

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-335
District Docket No. IV-03-065E

IN THE MATTER OF :
:
MERRI R. LANE :
:
AN ATTORNEY AT LAW :
:

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

Decided: December 17, 2004

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

Pursuant to R.1:20-4(f), the District IV 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 ethics complaint.

Respondent was admitted to the New Jersey bar in 1982. On
December 12, 1996, she received a reprimand for gross neglect
and failure to communicate with the client in a bankruptcy
matter. In re Lane, 147 N.J. 3 (1996). She has been ineligible
to practice law since September 30, 2002, for failure to pay the

New Jersey Lawyers' Fund for Client Protection ("CPF") assessment; she remains ineligible to date.

Leonard F. Evans retained respondent, in or about December 2001, to represent him in a "whistle-blower" claim against his former employer, American Asphalt Company ("AAC"), for illegal dumping.

On December 13, 2001, Evans paid respondent a \$750 check as a "retainer fee." Respondent wrote to AAC on December 13, 2001, charging that it had wrongfully discharged Evans because of his whistle-blowing activities, and that AAC had damaged Evans' reputation by telling would-be employers that he had stolen money from the company.

After the December 13, 2001 letter, respondent took no action to prosecute Evans' claims. She never accounted for the use of the \$750 retainer, and did not return the funds to his client.

Thereafter, from January to October 2002, Evans tried repeatedly to contact respondent about the status of his case. On those occasions when Evans was able to speak to respondent, she misrepresented to him that the matter was proceeding apace.

Finally, respondent failed to reply to requests for information from Evans' subsequent attorney.

In addition to the Evans charges, the Office of Attorney Ethics ("OAE") investigator learned that respondent had affixed her signature to a trust account check, made payable to her landlord, using a rubber facsimile signature-stamp, a violation of R. 1:21-6.¹

A separate count of the complaint alleges that, on July 24 and August 25, 2003, the OAE wrote to respondent requesting a reply to the grievance. Respondent received that correspondence, but did not reply. The OAE reached respondent in Maryland, by telephone, on September 16, 2003. At that time, respondent gave the OAE her Maryland address and promised to furnish a reply to the grievance. Despite further efforts by the OAE investigator to obtain respondent's compliance, she failed to do so.

The complaint alleged that respondent violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) and (b) (failure to communicate with the client and to explain the matter in detail to the extent reasonably necessary to allow the client to make informed decisions regarding the representation), RPC 1.15(a) (failure to safekeep property), RPC 8.1(b) (failure to cooperate with ethics authorities), RPC 8.4(c) (conduct

¹ During the ethics investigation, respondent told the OAE that she had relocated to Maryland, with no intention of returning to New Jersey.

involving misrepresentation), and R. 1:21-6 (improper use of signature stamp on trust account check).

On March 18, 2004, the DEC sent a copy of the complaint to respondent's last known address, 1444 N Street, N.W., Washington, D.C. 20005, by certified and regular mail. The certified mail receipt was returned signed by "Linda Gamble." The regular mail was not returned.

On July 28, 2004, a second letter was sent to respondent at the above address, by certified and regular mail, advising her that, if she did not file an answer to the complaint within five days, the record would be certified directly to us for the imposition of discipline. The certified mail receipt was again returned signed by "Linda Gamble." The regular mail was not returned.

Respondent did not file an answer to the complaint.

Service of process was properly made in this matter. Following a review of the record, we find 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 was retained to pursue Evans' claims against his employer, but failed to do so. Respondent issued a single letter to the employer, and took no further action thereafter.

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-286
District Docket Nos. X-04-051E,
X-04-052E, and X-04-053E

IN THE MATTER OF
STEPHEN D. LANDFIELD
AN ATTORNEY AT LAW

Decision
Default [Rule 1:20-4(f)]

Decided: November 22, 2004

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

This matter was before us on a certification of default
filed by the District X Ethics Committee ("DEC"), pursuant to
Rule 1:20-4(f). Although, on June 18, 2004, we granted
respondent's motion to vacate the default and remanded the
matter for a hearing, respondent again failed to file an answer.
The DEC recertified the matter to us as a default.

Respondent was admitted to the New Jersey bar in 1984. In 2003, he received an admonition for failure to promptly provide an accounting and to return the unused portion of a retainer to a client, despite the client's request. In the Matter of Stephen D. Landfield, Docket No. 03-137 (July 3, 2003). On September 27, 2004, respondent was temporarily suspended, effective November 1, 2004, for failure to comply with fee arbitration determinations in three matters requiring him to refund payments made by clients.

On January 10, 2004, the DEC sent a complaint by certified and regular mail to respondent's last known office address in Morristown, New Jersey. The return receipt for the certified mail, indicating delivery on January 16, 2004, was returned to the DEC signed by L. Gaguardo.

