

letter to respondent by regular and certified mail, advising him that the failure to file an answer would constitute an admission of the allegations contained in the complaint and could result in his temporary suspension. The certified mail return receipt and the copy sent by regular mail were not returned.

Respondent did not file an answer to the complaint. On December 28, 1999 the record was certified directly to us for the imposition of discipline, pursuant to R. 1:20-4(f)(1).

Respondent was admitted to the New Jersey bar in 1981. He maintains an office in Pompton Plains, Morris County, New Jersey. On January 3, 2000 he was suspended for three months for gross neglect, failure to act with reasonable diligence, failure to communicate with a client, failure to explain matters sufficiently to a client to permit the client to make an informed decision, failure to expedite litigation, unauthorized practice of law and failure to cooperate with the disciplinary authorities. *In re Spiess*, 162 N.J. 121 (1999).

According to the complaint, respondent was retained in December 1997 by the grievant, Louis P. West, Jr., to administer the estate of West's father, who had passed away on December 1, 1997. Although there was no written retainer agreement, respondent agreed to probate the will and settle the estate. The settlement of the estate included the sale of the decedent's house and the submission of information to West's accountant for the preparation of the estate tax return.

On December 12, 1997 respondent appeared in Passaic County Surrogate Court in the *West* estate matter. At that time, respondent was ineligible to practice law because he had failed to make the necessary payments to the New Jersey Lawyers' Fund for Client Protection. His ineligibility began on September 5, 1997 and ended on June 29, 1998.

On May 21, 1998, while still ineligible to practice law, respondent represented the estate in the sale of the decedent's house. On May 4, 1998 the purchaser had paid a \$9,000 down payment that was held in respondent's attorney trust account. Upon the sale of the property, an \$82,073.12 check from the buyer's attorney trust account was disbursed to the estate. The \$9,000 deposit monies, however, were not distributed to the estate at that time. The funds presumably remained in respondent's trust account.

On June 15, 1999 respondent remitted a \$2,878.05 check to West, along with a letter indicating that the "\$2,878.05 represent[ed] the release of the deposit less my fee and crediting the \$142.00 IRS charge incurred." Respondent also enclosed a bill in the total amount of \$8,588.95 and in the net amount of \$6,121.95. Respondent had already disbursed \$2,467 to himself.

Between May 1998 and June 1999 West requested several times that respondent disburse the remainder of the deposit monies to the estate. According to the complaint, as late as June 1999 respondent had not disbursed the entire deposit. In fact, respondent had used in excess of \$6,000 of the funds for his legal

fees. West had not agreed that respondent could withdraw his legal fees from the real estate deposit monies. Respondent disbursed his fee to himself before he gave West an opportunity to review respondent's bill.

On numerous occasions, West asked respondent for information about whether the probate process had been completed and for specific documents necessary for his accountant's preparation of the estate tax return. West also repeatedly requested that respondent return the original tax records. Respondent failed to comply with West's requests, forcing West to gather the information himself.

Also, respondent failed to file a reply to the grievance or to return the ethics investigator's telephone calls. Although respondent acknowledged to the investigator, in a telephone conversation, that he had received the grievance and that he had been remiss in replying to it, he supplied no information about the grievance.

The complaint charged respondent with violations of *RPC* 1.3 (lack of diligence), *RPC* 1.4(a) (failure to communicate with client and to respond to reasonable requests for information), *RPC* 1.15(b) (failure to promptly deliver funds to a client), *RPC* 5.5(a) (unauthorized practice of law) and *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, we found that the facts recited support a finding of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint were deemed admitted. *R. 1:20-4(f)(1)*.

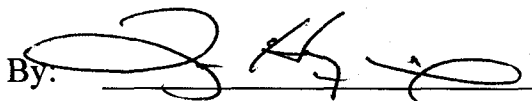
Respondent agreed to administer the *West* estate at a time when he was ineligible to practice law for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. While ineligible, he appeared in court and also represented the estate in a real estate sale. Respondent, thus, practiced law while ineligible to do so, in violation of *RPC 5.5(a)*. After the closing, respondent failed to disburse the real estate deposit to the estate. Instead, he took his fee, despite the absence of any agreement permitting him to do so. Moreover, respondent disbursed the funds to himself in payment of his fee before he sent his client a bill, thereby depriving West of the opportunity to object to the fee. Respondent's conduct in this regard violated *RPC 1.3* and *RPC 1.15(b)*. Furthermore, his refusal to reply to West's requests for information about the completion of the probate process constituted a violation of *RPC 1.4(a)*. Finally, respondent's failure to reply to the grievance or to file an answer to the ethics complaint violated *RPC 8.1(b)*.

Conduct similar to respondent's usually results in the imposition of a reprimand. *See, e.g., In re Namias*, 157 N.J. 15 (1999) (reprimand for lack of diligence, failure to communicate and unauthorized practice of law). When the misconduct is coupled with a default, a short-term suspension is required. *See, e.g., In re Dudas*, 156 N.J. 540 (1999) (three-month suspension in default matter for lack of diligence, failure to safeguard property, unauthorized practice of law and failure to cooperate with disciplinary authorities; attorney failed to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection, failed to timely complete an estate accounting and was consistently unable to determine how much he held in trust for the estate).

In light of respondent's disciplinary history, a six-member majority determined to impose a three-month suspension, to be effective upon the expiration of his prior three-month suspension. Three members voted to impose a six-month suspension.

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

Dated: 5/22/00

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Robert C. Spiess
Docket No. DRB 00-010**

Decided: May 22, 2000

Disposition: Three-month Suspension

Members	Disbar	Three-month Suspension	Six-month Suspension	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling			X				
Peterson		X					
Boylan		X					
Brody		X					
Lolla			X				
Maudsley		X					
O'Shaughnesy		X					
Schwartz			X				
Wissinger		X					
Total:		6	3				

Robyn M. Hill 7/12/00
Robyn M. Hill
Chief Counsel