

SP

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-050

IN THE MATTER OF :
:
STEVEN E. POLLAN :
:
AN ATTORNEY AT LAW :
:
:

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

Decided: August 24, 1999

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

Pursuant to R.1:20-4(f), the Office of Attorney Ethics ("OAE") 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 December 21, 1998, the OAE sent respondent a copy of the complaint by regular mail and certified mail, return receipt requested. The regular mail was not returned. The certified mail was returned to the OAE marked "unclaimed." Respondent did not file an answer to the formal ethics complaint.

On January 15, 1999, the OAE sent respondent a second letter by regular and certified mail, return receipt requested. The letter stated that, unless respondent filed an answer within five days, the allegations of the complaint would be deemed admitted and the record would be certified to the Board for the imposition of sanction. Neither the regular mail nor the certified mail or the certified mail receipt was returned. Respondent did not file an answer to the formal ethics complaint.

Respondent was admitted to the New Jersey bar in 1970. In February 1996 he was suspended for six months for misconduct in seven matters, including gross neglect, pattern of neglect, lack of diligence, failure to communicate, failure to protect a client's interests, failure to cooperate with disciplinary authorities, misrepresentation and recordkeeping violations. In re Pollan, 143 N.J. 306 (1996). In October 1997, respondent was suspended for an additional two years, in a default proceeding, for misconduct in five matters. The misconduct included gross neglect, pattern of neglect, lack of diligence, failure to communicate, failure to surrender client property, failure to expedite litigation, failure to cooperate with disciplinary authorities and attempt to violate the Rules of Professional Conduct. In re Pollan, 151 N.J. 494 (1997). Respondent remains suspended to date.

Following the Board's consideration of this matter, but before the preparation of this decision, respondent filed a motion to vacate the default. Respondent claimed that he had not answered the complaint because of family problems and a time-consuming new business

venture. After consideration of the reasons set forth in respondent's motion, the Board determined to deny the motion to vacate the default.

The complaint alleged that, in or around October 1974, respondent was retained by Harry Kampelman and James Karcases "as Executors under the Last Will and Testament of John Kalogerakos, deceased." The complaint does not explain the services respondent agreed to provide or whether there was a retainer agreement.

According to the terms of Kalogerakos' will, his widow was to receive payments of income from bank accounts for her lifetime. Upon the death of the widow, certain named beneficiaries were to receive specific monetary bequests. The residue was to be paid to Greystone Park Institution. The total of decedent's estate was approximately \$29,000.

The complaint did not mention the date of decedent's death. According to the complaint, respondent took no action to disburse funds to the widow or to the other beneficiaries of the estate. On June 10, 1982, almost eight years after being retained in this matter, respondent opened a certificate of deposit with Valley National Bank in the name of "Steven Pollan, Esquire as Second Substituted Trustee under the Will of John Kalogerakos." In June 1997, the certificate of deposit had a balance of \$41,092.95.

In November 1997, Valley National Bank wrote to respondent and notified him that the balance of the account would escheat to the State of New Jersey unless he took preventive action. Respondent did not reply to the bank or take any action to distribute the

funds. The bank wrote to respondent on two additional occasions in February 1998. Again, respondent did not reply or take any action with regard to the funds.

In April 1998, the OAE wrote respondent by regular and certified mail and instructed him to immediately contact Valley National Bank about the certificate of deposit. The complaint did not indicate whether respondent received either letter. Respondent did not comply with the OAE's direction. On April 22, 1998, the OAE telephoned respondent at his home and spoke to him about the matter. Respondent indicated that he had not replied to the bank's inquiries because he had been traveling and had not seen any urgency in the matter. He stated that he would review the file, review the law on escheats and do "whatever was necessary" to prevent the escheat and make the distributions under the will.

The OAE requested that respondent come to its office to discuss his inaction in the matter. On April 30, 1998, respondent appeared, but, contrary to the OAE's instructions, did not bring the Kalogerakos file. He stated that the file had been "archived" and that he would retrieve the file from storage the following day. However, later that same day respondent contacted the OAE and claimed that the file was not in his archives and could not be located.

