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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-323
District Docket Nos. IV-03-054E,
IV-04-037E, and IV-05-003E

IN THE MATTER OF
JON DeMASI
AN ATTORNEY AT LAW

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Decision

Argued: January 12, 2006

Decided: February 22, 2006

Shereen Chen appeared on behalf of the District IV Ethics Committee.

Teri Lodge appeared on behalf of respondent.

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

This matter was before us on a recommendation for discipline (reprimand) filed by the District IV Ethics Committee (DEC). Three separate complaints charged respondent with violating combinations of the following: RPC 1.1(a) (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.3 (lack of diligence); RPC 1.4(a) (failure to

keep the client reasonably informed about the status of the matter or to promptly comply with reasonable requests for information); RPC 1.4(b)¹ (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation); RPC 1.5(b) (failure to communicate the basis or rate of the fee in writing); RPC 1.6(a) (revealing a client's confidential information); RPC 4.4 (using means that have no substantial purpose other than to embarrass, delay, or burden a third person); RPC 7.1(a)(2) (making false or misleading communications about the lawyer's services to create an unjustified expectation about the results the lawyer can achieve); and RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority).

Respondent was admitted to the New Jersey bar in 1991. He maintains a law office in Woodbury, New Jersey. In 2003, he was reprimanded, in a default matter, for accepting a retainer to institute a name-change proceeding, but taking no further action. Respondent was found guilty of gross neglect, lack of diligence,

¹ Under the new rules, RPC 1.4(a) and (b) have been re-designated as RPC 1.4(b) and (c), respectively. Because respondent's conduct occurred before the new rules went into effect, the complaint under Docket No. IV-04-037 (Muio) should have charged him with violations of old RPC 1.4(a) and (b), instead of RPC 1.4(b) and (c). Changes were made, in this decision, to reflect the correct rule citation.

failure to communicate with the client, and failure to cooperate with disciplinary authorities. In re DeMasi, 178 N.J. 72 (2003).

The Muoio Matter – District Docket No. IV-04-037

The complaint in this matter charged respondent with violating RPC 1.1(a) and (b), RPC 1.3, RPC 1.4(a) and (b), RPC 4.4, and RPC 7.1(a)(2).

Maureen Muoio retained respondent to represent her son Dante in connection with criminal charges stemming from his arrest for assault with a baseball bat. A grand jury returned an eighteen-count indictment against Dante and his co-defendants.

Dante was incarcerated at the time Maureen first met with respondent, in early February 2003. Respondent represented Dante from February to September 2003, when Maureen, dissatisfied with the plea offer respondent obtained, retained a new attorney. In October 2003, the Muoios filed a grievance against respondent.

Maureen testified that respondent met with her approximately twelve times during the course of the representation, and that he also met with Dante individually on other occasions. Respondent was involved with negotiations with the assistant prosecutor and entered several court appearances on Dante's behalf.

Maureen conceded that respondent took her telephone calls when he was in the office and also returned other calls. She

mentioned only one instance when she was unable to reach him -- on a Friday night, after business hours. Although Maureen left several messages on respondent's "cell" phone, he did not return her calls until Monday morning, at which time he scheduled an appointment with her. Maureen also recalled five occasions when respondent was unable to keep appointments with her. His secretary, however, notified her of his unavailability and rescheduled the appointments.

Maureen remembered one occasion when respondent told her to arrive at the courthouse by 9:30 a.m., but he did not appear until 1:30 p.m. Later, she testified that respondent may have been with his sick mother. Respondent denied Maureen's contention, claiming that he had arrived at the courthouse "well before lunch," but had to attend other status or pretrial conferences.

Maureen admitted that she had a friendly relationship with respondent. However, she claimed, at times he made her feel uncomfortable, such as when he complimented her about her appearance; when she felt that he had hurried through their meeting, after she had waited to meet with him for forty-five minutes; when he inquired about the effects her anti-depressant had on her sex life; when he commented on the size of her breasts; when he pointed out a client of his that had been accused of murder; and when he took messages on other cases in

her presence and told her about other cases that he handled. Maureen was concerned that respondent would discuss Dante's case with other clients too. According to Maureen, respondent claimed that people who owed him favors, in particular judges, could help Dante.

