

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-047
District Docket Nos. XI-2009-032E
and XI-2010-001E

IN THE MATTER OF
NICHOLAS R. MANZI
AN ATTORNEY AT LAW

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Decision

Decided: August 1, 2011

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 XI Ethics Committee (DEC), pursuant to R. 1:20-4(f). The two-count complaint charged respondent with engaging in unethical conduct in two client matters. In the first, he was charged with gross neglect (RPC 1.1(a)), pattern of neglect (RPC 1.1(b)), lack of diligence (RPC 1.3), failure to communicate with the client (RPC 1.4(a) and (b)), making a false

or misleading communication about himself, his services, "or any matter in which the lawyer has or seeks a professional involvement" (RPC 7.1(a)), failure to cooperate with disciplinary authorities (RPC 8.1(b)), and conduct involving dishonesty, fraud, deceit and misrepresentation (RPC 8.4(c)). In the second matter, he was charged with pattern of neglect, lack of diligence, and failure to cooperate with disciplinary authorities. For the reasons set forth below, we determine to impose a three-month suspension on respondent for his unethical conduct.

Respondent was admitted to the New Jersey bar in 1993. He was temporarily suspended on February 9, 2010 for lack of cooperation with disciplinary authorities. He remains suspended.

In July 2010, respondent was censured, in a default matter, for lack of diligence, failure to communicate with his client, and practicing while ineligible. In re Manzi, 202 N.J. 339 (2010). In that matter, respondent allowed his client's complaint to be dismissed, failed to take any steps to have the pleading reinstated, and failed to inform his client of the dismissal, its ramifications, and the options available to him.

Respondent was on the Supreme Court's list of ineligible attorneys due to nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection during the following periods: December 12 to 14, 1994; September 30, 1996 to September 8, 1997; September 21 to 25, 1998; and September 28 to December 10, 2009.

Service of process was proper in this matter. On August 11, 2010, the DEC sent a copy of the formal ethics complaint to respondent's office address, 326 Lafayette Avenue, Hawthorne, New Jersey 07506, and to his home address, 51 Park Avenue, Hawthorne, New Jersey 07506, via regular and certified mail, return receipt requested. On September 25, 2010, the letters sent by certified mail were returned and marked with the following notation: "Return to Sender Unclaimed Unable to Forward." The letters sent by regular mail were not returned.

On September 7, 2010, the DEC sent a letter to respondent at the same addresses, via 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 record would be certified directly to us for the imposition of sanction. The certified letters were returned on September 25, 2010, also marked "Return to Sender Unclaimed

Unable to Forward." The letters sent by regular mail were not returned.

As of November 30, 2010, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default.

The Ketuman Joshi Matter (District Docket No. XI-2010-0001E)

The first count of the complaint alleged that Ketuman Joshi (Joshi) was the sole shareholder and director of Dollar Magic U.S.A., Inc. (Dollar Magic). A company called Forever Beautiful, a Division of ADES Imports, Inc. (Forever Beautiful), sued Dollar Magic for payment of goods that it claimed to have delivered to Dollar Magic, but for which payment was never received. On November 20, 2008, Joshi retained respondent to represent Dollar Magic in the litigation.

During the course of the representation, respondent failed to conduct discovery on behalf of Dollar Magic; failed to comply with Forever Beautiful's discovery requests, even though Joshi had supplied respondent with draft responses to the requests; failed to oppose Forever Beautiful's motion to strike Dollar Magic's answer, which was dismissed, without prejudice, for failure to comply with discovery requests; failed to file a

motion to reinstate the answer, which caused the dismissal to be with prejudice; and "failed to prevent the execution of the goods and chattels of Dollar Magic . . . , causing Joshi to pay a Judgment for the full amount and ultimately obtain a Warrant in Satisfaction of Judgment through his sole efforts." Based on these allegations, the complaint charged respondent with having violated RPC 1.1(a) and RPC 1.3.

