

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-031
District Docket No. VII-06-009E

IN THE MATTER OF
ARTHUR E. SWIDLER
AN ATTORNEY AT LAW

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

Decided: May 24, 2007

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

This matter came before us on a certification of default
filed by the District VII Ethics Committee ("DEC"), pursuant to R.
1:20-4(f). The two-count complaint charged respondent with
violating RPC 1.1(b) (pattern of neglect) and RPC 8.1(b) (failure
to cooperate with disciplinary authorities) (count one). Count two
called for respondent's temporary suspension.

Respondent was admitted to the New Jersey bar in 1985. At the
relevant time, he maintained a law office in Trenton, New Jersey.
He has no history of discipline.

Service of process was proper. On October 25, 2006, the DEC mailed a copy of the complaint by regular and certified mail to respondent's office at 222 South Broad Street, Trenton, New Jersey 08608. The certified mail receipt indicates delivery on October 31, 2006. The signature of the recipient is illegible. The regular mail was not returned. Respondent did not file an answer.

On December 13, 2006, the DEC sent a second letter to the same address by regular and certified mail. The letter notified respondent that, if he did not file an answer within five days, it could result in his immediate temporary suspension, the matter would be certified to us for the imposition of discipline, and the complaint would be amended to include a willful violation of RPC 8.1(b). The certified mail receipt shows delivery of the letter on December 15, 2006. The signature of the recipient is again illegible. The regular mail was not returned. As of the date of the certification of the record, January 8, 2007, respondent had not filed an answer to the complaint.

On March 19, 2005, Leeanna Purnell retained respondent to represent her in a foreclosure proceeding, for which she paid him \$1,500 in two installments. Respondent failed to take any action on her behalf.

On August 22, 2005, the City of Trenton obtained an Order of Taking on Purnell's property, which had been the subject of respondent's representation.

On November 30, 2005, Purnell filed a grievance against respondent, to which he failed to file a timely reply. On May 1, 2006, four months after the due date, respondent filed a reply to the grievance, admitting that he had not handled the matter as well as he should have. Respondent also promised to "repay" Purnell, presumably referring to her retainer. However, as of the date of the formal ethics complaint, October 17, 2006, respondent had not refunded the retainer.

On June 20, 2006, the DEC demanded the production of documents by respondent. As of the date of the complaint, respondent had not complied with that demand. Respondent also failed to reply to the DEC's telephone messages left on August 10, 29, 31, and September 26, 2006.

Count two of the complaint alleges that respondent's failure to cooperate with the DEC investigation required that he be temporarily suspended.

Following a review of the record, we find that the facts recited in the complaint support the charges 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).

We find that respondent failed to cooperate with the DEC investigation and engaged in gross neglect, by failing to take any action on Purnell's behalf, which ultimately resulted in an Order of Taking on her property. Although the complaint did not specifically charge respondent with violating RPC 1.1(a), the facts recited therein gave him sufficient notice of this alleged improper conduct and of a potential finding of a violation of that rule.

On the other hand, respondent's conduct does not amount to a pattern of neglect, as charged in the complaint. Generally, such a finding requires neglect in at least three matters. In re Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12).

As to count two, we deny the DEC's request for respondent's temporary suspension for failure to cooperate with the investigation. The proper procedure for a motion for temporary suspension on these grounds is spelled out in R. 1:20-3(g)(4). Under that rule, if a respondent fails to cooperate by not replying in writing to a request for information, the OAE may file and serve a motion for temporary suspension with the Court. We find, however, that respondent's failure to cooperate with the DEC violated RPC 8.1(b).

Cases involving gross neglect, without more, generally result in admonitions. See, e.g., In the Matter of Thomas S.

Capron, DRB 04-294 (October 25, 2004) (attorney grossly neglected a matter by failing to have a mortgage discharged of record so that refinancing could be accomplished); In the Matter of Terry J. Finkelstein, DRB 03-420 (February 6, 2004) (attorney grossly neglected a personal injury matter); and In the Matter of Raymond Douglas, DRB 01-356 (November 27, 2001) (attorney grossly neglected a matrimonial matter).

An admonition may still be proper where, in addition to gross neglect, other, non-serious violations are present. See, e.g., In the Matter of Ben Zander DRB 04-133 (May 24, 2004) (attorney grossly neglected a business trademark case and failed to communicate the status of the matter to his client); In the Matter of Stephen K. Fletcher, DRB 04-077 (April 16, 2004) (attorney grossly neglected a real estate matter and failed to adequately communicate with the client); In the Matter of Carolyn J. Fleming-Sawyer, DRB 04-017 (March 23, 2004) (attorney grossly neglected one matter by failing to record a deed until one year after the closing; in another matter she failed to maintain trust and business account records for seven years and engaged in a conflict of interest); and In the Matter of Mark Krassner, DRB 03-307 (November 25, 2003) (attorney grossly neglected a matrimonial matter by allowing a judgment of divorce to be entered against his client; he also failed to communicate with the client).

In default matters, however, the discipline is enhanced to reflect an attorney's failure to cooperate with disciplinary authorities as an aggravating factor. For instance, enhanced discipline was imposed in the following default cases. In re Block, 181 N.J. 297 (2004) (reprimand for attorney who failed to properly file an application with the Department of Immigration and Naturalization Services or to follow up on its status; the attorney also failed to properly communicate with the client); and In re Hediger, 179 N.J. 365 (2003) (reprimand for attorney who was retained to defend a client in connection with a complaint filed against her, settled the matter, but failed to forward the settlement funds to the plaintiff, resulting in a judgment being entered against her; the attorney also failed to communicate with the client, and failed to cooperate with disciplinary authorities).

In this default matter, we find that a reprimand is warranted for respondent's gross neglect and failure to cooperate with disciplinary authorities.

As a final note, we strongly encourage respondent to refund Purnell's retainer, if he has not already done so.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and

actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
William J. O'Shaughnessy, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Arthur E. Swidler
Docket No. DRB 07-031

Decided: May 24, 2007

Disposition: Reprimand

Members	Suspension	Reprimand	Admonition	Disqualified	Did not participate
O'Shaughnessy		X			
Pashman		X			
Baugh		X			
Boylan		X			
Frost		X			
Lolla		X			
Neuwirth		X			
Stanton		X			
Wissinger		X			
Total:		9			


Julianne K. DeCore
Chief Counsel