

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 00-404

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IN THE MATTER OF :  
MICHAEL P. BALINT :  
AN ATTORNEY AT LAW :  
\_\_\_\_\_ :

Decision

Argued: March 15, 2001

Decided: August 6, 2001

Andre W. Gruber appeared on behalf of the District VII Ethics Committee.

Donald S. Driggers 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 based on a recommendation for discipline filed by the District VIII Ethics Committee ("DEC"), arising out of allegations of misconduct in four client matters, as well as allegations that respondent practiced law while he was on the Supreme Court's list of ineligible attorneys.

Respondent was admitted to the New Jersey bar in 1976. He maintains an office for the practice of law in Lawrenceville, Mercer County. He formerly maintained an office in Cranbury, Middlesex County.

We recently determined to reprimand respondent for gross neglect, lack of diligence and failure to communicate in three matters, as well as failure to expedite litigation in two of the three. Respondent had also demonstrated a pattern of neglect of client matters. As of this date, that decision is awaiting Supreme Court review. In the Matter of Michael P. Balint, Docket No. DRB 00-244 (February 6, 2001).

Practicing Law While Ineligible (District Docket No. VIII-99-20E)

On September 21, 1998 respondent was placed on the Supreme Court's list of ineligible attorneys after he failed to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection ("CPF"). Respondent paid the amount due to the CPF on January 6, 1999 and was removed from the ineligible list on February 16, 1999. He admitted that he practiced law during the time that he was on the ineligible list.

According to respondent, he was unaware that he was ineligible to practice, assuming that his secretary had made the payment to the CPF. He explained that he had relocated his office in August 1998 and thought that the assessment had been paid before the move. In January 1999 another attorney advised respondent that he was ineligible to practice. Respondent immediately paid the assessment.

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The complaint charged respondent with a violation of RPC 1.1(b) (pattern of neglect), when this matter was considered with the Olesnycky/Shaw matter below, and R.1:20-3(g)(4)

(failure to cooperate with a disciplinary investigation). More properly, respondent should have been charged with a violation of RPC 5.5(a) (unauthorized practice of law).

The DEC did not find that respondent's conduct was unethical. The DEC concluded that respondent was unaware that the annual assessment to the CPF had not been paid, noting that he paid the assessment as soon as he learned of his ineligibility. Similarly, the DEC remarked that there was no factual basis to support a finding that respondent had failed to cooperate with the investigation of this matter.

The Olesnycky/Shaw Matter (District Docket No. VIII-99-27E)

In 1998 respondent represented a client, Shaw, in the sale of real property to Rosa R. Joy. Nestor L. Olesnycky represented Joy in the transaction. In connection with the sale, Shaw took back a mortgage on the property.

By letter dated August 24, 1998, Olesnycky sent to respondent Joy's final payment on the mortgage. The letter instructed respondent to hold the check in escrow, pending Olesnycky's receipt of the original mortgage endorsed for cancellation. Contrary to this instruction, the check was released to the client prematurely. Moreover, respondent did not forward to Olesnycky the discharge of mortgage until August 9, 1999, almost one year later and then only after a series of letters and phone calls from Olesnycky's office.

As a result of respondent's failure to timely send the discharge of the mortgage, Olesnycky and his law partner were forced to do legal work in their client's behalf, including

the preparation of a lawsuit, which would not have been necessary but for respondent's conduct.<sup>1</sup> The firm was not compensated for the additional work.

Respondent was unable to explain why the pay-off check had been prematurely turned over to his client. He testified that he did not personally release the check. As to the discharge of the mortgage, respondent could not explain the delay between August 1998 (when Olesnycky sent the pay-off check) and March 1999. From that point forward, respondent appeared to blame the delay on the fact that his secretary for more than twenty years left without notice and on his subsequent hospitalization.

\* \* \*

The complaint charged respondent with a violation of RPC 1.1(b) and R.1:20-3(g)(4).

The DEC concluded that respondent violated RPC 1.1(a) (gross neglect) and RPC 1.3 (lack of diligence) (neither of which was charged in the complaint) and that his misconduct in this count, when considered in concert with the above matter, constituted a pattern of neglect, in violation of RPC 1.1(b).

The DEC did not find clear and convincing evidence of a violation of R.1:20-3(g)(4).

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<sup>1</sup>The complaint was not served because Olesnycky's client did not want to pay a retainer fee.

