

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 01-259

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IN THE MATTER OF  
DONALD B. DEVIN  
AN ATTORNEY AT LAW

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Decision

Argued: October 18, 2001

Decided: March 1, 2002

Caroline Record appeared on behalf of the District X Ethics Committee.

Respondent waived appearance for oral argument.

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"). The complaint alleged solely that respondent failed to cooperate with ethics authorities in the investigation of this grievance.

Respondent was admitted to the New Jersey bar in 1969. On October 31, 1994 he was suspended from the practice of law for three months for failure to keep a client reasonably informed, misrepresentation to the client and lying to a police officer. In re Devin, 138 N.J.

46 (1994). On June 26, 1996 he was reprimanded for gross neglect, lack of diligence, failure to communicate with the client, failure to provide a written retainer agreement, failure to expedite litigation, misrepresentation about the status of the case and failure to cooperate with ethics authorities. In re Devin, 144 N.J. 476 (1996).

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Respondent and the DEC entered into a stipulation of facts.

On or about February 27, 1998 the grievant, Leonard Wesley, retained respondent to represent him in a business matter. On or about November 22, 1999 Wesley filed an ethics grievance against respondent.

Between December 3, 1999 and June 5, 2000 the DEC sent respondent five letters requesting information about the grievance. Respondent did not reply to any of those requests. On June 5, 2000 respondent was served with the formal ethics complaint. Thereafter, on July 8, 2000, the DEC sent respondent a letter advising him that his failure to file an answer within five days would constitute an admission of the charges and might result in his temporary suspension from the practice of law. Finally, respondent filed an answer to the complaint on or about August 28, 2000.

At the truncated DEC hearing, respondent admitted that he had received all of the DEC's correspondence. He did not attempt to excuse his failure to cooperate with the DEC

in its numerous efforts to elicit a response from him. Rather, he stated that he was angry with Wesley for having filed an ethics grievance against him.

Wesley, who had relocated to North Carolina sometime earlier, filed the ethics grievance after respondent failed to turn over to him a \$1,700 fee arbitration award. Respondent finally paid the fee arbitration award in late 1999, but only after the Office of Attorney Ethics ("OAE") filed a motion for his temporary suspension and we imposed a \$500 sanction.

Respondent testified that, while his behavior was inexcusable, he was so angry about Wesley's ethics grievance that he was not "able to deal with it":

I don't have a legitimate explanation. I just didn't. I think I tried to put it out of my mind and hoped it would go away because the money had been paid and because the [sanction] had been paid.

Respondent apologized to the DEC for his failure to properly deal with its requests for information and to timely file an answer to the ethics complaint. Respondent requested leniency for his conduct.

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Another facet of this case appeared troubling to us. The first two counts of the complaint alleged violations of RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to

communicate with the client).<sup>1</sup> At the DEC hearing, the presenter announced the intention to withdraw those counts, based on Wesley's "nonappearance" at the hearing. In granting the presenter's request, the panel chair reasoned that those counts of the complaint were "rendered somewhat moot because the grievant is not going to participate or cooperate" with the DEC at hearing, citing a December 17, 2000 letter from Wesley to the presenter. Wesley's letter, written several months after the filing of the ethics complaint, does not contain a forceful retreat from his earlier assertions of misconduct. However, it states that he no longer wished to pursue the ethics matter against respondent. The panel report also states that "grievant, a North Carolina resident, abandoned the grievance and declined to participate in [the] proceedings." Ordinarily, however, a grievance may not be withdrawn after the filing of a formal ethics complaint. For the reasons set forth below, however, we refrained from remanding this matter for a hearing on the substantive issues.

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The DEC found that respondent's conduct amounted to a violation of RPC 8.1(b). As previously noted, the DEC dismissed the other allegations of wrongdoing at the hearing. The DEC recommended the imposition of a reprimand, based on an attorney's duty to

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<sup>1</sup>In addition, the grievance contained allegations of gross neglect and misrepresentations to Wesley that a complaint had been filed and the case was proceeding apace.

cooperate with ethics authorities and respondent's failure to present a meritorious defense to the charge.

