

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-239

IN THE MATTER OF
EDWARD A. WIEWIORKA
AN ATTORNEY AT LAW

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Decision

Argued: October 16, 2003

Decided: November 25, 2003

Bernard Schenkler appeared on behalf of the District VC Ethics Committee.

Respondent did not appear for oral argument.

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

This matter was before us based on a recommendation for discipline filed by the District VC Ethics Committee (“DEC”). The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate with client), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Grossman, therefore, believed that respondent had filed a lawsuit. According to Grossman, respondent later told him that he had filed a complaint in January 1999.

Roseann Roberts testified that after her family's initial meeting with respondent, he did not reply to most of her telephone messages. During one conversation, respondent informed Roberts that he was going to file a complaint and that they would have to answer interrogatories. In a later telephone conversation, respondent informed Roberts that "the case was filed" (T29)¹. When she later asked for the docket number, respondent changed the subject.

After the Gigantes met with respondent in November 1999, they concluded that he seemed overburdened. He had explained to them that he was practicing on his own and had "all these extra cases on his hands. . ." (T30). Following that meeting, the Gigantes believed that they were not getting the attention they deserved, and respondent was not acting in their best interests. As a result, Grossman found the Gigantes a new attorney. In December 1999, Grossman wrote to respondent informing him that the Gigantes were dissatisfied with his services and to forward their file to Lars Hyberg, Esq. When respondent did not comply, Hyberg sent several additional letters to respondent, from February 21, 1999 to March 1999, requesting the file. It was not until Hyberg threatened to file an order to show cause that respondent, through his attorney, turned over the file.

¹ T denotes the transcript of the November 21, 2002 DEC hearing.

Respondent conceded that he was overwhelmed at the time he met with the Gigantes. His partner left behind a large caseload. Shortly thereafter his secretary left. From January 1997 to February 1998 his office was not as organized as it should have been.

Respondent explained that Gigante's cause of action was not recorded in the journal that he kept on statutes of limitations. He mistakenly believed that November 11, 1999 was the date the statute of limitations would expire, because he confused the interview date with the "accrual date" of the cause of action (T58).

In August 1999, after Roberts inquired about the status of the case, he realized that he had missed the statute of limitations. He never informed the Gigantes of this fact. Respondent also admitted that he told Grossman of his intent to file a lawsuit in early 1999, and in either the spring or early summer 1999, told Grossman that the suit had been filed. Respondent admitted that he never filed the lawsuit; that he believed Roberts understood that a complaint had been filed based on her conversations with Grossman; that he told Grossman that he had filed the lawsuit; and that he did not return all of the telephone calls or reply to all of the letters requesting information about the matter.

After the Gigantes new attorney requested the file, respondent contacted a lawyer. Respondent's lawyer turned the file over to Hyberg. Respondent had no malpractice insurance because he could not afford it.

Respondent blamed his inattention to Gigante's matter on his deteriorating health. He explained that by 1998 he was not feeling well most of the time and had a hard time concentrating. As a result, he put a lot of his cases on the back burner and addressed only

the matters that were coming up for trial. By 1999 his condition worsened. Near the end of 2000, he was suffering from undiagnosed heart problems, which developed into congestive heart failure in mid-2001. Respondent testified that he felt “pretty lousy, missing work a lot.” He claimed that he was out of the office for weeks at a time. Thus, he “[h]ad to make excuses to clients as to why [he] didn’t get back to them” (T56). Gigante’s case fell into that category.

According to respondent, initially he did not realize that he had a medical problem. He was suffering from fatigue, shortness of breath, difficulty sleeping and light-headedness. He believed all of these symptoms were a result of being overwhelmed at work. Later, he was diagnosed with congestive heart failure. He was hospitalized for a week and afterwards could not return to work on a full-time basis. From 1998 to 2001, he did not try any cases, but as of the time of the DEC hearing had recently resumed doing so.

Respondent noted that he had no history of discipline and is a member of the District VB Ethics Committee.

