SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-309
District Docket Nos. IIIA-02-026E and
IIIA-02-013E

IN THE MATTER OF	:
	:
EDWARD BASAMAN	:
	:
AN ATTORNEY AT LAW	:

Decision

Argued: November 18, 2004

Decided:

Suzanne M. Jorgensen appeared on behalf of the District IIIA Ethics Committee.

Respondent did not appear for oral argument, despite proper notice.

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

These matters were before us on a recommendation for discipline filed by the District IIIA Ethics Committee ("DEC"). The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect),[1] RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with the

[1] This charge encompasses matters for which respondent had been previously disciplined in 2002.

client) and RPC 8.1(b) (failure to cooperate with disciplinary authorities) in the DiBiasi matter, and RPC 8.1(b) in the Ratchford matter.

On September 7, 2003, respondent forwarded a letter to the DEC secretary requesting that a special master be appointed to preside over this proceeding, based on respondent's concerns about the handling of his other disciplinary matters. Indeed, several exhibits herein are communications from respondent in which he accused a member of the OAE staff, a DEC member, and former Disciplinary Review Board Chair Rocky L. Peterson of misconduct in his earlier disciplinary matters. Respondent's contentions in this regard are not germane to the present matter, which proceeded before a hearing panel.[2]

By e-mail on December 7, 2003, respondent advised the DEC that he was traveling in Asia, where he would be spending winters due to health concerns from chronic lung disease. Thereafter, by e-mail dated January 15, 2004, respondent indicated that he would be in the United States for approximately three weeks beginning on January 17, 2004, and

[2] Also not discussed herein is additional communication between the parties regarding a pre-hearing conference that did not occur and a discovery request with which respondent did not comply.

that discovery would be provided within a few days of his arrival. Discovery was not provided.

By letter dated March 24, 2004, respondent was advised that the hearing would be held on April 30, 2004. The letter was sent via e-mail and certified and regular mail. According to the hearing panel report, the certified mail was accepted by "J. Basaman." On April 29, 2004, one day before the scheduled hearing, respondent sent an e-mail to the presenter, stating:

> It has been brought to my attention that the District IIIA panel intends to hold a hearing on April 30th. I am currently in Bangkok Thailand and will not be returning to the United States until after May 16th. I was in the US briefly from January 17th, 2004 until February 10th but I spent most of my time at my home in Charleston, SC. In any event, I waive my right to participate at the hearing, however, I would like to make a few legal points and will submit them for you by 8:30 AM on April 30th, 2004. I will try to obtain the Chairman of the Hearing Panel's email address, but if I can't I would appreciate it if you would forward this email.
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> [Ex.A-29.]

On April 30, 2004, respondent sent an e-mail setting forth additional information he wanted to bring to the panel's attention, as seen below.

Respondent was admitted to the New Jersey bar in 1991. In 2003, he was suspended for three months for gross neglect and misrepresentation in two client matters. In a third matter, he

failed to communicate with the client. In re Basaman, 176 N.J. 517 (2003). He has not applied for reinstatement.

The DeMasi Matter (District Docket No. IIIA-02-026E)

In 1998, respondent was retained to represent KWA Partnership ("KWA") and partners William DeMasi, Kim Farrella (Farella), and Anthony Ferro in defense of a collection matter.[3] DeMasi and his partners paid respondent $1,200. According to DeMasi, it was agreed that he would be the "contact person" during the representation.

In April 1999 and September 1999, the court entered orders striking defendants' answer and suppressing defenses without prejudice.[4] A third order was entered in December 1999, disposing of the action. The stated reason was "SETTLED BY STAT.ARB./50 DAY DISMISSAL." Ultimately, judgment was entered against Joseph Farrella, DeMasi, Ferro, and KWA for the full amount sought in the complaint.

According to DeMasi, other than a copy of the answer that respondent filed, he was never provided with any documents

[3] Joseph Farrella was incorrectly included in the lawsuit, which should have proceeded against his wife, Kim Farrella. Neither of the Farellas nor Ferro's estate were involved in the ethics proceeding.

[4] The April 1999 order stated that it was entered for failure to answer interrogatories and comply with a notice to produce.

during the litigation and had no communication with respondent. Farrella never discussed with him any communication she had with respondent about the lawsuit.

DeMasi was unaware that a judgment had been entered against him until he received the results of an unrelated title search sometime later. DeMasi spoke with Farrella after he learned of the judgment. He was unable to state with certainty whether she did or did not already know of the judgment at the time of their conversation. After learning of the judgment, DeMasi attempted without success to contact respondent. It appears that he did not attempt to contact respondent about the status of the proceeding until he learned of the judgment.

In his answer, respondent contended that Farrella was the "contact person" for the partnership. He explained that he had been representing Farrella in a number of other matters when he was retained to represent KWA and that he was in contact with her about those matters and the KWA matter through February 1999. Respondent added that he told Farrella that KWA had no defense in the collection matter.