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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.

Respondent admitted receiving all of the correspondence from the ethics authorities in this matter. Moreover, he admitted the allegation that he failed to cooperate with disciplinary authorities, in violation of RPC 8.1(b).

There remains the issue of the underlying charges of the first two counts of the complaint. From the grievance it appears that respondent may have violated other RPCs, in addition to RPC 8.1(b). Wesley, however, having received a refund of his fee, wrote to the DEC indicating his desire to abandon the grievance against respondent.

Under some circumstances, a grievant may be allowed to abandon a grievance, if a formal ethics complaint has not yet issued and the charges are not serious. For instance, allegations of misuse of trust funds would not as easily be dismissed as would allegations of failure to communicate with the client. Here, Wesley raised the issue of respondent's potential misrepresentation to him, among other acts of misconduct. The better course of action would have been for the DEC to proceed on those charges. However, as noted by the


DEC, Wesley's apparent unavailability, as a North Carolina resident, and his lack of cooperation with the DEC might have rendered it difficult to prove the other allegations by clear and convincing evidence. We determined, therefore, not to remand to the DEC that portion of the record that alleged additional misconduct and agreed with the withdrawal of the charges contained in the first two counts of the complaint. We made only a finding that respondent failed to cooperate with ethics authorities, in violation of RPC 8.1(b).

An admonition would ordinarily be adequate discipline for a single instance of failure to cooperate with ethics authorities. See, e.g., In the Matter of Donald R. Stemmer, Docket No. DRB 98-394 (April 11, 2000) (admonition for an attorney who, in the course of a disciplinary investigation of a grievance filed against him, failed to cooperate with disciplinary authorities by not replying to the grievance); and In the Matter of Arnold M. Abramowitz, Docket No. DRB 97-150 (July 25, 1997) (admonition for an attorney who failed to cooperate with reasonable requests for information by a district ethics committee during its investigation of a disciplinary grievance against him).

Here, respondent ignored five requests for information from the DEC, before finally filing a late answer to the ethics complaint. Respondent offered no excusable basis for his misconduct. Moreover, he has been disciplined in the past for failure to cooperate with ethics authorities. Therefore, we unanimously determined that a reprimand is the more appropriate degree of discipline for this respondent. See In re Macias, 121 N.J. 243 (1990) (public reprimand imposed for failure to cooperate with the OAE by not properly certifying

that recordkeeping deficiencies, found during a random audit, had been corrected); and In re Fody, 148 N.J. 373 (1997) (reprimand imposed where the attorney failed to cooperate with a district ethics committee during the processing of an ethics matter; the attorney had been previously reprimanded in 1995 for the same misconduct and had been temporarily suspended from the practice of law for failure to cooperate with a district ethics committee and failure to account for estate funds). Three members did not participate.

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



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ROCKY L. PETERSON  
Chair  
Disciplinary Review Board

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

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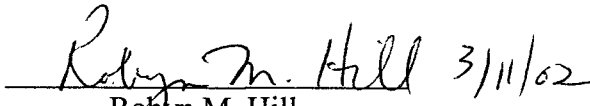
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Argued: October 18, 2001

Decided: March 1, 2002

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>Peterson</i>      |               |                   | X                |                   |                |                     |                            |
| <i>Maudsley</i>      |               |                   | X                |                   |                |                     |                            |
| <i>Boylan</i>        |               |                   |                  |                   |                |                     | X                          |
| <i>Brody</i>         |               |                   | X                |                   |                |                     |                            |
| <i>Lolla</i>         |               |                   | X                |                   |                |                     |                            |
| <i>O'Shaughnessy</i> |               |                   | X                |                   |                |                     |                            |
| <i>Pashman</i>       |               |                   |                  |                   |                |                     | X                          |
| <i>Schwartz</i>      |               |                   |                  |                   |                |                     | X                          |
| <i>Wissinger</i>     |               |                   | X                |                   |                |                     |                            |
| <b>Total:</b>        |               |                   | 6                |                   |                |                     | 3                          |

  
 Robyn M. Hill  
 Chief Counsel