

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 10-309, 10-362,
10-363, and 10-390
District Docket Nos. VII-10-25E,
VII-10-15E, VII-10-17E, and
VII-09-17E

IN THE MATTERS OF
KEVIN H. MAIN
AN ATTORNEY AT LAW

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Decision

Decided:

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

We have consolidated the four above matters that came before us as individual certifications of default filed by the District VII Ethics Committee (DEC). We determine that a three-month suspension and conditions on respondent's practice, after his reinstatement, are warranted for the totality of his actions in the four matters.

Respondent was admitted to the New Jersey bar in 1988. At the relevant time, he practiced law at the firm of Spadaccini Main, LLC, in Lawrenceville, New Jersey. He currently maintains a solo law practice in Princeton, New Jersey.

On April 30, 2010, respondent received an admonition for failure to cooperate with an ethics investigation. In the Matter of Kevin H. Main, DRB 10-046 (April 30, 2010).

By letter dated December 2, 2010, respondent was given until January 10, 2011 to file a motion to vacate these defaults. That letter noted that respondent had informed Office of Board Counsel that an attorney would be representing him in these defaults. OBC received no confirmation from the attorney that he is respondent's counsel in these matters.

On January 14, 2011, respondent, not the attorney, filed a motion to vacate the above defaults, even though respondent's certifications again stated that he had retained the attorney to represent him in his pending ethics matters.

The first time one of the present matters (Riviera) was before us as a default (formerly DRB 10-220), September 16, 2010, respondent filed a motion to vacate it with an accompanying certification. He submitted no documentation to support his contentions that he was suffering from debilitating depression.

In respondent's certifications in the present matters, he again blamed his depression for his professional problems. As in his prior motion to vacate the Rivera default, he claimed that he has been suffering from depression for approximately fifteen

years and that his condition has affected his cases and his partnership; that he is in the process of getting divorced; and that the loss of daily contact with his children has "robbed [him] of [his] ability to concentrate on what is professionally important."

According to respondent, initially, his family physician prescribed different anti-depressants to alleviate some of his extreme symptoms. Then, approximately one and a half years ago, when the increasing stress in his personal and professional life prevented him from effectively function on either level, he consulted with the Lawyers' Assistance Program (LAP). LAP referred him to a Princeton therapist, who, in turn, referred him to a psychiatrist, with whom he has been "working for just over a year." Respondent failed to provide the name of either mental health professional or to submit documentary support for his alleged problems.

According to respondent, both professionals diagnosed him with depression and ADHD, for which he has been prescribed medications. The types and dosages of the medications were changed to achieve the appropriate combination. He has also been attending outpatient sessions at Princeton Behavioral Health and believes that he is making progress there with his issues.

Respondent stated that his conditions manifest themselves in general lethargy and an inability to act. He has worked on projects almost to completion, but has set them aside unable to finish them.

Respondent admitted that he was not in a position to offer a defense, but wanted to resolve the discipline component with the DEC, by consent.

In opposing respondent's motion, the DEC noted, among other things, that he failed to offer a defense for not timely filing answers to the ethics complaints. He offered as an explanation only his "alleged ADHD/depression condition and its alleged consequence of creating an inability to act". The DEC also highlighted the absence of medical or clinical support for respondent's diagnosis.

Also, the DEC questioned why respondent continues to represent clients, in light of his diagnosis, and noted that, seemingly, he continues to represent some clients but is unable to reply to ethics grievances and complaints.

To succeed on a motion to vacate a default, an attorney must satisfy a two-pronged test: (1) explain the failure to file an answer to the ethics complaint and (2) provide meritorious defenses to the ethics charges.

As to the first prong, respondent's reason for not filing an answer to the complaint is, presumably, his inability to finalize projects, due to his alleged depression and ADHD. Respondent, however, failed to provide any documentation to support this claim. In addition, he filed answers in only two of the four defaults, and did not provide specific meritorious defenses to the ethics charges. Thus, he has not fully satisfied the two-pronged test. We, therefore, deny his motion.

We now proceed with our review of the four default matters.

DRB 10-309 – THE RAFAEL LEDESMA MATTER (DISTRICT DOCKET NO. VII-10-25E)

Service of process was proper. On July 27, 2010, the DEC mailed copies of the ethics complaint, by regular and certified mail, to respondent's last known office address, 98 Franklin Corner Road, Lawrenceville, New Jersey. The certified mail receipt indicates delivery on July 28, 2010 and contains an illegible signature. The regular mail was not returned.

