SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-320
District Docket Nos. XIV-04-017E,
XIV-04-018E, and XIV-04-140E

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|---|---|
| IN THE MATTER OF | : |
| ALLEN C. MARRA | : |
| AN ATTORNEY AT LAW | : |

Decision

Argued: October 21, 2004

Decided: March 7, 2005

John McGill, III appeared on behalf of the Office of Attorney Ethics.

Michael Critchley, Jr. 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 (two and a half-year suspension, retroactive to September 2002) filed by Special Master Bernard A. Kuttner. Two complaints charged respondent with violating RPC 5.5(a) (unauthorized practice of law - practicing law while suspended),

RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). One complaint also charged a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities).

Respondent was admitted to the New Jersey bar in 1967. He maintained a law practice in Montclair, New Jersey.

Respondent received a private reprimand in 1992 for lack of diligence and failure to communicate with a client. In the Matter of Allen C. Marra, Docket No. DRB 92-149 (June 19, 1992). In December 1993, he was publicly reprimanded for failing to communicate with a client, having an office employee notarize false signatures, failing to deposit settlement proceeds in his trust account, and failing to cooperate with disciplinary authorities. In re Marra, 134 N.J. 521 (1993).

In 1997, respondent was suspended for three months when he failed to advise a client of the dismissal of a complaint in one matter and, in a second matter, was found guilty of gross neglect, lack of diligence, and failure to communicate with a client. In re Marra, 149 N.J. 650 (1997).

In 2002, the Court reviewed three separate matters involving respondent, all resulting in suspensions. On February 8, 2002, the Court imposed a six-month suspension. Respondent

grossly neglected a client matter, engaged in a pattern of neglect and lack of diligence, failed to reply to the client's reasonable requests for information, failed to return the client's file upon termination of the representation, and failed to cooperate with disciplinary authorities. In re Marra, 170 N.J. 410 (2002). The Court ordered that the six-month suspension run concurrently with a three-month suspension imposed on that same date. The three-month suspension stemmed from respondent's lack of diligence, failure to keep a client reasonably informed about the status of a matter and to comply with the client's reasonable requests for information, failure to provide a written fee agreement, and recordkeeping violations. In re Marra, 170 N.J. 412 (2002). Respondent's suspensions were to have taken effect on March 4, 2002. However, he petitioned the Court to stay the effective date of his suspensions. The Court granted the motion and respondent's suspensions took effect on March 22, 2002. On that same date, the Court also ordered respondent suspended for a one-year period, retroactively to July 28, 1997, for recordkeeping violations, unauthorized practice of law (practicing law in two cases while already suspended), and conduct prejudicial to the administration of justice. In re Marra, 170 N.J. 411 (2002).

For the most part, the facts in this matter are not in dispute. They are gleaned from a stipulation of facts between the Office of Attorney Ethics ("OAE") and respondent, respondent's admissions to the charges of the formal ethics complaints, documentary evidence, and respondent's testimony.

According to the stipulation, and as noted above in respondent's ethics history, he was suspended from the practice of law for a one-year period, retroactive to July 28, 1997, for practicing law in two matters while actively suspended and for violating the recordkeeping rules; he also received a three-month and a six-month suspension, both effective March 4, 2002.

Although respondent was eligible to apply for reinstatement in September 2002, he has not done so, and remains suspended to date. Respondent testified that his reasons for not applying for reinstatement were two-fold: he was "burnt out" and he was caring for his adult daughter who lost her aunt (Dina) to cancer; the loss was particularly traumatic to his daughter because she had lost her mother at the age of eight, and had become very close to her aunt. Respondent claimed that he was very involved with Dina's care during her illness, and was also very concerned about his daughter's well-being. Respondent also lost his mother in 2003. Respondent stated that "[t]he last

thing in the world that I was thinking about was practicing law."

Pursuant to the Court's orders of suspension, respondent filed with the OAE an affidavit in compliance with R. 1:20-20(b)(15). The affidavit stated, in relevant part:

> 3. That I have refrained from the practice of law in any form either as principal, agent, servant, clerk or employee, or other form.
>
> 4. That I refrained and desisted from furnishing of any legal services, opinion or holding myself out as an attorney to the public.
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> [S2;Ex.C1.][1]

As seen below, those statements were false. Respondent's affidavit was notarized on April 2, 2002.