Maureen was dissatisfied with respondent's services including his failure to request a pre-indictment conference. She believed that, if he had done so, the case would have been finalized sooner. She was also displeased with the plea offer tendered by the assistant prosecutor - five years' imprisonment, eighty-five percent of which had to be served. Eventually, Dante's new attorney obtained a five-year sentence, in return for Dante's guilty plea to burglary. Thereafter, Dante was accepted into the Intensive Supervision Program, for first-time offenders.

Respondent stated that the majority of his practice consists of criminal matters, but also encompasses family law, real estate, wills, and Municipal Court matters; he also served as a court-appointed arbitrator. He testified that he first met with Dante's parents in early January 2003, and then with Dante a day or two later. Respondent claimed that he had countless telephone conversations with Maureen. She, rather than Dante, would call to discuss various issues about Dante's case.

According to respondent, from the outset, the Muoios believed that their son was innocent and, therefore, did not want him to plead guilty to any charges. After Dante was indicted on multiple counts of second-degree burglary, aggravated assault, and conspiracy, respondent obtained and reviewed discovery, and determined that the witnesses' accounts differed from the Muoios' version of events.

At the DEC hearing, respondent detailed his involvement in Dante's matter, beginning with his appearance at a bail motion, request and review of discovery, preparation of the case, attendance at conferences, meeting with his clients, interview of witnesses, and so on.

On September 2, 2003, Dante's co-defendants entered guilty pleas. Four weeks later, the assistant prosecutor was replaced. In the interim, the Muoios discharged respondent. By letter dated September 10, 2003, respondent made his file available to Dante's new attorney.

Respondent denied that he had not returned the Muoios' telephone calls. He claimed that he had maintained extensive contact with them because of their concern over Dante's matter.

Respondent admitted having a very friendly relationship with Maureen. He denied commenting on her breast size, but admitted mentioning that her blouse was low-cut. Respondent further denied

knowing that Maureen took antidepressants and inquiring about its effect on her sex life. As to discussing other clients with Maureen, respondent explained that he never used their names, and only mentioned them as "factual examples." He further explained that, if he had to cancel appointments with the Muoios, it was typically because he was "stuck in court," whereupon his secretary would notify them and reschedule their appointments. Respondent admitted that Maureen saw one of his clients in his office and inquired about him. Respondent claimed that he did not reveal any confidential information by informing her that he was a "murder client." He also denied that any judge owed him favors, or that he had made such a representation.

The Pike Matter – District Docket No. IV-03-054E

For the most part, in this and in the Bryce matter (below), respondent admitted the allegations of the complaint. The grievants did not testify.

The complaint in this matter charged respondent with violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5(b), and RPC 8.1(b).

Sheila Pike retained respondent in June 2002, to have her name changed. She paid respondent \$600 in cash. Although the complaint charged that respondent did not give Pike a written

retainer agreement, he attached a copy of it to his verified answer to the formal ethics complaint.

The complaint also charged that, over a six-month period, between July 2002 and December 2002, Pike called respondent at least twice a month about the status of her matter, to no avail. Respondent had no specific recollection of whether he had returned her calls, claiming that he was not in a position to deny the allegations, and that he had no knowledge of conversations his secretary may have had with Pike about his unavailability.

Respondent admitted that he took no action to have Pike's name changed and that he owed her \$600. He maintained that he was willing to return the money to her, but did not do so after the grievance was filed, on the advice of his counsel, to avoid the appearance that he was trying to improperly settle the disciplinary matter.

The second count of the complaint charged respondent with failure to reply to four letters from the Office of Attorney Ethics (OAE), sent on June 25, July 29, September 5, and October 17, 2003, requesting a reply to the grievance. Respondent testified that he had relocated his office on June 16, 2003. Although he had his mail forwarded to his new office, he could

not recall whether he had received the letters because "things were happening" at that time.

According to the complaint, the OAE called respondent's law office on October 21 and November 12, 2003, but did not receive a voicemail recording to accept a message. Respondent admitted that, on November 12, 2003, the OAE left a voicemail message at his home requesting a reply, but he did not return the call. Respondent conceded that he never replied to the grievance in this matter.

