

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket Nos. DRB 10-246 and 10-260  
District Docket Nos. IIB-2010-0001E  
and IIB-2010-0002E

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IN THE MATTERS OF  
SAMUEL RAK  
AN ATTORNEY AT LAW

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Decision

Decided: December 15, 2010

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

These matters were before us on two separate certifications  
of default filed by the District IIB Ethics Committee (DEC),  
pursuant to R. 1:20-4(f). Two complaints charged respondent with  
having violated RPC 1.1, presumably (a) (gross neglect) and (b)  
(pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4,  
presumably (b) (failure to comply with the client's reasonable  
requests for information), and R. 1:20-3 (g) (3) and (4), more

properly RPC 8.1(b) (failure to cooperate with disciplinary authorities).

Respondent was admitted to the New Jersey bar in 1985. On September 10, 2010, he was reprimanded for gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with an ethics investigation. In re Rak, 203 N.J. 381 (2010) (the Nasseripour matter).

I. **The Caracciolo Matter – Docket No. DRB 10-246 (District Docket No. IIB-2010-0001E)**

Service of process was proper in this matter. On June 15, 2010, the DEC sent a copy of the complaint to respondent by both certified and regular mail, pursuant to R. 1:20-4(d), at his office address, 135 Fort Lee Road, Leonia, New Jersey 07605.

According to the certification of service, the certified mail card was returned indicating receipt, on June 18, 2010, by "S. Cohen." The regular mail was not returned.

On July 9, 2010, the DEC sent respondent a "five-day" letter, notifying him that, unless he filed an answer to the complaint within five days of the date of the letter, the matter would be certified directly to us, pursuant to R. 1:20-4(f). The letter was sent by regular mail to respondent's Fort Lee Road

office address. The certification is silent about the delivery status of the letter.

Respondent did not file an answer to the complaint.

At a time not specified in the complaint, respondent was retained by Michael Caracciolo to file a bankruptcy petition. At the initial meeting with respondent, Caracciolo gave him "all but \$300 of the required fee, which was due, and was paid on the date of the court appearance."

Respondent did not file the bankruptcy petition for eleven months thereafter. When Caracciolo telephoned respondent about delays in the case, respondent failed to return those calls. On those occasions when Caracciolo met with respondent to discuss the case, respondent appeared "hours late" or not at all. At one meeting, for which respondent was hours late, he blamed his secretary for the delay in filing the bankruptcy petition. According to the complaint, respondent had employed "at least" four different secretaries, during the eleven months in question.

Although Caracciolo successfully obtained a bankruptcy discharge, it was ineffective against one creditor, Washington Mutual (WaMu), to whom he owed \$4,500. Respondent had failed to

name WaMu as a creditor. As of June 11, 2010, the date of the complaint, Caracciolo's debt to WaMu had not been extinguished.

The ethics grievance was filed in January 2010. On January 26, 2010, the investigator sent respondent a letter requesting his reply to the grievance. Hearing nothing, on February 18, 2010, the investigator sent a second letter. Respondent ignored that correspondence as well.

**II. The Rivas Matter – Docket No. DRB 10-260 (District Docket No. IIB-2010-0002E)**

Service of process was proper in this matter. On June 15, 2010, the DEC sent a copy of the complaint to respondent by both certified and regular mail, pursuant to R. 1:20-4(d), at his Fort Lee Road office address.

According to the certification of service, the certified mail card was returned indicating receipt, on June 18, 2010, by "S. Cohen." The regular mail was not returned.

Respondent did not file an answer to the complaint.

At a time not specified in the complaint, respondent was retained by Maria Rivas to file a bankruptcy petition. She paid respondent a total of \$1,850 for the representation. Respondent

advised her that the petition would take two or three months to file.

According to Rivas, respondent took no action on her behalf for the next two years. When she finally spoke to him, in October 2009, he promised to file her petition within one week, but did not do so. In December 2009, when Rivas filed the grievance against respondent, she "was still waiting for a docket number in the bankruptcy matter."

Rivas also advised ethics authorities that, when she visited respondent's office to obtain information about her case, he avoided her. He also failed to take her telephone calls.

In early April 2010, Rivas learned that her case had been dismissed. She returned to respondent's office to discuss the case. Although respondent told her that she had "nothing to worry about," as of April 20, 2010, Rivas had received nothing from respondent to indicate that he had taken any new action on her behalf.

According to the complaint, respondent's delay in filing the petition was so lengthy that Rivas was forced to repeat a mandatory debtor's "on-line course which costs fifty dollars," because the first course had "expired."

On January 26, 2010, the DEC investigator wrote to respondent, seeking a reply to Rivas' December 2009 grievance. Respondent did not reply to the investigator's request for information. On February 18, 2010, the investigator sent a second letter, but respondent ignored that request as well.

