SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 96-494
DRB 96-495
DRB 96-496
DRB 97-052

IN THE MATTER OF :
:
STEVEN E. POLLAN, :
:
AN ATTORNEY AT LAW :

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

Decided: June 30, 1997

Pursuant to R. 1:20-4(f)(1), the District VB Ethics Committee ("DEC") certified the records in the above matters directly to the Board for the imposition of discipline, following respondent's failure to file answers to four formal ethics complaints.

The complaints were mailed by both certified and regular mail in each matter. While the certified mail was not claimed, the regular mail was not returned. Service of process was, thus, presumed to have been made.

The four separate ethics complaints charged respondent with the following violations: Docket No. DRB 96-494 — RPC 1.3 (lack of diligence), RPC 1.4(failure to communicate), RPC 1.1(b) (pattern of neglect), RPC 1.1(a) (gross negligence), RPC 1.16(d) (upon termination of representation, failure to reasonably protect a client's interest) and RPC 8.4(a)(violating or

attempting to violate the Rules of Professional Conduct); Docket No. DRB 96-496 — RPC 1.3, RPC 1.4, RPC 1.1(b) and RPC 8.4(a); Docket No. DRB 96-496 — RPC 1.3 and RPC 8.1(b) (failure to cooperate with the disciplinary authorities [the complaint charged a violation of R. 1:20-3(g)]; Docket No. DRB 97-052 — RPC 1.1(a), RPC 1.3, RPC 3.2 (failure to expedite litigation) and RPC 8.1(b) (count one); 1.1(b) RPC 1.3, RPC 1.4, and RPC 8.4(c)(conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 1.1(b)(count two); and RPC 1.1(b) and RPC 8.1(b)(count three).

Respondent received a six-month suspension effective March 1, 1996 for his conduct in seven matters, which included numerous violations, as discussed more fully below. In re Pollan, 143 N.J. 305(1996).

* * *

DRB 96-494

District Docket No. VB-95-004E

Respondent was retained by Susan Wallace in early to mid-1993 in connection with a workers' compensation claim. Respondent filed suit in her behalf. In early 1994, Wallace stopped receiving her checks from Allstate Insurance Company. When she contacted the insurer, she was informed that her claim had been dismissed due to respondent's lack of prosecution of the matter. Although respondent had been notified of the pending dismissal, he failed to reply or object.

After Wallace learned that her claim had been dismissed, she attempted to telephone respondent on a number of occasions, to no avail. Wallace did eventually reach respondent.

Although he assured her that he would look into the matter and would take action to have her benefits reinstated within a day or two, he did nothing.

In August 1994, Wallace retained another attorney, Marvin S. Fish, Esq. Both Wallace and Fish unsuccessfully attempted to obtain Wallace's file from respondent by telephoning him and sending him a number of letters requesting the return of the file.

Based on these facts, respondent was charged with violations of RPC 1.3, RPC 1.4, RPC 1.1(b)for his conduct in this and other matters, RPC 1.1(a), RPC 1.16(d) and RPC 8.4(a).

DRB 96-495

District Docket No. VB-94-042E

Respondent was retained to represent Janet M. Miller in connection with a real estate refinancing. The settlement was held on September 22, 1993. Although respondent had informed Miller that he would look into obtaining a discount for title insurance, he failed to do so. He also failed to return numerous telephone calls from Miller.

In addition, respondent did not forward a check to Miller's title insurance company until thirteen months after the closing, even though he had obtained the funds from Miller at the time of closing. Similarly, after the closing, respondent did not return Miller's numerous telephone calls or send several documents to her. Lastly, although respondent withheld $1,500 from the closing proceeds for the payment of Miller's third quarter property taxes, he failed to pay Miller's taxes until forty-five days after the closing.

Respondent was charged with violations of RPC 1.3, RPC 1.4, RPC 1.1(b) and RPC 8.4(a).

DRB 96-496

District Docket No. VB-95-066E

Alberto Rodriguez had retained respondent to represent him in connection with a personal injury matter that occurred in 1986. Thereafter, in 1993 Rodriguez retained Roy Macaluso, Esq. to take over the representation. In August 1993, Rodriguez executed an authorization to release the file held by respondent. Between September 15, 1993 and May 16, 1995, Rodriguez wrote to respondent six times seeking the release of his file. Macaluso also called respondent's office five times between June 7, 1994 and February 2, 1995. An employee of respondent's office assured Macaluso that the file would be forwarded to him. Nevertheless, Macaluso did not receive any part of the Rodriguez file or any response to his requests to respondent.

