

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-205

IN THE MATTER OF :
:
RICHARD W. BANAS :
:
AN ATTORNEY AT LAW :
:

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

Decided: November 2, 1998

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 VC 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 complaint.

On March 4, 1998, the DEC sent a copy of the complaint and cover letter to respondent's last known address via certified and regular mail. The certified mail return receipt (green card) was returned to the DEC showing acceptance on March 7, 1998 and indicating that the mail had been forwarded to a new address. The regular mail was not returned. On April 24, 1998, the DEC mailed a second letter to respondent, advising him that

he could be temporarily suspended if he failed to respond within five days. This second letter was sent via certified and regular mail to the new address indicated on the first green card. Neither the return receipt nor the regular mail was returned to the DEC. Respondent did not file an answer.

Respondent was admitted to the New Jersey bar in 1978. He received a reprimand in 1996 for improperly retaining as legal fees a \$5,000 payment intended to obtain bail for his client. In re Banas, 144 N.J. 75 (1996).

According to the first count of the two-count complaint, grievant Terrence Wright retained respondent for representation in connection with a parole revocation. Respondent met with Wright twice while Wright was in jail. At their first meeting, respondent picked up the paperwork with regard to the parole revocation; at the second, he arranged for payment of his fees. After respondent received a retainer in the amount of \$3,500, which he acknowledged in writing, he failed to prepare for or attend the parole revocation hearing and took no further action on behalf of Wright. The complaint further alleged that Wright repeatedly and unsuccessfully attempted to contact respondent by telephone and in writing.

The second count of the complaint alleged that the DEC contacted respondent by certified and regular mail and attempted to reach him by telephone. According to the complaint, respondent did not reply to any of the DEC's requests for information.

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), RPC 1.5(b) (failure

to reduce a fee agreement to writing) and RPC 8.1(b) (failure to cooperate with the disciplinary authorities).

* * *

Following a de novo review of the record, the Board deemed the allegations contained in the complaint admitted. R.1:20-4(f)(1). The facts alleged in the complaint support a finding of unethical conduct by respondent.

Respondent accepted a retainer from a client and then failed to take any action on the client's behalf. Moreover, he failed to reply to the client's repeated attempts to contact him and did not provide the client with a written fee agreement. Finally, he failed to reply to the DEC's requests for information in connection with the ethics investigation. The Board found that respondent's conduct violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client), RPC 1.5(b) (failure to reduce a fee agreement to writing) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

Ordinarily, an admonition or a reprimand would constitute appropriate discipline for similar misconduct. See In the Matter of Dennis Joy, Docket No. DRB 97-105 (1997) (admonition for lack of diligence and failure to communicate); In re Gordon, 139 N.J. 606 (1995) (reprimand for gross neglect, lack of diligence, failure to communicate and failure to return a file); In re Carmichael, 139 N.J. 390 (1995) (reprimand for lack of diligence and failure to communicate). However, the Board considered in aggravation respondent's prior discipline as well as failure to either cooperate with the disciplinary investigation or to file

an answer to the complaint. Accordingly, the Board unanimously determined to impose a suspension of three months.

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

Dated: 11/2/98

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

*DISCIPLINARY REVIEW BOARD
VOTING RECORD*

**In the Matter of Richard Banas
Docket No. DRB 98-205**

Decided: November 2, 1998

Disposition: Three-month Suspension

Members	Disbar	Three-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Zazzali		x					
Brody		x					
Cole		x					
Lolla		x					
Maudsley		x					
Peterson		x					
Schwartz		x					
Thompson		x					
Total:		9					

Robyn M. Hill 11/13/98
Robyn M. Hill
Chief Counsel