SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-221
District Docket No. IIA-09-0014E

IN THE MATTER OF	:
HAMDI M. RIFAI	:
AN ATTORNEY AT LAW	:

Decision

Decided: October 26, 2010

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 IIA Ethics Committee (DEC), pursuant to R. 1:20-4(f). The complaint charged respondent with violating RPC 3.2 (failure to treat with courtesy and consideration all persons involved in the legal process and failure to expedite litigation), RPC 4.4, presumably (a) (failure to respect the rights of third persons by using means that have no substantial purpose other than to embarrass, delay or burden a third person), RPC 8.1, presumably (b) (failure to reply to reasonable requests for information from a disciplinary authority), and RPC

8.4, presumably (d) (conduct prejudicial to the administration of justice).

At the eleventh hour, respondent filed a motion to vacate the default. Upon review of his motion, the DEC investigator's reply and respondent's additional submission, we determine to deny the motion and to impose discipline.

For the reasons expressed below, we determine that a three-month suspension and a referral to the appropriate County Bar Association Committee on Professionalism are necessary measures to protect the public.

Respondent was admitted to the New Jersey bar in 1994. He maintains a law office in Rochelle Park, New Jersey.

In 2002, respondent was reprimanded, on a motion for discipline by consent, for his conduct in a complex litigation matter that he had taken over from another law firm. Some problems arose during the transition period, for which respondent was not responsible. However, afterwards, his inaction led to the filing of default judgments and enforcement actions against his clients. Eventually, respondent obtained an order vacating the default judgments. After the court granted the plaintiff's unopposed motion to dismiss the defendants' counterclaim and answer without prejudice, respondent's clients retained new counsel. Respondent, however, would not turn over

the file to the new attorney. Respondent's misconduct included gross neglect, lack of diligence, failure to communicate with the clients, and failure to protect the clients' interests on termination of the representation. In re Rifai, 171 N.J. 435 (2002).

In 2007, respondent was again reprimanded, this time for negligent misappropriation of trust funds and recordkeeping violations. In re Rifai, 189 N.J. 205 (2007).[1]

Service of process was proper. On May 4, 2010, the DEC secretary mailed a copy of the complaint by regular and certified mail to respondent's office at 87 West Passaic Street, Rochelle Park, New Jersey, 07662. The certified mail receipt indicated delivery on May 6, 2010. The signature of the recipient was illegible. The regular mail was not returned.

On June 1, 2010, the DEC secretary mailed a second letter to respondent, by regular mail, advising him that, if he did not file a verified answer within five days of the date of the

[1] A matter currently pending against respondent was previously before us as a default (DRB 09-034) at our May 21, 2009 session. At that time, we granted respondent's motion to vacate the default. After respondent had received several extensions to file the answer, he eventually did so, but late. He also failed to verify his answer. On the same day that he filed the answer, the DEC sent him a letter giving him five days to submit a verification. Respondent complied, but only after the DEC had certified the matter to us as a default.

letter, the matter would be certified to us for the imposition of discipline and the complaint would be deemed amended to include a willful violation of RPC 8.1(b). As of the date of the certification of the record, June 15, 2010, respondent had not filed an answer.

As indicated above, in a letter dated September 9, 2010, respondent filed what purported to be a motion to vacate the default, which was not verified. To prevail on such a motion, an attorney must satisfy a two-pronged test: (1) address, in detail, why the attorney failed to file an answer and (2) present specific and meritorious defenses to the charges.

Respondent's two-page letter was filed three days after the due date of the motion. Respondent requested that we, nevertheless, consider his request because, when he diaried the motion, he did not realize that the due date was Labor Day. We note that, by letter dated July 23, 2010, sent by certified and regular mail to his 87 W. Passaic Street, Rochelle Park, New Jersey 07662 address, Office of Board Counsel gave respondent notice of the default and the September 6, 2010 deadline to file a motion. Also, on August 23, 2010, notice by publication was made in the New Jersey Law Journal. Respondent, therefore, had ample notice and ample opportunity to file a timely motion to

vacate the default. Despite respondent's failure to comply with our deadline, however, we address his unverified assertions.

Our review of respondent's motion showed that his efforts at formulating a comprehensible argument in support the motion were flawed. He maintained that

> service of the papers in support of the request for entry of default were served upon my office during a time when it was under construction and some of the mail was being incorrectly delivered to our old office with the same address as the new office. The new office has the same mailing address of [sic] the old office and was under construction during that time.

