

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-169
District Docket No. XIV-07-228E

IN THE MATTER OF :
THOMAS A. GIAMANCO :
AN ATTORNEY AT LAW :
_____ :

Decision

Decided: August 19, 2008

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 Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The complaint charged respondent with violating RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority) and RPC 8.4(d) (conduct prejudicial to the administration of justice) for his failure to file an affidavit of compliance with R. 1:20-20. The OAE believes that a six-month suspension is warranted. For the reasons expressed below, we recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1983. In 1999, he was reprimanded (on a motion for discipline by consent) for gross neglect, lack of diligence, failure to communicate with the client, and misrepresentation to the client about the status of the matter. As a result of respondent's inaction, a workers' compensation case was dismissed. He then took no action to reinstate the case for a period of seven years. In re Giamanco, 161 N.J. 724 (1999).

On October 5, 2005, respondent was censured for lack of diligence, conflict of interest, misrepresentation to the client, and conduct prejudicial to the administration of justice. Respondent failed to file a bankruptcy petition for fifteen months after he was retained, and then only after the client filed a suit against him. In addition, he continued to represent the client after he was discharged from the representation; counseled the client to withdraw a suit against him; misrepresented to the client that the suit was illegal because it was precluded by the fee arbitration process; and threatened to "countersue" the client, to inform the bankruptcy court that the client had committed fraud, and to subpoena witnesses to discuss the client's personal problems. In re Giamanco, 185 N.J. 174 (2005).

In a November 17, 2006 default matter, respondent was suspended for three months for negligent misappropriation of client funds, recordkeeping violations, and failure to cooperate with disciplinary authorities. Respondent remains suspended to date. In re Giamanco, 188 N.J. 494 (2006).

In two default matters, respondent violated RPC 1.3, RPC 1.4(b), and RPC 8.1(b). In one of the cases, respondent failed to record a deed after a closing, failed to reply to the client's voice-mail messages, and failed to provide the client with the closing documents. In the other case, respondent failed to reduce to writing the terms of a pendente lite agreement, failed to appear for a scheduled court proceeding, allowed a default judgment to be entered against the client, took no action to compel the client's husband to make support payments, and failed to reply to the client's numerous telephone calls over a three-month period. In both matters, respondent failed to cooperate with disciplinary authorities. For the totality of respondent's conduct, he was suspended for one year. In re Giamanco, 194 N.J. 505 (2008).

The Court imposed an additional consecutive six-month suspension, effective May 7, 2008, for respondent's gross neglect, lack of diligence, failure to keep a client reasonably informed about the status of a matter or to comply with requests

for information, failure to explain a matter to the extent necessary to permit the client to make informed decisions about the representation, failure to refund a fee, and failure to cooperate with disciplinary authorities. In re Giamanco, 194 N.J. 556 (2008).

There, respondent had been retained, in December 2001, in connection with a condominium conversion. After he resolved several problems with obtaining an updated survey and title report, he assured his clients that there would be no delays in the preparation of the documents. He failed, however, failed to finalize the required paperwork.

Respondent's clients did not know where to contact him; he failed to reply to their numerous telephone messages and did not keep them informed about the progress of the work that he had been hired to perform. He also failed to comply with the DEC's requests for information and for the production of the file, ignoring even the DEC's subpoena duces tecum. He eventually complied, but only under the threat of being temporarily suspended.

Service of process was proper in this matter. On January 30, 2008, the OAE mailed a copy of the complaint, by regular and certified mail, to respondent's last known addresses listed in the attorney registration: 801 Charnwood Drive, Wyckoff, New

Jersey 07481 and 67 Godwin Avenue, Ridgewood, New Jersey 07450. The mail sent to the Ridgewood address was returned as undeliverable. The certified mail receipt card sent to the Wyckoff address was returned indicating delivery on February 1, 2008. The signature of the recipient appears to be respondent's. The regular mail sent to the Wyckoff address was not returned.

Respondent did not file an answer within the allotted time. Therefore, on February 25, 2008, the OAE mailed a second letter to the Wyckoff address, by regular and certified mail. The letter notified respondent that, if he did not file an answer within five days, the allegations of the complaint would be deemed admitted, the matter would be certified to us for the imposition of sanction, and the complaint would be amended to charge a willful violation of RPC 8.1(b). The certified mail receipt card was returned indicating delivery on February 27, 2008. It appears to be signed by respondent. The regular mail was not returned.

As of the date of the certification of the record, May 1, 2008, respondent had not filed an answer to the ethics complaint.

The conduct that gave rise to this matter arose out of respondent's three-month suspension on November 17, 2006. Pursuant to the Court's order, respondent was to comply with R.

1:20-20, requiring, among other things, that attorneys "within 30 days after the date of the order of suspension (regardless of the effective date thereof) file with the Director [of the OAE] the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's Order" (R. 1:20-20(b)(15)). As of the date of the ethics complaint, January 29, 2008, respondent had not complied with R. 1:20-20.