After Macaluso filed a grievance, the DEC wrote to respondent on January 3, 1996 requesting a response. That letter was sent to the wrong address. Respondent contacted the DEC on January 5, 1996 to inform it of his new address. The DEC then forwarded another copy of the letter on that date by certified mail, return receipt requested. On February 6, 1996, the letter that had been sent to respondent's correct address was returned as "unclaimed." Notwithstanding the charge in the complaint that respondent did not reply to either letter, there is no evidence that respondent received them. Moreover, the complaint does not reveal how the January 3, 1996 letter was served.

On February 13, 1996, the DEC telephoned respondent at his new office and left a message on his answering machine. Respondent did not return that call until February 16, 1996, at which time he informed the DEC that he would submit a response to the DEC's letter by the following week. It may, therefore, be presumed that respondent received a copy of the second letter, despite the absence of details about its service. Respondent did not reply to the grievance.

Respondent was charged with a violation of RPC 1.3 and R. 1:20-3(g) [rather than RPC 8.1(b)].

DRB 97-052

District Docket No. VB-96-025E

Count One

Sylvia Brackston retained respondent to represent her son in connection with a personal injury matter and also a legal malpractice claim against her son's former attorney. Brackston executed an authorization to release all files held by her former attorney. Brackston called respondent more than five times between January 31, 1994 and October 19, 1995. During that period she also went to respondent's office on one occasion to set up an appointment with respondent. She was told that respondent would contact her. As of the date of the filing of the complaint respondent had not contacted Brackston.

A DEC investigation ensued. On March 12, 1996, the DEC wrote to respondent requesting a reply to the grievance. The letter was sent by both certified and regular mail. The certified letter was returned unclaimed on March 28, 1996. The regular mail was not returned.

The complaint charged respondent with violations of RPC 1.1(a), and R. 1:20-3(g) [RPC 8.1(b)], RPC 1.3, RPC 3.2 and RPC 1.1(b).

District Docket No. VB-96-68E

Count two

Respondent represented Minakshi Patel in connection with a personal injury matter. Respondent filed a complaint on May 1, 1991. Defendant's counsel propounded interrogatories on August 15, 1991. Respondent had at least sixty days to answer the interrogatories, but failed to do so. On December 31, 1991, the defendant's attorney filed a motion to dismiss the complaint for respondent's failure to supply answers to interrogatories on a timely basis. The complaint was dismissed on January 24, 1992. Thereafter respondent failed to contact his client to inform her of the status of the matter. Patel did not learn that the matter had been dismissed until January 19, 1994, through her new attorney, John O. Goins, Esq.

By letter dated January 30, 1996, the DEC wrote to respondent requesting a reply to the grievance. The request was sent by certified and regular mail. On August 15, 1996, the certified letter was returned unclaimed. The regular mail was not returned.

The complaint charged respondent with violations of RPC 1.4, RPC 8.4(c), RPC 1.3, RPC 3.2, and RPC 1.1(b).

Count three

Patel's new attorney, John O. Goins, filed a civil complaint against respondent for damages sustained by his client because of respondent's failure to pursue the personal injury matter. On July 18, 1995 a default judgment was entered against respondent. A proof hearing was conducted on May 19, 1995, resulting in a judgment against respondent individually in the amount of $35,000 plus

interest from August 15, 1991, in the amount of $7,575.83, for a total judgment of $42,575.83.

Goins subpoenaed records by mail on October 12, 1995, but respondent failed to answer the subpoena. Goins then sent two letters to respondent on November 25, 1995 and December 26, 1995. Respondent did not to reply to the letters. Although respondent made two appointments to go to Goins' office, he failed to keep either appointment.

By letter dated July 30, 1996, the DEC requested that respondent reply to the grievance against him. The letter was sent by certified and regular mail. On August 15, 1996, the certified letter was returned unclaimed. The regular mail was not returned.

The complaint charged respondent with violations of R. 1:20-3(g) [RPC 8.1(b)] and RPC 1.1(b).

* * *

Following a de novo review of the record, the Board deemed the allegations contained in the complaint admitted. R.1:20-4(f)(1).

