

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-324
District Docket No. IV-08-048E

IN THE MATTER OF
JOHN A. MISCI, JR.
AN ATTORNEY AT LAW

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Decision

Decided: March 22, 2011

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 IV Ethics Committee (DEC). The complaint charged respondent with violating RPC 1.5(a) (charging an unreasonable fee), RPC 1.5(b) (failure to reduce the basis or rate of the fee to writing), and RPC 1.16(d) (failure to protect a client's interests on termination of the representation).

For the reasons expressed below, we determine that a one-year suspension is the appropriate discipline for respondent.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1995. The report of the New Jersey Lawyers' Fund for Client Protection indicates that respondent has been retired from the practice of law in New Jersey since June 12, 2009.

On October 5, 2010, respondent was reprimanded, in a default matter, for failure to reduce the basis or rate of his fee to writing and for failure to cooperate with disciplinary authorities. In re Misci, ___ N.J. ___ (2010).

By order dated March 8, 2011, the Court suspended respondent for three months in another default matter, for exhibiting gross neglect and lack of diligence, failing to communicate with the client, charging an unreasonable fee, and failing to reduce the basis or rate of his fee to writing. In re Misci, ___ N.J. ___ (2011).

Respondent was temporarily suspended, by order dated September 27, 2010, for failure to comply with a fee arbitration determination.

Service of process was proper in this matter. On June 14, 2010, the DEC secretary forwarded a copy of the complaint to respondent, via certified and regular mail, at his last known home address, 111 Pristine Place, Sewell, New Jersey 08080. The certified mail was returned unclaimed. The regular mail was not returned. Respondent did not file an answer. However, in a

July 2010 letter to the DEC secretary, respondent stated that he would not be filing an answer to the complaint and that he had no intention of practicing law in the future. He denied the allegations in the complaint.

Count One

In January 2008, Patricia Drake retained respondent in connection with two matters, a municipal court proceeding and a contract dispute with a home remodeling contractor. According to the complaint, "checks, numbered 101 and 102, in the amounts of \$300.00, and \$500.00 respectively, were drafted by Ms. Drake on that said date." Presumably, that means that Drake paid respondent \$300 and \$500 for the municipal court and contract matters, respectively. Respondent did not memorialize the rate or basis of the fee for either matter.

In the municipal court matter, respondent appeared in municipal court on Drake's behalf, but the matter was adjourned. Later, respondent resolved the case in a brief trial. He did nothing, however, in the contract matter.

Respondent applied to the municipal court matter the \$500 he received for the contract matter. Because the municipal court case was adjourned, he required additional funds to return to court to try the case.

Drake did not authorize the application of the contract action fee to the municipal court matter. She thought that respondent was continuing to handle the contract matter.

The complaint charged respondent with violating RPC 1.5(b), based on his taking the \$500 retainer from the contract matter and using it for the municipal court matter, without Drake's authorization.¹

Count Two

In July 2008, Drake retained respondent to represent her son, Domenic Corsaro, in a family law matter.² Drake paid respondent \$1,500. Respondent appeared in court on Corsaro's behalf, on July 7, 2008, but the matter was adjourned.

Prior to the September 4, 2008 return date, Drake tried to reach respondent by telephone to discuss the matter. She did not receive a return call and respondent's answering machine "became inoperable." The evening before the return date, Drake

¹ As seen below, such conduct does not fall within RPC 1.5(b).

² The complaint indicates that respondent was retained in July 2010. That date must be incorrect, given the other dates provided in the complaint and the July 5, 2009 filing date of Drake's grievance against respondent.

contacted respondent's "girlfriend/wife," who advised her that respondent was in Mexico and was no longer practicing law.

The next day, Drake went to respondent's former office. According to Drake, although respondent received evidence and "paperwork" to facilitate his representation of Corsaro, she was advised that there was no file for Corsaro's case. Corsaro, whose evidence and paperwork were never returned to him, fared poorly in court without his documents or counsel.

The complaint charged respondent with violating RPC 1.5(a), RPC 1.5(b), and RPC 1.16(d).

The facts recited in the complaint support all but one of the charges of unethical conduct. Although 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 pursuant to R. 1:20-4(f)(1), we do not find that respondent violated RPC 1.5(a). There is no evidence in the record that his fee was unreasonable or excessive.

