

Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-391

IN THE MATTER OF :
SEYMOUR GOLDSTAUB :
AN ATTORNEY AT LAW :
_____ :

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

Decided: September 2, 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 VI 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 certified mail. The return receipt card was signed by one Jo Sullivan and dated April 13, 1996. Notice of the complaint was thereafter published in the Jersey Journal and New Jersey Law Journal on April 26, 1996 and May 6, 1996, respectively.

Respondent was admitted to the New Jersey bar in 1960. In 1971, he was suspended for one year for failure to respond to a consolidated statement of charges. In 1982, respondent was again suspended for one year for misconduct in four matters, including gross neglect and pattern of neglect. Thereafter, in 1988, he was again suspended, retroactive to the time of his 1982 suspension, for misconduct in two matters.

The formal complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 3.2 (failure to expedite litigation), RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(b) (misrepresentation) [mistakenly cited as RPC 1.4(b)].

Siddiqui

In May 1990, respondent was retained by Dr. Ghufuran and Aisha Siddiqui to appeal an adverse judgment rendered against them in the Law Division. He was given \$3,500 as a retainer and for expenses. Although respondent filed a notice of appeal with the Clerk of the Appellate Division and served it on counsel for plaintiff, he failed to serve the notice on counsel for plaintiff-intervenors. He also ordered the transcripts of the trial, but did not file them with the court or serve them on opposing counsel. Finally, respondent failed to file a brief, causing the appeal to be dismissed for lack of prosecution.

Respondent failed to notify his clients that the appeal was dismissed or to take any action to have it reinstated. In fact, he continued to assure his clients that the appeal was pending. In January 1991, Dr. Siddiqui became aware of the dismissal when a levy was placed on his savings account. When confronted by Dr. Siddiqui, respondent continued to assure him that his funds were safe while the appeal was pending. The collection matter continued, however. In fact, the court papers were served on the Siddiquis in February 1991. Respondent assured his clients that he would file a motion immediately, which he failed to do.

It was not until June 1991 that Dr. Siddiqui learned from adversaries that the appeal had been dismissed, despite respondent's continued assertions to the contrary. Thereafter, on July 18,

1991, the Siddiquis were served with a notice of a sheriff's sale. At this point, respondent finally confessed to Dr. Siddiqui that the appeal had indeed been dismissed, explaining that the appellate court was reluctant to disturb the jury verdict below.

Persaud

Some time prior to May 1990, respondent was retained by Vincent Persaud to recover a \$7,500 payment for a franchise purchased from Auto Spa, Inc. that was never delivered. Beginning in March 1991, Persaud experienced difficulties in contacting respondent. In July 1991, respondent advised Persaud that he was prepared to serve Auto Spa in New York. In December 1991, following many frustrated attempts to reach respondent, Persaud was able to contact him, at which time respondent informed Persaud that he had served the summons on Auto Spa. Nothing in the record indicates that respondent, in fact, took such action. Thereafter, respondent failed to keep two scheduled appointments with Persaud, canceling the first and not appearing for the second.

Proctorship

On June 13, 1989, as a condition of his readmission to practice, respondent was directed to practice under the supervision of a proctor for a period of two years and to comply with the requirements of Administrative Guideline No. 28 of the Office of Attorney Ethics ("OAE"). R. 1:20-18. Respondent was proctored by two different attorneys. The first proctor was Armando C. Hernandez, who asked to be relieved on November 21, 1990, as a result of problems with respondent. Thereafter, respondent was proctored by Libero C. Marotta. As a result of respondent's failure to comply with the proctorship, he was temporarily suspended on July 7, 1992.

Marzulli and Stigliano

John Marzulli and Frank Stigliano retained respondent to represent them in a municipal court matter and a civil suit against the manager of a McDonald's restaurant. Respondent failed to file a motion compelling the testimony of a witness in the case, despite continued promises that he would do so. As a result, the case was adjourned and respondent failed to perform any further services on the case. Thereafter, the clients retained new counsel to handle the matter. Subsequently, the clients began to receive numerous telephone call "hang-ups" and verbal threats, allegedly made by respondent.

Marnin

Respondent was retained by Joseph Marnin to represent him in a collection and property damage case. Although respondent filed a complaint and an amended complaint, the complaint was dismissed for failure to answer interrogatories on February 19, 1991. Respondent failed to notify Marnin of the dismissal. More than one year later, in April 1992, respondent filed a new complaint.

Respondent also failed to inform Marnin of his temporary suspension on July 7, 1992, and failed to direct him to obtain new counsel. Thereafter, respondent or someone acting on his behalf obtained the services of another attorney to handle the matter, without Marnin's knowledge and consent. Neither respondent nor new counsel advised Marnin of a trial date. Furthermore, no one appeared at the trial, resulting in the second complaint's dismissal.

Rescigno

On an undisclosed date, respondent was retained by George Rescigno to represent him in a child custody matter. Respondent told Rescigno that he would file a motion on short notice or an order to show cause. However, respondent failed to take any action in the matter. Rescigno attempted to contact respondent over a two-month period, unsuccessfully, before filing a grievance.

* * *

The DEC noted respondent's failure to notify the OAE of any change of address, despite the ongoing nature of the ethics matter against him. The DEC did serve notice of these proceedings on respondent at his daughter's address, on the basis of information that he was then living with her. In addition, notice by publication was made. Respondent never filed a written response to the grievances or contacted the DEC investigator or the DEC secretary on these matters.

* * *

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. Although misconduct of this nature does not ordinarily give rise to a recommendation for disbarment, in certain circumstances disbarment is appropriate. See, e.g., In re Cohen, 120 N.J. 304 (1990) (disbarment for attorney who engaged in a pattern of neglect and failure to communicate with five clients, failure to comply with mandates

to refund monies to clients in two fee arbitration cases, failure to cooperate with disciplinary authorities and failure to safeguard client property); In re Clark, 134 N.J. 522 (1993) (disbarment for abandonment of law practice, gross neglect, lack of diligence, failure to communicate, conduct prejudicial to the administration of justice and failure to cooperate with disciplinary authorities).

Since 1971, respondent has almost perpetually failed to cooperate with the disciplinary system. He has been given numerous opportunities to rehabilitate himself, to no avail. Furthermore, he has evidenced an inability to conform to the Rules of Professional Conduct both on his own and while under the supervision of a proctor. The only possible conclusion is that respondent's deficiencies are irremediable.

In light of the foregoing, the Board unanimously determined to recommend that respondent be disbarred. One member did not participate.

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

Dated: 9/2/87

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board