

counsel, failure to cooperate with the DEC investigation and failure to comply with the DEC's direction that the file be forwarded to client's new counsel. Also, in January 1999, respondent was suspended from the practice of law for three months for violations of RPC 1.3 (lack of diligence), RPC 1.15 (failure to safeguard property), RPC 5.5(a) (unauthorized practice of law) and RPC 8.1(b) (failure to cooperate with disciplinary authorities). That matter also reached the Board by default, pursuant to R. 1:20-4(f).

In June or July 1990, William Schwartz retained respondent to represent him in a personal injury case. Schwartz had been injured as a result of a motor vehicle accident that took place in June of that same year. Respondent failed to file a lawsuit on Schwartz's behalf within the two-year statute of limitations or to institute an investigation of his claim. Also, respondent assured Schwartz that a complaint had been filed and was pending in the courts, when in fact nothing had been filed.

When Schwartz requested his file, respondent failed to return it to him. In fact, the file had been lost, but respondent did not inform Schwartz of this development until February or March 1998.

Also, according to the complaint, "respondent offered to give Schwartz some money and told Schwartz that if he went to the Ethics Committee, he would get nothing."

Finally, despite the DEC's numerous attempts to contact respondent, both by letter and by telephone, he failed to cooperate with the investigation triggered by the Schwartz grievance.

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Service in this matter was properly made, as the certified mail receipt was returned signed by respondent and the regular mail was not returned. Therefore, pursuant to R. 1:20-4(f), the allegations of the complaint are deemed admitted. Following a review of the complaint, the Board found that the facts contained therein support a finding of unethical conduct.

Respondent's failure to file a claim on behalf of Schwartz within the two-year statute of limitations, despite the fact that he was retained shortly after the accident, and his continued possession of Schwartz's file until 1998 without taking any action constituted gross neglect, in violation of RPC 1.1(a), as well as lack of diligence, in violation of RPC 1.3. Respondent's failure to keep Schwartz informed about the status of his case and his failure to promptly notify Schwartz that his file had been lost violated RPC 1.4(a) (failure to communicate). This infraction also constituted gross neglect, in violation of RPC 1.1(a). Although this specific RPC was not cited in the complaint, the facts alleged therein provide a sufficient basis for this finding. In re Logan, 70 N.J. 222, 232 (1976).

Also, respondent's offer of money to Schwartz to keep him from contacting ethics authorities violated RPC 8.4(d) (conduct prejudicial to the administration of justice). Again, while this RPC was not cited in the complaint, there is sufficient factual support for finding this violation.

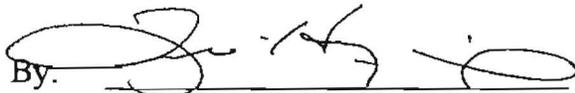
Respondent's assurance to Schwartz that an action had been filed and was pending in the courts, when in fact no such action had been filed, constituted misrepresentation, in violation of RPC 8.4(c).

Finally, respondent's failure to cooperate with the DEC investigation of this matter constituted a failure to cooperate with the ethics authorities, in violation of RPC 8.1(b).

Generally, for conduct of this nature a three-month suspension is the appropriate discipline where the matter proceeded on a default basis. See, e.g., In re Hoffman, 156 N.J. 579 (1999) (three-month suspension for violations of RPC 1.4(a), RPC 8.1(b) and RPC 8.4(c)); In re Daly, 156 N.J. 541 (1999) (three-month suspension for violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.15(b) and RPC 8.4(c)). However, while a three-month suspension would be appropriate in a default matter such as this, respondent's ethics history requires an increased level of discipline. This is respondent's second default matter before the Board in the past year. Furthermore, his admonition in 1995 also involved a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities). Essentially, respondent's history reflects a pattern of disregard towards disciplinary authorities and the disciplinary system as a whole that cannot be tolerated. Accordingly, the Board unanimously determined to suspend respondent for six months.

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

Dated: 4/18/99

By. 
LEE M. HYMERLING
Chair
Disciplinary Review Board