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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-289

IN THE MATTER OF
THAKI ISMAEL
AN ATTORNEY AT LAW

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

Decided: July 17, 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 in this matter directly to us for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint.

On March 4, 1999 the DEC forwarded a copy of the complaint to respondent's last known office address by regular and certified mail. The certified mail receipt was returned

with respondent's signature, indicating delivery on March 10, 1999. The complaint does not state whether the regular mail was returned. On March 10, 1999 a copy of the complaint was forwarded to respondent by regular and certified mail at a second address: 1312 Baker Street, Hillside, N.J. 07205. The certified mail receipt was returned, indicating delivery on March 11, 1999. The signature of the accepting agent was that of "Dana Ismael." The complaint does not state whether the regular mail was returned.

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).

Respondent was admitted to the New Jersey bar in 1985. At all relevant times, respondent maintained law offices at 41 Borman Avenue, Avenel, New Jersey, 07001.

Respondent has a significant ethics history. On March 3, 1992 respondent was privately reprimanded for misconduct in two real property matters, including failure to act with diligence and failure to cooperate with disciplinary authorities. In the Matter of Thaki Ismael, Docket No. DRB 91-376 (March 3, 1992). On May 24, 1994 respondent was again privately reprimanded for his inability to reconstruct financial records so that the owner of a trust fund could be ascertained; this misconduct was revealed as a result of a random audit. In the Matter of Thaki Ismael, Docket No. DRB 94-091 (May 24, 1994). On March 22, 1995 respondent was admonished for lack of diligence, failure to communicate and failure to reply to the DEC investigator's requests for information. In the Matter of Thaki Ismael, Docket No. DRB 95-053 (March 22, 1995). Most recently, on March 23, 1999, respondent was

suspended for six months for gross neglect, failure to act with reasonable diligence and promptness, failure to safeguard client property, failure to deliver client funds, failure to comply with recordkeeping rules and failure to respond to lawful demands for information from disciplinary authorities. In re Ismael, 157 N.J. 632 (1999). Respondent remains suspended to date.

The complaint alleges that respondent was retained by Miles McCoy on or about January 22, 1998 to file a complaint for a name change. McCoy told respondent that the name change should be effective approximately two weeks prior to his wedding date, set for May 29, 1998. McCoy's fiancée wished to assume the new name upon marriage.

On or about March 5, 1998 respondent forwarded a draft of the complaint for McCoy's review. In March and April 1998 McCoy contacted respondent's office and was told that respondent was waiting for a court date. Between April 27 and May 8, 1998 respondent failed to reply to numerous telephone messages left by McCoy. On or about May 8, 1998 McCoy contacted the Union County Superior Court directly and was informed that a complaint had never been filed.

At some point not specified in the complaint, respondent returned the retainer to McCoy.

The first count of the complaint charges that respondent violated RPC 1.3 (lack of diligence) for his failure to file the complaint for McCoy's name change; the second count of the complaint charges that respondent violated RPC 1.1(b) (pattern of neglect) for his failure

to communicate with McCoy or to provide him with any information between April 27 and May 8, 1998 (more properly, a violation of RPC 1.4(a)). The third count of the complaint charges that respondent violated RPC 1.1(a)¹ (gross neglect) for his failure to file the complaint; the fourth count of the complaint charges that respondent violated RPC 3.2 (failure to expedite litigation) for his failure to file McCoy's complaint.

* * *

Service of process was properly made in this matter. Following a review of the complaint, we find that the facts recited therein 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).

On November 18, 1999, the date of our consideration of the default, respondent "faxed" an unsigned motion to vacate the default. The motion was not received until after we made our determination to impose discipline on respondent. On December 16, 1999, we unanimously determined to deny the motion to vacate the default and to impose the discipline decided at the November meeting.

Respondent's failure to file a complaint for McCoy's name change and his failure to

¹ Although the complaint does not cite a specific subsection, its language ("grossly negligent") implies that a charge of RPC 1.1(a) was intended.

reply to McCoy's numerous inquiries for information violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a). From the beginning of this attorney/client relationship, respondent was aware of his client's need to have the matter resolved within a short period of time. Thus, although normally a delay of several months might not amount to gross neglect or lack of diligence, in this case quick action was essential. Respondent's conduct was, thus, clearly unethical.

We dismissed the charge, however, that respondent's conduct violated RPC 1.1(b) (pattern of neglect). Generally, a RPC 1.1(b) violation requires three or more instances of neglect. Here respondent neglected only one matter. We also dismissed the charge that respondent violated RPC 3.2 (failure to expedite litigation). Respondent's failure to file the complaint on his client's behalf is more appropriately addressed by finding that respondent violated RPC 1.1(a) and RPC 1.3.

Normally, conduct of this sort merits an admonition, when only one matter is involved. See, e.g., In the Matter of William C. Herrmann, Docket No. DRB 98-276 (October 21, 1998) (admonition where attorney's conduct violated RPC 1.1(a), RPC 1.3 and RPC 1.4(a)); In the Matter of Michael A. Amantia, Docket No. DRB 98-402 (September 22, 1999) (admonition where attorney violated RPC 1.1(a), RPC 1.3 and RPC 1.4(a) and (b)); and In the Matter of Michael K. Mullen, Docket No. DRB 98-067 (April 21, 1999) (admonition where attorney's conduct violated RPC 1.3 and RPC 1.4(a)).

Here, however, because of the default nature of this matter and because of

respondent's extensive ethics history, the level of discipline must be increased. Respondent's disciplinary history spans eight years and includes similar violations. Even in the face of repeated discipline, respondent has made no attempt to conform his conduct to the Rules of Professional Conduct. These aggravating factors require enhanced discipline. See, e.g., In re Waters-Cato, 158 N.J. 12 (1999) (attorney was suspended for three months where, in a default proceeding, attorney violated RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 8.1(b) and, in addition to other prior discipline, was currently serving a three-year suspension).

Accordingly, five members of the Board determined to impose a prospective three-month suspension. The four dissenting members voted for a six-month suspension. Prior to reinstatement, respondent is to complete twelve hours of professional responsibility courses and must demonstrate proof of his fitness to practice law. Lastly, for two years upon reinstatement, respondent must be monitored by a proctor approved by the Office of Attorney Ethics.

We further directed that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: _____

7/17/00

By: _____



LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Thaki Ismael
Docket No. DRB 99289**

Decided: July 17, 2000

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Six-month Suspension	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling			x				
Cole		x					
Boylan		x					
Brody		x					
Lolla			x				
Maudsley		x					
Peterson		x					
Schwartz			x				
Wissinger			x				
Total:		5	4				

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