

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 05-294  
District Docket No. IIB-04-009E

---

IN THE MATTER OF  
FERNANDO REGOJO  
AN ATTORNEY AT LAW

---

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Decision

Argued: November 17, 2005

Decided: December 22, 2005

Salvatore Giampiccolo appeared on behalf of the District IIB Ethics Committee.

Joseph Castiglia appeared on behalf of respondent.

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

This matter was before us on a recommendation for discipline filed by District IIB Ethics Committee ("DEC"). The complaint charged respondent with violating RPC 1.1, presumably

(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4, presumably (b) (failure to keep a client reasonably informed about the status of the matter and to comply with reasonable requests for information), and RPC 1.16(d) (failure to return the unearned portion of a retainer or to give an accounting of legal fees in connection with the representation). At the hearing, the presenter withdrew the charge of a violation of RPC 1.16(d). The matter proceeded on the remaining three charges.

Respondent was admitted to the New Jersey bar in 1981. In 2001, he received a reprimand when, in one matter, he failed to promptly pay funds to third parties in a real estate transaction; in ten matters, he negligently misappropriated client funds; and he failed to maintain proper records. The Court also required him to submit to the Office of Attorney Ethics ("OAE") quarterly trust account reconciliations for two years. In re Regojo, 170 N.J. 67 (2001).

In 2004, respondent received a second reprimand for gross neglect, lack of diligence, failure to communicate with a client, and negotiating a malpractice settlement without advising the client to seek independent counsel. In re Regojo, 180 N.J. 523 (2004).

On December 6, 2005, the Court imposed a third reprimand for negligent misappropriation, commingling, failure to promptly deliver funds to clients, and recordkeeping violations. In re Regojo, \_\_\_ N.J. \_\_\_ (2005). The Court further required respondent to retain a certified public accountant and submit quarterly reconciliations of his attorney accounts to the OAE for two years.

On October 10, 2000, the grievants, Mario Arteaga and his sister, Lola, retained respondent to investigate a claim of defective construction against a contractor, Allied Housing Corporation ("Allied"). At that time, the Arteagas paid respondent a \$1,000 retainer. They had purchased a house in North Bergen from Allied in February 1999. Shortly afterward, the property developed problems with water infiltration and sewer drainage. On January 16, 2001, respondent sent a letter to Allied demanding correction of the defects. Although respondent engaged in preliminary discussions with Allied's attorney, he was not able to resolve the matter.

On July 12, 2001, respondent entered into a retainer agreement with Mario in which respondent agreed to file a lawsuit against Allied and its principal, Jose Miguel Torres. The Arteagas paid respondent \$4,000 to begin work on the file.

Respondent filed a complaint against Allied and Torres on December 26, 2001. Although the record is not clear, respondent may not have served the defendants with the complaint, resulting in its dismissal. In any event, respondent filed the same complaint on April 2, 2002.

On October 18, 2002, respondent filed an amended complaint naming as additional defendants John Graziano, a subcontractor, and Martha Rodriguez, an architect.<sup>1</sup> Respondent did not have information about the extent of Graziano's or Rodriguez' liability; however, he was concerned that the entire controversy doctrine could bar litigation against them if he did not amend the complaint to add them as defendants.

Respondent did not serve discovery on any of the defendants. He did not propound interrogatories, request documents, or request admissions. He explained at the ethics hearing that the case was in mediation and he was hopeful that it could be resolved. Respondent further asserted that he had retained an expert, Wayne Nolte, and was awaiting a report from Nolte for information to develop the case against Allied.

On January 16, 2003, Nolte sent a retainer agreement for respondent's review and execution, which respondent returned,

---

<sup>1</sup> Graziano's name also appears in the record as "Grassiano."

along with a \$1,000 retainer, on March 6, 2003. Respondent paid Nolte a total fee of \$2,000 from the retainer he had received from the Arteagas.