The Bryce Matter – District Docket No. IV-05-003E

The complaint in this matter charged respondent with violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), and RPC 1.5(b).

In June 2003, Gina Bryce retained respondent to represent her in a child custody matter and in a partition action relating to the sale of her house. Although respondent did not provide Bryce with a written retainer agreement, she paid him a \$2,500 retainer.

Respondent met with Bryce on several occasions. As to the child custody matter, respondent initially filed the complaint in the wrong county and did not re-file it in the proper county until December 2003. He entered an appearance at a January 23, 2004 hearing, at which time Bryce was awarded custody of her child and prospective child support payments. Back child support

payments were denied. Because of respondent's failure to proceed in a timely fashion, Bryce lost approximately \$1,700 in back child support payments.

As to the partition action, respondent believed that the matter had been resolved between the parties themselves. In a December 18, 2003 letter to Bryce, he confirmed his understanding of their division of the property.

On February 5, 2004, respondent notified Bryce that he had concluded the matters for which he had been retained. Thereafter, he corresponded with Bryce via email, through April 2004, on outstanding issues relating to her son. During those communications, Bryce also notified respondent about problems with the partition matter. In May 2004, respondent met with Bryce, at which time she provided him with information relating to the mortgage on the property.

On June 29, 2004, Bryce filed for fee arbitration (she was awarded \$1,502). As a result of that proceeding, respondent did not complete the partition matter.

Respondent also testified about his personal problems during the relevant time: his mother's battle with cancer and death in mid-September 2003, the stress from being the geographically-closest child to his parents, thus having to assist them with their problems; the turmoil from relocating his

law office; the problems his wife endured during her pregnancy, which required bed rest and resulted in respondent's performance of all household chores; the possibility that their child would not survive birth; the stress from being the sole bread-winner and a sole practitioner; and the resulting stress that these factors had on his marriage. According to respondent, these stressors led to a "paralysis" in his law practice.

Respondent sought professional help from a therapist and a psychiatrist to deal with his problems. He was diagnosed with attention deficit disorder (ADD) and given medication for the condition, which helped him focus on his practice. Respondent testified that he and his wife are undergoing counseling and are working on their marital problems.

Other mitigating factors include respondent's admission of wrongdoing, the fact that he stipulated to much of his misconduct, his contrition, and remorse. Respondent's visible emotion at the DEC hearing was pointed out for the record by one of the DEC members. Respondent also submitted many letters attesting to his good character.

The DEC recommended the dismissal of all ethics charges, finding no violations. The DEC outlined all of the work performed by respondent, as well as his denial that he had failed to return his clients' calls or that he had divulged any confidential

information to Maureen. The DEC concluded that respondent's references to other clients were probably intended to demonstrate "what happens in various types of cases." As to respondent's denial of making an improper comment about Maureen's breasts, the DEC found that his and Maureen's testimony was at odds and that, therefore, there was no clear and convincing evidence that respondent had made any inappropriate comments.

The DEC concluded that Maureen was a "concerned parent," who did not entirely understand the criminal court process or the severity of her son's situation. The DEC found that "the representation in this matter was exemplary under the circumstances."

In the Bryce matter, the DEC found that respondent's failure to provide his client with a written fee agreement violated RPC 1.5(b). As to the real estate matter, the DEC found that respondent mistakenly believed that his client and her "ex" had successfully resolved the partition issue between them, and that his services were no longer needed. The DEC pointed out that respondent did not realize, until May 2004, that Bryce still expected him to work on the matter. Once Bryce filed for fee arbitration, respondent ceased doing work in the matter.

The DEC found a violation of RPC 1.3 (lack of diligence), because Bryce lost \$1,700 in back child support payments due to

respondent's failure to timely file the documents in that matter. The DEC did not find, however, that this conduct was grossly negligent. In addition, the DEC did not find that respondent failed to communicate with his client. The DEC concluded that there was a misunderstanding about respondent's services having been concluded, but not as a result of respondent's inaction or lack of communication. The DEC, therefore, dismissed the charged violations of RPC 1.1(a) (gross neglect) and RPC 1.4(a) (failure to communicate with the client).

