

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 04-461, 04-462 and
04-463
District Docket Nos. XII-03-007E,
XII-03-049E and XII-04-002E

IN THE MATTER OF
KIERAN P. HUGHES
AN ATTORNEY AT LAW

Decision

Argued: March 17, 2005

Decided:

Kenneth B. Rotter appeared on behalf of the District XII Ethics Committee.

Respondent failed to appear, despite proper service.¹

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

These matters were submitted to us by the District XII Ethics Committee ("DEC") pursuant to R.1:20-6(c)(1). That rule states that the pleadings and a statement of the procedural

¹Although respondent indicated that he would appear, after oral argument, he explained that he could not appear because of car trouble.

history of the matter may be filed directly with us, without a hearing, if the pleadings do not raise genuine disputes of material fact, respondent does not request an opportunity to be heard in mitigation, and the presenter does not request an opportunity to be heard in aggravation.

Respondent was admitted to the New Jersey bar in 1985. He has no disciplinary history.

I. DRB 04-461 - District Docket No. XII-03-007E

On an unspecified date, Bernadette Matrisciano retained respondent to represent her in a personal injury matter. After filing the lawsuit, respondent told Matrisciano that the defendant's insurance carrier denied coverage. Matrisciano then retained another attorney, Louis Chiarolanza.

Chiarolanza, who had determined to file an uninsured motorist claim against Matrisciano's insurer, requested information and the client file from respondent, both orally and in writing. According to the grievance, Chiarolanza contacted respondent at least a dozen times. On January 15, 2003, after about six months had elapsed with no compliance from respondent, Chiarolanza filed a grievance against him.

On May 6, 2003, respondent replied to the grievance:

I did not intend to occasion a delay or be difficult. At the time the requests were made of me to supply the file I fully intended to supply them and even had portions of the file copied. Unfortunately, other life events distracted me and took up my time including my decision to leave the practice of law. I have since left private practice and become affiliated with a corporation but not as corporate counsel. It is not my intention to return to the private practice of law.

I have insured that a complete copy of the file belonging to Ms. Matrisciano has been made and by separate letter I am forwarding it to Mr. Chiarolanza. I anticipate that he will have the file no later than Monday, May 12, 2003. I apologize to Mr. Chiarolanza and to Ms. Matrisciano for the delay in forwarding this file.

[C Ex.A.]²

Despite respondent's representation that he would forward the file to Chiarolanza by May 12, 2003, he did not do so until July 2003. According to Chiarolanza, the delay did not prejudice Matrisciano's claim because Chiarolanza was able to obtain the necessary information from other sources.

The complaint charged respondent with having violated RPC 1.3 (lack of diligence), RPC 1.4, presumably (a)³ (failure to

²C refers to the formal ethics complaint.

³Effective January 1, 2004, that subsection was redesignated as RPC 1.4(b).

keep a client reasonably informed about the status of a matter and to comply promptly with reasonable requests for information), and RPC 1.16, presumably (d) (failure to protect a client's interests upon termination of the representation).

In his answer to the formal ethics complaint, respondent admitted the relevant factual allegations and admitted that he violated RPC 1.3 and RPC 1.4. He failed to address, however, the allegation that he violated RPC 1.16. In his answer, respondent asserted, in mitigation, that, during the six years prior to the filing of the grievance, his son was diagnosed with celiac sprue disease, an autoimmune disease. According to respondent, the effects of the disease include gastrointestinal problems, juvenile rheumatoid arthritis, loss of bone density, stress fractures, and other ailments. Respondent averred that the time spent pursuing the diagnosis of the illness, obtaining treatment for his son, and securing better health care benefits reduced respondent's attention to his law practice.

II. DRB 04-462 - District Docket No. XII-03-049E

On an unknown date, Elna Noble retained respondent to represent her in a personal injury matter. According to the complaint, from the beginning of the representation to the date

of the complaint, respondent failed to communicate with Noble about the status of the matter. Although respondent filed a lawsuit on Noble's behalf on April 30, 2001,⁴ he permitted the complaint to be dismissed for lack of prosecution sometime in 2001, and did not inform Noble of the dismissal.

After Noble's initial meeting with respondent, she repeatedly attempted, without success, to contact him. Eventually, when Noble tried to reach respondent and was informed that his telephone had been disconnected, she learned that he had left the practice of law. The complaint alleged that respondent abandoned the matter without notice. The record does not indicate whether Noble took any steps to retain another attorney or to move to reinstate the personal injury complaint.

The ethics complaint charged respondent with having violated RPC 1.4, presumably (a), and RPC 1.16, presumably (d).

