SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-110
District Docket No. IV-01-107E

IN THE MATTER OF	:
JOHN DE LAURENTIS	:
AN ATTORNEY AT LAW	:

Decision

Argued: May 20, 2004

Decided: June 23, 2004

Robert Porter appeared on behalf of the District IV Ethics Committee.

Respondent failed to appear, despite proper notice.

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 IV Ethics Committee ("DEC"). The complaint charged respondent with violations of RPC 1.3

(lack of diligence), RPC 1.4(a) (failure to keep a client informed about the status of a matter), RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit a client to make informed decisions), RPC 1.15(b) (failure to notify a third person of receipt of funds and to promptly deliver funds), RPC 4.1(a)(1) (false statement to a third person), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation) (count one); RPC 5.3(a) and (b) (failure to supervise an employee) and RPC 8.4(c) (count two); RPC 1.7(a) and (b) (conflict of interest) and RPC 8.4(c) (count three); RPC 8.4(a) (attempt to violate the Rules of Professional Conduct) and RPC 8.4(c) (count four); and RPC 1.1(b) (pattern of neglect) (count five).

Respondent was admitted to the New Jersey bar in 1980. On April 25, 2002, he received a reprimand for gross neglect, lack of diligence, and failure to communicate in three matters, failure to expedite litigation in two of those matters, pattern of neglect, practicing law while ineligible, and failure to cooperate with disciplinary authorities. In re DeLaurentis, 172 N.J. 35 (2002). Our decision cautioned respondent that future ethics infractions would be met with harsher discipline. Indeed, on October 7, 2002, respondent was suspended for one year. In re

DeLaurentis, 174 N.J. 299 (2002). In that case, respondent engaged in fraudulent conduct in a series of matters, including concealing from welfare agencies that his clients, who were recipients of welfare assistance, had obtained personal injury settlements, thereby precluding the welfare agencies from enforcing liens; settling a personal injury claim without disclosing his client's death to the insurance company; engaging in several conflicts of interest; providing financial assistance to clients; failing to disburse funds to a welfare agency; failing to notify a welfare agency of the receipt of funds to which the welfare agency was entitled; failing to prepare written fee agreements; displaying a lack of diligence; and failing to comply with recordkeeping rules. In addition to the one-year suspension, respondent was required to submit proof of fitness to practice law before reinstatement, and to complete six hours of professional responsibility courses upon his reinstatement.

On April 13, 2004, we transmitted a decision to the Court in which we voted to reprimand respondent for a violation of RPC 8.4(b) (commission of a criminal act), following a motion for final discipline filed by the Office of Attorney Ethics. In that

case, respondent was convicted of thirty-five counts of animal neglect. That decision is pending with the Court.

In 1994, Evelyn Kelley retained respondent to represent her in a claim for personal injuries after she was struck by a motor vehicle. On March 23, 1994, respondent filed a personal injury lawsuit in Kelley's behalf. On May 18, 1995, an arbitration proceeding resulted in a finding that Kelley "failed to satisfy her burden of proof." On June 12, 1995, respondent filed a request for a trial de novo. On March 17, 1997, at the trial, the complaint was dismissed on the defendant's motion after Kelley presented her evidence. Although respondent appealed the dismissal, the appeal was dismissed on October 30, 1997, upon his failure to file a brief.

Meanwhile, on October 11, 1994, respondent filed a lawsuit against Keystone Insurance Company for personal injury protection benefits ("PIP") for Kelley. On November 16, 1995, an arbitration award was entered in Kelley's favor for $8,934.54 to "pay 80% all medicals per the fee schedule and counsel fee of $800 plus $135.00 costs". On December 15, 1995, respondent filed a request for a trial de novo.

On December 4, 1995, Keystone offered to settle the PIP claim for $9,518.14, representing eighty percent of the medical bills of $10,728.92, plus $935 in costs and attorney fees. The matter was settled for $9,546 and the PIP lawsuit was dismissed by stipulation in April 1996.

On January 29, 1996, respondent sent the following letter to Kelley: "The enclosed [release] settles the unpaid medical bills. Please sign the same and mail back to me immediately". Respondent conceded that, when he sent the release to Kelley, he did not explain that it had to be notarized. On February 5, 1996, Kelley's daughter, Sandra Kelley, mailed the signed release to respondent. Respondent admitted that his secretary notarized the release, notwithstanding that Kelley had not signed it in the secretary's presence.

