SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 05-338,
05-339, and 05-340
District Docket Nos. IIA-05-003E,
IIIA-04-016E, and IIIA-04-026E

IN THE MATTERS OF	
VICTOR J. CAOLA	
AN ATTORNEY AT LAW	

Decision
Default [R. 1:20-4(f)]

Decided: February 14, 2006

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

These matters were before us on certifications of default filed by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-4(f).

Respondent was admitted to the New Jersey bar in 1980. On September 6, 1989, he received a public reprimand for misrepresenting his background and experience as a criminal defense attorney in a solicitation letter sent to a prospective client. In re Caola, 117 N.J. 108 (1989). In 1990, he received a private reprimand for lack of diligence and failure to communicate

with a client. In the Matter of Victor Caola, Docket No. DRB 90-097 (May 4, 1990). On March 23, 1999, he received a reprimand for failure to communicate with a client in a workers' compensation matter. In re Caola, 157 N.J. 641 (1999).

I. **The Travis Matter – District Docket No. IIIA-05-003E**

The one-count complaint alleged that, between April 2002 and May 2004, respondent represented Willie Travis, II ("Travis") in connection with the estate of his deceased father, Willie Travis. At the time of the elder Travis' death, he was married to Jerelina Wright Travis. Travis sought to revoke the marriage and Jerelina's claim to his father's estate.

The complaint alleged that, during the course of the representation, respondent failed to communicate with Travis or keep him apprised of the status of the case. The complaint further alleged that respondent failed to communicate important aspects of the case to Travis, such as scheduled court appearances and depositions, in a way that would permit him to make informed decisions about the representation.

The complaint also stated that Travis had repeatedly been told by unidentified persons that respondent was unavailable due to illness or, alternately, that he was in federal court.

The complaint alleged violations of RPC 1.4(a) (failure to communicate with the client) and RPC 1.4(b) (failure to explain a

matter to the extent reasonably necessary to permit the client to make informed decisions about the representation).

On June 9, 2005, the DEC sent a copy of the complaint by certified and regular mail to respondent's last known office address, 1410 Hooper Avenue, Toms River, New Jersey, 08753. The certified mail receipt was returned indicating delivery on June 16, 2005, having been signed by "JoAnn Bliss." The regular mail was not returned.

On July 7, 2005, a copy of the complaint was sent to respondent's home address, 2 Monterey Court, Old Bridge, New Jersey, 08857. The certified mail was returned marked "unclaimed." The regular mail was not returned.

On October 17, 2005, the DEC sent a letter to respondent's home address by regular mail advising him that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations would be deemed admitted and that, pursuant to R. 1:20-4(f), the record in the matter would be certified directly to us for the imposition of discipline. The regular mail was not returned.

Respondent did not file an answer.

II. The Warnock Matter- District Docket No. IIIA-04-016E

Theresa Warnock retained respondent, on September 24, 2002, to represent her in a domestic violence and divorce matter against

her husband. She gave respondent "retainers" of an unspecified amount, in December 2002 and February 2003.

According to the complaint, respondent failed to set the rate or basis of the fee in writing, prior to the representation. The complaint is silent on whether respondent had previously represented Warnock.

Further, the complaint alleged that respondent and his office staff led Warnock to believe that, among the services rendered, respondent had prepared and filed a pendente lite motion for support in the divorce matter. In fact, respondent never filed a pendente lite motion on Warnock's behalf.

On March 5, 2003, respondent sent Warnock a fee bill, which included a $250 charge for the preparation of a pendente lite support motion.

Count one alleged that respondent failed to communicate with his client, leaving that duty to his staff. As a result, Warnock was misled about the status of her matter, particularly with respect to the pendente lite motion. However, the complaint did not specifically charge respondent with violations of RPC 1.4(a).

Without explanation, count one charged respondent with violations of RPC 1.1(a) (gross neglect) and RPC 1.1(b) (pattern of neglect).

Count two alleged that respondent and his staff misrepresented to Warnock that the motion for pendente lite

support had been filed and scheduled for a hearing. In fact, respondent's office file contained only a partially drafted motion, which had not been filed with the court. According to this count, respondent's misrepresentation violated RPC 8.4(c).

On March 1, 2005, the DEC sent a copy of the complaint by certified and regular mail to respondent's last known office address, 1410 Hooper Avenue, Toms River, New Jersey, 08753. The certified mail receipt was returned indicating delivery on March 8, 2005, having been signed by "JoAnn Bliss." The regular mail was not returned.

On April 21, 2005, the DEC sent a letter to respondent's office address by regular mail advising him that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations would be deemed admitted and that, pursuant to R. 1:20-4(f), the record in the matter would be certified directly to us for the imposition of discipline.[1] The regular mail was not returned.