On July 29, 2003, the Honorable Camille M. Kenny, J.S.C., entered an order dismissing the complaint with prejudice against Rodriguez for failure to file an affidavit of merit. The order indicated that respondent had not opposed the motion to dismiss the complaint. Respondent testified that, because he had determined that there was no evidence that Rodriguez had been negligent, he permitted the claim to be dismissed against her.

On December 23, 2002, Graziano's attorney served respondent with interrogatories and a notice to produce documents. According to respondent, he gave the interrogatories to Mario. Although respondent asked Mario to complete the interrogatories, Mario told respondent that he did not have the necessary documents or information. Because respondent did not comply with the discovery requests, Judge Kenny entered an August 8, 2003 order dismissing the complaint against Graziano without prejudice. The order indicated that respondent had not opposed the motion to dismiss the complaint.

On January 9, 2004, Judge Kenny entered an order dismissing the complaint with prejudice as to Graziano only. Again,

respondent did not oppose the motion to dismiss the complaint. Judge Kenny inserted the following language, by hand, in the January 9, 2004 order:

The court has made repeated efforts to contact plaintiff's attorney Mr. Regojo since this motion was filed on November 7. [The court] had granted adjournments at request of counsel's office, but to date, plaintiff's counsel has failed to submit a certification as required by Rule 4:23-5(a), has failed to personally contact the court despite repeated requests, and has been unavailable to appear by teleconference, even at times when [the] court was advised he would be available. Defendant Graziano is entitled to the relief sought.

[Ex.26.]

Respondent asserted that he did not oppose Graziano's motion to dismiss the complaint because he believed that the primary defendant was Allied, that the Arteagas were not in privity with the subcontractor Graziano, and that he did not have sufficient information to complete the interrogatories.

Although Allied remained as a defendant in the case, respondent mistakenly believed that the complaint had been dismissed against all defendants. On January 21, 2004, respondent sent to the Arteagas a copy of the order dismissing the complaint against Graziano. Respondent advised them that the entire matter needed to be restored to the trial calendar and

that they need not appear in court on February 3, 2004. A trial call had been scheduled for that date. According to Lola, she did not receive the January 21, 2004 letter from respondent and learned, by contacting the court, that she should appear on February 3, 2004.

Although Lola appeared in court on February 3, 2004, respondent did not. On that date, the Honorable Maurice J. Gallipoli, J.S.C., entered an order requiring respondent to appear on February 4, 2004, with his file. Respondent appeared in court on that date. Judge Gallipoli asked the Arteagas if they wanted respondent to continue representing them. When the Arteagas replied that they wanted another attorney, Judge Gallipoli removed respondent as their counsel and directed him to provide a copy of his file to the Arteagas. Meanwhile, on February 2, 2004, the day before the trial call, respondent had received the expert report from Nolte.

On February 12, 2004, respondent sent a copy of his file to Mario, along with a \$1,755.10 check, representing a refund of the \$4,000 retainer, less respondent's out-of-pocket expenses consisting of \$2,000 for Nolte's expert report, \$175 for filing the complaint, and \$69.90 for serving the complaint. Respondent

explained that he refunded his fee because Mario had been very concerned about litigation expenses and needed the money.

As mentioned above, Mario did not appear at the ethics hearing. Although Lola testified extensively that respondent failed to provide her with documents, did not return her telephone calls, and did not keep her advised about the status of the matter, she conceded that respondent primarily contacted Mario, and that, during much of the period of representation, she resided in North Carolina. Because Mario did not appear, there was no proof concerning respondent's communication with him.

In his answer to the formal ethics complaint, respondent made the following admissions:

He admits that he failed to act with reasonable diligence and promptness in the following respects: (a) in failing to oppose the motion of defendant Rodriguez for an Order of dismissal; (b) in failing to be cognizant of the Court's directions, and thereby failing to appear in connection with the proceedings leading up to the Order of dismissal as to defendant Graziano on January 9, 2004; (c) in failing to be aware of the February 3, 2004 trial call and mistakenly believing that the entire case had been dismissed; and (d) in failing to communicate adequately with the court.

