

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 10-005  
District Docket No. XI-2009-01E

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IN THE MATTER OF  
NICHOLAS R. MANZI  
AN ATTORNEY AT LAW

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Decision

Decided: May 13, 2010

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 XI Ethics Committee ("DEC"), pursuant to  
R. 1:20-4(f). The formal ethics complaint alleged that  
respondent's failure to withdraw from the representation of a  
New Jersey client, who had retained respondent to represent him  
in connection with injuries sustained in an automobile accident  
that took place in New York, where respondent was not licensed

to practice law, constituted a violation of RPC 1.16(a)(1) (prohibiting a lawyer from representing a client if the "representation will result in violation of the Rules of Professional Conduct or other law"). Respondent also was charged with having violated RPC 1.3 (lack of diligence), based on his filing, on behalf of that client, a complaint in New Jersey, which was dismissed, and his subsequent failure to take any action to reinstate the suit or to transfer either the action or the file to an attorney licensed to practice law in New York. Finally, respondent was charged with having violated RPC 1.4(a) and (b), based on his failure to communicate with the client. In a separate count, respondent was charged with the unauthorized practice of law, a violation of RPC 5.5(a).

For the reasons expressed below, we determine to impose a censure on respondent for his lack of diligence, failure to communicate with the client, and his unauthorized practice of law.

Respondent was admitted to the New Jersey bar in 1993. At the relevant times, he maintained an office for the practice of law in Hawthorne.

Respondent has no final ethics history. However, on February 9, 2010, he was temporarily suspended for failure to

cooperate with the Office of Attorney Ethics. Also, he was on the Supreme Court's list of ineligible attorneys due to nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection during the following periods: December 12 to 14, 1994; September 30, 1996 to September 8, 1997; September 21 to 25, 1998; and September 28 to December 10, 2009.

In addition, on November 5, 2008, the Supreme Court issued an order placing respondent on the IOLTA ineligible list, as a result of his failure to comply with the requirements of R. 1:28A-2. Respondent was removed from the ineligibility list on February 23, 2009.

Service of process was proper. On June 10, 2009, the DEC sent a copy of the formal ethics complaint to respondent's office address, 326 Lafayette Avenue, Hawthorne, New Jersey 07506, via regular and certified mail, return receipt requested. On June 11, 2009, "Rose Becker" signed for the certified letter. The letter sent by regular mail was not returned.

On July 28, 2009, the DEC sent a letter to respondent at the same address, via regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so,

the record would be certified directly to us for the imposition of sanction. On July 29, 2009, "Rose Becker" signed for the certified letter. The letter sent by regular mail was not returned.

On August 10, 2009, the DEC received an answer to the complaint from respondent. On that same date, the DEC wrote to respondent and advised him that the answer was insufficient, as it did not satisfy the requirements of R. 1:20-4(e). The letter did not identify the specific deficiencies in the answer. Respondent was advised to file an amended answer within ten days.

On November 9, 2009, the DEC sent a copy of an amended ethics complaint to respondent's office address, 326 Lafayette Avenue, Hawthorne, New Jersey 07506, via regular and certified mail, return receipt requested. On November 16, 2009, "Rose Becker" signed for the certified letter. The letter sent by regular mail was not returned.

On December 7, 2009, the DEC sent a letter to respondent at the same address, via regular and certified mail, return receipt requested. The letter directed respondent to file an answer to the amended complaint within five days and informed him that, if he failed to do so, the record would be certified directly to us

for the imposition of sanction. No one signed for the letter. The letter sent by regular mail was not returned.

According to the December 15, 2009 certification of the record, as of that date, the United States Postal Service's records reflected that notice of the certified letter had been left with respondent's office. Also, as of that date, respondent had not filed an answer to the amended complaint. Accordingly, the DEC certified this matter to us as a default.

Our independent investigation, using the United States Postal Service's "track and confirm" system, disclosed that the letter was delivered to respondent on January 4, 2010.

The first count of the amended complaint alleged that, on June 1, 2004, Christopher Martin retained respondent to represent him in connection with injuries that he had sustained in a May 7, 2004 automobile accident, which took place on the Eastbound Cross Bronx Expressway in Bronx, New York. Martin's car was struck by a vehicle registered in New York and owned by R. J. Guerrera, Inc.

