

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 09-139  
District Docket Nos. X-2006-0084E  
and X-2007-0046E

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IN THE MATTER OF  
RICHARD BANAS  
AN ATTORNEY AT LAW

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Decision

Decided: September 21, 2009

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

This matter came before us on a certification of default filed by the District X Ethics Committee ("DEC"), pursuant to R. 1:20-4(f). In two matters, respondent exhibited gross neglect, a pattern of neglect, lack of diligence, failure to communicate, misrepresentation, and failure to cooperate with ethics authorities. We recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1978. He has a serious disciplinary record. On May 10, 1996, he was reprimanded for improperly retaining as legal fees a \$5,000 payment intended for a client's bail. In re Banas, 144 N.J. 75 (1996).

On February 26, 1999, the Supreme Court suspended him for three months, in a default case, for misconduct that included gross neglect, lack of diligence, failure to communicate with the client, failure to utilize a written fee agreement, and failure to cooperate with ethics authorities. In re Banas, 157 N.J. 18 (1999). Respondent was reinstated on February 8, 2000. In re Banas, 162 N.J. 361 (2000).

On May 22, 2008, respondent received a censure, in another default matter, for lack of diligence and failure to communicate with a client. In re Banas, 194 N.J. 504 (2008).

Finally, on September 22, 2008, the Court suspended respondent for three years, also in a default matter, for grossly neglecting an appeal of a murder conviction. The Court cited In re Kivler, 193 N.J. 332 (2008), in imposing enhanced discipline for respondent's failure to appear on the return date

of the Court's order to show cause. In re Banas, 196 N.J. 447  
(2008).

Although respondent is otherwise current with the New Jersey Lawyers' Fund for Client Protection annual attorney assessments, he has been placed on the Supreme Court's list of ineligible attorneys six times since 1988, most recently from September 24 to October 1, 2007.

Service of process was proper. On March 3, 2009, the DEC sent a copy of the complaint, by both certified and regular mail, to respondent's last known home address, as listed in the attorney registration system, 16 Hanover Road, East Hanover, New Jersey 07936. The certified mail was returned unclaimed. The regular mail was not returned.

On April 3, 2009, the DEC sent respondent a "five-day" letter, notifying him that, unless he filed an answer to the complaint within five days of the date of the letter, the matter would be certified directly to us, pursuant to R. 1:20-4(f). The letter was sent to respondent's home address by certified and regular mail. The certified mail was returned unclaimed. The regular mail was not returned.

Respondent did not file an answer to the complaint.

I. The Jacobs Matter - District Docket No. X-06-084E

In May 2005, Sylvia Lynn Jacobs retained respondent and paid him \$3,000 to expunge the records of two fifteen-year-old shoplifting convictions against her husband.

Respondent advised Jacobs that it would take about six to ten weeks to obtain an expungement. According to Jacobs' September 23, 2005 letter to respondent, the situation was somewhat urgent, due to her husband's immigration status. Respondent took no action thereafter to have the records expunged and, despite Jacobs' numerous requests, never provided her with evidence of the work he claimed to have performed. According to the complaint, respondent then "attempted to pass a document off as being evidence that the records were expunged, but when Jacobs questioned the document, he backed off the claim."

When, after a year, respondent had not yet expunged the records, Jacobs terminated the representation and demanded that respondent return the fee. He returned \$1,500 with a check drawn on insufficient funds. He eventually returned \$3,000 in July 2006.

Respondent was asked to reply to Jacobs' September 1, 2006 ethics grievance, but failed to do so. On December 8, 2006, the DEC investigator spoke to him, but he claimed not to have received any correspondence from ethics authorities. On December 8, 2006 and January 3, 2007, the DEC investigator sent respondent letters demanding a reply to the grievance. Neither prompted respondent's reply.

The 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 communicate with the client), RPC 8.4(a) (violate or attempt to violate the RPCs), RPC 8.4(c) (misrepresentation), and RPC 8.1(b) (failure to cooperate with an ethics investigation).

## **II. The Angarano Matter - District Docket No. X-07-046E**

In 2002, Andrew Angarano retained respondent to represent him in a special civil part lawsuit filed by Fran Fucci for \$9,984. Upon retention, Angarano paid respondent \$2,000 toward his fee. At an undisclosed point thereafter, respondent advised Angarano that Fucci's complaint had been dismissed after

respondent had filed a motion and Fucci had failed to file responsive pleadings.

In June 2006, in connection with a mortgage refinancing, Angarano learned that Fucci had obtained a default judgment against him for the \$9,984. Thereafter, Angarano and/or his wife called respondent twice monthly about the default judgment. Respondent variously told them that he was attempting to vacate the judgment or that he would satisfy the judgment himself.

On May 18, 2007, respondent left a message on Mrs. Angarano's voicemail saying that he accepted responsibility for the judgment and that he was drafting a motion to vacate the default.

Respondent never filed a motion to vacate the default, never advised Angarano that he had not done it, and never repaid the judgment.

