

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-349

IN THE MATTER OF
FRANCIS X. GAVIN
AN ATTORNEY AT LAW

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

Decided: March 7, 2003

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.

Respondent was admitted to the New Jersey bar in 1981. At the relevant times he maintained a law office in Hackettstown, New Jersey.

Respondent’s ethics history is extensive. In 1998 he received a reprimand for gross neglect, failure to act with diligence and failure to communicate with a client. In re Gavin, 153 N.J. 356 (1998). In the first of a series of defaults, in 2001 respondent was

again reprimanded for gross neglect, lack of diligence, failure to communicate with client, failure to refund an unearned fee and failure to comply with reasonable requests for information from a disciplinary authority. In re Gavin, 167 N.J. 606 (2001). In another default matter, respondent received a six-month suspension for lack of diligence, failure to communicate with client, failure to surrender client file on termination of the representation, failure to cooperate with disciplinary authorities and conduct prejudicial to the administration of justice (contempt of court by ignoring two court orders directing him to turn over a client's file). In re Gavin, 170 N.J. 597 (2002). In a recent default matter, respondent received a three-month consecutive suspension for gross neglect, pattern of neglect, lack of diligence, failure to deliver promptly to clients or third persons property to which they are entitled, failure to cooperate with disciplinary authorities and conduct prejudicial to the administration of justice (failure to comply with court orders). In re Gavin, 172 N.J. 347 (2002).

* * *

On July 30, 2002, the DEC mailed a copy of the complaint to respondent's office address by regular and certified mail, return receipt requested. The regular mail was not returned. The certified mail was returned as unclaimed. Respondent did not file an answer. Thereafter, on September 4, 2002, the DEC sent respondent a second letter, granting him five days to file an answer. Copies of the letter were sent to respondent's office and home addresses by certified mail, return receipt requested, and by regular mail.

Both the certified and regular mail sent to respondent's office were returned marked "Forwarding Expired." The certified mail receipt card for the home address was accepted on September 6, 2002. The regular mail was not returned.

Respondent did not file an answer.

* * *

The two-count complaint charged respondent with violations of RPC 1.4(a) (failure to communicate with client) and RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority).

Count one charged that respondent represented Nancy J. Hummer in connection with a divorce proceeding. On December 15, 1993, she was awarded fifty percent of her former husband's pension benefits. According to Hummer, respondent was to obtain documentation regarding her ex-husband's pension plan. Respondent failed to return her telephone calls and to answer her letters.

The complaint alleged that, in a May 31, 2000 letter to Hummer, respondent stated that he had to make revisions to the form of the court order to resubmit it to the Division of Pensions and Benefits for its approval. At the time the grievance was filed, October 2001, respondent had not obtained the required documentation to perfect Hummer's interest. Respondent also failed to provide a reply to the grievance.

In count two, the complaint alleged that Sandra L. Phillips was divorced in January 1998. The final judgment of divorce required her ex-husband to transfer title of

the former marital home to her within thirty days of the divorce. The closing was scheduled to take place on June 24, 1999, but because Phillips' ex-husband failed to supply a quitclaim deed, the closing never took place.

Thereafter, respondent filed an order to show cause returnable on July 16, 1999, requiring, among other things, that Phillips' ex-husband show cause why he should not provide a bargain and sale deed with covenants against grantor's acts to enable Phillips to refinance the property.

On July 11, 1999 the court ordered that the closing of the refinancing take place on or before July 23, 1999. The order also required that Phillips submit to the court a copy of her mortgage commitment and proposed closing statement within two days and that the closing statement show that there were sufficient funds for any existing mortgages and for her ex-husband's share of the property.

The refinancing did not take place by July 31, 1999. On July 30, 1999 the court issued another order requiring Phillips to move out of the former marital residence no later than July 31, 1999, unless she made full payment to her ex-husband for his interest in the property.

According to the complaint, respondent did not inform Phillips about the court's decision or provide her with copies of the two court orders. Because of Phillips' failure to pay her ex-husband the amount ordered, she was removed from the property by the county sheriff.

