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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-382
District Docket No. IIA-02-015E

IN THE MATTER OF :
:
STEVEN T. MULLER :
:
AN ATTORNEY AT LAW :
:
:

Decision

Argued: January 20, 2005

Decided: March 15, 2005

Lorraine Teleky-Petrella appeared on behalf of the District IIA Ethics Committee.

Michael P. Ambrosio appeared for 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 (reprimand) filed by the District IIA Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1971. On January 26, 1989, he received a private reprimand for failing to act on a client's behalf for five months, after his receipt of a \$500 retainer. In the Matter of Steven T. Muller, Docket No. DRB

89-001. On December 7, 1999, he received a reprimand for gross neglect and misrepresentation to the client in a matrimonial matter. In re Muller, 162 N.J. 118 (1999).

The complaint alleged violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.2(a) (failure to abide by client's decisions regarding scope of the representation), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with the client), RPC 1.5(b) (failure to set forth in writing the basis or rate of the fee), RPC 8.1 (b) (failure to cooperate with an ethics investigation), and RPC 8.4(c) (misrepresentation to client).

At the outset of the DEC hearing, the presenter withdrew the charges related to RPC 1.2, RPC 8.1(b), and RPC 8.4(c).

Respondent then, through counsel, stipulated that he had violated RPC 1.3, RPC 1.4(a), and RPC 1.5(b). The only unresolved allegation for the DEC's consideration at that point concerned gross neglect, which respondent denied. The facts below were gleaned from the hearing panel report, the contents of which were stipulated by the parties. In fact, no witnesses testified at the DEC hearing. Instead, the presenter and respondent's counsel offered arguments and summaries of the case to the hearing panel.

In May 1994, the grievant, Patricia McGuire, a former New Jersey resident, was living in Ireland with her husband, Thomas McGuire. Grievant contacted an Irish solicitor, Michael Quigley, to represent her in a matter involving her husband's New Jersey assets, which included his U.S. social security retirement benefits. They were automatically deposited to an Anchor Savings Bank account in New Jersey. Thomas also had an account at the Elysian Federal Bank, another New Jersey banking institution, the contents of which were never made clear in the record.

Thomas suffered from Alzheimer's and Parkinson's diseases. Grievant sought to collect Thomas' New Jersey assets to help defray the costs of his care. However, grievant did not have access to her husband's New Jersey accounts, because his daughter in New Jersey, Judith Zandarski, held a power of attorney over those accounts. Quigley advised grievant to retain New Jersey counsel to assist him in recovering the New Jersey assets.

Sometime after May 1994, grievant retained respondent, paying him \$1,600 for the representation. Respondent conceded that he had never before represented grievant, and had not set forth in writing the basis or rate of his fee.

With Thomas' health steadily declining, on January 31, 1995, an Irish court appointed grievant as his guardian. On

February 1, 1995, Quigley wrote to respondent, advising him of the appointment, and requesting that respondent start an action in New Jersey to revoke Zandarski's power of attorney. Quigley also requested respondent to obtain statements from the New Jersey bank accounts, in order to determine if Zandarski had properly handled her father's assets.

Thereafter, between March 1995 and April 1997, respondent took little action to further grievant's claims in New Jersey. In that time, Quigley wrote at least eight letters to respondent requesting information about the New Jersey matter. In the letters, Quigley gave respondent updated information about the status of the Irish case, and requested respondent to contact him regarding the status of his efforts to secure information about the New Jersey assets. Respondent largely ignored the letters, replying once on May 24, 1995, and stating therein that the case was proceeding apace.

Thomas passed away in October 1998. About a year later, on November 18, 1999, Quigley again wrote to respondent, pleading for information about the New Jersey matter, as Thomas had apparently left property to both Zandarski and grievant.

Grievant wrote to respondent on at least eight occasions between March 1999 and May 2002, requesting information about

her case and, later, the return of her retainer. Respondent did not reply to her correspondence.

In September 2002, respondent returned \$1,500 of grievant's \$1,600 retainer.

