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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-189

IN THE MATTER OF :
ALAN H. MARLOWE :
AN ATTORNEY AT LAW :

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

Decided: April 12, 2000

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

Pursuant to R. 1:20-4(f), the District VA 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 October 27, 1998 the DEC forwarded a copy of the complaint to respondent's last known address by regular and certified mail. The certified mail was returned with a note indicating that respondent had moved to 178 Rothwell Avenue, Cliffside Park, NJ 07010. The regular mail was not returned.

On November 24, 1998 the DEC sent a second letter to respondent's former address by regular and certified mail, advising him of the DEC's right to seek his temporary suspension from the practice of law, pursuant to R. 1:20-4(f), if the DEC did not receive an

answer within five days of the letter. On the certified mail envelope there was another note indicating that respondent had moved to 178 Rothwell Avenue, Cliffside Park, NJ 07010.

The regular mail was not returned.

On November 30, 1998 the DEC sent the complaint to respondent's new address by regular and certified mail. Although the certified mail was returned as unclaimed, the regular mail was not returned.

On March 12, 1999 the DEC sent a second letter to respondent's new address by certified and regular mail, advising him that the DEC could seek his temporary suspension from the practice of law if he did not file an answer within five days of the date of the letter. The certified mail was returned as unclaimed. The record is silent as to what happened to the regular mail. Respondent did not file an answer to the formal ethics complaint.

Respondent was admitted to the New Jersey bar in 1971. He does not currently maintain a New Jersey law office.

Respondent has a significant ethics history, having been disciplined four times since 1990. He was first publicly reprimanded on January 10, 1990 for misrepresenting to a trial judge that he had his adversary's consent to an adjournment. Thereafter, on September 17, 1990, respondent was suspended for three months for a pattern of neglect, failure to communicate and misrepresentation in two matters. That suspension was ordered continued unless and until respondent produced all financial records required by the Office of Attorney Ethics ("OAE") in a separate matter. One of the factors leading to the three-month

suspension was respondent's lack of cooperation with the DEC. In a third matter, respondent was again publicly reprimanded on December 10, 1991 for failure to cooperate and failure to file an answer to an ethics complaint. On the same date, and in a fourth matter, respondent was suspended for one year, retroactive to the original September 1990 suspension (including the prior three-month suspension). The latest order resulted from respondent's repeated failure to cooperate with the disciplinary system.

Lastly, in a default matter, respondent was suspended for one year from the practice of law, effective December 8, 1997, for gross neglect, failure to abide by a client's wishes, failure to act with due diligence, failure to keep his client reasonably informed, failure to comply with recordkeeping requirements, failure to cooperate with the disciplinary authorities and failure to notify existing clients of his suspension from the practice of law. Respondent has not applied for reinstatement.

The complaint charged respondent with violations of RPC 8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority), RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), R. 1:20-20 (failure to notify clients of suspension from the practice of law), RPC 1.1(a) (gross negligence) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The complaint alleged that the OAE wrote to respondent on March 3, 1998, requesting a written reply to the within grievance on or before March 24, 1998. The letter was sent to respondent's home address by regular and certified mail. The record indicates that, although

respondent received the letter, he did not reply to it.

On March 26, 1998 the OAE sent a second letter to respondent's home address, requesting a written reply to the grievance on or before April 6, 1998. The complaint is silent as to whether respondent received this letter. Respondent failed to comply with the OAE's request.

On April 27, 1998 the OAE wrote to respondent, directing him to appear at the OAE offices, on May 20, 1998, to submit an explanation to the allegations of the grievance. This letter was sent by regular and certified mail. The certified mail was returned as unclaimed. The regular mail was not returned and is, therefore, presumed delivered.

On May 18, 1998, the OAE investigator called respondent's home telephone number and reached an answering machine. The recorded male voice identified himself as respondent. The OAE investigator left a message on the answering machine, advising respondent to appear, as scheduled, on May 20, 1998 at 10:00 A.M. at the OAE offices. Respondent did not return the call or appear on May 20, 1998. The complaint alleged that respondent violated RPC 8.1(b).

