

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-384

IN THE MATTER OF
KARL R. LAWNICK
AN ATTORNEY AT LAW

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

Decided: May 10, 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 VIII Ethics Committee ("DEC") certified the record in this matter directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint. On May 13, 1998 the DEC sent a copy of the complaint to respondent's office address by regular and certified mail. Although the record is silent as to the return of the regular mail, the certified mail return receipt indicates delivery on May 15, 1998. The signature is illegible, although the first name appears to be "Pat." The letter accompanying the complaint stated that, if

respondent did not file a timely answer, the allegations of the complaint would be deemed admitted and the record would be certified to the Board for the imposition of sanctions. Respondent did not file an answer to the formal ethics complaint.

Respondent was admitted to the New Jersey bar in 1988. At the relevant times, he maintained an office in Perth Amboy, New Jersey. In June 1998, when respondent refused to cooperate with the Office of Attorney Ethics ("OAE") during an audit, he was ordered by the Supreme Court to submit certain records and information to the OAE within thirty days or face suspension. In re Lawnick, 154 N.J. 120 (1998). In August 1998, the Court temporarily suspended respondent for not complying with that order. In re Lawnick, 155 N.J. 117 (1998). While that matter was pending, the OAE had also filed with the Board a motion for temporary suspension and imposition of sanctions for respondent's failure to comply with a fee arbitration committee determination. After the Court suspended him on the other matter, the OAE withdrew that part of the motion that sought respondent's suspension, but proceeded with the request for a monetary sanction. In September 1998 the Board determined that respondent should pay a \$500 sanction. In the Matter of Karl R. Lawnick, Docket No. DRB-98-294 (September 17, 1998). Respondent's suspension continues to date.

The complaint alleged that respondent was retained by Andrew J. Santa Barbara to bring a negligence claim on his behalf for an automobile accident that occurred on May 15, 1995. The complaint does not state when respondent was retained. However, in November 1997, dissatisfied with respondent's service, Santa Barbara sought out representation by a

different attorney, Michael A. Percario.

On November 18, 1997 Percario sent respondent a letter advising him that he was Santa Barbara's new counsel and requesting a photocopy of Santa Barbara's file. Receiving no response, Percario sent an additional request on December 3, 1997. At some point prior to December 19, 1997, respondent telephoned Percario's office and told the secretary that he would hand-deliver the file to the office.

On December 19, 1997, when respondent failed to deliver the file, Santa Barbara's wife spoke with respondent's secretary on the telephone and requested that the file be delivered to Percario by January 5, 1998. On January 6, 1998 respondent spoke with Santa Barbara's wife on the telephone and stated that he would be in New Brunswick on the following day and would deliver the file to Percario then. On January 7, 1998 Santa Barbara's wife left another message with respondent's secretary. The next day, Wednesday, a "Mr. Kogas" assured Santa Barbara's wife that respondent would return her call that Friday.¹

At some point during the next nine days, Santa Barbara spoke with respondent, who claimed that he had placed the file in the mail. On January 22, 1998 respondent spoke with Santa Barbara again. Santa Barbara made it clear that either he would pick up the file that day or that respondent had to mail it overnight to Percario. Respondent stated that he could

¹ Neither the complaint nor the record reveals who Mr. Kogas is. An examination of the 1998 New Jersey Lawyer's Diary and Manual lists a Ronald R. Kogos, Esq., practicing at the same address as respondent.

not comply with that request because he had not photocopied the file yet. It was agreed that Santa Barbara would page respondent the following day and that a time would then be arranged for Santa Barbara to pick up the file from respondent's office. However, respondent failed to return five calls made by Santa Barbara to his "beeper" and to several messages left with respondent's secretary. For the next several days, Santa Barbara tried calling respondent's pager and leaving messages, to no avail.

Santa Barbara filed a grievance against respondent on January 27, 1998. It appears that Percario has withdrawn as Santa Barbara's counsel because he was unable to obtain the file. Without his file, Santa Barbara has been unable to procure representation.