On February 10, 2004, the DEC sent a second letter by certified and regular mail to the same address, advising respondent that, unless he filed an answer, the allegations of the complaint would be deemed admitted and the record in the matter would be certified directly to us for the imposition of discipline. The letter further informed respondent that the complaint was deemed amended to include a charge of failure to cooperate with a disciplinary authority, based on his failure to

answer the complaint. The return receipt for the certified mail, indicating delivery on March 2, 2004, was returned to the DEC signed by respondent. The certification of the record is silent concerning the envelopes sent by regular mail.

Respondent did not file an answer to the complaint. The DEC certified the record directly to us for the imposition of discipline, pursuant to Rule 1:20-4(f). As mentioned above, respondent filed a motion to vacate the first default. In the motion, respondent addressed the allegations of the complaint, thus indicating that he had received it. Although respondent asked for (and received) an opportunity to answer the charges, upon remand he again failed to file an answer.

The Herka Matter - District Docket No. X-04-051E

In the summer of 2003, John Herka retained respondent to perform legal services for him and his girlfriend, Barbara Bartel. Herka gave respondent a \$1,000 check as a retainer, issued on an account held by Herka's father, the grievant, also named John Herka. According to respondent, he deposited the check in his attorney business account and performed services for Herka and Bartel.

On August 27, 2003, Herka's father informed respondent that Herka had forged his name to the check and demanded reimbursement from respondent. Respondent refused, maintaining that he had received the check in good faith, and that he had not been informed of the forgery until after he had deposited the check and performed legal services for Herka. Herka's father was not able to rebut respondent's contention that, by the time respondent was informed about the forgery, he had deposited the check and provided services to Herka.

Although respondent replied to the grievance on October 24, 2003, he failed to reply to the investigator's three subsequent requests for additional information.

The complaint charged respondent with violating RPC 1.1(b) and Rule 1:20-3(g)(3) and (4), more properly, RPC 8.1(b) (failure to cooperate with disciplinary authorities).

The Bohn/O'Neill Matter - District Docket Nos. X-04-052E and X-03-053E

In June 2003, respondent represented Stephen Steinhardt in connection with his sale of a condominium to Alex Liu and Xiaoxia Zhao, who were represented by grievant Jay Bohn. A title search conducted by Bohn revealed a \$7,500 judgment against

Steinhardt in favor of Steinhardt's former wife, grievant Robin O'Neill. The title insurance company informed Bohn that \$15,000 had to be held in escrow by either Bohn or respondent, pending receipt of a warrant of satisfaction, and that the seller had to execute a personal undertaking on a form that was provided by the title insurance company. Bohn "faxed" these documents to respondent.

At the closing, on June 24, 2003, Bohn gave respondent a \$15,000 check to be held in escrow for satisfaction of the O'Neill judgment. Respondent signed the personal undertaking as agent and attorney for Steinhardt, who signed a power of attorney in respondent's favor. Respondent represented that he would be filing a motion to set aside the O'Neill judgment. The judgment had been entered on December 10, 2001, in a matrimonial proceeding in which respondent had represented Steinhardt.

On July 25, 2003, O'Neill informed Bohn that respondent had neither satisfied the judgment nor filed the motion to vacate it. By letters dated July 25 and August 19, 2003, Bohn urged respondent to satisfy the O'Neill judgment.

On September 9, 2003, O'Neill informed respondent that she had been in the hospital for the prior six weeks, and still had not received the judgment payoff or a motion for relief from the

judgment. The next day, Bohn contacted respondent, who advised that, out of courtesy to O'Neill, he had refrained from filing the motion. In a letter dated September 10, 2003, Bohn confirmed the telephone conversation in which (1) he informed respondent that O'Neill had been discharged from the hospital and (2) respondent promised to file the motion by the end of the following week.

By letter dated September 26, 2003, Bohn informed respondent that, if the matter were not resolved by September 30, 2003, Bohn would file an ethics grievance against him. On October 7, 2003, after attempting to contact respondent by telephone, Bohn filed the ethics grievance. O'Neill's grievance was filed about one month later, on November 5, 2003.

By letters dated October 28 and November 24, 2003, respectively, the DEC investigator served respondent with the Bohn and O'Neill grievances. Despite the investigator's subsequent letters dated November 11 and December 1, 2003, and telephone call on November 28, 2003, respondent did not reply to the grievances.

The complaint charged respondent with violating RPC 1.1(b) (pattern of neglect), RPC 1.15(b) (failure to promptly notify a third person of receipt of property and failure to promptly

deliver property to a third person), RPC 4.4 (use of means to delay or burden a third person), RPC 8.1(b) (failure to cooperate with disciplinary authorities), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Service of process was properly made. The complaint contains sufficient facts to support findings of the charges. Because of respondent's failure to file an answer, the allegations of the complaints are deemed admitted. Rule 1:20-4(f).

