

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 11-203, 11-207,
11-208, 11-209, 11-210, and 11-211
District Docket Nos. IIIB-2010-0025E,
VII-2011-0007E, VII-2010-0037E,
VII-2010-0049E, VII-2010-0046E,
and VII-2010-0034E

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

Decision

Decided: December 20, 2011

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

These six default matters (five filed by the District VII Ethics Committee (DEC) and one filed by the District IIIB Ethics Committee (DEC IIIB)) were consolidated for our review. Respondent was charged with gross neglect in four matters, a pattern of neglect in three matters, lack of diligence in five matters, failure to communicate with the client in six matters, failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the

representation in three matters, failure to withdraw from the representation where the representation will result in the violation of the Rules of Professional Conduct in two matters, failure to withdraw from the representation when discharged in one matter, failure to turn over a file upon termination of the representation in one matter, conduct involving dishonesty, fraud, deceit or misrepresentation in two matters, and failure to cooperate with disciplinary authorities in six matters.

We determine that a two-year prospective suspension with conditions on respondent's practice is warranted.

Respondent was admitted to the New Jersey bar in 1988. At the time of these events, he practiced law at the firm of Spadaccini Main, LLC, in Lawrenceville, New Jersey and later opened an office in Princeton, New Jersey. He is currently suspended from the practice of law.

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).

In 2011, he was suspended for three months, effective June 11, 2011, for misconduct in four consolidated default matters. Specifically, respondent 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 failure to communicate with clients and to cooperate with ethics authorities in all four matters. In re Main, 206 N.J. 66 (2011). The Court ordered that, prior to reinstatement, respondent provide proof of fitness to practice law and, upon reinstatement, practice under the supervision of a proctor for a two-year period.

In another default matter, the Court imposed an additional three-month suspension, effective September 11, 2011, for respondent's misconduct in one client matter. There, respondent failed to file a complaint, causing the statute of limitations to expire. He also failed to reply to his client's numerous attempts to contact him. He was found guilty of gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client, failure to promptly turn over the client's file, and failure to cooperate with the ethics investigator. In the Matter of Kevin H. Main, DRB 11-028 (July 19, 2011). The Court imposed the same conditions contained in its prior order.

For the ease of review, we set forth our findings of fact and conclusions of law after the recitation of the allegations of the complaint for each matter. The assessment of the appropriate measure of discipline accounts for the totality of respondent's violations.

DRB 11-203

THE GONZALEZ MATTER (District Docket No. IIIB-2010-0025E)

Service of process was proper in this matter. On April 6, 2011, the DEC IIIB mailed copies of the ethics complaint, by regular and certified mail, to respondent's last known office address, 20 Nassau Street, Suite 26-B, Princeton, New Jersey 08542. The certified mail receipt, showing delivery on April 25, 2011, bears respondent's signature. The regular mail was not returned.

Respondent did not file a verified answer to the ethics complaint. Therefore, on May 17, 2011, the DEC IIIB sent a letter to the same address, by regular and certified mail, informing 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) (five-day letter). As of the date of the certification of the record, May 27, 2011, neither the regular mail nor the certified mail receipt had been returned. Respondent did not file an answer to the complaint.

The complaint charged respondent with violating RPC 1.1(a) (gross neglect) (mistakenly cited as RPC 1.1(b)), 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 comply with reasonable requests for information), R. 1:20-3(g)(3,4), more properly RPC 8.1(b) (failure to comply with a reasonable request for information from a disciplinary authority), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

In November 2005, Ligia Gonzalez was involved in an automobile accident that required two operations and continuing medical treatment. On March 28, 2006, Gonzalez and her husband met with respondent, at his Lawrenceville office. They informed him about some bills related to the accident that were in the collection phase. Respondent agreed to represent Gonzalez in a civil suit. She signed a fee agreement at that time. Respondent telephoned Gonzalez' insurance company and informed her that "he would see that she [start] receiving monthly payments if she were to win her lawsuit."

When Gonzalez expressed her concerns about the amount of time that had elapsed since her accident, respondent reassured her that she had two years from the date of the accident to file a lawsuit. Gonzalez then supplied respondent with some documents, including a police report and some bills.

Between March 2006 and October 2007, Gonzalez and/or her husband met with respondent approximately four times, primarily to obtain the insurance company's approval for her treatment.