The DeLotto Matter (District Docket No. VIII-99-34E)

On October 21, 1996 Joseph and Lillian DeLotto retained respondent to represent them and their business in a dispute with a contractor, Todd Leatherman. Respondent did not answer the complaint filed against the DeLottos, resulting in the automatic entry of a default against them. In March 1998 the plaintiff filed an application for entry of a default judgment. Respondent filed an opposition. Although an order was entered denying the plaintiff's application, vacating the default and permitting the filing of an answer and counterclaim, respondent failed to file either.

Thereafter, respondent began negotiations with Leatherman's attorney in an attempt to resolve the dispute. During the course of those negotiations, however, Leatherman, without notice to respondent, proceeded pro se to obtain a default judgment against the DeLottos. On June 23, 1998 a judgment was entered against the DeLottos. Subsequently, a levy was placed on Mrs. DeLotto's bank account. Ultimately, the DeLottos retained another attorney, who had the default judgment vacated and was able to settle the matter.

According to Mrs. DeLotto, respondent was unresponsive to her many telephone calls after she learned of the levy. When respondent replied to the DeLottos, he assured them that he was taking the necessary steps in their behalf.

In his answer, respondent denied ignoring the DeLottos' calls and further denied giving them misleading information.

\* \* \*

The complaint charged respondent with a violation of RPC 1.1(a), RPC 1.3, RPC 1.4(a) (failure to communicate) and RPC 3.2 (failure to expedite litigation). In addition, respondent was charged with a violation of RPC 1.1(b), when this matter is viewed in concert with the Scheiermeyer matter.

The DEC determined that respondent violated RPC 1.1(a), RPC 1.3 and RPC 3.2, by allowing the default to be automatically entered against the DeLottos and then failing to file a responsive pleading, even after the default was vacated. The DEC further found that respondent's failure to reply to the DeLottos' telephone calls and his inaccurate information to them violated RPC 1.4(a). In addition, the DEC found that respondent exhibited a pattern of neglect in his handling of client matters.

The Schiermeyer Matter (District Docket No. VIII-99-52E)

At the DEC hearing, the presenter withdrew the charges in this matter. The grievants had moved out of state and appearing at the hearing would have been too onerous a burden on them. By letter dated March 13, 2000, the grievants indicated that, in the event of a hearing, they would be available by telephone. The record does not reveal why they did not testify via telephone.

The Weinstein/Estate of Montsko Matter (District Docket No. VIII-99-63E)

Louis A. Montsko died on February 15, 1995. The grievant, Norma E. Weinstein, was a primary beneficiary of the estate. Respondent, who was the executor of the estate, provided a final informal accounting to Weinstein on October 30, 1996. However, it was not until February 11, 2000 that respondent closed the estate bank account. Weinstein contended that respondent had been unresponsive to her telephone calls and to her attorney's requests that he make the final distribution of approximately \$1,445. She contended that, as a result of respondent's inaction, she incurred substantial legal fees.

In his answer, respondent denied Weinstein's contentions and stated that he had given her an explanation for the delay.<sup>2</sup>

Respondent testified that he had difficulty dealing with the estate because of his close relationship with the decedent and because of his depression and alcoholism, detailed below. During the DEC hearing, respondent's counsel assured the panel that respondent would finalize the administration of the estate. The record does not reveal if it was completed.

\* \* \*

The complaint charged respondent with a violation of RPC 1.1(b) and RPC 1.4(a).

The DEC found both violations.

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<sup>2</sup>Respondent's financial records in connection with the Montsko estate were turned over to the Office of Attorney Ethics at the request of that office. Apparently, no irregularities were found in the estate account.

By way of mitigation, respondent pointed to his mental health difficulties, his alcoholism and physical problems.<sup>3</sup> Respondent stated that his alcoholism became severe approximately two years before the April 2000 DEC hearing. Respondent offered into evidence two letters that he had previously offered in connection with the matter that was earlier before us. In that matter, we summarized those letters as follows:

A June 30, 1999 letter from the Family Guidance Center Corporation states that respondent was first evaluated in February 1999. Thereafter, on February 16, 1999, he was seen for an assessment and was diagnosed with 'Dysthymic Disorder; Rule Out Alcohol Dependence.' The letter indicated that respondent had been referred to a psychiatrist for medication and counseling to deal with depression, stress, job performance issues and substance use. . . . Respondent also submitted an August 9, 1999 letter from a psychiatrist, indicating that he was first seen on March 9, 1999. The letter stated, that, among other things, respondent was diagnosed with adjustment disorder with depressed mood. The letter also stated that, during respondent's second consultation, he acknowledged a history of pathological alcohol use and claimed that he had stopped drinking in March 1999. According to the letter, respondent informed the psychiatrist that, after their second meeting, respondent had relapsed to alcohol use. In addition, respondent stated, he had been hospitalized for blood loss, anemia and gallstones. The psychiatrist noted that some of respondent's physical conditions might be medical complications from alcoholism.

