

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-209

IN THE MATTER OF
ELLIOTT D. MOORMAN
AN ATTORNEY AT LAW

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Decision
Default [R. 1:20 4(f)]

Decided: September 18, 2003

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

Pursuant to R. 1:20-4(f), the District VB Ethics Committee (“DEC”) certified the record in this matter directly to us for the imposition of discipline, following respondent’s failure to file an answer to the formal ethics complaint.

The complaint alleged that respondent grossly neglected a litigation matter.

Respondent was admitted to the New Jersey bar in 1977. He was publicly reprimanded in 1990 for failure to maintain proper time records and to preserve the identity of client funds. In re Moorman, 118 N.J. 422 (1990). In 1994, he was suspended for three months for gross neglect, lack of diligence, failure to keep a client informed about the status of the

matter, and failure to explain the matter to the extent reasonably necessary to permit the client to make informed decisions. In re Moorman, 135 N.J. 1 (1994). In 1999, he received another reprimand for lack of diligence, failure to provide a written retainer agreement, failure to comply with bookkeeping requirements, and failure to cooperate with disciplinary authorities. In re Moorman, 159 N.J. 523 (1999). On January 28, 2003, the Supreme Court suspended respondent for three months, effective February 28, 2003, for conduct prejudicial to the administration of justice, conflict of interest, release of escrow funds without the consent of the parties, withdrawal of fees without the client's consent, and failure to utilize a retainer agreement. In re Moorman, 175 N.J. 154 (2003). On June 26, 2003, the Court suspended respondent for three months, effective May 28, 2003, for forging a client's name on a settlement check, deceiving the client's prior attorney about the attorney's portion of the fee, and improperly calculating his own fee in a tort action. In re Moorman, 176 N.J. 510 (2003). In addition, we determined to reprimand respondent for neglect in an immigration matter, which is pending with the Court. In the Matter of Elliott D. Moorman, Docket No. DRB 03-117.

In or about March 2001, Emily Arosaye, the grievant, retained respondent to represent her in a matter involving her mortgage company. She paid respondent \$500 and was promised a retainer agreement, but respondent never produced one.

Several months later, respondent and Arosaye arranged to meet at respondent's office early on October 9, 2001, in order to prepare for a deposition scheduled for that morning.

However, respondent arrived over an hour late, leaving no time to prepare for the deposition. As a result, both Arosaye and respondent were ill-prepared for the events that day.

Arosaye had also requested respondent to prepare certain additional interrogatories regarding the mortgage company's prior answers, which Arosaye considered non-responsive. Respondent failed to do so. Yet, he raised the issue of non-responsiveness at trial, at which time the court rejected the argument as untimely.

On the trial date, Arosaye appeared in court with a witness who had flown in from California. At 11:00 a.m., the court clerk told Arosaye that respondent was appearing in another court, several blocks away. That court released respondent at 12:00 p.m. to appear in the Arosaye court for trial. With the parties ready and the Arosaye court waiting, respondent failed to appear until 1:45 p.m. When respondent finally appeared, he did so unprepared to present an effective defense. A judgment was entered against Arosaye and her bank account levied upon, after which Arosaye retained a new attorney. The outcome of the litigation is unknown.

In addition, respondent failed to oppose an overly broad subpoena from the mortgage company regarding Arosaye's bank accounts.

Throughout the pendency of the matter, Arosaye attempted to obtain information from respondent about the status of the case, but he failed to return telephone calls and to meet with Arosaye when she made impromptu visits to his office.

The complaint alleged that respondent violated RPC 1.1(a) (gross neglect), RPC 1.3

(lack of diligence), RPC 1.4 (failure to communicate with the client), RPC 1.5 (b) (failure to utilize retainer agreement), and RPC 8.1(b) (failure to cooperate with ethics authorities), mistakenly cited as R. 1:20-3(g) (4).

On December 16, 2002, the DEC sent a copy of the complaint to respondent's last known office address listed in the New Jersey Lawyers' Diary and Manual, 55 Washington Street, Suite 202, East Orange, New Jersey 07017, by certified and regular mail. The certified mail and the mail receipt were not returned. Likewise, the regular mail was not returned.

On March 7, 2003, the DEC sent a five-day letter to respondent at the same address. The certified mail and the mail receipt were not returned. Likewise, the regular mail was not returned.

Respondent did not file an answer to the complaint.¹

Service of process was properly made. Following a review of the record, we found that the facts recited in the complaint support the charges of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R.1:20-4(f).

Respondent lacked diligence by failing to propound certain interrogatories upon the mortgage company, failing to prepare for the October 2001 deposition or the subsequent trial,

¹ After this matter was certified directly to us, respondent attempted to file with the OAE a late answer to the complaint. The OAE forwarded respondent's May 12, 2003, answer to the Office of Board Counsel, with a copy of a June 12, 2003, letter to respondent in which the OAE refused to accept the answer. Board Counsel's office notified respondent that, after certification of the record, the only available remedy was a motion to vacate the default. Respondent did not file a motion.

and failing to oppose an overly broad subpoena for Arosaye's banking records, all in violation of RPC 1.3. However, it was not clear to us that respondent grossly neglected the case, in violation of RPC 1.1(a). With regard to that charge, the complaint stated as follows:

The cumulative effect of persistent non-communication, lack of diligence, late appearances, failure to take essential actions in litigation, failure to prepare for hearings, failure to extend [sic] or demonstrate courtesy to adversaries and the court (in connection with late appearances) comprises gross negligence in the handling of Grievant's matter.

We found that the above facts did not clearly and convincingly support a finding of gross neglect. Non-communication, late appearances, and failure to extend courtesy to adversaries and the court do not implicate the rule. In fact, it is not clear from the complaint that respondent's lack of attention affected the outcome of the case at all. For all of these reasons, we dismissed the charge of a violation of RPC 1.1(a).

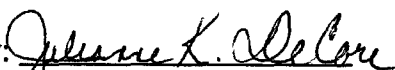
Respondent also failed to communicate with Arosaye over the course of the representation. Numerous requests for information, over a period of four years, went unanswered, in violation of RPC 1.4(a) and (b). In addition, respondent failed to utilize a retainer agreement, in violation of RPC 1.5(b). Finally, by failing to file an answer to the ethics complaint and allowing the matter to proceed to us on a default basis, respondent violated RPC 8.1(b).

Ordinarily, conduct of this sort in one or a few matters, with or without violations such as failure to communicate with the client, warrants the imposition of an admonition or a reprimand. See, e.g., In the Matter of E. Steven Lustig, Docket No. DRB 00-003 (April 10,

2000) (admonition for attorney who grossly neglected a matrimonial matter and failed to adequately communicate with his client); In re Wildstein, 138 N.J. 48 (1994) (reprimand for gross neglect and lack of diligence in two matters and failure to communicate in a third matter); and In re Gordon, 121 N.J. 400 (1990) (reprimand for gross neglect and failure to communicate in two matters). However, respondent allowed the matter to proceed to us on a default basis. Therefore, we determined that enhanced discipline — a reprimand — was required. Two members did not participate. One Board member recused himself.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Acting Chief Counsel

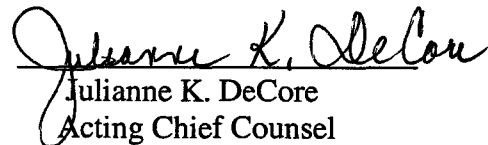
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Elliott D. Moorman
Docket No. DRB 03-209

Decided: September 18, 2003

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				
Total:			6			1	2


 Julianne K. DeCore
 Acting Chief Counsel