SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-092

IN THE MATTER OF

JOHN de LAURENTIS

AN ATTORNEY AT LAW

Decision

Argued: June 21, 2001

Decided: December 4, 2001

Patricia B. Santelle appeared on behalf of the District IV Ethics Committee.

Respondent appeared pro se.

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).

Respondent was admitted to the New Jersey bar in 1980.

The seven-count complaint alleges that, between approximately 1990 and 1999, respondent engaged in a pattern of neglect in four personal injury matters, improperly solicited a client, practiced law while on the Supreme Court's list of ineligible attorneys for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client

Protection (CPF) and failed to cooperate with ethics authorities in the investigation of these matters.

I. The Ascevedo Matter

The complaint alleges that respondent violated RPC 1.3 (lack of diligence), RPC 1.4 (a) (failure to communicate with client), RPC 3.2 (failure to expedite litigation) and RPC 7.3 (b)(5) (prohibited contact with a prospective client/use of a "runner").

On or about August 20, 1990 the grievant, Lissette Ascevedo, retained respondent to represent her in connection with injuries sustained while she was a passenger in an automobile driven by John Ortiz. On that day, respondent and a non-attorney acquaintance met Ascevedo at her home. The Office of Attorney Ethics' (OAE) investigator, Denise A. Gamble, interviewed Ascevedo and later testified at the DEC hearing. For unknown reasons, Ascevedo was not called to testify.

According to Gamble, Ascevedo told her that respondent and another man had come to her house unannounced that day and had convinced Ascevedo to retain respondent. According to Gamble, Ascevedo did not know either respondent or the other man and had not yet told anyone but the police about the accident. Respondent would later testify that the other man was a mutual acquaintance named Hector Ramos, who had told respondent about Ascevedo's accident. Respondent further testified that he believed that Ramos had arranged a meeting with Ascevedo and that she was expecting him for an interview at her home that day.

Respondent objected to the admission of Ascevedo's version of the events in the record, stating that, because Ascevedo did not testify, he had no opportunity to cross-examine her on this aspect of the case. There is no other evidence that respondent had solicited Ascevedo's business.

The remainder of the Ascevedo matter is largely uncontested. On or about May 13, 1992 respondent filed a complaint against Ortiz and the driver of the other vehicle, Miriam Suarez. Thereafter, both defendants were served with copies of the complaints. The complaint was administratively dismissed by the court on August 19, 1993.[1] Presumably unaware of that order, the next day another judge signed an order permitting the entry of default against Ortiz and Suarez. Although it is not clear from the record exactly when respondent became aware of the August 19, 1993 dismissal, he testified that he immediately moved to vacate it and to reinstate the complaint, because he had already obtained defaults against the defendants. Respondent's motion was granted on September 24, 1993. After a proof hearing in December 1993, on May 5, 1994 judgment was entered against Ortiz only, in the amount of $15,350.88.

On June 16, 1994 the court again scheduled the case against Suarez for dismissal. On September 21, 1995 the case was dismissed for lack of prosecution. Thereafter, respondent took no action to reinstate the complaint after the entry of this order.

---

[1]That order is not in the record.

Between May 5, 1994 and May 22, 1996, when respondent requested a copy of the default judgment from the court, he took no action to advance the case, either to reinstate the complaint against Suarez or to enforce the judgment against Ortiz. Respondent argued that this inaction was part of his litigation strategy. Paragraph fifteen of his answer states as follows:

> Every single case in which I have obtained default, I have awaited at least fourteen months before informing any adverse party or carrier that judgment has been entered. I do this because after one year expires after the entry of a judgment, it becomes more difficult under Rule 4:50-1 to vacate said judgment on behalf of the defendant.

On July 18, 1996 respondent made an initial effort to enforce the judgment against Ortiz, by writing to Ortiz' insurer, HCM Claim Management Corporation (HCM), and requesting payment of the judgment amount. Exhibit I-8. Although respondent remembered calling HCM thereafter about the judgment, there is nothing in the record to corroborate his testimony. Likewise, there is no evidence that respondent made any further attempts to collect on the judgment or to reinstate the complaint against Suarez.