On August 2, 2007, the DEC investigator sent respondent a copy of the grievance and requested respondent's required reply. Hearing nothing, the investigator renewed the request by letters dated October 3 and October 17, 2007. Respondent ignored the requests.

The 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 communicate with the client), RPC 8.4(a) (violate or attempt to violate the RPCs), RPC 8.4(c) (misrepresentation), and RPC 8.1(b) (failure to cooperate with an ethics investigation).

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).

In the Jacobs matter, respondent was retained to obtain an expungement, but took no action thereafter to have the records expunged and, despite Jacobs' numerous requests, never provided her with evidence of the work that he claimed to have performed. Respondent's actions amounted to gross neglect (RPC 1.1(a)), lack of diligence (RPC 1.3), and failure to communicate with the client (RPC 1.4(b)). Respondent also misrepresented to Jacobs that a document he showed her proved that the records had been expunged, thereby violating RPC 8.4(c).

In the Angarano matter, respondent was retained to defend a special civil part lawsuit, for which he was paid \$2,000. Thereafter, he took no action to protect his client's interests, causing Fucci to obtain a default judgment against Angarano. Despite promises to do so, respondent never filed a motion to vacate the default. We find respondent guilty of gross neglect (RPC 1.1(a)) and lack of diligence (RPC 1.3). Respondent also lied to Angarano that Fucci's complaint had been dismissed for failure to reply to respondent's motion to vacate default, which respondent had never actually filed. In this context, he violated RPC 8.4(c).

Despite the Angaranos' numerous attempts to obtain information about his matter, respondent told them only that he was working on the default and would pay for the judgment, without advising them of the actual status of their matter, a violation of RPC 1.4(b).

Also, when respondent's gross neglect in these matters is combined with his prior instances of gross neglect, it constitutes a pattern of neglect, a violation of RPC 1.1(b). In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16).



Respondent also failed to cooperate with the ethics investigations into the Jacobs and Angarano matters, violations of RPC 8.1(b).

In all, respondent's misconduct constituted gross neglect (RPC 1.1(a)), pattern of neglect (RPC 1.1(b)), lack of diligence (RPC 1.3), failure to communicate with the client (RPC 1.4(b)), failure to cooperate with ethics authorities (RPC 8.1(b)), violation of the Rules of Professional Conduct (RPC 8.4(a)), and conduct involving misrepresentation (RPC 8.4(c)).

Only the issue of discipline remains. The most serious aspect of respondent's misconduct has to do with his misrepresentations to both of his clients about their matters. When an attorney falsely represents to a client that the case is proceeding smoothly, public confidence in the bar is undermined. In re Cohen, 120 N.J. 304, 306 (1990). "Clients must not suffer the consequences of being told their case [is] under control when it [is] not." In re Goldstein, 97 N.J. 545, 549 (1984).

Historically, misrepresentation to clients requires the imposition of at least a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). See, e.g., In re Wiewiorka, 179 N.J. 225 (2004) (attorney took no action in the client's behalf, did not inform

the client about the status of the matter and the expiration of the statute of limitations, and misled the client that a complaint had been filed); In re Onorevole, 170 N.J. 64 (2001) (attorney grossly neglected a matter, failed to act with diligence, failed to reasonably communicate with the client, and made misrepresentations about the status of the case; prior admonition and reprimand); In re Till, 167 N.J. 276 (2001) (attorney engaged in gross neglect and misrepresentation; for over a nine-month period, the attorney lied to the client about the status of the case; no prior discipline); and In re Riva, 157 N.J. 34 (1999) (attorney grossly neglected a matter, thereby causing a default judgment to be entered against the clients, failed to take steps to have the default vacated, and misrepresented the status of the case to the clients; no prior discipline).

In aggravation, respondent also allowed these matters to proceed to us on a default basis. In default matters, enhanced discipline is imposed to address a respondent's failure to cooperate with disciplinary authorities as an aggravating factor. In re Nemshick, 180 N.J. 304 (2004) (conduct meriting

reprimand enhanced to three-month suspension due to default; no ethics history).

In further aggravation, however, this respondent has a significant disciplinary record. In all of the ethics matters after his 1996 reprimand, he refused to cooperate with ethics authorities. The last three matters proceeded to us as defaults, leading to a 1999 three-month suspension, a May 2, 2008 censure, and a September 22, 2008 three-year suspension. In the last matter, respondent did not appear for the Court's order to show cause. As the Court stated in In re Kivler, 193 N.J. 332, 343 (2008), "[a]n Order to Show Cause issued by this Court is neither a suggestion nor an invitation that an attorney is privileged to accept or reject as he or she wishes. Rather, it is an Order to appear with which a respondent's compliance is required."

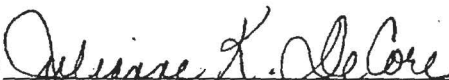
This respondent has become a phantom attorney, refusing to defend against defaults for the past ten years and abandoning his clients. He has positioned himself well for disbarment.

The Supreme Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such situations, enhanced discipline is appropriate. See In

re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system). We, therefore, determine to recommend respondent's disbarment.

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