[Ex.C-2131.]



In mitigation, respondent offered that, at the time of these events, he was experiencing marital difficulties and his father was very ill with cancer.

The DEC found that respondent displayed a lack of diligence in his representation of the Arteagas, pointing out that he filed the lawsuit well after he had been retained; that he allowed almost two months to elapse before retaining the expert's services; that he failed to obtain the expert report in a timely fashion, ultimately receiving it on the eve of the trial; that he failed to serve discovery on the defendants; and that he permitted the complaint to be dismissed, without opposition, against the architect and the subcontractor.

Finding that the record did not contain clear and convincing evidence of gross neglect, the DEC recommended dismissal of that charge. In addition, the DEC recommended dismissal of the failure to communicate charge. The DEC observed that, because respondent had communicated primarily with Mario, the absence of Mario's testimony precluded a finding of a violation of RPC 1.4(b).

The DEC recommended a reprimand.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is supported by clear and convincing evidence.

We find that respondent failed to act with diligence and exhibited gross neglect. Although he filed a complaint in December 2001, it apparently was dismissed and he filed the same complaint in April 2002. He did not serve discovery on any of the defendants. Despite his assertion that his litigation strategy was to rely on the expert's report, he failed to pursue the prompt submission of that document, resulting in its receipt on February 2, 2003, the day before the trial call. If the case actually had been called for trial on February 3, 2003, he would not have been permitted to introduce the report into evidence or to call Nolte as a witness, because he had not provided the report to his adversary. He also failed to obtain interrogatory answers from the Arteagas, resulting in the dismissal of the complaint against the subcontractor, Graziano; failed to obtain an affidavit of merit, resulting in the dismissal of the complaint against the architect, Rodriguez; and failed to oppose both of those motions to dismiss.

Respondent's testimony that he mistakenly believed that the entire complaint had been dismissed was inconsistent. On the one

hand, he claimed that he did not oppose the motions to dismiss because he believed that Allied, not Graziano or Rodriguez, was the party responsible for the construction defects. Yet, on the other hand, he conceded that, when the case was called for trial, he did not know that Allied, the primary defendant, remained in the litigation. We find respondent's testimony contradictory.

Furthermore, respondent was not accessible to Judge Kenny. According to her January 9, 2004 order, upon the filing of Graziano's November 7, 2003 motion to dismiss the complaint with prejudice, the court made repeated efforts to contact respondent. Respondent failed to contact the court during this two-month period, even failing to be available by teleconference, after the court had been advised that he would be available.

Thus, after representing the Arteagas for more than two and one-half years, respondent had accomplished only the filing of a complaint against Allied. He had obtained no discovery, had failed to ensure that his expert submitted a timely report, had not provided answers to interrogatories, had not appeared at the trial call, and had not replied to the court's efforts to contact him. We, thus, find that, in addition to a lack of diligence, respondent's conduct amounted to gross neglect.

In our view, the DEC properly dismissed the charge that respondent failed to communicate with his clients. The record suggests that respondent failed to keep Lola informed about the status of the matter and to return her telephone calls. Because Mario was the primary contact person, his failure to testify, however, prevented the presentation of evidence to a clear and convincing standard. We, thus, dismiss the RPC 1.4(b) charge.

As mentioned above, the presenter withdrew the charge that respondent failed to account for his unearned fee.