In the Pike matter, the DEC found that respondent failed to complete the name change for which he had been retained and that he may not have returned Pike's telephone calls. As to the charged violation of RPC 8.1(b), the DEC noted that, once respondent relocated his office, he denied receiving any communications from the OAE and, therefore, denied intentionally failing to cooperate with its investigation. The DEC, thus, found that respondent engaged in gross neglect, lack of diligence, and failure to communicate with the client. Because respondent presented a copy of his fee agreement, the DEC did not find that respondent violated RPC 1.5(b).

The DEC concluded that respondent's practice was adversely affected by the traumatic events in his life: his mother's illness and death, his wife's difficult pregnancy and inability

to return to work, the relocation of respondent's law office, the caring for his father, and his ADD and depression.

Based on the above considerations, the DEC recommended a reprimand, the refund of \$600 to Pike and \$1,502.88 to Bryce, the continuation of respondent's therapy and medication, supervision of his practice by a proctor approved by the OAE, and the "re-vamping" of his "office/practice."

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

In the Muoio matter, the evidence established that respondent performed the services for which he was retained: he attended the bail hearing, interviewed witnesses, obtained and reviewed discovery, attended status conferences, and obtained a plea offer from the assistant prosecutor. Although the clients were dissatisfied with the result that respondent achieved prior to his discharge, there is no evidence that he grossly neglected the matter (RPC 1.1(a)) or engaged in a lack of diligence (RPC 1.3). We, therefore, dismiss these charged violations.

Similarly, respondent met with his clients on numerous occasions, and rescheduled meetings that he was unable to keep. Maureen pointed to only one occasion when respondent failed to return her calls. However, the calls were made on a Friday,

after business hours. Respondent promptly returned the calls Monday morning and scheduled an appointment to meet with her. Thus, there is no evidence that respondent failed to communicate with his clients. Likewise, there is insufficient evidence that respondent failed to explain the matter to the extent reasonably necessary to permit the clients to make informed decisions about the representation. The Muoios were dissatisfied with the result that respondent achieved because of their unwavering belief that Dante was innocent. Their dissatisfaction with respondent's performance, however, does not in and of itself signal an ethics violation on respondent's part.

Respondent was also charged with failure to keep his clients' information confidential (RPC 1.6(a)). There is no evidence of any specific confidences that may have been breached, either in Dante's matter or in his other clients' matters. Respondent testified that he referred to other client matters to illustrate how similar matters were handled. The presenter did not offer any evidence to refute respondent's contention. We, therefore, dismiss this charge as well.

RPC 4.4 states that "[i]n representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a

person." Presumably, this rule was cited in connection with respondent's purported comments about Maureen's breasts. The testimony in this regard, however, was in equipoise. Thus, the evidence does not meet the clear and convincing standard required for us to find that respondent made the comment. We note that, even if he had, the more applicable rules would have been either RPC 3.2 (treating with courtesy and consideration all persons involved in the legal process), or RPC 8.4(g) (engaging in conduct involving discrimination because of sex). Based on a lack of clear and convincing evidence, however, we do not find any of these violations.

Respondent was also charged with violating RPC 7.1(a)(2) (creating an unjustified expectation about the results he could achieve by means that violate the Rules of Professional Conduct). Here, too, we find insufficient evidence to sustain such a violation. Respondent denied that he had made any comments that people owed him favors and could, therefore, help Dante. In the absence of clear and convincing proof of any impropriety in this context, we dismiss this charge as well.

Finally, respondent was charged with a violation of RPC 1.1(b) (pattern of neglect). Although there is no evidence that respondent neglected the Muoio matter, he neglected the other two matters, as seen below, and engaged in gross neglect in his

prior ethics matter (resulting in a reprimand). We, therefore, find a violation of RPC 1.1(b).

In the Pike matter, the record gives a strong sense that respondent did not return Pike's numerous telephone calls. Moreover, although respondent could not recall whether he had returned Pike's calls, and professed no knowledge of any conversations between Pike and his secretary, his answer to the ethics complaint stated that "[i]t is admitted that if Respondent received telephone calls from the Grievant he did not return them." Based on this admission, we find a violation of RPC 1.4(a) (failure to keep a client reasonably informed about the status of the matter or to promptly comply with reasonable requests for information).