With respect to the allegation of a violation of RPC 1.4(a), respondent did not deny that, from the inception of the case, in 1990, until the filing of the grievance , March 1999, he corresponded with Ascevedo only six times. Moreover, respondent admitted that he did not regularly send to any clients documents pertinent to their cases, because he thought it unnecessary. Respondent stated that, if a client was truly interested in his or her case, the client could either call or write him. Indeed, there is no evidence that respondent

communicated with Ascevedo at all for a three-year period, from 1995 through 1997. Respondent produced no telephone or other records to rebut Ascevedo's claim that he failed to return her calls for information about the case or to otherwise communicate the status of the case to her.

II. The Mendoza Matter

The second count of the complaint alleges that respondent violated RPC 1.3 (lack of diligence), RPC 1.4 (a) (failure to communicate) and RPC 3.2 (failure to expedite litigation) in a personal injury matter.

Respondent represented Mary Lou Mendoza, the grievant, in connection with a claim for injuries sustained in a November 14, 1991 automobile accident. In or about early May 1995 the complaint was dismissed for plaintiff's failure to appear at a scheduled arbitration hearing. Thereafter, respondent and counsel for the defendant entered into a consent order to reinstate the complaint.[2] On September 5, 1996, respondent obtained a default judgment against the defendant.

Over one year later, on or about October 2, 1996, respondent made his first attempt to enforce the default judgment, forwarding a copy to MTF and requesting payment of the judgment amount. On October 24, 1996 MTF denied coverage, due to a lapse in the policy

---

[2] In exchange for his adversary's consent, respondent was required to pay defendant's counsel fees for that day, in the amount of $375.

for non-payment of premiums, and suggested that respondent present an uninsured motorist claim to Mendoza's carrier. On November 22, 1996 respondent prepared a letter to HCM in order to file an uninsured motorist claim. He could not recall, however, if he had ever sent that letter. In fact, the only evidence of the letter in respondent's file was an unsigned draft. For unknown reasons, respondent waited one and one-half years before following up on that letter on April 7, 1998. HCM refused to allow the filing of an uninsured motorist claim because the six-year statute of limitations had already expired.

Despite years of inactivity and HCM's claim denial, at the November 21, 2000 DEC hearing respondent insisted that, at that point, there were still several avenues of recovery available to him, leaving the DEC to believe that he might still take steps to protect his client's interests. He never did so, however.

With regard to the charge of failure to communicate with Mendoza, respondent produced no telephone records to support his hollow assertion that he kept Mendoza informed by telephone about the status of her case or any other evidence that he corresponded with Mendoza over the course of the representation.

III. The Guerrero Matter

This matter was discovered by OAE Investigator Gamble during her review of respondent's files. The complaint alleges that respondent violated RPC 1.3 (lack of

diligence), RPC 1.4 (a) (failure to communicate) and RPC 3.2 (failure to expedite litigation) in a personal injury matter. Guerrero did not testify at the DEC hearing.

On or about December 20, 1995 Alberto Guerrero Alvarez retained respondent to represent him with regard to a December 19, 1995 automobile accident, including the filing of a personal injury action and the defense of a municipal court summons for driving an uninsured motor vehicle. Guerrero signed separate retainer agreements for each of the two matters.

Respondent's entire file in the matter consisted of one handwritten note from the initial interview, a copy of the summons and police report, a medical authorization form, a PIP application and an affidavit of no insurance. The latter three documents had been signed in blank.

