

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-402
District Docket No. XIV-2015-0021E

IN THE MATTER OF
C. PETER BURRO
AN ATTORNEY AT LAW

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Decision

Argued: February 15, 2018

Decided: May 15, 2018

Joseph Glyn appeared on behalf of the Office of Attorney Ethics.
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 an
admonition filed by the District I Ethics Committee (DEC). It was
originally before us at our October 19, 2017 session, at which
time we determined to treat the admonition as a recommendation
for greater discipline, in accordance with R. 1:20-15(f)(4). A
one-count complaint charged respondent with violations of RPC
1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b)
(failure to keep the client reasonably informed about the status

of the matter and to promptly comply with reasonable requests for information), RPC 1.16(d) (failure to return the client file upon termination of the representation), and RPC 8.1(b) and R. 1:20-3(g)(3) (failure to cooperate with ethics authorities).

We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1979, to the Florida bar in 1976, and to the Pennsylvania bar in 1980.¹ On October 11, 1990, he received a private reprimand for borrowing \$3,900 from an elderly client, without complying with the requirements of RPC 1.8. In the Matter of C. Peter Burro, DRB 90-276 (October 11, 1990).

On September 30, 2013, the Court entered an Order declaring respondent ineligible to practice law for failure to pay the 2013 annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection. He remains ineligible for failure to pay the annual attorney assessment for each subsequent year through 2017. In addition, on both November 17, 2014 and November 16, 2015, the Court entered an Order declaring respondent ineligible for failure to comply with continuing legal education requirements. He remains ineligible

¹ According to the complaint, respondent's license to practice in Pennsylvania was administratively suspended on January 19, 2016. Similarly, respondent is currently ineligible to practice in Florida.

to date. Finally, on October 27, 2015, the Court entered an Order declaring respondent ineligible for failure to comply with the Interest on Lawyers Trust Accounts (IOLTA) program. According to a Notice to the Bar, dated October 6, 2016, respondent's name was removed from the 2015 IOLTA Ineligible List.

Ann Sisbarro, Executrix of the Estate of Anthony DiLeo (her uncle), retained respondent (her former brother-in-law) in 2003 to probate the will and complete the distribution of the estate. DiLeo passed away on August 15, 2003.

On January 4, 2006, the New Jersey Division of Taxation (the Division) sent respondent a Notice of Assessment for estate taxes of \$225,000, with accrued interest of \$40,746.58, along with instructions for him to remit payment of \$265,746.58. When respondent failed to do so, the Division filed a certificate of debt² on Sisbarro's own house for failure, as Executrix, to pay the estate's delinquent taxes.

Respondent participated in the DEC hearing by telephone. He testified that he did not recall receiving documents from

² A certificate of debt may be issued by a State department or agency thirty days after service upon the person who owes the debt, if the person fails to make payment. The certificate of debt is issued to the Office of the Clerk of the Superior Court, and, once docketed, has the same force and effect as a civil judgment. N.J.S.A. 2A:16-11.1.

the Division, but had he received such a document, he would have challenged it, "because the assessment appears to be arbitrary." Respondent was unable, however, to place a value on the estate.

E-mails between respondent and Sisbarro, from December 3, 2010 through October 26, 2012, show that Sisbarro repeatedly requested information about the status of the estate. Her pleas became increasingly urgent, as time passed and respondent appeared to be making no progress in completing the estate. On occasion, respondent replied to her e-mails, including, for example, an August 2, 2012 e-mail, which stated, "I am doing what I can to wrap this up, Annie, hang in there with me." Further, on October 12, 2012, respondent replied to Sisbarro's October 8, 2012 e-mail as follows: "Way to slow [sic] for ALL of us, Aunt A. I did get your emails. I am not ignoring them or you, my dear. With lustre, this will soon be a distant memory." Respondent did not deny the substance of these e-mails.

