

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-242

IN THE MATTER OF
KENNETH VAN RYE
AN ATTORNEY AT LAW

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

Decided: December 6, 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 IIA 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 December 10, 2001 the DEC mailed a copy of the complaint by regular and certified mail to respondent’s office address at 519 River Drive, Elmwood Park, New Jersey 07407. Although the DEC certification was not clear about service of process, on September 1, 2002 respondent filed a motion to vacate the default, in which he acknowledged receipt of the ethics complaint.

For a motion to vacate the default to be granted, a respondent must satisfy two requirements. First, a respondent must advance a legitimate reason for his or her failure to answer the formal ethics complaint. Second, he or she must advance a meritorious defense to the underlying allegations of misconduct.

With regard to the first, respondent advanced several personal reasons for his failure to answer the complaint. In essence, he asserted that his failure to answer the complaint stemmed from his difficulty in making ends meet – working two jobs, sometimes three – since his recent suspensions from the practice of law (detailed below). As a result of being so busy and tired, respondent claimed, he “put answering this complaint off.”

With regard to meritorious defenses to the ethics charges, respondent alleged that he had difficulty obtaining information from the prosecutor’s office in the underlying matter (a civil suit brought by a slain man’s family), that the executor of the will was supposed to obtain some information and did not, and that he did not receive a trial notice in the case. Respondent did not address his failure to reinstate the complaint or his lack of communication with his clients. Respondent affirmatively denied, however, misrepresenting the status of the case to his clients.

After a review of respondent’s motion, we concluded that he failed to advance a valid reason for his failure to answer the ethics complaint and that he presented no meritorious defenses to the underlying charges that he grossly neglected his clients’ case and failed to

communicate with them. We determined to deny respondent's motion to vacate the default.

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Respondent was admitted to the New Jersey bar in 1979. He has an extensive ethics history. On July 17, 1991 he was suspended for three months for recordkeeping violations, failure to submit to a client a written formal accounting on receipts and disbursements, failure to properly designate an account as an "attorney trust account," and withdrawal of fees from a client account without first depositing them into his business account, all in violation of RPC 1.15(b) and RPC 1.15(d). In addition, he improperly witnessed a false signature on a document and affixed his jurat thereon, in violation of RPC 8.4(c). In re Van Rye, 124 N.J. 664 (1991).

On June 11, 1992 respondent was suspended for two years, effective November 12, 1991, for entering into a business transaction with a client without advising him to obtain independent counsel, executing a jurat on a document signed outside his presence, improperly altering a deed, signing closing documents without a power-of-attorney and disbursing mortgage proceeds without obtaining the requisite authorization. In re Van Rye, 128 N.J. 108 (1992). Respondent was restored to the practice of law on January 11, 1994.

On May 22, 2001 respondent was suspended for three months, effective June 20,

2001, for lack of diligence and failure to cooperate with disciplinary authorities. In re Van Rye, 167 N.J. 592 (2001).

On February 5, 2002 respondent was suspended for six months, effective September 20, 2001, for failure to communicate with a client, failure to communicate the rate or basis of a fee in writing, failure to cooperate with ethics authorities and knowingly violating the Rules of Professional Conduct. In re Van Rye, 170 N.J. 405 (2002).

* * *

In 1996 members of the Hagan family retained respondent to represent them in a civil matter stemming from the manslaughter of their father, Edward T. Hagan. Their father had been shot to death by Antonio Machido, a man who lived in the same apartment building as Hagan and who apparently ambushed Hagan on his return home one day. The civil suit was filed after Machido's criminal conviction for manslaughter.

On September 10, 1998 respondent filed a complaint against Machido. On April 27, 2000, he amended the complaint to include the landlord as a defendant. During this time, respondent was actively pursuing the case and communicating regularly with the Hagans.

For unknown reasons, in May 2000 respondent failed to appear for trial, prompting the dismissal of the complaint. Respondent took no action thereafter to reinstate it.

Thereafter, respondent failed to advise the Hagans about events in the case, including its dismissal. Moreover, the Hagans made numerous attempts to obtain information about the case, all of which were ignored. Finally, respondent misrepresented to the Hagans that he had been in contact with the defendants' insurance company and that he was actively negotiating a settlement.

The grievance in this matter was filed on January 12, 2001. On March 14, 2001 the DEC wrote to respondent requesting a reply to the grievance. On April 5 and 18, 2001 the DEC again wrote to respondent, requesting a reply. At one point, in a facsimile to the investigator, respondent indicated his intention to reply to the grievance. However, he never did so.

The complaint alleged violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.4(a) (failure to communicate with client), RPC 8.4(c) (misrepresentation), RPC 8.4(a) (violation of or attempt to violate the Rules of Professional Conduct) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

* * *

Service of process was properly made. Following a review of the record, we found that the facts recited in the complaint support the charges of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted.

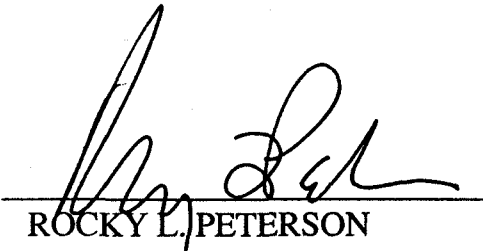
R.1:20-4(f).

Respondent allowed the Hagan complaint to be dismissed and, thereafter, took no action to reinstate it. Also, he did not apprise his clients of important aspects of the case, despite their numerous attempts to obtain information about the matter, and misrepresented its status to them. In addition, he failed to cooperate with disciplinary authorities. His conduct violated RPC 1.1(a), RPC 1.4(a), RPC 8.4(c), RPC 8.4(a) and RPC 8.1(b). Finally, respondent's gross neglect in this case, taken together with other instances of gross neglect in the prior disciplinary matters, amounted to a pattern of neglect, in violation of RPC 1.1(b).

In default cases dealing with similar violations, generally either a reprimand or a short-term suspension is imposed. See, e.g., In re Gruber, 152 N.J. 451 (1998) (default; reprimand for attorney who, in a tax foreclosure matter, engaged in gross neglect, lack of diligence, failure to communicate with client, and failure to cooperate with ethics investigators); In re Herron, 162 N.J. 105 (1999) (default; three-month suspension where attorney was paid a retainer but failed to take any action on behalf of his client, in violation of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 8.1(b); prior suspensions contributed to the elevated quantum of discipline); and In re Carroll, 171 N.J. 469 (2002) (default; six-month suspension for gross neglect, lack of diligence, failure to communicate with client and failure to cooperate with disciplinary authorities; extensive prior ethics history, including two previous defaults). Here, respondent has an abysmal disciplinary history that includes four terms of suspension. Moreover, he has shown his continuing disregard for the disciplinary

system by allowing the case to proceed on a default basis. For respondent's demonstrated inability – or refusal – to conform to the standards of the profession, we concluded that a long-term suspension is required. A majority of the Board, therefore, voted to impose a three-year suspension, to be served at the expiration of respondent's most recent suspension. Three members voted for disbarment.

We also determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.



ROCKY L. PETERSON
Chair
Disciplinary Review Board

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

In the Matter of Kenneth Van Rye
Docket No. DRB 02-242

Decided: December 6, 2002

Disposition: Three-year suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-year 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:	3	6					

Robyn M. Hill 12/14/02
Robyn M. Hill
Chief Counsel