

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-244
District Docket Nos. XIV-07-131E,
XIV-07-132E and XIV-07-261E

IN THE MATTERS OF
MICHAEL L. BLOCK
AN ATTORNEY AT LAW

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Decision

Argued: October 15, 2009

Decided: December 7, 2009

Melissa A. Czartorski appeared on behalf of the Office of Attorney Ethics.

Respondent's counsel waived appearance for oral argument.

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

These matters came before us on a recommendation for discipline (six-month suspension, retroactive to March 21, 2008) filed by Special Master John F. Kearny, III. Two separate complaints charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with a client), RPC 1.5(b) (failure to provide a client with a writing setting forth the basis or rate of the fee), RPC 1.16(d) (failure to protect a client's interests upon

termination of the representation), RPC 8.1(b) (failure to cooperate with ethics authorities), RPC 8.4(d) (conduct prejudicial to the administration of justice), and R. 1:20-20(b)(10) (failure to file an affidavit of compliance required of suspended attorneys). We determine that a six-month prospective suspension is warranted in this case.

Respondent was admitted to the New Jersey bar in 1990. At the relevant time, he maintained a law office in Voorhees, New Jersey.

In 2004, respondent was reprimanded for gross neglect and lack of diligence in the filing of a petition for residency with the United States Department of Justice, Immigration and Naturalization Services ("INS"), for which he failed to submit the correct filing fee. Because he did not look into the status of the INS application, he failed to keep his client accurately informed about it. Instead, he provided his client with a series of excuses for the delay, without investigating the matter. Respondent was found guilty of violating RPC 1.1(a), RPC 1.3 and RPC 1.4(b). The disciplinary matter proceeded on a default basis. In re Block, 181 N.J. 297 (2004).

In 2007, respondent was suspended for one-year for multiple ethics violations in fourteen client matters. In re Block, 189 N.J. 432 (2007). He failed to cooperate with ethics authorities

in thirteen matters; lacked diligence in six of those matters; failed to communicate with clients in nine matters; failed to prepare a writing setting forth the basis or rate of his fee in five matters; failed to safeguard client funds by failing to deposit the funds in a trust account maintained in a New Jersey financial institution, but instead kept checks for twelve clients locked in a safe in his home; failed to promptly deliver funds to clients; failed to maintain an attorney trust account; failed to promptly turn over client files; advanced funds to a client on at least two occasions; settled a potential claim against him; failed to withdraw from the representation when his mental condition materially impaired his ability to properly represent his clients; and misrepresented the status of a case to one client. We also considered, as an aggravating factor, that respondent drafted a misleading letter to the Office of Attorney Ethics ("OAE").

In assessing the proper quantum of discipline, we considered the mental problems that contributed to some of respondent's ethics offenses. Respondent was ordered to provide, prior to reinstatement, proof of fitness to practice law. Upon reinstatement, he was to practice under the supervision of a proctor for a two-year period. Respondent remains suspended to date.

Respondent was also twice temporarily suspended for failure to comply with a fee arbitration determination and to pay a monetary sanction to the Disciplinary Oversight Committee. He was reinstated both times.

At the May 5, 2009 DEC hearing, the parties stipulated certain facts, which are supplemented below with respondent's admissions to the formal ethics complaint.

District Docket No. XIV-07-0261E – The Florence Jackson Matter

Because the OAE was unable to locate the witness in the Jackson matter, it moved to dismiss the portions of count two, charging respondent with violating RPC 1.4(b) (failure to communicate with the client), RPC 1.16(d) (failure to protect the client's interests upon termination of the representation), RPC 8.1(b) (failure to cooperate with ethics authorities), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

In September 2006, Florence Jackson retained respondent to represent her son, Joshua, in a criminal matter. Respondent had not previously represented either one of them. Respondent did not provide Jackson with a writing setting forth the basis or rate of her fee. Respondent stipulated that he violated RPC 1.5(b).

Respondent also stipulated having violated RPC 8.1(b) and RPC 8.4(d) (charged in count one of this complaint) for failing to comply with the Court's Order, dated February 20, 2007, requiring him to comply with the provisions of R. 1:20-20(b)(10), namely, to file with the OAE an affidavit of compliance with that rule, within thirty days from the date of his suspension. In fact, on May 23, 2007, the OAE sent him a letter reminding him of his obligation to comply with R. 1:20-20. On June 13, 2007, he attended an interview at the OAE offices in connection with these ethics matters, at which time the OAE again reminded him of his obligation to comply with the rule.