At the DEC hearing, respondent claimed that Sisbarro had sought to delay the completion of the estate from 2003 until 2009, in order to avoid creditors, including "Syracuse or Columbia or Cornell . . . I forget which college [DiLeo] left a lot of money to." He accused Sisbarro of wanting to avoid

paying those entities because "she wanted it for herself." The record, however, contained no evidence to support this contention. Respondent further claimed that, early in the representation, he had made a partial distribution of \$7,500 to Sisbarro and three other beneficiaries.

Although respondent communicated with Sisbarro through October 2012, he asserted that, in 2009, Sisbarro had "fired" him. He conceded, however, that he had no proof that Sisbarro had terminated the representation that year. In this and other areas of questioning related to the representation, respondent's memory was poor, perhaps for medical reasons, described below.

The record contains a copy of the following April 17, 2013 e-mail from Sisbarro:

Dear Pete,

As I have not heard from you in over 6 months with regard to the estate, which you advised would be finalized over a year ago, I met with an attorney this morning to discuss the actions required to obtain my file. I am requesting you either finalize this open matter or send my file to me within the next 7 business days or I will be forced to take legal action.

Your negligence and indifference to the personal financial effect this has on all parties concerned is unconscionable. I do not want to pursue litigation for negligence, malpractice and ethics but will do so if necessary. Your choice . . . get back to me with your response as this is the

last inquiry I will make before taking further action.

[Ex.P-9,36].

Although respondent did not address the above e-mail, at the hearing, he testified that he had suffered a stroke in April 2013, and ceased practicing law thereafter. He did not, however, retire from the practice of law.

In June 2013, having received no communications from respondent after October 2012, Sisbarro retained Scott M. Hanula, Esq. to complete the estate. On June 13, 2013, Hanula sent respondent a letter requesting the estate file and the location of the estate account. On July 3, 2013, he sent respondent an e-mail with a copy of that letter attached, again requesting respondent's reply. That same day, respondent replied via e-mail: "I am acknowledging receipt of your email and letter, Sir. I will get back to you with answers to your questions." On July 12, 2013, Hanula again e-mailed respondent, renewing his request for the estate file. Respondent replied, "I am putting together a response thereto, Sir. Unfortunately, my stroke has REALLY slowed me down." At the DEC hearing, respondent recalled neither having received nor having replied to Hanula's e-mails.

In October 2013, Sisbarro retained Kevin Young, Esq. (grievant) to complete the estate. On October 11, 2013, via a

certified letter to respondent's Somers Point office address, Young informed respondent that he had assumed Sisbarro's representation. He noted that New Jersey inheritance/estate tax returns had not been filed, and that a certificate of debt operated as a lien against Sisbarro's property. Thus, Young demanded the client file, checks for any estate account, and bank records. He also enclosed a signed substitution of attorney for respondent's signature and return.

Although Young's certified letter had been accepted, respondent could not recall having received it. He explained that, after suffering the stroke in April 2013, his office sat idle. Occasionally, another lawyer's secretary in the same building as respondent's law office would collect his office mail and deliver it to him.

In the ethics grievance, Young asserted that Sisbarro had been referred to him after respondent stopped taking Hanula's calls:

As a result, I have called several times and left messages at respondent's office machine and on his cell phone. I have not received any response. My office has written as well and again received no response, whatsoever. My client, the Executrix, Ann Sisbarro, has attempted multiple times to talk to the respondent who is her former brother-in-law. In addition, she spoke to her nephew, the respondents [sic] son and asked him to communicate with his father, as an intermediary in order to obtain the file and

information as to the whereabouts of the Estate checking account. After agreeing to meet with his son to turn over the Estate file, the respondent inexplicably cancelled or failed to meet with his son.

Ms. Sisbarro, as Executrix, has been forced to retain counsel at her own expense, has never received her commission or bequest and has a certificate of debt filed on her marital property.

The respondent has stopped working on the file and completely ignores all requests by counsel for the file or for information. This conduct has caused the estate unnecessary costs and expenses.

