

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-166
District Docket No. VC-05-047E

IN THE MATTER OF
GERARD ROSS
AN ATTORNEY AT LAW

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Decision

Decided: September 3, 2008

This matter was before us on a certification of default filed by the District VC Ethics Committee ("DEC"), pursuant to R. 1:20-4(f). The complaint alleged that respondent neglected a matter, failed to communicate with the client, and failed to cooperate with the ethics investigation. We determined to recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1988. He was temporarily suspended from the practice of law, effective July 14, 1999, for failure to comply with the determination of a fee arbitration committee, requiring the return of a \$1,000 fee. In re Ross, 158 N.J. 450 (1999). To date, respondent has not refunded the fee to the client.

Effective January 9, 2001, in a default, respondent was suspended for three months for gross neglect, making false or misleading statements to the client about an appeal that he never filed, and failure to cooperate with the ethics investigation. In re Ross, 166 N.J. 008 (2001). The order also required respondent to comply with the determination of the fee arbitration committee in the temporary suspension matter, prior to reinstatement.

Effective April 11, 2001, in another default, respondent was suspended for six months for gross neglect, lack of diligence, failure to communicate, misrepresentations, and failure to cooperate with ethics authorities. Respondent's failure to file a complaint in a tenancy matter resulted in his clients' eviction. In addition, due to respondent's failure to answer the landlord's complaint, a judgment for \$20,000 was entered against his clients. In re Ross, 166 N.J. 005 (2001). This order, too, required respondent to comply with the determination of the fee arbitration committee in the temporary suspension matter, prior to reinstatement.

Effective October 11, 2001, in yet another default, respondent was suspended for three months for gross neglect in two client matters, failure to communicate with the clients, and failure to cooperate with the investigations of the ethics grievances. In re Ross, 166 N.J. 007 (2001). Like the prior two

orders, this order also required respondent to comply with the determination of the fee arbitration committee in the temporary suspension matter, prior to reinstatement. The temporary suspension order was never vacated.

On December 7, 2007, the DEC sent a copy of the complaint, by certified and regular mail, to the address listed for respondent in the New Jersey Lawyers' Fund for Client Protection ("CPF") records, 12 Princeton Terrace, Belleville, New Jersey 07032. Both the certified and the regular mail were returned with the notation "Attempted Not Known".

On February 4, 2008, the DEC published a notice of the complaint in The Star Ledger.

Respondent did not file an answer to the complaint.

Respondent was retained to represent Julio Ortiz in a workers' compensation matter. At their initial meeting, Ortiz provided respondent with his medical records and other documentation necessary to the case.

According to the complaint, respondent "allegedly" filed a petition on Ortiz' behalf, in workers' compensation court. Respondent thereafter neglected the matter.

Ortiz attempted many times to contact respondent about the status of his matter, but could not locate him. When respondent, at an undisclosed time, relocated his office, he failed to inform Ortiz of his new address.

Respondent and Ortiz spoke by telephone only once thereafter. During that conversation, respondent took down Ortiz' address, in order to send him his file. Respondent did not inform Ortiz about the status of his case. In addition, respondent never sent the file to Ortiz.

Count one charged respondent with neglecting the matter, but cited RPC 1.3 (lack of diligence). Count one also charged respondent with failure to expedite litigation (RPC 3.2) and failure to communicate with the client (RPC 1.4(a) and (b)).¹

Count two charged respondent with having violated RPC 8.1(b) (failure to cooperate with ethics authorities. Specifically, on September 21, 2005, the DEC sent respondent a copy of Ortiz' grievance for his reply, but it was returned marked "Attempted Not Known."

The CPF provided the DEC an updated address for respondent, 963 Bloomfield Avenue, Glen Ridge, New Jersey. The DEC sent the grievance to respondent at the new address, but that mail, too, was returned, marked "Return to Sender."

On January 10, 2007, the DEC again sent respondent a letter (presumably to the newer Glen Ridge address), by certified and regular mail, requesting his reply to the grievance. The letters

¹ Respondent was apparently charged under the pre-2004 version of RPC 1.4(a) (failure to communicate with the client) and (b) (failure to explain a matter to the extent reasonable necessary for the client to make informed decisions about the representation).

were returned, marked "no longer at this address and unclaimed."

Respondent did not reply to the grievance.

The complaint alleged that respondent's conduct in this regard violated RPC 8.1(b).

The complaint contains sufficient facts to support a finding of unethical conduct. Because respondent failed to answer the complaint, the allegations are deemed admitted. R. 1:20-4(f).

Respondent was retained to represent Ortiz in a workers' compensation matter, but ultimately neglected it, in violation of RPC 1.3 and RPC 3.2. He also failed to keep Ortiz informed about important events in the case, a violation of RPC 1.4(b).

Finally, we dismissed the allegation that respondent failed to cooperate with the ethics investigation, in violation of RPC 8.1(b). There is no indication that respondent received the grievance, as the DEC mail to him was repeatedly returned by the post office.

Generally, in default matters, reprimands are imposed for gross neglect, even if the conduct is accompanied by other, non-serious ethics infractions. See, e.g., In re Swidler, 192 N.J. 80 (2007) (attorney grossly neglected one matter and failed to cooperate with the investigation of an ethics grievance); In re Van de Castle, 180 N.J. 117 (2004) (attorney grossly neglected an estate matter, failed to communicate with the client, and

failed to cooperate with disciplinary authorities); In re Goodman, 165 N.J. 567 (2000) (attorney grossly neglected a personal injury case for seven years by failing to file a complaint or to otherwise prosecute the client's claim; the attorney also failed to keep the client apprised of the status of the matter and failed to cooperate with disciplinary authorities; prior private reprimand (now an admonition)); and In re Lampidis, 153 N.J. 367 (attorney failed to pursue discovery in a personal injury lawsuit or to otherwise protect his client's interests and failed to communicate with the client; the attorney also failed to cooperate with ethics investigators).