According to the amended ethics complaint, a civil action complaint should have been filed in New York, where respondent was not licensed to practice law. Thus, the complaint alleged,

respondent violated RPC 1.16(a)(1) when he "failed to withdraw from his representation of Mr. Martin."

The amended complaint also alleged that respondent had "failed to keep [Martin] adequately and accurately informed," had failed "to explain the matter to [Martin] to the extent reasonably necessary to permit [him] to make an informed decision," and, "beginning in May 2006," failed "to inform [Martin] how he may communicate with [respondent] promptly." These inactions, according to the amended complaint, violated RPC 1.4(a) and (b).

Respondent did not file a civil complaint on behalf of Martin in New York. Rather, on May 6, 2006, he filed a complaint in the Superior Court of New Jersey, Hudson County. On November 23, 2006, the court dismissed the complaint for failure to prosecute. Respondent did not inform Martin that the case had been dismissed and took no action to either reinstate the suit or have the matter transferred to an attorney licensed to practice in the State of New York. Thus, respondent was charged with having violated RPC 1.3 (lack of diligence), RPC 1.16(a)(1), mistakenly cited as RPC 1.16(1), and RPC 1.4(a) and (b).

The second count of the amended complaint alleged that, on November 5, 2008, the Supreme Court issued an order rendering respondent ineligible to practice law for failure to comply with the mandatory IOLTA requirements. Nevertheless, the complaint charged, respondent practiced law from November 5, 2008 to February 23, 2009, when he became compliant with the IOLTA requirements.

The facts recited in 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's representation of Martin, a New Jersey resident who had been involved in an accident in the State of New York, which was caused by a New York resident, did not, on its face, violate RPC 1.16(a)(1). That rule prohibits a lawyer from representing a client if "the representation will result in violation of the Rules of Professional Conduct or other law." In this case, respondent was not authorized to practice law in New York, as he was not licensed there. If he had filed a complaint in New York, he would have violated the RPCs.

However, the complaint was filed in New Jersey. Thus, we find no violation of any RPC in this context.

We find, however, respondent guilty of lack of diligence. RPC 1.3 requires an attorney to "act with reasonable diligence and promptness in representing a client." Respondent violated this rule when the New Jersey complaint was dismissed due to his inaction and when he failed to take any steps to have the complaint reinstated.

The complaint charged respondent with having violated RPC 1.4(a) and RPC 1.4(b). In all likelihood, this was a mistake, perhaps a typographical error. Presumably, the DEC intended to charge respondent with RPC 1.4(b) and RPC 1.4(c), formerly designated RPC 1.4(a) and RPC 1.4(b). RPC 1.4(b) and RPC 1.4(c) provide:

(b) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(c) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representations.

Respondent violated RPC 1.4(b) and RPC 1.4(c) when he failed to inform Martin of the dismissal of the complaint and when he failed to explain to Martin the ramifications of the



dismissal and the options available to him (e.g., whether to move for reinstatement or to transfer the file to a New York attorney).

In terms of respondent's alleged failure to "transfer the file to a New York State Licensed Attorney in order to adequately protect the client's interest," none of the rules cited in the complaint support the finding of an ethics violation based on these facts.

In summary, we find that respondent violated RPC 1.3, RPC 1.4(b), and RPC 1.4(c) in the Martin matter.

In addition to these violations, respondent violated RPC 5.5(a), which prohibits a lawyer from practicing law "in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction." As stated previously, on November 5, 2008, respondent was placed on the IOLTA ineligible list, as a result of his failure to comply with the requirements of R. 1:28A-2. Nevertheless, according to the amended complaint, respondent continued to practice law between the date of his ineligibility and February 23, 2009, when he was removed from the ineligible list. Thus, respondent violated RPC 5.5(a).

There remains for determination the quantum of discipline to be imposed for respondent's violations of RPC 1.3, RPC 1.4(b), RPC 1.4(c), and RPC 5.5(a).