This office is in the process of trying to obtain bank records, tax information, and other documents necessary to administer this estate.

[Ex.P-9,2-3.]

On December 16, 2013, the DEC secretary sent respondent a copy of Young's grievance and requested his written reply. Respondent neither replied to that letter nor to three similar letters from the first of two DEC investigators assigned to the case.

Thereafter, on January 28, 2015, Office of Attorney Ethics (OAE) Deputy Ethics Counsel, HoeChin Kim, sent respondent a letter notifying him that, based on his own statement that he held the estate's funds in his attorney trust account, the matter had been transferred to the OAE for investigation. The letter requested respondent's written reply

to the grievance, as well as certain trust account bank records, client ledger cards, and other documents.

After respondent communicated with the OAE, Kim and OAE Disciplinary Auditor Alan Fogel met respondent, on March 10, 2015, and drove him to his Somers Point office location to retrieve the estate file.

Thereafter, respondent failed to reply to OAE letters, dated March 10 and April 22, 2015, demanding the previously requested written reply and trust account records.

In a May 27, 2015 letter to the OAE, respondent claimed that, early in the case, he had e-mailed the original DEC investigator a written reply to the grievance, which had explained his retention of an accountant to file estate tax returns for the "missing" years. He believed that the accountant had prepared and filed those returns, and that respondent "probably" received copies of them from the accountant. Respondent testified that he might be able to retrieve the e-mail to the investigator. The record contains no evidence that respondent ever did so. Likewise, respondent produced no documentation regarding his claimed retention of an accountant to file the estate returns.

Respondent did not provide any of the documents that the OAE requested, including client ledger cards and trust and

business account records. The record does not make clear whether respondent actually maintained client ledger cards in his law practice. He was not, however, charged with having violated the recordkeeping Rules.

The OAE subpoenaed respondent's Susquehanna Bank attorney trust account (ATA) and business account (ABA) records for January 1, 2003 through January 1, 2015. Those records showed a balance of about \$38,000 remaining in the ATA at the end of January 2015. Because the OAE had no journals or ledgers from respondent, however, it could not discern to whom those funds belonged. For his part, respondent testified that he did not know to whom the ATA funds belonged. He remarked that he would like to disburse those funds to their rightful owners, if he ever locates his "attorney records."

In October 2015, Kim contacted Young's office for an update on the status of the estate, and was informed that Young had filed tax returns with the State of New Jersey, but that the lien on Sisbarro's personal residence had not yet been lifted. Moreover, Young had not yet located an estate account. Respondent had no information about the resolution of the estate, beyond his hope that Young had completed it. No further update regarding the status of the estate was available.

Finally, respondent testified that he had no active clients as of the date of the DEC hearing. He had informed his few active clients about his stroke, gave them their client files, and told them that he could no longer represent them.

During his summation, respondent reflected upon the representation, noting "I did not do what I was supposed to do in finishing Uncle Tony's estate for Aunt Ann. I am really feeling badly about that. . . . But I don't think that [the presenter], even though she's a very, very good lawyer, has proven my responsibility by clear and convincing evidence." Respondent, thus, requested dismissal of the charges against him.

* * *

At the outset, the hearing panel determined that, on the hearing date, respondent "understood the nature of the complaint, was competent to proceed, and was prepared to represent himself at the hearing."

The DEC concluded that respondent represented the DiLeo estate from 2003 through a portion of 2013, but never distributed the estate assets, in violation of RPC 1.1(a) and RPC 1.3. The panel also concluded that respondent's failure to retain client ledger cards, and to identify to whom the \$38,000

in the trust account belonged, also amounted to a violation of RPC 1.1(a).

From the e-mail correspondence between respondent and Sisbarro, the DEC concluded that respondent had failed to reply to many of Sisbarro's requests for information about the case, and that he had "admitted a lack of timely responses," for which it found a violation of RPC 1.4(b).

