

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-130
District Docket No. VII-2011-0036E

IN THE MATTER OF
KEVIN J. CARLIN
AN ATTORNEY AT LAW

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Decision

Decided: October 2, 2012

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

This matter came before us on a certification of default filed by the District VII Ethics Committee (DEC). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client), and RPC 8.1(b) (failure to cooperate with disciplinary authorities). For the reasons set forth below, we determine to impose a two-year

suspension on respondent for the totality of his misconduct in two disciplinary cases involving three client matters. The suspension is to be served at the expiration of the one-year suspension imposed on January 25, 2012.

Respondent was admitted to the New Jersey bar in 1985. At the relevant times, he maintained an office for the practice of law in Hamilton Township. Presently, he is under a temporary suspension for failure to submit proctorship reports to the Office of Attorney Ethics (OAE). In re Carlin, 207 N.J. 61 (2011).

Respondent has a significant disciplinary record. In 2003, he was reprimanded for gross neglect, lack of diligence, failure to communicate with his client, failure to promptly deliver funds to a third party, failure to obey an obligation under the rules of a tribunal, use of letterhead that contained a false or misleading communication about him, conduct prejudicial to the administration of justice, and recordkeeping violations. His misconduct encompassed three client matters. In re Carlin, 176 N.J. 266 (2003). Specifically, among other things, respondent wrongfully delayed turning over settlement funds to a client for four years; wrongfully delayed returning a deposit in a landlord-tenant dispute for more than two years, after the entry

of a court order compelling him to do so, and then did so only after the entry of another court order; and failed to pay a client's medical bill from the proceeds of a settlement.

In 2006, respondent was censured for lack of diligence, failure to communicate with the client, failure to promptly deliver funds to a third party, recordkeeping violations, and conduct involving dishonesty, fraud, deceit or misrepresentation. In re Carlin, 188 N.J. 250 (2006). In that matter, respondent mishandled his duties as the trustee of an education trust established for two minor beneficiaries. Among respondent's derelictions was his failure to remit \$1210 to one of the beneficiaries, after she had reached the age of twenty-one. In fact, even after we directed respondent to turn over the funds within sixty days, it became necessary for the Supreme Court to order him to release the monies to the beneficiary.

On March 12, 2009, respondent received a three-month suspension for failure to promptly deliver funds to his client, failure to refund the unearned portion of the fee on termination of the representation, and violation or attempted violation of the RPCs. In re Carlin, 197 N.J. 501 (2009). In that matter, respondent represented the executrix of an estate. Although the representation was terminated in July 2004, respondent did not

refund a portion of an unearned retainer until December 2006. The remainder was not returned until May 2008. Moreover, he returned the money to someone other than the executrix of the estate.

Two conditions were imposed on respondent at the time of his 2009 suspension. First, prior to reinstatement, he was required to submit proof of his fitness to practice law, as attested to by a mental health professional approved by the Office of Attorney Ethics (OAE). Second, he was ordered to practice under the supervision of a proctor, approved by the OAE, for a period of two years, upon reinstatement.

Respondent was reinstated to the practice of law on June 30, 2009. In re Carlin, 199 N.J. 455 (2009). He was ordered to continue practicing under the supervision of a proctor for two years and until further order of the Court.

On January 25, 2012, the Supreme Court suspended respondent for one year, for the totality of his misconduct in two ethics cases involving three client matters, which had been consolidated for the purpose of imposing a single form of discipline. In re Carlin, 208 N.J. 592 (2012). Respondent defaulted in both ethics cases. In two of the client matters, respondent lacked diligence in his representation of the

clients, failed to communicate with them, and failed to cooperate with disciplinary authorities.

Service of process was proper. On February 3, 2012, the DEC sent a copy of the formal ethics complaint to respondent's home address, 60 Breza Way, Allentown, New Jersey 08501, by regular and certified mail, return receipt requested. The certified letter was not claimed. The letter sent by regular mail was not returned to the DEC.