Apparently, respondent claimed that there was some confusion over the new division of office space among three tenants, that "much" of the mail was delivered incorrectly, and not all of the postal carriers were familiar with the changes in the office space.

As the DEC properly noted in its objection to respondent's motion, respondent alleged, without support, that he did not receive "some of his mail" and that he did not receive the documents in connection with "the request for entry of the default." He did not specifically state that he did not receive the complaint. We note that the complaint was sent to him via certified and regular mail, on May 4, 2010, and that it was received on May 6, 2010. Even if respondent were having trouble

with the receipt of his mail, it defies logic that he would not have routinely checked with the other tenants to determine whether they had improperly received his mail, or that the other tenants would not have routinely turned over his mail, in light of the dire consequences surrounding improper handling of the U.S. mail.

Although the Court rules do not require it, the DEC sent respondent a second letter to notify him that, if he did not file an answer within five days, the matter would be certified to us as a default. It appears that it was this notice that respondent claims he did not receive. Because Office of Board Counsel served respondent with notice of the default proceedings at the same address utilized by the DEC, we find respondent's arguments suspect and reject his reasons for not filing an answer to the complaint.

As to respondent's meritorious defense to the charges, he simply denied the allegations of the complaint, suggesting that they were "non-meritorious" and stating that he had ordered the transcripts from the trial to demonstrate the "lack of truth" contained in the complaint. Respondent added that, if there had been any truth to the allegation that he had pushed a police officer, he would have been charged criminally. As the DEC

properly noted, however, and we agree, respondent's unethical conduct would not have been captured in the trial transcripts.

Respondent did not address the other allegations in the complaint (delaying the trial, making discourteous comments to the prosecutor, and failing to cooperate with the DEC investigation).

Based on the foregoing, we find that respondent failed to meet the two-pronged test and deny his motion to vacate the default.

The conduct that gave rise to this disciplinary matter was as follows: Respondent represented a defendant in a protracted municipal court trial. In his discussions with the municipal prosecutor, respondent referred to the prosecutor as, among other things, "an 'idiot'." In addition, on a break during the lengthy trial, respondent forcefully bumped into an investigating officer, while walking past her.

Respondent also repeatedly had the trial postponed, claiming that he was delayed by traffic or a motor vehicle accident. On one occasion, the trial was postponed, when respondent claimed that there had been an accident on the New Jersey Turnpike. A subsequent DEC investigation established that no accidents had occurred on the Turnpike at the alleged time.

When the DEC investigator contacted respondent for information about the grievance, respondent "raised his voice, challenged the DEC's authority to investigate the grievance, and was extremely uncooperative and belligerent."

As indicated previously, the complaint charged that respondent violated RPC 3.2, by failing to treat with courtesy and consideration all persons involved in the legal process and failing to expedite litigation by unnecessarily delaying a municipal trial; RPC 4.4, by failing to respect the rights of third persons, an investigating police officer and a municipal prosecutor; RPC 8.4, by engaging in conduct prejudicial to the administration of justice by unnecessarily delaying a trial, pushing a witness, and referring to the prosecutor as an idiot; and RPC 8.1 and RPC 8.4, by knowingly failing to cooperate with and/or reply to a lawful demand for information from a disciplinary authority.

We find that the facts recited in the complaint support the charges of unethical conduct. We deem respondent's failure to file an answer 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).

By calling the prosecutor an idiot and pushing the police officer, who was a witness at the trial, respondent violated RPC

3.2; his comment to the prosecutor violated RPC 4.4(a), which prohibits attorneys from using means that have no substantial purpose other than to embarrass, delay or burden a third person; his tactics to delay the trial violated RPC 3.2 (failure to expedite litigation) and RPC 8.4(d) (conduct prejudicial to the administration of justice); and his failure to cooperate with the DEC's investigation and his failure to file a verified answer to the ethics complaint violated RPC 8.1(b).