The Gonzalezes became concerned that the statute of limitations was running out. Therefore, in October 2007, Gonzalez' husband went to respondent's office to inquire about the status of his wife's case. An individual who identified himself as respondent's law partner informed him that a lawsuit had been filed, showed him Gonzalez' file, and handed him uniform interrogatories for Gonzalez to answer.

In early 2008, respondent informed Gonzalez' husband that "things were going well." Later that year, Gonzalez and her husband had a scheduled appointment with respondent. After waiting for almost an hour, they learned that respondent was in court. Thereafter, on at least five occasions, they went to respondent's office to try to obtain information about the case. Each time, they were informed that respondent was in court. Although they left their telephone contact information, they heard nothing further from respondent after the summer of 2008.

In 2009, Gonzalez decided to retain another attorney. When her husband went to respondent's office to discuss the case with respondent and to get his wife's file, respondent's secretary informed him that respondent was not in the office. Gonzalez and

her husband estimated that, from the summer of 2008 to 2009, they went to respondent's office at least five times and tried to telephone him more than thirty times, all to no avail.

When Gonzalez' new attorney conducted a docket search, he determined that respondent had not filed a lawsuit on Gonzalez' behalf. Moreover, Gonzalez asserted that she had received a letter from an insurance company, stating that the statute of limitations had expired on her claim. According to Gonzalez, because of respondent's inaction, she incurred substantial debt for unpaid medical bills and worried that future treatment would not be approved.

Respondent also failed to cooperate with the investigation of Gonzalez' grievance. On February 25, 2010, the DEC IIIB requested that he submit a written reply to the grievance by March 12, 2010. When he did not reply, on June 11, 2010, the DEC IIIB gave him an extension to June 25, 2010. After respondent failed to reply to the DEC IIIB's second letter, the matter was assigned to an investigator on September 21, 2010.

By letter to the DEC IIIB, dated October 18, 2010, respondent acknowledged his earlier failure to reply and stated that he had been "undergoing a number of personal issues" that he was addressing and that caused him to "neglect a number of personal and professional duties and obligations." He added that

he had located Gonzalez' file, in the course of moving, and would forward it to her new attorney. He further stated that he was "overwhelmed and may have missed an appointment or failed to return a call in a timely fashion."

On or around December 1, 2010, Gonzalez' new attorney informed the ethics investigator that he had not received Gonzalez' file. As a result, by letter dated December 15, 2010, the investigator instructed respondent to immediately turn over the file to him and to contact him to arrange for an interview. The investigator added that if respondent failed to comply, he would assume that respondent had no intention of participating in the investigation and that the matter would continue without his input. The investigator also left a telephone message at respondent's office. Respondent did not reply.

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).

Respondent accepted Gonzalez' case, failed to file a complaint in time to stop the statute of limitations from running, misrepresented to Gonzalez' husband that the case was "going well," stopped communicating with Gonzalez or her

husband, and did not cooperate with the ethics investigation, violations of RPC 1.1(a), RPC 1.3, RPC 8.4(c), RPC 1.4(b), and RPC 8.1(b), respectively.

DRB 11-207

THE LOHMAN MATTER (District Docket No. VII-2011-0007E)

Service of process was proper in this matter. On May 6, 2011, the DEC mailed copies of the ethics complaint, by regular and certified mail, to respondent's office address in Princeton, New Jersey. The certified mail receipt indicates delivery on May 12, 2011 and contains an illegible signature, which, when compared to the signature on the receipt in DRB 11-203, appears to be respondent's. The certification of the record is silent about the regular mail.

On June 7, 2011, the DEC mailed a "five-day letter" to the same address, by regular and certified mail. The certified mail receipt indicates delivery on June 10, 2011 and bears respondent's signature. The certification of the record is silent about the regular mail.

As of the date of the certification of the record, June 14, 2011, respondent had not filed an answer to the ethics complaint.

The complaint charged respondent with violating RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(b), 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 (a) (a lawyer shall not represent a client, or shall withdraw from the representation, if the representation will result in a violation of the Rules of Professional Conduct), and RPC 8.1(b).

In March 2009, Michael Lohman, of San Antonio, Texas, contacted respondent for representation on a petition for expungement of a criminal matter.¹ Respondent had represented Lohman in the initial criminal matter, in 2005. Although they did not execute a retainer agreement, Lohman paid respondent a \$1,000 retainer, which respondent cashed on March 16, 2009.

