

B

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 07-165 and 07-166
District Docket Nos. IIA-06-006E
and IIA-06-024E

IN THE MATTERS OF :
:
:
THOMAS GIAMANCO :
:
:
AN ATTORNEY AT LAW :
:
:

Decision
Default [R. 1:20-4(f)]

Decided: December 12, 2007

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

Two consolidated default matters came before us on
certifications of default filed by the District IIA Ethics
Committee (DEC), pursuant to R. 1:20-4(f), following respondent's
failure to file answers to the formal ethics complaints. We
determine to impose a one-year suspension.

Respondent was admitted to the New Jersey bar in 1983. His most recent office address was in Ridgewood, New Jersey.

In 1999, following a motion for discipline by consent, respondent was reprimanded for engaging in gross neglect and lack of diligence, failing to communicate with the client, and misrepresenting the status of the case. In re Giamanco, 161 N.J. 724 (1999). In 2005, he was censured for gross neglect and lack of diligence in a bankruptcy matter, conflict of interest for failing to withdraw from the representation after his client filed a civil suit against him, misrepresentation that the lawsuit against him was illegal because it was precluded by the fee arbitration process, and conduct prejudicial to the administration of justice for using threats and intimidation to try to convince his client to withdraw the civil suit against him. In re Giamanco, 185 N.J. 174 (2005). In 2006, respondent was suspended for three months, in a default matter, for negligently misappropriating clients' funds and failing to comply with the terms of an agreement in lieu of discipline. The latter violation resulted in the filing of a formal ethics complaint against him, to which he failed to file an answer. In re Giamanco, 188 N.J. 494 (2006). Respondent remains suspended to date.

DRB 07-165 (THE FOLEY MATTER)

Service of process was proper. On January 16, 2007, the DEC mailed copies of the complaint to respondent by regular and certified mail to his office address, 67 Godwin Avenue, Ridgewood, New Jersey 07450, and to a post office box, P.O. Box 308, Midland Park, New Jersey 07432. According to the certification of the record, "[l]ater when multiple delivery attempts proved futile the respondent was also served at his home address" (801 Charnwood Drive, Wyckoff, New Jersey 07481). The certified mail was returned either as unclaimed, not deliverable or unable to forward. The regular mail was not returned. As of the date of the certification of the record, respondent had not filed an answer.

The complaint in this matter charged respondent with violating RPC 1.3 (lack of diligence) and RPC 1.4, presumably (b) (failure to communicate with client).

In July 2004, Mary Foley retained respondent in connection with a matrimonial action, which was already pending and close to trial. At a pre-trial hearing, respondent agreed to dismiss the complaint without prejudice and to enter into a pendente lite agreement. Respondent did not reduce that agreement to writing.

In January 2005, Foley's husband served her with a new divorce complaint. Respondent failed to timely file an answer to the

complaint, resulting in the entry of a default judgment against Foley. Subsequently, the court vacated the default and respondent filed an answer to the complaint.

During March, April and May 2005, respondent failed to return any of Foley's numerous telephone calls.

At some unspecified point, Foley's husband ceased paying child support and maintenance for the marital home. Respondent failed to take immediate action, as requested by Foley, resulting in foreclosure proceedings and causing Foley to sell the marital residence.

In August 2005, the court scheduled some type of "proceeding," at which respondent failed to appear. Respondent did not notify Foley or the court that he would be absent. As a result, the court telephoned respondent and instructed him to obtain assistance in the matter by obtaining co-counsel. Respondent failed to comply with the court's direction.

On November 16, 2005, respondent appeared with Foley for a court hearing. During that hearing, respondent "failed to properly advise Foley" and, instead, pressured her to agree to a property settlement that was not in her best interests.

The facts recited in the complaint sufficiently support the charges of unethical conduct. Because of respondent's failure to

file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f)(1).

Respondent failed to act with reasonable diligence in his representation of Foley by failing to reduce to writing the terms of the pendente lite agreement, failing to appear for a scheduled court proceeding, allowing a default judgment to be entered against Foley, and taking no action to compel the husband to make support payments, as a result of which the marital home had to be sold. Respondent also failed to reply to Foley's numerous telephone calls over a three-month period. His conduct in the Foley matter violated RPC 1.3 and RPC 1.4(b).

An aggravating factor was respondent's failure to file an answer to the formal ethics complaint.

DRB 07-166 (THE FRANKEN MATTER)

Service of process was proper. On March 12, 2007, the DEC sent a copy of the complaint to respondent by regular and certified mail, initially to his post office box address. "Later, when multiple delivery attempts proved futile the respondent was also served at his home address." The certified mail was returned as unclaimed in both instances. The regular mail was not returned. As of the date of the certification of the record, May 16, 2007, respondent had not filed an answer to the ethics complaint.

The complaint in this matter charged respondent with violating RPC 1.3 (lack of diligence), RPC 1.4, presumably (b) (failure to keep a client reasonably informed about the status of the matter or to promptly reply to reasonable requests for information) and, although the rule citation was omitted (RPC 8.1(b)), failure to cooperate with disciplinary authorities.

