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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket Nos. DRB 96-220 and 96-221

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IN THE MATTER OF  
DAVID THOMAS  
AN ATTORNEY AT LAW  
\_\_\_\_\_

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

Decided: April 8, 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 X Ethics Committee ("DEC") certified the record in these matters directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint.

Respondent was admitted to the New Jersey bar in 1973. He has no prior disciplinary history.

**I- Docket No. DRB 96-220**

Service of the formal ethics complaint was made by regular and certified mail on July 14, 1996. The return receipt card was signed "Elizabeth Thomas." On January 5, 1996, the DEC sent a second letter to respondent via certified and regular mail, advising him that he could be temporarily suspended if he did not file an answer within five days. The certified mail was returned as unclaimed, but the regular mail was not. Furthermore, respondent had knowledge of at least two of the three grievances, as evidenced by his own signature on the receipt card of the certified mail containing the

grievance sent to his home address. Additionally, the DEC investigator spoke with respondent about one of the matters on August 18, 1994, at which time respondent informed him that he had been neglecting his practice because he had a child sick with leukemia. He told the investigator that his practice had shrunk and that he was not picking up his mail on a regular basis. He assured the investigator that he would file a reply by August 29, 1994. He did not, however. In the third matter, the DEC sent two letters via certified mail to respondent's Post Office box. The certified mail was returned as unclaimed.

The foregoing establishes that respondent is aware of at least two grievances filed against him. Nevertheless, he failed to reply to them and to file an answer to the formal ethics complaint.

The formal complaint charged respondent with violations of RPC 1.1(a) (gross negligence); RPC 1.3 (failure to act with due diligence); RPC 1.4(a) (failure to communicate); RPC 1.5(a) (reasonable fee); RPC 1.5(b) (recordkeeping violation); RPC 1.15(b) (failure to promptly notify receipt of and to deliver client funds); RPC 5.5 (bona fide office); and RPC 8.1(b) (failure to cooperate with the disciplinary authorities).

The facts of these matters as set forth in the complaint are as follows:

#### THE PICCIRILLO MATTER

The complaint alleged that Lucille Piccirillo retained respondent in or about January 1993 in connection with the administration of the estate of Ann Londry, Piccirillo's aunt. Piccirillo was the executrix of the estate. Although respondent requested and received a \$1,500 retainer and quoted to Piccirillo a \$150 hourly rate, he did not prepare a retainer agreement, despite the fact that he had not represented Piccirillo on a regular basis. In addition, from March 1993 through January 1994,

Piccirillo attempted to communicate with respondent on numerous occasions, to no avail. On the one occasion that Piccirillo was able to reach respondent, he requested updated information on the decedent's assets, which Piccirillo later provided. Piccirillo's subsequent efforts to obtain information about the status of the matter went unheeded. On January 1, 1994, Piccirillo sent a letter to respondent informing him that she had retained new counsel and demanding the return of both her file and the \$1,500 retainer. Respondent ignored the letter.

The complaint charged respondent with violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5(a), RPC 1.5(b), and RPC 8.1(b).

#### THE RUBENS MATTER

The complaint alleged that Silvia Rubens, the co-executrix of the estate of Ruth Rubens, retained respondent in or about June 1989, paying him an initial retainer of \$5,000. On August 1, 1989, respondent notified Silvia Rubens that he was forwarding an interim billing statement and indicated that the \$5,000 had been exhausted. Respondent requested an additional \$5,000. Rubens sent the additional \$5,000 in August 1989, notwithstanding that respondent did not send her a bill for services previously rendered. In September 1989, respondent once again requested an additional \$5,000, which Rubens paid. All in all, Rubens paid respondent \$15,000, despite the fact that the only bill she received was for services rendered in the amount of approximately \$5,000.

Rubens frequently attempted to contact respondent by telephone to request information about the status of the case. She was unable to reach him by phone. In October 1994, the District X Fee Arbitration Committee determined that respondent should return to Rubens \$10,000 of the \$15,000 paid to him. Respondent did not comply with the arbitration determination and never contacted

Rubens with regard to the return of those funds. Also, on numerous occasions Rubens attempted to obtain her file from respondent. Her new attorney sent a letter to respondent demanding the return of the file. Respondent, however, failed to reply.

The complaint charged respondent with violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5(a), and RPC 8.1(b).

#### THE NAPOLITANO MATTER

The complaint charged that, in or about November 1992, Michael Napolitano retained respondent to handle a refinancing of a mortgage loan. When a title search revealed a judgment against Napolitano, the title company required that \$2,500 be placed in escrow until the issue of the judgment could be resolved. According to the complaint, upon information and belief, respondent deposited \$2,500 in his trust account. At the time of the closing, respondent agreed to forward to Napolitano copies of all closing documents and to resolve the issue with regard to the judgment.