Respondent did not file a verified answer to the ethics complaint. Therefore, on August 17, 2010, the DEC sent a second letter to the same address, by regular and certified mail. The letter informed respondent that, if he did not file a verified answer within five days, the allegations of the complaint would be deemed admitted, the matter would be certified directly to us

for the imposition of discipline, and the complaint would be deemed amended to include a willful violation of RPC 8.1(b). The certified mail receipt was not signed, but it shows that the letter was delivered on August 18, 2010. The regular mail was not returned.

As of the date of the certification of the record, August 23, 2010, respondent had not filed an answer to the ethics complaint.

The complaint in this matter charged respondent with violating RPC 1.1(b) (pattern of neglect), RPC 1.4(b) (failure to communicate with the client), RPC 1.15(b) (failure to deliver funds to the client), and RPC 8.1(b) (failure to reply to requests for information from a disciplinary authority).

Rafael Ledesma retained respondent in connection with injuries he sustained in February 2004, allegedly as the result of the negligence of either Dr. Cruz-Rieza or Adrian Flores. Respondent filed a lawsuit against those individuals in Hudson County Superior Court.

The matter against Flores was settled for \$50,750. Flores was to pay an initial lump sum and to make monthly payments thereafter. Flores was to send checks to his attorney, who, in turn, would forward the checks to respondent for Ledesma's benefit. The checks were payable to respondent.

Despite Ledesma's numerous inquiries about the status of the matter and the settlement, respondent failed to keep him informed.

The formal ethics complaint alleged that respondent was "believed to have received" eight monthly installment payments in partial payment of the settlement, but failed to notify his client about his receipt of the funds or to deliver the funds to Ledesma.¹

The complaint also charged that respondent failed to comply with the DEC's multiple requests for a reply to Ledesma's grievance.

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to timely 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).

Specifically, respondent failed to communicate with Ledesma (RPC 1.4(b)), failed to deliver the settlement funds to him (RPC 1.15(b)), and failed to cooperate with the DEC's investigation of the matter (RPC 8.1(b)). In addition, respondent's conduct

¹ The complaint did not mention the whereabouts of the eight installment payments that respondent purportedly received and failed to turn over to Ledesma.

here, when considered with his conduct in the other three matters, establishes that he engaged in a pattern of neglect (RPC 1.1(b)).

DRB 10-362 - THE RHONDA GIBBS-ALLEN MATTER (DISTRICT DOCKET NO. VII-10-15E)

Service of process was proper. On August 6, 2010, the DEC mailed copies of the ethics complaint to respondent, by regular and certified mail, to his last known office address, 98 Franklin Corner Road, Lawrenceville, New Jersey 08648. The certified mail receipt indicates delivery on August 9, 2010. The signature of the recipient is illegible. The regular mail was not returned.

When respondent did not file an answer within the allotted time, on September 29, 2010, the DEC sent a five-day letter, by regular and certified mail, to respondent's 20 Nassau Street, Princeton, New Jersey, address. The certified mail receipt contains an illegible signature and indicates delivery on October 1, 2010. The regular mail was not returned.

As of the date of the certification of the record, October 12, 2010, respondent had not filed an answer to the ethics complaint.

The complaint in this matter charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter or to reply to reasonable requests for information), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation), RPC 1.16, presumably (a) (2) (failure to withdraw from the representation when the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client), RPC 8.1(b) (failure to reply to reasonable requests for information from a disciplinary authority), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Sometime after April 15, 2005, Rhonda Gibbs-Allen retained respondent to prosecute a personal injury action against the owners of a high-rise building where Gibbs-Allen had been injured.

Respondent filed a lawsuit on Gibbs-Allen's behalf in the Atlantic County Law Division. An attorney from respondent's law firm represented Gibbs-Allen at depositions in the matter.

According to the complaint, respondent misrepresented to Gibbs-Allen that the case was scheduled for arbitration on July

19, 2010, when, on July 3, 2008, her case had been dismissed. Nevertheless, on July 18, 2010, respondent's office telephoned Gibbs-Allen to inform her that the arbitration was being rescheduled.

Afterwards, Gibbs-Allen heard nothing further from respondent or his law firm. Her repeated telephone calls to respondent went unanswered.

Among other things, the complaint alleged that respondent abandoned Gibbs-Allen's lawsuit. The complaint also stated that, "[r]espondent's failure to withdraw from representation in the face of an apparent physical or mental condition which materially impairs his ability to represent the client violates RPC 1.16."

