

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-483

IN THE MATTER OF
JAMES P. TUTT
AN ATTORNEY AT LAW

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

Decided: November 16, 1999

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

Pursuant to R.1:20-4(f), the District VA Ethics Committee ("DEC") certified the record of this matter following respondent's failure to file an answer to the formal ethics complaint. The Office of Attorney Ethics ("OAE") thereafter submitted the record to the Board for the imposition of discipline.

On September 3, 1998, the DEC sent a copy of the complaint to respondent, by regular and certified mail, return receipt requested, at his last known office address. The regular mail was not returned, but the certified mail was returned marked "unclaimed."

Respondent did not file an answer.

On October 8, 1998, the DEC sent a second letter to the same address by regular and certified mail, return receipt requested. The letter stated that, if respondent failed to answer the complaint within five days, the allegations of the complaint would be deemed admitted and the DEC would certify the record to the Board. The regular mail was not returned. The certified mail green card was returned indicating acceptance by Jessie Vincent on October 10, 1998.

Notice of the Board hearing was published in the New Jersey Law Journal on April 5, 1999. Respondent has not filed an answer to the formal ethics complaint.

Respondent was admitted to the New Jersey bar in 1985. In May 1998 respondent agreed to enroll in continuing legal education courses, after admitting to a violation of RPC 1.8(e) in an Agreement in Lieu of Discipline, pursuant to R. 1:20-3(i)(2)(B). Hasaan K. Pasha v. James P. Tutt, District Docket No. VA-97-058E (May 7, 1998).

In this matter, the complaint alleged that, in April 1991, respondent became executor of the estate of Juan Lopez, who died in February of that year. After paying off the estate debts and distributing the specific bequests, respondent was to divide the remainder of the estate into six equal shares and distribute them to Lopez's six children.

Respondent was unable to locate one of the children, Denise Jimenez. In November 1993, respondent sent the other five children an accounting of the estate from February 1991

through October 1993, a receipt release and refunding agreements, as well as a summary of the residuary estate for distribution purposes. As of December 31, 1997, respondent was still holding Jimenez's share, then valued at \$67,470.13.

The complaint alleged that one of the other children, A. Lopez Colon, made numerous requests to respondent to take action with respect to the Jimenez funds. However, respondent failed to reply to those requests for information and failed to communicate to Colon his intentions about Jimenez's share of the funds.

The complaint charged respondent with violations of RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 1.4(b) (failure to explain a matter to a client) and RPC 1.15(b) (failure to promptly deliver funds or property). In addition, the October 9, 1998 letter to respondent served as an amendment to the complaint to include a charge of a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities).

* * *

Service of process was properly made in this matter. Following a review of the record, the Board 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).

As one of six beneficiaries of the estate, Colon was entitled to receive information regarding the estate. Respondent failed to provide that information, despite Colon's numerous requests. The record, thus, contains sufficient basis to find that respondent violated RPC 1.4(a). Furthermore, if Jimenez could not be found, then Colon had an interest in the funds being held for Jimenez. Without knowledge of the status of the case, Colon did not have enough information to make a decision as to how to proceed. Respondent, thus, also violated RPC 1.4(b).

During the DEC investigation, respondent claimed that he had attempted to locate Jimenez. However, the record contains no evidence of such efforts over the six-year period that respondent handled the matter. Indeed, the record shows that respondent did not diligently attempt to locate Jimenez or take other appropriate action if, in fact, Jimenez could not be located. Therefore, respondent's misconduct in this regard was a violation of RPC 1.3.

With regard to RPC 1.15, it is clear that, having failed to diligently pursue Jimenez's whereabouts, respondent violated that RPC by not promptly delivering the funds to her or, in the alternative, taking other appropriate action to disburse those funds.

Additionally, respondent failed to file an answer to this complaint, thereby violating RPC 8.1(b).

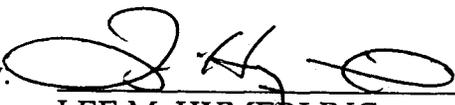
In In re Dreier, 120 N.J. 154 (1990), an attorney was reprimanded where, acting as

an estate trustee, he failed to pursue the matter with reasonable diligence for three years and failed to communicate with the beneficiary of the estate. The attorney had previously been reprimanded.

Here, respondent has the added charge of failure to cooperate with the disciplinary authorities, as demonstrated by the default nature of this case. However, his prior unblemished record balances any need for discipline greater than a reprimand. Accordingly, the Board unanimously voted to reprimand respondent. Two members did not participate.

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

Dated: 11/16/89

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

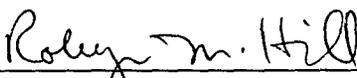
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: Reprimand

Members	Disbar	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*	On temporary leave of absence						x
Total:			7				2


 Robyn M. Hill
 Chief Counsel