Thereafter, from November 1992 until approximately mid-1993, Napolitano contacted respondent on numerous occasions, at which time respondent would assure him that he would either have the judgment released or satisfy the judgment. After mid-1993, Napolitano attempted to reach respondent by phone on many occasions, leaving messages on his answering machine and with respondent's secretary. His calls went unanswered. As of the date of the complaint, respondent had not delivered copies of the closing documents to Napolitano or made any efforts to satisfy or release the judgment.

According to the complaint, respondent's conduct constituted violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.15(b), and RPC 8.1(b).

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Additionally, the complaint charged respondent with failure to maintain a bona fide office in New Jersey, in violation of RPC 5.5. According to the investigative reports, attached as exhibits to the amended certification of the DEC's secretary, all three grievants informed the DEC investigator that they were unable to reach respondent directly by telephone; they would leave messages on an answering machine, never receiving a call back. In fact, grievant Rubens told the DEC investigator that he found out from respondent's secretary that the answering machine was physically located in the secretary's home. Also, according to grievant Piccirillo, respondent did not maintain a business office. Instead, respondent always went to her aunt's house to discuss business and also conducted business in the homes of other women in the Mendham area who used him as their attorney. Piccirillo, too, found out from respondent's secretary that the answering machine was located in the secretary's home.

## **II- Docket No. DRB 96-221**

The complaint in this case was sent to respondent via certified mail. Respondent himself signed the return receipt card. Moreover, there is no question that respondent was aware of these proceedings, as the attached letter of Warren E. Dunn, Esq. indicates. Dunn, the new attorney for the grievant, Susan Konight, met with respondent and with Konight on May 2, 1996. At that meeting, respondent turned over Konight's files and, according to Dunn, was "extremely cooperative and gave a full and complete explanation of his handling of the various files prior to the time that he became incapacitated due to his own health problems and those of his young son." Dunn's letter

indicated to the DEC investigator that Konight no longer wished to pursue the disciplinary charges against respondent.

By letter dated August 15, 1996, this office informed the DEC investigator, Dunn and respondent that the matter would nevertheless proceed as a default proceeding, inasmuch as the rules provide for the continuation of the matter after the filing of the formal ethics complaint, even when the grievant is no longer interested in pursuing the ethics grievance against the attorney.

The complaint alleged that, in or about 1987, respondent was retained to represent Susan Konight in connection with the buy-out of her business partner. Thereafter, respondent represented Konight in the closing of the business, obtained a corporate kit and conducted a closing on a seven-year balloon mortgage on the property, which was an asset of the business. From 1987 through 1992, respondent maintained contact with Konight. Beginning in 1993 and through 1994, however, Konight was unable to reach respondent, leaving numerous messages on an answering machine and also with his secretary. Respondent did not return the calls. On May 1, 1995, Konight sent a letter to respondent requesting her corporate files. That letter was returned to Konight marked "moved, left no address." Konight learned that the mortgage documents were never completed and filed by respondent.

The complaint charged that respondent's conduct constituted violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), and RPC 8.1(b). In addition, the complaint charged respondent with failure to maintain a bona fide office in New Jersey, in violation of RPC 5.5.

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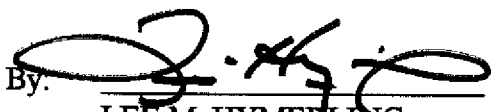
Following a de novo review of the record, the Board deemed the allegations contained in the complaint admitted. The record contains sufficient evidence of respondent's unethical conduct. The Board also considered, as a mitigating factor, respondent's statement to the DEC that his son is suffering from leukemia.

This leaves only the issue of appropriate discipline. Conduct similar to that displayed by respondent normally will result in a six-month suspension. See In re Bosies, 138 N.J. 169 (1994) (six-month suspension for conduct that included a pattern of neglect in four matters, gross neglect, lack of diligence, misrepresentation, conduct prejudicial to the administration of justice, violation of the scope of representation, and failure to communicate); and In re Knight, 134 N.J. 121 (1993) (six-month suspension for gross neglect, misrepresentation, failure to cooperate with disciplinary authorities, and recordkeeping violations).

In light of the foregoing, a seven-member majority of the Board determined to suspend respondent for six months. As a condition for reinstatement, respondent must make restitution of the \$10,000 award made by the fee arbitration committee and must submit proof of a bona fide office. One member dissented, voting for a three-month suspension. One member did not participate.

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

Dated: 4/8/97

By:   
LEE M. HYMERLING  
Chair  
Disciplinary Review Board