Respondent submitted into evidence a letter dated April 24, 2000 from the facilitator for the Mercer County group of Lawyers Concerned for Lawyers. The writer stated that respondent had been referred to the group by the Lawyers' Assistance Program in June 1999 and that he had been "a regular attendee ever since." Respondent is not under the care of a

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<sup>3</sup>Respondent stated in his answer that he suffers from "a widely varying uncontrollable blood pressure problem."



psychiatrist or a psychologist.

Respondent also pointed to the relocation of his office in March or April 1999 and the departure of his secretary, in March 1999, as contributing to his difficulties.

\* \* \*

In sum, the DEC determined that respondent violated RPC 1.1(a) and (b) and RPC 1.3 in Olesnycky/Shaw; RPC 1.1(a) and (b), RPC 1.3, RPC 1.4(a) and RPC 3.2 in DeLotto; and RPC 1.1(b) and RPC 1.4(a) in Weinstein/Estate of Montsko.

It appears that the DEC considered respondent's prior disciplinary matter in its determination on this matter. The panel report stated as follows:

The findings set forth in the Hearing Panel Report dated February 29, 2000 in regard to other ethics proceedings . . . (Pompliano), . . . Estate of Walther/Totten) and . . . (Kellum) are incorporated herein as to the **Findings** set forth in the section entitled **Allegations Common to Each Count** beginning on Page 15 of that report.

As such we need not repeat at length the difficulties Respondent endured in regard to his mental and physical health as well as his office staffing problems and only need add the finding that the Respondent's close personal relationship with the decedent Montsko in regard to **Docket No. VIII 99-63E (Weinstein/Estate of Montsko)**, coupled with this depression and alcoholism, impacted upon his ability to properly meet his responsibilities in regard to that matter.

[Hearing panel report at 12-13]

The DEC found that, despite respondent's mental and physical health problems and his office-related difficulties, which were considered in mitigation, his misconduct warranted a reprimand. Also, the DEC "strongly" recommended that respondent practice under the supervision of a proctor for at least one year and that he be required to undergo regular

psychiatric treatments. In addition, the DEC recommended that respondent pay Olesnycky \$900 as compensation for legal work necessitated by respondent's conduct in that matter, even though Olesnycky made it clear that he was not seeking payment. The DEC also recommended that respondent reimburse Weinstein for the legal fees and expenses she incurred as a result of respondent's inaction.<sup>4</sup>

\* \* \*

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent's conduct was unethical is fully supported by clear and convincing evidence. We cannot agree, however, with some of the specific findings made by the DEC.

The DEC was correct in finding no violation of R.1:20-3(g)(4) [more appropriately, RPC 8.1(b)] in the Olesnycky/Shaw matter. There is no factual basis to support a finding of failure to cooperate with ethics authorities. On the other hand, we are unable to agree with the DEC's conclusion that respondent's conduct in practicing law while ineligible was not unethical. Attorneys who have claimed ignorance of their non-payment to the CPF have been found guilty of practicing while ineligible, despite their lack of intent to violate the rules. We, therefore, find that respondent violated RPC 5.5(a) (as opposed to RPC 1.1(b), which is inapplicable). In re Assad, 164 N.J. 615 (2000).

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<sup>4</sup>Since the date of the DEC hearing, respondent has paid Olesnycky \$900. As to the DEC's suggestion that respondent pay the legal fees and expenses incurred by Weinstein as a result of his inaction, that remedy is not something we generally require.

In Olesnycky/Shaw, respondent was unable to explain the delay in forwarding the discharge of the mortgage to the buyer's attorney and, in addition, had no reasonable explanation for the premature release of the check to his client. Accordingly, we find a violation of RPC 1.3 (lack of diligence) for the delay in connection with the discharge of the mortgage. In addition, respondent breached his escrow agreement with Olesnycky by releasing the pay-off check to Shaw prior to sending the discharge of the mortgage to Olesnycky. In his letter to respondent, Olesnycky made clear his intent that the money be held in escrow until his receipt of that document. Thus, we find a violation of RPC 1.15(a). Although the complaint did not charge respondent with violations of RPC 1.3 and RPC 1.15(a), the language of the complaint gave him adequate notice of a potential finding of violations of these rules. See In re Logan, 70 N.J. 222 (1976).

