

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-482

IN THE MATTER OF :
MARC Malfara, :
AN ATTORNEY AT LAW :

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

Decided: November 17, 1999

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

Pursuant to R. 1:20-4(f)(1), the District IV Ethics Committee ("DEC") certified the record in this matter directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaints.

On September 10, 1998, the DEC served a copy of the complaint on respondent by certified mail sent to his office address. The certified mail receipt was returned, indicating delivery on September 12, 1998; the signature was illegible. On November 30, 1998, a second letter was mailed to respondent by certified and regular mail sent to the same address.

The certified mail receipt was returned indicating delivery on December 1, 1998; the receipt was signed by "A. Malfara." The regular mail was not returned.

Respondent was admitted to the New Jersey bar in 1993. At the relevant times, he maintained an office in Blackwood, New Jersey.

On March 23, 1999, respondent was reprimanded for gross neglect, failure to cooperate with disciplinary authorities and conduct prejudicial to the administration of justice, in violation of RPC 1.1(a), RPC 8.1(b) and RPC 8.4(d), respectively.

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), RPC 1.5(b) (failure to communicate the basis of a fee in writing) and RPC 1.16(d) (failure to return client's file).

The Donato Matter

On September 16, 1996, Dolores Donato retained respondent to defend her on charges resulting from a September 13, 1996 motor vehicle accident and to challenge Liberty Mutual Insurance Company's cancellation of her auto insurance. Respondent did not have Donato sign a written retainer agreement, nor did he forward to her a written confirmation of their fee agreement. Donato paid no legal fees to respondent.

On September 30, 1996, respondent entered his appearance as Donato's attorney and requested an adjournment of her initial trial date. Respondent requested and received adjournments of subsequent court dates in October, November and December 1996. The

matter was finally scheduled for a court hearing on January 21, 1997. Respondent failed to appear, however, when Donato asked the judge to relieve respondent as her counsel, the judge granted the request and adjourned the case so Donato could retain a new attorney.

Following the hearing, Donato telephoned respondent, advised him that he was relieved as her counsel and requested the return of her documents. Because respondent failed to return the documents, Donato placed several additional telephone calls to respondent's office. Respondent never forwarded the documents and never returned Donato's telephone calls.

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), RPC 1.5(b) (failure to communicate the basis of the fee in writing) and RPC 1.16(d) (failure to return client's file).

The Leone Matter

On September 21, 1997, Lillian Leone retained respondent to represent her in defense of a collection matter. Leone's nephew had defaulted on an auto loan that she had co-signed. The vehicle had been repossessed and the bank was pursuing Leone for the \$4,100 deficiency. The bank had levied on Leone's checking account for the full amount due.

At their initial meeting, respondent told Leone that he would charge her a flat fee of \$500 for securing the release of her funds. Respondent did not ask Leone to sign a written retainer agreement nor did he send her a written confirmation of their agreement. Leone paid

respondent \$500, which he deposited in his attorney business account. On October 1, 1997, respondent notified Leone that her funds had been released. When Leone called the bank to verify that fact, she learned that her funds had not been released. When Leone telephoned respondent, she was told that there had been some confusion and that the money would be available the following week.

In mid-November, respondent advised Leone that he was going to pick up the funds from the bank and would deliver the check to Leone's home. Respondent never delivered the check. Leone placed several telephone calls to respondent, none of which were returned. In December 1997, Leone did speak with respondent, who claimed that the bank was causing problems and that he intended to sue them. Respondent never contacted Leone again.

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) and RPC 1.5(b) (failure to communicate the basis of a fee in writing).

The Pino Matter

In or about January 1996, Rose Pino retained respondent to handle a life insurance claim regarding her deceased husband. Pino never signed a written retainer agreement and never received a written confirmation of their fee agreement. Pino was never billed by respondent.

Pino's only communication with respondent was by copy of his letter to the insurance

company dated January 3, 1996. After several unsuccessful attempts to contact respondent, Pino retained another attorney, who unsuccessfully attempted to retrieve Pino's file. Pino wrote several letters to respondent, but never received her file back. The insurance company confirmed that it had not issued a check to respondent regarding Pino's claim.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (failure to act with reasonable diligence), RPC 1.4(a) (failure to communicate with the client), RPC 1.5(b) (failure to communicate the basis of the fee in writing) and RPC 1.16(d) (failure to return client's file).

* * *

Service of process was proper in this matter. Following a review of the complaint, the Board found that the facts recited therein support a finding of unethical conduct. Because respondent failed to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f)(1).

Respondent's failure to take any action on behalf of his clients constituted gross neglect and failure to act with reasonable diligence, in violation of RPC 1.1(a) and RPC 1.3, respectively. Respondent's failure to contact his clients or to reply to their attempts to reach him constituted a failure to communicate, in violation of RPC 1.4(a). Respondent's failure to have written fee agreements with his clients and to return Donato's and Pino's files at their

request constituted violations of RPC 1.5(b) and RPC 1.16(d). Furthermore, respondent's neglect in all three matters constituted a pattern of neglect, in violation of RPC 1.1(b). Finally, respondent's failure to reply to the DEC's and the OAE's letters constituted a failure to cooperate with disciplinary authorities, in violation of RPC 8.1(b).

Respondent was reprimanded in March 1999 for misconduct including gross neglect, failure to cooperate with disciplinary authorities and conduct prejudicial to the administration of justice. Respondent was aware of the ethics investigation in the earlier matter when he neglected these matters. On notice that his conduct was under investigation, respondent still failed to conform his behavior to that expected of an attorney in this State.

Generally, in matters involving similar violations, absent aggravating circumstances, short-term suspensions have been imposed. See In re Ortopan, 143 N.J. 586 (1996) (three-month suspension for lack of diligence, failure to keep client informed and failure to cooperate with disciplinary authorities) and In re Fornaro, 152 N.J. 449 (1998) (three-month suspension for gross neglect, lack of diligence, failure to communicate, failure to communicate basis of fee in writing, failure to surrender a client's file, making a false statement of fact to a tribunal, failure to cooperate with disciplinary authorities and conduct involving dishonesty, fraud, deceit and misrepresentation).

Similar misconduct, when accompanied by an ethics history, has led to the imposition of a six-month suspension. See In re Gertsacov-Smith, 151 N.J. 483 (1997) (six-month suspension for lack of diligence, failure to communicate, failure to return client's file and

failure to cooperate; the attorney had been privately reprimanded on one prior occasion). Thus, respondent's prior reprimand must be taken in consideration in assessing the appropriate measure of discipline. Another aggravating factor is respondent's failure to answer the formal ethics complaint.

In light of the foregoing, the Board unanimously determined to suspended respondent for six months. Respondent's reinstatement should be conditional on proof of fitness to practice law. One Board member did not participate.

The Board also directed that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: _____

11/17/98

By: _____



LEE M. HYMERLING

Chair

Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Marc Malfara
Docket No. 98-482

Decided: November 17, 1999

Disposition: Six-Month Suspension

Members	Disbar	Six-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Cole		x					
Boylan		x					
Brody		x					
Lolla		x					
Maudsley		x					
Peterson		x					
Schwartz		x					
Thompson*							x
Total:		8					1

* Member Thompson on temporary leave of absence

Robyn M. Hill 12/1/99
Robyn M. Hill
Chief Counsel