

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 02-270

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IN THE MATTER OF  
SAMUEL A. MALAT  
AN ATTORNEY AT LAW

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

Decided: December 11, 2002

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 an answer to the formal ethics complaint.

Respondent was admitted to the New Jersey bar in 1989. He maintains a law office in Hadden Heights, New Jersey. In December 2002, the Court reprimanded respondent for violations of RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with a client), RPC 1.16(d) (failure to turn over client files on termination

of representation), RPC 3.4(c) (knowingly disobeying an obligation under the rules of the tribunal), RPC 8.1(b) (failure to cooperate with ethics authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

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On March 21, 2002, the DEC mailed a copy of the complaint to respondent by regular and certified mail, return receipt requested. The certified mail receipt was returned indicating delivery. The signature of the agent accepting delivery is illegible. The regular mail was not returned. When respondent did not file an answer, the DEC sent him a second letter on May 24, 2002, allowing him five days to file an answer. The certified mail receipt was returned indicating delivery. The regular mail was not returned. Respondent did not file an answer.

By letter dated October 7, 2002, respondent filed a motion to vacate the default. The Office of Attorney Ethics ("OAE"), filed its opposition to the motion on October 15, 2002.

Respondent's motion to vacate the default alleged that he did not review the "default package" sent to him by the DEC because he presumed that it was discovery in the underlying matter. Respondent further claimed that he had had a difficult summer. He alluded to the death of his father, but failed to indicate when that had occurred. He also claimed that he had a myriad of other personal problems, but did not specify what

they were. He stated only that as a result of the problems, he "let many personal things go." Respondent further claimed that his office had been burglarized in late April 2002 and that materials removed from his evidence locker were critical to several targeted cases. He admitted, though, that he had other copies, and did not allege that the materials taken related to this matter.

Along with respondent's motion to vacate the default, he submitted an answer to the ethics complaint. Among other things, both accused Judge Mariano of ignoring evidence.

Based on respondent's failure to provide a reasonable explanation for his failure to file a timely answer to the complaint, we unanimously determined to deny his motion to vacate the default.

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The two-count complaint charged respondent with violations of RPC 3.3(a)(1) (knowingly making a false statement of material fact or law to a tribunal), RPC 3.3(a)(5) (knowingly failing to disclose to the tribunal a material fact with knowledge that the tribunal may tend to be misled by such failure), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice) (count one); and RPC 8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority) (count two).

The crux of respondent's ethics matter is his failure to disclose to the court the existence of a pending motion before another judge. Respondent was the plaintiff in a civil suit against one of his former employees, Scott R. Cohen, also an attorney. Both respondent and Cohen were pro se litigants. Cohen moved to dismiss respondent's complaint for failure to provide discovery. According to the formal ethics complaint, respondent was served with the notice of motion and supporting documentation.

On May 30, 2000, Judge John B. Mariano granted Cohen's motion and dismissed respondent's complaint without prejudice. Respondent was served with a copy of the court order. Thereafter, on August 31, 2000, Cohen filed a motion to dismiss the complaint with prejudice.

On September 20, 2000, respondent filed a motion to vacate Judge Mariano's order dismissing the complaint without prejudice. In his motion, respondent did not disclose that Cohen's motion to dismiss the complaint with prejudice was pending. That motion was granted on September 22, 2000 by Judge John T. McNeill. According to the formal ethics complaint, respondent "was made aware of the entry of Judge McNeill's order."

The formal ethics complaint further alleged that respondent did not notify Judge Mariano of the entry of Judge McNeill's order. On October 6, 2000, Judge Mariano granted respondent's motion to vacate the May 30, 2000 order dismissing the case without prejudice. On October 27, 2000, respondent filed a motion to vacate Judge McNeill's order dismissing the complaint with prejudice. Judge McNeill denied the motion.

On November 14, 2000, Cohen filed a motion to vacate Judge Mariano's October 6, 2000 order and to reinstate Judge McNeill's order of September 22, 2000 dismissing the case with prejudice. In opposition to Cohen's motion, respondent filed a certification, dated January 2, 2001. Paragraph 25 of the certification stated as follows:

At no time prior to preparation of this Opposition was I provided a copy of the Motion which was heard on May 30, 2000, or a copy of the Order that was entered on May 30, 2000.

The formal ethics complaint alleged that respondent's statement was false and known to be false when made. In his letter-brief in opposition to Cohen's motion, respondent stated that "[t]he Plaintiff received the Notice of Motion on or about June 1, 2000, by certified mail seeking dismissal without prejudice of complaint." The letter-brief also stated that "[i]n that matter, the Motion filed which resulted in an Order dated May 30, 2000 was never served on either the Plaintiff or Third party defendants." The letter-brief further stated that "[f]or reasons unknown at this time, no motion which resulted in the Order dated May 30, 2000 was received. Also, no copy of the Order was ever provided to Plaintiff or third party defendants in contravention of R. 4:3-2." The formal ethics complaint alleged that respondent's statements were false and known to be false at the time.