Respondent was also charged with failure to provide Pike with a written retainer agreement. Because respondent produced a copy of their agreement, however, we dismiss this charged violation (RPC 1.5(b)). Unquestionably, however, respondent violated RPC 1.1(a) and RPC 1.3 by failing to perform any work in Pike's behalf.

The complaint charged that respondent failed to reply to the OAE's letters requesting a response to the Pike grievance. Respondent moved his office to another location and could not recall if he had received them. It is possible, thus, that he had no actual notice of the letters. On the other hand, he

admitted that the OAE had left a telephone message at his home and that he had not returned that call. We find, thus, that respondent violated RPC 8.1(b).

As to the Bryce matter, it appears that there was actual confusion about respondent's role in the partition action and about when his obligations in that regard ceased. The confusion, in part, may have resulted from respondent's failure to provide Bryce with a written retainer agreement, a violation of RPC 1.5(b).

In the custody matter, respondent did not act diligently in Bryce's behalf. Although he succeeded in obtaining custody and child support for Bryce, his dilatory actions caused her to lose approximately \$1,700 in back child support payments. Respondent's conduct in this context violated RPC 1.3 (lack of diligence), although it did not rise to the level of gross neglect (RPC 1.1(a)).

As to the charged violation of RPC 1.4(a), the evidence does not show, to a clear and convincing standard, that respondent failed to keep Bryce reasonably informed about the status of the matter and to promptly comply with her reasonable requests for information. Respondent sent two letters to Bryce: the first set forth his understanding of how the real estate was to be partitioned; the second stated his belief that his services in her

matters were concluded. Respondent also testified that he communicated with Bryce by email. Because respondent's contentions were not refuted, we dismiss this charge.

In sum, respondent's combined conduct in the three matters violated RPC 1.1(a) and (b), RPC 1.3, RPC 1.4(a), RPC 1.5(b), and RPC 8.1(b).

In determining the proper quantum of discipline, we have considered, as mitigation, the stressful situations that respondent endured during the relevant period, including the illness and death of his mother, his marital problems, the stresses of being a sole practitioner, and his ADD and depression. We have also considered respondent's contrition and the numerous letters he provided attesting to his good character.

In matters involving similar misconduct, reprimands have been imposed. See, e.g., In re Weiss, 173 N.J. 323 (2002) (reprimand for lack of diligence, gross neglect, and pattern of neglect); In re Aranguren, 172 N.J. 236 (2002) (reprimand for attorney who failed to act with diligence in a bankruptcy matter, failed to communicate with the client, and failed to memorialize the basis of the fee; the attorney had a prior admonition and a six-month suspension); In re Balint, 170 N.J. 198 (2001) (reprimand where, in three client matters, the attorney engaged in lack of diligence, gross neglect, pattern of neglect, failure to

communicate with clients, and failure to expedite litigation); In re Bennett, 164 N.J. 340 (2000) (reprimand for lack of diligence, failure to communicate in a number of cases handled on behalf of an insurance company, gross neglect, and pattern of neglect); In re Gordon, 139 N.J. 606 (1995) (reprimand for gross neglect, lack of diligence and failure to communicate with the clients in two matters; in one of the matters, the attorney also failed to return the file to the client; the attorney had a prior reprimand); and In re Wildstein, 138 N.J. 48 (1994) (reprimand for misconduct in three matters, including gross neglect, lack of diligence, and failure to communicate with clients).

Respondent's conduct in this case also includes a failure to cooperate with disciplinary authorities, a violation not found in the above cases. Another factor we considered was respondent's prior reprimand. His conduct in that matter spanned from September 2000 to the end of 2001. According to respondent, he experienced many of the same stresses during that time as well. We have tempered the weight we have given to respondent's prior discipline because of the absence of any ethics problems either before or after this isolated time period, and the presence of much of the same stress during the entire period of respondent's ethics problems.

Based on the above factors, we find that a reprimand adequately addresses respondent's misconduct in these matters. Members Stanton and Lolla did not participate.

We further require respondent to practice under the supervision of a proctor approved by the OAE, for a period of two years.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel