

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 11-028  
District Docket No. VII-2010-0031

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

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Corrected Decision

Decided: July 19, 2011

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

This matter comes before us on a certification of default filed by the District VII Ethics Committee (DEC), pursuant to R. 1:20-4(f). The five-count complaint 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 and to promptly comply with reasonable requests for information), RPC 1.16(a)(1) (failure to withdraw from the representation when the representation violates the Rules of Professional Conduct), RPC 1.16(a)(3) (failure to withdraw from the representation when discharged); RPC 1.16(d) (failure to

protect a client's interests upon termination of the representation), and RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority).

For the reasons detailed below, we determine to suspend respondent for three months.

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 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)).

Recently, respondent was suspended for three months for misconduct in four consolidated default matters. Specifically, he was found guilty of gross neglect in two matters; lack of diligence in two matters; misrepresentation in one matter; failure to deliver funds to a client in one matter; and pattern of neglect, failure to communicate with clients, and failure to cooperate with ethics authorities in all four matters. Also, the Court ordered respondent to provide, prior to reinstatement, proof of fitness to practice law and, following reinstatement, to practice under the supervision of a practicing attorney for a two-year period. In re Main, 206 N.J. 66 (2011).

Service of process was proper. On December 3, 2010, the DEC mailed copies of the ethics complaint, by regular and certified mail, to respondent's last known office address, 20 Nassau Street, Suite 26B, P.O. Box 550, Princeton, New Jersey 08542. The certified mail was not claimed. The regular mail was not returned.

Respondent did not file an answer to the ethics complaint. Therefore, on January 2, 2011, the DEC sent a second letter to respondent, by regular and certified mail, to the same address. The letter informed respondent that, if he did not file an answer within five days, the allegations of the complaint would be deemed admitted and the matter would be certified to us for the imposition of discipline. The certified mail was not claimed. The regular mail was not returned.

As of the date of the certification of the record, January 19, 2011, respondent had not filed an answer to the ethics complaint.

The facts set forth in the complaint are as follows:

In April 2009, Lenord Smith retained respondent for representation in a personal injuring action arising from a January 24, 2009 job-related accident. At the time, respondent practiced with The Yankowitz Law Firm, LLP, in Lawrenceville,

New Jersey.<sup>1</sup> Smith executed a retainer agreement, dated April 15, 2009, which he "faxed" back to respondent.

Smith heard nothing further from respondent. Over a period of months, Smith made repeated telephone calls to respondent's firm, requesting information about the status of his case. Each time he called, he was told that respondent was not available to speak to him.

On February 24, 2010, Smith "faxed" a handwritten letter to respondent's firm, requesting information about the status of his case. He wrote that he had very little communication with respondent and was still in pain. He received no response to the "fax."

Because Smith was unable to communicate with respondent, he retained another attorney, Jeffrey Scott Beckerman, to take over the case. By letters dated April 22, May 6, and May 19, 2010, a detailed email, and telephone calls, Beckerman informed respondent that he had been retained to take over Smith's case and requested that respondent transfer Smith's file to him. Respondent did not reply to Beckerman's attempts to contact him.

Smith filed a grievance against respondent on June 3, 2010. By letters dated June 9 and July 7, 2010, the DEC secretary

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<sup>1</sup> The firm was later renamed Spadaccini & Main.

requested respondent's reply to the grievance. Respondent failed to submit a reply.

By letter dated September 10, 2010, respondent transferred Smith's file to Beckerman. In his cover letter, respondent apologized for not transferring the file sooner and admitted that his firm had not filed a complaint within one year from the date of the accident. He stated that, "[w]hile by no means an excuse, I have been dealing with some personal issues that have contributed to the delay."

On October 18, 2010, respondent wrote to the DEC, confirming that he had forwarded the file to Beckerman and apologizing for the delay. He stated, "I have been undergoing a number of personal issues that I am addressing and, while not an excuse, have caused me to neglect a number of personal and professional duties and obligations."

According to the complaint, respondent violated RPC 1.4(b) by failing to answer Smith's telephone calls, letters and emails; by failing to comply with Smith's reasonable requests for information; and by failing to keep Smith reasonably informed about the status of his case.

The complaint further alleged that, from April 2009 to September 2010, respondent failed to pursue Smith's personal injury case, thereby permitting the statute of limitations to

run. The complaint, charged respondent with violating RPC 1.1(a) and RPC 1.3.<sup>2</sup> The complaint also charged that respondent's handling of legal matters, generally, established a pattern of neglect, a violation of RPC 1.1(b).

