

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-317

IN THE MATTER OF :
 :
JEFFREY A. FOUSHEE :
 :
AN ATTORNEY AT LAW :
_____ :

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

Decided: January 23, 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 VB 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. Service of the complaint was made by regular and certified mail on May 7, 1996 to one of respondent's last known office addresses. Although the certified mail was returned stamped "attempted, not known," the regular mail was not returned. Additionally, on May 23, 1996, a copy of the complaint in four matters and a copy of the complaint in a fifth matter were sent by regular and certified mail to three different addresses. According to the certification, these mailings were returned as "undeliverable." The various envelopes indicated that the mail was returned either because it was unclaimed, or the forwarding order expired, or

respondent moved leaving no forwarding address, or the address was insufficient. On April 1, 1996, the DEC attempted to deliver, by regular and certified mail, a grievance in the fifth matter. Both mailings were returned to the DEC. Lastly, the certification indicates that, on January 17, 1996, respondent appeared before the Supreme Court and agreed to supply documents to the Office of Attorney Ethics ("OAE"). Respondent, however, has not complied with this agreement.

The formal complaint charged respondent with violations of RPC 1.3 (failure to act with due diligence); RPC 1.4(a) (failure to communicate); RPC 1.5(b) (failure to inform in writing the basis or rate of the fee); RPC 8.1(b) (failure to cooperate with disciplinary authorities); RPC 8.4(a) (knowingly violating Rules of Professional Conduct); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

Respondent was admitted to the New Jersey bar in 1988. Although respondent has no prior ethics history, he was temporarily suspended, on March 6, 1996, for failure to provide documents to the OAE, failure to cooperate with disciplinary authorities in investigations involving his practice of law and failure to comply with his earlier representation to the Court that he would provide records and meet with the OAE by a certain date.

The instant misconduct, as set forth in the five-count complaint, is as follows:

In April 1994, respondent was retained by Artara J. Benson in connection with a divorce action against her husband, who was in the United States Army at the time. During the pendency of the divorce matter, respondent failed to deliver in a timely fashion important correspondence received from Benson's husband, failed to appear promptly in court on Benson's behalf, failed to incorporate an important item regarding the purchase of Benson's home in her property settlement

agreement and failed to deliver a copy of the fully executed property settlement agreement to Benson. The complaint further alleged that respondent failed to return Benson's telephone calls, failed to timely provide information to her that was received from her husband's legal representative and failed to advise her that a replacement attorney would appear in court on the return date of the divorce matter. Furthermore, the complaint charged that respondent never communicated in writing to Benson the basis or rate of his fee, despite the fact that Benson was not a regular client. Lastly, the first count alleged that respondent did not give the DEC investigator any information about the grievance, despite repeated requests and specific direction from the Supreme Court that respondent comply. The first count charged respondent with violations of RPC 1.3 (failure to act with due diligence), RPC 1.4(a) (failure to communicate), RPC 1.5(b) (failure to inform in writing the basis or rate of the fee), RPC 8.1(b) (failure to cooperate with disciplinary authorities), RPC 8.4(a) (knowingly violating Rules of Professional Conduct) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). [Although the factual recitation makes no mention of facts supporting a violation of RPC 8.4(c), paragraph 10 of the first count of the complaint states that "[r]espondent's conduct with respect to the rental vehicle, in utilizing his client for his own financial purposes, involved misrepresentations to his client which constituted a violation of RPC 8.4(c)." This is the only reference to respondent's conduct in this regard. No further details were provided.]

The second count of the complaint alleged that, in November or December 1994, respondent was retained by Tolani Waller to represent her friend Wesley Albany in connection with various criminal matters then pending against Albany. According to the complaint, respondent failed to attend a Superior Court hearing in a timely fashion, failed to contact the assistant prosecutor

involved in the Superior Court matters and failed to contact the court in a timely manner in the Albany Superior Court matters. The complaint also alleged that respondent ignored telephone calls from Waller. Other allegations are that respondent did not give Albany or Waller any writing indicating the basis or rate of his fees, that respondent asked for and received four bail receipts as collateral for payment of fees from Albany, that respondent was unable to or unwilling to deliver these receipts to Waller at the appropriate time and never accounted for them, that respondent was unwilling to discuss the matter or remit any portion of unearned fees to Waller despite her request for a refund of the portion of the \$2,500 fee paid to him, and that respondent never answered the ethics complaint, notwithstanding the numerous requests from the ethics investigator, the OAE and the New Jersey Supreme Court. The second count charged respondent with violations of RPC 1.3 (failure to act with due diligence), RPC 1.4(a) (failure to communicate), RPC 1.5(b) (failure to inform in writing the basis or rate of the fee), RPC 1.15(b) (failure to promptly notify client of the receipt of property), RPC 1.16(d) (failure to turn over files), RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(a) (knowingly violating Rules of Professional Conduct).

