

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-207
District Docket No. IIA-08-0024E

IN THE MATTER OF
THOMAS A. GIAMANCO
AN ATTORNEY AT LAW

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Decision

Decided: October 27, 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 1.1, presumably (a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4, presumably (b) (failure to keep a client reasonably informed about the status of the matter or to promptly comply with reasonable requests for information), and RPC 8.1(b) (failure to comply with reasonable requests for information from a disciplinary authority), cited in the complaint as R. 1:20-3. For the reasons expressed below, we recommend respondent's disbarment.

This matter was previously before us at our February 18, 2010 session. At the eleventh hour, February 17, 2010, respondent filed a motion to vacate the default, explaining that he had not filed an answer to the complaint because of his emotional paralysis and depression brought on as a result of the long-term effects of a severe June 2003 automobile accident. Since that time, he claimed, he had suffered from debilitating pain, post-traumatic stress syndrome, and major depression, which caused him to continue to "spiral downward mentally."

According to respondent, he had also been unemployed and could not hire an attorney to represent him in connection with his ethics matters. He maintained that, because of his precarious emotional state and financial situation, he desperately needed court-appointed counsel to help prepare a proper defense to the ethics charges.

By letter dated February 24, 2010 to the DEC Chair, we granted respondent's motion to vacate the default and remanded the matter to the DEC for a hearing, to take place after respondent filed a verified answer to the ethics complaint within the time prescribed by R. 1:20-4(e). By copy of the above letter, respondent was informed that, if he needed appointed counsel, pursuant to R. 1:20-4(g), he was required to (1) immediately notify the DEC's Vice-Chair; (2) on or before March

12, 2010, make written application for assistance of counsel to the Assignment Judge of the vicinage in which he formerly practiced law; and (3) to simultaneously serve the application on the DEC's Vice-Chair and the Director of the Office of Attorney Ethics (OAE). The letter forewarned respondent that, if he failed to meet the stated deadline, the matter would be re-certified to us and would proceed as a default.

By letter dated June 4, 2010, the DEC secretary informed Office of Board Counsel that, "to the best of [her] knowledge," respondent had not filed his answer within fourteen days after the February 24, 2010 remand letter. She, therefore, re-certified the matter to us as a default. Respondent did not file another motion to vacate the default.

Respondent was admitted to the New Jersey bar in 1983. He previously maintained a law office in Ridgewood, New Jersey, but is currently suspended from the practice of law.

Respondent has a significant ethics history. In 1999, he was reprimanded for gross neglect, lack of diligence, failure to communicate with the client, and misrepresentation to the client about the status of the matter. Specifically, for a period of seven years, respondent took no action to reinstate a case that had been dismissed. In re Giamanco, 161 N.J. 724 (1999).

On October 5, 2005, respondent was censured for lack of diligence, conflict of interest, misrepresentation to the client, and conduct prejudicial to the administration of justice. Respondent failed to file a bankruptcy petition for fifteen months after he was retained and then did so only after the client filed a suit against him. In addition, he continued to represent the client, after being discharged from the representation; counseled the client to withdraw the suit against him; misrepresented to the client that the suit was illegal because it was precluded by the fee arbitration process; and threatened to "countersue" the client, to inform the bankruptcy court that the client had committed fraud, and to subpoena witnesses to discuss the client's personal problems. In re Giamanco, 185 N.J. 174 (2005).

In a 2006 default matter, respondent was suspended for three months for negligent misappropriation of client funds, recordkeeping violations, and failure to cooperate with disciplinary authorities. In re Giamanco, 188 N.J. 494 (2006).

In 2008, in two consolidated default matters, respondent received a one-year suspension when he violated RPC 1.3, RPC 1.4(b), and RPC 8.1(b). In one of the cases, respondent failed to record a deed after a closing, failed to reply to the client's voice-mail messages, and failed to provide the client

with the closing documents. In the other case, respondent failed to reduce to writing the terms of a pendente lite agreement, failed to appear for a scheduled court proceeding, allowed a default judgment to be entered against the client, took no action to compel the client's husband to make support payments, and failed to reply to the client's numerous telephone calls over a three-month period. In both matters, respondent failed to cooperate with disciplinary authorities. In re Giamanco, 194 N.J. 505 (2008).

