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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 98-181 and 98-228

IN THE MATTER OF :
 :
MARK D. CUBBERLEY, :
 :
AN ATTORNEY AT LAW :
 :

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

Decided: April 5, 1999

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 VII Ethics Committee ("DEC") and the Office of Attorney Ethics ("OAE") certified the records in these matters directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaints.

Respondent was admitted to the New Jersey bar in 1984. At the relevant times he maintained an office in Lawrenceville, New Jersey.

On April 19, 1996, respondent was admonished for violating RPC 8.1(b) by failing

to reply to the DEC investigator's request for information until a subpoena was issued. In September 1998, the Board determined to suspend respondent for three months for lack of diligence, failure to communicate with the client and pattern of neglect, in violation of RPC 1.3, RPC 1.4(a) and RPC 1.1(b), respectively.

I. DRB 98-181 (The Folis Matter - District Docket No. VII-97-012E)

On February 25, 1998, the DEC served a copy of the complaint on respondent by certified mail at his last known office address. The certified mail return receipt was returned indicating delivery on March 14, 1998. The signature appears to be respondent's. On April 10, 1998, a second letter was mailed to respondent by certified and regular mail at the same address. The certified mail receipt was returned indicating delivery on April 14, 1998. Once again, the signature appears to be respondent's. The regular mail was not returned.

Sometime after the complaint was sent out by the DEC, a DEC investigator received a phone message from respondent stating that he wanted to meet with the investigator to stipulate facts before a hearing. By letter dated April 14, 1998 the investigator advised respondent that there could not be any meeting until an answer was filed. As of May 4, 1998, the date of the certification of the record to the Board, respondent had not filed an answer.

According to the one-count complaint, respondent was retained by John Folis to represent him in several legal matters, including a residential real estate closing. The closing

took place in September 1995. During the first quarter of 1996, Folis received a delinquency notice for unpaid roll-back taxes. The property was subject to roll-back taxes because the previous farmland assessment had ceased with a change in the use of the property. Folis immediately contacted respondent, who promised that he would take care of the problem. Despite Folis' repeated attempts to contact respondent during the summer and fall of 1996, respondent failed to take any action and to return Folis' telephone calls or letters. Finally, in December 1996, respondent met with Folis. At that meeting, respondent admitted that the roll-back tax issue was his fault. He promised to promptly take care of the matter. He did nothing, however. Folis then retained another attorney, who was able to resolve the problem in a short period of time.

The complaint charged respondent with violations of RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate with the client).

II. DRB 98-228 (The Gearren Matter - District Docket No. XIV-97-239E)

On April 29, 1998, the OAE served a copy of the complaint on respondent by certified and regular mail sent to his last known office address. On May 26, 1998, the certified mail package was returned as "unclaimed." The regular mail was not returned. A second letter was mailed to the same address, on May 26, 1998, by certified and regular mail. As of June 2, 1998, the date of the OAE's certification to the Board, neither the certified mail return receipt nor the regular mail had been returned.

According to the one-count complaint, respondent was retained in May 1995 by Patrick Gearren in a divorce proceeding against Linda Gearren and was responsible for preparing the final judgment of divorce. Because respondent failed to prepare the judgment or to communicate with Linda Gearren's attorney, Regina Meredith, Meredith prepared the judgment. According to the terms of the judgment, respondent's client had the opportunity to buy out Linda Gearren's interest in their marital home. He was also required to pay child care costs and child support arrearages.

Mr. Gearren was able to refinance the house in September 1996. By letter dated September 11, 1996, Meredith advised respondent of the amounts owed by Mr. Gearren, which totaled \$22,925.73.

On September 13, 1996, Mr. Gearren gave respondent \$22,000, which respondent deposited into his attorney trust account.

Respondent provided Meredith with a quitclaim deed transferring all title in the marital home to Mr. Gearren. After Linda Gearren signed the deed, Meredith held it in escrow, pending receipt of the funds. Respondent failed to disburse Mr. Gearren's funds to Meredith, as required by the judgment. Thereafter, Meredith unsuccessfully attempted to contact respondent. She finally filed a motion to enforce litigant's rights on October 24, 1996. On November 15, 1996, the court directed respondent and Mr. Gearren to pay Mrs. Gearren the required funds, \$22,925.73. The order also required that respondent and/or Mr. Gearren pay Meredith \$500 in counsel fees and costs for the motion.