Respondent received the $9,546 settlement check from Keystone, dated April 8, 1996, and deposited it in his trust account. About twenty months later, in November 1997, Kelley received a bill for $5,147 from New Jersey Physical Medicine Associates ("PMA"). On November 17, 1997, Kelley forwarded the bill to respondent, stating that it "should have been taken care of" and asking him to pay the bill promptly.

In April 1999, respondent received a bill from a collection agency, Financial Recoveries, Inc. ("FRI"), seeking payment of $5,179 for PMA and $5,490 for another medical provider, Therapy Center[1], for a total of $10,669. By letters dated December 29, 1999, February 23, 2000, and March 24, 2000, FRI asked respondent for an update of the status of Kelley's case. In addition, from March 24, 1998 through December 28, 1999, FRI called respondent's office twelve times regarding the Kelley matter. Despite these numerous requests for information, respondent failed to notify FRI that he was holding settlement funds with which to pay Kelley's medical bills. Finally, on November 12, 2001, more than five and one-half years after he received the settlement funds and about two weeks after Kelley filed the grievance against respondent, he contacted FRI and settled the matter for $7,113.34. On November 21, 2001, FRI received the settlement check.

The complaint alleged that, when respondent contacted FRI, he misrepresented that he had "no bills relevant to the case." According to a letter that FRI sent to the Office of Attorney

---

[1] Elsewhere in the record, Therapy Center is referred to as Pavilions of Voorhees Therapy Center.

Ethics' investigator, respondent "claimed bills no relevant to case." The complaint further asserted that, at the time respondent misrepresented that he had no relevant bills, his file contained verification of the amounts due to PMA and the Therapy Center. Respondent, however, testified that he told FRI that the bills he had were not relevant to the case because, although Kelley owed only $5,179, the bills submitted by FRI alleged that $10,669 was due.

By letters dated November 15 and 16, 2001, respondent submitted the balance of the settlement funds to three medical providers to satisfy Kelley's medical bills. There is no indication in the record that respondent failed to keep intact the settlement funds in his trust account.

Kelley testified that respondent's failure to timely pay her medical bills negatively affected her credit rating and resulted in the denial of her credit card application.

For his part, respondent admitted in his answer to the complaint that he did not handle Kelley's PIP claim promptly:

> Although I took longer to contact and negotiate with all the providers that [sic] I would have liked, I deferred contacting and negotiating with the providers because I could not afford to spend additional time on the claims from a time/money standpoint. . . . As to contacts from Financial Recoveries, I was familiar

> with their procedures and knew it served no purpose to discuss the bills with the individuals turning out form letters and calling my office as they had no authority to negotiate. . . . I did not tell someone at Financial Recoveries I had "no bills relevant to the case", since, obviously, I had an amount for two providers that I submitted for the PIP settlement.

When respondent was asked at the ethics hearing why he took five years to disburse the settlement funds, he testified as follows:

> Because I didn't do anything further in the case, because I've put all my time and money into the case and was not – basically, it was a no-payment case at that point on, and it got low, low priority.
>
> If the damage was already done credit-wise, because Keystone wouldn't pay the bill in the years after the accident – if, indeed, the credit problem was strictly from the hospital, then we know the hospital probably affected the credit six months after the accident.
>
> I came along two years later and resolved it, but the damage had already been done. It just – it got a low priority because – simply from a time and money standpoint, was simply not going to be pursued much further anyway.

Respondent further testified that one advantage to not paying medical providers promptly is that "they become more amenable to resolving" the matter if "you string it out for years."

In September 1993, several months before respondent represented Kelley in the personal injury litigation, he drafted

wills for Kelley and her husband, Charles Kelley.[2] According to respondent, about ten years earlier, he represented Charles in a divorce proceeding filed by Kelley in which a judge orally granted a divorce, but no final judgment or order was ever entered. Respondent stated that, although the divorce was never finalized and although Charles and Kelley filed joint income tax returns until Charles' death, the parties considered themselves divorced. According to respondent, Kelley's will referred to Charles as her former husband and Charles' will referred to Kelley as his former wife.