The Court imposed a consecutive six-month suspension on respondent, effective May 7, 2009, for misconduct in a real estate matter involving the conversion of an office building into an office condominium. Respondent was found guilty of gross neglect, lack of diligence, failure to keep a client reasonably informed about the status of a matter or to comply with the client's requests for information, failure to explain a matter to the extent necessary to permit the client to make informed decisions about the representation, failure to protect the client's interests on termination of the representation, failure to refund a fee, and failure to cooperate with disciplinary authorities. In re Giamanco, 194 N.J. 556 (2008).

Finally, in a 2009 default matter, respondent was suspended for one year, effective November 8, 2009, for his failure to

file an affidavit of compliance with R. 1:20-20 (activities of suspended attorneys), thereby violating RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority) and RPC 8.4(d) (conduct prejudicial to the administration of justice). In re Giamanco, 197 N.J. 494 (2009).

Service of process was proper. On June 15, 2009, the DEC secretary mailed a copy of the complaint by certified mail to respondent's last known office address, 67 Goodwin Avenue, Ridgewood, New Jersey 07540. The certified mail was returned stamped "Return to Sender, Not Deliverable as Addressed, Unable to Forward."

On July 14, 2009, the DEC secretary sent a second letter to respondent at the same address, by regular mail. The letter notified respondent that, if he did not file a verified answer within five days, it would be deemed an admission of the charges, the record would be certified to us for the imposition of sanction, and the complaint would be amended to include a willful violation of RPC 8.1(b).

After the DEC secretary learned that respondent had been serving several suspensions, on August 28, 2009, she served him with the complaint, by regular and certified mail, at his residence, 801 Charnwood Drive, Wyckoff, New Jersey, 07481. The certified mail was delivered on August 28, 2009. The signature

of the recipient is illegible. The regular mail was not returned. The DEC secretary also served respondent by publication in The Record and in the New Jersey Law Journal, on October 23 and October 29, 2009, respectively.

As of the date of the re-certification of the record, June 4, 2010, respondent had not filed an answer to the ethics complaint.

According to the complaint, in February 2004, Tania Nilsen retained respondent for representation in a matrimonial matter and to have a prior criminal charge expunged. On February 15, 2004, she paid respondent a \$1,900 retainer and executed two retainer agreements. Thereafter, respondent took no action on Nilsen's behalf, failed to return her telephone calls, and failed to maintain contact with her.

Eventually, Nilsen requested that respondent return her retainer, to no avail. Nilsen, therefore, filed for fee arbitration. Respondent failed to appear at the November 15, 2007 fee arbitration hearing. The fee arbitration panel awarded Nilsen the return of her \$1,900 retainer. Respondent failed to reimburse Nilsen within thirty days. The fee arbitration committee, therefore, referred the matter to the OAE for overreaching. Subsequently, respondent settled the matter for \$1,500.

Respondent also failed to cooperate with the DEC's investigation of this matter: he failed to reply to the DEC's letters; failed to turn over a copy of his file, despite the DEC's numerous requests; and failed to notify the DEC of his whereabouts. When the DEC was able to contact respondent, he informed the investigator that the matter had been resolved. However, only the fee arbitration matter had been resolved. Respondent never turned over his file to the investigator.

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).

Respondent engaged in gross neglect (RPC 1.1(a)) and lacked diligence (RPC 1.3) by failing to take any action on Nilsen's behalf, after entering into retainer agreements and accepting a retainer from her. He also failed to reply to Nilsen's telephone calls or to otherwise keep her informed about the status of her matter (RPC 1.4(b)). Finally, respondent failed to cooperate with the DEC's investigation by failing to reply to the investigator's letters, failing to turn over his file, and failing to file an answer to the ethics complaint (RPC 8.1(b)).

