

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 97-399

IN THE MATTER OF :
FRANK B. O'NEILL :
AN ATTORNEY AT LAW :

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

Decided: November 2, 1998

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

Pursuant to R.1:20-4(f), the District VA 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. Attempts to serve respondent by mail were unsuccessful. Notice of the complaint was served by publication in the New Jersey Lawyer on August 25, 1997. Respondent did not file an answer.

Respondent was admitted to the New Jersey bar in 1970. He has no prior ethics history.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to keep client reasonably informed about the

status of the matter and failure to communicate with client) and RPC 1.16(d) (failure to properly terminate representation and abandonment of client).

On September 14, 1990 Robert L. Kinder retained respondent in a personal injury case. Respondent failed to file a lawsuit on Kinder's behalf, failed to negotiate a settlement of Kinder's claim and failed to take any action to otherwise represent Kinder in a competent manner. In addition, on numerous occasions, Kinder unsuccessfully attempted to contact respondent by telephone and by personal visits to his former office location.

* * *

Following a de novo review of the record, the Board deemed the allegations of the complaint admitted. There is sufficient factual basis in the complaint to support a finding of unethical conduct. Respondent accepted representation of a personal injury client and took no action on his behalf. Respondent failed to file a lawsuit, negotiate a settlement or take any action to resolve the case. Respondent also ignored his client's attempts to ascertain the status of the matter. The Board, thus, found violations of RPC 1.1(a), RPC 1.3 and RPC 1.4(a).

Although the record raises significant suspicions that respondent abandoned his client, the allegations that the client made numerous attempts to locate respondent at his former

office and was unable to contact him are insufficient to establish a violation of RPC 1.16(d). The Board, therefore, dismissed that charge.

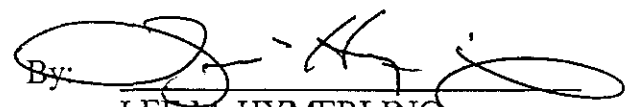
The August 25, 1997 notice published in the New Jersey Lawyer notified respondent that he also faced a charge of a violation of RPC 8.1(b) (failure to cooperate with the disciplinary authorities) if he failed to file an answer to the complaint. Respondent did not file an answer. Although the complaint did not specifically charge respondent with a violation of RPC 8.1(b), the published notice advised him of the potential violation of that RPC. The complaint is, therefore, deemed amended to conform to the proofs. In re Logan, 70 N.J. 223, 232 (1976).

Discipline for offenses similar to these generally results in an admonition or a reprimand. See, e.g., In the Matter of Ben W. Payton, DRB 97-247 (1997) (admonition for gross neglect, lack of diligence, failure to keep client reasonably informed and failure to communicate with client); In re Gordon, 139 N.J. 606 (1995) (reprimand for gross neglect, failure to keep client informed and failure to return a file to client); and In re Carmichael, 139 N.J. 390 (1995) (reprimand for lack of diligence and failure to communicate with client).

In this matter, although respondent's misconduct involved only one client, it was exacerbated by his failure to answer the ethics complaint. A reprimand is, therefore, more appropriate here. The Board unanimously determined to impose a reprimand.

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

Dated: 1/2/98

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board