

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-361

IN THE MATTER OF
LARRY J. McCLURE
AN ATTORNEY AT LAW

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

Decided: March 10, 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 IIB 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.

Respondent was admitted to the New Jersey bar in 1971. At the relevant times he maintained a law office in Hackensack, New Jersey. In 1999, respondent was admonished for misconduct in two matters that included gross neglect, lack of diligence, failure to communicate with clients, failure to provide client with a written retainer agreement, and failure to cooperate with disciplinary authorities. In the Matter of Larry J. McClure, Docket No. DRB 98-430 (February 22, 1999). He received a six-month suspension effective May 21, 2003, for

misconduct in two matters. In one matter, he failed to provide his client a written retainer agreement, failed to return the client's numerous telephone calls or to keep scheduled appointments with him, failed to explain the matter to his client to enable him to make informed decisions about the representation, and engaged in misrepresentations by leading his client to believe that he was working on the case, when he was not. In the second matter, respondent failed to inform his client that her case had been dismissed, a misrepresentation by silence, and engaged in gross neglect, lack of diligence, failure to communicate with the client, and failure to explain the matter to the extent necessary to permit the client to make informed decisions about the representation. In re McClure, 176 N.J. 121 (2003).

On May 27, 2003, the DEC sent a copy of the complaint to respondent at an address in Stillwater, New Jersey by regular and certified mail, return receipt requested. An exhibit to the certification to the record indicates that the certified mail was delivered on May 29, 2003. The signature of the recipient was that of Jill Williams. The certification is silent about the regular mail. Respondent did not file an answer. The procedural history appended to the certification states that respondent requested a twenty-day extension to file an answer. Although the request was granted, respondent did not file an answer.

The five-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client), and RPC 1.5(b) (failure to provide client with a written retainer agreement).

On or about June 21, 2002, James E. McGroarty ("McGroarty"), the grievant, retained respondent to represent his son, James J. McGroarty, Sr. ("James Sr."), in a custody case involving his grandson, James J. McGroarty, Jr. ("James Jr."). On that date, McGroarty paid

respondent a fee of \$3,500. Respondent, however, did not give McGroarty a written retainer agreement.

James Jr. lived with his mother in Florida, but at that time was visiting in New Jersey for the summer. Respondent was retained to file a petition on James Sr.'s behalf, in New Jersey, seeking temporary and permanent custody of his son. During their initial meeting with respondent, the McGroartys informed respondent that the petition would have to be filed and decided on or before July 26, 2002. That was the date that McGroarty was to return his grandson to Florida, pursuant to James Sr.'s custody arrangement with his ex-wife. The airline tickets for James Jr.'s return trip to Florida were non-refundable.

At the June 21, 2002 meeting with respondent, McGroarty and James Sr. expressed their concern about whether New Jersey courts would have jurisdiction over the child custody dispute because the issues of child custody, support, and visitation previously had been determined in the Florida courts. According to the complaint, respondent represented to them that he could succeed in pursuing a child custody case in New Jersey. He also assured them that he would file the necessary papers with the court and that the matter would be decided before July 26, 2002.

McGroarty and James Sr. gave respondent information, which included the names of schools James Jr. attended in Florida, and Florida hospitals close to his home. The McGroartys expected respondent to use the information to obtain medical records or other information to support their contention that a medical emergency existed. Presumably the medical emergency would support the need for either a temporary or permanent change in custody. McGroarty and James Sr. also requested that respondent obtain the name of a psychiatrist willing to evaluate James Jr., prepare a report favorable for their claim, and testify in the custody proceedings. According to the complaint, respondent told the McGroartys that his wife, a nurse at Hackensack Medical Center, would provide them with references for a qualified psychiatrist.

Respondent neither attempted to obtain James Jr.'s medical records from Florida, nor did he take any action to obtain a psychiatric evaluation of James Jr. Respondent also failed to file the necessary papers for a change in custody by July 26, 2002. However, he told the McGroarty that he would do so on July 29, 2002. Relying on respondent's representations, the McGroarty kept James Jr. in New Jersey beyond the date he was to be returned to his mother in Florida. Respondent did not file the necessary papers on July 29, 2002.