In December 2004, John Franken retained respondent to represent him in the purchase of a house in Spring Lake Heights, New Jersey. Franken paid respondent a fee of \$600 and advanced the funds for transfer fees and recording fees. Respondent deposited the recording and filing fees into his trust account.

At the December 20, 2004 closing, respondent informed Franken that he would forward to him copies of "everything" that Franken had signed at the closing.

Several months later, Franken requested from respondent the "filed" deed. Respondent replied that he was in the process of relocating his office but would, nevertheless, send it to him. Thereafter, respondent mailed to Franken an unfiled copy of the deed, together with what purported to be a copy of a transmittal letter to the Monmouth County Clerk's office, enclosing copies of his attorney trust account checks for the realty transfer fee and the recording fee.

Franken waited several more months before attempting to contact respondent. When he did, he could reach only respondent's voicemail. Respondent failed to reply to Franken's messages.

On August 3, 2006, when Franken went to the County Clerk's office, he discovered that respondent had never filed the deed. Thereafter, Franken visited respondent's home, at which time respondent admitted that he had never forwarded the deed or filing fees to the clerk's office. Respondent never provided Franken with any of the signed closing documents.

Respondent also failed to cooperate with the DEC's investigation of this matter.

The facts recited in the complaint contain sufficient basis for the charged violations. Under R. 1:20-4(f)(1), the allegations of the complaint are deemed admitted because of respondent's failure to file an answer.

In this matter, respondent failed to diligently represent Franken by failing to record the deed after the closing, a violation of RPC 1.3. He also failed to reply to Franken's voicemail messages and to provide him with the closing documents, a violation of RPC 1.4(b).

Finally, respondent's failure to cooperate with the DEC's investigation of the grievance violated RPC 8.1(b).

Aggravating factors here were respondent's misrepresentation to Franken that he had filed the deed, as well as respondent's failure to file an answer to the complaint.

We now turn to the appropriate measure of discipline for respondent's combined improprieties, taking into account the aggravating circumstances present in both cases and respondent's disciplinary record.

In both of these matters, respondent exhibited lack of diligence, failed to adequately communicate with his clients, and failed to cooperate with disciplinary authorities, violations of RPC 1.3, RPC 1.4(b), and RPC 8.1(b), respectively. Furthermore, he made a misrepresentation to one of the clients, Franken, and allowed these matters to proceed before us as defaults.

The following default cases, involving similar violations, resulted in six-month suspensions. In re Kearns, 187 N.J. 250 (2006) (attorney engaged in gross neglect and lack of diligence in a real estate matter by failing to perform any services after accepting a retainer, failing to keep the client informed about the status of the matter, improperly terminating the representation, failing to cooperate with disciplinary authorities and engaging in conduct prejudicial to the administration of justice for failing to comply with a fee arbitration award; temporary suspension for failure to refund a fee to a former

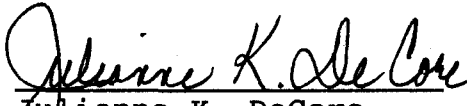
client and three-month suspension); In re Gallo, 186 N.J. 247 (2006) (attorney failed to diligently represent a client in a workers' compensation matter, failed to communicate with the client, failed to return the client's file when terminated and failed to cooperate with disciplinary authorities; prior three-month suspension); In re Landfield, 185 N.J. 609 (2006) (attorney in three client matters engaged in gross neglect, lack of diligence, failure to communicate with clients, failure to cooperate with disciplinary authorities, and failure to set forth in writing the basis or rate of his fee; prior admonition and temporary suspension); and In re Landfield, 185 N.J. 607 (2006) (misconduct in two client matters involving gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, and failure to set forth in writing the basis or rate of his fee; prior admonition and temporary suspension).

In fashioning the suitable quantum of discipline for this respondent, we considered not only the within ethics offenses, but also the aggravating circumstances present in these matters – respondent's misrepresentation to Franken and the default nature of these two separate proceedings – and respondent's ethics history – a reprimand, a censure, and a three-month suspension (also a default). We, therefore, determine that respondent should be suspended for one year.

Members Boylan and Lolla 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
William J. O'Shaughnessy
Chair

By: 
Julianne K. DeCore
Chief Counsel

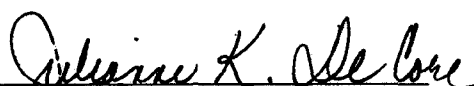
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matters of Thomas A. Giamanco
Docket No. DRB 07-165 and DRB 07-166

Decided: December 12, 2007

Disposition: One-year suspension

Members	One-year Suspension	Reprimand	Admonition	Disqualified	Did not participate
O'Shaughnessy	X				
Pashman	X				
Baugh	X				
Boylan					X
Frost	X				
Lolla					X
Neuwirth	X				
Stanton	X				
Wissinger	X				
Total:	7				2


Julianne K. DeCore
Chief Counsel