

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 00-135

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IN THE MATTER OF  
NINO F. FALCONE  
AN ATTORNEY AT LAW

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Decision

Argued: July 20, 2000

Decided: February 6, 2001

John Ukegbu appeared on behalf of the District VI Ethics Committee.

Respondent appeared pro se.

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 VI Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1984 and maintains an office for the practice of law in North Bergen, Bergen County. He has no ethics history.

The two-count complaint alleges that respondent mishandled four personal injury matters. Two of the matters were dismissed because the grievants failed to appear at the DEC hearing. The complaint alleges that in the remaining two matters, respondent violated

RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client) and RPC 8.4(c) (misrepresentation to client).

Respondent and the grievants, Joseph G. Pica, Sr. and Judith Pica, had a long-standing relationship, both professional and personal, dating back to 1986. In fact, respondent handled numerous matters for the Pica family, including the two personal injury matters that form the basis of the formal ethics complaint.

I. Joseph Pica vs. Mark DeRobertis

In or about November 1990 Joseph G. Pica, Sr. retained respondent to represent him in a personal injury action. Respondent filed a complaint on November 19, 1990. The summons was served on May 10, 1991 and the defendant filed an answer on October 25, 1991. On March 20, 1992 the matter was dismissed for failure to answer interrogatories. The complaint must have been reinstated because, on August 7, 1992, it was again dismissed. The record does not indicate if this second dismissal was with prejudice. In his reply to the grievance, respondent informed the DEC investigator that he was in the process of restoring the complaint. At the DEC hearing, respondent admitted that he took no action toward that end, however.

Pica testified that, because he was getting no answers from respondent about this and other matters in which respondent represented him, he terminated the representation and

arranged to pick up all of his files from respondent's office in June 1998.<sup>1</sup> According to Pica, upon his arrival respondent told him that only his new attorney could retrieve that file. According to Pica, respondent only returned an unrelated file that day. Pica was adamant that respondent never returned the personal injury file to him.

Pica also testified that he attempted numerous times to contact respondent about the status of his case. To that end he produced two letters, dated May 3, 1995 and May 13, 1995, that he allegedly sent to respondent by facsimile. According to Pica, respondent did not reply to the letters.<sup>2</sup> Pica testified as follows:

Oh, yea. On the phone I would call him. And his response was that these things take time, that I had so many accidents, they were going to have to get the insurance companies and . . . But there was never a day when anything was going to be done, just that he was taking care of it.

[T29]<sup>3</sup>

## II. *Judith Pica vs. Wasyl Kucyj* - HUD-W-020254-89

On or about June 10, 1987 Mrs. Pica was involved in an automobile accident. On the following day, she retained respondent to represent her in connection with her injuries. On June 14, 1989 respondent filed a personal injury action. The summons was served on

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<sup>1</sup>Although the complaint alleged facts that respondent failed to return Pica's files, it did not cite a RPC for this violation ( RPC 1.16(d)).

<sup>2</sup>Respondent initially objected to the admission into evidence of the two letters. For reasons that are unclear, the letters were not entered in evidence.

<sup>3</sup>T refers to the transcript of the January 13, 2000 DEC hearing.

November 27, 1989. Defendant's answer was filed on December 26, 1989. The entire matter was dismissed, however, on September 14, 1990 and, again, on January 25, 1991. Respondent admitted that the complaint was dismissed for lack of prosecution.

Mrs. Pica testified that she recalled seeing a copy of the complaint. She was unsure if respondent had done any work in her behalf after the filing of the complaint. With respect to her efforts to gather information about the case, Mrs. Pica testified as follows:

We would have occasions where I would be in touch with [respondent] and his wife []. I'd call for one reason or another pertaining to another case, this case [sic], and I would say what is happening with the accident cases? Sometimes he would say it's being handled. Joe answered what we told him [sic], and he pretty much told me the same thing about the amount of cases he had to handle for the family collectively. He told us at one point that there were judges who were taken out of the courts, so it would take a lot more time, these things don't happen overnight, but we would settle it. At least two years in a row, he referred to the beginning of the next year as this is the year of the Pica accident cases, we will take care of them all.

[T60]

Mrs. Pica did not recall when that conversation took place. Finally, Mrs. Pica testified that, other than a medical authorization form, respondent sent her no other documents about the case.

For his part, respondent testified that both of the Pica cases were "weak." According to respondent, he suspected, after having filed the complaints, that the Picas' injuries were not severe enough to meet the "tort threshold" in effect at the time. Further, respondent claimed that he had requested the Picas' medical bills to substantiate their injuries.

According to respondent, it was the Picas' failure to submit those documents to him that jeopardized their cases. Respondent testified as follows:

And the cases developed, and there came really a professional dilemma that I was in. One, I had filed a complaint. And as I worked on the cases, it became clear to me that these complaints could not be sustained in a court of law because the injuries - - because there was no objective medical evidence that they were, quote/unquote, serious enough injury [sic].

[T84]

In short, respondent asserted that he was reluctant to move ahead with the cases for fear that the cases were meritless. Respondent also claimed that he spoke to Joseph Pica about this troubling aspect of the case, an assertion that Pica denied. Respondent conceded that he did not reduce his conversation to writing and, therefore, was unable to support his contentions in this regard.