This respondent has a significant history of prior discipline, as evidenced by three separate defaults: a three-month suspension on October 11, 2001, a six-month suspension on April 11, 2001, and another three-month suspension on January 9, 2001. Each of those defaults involved a combination of gross neglect, failure to communicate with clients, and failure to cooperate with ethics authorities.

What is the appropriate sanction for an attorney who has essentially become a phantom? Since respondent's temporary suspension in 1999, he has allowed five consecutive matters to proceed to us as defaults. Moreover, he has never paid the \$1,000 fee arbitration award for which he was temporarily

suspended nine years ago. As a result, the suspension remains in effect to date.

Another attorney who, like respondent, was found guilty of violations that, viewed alone, would not have warranted a suspension, was suspended for one year. In In re Wargo, 194 N.J. 166 (2008), the Court suspended the attorney for gross neglect, lack of diligence, failure to communicate with the client, misrepresentations, failure to promptly release escrow funds, and failure to cooperate with ethics investigators. The misconduct, standing alone, would have warranted no more than a censure. However, we found that

because she has been disciplined before and has exhibited an egregious pattern of indifference toward the ethics system, beginning with her first disciplinary matter (a default), continuing with her failure to cooperate with the OAE in connection with the Pinto grievance (for which she was temporarily suspended), and extending to the two current matters (also defaults), more severe discipline is required.

[In the Matter of Kathleen D. Wargo, DRB 07-210 and 07-217 (October 30, 2007)
[slip op. at 15.]

Another similarly situated attorney was suspended for six months, when the misconduct would ordinarily have resulted in a reprimand. In In re Gallo, 186 N.J. 247 (2006), the complaint alleged lack of diligence in a workers' compensation case, failure to communicate with the client, failure to return the

client's file, and failure to cooperate with the investigation of the grievance. When the Court issued an order to show cause why Gallo should not be disciplined, he requested an adjournment, which was denied. Gallo then failed to appear on the return date of the order to show cause. Gallo's sole discipline prior to that time had been imposed sixteen years earlier - a reprimand for recordkeeping violations and negligent misappropriation.

Six months later, the Court considered two additional defaults involving Gallo. One matter involved allegations of gross neglect, pattern of neglect, failure to return client files, and failure to cooperate with disciplinary authorities in matters for three clients; the other default dealt with a single violation: failure to cooperate with the investigation of a grievance. The Court disbarred Gallo, citing his history of defaults and several failures to appear before the Court. In re Gallo, 188 N.J. 478 (2006). See also In re Devin, 181 N.J. 344 (2004) (attorney disbarred in a default matter alleging solely failure to reply to the DEC's requests for information about a grievance; the attorney had accumulated an impressive ethics record: two reprimands, two three-month suspensions (one of them imposed in a default case), and a temporary suspension for failure to cooperate with an OAE investigation; the attorney did not appear on the Court's order to show cause) and In re Gavin,

181 N.J. 342 (2004) (disbarment for attorney who compiled an extensive disciplinary record: two reprimands, two three-month suspensions, and a six-month suspension; all but one of those matters were defaults; although the attorney's last violations were not serious (failure to promptly release the balance of an estate's funds to the beneficiaries and failure to communicate with them) the Court disbarred the attorney based on its "review of the record and on the basis of respondent's failure to appear on the Court's Order to Show Cause" Id. at 343).

As evidenced by the above cases, there is considerable precedent for a lengthy suspension and even disbarment where, as here, an attorney's abject failure to deal with clients and the disciplinary system reaches a critical mass. This respondent has not replied to the disciplinary system since being temporarily suspended in 1999 and racking up final discipline (two three-month suspensions and a six-month suspension) in four other defaults since then.

Respondent has shown the "egregious indifference" toward the discipline system present in Warqo (one-year suspension), and the "impressive" prior disciplinary history of the disbarment cases, including the second Gallo, Devin, and Gavin.

We, therefore, determine to recommend respondent's disbarment. He has abandoned any interest he may have had in ever regaining his right to practice law in this state.

Members Baugh and Clark voted for an indeterminate suspension. Member Boylan did not participate.

We also determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses, as provided by R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: _____
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

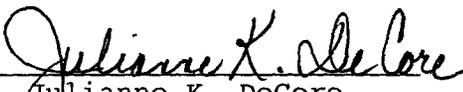
In the Matter of Gerard V. Ross
Docket No. DRB 08-166

Argued: July 17, 2008

Decided: September 3, 2008

Disposition: Disbar

| <i>Members</i> | Disbar | Suspension | Reprimand | Dismiss | Disqualified | Did not participate |
|----------------|--------|------------|-----------|---------|--------------|---------------------|
| Pashman | X | | | | | |
| Frost | X | | | | | |
| Baugh | | X | | | | |
| Boylan | | | | | | X |
| Clark | | X | | | | |
| Doremus | X | | | | | |
| Lolla | X | | | | | |
| Stanton | X | | | | | |
| Wissinger | X | | | | | |
| Total: | 6 | 2 | | | | 1 |


Julianne K. DeCore
Chief Counsel