In his answer to the ethics complaint, respondent admitted that he had not taken any action in Guerrero's behalf "because the plaintiff never followed up on the claim, or even contacted me any further about me representing him in the Municipal Court matters." Respondent also admitted that he did not write to his client or otherwise take steps to terminate the representation. Respondent asserted, however, that his repeated attempts to locate Guerrero, through a woman who had referred him to respondent, had been unsuccessful. Respondent also stated that Guerrero had not seen a doctor regarding his alleged injuries and may have returned to his native Dominican Republic, due to immigration problems. Respondent did not corroborate his story in this regard.

IV. The Kuilan Matter

Respondent represented Jose Miguel Kuilan in a personal injury case arising out of a November 30, 1990 automobile accident. The case was settled on or about January 25, 1995. According to the settlement, each of the two defendants was required to pay $5,000 within eighteen months. Thereafter, by stipulation dated March 8, 1995, the case was dismissed with prejudice.

One defendant paid on or about December 11, 1995 and the settlement proceeds were disbursed accordingly. Because respondent took no further action to enforce the settlement against the other defendant, the $5,000 balance of the settlement was never paid. Respondent denied any wrongdoing in this regard. Instead, he faulted Kuilan for not contacting him about the case. In addition, respondent denied any responsibility "for the failure of the adverse party, his carrier and his client to live up to an agreement to resolve the claim for $5,000." He was adamant that, "when an adverse party and its counsel enter into agreement [sic] with me to pay in settlement of resolution of a claim and do not follow through with the agreement, and thereafter my client no longer contacts me regarding this matter, the matter remains open, presumably, pending a motion to compel payment."

* * *

The fifth count of the complaint alleges a violation of RPC 1.1 (b) (pattern of neglect), for respondent's actions in the Ascevedo, Mendoza, Alvarez and Kuilan matters, and a violation of RPC 1.2 (a) (failure to abide by client's decisions regarding the representation).

The sixth count of the complaint alleges that respondent practiced law while on the Supreme Court's list of ineligible attorneys for failure to pay the annual assessment to the CPF, in violation of RPC 5.5 (a).

Respondent admitted that he was ineligible to practice law during 1996, 1997 and 1999. Moreover, he admitted that, during the period of his ineligibility, he filed documents with the courts, forwarded documents to sheriffs for service and paid "fees to file complaints to protect the interest of the clients." At the DEC hearing, respondent also admitted, for the first time, that his actions in this regard constituted the practice of law.

The final count of the complaint alleges that respondent failed to cooperate with ethics authorities in the investigation of these matters. In particular, the complaint alleges that respondent failed to turn over to the OAE a large portion of the trust and business account records requested by that office, during its investigation. That request included all records for the ten-year period from 1990 through 2000. However, Gamble acknowledged at the DEC hearing that, by that time, respondent had turned over additional documents not yet reviewed by the OAE. Gamble also recalled that respondent replied to her correspondence in a generally tardy fashion. A review of the record in this respect reveals

only on one occasion did respondent wait several weeks to reply to Gamble's requests for information. Respondent was generally swift to act, usually doing so within days of those requests.

According to respondent, he had substantially complied with the OAE's requests for information. He explained that, because he was a sole practitioner, he had difficulty complying with the OAE's original request, that is, for his trust and business account records for the previous ten years. The OAE later narrowed that request to the period from 1998 through part of 2000. Respondent acknowledged, however, that some of the information that he gave the OAE for that relatively recent period may have been missing or only partially complete.

* * *

In Ascevedo and Mendoza, the DEC found violations of RPC 1.3, RPC 1.4(a) [mistakenly cited as RPC 1.3(b)] and RPC 3.2. In Ascevedo, the DEC dismissed the allegation of a violation of RPC 7.3(b)(5), finding no clear and convincing evidence that respondent improperly solicited Ascevedo's representation. The DEC dismissed all of the allegations in Guerrero, believing respondent's assertion that the client did not seek treatment for his injuries and never told respondent to move forward with the case. In Kuilan, the DEC found violations of RPC 1.3 and RPC 3.2 for respondent's failure to seek

payment from the second defendant. Also, the DEC found that respondent's ethics infractions in Ascevedo, Mendoza and Kuilan amounted to a pattern of neglect.

