SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-192

IN THE MATTER OF

CARL C. BOWMAN

AN ATTORNEY AT LAW

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

Decided: September 15, 2003

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

Pursuant to R.1:20-4(f), the Office of Attorney Ethics ("OAE") 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 1962. At the relevant times, he maintained a law office in Westville, New Jersey.

In 1971, respondent was privately reprimanded for lack of diligence in a divorce matter. In the Matter of Carl C. Bowman, (December 27, 1971).[1] On November 1, 2002, he was temporarily suspended following the abandonment of his law practice. Earlier this

[1] The docket number is unavailable.

year he was suspended for six months for gross neglect, pattern of neglect, lack of diligence, failure to communicate with a client, failure to provide a written fee agreement, failure to protect a client's interests on termination of representation, false statement of fact in a disciplinary matter, and misrepresentation to a client and others, all arising from his handling of three client matters. In re Bowman, 175 N.J. 108 (2003). We recently determined to suspend respondent for a six-month period, to run consecutively to his prior suspension, for gross neglect, lack of diligence, failure to communicate with a client, failure to protect the client's interests after terminating the representation, misrepresentation to the client and to a tribunal, failure to cooperate with disciplinary authorities, conduct prejudicial to the administration of justice, and abandoning the client in the middle of litigation with no warning. The matter proceeded as a default. In the Matter of Carl C. Bowman, Docket No. DRB 03-146. This matter is currently pending with the Court.

A report from the New Jersey Lawyers' Fund for Client Protection indicates that respondent has been ineligible to practice law since September 2001.

On July 23, 2002, the District IV Ethics Committee ("DEC") sent a copy of the complaint to respondent by regular and certified mail, return receipt requested, to his last known home address in Hammonton, New Jersey. The address was listed in the records of the Lawyer's Fund for Client Protection. The certified mail envelope was returned marked "unclaimed." The regular mail envelope was returned marked "attempted – not known."

On April 25, 2003, the complaint was served on respondent by publication in the Press of Atlantic City and on April 28, 2003 in the New Jersey Lawyer. Respondent did not file an answer.

The thirteen-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 clients); RPC 1.16(d) (upon termination of representation, failure to take steps reasonably practicable to protect the clients' interests); RPC 8.1(b) (failure to reply to lawful demands for information from a disciplinary authority); RPC 8.4(c) (misrepresentation to a client); RPC 1.5(b) (failure to give client a written fee agreement); RPC 4.2 (communicating about the subject of the representation with a person the lawyer knows or should know to be represented by another lawyer in the matter, including members of an organization's litigation control group as defined by RPC 1.13); RPC 5.3(a) (with respect to a non-lawyer employed or retained by the lawyer, failure to adopt and maintain reasonable efforts to ensure that the conduct of the nonlawyer is compatible with the professional obligations of the lawyer); and RPC 5.3(b) (in having direct supervisory authority over the nonlawyer, failure to make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer).

The Allen-Jones Matter - District Docket No. IV-01-080E

In October 1999, Heddy Allen-Jones retained respondent to represent her in an employment discrimination claim against her former employer, WNY Group, Inc. She paid respondent $2,300 to handle the matter. Respondent failed to take any action in Allen-Jones' behalf for nearly one year. On September 7, 2000, respondent wrote to the United States Equal Opportunity Commission ("EEOC") requesting the issuance of a "right to sue letter." On September 18, 2000, the EEOC provided respondent with a notice of right to sue. The notice advised that within ninety days of receipt of the notice, a lawsuit either

under Title VII or the ADA had to be filed in federal or state court. Respondent did not file the lawsuit.

On October 18, 2000, the New Jersey Department of Law and Public Safety, Division on Civil Rights, notified Allen-Jones that the complaint she had previously filed pro se had been administratively dismissed because respondent had elected to proceed with the EEOC claim.

In February and March 2001, Allen-Jones repeatedly telephoned respondent's office and left numerous messages with his secretary seeking information about the status of her case. Respondent did not return her telephone calls. On April 9, 2001, Allen-Jones telephoned respondent's office and discovered that his telephone had been disconnected.

Respondent also failed to reply to the DEC's and OAE's written requests for a reply to the grievance. By letter dated April 26, 2002, the OAE directed respondent to appear at a demand audit on May 13, 2002, in connection with this matter and the Green, Stanton, Kersaint, and OCCA matters below. He neither appeared at the audit, nor replied to the OAE.