Respondent did not file the required affidavit. After the OAE filed an ethics complaint charging him with violating the Court order, on November 13, 2007, respondent filed the required affidavit, which was appended to his answer to the complaint. In his answer, respondent asserted that he adhered to the directive of not practicing law in New Jersey, informed all clients of his suspension, advised them that they would be required to retain another attorney, cleared all funds from his escrow accounts, and complied with the other requirements of R. 1:20-20. He claimed that his failure to timely file the affidavit was a "technical oversight."

District Docket No. XIV-07-0131E – The Rita Ford Matter

On an unspecified date, Rita Ford retained respondent in connection with a personal injury action. During the course of the representation, Ford supplied respondent with documentation relating to her injury.

By letter dated January 27, 2006, Ford terminated respondent's services and directed him to forward her file to her new attorney, William Reil. Thereafter, between February 14, 2006 and November 27, 2006, Reil sent four letters to respondent, requesting that he turn over Ford's file. Respondent did not do so.

In December 2006, Reil went to respondent's home, unannounced, to retrieve Ford's file. At that time, respondent agreed to meet with Reil at a later date, at which time he would turn over the file and Reil would reimburse him for his out-of-pocket expenses. In January 2007, respondent forwarded the file to Reil.

Respondent admitted having violated RPC 1.16(d) (failing to protect a client's interests on termination of the representation).

District Docket No. XIV-07-132E – The Carlos Ruiz Matter

In October 2006, Carlos Ruiz retained respondent to represent him in a criminal matter (a petition for violation of probation) filed by the Camden County Prosecutor's Office. Respondent did not provide his client with a writing setting forth the basis or rate of his fee, although he had not represented Ruiz before. Respondent stated that he had directed Ruiz' mother to write "legal fee" on the check that she gave him as a retainer.

On November 1, 2006, the Honorable Robert G. Millenky, J.S.C., entered an order that respondent had prepared. The order provided, among other things, that Ruiz, who was incarcerated at that time, was to enter and successfully complete an inpatient residential drug treatment program at the Institute for Human Development ("IHD"), in Atlantic City, New Jersey. Paragraph three of the order stated that Ruiz was scheduled for admission at IHD on "Monday, November 13, 2006 at 10:00 A.M." Paragraph four released Ruiz into the "care and custody of respondent," who was "directed to transport" Ruiz to the IHD. The Camden County Correctional Facility Warden was to have Ruiz available to be transported by "no later than 8:15 A.M." that morning. IHD required Ruiz to arrive "no later than 10:00 a.m.," on that day.

Although the Warden had prepared Ruiz for transport at the ordered time, respondent did not pick him up until after 11:00 a.m. In addition, respondent did not transport Ruiz to IHD. Instead, respondent left him at the World Harvest Christian Center, in Pennsauken, New Jersey, where Ruiz' girlfriend was a pastor. Respondent then went to Philadelphia for a court appearance in an unrelated case.

Ruiz fled from Pennsauken before respondent returned to pick him up. Two days later, on November 15, 2006, respondent picked up Ruiz and had him admitted at IHD. Respondent, however, had not moved for modification of Judge Millenky's order. Upon his admission to IHD, Ruiz admitted that he had used a controlled dangerous substance since his release from the corrections facility, two days earlier. Ruiz' failure to timely report to IHD and his admitted drug use violated his probation. When Ruiz learned that the Camden County Probation Department was seeking a bench warrant for his violation of probation, he fled IHD and remained a fugitive until his December 28, 2006 arrest for theft of an automobile, a violation of N.J.S.A. 2C:20-3.

On February 7, 2007, Ruiz pled guilty to an accusation charging him with third degree theft of an automobile. He was

sentenced to five years' imprisonment and eighteen months without parole.

The parties stipulated that the above derelictions constituted gross neglect, lack of diligence, failure to provide the client with a writing setting forth the basis or rate of his fee, and conduct prejudicial to the administration of justice for respondent's failure to either comply with the court order or to seek a modification of the order.