In the wills that respondent drafted, Kelley left her entire estate to Charles, while Charles' will contained a $10,000 bequest to his paramour, Mary Berle. In a cover letter to Charles dated September 10, 1993, respondent cautioned his client:

> Obviously you are going to have Evelyn sign her Will in the same way at the same time with probably the same witnesses and Notary. I do not know . . . if you want her to see your Will leaving your money to Mary Berle. You have got to wonder whether Evelyn will

---

[2] Although Kelley denied that respondent had drafted her will, respondent testified that he had prepared wills for both Kelley and Charles. In addition, respondent's cover letter to Charles indicated that copies of both Charles' and Kelley's wills were enclosed.

> carry out the Will if you pass away before her and you give the money to Mary Berle as required by the Will. In any case, please send back to me one executed copy of each Will and at least I can see what I can do about making sure its [sic] carried out as I will have a copies [sic] of them.

The complaint alleged that respondent did not disclose to Kelley that Charles intended to bequeath money to Berle and that respondent should have made such a disclosure. Respondent conceded that, by preparing a will for Kelley, he represented her, although he did not charge either Kelley or Charles a fee. Although respondent prepared Charles' will leaving $10,000 to Mary Berle, he testified that "Charles told me that he and Evelyn wanted to do wills, leaving everything to each other."

According to respondent, after Charles died, Mary Berle began forging checks and removing money from his checking account. Respondent testified that, although Kelley's daughter contacted him and requested that he take action, "I couldn't do something about it, because I represented Mary, I represented Charles, I represented Evelyn. I represented everybody." Respondent stated that, about eight years earlier, he had represented Mary Berle in a personal injury case.

The complaint alleged that respondent's conduct in this matter constituted a pattern of neglect.

At the ethics hearing, the presenter withdrew the allegations in count four of the complaint charging respondent with violations of RPC 8.4(a) and (c). According to the complaint, in the course of his representation of Kelley in the personal injury litigation, respondent sent a letter dated August 14, 1996 to an expert witness in which he stated that the letter should not become part of the expert's file in the event that the file was requested in discovery. The complaint alleged that the letter would have been subject to disclosure if a proper discovery demand had been made and that respondent's instruction to the expert to conceal the letter was unethical. R.4:17-4(e) was amended effective September 2002 to provide that "the communications between counsel and expert deemed trial preparation materials pursuant to R.4:10-2(d)(1) may not be inquired into." Based on this rule amendment, the allegations of unethical conduct were withdrawn.

The DEC found that, in his representation of Kelley in the PIP matter, respondent displayed a lack of diligence, failed to communicate with Kelley, failed to notify the medical providers of his receipt of funds, and failed to promptly deliver funds to the medical providers, in violation of RPC 1.3, RPC 1.4(a) and

(b), and RPC 1.15(b). The DEC dismissed the charges that respondent violated RPC 4.1(a)(1) and RPC 8.4(c).

With respect to the release, the DEC found, by majority vote, that respondent violated RPC 5.3(a) and (b) by failing to supervise his secretary, who notarized Kelley's signature, although she did not sign the release in front of the secretary. The panel chair voted to dismiss these charges. The DEC dismissed the charge that respondent violated RPC 8.4(c).

Again by majority vote, the DEC found that respondent engaged in an impermissible conflict of interest when he drafted wills for both Kelley and Charles without disclosing to Kelley that Charles was bequeathing money to a third person. The panel chair voted to dismiss those charges. The DEC dismissed the charge that respondent violated RPC 8.4(c).

Finally, the DEC determined that respondent engaged in a pattern of neglect in his representation of Kelley.

The DEC recommended a three-month suspension, with one attorney member voting for a suspension of "180 days."

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

In the PIP matter, respondent's delay in disbursing the settlement funds to Kelley's medical providers was unreasonable and inexcusable. Respondent admitted that he received the $9,546 settlement check on April 8, 1996. Although Kelley repeatedly requested that respondent satisfy her medical bills, respondent waited more than five and one-half years to do so. Despite numerous requests for information, respondent failed to inform the creditors that he had received the funds. It was not until after Kelley filed a grievance against respondent that he paid the bills. Respondent's only explanations for his delay were that (1) the case received a low priority because it was a "no-payment case" and (2) the medical providers were willing to accept lower sums to settle the case the longer they waited for payment. These excuses smack of bad faith. Although it was not clear from the record, it is possible that Kelley's application for a credit card was denied because respondent's delay in paying her creditors damaged her credit rating.

