

Office of Attorney Ethics
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Deputy Ethics Counsel.

OFFICE OF ATTORNEY ETHICS	,	:	
		:	DOCKET NO: XIV-04-257E
Complainant,		:	XIV-06-508E
		:	
vs.		:	DISCIPLINARY ACTION
		:	
MICHAEL J. FIURE, ESQ.		:	
		:	COMPLAINT
Respondent,		:	(Complex Misconduct)

Complainant, Office of Attorney Ethics of the Supreme Court of New Jersey,
Mountain View Office Complex, 840 Bear Tavern Road, P.O. Box 963, Trenton, New Jersey
08625, by way of complaint against Respondent, says:

GENERAL ALLEGATIONS

1. Michael J. Fiure (Respondent) was admitted to the Bar of this State in 1999.
2. Respondent at all times relevant to this complaint maintained a law office at either 501 Main Street, Toms River; 94 East Water Street, Toms River; 815 Boulevard, Toms River, Ocean County, New Jersey or 10 West Bergen Place, Suite 202, Red Bank, or One Harding Road, Suite 106, Red Bank, Monmouth County, New Jersey.

FIRST COUNT
Failure to Communicate; Lack of Diligence
Carlo XIV-2004-0257E

1. Grievant, Marie Carlo retained the law firm of Bray B. Barnes in July 1998 to take over the handling of civil case relating to the construction of the grievant's home and

to file a legal malpractice suit against Anthony S. Amoscato, Esq., the attorney who had previously represented grievant in that matter.

2. Bray Barnes obtained a judgment against one of the contractors, Richard Pesci, had a lien removed from the grievant's property and had a default judgment on a counterclaim vacated.

3. In or about July 2000, Barnes assigned the two matters to Respondent, who was an associate at the firm.

4. At the time Respondent took over handling of the two cases, in the malpractice suit, interrogatories had been exchanged and the grievant had paid for but not yet received an Affidavit of Merit from Attorney Carton.

5. Without grievant's knowledge or consent, Respondent allowed the legal malpractice case against Amoscato to be dismissed with prejudice.

6. Without grievant's knowledge or consent, Respondent agreed to voluntarily dismiss his client's construction case and submit it to binding arbitration.

7. After agreeing to arbitrate the matter, he failed to respond to his adversaries' requests to set an arbitration date, thereby delaying the matter further.

8. None of these actions were advantageous to the grievant.

9. As a result of the foregoing, Respondent violated RPC 1.2(a), RPC 1.3 and RPC 1.4(a).

SECOND COUNT
Failure to Cooperate with Disciplinary Authorities
Carlo XIV-2004-0257E

1. On May 28, 2004, the Office of Attorney Ethics sent Respondent a copy of the Carlo grievance and instructed him to provide a written reply and the original client file within 10 days. (Exhibit 2)
2. Respondent did not provide a written reply to the grievance and did not provide his original client file.
3. On June 24, 2004, the OAE wrote to Respondent again requesting his written response to the Carlo grievance. (Exhibit 3)
4. Again, respondent failed to comply.
5. On April 6, 2005, after Respondent failed to respond to the May 28, 2004 and June 24, 2004 letters, the OAE sent a third letter to Respondent requesting his written response to the Carlo grievance. (Exhibit 4)
6. All of the above referenced letters were sent by both regular and certified mail to Respondent's home address.
7. The April 6, 2005 certified letter was returned unclaimed; the regular mail was not returned and is presumed delivered. (Exhibit 5)
8. On May 16, 2005, the OAE wrote to respondent a fourth time, addressed to his office address, again requesting his written response to the Carlo grievance. (Exhibit 6)
9. Respondent did not provide a written reply to the grievance or communicate with the OAE in any fashion.
10. The OAE telephoned Respondent on August 24, 2005, at which time a meeting was scheduled for September 2, 2005.
11. Respondent appeared at the September 2, 2005 meeting, at which time he agreed to send a written response to the Carlo grievance.

12. Respondent did not provide a written reply to the grievance and did not turn over the original client file.

13. On September 23, 2005, the OAE wrote to Respondent advising that we had not received a response. (Exhibit 7)

14. On October 14, 2005, the OAE telephoned Respondent, who said that he had mailed his written response to the OAE and that he would fax a copy on the morning of October 15, 2005.

15. On October 15, 2005, Respondent telephoned the OAE and said that he was on the road and would fax his response around noon.

