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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-310
District Docket No. VA-04-0044E

IN THE MATTER OF :
 :
JOHN F. HAMILL, JR. :
 :
AN ATTORNEY AT LAW :
 :
 :
 :

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

Decided: March 27, 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 VA Ethics Committee ("DEC") pursuant to R.
1:20-4(f). The two-count complaint charged respondent with
violating RPC 1.16(d) (failure to protect a client's interests on
termination of the representation) and RPC 8.1(b) (failure to
comply with a lawful demand for information from a disciplinary
authority), cited in the complaint as R. 1:20-3(g)(3). We
determine to impose a reprimand.

On January 9, 2007, Office of Board Counsel received what purported to be respondent's motion to vacate the default. We found unpersuasive respondent's reasons for failing to timely file an answer to the ethics complaint, namely, his personal problems and his reliance on a friend's statement that the "dispute" between them would be resolved shortly. Respondent's alleged defense was equally unconvincing. We, therefore, determined to deny respondent's motion to vacate the default.

Respondent was admitted to the New Jersey bar in 1980. He practices law with the firm of Bogart, Keane, Ryan & Hamill, L.L.C., located in Jersey City, New Jersey. Respondent has no history of discipline.

Service of process was proper. On August 8, 2006, the DEC mailed copies of the complaint, by regular and certified mail, to respondent's law office at 660 Newark Avenue, P.O. Box 8118, Jersey City, New Jersey 07308. The certified mail receipt, which indicated delivery on August 10, 2006, was signed by Marianna Mantone. The regular mail was not returned.

Respondent did not file an answer within the time allotted. Thus, on October 3, 2006, the DEC sent a second letter to the same address, by regular and certified mail. The certified mail receipt, which showed delivery on October 4, 2006, was signed by the same individual. The regular mail was not returned. The letter

advised respondent that, if he did not reply within five days, the matter would be certified to us for the imposition of discipline and the complaint amended to include a willful violation of RPC 8.1(b). As of the date of the certification of the record, October 19, 2006, respondent had not filed an answer to the complaint.

At some point prior to August 2003, grievant Sherry Coleman retained respondent to handle a chapter 11 bankruptcy matter for her company, Sherlen Co., Inc. For reasons not stated in the record, "[s]ometime prior to August 2003," Coleman terminated respondent's representation.

In August 2003, Coleman asked respondent to provide her with a copy of her files. By letter dated August 18, 2003, respondent refused the request, asserting an outstanding bill due to his firm, apparently relating to a real estate closing handled by a partner of the firm.

In a September 5, 2003 letter to respondent, Coleman disputed the bill and respondent's claim that the files could not be released. In addition, she requested that the files be turned over to her agent¹ by September 14, 2003.

By letter dated September 16, 2003, respondent asked Coleman to identify the files she wanted copied. She replied by letter dated September 24, 2003.

¹ Neither the agent nor the individuals with whom the agent had contact at respondent's office were identified in the complaint.

Coleman's agent made numerous attempts to retrieve the files, which attempts were continuously thwarted. For example, on September 17, 2003, when the agent contacted respondent to arrange to pick up the files, someone told the agent that there were no files. Early the next month, Coleman's agent again contacted respondent about retrieving the files. Someone from respondent's office notified the agent that respondent was in a meeting and directed the agent to call back in a week.

In an October 14, 2003 conversation, someone from respondent's office informed the agent that some files had been copied, but others were still in storage. Three days later, when the agent tried to contact respondent, someone told the agent that respondent was in court. Shortly afterwards, respondent advised the agent that he would get the items and contact the agent on or about October 20, 2003. Afterwards, respondent failed to contact either Coleman or her agent about the return of the files.

On October 28, 2003, Coleman filed a grievance against respondent. By letters dated November 22, 2004 and January 10, 2005, the DEC requested that respondent reply to Coleman's grievance. After the second letter, respondent telephoned the DEC investigator, claiming that he had not received the grievance. The investigator then forwarded another copy of the grievance to respondent on January 14, 2005.