Respondent’s psychiatrist, Dr. Edward A. Latimer, testified that he started treating respondent in 1993 for depression; that in June 2001, respondent was diagnosed with dilated cardiomyopathy; and that respondent had expressed extreme remorse over the Gigante matter and even considered suicide. It was Latimer’s opinion that respondent was suffering from health problems well before he became seriously ill in June 2001, and was not functioning properly prior to that time. Latimer stated that, currently, respondent is on three different types of medications: two antidepressants and an atypical

antipsychotic medication. At the DEC hearing the doctor noted that respondent's hands were shaking and that he was still not well, "from an emotional end. Physically he is better but from the emotional end he is devastated" (T96).

The DEC determined that respondent's failure to take any action with respect to Gigante's cause of action violated RPC 1.1(a), and RPC 1.3 and could not be excused by either his caseload at the time, or his alleged illness. The DEC also found a violation of RPC 1.4(a) based on respondent's admissions that he did not reply to letters from Grossman and did not communicate with his clients. Finally, the DEC found a violation of RPC 8.4(c). Respondent admitted that he informed Grossman that a suit had been filed and depositions would be conducted. In addition, when he met with the Gigante family in November 1999, he knew that the statute of limitations had expired but did not inform them of that fact. Respondent also admitted that the Gigantes probably assumed that the complaint had been filed based on their knowledge of his prior conversations with Grossman. Notwithstanding, he did nothing to correct their mistaken impressions.

The DEC recommended the imposition of a reprimand.

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent is guilty of unethical conduct is supported by clear and convincing evidence.

Respondent took on Gigante's matter and then failed to take any action in her behalf. His excuse was that he was overwhelmed by all of the cases that had been left to him. Based on respondent's defense, it is surprising that this was the only matter that fell through the cracks, particularly in light of his confession that he had put a lot of cases on

the back burner to address only matters coming up for trial. His failure to take any action in Gigante's behalf violated RPC 1.1(a) and RPC 1.3.

Respondent also failed to keep his client informed about the status of the matter and failed to alert her of the fact that the statute of limitations had expired, a violation of RPC 1.4(a). In addition, he failed to reply to Roberts' and Grossman's telephone calls and letters concerning the status of the matter.

Respondent denied that he informed Roberts that he had filed the complaint. He did, however, admit that she may have "assumed" it had been filed based on his prior conversations with Grossman. Respondent's misrepresentations to Grossman about filing the complaint, and his misleading the Gigantes into believing that he had filed a complaint, as well as his failing to inform them that the statute of limitations had expired, a misrepresentation by silence, violated RPC 8.4(c).

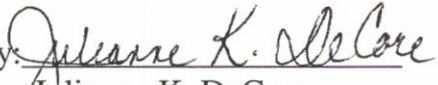
Generally, in cases involving similar violations, reprimands have been imposed. See In re Till, 167 N.J. 276 (2001) (reprimand for gross neglect, lack of diligence and misrepresentation where attorney failed to take action in representing his client in a "minority shareholder oppression action" and made numerous misrepresentations to her about the status of the case for more than a nine-month period; the attorney lied to the client that the complaint had been filed, that service had been made, that the defendant had failed to answer the complaint, that he was seeking default judgments, and that he had filed motions to obtain the deposition of her ailing father); In re Riva, 157 N.J. 34 (1999) (reprimand where attorney grossly neglected a litigated matter, allowing a default judgment to be entered, and then failed to act with diligence to have the default vacated

while also misrepresenting the status of the matter to his clients); and In re Onorevole, 144 N.J. 477 (1996) (reprimand where attorney grossly neglected a landlord-tenant matter for nearly one year, lied to his client to hide his neglect and failed to cooperate with the disciplinary authorities in violation of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 8.1(b), and RPC 8.4(c)).

We found no reason to deviate from precedent and, therefore, unanimously determined that respondent's conduct warrants the imposition of a reprimand. In light of his psychiatrist's testimony, we also determined to require respondent to submit proof of fitness to practice law as attested by a mental health professional approved by the Office of Attorney Ethics within ninety days of this decision.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Acting Chief Counsel

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

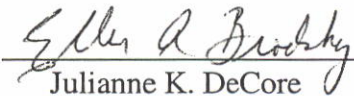
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Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>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				
<i>Total:</i>			9				

for 
Julianne K. DeCore
Chief Counsel