In his answer, respondent admitted all of the allegations of the formal ethics complaint, except for admitting in part and denying in part the allegation that he failed to communicate with Noble from the beginning of the representation until the

⁴According to the personal injury complaint, Noble sustained the injury on April 30, 1999. The allegation in the ethics complaint that Noble retained respondent nine days earlier, on April 21, 1999, appears to be inaccurate.

date of the complaint. In his discussions with the ethics investigator, although respondent acknowledged that he had abandoned the lawsuit after the defendant refused to make a settlement offer, he indicated that Noble's case was "weak." He advanced the same mitigating circumstances as those presented in the Matrisciano matter.

III. DRB 04-463 - District Docket No. XII-04-002E

In January 2003, Susan Checchio retained respondent to represent her in a simultaneous real estate purchase and sale conducted in April 2003. Almost immediately upon retaining respondent and continuing until the real estate closing, Checchio found it difficult to contact him. Although a "use and occupancy" agreement was required for Checchio's purchase, the seller's attorney, instead of respondent, prepared the agreement on her behalf.

After the closing,⁵ Checchio tried to obtain the deed. The grantor had died and Checchio needed the deed to be recorded so that she could refinance her mortgage loan. In August 2003,

⁵Although the complaint indicated that the closing took place on April 1, 2003, according to the investigative report, the closing occurred on April 12, 2003; the deed for Checchio's purchase is dated April 2, 2003.

Checchio retained another attorney who tried, without success, to obtain the deed. Although respondent turned over the file to that attorney, it did not contain the original deed.

From April to June 2003, the county clerk twice rejected the deed for recording, due to errors in that document. In his reply to the grievance, respondent admitted that, after the deed was returned to him the second time, he failed to submit it for recording in a timely manner. Respondent finally accomplished the recording of the deed in April 2004, almost one year after the closing. According to the investigative report, no title problems were created by the delay in the recording of the deed.

The complaint charged respondent with having violated RPC 1.4, presumably (a), and RPC 1.16, presumably (d).

In his answer, respondent admitted the relevant allegations and submitted the same mitigating circumstances as in the two prior matters.

Following a review of the record, we are satisfied that it contains clear and convincing evidence that respondent's conduct in these three matters was unethical. Indeed, respondent admitted violating almost all of the charged RPCs.

In DRB 04-261, after the defendant's insurance carrier denied coverage, respondent took no action on Matrisciano's

behalf. The record provides no indication that respondent had suggested filing an uninsured motorist claim. More seriously, when Matrisciano, through Chiarolanza, her new attorney, requested information and her file so that she could pursue the uninsured motorist claim, respondent failed to comply with her request. Even after the grievance was filed and respondent represented that he would turn over the file to Chiarolanza, respondent delayed honoring his commitment for about two months. We find, thus, that respondent violated RPC 1.3 and RPC 1.4(a), as he admitted in his answer. Although he did not address the RPC 1.16(d) violation, respondent clearly failed to turn over the file, despite Chiarolanza's numerous requests made over a substantial period of time.

With respect to DRB 04-462, after filing a lawsuit on Noble's behalf, respondent permitted the dismissal of the complaint for lack of prosecution, a violation of RPC 1.3. Although the complaint did not specifically charge respondent with violating RPC 1.3, the facts recited therein gave him sufficient notice of this allegedly improper conduct and of a potential finding of a violation of that RPC. Respondent admitted those allegations, including the assertion that he permitted the

complaint to be dismissed. We, therefore, deem the complaint amended to include a charge that respondent violated RPC 1.3.

In addition, respondent failed to keep Noble informed about the status of the matter, failed to notify her of its dismissal, and failed to notify her when he closed his practice, a violation of RPC 1.4(a). More seriously, respondent abandoned Noble by terminating his practice without informing her or advising her to seek other counsel, a violation of RPC 1.16(d). In his answer to the ethics complaint, respondent admitted the RPC 1.4(a) and RPC 1.16(d) violations.

In DRB 04-463, respondent extended his unethical conduct from the litigation arena to his real estate practice. After undertaking to represent Checchio in both her sale and purchase, respondent failed to return her repeated telephone calls, a violation of RPC 1.4(a). Respondent's apparent unavailability was so severe that the seller's attorney, not respondent, had to prepare Checchio's use and occupancy agreement.

Respondent also failed to take any corrective action to record the deed, after the county clerk twice rejected it, until almost one year after the closing. Respondent's failure to timely record the deed violated RPC 1.3. Although the complaint did not specifically charge respondent with violating RPC 1.3,

the facts recited therein gave him sufficient notice of this allegedly improper conduct and of a potential finding of a violation of that RPC. Respondent admitted those allegations, including the assertion that he failed to timely record the deed. As in the Noble matter above, we deem the complaint amended to include a charge that respondent violated RPC 1.3.

