

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-317
District Docket No. X-03-077E

IN THE MATTER OF
THEODORE KOZLOWSKI
AN ATTORNEY AT LAW

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

Decided: December 10, 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
R.1:20-4(f).

Respondent was admitted to the New Jersey bar in 1978. On
May 28, 1992, he was privately reprimanded for lack of diligence
and failure to cooperate with ethics authorities. In the Matter
of Theodore Kozlowski, Docket No. DRB 92-104. On February 18,
1998, he received an admonition for lack of diligence and
failure to communicate with the client in two matters. In the
Matter of Theodore Kozlowski, Docket No. DRB 96-460. On October

27, 2003, respondent was reprimanded, in a default matter, for practicing law while ineligible to do so for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. In re Kozlowski, 178 N.J. 3 (2003). On January 27, 2004, respondent received another reprimand in a default matter, for failure to cooperate with disciplinary authorities. In re Kozlowski, 178 N.J. 326 (2004). In September 2004, respondent received a three-month suspension for conduct in matters for three separate clients, presented in two defaults. The misconduct included gross neglect in one matter, lack of diligence and failure to communicate with the client in all three matters, and, in one of the matters, improper signing of clients' names to two separate bankruptcy petitions without their authorization. In re Kozlowski, 181 N.J. 307 (2004). In the same month, respondent received a reprimand in a default matter for lack of diligence in a bankruptcy case. In re Kozlowski, 181 N.J. 309 (2004).

In the fall months of 2002, John and Sharon Larkins retained respondent for a Chapter 13 bankruptcy. They met with respondent at his Morristown office and gave him a \$2,000 retainer for the representation. Respondent filed a bankruptcy petition for the Larkins in September 2002. Over the ensuing months, respondent took little action on his clients' behalf.

Respondent failed to return the Larkins' phone calls, failed to expedite the bankruptcy matter, and missed court appearances.

Further, respondent misrepresented to the Larkins that the bankruptcy judge and the trustee had "been avoiding him."

On October 14, 2003, over one year after the petition was filed, the Larkins contacted the trustee to avoid dismissal of their case for failure to prosecute the petition.

The complaint alleged that respondent violated RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with the client), RPC 3.2 (failure to expedite litigation), RPC 8.4(a) (violation or attempt to violate the Rules of Professional Conduct), RPC 8.4(c) (misrepresentation), RPC 8.4(d) (conduct prejudicial to the administration of justice), and RPC 8.1(b) (failure to cooperate with ethics authorities).

On June 22, 2004, the DEC sent a copy of the complaint to respondent's last known office address listed in the New Jersey Lawyers' Diary and Manual, 20 Park Place, Suite 200, Morristown, New Jersey, 07960, by certified and regular mail. The certified mail receipt was returned signed by "M. H. Glassman." The outcome of the regular mail is not known.

On August 3, 2004, a second letter was sent to the above address, by certified and regular mail, advising respondent

that, if he 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 returned signed by "L. Brown." The outcome of the regular mail is not known.

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 answer the complaint, the allegations are deemed admitted. R. 1:20-4(f).

Respondent failed to take action to protect his clients' interests for over a year, after which they asked the trustee about the status of their case. By his failure to take action during that time, respondent exhibited a lack of diligence, a violation of RPC 1.3. So, too, respondent failed to expedite the bankruptcy litigation, a violation of RPC 3.2.

In addition, respondent failed to reply to the Larkins' numerous requests for information about their matter, forcing them to turn to the trustee to determine the status of their case. In so doing, we find that respondent violated RPC 1.4(a).

Respondent also lied to his clients, a violation of RPC 8.4(c), misrepresenting to them that the bankruptcy judge and the trustee had been avoiding him.

Finally, respondent failed to cooperate with the DEC and the OAE in the processing of the ethics matter, and allowed it to proceed on a default basis, a violation of RPC 8.1(b).

With respect to RPC 8.4(a), the DEC alleged no specific conduct by respondent to support the charge. Likewise, with regard to RPC 8.4(d), there is no support for a finding of conduct prejudicial to the administration of justice. The lone statement in the complaint - respondent "mishandl[ed] the Larkins' bankruptcy, fail[ed] to cooperate with disciplinary authorities, and repeated similar conduct" - is insufficient to sustain a finding that respondent thwarted the administration of justice. With regard to RPC 1.1(b), the record sheds no light on what happened to the Larkins' petition after they contacted the trustee in October 2003. It is not clear that the petition was ever dismissed. It may be that respondent or a subsequent attorney was able to put the matter back on track. For these reasons, we dismiss the RPC 8.4(a) and (d), and the RPC 1.1(b) charges.

It is well-settled that "intentionally misrepresenting the status of lawsuits warrants public reprimand." In re Kasdan, 115

N.J. 472, 488 (1989). Here, respondent misrepresented to his clients that he had encountered problems with the judge and trustee, in order to mask his inaction. Accordingly, at least a reprimand is warranted. See In re O'Connor, 174 N.J. 298 (2002) (reprimand in a default matter, where the attorney misrepresented to the client that he had filed a complaint and that the case was proceeding smoothly, and also failed to reply to the client's requests for information; aggravating factors were the attorney's failure to abide by the terms of an agreement in lieu of discipline, and failure to answer the complaint).

Cases dealing with violations of RPC 1.3 and RPC 1.4(a) generally result in either an admonition or a reprimand. See, e.g., In the Matter of Theodore F. Kozlowski, Docket No. DRB 96-460 (February 18, 1998) (admonition where, in two separate matters, attorney failed to act diligently and to communicate with his clients); In re Paradiso, 152 N.J. 466 (1998) (reprimand for attorney who, in a personal injury matter, failed to act with diligence and failed to communicate with a client, causing the case to be dismissed with prejudice); and In re Bildner, 149 N.J. 393 (1997) (reprimand for lack of diligence, and failure to communicate for two years after client's matter was dismissed with prejudice).

In default matters, we upgrade the discipline to reflect an attorney's failure to cooperate with disciplinary authorities as an aggravating factor. Here, however, respondent's conduct is further compounded by his ethics history, which includes a private reprimand and an admonition, three separate reprimands in recent defaults, and, in another recent default, a three-month suspension. For all of these reasons, we voted to suspend respondent for six months. Vice-Chair William J. O'Shaughnessy and Members Matthew P. Boylan, Esq. and Barbara F. Schwartz did not participate.

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
Julianne K. DeCore
Chief Counsel

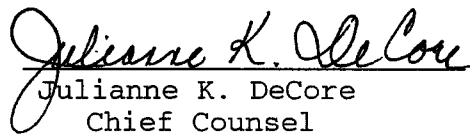
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Theodore F. Kozlowski
Docket No. DRB 04-317

Decided: December 10, 2004

Disposition: Six-month suspension

Members	Six-month Suspension	Reprimand	Admonition	Disqualified	Did not participate
Maudsley	X				
O'Shaughnessy					X
Boylan					X
Holmes	X				
Lolla	X				
Pashman	X				
Schwartz					X
Stanton	X				
Wissinger	X				
Total:	6				3


Julianne K. DeCore
Chief Counsel