For the above ethics offenses, the OAE recommended a six-month suspension, retroactive to March 21, 2008, the date that respondent would have been eligible for reinstatement, had he applied after his 2007 one-year suspension.

At the DEC hearing, respondent conceded that his ethics history is troubling. He noted that he had been a successful attorney until problems developed from the dissolution of his practice. He suffered from severe depression and adult attention deficit disorder ("ADD"), which was documented in his prior ethics matter. Respondent claimed that the ADD is "heightened by depression." According to respondent, he did not apply to be reinstated because he wanted to determine the cause of his problems and to address them to prevent a reoccurrence. Respondent argued that, by trying to take responsibility for his

conduct, he "took more of a punishment" than necessary by not applying for reinstatement.

At the DEC hearing, respondent's counsel asked the special master to hold the record open for two weeks for the submission of a report from respondent's therapist. Respondent failed to submit such a report, however.

Because respondent admitted most of the allegations in the complaint, the special master found it unnecessary to analyze the proofs as to respondent's culpability, but only to verify the existence of an adequate factual basis for respondent's admissions to support the cited violations. The special master found such support in the record before him.

In the Ford/Riel matter, the special master found a sufficient factual basis to support a violation of RPC 1.16(d). The special master noted that, despite repeated requests from both Ford and Riel for the return of Ford's file, respondent took the better part of a year to turn it over. The special master concluded that, while respondent may have had a valid claim for out-of-pocket expenses and perhaps a quantum meruit claim for the time he spent on the matter, he was, nevertheless, obligated to promptly turn over Ford's file (citing N.J. Advisory Opinion 554, 115 N.J.L.J. 565 (May 16, 1985)).

In Ruiz, respondent admitted violating RPC 1.1(a), RPC 1.3, RPC 1.5(b), and RPC 8.4(d). The special master found that respondent failed to provide Ruiz, a new client, with a writing setting forth the basis or rate of his fee. He further found that respondent's failure to comply with the court's directive for the transfer of Ruiz to IHD constituted lack of diligence, gross neglect, and conduct prejudicial to the administration of justice.

In the Jackson matter, too, respondent admitted that he failed to provide Jackson with a writing setting forth the basis or rate of his fee.

Finally, respondent acknowledged that his failure to timely file the detailed affidavit required by R. 1:20-20(b)(15) violated RPC 8.1(b) and RPC 8.4(d). The special master noted that respondent ceased practicing law when suspended and took all the steps required by the rule governing suspended attorneys, but did not file the required affidavit of compliance.

In assessing the proper quantum of discipline, the special master considered, as an aggravating factor, respondent's significant ethics history, balanced against his remorse, contrition, shame, depression, ADD, and efforts at seeking professional help for his problems. The special master also

noted that, although respondent had been granted additional time to submit a report from his therapist and had been reminded by his counsel to do so, as of the date of the special master's recommendation, he had not submitted the report. The special master, thus, found credible that respondent "suffers from severe depression and adult ADD. Indeed, the fact that the report has not been submitted timely arguably lends support to that view."

The special master did not give great weight to counsel's argument that respondent was not responsible for Ruiz' use of drugs while free, becoming a fugitive, or stealing a car. The special master found that, although respondent was not directly responsible for Ruiz' actions, it was

reasonably foreseeable that an untreated addict who was intended by terms of the Court's Order to go directly and uninterruptedly from jail to an inpatient program in Respondent's custody (thereby being under supervision and observation continually) might, having been left at liberty in Pennsauken with his girlfriend, use drugs, and that having used drugs, he might resort to antisocial behavior. This bespeaks not only lack of time management and organizational skill on Respondent's behalf, but gross negligence, lack of diligence, and a lack of good judgment.

[SMR17.]¹

¹ SMR refers to the special master's report.

The special master found that the violations here were similar to, and appeared to be a continuation of, respondent's prior course of conduct, for which he was suspended for one year. The special master noted that respondent's derelictions resulted in harm to his clients, mentioning specifically that Ruiz ended up taking drugs and being arrested and that Ford's new attorney had to expend great efforts, over the course of one year, to obtain Ford's litigation file in her ongoing matter.