**Docket No. XIV-04-017E**

By letter dated June 20, 2003, Brian Kiernan, Esq. notified the OAE that his client, Martin Lucibello, Jr., had retained respondent to represent Francesco Rauseo, Lucibello's employee. Lucibello had paid respondent a $6,000 retainer on or before June 8, 2003. At that time, respondent had not yet applied for reinstatement to the practice of law, although his suspension had already expired. Subsequently, Kiernan learned that

[1] S refers to the stipulation of facts dated July 13, 2004.

respondent was suspended from the practice of law. Presumably, Kiernan notified Lucibello. As a result, Lucibello terminated respondent's representation and requested that he refund the $6,000 retainer. Lucibello was not interested in pursuing a grievance against respondent if respondent returned his retainer. Kiernan, nevertheless, reported the matter to the OAE because of his obligations under RPC 8.3 (reporting professional misconduct).

After Lucibello terminated the attorney-client relationship with respondent, respondent returned $2,200 of the retainer. At Lucibello's request, respondent also returned Rauseo's files. Respondent did not return the balance of the retainer ($3,800) until July 15, 2004, the day before the DEC hearing.

On June 10 and 11, 2003, respondent sent four separate letters on behalf of Rauseo to the municipal courts of Mahwah Township, Elizabeth, North Haledon, and East Rutherford, on letterhead listing him as "Allen C. Marra, Esq." All four letters stated: "As per our conversation, please be advised that I represent the above named defendant." Respondent also composed a fifth letter, on behalf of another client, Christine Mastroacovo, on "Allen C. Mara [sic], Esq." letterhead. That letter, addressed to the Union Municipal Court stated: "As per my conversation of June 10th, please be advised that I represent

the above named defendant." All five letters entered a "not guilty" plea on behalf of his clients, requested discovery, and asked for a new court date.

Respondent stated that he did not inform Rauseo that he was suspended because he was embarrassed. He admitted that, approximately four or five days after he wrote the letters on Rauseo's behalf, he told Rauseo to obtain another attorney because he, respondent, could not appear in court. Respondent conceded that he knew, when he wrote the letters, that the restrictions on practicing law went beyond appearing in court, and precluded him from writing the letters. He claimed that his judgment was clouded at the time, and that he felt sorry for the "kid."

Respondent maintained that, when he took a fee in the matter, in the "back of [his] mind" he was thinking that he needed to get the "kid" out "this jam," and that he would refer the matter to another attorney, to whom he would give the fee.

The OAE forwarded to respondent a copy of the Lucibello grievance on July 8, 2003, and requested a reply within ten days. By letter dated July 24, 2003, respondent replied to the grievance. In his letter, he admitted that he accepted the fee, and that he wrote the letters to the courts to do something positive for Rauseo to avoid the issuance of any bench warrants

against him. Respondent also claimed that Rauseo's prior attorney had not done anything about the pending court dates.

According to respondent, when he accepted the fee and wrote the letters, he "was not under [his] normal faculties." He was depressed and suffering from stress from a number of events that included the sudden death of his mother in May 2003, the loss of his sister-in-law in February 2003, the emotional toll her death took on his daughter, who had been living with her, and the effects of his quadruple bypass surgery in December 1998.

Respondent's letter further stated that, when Lucibello asked him if he was suspended, he admitted that he was, and told him that he would refund his money. Respondent claimed that he never anticipated appearing in court on the charges, and intended to work out a plan to pay Lucibello the balance due from the retainer.

The complaint charged that respondent engaged in the unauthorized practice of law (RPC 5.5(a)), and that his misrepresentations to the municipal courts about his eligibility to practice law in the Rauseo and Mastroacovo matters violated RPC 8.4 (c) and (d).

**District Docket No. XIV-04-018E**

By letter dated August 14, 2003, Kenneth A. Schoen, Esq. notified the OAE that a potential client of his, Angeline Williams, had informed him that respondent had been unable to file a lawsuit on her behalf because he was suspended from the practice of law. Williams had learned about respondent's suspension from her father, not respondent. Schoen also forwarded to the OAE a copy of respondent's March 15, 2003 letter to ADF Management Co. ("ADF"), written on Williams' behalf. The letterhead did not include the designation "Esq." after respondent's name. It stated, however:

> [P]lease be advised that I represent Ms. Angilene Williams regarding her being sexually harassed by her manager.
>
> . . . .
>
> My client was sexually harassed and put in a hostile work environment. To make matters worse, the retaliation on her by firing her has cause[d] her economic loss and great mental anguish.
>
> [S4;Ex.C11.]

Schoen also provided the OAE with a photocopy of the envelope (date-stamped July 31, 2003) that respondent had used to return Williams' documents, which contained a handwritten return address listing respondent as "A. Marra, Esq." Respondent claimed that he did not know that he was prohibited from using

the designation "Esq." on correspondence during his suspension and that he did so "harmlessly."

