

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 03-364, DRB 03-365,
and DRB 03-366

IN THE MATTER OF :
 :
ROBERT J. NEMSHICK :
 :
AN ATTORNEY AT LAW :
 :

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

Decided: March 11, 2004

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

Pursuant to R.1:20-4(f), the District VIII Ethics Committee (“DEC”) certified the record in this matter directly to us for the imposition of discipline, following respondent’s failure to file an answer to the formal ethics complaint.

Respondent was admitted to the New Jersey bar in 1994. He has no history of discipline. It appears that he does not currently maintain an office for the practice of law. During the relevant time, however, he was employed as an associate with the law firm of Spevack & Cannan in Iselin, Middlesex County. He has been ineligible to practice law since September 15, 2003, for failure to pay the annual assessment to the New Jersey Lawyers’ Fund for Client Protection.

Three cases were presented for our review. In each matter, the DEC secretary mailed a copy of the complaint to respondent, by certified and regular mail, to his home address, 12 Tall

Oaks Lane, Mt. Olive/Budd Lake, New Jersey 07828, in care of Susan Pizza. The return receipts indicated delivery to respondent. He failed to answer the complaints.

DOCKET NO. DRB 03-364E
DISTRICT DOCKET NO. VIII-02-047E

On or about June 2, 1999, Susan K. Luskey retained Spevack & Cannan to pursue a wrongful termination claim against Paul's Trucking Corp., and/or Pathmark Stores, Inc. ("Paul's"). Respondent was assigned to handle Luskey's claim. He filed a complaint in her behalf on June 22, 1999. Paul's filed an answer. Respondent did little subsequent work on the case. Specifically, he did not prepare written discovery demands, and did not conduct any depositions of the defendant's representatives until after Paul's had filed a motion for summary judgment on November 15, 2000. Respondent did not oppose the motion or advise Luskey that it had been filed.

On December 15, 2000, the court granted Paul's unopposed motion for summary judgment. Respondent received a copy of the order. He did not provide a copy thereof to Luskey. Rather, following the dismissal of the complaint, respondent misrepresented to her that the matter was pending. Specifically, he advised her that the matter had a trial date in 2001, and, in various conversations, told her that the matter was ongoing. Moreover, in the summer of 2002, respondent told Luskey that he had received a settlement offer. In fact, no offer had been received.

The complaint charged respondent with a violation of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate), and RPC 8.4(c) (conduct involving dishonesty fraud, deceit or misrepresentation). In the OAE's letter transmitting the matter to us,

that office, on behalf of the DEC, asked us to amend the complaint to charge respondent with a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities).

DOCKET NO. DRB 03-365
DISTRICT DOCKET NO. VIII-02-057E

In May 2000, Mira Shah retained Spevack & Cannan to pursue an appeal of a decision by the Merit System Board, upholding the termination of her employment with the Union County Division of Social Services. Respondent was assigned to handle the claim in Shah's behalf.

When respondent received the file, Shah had already appeared pro se in connection with the appeal, and had filed a motion to obtain a copy of the hearing transcript at no charge. The court denied her motion on May 22, 2000. Respondent filed a motion for reconsideration, which the court denied on June 28, 2000. Respondent advised Shah of the denial of her application for a free transcript. Approximately six months later, respondent took steps to secure a copy of the transcript, and obtained the materials in March 2001. Respondent, however, did little other work on the file. There is no indication that respondent pursued the appeal, and the DEC investigator believed that the matter had been dismissed. Furthermore, there is no indication that respondent kept Shah advised about the status of her case. Rather, Shah alleged that, during 2001 and 2002, he misrepresented to her that the case was progressing. Ultimately, in August 2002, a member of Spevack & Cannan advised Shah that her appeal had not been pursued. By that time, respondent's employment at the firm had been terminated.

In addition to her appeal of the Merit System Board's decision, Shah sought to reopen a wrongful termination claim that she had previously made. She initially attempted to reopen the claim pro se by letter dated November 13, 2000. Thereafter, in January 2001, respondent sent a letter of representation in connection with the case. It appears he took no further action in the

matter, and the DEC investigator understood that it had been dismissed. There is no indication that respondent advised Shah about the status of the claim.

The complaint charged respondent with a violation of RPC 1.3, RPC 1.4, and RPC 8.4(c). In its transmittal letter to us, the OAE, on behalf of the DEC, asked us to amend the complaint to include a charge of a violation of RPC 8.1(b).

DOCKET NO. 03-366
DISTRICT DOCKET NO. VIII-03-001E

In August 1999, Richard Vitale retained Spevack & Cannan to pursue a wrongful termination claim on the basis of age discrimination, against Lucent Technologies (“Lucent”). Respondent was assigned to handle the claim.

Respondent filed a complaint in Vitale’s behalf on or about September 1, 1999. Counsel for Lucent filed an answer. Respondent timely prepared initial discovery requests but failed diligently to pursue discovery thereafter. Specifically, approximately eight months passed before respondent received discovery from Lucent. During that period, respondent did not file a motion to compel or otherwise expedite discovery. In addition, it was not until December 12, 2000, that he signed a proposed stipulation and order of confidentiality, forwarded by defense counsel in January 2000, as a condition precedent to Lucent’s releasing certain requested documentation.

