

OR

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-456

IN THE MATTER OF
THOMAS J. SCHIAVO
AN ATTORNEY AT LAW

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

Decided: May 22, 2000

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

Pursuant to R. 1:20-4(f), the District X 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 September 8, 1999 the DEC sent a complaint to respondent's office by regular and certified mail. The certified mail return receipt was returned with respondent's signature, showing a delivery date of September 14, 1999. The complaint sent by regular mail was not returned. On October 20, 1999 the DEC sent

a second letter to respondent by regular and certified mail, advising him that the failure to file an answer would constitute an admission of the allegations contained in the complaint and could result in his temporary suspension. The letter further notified respondent that the complaint was amended to allege a violation of *RPC* 8.1(b) (failure to cooperate with disciplinary authorities). The certified mail return receipt was returned signed by respondent and showing a delivery date of October 27, 1999. The copy sent by regular mail was not returned.

Respondent did not file an answer to the complaint. On December 30, 1999 the record was certified directly to us for the imposition of discipline, pursuant to *R. 1:20-4(f)(1)*.

* * *

Respondent was admitted to the New Jersey bar in 1979. On October 26, 1999 he was temporarily suspended for failure to cooperate with an ethics investigation, and remains suspended to date. Respondent formerly maintained an office in Ledgewood, Morris County, New Jersey.

I - The Kendall Matter

The complaint charged that an April 15, 1998 Superior Court order required respondent to pay grievant, Debra Kendall, escrow funds held in his trust account since May 22, 1996. Respondent represented Kendall's former husband in a matrimonial proceeding and was required to turn over certain funds to Kendall. Despite Kendall's repeated requests, respondent refused to remit the monies to her, contending that he was required to discuss the matter with Kendall's former husband before the funds were released to her. Respondent claimed that he did not have his client's current address, which Kendall then provided.

After waiting several weeks, Kendall repeatedly left telephone messages for respondent, which he did not return. Respondent told the ethics investigator that he wanted to assure himself that his client would not ask him to appeal the April 15, 1998 order, before he complied with it. Finally, in May 1999, more than one year after the date of the order, respondent remitted the funds to the investigator, who forwarded them to Kendall.

The complaint charged that respondent violated *RPC* 1.15(b) (failure to promptly deliver funds to a third party).

II - The Wilczewski Matter

Respondent represented grievant, Phillip Wilczewski, in the purchase of real estate from the Federal National Mortgage Association. The closing occurred on October 19, 1998. The real estate documents provided that Wilczewski was entitled to a \$3,000 credit. Wilczewski repeatedly sought an explanation from respondent concerning a refund. Despite Wilczewski's repeated requests, respondent failed to contact him. Finally, the DEC reviewed the real estate documents and explained to Wilczewski's satisfaction that the distribution of funds at the real estate closing had been accurate.

The complaint charged that respondent failed to comply with a client's reasonable requests for information, in violation of *RPC 1.4(a)*.

III - The Matolyak/DeMaio Matter

In August 1998 respondent was retained by Ron DeMaio, who gave him a \$500 check to represent Carol Matolyak in a family law matter. Although respondent performed little or no work on the case, he informed DeMaio and Matolyak that he had filed papers and that a fall 1998 hearing date had been set. These representations were false. Respondent neither performed legal services for Matolyak nor returned any of the \$500 fee that DeMaio had paid in Matolyak's behalf.

The complaint charged that respondent violated *RPC* 1.3 (lack of diligence), *RPC* 1.4(a) (failure to keep client reasonably informed about the status of a matter) and *RPC* 1.16(d) (failure to return unearned retainer).

IV - The Feltwater Matter

On July 21, 1999 Robert J. Feltwater, Jr.'s employer paid respondent a \$300 fee to modify a child support order that had been entered against Feltwater on December 21, 1998. Respondent informed Feltwater that he would review the documents and then file an appropriate motion. Although respondent retained the \$300 fee, he performed no services in Feltwater's behalf. Respondent failed to return Feltwater's telephone calls seeking information about the status of the matter. Moreover, respondent negotiated the fee check and then misrepresented that he had lost or misplaced it.

Ultimately, Feltwater retained substitute counsel and retrieved his file from respondent. The file revealed that respondent had taken no action in Feltwater's behalf.

The complaint charged that respondent violated *RPC* 1.3 (lack of diligence) and *RPC* 1.4(a) (failure to communicate with client and keep client reasonably informed about the status of a matter). The complaint further charged that respondent "made false and misleading communications to the grievant about his work and his

services to the detriment of the Grievant and to the general public in violation of *RPC* 7.1(4)(II) [sic] and *RPC* 1.16(6)(d) [sic]."

* * *

Service of process was properly made in this matter. Following a review of the record, we found that the facts recited in the complaint 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).

