

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 98-240

IN THE MATTER OF :
:
KEVIN J. DALY :
:
AN ATTORNEY AT LAW :
:

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

Decided: October 5, 1998

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 VA Ethics Committee ("DEC") certified the record in this matter directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint.

On February 19, 1998, the DEC sent a copy of the complaint and cover letter to respondent by both certified and regular mail. The certified mail return receipt (green card) indicates that the mail was forwarded to a new address and accepted there. The signature is not respondent's. The regular mail was not returned. On April 24, 1998, the DEC sent a second letter to respondent, advising him that the DEC could seek his temporary suspension if an answer was not received within five days. This second letter was sent by certified and

regular mail to the new address indicated on the first certified mail receipt. The green card was returned to the DEC indicating acceptance; the signature is not respondent's. The regular mail was not returned. Respondent did not file an answer.

On July 21, 1998, two days before this matter was to be reviewed by the Board, respondent, through his counsel, made a motion to vacate the default. Apparently, the complaint was served upon respondent shortly after he had completed a fifty-four day matrimonial trial, which had necessitated that he submit two written summations totaling over one hundred pages. According to respondent, that case resulted in his office becoming "back-logged in its daily obligations." Consequently, respondent did "not giv[e] the necessary attention to this ethics charge as [sic] he should have." The Board determined to deny the motion, noting that, while respondent's other obligations may have been a valid reason for requesting an extension to file an answer, respondent never contacted the DEC to request such an extension. An attorney's obligations to the ethics system are paramount; brushing them aside is unacceptable.

Respondent was admitted to the New Jersey bar in 1980. He has no prior ethics history.

According to the complaint, grievant Denise Lisa retained respondent in late 1992 to represent her in resolving several post-judgment matrimonial issues, including custody, child support, proof of maintenance of insurance for the children's benefit and an accounting of escrowed funds. Respondent accepted a retainer of \$2,000 and agreed to prepare and file a

motion to have the post-judgment issues resolved. In April 1993, respondent received a check in the amount of \$1,751.96, representing Lisa's share of funds escrowed from the sale of her former marital residence. Respondent put the check in Lisa's file, but failed either to tell her that he had received the funds or to remit the funds to her. In September 1993, respondent received a replacement check for the initial check, in the amount of \$1,751.96. Respondent put this second check in Lisa's file, but again failed to either notify her that he had received the funds or send the funds to her.

In addition, on several occasions, respondent misrepresented to Lisa that he had filed the appropriate motion to resolve the post-judgment issues and that consideration of the motion had been delayed. Among the untrue stories that respondent told Lisa to explain the fabricated delay were that the judge assigned to the matter had suffered an embolism and that Lisa's ex-husband had failed to provide the necessary financial information. In or about March 1995, respondent misrepresented to Lisa that the court had ruled on the child support aspect of the motion. Thereafter, in May 1995, respondent paid \$500 to Lisa, falsely telling her that it represented a child support payment from her ex-husband. In June 1995, respondent misrepresented to Lisa that the court was in the process of making a final decision on her motion. In fact, from the time that Lisa had retained him in late 1992 until the termination of their attorney/client relationship, in or about June 1995, respondent failed to file a motion or otherwise resolve the issues for which he had been retained.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to keep client reasonably informed), RPC 1.15(b) (failure to notify and promptly deliver funds) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

* * *

Following a de novo review of the record, the Board deemed the allegations of the complaint admitted. R. 1:20-4(f)(1). The facts cited in the complaint provide sufficient basis to find that respondent's conduct was unethical.

Respondent's failure to file a motion on behalf of his client constituted gross neglect, in violation of RPC 1.1(a), and lack of diligence, in violation of RPC 1.3. By not disclosing to Lisa that he had not filed the motion, respondent failed to keep his client reasonably informed about the status of the case, in violation of RPC 1.4(a). In addition, respondent's failure to notify Lisa that he had received funds from the closing of the former marital property and his subsequent failure to deliver those funds to her promptly violated RPC 1.15(b). Finally, by fabricating stories to cover up his inaction respondent violated RPC 8.4(c).

One single instance of misrepresentation of the status of a suit to a client warrants the imposition of a reprimand. In re Kasdan, 115 N.J. 472 (1989). Here, respondent failed to file a motion on behalf of his client, failed to inform his client of his inaction, failed to deliver funds to his client promptly and fabricated stories to cover up his behavior. On at

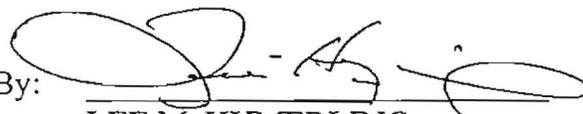
least four occasions, respondent made misrepresentations about the status of the case. Generally, cases involving a similar mixture of ethics infractions have resulted in a reprimand. See, e.g., In re Onorevole, 144 N.J. 477 (1996) (reprimand for gross neglect, lack of diligence, failure to communicate, failure to cooperate with the disciplinary authorities and misrepresentation; the attorney misrepresented to a client that he had filed a complaint, and that the court was backlogged in filing complaints, when in fact the attorney had not filed the complaint at all); In re Martin, 132 N.J. 266 (1993) (reprimand for lack of diligence, failure to communicate, failure to provide sufficient information to allow a client to make informed decisions and misrepresentation; the attorney allowed an appeal to be procedurally dismissed, based on his belief that he could not win the appeal, first allowing his client to believe that the appeal was pending and then attempting to mislead the client into believing that the appeal was dismissed on the merits). However, this matter arose as a default, evidencing a disregard for the ethics system on the part of respondent. For this reason, the Board unanimously voted to impose a suspension of three months.

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

Dated: _____

10/5/98

By: _____



LEE M. HYMERLING
Chair
Disciplinary Review Board