On July 7, 2005, a copy of the complaint was sent to respondent by both certified and regular mail at his home address, 2 Monterey Court, Old Bridge, New Jersey, 08857. The certified

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[1] Although the certification does not specifically state that certified mail was utilized for service of process for this letter, paragraph seven states that "the certified mail receipt was returned indicating delivery on April 26, 2005, having been signed by 'J. Bliss' (Ex.D)."

mail was returned marked "unclaimed." The regular mail was not returned.

On October 17, 2005, the DEC sent another five-day letter to respondent's home address advising him that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations would be deemed admitted and that, pursuant to R. 1:20-4(f), the record in the matter would be certified directly to us for the imposition of discipline. That letter was sent by regular mail.[2] The regular mail was not returned.

Respondent did not file an answer.

III. The Haughey Matter – District Docket No. IIIA-04-026E

At some undisclosed point in time, respondent represented Jean Haughey in a legal matter involving her spouse. Haughey later requested fee arbitration, resulting in a March 4, 2004 reduction of the fee and a recommendation that the matter be investigated by ethics authorities.

According to the complaint, in the underlying Haughey litigation, respondent filed a false certification of services with the Superior Court. That certification differed from the bill

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[2] On this occasion, too, the certification does not state that certified mail service was utilized, but refers (paragraph thirteen) to the return of certified mail, marked "unclaimed."

sent to the client, which was higher. In one instance, respondent's certification reflected 1.5 hours of attorney time for an item, but his bill to the client showed a 2.0 hour charge. In another instance, the certification reflected a 2.5 hour charge for the preparation of a pendente lite motion. Yet, respondent's bill to the client for the same work reflected an 8.5 hour charge. The complaint charged respondent with violating RPC 3.3(a)(1) (making a false statement of fact or law to a tribunal).

The fee arbitration committee found that respondent had grossly overcharged his client and questioned whether respondent had performed the services. The committee reduced his $16,428.50 bill by almost two-thirds, allowing only $5,280 for his legal work. On this score, the complaint charged respondent with overreaching his client (RPC 1.5) and with dishonest and deceitful conduct (RPC 8.4(c)).

The complaint also charged respondent with failure to cooperate with ethics authorities, a violation of R. 1:20-3(g)(3) (more appropriately, RPC 8.1(b)). After an initial telephone conversation with the DEC on November 16, 2005, and several extensions of time to reply to the grievance, respondent requested time to retain ethics counsel. After yet another extension to December 30, 2004, and initial overtures from an attorney interested in the representation, respondent failed to reply to the DEC's requests for information or file an answer, either

through ethics counsel, or on his own account.

On March 10, 2005, the DEC sent a copy of the complaint by certified and regular mail to respondent's last known office address, 1410 Hooper Avenue, Toms River, New Jersey, 08753. The certified mail receipt was returned indicating delivery on March 11, 2005, having been signed by "J. Bliss." The regular mail was not returned.

On April 21, 2005, the DEC sent a letter to respondent's office address by regular mail advising him that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations would be deemed admitted and that, pursuant to R. 1:20-4(f), the record in the matter would be certified directly to us for the imposition of discipline.[3] The regular mail was not returned.

On July 7, 2005, a copy of the complaint was sent to respondent's home address, 2 Monterey Court, Old Bridge, New Jersey, 08857. The certified mail was returned marked "unclaimed." The regular mail was not returned.

On October 17, 2005, the DEC sent a letter to respondent's home address by regular mail advising him that, unless he filed an answer to the complaint within five days of the date of the

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[3] Although the certification does not state that the letter was sent by certified mail, paragraph seven of the certification refers to the return of the certified mail indicating delivery on April 26, 2005, having been signed by "J. Bliss" (Ex.D).

letter, the allegations would be deemed admitted and that, pursuant to R. 1:20-4(f), the record in the matter would be certified directly to us for the imposition of discipline.[4] The regular mail was not returned.

Respondent did not file an answer.

Service of process was properly made. Following a review of the record, we find that the facts recited in the complaints support most of the charges of unethical conduct. Because of respondent's failure to file answers to the complaints, the allegations are deemed admitted. R. 1:20-4(f).

In the Travis matter, respondent failed to communicate with his client or explain the matter to the extent reasonably necessary to permit Travis to make informed decisions about the representation. Rather, respondent forced his client to rely on information provided by his staff, some of which was faulty, a violation of RPC 1.4(a) and (b).

Again, in the Warnock matter, respondent failed to communicate with his client about important aspects of the case. He relied instead on office staff, which sometimes misinformed Warnock about the status of the matters. As in the Travis matter, RPC 1.4(a) is implicated. For unknown reasons, however, the

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[4] Once again, the certification does not state that this letter was sent by certified mail, but refers (paragraph thirteen) to the return of a certified-mail copy of the letter, marked "unclaimed."

complaint cited RPC 1.1(a) (gross neglect) and RPC 1.1(b) (pattern of neglect) for "the failure of Respondent to communicate directly to keep her honestly, adequately and accurately informed of the progress or lack thereof of her case, and his actions in leaving all or most communication with her to his secretarial staff." We find that the gross neglect RPCs are inapplicable here, as the complaint contains no clear and convincing evidence of gross neglect. Therefore, we dismiss the charges related to RPC 1.1(a) and (b), and find that respondent's failure to communicate with the client violated RPC 1.4(a).