Practicing law while ineligible, without more, is generally met with an admonition if the attorney is either unaware of the ineligibility or advances compelling mitigating factors. See, e.g., In the Matter of Matthew George Connolly, DRB 08-419 (March 31, 2009) (attorney ineligible to practice law rendered legal services; the attorney's conduct was unintentional); In the Matter of Frank D. DeVito, DRB 06-116 (July 21, 2006) (attorney practiced law while ineligible, failed to cooperate with the OAE, and committed recordkeeping violations; compelling mitigating factors justified only an admonition, including the attorney's lack of knowledge of his ineligibility); In the Matter of William C. Brummel, DRB 06-031 (March 21, 2006) (attorney practiced law during a four-month period of ineligibility; the attorney was unaware of his ineligible status); and In the Matter of Richard J. Cohen, DRB 04-209 (July 16, 2004) (attorney practiced law during nineteen-month ineligibility; the attorney did not know that he was ineligible).

A reprimand is usually imposed when the attorney has an extensive ethics history, has been disciplined for conduct of the same sort, has also committed other ethics improprieties, or is aware of the ineligibility and practices law nevertheless. See, e.g., In re Austin, 198 N.J. 599 (2009) (during one-year period of ineligibility attorney made three court appearances on behalf of an attorney-friend who was not admitted in New Jersey, receiving a \$500 fee for each of the three matters; the attorney knew that he was ineligible; also, the attorney did not keep a trust and a business account in New Jersey and misrepresented, on his annual registration form, that he did so; several mitigating factors considered, including the attorney's unblemished disciplinary record); In re Marzano, 195 N.J. 9 (2008) (motion for reciprocal discipline, following attorney's nine-month suspension in Pennsylvania; the attorney represented three clients after she was placed on inactive status in Pennsylvania; she was aware of her ineligibility); In re Davis, 194 N.J. 555 (2007) (motion for reciprocal discipline; attorney represented a client in Pennsylvania when the attorney was ineligible to practice law in that jurisdiction as a non-resident active attorney and later as an inactive attorney; the attorney also misrepresented his status to the court, to his

adversary, and to disciplinary authorities; the attorney was suspended for one year and a day in Pennsylvania; extensive mitigation considered); In re Perrella, 179 N.J. 499 (2004) (attorney advised his client that he was on the inactive list and then practiced law; the attorney filed pleadings, engaged in discovery, appeared in court, and used letterhead indicating that he was a member in good standing of the Pennsylvania bar); and In re Armorer, 153 N.J. 358 (1998) (attorney practiced law while ineligible, exhibited gross neglect and failed to communicate with the client in one matter, and failed to maintain a bona fide office). But see In the Matter of Maria M. Dias, DRB 08-138 (July 29, 2008) (although attorney knew of her ineligibility, compelling mitigation warranted only an admonition; in an interview with the Office of Attorney Ethics, the attorney admitted that, while ineligible to practice law, she had appeared for other attorneys forty-eight times on a part-time, per diem basis, and in two of her own matters; the attorney was unable to afford the payment of the annual attorney assessment because of her status as a single mother of two young children).

Here, the amended complaint does not state whether respondent was or was not aware of his ineligibility. Thus, we must presume that he was unaware of his status, which would warrant the imposition of an admonition for the RPC 5.5(a) violation. However, respondent committed other ethics infractions, namely lack of diligence and failure to communicate with the client. Under the circumstances, then, a reprimand would be warranted. See In re Armorer, supra, 153 N.J. 358. We must consider, however, the default nature of this matter, which requires enhancement of the discipline that would otherwise be appropriate for the found violations. See, e.g., In re Kivler, 193 N.J. 332, 342 (2008) ("a respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced"). We, therefore, determine that a censure is warranted.

Members Wissinger and Zmirich 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  
Julianne K. DeCore  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Nicholas R. Manzi  
Docket No. DRB 10-005

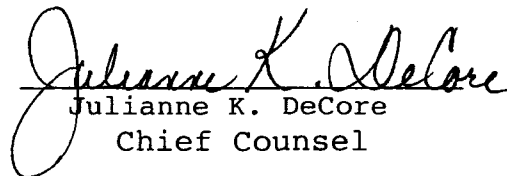
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Decided: May 13, 2010

Disposition: Censure

<b>Members</b>	Disbar	Suspension	Censure	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