According to respondent, when he wrote to ADF, he did not hold himself out "as an attorney in representing Miss Williams." He claimed that he represented her "as a spokesman, as a consultant, as someone who was trying to get her job back." Respondent also asserted that he never said he was her attorney, had her sign any agreement that he was her attorney, and never asked or took any money from her. According to respondent, he wrote the letter as a favor to her, and told her that she had to get an attorney.

Respondent contended that Williams' father knew of his "situation" and that he, respondent, was only trying to get her job back; when his efforts did not succeed, he told Williams to hire an attorney.

By letter dated August 18, 2003, the OAE forwarded Schoen's letters and enclosures to respondent, requesting a written response within ten days. The letters were sent by regular and certified mail. The certified mail was received on August 22, 2003. However, someone other than respondent signed the receipt card. The regular mail was not returned to the OAE. Respondent did not submit a written reply within the required time, prompting the OAE to grant an extension until September 15,

2003. As of the date of the formal ethics complaint, October 1, 2003, respondent had not submitted a reply to the OAE.

According to respondent's November 6, 2003 answer to the ethics complaint, he had not received the "complaints" until sometime later in October and, therefore, still had time to file an "answer." Respondent filed an unverified answer to the complaint. He stated that his failure to include a verification was "[j]ust an oversight."

The formal ethics complaint alleged that respondent violated RPC 5.5(a) by engaging in the unauthorized practice of law, and that he made misrepresentations to ADF Management Co. as to his eligibility to practice law, thereby violating RPC 8.4(c) and (d). The complaint further charged that respondent's failure to cooperate with the OAE violated RPC 8.1(b).

**District Docket No. XIV-04-140E**

On December 26, 2003, the OAE received a grievance against respondent from E. Allen MacDuffie, Jr., Esq., the attorney for Jerome and Margaret Natalie, the plaintiffs in an action against Vincent Perri. MacDuffie claimed that, while respondent was suspended, he had filed pleadings on Perri's behalf.

According to the stipulation, respondent prepared a draft answer and counterclaim to be typed by Diane Edwards, his

"typist," and filed with the clerk of the court. The stipulation further stated:

> Without stipulating to the credibility, the OAE stipulates that, if he were to testify, respondent would testify that it was not his intent that the Answer and Counterclaim be forwarded and filed under his name as attorney for Mr. Perri. The parties stipulate that, if he were to testify, Mr. Perri would testify that it was his intention that the Answer and Counterclaim be filed in Perri's name as a pro se litigant, and that Mr. Perri had authorized respondent to sign Perri's name on the pleading. The parties stipulate that, if she were to testify, Diane Edwards would testify that, in preparing the cover letter (C-19) and Answer and Counterclaim (C-20) which she signed in respondent's name and forwarded to the court, she used the draft prepared by respondent and mistakenly assumed that respondent's name was to be included on the documents forwarded to the court.
>
> [S6;S7.]

According to the stipulation, respondent prepared the draft answer and counterclaim after he consulted with Perri about his dispute with the Natalies. Respondent did not inform Perri, either before or during their discussions, that he was a suspended attorney. Presumably, Edwards forwarded the answer and counterclaim to the clerk of the court – the pleadings were stamped "received" on October 31, 2003 – and also sent a copy to MacDuffie.

The OAE transmitted a copy of the grievance in this matter to respondent on December 19, 2003. The OAE received respondent's reply on January 15, 2004, in which he claimed that the answer had been sent by "mistake" and that he had not charged or received a fee from Perri. In his answer to the complaint, too, respondent asserted that the "typist" mistakenly filed the answer under his name, instead of listing Perri as a pro se defendant.

The complaint charged that respondent engaged in the unauthorized practice of law (RPC 5.5(a)) and made misrepresentations in the Natalie matter as to his eligibility to practice law, thereby violating RPC 8.4(c) and (d).

Respondent testified that he sought counseling from a psychologist and from his priest regarding the tragic personal events he endured during 2003. He did not, however, supply any documentation elaborating on his treatment or diagnosing any condition from which he may have suffered.

Respondent submitted fourteen letters from attorneys, a retired judge, a reverend, former clients, and his brother-in-law, attesting to his good character, high personal ethics standards, morality, honesty, and integrity.

Respondent requested that he be permitted to apply for reinstatement at the conclusion of these ethics proceedings.

The OAE argued that respondent should be disbarred. It underscored the fact that respondent failed to provide any reasonable nexus between his "personal tragedies" and his unauthorized practice of law and misrepresentations.

The special master found that respondent knowingly practiced law while suspended. Without any elaboration, the special master found unconvincing respondent's explanation that he had sent out the letters by mistake.