According to respondent, during the course of his representation, discoveries made about actions taken by Farrella placed him in a conflict of interest situation. Respondent ceased his representation of KWA and the partners in February

1999. According to respondent, at that time, he disclosed the conflict to the partners by correspondence directed to their mailing address. Respondent did not provide a copy of that letter. DeMasi testified that he never received such a letter, and that Farrella never advised him that respondent could no longer represent her.

In his answer, respondent also stated that, shortly after he advised Farrella that he could not represent her or her partners, he was contacted by the attorney who took over the Farrella matters in which he had been involved. Respondent stated that he was not counsel for KWA in September 1999, and had no recollection of receiving any documents from the court. He admitted receipt of a phone call from DeMasi, but stated that he left a message advising that he could not communicate with him.

In the e-mail respondent sent on the day of the DEC hearing, he supplied additional information about the schism with Farrella and also called "specious" DeMasi's claim that he learned that his legal action was concluded three years after it occurred.

The hearing panel noted that apparently respondent did not file a substitution of attorney and remained the attorney of record in the case. There were no indications that respondent

had filed a motion to withdraw as counsel or that he had taken steps to ensure that the matter was properly transferred to substitute counsel.

The Ratchford Matter (District Docket No. IIIA-02-013E)

Stephanie Ratchford filed a grievance against respondent in April 2002, alleging that he had neglected her bankruptcy proceeding. The DEC investigator's review of the underlying bankruptcy file revealed that respondent had not mishandled the Ratchford matter.

The only allegation in the complaint arose from respondent's failure to cooperate with the DEC during the underlying investigation. That dereliction is discussed below.

Failure to Cooperate (DeMasi and Ratchford)

In October 2002, the DeMasi grievance was forwarded to respondent at his home address. The following month, the Ratchford grievance was sent to respondent. Respondent did not reply to both grievances. In November 2002, the investigator again requested a reply to the grievances. In December 2002, the investigator had a telephone conversation with respondent, during which respondent stated that he would file a reply. The investigator confirmed that conversation by letter in December

2002. The investigator received no information from respondent, requiring her to travel to Trenton to review the Ratchford file and to the Ocean County courthouse to review the DeMasi file.

The formal ethics complaint was served on respondent in February 2003. He did not timely file an answer. In May 2003, the DEC secretary sent respondent a five-day letter advising him that the filing of an answer was mandatory, and amending the complaint to charge him with a violation of RPC 8.1(b), based on his failure to file an answer to the complaint. Shortly thereafter, respondent filed an unverified answer.

With regard to his failure to reply to the DEC, respondent answered:

> Respondent admits being served with a copy of the complaint at his home. Respondent admits receipt of the grievances and that he was telephoned. Respondent admits not filing an Answer but denies that any of the rules covering ethic complaints are mandatory. Respondent admits that, in theory, said rules 'appear' mandatory, respondent has learned that in practice, the rules governing ethic complaints are disregarded, and that both local ethic committee members, and employees of the Office of Attorney Ethic [sic] routinely violate the rules which appear mandatory.
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> (Ex.A-6;Ct1¶6)[5].

In respondent's submission to the DEC on the day of the DEC hearing, he addressed his failure to reply in Ratchford, stating: "I am not being sarcastic but to suggest that I should

[5] Ct1 refers to count one of respondent's answer.

be disciplined for not cooperating in the investigation of a frivolous grievance is mind boogling [sic]."

The DEC found it incredible that DeMasi did not know that respondent was no longer representing the partners and KWA, based upon the length of time between the initial meeting in November 1998, and the discovery of the judgment in 2002. If DeMasi was the contact person, there would have been some effort by him to get in touch with respondent after the first meeting. In the DEC's view, however, respondent had a duty to the individual partners to ensure that the matter was properly handled in the court by filing either a substitution of attorney or a motion to withdraw. His failure to file a substitution of attorney, standing alone, did not, in the DEC's view, constitute gross neglect. That dereliction, however, coupled with his failure to notify counsel for the plaintiff or the court that he was no longer representing the parties after filing an answer, and his failure to forward discovery, orders of dismissal, and the order of final judgment "constituted gross negligence a violation of R.P.C. 1.4(a) which resulted in judgment being entered against the individuals."

The DEC further found that respondent failed to cooperate with disciplinary authorities, a violation of RPC 8.1(b), in

both matters. The DEC did not find clear and convincing evidence to support the remaining charges.