Furthermore, respondent's failure to timely record the deed and to protect Checchio's interests upon termination of the representation also violated RPC 1.16(d).

In sum, in three matters, respondent exhibited a lack of diligence, failed to communicate with clients, and failed to protect his clients' interests upon termination of the representation. In addition, in the Noble matter, respondent abandoned his client.

Discipline for violations of RPC 1.3, RPC 1.4(a), and RPC 1.16(d), absent abandonment, usually ranges from an admonition to a reprimand, depending on, among other things, the attorney's disciplinary history and the number of matters involved. See, e.g., In the Matter of Vera Carpenter, Docket No. DRB 97-303 (October 27, 1997) (admonition where, in one matter, the attorney failed to act diligently, failed to communicate with a client, and failed to turn over the client's file to new

counsel; attorney had no disciplinary history); In re Baiamonte, 170 N.J. 184 (2001) (reprimand where, in two matters, the attorney was guilty of lack of diligence, failure to communicate with a client, failure to turn over a client's file after termination of representation, and failure to expedite litigation; attorney had no disciplinary history); and In re Magid, 167 N.J. 614 (2001) (reprimand for failure to communicate with a client and failure to take reasonable steps to protect the interests of that client on termination of representation in two matters, and for lack of diligence in one of those matters; the attorney had a prior reprimand).

When the attorney's conduct includes abandonment of one or several clients, suspensions of various lengths have been imposed, depending on such factors as the circumstances of the abandonment, the presence of other misconduct, and the attorney's disciplinary history. See, e.g., In re Hoffman, 163 N.J. 4 (2000) (default matter in which a three-month suspension was imposed on an attorney who closed his office without notifying a client in a workers' compensation matter and three clients in a personal injury matter; the attorney was guilty of gross neglect, lack of diligence, failure to communicate with clients, failure to protect clients' interests upon termination

of representation, and failure to cooperate with disciplinary authorities; the attorney had a prior reprimand and a three-month suspension); In re Jennings, 147 N.J. 276 (1997) (three-month suspension for attorney's abandonment of one client and failure to cooperate with ethics authorities; attorney had no prior disciplinary history); In re Bowman, 175 N.J. 108 (2003) (six-month suspension for abandonment of two clients, misrepresentations to disciplinary authorities, pattern of neglect, and misconduct in three client matters, in various combinations, including gross neglect, lack of diligence, failure to communicate with clients, failure to explain a matter to the extent necessary to permit the client to make an informed decision, failure to provide a written fee agreement, failure to protect a client's interests upon termination of representation, and conduct involving misrepresentation of the status of a matter to a client; attorney had a prior private reprimand); In re Bock, 128 N.J. 270 (1992) (six-month suspension imposed on attorney who, 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); In re Greenawalt, 171 N.J. 472 (2002) (one-year suspension for attorney who grossly neglected three client matters, abandoned

his law practice, failed to notify clients of a prior suspension and failed to cooperate with disciplinary authorities; attorney had been temporarily suspended for failure to cooperate during the ethics investigation).

In the matter before us, respondent's overall misconduct closely resembles that of the attorney in Hoffman, who received a three-month suspension. Hoffman is distinct from this matter, however, in three significant respects — Hoffman proceeded as a default, the attorney's disciplinary history included a reprimand and a three-month suspension, and the attorney presented no mitigating factors. Here, respondent filed an answer admitting virtually all of the allegations of the complaint. His twenty-year professional career has remained unblemished until now. Moreover, during the relevant time, respondent was seeking diagnosis and treatment for his son, who suffered from a very serious illness. Although respondent's family crisis does not excuse his misconduct, in our view, it serves as a strong mitigating factor.

Furthermore, no evidence of client harm was presented — Matrisciano, through new counsel, was able to pursue the uninsured motorist claim and Checchio's deed eventually was recorded without the creation of title problems. As to the Noble

matter, the record does not reflect whether the client was able to pursue the personal injury claim.

We vote that the appropriate level of discipline in this matter is a reprimand, in light of the compelling mitigating circumstances present in this case, particularly the distraction caused by the serious illness suffered by respondent's son. We caution the bar, however, that the precedential value of this case is limited, due to the significant mitigation presented. Members Matthew Boylan, Esq. and Robert Holmes, Esq. 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**

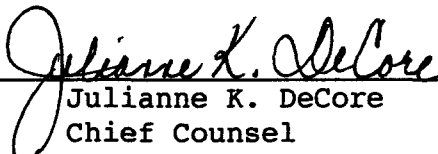
In the Matters of Kieran P. Hughes
Docket Nos. DRB 04-461, 04-462, 04-463

Heard: March 17, 2005

Decided: April 20, 2005

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	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
Chief Counsel