

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 97-390

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IN THE MATTER OF :  
JOHN J. DUDAS, JR. :  
AN ATTORNEY AT LAW :

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

Decided: August 18, 1998

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

Pursuant to R. 1:20-4(i)(1), the District IIA 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. Respondent was served with the complaint at his last known office address by regular and certified mail. The certified mail receipt was returned indicating delivery on July 17, 1997. Respondent's signature is on the receipt. The regular mail envelope was not returned. Respondent did not file an answer. Therefore, on August 13, 1997 the DEC sent a second letter to respondent

informing him that unless he filed an answer to the complaint within five days, the allegations of the complaint would be deemed admitted. The letter was sent by regular mail only. The regular mail envelope was not returned. Respondent did not file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1968. He maintains a law office in Dumont, New Jersey. Respondent was admonished in November 1995 for failure to communicate with a client, failure to turn over a client's file to new counsel and failure to cooperate with the district ethics committee investigation.

This matter was originally before the Board in June 1997. Count one of the complaint charged respondent with violating RPC 5.5(a) (unauthorized practice of law), alleging that respondent was declared ineligible to practice law on December 12, 1994 for failure to pay his annual fee to the New Jersey Lawyers' Fund for Client Protection (Fund). Nevertheless, he continued to practice law and specifically acted as counsel to the Borough of Dumont, Bergen County, New Jersey. According to the Statement of Procedural History filed with the Board by the DEC secretary, respondent claimed that when he received his notice from the Fund, he may not have had sufficient funds to make immediate payment and put the notice aside. Afterwards he did not attend to the matter in a timely fashion. When he realized that he had forgotten to pay the assessment, he immediately forwarded the payment to the Fund and was reinstated as of September 20, 1995. During his period of ineligibility respondent, nevertheless, continued to practice law.

Count two of the complaint charged respondent with violations of RPC 1.1 (competence), RPC 1.3 (lack of diligence) and RPC 1.15 (safekeeping property). According to the complaint, respondent was the executor of the estate of Johanna O'Brien. During O'Brien's lifetime, respondent had held a power-of-attorney over her assets from 1989 until her death. O'Brien had been a resident of the Woodcrest Center (Woodcrest), a long-term care facility in Bergen County, New Jersey. Apparently O'Brien had accrued unpaid expenses which prompted Woodcrest to file an action in Superior Court against her estate and against respondent as executor. Respondent represented the estate in the litigation.

On December 21, 1995 Woodcrest obtained a judgment against the estate in the amount of \$65,604.22. A year earlier, on December 2, 1994, the court had entered an order requiring respondent to prepare an accounting of the estate's assets, liabilities, expenses and income. Although respondent had been properly served with the order, he failed to prepare or file an accounting. Thereafter, on May 31, 1995 respondent was held in contempt of court for violating the December 2, 1994 order. Under the terms of the contempt order, respondent was given an opportunity to purge himself of the contempt by preparing an accounting and paying a fine of \$50 per day until the filing of the accounting. Respondent, however, failed to prepare the accounting.

On July 14, 1995 the Court issued an order to show cause requiring respondent to appear in court on August 11, 1995 with an accounting. Although respondent appeared in court as ordered, the accounting he had prepared was inadequate and did not reconcile. At

that time, respondent represented to the court that he was holding approximately \$18,000 belonging to the O'Brien estate in his attorney escrow account. However, after a judgment had been entered against the estate, and respondent failed to voluntarily turn over the estate assets in partial satisfaction of the judgment, the sheriff levied on the estate assets held by respondent. At that time, respondent informed the sheriff that he held only \$12,000 in estate assets. Thereafter, based on the inaccuracies in respondent's accounting and the misrepresentations he had allegedly made to the court and the sheriff, Woodcrest filed an application for an order requiring respondent to deposit with the court all of the estate assets held by him.

Finally, in May 1996, respondent submitted a revised final accounting to the court, and to Woodcrest. The accounting showed an outstanding balance of \$17,234.92 in respondent's trust account, which was remitted to Woodcrest in partial satisfaction of the judgment.

Respondent sent a May 6, 1996 letter to the Office of the Attorney Ethics ("OAE") enclosing a copy of the revised formal accounting and stating that Woodcrest was satisfied with the accounting. After contacting Woodcrest the OAE concluded that a further investigation or audit of respondent's trust account records was unnecessary.

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Following a de novo review of the record, the Board deemed the allegations of the complaint admitted. R. 1:20-4(f)(1). The record contains sufficient evidence that respondent violated RPC 1.3, RPC 1.15 and RPC 5.5(a). The Board determined that the complaint did not allege sufficient facts to establish that respondent committed gross neglect, in violation of RPC 1.1(a).

This leaves only the issue of appropriate discipline. Conduct similar to that displayed by respondent has resulted in short-term suspensions. See In re Bernstein, 144 N.J. 369 (1996) (three-month suspension for gross neglect, lack of diligence, failure to communicate, misrepresentations and failure to cooperate with disciplinary authorities); In re Kates, 137 N.J. 102 (1994) (three-month suspension for lack of diligence, failure to communicate and extreme indifference toward the ethics system); In re Ortopan, 143 N.J. 586 (1996) (three-month suspension for gross neglect, failure to communicate, failure to turn over client files and failure to cooperate with disciplinary authorities).

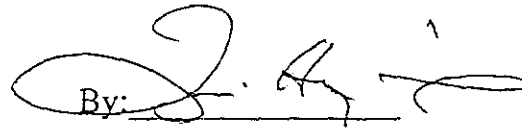
Although respondent was not charged specifically with an RPC 8.1(b) violation, the default is, itself, a strong indication of indifference toward the ethics system - the same type of indifference displayed by respondent during the litigation with Westwood. This, coupled with respondent's lack of diligence and record-keeping problems, substantiates the need for a suspension.

Accordingly, the Board unanimously determined to suspend respondent for three months. The Board considered respondent's prior ethics history and the special responsibility

that respondent breached due to his public position as a municipal attorney. Additionally, respondent must complete fifteen hours of professional responsibility courses within one year of his reinstatement to the practice of law. Two members did not participate.

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

Dated: 8/18/18

By:   
LEE M. HYMERLING  
Chair  
Disciplinary Review Board