On March 6, 2012, the DEC sent a letter to respondent at the same address, by regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the DEC would certify the record directly to us for the imposition of sanction. The certified letter was not claimed. The letter sent by regular mail was not returned to the DEC.

As of March 27, 2012, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default.

According to the first count of the complaint, in May 2010, grievants Deidre and Daniel Carroll, retained respondent to handle a bankruptcy proceeding for them. The Carrolls agreed to pay respondent \$2800, which included costs and filing fees,

although they did not have the money at the time. Respondent, who understood their financial situation, told the Carrolls that he would prepare all the necessary paperwork, but that he would not file the papers until he had received the \$2800. The Carrolls agreed.

One year later, in May 2011, the Carrolls contacted respondent and told him that they were able to pay his fee. Respondent informed them that, upon receipt of the money, he would file the papers necessary to begin the bankruptcy proceeding. The Carrolls gave respondent \$2800 cash, for which he signed a receipt, stating that he had been paid in full.

Thereafter, the Carrolls spent several months trying to contact respondent to find out what was going on with their bankruptcy matter, to no avail. When they finally reached respondent, he told them that he would be filing the bankruptcy petition soon. Several more weeks went by, with the Carrolls hearing nothing from respondent. During this time, the Carrolls began to receive letters from creditors. Also a lien was placed on their car.

As of the date that respondent was served with the ethics complaint, February 3, 2012, he still had not filed the bankruptcy papers and had not returned the Carrolls' retainer.

He was charged with having violated RPC 1.1 (presumably, (a)) (gross neglect), RPC 1.3 (lack of diligence), and RPC 1.4 (presumably (b)) (failure to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information).

The second count of the complaint charged respondent with having violated RPC 8.1(b) (failure to cooperate with disciplinary authorities. According to the complaint, the DEC sent respondent a copy of the grievance, on September 27, 2011, and requested a written reply within ten days. Respondent did not comply with the DEC's request.

On October 14, 2011, the DEC sent another letter to respondent, reminding him of his obligation to cooperate in a disciplinary investigation. Respondent did not reply to the letter.

On November 28, 2011, DEC investigator Daniel F. Dryzga, Jr. wrote to respondent and advised him of his duty to cooperate with the disciplinary investigation. The letter went unanswered.

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are

true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Respondent violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b) in the Carrolls' matter. Respondent told the Carrolls, in 2010, that he would prepare all the papers necessary for the bankruptcy filing, but that he would not file them until he had received the \$2800 fee. A year later, the Carrolls paid him the fee, at which time respondent told them that he would file the papers. He never did. This resulted in a lien being placed on the Carrolls' car and their receipt of a barrage of letters from creditors.

Respondent's failure to file the bankruptcy papers was a violation of RPC 1.1(a) and RPC 1.3.

Respondent also violated RPC 1.4(b), when he failed to keep the Carrolls informed about the status of their case and to comply with their requests for information.

Finally, respondent violated RPC 8.1(b), when he failed to reply to the September 29, October 14, and November 28, 2011 letters from the DEC, requesting a written response to the grievance.

Generally, in default matters, a reprimand is imposed for gross neglect, lack of diligence, failure to communicate with

the client, and failure to cooperate with disciplinary authorities, even if this conduct is accompanied by other, non-serious ethics infractions. See, e.g., In re Rak, 203 N.J. 381 (2010) (attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of a grievance); In re Swidler, 192 N.J. 80 (2007) (attorney grossly neglected one matter and failed to cooperate with the investigation of an ethics grievance); In re Van de Castle, 180 N.J. 117 (2004) (attorney grossly neglected an estate matter, failed to cooperate with disciplinary authorities, and failed to communicate with the client); In re Goodman, 165 N.J. 567 (2000) (attorney failed to cooperate with disciplinary authorities and grossly neglected a personal injury case for seven years by failing to file a complaint or to otherwise prosecute the client's claim; the attorney also failed to keep the client apprised of the status of the matter; prior private reprimand (now an admonition)); and In re Lampidis, 153 N.J. 367 (1998) (attorney failed to pursue discovery in a personal injury lawsuit or to otherwise protect his client's interests and failed to comply with the ethics investigator's requests for information about the grievance; the attorney also failed to communicate with the client).

