

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 04-092

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IN THE MATTER OF  
KEVIN R. SHANNON  
AN ATTORNEY AT LAW

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Decision

Decided: May 7, 2004

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us based on a certification of default filed by the District VA Ethics Committee ("DEC"), pursuant to Rule 1:20-4(f).

Respondent was admitted to the New Jersey bar in 1990. He has no ethics history. Respondent has been temporarily suspended since October 22, 2003 for failure to provide records to the Office of Attorney Ethics ("OAE") in connection with a pending investigation.

On December 5, 2003, the DEC sent a complaint by certified and regular mail to respondent's home address in Absecon, New Jersey. The return receipt for the certified mail, indicating delivery on December 8, 2003, was returned to the DEC signed by Rick Beck. The complaint sent by regular mail was not returned. On January 22, 2004, the DEC sent a second letter by certified and regular mail to the same address, advising respondent that, unless he filed an answer, the allegations of the complaint would be deemed admitted and the record in the matter would be certified directly to us for the imposition of discipline. The letter further informed respondent that the complaint was deemed amended to include a charge of failure to cooperate with a disciplinary authority, based on his failure to answer the complaint. The return receipt for the certified mail, indicating delivery on January 24, 2004, was returned to the DEC signed by respondent. The complaint sent by regular mail was not returned.

Respondent did not file an answer to the complaint. The DEC certified the record directly to us for the imposition of discipline, pursuant to Rule 1:20-4(f).

In 2002, respondent represented the parents of a child in a child abuse/neglect matter filed by the New Jersey Division of Youth and Family Services. On June 13, 2002, respondent failed

to appear at a scheduled court proceeding in that matter. On June 18, 2002, the Honorable Kyran Connor, J.S.C., informed respondent that his clients had appeared without counsel on June 13, 2002, and directed respondent, within seven days, to explain his failure to appear and to show cause why monetary sanctions should not be assessed against him. Because respondent did not reply within the deadline, on July 17, 2002, Judge Connor entered an order requiring respondent to pay costs of \$150 by July 26, 2002. Respondent paid the sanction on July 25, 2002, and submitted a statement, in part:

As I informed my clients, I am leaving the practice of law. I no longer maintain an office and the letterhead address above is my residence. I am preparing a motion to be relieved as Counsel and Supporting Certification. I had erroneously believed that my clients would hire new counsel and a motion would not be necessary. They have not paid me, other than for my initial appearance. I was under the assumption that my client's [sic] would have hired another attorney or would have proceeded Pro se, as the matter before your Honor was almost completed. As my certification will point out . . . I have spent a considerable amount of time out of state in the past two months. Once again, I apologize [for] any inconvenience I may have caused the Court. I certainly did not mean to convey a lack of respect. I respectfully ask that your Honor reconsider the sanction.

Respondent also mentioned that he was working in a "non-law related job" near Philadelphia.

Despite his representation to the judge, respondent failed to file a motion to be relieved as counsel. On September 26, 2002, respondent failed to appear at another scheduled proceeding in the same case, prompting Judge Connor to refer the matter to the District I Ethics Committee.<sup>1</sup> In his letter to the ethics committee, Judge Connor mentioned that the litigation was terminated on September 26, 2002, with no additional proceedings scheduled.

On January 22, 2003, the OAE requested that respondent reply to the grievance and submit his client file by February 14, 2003. On March 4, 2003, the OAE requested the same information by March 18, 2003. On April 30, 2003, the OAE received respondent's reply, along with the client file.

In his reply to the grievance, respondent stated that (1) he did not refute the information provided by Judge Connor, (2) he closed his law office and withdrew from the practice of law in May 2002, without filing the necessary motion papers, and (3) he is employed in a non-legal capacity for a marketing company and does not intend to return to the practice of law. Along with

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<sup>1</sup> The ethics matter was transferred to the District VA Ethics Committee in accordance with an OAE policy to transfer matters referred by judges.

his reply to the grievance, respondent provided a copy of his client file, which did not contain a writing setting forth the basis or rate of his fee.

The complaint alleged that the reply inadequately addressed the grievance and that respondent failed to return the OAE's telephone message of October 10, 2003.