The complaint alleged that, at the time that respondent was failing to carry out the duties identified in the above paragraph, he was assuring Joshi that the matter was proceeding in due course and that he was "addressing the issues." Specifically, on two occasions, in 2009, respondent replied to two text messages or emails from Joshi and stated that "he was addressing the investigative issues involving Plaintiff's allegations in its Complaint," and that he had filed a motion to object to the execution of Dollar Magic's goods and chattels. Neither statement was true. Based on these allegations, the complaint charged respondent with having violated RPC 7.1(a) and RPC 8.4(c).

Respondent also was charged with having violated RPC 1.4(a) and (b) by failing to keep Joshi informed about the status of

the litigation and avoiding Joshi's multiple attempts to meet with him, between May and December 2009.

The complaint charged respondent with a pattern of neglect, based on his conduct in this matter "combined with his acts of neglect in three Ethics Proceedings against him"

Finally, respondent was charged with having violated RPC 8.1(b), based on his failure to cooperate with the DEC's investigation, including his failure to reply to the grievance and to the presenter's lawful demands for information about the grievance.

The Alicia Mandel Matter (District Docket No. XI-2009-032E)

The second count of the complaint alleged that, on February 18, 2005, Alicia Mandel (Mandel) retained respondent to represent her in connection with injuries sustained on January 25, 2005, as the result of a slip-and-fall accident at the Bergen Mall. According to the complaint, respondent "failed to keep . . . Mandel adequately and accurately informed of all proceedings which materially affected her legal rights and

interests, as well as her ability to make decisions concerning the handling of her case." Based on these facts, respondent was charged with having violated RPC 1.4(b).¹

The complaint also asserted that respondent inordinately and unreasonably delayed complying with discovery requests, a violation of RPC 1.3, thereby causing the dismissal of Mandel's complaint.

For the same reasons alleged in the first count of the complaint, respondent was charged with having violated RPC 1.1(b) (pattern of neglect) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

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).

¹ We note that the words "her ability to make decisions concerning the handling of her case" suggests a violation of RPC 1.4(c), which requires a lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." However, the complaint did not charge respondent with a violation of this paragraph.

In the Joshi matter, the allegations of the complaint support a finding that respondent grossly neglected and lacked diligence in handling the Magic Dollar matter. After Joshi retained respondent in November 2008, he did nothing beyond filing an answer to Forever Beautiful's complaint on behalf of Magic Dollar. He did not comply with Forever Beautiful's discovery requests, which led to the striking of Magic Dollar's answer to the complaint, with prejudice. Ultimately, Joshi was required to pay the judgment obtained by Forever Beautiful, and get a warrant to satisfy a judgment, which he did on his own.

The allegations of the complaint do not, however, support a finding that respondent engaged in a pattern of neglect, a violation of RPC 1.1(b). It is well-established that a pattern of neglect requires three acts of either gross or simple neglect. See, e.g., In re Rohan, 184 N.J. 287 (2005); In re McClure, 180 N.J. 154 (2004); and In re Nielsen, 180 N.J. 301 (2004).

Although the complaint makes reference to "three Ethics Proceedings against him," respondent was neither charged with nor found guilty of gross neglect in the matter leading to the 2010 censure. In addition, he was not charged with gross

neglect in the Mandel matter. Thus, there is no basis for us to find that respondent engaged in a pattern of neglect.

Respondent's failure to keep Joshi informed about the status of the litigation, coupled with his avoidance of Joshi's multiple attempts to meet with him, between May and December 2009, constituted a violation of RPC 1.4(b), but not RPC 1.4(a).

The current version of RPC 1.4 provides:

(a) A lawyer shall fully inform a prospective client of how, when, and where the client may communicate with the lawyer.

(b) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

In this case, respondent failed to inform Joshi of any developments. He also failed to comply with Joshi's multiple requests to meet with him. These facts support a finding that respondent violated RPC 1.4(b).

On the other hand, nothing in the complaint suggests that Joshi could not communicate with respondent. To the contrary, the complaint alleges that respondent and Joshi were in communication during the course of the representation, particularly through email and text messaging. Thus, there is

no basis for us to determine, based on the allegations of the complaint, that respondent violated RPC 1.4(a).