The special master also noted that the tragedies that befell respondent were "horrific" and occurred during the time that respondent was charged with the violations detailed in the complaint. The special master considered them in recommending discipline, finding that these tragic circumstances no doubt "affected respondent's judgment." The special master also found persuasive the numerous letters from "clients, priests, and former judges," attesting to respondent's character.

The special master reasoned that, since respondent would have been eligible for reinstatement in September 2002, a two and a half-year suspension, retroactive to September 2002, was appropriate discipline. The special master further recommended that respondent practice under the supervision of a proctor for a period of two years.

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

We find that the stipulation supports a conclusion that respondent engaged in the unauthorized practice of law by representing clients while he was suspended. Respondent held himself out to be an attorney in good standing not only to his clients, but to adversaries and the courts. Respondent had not applied for reinstatement from his prior three suspensions, one of which was for practicing law while suspended. Nevertheless, he continued to represent clients. He met with clients, consulted with clients, and prepared letters and pleadings on their behalf.

In the Rauseo matter, respondent accepted a $6,000 fee from Lucibello to represent Rauseo in connection with his recent arrest. On June 10 and June 11, 2003, respondent wrote to four different municipal courts. He indicated that he was representing the defendant, sought discovery, and requested a new trial date. His letterhead included the designation "Esq." after his name. Respondent made similar statements in a letter he submitted on behalf of Christine Mastroacovo.

To all concerned, respondent held himself out to be an attorney in good standing, although he had not been restored to the practice of law. His conduct was deceitful. We find that his credibility is also at issue based on his disingenuous claim that he only wanted to help "the kid out of a jam" and intended to turn over the case – and the fee – to another attorney. We find that the collection of the fee, rather than the desire to assist Rauseo, was respondent's primary interest. Although his conduct would still have been improper, had he acted out of altruistic motives this might have been considered as a mitigating factor. His collection of a fee, however, convinces us that he was moved solely by self-benefit. Our conviction is reinforced by respondent's failure to reimburse the remainder of the fee owed to Lucibello until the eve of the DEC hearing. The timing of this payment inevitably raises a question about the sincerity of his statement about the fee.

We find that, in holding himself out to be an attorney in good standing, respondent violated RPC 5.5(a), as well as RPC 8.4(c) and (d).

In the Williams matter, Williams learned of respondent's suspension from her father, not respondent. Respondent wrote to Williams' employer in an attempt to have her reinstated at her job. Respondent stated, in his letter to ADF, that he

"represented" Williams. Moreover, the letter repeatedly referred to Williams as his "client." We find, thus, that respondent's conduct here also violated RPC 5.5(a), and RPC 8.4(c) and (d).

In the Williams matter, respondent was also charged with a violation of RPC 8.1(b). He claimed that he did not receive the grievance and that the certified mail receipt card contained the signature of an individual named "Judy," with whom he was not acquainted. That respondent answered the ethics complaints and replied to the grievances in the other two matters lends credence to his claim that he did not receive this grievance. We do not find clear and convincing evidence that respondent willfully failed to reply to the grievance and, therefore, dismiss this charge.

In the Perri matter, respondent consulted with Perri about filing an answer and counterclaim and, in fact, drafted the documents on his behalf. Respondent claimed, however, that his typist mistakenly submitted the documents to the clerk under respondent's name, rather than having Perri file them pro se. Notwithstanding respondent's claim of a "mistake," his conduct, which included consulting with Perri and preparing draft pleadings for his use, constituted the practice of law. Thus, respondent's conduct in this matter also violated RPC 5.5(a), and RPC 8.4(c) and (d).

Mitigating factors include a number of character letters, as well as the tragedies that befell respondent around the time he again engaged in the unauthorized practice of law. These tragedies evoke some sympathy. However, as underscored by the OAE, respondent failed to demonstrate a causal link between these tragedies and the "clouding" of his judgment, which caused him to engage in the unauthorized practice of law.

The aggravating circumstances – respondent's extensive ethics history (a private reprimand in 1992, a public reprimand in 1993, a three-month suspension in 1997, another three-month suspension in 2002, a concurrent six-month suspension in 2002, and a retroactive one-year suspension also in 2002) and the fact that this is his second disciplinary matter involving the practice of law while suspended – outweigh any mitigating factors and demonstrate that respondent has not learned from his prior mistakes and that he has no regard for the Supreme Court's orders and no understanding of the magnitude of his conduct.