Several weeks passed without a reply from respondent. In a letter dated April 22, 2005, the investigator advised that he would proceed without his input. A few days later, respondent contacted the investigator, informing him that he had been on vacation, and requesting a few days "to consider his options." Respondent had no further contact with the investigator.

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).

The allegations establish that, upon termination of the representation, respondent failed to turn over his client's files despite her and her agent's repeated attempts to obtain them. Respondent's conduct in this context violated RPC 1.16(d). Respondent also violated RPC 8.1(b) by failing to reply to the investigator's requests for information pertaining to the grievance, despite having been given ample opportunity to do so. That respondent requested a few days to consider his options suggests that he intentionally failed to reply, possibly hoping that he would benefit thereby.

Generally, admonitions have been imposed on attorneys who have failed to turn over their clients' files, and have committed additional violations, such as failure to cooperate with

disciplinary authorities, gross neglect, lack of diligence, or failure to communicate with a client. See, e.g., In the Matter of Vera Carpenter, DRB 97-303 (November 1, 1997) (admonition for attorney who failed to act diligently, failed to communicate with a client, and failed to turn over the client's file to new counsel); In the Matter of Andrew T. Brasno, DRB 99-091 (June 25, 1997) (admonition for failure to turn over client's file after termination of representation and failure to comply with a lawful demand for information from a disciplinary authority); In the Matter of John J. Dudas, Jr., DRB 95-383 (November 29, 1995) (admonition for failure to turn over client's file to new counsel for nearly one year after termination of the representation, failure to communicate with a client, and failure to reply to a lawful demand for information from a disciplinary authority or to comply with the DEC's direction to forward the client's file to new counsel); and In the Matter of Howard M. Dorian, DRB 95-216 (August 1, 1995) (admonition for failure to turn over client's file to new counsel, gross neglect of client's file for fifteen months, failure to communicate with a client, and failure to comply with a lawful demand for information from a disciplinary authority).

Reprimands have been imposed when the attorneys have an ethics history, more than one client matter was involved, or the case proceeded as a default. See, e.g., In re Hughes, 183 N.J.

472 (2005) (reprimand for attorney who, in three matters, failed to protect his client's interests on termination of the representation (in one of the matters he failed to turn over the client's file; in the other two, he failed to protect their interests on termination of the representation and even abandoned one client), engaged in lack of diligence and failed to communicate with the clients); In re Taylor, 176 N.J. 123 (2003) (reprimand for attorney who, in five matters, failed to protect clients' interests on termination of the representation, in two of those matters failed to turn over the files, engaged in gross neglect and lack of diligence, and failed to communicate with clients; the attorney had severe emotional problems, tried to close down her practice and distribute the client files, but did not follow proper procedures; we found that the attorney was not motivated by indifference to her clients' interests); In re Baiamonte, 170 N.J. 184 (2001) (reprimand where, in two matters, the attorney was guilty of lack of diligence, failure to communicate with a client, failure to turn over a client's file after termination of the representation, and failure to expedite litigation); In re Helt, 166 N.J. 597 (2001) (reprimand for attorney who failed to turn over a file to his client or the new attorney after he was discharged from the representation; prior private reprimand and reprimand); and In re Helt, 147 N.J. 273

(1997) (reprimand, in a default matter, for attorney who failed to return a client's file and failed to cooperate with disciplinary authorities).

We found respondent's conduct to be most similar to the last Helt matter, which also proceeded as a default. Helt failed to provide a written reply to the DEC, despite his assurance to the DEC investigator that he would. Helt also failed to turn over his client's files and documents after three requests from the new attorney. There, like here, only one client was involved. Although Helt, unlike this respondent, had prior discipline, it was only a private reprimand. He was, nevertheless, merely reprimanded. Based on this precedent, we determine that a reprimand is appropriate here as well.

Members Baugh and Lolla did not participate.

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 John F. Hamill, Jr.
Docket No. DRB 06-310

Decided: March 27, 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:		7			2


Julianne K. DeCore
Chief Counsel