* * *

Service of process was properly made. 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 answer the complaint, the allegations are deemed admitted. R.1:20-4(f).

In the Hummer matter, respondent was supposed to obtain documentation in connection with Hummer's ex-husband's pension plan in order to protect her interest in the pension. According to the complaint, respondent was representing Hummer as of December 1993.¹ The investigative report indicated that Hummer last heard from respondent by letter dated May 31, 2000 and that, as of the date that Hummer filed the grievance, October 2001, respondent still had not obtained the required documentation. Respondent's failure to act by October 2001 constituted lack of diligence. Although this charge was not cited in the complaint, we found that the alleged facts gave sufficient notice of a potential finding of a violation of RPC 1.3. Also, respondent's failure to reply to Hummer's many telephone calls and letters violated RPC 1.4(a) and his failure to reply to the grievance violated RPC 8.1(b).

In the Phillips matter, respondent's failure to act and to inform his client about the court orders resulted in her removal from the marital premises. Respondent's conduct in this regard violated RPC 1.4(a).

Finally, his failure to reply to the grievance violated RPC 8.1(b).

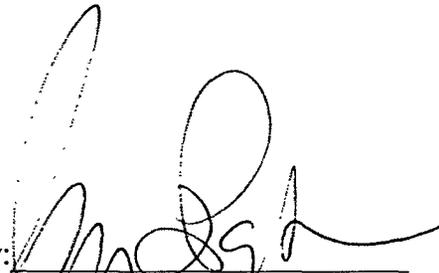
¹ Neither the complaint nor the investigative report shed light on whether the 1993 date is a typographical error and the correct date should be 1998.

Generally, in default matters involving similar violations and a prior disciplinary record, short-term suspensions have been imposed. See In re Davis, 162 N.J. 7 (1999) (three-month suspension in a default matter involving gross neglect, lack of diligence, knowingly disobeying the rules of a tribunal and failure to cooperate with disciplinary authorities; attorney had prior admonition); In re Herron, 162 N.J. 105 (1999) (three-month suspension in a default matter for gross neglect, lack of diligence, failure to communicate with client and failure to cooperate with disciplinary authority; attorney had two prior one-year suspensions); and In re King, 157 N.J. 548 (1999) (three-month suspension in a default matter for gross neglect, pattern of neglect, lack of diligence, failure to communicate with client and failure to cooperate with disciplinary authorities; attorney had prior reprimand).

In imposing discipline against respondent in December 2001, we considered that the misconduct in that matter had occurred around the same time as his misconduct in the earlier default that led to a six-month suspension. We found that respondent's ethics transgressions were part of the same overall pattern of misconduct, rather than the product of failure to learn from prior mistakes. We, therefore, imposed only a three-month suspension. While we recognize that the misconduct here also occurred during that same time period, we cannot ignore the fact that respondent continues to disregard the disciplinary process. We, therefore, unanimously determined to impose an additional three-month suspension, to run consecutively to his prior suspensions. Three members did not participate.

We also determined to require respondent to submit, prior to reinstatement, proof of fitness to practice law, as attested by a mental health professional approved by the Office of Attorney Ethics. In addition, within six months of his reinstatement, he is to take ten hours of courses in professional responsibility and provide to the Office of Attorney ethics proof of compliance with this requirement.

Finally, we determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

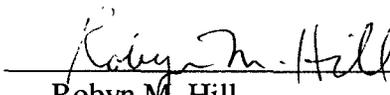
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Francis X. Gavin
Docket No. DRB 02-349

Decided: March 7, 2003

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>
<i>Peterson</i>		X					
<i>Maudsley</i>							X
<i>Boylan</i>							X
<i>Brody</i>		X					
<i>Lolla</i>		X					
<i>O'Shaughnessy</i>							X
<i>Pashman</i>		X					
<i>Schwartz</i>		X					
<i>Wissinger</i>		X					
Total:		6					3

 3/14/03
 Robyn M. Hill
 Chief Counsel