The only issue left for consideration is the proper quantum of discipline. Attorneys who have displayed discourteous conduct toward persons involved in the legal process have received admonitions or reprimands. See, e.g., In re Gahles, 182 N.J. 311 (2005) (admonition for attorney who, during oral argument in a matrimonial motion, made rude and degrading statements about an opposing party, her client's wife; the attorney called her a "con-artist," "crazy," a "liar" and a "fraud;" other comments were "this is a person who cries out to be assaulted" and "somebody has to, like put her in jail or put her in the loony bin;" we took into account that the statements may have been made with the dual purpose of acquainting the new judge assigned to the matter with the allegedly obstreperous and harmful conduct the wife exhibited during the lengthy divorce proceeding and advancing her client's interests; the attorney had a prior

reprimand); In the Matter of Alfred Sanderson, DRB 01-412 (February 11, 2002) (admonition for attorney who, in the course of representing a client charged with DWI, made discourteous and disrespectful communications to the municipal court judge and to the municipal court administrator; in a letter to the judge, the attorney wrote: "How fortunate I am to deal with you. I lose a motion I haven't had [sic] made. Frankly, I am sick and tired of your pro-prosecution cant . . . . It is not lost on me that in 1996 your little court convicted 41 percent of the persons accused of DWI in Salem County. The explanation for this abnormality should even occur to you."); and In the Matter of John J. Novak, DRB 96-094 (May 21, 1996) (admonition imposed on attorney who engaged in a verbal exchange with a judge's secretary; the attorney stipulated that the exchange involved "loud, verbally aggressive, improper and obnoxious language" on his part); In re Zeigler, 199 N.J. 123 (2008) (reprimand for attorney who told the wife of a client in a domestic relations matter that she should be "cut up into little pieces . . . put in a box and sent back to India;" and in a letter to his adversary, the attorney accused her client of being an "unmitigated liar," threatened that he would prove it and have her punished for perjury, and threatened his adversary with a "Battle Royale" and ethics charges; mitigating factors included

that the attorney had an otherwise unblemished forty-year ethics history, that he recognized that his conduct had been intemperate, and that the incident had occurred seven years earlier); In re Geller, 177 N.J. 505 (2003) (reprimand for attorney who filed baseless motions accusing judges of bias against him; failed to expedite litigation and to treat with courtesy judges, his adversary, the opposing party, an unrelated litigant, and a court-appointed custody evaluator; failed to comply with court orders (at times defiantly) and with the disciplinary special master's direction not to contact a judge; used means intended to delay, embarrass or burden third parties; made serious charges against two judges without any reasonable basis; made unprofessional and demeaning remarks toward the other party and opposing counsel; and made a discriminatory remark about a judge; in mitigation, the attorney's conduct occurred in the course of his own child custody case); In re Milita, 177 N.J. 1 (2003) (reprimand for attorney who wrote an insulting letter to his client's former paramour, the complaining witness in a criminal matter involving the client; he accused her of giving false information about his client to the county prosecutor's office; an aggravating factor was the attorney's prior six-month suspension for misconduct in criminal pre-trial negotiations and for his deceitful method of obtaining

information to assist a client); and In re Stanley, 102 N.J. 244 (1986) (reprimand for attorney who engaged in shouting and other discourteous behavior toward the court in three cases; in mitigation, the attorney was retired from the practice of law at the time of discipline, had no disciplinary record, and did not injure anyone by his conduct).

As to an RPC 8.1(b) violation, if the attorney has been disciplined before, but the attorney's ethics record is not serious, then a reprimand has been imposed. See, e.g., In re Wood, 175 N.J. 586 (2003) (attorney failed to cooperate with disciplinary authorities; prior admonition for similar conduct); In re DeBosh, 174 N.J. 336 (2002) (failure to cooperate with disciplinary authorities; prior three-month suspension); and In re Williamson, 152 N.J. 489 (1998) (attorney failed to cooperate with disciplinary authorities; prior private reprimand for failure to carry out a contract of employment with a client in a matrimonial matter and failure to surrender the client's file to a new attorney).

Based on the cited precedent, respondent's infractions alone warrant a reprimand. However, under the totality of circumstances -- respondent's misconduct in this case, his two prior reprimands, the default nature of these proceedings, and his failure to appreciate the seriousness of his misconduct --

we find that nothing short of a three-month suspension is warranted here.

We also determine to refer respondent to the appropriate County Bar Association Committee on Professionalism for an assessment and, if the Committee finds it appropriate, for the development of a program to assist him in developing and maintaining courtesy and civility in his professional dealings with others, which may also include the appointment of a mentor.

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 Hamdi M. Rifai
Docket No. DRB 10-221

Decided: October 26, 2010

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:		9				

Julianne K. DeCore
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Chief Counsel