In the Wallace matter, the facts alleged in the complaint support a finding of violations of RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate), RPC 1.1(b)(pattern of neglect), RPC 1.1(a)(gross neglect) and RPC 1.16(d)(failure to surrender property to client). In the Miller matter, respondent violated RPC 1.3(lack of diligence), RPC 1.4(failure to communicate) and RPC 1.1(b)(pattern of neglect). In Macaluso , respondent violated RPC 8.1(b)(failure to cooperate with a disciplinary authority) as well as RPC 1.3 (lack of diligence). Although respondent was not charged with violations of RPC 1.16(d)(failure to surrender property to client) and RPC 1.4(failure

to communicate), the facts alleged in the complaint also support a finding of violations of these rules.

In the Brackston matter, respondent violated RPC 8.1(b)(failure to cooperate with a disciplinary authority), RPC 1.1(a)(gross neglect), RPC 1.3 (lack of diligence), RPC 3.2(failure to expedite litigation), and RPC 1.1(b)(pattern of neglect). Finally, in the Patel matter, respondent violated RPC 8.1 (b)(failure to cooperate with disciplinary authorities), RPC 1.1(a)(gross neglect), RPC 1.4(failure to communicate), RPC 1.3(lack of diligence, RPC 3.2(failure to expedite litigation), RPC 1.1(b)(pattern of neglect). Presumably, the DEC believed that respondent's failure to notify his client that the complaint had been dismissed for his failure to supply answers to interrogatories was a misrepresentation by silence and, therefore, a violation of RPC 8.4(c)(conduct involving dishonesty, fraud, deceit, or misrepresentation). The Board was unable to find, however, that such a violation was supported by the allegations in the complaint.

Respondent's conduct in all five matters included violations of lack of diligence (RPC 1.3) in four matters, failure to communicate (RPC 1.4) in three matters, gross neglect [(RPC 1.1(a)] in two matters, failure to expedite litigation (RPC 3.2) in one matter, failure to surrender property and papers to a client [(RPC 1.16(d)] in two matters and failure to cooperate with a disciplinary authority [(RPC 8.1(b)] in three matters. Moreover, respondent's conduct in the five matters amounted to a pattern of neglect, in violation of RPC 1.1(b).

In a more serious situation, an attorney received a three-year suspension for multiple violations of various ethics rules. See In re Beck, 143 N.J. 135(1996). There, the attorney engaged in misconduct in eleven matters and was found guilty of pattern of neglect, lack of diligence, failure to communicate, improper termination of a client's representation, lack of truthfulness, unauthorized

practice of law, criminal conduct, conduct involving fraud, dishonesty or misrepresentation and conduct prejudicial to the administration of justice. The attorney's ethics history was extensive: two private reprimands, a public reprimand, a three-month suspension and several temporary suspensions.

In a less serious matter, In re Herron, 144 N.J. 158 (1996), the attorney received a one-year suspension for his misconduct in two matters, which included gross neglect, failure to communicate with clients and failure to cooperate with disciplinary authorities. He had been previously suspended for one year for similar misconduct in seven client matters.

This is not respondent's first contact with the attorney disciplinary system. Respondent received a six-month suspension, effective March 1, 1996, for his misconduct in seven matters. That prior conduct included violations of gross negligence, pattern of neglect, failure to communicate, failure to deliver a client's file, misrepresentation, record keeping and failure to cooperate with the ethics authorities. The Court ordered that respondent repay penalties and interest in one of the matters and prior to reinstatement, present proof of fitness to practice law and thereafter be supervised by a proctor for one year. Respondent's conduct in that matter spanned from the late 1980s to 1994. Respondent's conduct in these default matters demonstrated a continuing pattern of misconduct.

Based on respondent's total indifference to the ethics process, confirmed by his failure to reply to the DEC investigations, coupled with the significant number of violations involved, a six-member majority of the Board voted to impose a two-year prospective suspension. One member voted for respondent's disbarment. One member did not participate.

The Board also determined to require respondent to satisfy the judgment in the Patel matter.

The Board further directed that, before reinstatement, respondent submit proof of fitness to practice law and that, upon reinstatement, he be required to practice under the supervision of a proctor for a three-year period.

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

Dated: 6/30/17

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Steven E. Pollan
Docket Nos. DRB 96-494, DRB 96-495, DRB 96-496, DRB 97-052

Decided: June 30, 1997

Disposition: Two-year suspension

Members	Disbar	Suspension 2 Years	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Zazzali		X					
Cole	X						
Lolla		X					
Maudsley		X					
Peterson		X					
Schwartz							X
Thompson		X					
Total:	1	6					1

By Isabel Frank 7/9/97
Robyn M. Hill
Chief Counsel