Respondent's unjustified delay in this matter constituted a lack of diligence, in violation of RPC 1.3. He also violated that rule by failing to file an appellate brief, resulting in the dismissal of the personal injury appeal.

Respondent failed to keep Kelley informed of the status of her case, in violation of RPC 1.4(a), failed to promptly notify Kelley's creditors of his receipt of funds to which they were entitled, and failed to promptly deliver those funds, in violation of RPC 1.15(b). Because there is no clear and convincing evidence that respondent failed to explain a matter to the extent reasonably necessary to permit Kelley to make informed decisions, we dismiss the charge that he violated RPC 1.4(b). In addition, although the complaint alleged that respondent misrepresented to FRI that he did not have bills relevant to the case, in our view, the record does not support that charge. Respondent testified that he informed FRI that the bills that he had received were not relevant because they did not reflect the actual charges. That testimony was not rebutted. We, therefore, dismiss the charges that respondent violated RPC 4.1(a)(1) and RPC 8.4(c).

Respondent admitted that his secretary notarized Kelley's affidavit, even though Kelley signed the affidavit outside of the secretary's presence. Respondent mailed the affidavit to Kelley without instructing her to have her signature notarized. Respondent, thus, violated RPC 5.3(a) and (b). Because there was

no clear and convincing evidence that, at the time that respondent submitted the release, he knew that it had been improperly notarized, we dismiss the charge of a violation of RPC 8.4(c).

Respondent engaged in a conflict of interest by drafting wills for both Kelley and Charles. Although respondent asserted that Charles retained him to prepare reciprocal wills for Charles and Kelley, the wills were not reciprocal. Kelley intended to give her entire estate to Charles, while Charles bequeathed $10,000 to his paramour without Kelley's knowledge. At that point, Kelley's and Charles' interests were adverse and respondent was required to withdraw from the representation. Charles apparently did not want respondent to disclose the will provision to Kelley, while, as Kelley's attorney, respondent had a duty to disclose information to protect her. Respondent's representation of Charles was directly adverse to Kelley and materially limited his responsibilities to her, in violation of RPC 1.7(a) and (b).

In addition, respondent's prior representation of Charles in the divorce proceedings precluded him from preparing a will for Kelley. His representation of Charles' paramour in a

personal injury matter further complicated his representation of the parties.

The complaint charged, and the DEC found, that respondent was guilty of a pattern of neglect, based solely on his misconduct in this matter. However, the complaint did not charge respondent with any instances of neglect. Although respondent's delay in paying Kelley's medical bills constituted a lack of diligence, it did not amount to neglect. Moreover, usually three instances of neglect are required before we will find a pattern of neglect. See In the Matter of Anthony Baiamonte, Docket No. DRB 00-327 (August 7, 2001). Because respondent was not guilty of neglect in the present matter, we dismiss the charge that he engaged in a pattern of neglect.

As mentioned above, the presenter withdrew the charges that respondent violated RPC 8.4(a) and (c) by instructing his expert not to disclose in discovery a letter sent by respondent. The DEC determined that the change to R.4:17-4(e), effective September 2002, precluded a finding of an ethics violation, even though the conduct predated the rule change. In disciplinary matters, the rules of discipline that exist at the time of the conduct apply. See, e.g., In re Kushner, 101 N.J. 397, 402

(1986); In re Milita, 99 N.J. 336, 342 (1986) (applying the Disciplinary Rules in force at the time of the attorney's actions, although, at the time of the decision, the Rules of Professional Conduct governed the conduct of attorneys). Here, although the change involved a civil rule, not a disciplinary rule, respondent's conduct should be analyzed by the rules in existence at that time. The DEC, thus, should not have dismissed the charge.

Because no record was developed on this issue, we would be required to remand the matter for a hearing. However, because the discipline to be imposed would not be affected by a finding of a violation of RPC 8.4(a) and (c), we concur with the dismissal of those charges.

In sum, respondent was guilty of a lack of diligence, failure to communicate with a client, failure to notify a third person of the receipt of funds, failure to promptly deliver funds to a third person, failure to supervise an employee, and conflict of interest.