The complaint charged that respondent violated RPC 1.3 (lack of diligence) and RPC 1.4 (failure to keep a client reasonably informed).

* * *

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

The Board found that respondent violated both RPC 1.3 and RPC 1.4(a). By not filing a complaint on Santa Barbara's behalf respondent has clearly demonstrated a lack of

diligence. Additionally, respondent did not keep Santa Barbara informed about the status of the matter.

Furthermore, although the complaint is silent about respondent's failure to turn over the file to his client or new counsel, the Board determined that respondent violated RPC 1.16(d). That rule states that "upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled." Respondent has failed to live up to this duty. Additionally, by failing to file an answer to the formal ethics complaint, respondent has failed to cooperate with the ethics authorities, in violation of RPC 8.1(b).

When a complaint fails to charge a specific ethics violation, but the facts in the record are sufficient to put respondent on notice of that violation, the allegations may be deemed amended to conform to the proofs. In re Logan, 70 N.J. 223, 232 (1976). Here, the Board deemed the allegations of the complaint amended to include charges of violations of RPC 1.16(d) (failure to protect client's interest on termination of representation) and RPC 8.1(b) (failure to cooperate with the ethics authorities).

In summary, the Board found that respondent violated RPC 1.3, RPC 1.4(a), RPC 1.16(d) and RPC 8.1(b).

Under the facts of this case, an admonition or a reprimand would ordinarily be appropriate. See In the Matter of George S. Crisafulli, Docekt No. DRB-96-040 (May 6, 1996) (admonition for gross neglect, lack of diligence, failure to communicate and failure

to cooperate with the disciplinary authorities); In re Lampidis, 153 N.J. 367 (1998) (reprimand for gross neglect, lack of diligence, failure to communicate and failure to cooperate with the disciplinary authorities).

In assessing the appropriate form of discipline, the Board considered the harm done to respondent's client; Santa Barbara has been unable to obtain representation due exclusively to respondent's failure to live up to the bare minimum expected of every member of the bar. Given that the events occurred in 1995, Santa Barbara is likely to be facing a statute of limitations problem and could lose his cause of action.

The Board also considered respondent's behavior in other ethics-related matters, as evidenced by two Court orders last year. Respondent failed to cooperate with an audit by the OAE and failed to obey a Court order directing him to do so. Also, respondent failed to abide by a decision of the fee arbitration committee and failed to reply to a motion to sanction him for that behavior. Respondent's behavior has been so remiss that he has been temporarily suspended from the practice of law.

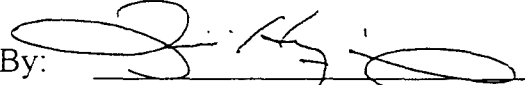
The purpose of discipline is not to punish the attorney, but to protect the public from an attorney "who cannot or will not measure up to the high standard of responsibility required of every member of the profession." In re Rosenthal, 118 N.J. 454, 464 (1990) (citing In re Stout, 75 N.J. 321, 325 (1978)). It is clear that respondent has not measured up to this standard and that the public is at risk.

Accordingly, the Board unanimously determined that respondent's violations warrant

a three-month suspension, not to begin until after respondent complies with the OAE's audit and the fee arbitration determination. See In re Flayer, 154 N.J. 2 (1998) (six-month suspension to begin at the end of the temporary suspension currently in effect for failure to comply with a fee arbitration determination). Three members did not participate. Respondent's reinstatement should be conditioned upon demonstration that he has turned over the file to Santa Barbara. Additionally, the Board determined that, within six months of the date of the Court's order in this matter, respondent should attend ten hours of the ethics courses offered by the Institute for Continuing Legal Education.

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

Dated: 5/10/99

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Karl R. Lawnick
Docket No. DRB 98-384

Decided: May 10, 1999

Disposition: Three-Month Suspension

Members	Disbar	Three-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling		X					
Zazzali							X
Brody		X					
Cole		X					
Lolla		X					
Maudsley							X
Peterson							X
Schwartz		X					
Thompson		X					
Total:		6					3

By Robyn M. Hill 6/1/99
Robyn M. Hill
Chief Counsel