Lohman and respondent corresponded via telephone and email. On June 23, 2009, respondent sent an email to Lohman, apologizing for the delay in filing the petition and stating that he would try to finalize it "in the next week or so."

Afterwards, Lohman heard nothing further from respondent. He, therefore, tried to call respondent many times and sent him a number of emails, requesting information about the status of his matter. His efforts at the time were unsuccessful.

¹ At the time, respondent was working at the law firm of Spadaccini Main, in Lawrenceville, New Jersey.

In a May 2010 telephone conversation, respondent informed Lohman that his petition for expungement would be filed and that he would send Lohman confirmation of the filing.

The formal ethics complaint does not mention when respondent finally filed the petition. However, as of October 28, 2010, respondent had not served any of the "interested agencies" with the expungement petition. On December 15, 2010, when Lohman contacted the Mercer County Court, he discovered that his petition had been dismissed without prejudice two days earlier, because it had not been served on the parties.

On December 15, 16, 20, and 21, 2010, Lohman sent emails to respondent concerning the order of dismissal. Respondent did not reply. Because Lohman could not communicate with respondent, he retained another attorney to handle his petition for expungement.

The formal ethics complaint alleged that, respondent failed to comply with Lohman's reasonable requests for information, to keep Lohman informed about the status of the petition, and to file the necessary documents for which he had been retained.

As to respondent's failure to cooperate with the DEC's requests for information about the grievance, the complaint alleged that, on January 5, January 27, and March 24, 2011, the

DEC requested a written reply to Lohman's grievance. Respondent did not reply to any of those requests.

The third count of this complaint, charging respondent with gross neglect and a pattern of neglect, alleges that, from March 2009 to December 2010, while representing Lohman, respondent failed to initiate and pursue the petition for expungement, resulting in the entry of an order of dismissal without prejudice against Lohman.

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 complaint alleged that respondent was guilty of gross neglect, lack of diligence, and pattern of neglect for failing to initiate and pursue the petition for expungement. Exhibit 5, however, includes a copy of the order that establishes that respondent did file the petition. Therefore, the assertion that respondent did not initiate the matter is inaccurate. After he did so, however, respondent failed to take further action, resulting in the petition's dismissal on December 13, 2010. Respondent then took no action to have the petition reinstated. After learning about the dismissal, Lohman retained another

attorney to represent him in the matter. Respondent is, thus, guilty of gross neglect and lack of diligence.

This ethics complaint also charged respondent with a pattern of neglect. This charge applies when there has been negligence in at least three matters, not because of continuing negligence in the same matter. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). However, we find that respondent engaged in a pattern of neglect in light of his gross neglect in this and the other matters now before us (RPC 1.1(b)).

As to communications with this client, the allegations of the complaint and exhibits appended thereto amply establish the numerous attempts Lohman made to communicate with respondent, to no avail. Respondent is, therefore, also guilty of failing to reply to Lohman's reasonable requests for information and failing to keep him apprised about the status of his matter (RPC 1.4(b)). Respondent did not inform Lohman that his petition had been dismissed. Lohman learned that fact on December 15, 2010, when he personally called the court. Thereafter, respondent would not answer Lohman's numerous telephone calls and emails.

The complaint further alleged that respondent violated RPC 1.4(c) because he failed to explain the matter to Lohman to the extent reasonably necessary to permit him to make informed

decisions about the representation. The allegations of the complaint do not support this charged violation. We, therefore, dismiss it.

Count four charged respondent with violating RPC 1.16(a), which prohibits an attorney from representing a client if doing so will result in a violation of the Rules of Professional Conduct. This rule does not apply here. The representation itself, pursuing a petition of expungement, did not violate any of the Rules of Professional Conduct. We, therefore, dismiss this charge as well.

Finally, the allegations of the complaint support a finding that respondent violated RPC 8.1(b). He did not reply to the DEC's requests for information about the grievance.

In sum, respondent is guilty of violating RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.1(b). He also violated RPC 1.1(b), when his conduct in this matter is considered with his conduct in the other matters discussed below.

DRB 11-208

THE BARA MATTER (District Docket No. VII-2010-0037E)

Service of process was proper in this matter. On April 19, 2011, the DEC mailed copies of the ethics complaint, by regular and certified mail, to respondent's Princeton, New Jersey, address. The certified mail receipt shows delivery on May 12,

2011. The signature of the recipient appears to be respondent's. The certification does not mention the status of the regular mail.