On February 16, 2010, Gibbs-Allen filed a grievance against respondent. Respondent did not comply with the DEC's written requests for a reply to it.

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).

In this matter, respondent engaged in gross neglect and lack of diligence by allowing Gibbs-Allen's case to be dismissed

(RPC 1.1(a) and RPC 1.3), failed to communicate with Gibbs-Allen (RPC 1.4(b)), misrepresented to Gibbs-Allen that her arbitration was being rescheduled when, in fact, her complaint had been dismissed (RPC 8.4(c)), and failed to cooperate with the DEC's investigation of the grievance (RPC 8.1(b)). He is also guilty of engaging in a pattern of neglect for his conduct in this and the other matters set forth herein (RPC 1.1(b)).

On the other hand, the complaint did not allege sufficient facts to support a finding that respondent violated RPC 1.16(a)(2). It stated simply that he should have withdrawn from the representation "in the face of an apparent physical or mental condition which materially impairs his ability to represent the client." The facts, as alleged, did not establish that respondent was suffering from any impairment. We, therefore, dismiss the charged violation of RPC 1.16. We also dismiss the charged violation of RPC 1.4(c) for the complaint's failure to allege sufficient facts to support a finding in this regard.

DRB 10-363 – THE ELEANOR WALKER MATTER (DISTRICT DOCKET NO. VII-10-17E)

Service of process was proper. As in the Gibbs-Allen matter, on August 6, 2010, the DEC mailed copies of the ethics complaint, by regular and certified mail, to respondent at 8

Franklin Corner Road, Lawrenceville, New Jersey 08648. The certified mail receipt indicates delivery on August 9, 2010. The signature of the recipient is illegible. The regular mail was not returned.

When respondent did not file a verified answer within the allotted time, on September 29, 2010, the DEC sent a five-day letter, by regular and certified mail, to respondent's Princeton, New Jersey, law office. The certified mail receipt indicates delivery on October 1, 2010. The signature of the recipient is illegible. The regular mail was not returned.

As of the date of the certification of the record, October 12, 2010, respondent had not filed a verified answer to the ethics complaint.

The three-count complaint charged respondent with violating RPC 1.3 (lack of diligence), RPC 1.4, presumably (b) (failure to keep the client reasonably informed about the status of the matter or to comply with reasonable requests for information), and RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority).

In November 2009, Eleanor Walker retained respondent, after losing a November 3, 2009 bid for a position on the Old Bridge town council by approximately thirty-three votes. Walker was

acquainted with respondent, who had satisfactorily represented her in another election matter.

One week after the election, respondent met with Walker and "a political party official." During that meeting, Walker opined that illegal votes had been cast in favor of her opponent. Respondent agreed to "file for a recount" and, after the recount, to look into the illegal votes. He further "suggested" that one of his employees would check if certain voters still lived in the ward from which they voted.

In the days that followed, Walker repeatedly telephoned respondent about the status of the lawsuit for a recount. Respondent did not reply to her calls.

At some point not specified in the complaint, Walker spoke to respondent twice. Each time, she asked him if he was certain that he wanted to pursue her matter. Each time he replied affirmatively. During one of their conversations, respondent told Walker that "the case would have a lot of weight as he is on the board of elections."

Respondent, however, failed to file the lawsuit by its deadline. In a subsequent conversation, respondent told Walker that missing the deadline "did not matter" because it did not usually change the outcome. He also told her that he would look into the illegal votes. Although Walker sent respondent a "list

of suspected illegal votes," respondent did not take any action to investigate them.

Respondent also failed to follow through on his suggestion to file a press release. Although he drafted the release, it was never published in the newspaper because he failed to return the newspaper's calls. As a result, the paper refused to run the press release.

Walker left numerous telephone messages on respondent's cell phone and work telephone and sent him at least eight email messages, between December 10, 2009 and February 17, 2010, all to no avail. Also, Walker claimed that respondent avoided taking her calls, when she knew that he was present in the office.

On February 17, 2010, Walker sent an email to respondent stating, among other things, that so much time had passed that she believed that respondent had "ruined any hope of a recall." She had hoped, "at the very least," that the illegal voters' names could be sent to the Attorney General's Office.

According to the complaint, because of respondent's inaction, Walker suffered from anxiety, was foreclosed from pursuing her cause of action, and her interests were prejudiced.