The DEC also found – and respondent admitted – that he practiced law during his period of ineligibility, in violation of RPC 5.5(a).

Finally, the DEC found a violation of RPC 8.1(b), based on respondent's failure to turn over to the OAE some records that the DEC believed were not "too remote or inaccessible."

* * *

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

In Ascevedo, the matter apparently proceeded apace through the entry of default against the defendants, in August 1993. Thereafter, respondent engaged in sporadic efforts to move the case forward, until it was dismissed in September 1995 for failure to prosecute. Ultimately, the judgment against Ortiz was never enforced and the claim against the other defendant, Suarez, was lost. Respondent had no explanation for his inaction. We found that his misconduct in this regard amounted to lack of diligence, in violation of RPC 1.3. We

also found that he failed to expedite Ascevedo's litigation, in violation of RPC 3.2, insomuch as he neglected to resolve her claims for the better part of a decade.

With regard to the allegation of a violation of RPC 1.4(a), it is clear that respondent left Ascevedo in the dark for years. Absurdly, respondent stated that it was not his practice to keep his clients informed about the status of their matters, unless they contacted him. Likewise, he acknowledged that he did not always send copies of important documents to his clients, because he did not deem it necessary.

In Mendoza, the DEC was correct to find violations of RPC 1.3, RPC 1.4(a) [mistakenly cited as RPC 1.3(b)] and RPC 3.2. Here, too, respondent "dropped the ball" in a straightforward personal injury action. After the matter was first dismissed in May 1995 for plaintiff's failure to attend an arbitration hearing, respondent allowed the six-year statute of limitations to expire, without taking any action to protect his client's interests. Incredibly, nine years after the inception of the case, at the DEC hearing, respondent maintained the position that there were still avenues to pursue in the case. Respondent's distorted view of the case aside, his total disregard of his client's matter for years at a time violated RPC 1.3 and RPC 3.2. In addition, respondent presented no evidence that he ever communicated with his client about the status of the case. Therefore, we found a violation of RPC 1.4(a).

In Guerrero, respondent's file was sparse. It appeared to be a file that, once opened, was never reviewed. It could be, as respondent claimed, that Guerrero never contacted him after the initial interview and never intended to continue with the representation. Obviously,

the prudent course of conduct would have been for respondent to write to Guerrero at his last known address, to inquire about his interest in continuing with the case. In the long run, however, the DEC was correct in dismissing this matter for lack of clear and convincing evidence of violations of RPC 1.3, 1.4(a) and RPC 3.2, as alleged.

In Kuilan, respondent blamed everyone but himself for problems in the case. The record shows that respondent never pursued the second defendant for the $5,000 settlement amount. Respondent's attempt to blame the defendant, adverse counsel and the carrier for not complying with the settlement agreement was disturbing. It was respondent's responsibility to press his client's claim in this regard. Instead, respondent simply left the matter open, "pending a motion to compel payment," which he never filed. Clearly, thus, respondent violated both RPC 1.3 and RPC 3.2 by allowing the situation to stagnate.

As stated earlier, the DEC alleged a pattern of neglect on respondent's part for his misconduct in Ascevedo, Mendoza and Kuilan. The complaint did not charge respondent with violations of RPC 1.1(a) (gross neglect) in any of the three matters. Nevertheless, the facts recited in the complaint not only fully support a charge of violation of RPC 1.1(a), but also gave respondent sufficient notice of a potential finding of a violation of that RPC. Furthermore, the record developed below contains clear and convincing evidence of a violation of RPC 1.1(a) in each of the three matters. Respondent did not object to the admission of such evidence in the record. In light of the foregoing, we deemed the

complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976). We determined, thus, that respondent violated both RPC 1.1(a) and RPC 1.1(b).