On June 7, 2011, the DEC sent a "five-day letter," by regular and certified mail to the same address. The certified mail receipt indicates delivery on June 10, 2011. Respondent's signature appears on the receipt. The certification is silent about the status of the regular mail.

As of the date of the certification of the record, June 14, 2011, respondent had not filed an answer to the ethics complaint.

The complaint charged respondent with violating RPC 1.3, RPC 1.4(b) and (c), RPC 8.1(b), and RPC 8.4(c).

In early 2005, Denise Bara retained respondent to represent her in a personal injury action arising from a January 2005 accident. On January 2, 2007, respondent filed a complaint on Bara's behalf.

From 2007 throughout 2009, Bara made repeated telephone calls to respondent's office, seeking information about the status of her case. On most occasions, she was informed that respondent was unavailable. He did not return her telephone calls.

At some point in 2009, Bara received a written communication, stating that she was required to appear in court.² The ethics complaint did not identify the author of the communication. Approximately ten minutes before Bara's arrival at the courthouse, respondent called her on her cell phone to inform her that the hearing had been postponed and that her appearance was not required.

Afterwards, Bara called respondent's office on two occasions for a new hearing date, but respondent did not return her calls.

During the pendency of Bara's personal injury matter, various treating physicians contacted her about being paid. On numerous occasions, Bara requested that respondent write to those physicians to inform them that she had an active case. Respondent did not comply with her requests. At some point, "medical providers filed suit against her for payment." When she spoke to respondent about it he told her, "I am working on it." However, he took no action on her behalf.

In December 2009, respondent went to Bara's residence to discuss her case with her. Afterwards, she unsuccessfully attempted to reach him, until one morning, at 7 a.m., she

² Her case, however, had been dismissed with prejudice in December 2008.

reached him on his cell phone. When she inquired whether he had sent letters to the physicians that were suing her, he replied that he would do so. He did not, however.

In either April or May 2010, Bara's attempts to contact respondent were unsuccessful. She, therefore, called the Superior Court Clerk's Office to learn about the status of her case and discovered that, on December 19, 2008, her case had been dismissed with prejudice for failure to comply with the court's order entered on August 12, 2008. The August 12, 2008 order had dismissed Bara's complaint without prejudice for failure to comply with the court's April 11, 2008 order.³

Afterwards, Bara again tried to contact respondent. On one occasion, she went to his office, at which time he promised to turn over her file. He failed to do so. He did, however, give her information about his legal malpractice carrier. On September 8, 2010, Bara again went to respondent's office and refused to leave without her file, which he gave her at that time.

On August 11, 2010, Bara filed a grievance against respondent. Among other things, she complained that respondent had "completely abandoned" her and had led her to believe that

³ The April 11, 2008 order is not a part of the record.

her case would be settled in the summer, knowing all along that it had been dismissed in August 2008. Bara added that her brother, who had also retained respondent for representation regarding a motorcycle accident, was so dissatisfied with respondent that he had fired him. She stated that it seemed to be "a pattern, he takes on your case and then [you're] on your own!" She stated further that respondent had caused her "much aggravation and stress."

By letters dated August 16 and August 31, 2010, sent to respondent's Lawrenceville office address, the DEC requested a written reply to Bara's grievance. Respondent failed to reply to either letter. When the DEC learned that respondent had moved his office, it sent a third letter to respondent's Princeton law firm address, on September 1, 2010, seeking a reply to Bara's grievance within ten days. Respondent did not reply to the DEC's requests for information.

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).

Respondent was charged with lack of diligence for allowing the dismissal of Bara's complaint. The facts alleged in the

complaint support this violation. Because respondent ignored two earlier court orders, failed to have Bara's complaint restored, and failed to communicate with Bara's treating physicians, culminating in their lawsuit against her, he is also guilty of gross neglect. Although that violation was not charged in the ethics complaint, we viewed it as an aggravating factor in this matter.

The allegations of the ethics complaint also establish that respondent failed to adequately communicate with Bara. Clearly, he failed to keep her apprised about the status of her matter, failed to reply to her requests for information, and also misrepresented to her that her case was still active in December 2009, when it had been dismissed with prejudice a year earlier. Respondent's conduct in this regard violate RPC 1.4(b) and RPC 8.4(c), respectively.