In the Herka matter, respondent's failure to cooperate with the investigator and to file an answer to the complaint violated RPC 8.1(b). Because there is no evidence that respondent exhibited a pattern of neglect, we dismiss the charged violation of RPC 1.1(b).

In the Bohn/O'Neill matter, respondent held funds in escrow for O'Neill, but failed to notify her of the receipt of those funds and failed to deliver them to her to satisfy the judgment, a violation of RPC 1.15(b). In addition, respondent violated RPC 8.4(c) when he misrepresented to Bohn several times that he would file a motion to vacate the judgment. Also, respondent's failure to reply to the grievance or to file an answer to the formal ethics complaint violated RPC 8.1(b).

We determine to dismiss the remaining charges in this matter. By failing to deliver the funds to O'Neill to satisfy the judgment, respondent did not "use means that have no substantial purpose other than to embarrass, delay, or burden a third person." Moreover, the complaint did not allege any instance of neglect to justify the finding of a pattern of neglect. We, thus, dismiss the charged violations of RPC 1.1(b) and RPC 4.4.

In sum, in one matter, respondent was guilty of failure to promptly notify a third person of the receipt of property, failure to promptly deliver property to a third person, misrepresentation, and failure to cooperate with disciplinary authorities, and, in another matter, failure to cooperate with disciplinary authorities.

The remaining issue is the quantum of discipline to be imposed. In cases involving similar violations, the discipline has ranged from admonitions to suspensions. See, e.g., In the Matter of Craig A. Altman, Docket No. DRB 99-133 (June 17, 1999) (admonition where attorney failed to honor a letter of protection in which he had promised to submit funds to a medical provider); In the Matter of Gerald M. Lynch, Docket No. DRB 99-105 (June 1, 1999) (admonition where attorney, contrary to his

client's wishes, failed to reject an arbitration award, failed to inform his client that he had not rejected the arbitration award, failed to promptly deliver funds to the client, and failed to cooperate with disciplinary authorities); In re Dorian, 176 N.J. 124 (2003) (reprimand where attorney failed to promptly deliver funds to a third person and failed to cooperate with disciplinary authorities); In re Breig, 157 N.J. 630 (1999) (reprimand where attorney failed to promptly remit funds received on behalf of a client and failed to comply with recordkeeping rules; numerous mitigating factors were present); In re Gilbert, 159 N.J. 505 (1999) (three-month suspension where attorney failed to promptly return funds that belonged to his client's former spouse in an effort to obtain payment of his fee from his client).

In default cases, both reprimands and suspensions have been imposed. See, e.g., In re Tutt, 163 N.J. 562 (2000) (reprimand in a default case where the attorney failed to distribute funds to beneficiaries of an estate, failed to cooperate with disciplinary authorities, exhibited a lack of diligence, and failed to communicate with clients); In re Van Wart, 162 N.J. 102 (1999) (three-month suspension in a default case where the attorney failed to deliver property to a third person, practiced

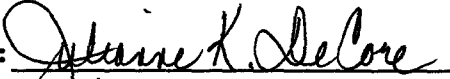
law while ineligible, and failed to cooperate with disciplinary authorities).

Here, respondent previously received an admonition for failing to promptly return the unused portion of a retainer to a client. We also consider as an aggravating factor respondent's continued refusal to either satisfy the judgment against his client or to file a motion for relief from that judgment. As of the date of the complaint, respondent had held the escrow proceeds for six months without taking the necessary action to resolve the matter. Another aggravating factor is the waste of the disciplinary system's resources caused by respondent's filing of a motion to vacate the default, only to again fail to file an answer to the complaint.

Based on respondent's disciplinary history and the default nature of this proceeding, five members determine that a three-month suspension is warranted. Before respondent is reinstated, he must demonstrate proof of fitness to practice law, as attested to by a mental health professional approved by the Office of Attorney Ethics. Member Ruth Jean Lolla would impose a six-month suspension. Vice-Chair William J. O'Shaughnessy, Esq. and Members Matthew P. Boylan, Esq. and Barbara F. Schwartz did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

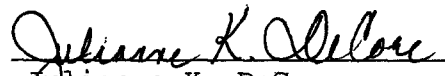
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Stephen D. Landfield
Docket No. DRB 04-286

Decided: November 22, 2004

Disposition: Three-month suspension

Members	Three-month Suspension	Reprimand	Six-month Suspension	Disqualified	Did not participate
Maudsley	X				
O'Shaughnessy					X
Boylan					X
Holmes	X				
Lolla			X		
Pashman	X				
Schwartz					X
Stanton	X				
Wissinger	X				
Total:	5		1		3


Julianne K. DeCore
Chief Counsel