The facts recited in the Caracciolo and Rivas complaints support the charges of unethical conduct in both matters. Respondent's failure to file answers 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).

Respondent was retained by Caracciolo for representation in a bankruptcy matter. Respondent then took eleven months, an extraordinarily long period of time, to file the bankruptcy petition. Thereafter, respondent seemingly abandoned his client, after failing to name WaMu as a creditor. As a result, Caracciolo's \$4,500 debt to WaMu was never extinguished in the bankruptcy proceedings. Respondent's inaction constituted gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively.

Caracciolo also tried repeatedly to obtain information about the status of his bankruptcy case, but respondent ignored

many of those requests. Also, respondent failed to appear for some scheduled meetings and was hours late to others. His conduct in this regard violated RPC 1.4(b).

So, too, respondent failed to cooperate with the DEC investigation into Caracciolo's grievance, ignoring the investigator's two written requests for information about the matter, a violation of RPC 8.1(b).

In the Rivas matter, respondent was retained, presumably in October 2007, to file a bankruptcy petition. In October 2009, Rivas complained that respondent had failed to take appropriate action on her petition for the last two years. That petition was apparently filed and later dismissed by the bankruptcy court.

In October 2009 and again in December 2009, respondent promised Rivas that he would take steps to remedy his inaction, but did not do so. When, in April 2010, Rivas learned that her petition had been dismissed, respondent promised to act, but again did nothing. We find respondent guilty of gross neglect (RPC 1.1(a)) and lack of diligence (RPC 1.3).

Respondent also failed to reply to Rivas' numerous requests for information about her matter, a violation of RPC 1.4(b).

Finally, respondent failed to cooperate with the DEC investigation into Rivas' grievance, ignoring the investigator's

two written requests for information about the matter, a violation of RPC 8.1(b).

With regard to the pattern of neglect charge (RPC 1.1(b)), for a finding of a pattern of neglect, at least three instances of neglect are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). When the misconduct in the Caracciolo and Rivas matters is combined with the neglect found in the matter that led to respondent's September 2010 reprimand, a pattern of neglect emerges. Thus, we find respondent guilty of having violated RPC 1.1(b).

In summary, in each of the two client matters, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.1(b). He was also guilty of a pattern of neglect (RPC 1.1(b)).

The baseline for conduct involving gross neglect, lack of diligence, and failure to communicate with clients is an admonition. See, e.g., In re Russell, 201 N.J. 409 (2009) (admonition for attorney whose failure to file answers to divorce complaints against her client caused a default judgment to be entered against him; the attorney also failed to explain to the client the consequences flowing from her failure to file answers on his behalf); In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008) (admonition imposed when attorney's



inaction in a personal injury action caused the dismissal of the client's complaint; the attorney took no steps to have it reinstated; also, the attorney did not communicate with the client about the status of the case); and In re Dargay, 188 N.J. 273 (2006) (admonition for attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; prior admonition for similar conduct).

If, as here, the attorney displays a pattern of neglect, a reprimand ordinarily ensues. See, e.g., In re Weiss, 173 N.J. 323 (2002) (lack of diligence, gross neglect, and pattern of neglect); In re Balint, 170 N.J. 198 (2001) (in three matters, attorney engaged in lack of diligence, gross neglect, pattern of neglect, failure to communicate with clients, and failure to expedite litigation); and In re Bennett, 164 N.J. 340 (2000) (lack of diligence, failure to communicate in a number of cases handled on behalf of an insurance company, gross neglect, and pattern of neglect).


In addition, in a default matter, the appropriate discipline for the found ethics violations is enhanced to reflect the attorney's failure to cooperate with disciplinary authorities as an aggravating factor. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366 (March 11, 2004) (slip op. at 6).

Thus, the default nature of these proceedings would serve to elevate the otherwise appropriate discipline here, a reprimand, to a censure.

But other aggravating factors are also present: harm to the clients; a September 2010 reprimand; and a pattern of failure to cooperate with disciplinary authorities. The latter is evidenced by respondent's failure to cooperate with the ethics investigations into three matters (these two and the prior disciplinary matter), and his failure to file answers to three complaints, the latter in just a few months' time. Thus, we determine that a three-month suspension is warranted for the totality of the circumstances in these two defaults.

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  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matters of Samuel Rak  
Docket Nos. DRB 10-246 and 10-260

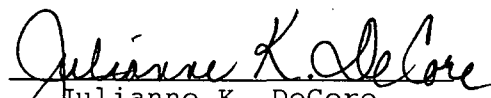
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Decided: December 15, 2010

Disposition: Three-month suspension

<i>Members</i>	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  
Chief Counsel