Respondent's most serious violation was the abandonment of his client. He showed a callous indifference to the interests of Corsaro, who was left without his documents and without counsel, with no warning whatsoever from respondent. Such conduct almost invariably results in a suspension, the duration

of which depends on the circumstances of the abandonment, the presence of other misconduct, or the attorney's disciplinary history. See, e.g., In re Nwaka, 178 N.J. 483 (2004) (three-month suspension on a motion for reciprocal discipline; the attorney was disbarred in New York for abandoning one client and failing to cooperate with New York ethics authorities by not filing an answer to the complaint and not complying with their requests for information about the disciplinary matter; prior three-month suspension); In re Jennings, 147 N.J. 276 (1997) (three-month suspension for attorney who abandoned one client and failed to cooperate with ethics authorities; no disciplinary history); In re Bowman, 175 N.J. 108 (2003) (six-month suspension for attorney who abandoned two clients, made misrepresentations to disciplinary authorities, engaged in a pattern of neglect and other acts of misconduct in three client matters, including gross neglect, lack of diligence, failure to communicate with clients, failure to explain a matter to the extent reasonably necessary to permit the client to make an informed decision about the representation, failure to provide a written fee agreement, failure to protect a client's interests upon termination of representation, and misrepresentation of the status of a matter to a client; prior private reprimand); In re Bock, 128 N.J. 270 (1992) (six-month suspension for attorney

who, while serving as both a part-time municipal court judge and a lawyer, with approximately sixty to seventy pending cases, abandoned both positions by feigning his own death); In re Pierce, 193 N.J. 298 (2007) (one-year suspension for attorney who abandoned a client by receiving a fee, performing no services and then unilaterally terminating the representation when evicted from her office; the attorney also lacked diligence in the representation and failed to return the unearned fee to the client; the attorney had received two prior reprimands); In re Greenawalt, 171 N.J. 472 (2002) (one-year suspension for attorney who, in a default matter, displayed gross neglect in three client matters, abandoned his law practice, failed to notify clients of a prior suspension, and failed to cooperate with disciplinary authorities; the attorney had been temporarily suspended for failure to cooperate during the ethics investigation); and In re Mintz, 126 N.J. 484 (1992) (two-year suspension for attorney who abandoned four clients and was found guilty of a pattern of neglect, failure to maintain a bona fide office, and failure to cooperate with ethics authorities). But see In re Hughes, 183 N.J. 473 (2005) (reprimand for attorney who abandoned one client by closing his practice without informing the client or advising her to seek other counsel;

altogether the attorney mishandled three matters by exhibiting a lack of diligence, failure to communicate with clients, and failure to protect his clients' interests upon termination of the representation; strong mitigating factors considered).

This is respondent's third run-in with the disciplinary system. Although he had not been disciplined when he committed the present infractions, he was at least on notice that his conduct in another client matter was under scrutiny by disciplinary authorities. The grievance that led to his prior reprimand was filed on July 24, 2008, during his representation of Corsaro. Knowing that his conduct in the matter that led to the grievance against him was being investigated by ethics officials, he should have taken special care to behave ethically. His failure to do so is an aggravating factor.


In addition, not only does respondent's third encounter with the disciplinary system show his propensity for violating the rules of the profession, but this is his third default. In default matters, the proper 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).

Here, respondent has shown nothing but disrespect – indeed, insolence – in his dealing with the disciplinary system, an arm of the Supreme Court. As we noted in our decision in respondent's last case, he has shown "a lack of respect for disciplinary authorities, this Board, and the Court, the likes of which we have seldom seen." In the Matter of John A. Misci, Jr., DRB 10-222 (December 13, 2010) (slip op. at 9).

What discipline is, then, appropriate for this respondent? His abandonment of Corsaro's interests and failure to cooperate with ethics authorities by allowing this matter to proceed as a default would, most likely, merit a three-month suspension, if these had been respondent's only infractions. The attorneys in Nwaka and Jennings, who also abandoned one client and did not cooperate with ethics authorities, received three-month suspensions. Respondent, however, also failed to memorialize the basis or rate of his fee, a violation of RPC 1.5(b), and, more seriously, displayed a contumacious attitude toward the disciplinary system. As indicated previously, this is his third default. We, therefore, determine that a one-year suspension is justified in this instance.

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

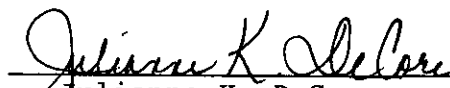
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: One-year Suspension

Members	Disbar	One-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:		9				


Julianne K. DeCore
Chief Counsel