Further, after the court granted a request to extend the discovery period and to adjourn the original trial date, respondent failed timely to pursue any additional discovery. Rather, the only depositions of Lucent’s representatives were conducted after the second discovery end date and defense counsel denied respondent’s requests to schedule depositions of additional Lucent employees. Respondent never informed Vitale of the depositions, despite the fact that one of the

witnesses was crucial to his case, and Vitale had wanted to attend the depositions. He also never discussed the substance of the testimony with Vitale.

On or about December 18, 2000, respondent received a letter from defense counsel, memorializing an earlier conversation in which counsel stated that Lucent would be filing a motion for summary judgment. Counsel further stated that, if respondent and Vitale were planning to make a settlement offer, they should do so as soon as possible. Respondent did not advise Vitale of the letter or of defense counsel's overture toward a settlement. On or about January 18, 2001, counsel for Lucent filed the motion for summary judgment. Respondent filed his opposition to the motion on February 14, 2001, two days before the return date.¹ The matter was adjourned, and the court subsequently granted Lucent's motion. Respondent did not advise Vitale that the motion had been filed or that it had been granted. In fact, for the remainder of 2001, and until his employment was terminated in August 2002, respondent misrepresented to Vitale that the matter was progressing. Ultimately, in September 2002, a member of Spevack & Cannan advised Vitale that his case had been dismissed.

The complaint charged respondent with a violation of RPC 1.1(a), RPC 1.3, RPC 1.4, and RPC 8.4(c). The OAE's letter transmitting this matter to us asked us to amend the complaint to charge respondent with a violation of RPC 8.1(b).

Service of process was properly made. The certified mail receipts were returned indicating delivery of the complaint to respondent in each of the three matters. Yet, he failed to file answers. Allegations are deemed admitted when the matter proceeds as a default. R.1:20-4(f)(1).

¹ The ethics complaint described the opposition as "superficial."

The complaints charged respondent with a violation of RPC 1.3, RPC 1.4, and RPC 8.4(c) in each matter, and with a violation of RPC 1.1(a) in the Luskey and Vitale matters. In addition, we grant the OAE's request to amend the complaints to charge respondent with violations of RPC 8.1(b).

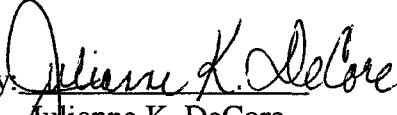
It is well settled that "intentionally misrepresenting the status of lawsuits warrants public reprimand." In re Kasdan, 115 N.J. 472, 488 (1989). In these matters, respondent misrepresented to his clients that their cases were pending when they had been dismissed. Accordingly, at least a reprimand is warranted. See In re O'Connor, 174 N.J. 298 (2002) (reprimand in a default matter, where the attorney misrepresented to the client that he had filed a complaint, and that the case was proceeding smoothly, and also failed to reply to the client's requests for information; aggravating factors were the attorney's failure to abide by the terms of an agreement in lieu of discipline, and failure to answer the complaint); In re Zukowski, 152 N.J. 59 (1997) (reprimand after the attorney failed diligently to pursue a workers' compensation claim, and failed to communicate with the client; in a second matter, the attorney grossly neglected a personal injury case); In re Bildner, 149 N.J. 393 (1997) (reprimand for lack of diligence, and failure to communicate for two years after client's matter was dismissed with prejudice); and In re Onorevole, 144 N.J. 477 (1996) (reprimand where the attorney, for over six months, misrepresented to a client that he had filed a complaint; the attorney was also found guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities).

Generally, in default matters, we upgrade the discipline imposed to reflect a respondent's failure to cooperate with disciplinary authorities as an aggravating factor. That is certainly appropriate in this matter. Although respondent has no history of discipline, three cases are at

issue here. In each one, his misconduct was serious. We, therefore, determine that respondent's ethics infractions, coupled with the default nature of this matter, warrant a three-month suspension. Three members dissented, voting for a reprimand. Two members did not participate.

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
Chief Counsel

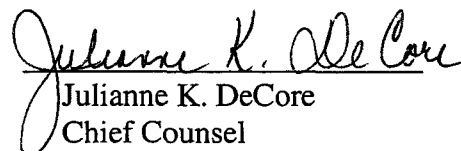
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matters of Robert J. Nemshick
Docket Nos. DRB 03-364, 03-365 and 03-366

Decided: March 11, 2004

Disposition: Three-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-month Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>			X				
<i>O'Shaughnessy</i>							X
<i>Boylan</i>			X				
<i>Holmes</i>			X				
<i>Lolla</i>							X
<i>Pashman</i>		X					
<i>Schwartz</i>		X					
<i>Stanton</i>		X					
<i>Wissinger</i>		X					
Total:		4	3				2


Julianne K. DeCore
Chief Counsel