With regard to DeLotto, the complaint charged respondent with violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 3.2. The DEC concluded that respondent had violated each of the charged rules. The DEC was correct with regard to most of those findings. However, we dismissed for lack of clear and convincing evidence the allegations that respondent failed to communicate with the DeLottos and gave them misleading information. As to the remaining violations, however, the DEC's findings were proper. Respondent inexplicably failed to file an answer in his clients' behalf not once, but twice, allowing the entry of an automatic default, a judgment and a levy on Mrs. DeLotto's bank account. Through his inaction, respondent caused harm to his clients. He, therefore, violated RPC

1.1(a), RPC 1.3 and RPC 3.2.

As to Weinstein/Estate of Montsko, the complaint charged respondent with failure to communicate with one of the beneficiaries. Although respondent stated in his answer that he was responsive to Weinstein and that he gave her an explanation about the delay in finalizing the estate, he produced no writing to Weinstein or to her attorney. Given respondent's lack of adequate explanation to the DEC for his delay in finalizing the estate, it is unlikely that he did, in fact, communicate with Weinstein and explain his inaction to her. We, therefore, find a violation of RPC 1.4(a).

In addition, there is little doubt but that respondent did not handle the Montsko estate with diligence. If respondent, because of his mental health problems and his relationship with the decedent, found himself unable to take the simple steps necessary to complete the estate, respondent should have asked for assistance from another attorney. Montsko died in February 1995. The estate has remained unsettled for too long. The ethics complaint charged respondent only with failure to communicate and a pattern of neglect. The language of the complaint, however, gave respondent adequate notice that his handling of the estate was in question and that violations of RPC 1.1(a) and RPC 1.3 could be found. We, therefore, find that respondent exhibited gross neglect and lack of diligence in Montsko.

In each of the above matters, respondent was charged with - and the DEC found - a pattern of neglect, when the matters were considered in concert. We agree.

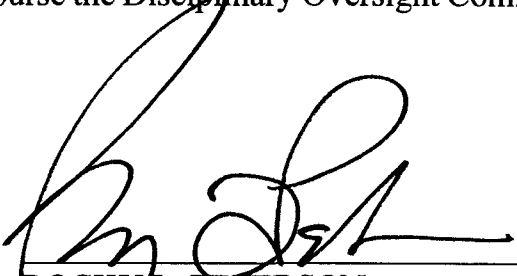
As to the appropriate measure of discipline. Respondent's misconduct in these matters spanned from 1997 through 1999. We recently determined to reprimand him for unethical conduct that occurred before and during that period. Although in the present matters respondent's conduct was serious, we see no compelling reason to suspend him when it appears that he is finally getting himself back on track. Accordingly, we unanimously determined that a reprimand is sufficient to address the nature of respondent's conduct. See In re Mandle, 157 N.J. 68 (1999) (reprimand imposed for gross neglect, lack of diligence and failure to communicate with the client; the attorney had previously received a reprimand); In re Caola, 157 N.J. 641 (1999) (reprimand imposed where the attorney failed to communicate with a client in a workers' compensation and personal injury matter; the attorney had previously received a private reprimand and a public reprimand) and In re Carmichael, 139 N.J. 390 (1995) (reprimand imposed for lack of diligence and failure to communicate in two matters; the attorney had a prior private reprimand for similar misconduct).

In addition, respondent is to practice under the supervision of a proctor for an indefinite period of time. Furthermore, the OAE is to monitor respondent's status with Lawyers Concerned for Lawyers and/or Alcoholics Anonymous every three months for a period of one year. The monitoring should continue until the OAE deems it unnecessary or

until respondent successfully applies to have it discontinued.

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

Dated: 8/6/09

By:   
ROCKY L. PETERSON  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

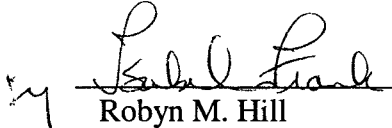
**In the Matter of Michael P. Balint  
Docket No. DRB 00-404**

**Argued: March 15, 2001**

**Decided: August 6, 2001**

**Disposition: Reprimand**

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			X				
Peterson			X				
Boylan			X				
Brody			X				
Lolla			X				
Maudsley			X				
O'Shaughnessy			X				
Schwartz			X				
Wissinger			X				
<b>Total:</b>			9				

  
Robyn M. Hill  
Chief Counsel