In addition, the panel found that respondent failed to comply with Sisbarro's and her attorneys' demands for the return of the estate file, a violation of RPC 1.16(d).

Finally, the panel concluded that respondent failed to cooperate with the ethics investigation. Between December 2013 and January 2016, when the complaint was filed, both the DEC and OAE sent respondent numerous letters requesting a written reply to the grievance, as well as a copy of the estate file. Those letters contained a warning that his failure to reply would result in a failure-to-cooperate charge. Moreover, the OAE had requested information about the estate checking account, but respondent also did not comply with that request.

Because respondent never provided the e-mail reply to the grievance that he claimed to have provided to the DEC investigator early on, the DEC found a violation of RPC 8.1(b).

In mitigation, the panel considered that: (1) respondent ultimately cooperated with the DEC, having answered the complaint, and participated in both pre-hearing conferences and the hearing; (2) he had suffered a stroke; (3) as a result of the stroke, he was unable to return to the practice of law; (4) he expressed remorse; and (5) he has no prior discipline.³

The DEC recommended that respondent receive an admonition.

In a January 18, 2018 letter, the OAE recommended that we impose a reprimand.

* * *

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Although the factual record is somewhat short on detail, the facts are sufficient to establish that respondent violated the Rules of Professional Conduct, largely as they were charged in the complaint.

In respect of gross neglect and lack of diligence, the record is clear that Sisbarro, as executrix of the DiLeo estate, retained respondent in 2003 to probate the decedent's will and to distribute the estate assets. Yet, for the next

³ The DEC is mistaken in this respect. As previously noted, respondent received a private reprimand.

ten years – before he suffered a stroke – respondent failed to do so. Indeed, it appears that respondent never completed or filed New Jersey Inheritance Tax returns, resulting in a lien on Sisbarro's home.

Moreover, respondent never completed the estate distributions, apparently having made just one small, partial distribution early in the case. For his inaction, respondent is guilty of gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively.

The DEC incorrectly found respondent guilty of another instance of gross neglect for his failure to "retain" client ledger cards, and to identify the owners of the \$38,000 held in his trust account. A failure to maintain client ledger cards would constitute a recordkeeping violation under RPC 1.15(d), while failure to identify client funds amounts to a violation of RPC 1.15(a) (failure to safeguard funds). Because the complaint did not charge a violation of RPC 1.15(a) or (d), we did not find those violations. Moreover, RPC 1.1(a) is inapplicable to this conduct; therefore, we dismiss the gross neglect charge as it pertains to respondent's recordkeeping failures.

Respondent also failed to communicate with Sisbarro in two respects. As evidenced by the e-mail correspondence

between them, respondent often failed to reply to his client's e-mail pleas for information, sometimes for months at a time. The first e-mails in the record are from 2010 – seven years into the representation.

On those occasions when respondent did reply to Sisbarro's communications, he gave her no useful information, most often asking for her continued indulgence while he "wrapped things up." Respondent strung Sisbarro along, while doing nothing to keep her reasonably informed about the status of the matter. Finally, after giving respondent ample opportunity to complete the estate, Sisbarro had little choice but to retain new counsel.

At the DEC hearing, respondent had little to add about his communications with Sisbarro, other than to suggest that she had sought to stall the case so that she and the other beneficiaries could keep the estate funds away from a university to whom the decedent may have bequeathed them – an assertion that was unsupported by the record. For his failure to keep his client adequately informed about the happenings in the case, we found respondent guilty of having violated RPC 1.4(b).

The DEC correctly concluded that respondent violated RPC 1.16(d) by his failure to return the estate file to Sisbarro

and her subsequent attorneys, despite their numerous requests. Only with the involvement of the OAE did that occur. Thus, respondent is guilty of having violated RPC 1.16(d).