Walker filed a grievance against respondent on March 7, 2010. By letter dated March 9, 2010, the DEC instructed respondent to reply to it within ten days. On March 24, 2010,

the DEC sent a second letter to respondent, seeking his reply. By letter dated July 13, 2010, the DEC informed respondent that it had been eighteen weeks since the initial request for a reply to the grievance, that he should contact the DEC, and that, if he failed to do so, the investigation would be concluded. Respondent ignored that letter.

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to timely 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).

Respondent failed to take any action on Walker's behalf, foreclosing her ability to obtain a recount, and failed to pursue an investigation into whether illegal votes had been cast (RPC 1.3); he failed to return Walker's numerous telephone calls and emails (RPC 1.4(b)); and he failed to cooperate with the DEC's investigation of the matter (RPC 8.1(b)).

DRB 10-390 – THE FLORA RIVERA MATTER (DISTRICT DOCKET NO. VII-09-17E)

As indicated previously, this matter was previously before us at our September 16, 2010 session. It came to us as a default. Prior to that date, respondent filed a motion to vacate the default. In respondent's accompanying certification, he

claimed, among other things, that he had retained an attorney to represent him and that he had been suffering from depression and was experiencing marital problems. Based on respondent's certification, we determined to grant his motion and to vacate the default. It is now again before us as a default.

Service of process was proper in the matter now before us. By letter dated September 29, 2010, Office of Board Counsel informed the DEC secretary that we had vacated respondent's default and remanded the matter to the DEC. By copy of that letter to respondent's purported counsel, respondent was informed that he had fourteen days from his receipt of the letter to file a verified answer to the ethics complaint, or the DEC would re-certify the record directly to us.

As of the date of the re-certification of the record, November 8, 2010, neither respondent nor the attorney had filed an answer. In addition neither one of them contacted the DEC secretary to confirm or deny the attorney's representation of respondent in the default matter.

The complaint in this matter charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.4, presumably (b) (failure to keep a client reasonably informed about the status of the matter or to reply to reasonable requests for

information), and RPC 8.1(b) (failure to comply with reasonable requests for information from a disciplinary authority).

In 2005, Flora Rivera retained respondent to file a lawsuit against Walgreen Eastern Co., Inc. and other potential defendants for damages she allegedly sustained as a result of the defendants' negligence, when "her prescription was filled other than as prescribed by her physician."

In August 2006, respondent filed a complaint on Rivera's behalf. Walgreen subsequently filed a motion for summary judgment. Despite requesting an adjournment of the original motion date, respondent failed to oppose Walgreen's motion. By order dated January 4, 2008, the court entered summary judgment in favor of Walgreen and dismissed the complaint.

During the course of the litigation, respondent failed to reply to Rivera's repeated requests for status updates. He also failed to inform Rivera that her complaint had been dismissed. Receiving no information from respondent, Rivera contacted the court directly and discovered the dismissal herself.

Respondent did not reply to Rivera's grievance.

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).

The allegations of the complaint establish that respondent grossly neglected Rivera's matter. Although he sought an adjournment of the summary judgment motion, he never filed opposition to it or took any action to have Rivera's complaint reinstated (RPC 1.1(a)). He also failed to communicate with Rivera. He did not return her numerous telephone calls seeking information about the status of her case and did not inform her that her case had been dismissed (RPC 1.4(b)).

Finally, he displayed a pattern of neglect (RPC 1.1(b)) and failed to cooperate with the DEC's investigation by failing to reply to the grievance (RPC 8.1(b)).

In all, we find respondent guilty of gross neglect in Gibbs-Allen and Rivera; lack of diligence in Gibbs-Allen and Walker; misrepresentation in Gibbs-Allen; failure to deliver funds to a client in Ledesma; and pattern of neglect, failure to communicate with clients, and failure to cooperate with ethics authorities in all four matters.

Generally, in default matters, reprimands are imposed for gross neglect and failure to cooperate with disciplinary authorities, even if this conduct is accompanied by other, non-serious, ethics infractions. See, e.g., In re Rak, 203 N.J. 381

(2010) (attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of the grievance); In re Swidler, 192 N.J. 80 (2007) (in a default matter, attorney grossly neglected one matter and failed to cooperate with the investigation of an ethics grievance); In re Van de Castle, 180 N.J. 117 (2004) (attorney grossly neglected an estate matter, failed to cooperate with disciplinary authorities, and failed to communicate with the client); In re Goodman, 165 N.J. 567 (2000) (attorney engaged in gross neglect and lacked diligence in a personal injury case where for seven years he failed to file a complaint or to otherwise prosecute the client's claim; he also failed to keep the client apprised of the status of the matter and to cooperate with disciplinary authorities; prior private reprimand); and In re Lampidis, 153 N.J. 367 (1998) (attorney failed to pursue discovery in a personal injury lawsuit or to otherwise protect his client's interests, failed to communicate with the client, and failed to comply with the district ethics committee's requests for information about the grievance).