On August 14, 2007, the OAE sent letters, by regular and certified mail, to respondent's home address in Wyckoff, New Jersey, and his office address in Ridgewood, New Jersey, advising him that he was required to file the affidavit under R. 1:20-20 and requesting that he reply to the letter by August 28, 2007. The certified mail receipt for the letter sent to respondent's home was returned indicating delivery on August 29, 2007. It was signed by respondent. The regular and certified letters sent to respondent's former office address were returned as undeliverable, unable to forward.

Respondent neither answered the letter nor filed the required affidavit.

On January 2, 2008, the OAE met with respondent at his house in Wyckoff, New Jersey. The OAE reminded him of his

obligation to file the required affidavit and provided him with "copies of the order of temporary suspension, R. 1:20-20 and OAE contact information." The OAE requested that respondent forward the affidavit immediately. Respondent failed to do so.

During a January 24, 2008 telephone call with the OAE, respondent stated that he would forward the affidavit on Friday, January 25, 2008, via email, facsimile, and regular mail. As of the date of the ethics complaint, January 29, 2008, respondent had not filed the affidavit or contacted the OAE. According to the complaint, respondent "willfully violated the Supreme Court's order and has failed to take the steps required of all suspended or disbarred attorneys, including notifying clients and adversaries of the suspension and providing pending clients with their files".

The OAE's position was that, "presumptively," a reprimand is the appropriate sanction for an attorney's failure to obey the Court's mandate to comply with R. 1:20-20. The OAE argued, however, that a six-month suspension is appropriate discipline for respondent's willful failure to file the affidavit of compliance, citing, as aggravating factors, the default nature of these proceedings and respondent's extensive disciplinary history.

The OAE added that respondent's failure to notify his clients about his suspension was "a callous and willful disregard of the plight he created for his clients who put their trust in him." The OAE concluded that respondent's failure to notify his clients, the courts, and his adversaries of his suspension, his failure to file the affidavit required by R. 1:20-20, and his pattern of disregard for the ethics system in other matters paint a clear picture of an attorney who "thumbs his nose" at the disciplinary system.

Following a review of the record, we find that the complaint contains sufficient facts to 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).

As noted above, R. 1:20-20 requires suspended attorneys to file an affidavit of compliance with the OAE. Respondent failed to file the affidavit.

Often, the discipline imposed in cases where attorneys have failed to comply with R. 1:20-20 is increased from the threshold reprimand to a suspension when the attorney has a disciplinary history and the matter proceeds as a default. See, e.g., In re Wyskowski, 186 N.J. 471 (2006) (three-month suspension for attorney whose ethics history included a temporary suspension

for failure to comply with a fee arbitration determination); In re Girdler, 179 N.J. 227 (2004) (three-month suspension; ethics history included a private reprimand, a public reprimand, and a three-month suspension); In re McClure, 182 N.J. 312 (2005) (one-year suspension for attorney who had received an admonition and two concurrent six-month suspensions); In re King, 181 N.J. 349 (2004) (one-year suspension for attorney with an extensive ethics history, including 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; the attorney remained suspended since 1998, the date of the temporary suspension); and In re Mandle, 180 N.J. 158 (2004) (one-year suspension for attorney whose ethics history included 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; in three of the matters, the attorney failed to cooperate with disciplinary authorities). But see In re Moore, 181 N.J. 335 (2004) (reprimand, in a default matter, for attorney with a prior one-year suspension).

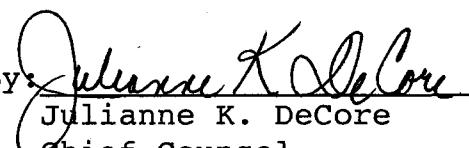
This is respondent's seventh ethics matter and his third default. He has been reprimanded, censured, and suspended for three months, one year (DRB 07-165 and DRB 07-166), and six months. Respondent continues to ignore the disciplinary process

(he has been found guilty of failure to cooperate with disciplinary authorities in four matters, three of which proceeded as defaults), showing an utter disregard for the disciplinary process. There is nothing in the record before us that shows that he is salvageable as an attorney. His appalling indifference to his clients' well-being and to disciplinary authorities, render him unfit to continue as a member of the legal profession. The purpose of the disciplinary review process is to protect the public from unfit lawyers and to promote public confidence in our legal system. In re Gallo, 178 N.J. 115, 122 (2003). We, therefore, recommend that he be disbarred.

Members Boylan, Baugh, and Wissinger voted to impose an indeterminate suspension.

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

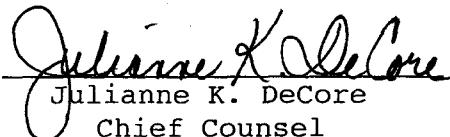
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Thomas A. Giamanco
Docket No. DRB 08-169

Decided: August 19, 2008

Disposition: Disbar

Members	Disbar	Indeterminate Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman	X					
Frost	X					
Baugh		X				
Boylan		X				
Clark	X					
Doremus	X					
Lolla	X					
Stanton	X					
Wissinger		X				
Total:	6	3				


Julianne K. DeCore
Chief Counsel