As noted above, respondent was suspended from the practice of law for a period of one year on November 7, 1997, effective December 8, 1997. The order also required him to comply with R. 1:20-20, governing the actions of suspended and disbarred attorneys. The complaint alleges that, in failing to notify his clients of his suspension, respondent violated R. 1:20-20 and RPC 3.4(c). Although the complaint did not specify which clients respondent

failed to notify, in his report the DEC investigator stated that he had spoken with at least two, Robert Russotti and William Mitchell.

On or about November 12, 1997, after the date of the order suspending him, but before its effective date, respondent accepted a retainer in the amount of \$1,200 from Lucius Edwards to handle a bankruptcy matter. Edwards was not eligible to file for bankruptcy in November or December 1997 because he had filed for, but failed to successfully complete, a Chapter 13 bankruptcy within the previous six years. Respondent knew of this circumstance because he had handled Edwards' previous bankruptcy matter. According to the complaint, respondent acted with dishonesty, in violation of RPC 8.4(c), by accepting a retainer from Edwards when he knew that (1) he was about to be suspended from the practice of law and (2) Edwards was ineligible to file for bankruptcy. According to the complaint, respondent's conduct constituted a theft of Edwards' funds.

According to the complaint, respondent filed a bankruptcy petition on Edwards' behalf, which was dismissed in 1998 for respondent's failure to submit a plan. The complaint charged respondent with violation of RPC 1.1(a) (gross neglect).

* * *

Service of process was proper. Following a review of the record, we found that, with the exception of the charge of theft of funds, there is sufficient factual basis in the complaint

to find violations of the RPCs charged. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f)(1).

Specifically, respondent filed a bankruptcy petition on Edwards' behalf, which was dismissed in 1998 for respondent's failure to submit a plan. Respondent's conduct in this regard constituted a violation of RPC 1.1(a).

Respondent also violated RPC 8.1(b) by failing to reply to the OAE's letters and telephone call. The communications directed respondent to appear at the OAE offices on May 20, 1998 to submit an explanation to the allegations of the grievance. Respondent did not reply to the OAE communications and failed to appear at the OAE offices on May 20, 1998.

In addition, respondent violated R. 1:20-20, when he did not notify all his clients of his 1997 suspension.

Lastly, respondent violated RPC 8.4(c) when he accepted a retainer from his client, Edwards, on or about November 12, 1997, knowing that (1) Edwards was ineligible to file for bankruptcy in November or December 1997 and (2) that he was about to serve a one-year suspension.

In a recent default decision, an attorney was suspended for one year when he accepted retainers in five matters, ranging from \$500 to \$1500, and thereafter took no action in behalf of those clients. The attorney also refused to reply to any communications from his clients and, in every matter, refused to cooperate with the DEC's investigation. In re Lawnick, 162

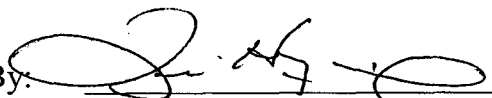
N.J. 113(1999). That attorney had been the subject of four separate disciplinary actions.

In October 1998, the Court suspended an attorney for six months for conduct similar to respondent's. In re West, 156 N.J. 451 (1998). In three matters, the attorney demonstrated a pattern of accepting retainers, performing no services, failure to do any work for his client and failure to cooperate with the ethics investigations. Noting that ordinarily this conduct might result in only a suspension of three months, we unanimously imposed a six-month suspension because of the attorney's ethics history and his total disregard for the ethics system. That case, too, proceeded on a default basis.

Standing alone, respondent's within conduct would ordinarily warrant a suspension of three months. Respondent, however, has an extensive history of ethics violations: five prior brushes with the disciplinary system. Also, the violations in this matter are similar to the violations for which he was disciplined in the past, including failure to notify his clients of his suspension. Given respondent's ethics record, coupled with the default nature of these proceedings, we unanimously determined that respondent's violations warrant a six-month prospective suspension.

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

Dated: 4/12/00

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Alan H. Marlowe
Docket No. DRB 99-189

Decided: April 12, 2000

Disposition: Six-Month Suspension

Members	Disbar	Six-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling		x					
Cole		x					
Brody		x					
Boylan		x					
Lolla		x					
Maudsley		x					
Peterson		x					
Schwartz		x					
Wissinger		x					
Total:		9					

By Robyn M. Hill 5/2/00
Robyn M. Hill
Chief Counsel