In determining the appropriate measure of discipline, the DEC considered the following aggravating factors:

> Hostility to ethical standards, Matter of Peia, 111 N.J. 318 (1988); Matter of Cohen, 120 N.J. 304 (1990); Failure to cooperate with ethics authorities: Matter of Cohen, 120 N.J. 304 (1990); Matter of Yetman, 113 N.J. 556 (1989); Prior Disciplinary actions taken against attorney; In re Pena, 164 N.J. 222,233 (2000); Matter of Youmans, 118 N.J. 622 (1990).
>
> [HPR12-HPR13.][6]

In mitigation, the DEC considered respondent's above-mentioned medical condition.

The DEC recommended the imposition of a reprimand.

Upon a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

The DEC was correct in finding a violation of RPC 8.1(b) in both matters. Respondent's contention that the rules governing these proceedings are not mandatory, are without merit. His argument that he should not be disciplined for failing to reply to a frivolous grievance (Ratchford) also misses the mark. Had respondent replied to the grievance, the time and effort put

[6] HPR refers to the hearing panel report, dated July 2, 2004.

into investigating and trying the matter would have been saved. Hence the requirement that he reply to the grievance and to the presenter's requests for information, even in what he deemed a frivolous matter.

As to respondent's misconduct in DeMasi, there is no indication in the record why the presenter did not call Farrella as a witness. Her testimony would have resolved the question of who the "contact person" was for the collection proceeding, and whether respondent advised KWA's partners that he was withdrawing from the representation. We were, thus, faced with a "he said/he said" situation, which could not be resolved on this record. We, therefore, dismiss the allegation of gross neglect. Respondent was also charged with a pattern of neglect, when the prior matters for which he was already disciplined are considered in conjunction with these matters. Because a finding of a pattern of neglect may, at times, enhance the appropriate measure of discipline and because discipline for respondent's conduct in the prior matter has already been set and served, we decline to make a finding now that could perhaps result in elevating the quantum of discipline for the within conduct another notch. We, therefore, dismiss the charged violation of RPC 1.1(b).

What remains is that respondent did not take the necessary steps to withdraw from the matter. He should have been charged with violating RPC 1.16(d) for failure to properly terminate his representation. We are, however, reluctant to amend the complaint to conform to the proofs at this time, particularly because respondent was not at the DEC hearing or at oral argument before us. His failure to take the steps necessary to terminate his representation, thus, constituted a lack of diligence, a violation of RPC 1.3.

In sum, respondent was guilty of lack of diligence in DeMasi and failure to cooperate with the DEC in DeMasi and Ratchford. Without more, those violations would merit the imposition of an admonition. See, e.g., In the Matter of Philip A. Machlin, Docket No. DRB 03-199 (August 5, 2003) (failure to communicate in a claim for property damage and failure to cooperate with disciplinary authorities merited admonition; no prior discipline); In the Matter of Frederick M. Testa, Docket No. DRB 01-319 (March 12, 2002) (admonition for lack of diligence in an estate matter and failure to cooperate with the DEC; prior admonition); In the Matter of Lenora Marshall, Docket No. DRB 01-207 (September 26, 2001) (admonition for lack of diligence and failure to communicate with disciplinary authorities; no prior discipline); and In the Matter of Michael

A. Nelson, Docket No. DRB 99-045 (June 21, 2000) (admonition for lack of diligence and failure to communicate in a criminal matter, and failure to properly withdraw from representation in a second matter; no prior discipline).

Here, respondent's misconduct in the DeMasi matter occurred before the imposition of his prior three-month suspension. Thus, we cannot say that he failed to learn from his mistakes. The larger problem is his failure to cooperate with the DEC. Although that violation was not charged in respondent's prior matter, having been through the ethics system respondent had to know the obligation of cooperating with the DEC. Even if the Ratchford claim were without merit, had respondent replied to the presenter's requests for information that matter would not have been before us now.

One more point warrants mention. As noted above, respondent stated that he suffers from chronic lung disease, which was considered by the DEC as a mitigating factor. Our decision in respondent's earlier matter noted, "Respondent stated below that an illness suffered by his daughter took a great deal of his time and energy. Since he presented no evidence about this circumstance, it has not been considered as a mitigating factor." Respondent was, therefore, on notice that, if he wanted his illness to be considered in mitigation,

he was required to produce evidence of the condition. This he failed to do. We are unable, thus, to take his illness into account as a mitigating factor.

When respondent's lack of diligence in DeMasi and failure to cooperate with ethics authorities in DeMasi and Ratchford are viewed in conjunction with his prior three-month suspension, we determine that a reprimand is warranted.

Chair Mary J. Maudsley did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
William J. O'Shaughnessy
Vice-Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Edward T. Basaman
Docket No. DRB 04-309

Argued: November 18, 2004

Decided: December 14, 2004

Disposition: Reprimand

Members	Suspension	Reprimand	Admonition	Disqualified	Did not participate
Maudsley					X
O'Shaughnessy		X			
Boylan		X			
Holmes		X			
Lolla		X			
Pashman		X			
Schwartz		X			
Stanton		X			
Wissinger		X			
Total:		8			1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel