

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 12-195  
District Docket Nos. IIB-2011-0034E,  
IIB-2011-0036E, and IIB-2010-0037E

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IN THE MATTER OF :  
: DANIEL N. SHAPIRO :  
: AN ATTORNEY AT LAW :  
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Decision

Argued: September 20, 2012

Decided: November 30, 2012

N. Ari Weisbrot appeared on behalf of the District IIB Ethics Committee.

Edward W. Cillick appeared on behalf of respondent.

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

These matters were before us on a recommendation for discipline (three separate two-year suspensions, to run consecutively) filed by the District IIB Ethics Committee (DEC). Each complaint charged respondent with having violated RPC 1.1(a) and (b) (gross neglect and pattern of neglect), RPC 1.3

(lack of diligence), RPC 1.4 (b) (failure to adequately communicate with the client), RPC 1.5(b) (failure to memorialize the basis or rate of the fee), and R. 1:20-3(g)(3) and (4), more properly RPC 8.1(b)(failure to cooperate with an ethics investigation). We determine to impose a three-month suspension, with conditions.

Respondent was admitted to the New Jersey bar in 1984. On October 15, 2002, he received a reprimand for misconduct in four matters: gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with an ethics investigation. In re Shapiro, 174 N.J. 368 (2002).

On February 25, 2010, respondent received a reprimand for gross neglect and failure to communicate with the client in one matter and lack of diligence and failure to utilize a written fee agreement in a second matter. In re Shapiro, 201 N.J. 201 (2010).

On March 8, 2011, respondent received a censure for gross neglect and pattern of neglect, lack of diligence, failure to communicate with the client and failure to utilize a written fee agreement. In re Shapiro, 205 N.J. 106 (2011).

On June 21, 2011, respondent was temporarily suspended for his failure to comply with conditions set out in the 2010

reprimand matter, including proof of ten hours of professional responsibility courses, a copy of a substance abuse evaluation, and proof of payment to the New Jersey Lawyers' Fund for Client Protection. In re Shapiro, 205 N.J. 106 (2011). He remains suspended to date.

At the inception of the DEC hearing, respondent admitted, seriatim, virtually all of the facts and charged violations contained in the three separate complaints.

**I. The Mojica Matter – District Docket No. IIB-2011-0036E**

Rosaria Mojica retained respondent in connection with a divorce action, in which Mojica's sister-in-law sought to receive Mojica's interest in a two-family house that Mojica and her brother owned jointly.

On August 20, 2009, Mojica had her one and only meeting with respondent, at which time she paid him a \$2,500 fee. Respondent did not set forth the rate or basis of his fee, in writing. At the meeting, respondent advised Mojica that her case should be handled as a real estate action.

Thereafter, respondent took no action to further a real estate action or the matrimonial action. Specifically, he admitted that he filed no papers on Mojica's behalf, never

contacted her to discuss the status of the case pending against her, and took no action to protect her interests in the case. As a result, in December 2009, a default was entered against her.

After August 2009, Mojica called respondent on several occasions, to obtain information about her matter, but respondent did not return any of her calls. Thereafter, she called respondent weekly for months, until she finally demanded the return of her \$2,500 fee. All of her requests went unheeded. Respondent never replied to her about returning the fee.

Finally, respondent conceded that he failed to reply to the grievance, "failed to cooperate in the investigation" of the grievance, and offered no "counter-version" of the facts.

## **II. The Tang Matter - District Docket No. IIB-2010-0037E**

In June or early July 2010, Nicole Tang retained respondent to represent her with regard to an uncontested divorce and a custody dispute. Tang paid respondent \$3,000 for the representation, but respondent failed to provide her with a written fee agreement.

Tang called respondent numerous times for information about her matters, on his office and cellular telephones. She also asked his colleagues of his whereabouts. Respondent ignored

Tang's repeated requests for information. He also performed no legal services in connection with the matter.

Tang filed an ethics grievance on October 17, 2010. The DEC investigator sent respondent letters dated December 7, 2010 and January 28, 2011, neither of which garnered the required reply from respondent. Respondent conceded his failure in this regard.

**III. The Broking Matter – District Docket No. IIB-2011-0034E**

In March 2009, Scott Broking retained respondent to have his alimony payments to his ex-wife reduced or discontinued. Respondent failed to set forth, in writing, the rate or nature of his fee.

Thereafter, respondent advised Broking to collect all of the appropriate and relevant underlying documentation, in order for respondent to draft a petition and prepare for a hearing.

In March or April 2009, respondent told Broking that all of the necessary documents had been submitted to the court, that a motion was pending, and that they should meet in advance of the hearing. To that end, respondent scheduled a meeting with Broking. Due to scheduling conflicts, however, respondent canceled the meeting and advised Broking to await his word about the upcoming hearing.

During the summer of 2009, Broking made numerous telephone calls to respondent that went unanswered. Therefore, Broking contacted the Ocean County Superior Court to obtain the date of the upcoming hearing. The court clerk advised him that no motion had been filed in a matter involving him and that there was no hearing.

Respondent was not charged with having misrepresented the status of the case (RPC 8.4(c)). He testified that he sent the motion for filing, and thought at the time that it had been filed.

Broking again made repeated efforts to reach respondent by telephone, but he ignored them. Respondent subsequently sent Broking a letter, apologizing for the "delay" and pledging to immediately file the motion.

In August 2009, respondent filed the appropriate motion. The court scheduled a hearing for September 4, 2009. Broking made "numerous and substantial efforts to communicate" with respondent by telephone and in written correspondence about preparing for the hearing, but respondent ignored all of those inquiries.

At the September 4, 2009 court hearing, respondent "was woefully unprepared" and unable to answer basic questions from

the judge. According to the complaint, the court "was extremely critical of Respondent and excoriated him" for his unpreparedness regarding his own application. The court dismissed Broking's application to reduce his alimony obligation.

At the DEC hearing, respondent sought to clarify the events at the September 4, 2009 hearing. He asserted that the judge had dismissed the matter not because of respondent's actions, but because of his client's own actions. Respondent's assertion was otherwise unsupported by any evidence.

Broking was left to seek new counsel to file a motion for reconsideration of his application. Toward that end, he wrote to respondent seeking his file. Respondent failed to comply with that request.

On February 3, 2010, the DEC investigator sent a letter to respondent, advising him of the ethics grievance and requesting his reply and the client file. When respondent failed to reply, the investigator sent a second letter, dated July 21, 2010. Respondent failed to reply to that second request for information as well.

In mitigation, respondent offered his alcoholism and depression. According to respondent, he has been an alcoholic

since he was twelve years old, although he has been sober since 1997. In November 2011, he sought counseling from a "social worker addiction counselor," Joel M. Levine, who randomly tests respondent to ensure that he is drug-and-alcohol free. In addition, respondent attends Alcoholics Anonymous.

Respondent testified that he was told (presumably by Levine) that he has been suffering from depression for two or three years. Since November 2011, respondent has attended weekly therapy sessions with Levine for his depression. He takes no medication and has not seen a medical professional for his depression. He acknowledged that, if required to do so, he would seek psychological or psychiatric care.

When respondent was cross-examined by the presenter about the use of his alcoholism as a mitigating factor, the following exchange took place:

Q. So in addition to the pattern of unethical violations or I should say ethics violations, would you agree that is also a pattern of each time confronted with it, you come with an excuse or explanation or some, you know, mitigation about alcoholism or depression, and at least in the last couple of times those factors resulted not in suspension or in disbarment, but in the lesser reprimands, correct?

A. Yes.



Q. And that's what you want now, you want to come before the Disciplinary Review Board eventually or Supreme Court and say, even though this has been going on for ten years, and even though I've offered the alcoholism, I haven't had a drink since '97, but I've been offering the alcoholism as a mitigating factor every year, every two years, for these things, now, it's -- I guess you realize you can't just offer the alcoholism anymore, right, that's not going to work, right?

MR. CILLICK [Respondent's Counsel]: Is that a rhetorical --

Q. No, I'm asking, you recognize that you know the fifth time or the fourth time that you're brought before the Office of Attorney Ethics, you can't again say it's alcoholism, right?

A. It is what it is, sir, and I'll accept whatever punishment I have, and I'll work to get better.

[T70-16 to T71-16.]<sup>1</sup>

The DEC found that, in each of the three matters, respondent violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4 (b) (failure to adequately communicate with the client), RPC 1.5(b) (failure to memorialize the basis or rate of the fee), and R. 1:20-3(g)(3) and (4), more properly RPC

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<sup>1</sup> "T" refers to the January 19, 2012 DEC hearing transcript.

8.1(b) (failure to cooperate with an ethics investigation). The DEC also found that respondent engaged in a pattern of neglect (RPC 1.1(b)).

As previously noted, the DEC recommended three separate two-year suspensions, to run consecutively. The DEC did not support that recommendation with applicable case law.

The DEC also recommended the following conditions: thirty hours of courses in professional responsibility; a proctor for an indefinite term; and continuing treatment with Alcoholics Anonymous, with regular reports to the OAE.

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence.

Respondent was retained to represent three separate clients in their relatively uncomplicated matrimonial matters, one of which included a real estate component. As conceded by respondent, in all three, Mojica, Tang and Broking, he performed little or no work on his clients' matters, which resulted in the loss of their claims or the necessity that they seek new counsel. In so doing, respondent violated RPC 1.1(a) and (b) and RPC 1.3.

So, too, in all three matters, the clients called respondent at his office, sent him letters, and tried to meet with him, in order to obtain information about the status of their cases. Yet, in all three instances, respondent admitted that he repeatedly ignored their numerous, reasonable requests for information, a violation of RPC 1.4(b).

Respondent was also required by RPC 1.5(b) to provide his clients with a writing that set forth the rate or basis of his fee. He admittedly failed to do so in all three matters.

Finally, although respondent ultimately filed answers to the three complaints and appeared at the DEC hearing, he admittedly failed to cooperate with ethics authorities at the investigation stage of all three matters, ignoring written requests for information, and failing to turn over files related to the grievants' matters. In so doing, he violated RPC 8.1(b).

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, and the seriousness of the attorney's disciplinary history. Admonitions: In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (attorney filed an appearance in his

client's federal civil rights action and chancery foreclosure matter and had a pending motion in the federal matter adjourned; he was unable to demonstrate what work he had done on his client's behalf, who had paid him \$10,000; he also failed to communicate with his client and failed to reply to the disciplinary investigator's requests for information about the grievance); In re Russell, 201 N.J. 409 (2009) (attorney failed to file answers to divorce complaints against her client, causing a default judgment to be entered against him; the attorney also failed to explain to the client the consequences flowing from her failure to file answers on his behalf); and In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008) (attorney's inaction in a personal injury action caused the dismissal of the client's complaint; the attorney took no steps to have it reinstated; also, the attorney did not communicate with the client about the status of the case).

Reprimands: In re Uffelman, 200 N.J. 260 (2009) (attorney was guilty of gross neglect, lack of diligence, and failure to communicate with a client; although the attorney had no disciplinary record, the reprimand was premised on the extensive harm caused to the client, who was forced to shut down his business for three months because of the attorney's failure to

represent the client's interests diligently and responsibly) and In re Aranguren, 172 N.J. 236 (2002) (attorney failed to act with diligence in a bankruptcy matter, failed to communicate with the client, and failed to memorialize the basis of the fee; prior admonition and six-month suspension).

If, as here, the attorney displays a pattern of neglect, a reprimand ordinarily ensues. See, e.g., In re Weiss, 173 N.J. 323 (2002) (attorney found guilty of gross neglect, pattern of neglect, and lack of diligence); In re Balint, 170 N.J. 198 (2001) (in three 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) (lack of diligence, failure to communicate in a number of cases handled on behalf of an insurance company, gross neglect, and pattern of neglect).

In mitigation, respondent urged us to consider his alcoholism and depression. With regard to his alcoholism, respondent claimed that he has been alcohol-free since 1997. Yet, about thirteen years into his sobriety, he committed exactly the same type of ethics infractions that have plagued him in the past, when he was not sober. Respondent's misconduct

over these past few years, when he neglected these cases as a sober, recovering alcoholic, cannot be attributed to alcoholism.

Respondent also urged us to consider that his social worker, Mr. Levine, determined that he suffers from depression, for which he has received weekly therapy sessions, since November 2011. Depression may be partly to blame for respondent's problems here, but its existence should be established by a medical professional trained to diagnose it.

In aggravation, respondent has significant prior discipline. In October 2002, he received a reprimand for misconduct in four matters: gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with an ethics investigation. In February 2010, he received a second reprimand for similar misconduct: gross neglect and failure to communicate with the client in one matter, and lack of diligence and failure to utilize a written fee agreement in a second matter. In March 2011, he received a censure, in a default matter, for identical infractions to the ones at hand: gross neglect and pattern of neglect, lack of diligence, failure to communicate with the client, and failure to utilize a written fee agreement. A timeline shows that the underlying misconduct in the censure matter took place in 2008 and 2009. In February

and March 2010, he received notices of the ethics complaint filed against him in that matter.

Meanwhile, from 2009 to 2010, respondent was neglecting and ignoring the clients in this matter, at the very time that the complaint in the default (censure) matter above was served on him and was wending its way to us. In addition, respondent is presently temporarily suspended for failure to comply with a prior Supreme Court order.

With two prior reprimands and a censure for identical misconduct, the latter during the same time frame that he was ignoring this new group of clients, it is obvious that he has not learned from his prior mistakes. Thus, we believe that progressive discipline is in order.

In his brief to us, respondent's counsel asked for a lenient sanction, stating that, "based on the aggravating factor of prior discipline, suspension may be appropriate, however, a six-year suspension [as recommended by the DEC] is arbitrary and unwarranted," and "[r]espondent accepts that if the aggravating factors outweigh the mitigating factors . . . a short suspension is warranted." Counsel further stated that respondent

accepts any supervision and does not foresee ever practicing law as a sole practitioner again. He has offers of work as a *per diem*

attorney and as of counsel. A limitation can be imposed on his practice. He has no ethics history as an employee or while supervised. Additionally, Respondent represented at the hearing that, if allowed to practice, he would limit himself to Criminal (including Municipal Court) matters and Family court actions, but as to those not as the primary attorney. Such a limitation is allowable and respectfully a viable option to suspension. See: In Re Breen [sic], 113 N.J. 522 (1989); In Re Goldstein [sic], 97 N.J. 545 (1984) and In Re Palmieri [sic], 75 N.J. 488 (1978).

[Rb5.]<sup>2,3</sup>

Respondent's counsel argued for a limitation of respondent's practice, in lieu of a suspension, but in none of the cases cited by counsel, Breen, Goldstein, and Palmieri, was the attorney allowed to limit his practice, in lieu of a suspension.

We find that, under the principle of progressive discipline, the appropriate sanction here is one degree higher than was imposed in respondent's most recent, censure matter. Thus, we determine to impose a prospective three-month

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<sup>2</sup> "Rb" refers to respondent's counsel's brief to us.

<sup>3</sup> At oral argument before us, respondent's counsel told us that, currently, respondent is working full-time as a plumber's assistant.




suspension. The discipline recommended by the DEC is too severe, under the circumstances. We also require respondent to certify his fitness to practice law by a qualified mental health professional approved by the OAE, and, upon reinstatement, practice with a proctor for two years or until such later time as the OAE determines that respondent no longer requires a proctor. In addition, no petition for reinstatement should be entertained until respondent complies with all of the Court's prior orders. Finally, we determine that respondent should be precluded from practicing law as a sole practitioner.

Vice-Chair Frost voted for the imposition of a six-month suspension. Member Clark would not have limited respondent's ability to practice law as a sole practitioner, at least until the OAE is satisfied that he is able to do so without risk of harm to the public.

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 Daniel Shapiro  
Docket No. DRB 12-195

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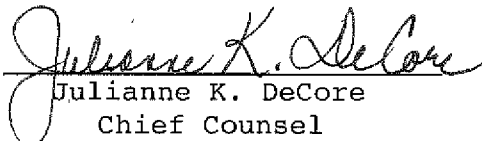
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Argued: September 20, 2012

Decided: November 30, 2012

Disposition: Three-month suspension

<i>Members</i>	Disbar	Six-month Suspension	Three-month suspension	Reprimand	Did not participate
Pashman			X		
Frost		X			
Baugh			X		
Clark			X		
Doremus			X		
Gallipoli			X		
Wissinger			X		
Yamner			X		
Zmirich			X		
Total:		1	8		

  
Julianne K. DeCore  
Chief Counsel