In sum, respondent was guilty of a lack of diligence and gross neglect. Generally, cases involving gross neglect and lack of diligence in one or two matters, usually accompanied by failure to communicate with a client, result in an admonition, if the attorney does not have an ethics history. In the Matter of Ben Zander, DRB 04-133 (May 24, 2004) (admonition where an attorney, retained to apply for a trademark, twice allowed the application to be deemed abandoned by the United States Patent and Trademark Office, and failed to keep his client advised of the status of the matter, violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(a)); In the Matter of Vincenza Leonelli-Spina, DRB 02-433 (February 14, 2003) (admonition for gross neglect, lack of diligence and failure to communicate with a client; after the

client's suit was dismissed on a summary judgment motion, the attorney did not file an appellate brief on two separate occasions; the attorney also failed to reply to the client's telephone calls and letters); In the Matter of Jonathan H. Lesnik, DRB 02-120 (May 22, 2002) (admonition for attorney who, in a divorce matter, did not file an answer or obtain an extension to file the answer, resulting in a final judgment of divorce by default; the attorney also failed to keep the client informed about the matter; the attorney violated RPC 1.1(a), RPC 1.3, and RPC 1.4(a)); In the Matter of Jeri L. Sayer, DRB 99-238 (January 11, 2001) (admonition for gross neglect, lack of diligence, and failure to communicate with a client; a workers' compensation petition was dismissed twice for the attorney's failure to appear in court; thereafter, the attorney filed an appeal, which was dismissed for failure to timely file a brief); In the Matter of Paul Paskey, DRB 98-244 (October 23, 1998) (admonition imposed for gross neglect, lack of diligence, and failure to inform the client of the status of the matter; the attorney allowed a complaint to be dismissed twice and failed to apprise the client of its dismissal; the attorney also failed to reply to the client's numerous requests for information); and In the Matter of Ben W. Payton, DRB 97-247 (October 27, 1997)

(admonition for attorney who allowed a complaint to be dismissed for lack of prosecution, failed to disclose the dismissal to the client, and failed to reply to the client's requests for information about the case).

A reprimand is generally imposed if the attorney has a disciplinary record. See, e.g., In re Aranguren, 172 N.J. 236 (2002) (reprimand for attorney who failed to act with diligence in a bankruptcy matter, failed to communicate with a client, and failed to provide the client with a writing setting forth the basis or rate of his fee; the attorney had received an admonition and a six-month suspension); and In re Gordon, 139 N.J. 606 (1995) (reprimand for lack of diligence and failure to communicate in two matters; in one of the matters, the attorney also failed to return the file to the client; prior reprimand).

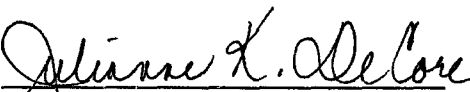
Here, respondent received a reprimand in 2004 for violations similar to those in the instant case. The misconduct in that case occurred from 1996 through 2002; the grievance was filed in April 2002, and the formal ethics complaint was served in December 2002. Respondent, therefore, was on notice, during the events in this matter, that his prior conduct raised ethics implications. In 2001, respondent was reprimanded for failure to promptly pay funds to third parties, negligent misappropriation,

and recordkeeping violations. In October 2005, we transmitted to the Court a decision in which we voted to impose another reprimand for violations similar to those for which the 2001 reprimand was imposed - negligent misappropriation, commingling, failure to promptly deliver funds to clients, and recordkeeping violations. That matter is pending with the Court.

Based on respondent's extensive disciplinary history, particularly the 2004 reprimand for similar misconduct, we determine that a censure, rather than the reprimand recommended by the DEC, is warranted. Chair Maudsley and Vice-Chair O'Shaughnessy did not participate.

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

Disciplinary Review Board  
Louis Pashman, Esq.

By:   
Julianne K. DeCore  
Chief Counsel

---

---

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Fernando Regojo  
Docket No. DRB 05-294

---


---

Argued: November 17, 2005

Decided: December 22, 2005

Disposition: Censure

Members	Disbar	Censure	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley						X
O'Shaughnessy						X
Boylan		X				
Holmes		X				
Lolla		X				
Neuwirth		X				
Pashman		X				
Stanton		X				
Wissinger		X				
Total:		7				2

  
Julianne K. DeCore  
Chief Counsel