As to the charged violation of RPC 8.4(c), the allegations of the complaint amply support a finding that respondent violated that rule. Respondent told Joshi that he was "addressing the issues," and that the matter was proceeding in due course, when the opposite was true. He went so far as to assure Joshi that he had filed an objection to Forever Beautiful's attempted execution on Dollar Magic's goods and chattels, a statement that was patently false. This conduct was in clear violation of RPC 8.4(c).

Respondent's falsehoods did not, however, violate RPC 7.1(a). Although that rule forbids attorneys from making "false or misleading communications" about themselves, their services, or "any matter" in which they have or seek to have professional involvement, the context of its application typically involves representations made on an attorney's letterhead or sign. In other words, it is applicable to general misrepresentations made to "the world," rather than specific misrepresentations made to actual clients.

Finally, the allegations of the complaint support the finding that respondent failed to cooperate with disciplinary

authorities. Specifically, he did not reply to the grievances and did not reply to the investigator's requests for information about the grievant. RPC 8.1(b) expressly states that a lawyer who is the subject of a disciplinary matter shall not "knowingly fail to respond to a lawful demand for information from . . . [a] disciplinary authority." Respondent violated this rule when he ignored the grievance and the DEC's efforts to investigate it.

In the Mandel matter, the allegations of the complaint support a finding that respondent lacked diligence (RPC 1.3) in his handling of the Alicia Mandel matter, insofar as his failure to comply with the adversary's discovery requests resulted in the dismissal of Mandel's complaint. Moreover, he failed to inform his client of the dismissal of her complaint, a violation of RPC 1.4(b). Finally, respondent violated RPC 8.1(b) because he failed to reply to the grievance and to comply with the investigator's demands for information about the grievance.

For the reasons expressed in the analysis of the Joshi matter, respondent did not engage in a pattern of neglect (RPC 1.1(b)).

There remains for consideration the measure of discipline to be imposed for respondent's ethics violations. The Court

"has consistently held that intentionally misrepresenting the status of lawsuits warrants public reprimand." In re Kasdan, 115 N. J. 472, 488 (1989). So long as the attorney has not defaulted and has no ethics history, this is typically the discipline imposed even where, in addition to the misrepresentation, the attorney has engaged in gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities. See, e.g., In re Wiewiorka, 179 N.J. 225 (2004) (attorney reprimanded for gross neglect, lack of diligence, failure to communicate with the client, and conduct involving misrepresentation in one client matter where he was hired to investigate a personal injury claim for the purpose of a possible lawsuit but failed to return phone calls and told the client that he had filed suit when he had not and the statute of limitations had expired) and In re Porwich, 159 N.J. 511 (1999) (reprimand imposed upon attorney who admitted to gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with ethics authorities in two client matters; in addition, we found that attorney misrepresented to the client that he had filed suit). Thus, the starting point

for determining the discipline to impose on respondent in this matter is a reprimand.

However, two aggravating factors require that the otherwise appropriate form of discipline be elevated to two higher degrees. First, respondent has an ethics history. In 2010, he received a censure for lack of diligence and failure to communicate with a client, as well as practicing while ineligible. Inasmuch as he has lacked diligence and failed to communicate with two clients in the matter now before us, respondent has demonstrated that he is either unable or unwilling to learn from his prior mistakes. Second, he has defaulted in this matter, as he did in the 2010 disciplinary action. In re Kivler, 193 N.J. 332, 342 (2008) ("a respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced"). We, therefore, determine that the imposition of a three-month suspension is required.

Member Baugh 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
Julianne K. DeCore
Chief Counsel

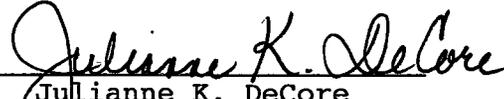
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Nicholas R. Manzi
Docket No. DRB 11-047

Decided: August 1, 2011

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh						X
Clark		X				
Doremus		X				
Stanton		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		8				1


Julianne K. DeCore
Chief Counsel