The remaining issue is the quantum of discipline to be imposed. Generally, in cases involving a conflict of interest, without more, and absent egregious circumstances or serious economic injury to clients, a reprimand constitutes appropriate

discipline. In re Berkowitz, 136 N.J. 134 (1994); In re Guidone, 139 N.J. 272 (1994).

For failure to supervise employees, attorneys have typically received admonitions or reprimands. See, e.g., In the Matter of Samuel L. Sachs, DRB Docket No. 01-429 (2002) (admonition imposed on an attorney who failed to properly supervise his secretary, resulting in the dismissal of three cases for various deficiencies and the client's termination of the attorney's representation in a fourth matter); In re Tighe, 143 N.J. 304 (1996) (reprimand imposed on an attorney who failed to properly supervise her staff, resulting in the negligent misappropriation of clients' trust funds); In re Weiner, 140 N.J. 621 (1995) (reprimand for failure to supervise non-lawyer staff by condoning staff's signing client's names to documents).

In cases involving failure to promptly deliver property, admonitions and reprimands have been imposed. See, e.g., In the Matter of Craig A. Altman, DRB Docket No. 99-133 (1999) (admonition where attorney failed to honor a letter of protection in which he had promised to submit funds to a medical provider); In re Dorian, 176 N.J. 124 (2003) (reprimand where attorney failed to promptly deliver funds to a third person and

failed to cooperate with disciplinary authorities); In re Breig, 157 N.J. 630 (1999) (reprimand where attorney failed to promptly remit funds received on behalf of a client and failed to comply with recordkeeping rules; numerous mitigating factors were present).

When additional violations such as those present in this matter are involved, suspensions have been imposed. See, e.g., In re Gilbert, 159 N.J. 505 (1999) (three-month suspension where attorney failed to promptly return funds to his client's former spouse in an effort to obtain payment of his fee from his client and failed to respect the rights of third persons); In re Daly, 156 N.J. 541 (1999) (attorney suspended for three months for gross neglect, lack of diligence, failure to communicate with a client, failure to notify a client of receipt of funds and to promptly deliver funds, and conduct involving dishonesty, fraud, deceit, or misrepresentation); In re Jacobs, 152 N.J. 463 (1998) (three-month suspension for gross neglect, pattern of neglect, lack of diligence, failure to communicate, failure to promptly deliver funds to a client, failure to cooperate with disciplinary authorities, and various recordkeeping violations); In re Rodgers, 177 N.J. 501 (2003) (attorney suspended for three

months for gross neglect, lack of diligence, failure to communicate with a client, and failure to properly deliver funds or property to a client or third person).

Here, respondent's misconduct was limited to matters involving only one client. On the other hand, this is his fourth brush with the disciplinary system. He has shown a disturbing lack of awareness of his responsibilities as an attorney. For example, in respondent's first ethics matter, he refused to acknowledge his duty to keep his clients informed, contending that it was their obligation to contact him if they were interested in the status of their cases. When respondent failed to enforce a settlement in his client's favor, respondent blamed the adversary and the client for failing to abide by the agreement. In that case, we voted to reprimand respondent, noting that, if not for his prior unblemished twenty-year career, a suspension would have been appropriate.

In the second disciplinary matter, in addition to other unethical conduct, respondent engaged in a pattern of dishonesty by concealing personal injury settlements from welfare agencies to avoid liens held by those agencies, concealing the death of a client from an adversary, and concealing loans to his clients.

He also asked his secretary to notarize a document that had not been signed in her presence. Respondent, who repeated that misconduct in this matter, obviously did not learn from his prior mistakes.

In this matter, respondent showed no remorse or contrition; indeed, at the ethics hearing, he admitted that he had not paid Kelley's creditors sooner because it was a "no-payment case". Respondent placed his interests over those of his client, whose credit rating may have suffered because respondent did not place a high priority on her matter.

In light of the foregoing, six members determine that, for respondent's infractions, a suspension of three months is the appropriate discipline. Two members dissented, voting for a six-month suspension. One member did not participate.

We further 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 John De Laurentis
Docket No. DRB 04-110

Argued: May 20, 2004

Decided: June 23, 2004

Disposition: Three-month suspension

Members	*Disbar*	*Three-month Suspension*	*Reprimand*	*Six-month Suspension*	*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:		6		2			1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel