

**SUPREME COURT OF THE STATE OF NEW YORK, APPELLATE DIVISION,
FIRST DEPARTMENT**

In re Mainiero

109 A.D.3d 133 (1st Dep't 2013) · Decided June 13, 2013

SUMMARY

The First Department disbarred Joseph J. Mainiero after he failed to cooperate with a disciplinary investigation and failed to seek a hearing or reinstatement within six months of his suspension. The court ordered that his name be stricken from the roll of attorneys and counselors-at-law, effective immediately.

CASE DETAILS

COURT	Supreme Court of the State of New York, Appellate Division, First Department
WRITING FOR THE COURT	Per Curiam; Mazzairelli, J.E.; Saxe, J.; Moskowitz, J.; Richter, J.; Manzanet-Daniels, J.
JURISDICTION	New York
DECIDED	June 13, 2013
DISPOSITION	other
PROCEDURAL POSTURE	The Departmental Disciplinary Committee moved under 22 NYCRR 603.4(g) to disbar an attorney who had been suspended under 22 NYCRR 603.4(e)(1)(i) and had not appeared or applied for a hearing or reinstatement within six months.
PRECEDENTIAL VALUE	published and precedential
PARTIES	Departmental Disciplinary Committee v. Joseph J. Mainiero

TOPICS

appellate procedure

PRACTICE AREAS

attorney discipline

professional responsibility

QUESTIONS PRESENTED

1. Whether an attorney suspended under 22 NYCRR 603.4(e)(1)(i) may be disbarred under 22 NYCRR 603.4(g) when the attorney has not appeared or applied in writing for a hearing or reinstatement within six months of the suspension order.

HOLDINGS

1. An attorney suspended under 22 NYCRR 603.4(e)(1)(i) who does not appear or apply for a hearing or reinstatement within six months of the suspension order may be disbarred under 22 NYCRR 603.4(g). Because respondent did not seek a hearing or reinstatement within the required period, the Committee's motion to disbar him was granted.

KEY QUOTATIONS

"Accordingly, the Committee's motion to disbar respondent, pursuant to 22 NYCRR 603.4 (g), should be granted and respondent's name stricken from the roll of attorneys and counselors-at-law in the State of New York, effective immediately." (109 A.D.3d at 135)

FACTUAL BACKGROUND

Respondent had been suspended after failing to cooperate with the Committee's investigation of four complaints alleging neglect of client matters and after failing to provide subpoenaed escrow-account records. The Committee served notice of the suspension order at respondent's last known business address, and the certified-mail receipt was signed on July 24, 2012. More than six months after the July 17, 2012 suspension order, respondent had neither appeared nor applied for a hearing or reinstatement.

PROCEDURAL HISTORY

The court previously suspended respondent effective July 17, 2012, for failing to cooperate with an investigation into client-neglect complaints and for failing to produce subpoenaed escrow-account records. The Committee served the suspension order and notice of entry, but respondent did not seek a hearing or reinstatement within six months. The Appellate Division granted the Committee's motion and ordered respondent disbarred.

DISPOSITION

other

CASES CITED

- Matter of Claffey, 99 A.D.3d 201 (1st Dep't 2012)
- Matter of Bloodsaw, 95 A.D.3d 226 (1st Dep't 2012)
- Matter of Bambury, 91 A.D.3d 141 (1st Dep't 2011)
- Matter of Bugtti, 15 A.D.3d 70 (1st Dep't 2005)

OPINION

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PER CURIAM.

OPINION OF THE COURT

Per Curiam. Respondent Joseph J. Mainiero was admitted to the practice of law in the State of New York by the Second Judicial Department on March 7, 1984. At all times relevant to this proceeding, respondent has maintained an office for the practice of law within the First Judicial Department. The Departmental Disciplinary Committee seeks an order, pursuant to Rules of the Appellate Division, First Department (22 NYCRR) § 603.4 (g), disbaring respondent from the practice of law, because he was suspended under 22 NYCRR 603.4 (e) (1) (i) and did not appear or apply to the Committee or this Court for a hearing or reinstatement within six months from the date of the order of suspension, which was July 17, 2012. Respondent was suspended because he failed to cooperate with the Committee's investigation into four complaints that he neglected client matters, and because he failed to provide relevant escrow account records subpoenaed by the Committee. On July 19, 2012, the Committee served respondent with a notice of entry dated July 19, 2012, enclosing a copy of this Court's July 17, 2012 order of suspension, by mailing same to his last known business address as listed with the Office of Court Administration. The copy of the notice of entry was served by first-class mail and certified mail, return receipt requested. The receipt was signed for on July 24, 2012 and returned to the Committee. In its previous application for immediate suspension the Committee included the following notice to respondent: "PLEASE TAKE FURTHER NOTICE, that pursuant to 22 NYCRR § 603.4 (g), an attorney who is suspended under § 603.4 (e) (1) and who has not appeared or applied in writing to the Committee or the Court for a hearing or reinstatement for six months from the date of the order of suspension, may be disbarred without further notice." More than six months have elapsed since the date of this Court's July 17, 2012 order of suspension but respondent has not sought a hearing or reinstatement (Matter of Claffey, 99 AD3d 201 [1st Dept 2012]; Matter of Bloodsaw, 95 AD3d 226 [1st Dept 2012]; Matter of Bambury, 91 AD3d 141 [1st Dept 2011]; Matter of Bugtti, 15 AD3d 70 [1st Dept 2005]). *135Accordingly, the Committee's motion to disbar respondent, pursuant to 22 NYCRR 603.4 (g), should be granted and respondent's name stricken from the roll of attorneys and counselors-at-law in the State of New York, effective immediately. *Mazzarelli, J.E., Saxe, Moskowitz, Richter and ManzanetDaniels, JJ., concur.* Respondent disbarred, and his name stricken from the roll of attorneys and counselors-at-law in the State of New York, effective the date hereof.