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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-316
District Docket No. X-02-003E

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

Decision

Argued: January 12, 2006

Decided: February 22, 2006

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

Respondent appeared pro se.

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 the unearned portion of a fee. In the Matter of Stephen D. Landfield, Docket No. 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).

By Court order dated January 24, 2006, respondent was suspended for three months, effective immediately, for failure to promptly notify a third party of receipt of property and failure to promptly deliver property to a third party, failure to cooperate with disciplinary authorities, and conduct involving dishonesty, fraud, deceit or misrepresentation. In re Landfield, N.J. (2006).

By Court order also dated January 24, 2006, respondent was suspended for six months, effective immediately, for gross neglect, lack of diligence, failure to communicate with clients, failure to set forth in writing the basis or rate of the fee, and failure to cooperate with disciplinary authorities. In re Landfield, N.J. (2006).

The Court issued another suspension order on January 24, 2006, for an additional six-month term, effective immediately, for gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to set forth in writing the basis or rate of a fee, and violating the Rules of Professional Conduct. In re Landfield, N.J. (2006).

The complaint in this matter alleged violations of RPC 1.4(a) (failure to communicate with the client); RPC 4.4 (respect for rights of third parties); RPC 8.1(b) (failure to cooperate with ethics authorities); RPC 8.4(a) (attempt to violate the RPCs); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

In August 2003, the Cimaglias, the grievants, retained respondent to assist them in the "foster-to-adopt" adoption, through the Division of Youth and Family Services ("DYFS"), of a foster child in their care.¹ On August 5, 2003, Gerald Cimaglia gave respondent a check for \$250 toward his retainer.² Shortly thereafter, on August 15, 2003, he gave respondent a second \$250 check. Respondent negotiated both of the checks.

According to the complaint, the matter progressed slowly (through no fault of respondent) until May 2004, when DYFS notified the Cimaglias that it was ready to issue a birth certificate for the child, which it would then send to respondent.

¹ Respondent's name had been on a list of DYFS-approved attorneys. According to Cimaglia, respondent had been appointed by that agency to assist them.

² Respondent referred to the fee as a "retainer," in his answer to the formal ethics complaint.

The DEC hearing took place on May 31, 2005. Without explanation, respondent failed to appear.³

Gerald Cimaglia testified at the DEC hearing that, once the adoption matter was moving ahead again, respondent arranged to meet with the Cimaglias on July 15, 2004, at a local diner, in order to finalize and sign the adoption papers. The Cimaglias went to the diner at the specified time and waited for one and one-half hours, but respondent never appeared.

That evening, Cimaglia found a message from respondent on his cell phone, stating that he did not need to meet with them after all, and representing that, because he had obtained "the signatures" necessary for the adoption, he "would take care of the adoption from here."

³ On the evening of the hearing date, after its conclusion, the hearing panel chair received a facsimile from respondent (sent on Sunday, May 29, 2005, of the holiday weekend), advising her that he could not appear at the hearing because of a work emergency. The panel chair determined to obtain transcripts of the hearing and to give respondent time to re-open the matter, if he chose to do so. In the meantime, on June 2, 2005, the Court ordered respondent to obtain counsel for all pending matters within thirty days. The panel chair waited in excess of the thirty days and, hearing nothing from respondent or counsel, on August 9, 2005, notified respondent by certified and regular mail that the DEC intended to conclude the matter. The certified mail to respondent was returned marked "unclaimed." The regular mail was not returned. The DEC also contacted the Office of Attorney Ethics, and was informed that respondent had not retained counsel. Therefore, the matter proceeded without respondent's further input. See Hearing Panel Report at unmarked page two, paragraph 8.

For the next few weeks, Cimaglia called respondent and left messages for him on ten separate occasions, each time requesting the status of the matter and a finalization of the adoption. Respondent never returned those calls.

According to Cimaglia, on August 2, 2004, Maryann Grundy, the DYFS caseworker assigned to the Cimaglias, contacted him directly, because her several messages for respondent, too, had gone unheeded. Grundy advised Cimaglia that the adoption was in jeopardy, and that, if the couple wanted to proceed, they should immediately retain another attorney.

Cimaglia stated that, under the circumstances, he thought that he and his wife might lose the opportunity to adopt their foster-child. Therefore, the next day, he retained a new attorney, who successfully completed the adoption in October 2004.

Finally, Cimaglia testified that he sought the return of the \$500 retainer, but that respondent never complied with those requests.

