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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-250

IN THE MATTER OF :
 :
DOUGLAS J. FLEISHER :
 :
AN ATTORNEY AT LAW :
 :

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

Decided: February 22, 2000

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

Pursuant to R. 1:20-4(f)(1), the District VI 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.

On April 14, 1999, the DEC forwarded a copy of the complaint to respondent's office address by regular and certified mail. The certified mail return receipt was returned, indicating delivery on April 15, 1999. The signature was illegible. The regular mail was

not returned. On June 2, 1999, a second complaint was served on respondent at his office address. The certified mail return receipt was again returned, indicating acceptance. The accepting agent's signature was also illegible. The regular mail was not returned. Respondent did not file an answer to the formal ethics complaint.

Respondent was admitted to the New Jersey bar in 1980. On June 13, 1997, he was the subject of diversion for his failure to safeguard a lien held by his client's landlord on a portion of proceeds from an unrelated personal injury matter. R. 1:20-3(i)(2)(B).

According to the complaint, Samuel Morrisette retained respondent to represent him in a products liability matter arising out of exposure to hazardous materials at his place of work. Respondent filed a complaint on February 14, 1995. Thereafter, Morrisette made several inquiries to respondent about the status of his case. Respondent either assured Morrisette that everything was under control or did not reply at all to his inquiries .

In either August or September 1997, Morrisette became dissatisfied with respondent's assurances and telephoned the Superior Court to find out the status of his case. Morrisette was informed that the complaint had been dismissed with prejudice on October 4, 1996. When Morrisette confronted respondent about the dismissal, respondent promised him that he would have the case promptly reinstated. Thereafter, rather than to move to reinstate the matter, respondent attempted to convince Morrisette that he should drop the entire lawsuit, stating merely that things were not going well.

Following respondent's recommendation that he abandon his claim, Morrisette made

several requests for a copy of his file. In addition, Morrissette engaged another attorney to make a written request for a copy of the file. Respondent never forwarded the file to either Morrissette or his attorney.

The complaint charged respondent with violations of RPC 1.4(a) (failure to communicate with his client) and RPC 8.4(c) (conduct involving dishonesty, fraud or misrepresentation).

* * *

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

As charged in the complaint, respondent failed to keep Morrissette informed about the status of his case and neglected to reply to his reasonable inquiries over a two year period, in violation of RPC 1.4(a).

In addition, respondent failed to have Morrissette's case reinstated, as promised, in violation of RPC 1.3 (lack of diligence) and failed to forward Morrissette his file, after

repeated requests by Morrisette and his new attorney, in violation of RPC 1.16(d). Although respondent was not specifically charged with violations of these RPCs, the facts recited in the complaint are sufficient to support such findings. Therefore, the Board deemed the complaint amended to conform to the proofs. In re Logan, 70 N.J. 222, 232 (1976).

However, the facts alleged in the complaint do not support a finding that respondent misrepresented the status of the case to Morrisette, in violation of RPC 8.4(c). Although the complaint specifies the date of the dismissal of the complaint, it does not state whether these communications occurred before or after the date of the dismissal. Here, we dismissed the allegation that respondent violated RPC 8.4(c).


Ordinarily, misconduct that includes failure to communicate, lack of diligence and failure to return a client's file merits an admonition. See, e.g., In the Matter of Vera Carpenter, Docket No. DRB 97-303 (October 27, 1997) (admonition where attorney failed to act diligently, failed to communicate with client and failed to turn over client's file to new counsel); In the Matter of Howard M. Dorian, Docket No. DRB 95-216 (August 1, 1995) (admonition where attorney grossly neglected a client matter, failed to inform the client that her litigated matter had been dismissed, failed to turn over the file to the successor attorney and failed to reply to the DEC investigator); In the Matter of Richard Carroll, Docket No. DRB 95-017 (June 26, 1995) (admonition where attorney failed to act diligently, failed to communicate with client, failed to turn over client's file and failed to cooperate with ethics

authorities).

Because, however, respondent did not participate in these proceedings, allowing them to proceed on a default basis, enhanced discipline is required. Accordingly, we unanimously determined to impose a reprimand.

We further directed that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 2/22/2000

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Douglas Fleisher
Docket No. DRB 99-250**

Decided: February 22, 2000

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Cole			x				
Brody			x				
Boylan			x				
Lolla			x				
Maudsley			x				
Peterson			x				
Schwartz			x				
Wissinger			x				
Total:			9				

Robyn M. Hill 3/20/00
Robyn M. Hill
Chief Counsel