SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-238

IN THE MATTER OF

CORNELIUS W. DANIEL, III

AN ATTORNEY AT LAW

Decision

Argued: October 16, 2003

Decided: December 5, 2003

Frank Gaudio appeared on behalf of the District IX Ethics Committee.

Michael D. Schottland appeared for respondent.

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

This matter was before the Board on a recommendation for discipline filed by the District IX Ethics Committee ("DEC").

The complaint alleged gross neglect, lack of diligence, failure to communicate with the client and misrepresentation in a fraud litigation.

Respondent was admitted to the New Jersey bar in 1969. On January 16, 1997, respondent received an admonition for lack of diligence, failure to turn over

settlement proceeds and failure to communicate with the client. In the Matter of Cornelius W. Daniel, III, Docket No. DRB 96-394. On October 16, 1996, respondent was reprimanded for lack of diligence, failure to communicate with the client and failure to supervise an attorney employee. In re Daniel, 146 N.J. 490 (1996). On May 25, 1988, respondent received a private reprimand for releasing escrowed mortgage funds prematurely, in violation of DR 1-102 (A) (6) (engaging in conduct that adversely reflects on the fitness to practice law). Also on May 25, 1988, respondent received a private reprimand for failing "to carry out a contract of employment with a client for professional services in a real estate transaction." Respondent "failed to advise this client of the problems encountered in and to take appropriate actions to resolve this matter, in violation of DR 7-101 (A) (2) and 1-102 (A) (6)."

The formal ethics complaint alleged violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client), and RPC 8.4(c) (misrepresentation). The complaint also alleged facts implicating RPC 1.5 (failure to utilize retainer agreement), although the specific RPC was not referenced. The presenter withdrew that charge when it became evident that respondent and the grievants had a history of legal dealings that spanned approximately eighteen separate matters.

Respondent represented the grievants, Donald and Muriel LaScola, and other LaScola family members, in numerous legal matters during their lengthy friendship, which began in the late 1980s. Respondent and his wife were so close

to the LaScolas that they vacationed together and purchased adjoining building lots in Florida in 1989. The LaScolas later moved to Florida, having tried unsuccessfully to convince respondent to move as well.

In September 1991, Donald LaScola ("LaScola") became involved in a financial scam promoted by Michael Bartlett, a bank officer at Florida's Southtrust Bank. Bartlett told LaScola, among other investors, that the Nigerian government was withholding the sum of $35,000,000 belonging to an American company, pending the payment of overdue corporate taxes to the Nigerian government. Bartlett assured LaScola that if he invested $100,000, the scheme would return $900,000 on the investment in just two weeks.

Because he did not have $100,000, LaScola and other investors borrowed funds from Southtrust, signing a promissory note for that amount and securing the debt by granting mortgages on three Florida properties. Several weeks passed without word from Bartlett. Therefore, LaScola contacted Southtrust, only to find that Bartlett had been terminated after the bank received a string of complaints from other investors in the scheme. To make matters worse for LaScola, Southtrust accepted no responsibility for Bartlett's actions, instituting foreclosure actions against LaScola's properties.

In early 1992, LaScola moved back to New Jersey and retained respondent to sue Bartlett and Southtrust for fraud. According to LaScola, who testified at the DEC hearing, he and respondent did not use retainer agreements in their dealings with each other. Rather, under a barter arrangement, LaScola performed

construction and renovation work for respondent in exchange for legal representation. In fact, the record reveals that respondent and LaScola bartered in approximately eighteen legal matters over the years.

In late 1992, LaScola retained respondent to file suit against Bartlett and Southtrust in New Jersey. Thereafter, on January 20, 1993, respondent filed a complaint in the United States District Court for the District of New Jersey (USDNJ). However, the bank's contacts in New Jersey were so limited that the USDNJ transferred the matter to Florida on jurisdictional grounds. Therefore, in May 1993, respondent consented to the transfer of the case to the United States District court for the Middle District of Florida. ("USDMDF").[1]

Respondent also produced a draft of his June 11, 1993, letter to LaScola in which respondent advised his client that he was unable to represent him and that LaScola should retain a Florida attorney to handle the litigation. The letter also stated that he was not admitted to practice in Florida and could only help LaScola as a friend. LaScola denied receiving that letter from respondent. Although respondent asserted that the letter was sent to LaScola, there is no confirmation in the record that the letter was sent. In any event, respondent was seeing LaScola several times a week at the time. Respondent claimed that, on those occasions, he prodded LaScola to retain a Florida attorney to handle the case.

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[1] The actual transfer occurred in August 1993.