The Green Matter – District Docket No. IV-01-073E

Kevin Green retained respondent in April 2000 to represent him in an employment discrimination claim against his former employer, Penn Power Systems ("Penn"). Pursuant to a written retained agreement, Green was to pay respondent $5,000 in ten equal installments from April 2000 through August 2000.

According to the complaint, Green completed "paper work" which respondent agreed to file with the EEOC by May 1, 2000. For more than one year, respondent did not file

Green's EEOC complaint. In September 2000, Green informed respondent that he was unhappy with the way respondent was handling his matter and that he was not being informed about the status of his case. The two met on September 15, 2000, at which time respondent advised Green that the matter should be pursued in New Jersey Superior Court.

When Green telephoned respondent in November 2000 to determine the status of his matter, respondent informed him that the case was "proceeding well." In a February 2001 telephone conversation, respondent told Green that he was still "waiting on a response from Penn."

In April 2001, Green learned that respondent's telephone had been temporarily disconnected and that his office was "locked." He has been unable to contact respondent since that date.

Respondent filed Green's complaint with the EEOC on May 10, 2001. On October 5, 2001, the EEOC notified Green that under Title VII, a complaint has to be filed with the EEOC "within 300 days of the date of the alleged discrimination." The date of the alleged discrimination was April 3, 2000, the date Green had been terminated from his job. The EEOC, therefore, no longer had jurisdiction to review the matter.

Here too, respondent failed to reply to the DEC's and OAE's letters requesting a reply to the grievance.

<u>The Stanton Matter – District Docket No. IV-01-095E</u>

In December 2000, John Stanton, Jr. retained respondent to represent him in a legal malpractice claim. Pursuant to a written retainer agreement, Stanton paid respondent $3,500. When Stanton had not heard from respondent for one month, he tried to contact

respondent about the status of his matter. Eventually, respondent told Stanton that he would be filing the case soon and would send him copies of the paperwork. As of August 7, 2001, four months after they had spoken, Stanton had still not heard from respondent and filed a grievance against him. There is no indication that respondent took any action to prosecute Stanton's claim.

When Stanton once again attempted to contact respondent, he discovered that respondent's telephone had been disconnected and his law office had been closed.

Once again, respondent did not reply to the DEC's and OAE's requests for information about the grievance.

The Kersaint Matter – District Docket No. IV-01-086E

In January 2000, Juliette Kersaint retained respondent to represent her and her disabled minor child in a dispute with the Willingboro School District about furnishing appropriate educational services and programs. Although respondent had not previously represented Kersaint or her son, he did not provide Kersaint with a written retainer agreement. She paid respondent $3,000 to handle the matter.

Over the following year and one-half, respondent performed significant legal services for Kersaint and her son, including negotiations and settlement talks with counsel for the Willingboro School District. In or about August 2001, however, respondent unilaterally ceased his representation of Kersaint and her son and abandoned their case. Thereafter, he did not keep them informed about the status of the matter and did not comply with Kersaint's requests for information. Later, Kersaint was unable to contact respondent because his telephone had been disconnected and his law office had been closed.

By letter dated August 10, 2001, Administrative Law Judge Steven C. Rebak informed Kersaint that respondent had notified him that he would no longer be representing Kersaint's interests. The letter also stated that respondent had previously reached a tentative settlement with the Willingboro Board of Education, which was still available to her. Kersaint accepted the settlement. On November 27, 2001, the ALJ issued a decision in conformance with the settlement.

As in the other matters, respondent failed to reply to the DEC's and the OAE's letters requesting a reply to the grievance.

The Ocean Colony Condominium Association Matter – District Docket No. IV-01-081E

Respondent represented the plaintiff, Joseph Thomas, in a suit against the Ocean Colony Condominium Association ("OCCA") and others, filed on August 25, 1999, in the Superior Court of New Jersey. The suit alleged that, on or about July 1, 1999, the defendants published false, malicious and libelous words and statements, threatened litigation and the confiscation of the Thomas' property. On January 19, 2001, the Thomas suit was dismissed with prejudice on a motion for summary judgment.