On the other hand, there are insufficient facts alleged to support a violation of RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary for the client to make informed decisions about the representation). We, therefore, dismiss this charged violation.

Finally, respondent violated RPC 8.1(b) by failing to reply to the DEC's requests for a reply to the grievance.

In sum, respondent is guilty of violating RPC 1.3, RPC 1.4(b), RPC 8.1(b), and RPC 8.4(c). An aggravating factor present here is his gross neglect of Bara's case.

DRB 11-209

THE STUDSTILL MATTER (District Docket No. VII-2010-0049E)

Service of process was proper in this matter. On May 12, 2011, the DEC mailed copies of the ethics complaint, by regular and certified mail, to respondent's Princeton, New Jersey, address. The certified mail receipt shows delivery on June 3, 2011. The receipt was signed by respondent. The certification is silent about the status of the regular mail.

On June 7, 2011, the DEC sent a "five-day letter," by regular and certified mail, to the same address. The certified mail receipt indicates delivery on June 10, 2011. The receipt was signed by respondent. The certification is silent about the status of the regular mail.

As of the date of the certification of the record, June 14, 2011, respondent had not filed an answer to the complaint.

The complaint charged respondent with violating RPC 1.1 (a) and (b), RPC 1.3, RPC 1.4(b) and (c), and RPC 8.1(b).

In 2006, William Studstill retained respondent regarding a medical malpractice action. The circumstances giving rise to the cause of action occurred in August 2004.

Although respondent filed a civil complaint on Studstill's behalf, he failed to pursue Studstill's medical malpractice action.

On November 6, 2009, on an unopposed motion, the court entered an order barring two witnesses from testifying in Studstill's trial. Thereafter, on March 5, 2010, again on an unopposed motion, the court entered an order granting the defendant's motion for summary judgment and dismissing Studstill's complaint with prejudice. Respondent never informed Studstill about these events.

Beginning in January 2010, respondent stopped returning Studstill's telephone calls, made at least four times a week, to respondent's office and cell phone numbers. According to the complaint, on "some days," Studstill called respondent consistently throughout the day, to no avail.

As of the date of the ethics complaint, May 4, 2011, Studstill did not know the status of his malpractice action.

On October 27, 2010, Studstill filed a grievance, complaining that respondent did not reply to his telephone calls or letters and that respondent refused to communicate with him.

On November 5 and 23, 2010, the DEC sent letters to respondent at his Princeton law office, seeking a reply to Studstill's grievance. Respondent failed to reply.

The matter was, thereafter, assigned to an investigator. On December 13, 14, and 15, 2010, January 5 and 6, and February 9, 2011, the investigator left messages on respondent's office telephone or cell phone numbers listed on his letterhead. Respondent did not reply to the messages. He also failed to reply to the investigator's December 13 and 15, 2010 emails and to the investigator's December 15, 2010 and January 19, 2011 letters.

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).

Respondent filed a lawsuit on Studstill's behalf. Thereafter, he failed to oppose two motions. The first motion precluded Studstill from presenting two witnesses at trial; the second motion was for summary judgment and resulted in the case's dismissal with prejudice. Respondent's conduct in this context violated RPC 1.1(a) and RPC 1.3. He also violated RPC

1.1(b), when his infractions in this and in other matters before us are considered together.

Furthermore, respondent violated RPC 1.4(b), by failing to reply to Studstill's telephone calls and by failing to inform him that his case had been dismissed, and RPC 8.1(b), by failing to cooperate with the ethics investigator.

This complaint also charged respondent with violating RPC 1.4(c). Other than re-stating the language of that rule, namely, that respondent failed to explain the matter to the extent reasonably necessary to permit Studstill to make informed decisions about the representation, it alleged no independent facts to support a finding that the rule was violated. We, therefore, dismiss this charged violation.

In sum, respondent is guilty of violating RPC 1.1(a) and (b), RPC 1.3, RPC 1.4(b), and RPC 8.1(b).

DRB 11-210

THE STUCKEY MATTER (District Docket No. VII-2010-0046E)

Service of process was proper in this matter. On May 6, 2011, the DEC mailed copies of the ethics complaint, by regular and certified mail, to respondent's Princeton, New Jersey, address. The certified mail receipt indicates delivery on May

12, 2011 and appears to have been signed by respondent. The certification is silent about the status of the regular mail.

