

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-062 and 97-064

IN THE MATTER OF :
:
ARTHUR N. MARTIN :
:
AN ATTORNEY AT LAW :
:

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

Decided: November 18, 1997

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

Pursuant to R. 1:20-4(f)(1), the District VA Ethics Committee ("DEC") certified the record in these matters directly to the Board for the imposition of discipline, following respondent's failure to file answers to the formal ethics complaints. Service of the complaint in Docket No. DRB 97-062 was made by certified and regular mail at his last known office address, 38 East Park Place, Newark, New Jersey 07102. The return receipt card was signed by a LaVerne C. Dudley and dated December 11, 1996. A second letter was forwarded to respondent by certified and regular mail, advising him that failure to file an answer to the complaint within five days would result in treatment of the matter as a default. The return receipt card was illegibly signed and dated January 22, 1997.

In Docket No. DRB 97-064, there were five complaints filed against respondent. The complaints in VA-95-68E and VA-95-71E were sent to respondent's office address by certified and regular mail. The return receipt cards were signed by a LaVerne C. Dudley and both were dated May 9, 1996. The complaints in VA-96-05E and VA-96-08E were served on respondent at the same address by certified and regular mail. The return receipt card, illegibly signed, was dated June 25,

1996. Finally, the complaint in VA-96-37E was served on respondent at the same address by certified and regular mail. The return receipt card, dated October 21, 1996, was again signed illegibly.

A second letter, referencing each of the above complaints, was forwarded to respondent by certified and regular mail. The return receipt card was signed by a LaVerne C. Dudley and dated December 11, 1996. The regular mail in all cases was not returned.

Respondent was admitted to the New Jersey bar in 1973. He has an extensive record of discipline, which includes a six-month suspension on April 9, 1990 for gross neglect, pattern of neglect, negotiating a settlement without client's authorization, advancing money to a client for personal expenses and displaying a gun during client meetings. In January 1991, respondent was suspended for three months for failure to return an unearned portion of a fee, failure to communicate and failure to cooperate in three matters. On May 25, 1993, he received a reprimand for gross neglect, pattern of neglect and failure to communicate. Finally, in two recent default matters, DRB 96-222 and 96-226, the Board determined to suspend respondent for a period of one year for virtually the same violations as those charged here. That decision is pending before the New Jersey Supreme Court.

The formal complaints charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 1.5 (unreasonable fees), RPC 1.5(b) (failure to execute written fee agreement), RPC 1.15(b) (failure to return client property), RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

DRB 97-062

In December 1993, respondent was retained to represent Lyle Nance in a civil rights action against the City of Newark, Newark police officers and others in connection with Nance's arrest. On March 8, 1994, respondent filed a complaint in Nance's behalf. Respondent failed to respond to Nance's numerous requests for information by telephone and letter. During the course of the representation, the relationship between Nance and respondent grew strained and resulted in respondent's attempts to withdraw as Nance's counsel. However, when Nance refused to sign a substitution of attorney, the Court did not grant respondent's petition to be relieved as counsel in July 1995.

DRB 97-064

L. VA-95-68E- Schwarha Matter

In September 1991, respondent was retained by Priscilla G. Schwarha to represent her in a suit for wrongful termination of employment. On September 4, 1992, Michelle Marquez, Esq., respondent's associate, filed a complaint against Schwarha's former employer, Credit Suisse. Credit Suisse filed a motion for summary judgment on July 30, 1993. Thereafter, Credit Suisse tendered a settlement offer of \$3,000, which Schwarha tentatively accepted on the condition that the settlement funds would be tax-exempt. Neither respondent nor Marquez submitted a reply to the summary judgment motion, despite the fact that the court granted a three-week extension to file an objection. Consequently, the motion was granted on December 13, 1993.¹

¹Although the complaint mentions costs imposed on Schwarha, the order is silent. Furthermore, the complaint alleges that respondent promised to pay the costs, but failed to do so.

On that same day, Credit Suisse wrote to respondent withdrawing the settlement offer, since respondent failed to return the settlement agreement, the release and the stipulation. Respondent then wrote two letters to both Credit Suisse and to the Court, inquiring about the settlement and the circumstances under which the motion was heard and granted.

Respondent failed to respond to Schwarha's numerous requests for information or to pay the costs that he promised to pay. Respondent further failed to respond to the Office of Attorney Ethics' ("OAE") requests for information concerning the grievances.

