SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-398

IN THE MATTER OF

WILLIAM D. MANNS, JR.

AN ATTORNEY AT LAW

Decision

Argued: May 17, 2001

Decided: December 17, 2001

John T. Wolak appeared on behalf of the District VA Ethics Committee.

Thomas R. Ashley 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 based on a recommendation for discipline filed by the District VA Ethics Committee ("DEC"). The complaint charged respondent with violations of RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client), RPC 3.3(a)(1) (knowingly making a false statement of material fact or law to a tribunal) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1978. He maintains an office in Newark, New Jersey. He received a reprimand in 1999 for violations of RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate with client) and was ordered to practice under the supervision of a proctor for six months. In re Manns, 157 N.J. 532 (1999).

Columbus Littlejohn retained respondent in September 1984 to represent him in connection with a personal injury matter stemming from a fall on property owned by Leroy Graves. Although respondent filed a complaint on June 24, 1985, the matter was resolved almost ten years later, when the case was settled on March 7, 1995, three weeks before the scheduled trial date. Within that time period, the complaint was dismissed four times: for lack of prosecution on October 30, 1986; for failure to answer interrogatories on June 23, 1989; for failure to appear at a trial call on August 1993; and for failure to appear at a trial call on June 8, 1994. According to the Littlejohns, they were only informed of one of the dismissals.

Within two weeks of the first dismissal, respondent filed a successful motion to reinstate the complaint. Between December 1986 and March 1988, respondent obtained a default against the defendant (which was vacated shortly thereafter) and, following respondent's failure to answer interrogatories, the complaint was dismissed for the second time on June 23, 1989.

Within three weeks of the settlement agreement, Littlejohn signed a release on March 27, 1995, but no funds were forthcoming. Respondent eventually filed a motion to vacate the settlement and enter a judgment against the defendant. The motion was granted on July 19, 1995. Respondent did not send the judgment to be docketed as a lien until January 28, 1997. A writ of execution was submitted to the sheriff's office in February 1997. Littlejohn, however, never received any proceeds. Subsequently, the defendant was declared bankrupt. As of the date of the DEC hearing, Littlejohn had not received any proceeds from the execution.

At the DEC hearing, Littlejohn testified that, initially, respondent remained in contact with him by sending him to doctors for treatment and possibly contacting him to answer interrogatories. Littlejohn claimed that, afterwards, both he and his wife had problems reaching respondent and, at times, seven to twelve months would elapse without any communication with respondent, who would then tell him either that he was working on the case or waiting for a court date.

Littlejohn testified that, at some point, respondent informed him that his case had been dismissed and that he thought Littlejohn had been acting pro se. This surprised Littlejohn because, he claimed, he was not equipped to handle the case himself. Littlejohn was not informed of the other three dismissals or of respondent's trouble in contacting him. Respondent's file contained at least seven returned letters sent to Littlejohn at a variety of addresses.

At the time Littlejohn filed the grievance, he had not heard from respondent for several years. Neither Littlejohn nor his wife believed that respondent adequately advised them about the case over its ten-year duration.

Respondent made a motion to reinstate Littlejohn's complaint from the second dismissal on December 1, 1989, claiming that it was difficult to obtain answers to interrogatories because Littlejohn had moved from his last known address and efforts to locate him had been unsuccessful. Littlejohn, however, had not moved. Respondent testified that he did not know that he was using an incorrect address for Littlejohn, he had obtained it from the file label. Because mail sent to that address was returned, respondent mistakenly believed that the Littlejohns had moved.

Following the December 1989 reinstatement of Littlejohn's complaint, depositions and other discovery continued through at least January 1991.

In August 1993, Littlejohn called respondent about the status of his case. When respondent contacted the court, he was advised that the matter had been dismissed for the third time, this time because of his failure to appear at a trial call. The court did not rule on respondent's subsequent motion to reinstate the case because respondent had included a certification with facts from a different matter. Respondent was ultimately successful in reinstating the complaint in mid-December 1993, but no trial date was set. On July 18, 1994, respondent wrote to the court requesting a trial date. On July 21, 1994, the court notified respondent that the case had again been dismissed — this time for respondent's

failure to appear at the June 8, 1994 trial call. By letter dated August 9, 1994, respondent advised the court that he had not received notice of the trial call and requested that the court provide proof of notice or return the case to the active trial list.