On November 18, 1996, respondent issued an attorney trust account check payable to Mrs. Gearren in the amount of \$22,000. Meredith retained possession of the quitclaim deed because of the outstanding sums still owed to her and her client.

Respondent never informed his client of the \$1,000 in counsel fees owed to Meredith. Neither respondent nor his client paid the approximately \$2,000 still owed. Also, respondent never contacted Meredith about amending the November 15, 1996 order and never filed a motion to amend the order.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.4 (failure to communicate with the client) and RPC 1.3 (lack of diligence).

* * *

On July 22, 1998, the day before the Board hearing, respondent filed a motion to vacate the defaults and to allow him to answer the ethics complaints. He stated that he had experienced difficulties in the last year balancing competing interests in his life because of several personal problems. Respondent also certified that his failure to answer the allegations against him was based on a series of misunderstandings. The Board denied respondent's motion for lack of a meritorious defense to the failure to answer the complaint and to the ethics charges. The Board, however, determined to treat the information contained therein for purposes of mitigation of the underlying disciplinary charges.

* * *

Service of process was properly made in this matter. Following a de novo review of the record, the Board found 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).

In the Folis matter, respondent's failure to take any action to resolve the roll-back tax issue constituted a lack of diligence, in violation of RPC 1.3. In addition, respondent's failure to reply to Folis' attempts to contact him, except for one meeting in December 1996, constituted a failure to keep Folis reasonably informed about the status of the matter, in violation of RPC 1.4(a).

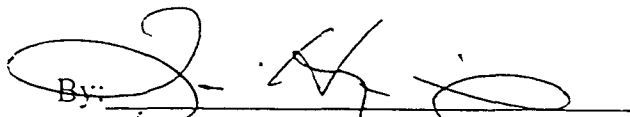
In the Gearren matter, respondent's failure to satisfy the debt or to move to amend the order amounted to gross negligence, in violation of RPC 1.1(a). Also, respondent's failure to advise his client that he had to pay additional funds in order to obtain the quitclaim deed violated RPC 1.4 as well as RPC 1.1(a). Finally, respondent's failure to prepare the final judgment of divorce, failure to disburse the funds, failure to move to amend the November 15, 1996 order or to otherwise address the debt to Mrs. Gearren and Meredith constituted a lack of diligence, in violation of RPC 1.3.

Matters involving similar violations ordinarily result in a reprimand, especially if the attorney has had prior discipline. See, e.g., In re Breingan, 120 N.J. 161 (1990) (reprimand

for pattern of neglect in three matters, failure to communicate with clients, lack of diligence and failure to cooperate with the DEC investigation; prior private reprimand); In re Rosenblatt, 118 N.J. 559 (1990) (reprimand for lack of diligence and failure to return client's file in a reasonable time; the attorney had been publicly reprimanded twice); and In re Stewart, 118 N.J. 429 (1990) (reprimand for gross neglect and failure to communicate with client: prior private reprimand). The appropriate discipline in this default matter would ordinarily be elevated to a three-month suspension because of respondent's failure to answer the complaint. Because, however, of the mitigating factors cited in respondent's motion to vacate the default, the Board unanimously determined that a reprimand constitutes adequate discipline for this respondent. One member recused himself.

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

Dated: 4/5/95

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

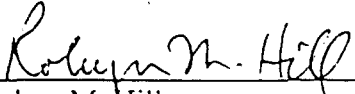
*DISCIPLINARY REVIEW BOARD
VOTING RECORD*

In the Matter of Mark D. Cubberley
Docket Nos. DRB 98-181 and DRB 98-228

Decided: April 5, 1999

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymmerling			X				
Zazzali			X				
Brody			X				
Cole			X				
Lolla			X				
Maudsley			X				
Peterson						X	
Schwartz			X				
Thompson			X				
Total:			8			1	



Robyn M. Hill
Chief Counsel