II. VA-95-071E- Hutton Matter

Respondent was retained by Pamela L. Hutton in March 1995 to represent her in connection with an employment discrimination suit. Although a written fee agreement was not executed, Hutton paid respondent a \$150 retainer. During the ensuing weeks, Hutton attempted to contact respondent on numerous occasions, to no avail. In April 1995, respondent wrote to Hutton's employer, at her request. Over the next several months, respondent failed to respond to Hutton's requests for information. In June 1995, respondent informed Hutton that he would not perform any more services on the case without additional payments. Hutton refused to pay respondent any more money.

As in the other matters, respondent failed to reply to the OAE's requests for information.

III. VA-96-005E- Thoms-Hankins Matter

In or about August 1992, respondent was retained by Marschia Thoms-Hankins to represent her in a divorce proceeding. Thoms-Hankins paid respondent a \$500 retainer on December 1, 1992. Respondent filed the divorce complaint on November 8, 1993. Thereafter, respondent failed to respond to Thoms-Hankins' requests for information through July 1995. During this time, Thoms-Hankins wrote to respondent, requesting the return of her file and retainer, to no avail. Finally, respondent wrote to Thoms-Hankins on July 7, 1995, notifying her that her complaint had been dismissed for lack of prosecution.

Here, too, respondent failed to respond to the OAE's requests for information.

IV. VA-96-008E- Wallace Matter

In December 1985, respondent was retained by Tommy Wallace to represent him in a personal injury suit. Respondent failed to attempt to reach a settlement, file suit or otherwise prosecute the claim. During the eleven years between 1985 and 1996, Wallace attempted to contact respondent to inquire about the status of his case, without success.

Again, respondent failed to reply to the OAE's requests for information.

V. VA-96-037E- Jackson Matter

Respondent was retained by James Jackson to represent him in connection with an appeal of an adverse Equal Employment Opportunity Commission determination in September 1992. On September 23, 1992, Jackson paid respondent a \$200 retainer. Jackson gave respondent an

additional \$2,500 on October 19, 1992. Respondent failed to file an appeal or perform any services on the matter, contrary to his contentions to Jackson that he had done so.

On July 26, 1993, Jackson filed a request for fee arbitration with the District VA Fee Arbitration Committee. On February 7, 1996, the committee ordered respondent to return to Jackson the entire \$2,700 paid to him. The record does not reveal whether respondent has complied with this order.

* * *

Following a de novo review of the record, the Board deemed the allegations contained in the complaint admitted. R. 1:20-4(f)(1). The record contains sufficient evidence of respondent's unethical conduct. Respondent continuously collected a fee and failed to perform any work on the cases in five different matters. Furthermore, he failed to keep any of these six clients informed as to the status of their cases. Finally, he evidenced a lack of regard for the ethics system by his continuous refusal to cooperate with the OAE, as well as by his default in all cases.

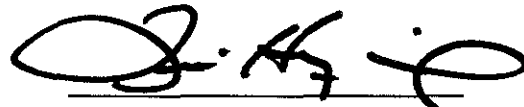
Similar misconduct has resulted in a three-year suspension. See, e.g., In re Gaffney, 146 N.J. 522 (1996) (three-year suspension for gross neglect, failure to cooperate with disciplinary authorities, failure to return client files, misrepresentation, conduct prejudicial to the administration of justice and conduct intended to disrupt the tribunal in eleven matters, with prior public reprimand, temporary suspension, two-year suspension and six-month suspension); In re Beck, 143 N.J. 135 (1996) (three-year suspension for pattern of neglect, lack of diligence, failure to communicate, improperly terminating client representations, misrepresentation, unauthorized practice of law,

criminal conduct, conduct involving dishonesty, fraud, deceit or misrepresentation and conduct prejudicial to the administration of justice, with two prior private reprimands, public reprimand and a three-month suspension); In re Brown, 141 N.J. 13 (1995) (three-year suspension for pattern of neglect, failure to consult with client prior to settling case, failure to communicate and charge of unreasonable fee, with prior six-month suspension).

In light of the foregoing, the Board unanimously determined to suspend respondent for three years, consecutive to its recent determination of a one-year suspension in DRB 96-222 and 96-226. Respondent must retake the Skills and Methods courses of the Institute for Continuing Legal Education. Additionally, upon reinstatement, respondent must practice under the supervision of a proctor for two years. One member did not participate.

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

Dated: 11/16/87



LEE M. HYMERLING
Chair
Disciplinary Review Board