The DEC dismissed the charged violations of RPC 1.1(b)¹ and RPC 1.2, but found respondent guilty of violating RPC 1.1(a),² RPC 1.3, RPC 1.4(a), and RPC 1.5(b). With regard to RPC 8.1(b), the hearing panel report was less than clear. It appears that the DEC found a violation of this rule on the basis that respondent did not produce his entire file. Yet, one paragraph later, the DEC noted the presenter's withdrawal of that allegation.

The DEC recommended the imposition of a reprimand.

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

Respondent stipulated that he lacked diligence, failed to communicate with his client, and did not provide the client with a writing setting forth the basis or rate of his fee. Respondent

¹ Presumably, the DEC intended to dismiss the allegation of a pattern of neglect, but mistakenly referred in the hearing panel report to RPC 1.1(a), which deals with gross neglect.

² This RPC was mistakenly referred to as RPC 1.1(b), which deals with pattern of neglect.

challenged only the allegation of gross neglect. Respondent's counsel denied that respondent's conduct amounted to gross neglect, and suggested that Quigley may have been partly to blame for delays in the case. However, respondent presented no evidence to refute the obvious impropriety revealed by the record before us – that respondent took a retainer from grievant and did little thereafter from 1995 through 2002. We, therefore, agree with the DEC that respondent violated RPC 1.1(a).

In all, we find that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), and RPC 1.5(b).

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the gravity of the offenses, the harm to the clients, and the attorney's disciplinary history. See, e.g., 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 the client); In the Matter of Jeri L. Sayer, DRB 99-238 (January 11, 2001) (admonition for attorney who displayed gross neglect, lack of diligence, and failure to communicate with the client; a workers' compensation claim was dismissed twice because of the attorney's failure to appear in court; thereafter, the attorney filed an appeal, which was dismissed

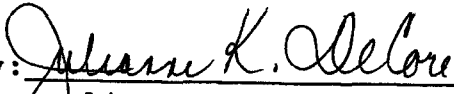
for her failure to timely file a brief); In the Matter of Jonathan H. Lesnik, DRB 02-120 (May 22, 2000) (admonition for failure to file an answer in a divorce matter, resulting in a final judgment of default against the client; the attorney also failed to keep the client informed about the status of the case); In the Matter of Paul Paskey, DRB 98-244 (October 23, 1998) (admonition for attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client); In the Matter of Ben Payton, DRB 97-247 (October 27, 1997) (admonition for attorney found guilty of gross neglect, lack of diligence, and failure to communicate with the client; the attorney filed a complaint four days after the expiration of the statute of limitations, and then allowed it to be dismissed for lack of prosecution; the attorney never informed the client of the dismissal; the attorney also failed to reply to the client's numerous requests for information about the case); 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 the client, and failed to memorialize the basis of the fee; prior admonition and six-month suspension); In re Gordon, 139 N.J. 606 (1995) (reprimand for lack of diligence and failure to communicate with the clients in two matters; in one of the matters, the attorney also failed to return the file to

the client; prior reprimand); and In re Wildstein, 138 N.J. 48 (1994) (reprimand for misconduct in three matters, including gross neglect, lack of diligence, and failure to communicate with clients).

We are mindful that respondent has had two prior brushes with the disciplinary system, resulting in a private reprimand and a reprimand. Nevertheless, we are not convinced that the matter at hand requires greater discipline than a reprimand. Although respondent's conduct extended over a number of years, it was confined to one matter; his ethics history is not significant enough to warrant a term of suspension; and respondent refunded almost the entire retainer to grievant. We therefore, believe that a reprimand sufficiently addresses respondent's misconduct in this matter. Member Barbara Schwartz voted for a three-month suspension. Member Ruth Lolla did not participate.

We also require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 

Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

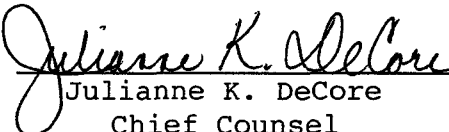
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Disposition: Reprimand

Members	Disbar	Reprimand	Three-month suspension	Dismiss	Disqualified	Did not participate
Maudsley		X				
O'Shaughnessy		X				
Boylan		X				
Holmes		X				
Lolla						X
Pashman		X				
Schwartz			X			
Stanton		X				
Wissinger		X				
Total:		7	1			1


Julianne K. DeCore
Chief Counsel