In June and July 1993, respondent and Karl C. Landsteiner, Esq., Southtrust's attorney, communicated regarding the LaScola matters. Landsteiner wrote to respondent twice seeking further information about respondent's prior overtures toward settlement of the matters. Respondent, however, did not reply.

In September 1993, Landsteiner filed a motion to dismiss the district court matter. Although he did not oppose the motion, respondent wrote to the court on October 26, 1993, the return date for the motion, indicating that he represented LaScola, but was not admitted to practice law in Florida. Therefore, he requested additional time for LaScola to retain Florida counsel to represent him. Despite respondent's plea, the court dismissed the case with prejudice for failure to prosecute the matter.

After the dismissal, respondent took no further action to protect LaScola's claim. He admitted at the DEC hearing that, although he had been retained to prosecute the claim to conclusion, he had failed to do so. He also conceded that he should have withdrawn from the representation when it became clear that the case required a Florida attorney. Yet, he continued to give the impression that he was actively involved in the case. Respondent admitted that in so doing, he lacked diligence in his handling of the matter and grossly neglected the case, in violation of RPC 1.3 and RPC 1.1(a), respectively.

Beyond the Florida district court litigation, respondent also injected himself in the Florida foreclosures. In fact, LaScola testified that respondent had agreed to represent him in those matters and to go to Florida for a critical hearing, but never

did so. According to LaScola, respondent "strung him along" in order to obtain additional work on his house.

Respondent, on the other hand, initially denied that he had been retained to defend the foreclosure cases. He refused any responsibility for the 1992 defaults in those matters, testifying that he had repeatedly warned LaScola, from the outset, that he was not a Florida attorney and could not represent him in those matters. The properties were sold in 1993 at sheriff's sale.

Respondent ultimately conceded that, between 1993 and 1996, he contacted Landsteiner by telephone and letter regarding the foreclosures. Respondent claimed that LaScola periodically requested him to take action, just to keep track of the case. Respondent contended that his contacts were simply to honor his friend's requests in that regard. Nevertheless, based on those contacts, Landsteiner believed that respondent represented LaScola in the foreclosure matters.

At the conclusion of the DEC hearing, respondent conceded that his sporadic involvement in the Florida foreclosure matters illustrated his participation in those matters. Indeed, at the conclusion of the DEC hearing, respondent stipulated that his conduct in the foreclosures amounted to gross neglect, in violation of RPC 1.1(a). Respondent's counsel summarized respondent's admissions as follows:

> [H]e failed to take any appropriate action or significant steps to protect the LaScola's interest after Judge Morton dismissed the pending U.S. District Court law suit in Florida with prejudice. In particular he – you know, he did not in writing advise the client of the significance of that, advise him of the options such as right to

> appeal or right to seek a motion for reconsideration [nor] [t]ake any other appropriate action to try to rectify that situation. And secondly, again, under the [RPC 1.1(a)] he permitted a misconception of his status as attorney to remain extant with respect to his relationship with his client and the adversary in the Florida proceedings to the legal detriment of the LaScolas. ... In other words, [he] acted in certain respects as the attorney for the LaScolas ... as a result of gross negligence on [his] part.
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> [5T 92; 5T95-96][2]

The complaint also charged respondent with misrepresentation, in violation of RPC 8.4 (c). The charge stemmed from respondent's August 18, 1993, letter to Mellon Mortgage Company, LaScola's first mortgagee. There, in an apparent effort to stave off further inquiry by that institution, respondent falsely stated that the district court matter had been stayed by the USDNJ. At the DEC hearing, respondent conceded that the USDNJ had not issued a stay in the case — and that his statement to Mellon amounted to a misrepresentation.

Finally, the complaint alleged that respondent failed to keep his client informed about the status of the cases, in violation of RPC 1.4(a). However, the panel concluded, from the testimony of both respondent and LaScola, that the two were in almost daily contact about the case during the course of the representation. In fact, LaScola admittedly worked at respondent's house and saw him there two

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[2] 5T refers to the November 13, 2002 DEC transcript.

or three days per week during much of the time in question. So, too, respondent testified that he and LaScola spoke often about the cases.[3]

LaScola also testified that, despite his contact with respondent, he was not always well-informed about the case. He often did not know the status of his cases, or the extent to which respondent had ignored them. Respondent, on the other hand, claimed that he always kept LaScola informed about the cases. However, he introduced a single letter from early in the case to corroborate his claims in that regard.

The DEC found that respondent lacked diligence and grossly neglected three matters — LaScola's district court case and both Florida foreclosures, in violation of RPC 1.3 and RPC 1.1(a), respectively. The DEC also found that respondent misrepresented the status of the case to Mellon Mortgage, in violation of RPC 8.4(c).[4] Citing respondent's prior discipline as an aggravating factor, the DEC recommended the imposition of a three-month suspension.