The complaint charged respondent with a violation of RPC 1.3 (lack of diligence), RPC 1.5(b) (failure to communicate the basis or rate of the fee in writing), RPC 3.2 (failure to expedite litigation), and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

Service of process was properly made. The complaint contains sufficient facts to support findings of most of the violations charged in the complaint. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R.1:20-4(f).

Respondent failed to appear at two court proceedings on behalf of his clients. As a result, the clients appeared in court without benefit of legal counsel. Respondent's failure to protect his clients' interest and to appear in court violated RPC 1.3.

In addition, respondent's failure to set forth the basis of his fee, in writing, violated RPC 1.5(b).

Although the complaint alleged that respondent failed to expedite litigation, we find that the facts do not support that charge. Respondent's failure to appear in court did not delay the proceedings. Indeed, according to Judge Connor, the clients appeared for both court proceedings and, on the latter date, the litigation was terminated. We, thus, dismiss the charge of a violation of RPC 3.2.

We also find that respondent violated RPC 1.16(d) (failure to protect a client's interest upon termination of representation). After he decided to terminate his law practice, he neither notified his clients, nor filed a motion to be relieved as counsel, despite his representation to Judge Connor that he would file such a motion. Although respondent was not specifically charged with a violation of RPC 1.16(d), the facts in the complaint gave him sufficient notice of the alleged improper conduct and of the potential of a finding of a violation of that RPC.

Finally, we find that respondent violated RPC 8.1(b) by failing to file an answer to the ethics complaint.

In sum, respondent was guilty of a lack of diligence, failure to communicate in writing the basis or rate of his fee, failure to protect a client's interests upon termination of representation, and failure to cooperate with disciplinary authorities.

The remaining issue is the quantum of discipline to be imposed. In cases involving similar violations, the discipline has ranged from an admonition to a reprimand. See, e.g., In the Matter of Richard J. Carroll, Docket No. DRB 95-017 (1995) (attorney who exhibited a lack of diligence, failed to communicate with a client, failed to turn over the client's file, and failed to reply to the grievance received an admonition); In re Farkas, 176 N.J. 296. (2001) (reprimand and transfer to disability inactive status for lack of diligence, failure to communicate with a client, failure to set forth the basis of the fee in writing, and failure to turn over a client's file to new counsel).

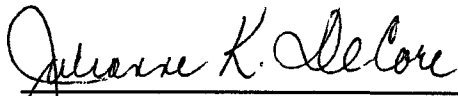
Even in default cases, where the discipline is almost invariably enhanced, reprimands still have been imposed. See, e.g., In re DeBosh, 164 N.J. 618 (2000) (reprimand in a default matter for gross neglect, lack of diligence, failure to communicate with a client, failure to set forth in writing the

basis of the fee, and failure to cooperate with disciplinary authorities); In re Mandel, 162 N.J. 100 (1999) (reprimand in a default matter for gross neglect, failure to communicate with a client, failure to turn over the client's file to a new attorney, and failure to cooperate with disciplinary authorities; the attorney had received a prior reprimand).

We unanimously determine that, because of the default nature of this matter, a reprimand is the appropriate level of discipline. Three members did not participate. One member recused herself.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board  
Louis Pashman, Esq.

By:   
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Julianne K. DeCore  
Chief Counsel



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**SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

In the Matter of Kevin R. Shannon  
Docket No. DRB 04-092

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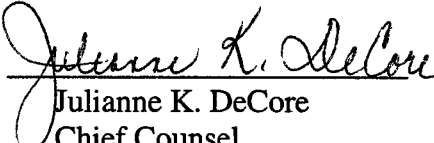


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Decided: May 7, 2004

Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>						X	
<i>O'Shaughnessy</i>							X
<i>Boylan</i>							X
<i>Holmes</i>			X				
<i>Lolla</i>			X				
<i>Pashman</i>			X				
<i>Schwartz</i>							X
<i>Stanton</i>			X				
<i>Wissinger</i>			X				
<b>Total:</b>			5			1	3

  
 Julianne K. DeCore  
 Chief Counsel