The question that remains is whether this respondent requires additional discipline because he continues to act unethically after having been disciplined or whether his conduct here occurred during the same time frame as in his earlier ethics matters and, therefore, he should not receive additional discipline.

Nilsen retained respondent in February 2004. In respondent's 2008 six-month suspension case (In re Giamanco, 194 N.J. 556 (2008)), he was retained in August 2001. His misconduct in that matter continued into early 2004, when the clients retained another attorney and complained to the Bergen County Bar Association about respondent's "unconscionable behavior." Respondent's ethics violations in that matter included, among others, gross neglect, lack of diligence, failure to communicate with the client and failure to cooperate with disciplinary authorities. At the time that Nilsen retained respondent, he was already on notice that his conduct was problematic but he, nevertheless, continued to act wrongfully. It is obvious that respondent did not learn from his prior mistakes, when he agreed to represent Nilsen. We also consider that, before either matter, respondent had already been reprimanded and censured for similar misconduct and that he continues to thumb his nose at

the ethics process by allowing this matter to twice reach the default stage.

What discipline is appropriate for an attorney who does not learn from prior mistakes and who refuses to conform to the standards of the profession? As noted above, in addition to the above discipline, respondent has already been suspended several times: three months in a 2006 default; one year in 2008 for two consolidated default matters; six months in 2008 (effective May 7, 2009); and one year for a 2009 default matter (effective November 8, 2009). Considered in isolation, respondent's conduct toward his client would have merited no more than an admonition. See, e.g., In the Matter of James Edward Burden, DRB 10-189 (July 28, 2010); In re Russell, 201 N.J. 409 (2009); and In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008). But this is respondent's eighth ethics case and his fourth default. We noted previously, in DRB 08-169, where we recommended respondent's disbarment for failure to file an affidavit of compliance with R. 1:20-20 (RPC 8.1(b) and RPC 8.4(d)), that respondent shows an utter disregard for the ethics system, the volunteers that give unselfishly of their time, and the Court. "Disrespect to an ethics committee agent constitutes disrespect to [the Supreme] Court, as such a committee is an arm of the Court." In re Grinchis, 75 N.J. 495, 496 (1978).

Recently, the Court decided In re Banas, 200 N.J. 578 (2010), where it employed progressive discipline principles and disbarred Banas. In two client matters, Banas was found guilty of gross neglect, lack of diligence, failure to communicate with the clients, and misrepresentation about the status of their cases. He also failed to cooperate with disciplinary authorities and was found guilty of a pattern of neglect, when his neglect in the two matters was combined with past instances of neglect. Not only did Banas allow the disciplinary case to proceed on a default basis, but he also had a significant disciplinary record: a reprimand in 1996, a three-month suspension in 1999 (a default case), a censure in 2008 (also a default case), and a three-year suspension, also in 2008 (yet another default case). Finally, Banas did not appear on the return date of the Court's order to show cause. As the Court stated in In re Kivler, 193 N.J. 332, 343 (2008), "[a]n Order to Show Cause issued by this Court is neither a suggestion nor an invitation that an attorney is privileged to accept or reject as he or she wishes. Rather, it is an Order to appear with which a respondent's compliance is required."

We conclude that respondent has had numerous opportunities to conform his conduct to the Rules of Professional Conduct, but failed — or refused — to do so. In essence, he abandoned his

responsibilities to his clients, the courts, and the entire disciplinary system. We, therefore, recommend his disbarment.

Vice-Chair Frost and Members Baugh, Clark, and Zmirich voted to impose a three-year suspension and to require respondent, prior to reinstatement, to provide to the OAE proof of fitness to practice law, as attested by an OAE-approved mental health professional.

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 Thomas A. Giamanco
Docket No. DRB 10-207

Decided: October 27, 2010

Disposition: Disbar

Members	Disbar	Three-year 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:	5	4				


Julianne K. DeCore
Chief Counsel