

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-156
District Docket No. X-04-098E
and X-04-099E

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

Decision

Argued: July 21, 2005

Decided: September 15, 2005

J. Michael Riordan appeared on behalf of the District X Ethics Committee.

Respondent waived appearance for oral argument.

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 the District X Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1984. In 2003, he received an admonition for failure to promptly return to the client the unearned portion of a fee. In the Matter of Stephen D. Landfield, DRB 03-137 (July 3, 2003).

By Court order dated November 1, 2004, respondent was temporarily suspended from the practice of law for failure to pay a fee arbitration award. In re Landfield, 182 N.J. 28 (2004).

On September 23, 2004, after granting a motion to vacate a default, we voted to remand two matters for the filing of answers and a hearing. In the Matters of Stephen D. Landfield, Docket No. DRB 04-215 and DRB 04-230. When respondent did not file an answer in one of those matters, it was re-certified to us as a default. On November 22, 2004, we voted to suspend respondent for three months in that matter, which is awaiting Supreme Court review. In the Matter of Stephen D. Landfield, DRB 04-286.

On December 21, 2004, in a default matter combining three separate cases, we voted to suspend respondent for six months. In the Matters of Stephen D. Landfield, DRB 04-365, DRB 04-366, and DRB 04-367. That matter, too, is pending Supreme Court review.

Both of the within matters were originally before us on certifications of default. However, respondent filed a motion to vacate the defaults, which we granted. Thereafter, respondent filed answers and a hearing was held. The matters are now ripe for our review.

I. The Ricca Matter – District Docket No. X-04-098E

The complaint alleged violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.4(a) (failure to communicate with client), RPC 4.4 (respect for rights of third persons), RPC 8.1(b) (failure to cooperate with ethics authorities), RPC 8.4(a) (attempt to violate RPCs), and RPC 8.4(c) (misrepresentation).

On October 29, 2003, Anthony Ricca, the grievant, retained respondent to prepare and file a brief in support of a pro se notice of appeal that Ricca had filed in the Appellate Division. On November 1, 2003, Ricca paid respondent \$500 for the representation.

In January 2004, Ricca received an order from the Appellate Division dismissing the appeal for failure to file a brief. For the next three weeks, Ricca called and "e-mailed" respondent numerous times in an effort to ascertain the status of his case. He was unsuccessful.

At the DEC hearing, Ricca testified that he heard nothing about his case after he gave respondent the retainer. Ricca recalled leaving at least twenty telephone messages for respondent, requesting information about the matter, and hand-delivering two letters, which he taped to respondent's office

door in the office space that respondent shared with other attorneys.

Thereafter, Ricca filed a pro se motion for the reinstatement of his appeal, which the Appellate Division granted. At the time of the DEC hearing, the appeal was pending in the Appellate Division.

For his part, respondent admitted that Ricca had retained him for the appeal. He also admitted accepting Ricca's \$500 retainer to prepare the appellate brief.

Respondent maintained that he had performed a substantial amount of research in Ricca's matter, claiming that he had earned the fee, and that, "in my own mind, I certainly spent way more than \$500 in time on the case." Respondent conceded, however, that he did not complete the brief or file it in the Appellate Division. He also acknowledged having taken no action to extend the time to file it. However, respondent was unable to substantiate his claim about the services performed in Ricca's behalf, alleging that a computer failure caused the loss of the draft brief, which he had hoped to make available to the DEC.

Finally, respondent recalled receiving numerous messages from Ricca and speaking with him on at least one unspecified occasion. Respondent provided no telephone records, notes, or other evidence in support of this claim.

According to respondent, he never communicated his failure to complete the brief to Ricca, having been "a little scared of him at that point because there were so many calls that were angry and yelling." Instead, respondent took no action on Ricca's behalf.

The Seekell Matter – District Docket No. X-04-099E

The complaint alleged violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.4(a) (failure to communicate with client), RPC 4.4 (respect for rights of third persons), RPC 8.1(b) (failure to cooperate with ethics authorities), RPC 8.4(a) (attempt to violate RPCs), and RPC 8.4(c) (misrepresentation).

In July 2003, Rene Seekell retained respondent to represent her in a family matter involving her son, who had been diagnosed with attention deficit hyperactive disorder ("ADHD"). Seekell's mother, Cheryl Moyer, gave respondent a \$1,500 retainer for the representation. Moyer testified at the DEC hearing. She had been actively involved in her daughter's case and had been treated by respondent as though she, too, was the client.

According to Moyer, she and Seekell sought to prevent the boy's father from administering the psychiatric drug Ritalin to

the boy. The father had custody of the boy and the drug had been prescribed for behavioral maladies.

In order to resolve the Ritalin issue, the father filed a motion in the Superior Court, Family Part. Respondent was retained to oppose the motion.