Based on the above considerations, the special master concurred with the OAE's recommendation for a retroactive six-month suspension and concluded that additional protective measures were warranted: prior to reinstatement, respondent must provide to the OAE proof of fitness to practice law, as attested by an OAE-approved mental health professional. He also must practice law under the supervision of an OAE-approved proctor for at least two years.

Following a de novo review of the record, we are satisfied that the special master's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

We find that, in all, respondent violated RPC 1.5(b) in two matters (Jackson and Ruiz), RPC 8.4(d) and RPC 8.1(b) for not

filing an affidavit in compliance with R. 1:20-20, RPC 1.1(a), RPC 1.3, and RPC 8.4(d) (Ruiz), and RPC 1.16(d) (Ford).

The only issue left for determination is the proper quantum of discipline. The threshold measure of discipline to be imposed for an attorney's failure to file an R. 1:20-20 affidavit is a reprimand. In re Girdler, DRB 03-278 (November 20, 2003). The discipline imposed may vary, based on mitigating or aggravating circumstances. Aggravating factors may include an attorney's failure to respond to the OAE's specific request that the affidavit be filed, the attorney's failure to answer the ethics complaint, and the existence of a disciplinary history. See, e.g., In re Raines, 181 N.J. 537 (2004) (three-month suspension where the attorney's ethics history included a private reprimand, a three-month suspension, a six-month suspension, and a temporary suspension for failure to comply with a previous Court order); In re Girdler, 179 N.J. 227 (2004) (three-month suspension in a default matter where the attorney failed to comply with R. 1:20-20; the attorney failed to produce the affidavit after prodding by the OAE and after agreeing to file it; prior public reprimand, a private reprimand, and a three-month suspension (the latter also proceeded on a default basis)); In re Horowitz, 188 N.J. 283 (2006) (six-month suspension in a default for failure to comply

with R. 1:20-20; the attorney's ethics history consisted of a three-month suspension and a pending one-year suspension in two default matters; ultimately, the attorney was disbarred on a motion for reciprocal discipline from New York); In re Wood, 193 N.J. 487 (2008) (one-year suspension in a default matter for an attorney who failed to comply with R. 1:20-20; aggravating factors were the attorney's failure to reply to the OAE's specific request to file the affidavit, his extensive ethics history (an admonition, a reprimand in a default, a censure, and a three-month suspension in another default) and his pattern of defaulting); In re King, 181 N.J. 349 (2004) (one-year suspension in a default matter for attorney who had an extensive ethics history consisting of a reprimand, a temporary suspension for failure to return an unearned retainer, a three-month suspension in a default matter, and a one-year suspension; in two of the matters, the attorney failed to cooperate with disciplinary authorities; the attorney also ignored the OAE's attempts to have her file an affidavit in compliance with R. 1:20-20); In re McClure, 182 N.J. 312 (2005) (one-year suspension in a default matter where the attorney's disciplinary history consisted of a prior admonition and two concurrent six-month suspensions, one of which proceeded as a default, and the attorney failed to

cooperate with disciplinary authorities in the matter before us; the attorney also failed to abide by his promise to the OAE to complete the affidavit); and In re Mandle, 180 N.J. 158 (2004) (one-year suspension in a default matter for an attorney who had already amassed three reprimands, a temporary suspension for failure to comply with an order requiring that he practice under a proctor's supervision, and two three-month suspensions; the attorney did not appear before the Supreme Court on its order to show cause).

Respondent's reprimand (in a default matter) and one-year suspension bring this case close to Raines (three-month suspension), Horowitz (six-month suspension), and Wood (one-year suspension). Raines had a private reprimand, a three-month suspension, a six-month suspension, and a temporary suspension; Horowitz had a three-month suspension and a pending one-year suspension, both default matters; Wood had an admonition, a reprimand, a censure and a three-month suspension; three of his cases proceeded as default matters. Unlike Wood and Horowitz, respondent participated in the proceedings against him and ultimately filed the affidavit of compliance.