The complaint further charged:

When it became apparent that respondent could not properly or competently represent Smith in the personal injury matter in the manner required by RPC 1.1, RPC 1.3 and RPC 1.4 due to personal issues with which respondent was dealing, respondent had an affirmative duty pursuant to RPC 1.16(a)(1) to withdraw from his representation of Smith in a timely manner, and his failure to do so violated RPC 1.16(a)(1).

[C513.]<sup>3</sup>

In addition, the complaint alleged that, when respondent learned that Smith had retained another attorney to handle his personal injury matter, he had an affirmative duty to withdraw from the representation and to transfer the file to the new attorney, in a timely manner. The complaint charged respondent

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<sup>2</sup> Typically, the statute of limitations for a personal injury action is two years. N.J.S.A. 2A:14-2. The complaint did not specifically state the type of claim that respondent intended to pursue.

<sup>3</sup> C refers to the formal ethics complaint, dated November 22, 2010.

with violating RPC 1.16(a)(3) and RPC 1.16(d) for his failure to do so.

Finally, the complaint charged that respondent violated RPC 8.1(b), by failing to comply with the DEC's requests for a reply to the 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).

Although the facts alleged in the complaint do not specify the type of claim that respondent was to advance on Smith's behalf, respondent, through his letter to Beckerman, admitted that he had not filed a complaint against the defendant Port Authority within one year. The complaint alleged that respondent permitted the statute of limitations to expire.

Presumably, because the claim was against a public entity, respondent was required to file a notice of claim under the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. That statute requires the filing of a notice of claim within ninety days after the accrual of the cause of action. N.J.S.A. 59:8-8. However, if a claim is not filed within that time, the claimant may seek leave of court to file a late notice of claim within

one year after the accrual of the claim. N.J.S.A. 59:8-9. We, thus, find that respondent's failure to do so was a violation of RPC 1.1(a) and RPC 1.3.

Furthermore, respondent's neglect in this matter, when considered with his neglect in his prior disciplinary matters, establishes a violation of RPC 1.1(b). A minimum of three instances of neglect is necessary to establish a pattern of neglect. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16).

Respondent also violated RPC 1.4(b) by failing to communicate with Smith and to reply to his telephone calls and fax; RPC 1.16(d) by failing to promptly turn over Smith's file, despite Beckerman's repeated requests; and RPC 8.1(b) by failing to promptly reply to the DEC's requests for information about the grievance.

RPC 1.16(a)(1), however, does not apply in this instance because that section requires an attorney to withdraw from the representation if the representation itself will violate the Rules of Professional Conduct. Nothing demonstrates that to be the case here. Similarly, RPC 1.16(a)(3) is inapplicable because it addresses situations in which attorneys are discharged but continue to represent the former clients. Again, there is no



indication that respondent did so. We, therefore, dismiss these charged violations.

In sum, respondent is guilty of violating RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 8.1(b) in one client matter. His misconduct is aggravated by his ethics history, which includes a 2010 admonition for failure to cooperate with an ethics investigation and a 2011 three-month suspension for similar misconduct in four client matters, all of which proceeded as defaults.

We note that respondent's conduct in this matter occurred around the same time as his conduct in one of the prior default matters. In DRB 10-363 (VII-2010-0017E), Eleanor Walker retained respondent in November 2009, seven months after Smith retained respondent for the present matter. Respondent neglected both matters. Ideally, all five matters should have been heard together. Thus, an assessment of the appropriate degree of discipline for all five matters should include consideration of whether respondent's conduct does not warrant additional discipline for the Smith matter, that is, if the three-month suspension for the four recent defaults is sufficient for five matters as well, or whether additional discipline is warranted because more than three months is required for the five defaults.

In the combined five cases, respondent violated RPC 1.1(a) and RPC 1.3 in three matters; RPC 1.1(b), RPC 1.4(b), and RPC 8.1(b) in all five matters; RPC 8.4(c) in one matter; RPC 1.15(a) in one matter; and RPC 1.16(d) in one matter.