Respondent also represented plaintiffs, Amelia Thomas, Rosemarie Thomas, Delores Sporn and Leonard Sporn in a separate suit against OCCA filed in March 2000 in the United States District Court, District of New Jersey. The Sporn suit alleged that in January 1999, the plaintiffs filed a HUD complaint against the OCCA, alleging Fair Housing Act violations and that in July 1999, the OCCA retaliated against the plaintiffs for filing the HUD complaint. On October 29, 2001, the Sporn suit was also dismissed with prejudice on a motion for summary judgment.

In connection with both lawsuits, respondent hired an investigator, Richard A. Boyt to interview potential witnesses. In the fall of 1999, prior to filing both lawsuits, Boyt spoke to Robert Lynn about the subject litigation. Lynn was the property manager of the OCCA from mid-May 1999 to mid-July 1999 and was a member of the OCCA litigation control group as defined in RPC 1.13.[2] The investigative report, which supplements the record, states that Lynn was the property manager at OCCA during the time periods relevant to each lawsuit. As property manager, he was charged with the operation and maintenance of the OCCA building and grounds. He also attended Board meetings, offered advice to the Board on a wide range of topics, supervised maintenance and security personnel and lifeguards, entered into agreements with independent contractors to service the building and grounds, implemented activities planned by the Board, reviewed financial records, verified insurance coverage, and reported claims.

During Boyt's conversation with Lynn, Boyt did not specifically inquire whether Lynn was represented by counsel. Thereafter, respondent and Boyt met with Lynn and spoke to him about the subject litigation. At that time, neither Boyt nor respondent specifically inquired whether Lynn was represented by counsel.

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[2] RPC 1.13(a) provides:

> A lawyer employed or retained to represent an organization represents the organization as distinct from its directors, officers, employees, members, shareholders or other constituents. For the purposes of RPC 4.2 and 4.3, however, the organization's lawyer shall be deemed to represent not only the organizational entity but also the members of its litigation control group. Members of the litigation control group shall be deemed to include current agents and employees responsible for, or significantly involved in, the determination of the organization's legal position in the matter whether or not in litigation, provided, however, that "significant involvement" requires involvement greater, and other than, the supply of factual information or data respecting the matter. Former agents and employees who were members of the litigation control group shall presumptively be deemed to be represented in the matter by the organization's lawyer but may at any time disavow said representation.

Respondent failed to reply to the DEC's and OAE's letters requesting information about the grievance in this matter.

The Tobin Matter – District Docket No. IV-01-094E

Lillian and Patrick Tobin retained respondent in November 1977, to represent them and their two sons, Frank and Samuel, in a civil suit against the Atlantic County Prosecutor, the Atlantic Count Assistant Prosecutor, the Egg Harbor Board of Education and an Egg Harbor Township high school teacher. On September 7, 1999, respondent filed suit on behalf of the Tobins in the United States District Court, District of New Jersey. Between November 3, 1997, and early 2001, the Tobins' case proceeded properly. On July 26, 2000, respondent forwarded the Tobins' answers to interrogatories to the defendants' counsel.

Lillian and Patrick last spoke to respondent on February 13, 2001. Afterwards, their repeated attempts to contact him were to no avail. In addition, on at least two occasions, respondent failed to make required appearances in federal court. Respondent did nothing further to prosecute the case on the Tobins' behalf.

On June 12, 2001, United States Magistrate Joel B. Rosen wrote to respondent expressing his concern that respondent had not taken steps to protect his client's interest in the matter. By letter dated July 20, 2001, respondent replied that he had submitted his resignation from the New Jersey bar with prejudice. Notwithstanding this representation, neither the OAE, the New Jersey Lawyers' Fund for Client Protection or the offices of the Supreme Court of New Jersey received respondent's resignation from the bar of the State of New Jersey.

As in the other matters, respondent did not reply to the DEC's or the OAE's requests for information about the grievance.

Pattern of Neglect

Count-thirteen of the complaint charged respondent with a pattern of neglect (RPC 1.1(b)) for his conduct in the above matters.

Service of process was properly made in this matter. Following a review of the record, we determined 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).

The allegations of the complaint support a finding that respondent abandoned four of the six client matters. In the Allen-Jones, Green, Stanton and Tobin matters respondent did little or no work on behalf of his clients. His inaction amounted to gross neglect (RPC 1.1(a)) and lack of diligence (RPC 1.3). In all of these matters, he failed to communicate with his clients (RPC 1.4(a)), failed to protect his clients' interests when he unilaterally terminated the representation (RPC 1.16(d)), and engaged in a pattern of neglect (RPC 1.1(b)). In the Green matter, respondent also misrepresented the status of the matter to his client in violation of RPC 8.4(c).

