

BK

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No.. DRB 99-295

---

IN THE MATTER OF :  
THOMAS BENITZ :  
AN ATTORNEY AT LAW :

---

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

Decided: May 22, 2000

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 VIII Ethics Committee (“DEC”) certified the record directly to us for the imposition of discipline, following respondent’s failure to file an answer to the formal ethics complaint.

On June 10, 1999 a copy of the complaint was sent to respondent’s last known address by regular and certified mail. The certified mail receipt was returned, indicating delivery on June 23, 1999. The receipt was signed by “Emily Kuhn.” There is no mention of the return of the regular mail. In a letter accompanying the complaint, respondent was notified that his failure to file a timely answer would constitute an admission of all the charges and could result in his immediate temporary suspension.

Respondent did not file an answer to the formal ethics complaint. The record was certified directly to the Board for the imposition of discipline, pursuant to R. 1:20-4(f)(1).

Respondent was admitted to the New Jersey bar in 1975. He currently maintains an office in Middlesex, New Jersey.

In March 1999, respondent was reprimanded for unethical conduct that included gross neglect, failure to act with diligence, failure to communicate with clients and failure to expedite litigation. See In re Benitz, 157 N.J. 637 (1999).

There is currently one other case pending against respondent. On March 17<sup>th</sup>, 2000, a default matter was certified to the Board and docketed as DRB 00-098. The alleged misconduct in this matter includes potential violations of RPC 1.1(a) (gross neglect), RPC 1.15 (safekeeping of property), RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

According to the complaint, respondent was retained by Kelly Sarboukh on March 15, 1991 for representation in a personal injury matter stemming from a motor vehicle accident. The parties signed a fee agreement.

The complaint further alleges that, due to respondent's failure to file suit in this matter, the statute of limitations expired on March 6, 1993. From the time respondent assumed representation (March 1991) to the summer of 1994, Sarboukh's father had approximately twenty conversations with respondent, in which he inquired about the

progress of his daughter's case. Respondent assured him that the case was proceeding according to schedule.

In the summer of 1994, Sarboukh attempted to learn the status of her matter. After she was unable to reach respondent by telephone, Sarboukh went to his office on approximately seven to ten occasions, with no success. She eventually obtained an appointment with respondent in March 1995, during which he denied ever handling any matter for Sarboukh.

Sarboukh was forced to obtain new counsel. On March 30, 1995, her new attorney wrote to respondent, seeking information about the case. Respondent failed to reply to this request.

In January, Sarboukh's new attorney obtained a \$50,000 judgment against respondent for legal malpractice. A very small portion of the judgment was satisfied upon the sale of respondent's home, during the course of divorce proceedings.

The complaint charges that respondent's conduct violated RPC 1.1(a) (gross neglect), RPC 1.4(a) (failure to keep client adequately informed), RPC 3.2 (failure to expedite litigation) and RPC 8.4(c) (conduct involving dishonesty, deceit, fraud or misrepresentation.)

\* \* \*

Service of process was properly made in this matter. Following a review of the record, we find that the facts recited in the complaint support a finding of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f)(1).

Unquestionably, respondent agreed to represent Sarboukh in the personal injury matter, as demonstrated by a signed fee agreement. Respondent, thus, had a duty to represent Sarboukh's interests promptly and responsibly. Respondent's failure to file appropriate and timely litigation on behalf of Sarboukh amounted to gross neglect, in violation of RPC 1.1(a). In addition, respondent's failure to keep Sarboukh reasonably informed about the status of her matter and his repeated assurances that the matter was proceeding apace, when in fact no complaint had been filed, constituted violations of RPC 1.4(a) and RPC 8.4(c), respectively.

The complaint also charged that respondent failure's to file suit before the statute of limitations constituted a violation of RPC 3.2 (failure to expedite litigation). RPC 1.1(a), however, is more applicable here, inasmuch as respondent had not started the litigation.

Ordinarily, for conduct of this nature either a reprimand or a three-month suspension would be appropriate. See In re Eastmond, 152 N.J. 435 (1998) (reprimand for attorney who engaged in gross neglect, lack of diligence and misrepresentation) ; In re Fox, 152 N.J. 467 (1998) (reprimand for attorney who grossly neglected a matter, failed to communicate with the client and misrepresented the status of the case to the client.) ; In re Burnett-Baker, 151

N.J. 483 (1997) (three-month suspension for attorney who grossly neglected a matter and made misrepresentations regarding the status of a matter).

Because respondent failed to file an answer to the complaint, allowing this matter to proceed as a default, the level of discipline should be increased. Accordingly, we unanimously determined to suspend respondent for three months.

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

Dated: \_\_\_\_\_

5/22/00

By: \_\_\_\_\_



LEE M. HYMERLING

Chair

Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**  
**DISCIPLINARY REVIEW BOARD**  
**VOTING RECORD**

**In the Matter of Thomas Benitz**  
**Docket No. DRB 99-295**

**Decided: May 22, 2000**

**Disposition: Three-month suspension**

Members	Disbar	Three-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling		x					
Cole		x					
Boylan		x					
Brody		x					
Lolla		x					
Maudsley		x					
Peterson		x					
Schwartz		x					
Wissinger		x					
<b>Total:</b>		9					

*Robyn M. Hill* 9/22/00  
Robyn M. Hill  
Chief Counsel