The discipline in default matters involving similar violations and either one or multiple clients has ranged from a three-month to a one-year suspension. See, e.g., In re Avery, 194 N.J. 183 (2008) (three-month suspension in two default matters, where the attorney mishandled four estate matters and was guilty of gross neglect, lack of diligence, failure to produce a court-ordered accounting, failure to communicate with clients, and failure to cooperate with disciplinary authorities; no ethics history); In re Franks, 189 N.J. 198 (2007) (three-month suspension for attorney guilty of gross neglect, lack of diligence, failure to cooperate with disciplinary authorities, and misrepresentation to the client about a mediation and a court date, which were never scheduled; the attorney's ethics history included an admonition and a censure, the latter also in a default); In re Davidson, 204 N.J. 175 (2010) (six-month suspension in one client matter, where the attorney filed a complaint on his client's behalf but failed to prosecute the case; the attorney's infractions included gross neglect, lack of diligence, failure to expedite litigation, failure to

communicate with the client, and failure to cooperate with ethics authorities; the attorney's ethics history included a three-month suspension, a reprimand, and a six-month suspension); In re Kearns, 187 N.J. 250 (2006) (six-month suspension for attorney who engaged in gross neglect and lacked diligence in a real estate matter by failing to perform any services after accepting a retainer, failing to keep the client informed about the status of the matter, improperly terminating the representation, failing to cooperate with disciplinary authorities, and engaging in conduct prejudicial to the administration of justice by failing to comply with a fee arbitration determination; prior three-month suspension); In re Tunney, 185 N.J. 398 (2006) (six-month suspension for misconduct in three client matters; the violations included gross neglect, lack of diligence, failure to communicate with clients, and failure to withdraw from the representation when the attorney's physical or mental condition materially impaired his ability to represent clients; prior reprimand and six-month suspension); In re Lester, 148 N.J. 86 (1997) (six-month suspension for attorney who displayed lack of diligence, gross neglect, pattern of neglect, and failure to communicate in six matters, and failed to cooperate with the investigation of the grievances; in one of the matters, the attorney misrepresented, in a letter to his

adversary, that the adversary's secretary had consented to extend the time to file the answer; the attorney had received a private reprimand in 1992, a reprimand in 1990 for gross neglect in two matters, at which time the Court noted the attorney's recalcitrant and cavalier attitude toward the district ethics committee, and another reprimand in 1996 for failure to communicate with a client, failure to supervise office staff, and failure to release a file to a client); and In re Brekus, 202 N.J. 333 (2010) (one-year suspension for attorney's misconduct in a client's workers' compensation and personal injury claims; the misconduct included gross neglect, pattern of neglect, lack of diligence, failure to return the client's file, misrepresentation to client, and failure to cooperate with disciplinary authorities; prior admonition, reprimand, censure, and one-year suspension).

Had respondent's five default matters been consolidated, a six-month suspension would have been the right form of discipline. Indeed, Avery, who mishandled four client matters and defaulted in the disciplinary case but had no prior discipline, received a three-month suspension. That degree of discipline would have been insufficient for the combination of respondent's violations in the five default matters, coupled with his prior admonition and three-month suspension.

Based on the above cases, more than a six-month suspension would be excessive discipline for respondent's overall transgressions. Brekus received a one-year suspension for mishandling two matters, as opposed to respondent's five, but Brekus had a significant disciplinary record -- an admonition, a reprimand, a censure, and a one-year suspension. In turn, respondent has an admonition and a three-month suspension.

Given that the Court has already imposed a three-month suspension in respondent's prior matters, we find that an additional -- and consecutive -- three-month suspension is now required to complement the duration of the suitable suspension for respondent's conduct in the five matters, that is, six months.

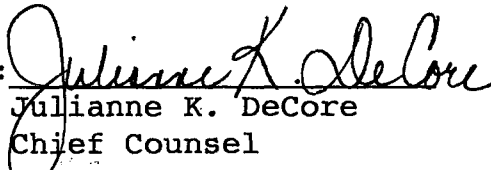
We also determine that the conditions set forth in the prior matters should be continued: that respondent provide proof of fitness to practice law to the Office of Attorney Ethics (OAE) as attested by an OAE-approved mental health professional, before reinstatement and, after reinstatement, that he practice under the supervision of an OAE-approved proctor for a two-year period.

We further determine to require the resolution of all pending matters against respondent, before he may apply for reinstatement.

Member Doremus did not participate.

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 Matter of Kevin H. Main  
Docket No. DRB 11-028

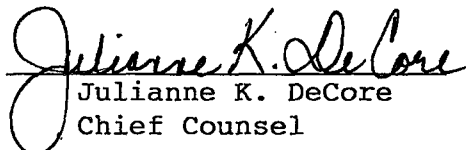
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Decided: July 19, 2011

Disposition: Three-month consecutive suspension

Members	Disbar	Three-month Consecutive 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:		8				1

  
Julianne K. DeCore  
Chief Counsel