Respondent met with the OAE again on May 1, 1998. He stated that he would immediately request the entire file from the surrogate's office. Respondent failed to take any action with respect to the funds held by Valley National Bank.

On October 6, 1998, Valley National Bank notified the OAE that the funds would

escheat on October 27, 1998. Subsequently, the bank discovered an "unspecified transaction" that had occurred on January 31, 1992 and apparently deferred the date on which the funds would escheat to the state.

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 communicate); RPC 1.15(a) (failure to safeguard client funds) and RPC 1.15(b) (failure to promptly deliver funds). The complaint was later amended to charge respondent with a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities).

* * *

Service of process was properly made in this matter. Following a 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).

Although the complaint does not specify respondent's duties in this matter, the Board found sufficient factual basis to conclude that respondent lacked diligence, in violation of RPC 1.3. The funds of the Kalogerakos estate were to go to either the widow or the named beneficiaries. It has now been almost twenty-five years that the funds have been under

respondent's control and he has taken no action with respect to them except to let them sit in a certificate of deposit. In addition, by not filing an answer to the formal ethics complaint, respondent violated RPC 8.1(b).

The Board, however, was unable to find sufficient factual basis to find respondent guilty of violations of RPC 1.1(a), RPC 1.4(a) and RPC 1.15(a) and (b). The record does not contain sufficient evidence that respondent had a duty or the ability to follow through on the terms of the will. Accordingly, the Board determined to dismiss these charges.

Ordinarily, a sole violation of RPC 1.3 would warrant an admonition. See In the Matter of Paulette Brown, Docket No. DRB 97-383 (December 2, 1997) (admonition where attorney held almost \$3,000 in settlement funds for more than four years before paying medical bills); In the Matter of Charles Deubel, III, Docket No. DRB 95-051 (May 16, 1995) (admonition where attorney is oversight resulted in a failure to record a deed for fifteen months). Because respondent failed to file an answer to the ethics complaint, thereby causing this matter to proceed as a default, the Board would normally raise the quantum of discipline by one level and impose a reprimand.

However, this respondent has consistently demonstrated a disregard for his ethics obligations. His disciplinary history includes two findings that he failed to cooperate with disciplinary authorities. In re Pollan, 151 N.J. 494 (1997) (two-year suspension); In re Pollan, 143 N.J. 306 (1996) (six-month suspension). An attorney has an obligation to

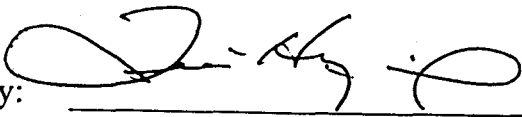
cooperate fully with the disciplinary system. In re Smith, 101 N.J. 568, 572 (1986); In re Gavel, 22 N.J. 248, 263 (1956). Disrespect toward the disciplinary system "constitutes disrespect to [the Supreme] Court," as the disciplinary system "is an arm of the Court." In re Grinchis, 75 N.J. 495, 496 (1978). Because of respondent's blatant indifference toward the disciplinary system, the Board unanimously determined to suspend him for three months, the suspension to be served at the expiration of the current two-year suspension. The Board recommends to make respondent's reinstatement conditioned on demonstration that he has disbursed the Kalogerakos funds.

Lastly, the Board also determined to recommend to the OAE that it take necessary steps to notify the Assignment Judge of Essex County of the problem in this matter, with a request that the judge assign it to other counsel, perhaps on a pro bono basis.

Three members did not participate.

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

Dated: 8/24/95

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Steven E. Pollan
Docket No. DRB 99-050**

Decided: August 24, 1999

Disposition: THREE-MONTH SUSPENSION

Members	Disbar	Three-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Zazzali							x
Brody		x					
Cole		x					
Lolla		x					
Maudsley							x
Peterson		x					
Schwartz		x					
Thompson							x
Total:		6					3

Robyn M. Hill 9/22/99
Robyn M. Hill
Chief Counsel