In his answer, and again in his testimony, respondent conceded that he had not prepared or filed any opposition papers to the motion, which was returnable on August 29, 2003.

On August 29, 2003, respondent appeared in court, but lost the motion. The record contains no information about the arguments respondent and his adversary made that day, or the reasoning for the court's determination. However, according to respondent, he and his adversary had first argued the case before the judge and had then met with the judge in chambers for almost an hour. Respondent claimed that his lack of written opposition to the motion had no impact on the outcome, citing the court's "absolute opinion" that Ritalin should be allowed.

On the other hand, Moyer testified that respondent never advised her or Seekell that he planned to file no opposition to the motion, if that had been his plan.

Thereafter, respondent allegedly failed to reply to several inquiries from Seekell for the return of her file, so that she

could retain a new attorney, and for an accounting for respondent's use of the \$1,500 retainer.

Respondent recalled that he might have returned portions of the file to Seekell upon the conclusion of the case, but conceded that he was unsure, and that, in any event, he had no records to substantiate his claim. He also admitted that he had not returned the complete file to Seekell or prepared an accounting for his use of the retainer.

With regard to the allegation that respondent failed to cooperate with ethics authorities in the investigation of the grievances, the presenter introduced DEC letters sent to respondent, which went unanswered and, thus, caused the original certifications of default. As noted earlier, respondent filed a motion to vacate the defaults, which we granted. As such, respondent argued, any lack of cooperation in the investigatory stage of those matters had been excused when we vacated the defaults.

Once the matters were remanded, respondent filed verified answers to the complaints and participated fully in the ethics proceedings.

Respondent offered mitigation for his misconduct. He attached to his verified answers a copy of his September 10, 2004 letter to us in support of his motion to vacate default.

That letter details respondent's struggle with mental illness. It chronicles his attempts to deal with anxiety and depression, to save his law license and his relationship with his family, and to turn his life around. Respondent appears perplexed by his own inability to address his problems, including those facing him in the disciplinary system. He states, in part, as follows:

I am now left with numerous ethics matters, a couple of malpractice suits, and other civil collection matters, which I have never faced in my life. Additionally, through it all, I have a family to take care of. Frankly, the sheer volume of the mess this illness has created is probably enough to make anyone upset. Imagine the burden I face dealing with these matters on top of dealing with my illness and moving on with my life. It is for that reason that I have simply not been able to face these matters and deal with them. It is depressing and embarrassing to be in my situation, having led the life I led prior to last year, let alone to try to explain this to people who have known me for years. Unethical conduct, despite these complaints, is quite frankly, inconsistent with my prior behavior and with the way I have lived my life. It is very difficult to face what has happened.

[September 10, 2004 letter at 2.]

Respondent further stated that his condition "made it difficult, if not impossible for [him] to focus on following the necessary time frames, organize, and prepare Ricca's work."

Respondent claimed that both Ricca and Seekell occurred at the height of the manifestation of his disorder.

The DEC found violations of RPC 1.4(a), RPC 8.1(b) and RPC 8.4(a). It dismissed the RPC 8.4(c) and RPC 4.4 violations, without explanation. The DEC did not address the allegations of gross neglect and pattern of neglect.

The DEC recommended the imposition of a suspension, without specifying the duration.

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.

At the outset, we dismiss the charged violations of RPC 4.4 and RPC 8.4(c) as to both matters. With respect to RPC 4.4 in both Ricca and Seekell, the record contains no evidence of any such violations. Likewise, with respect to RPC 8.4(c), in both Ricca and Seekell, the record contains no evidence of any such violations. Likewise, with respect to RPC 8.4(c), in both Ricca and Seekell, the record is devoid of evidence that respondent made misrepresentations.

For the most part, respondent admitted that he neglected these cases and the clients who retained him. In Ricca, respondent was retained to prepare and file an appellate brief. He did not do so. Thereafter, respondent took no action to

obtain an extension of time to file the brief, and failed to otherwise protect his client's rights on appeal.

So, too, respondent's claim that he spent many hours preparing the brief was totally unsubstantiated. Although the complaint alleged gross neglect, the DEC findings did not address RPC 1.1(a). It appears that respondent took little action to avoid the dismissal of Ricca's appeal. Thereafter, he took no measures to put the matter back on track. We, thus, find gross neglect in the Ricca matter.

With respect to RPC 1.4(a), communications between respondent and Ricca were one-sided. Ricca testified that he left twenty messages on respondent's office telephone, none of which were returned. Ricca taped two letters to respondent's office door, in the hopes that it would spur him to action. It did not.