On June 7, 2011, the DEC sent a "five-day letter" to the same address, by regular and certified mail. Respondent accepted delivery of the certified mail on June 10, 2011. The certification is silent about the status of the regular mail.

As of the date of the certification of the record, June 14, 2011, respondent had not filed an answer to the complaint.

The complaint charged respondent with violating RPC 1.4 (presumably (b)) and RPC 8.1(b).

On a date not mentioned in the ethics complaint, Alan and Rhonda Stuckey retained respondent individually and on behalf of minors Tavon and Eleanor Stuckey for representation in a personal injury matter. Although respondent filed a complaint on behalf of the Stuckeys, the complaint was dismissed for failure to prosecute. On December 21, 2007, respondent had the dismissal vacated and the complaint reinstated.

On April 29, 2009, a default judgment was entered against the defendant, followed by a July 23, 2009 order for judgment.

Throughout the litigation, and continuing through March 2010, the Stuckeys tried to communicate with respondent about the status of their case. Respondent did not timely address most of the Stuckey's requests for information or their requests for

information about the status of the judgment that had been entered in their favor.

Respondent also failed to reply to the DEC secretary's letters, dated October 15 and November 4, 2010, seeking information about the grievance, and failed to respond to the investigator's December 28, 2010 telephone call.

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 support a finding that respondent failed to properly communicate with the Stuckeys about the status of their case, failed to respond to their inquiries about the judgment, and also failed to comply with reasonable requests for information from disciplinary authorities, violations of RPC 1.4(b) and RPC 8.1(b), respectively.

DRB 11-211

THE SMETANA MATTER (District Docket No. VII-2010-0034E)

Service of process was proper in this matter. On April 18, 2011, the DEC mailed copies of the ethics complaint, by regular

and certified mail, to respondent's Princeton, New Jersey, address.⁴ The certified mail receipt shows delivery on May 25, 2011. It was signed by respondent. The certification is silent about the status of the regular mail.

On June 7, 2011, the DEC sent a "five-day letter," by regular and certified mail, to the Princeton, New Jersey, address. The certified mail receipt shows delivery on June 10, 2011. Respondent's signature appears on the receipt.

As of the date of the certification of the record, June 14, 2011, respondent had not filed an answer to the ethics complaint (6C15).

The complaint charged respondent with violating RPC 1.1(a) and (b), RPC 1.3, RPC 1.4(b), RPC 1.16(a)(1), (a)(3), and (d), and RPC 8.1(b).

In July 2005, Petro Smetana retained respondent for a workplace injury that occurred on April 15, 2005. Smetana, who is Russian, required a translator and often relied on his wife, Galina Smetana, or son, Max Smetana, to conduct the translations.

Apparently, there were no problems with the representation until 2009. In the spring of 2009, Smetana had a doctor's

⁴ Although the letter was addressed to the Lawrenceville office address, it was sent to the Princeton address.

appointment, the purpose of which was to generate information necessary for his workers' compensation case to proceed. Shortly after that appointment, respondent stopped replying to the Smetanas' telephone calls.

According to the complaint, between May and October 2009, Mrs. Smetana called respondent's office approximately twenty times. When he was unavailable, she was transferred to his voice mail, which often was full. She would then call back and, on approximately ten occasions, left messages and her contact information with respondent's secretary. Between May and October 2009, neither Smetana nor his wife received any correspondence or emails from respondent.

In December 2009, Smetana retained attorney Gary Adams to take over his workers' compensation matter. By letters dated January 14, February 24, and March 9, 2010, Adams requested a copy of Smetana's file. Adams also tried to reach respondent, on February 18,⁵ and March 8, 2010, about turning over the file to him.

Sometime around March 12, 2010, Adams spoke to respondent. He later filed a motion to compel respondent to turn over the file to him.

⁵ The complaint's reference to February 18, 2011 must have been a typographical error.

In March 2010, the court informed Adams that, in April 2009, Smetana's case had been dismissed for lack of prosecution. Respondent then turned over Smetana's file to the court, which, in turn, gave it to Adams. Adams had approximately one month to reinstate Smetana's case, before it would be dismissed with prejudice.

After Smetana filed a grievance, respondent failed to comply with the DEC secretary's July 30, 2010 request for a reply. On August 18, 2010, the DEC secretary send a second request, to which respondent did not reply until October 18, 2010.