As a result of respondent's failure to act when promised, McGroarty waited in respondent's office, to ensure that he prepare and file the papers in the matter. On July 31, 2002, respondent filed with the court an order to show cause and supporting certification of James Sr. Respondent did not review the final draft of the papers prior to filing them. He also had James Sr. sign a blank certification page before he actually prepared the certification. Afterwards, he "hastily" prepared the body of the certification. As a result, it contained numerous factual errors, misspelled names, and inaccurate or incomplete descriptions of critical events. The certification was inadequate. It did not set forth sufficient facts, or provide sufficient proof concerning the child's medical condition to satisfy the statutory criteria required by N.J.S.A. 2A:34-31 to establish jurisdiction of the child custody case in New Jersey.

On July 31, 2002, the court summarily denied James Sr.'s custody petition. The court found that the application was not emergent and that it should have been brought by notice of motion. The court also determined that New Jersey lacked jurisdiction in the matter. The court did not reach the merits of the petition.

Respondent failed to keep his clients informed about the status of the matter and failed to return their numerous telephone calls. He had not informed them that he would not seek the child's medical records or an independent psychiatric evaluation. He also failed to tell them that they had the option to re-file the custody application.

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 a finding of unethical conduct. Because of respondent's failure to answer the complaint, the allegations are deemed admitted. R. 1:20-4(f).

After respondent accepted a fee, he did little to pursue the custody matter on behalf of the McGroartys. Respondent informed the McGroartys that the New Jersey courts could assert jurisdiction over the matter, but he failed to seek the information necessary to properly pursue the matter. He failed to obtain medical documentation from Florida, and took no action to obtain a psychiatrist. It was not until the elder McGroarty planted himself in respondent's office that he prepared the papers. The hastily prepared certification contained numerous errors. In addition, although this was not charged in the complaint, respondent improperly obtained James Sr.'s signature on a blank certification. After the custody petition was denied, respondent failed to inform his clients that they could re-file the petition, and took no action to do so. Respondent's conduct in this regard violated RPC 1.1(a) and RPC 1.3. His failure to communicate with his clients and to keep them informed about the status of their matter violated RPC 1.4(a). Respondent also violated RPC 1.5(b) by failing to give his clients a written retainer agreement.

Finally, the complaint charged respondent with a pattern of neglect. Generally such a finding is reserved for cases where negligence is found in at least three matters. Although this case dealt with only one client matter, respondent's two prior matters included findings of gross neglect. We, therefore, find that respondent engaged in a pattern of neglect.

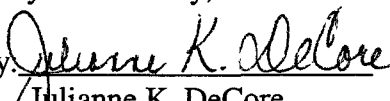
In default cases involving similar ethics infractions and a history of discipline, either six-month or one-year suspensions have been imposed. See In re Cubberely, 178 N.J. 103 (2003) (six-month suspension in a default matter where attorney accepted a retainer in connection with obtaining a site plan approval for his client, but took no further action on her behalf; attorney's conduct included gross neglect, lack of diligence, failure to communicate with client, and failure

to cooperate with disciplinary authorities; attorney had a prior admonition, two reprimands, a three and a six-month suspension); In re Malfara, 164 N.J. 551 (2000) (six-month suspension in a default matter, to run concurrently with another six-month suspension, for gross neglect, lack of diligence, failure to communicate with clients, failure to protect the clients' interests on termination of representation, failure to provide client with a written retainer agreement, failure to deliver funds of a client to a third person, and failure to cooperate with disciplinary authorities; attorney had prior reprimand); and In re Page, 165 N.J. 512 (2000) (one-year suspension in a default matter where attorney accepted a fee, failed to give the client a retainer agreement, took no further action in the client's behalf, refused to talk to the client and failed to cooperate with disciplinary authorities; attorney had a prior admonition, reprimand, a three-month, and a six-month suspension).

Some of respondent's violations here are similar to the violations in his earlier matters. Apparently he has not learned from his mistakes. Because, however, this case involved only one client matter, we unanimously determine to impose a six-month suspension to run concurrently to his prior suspension. Two members did not participate. We also determine that respondent cannot apply for reinstatement until all matters currently pending against him are resolved.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

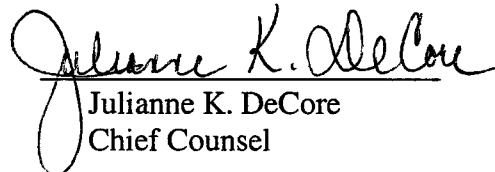
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Larry J. McClure
Docket No. DRB 03-361

Decided: March 10, 2004

Disposition: Six-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Six-month 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:		7					2


Julianne K. DeCore
Chief Counsel