Respondent and/or his staff also misrepresented to Warnock the status of a pendente lite motion for support, claiming that respondent had filed it with the court and that the court had scheduled the matter for a hearing. In fact, respondent never completed and never filed the motion. Therefore, if respondent himself made the misrepresentations, he violated RPC 8.4(c); if, on the other hand, his staff was responsible for the misrepresentations, then respondent violated RPC 5.3. Although this RPC rule was not cited in the complaint, the facts alleged therein gave respondent sufficient notice of a potential finding of a violation of that rule.

The Warnock complaint also states, without further context, that respondent took retainers from the client without setting forth in writing the basis or rate of his fee. Such actions

implicate RPC 1.5(b). That rule provides that "[w]hen the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before the representation or within a reasonable time after commencing the representation." However, respondent was not charged with a violation of RPC 1.5(b) and the allegations of the complaint do not establish that respondent had not regularly represented Warnock. Therefore, we decline to find any violation in this regard.

In Haughey, respondent filed a certification of services with the Superior Court that contained lower figures for his legal services than were billed to the client. The complaint alleged that respondent filed a false certification with the court, a violation of RPC 3.3(a)(1) and RPC 8.4(c). We are not convinced, however, by the clear and convincing evidence standard, that he violated these rules, in that his certification containing lower amounts was false. The certification was not made a part of the record and the facts alleged in the complaint are insufficient to sustain the charges that its contents were false. Rather, the impropriety here consisted of respondent's attempt to collect a higher fee by billing his client in excess of the services itemized in the certification. We find, thus, that respondent overreached his client by billing her in excess of the work performed. Indeed, his fee was reduced at fee arbitration from

$16,428.50 to $5,280. By "padding" his bill, respondent violated RPC 1.5(a).

Finally, respondent failed to cooperate with ethics authorities, a violation of RPC 8.1(b). After an initial telephone conversation with the DEC on November 16, 2005, and several extensions of time to reply to the Haughey grievance, respondent requested time to retain ethics counsel. After yet another extension to December 30, 2004, respondent failed to file an answer through counsel, or on his own.

In summary, in Travis, respondent violated RPC 1.4(a) and RPC 1.4(b); in Warnock, he violated RPC 1.4(a) and RPC 8.4(c); and in Haughey, he violated RPC 1.5(a) and RPC 8.1(b).

Attorneys who have charged their clients mildly excessive fees have received admonitions. See In the Matter of Robert S. Ellenport, Docket No. 96-386 (June 11, 1997) (admonition for attorney who received a fee of $500 in excess of the contingent fee permitted by R. 1:21-7(c), a violation of RPC 1.5(a) (unreasonable fee) and RPC 1.5(c) (improper contingent fee)); and In the Matter of Angelo Bisceglie, Jr., Docket No. 98-129 (September 24, 1998) (admonition for attorney who billed a Board of Education for legal work not authorized by the full Board; the fee charged was unreasonable, but did not reach the level of overreaching; attorney also violated RPC 1.5(b), by failing to communicate to his client, in writing, the basis or the rate of

his fee).

Where the excesses, as here, are greater, or other violations are involved, reprimands have been imposed. See, e.g., In re Read, 170 N.J. 319 (2001) (reprimand for attorney who, in one matter, collected almost $100,000 in fees, when $15,000 would have been reasonable, and, in another matter, overcharged the estate by $85,000; in an effort to legitimize his exorbitant fee, the attorney presented inflated time records to the estate; compelling mitigating factors were considered); In re Cipolla, 141 N.J. 408 (1996) (reprimand for attorney who charged an unreasonable fee for services rendered, filed with the court an affidavit signed in blank by his client, did not give the client a copy of the retainer agreement or a bill for services, and engaged in a conflict of interest situation by representing husband and wife in a matter and then representing another client against the husband and the wife in an action arising from substantially similar circumstances); and In re Hinnant, 121 N.J. 395 (1990) (public reprimand for attorney who overreached his client by attempting to collect $21,000 in fees for his representation in a $91,000 real estate transaction; the attorney was also found guilty of conflict of interest, by acting in multiple and incompatible capacities as attorney, consultant, negotiator, and real estate broker).

In addition, respondent made misrepresentations in one matter, failed to communicate with three clients, and failed to

cooperate with ethics authorities.

Aggravating factors are also present. Respondent has twice been disciplined for misconduct that included failure to communicate with clients. He received a third reprimand for making misrepresentations to a client about his background and experience as a criminal defense attorney. In addition, he showed an extreme indifference to the disciplinary system, having allowed these matters to proceed to us as three separate defaults.

For all of the reasons above, we determine to impose a three-month suspension. Members Pashman and Neuwirth voted for a six-month suspension. Members Lolla and Stanton did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

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