Although respondent did not personally appear at the DEC hearing, his verified answer denied any wrongdoing. He blamed Cimaglia for problems in the case. According to respondent, he had completed the work necessary to file the adoption papers, was prepared file the papers with the surrogate, but before he

could do so, was told by his client "not to bother; that he would be retaining someone else to do the work."

In fact, respondent was proud of his alleged accomplishments for Cimaglia:

Respondent suggests that the time and effort expended greatly exceeded the \$500 retainer, which in no way compensated him for the time and effort involved or for what an attorney of over 20 years experience, like Respondent, would be entitled to for such a matter.

[A13.]⁴

Respondent provided no support of any kind for his assertions about work performed.

The DEC found that respondent's repeated failure to reply to his clients' requests for information about the representation violated RPC 1.4(a). The DEC further found that respondent violated RPC 8.1(b) by his failure "to respond to a lawful request from the District X Ethics Committee." The DEC dismissed the charges related to RPC 4.4 and RPC 8.4(c) for lack of clear and convincing evidence.

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

⁴ "A" refers to respondent's verified answer to the ethics complaint.

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.

The Cimaglia's adoption matter appears to have been a fairly uncomplicated matter. Yet, after accepting a \$500 retainer, respondent failed to take any action in his clients' behalf. Contrary to respondent's assertion that he performed legal services in excess of that amount, it appears from the record that he never put pen to paper in the Cimaglias' behalf. He submitted no correspondence, notes, research, drafts of documents for filing with the court - nothing that would indicate that he performed legal services for his clients - a violation of RPC 1.1(a). Were it not for Cimaglia's swift action in retaining subsequent counsel, the adoption might have been lost.

It is also apparent to us that respondent had poor contact with his clients. First, he failed to attend a diner-meeting with the Cimaglias that he had arranged. Thereafter, he failed to keep them apprised of the status of the case, and failed to reply to numerous telephone calls from his client. In doing so, respondent violated RPC 1.4(a).

Additionally, we believe that respondent should have been charged with RPC 1.16(d) (failure to return unearned fees). There is no indication in the record before us that respondent

did anything for his clients after accepting the \$500 fee. His assertion that he performed work in his clients' behalf is wholly unsubstantiated. The entire fee appears to have been unearned. We find, thus, that respondent violated RPC 1.16(d). Although respondent was not specifically charged with violating RPC 1.16(d), the record developed below contains clear and convincing evidence of a violation of that rule. Furthermore, respondent did not object to the admission of such evidence in the record. In light of the foregoing, we deem the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

The complaint also charged respondent with a violation of RPC 4.4. That rule states that

[i]n representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

The record does not demonstrate that respondent embarrassed, delayed or burdened a third party. Moreover, evidence gathering does not appear as an issue here. Therefore, we dismiss the RPC 4.4 charge. Likewise, we dismiss the 8.4(c) charge for lack of clear and convincing evidence.

Finally, the complaint alleged a pattern of neglect, a violation of RPC 1.1(b). Generally, we require a finding of

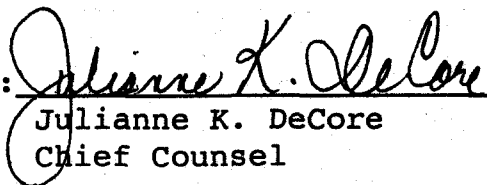
three or more instances of neglect in order to comprise a pattern. Here, only one matter is involved. However, in the three separate suspension matters pending Supreme Court review, we have found respondent guilty of gross neglect and/or pattern of neglect. Respondent's neglect in this case, when combined with those cited in his ethics history, is yet another indication of a continuing pattern of neglect, for which we find a 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, Docket No. 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).

In aggravation, respondent's history of final discipline includes a 2003 admonition and our more recent determinations for a three-month suspension, and two separate six-month suspensions, all of which are under review by the Supreme Court. For all of these reasons, we voted to impose a three-month suspension, to be served concurrently with any term of suspension that the Court may impose in the matters now before it. We reiterate the requirements in our earlier decisions that respondent be precluded from seeking reinstatement until all pending ethics matters against him are resolved, and that he submit, prior to reinstatement, proof of fitness to practice law, as attested by a mental health practitioner approved by the OAE. Members Lolla and Stanton did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

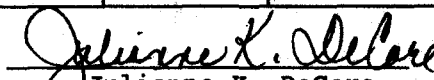
In the Matter of Stephen D. Landfield
Docket No. DRB 05-316

Argued: January 12, 2006

Decided: February 22, 2006

Disposition: Three-month suspension

Members	Three-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:	7				2


Julianne K. DeCore
Chief Counsel