In the Kersaint matter, respondent performed significant legal services for his client. Although he did not finalize the settlement, his actions resulted in Kersaint's settlement with the defendants. Therefore, we did not find a lack of diligence in this matter. However, respondent failed to communicate with Kersaint about the settlement in violation of RPC

1.4(a). She learned of the settlement from the ALJ. Respondent also failed to provide Kersaint with a written retainer agreement in violation of RPC 1.5(b).

In the OCCA matter, contrary to RPC 4.2 respondent had improper communications with Lynn, an individual he should have known to be a member of OCCA's litigation control group, and also permitted Boyt to have similar improper contacts with Lynn, in violation of RPC 5.3 (a) and (b).

Finally, in all of the above matters, respondent failed to reply to the DEC's and OAE's requests for information and failed to appear at the OAE demand audit in violation of RPC 8.1(b).

The discipline imposed in cases involving the abandonment of clients has varied based on the type of ethics violations involved and the number of clients abandoned. See, e.g., In re Grossman, 138 N.J. 90 (1994) (three-year suspension for multiple ethics violations, including signing a judge's name to a divorce judgment and giving it to his client to cover up his mishandling of the case; he also abandoned approximately two hundred cases after misrepresenting to the courts and clients that the cases had been settled); In re Mintz, 126 N.J. 484 (1992) (two-year suspension where attorney abandoned four clients and was found guilty of gross neglect, pattern of neglect, failure to maintain a bona fide office, and failure to cooperate with ethics authorities); In re Annenko, 165 N.J. 508 (2000) (six-month suspension where attorney abandoned two clients and was guilty of gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client, failure to return an unearned retainer, lack of written retainer agreement, failure to cooperate with disciplinary authorities, failure to maintain a bona fide office, and failure to maintain proper trust and business accounts; attorney had two prior private reprimands); In re Bock, 128 N.J.

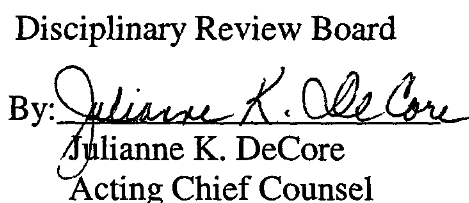
270 (1992) (six-month suspension imposed where attorney, while serving as both a part-time municipal court judge and a lawyer, with approximately sixty to seventy pending cases, abandoned both positions by feigning his own death); and In re Velazquez, 158 N.J. 253 (1999) (three-month suspension imposed where attorney abandoned seven clients and was found guilty of gross neglect, pattern of neglect, failure to communicate with clients and failure to protect the clients' interests upon the termination of the representation in all seven matters, and conduct prejudicial to the administration of justice in three of the matters; attorney's suspension was subsumed in his disbarment case).

While clearly this case does not involve as many client matters as the Grossman case, where a three-year suspension was imposed, it is more serious than the Annenko matter. Here, in addition to abandoning his clients and causing injury to at least some of them, respondent has ignored the entire disciplinary process by allowing this and his prior matter to proceed on a default basis. While it appears that respondent does not intend to resume the practice of law, in order to ensure that the public is protected, seven members voted to impose a one-year suspension to run consecutively to his prior suspension.

We also determined to require respondent, prior to reinstatement, to submit proof of fitness to practice law, as attested by a mental health professional approved by the OAE.

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

Disciplinary Review Board



By: Julianne K. DeCore
Acting Chief Counsel

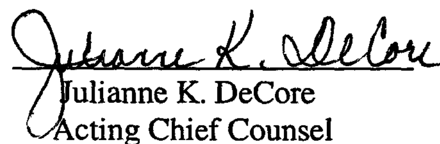
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Carl C. Bowman
Docket No. DRB 03-192

Decided: September 18, 2003

Disposition: One-year suspension

Members	***Disbar***	***One-year Suspension***	***Reprimand***	***Admonition***	***Dismiss***	***Disqualified***	***Did not participate***
Maudsley		X					
O'Shaughnessy		X					
Boylan		X					
Holmes		X					
Lolla		X					
Pashman							X
Schwartz							X
Stanton		X					
Wissinger		X					
Total:		7					2



Julianne K. DeCore
Acting Chief Counsel