In respondent's October 18, 2010 letter to the DEC investigator, he apologized for his delay in replying to the grievance and indicated that he had been undergoing a number of personal issues that he was addressing, which had caused him to neglect a number of "personal and professional duties and obligation." Among other things, respondent claimed that he had spoken to Mrs. Smetana often and had kept her informed about the status of the case, but speculated that she might not have "fully comprehended" what he was telling her.

In his letter, respondent set out the extent of Smetana's injuries, asserted that the case had been adjourned to enable him to gather Smetana's medical records to attempt to have him

declared totally disabled, and stated that the medical records, which were in Russian, had to be translated before the scheduling of Smetana's medical evaluation. Respondent contended that this complicated and timely process had led to Smetana's frustration and had caused him to retain another attorney.

Respondent claimed further that his delay in copying and transferring Smetana's file was due to his attempt to avoid prejudicing Smetana's rights, his heavy workload, and other issues.

In response to that letter, a DEC investigator wrote to respondent, on November 4 and December 10, 2010, requesting specific information about the case. Respondent did not reply to either letter.

The ethics complaint alleged that respondent's conduct constituted gross neglect and a pattern of neglect, because he failed to pursue Smetana's workers' compensation claim from 2009 to 2010 and because the "one-year time frame" to reinstate Smetana's claim had almost expired, which would have resulted in the case's dismissal with prejudice.

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 establish that respondent stopped working on Smetana's case for at least a one-year period. Because the case was about to be dismissed with prejudice, it may have already been dismissed without prejudice. Thus, respondent's inaction constituted gross neglect and lack of diligence, in addition to a pattern of neglect, when all of his transgressions are viewed together.

The allegations also support a finding that respondent failed to properly communicate with his client. He did not reply to the Smetanas' numerous attempts to obtain information about the case and did not keep them informed about its status. The Smetanas unsuccessfully attempted to contact respondent approximately twenty times, over the course of a five-month period. Eventually, they retained another attorney.

The complaint also charged respondent with violating RPC 1.16(a)(1) (an attorney shall withdraw from the representation of a client if the representation will result in a violation of the Rules of Professional Conduct) and RPC 1.16(a)(3) (a lawyer shall withdraw from the representation if he is discharged). Neither rule is applicable here.

As to RPC 1.16(a)(1), just as in the Lohman matter, respondent's pursuit of a workers' compensation claim did not violate the Rules of Professional Conduct. As to RPC 1.16(a)(3), respondent did not continue to represent Smetana, after Smetana requested the turn of his file. Respondent did, however, violate RPC 1.16(d), which requires an attorney, upon the termination of the representation, to surrender papers and property that the client is entitled to receive. Here, respondent failed to turn over Smetana's file. His new attorney had to file a motion to compel the return of the file.

Finally, even though respondent belatedly sent to the DEC an explanation about the grievance, when the investigator sought additional information, he failed to submit a further reply.

In sum, respondent is guilty of violating RPC 1.1(a) and (b), RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 8.1(b).

The only issue left for determination is the proper quantum of discipline for respondent's misconduct in these six default matters, including gross neglect in all but the Stuckey and Bara matters; lack of diligence in all but the Stuckey matter; failure to communicate and failure to cooperate with disciplinary authorities in all of the matters; misrepresentation in two matters, Gonzalez and Bara; failure to turn over a file in one matter, Smetana; and pattern of neglect.

In Bara, we find, as an aggravating factor, that respondent grossly neglected her matter, even though this violation was not charged in the ethics complaint.

An additional aggravating factor here is respondent's ethics history: a 2010 admonition in one matter, a three-month suspension in 2011 for four consolidated default matters, and in one matter, another three-month suspension in 2011.

Respondent was admitted to practice in 1988, approximately twenty-three years ago. He practiced law without incident until his problems arose, in 2004/2005 through 2009. During that time, including these matters, respondent has had twelve disciplinary matters before us. Eleven of the twelve matters were defaults. In the matter before us in December 2010, respondent filed an unsuccessful motion to vacate the default. In the motion, he highlighted his long-term bout with depression and the effect it had on his professional and personal life. As of the date of this decision, respondent has not filed a motion to vacate the current defaults. Given the timing of the majority of respondent's problems, over a four or five-year period, it is likely that his depression affected his law practice. There is no evidence that his misconduct was a result of indolence, greed, or callous indifference to his clients' interests.