We also considered respondent's additional ethics violations in this matter. He failed to turn over a client's file for one year, engaged in lack of diligence and gross

neglect in another matter, violated a court order, which resulted in serious consequences to his client, failed to provide clients with fee agreements, and failed to cooperate with disciplinary authorities. Standing alone, or in various combinations, these violations would result in discipline ranging from an admonition to a censure. See, e.g., In the Matter of Brian J. Muhlbaier, DRB 08-165 (October 1, 2008) (admonition for attorney who failed to promptly turn over the client's files to subsequent counsel in a collection matter); In the Matter of Alan D. Krauss, DRB 02-041 (May 23, 2002) (admonition for attorney who failed to provide the client with a writing setting forth the basis or rate of his fee, grossly neglected a matter, lacked diligence in the representation of the client's interests, and failed to communicate with the client); In re Macias, 121 N.J. 243 (1990) (reprimand for failure to cooperate with the OAE); In re Hirsch, 188 N.J. 255 (2006) (censure for failing to abide by a court order requiring him, as trustee, to make timely alimony payments to his client's ex-wife, during which period he made improper payments to the husband, his client); and In re Gourvitz, 185 N.J. 243 (2005) (attorney reprimanded for conduct prejudicial to the administration of justice by repeatedly disregarding several court orders requiring him to satisfy his financial obligations

to his former secretary, an elderly cancer survivor, who sued him successfully for employment discrimination).

We have also considered that respondent's ethics cases were part of a continuing pattern of misconduct and that he has not learned from his prior mistakes. In his prior ethics matter (one-year suspension), from which he has not yet sought reinstatement, respondent presented the testimony of John Scally, a licensed clinical social worker, who specialized in psychotherapy and claimed to be authorized to render diagnoses recognized by "most insurance companies in this state." In the Matter of Michael L. Block, DRB 06-258 (December 19, 2006) (slip op. at 43). Scally testified that he had treated respondent through the winter and spring of 2004, 2005 and until "just . . . recently." Ibid. That ethics hearing took place on March 8, 2006. Scally testified that respondent's depression "pre-dated by years the December 2003 crisis which precipitated his seeking treatment." According to Scally, respondent's lack of incentive and inability to concentrate had affected both his personal and professional life." In his October 2005 report, Scally opined that respondent's disorder was "the direct cause of his inability to organize, follow through on and complete an increasingly burdensome workload." He added that respondent's physician had prescribed Wellbutrin for his "chemical imbalance"

and that respondent began functioning better with that drug. Id. at 44.

Respondent's misconduct in that matter took place between 1999 and 2004. Respondent's misconduct in this matter occurred in 2006, around the time he purportedly stopped treating with Scally and when Scally stated that respondent appeared to be functioning better. Respondent did not supply any psychiatric reports in this matter, even though he was given ample opportunity to do so. We, therefore, do not consider his mental state to be a mitigating factor in this case.

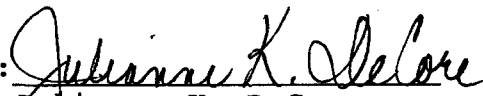
Based on the above precedent, we determine that respondent's conduct deserves a six-month suspension. The question remains whether respondent's six-month suspension should be prospective or retroactive. Without an additional report from a mental health professional, there is no evidence in the record from which to conclude that respondent delayed applying for reinstatement because of continuing psychological problems or because it simply was not a priority for him at the time. An attorney's voluntary withdrawal from the practice of law is not considered as a mitigating factor or as a form of discipline. In re Farr, 115 N.J. 231, 238 (1989); In re Asbell, 135 N.J. 446, 458 (1994). We, therefore, do not consider it as mitigation here. We find no reason to impose a retroactive

suspension simply because respondent chose not to apply for reinstatement. We, therefore, determine that the suspension should be prospective.

As in respondent's prior matter, we also require that, prior to reinstatement, he provide to the OAE proof of fitness to practice law, as attested by an OAE approved-mental health professional and that, upon reinstatement, he practice under the supervision of an OAE-approved proctor for a two-year period.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: 
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

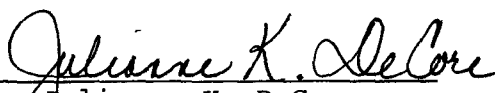
In the Matter of Michael L. Block
Docket No. DRB 09-244

Argued: October 15, 2009

Decided: December 7, 2009

Disposition: Six-month suspension

<i>Members</i>	Disbar	Six-month 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:		9				


Julianne K. DeCore
Chief Counsel