

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-417
District Docket No. IIA-2009-0017E

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

Decision

Argued: April 21, 2011

Decided: May 26, 2011

Kurt Hartmann appeared on behalf of the District II Ethics Committee.

Respondent waived appearance for oral argument.

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

This matter was previously before us at our June 18, 2009 session, on a default basis (DRB 09-034). Following respondent's motion to vacate the default, we determined to grant the motion and to remand the matter to the District IIA Ethics Committee (DEC). This matter is now here on a disciplinary stipulation between the DEC and respondent.

Specifically, respondent stipulated to violating RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack

of diligence), RPC 3.2 (failure to expedite litigation), RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter), 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 1.15 (b) (failure to safekeep property), RPC 1.16(d) (failure to protect a client's interests upon termination of the representation), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The parties agreed that a reprimand is appropriate discipline for respondent's conduct. For the reasons expressed below we determine that a three-month suspension is warranted.

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

In 2002, he 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. In the disciplinary matter that ensued, respondent was found guilty of gross neglect, lack of diligence, failure to communicate with the clients, and failure to turn over a file upon 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).

In 2011, respondent was suspended for three months in a default matter. Over the course of a protracted municipal court trial, he referred to the prosecutor, among other things, as "an idiot;" forcefully bumped into the investigating officer during a break in the trial; repeatedly had the trial postponed with various excuses, at least one of which was determined to be untrue; challenged the district ethics committee's authority to investigate the grievance; raised his voice to the committee investigator; and was extremely uncooperative and belligerent during the investigation. In all, he was found guilty of 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 (failure to respect the

rights of third persons), RPC 8.1(b) (failure to cooperate with the ethics investigation), and 8.4(d) (conduct prejudicial to the administration of justice). The Court also ordered that respondent contact the Bergen County Committee on Professionalism to help him establish a program to develop and maintain courtesy and civility in his professional dealings with others. In re Rifai, 204 N.J. 592 (2011).¹

According to the disciplinary stipulation, on February 25, 2003, Daoud Chehazeh retained respondent for representation in a federal tort claim action against the United States, as a result of his "retention in custody" for approximately eleven months. As of that date, the two-year statute of limitations had not yet expired.

On or about February 25, 2003, respondent forwarded to the U.S. Attorney General an unsigned standard form "95-Claims for Damages, Injury or Death" and sent copies to the Risk Management Division, Department of Justice, Immigration and Naturalization Services (the INS). According to the stipulation, the form did not comply with the requirements of the Federal Tort Claim Act

¹ The Supreme Court granted respondent's first motion to stay the effective date of the suspension from February 14, 2011 to March 9, 2011 (In re Rifai, 205 N.J. 49 (2011)), but denied his motion seeking a further stay. In re Rifai, 205 N.J. 49 (2011).

(FTCA) because, "among other reasons . . . it was not signed or dated and did not contain information in blocks 3-7."

On March 10, 2003, the INS returned the form to respondent as an invalid claim under the FTCA, as it lacked certain information and a signature. Respondent was instructed to provide the missing information and return the original form to that office. By letter dated March 21, 2003, the U.S. Department of Justice, Civil Division, Torts Branch, also notified respondent that the submission was not a valid administrative tort claim under the FTCA and that it would not be considered by that office, unless respondent complied with the steps set forth in the letter. Respondent did not submit a valid tort claim within the two-year statute of limitations.

According to the stipulation,

[r]espondent has claimed that by letter of February 27, 2004, he informed Chehazeh that "we will not be able to pursue your case" and advised Chehazeh that [Chehazeh] had one (1) year from the date of the incident to file a legal action for intentional acts and two (2) years from the date of the incident to file a legal action for any negligence claims.

[S1B7.]²

² S refers to the disciplinary stipulation.

The stipulation further stated that "[t]he timeframes in the February 27, 2004 letter, even if applicable, would have expired by the date of said letter."

Respondent stipulated that his failure to file an appropriate and timely notice of claim constituted a violation of RPC 1.1(a), RPC 1.3, and RPC 3.2; his failure to keep Chehazeh adequately and accurately informed and his misrepresentation of the facts and law violated RPC 1.4(b), RPC 1.4(c), RPC 1.16(d), and RPC 8.4(c); and his neglect in this matter, when combined with his prior acts of neglect, established a violation of RPC 1.1(b).

Respondent also represented Chehazeh in another matter. On September 25, 2003, Chehazeh retained him for representation in a malpractice action against the University Medical Hospital, regarding a June 6, 2003 emergency room visit. Although respondent filed a lawsuit, the case was dismissed, on December 16, 2005, for lack of prosecution. After respondent learned of the dismissal, he took no action to have the matter restored and did not inform Chehazeh of the dismissal. Also, respondent failed to turn over Chehazeh's file, despite requests from both Chehazeh and his new attorney.

