

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-167

IN THE MATTER OF
JON M. DeMASI
AN ATTORNEY AT LAW

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

Decided: September 18, 2003

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

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

Respondent was admitted to the New Jersey bar in 1991. He maintains a law office in Cherry Hill, New Jersey. He has no history of discipline.

On June 28, 2002, the DEC sent a copy of the complaint to respondent at his office address at 605 West Route 70, Suite 4, Cherry Hill, New Jersey, 08002, by regular and certified mail, return receipt requested. The certified mail receipt was returned indicating

delivery on July 1, 2002. The regular mail envelope was not returned. Respondent did not file an answer. On September 16, 2002, a second letter was sent to respondent by regular and certified mail, return receipt requested. The certified mail receipt signed by Marjorie Davey was returned indicating delivery on September 18, 2002. The regular mail envelope was not returned.

On September 23, 2002, respondent filed an answer to the complaint, which did not include a verification. Respondent, however, admitted virtually all of the allegations, as well as the charged violations. He also attached two letters setting forth mitigating circumstances.

In the absence of a verification, the DEC determined that respondent's answer did not comply with R.1:20-4(e). As a result, on October 4, 2002, the DEC sent him a letter stating, among other things, that his answer lacked the proper verification and an amended verified answer had to be filed within ten days or the allegations of the complaint could be deemed admitted and his lack of cooperation a violation of RPC 8.1(b). The letter was sent by regular and certified mail, return receipt requested. Neither the certified or the regular mail was returned. When respondent did not reply, the Office of Attorney Ethics ("OAE") sent him a second letter on April 16, 2003, reiterating the contents of the October 4, 2002, letter. The letter was sent by certified mail, return receipt requested and regular mail. A certified mail receipt signed by Marjorie Davey was returned indicating delivery on April 21, 2003. The regular mail envelope was not returned. Respondent did not file an amended answer.

On July 21, 2003, respondent filed a motion to vacate the default. In his certification in support of the motion, respondent stressed that he cooperated with all aspects of the DEC investigation, and that he made a good faith effort to answer the complaint. However, respondent failed to address his reasons for not submitting a verified answer.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client), and RPC 1.16(d) (upon termination of representation, failure to take steps reasonably practicable to protect a client's interests).

Geraldine Williams retained respondent in September 2000 to represent her grandson in a name-change application. Respondent informed Williams that he would charge her a flat fee of \$650 and gave her a written retainer agreement dated September 6, 2000. She paid him a portion of the retainer in the amount of \$325.

Thereafter, respondent took no action in the matter. On May 1, 2001, some seven months later, Williams telephoned respondent about the status of her matter and requested that he return her call. She also sent him the balance of the retainer, \$325. Respondent did not return her telephone call or take any action on her grandson's behalf.

From June 6, 2001, through August 3, 2001, Williams telephoned respondent several times and wrote to him on June 25, 2001, seeking information about the matter. Respondent did not reply to her requests for information or take any action on her grandson's behalf.

Williams filed a grievance against respondent on October 5, 2001, which was forwarded to him on October 11, 2001. Thereafter, on November 9, 2001, respondent telephoned Williams and left her a message to return his call. She called him on November 10, 13, 14 and 27, 2001, and left voicemail messages, but he never returned her telephone calls.

Williams proceeded pro se in the name-change application. Relief was granted on December 14, 2001. That same month, she filed suit against respondent in small claims court seeking the return of the \$650 retainer. On January 8, 2002, she obtained a default judgment against respondent in the amount of \$666, which he paid by check dated April 30, 2002.

Respondent attached two letters to his unverified answer, setting forth mitigating circumstances. He claimed that in mid-summer 2002, he experienced a great deal of stress because of problems that arose during his wife's pregnancy, the subsequent birth of his first child, and the stresses of being a sole practitioner. He explained that he did not reply to the grievance in a timely fashion because of the significant demands of his practice, as well as family difficulties during most of the year 2002. His wife was confined to complete bed rest for two months of her pregnancy. During that time he became the sole source of income. Near the end of March 2002, he learned that the fetus had a cyst on its brain which had the possibility of being a "fatal genetic defect." It was not until April 2002 that tests revealed that the baby was normal and the cyst would either "close up" or "be a harmless anomaly."

In the early part of 2002, respondent also learned that his mother had lung cancer. She underwent surgery, and in late March began a course of chemotherapy and radiation.

Respondent further stated that this was his first ethics violation, over which he became paralyzed and suffered a great deal of embarrassment.

We have considered respondent's motion to vacate the default and determined that respondent has not explained his failure to provide a verified answer, to provide an amended answer containing a verification as requested by the DEC and the OAE, and to address why he omitted the verification in his motion to vacate the default. We, therefore, denied respondent's motion to vacate the default.

Service of process was properly made in this matter. Following a review of the record, we determined that the facts recited in the complaint support a finding of unethical conduct. Because respondent did not submit a verified answer to the complaint, the allegations are deemed admitted. R.1:20-4(f).

After accepting a fee, respondent did not take any action to have Williams' grandson's name changed in violation of RPC 1.1(a) and RPC 1.3. His failure to return her telephone calls or to reply to her letter violated RPC 1.4(a). The complaint charged respondent with a violation of RPC 1.16(d). However, respondent was not technically discharged from the representation; Williams proceeded pro se to obtain the name change. A finding of RPC 1.16(d) under these circumstances is unsupportable, notwithstanding the fact that respondent admitted this violation.

In addition to the above violations, the DEC and OAE threatened respondent with a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities) if he did not

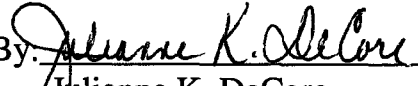
file an amended verified answer. Although respondent admitted the allegations of the complaint, he ignored the directions of both disciplinary authorities. Respondent may have had nothing further to add, nevertheless, he was required to submit a verification to his answer. His willful failure to do so is a violation of RPC 8.1(b).

The discipline imposed in default matters involving similar violations has been a reprimand. See In re Giannattasio, 165 N.J. 570 (2000) (reprimand for lack of diligence, failure to communicate with client and failure to cooperate with disciplinary authorities) and In re Goodman, 165 N.J. 567 (2000) (reprimand for gross neglect, lack of diligence, failure to communicate with client and failure to cooperate with disciplinary authorities).

As to the mitigating factors raised by respondent, it is noted that his misconduct in the Williams case occurred between September 2000 and late 2001, early 2002. Respondent's extreme stress, however, commenced mid-summer 2002. While the stress may have contributed to his delay in replying to the grievance or the complaint, it did not contribute to his misconduct. Therefore, seven members voted to impose a reprimand.

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

Disciplinary Review Board

By: 
Julianne K. DeCore
Acting Chief Counsel

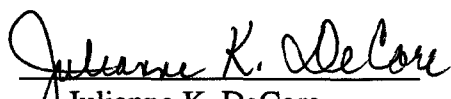
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Jon M. DeMasi
Docket No. DRB 03-167

Decided: September 18, 2003

Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>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:			7				2


Julianne K. DeCore
Acting Chief Counsel