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.

The record in this matter is lengthy, considering the relatively few charges levied against respondent. Much of the testimony in the record is not detailed

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[3] At the conclusion of the DEC hearing, the presenter withdrew the allegation of a violation of RPC 1.4.

[4] This RPC was mistakenly referred to in the record as RPC 8.4(a).

herein, because respondent ultimately admitted the misconduct for which the testimony was elicited. Moreover, portions of the record were devoted to ancillary matters, such as the barter arrangement between respondent and LaScola.

In late 1992, LaScola retained respondent to represent him in an action against Southtrust and Bartlett, its vice-president. A few months later, in January 1993, respondent filed suit in the USDNJ. Between January and May 1993, when the matter was transferred to Florida, respondent took little action. Once again, after its transfer, respondent did little else to protect LaScola's claims. Respondent never attempted to gain admission to the USDMDF bar pro hac vice. Likewise, he did not reply to the bank's October 1993 motion to dismiss the complaint for failure to prosecute. Instead, on October 26, 1993, the hearing day on Southtrust's motion, respondent wrote to the judge, stating that he was LaScola's attorney, and requesting an adjournment so that LaScola could retain Florida counsel. That request was denied. The USDMDF stated as follows:

> This case was initiated in New Jersey and transferred for hearing to the Middle District of Florida. Notice was given to all parties that the case had been transferred and was set for hearing on October 26, 1993 at 10:00 a.m. All counsel of record were notified, but the plaintiffs did not appear at the hearing. In addition, the defendants had filed a motion to dismiss, and plaintiffs did not respond. Therefore, this case is dismissed with prejudice for failure to prosecute.
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> [Exhibit P-21.]

Thereafter, respondent took no further action in the case.

Respondent admitted at the conclusion of the DEC hearing that his failure to take action to protect LaScola's USDMDF claim was in violation of RPC 1.3 and RPC 1.1(a).

So, too, with regard to the Florida foreclosure matters, respondent admitted that he acted as LaScola's attorney. He further admitted that his failure to answer the complaints or otherwise protect LaScola's interests was tantamount to lack of diligence and gross neglect.

With regard to RPC 8.4(c), respondent admitted that he had misrepresented to LaScola's first mortgagee, Mellon, that the district court litigation against Southtrust had been stayed. In fact, respondent knew at the time that he made the statement to Mellon that the matter had never been the subject of a stay.

Finally, the DEC was correct to dismiss the allegation that respondent failed to communicate with his client, in violation of RPC 1.4(a). The testimony from both respondent and LaScola, that they discussed the matters as often as three times per week during the representation, was determinative. However, LaScola also pointed out that respondent did not disclose events in the case as they happened. Therefore, he was often unaware of the true status of his case, or the extent to which respondent had ignored the matters. Respondent countered that he always kept LaScola informed about the case — that LaScola was playing "dumb" about the cases. Respondent introduced only one letter, early in the case, to support his contention that LaScola was kept informed.

Unquestionably, respondent had an ongoing obligation to discuss all of the matters with LaScola so that he could make informed decisions about the cases. Respondent did not do so. As a result, LaScola lost his claims against Southtrust and Bartlett. His misconduct in this regard violated RPC 1.4(b). Although respondent was not specifically charged with RPC 1.4(b), the record developed below contains clear and convincing evidence of a violation of RPC 1.4(b). Furthermore, 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).

In conclusion, respondent is guilty of gross neglect, lack of diligence, failure to communicate with the client, and misrepresentation.

Ordinarily, conduct involving gross neglect in one or a few matters, with or without violations such as lack of diligence and failure to communicate with the client, warrants the imposition of an admonition or a reprimand, where misrepresentation is not present. See, e.g., In the Matter of E. Steven Lustig, Docket No. DRB 00-003 (April 10, 2000) (admonition for attorney who grossly neglected a matrimonial matter and failed to adequately communicate with his client); In re Wildstein, 138 N.J. 48 (1994) (reprimand for gross neglect and lack of diligence in two matters and failure to communicate in a third matter); and In re Gordon, 121 N.J. 400 (1990) (reprimand for gross neglect and failure to communicate in two matters). Misrepresenting the status of the case to clients (or others) warrants a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). In addition,

respondent has a prior disciplinary record (an admonition, a reprimand and two private reprimands). Therefore, we unanimously determined to impose a reprimand for respondent's misconduct.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Cornelius W. Daniel, III
Docket No. DRB 03-238

Argued: October 16, 2003

Decided: December 5, 2003

Disposition: Reprimand

Members	*Disbar*	*Suspension*	*Reprimand*	*Admonition*	*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:			9				

Julianne K. DeCore
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Chief Counsel