Likewise, the DEC correctly concluded that respondent failed to cooperate with the ethics investigation. From December 2013 through January 2016, both the DEC and the OAE sent respondent numerous requests for a written reply to the grievance, a copy of the estate file, and information about both the estate checking account and respondent's own attorney books and records. Ultimately, the OAE was compelled to subpoena respondent's trust account records from his bank. Despite respondent's ultimate, partial cooperation, he never provided ethics authorities with critical information necessary to evaluate his representation of the estate, a violation of RPC 8.1(b).

In all, respondent is guilty of having violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 8.1(b), in a single client matter.

Usually, an admonition is imposed for gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities, if the attorney does not have a disciplinary record. See, e.g., In re Gleason, 220 N.J. 350 (2015) (attorney failed to inform his

client that his land use application had been deemed deficient and dismissed by the local planning board; the client learned of the dismissal only after he retained new counsel to pursue the application on his behalf, a violation of RPC 1.4(b); the attorney also ignored the ethics investigator's multiple attempts to obtain a copy of the client's file and failed to file an answer to the complaint, a violation of RPC 8.1(b); the attorney accepted full responsibility for the dismissal of his client's application, refunded his entire legal fee to the client, and had erroneously believed that his reply to the grievance and a subsequent letter to the district ethics committee secretary, admitting the allegations of the complaint, had satisfied his obligation to file a formal answer); In the Matter of Thomas E. Downs, IV, DRB 12-407 (April 19, 2013) (attorney admittedly failed to communicate with his client, a violation of RPC 1.4(b), and, after the grievance was filed, failed to reply to the ethics investigator's numerous attempts to contact him, a violation of RPC 8.1(b); the attorney had an unblemished disciplinary history since his 1975 admission to the New Jersey bar); In the Matter of Howard M. Dorian, DRB 95-216 (August 1, 1995) (attorney did not inform his client that her case had been mistakenly dismissed as settled, took no action to restore it,

did not reply to her inquiries about the matter, failed to withdraw as counsel, delayed the return of her file for almost five months, and failed to cooperate with the investigation of the grievance); and In the Matter of Richard J. Carroll, DRB 95-017 (June 26, 1995) (attorney lacked diligence in handling a personal injury action, failed to properly communicate with the client, and failed to comply with the new lawyer's numerous requests for the return of the file; the attorney also failed to reply to the grievance).

In mild aggravation, respondent has prior discipline - a 1990 private reprimand for a conflict of interest when borrowing \$3,900 from a client. There was, however, another, highly aggravating factor for our consideration. For many years before his stroke, respondent flagrantly disregarded the estate matter, as well as Sisbarro's numerous, desperate pleas for action. Just three years into his tenure as attorney for the estate, the interest on delinquent taxes had climbed to more than \$40,000. Finally, the Division of Taxation lien on Sisbarro's house remained in place as of October 2015.

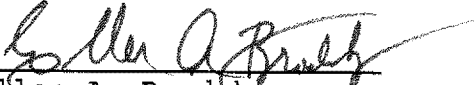
In mitigation, respondent suffered a stroke in 2013 that resulted in his decision to shutter his law practice. He also has expressed remorse for his misconduct.

Nonetheless, respondent caused significant harm, compounded by his having blamed Sisbarro for lack of progress in the estate administration, and his wholly unsupported assertion that she had sought to stall the distribution of estate assets in order to keep them for herself. Thus, in light of the aggravating factors, we determine to impose a reprimand.

Vice-Chair Baugh and Member Gallipoli 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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of C. Peter Burro
Docket No. DRB 17-402

Argued: February 15, 2018

Decided: May 15, 2018

Disposition: Reprimand

<i>Members</i>	Reprimand	Did Not Participate
Frost	X	
Baugh		X
Clark	X	
Boyer	X	
Gallipoli		X
Hoberman	X	
Rivera	X	
Singer	X	
Zmirich	X	
Total:	7	2


Ellen A. Brodsky
Chief Counsel