The question, thus, is what to do with this respondent and how to protect the public. We determine that an additional term of suspension and conditions on respondent's law practice will protect the public.

Generally, suspensions ranging from six months to two years have been imposed for combinations of ethics infractions in multiple matters that are similar to those committed by respondent. See, e.g., In re Pollan, 143 N.J. 306 (1996) (six-month suspension for attorney who in seven matters engaged in gross neglect, pattern of neglect, failure to communicate with clients, failure to turn over a client's file, misrepresentations, recordkeeping violations and failure to cooperate with disciplinary authorities); In re Griffin, 170 N.J. 188 (2001) (on a motion for reciprocal discipline involving seven client matters, one-year suspension for attorney guilty of pattern of neglect, failure to communicate with clients, and failure to cooperate with disciplinary authorities); and In re Kanter, 162 N.J. 118 (1999) (one-year suspension for attorney who displayed gross neglect, pattern of neglect, lack of diligence and failure to communicate with clients in five matters; in three of the matters he failed to prepare retainer agreements and, in one of the matters, failed to expedite litigation); In re Lawnick, 162 N.J. 113 (1999) (default matter;

one-year suspension for attorney who agreed to represent clients in six matters and took no action to advance their claims, failed to communicate with clients and failed to cooperate with disciplinary authorities); In re Herron, 140 N.J. 229 (1995) (one-year suspension for attorney who in seven client matters, engaged in gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to deliver funds and to surrender papers to a client, failure to cooperate with ethics authorities, and misrepresenting the status of matters to clients); In re Rosenthal, 118 N.J. 454 (1990) (one-year suspension for attorney who exhibited gross neglect, failed to seek lawful objectives of clients and failed to carry out contracts of employment in three matters, failed to communicate with his clients in two of the matters, failed to refund a retainer in one of the matters, displayed a pattern of neglect, and failed to cooperate with ethics authorities); and In re Kanter, 149 N.J. 396 (1997) (two-year suspension in a default, for misconduct in eleven matters, which misconduct included gross neglect, lack of diligence, failure to communicate with clients, failure to turn over files upon conclusion of the representation, failure to expedite litigation, conduct involving dishonesty, deceit or misrepresentation and failure to cooperate with disciplinary authorities). But see, In re

Przygoda, 163 N.J. 401 (2000) (reprimand where, in seven client matters, attorney engaged in gross neglect, failure to communicate with clients and misrepresentation; compelling mitigating factors were considered including the attorney's remorse and contrition, that she no longer posed a threat to the public, and the passage of time since her misconduct had occurred).

This case is more serious than the one-year suspension cases because of respondent's ethics history (admonition, three-month suspension in four default matters and another three-month suspension in one default matter). On balance, this case is comparable to Kanter (two-year suspension). Although Kanter involved eleven client matters and this case involves only six, Kanter had no ethics history, while respondent's ethics history is significant.

We determine that, based on cited precedent, a two-year prospective suspension, together with the conditions already in place, constitutes adequate discipline and sufficiently protects the public from harm until, hopefully, respondent is better equipped to deal with his personal and professional problems.

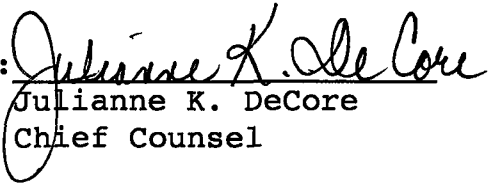
We also determine to require respondent to provide to the Office of Attorney Ethics (OAE), prior to his reinstatement, proof of fitness to practice law, as attested by an OAE-approved

mental health professional. Upon reinstatement, he should be required to practice under the supervision of an OAE-approved attorney for a two-year period.

Members Clark and Stanton 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

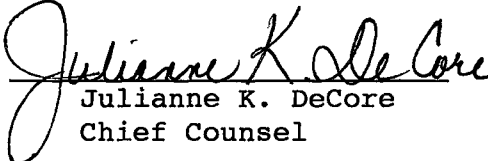
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matters of Kevin H. Main
Docket Nos. DRB 11-203, 11-207, 11-208, 11-209, 11-210 and 11-211

Decided: December 20, 2011

Disposition: Two-year prospective suspension

Members	Disbar	Two-year Prospective 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:		7				2


Julianne K. DeCore
Chief Counsel