

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-404

IN THE MATTER OF :
:
KAREN ANN KUBULAK :
:
AN ATTORNEY AT LAW :
:
:

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

Decided: February 15, 2002

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

Pursuant to R.1:20-4(f), the District VIII 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 July 19, 2001 copies of the complaint were sent by certified and regular mail to two addresses in Perth Amboy, New Jersey: 335 Maple Street and 654 Penn Street.¹ The certified mail receipt for the Maple Street address was returned as “unclaimed.” The certified mail

¹ We do not know if these addresses are respondent’s last known office or home addresses.

receipt to the Penn Street address was returned signed by an “Eleanor Kubulak.” The return date on the receipt is illegible. The regular mail was not returned from either address.

Respondent did not file an answer to the formal ethics complaint. Therefore, 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 1980. On January 26, 1999 she was suspended for three months in a default matter (effective March 1, 1999), for gross neglect, failure to abide by the client’s decisions concerning the representation, lack of diligence, failure to communicate with the client, failure to expedite litigation, failure to cooperate with ethics authorities, conduct prejudicial to the administration of justice and misrepresentation. The order also provided that respondent could not apply for reinstatement until she fully complied with all audit-related demands by the Office of Attorney Ethics. In re Kubulak, 157 N.J. 74 (1999). Respondent remains suspended to date.

On February 6, 2002 the Supreme Court imposed a three-month suspension in another default matter for gross neglect, pattern of neglect, failure to communicate and failure to cooperate with ethics authorities in a collection matter. In re Kubulak, N.J. (2002).

* * *

In or about 1993, Albert Check retained respondent to represent him in a matter involving the collection of a debt. Respondent filed a complaint in Superior Court in 1997.² In late 1997 or early 1998, Check contacted respondent about the status of the matter and was told

²The investigative report notes that respondent was unable to locate the defendant until 1997.

that the defendant had not yet been served with the complaint. Thereafter, Check requested information about the case by telephone and letter, but respondent failed to reply to those requests. Unbeknownst to Check, the complaint had been dismissed on or about June 7, 1998 for failure to prosecute.

The complaint alleges that respondent failed to communicate with the client, in violation of RPC 1.4(a), and exhibited a pattern of neglect, in violation of RPC 1.1(b), when this matter is considered with respondent's past misconduct. The complaint also alleges "deceit," based on respondent's failure to "accurately and honestly" communicate with the client.

* * *

Service of process was properly made in this matter. Following a de novo 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).

Although respondent filed a complaint in Check's behalf, she failed to prosecute the matter, resulting in its dismissal. Respondent, thus, grossly neglected the matter, in violation of RPC 1.1(a). Although respondent was not specifically charged with a violation of RPC 1.1(a), she was charged with a more severe violation, pattern of neglect (RPC 1.1(b)). Therefore, we found a violation of RPC 1.1(a) without resort to amending the complaint to include the lesser charge. Respondent's gross neglect in this case, combined with those cited in her ethics history,

constituted a pattern of neglect, in violation of RPC 1.1(b). Lastly, we found that she failed to reply to Check's requests for information about the case, in violation of RPC 1.4(a).

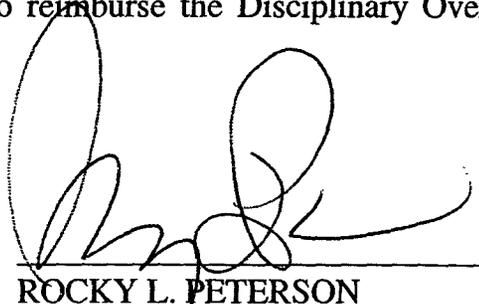
We dismissed the allegation of a violation of "deceit," inasmuch as the complaint does not contain sufficient facts to support a finding in this regard.

The only remaining issue is the quantum of discipline. Respondent violated RPC 1.1(a), RPC 1.1(b) and RPC 1.4(a). Ordinarily, conduct involving gross neglect and failure to communicate in a single non-default matter warrants the imposition of an admonition, if the attorney does not have a disciplinary history. *See, e.g., In the Matter of Paul A. Dykstra*, Docket No. DRB 00-182 (September 27, 2000) (admonition for attorney who failed to communicate with his clients); and *In the Matter of E. Steven Lustig*, Docket No. DRB 00-003 (April 10, 2000) (admonition for attorney who grossly neglected a matrimonial matter and failed to adequately communicate with his client). Here, however, due to the default nature of this matter (this is respondent's third consecutive default), the finding of a pattern of neglect and respondent's disciplinary history, including two recent three-month suspensions, a short-term suspension is required. *See, e.g., In re King*, 157 N.J. 548 (1999) (three-month suspension imposed in a default matter where the attorney engaged in gross neglect, a pattern of neglect, lack of diligence and failure to communicate with a client in a personal injury matter and also failed to cooperate with disciplinary authorities during the investigation and processing of the case; the attorney had been previously reprimanded for gross neglect, pattern of neglect, lack of diligence, failure to communicate and failure to return an unearned fee in a client file); *In re Gorman*, 156 N.J. 540

(1999) (three-month suspension imposed in a default matter where the attorney engaged in gross neglect, pattern of neglect and failure to communicate with the client; the attorney also failed to turn over the file to subsequent counsel and failed to cooperate with ethics authorities in the prosecution of the matter; prior admonition for failure to respond to ethics investigator's request for information in a prior matter arising out of the same client's case); and In re Vnenchak, 156 N.J. 548 (1999) (three-month suspension imposed in a default matter where the attorney displayed gross neglect, pattern of neglect, lack of diligence, failure to communicate, failure to expedite litigation, failure to cooperate with disciplinary authorities and conduct involving misrepresentations to clients). We also noted that respondent's misconduct in this matter occurred in 1997 and 1998, when she was already on notice that her prior actions were being scrutinized by ethics authorities. Nevertheless, respondent failed to conform to the rules of the profession. Accordingly, a five-member majority voted to impose a three-month suspension. Three members would have imposed a reprimand. One member recused herself.

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

By:



ROCKY L. PETERSON
Chair
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Karen Ann Kubulak
Docket No. DRB 01-404

Decided: February 15, 2002

Disposition: three-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-month Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
Peterson		X					
Maudsley			X				
Boylan			X				
Brody		X					
Lolla		X					
O'Shaughnessy			X				
Pashman		X					
Schwartz							X
Wissinger		X					
Total:		5	3				1

 3/14/02
 Robyn M. Hill
 Chief Counsel