Censures are imposed when there are aggravating factors beyond the default itself. See, e.g., In re Rosanelli, 203 N.J. 378 (2010) (attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, failure to cooperate with disciplinary authorities, and failure to return the unearned portion of fee advanced by client; the attorney was temporarily suspended after he had failed to comply with a fee arbitration award in favor of the client and remained suspended at the time of the decision); In re Romaniello, ___ N.J. ___ (2007) (censure for attorney who grossly neglected and lacked diligence in his handling of a disability claim, failed to communicate with the client, failed to promptly disburse property belonging to a third party, failed to maintain a bona fide office, and failed to cooperate with disciplinary authorities; aggravating factors were the attorney's abandonment of his client after he had been designated the client's representative, his inability to account for a disability payment into his business account, and the administrative revocation of his law license for nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection for seven years).

Here, there are several aggravating factors that take this matter far beyond the realm of a censure. First, respondent is a serial defaulter. He has not only defaulted in this matter, but he has also defaulted in the two disciplinary cases that resulted in the one-year suspension earlier this year. Moreover, in one of those matters, we had vacated the default, sua sponte, so that he could file an answer to the complaint. Yet, respondent still did not file an answer, thereby "double defaulting" in that particular matter.

Second, respondent has an egregious disciplinary history, consisting of a reprimand, a censure, a three-month suspension, and a one-year suspension. Since July 2011, he has been temporarily suspended and, since then, has demonstrated no sign of any intention to comply with the Court's directives in the suspension order.

Third, respondent has not learned from past mistakes, inasmuch as he continues to lack diligence in his handling of client matters and continues to fail in his duty to communicate with his clients.

Fourth, alongside respondent's failure to learn from past mistakes lies a disturbing pattern of disregard for the ethics system in general. He has now established a pattern of failure

to cooperate with disciplinary authorities for failure to file answers to complaints. In addition, in the 2006 matter, he ignored our direction that he turn over funds that were due to the beneficiaries of a trust. He gave the monies to the beneficiaries only after the Supreme Court had ordered him to do so. Since then, respondent has shown that he is even unwilling, or worse, unable to comply with Supreme Court directives. In May 2011, the Court ordered him to submit to the OAE all outstanding proctorship reports within sixty days. He did not. In July, the Court temporarily suspended him as a result. Respondent remains temporarily suspended and, therefore, in noncompliance of the Supreme Court's orders.

For respondent's continued inability or refusal to comply with the obligations imposed on him as an attorney in the State of New Jersey, we determine that severe discipline, a two-year suspension, is required. The suspension is to be served at the expiration of the 2012 one-year suspension, or January 25, 2013.


We also determine that respondent should not be reinstated until all disciplinary matters pending against him are resolved. Moreover, inasmuch as the proctorship was never lifted, we determine that, upon reinstatement, respondent should continue

to practice under the supervision of a proctor, until further order of the Court.

Vice-Chair Frost voted to impose a three-year suspension, with the same conditions outlined above. Member Clark did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: 
Julianne K. DeCore
Chief Counsel

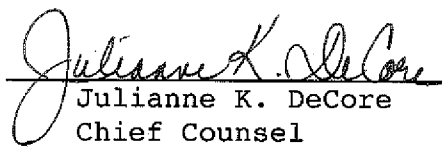
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Kevin Joseph Carlin
Docket No. DRB 12-130

Decided: October 2, 2012

Disposition: Two-year consecutive suspension

Members	Disbar	Two-year consecutive suspension	Three-year suspension	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost			X			
Baugh		X				
Clark						X
Doremus		X				
Gallipoli		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		7	1			1


Julianne K. DeCore
Chief Counsel