Judge Mariano granted Cohen's motion on January 5, 2001.<sup>1</sup>

Respondent did not reply to the DEC's requests for a reply to the grievance, sent on January 10 and February 5, 2001. Respondent also failed to reply to the OAE's June 8 and July 10, 2001 requests for information about this matter. On July 19, 2001, the OAE

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<sup>1</sup> Judge Mariano is the complainant in this matter.

extended to July 23, 2001 the time for respondent to submit a reply to the grievance. When respondent did not submit a reply, an OAE investigator met with respondent on October 24, 2001. At that time, respondent stated that he had forwarded his reply to the OAE and would also forward a copy to the DEC investigator by facsimile that day or the following day. Respondent, however, failed to provide a copy to either the DEC or the OAE.

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Service of process was properly made. Following a review of the record, we found that the facts recited in the complaint support the charges of unethical conduct. Because of respondent's failure to timely answer the complaint, the allegations are deemed admitted. R.1:20-4(f).

According to the formal ethics complaint, Cohen served respondent with the motion to dismiss respondent's complaint. Respondent did not file any opposition to the motion, which was granted on May 30, 2000, without prejudice. It was not until after Cohen made a motion to dismiss respondent's complaint with prejudice that respondent took any action. On September 20, 2000 respondent filed a motion seeking to vacate Judge Mariano's May 30, 2000 order dismissing the complaint without prejudice. Respondent's certification in connection with his motion contained inconsistencies and misrepresentations. First, he claimed that he was never "provided a copy" of Cohen's motion to dismiss the complaint. His brief, however, contained contradictory statements,

first admitting receipt of the motion, then denying that it was ever received. In addition, respondent never mentioned in his certification or letter-brief that a motion to dismiss the complaint with prejudice was pending before Judge McNeill. Respondent's statements to the court were false and material and violated RPC 3.3(a)(1). Also, respondent's failure to disclose to the court that there was a pending motion to dismiss the complaint with prejudice violated RPC 3.3(a)(5), in that he knowingly failed to disclose a material fact with knowledge that the court would tend to be misled by such failure. Respondent's statements also constituted misrepresentations, in violation of RPC 8.4(c), and conduct prejudicial to the administration of justice, in violation of RPC 8.4(d).

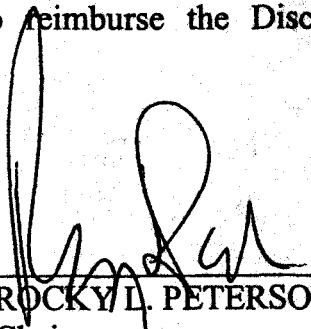
Additionally, respondent's failure to reply to the both the DEC's and the OAE's requests for information about the grievance violated RPC 8.1(b).

Discipline in cases involving misrepresentations to the court varies greatly, ranging from an admonition to a term of suspension. See In re Lewis, 138 N.J. 33 (1994) (admonition for attempting to deceive a court by introducing into evidence a document falsely showing that a heating problem in an apartment of which he was the owner/landlord had been corrected prior to the issuance of a summons); In re Marlowe, 126 N.J. 378 (1991) (reprimand for misrepresenting to the court that adversary consented to an adjournment to a domestic violence matter in which the attorney was a party); In re Mazeau, 122 N.J. 244 (1991) (reprimand for failure to disclose to a court representation of a client in a prior lawsuit where that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); In re Paul, 167 N.J. 6 (2001) (three-month suspension for attorney's misrepresentation, lack of candor to

a tribunal and conduct prejudicial to the administration of justice; attorney made oral misrepresentations to his adversary and written misrepresentations in, among other things, a deposition and several certifications to a court); and In re Telson, 138 N.J. 47 (1994) (six-month suspension where attorney altered a court document to conceal the fact that a divorce complaint had been dismissed, thereafter he submitted the uncontested divorce to another judge, who granted the divorce, then denied to a third judge that he altered the document) .

After consideration of the relevant circumstances, which included the default nature of this proceeding and respondent's recent reprimand, we determined that a three-month suspension is the appropriate degree of discipline for respondent's conduct. One member would have granted the motion to vacate the default and remand the matter to the DEC for a hearing.

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

By:   
ROCKY L. PETERSON  
Chair  
Disciplinary Review Board



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

In the Matter of Samuel A. Malat  
Docket No. DRB 02-270

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Decided: December 11, 2002

Disposition: Three-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-month Suspension</i>	<i>Remand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>		X					
<i>Maudsley</i>		X					
<i>Boylan</i>		X					
<i>Brody</i>		X					
<i>Lolla</i>		X					
<i>O'Shaughnessy</i>		X					
<i>Pashman</i>			X				
<i>Schwartz</i>		X					
<i>Wissinger</i>		X					
<b>Total:</b>		8	1				

*Robyn M. Hill* 12/19/02  
Robyn M. Hill  
Chief Counsel