More than five months later, respondent filed a notice of motion to reinstate the complaint, which was granted on January 27, 1995, and to set a date for trial. In his certification to the January 27, 1995 motion, respondent did not refer to the court's July 21, 1994 letter or to his August 9, 1994 reply, but stated the following:

> 2. I wrote to the Court of [sic] July 18, 1994 and requested a Trial date.
>
> 3. I did not receive a response and on or about November, 1994 I phoned to the court to inquire about the status of the case.
>
> 4. At that time I was advised that this matter was administratively dismissed for lack of prosecution.
>
> 5. I was also advised I was not listed as the attorney of record and that plaintiff was listed as pro se.
>
> [Exhibit J-47]

At the DEC hearing, respondent claimed that his certification should have referred to his August 9, 1994 letter, which asked for proof of a notice of trial, rather than to his July 18 letter. Although respondent did not receive a reply to his August 1994 letter, he admitted receiving a reply to his July 18, 1994 letter.

According to the Office of Attorney Ethics ("OAE") investigator, the matter was eventually settled for $15,000 and, when no monies were forthcoming, respondent made a motion to vacate the settlement and enter a judgment against the defendant. The motion was

granted on July 19, 1995. As noted earlier, the judgment was not sent to the court to be docketed as a lien until January 1997, one and one-half years later.

For his part, respondent admitted that, when he prepared the December 1989 motion to reinstate the complaint, which claimed that Littlejohn had moved, he did not recall if he had reviewed the file and seen all of the envelopes that had been returned as improperly addressed. Respondent also admitted that, in 1984, he did not have a computerized system or a listing of his clients and their addresses.

Respondent claimed that he had advised the Littlejohns that it would probably be difficult to recover any money from the defendant because the house he owned was in a poor neighborhood and it was "run-down;" in addition, the defendant did not maintain insurance on the property and had a bad credit rating.

* * *

The DEC found that respondent's conduct violated RPC 1.3 (lack of diligence) and cited the large blocks of time that expired before respondent completed some of the most perfunctory aspects of litigation. The DEC also found clear and convincing evidence of a violation of RPC 1.4(a) (failure to communicate with client), based on the Littlejohns' testimony about their unsuccessful efforts to obtain information from respondent. The DEC also relied on the fact that respondent informed the Littlejohns of only one of the four

dismissals. The DEC found the Littlejohns' testimony credible, noting that it was supported by documents — or the lack thereof — in respondent's file.

The DEC did not, however, find clear and convincing evidence of violations of RPC 3.3(a)(1) (knowingly making a false statement of material fact to a tribunal) or RPC 8.4(c) (conduct involving dishonestly, deceit, fraud or misrepresentation). The DEC focused on three allegedly false statements. The first was contained in an affidavit accompanying respondent's November 1998 motion to reinstate the complaint claiming that obtaining answers to the interrogatories was made difficult because the plaintiff had moved from his last known address and efforts to locate him were initially unsuccessful. The DEC noted that existing documents in respondent's file contained both correct and incorrect addresses for the Littlejohns. Although the certification was wrong, the DEC did not find clear and convincing evidence that the statement was made with the intent to deceive the court.

The same certification stated that the defendant had "not served [his Answer] upon me until March 7, 1989, nearly three months later and more than two years after the original complaint and summons upon defendant." The DEC pointed out that respondent had acknowledged receipt of an unfiled answer on December 15, 1988, but drew a distinction between the receipt of an unfiled answer and service of a filed pleading. Although the DEC noted that the explanation elevated form over substance, it determined that it could not find, to a clear and convincing standard, a knowing misrepresentation or a false statement made to the court .

As to the final alleged misrepresentation concerning respondent's January 1995 certification, the DEC noted that respondent had receive a reply to his July 1994 letter on July 25, 1995, as acknowledged in his subsequent letter of August 9, 1994. However, the DEC accepted respondent's explanation that he meant to state that he had not received a response to his August 9, 1994 letter. The DEC found respondent's contentions to be credible and reasonable under the circumstances. The DEC reasoned that, although all the information was readily available to respondent at the time, it could not find clear and convincing proof that respondent knowingly made a false statement to the court.

The DEC recommended a reprimand and a proctor, as well as respondent's adoption of an acceptable docketing system and attendance at continuing legal education courses.

* * *

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

The DEC properly found violations of RPC 1.3 and RPC 1.4(a). The record is replete with instances of respondent's lack of diligence in pursuing the Littlejohn matter. Likewise, the Littlejohns' credible testimony about their inability to obtain information from

respondent or to have him return their telephone calls clearly and convincingly establishes that respondent violated RPC 1.4(a).

