

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-155
District Docket No. VB-2012-0001E

IN THE MATTER OF
DANIEL G. LARKINS
AN ATTORNEY AT LAW

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Decision

Decided: December 3, 2013

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

This matter was before us on a certification of default filed by the District VB Ethics Committee (DEC), pursuant to R. 1:20-4(f). A one-count complaint charged respondent with having violated RPC 8.1(b) (failure to cooperate with an ethics investigation). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1983. On October 8, 2009, he was admonished for gross neglect, lack of diligence, failure to communicate with the client and failure to promptly return the client's file upon termination of the

representation. In the Matter of Daniel G. Larkins, DRB 09-155 (October 8, 2009).

On June 6, 2013, respondent was censured, in a default matter, for gross neglect in a personal injury case, lack of diligence, failure to communicate with the client, failure to promptly return the client's file upon termination of the representation, and failure to cooperate with the ethics investigation. In re Larkins, 214 N.J. 2 (2013).

Service of process was proper in this matter. According to the April 30, 2013 certification of the record, the DEC's attempts to serve respondent at his office and home addresses were not successful. The mail sent to his office address was returned. The mail sent to his home address was returned, but included a forwarding address in Pennsylvania.

On January 22, 2013, the DEC sent a copy of the complaint to the Pennsylvania address, by certified and regular mail. The certified mail green card was signed, on January 24, 2013, by "Robert J. Larkins." The regular mail was not returned.

On April 3, 2013, the DEC sent a five-day letter to respondent at the Pennsylvania address, by both certified and regular mail. The letter notified respondent that, unless he filed an answer to the complaint within five days of the date of

the letter, the allegations of the complaint would be deemed admitted and that, pursuant to R. 1:20-4(f) and R. 1:20-6(c)(1), the record in the matter would be certified directly to us for imposition of discipline. The certified mail green card was signed, on April 13, 2013, by "Carolyn Toby Larkins." The regular mail was not returned.

Respondent never filed an answer to the complaint.

In his August 2, 2011 grievance, Jemal Ameer McNeil alleged that respondent represented him for injuries sustained in a November 18, 2000 automobile accident. In McNeil's one-paragraph grievance, he complained that, since retaining respondent, he had not "heard from [him] and was told by State Farm Ins Company that [his] claim was paid on the date of 2004 [sic]." It appeared from the language of the grievance that respondent might have improperly withheld the insurance proceeds from McNeil. A September 26, 2013 letter (OAEL) from the Office of Attorney Ethics (OAE) to Office of Board Counsel (OBC), however, contains the following explanation, which was taken from the OAE investigative report:

In initial conversations with Grievant it was not clear to this Investigator whether checks from State Farm had been paid to Roche & Carter [respondent's law firm] for Grievant. This Investigator made numerous

unsuccessful attempts to obtain the entire file from State Farm, however, on August 16, 2012 this Investigator received correspondence from Debbie Derech, Claim Representative of State Farm Indemnity Company enclosing the front and back of all collision payments issued on the relevant matter.

Review of these checks and a conversation with the Grievant confirmed that the Grievant actually received each of the checks issued by State Farm which confirmed that no checks were paid to the law firm. To this date, the Grievant has never provided this Investigator with any physical evidence of his claims.

[OAEL at 2.]

The only document that the investigator was able to obtain from McNeil was his original grievance. The canceled checks from State Farm, however, bear McNeil's signature.

On January 6 and 17, 2012, the DEC investigator sent letters to respondent at the law firm where he had worked, Roche & Carter, demanding the file for McNeil's matter. Respondent never complied with the investigator's requests. The post office forwarded the investigator's January 6, 2012 letter to respondent's Pennsylvania address. The certified mail green card was returned, signed by "Carolyn Toby Larkins."

The facts recited in the complaint support the charge of unethical conduct. Respondent's failure to file an answer is

deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

The complaint simply alleged that respondent failed to cooperate with ethics authorities in the investigation of the grievance filed by McNeil. Although respondent received the grievance and the formal ethics complaint that followed, he did not reply to the DEC's attempts to obtain information about the grievance and did not file an answer to the complaint. Respondent, thus, violated RPC 8.1(b).

Ordinarily, the discipline in a default matter is enhanced to reflect, as an aggravating factor, the attorney's failure to cooperate with disciplinary authorities: "A respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008).

Here, however, respondent's failure to cooperate was a single event, albeit on a long continuum, from the investigation stage to the default. For a single, isolated violation of RPC 8.1(b) in a default, the discipline need not be enhanced. In In the Matter of Donald R. Stemmer, DRB 98-394 (April 11, 2000),

the attorney failed to cooperate with the district ethics committee in its investigation of a grievance. Id. at 2. Although the committee concluded that the attorney had not violated any RPCs in the underlying matter, it filed a formal ethics complaint nonetheless, charging him with failure to cooperate with disciplinary authorities. Ibid. Our decision noted that the discipline for such misconduct is ordinarily either an admonition or a reprimand. Id. at 3. Because of the default, we determined to impose a reprimand. Ibid. The Court disagreed, directing us to issue a letter of admonition. In the Matter of Donald R. Stemmer, D-4 September Term 1999, March 7, 2000. According to the Court, "the purposes of discipline can be adequately served in this matter by the issuance of a letter of admonition." Ibid.

In other default matters where the only finding is failure to cooperate with an ethics investigation, we have issued admonitions. See, e.g., In re Ventura, 183 N.J. 226 (2005) (attorney did not comply with ethics investigator's repeated requests for a reply to the grievance); In the Matter of Wesley S. Rowniewski, DRB 01-335 (January 10, 2002) (formal ethics complaint charged attorney with failure to cooperate with disciplinary authorities as a result of his failure to reply to

the grievance in the underlying matter); and In the Matter of Nejat Bumin, DRB 98-387 (March 25, 1999) (formal ethics complaint charged attorney with failure to cooperate with disciplinary authorities as a result of his failure to provide the district ethics committee with documents pertaining to his attorney bank accounts).


Here, however, we consider in aggravation, respondent's prior discipline, an admonition and, more significantly, a June 2013 censure, also in a default matter, in which he failed to cooperate with an ethics investigation. It is obvious to us that respondent did not learn from that mistake.

In In re LeBlanc, Jr., 192 N.J. 107 (2007), an attorney received a reprimand, in a default case, for failure to cooperate with the investigation of an ethics grievance. LeBlanc had prior discipline - a censure for several improprieties, including failure to cooperate with disciplinary authorities. We find that, like attorney LeBlanc, respondent's prior discipline warrants the imposition of discipline enhanced by one degree. We, thus, voted to impose a reprimand. Member Zmirich did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and

actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 

Isabel Frank
Acting Chief Counsel

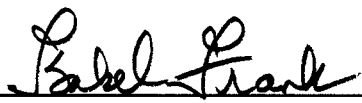
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Daniel G. Larkins
Docket No. DRB 13-155

Decided: December 3, 2013

Disposition: Reprimand

<i>Members</i>	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Gallipoli			X			
Yamner			X			
Zmirich						X
Total:			6			1



Isabel Frank
Acting Chief Counsel