As previously noted, respondent admitted that the cases were dismissed for lack of prosecution. Respondent submitted no evidence that he took steps to reinstate the complaints, once they were finally dismissed. Likewise, respondent presented no evidence that he kept the Picas informed about the status of their cases. Rather, respondent proffered, as a general defense, that he had many discussions with the Picas about numerous matters, including the personal injury cases, but was preoccupied with a more complicated litigation for the Picas' business, involving trademark issues. Finally, respondent did not address the testimony of the Picas that he misrepresented the status of their cases by telling them that delays were due to the court system. Moreover, respondent was not questioned in this regard. Therefore, there is no evidence to refute the Picas' testimony.

Respondent also admitted that the Picas' personal injury files were misplaced in one of several office moves, probably in 1992. Respondent apparently did not search for them until Pica requested them in April 1998. Respondent relocated the files in June 1998. Thereafter, respondent claimed, he returned the files to the Picas (a claim that they denied) with a number of other files that were also requested at the time. Respondent produced no evidence that he had returned the files to them.

In respondent's April 8, 1999 reply to the DEC, respondent stated that he was "attempting" to reinstate the complaints in the Pica matters. However, according to respondent's own testimony, those files were still lost at the time and did not turn up until June 1998. When questioned about this at the DEC hearing, respondent testified that his intention had been to reinstate the complaints by using copies.

As of the date of the DEC hearing, January 13, 2000, respondent had not reinstated the complaints. Respondent claimed that he was still grappling with the "professional dilemma" regarding the severity of the Picas' injuries vis-`a-vis the tort threshold issue.

Finally, the DEC permitted respondent additional time, after the conclusion of the hearing, to submit documentation regarding both of the Picas' personal injury actions. Respondent did not take advantage of that opportunity. As a result, there is no documentation regarding either of the cases. The only documentation received from respondent concerns the ethics matters.

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In a rather scanty report, the DEC found violations, in both cases, of RPC 1.1 (a), RPC 1.3, RPC 1.4 (a) and RPC 8.4 (c). The DEC recommended the imposition of a suspension of unspecified duration.

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Upon 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.

The DEC was correct to find violation of the specified rules. With regard to RPC 1.1 (a), respondent admitted that the Picas' cases were dismissed in 1991 and 1992. Thereafter, respondent lost the files and did no further work in the Picas' behalf. Moreover, once the complaints were dismissed, respondent took no measures to reinstate them, even after informing the DEC that he intended to do so. Respondent's misconduct in this regard was in violation of RPC 1.1 (a) and RPC 1.3.

Moreover, both Picas testified that they attempted to obtain information about their matters and that respondent failed to reply to their many requests for information. Respondent submitted no evidence of communication with the Picas at any juncture. Therefore, we found that respondent failed to adequately communicate with his clients, in violation of RPC 1.4 (a).

Finally, on those occasions when respondent did discuss the case with the Picas, he either misrepresented to them that the matters were progressing or told them that the court system was responsible for delays in the cases. Indeed, respondent would later admit that

the files were actually lost in or about 1992. Respondent's misrepresentations to the Picas about the status of the cases violated RPC 8.4 (c).

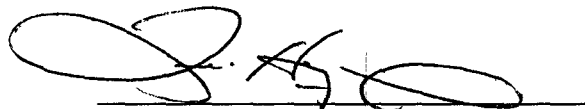
In cases dealing with misrepresentations to clients, often accompanied by gross neglect, lack of diligence and failure to communicate, the appropriate degree of discipline is generally either a reprimand or a short-term suspension. See, e.g., In re Silverberg, 142 N.J. 428 (1995) (reprimand imposed where the attorney exhibited gross neglect, lack of diligence and misrepresentation in a real estate matter when he failed to amend a RESPA statement to accurately reflect the terms of the transaction); In re Martin, 120 N.J. 443 (1990) (public reprimand imposed where the attorney displayed a pattern of neglect in six matters, in addition to misrepresenting to a client in one of the matters that the case was pending, when the attorney knew that the case had been dismissed.); In re Cervantes, 118 N.J. 557 (1990) (reprimand imposed where the attorney failed to pursue two workers' compensation matters, exhibited lack of diligence and failed to keep the clients reasonably informed of the status of the matters; in one matter the attorney misrepresented the status of the case); In re Bernstein, 144 N.J. 369 (1996) (three-month suspension imposed where the attorney exhibited gross neglect, lack of diligence, failure to communicate and misrepresentation, in addition to failure to cooperate with disciplinary authorities; prior private reprimand for similar misconduct.); and In re Chen, 143 N.J. 416 (1996) (three-month suspension imposed where the attorney engaged in a pattern of neglect, misrepresentation, failure to communicate and failure to cooperate with disciplinary



authorities in two matters; prior reprimand for gross neglect and failure to communicate in two matters). Here, given respondent's otherwise unblemished record, we unanimously determined that a reprimand is sufficient discipline to address his misconduct.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 2/6/2001



LEE M. HYMERLING  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

**In the Matter of Nino F. Falcone  
Docket No. DRB 00-135**

**Argued: July 20, 2000**

**Decided: February 6, 2001**

**Disposition: Reprimand**

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling			X				
Peterson			X				
Boylan			X				
Brody			X				
Lolla			X				
Maudsley			X				
O'Shaughnessy			X				
Schwartz			X				
Wissinger			X				
<b>Total:</b>			9				

*Robyn M. Hill 5/30/01*  
Robyn M. Hill  
Chief Counsel