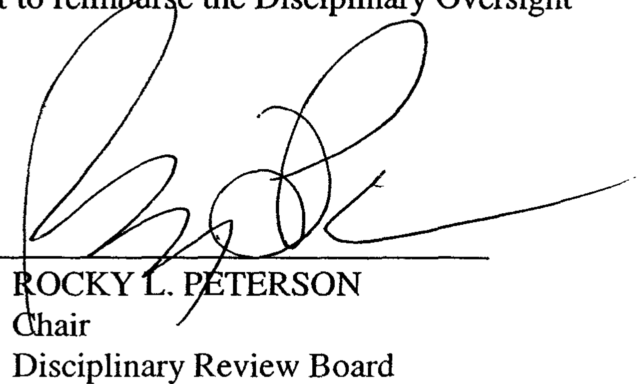
We also found that respondent practiced law during his period of ineligibility, in violation of RPC 5.5(a). As respondent admitted, during that period he continued to file court papers in active matters and served summonses through the sheriff's department.

Finally, with regard to the allegation that respondent failed to cooperate with ethics authorities, a review of the record reveals that he attempted to comply with the OAE's request for information in a fairly expeditious fashion, once the OAE pared down its request. Later, however, respondent inexcusably did not furnish complete trust and business account records for the requested time period. Moreover, once alerted to the problem, respondent took no steps to correct the situation. On that basis, we found that respondent violated RPC 8.1(b).

Practicing law while ineligible to do so, when coupled with other violations, such as gross neglect, lack of diligence and failure to communicate, will ordinarily warrant the imposition of a reprimand. See, e.g., In re Namias, 157 N.J. 15 (1999) (reprimand imposed where the attorney practiced law in 1993 and 1994 while ineligible to do so for failure to pay the annual attorney assessment and, in connection with an employment matter, failed to file suit on the client's behalf and to communicate with the client); In re Alston, 154 N.J. 83 (1998) (reprimand imposed where the attorney appeared before New Jersey courts on five occasions, while ineligible to practice law for failure to pay the annual attorney assessment;

the attorney also violated R.1:21-1(a) by failing to maintain a bona fide office and RPC 8.1(b) by failing to cooperate with the Office of Attorney Ethics during the investigation of the matter); In re Maioriello, 140 N.J. 320 (1995) (reprimand imposed where the attorney practiced law while ineligible to do so for failure to pay the annual attorney assessment, failed to maintain proper trust and business account records in nine matters and exhibited a lack of diligence, gross neglect and failure to communicate with clients in six of the matters). Here, respondent neglected a total of three cases and displayed a troubling refusal to acknowledge his basic responsibilities as a lawyer, putting the onus on clients to be informed and on adversaries to pay judgments as well as severely, ignoring his duty to take appropriate steps to protect his clients' interests. For this reason, it would not have been excessive to enhance the discipline to a three-month suspension. However, because this is respondent's first brush with ethics authorities in twenty years at the bar, we unanimously determined to impose a reprimand, with the stern warning that any future ethics infractions by this respondent will be met with harsher discipline. One member did not participate.

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



ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

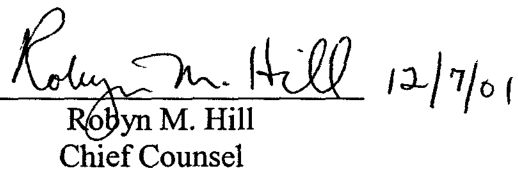
In the Matter of John de Laurentis
Docket No. DRB 01-092

Argued: June 21, 2001

Decided: December 4, 2001

Disposition: Reprimand

Members	***Disbar***	***Suspension***	***Reprimand***	***Admonition***	***Dismiss***	***Disqualified***	***Did not participate***
Peterson			X				
Maudsley			X				
Boylan			X				
Brody			X				
Lolla			X				
O'Shaughnessy			X				
Pashman			X				
Schwartz							X
Wissinger			X				
Total:			8				1



Robyn M. Hill
Chief Counsel