According to the stipulation, respondent's failure to "take appropriate action, both before and after the matter was

dismissed for lack of prosecution," constituted violations of RPC 1.1(a), RPC 1.3, and RPC 3.2. His failure to keep Chehazeh informed about the status of his matter and to turn over the file, when requested; violated RPC 1.4(b), RPC 1.15(b), RPC 1.16(d), and RPC 8.4(c). Finally, respondent's neglect in this matter, combined with his prior acts of neglect, violated RPC 1.1(b).

Following a full review of the stipulation, we are satisfied that the facts contained therein fully support a finding that respondent was guilty of unethical conduct.

The stipulation established that respondent engaged in gross neglect and lack of diligence in both of Chehazeh's cases. In the federal tort claim matter, he took no action to supply the information that was missing from the forms he had filed and allowed the statute of limitations to expire. In the malpractice action, he failed to restore the complaint, after its dismissal, and failed to expedite the litigation by failing to prosecute it. Because, however, respondent never properly instituted the litigation in the federal matter, the stipulated facts do not support a finding that he failed to expedite the litigation.

The stipulated facts also support a violation of RPC 1.1(b) (pattern of neglect), when both of Chehazeh's cases are considered with respondent's 2002 ethics matter, where he was

also found guilty of gross neglect. A pattern of neglect emerges when three instances of neglect have occurred. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16).

In addition, respondent failed to properly communicate with his client in both matters, a violation of RPC 1.4(b), and failed to turn over the file to either his client or to the new attorney in the malpractice case, a violation of RPC 1.16(d).

Finally, respondent made misrepresentations (RPC 8.4(c)) in both cases: (1) in the federal case, when he mailed the letter to Chehazeh stating that he would not be able to pursue his case and informing him about the general period within which to file an action, when the statute of limitations had already expired, and (2) in the malpractice case, by failing to inform Chehazeh that his case had been dismissed, a misrepresentation by silence. See Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984).

We dismiss the remaining stipulated violations (RPC 1.4(c) and RPC 1.15(b)) because they are not supported by the stipulated facts.

In sum, in both matters, respondent was guilty of gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client, and misrepresentation. In the malpractice action, he was also guilty of failure to expedite

litigation and failure to protect a client's interests upon termination of the representation by not releasing the file.

When an attorney displays a pattern of neglect, even if that offense is combined with other non-serious violations, a reprimand may ensue. See, e.g., In re Gellene, 203 N.J. 443 (2010) (attorney guilty of gross neglect, pattern of neglect, and lack of diligence by failure to timely file three appellate briefs); In re Weiss, 173 N.J. 323 (2002) (attorney engaged in gross neglect, pattern of neglect, and lack of diligence); In re Balint, 170 N.J. 198 (2001) (in three client matters, attorney engaged in gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, and failure to expedite litigation); and In re Bennett, 164 N.J. 340 (2000) (attorney guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate in a number of cases handled on behalf of an insurance company).

Here, respondent was also guilty of additional violations: failure to turn over the client's file and misrepresentation. A misrepresentation to a client ordinarily results in the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). These additional violations, therefore, require discipline greater than a reprimand.

An additional aggravating factor here is that respondent has failed to learn from prior, similar mistakes. In 2002, he was reprimanded for gross neglect, lack of diligence, failure to communicate with clients, and failure to turn over a file upon termination of the representation. Moreover, his ethics history as a whole (the 2002 reprimand, a 2007 reprimand, and a 2011 three-month suspension for discipline that occurred after his misconduct in this matter) firmly establishes his disregard for complying with the Rules of Professional Conduct. These factors, too, require that the discipline be further enhanced.

An attorney whose conduct parallels that of respondent's received a three-month suspension. In re Cheek, 178 N.J. 114 (2003) (in three client matters, attorney was guilty of gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client, failure to turn over the client's files, failure to cooperate with disciplinary authorities, and misrepresentations that a trial was imminent and a settlement offer had been made; the attorney's ethics history included an admonition and a reprimand).

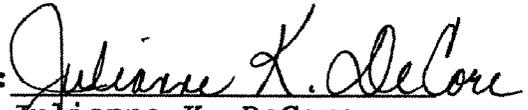
We find that the totality of the circumstances, that is, respondent's ethics violations, his failure to learn from prior mistakes, and his propensity to violate the Rules of Professional Conduct require that he be suspended for three

months. We determine that the suspension should start at the expiration of his current three-month suspension, that is, March 9, 2011.

Member Baugh did not participate. Member Stanton abstained.

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

In the Matter of Hamdi M. Rifai
Docket No. DRB 10-417

Argued: April 21, 2011

Decided: May 26, 2011

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Abstained	Did not participate
Pashman		X				
Frost		X				
Baugh						X
Clark		X				
Doremus		X				
Stanton					X	
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		7			1	1


Julianne K. DeCore
Chief Counsel