16. No response was received.

17. On October 19, 2005 the OAE telephoned Respondent and left a message asking for Respondent to call back.

18. No return call was received.

19. On November 2, 2005, the OAE telephoned Respondent and left a message asking for Respondent to call back.

20. No return call was received.

21. On December 2, 2005 the OAE called the Respondent and left a message asking for Respondent to call back.

22. No return call was received.

23. To date, Respondent has failed to supply a written response to the Carlo grievance.

24. As a result of the foregoing, Respondent's violated RPC 8.1(b) and R. 1:20-3(g)(4).

THIRD COUNT
Gross Negligence; Lack of Diligence; Failure to Communicate;
Terracciano XIV-2006-0508E

1. Ralph Terracciano (hereinafter called grievant) retained Respondent in early June 2001 to represent him in a bankruptcy matter.
2. Grievant paid respondent a retainer in the amount of \$2,000, plus \$200 to cover the filing fee.
3. On September 19, 2001, Respondent wrote to counsel for one of the grievant's creditors to advise of his representation and that he intended to file for Chapter 7 within a week. (Exhibit 8)
4. Grievant made numerous phone calls to respondent requesting information as to the status of his bankruptcy case.
5. Respondent failed and refused to return grievant's telephone calls or to communicate with him in any fashion.
6. With the exception of the one letter referenced above, Respondent did no work on grievant's bankruptcy case.
7. As a result of the foregoing, Respondent violated RPC 1.1(a), RPC 1.3 and RPC 1.4(b).

FOURTH COUNT
Failure to Cooperate with Disciplinary Authorities
Terracciano XIV-2006-0508E

1. On September 3, 2004, a grievance was filed against Respondent by Ralph Terracciano in reference to the mishandling of a bankruptcy matter. (Exhibit 9)
2. On October 8, 2004 District Investigator Judson Barrett sent a letter to Respondent asking for a response to Terracciano's grievance. (Exhibit 10)

3. On December 9, 2004, after Respondent failed to respond to Mr. Barrett's October 8 letter, another letter was sent to Respondent by Mr. Barrett, requesting a response to Mr. Terracciano's grievance. (Exhibit 11)

4. On December 27, 2004, Respondent responded to Mr. Barrett's letter with a letter indicating that he was no longer practicing law and asking for a copy of the grievance to be sent to his home address. (Exhibit 12)

5. In response to Respondent's December 27, 2004 letter, on January 3, 2005, the Terracciano grievance was sent to Respondent's home by Mr. Barrett. (Exhibit 13)

6. After Respondent again failed to respond to Mr. Barrett's January 3 letter another letter was sent to Respondent by Mr. Barrett on January 20, 2005. (Exhibit 14)

7. On January 31, 2005, Respondent sent a letter to Mr. Barrett advising that he and the grievant were discussing settlement and requesting that the matter be held in abeyance. (Exhibit 15)

8. On March 24, 2005, Mr. Barrett wrote to Respondent, advising that a response to the Terracciano grievance was necessary, since the grievant had notified Mr. Barrett that a settlement had not been reached. (Exhibit 16)

9. Investigator Greg Kulinich, of the OAE, finally made contact with the Respondent on August 24, 2005 by telephone, at which time a meeting was scheduled for September 2, 2005.

10. Respondent did appear at the September 2 meeting, at which time he admitted that he had been retained to represent Mr. Terracciano in a bankruptcy matter and that he had taken a \$2,000 retainer.

11. He also admitted that he had done no work on the bankruptcy matter and had not returned the retainer to the grievant.

12. On October 19, 2005 the OAE called the Respondent and left a message asking for Respondent to call back.

13. No return call was received.

14. On November 2, 2005 the OAE called the Respondent and left a message asking for Respondent to call back.

15. No return call was received.

16. On December 2, 2005 the OAE called the Respondent and left a message asking for Respondent to call back.

17. No return call was received

18. On February 6, 2006, Respondent wrote to the OAE to advise that grievant, Terracciano had requested that his grievance be withdrawn, since they had reached a settlement. (Exhibit 17)

19. On February 16, 2006, First Assistant Ethics Counsel, John J. Janasie wrote to Respondent, advising that he was still under investigation, still owed discovery materials to the Office of Attorney Ethics and that failure to provide same would result in a separate ethics violation being charged. (Exhibit 18)

20. To date no response has been heard from Respondent.

21. As a result of the foregoing, Respondent violated RPC 8.1(b) and R. 1:203(g)(4).

WHEREFORE, Respondent should be disciplined.

OFFICE OF ATTORNEY ETHICS

DATE: October 5, 2006

/s/ David E. Johnson Jr.
Director