In the *Kendall* matter, on April 15, 1998 respondent had been ordered by a Superior Court judge to distribute escrow funds from his trust account to Kendall. Respondent did not comply with the order until May 1999, more than one year later, and only after the DEC intervened. Respondent's explanation that he was required to confirm that his client, Kendall's former husband, did not wish to appeal the order is not credible, given that the time for filing an appeal had long since expired. Moreover, even after Kendall supplied respondent with her former husband's new address, the funds were not forthcoming. Hence, respondent's failure to promptly deliver the funds to Kendall violated *RPC* 1.15(b). Furthermore, we find that respondent's failure to comply with the court's order violated *RPC* 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal). Although respondent was not specifically

charged with a violation of *RPC* 3.4(c), the facts in the complaint gave him sufficient notice of the alleged improper conduct and of the potential violation of that *RPC*.

In the *Wilczewski* matter, respondent failed to reply to his client's repeated requests for an explanation of the \$3,000 credit in connection with his real estate purchase. As a result of respondent's inaction, the DEC had to review the real estate documents and to explain to Wilczewski that he was not entitled to a cash refund. Respondent's failure to reply to Wilczewski's repeated requests for information violated *RPC* 1.4(a).

In *Matolyak/DeMaio*, respondent accepted a fee to perform legal services in a family law matter. Not only did respondent fail to perform any services, but he also misrepresented to DeMaio and Matolyak that a hearing had been scheduled. Respondent's failure to take any action in Matolyak's behalf violated *RPC* 1.3. His misrepresentation of the status of the matter violated both *RPC* 1.4(a) and *RPC* 8.4(c). Although respondent was not specifically charged with a violation of *RPC* 8.4(c), the facts in the complaint gave him sufficient notice of the alleged improper conduct and of the potential violation of that *RPC*. Also, respondent's failure to return any portion of the \$500 fee violated *RPC* 1.16(d).

Finally, in the *Feltwater* matter, respondent accepted a \$300 retainer to file a motion to modify a child support order. Despite his retention of the fee, respondent performed no legal services in Feltwater's behalf and failed to return his client's

telephone calls seeking information about the status of the matter. Respondent, thus, violated *RPC* 1.3 and *RPC* 1.4(a). As to the alleged violations of "*RPC* 7.1(4)(II) and *RPC* 1.16(6)(d)" (obviously mistakenly cited), we find that the complaint contains no factual basis for a finding of unethical conduct.

In sum, respondent failed to promptly deliver funds to a third party and did not comply with the court's order for the disbursement of escrow funds in one matter; failed to communicate with a client in a second matter; failed to act with reasonable diligence, failed to communicate with a client, failed to refund an unearned fee and misrepresented the status of a matter in a third matter; and failed to act with reasonable diligence and to communicate with a client in a fourth matter.

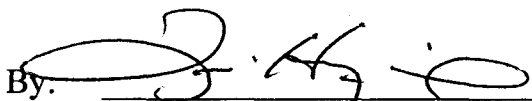
Conduct similar to respondent's usually results in the imposition of either a reprimand or a short-term suspension. *See, e.g., In re Park*, 152 *N.J.* 27 (1997) (attorney reprimanded for failure to communicate with clients in two matters, misrepresentation of the status of a case in one of the matters and failure to cooperate with ethics authorities in both matters); *In re Perkins*, 143 *N.J.* 139 (1996) (attorney reprimanded for failure to communicate with a client and misrepresentation of the status of a case in one matter, lack of diligence and failure to supervise staff in another matter and failure to cooperate with the ethics authorities in several matters); *In re Peluso* 156 *N.J.* 545 (1999) (attorney suspended for three months for gross neglect, lack of diligence and failure to communicate with clients in each of six

matters and, in one of the matters, failure to abide by a client's decision and failure to turn over a client's file on termination of representation; attorney also committed numerous recordkeeping violations).

After consideration of the relevant circumstances, particularly the default nature of these proceedings, we unanimously determined that respondent's violations warrant a three-month suspension.

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

Dated: 4/22/00

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

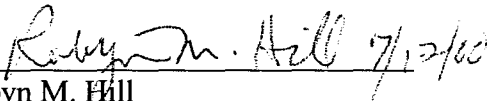
**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Thomas J. Schiavo
Docket No. DRB 99-456**

Decided: May 22, 2000

Disposition: Three-month suspension

| Members | Disbar | Three-month Suspension | Reprimand | Admonition | Dismiss | Disqualified | Did not Participate |
|---------------|--------|---------------------------|-----------|------------|---------|--------------|------------------------|
| Hyerling | | x | | | | | |
| Peterson | | x | | | | | |
| Boylan | | x | | | | | |
| Brody | | x | | | | | |
| Lolla | | x | | | | | |
| Maudsley | | x | | | | | |
| O'Shaughnessy | | x | | | | | |
| Schwartz | | x | | | | | |
| Wissinger | | x | | | | | |
| Total: | | 9 | | | | | |


Robyn M. Hill
Chief Counsel