The level of discipline for practicing law while suspended generally ranges from a lengthy suspension to disbarment, depending on a number of factors, including the attorney's level of cooperation with the disciplinary proceedings, the presence of other misconduct, and the attorney's disciplinary history. See In re Goldstein, 97 N.J. 545 (1984) (attorney disbarred for

misconduct in eleven matters and for practicing law while temporarily suspended by the Court and in violation of an agreement with the Disciplinary Review Board that he limit his practice to criminal matters); In re Kasdan, 132 N.J. 99 (1993) (three-year suspension, where the attorney deliberately continued to practice law after the Court denied her request for a stay of her suspension, failed to inform her clients, her adversary and the courts of her suspension, failed to keep complete trust records, and failed to advise her adversary of the location and amount of escrow funds; attorney was also guilty of conduct involving dishonesty, fraud, deceit or misrepresentation; the attorney had been previously suspended for three months); In re Beltre, 130 N.J. 437 (1992) (attorney suspended for three years for appearing in court in one matter after having been suspended and for misrepresenting his status to the judge, failing to carry out his responsibilities as an escrow agent, lying to us about maintaining a bona fide office, and failing to cooperate with an ethics investigation; attorney had a prior three-month suspension from which he had not been reinstated); In re Wheeler, 140 N.J. 321 (1995) (attorney suspended for two years for practicing law while suspended, making multiple and repeated misrepresentations about the status of cases to clients, failing to reply to clients' repeated

requests for information, and displaying gross neglect, pattern of neglect, lack of diligence, conflict of interest, dishonesty in issuing a check with knowledge that there were insufficient funds to cover it, negligent misappropriation of escrow funds, and failure to cooperate with disciplinary authorities)[2]; In re Wheeler, 163 N.J. 64 (2000) (attorney received an additional three-year suspension for handling three matters without compensation, with the knowledge that he was suspended, holding himself out as an attorney, in violation of RPC 8.4(c) and RPC 8.4(d), and failing to comply with Administrative Guideline No. 23 (now R. 1:20-20) relating to suspended attorneys); and In re Lisa, 158 N.J. 5 (1999) (one-year suspension where the attorney appeared pro hac vice in a New York court during his New Jersey suspension, without disclosing his suspended status to the New York judge; the Court considered that a serious childhood incident made the attorney anxious about offending other people or refusing their requests; out of fear of offending a close friend, the attorney agreed to assist as "second chair" in a criminal proceeding; the Court also noted that there was no

[2] In that same order, the Court imposed a retroactive one-year suspension on the attorney for retention of unearned retainers, lack of diligence, failure to communicate with clients, and misrepresentations. That matter came to us as a motion for reciprocal discipline.

venality or personal gain involved and the attorney did not charge for the representation).

Given respondent's prior disciplinary history, including his prior suspension for practicing law while suspended, he should have had a heightened awareness of his ethics duties. His purported "clouded" judgment at the time of his offenses does not shield him from a suspension. In fact, we note that, in respondent's prior matter involving the unauthorized practice of law (In re Marra, 170 N.J. 411 (2002)), we viewed his conduct with indulgence because of his plethora of cardiac problems and our belief that those problems had an effect on his judgment. He cannot now, attribute his clouded judgment, in part, to those same cardiac problems, as he attempted to do.

We find that respondent's continued violation of his prohibition to practice law is a direct assault not only on the integrity of the ethics system, but on the legal profession as well.

Based on the foregoing, Members Louis Pashman, Esq., Judge Reginald Stanton, Ruth Lolla, and Spencer Wissinger voted to impose a prospective three-year suspension. Chair Mary Maudsley and Member Robert Holmes, Esq. voted to impose a two-year prospective suspension. Vice-Chair William O'Shaughnessy, and

Members Matthew Boylan, Esq. and Barbara Schwartz did not participate.

We further determine that, prior to reinstatement, respondent should provide proof of completion of ten hours of courses in professional responsibility. Upon reinstatement, should respondent practice law in New Jersey, we require him to be supervised by an OAE-approved proctor for a one-year period.

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

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

In the Matter of Allen C. Marra
Docket No. DRB 04-320

Argued: October 21, 2004

Decided: March 7, 2005

Disposition: Three-month suspension

| Members | Two-year prospective Suspension | Three-year prospective suspension | Disqualified | Did not participate |
|---|---|---|---|---|
| Maudsley | X | | | |
| O'Shaughnessy | | | | X |
| Boylan | | | | X |
| Holmes | X | | | |
| Lolla | | X | | |
| Pashman | | X | | |
| Schwartz | | | | X |
| Stanton | | X | | |
| Wissinger | | X | | |
| **Total:** | 2 | 4 | | 3 |

Julianne K. DeCore
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Chief Counsel