Harsher discipline has been imposed when defaulting attorneys have serious ethics histories. See, e.g., In re Banas, 194 N.J. 504 (2008) (censure for attorney guilty of lack of diligence and failure to communicate with a client for whom he

was handling two separate matters; the censure was premised on the attorney's conduct, the default nature of the proceedings, and the attorney's disciplinary record - a reprimand and a three-month suspension, the latter also a default); In re Franks, 189 N.J. 198 (2007) (three-month suspension for attorney who engaged in gross neglect and lack of diligence, failed to cooperate with disciplinary authorities, and lied to the client about a mediation and a court date that were never scheduled; prior admonition and censure, the latter also in a default); In re Clemmons, 169 N.J. 477 (2001) (three-month suspension for attorney who grossly neglected a matter, failed to act with diligence, failed to communicate with the client, and failed to cooperate with disciplinary authorities; the attorney had a prior six-month suspension); In re Daly, 166 N.J. 24 (2001) (three-month suspension for attorney guilty of lack of diligence and failure to communicate with client; prior three-month suspension); and In re Walsh 196 N.J. 161 (2008) (six-month suspension for attorney guilty of failure to communicate with the client and failure to cooperate with disciplinary authorities; the attorney failed to inform his client of two court orders in a child custody case and failed to reply to the client's numerous telephone calls; the attorney had a prior reprimand for similar misconduct and a censure for failure to

cooperate with disciplinary authorities; in imposing a six-month suspension, we considered the attorney's ethics infractions, his ethics history, and his continuing disregard for the ethics system).

None of the cited default cases involved four client matters, as here. Also, respondent's ethics history (admonition) is not as serious as Banas' (reprimand and three-month suspension), Clemmons' (six-month suspension), Daly's (three-month suspension), or Walsh's (reprimand and censure). All of the above attorneys, except Banas (censure) received suspensions.

In a recent, non-default case, the Court imposed a censure on an attorney who was guilty of conduct similar to respondent's. In re Squitieri, 204 N.J. 218 (2010). Squitieri's misconduct included gross neglect, lack of diligence, and failure to communicate with clients in four matters, as well as failure to promptly deliver funds to a third party in one matter. Squitieri suffered from alcoholism. As a result, the Court placed conditions on his practice: to provide proof of fitness to practice law, to practice under the supervision of a proctor, and to continue with alcohol treatment.

Unlike respondent, however, Squitieri had no history of discipline, cooperated with the ethics investigator, did not

default, and was not found guilty of misrepresentation. It is well-settled that, in default matters, the discipline is enhanced to reflect the attorneys' failure to cooperate with disciplinary authorities, an aggravating factor. In re Nemshick, 180 N.J. 304 (2004). Here, respondent defaulted five times (twice in the Rivera matter). Based on the default nature of these four proceedings and on the additional violations committed by respondent, he deserves discipline greater than the censure imposed on Squitieri. We determine, thus, that he should be suspended for three months.

We have considered respondent's certifications, in which he alleged that he is suffering from a debilitating depression. However, he did not submit any documentation to support his contention. If he was (and still is) suffering from depression, that illness may well have prevented him from cooperating with the ethics investigations and him from properly representing his clients. The public needs to be protected from those ill effects. We, therefore, determine that respondent should not be reinstated until he provides to the Office of Attorney Ethics (OAE) proof of fitness to practice law, as attested by an OAE-approved mental health professional. In addition, upon reinstatement, respondent should practice under the supervision of an OAE-approved proctor for a two-year period.

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

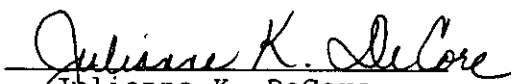
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Kevin H. Main
Docket Nos. DRB 10-309, 10-362, 10-363, and 10-390

Decided: March 14, 2011

Disposition: Three-month Suspension

Members	Disbar	Three-month Suspension	Censure	Dismiss	Reprimand	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