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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-228

IN THE MATTER OF :
 :
ROBERT B. CLARK, :
 :
AN ATTORNEY AT LAW :

Decision
Default [R. 1:20-6(c)(1)]

Decided: September 30, 1997

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

This matter was forwarded to the Board by the District VB Ethics Committee ("DEC"), pursuant to R. 1:20-6(c)(1). That rule provides for hearing at the district ethics committee level only where genuine disputes of material fact exist, or where respondent's answer requests an opportunity to be heard in mitigation or where the presenter requests to be heard in aggravation. As none of those conditions apply here, the DEC filed the pleadings directly with the Board for consideration of the appropriate sanction.

On review, however, the Board noted that the matter should have proceeded as a default, pursuant to R. 1:20-4(f)(1), given that respondent failed to file an answer to the formal ethics complaints, despite adequate notice of the proceedings. Indeed, notice of the DEC proceeding was published in the March 25, 1996 New Jersey Law Journal, as well as in the March 25, 1996 edition of the Star Ledger. The file also reflects numerous prior attempts to serve respondent with the complaints. It is not clear from the documentation whether those individual attempts were successful. Nevertheless, adequate notice was made by way of publication.

In light of the foregoing, the Board determined to treat this matter as a default, pursuant to R. 1:20-4(f)(1).

Respondent was admitted to the practice of law in 1979. He was reprimanded in May 1994 for unethical conduct in four matters, which included lack of diligence and failure to communicate with clients and, in a fifth matter, failure to return a retainer. On October 2, 1995 he was again reprimanded for negligence and misrepresentation in an employment matter. On that same date, he was temporarily suspended for failure to pay a fee arbitration award of \$10,000. As of this date he has not been reinstated.

Two separate matters were before the DEC, as follows:

The Fuller Matter - District Docket No. VB-94-094E

In 1992 respondent was retained by Sheronda Fuller ("grievant") to handle the administration of her father's estate. Grievant paid respondent a \$15,000 fee at that time. Thereafter, respondent did no work in the case and failed to return the \$15,000 fee, despite grievant's requests for the money.

Respondent was charged with gross neglect [RPC 1.1(a)] and a pattern of neglect [RPC 1.1(b)]. In charging a pattern of neglect, the DEC considered respondent's ethics history. Respondent was also charged with a failure to communicate with Fuller during the eighteen-month period of the representation, contrary to RPC 1.4(a), as well as a failure to cooperate with the DEC, in violation of RPC 8.1(b). The complaint further alleged that respondent's failure to promptly return the file to the client and his failure to return the \$15,000 fee, despite the client's requests, violated RPC 1.16(d) [mistakenly cited as RPC 1.15(d)].

The DEC concluded that respondent had violated RPC 1.1(a) and (b), RPC 1.4(a), RPC 8.1(b) and RPC 1.16(d) [mistakenly cited as RPC 1.15(d)].

The Camacho Matter - District Docket No. VB-95-018E

Felix Camacho retained respondent to represent him in a civil action concerning the City of Newark and others. Although respondent did file suit in behalf of Camacho, he failed to take any further action with respect to the matter. As a result, on February 4, 1992 the court dismissed the case for lack of prosecution. Respondent never notified Camacho of the dismissal and took no steps to reinstate the complaint. Subsequently, respondent failed to cooperate with Camacho's new counsel.

The DEC found that respondent violated RPC 1.1(a) and (b), RPC 1.3 and RPC 8.1(b).

* * *

Following a de novo review of the record, the Board is satisfied that the DEC's findings of unethical conduct are clearly and convincingly supported by the evidence. It is undisputed that respondent failed to take any action in the Fuller matter and that, despite the client's requests, he failed to return the \$15,000 retainer. Under the circumstances, the DEC's findings of violations of RPC 1.1(a), RPC 1.4(a) and RPC 1.16(d) are appropriate. In addition, respondent has demonstrated a complete failure to cooperate with the DEC in Fuller, in violation of RPC 8.1(b). The Board was unable, however, to find a violation of RPC 1.1(b), as only two cases of gross neglect are involved in the matter now before the Board. Ordinarily, the presence of three cases of neglect leads to a

finding of a violation of RPC 1.1(b). An additional finding of violation of RPC 1.1(b) would not, however, elevate the appropriate measure of discipline in this case.


Like the DEC, the Board found that respondent was guilty of unethical conduct in Camacho. Although respondent did file suit on behalf of Camacho, he failed to take any action thereafter, resulting in the dismissal of the matter for lack of prosecution. Respondent never notified Camacho of the dismissal, failed to take steps to reinstate the complaint and also failed to cooperate with Camacho's new counsel. Findings of violations of both RPC 1.1(a) and RPC 1.3 are appropriate under the circumstances. In addition, respondent's failure to cooperate with the DEC was a violation of RPC 8.1(b). Again, however, as with the Fuller matter, the Board was unable to concur with the DEC's findings of a pattern of neglect.

As noted above, respondent was reprimanded on two occasions for improprieties similar to the current misconduct. He has, thus, twice been given the opportunity to redirect his energies and remedy his unethical conduct. Clearly, respondent is either unable or refuses to conform to the ethical standards of the profession. A suspension is, thus, warranted in this case. See In re Chen, 143 N.J. 416 (1996) (three-month suspension for gross neglect, pattern of neglect, lack of diligence, failure to communicate, failure to cooperate with disciplinary authorities and misrepresentation); In re Brantley, 139 N.J. 465 (1995) (three-month suspension for pattern of neglect, lack of diligence, failure to communicate and failure to cooperate with disciplinary authorities); In re Marlowe, 121 N.J. 236 (1990) (three-month suspension for gross neglect, pattern of neglect, lack of diligence, failure to communicate and misrepresentations).

A five-member majority of the Board has determined to impose a prospective three-month suspension, followed by a return to temporary suspension status. Three members dissented, voting for a six-month suspension. One member did not participate.

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

Dated: 9/20/97

By: 
Lee M. Hymerling, Chair
Disciplinary Review Board