The third count of the complaint alleged that, sometime in 1992, respondent was retained by Dorothy Morton and her family to handle a matter involving the estate of Robert Gray, who was the common-law husband of Dorothy Morton. During the pendency of the matter, respondent failed to reply to Morton's request for information and to return her telephone calls and written correspondence. In addition, the complaint charged that respondent never communicated in writing to Morton the basis or rate of his fee, failed to turn over to the attorney for the estate of Robert Gray a check made payable to the estate in the amount of \$21,000, never advised any parties of the receipt

of this check, failed to turn over the contents of the file despite several requests by Morton after the representation was terminated, and failed to respond to the DEC's repeated requests for information about the grievance. The third count charged respondent with violations of RPC 1.4(a) (failure to communicate), RPC 1.5(b) (failure to inform in writing the basis or rate of the fee), RPC 1.15(b) (failure to promptly notify client of the receipt of property), RPC 1.15(d) (recordkeeping violation), RPC 1.16(d) (failure to turn over files), RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(a) (knowingly violating Rules of Professional Conduct).

The fourth count alleged that, on October 10, 1994, respondent was retained by Ezekiel Hull and his wife to represent them in the purchase of a house in East Orange, New Jersey. In connection with the closing, respondent failed to supply his clients with a fully executed RESPA statement, failed to return the closing package and check to the bank for six weeks, failed to cancel of record two mortgages, failed to record the deed, and misplaced the original signed by the clients. In addition, the complaint charged that respondent failed to communicate in a written document to the Hulls the basis or rate of his fee, failed to account for \$250 collected from the house's closing costs, collected \$1500 in additional fees allegedly to maintain the \$105,000 purchase price of the house and failed to cooperate with the ethics authorities. According to the fourth count of the complaint, respondent's conduct violated RPC 1.1(a) (gross neglect), RPC 1.3 (failure to act with due diligence), RPC 1.5(b) (failure to notify in writing the basis or rate of the fee), RPC 1.15(b) (failure to promptly notify client of the receipt of property), RPC 8.1(b) (failure to cooperate with disciplinary authorities), RPC 8.4(a) (knowingly violating Rules of Professional Conduct) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Lastly, the fifth count charged respondent with a pattern of neglect, in violation of RPC 1.1(b).

* * *

Following a de novo review of the record, the Board deemed the allegations contained in the complaint admitted. The record contains sufficient evidence of respondent's unethical conduct.

This leaves only the issue of appropriate discipline. In the past, conduct similar to that displayed by respondent has resulted in a three-year suspension. See In re Giles, 139 N.J. 468 (1995) (three-year suspension for pattern of neglect, gross neglect, charge of unreasonable fee, and failure to maintain a bona fide office); In re Hurwitz, 135 N.J. 181 (1994) (three-year suspension for pattern of neglect and failure to cooperate with disciplinary authorities in five matters); and In re Larsen, 138 N.J. 34 (1994) (three-year suspension for neglect, failure to communicate, conduct involving dishonesty, fraud, deceit or misrepresentation, failure to cooperate in an ethics investigation, failure to register as an attorney and failure to maintain a bona fide office).

Respondent's actions in these four default matters evidenced complete disregard for the well-being of his clients and were repetitive, rather than isolated. His whereabouts appear to be unknown. He has not in any way cooperated with the ethics system, despite his awareness that his conduct was being questioned. Indeed, he appeared before the Supreme Court in January 1996, at which time he promised to comply with the disciplinary authorities' request for information. Yet, he did not do so. It is obvious that respondent does not value his privilege to practice law.

In light of the foregoing, a five-member majority determined to suspend respondent for three years. Three members dissented, believing that the case should be remanded to the DEC for proper service of process. One member did not participate.

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

Dated: _____

1/23/97

By: _____



LEE M. HYMERLING

Chair

Disciplinary Review Board