As to the charge of RPC 3(a)(1) and RPC 8.4(c), the DEC found no clear and convincing evidence that respondent intentionally misstated that the Littlejohns had moved from his last known address. Respondent's file contained several returned letters that support respondent's allegation that he reasonably believed that the Littlejohns had moved. Even though the letters should have alerted respondent to an address problem, the record does not support a finding that respondent's errors were, in fact, intentional misrepresentations. Thus, we do not find a violation of RPC 3.3(a)(1) or RPC 8.4(c) in that instance. Similarly, we found insufficient proof that respondent made a misrepresentation when he stated that he was not served with the defendant's answer until March 7, 1989.

We disagree, however, with the DEC on the third alleged misrepresentation. Respondent's explanation — that he meant to include a statement in the certification that he did not receive a response to his August 9, 1994 letter — is insufficient. The issue here is not whether respondent made a mistake in not referencing either the court's letter of July 21, 1994 or his reply of August 9. Rather, the issue is whether respondent's certification was truthful or mislead the court. There is no dispute that, as of July 25, 1994, respondent was on notice (by the court's July 21 letter) that the case had been dismissed. His certification, however, clearly represents that he did not learn of the dismissal until November 1994.

That, of course, was not true. For this reason, we find that respondent, by this certification, violated RPC 3.3(a)(1) and RPC 8.4(c).

In sum, respondent violated RPC 1.3, RPC 1.4(a), RPC 8.4(c) and RPC 3.3(a)(1). He was not charged with gross neglect (RPC 1.1(a)) or failure to expedite litigation (RPC 3.2). The record, however contains clear and convincing evidence of these violations. Furthermore, respondent did not object to the admission of such evidence in the record. In light of the foregoing, under In re Logan, 70 N.J. 222, 232 (1976), we deem the complaint amended to conform to the proofs.

In similar cases exclusive of RPC 3.3(a)(1) violations, reprimands have generally been imposed. See, e.g., In re Caggiano, Jr., 165 N.J. 475 (2000) (reprimand where attorney grossly neglected two matters, failed to comply with the client's request for information, failed to advise the client that the case had been dismissed, made a misrepresentation and exhibited a pattern of neglect in one of the cases; ten years latter the client learned from other sources that the case had been dismissed); In re Eastmond, 152 N.J. 435 (1998) (reprimand where attorney in a medical malpractice case engaged in gross neglect, lack of diligence and misrepresentation to his client); and In re Fox, 152 N.J. 647 (1998) (reprimand for gross neglect, failure to communicate and misrepresentation about the status of case to two attorneys).

Even where misrepresentation to a court, in violation of RPC 3.3(a)(1), has been found, the discipline imposed has not exceeded a short term suspension. See, e.g., In re

Mazeau, 122 N.J. 244 (1991) (reprimand for making a false statement of material fact in a brief submitted to a trial judge); In re Kernan, 118 N.J. 361 (1990) (three-month suspension for filing a false certification in the attorney's own matrimonial matter); and In re Johnson, 102 N.J. 504 (1986) (three-month suspension for misrepresenting to a trial judge that the attorney's associate was ill in order to obtain an adjournment of a trial).

In assessing the appropriate form of discipline for this respondent, we have determined that his misconduct in the earlier disciplinary matter occurred during the same time frame as his misconduct in this matter, although Littlejohn did not file a grievance until May 1996. We have also considered that each matter involved only one client and that respondent's inattention to the Littlejohn file may have resulted from his poor office procedures at the time. Thus, even considering the violation of RPC 3.3(a)(1), had these two ethics matters been considered together, a suspension would not have been imposed. In addition, there is every indication that respondent's misconduct was limited to the years preceding 1996. Considering all of these factors, seven members voted to impose a reprimand. One member voted to impose a three-month suspension, finding that respondent's prior disciplinary matter was an aggravating factor that required a suspension. One member did not participate.

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

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of William D. Manns, Jr.
Docket No. DRB 00-398

Argued: May 17, 2001

Decided: December 17, 2001

Disposition: Reprimand

Members	*Disbar*	*Three-month Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson			X				
Maudsley			X				
Boylan							X
Brody		X					
Lolla			X				
O'Shaughnessy			X				
Pashman			X				
Schwartz			X				
Wissinger			X				
Total:		1	7				1

Robyn M. Hill 12/18/01
Robyn M. Hill
Chief Counsel