Respondent asserted generally that he had communicated with Ricca during the representation, but did not document a single instance or attempt to communicate with his client during that time. In fact, respondent acknowledged the numerous calls from his client, alleging that those calls frightened him away from a reply. That assertion by respondent, too, was unsupported by the record. Thus, we conclude that respondent failed to communicate with Ricca, a violation of RPC 1.4(a).

In Seekell, respondent was retained to oppose a motion that would have allowed the father of Seekell's child to administer Ritalin to the boy. Although respondent collected a \$1,500 retainer for the representation, he attended the court hearing without having submitted any prior opposition to the motion.

Respondent claimed that there was no need to file opposing papers, that all issues that might have been discussed on paper were fully litigated at the August 29, 2003 hearing, and that the court was predisposed to rule against his client's position.

Once again, respondent's assertions to his were wholly unsupported. As Moyer testified, respondent was paid not only for a court appearance, but to file opposition to the motion as well. His failure to file any opposition could not have helped his client's cause, and may have harmed the case.

It is unclear to us, however, that respondent grossly neglected Seekell's case. He appeared on the return date and argued his client's position, albeit unsuccessfully. His failure to file opposition prior to the hearing constituted lack of diligence, but did not rise to the level of gross neglect. We, therefore, find only a violation of RPC 1.3. Although the complaint did not charge a violation of RPC 1.3, the issue was fully litigated below, with no objection from respondent. The record developed below contains clear and convincing evidence of

a violation of that RPC 1.3. We, therefore, deem the complaint amended to conform to the proofs. R.4:9-2; In re Logan, 70 N.J. 22, 232 (1976).

With regard to the RPC 1.4(a) claims, respondent failed to communicate with the client at junctures throughout the representation. First, he failed to communicate his intention not to file opposition to the motion. Thereafter, he failed to promptly reply to his client's requests for information about the matter, requests for the file and requests for an accounting of the use of the retainer. Moreover, respondent produced no evidence to refute the charge. We find, thus, that respondent violated RPC 1.4(a). We also find that respondent's failure to advise Seekell that he intended to file no opposition papers in her matter violated then in effect RPC 1.4(b), which required him to explain the matter to the extent reasonably necessary to permit the client to make informed decisions about the representation. Once again, although the complaint did not charge a violation of RPC 1.4(b), the issue was fully litigated, without respondent's objection. The record contains clear and convincing evidence of a violation. Therefore, we deem the complaint amended to conform to the proofs. In re Logan, supra, 70 N.J. 222, 232 (1976).

With regard to the alleged violation of 8.4(a), not only did respondent attempt to violate the RPCs, but he succeeded in violating them. Although this rule is rarely utilized, we find a violation, as did the DEC before us.

As previously stated, we dismiss the charged violations of RPC 4.4 and 8.4(c) for lack of clear and convincing evidence.

In sum, in Ricca, respondent violated RPC 1.1(a) and RPC 1.4(a), while in Seekell, he violated RPC 1.3, RPC 1.4(a), and RPC 1.4(b). Respondent also violated RPC 8.4(a) in both matters.

Finally, the complaints allege an RPC 1.1(b) pattern of neglect. On December 21, 2004, we voted to suspend respondent for six months for gross neglect and pattern of neglect. Respondent's neglect in Ricca, when combined with those cited in his ethics history, is yet another indication of respondent's continuing pattern of neglect, a further violation of RPC 1.1(b). See, e.g., In re Kubulak, 172 N.J. 318 (2002) (gross neglect in one matter, when combined with instances of gross neglect from earlier disciplinary matters, constituted a pattern of neglect, in violation of RPC 1.1(b)).

Ordinarily, conduct involving gross neglect in one or a few matters, with or without violations such as lack of diligence and 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, DRB 00-003 (April 10, 2000) (admonition for gross neglect in a matrimonial matter and failure to adequately communicate with the 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). Here, respondent is guilty of misconduct in two matters.

In aggravation, respondent's history of final discipline includes a 2003 admonition and our recent determinations for a three-month suspension and a six-month suspension, both of which await Supreme Court review.

In mitigation, respondent battles with mental illness, a condition that may have adversely affected his ability to function at the time of the within misconduct. Under the circumstances, we vote to impose a prospective six-month suspension. Members Louis Pashman, Esq., Robert Holmes, Esq. and Reginald Stanton, Esq. did not participate.

Our prior decisions preclude respondent from applying for reinstatement until all pending ethics matters against him are resolved. In addition, before reinstatement, respondent must submit proof that he is fit to practice law, as attested by a mental health practitioner approved by the OAE.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Stephen Landfield
Docket No. DRB 05-156

Argued: July 21, 2005

Decided: September 15, 2005

Disposition: Six-month suspension

Members	Six-month Suspension	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:	6				3


Julianne K. DeCore
Chief Counsel