SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-004
District Docket No. X-04-45E

IN THE MATTER OF :

HENRY J. ARATOW :

:

AN ATTORNEY AT LAW :

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

Decided: March 29, 2005

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

This matter was before us on a certification of default filed by the District X Ethics Committee (DEC) pursuant to R. 1:20-4(f).

Respondent was admitted to the New Jersey bar in 1993. At the relevant times, he maintained a law office in Morristown, New Jersey. Respondent has no ethics history.

On October 12, 2004, the DEC transmitted a copy of the amended complaint to respondent's business at 89 Headquarters Plaza North, 14th Floor, Morristown, New Jersey 07960, via regular and certified mail, return receipt requested. Although the certification of the record is silent on whether the letters

reached respondent, someone signed for the certified letter. However, the name and signature are illegible. The record is silent with respect to the delivery of the regular mail.

On November 5, 2004, respondent mailed an original and seven copies of an answer to the amended complaint. Three days later, the DEC wrote to respondent and informed him that the answer was insufficient because respondent had not verified the pleading. The DEC directed respondent to file a verification no later than November 18, 2004.

The DEC's letter was sent to respondent's business address via regular and certified mail, return receipt requested. Someone signed for the certified letter. The record is silent with respect to the regular mail.

On December 2, 2004, the DEC wrote to respondent again and informed him that, if the committee did not receive a verified answer by December 13, it would certify the record directly to us. The letter, which is not attached to the certification of the record, was sent to respondent via regular and certified mail, return receipt requested. The letter sent via certified mail was marked "Undeliverable as Addressed" and returned. The letter sent via regular mail was returned and marked with the notation "Not Deliverable as Addressed – Unable to Forward."

On December 10, 2004, the DEC secretary directed someone from her office to contact the Morristown Post Office to determine why the December 2, 2004 letters had been returned. A post office representative informed the employee that respondent was no longer at that address. The DEC secretary does not have another address for respondent, and respondent has not filed a verification of his answer.

On December 14, 2004, the DEC certified the record directly to us for the imposition of discipline pursuant to R. 1:20-4(f).

The two-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information), RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation), and R. 1:20-3(g)(3) (failure to cooperate in a disciplinary investigation and reply in writing within ten days of receipt of a request for information), which is more properly a violation of RPC 8.1(b).

On August 8, 2001, according to the complaint, grievant Adrienne DeWitt retained respondent to represent her in a dental malpractice action against a Dr. Freer. Respondent filed suit on October 10, 2001. Respondent claimed that he had tried to

serve Freer repeatedly at his former business in Mendham, New Jersey. However, before respondent instituted the action, DeWitt had informed him that Dr. Freer was retired and had moved to Maine. Respondent led DeWitt to believe that Dr. Freer had been served with the complaint. In fact, respondent never served Freer with the complaint.

The case was dismissed for failure to prosecute, and respondent never so informed his client. DeWitt learned this information only after she had called the Law Division directly.

After DeWitt learned that the suit had been dismissed, she called respondent to find out what he intended to do about the dismissal. Respondent told her that he had been unable to locate Freer for the purpose of serving process upon him. After DeWitt found Freer's address on the internet and gave it to respondent, he refiled the malpractice action sometime in 2002, and Freer was served with the complaint in November of that year. One year later, on November 4, 2003, DeWitt met with respondent in his office for the purpose of preparing responses to the doctor's discovery requests.

In an attempt to ascertain the status of her case, DeWitt wrote to respondent on at least eight occasions between November 2001 and February 2004. Respondent answered his client's letters on only two occasions in 2002.

DeWitt sometimes followed up her letters with telephone calls to respondent. When she spoke to him, respondent "would make excuses why nothing was happening on the case." However, when DeWitt sent her final letter, which was dated February 27, 2004, the letter was returned. DeWitt called respondent's office, but his telephone had been disconnected. When she contacted the building manager, DeWitt was told that respondent had vacated the building. It was at this point that DeWitt called the Law Division and learned that, on December 12, 2003, her case had been dismissed without prejudice.[1]

After the OAE commenced its investigation of DeWitt's grievance, respondent failed to reply to three requests for information about the grievance. In addition, respondent failed to return the investigator's "repeated telephone calls" and make his client's file available for the investigator's inspection.

Service of process was properly made when the DEC mailed the amended complaint to respondent's business address on October 12, 2004. Inasmuch as respondent failed to file a verified answer to the complaint, the allegations are deemed admitted. R. 1:20-4(f). Moreover, the allegations set forth in

[1] This was the second dismissal, although the defendant had filed three motions to dismiss for DeWitt's failure to provide discovery.

the complaint support a finding that respondent engaged in unethical conduct.

Respondent violated RPC 1.1(a) and RPC 1.3. First, his actions or inactions caused DeWitt's complaint against Freer to be dismissed at least two times. Second, after the complaint was dismissed the second time, respondent failed to take any action to reinstate the case. Third, respondent's conduct deprived his client of the opportunity to have the complaint reinstated either through other counsel or on her own.

Moreover, respondent's failure to (1) inform DeWitt that her case had been dismissed, (2) reply to the client's inquiries about the status of her case, and (3) notify DeWitt that the location of his practice and, therefore, the location of her file had changed constituted violations of RPC 1.4(a) and RPC 1.4(b). In other words, by engaging in this misconduct, respondent failed to (1) keep DeWitt reasonably informed about the status of the matter and promptly comply with reasonable requests for information and (2) explain the matter to the extent reasonably necessary to permit DeWitt to make informed decisions regarding the representation.

In addition, respondent's failure to (1) reply to the DEC investigator's three written requests for information about the grievance, (2) return the investigator's repeated telephone

calls, and (3) make the DeWitt file available for the investigator's inspection constituted a violation of RPC 8.1(b).

Furthermore, although the complaint did not charge respondent with having violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), the allegations gave him sufficient notice of the allegedly improper conduct and the potential for finding a violation of the rule. The facts set forth in the complaint establish that respondent had led DeWitt to believe that Dr. Freer had been served, which was not true. Moreover, respondent never served Dr. Freer with the summons and complaint, and he never informed DeWitt that the case had been dismissed. We find, therefore, that respondent violated RPC 8.4(c).

Finally, although DeWitt stated that she was unable to locate respondent at his business address and, in fact, she was told that he had vacated the building, the record demonstrates that respondent likely remained in his office throughout the representation and even during the time that DeWitt was told that he had vacated the premises. Significantly, respondent and the DEC communicated with each other via the 89 Headquarters Plaza North business address, which is where DeWitt first communicated with respondent and from where he communicated with her. Indeed, the complaint in this matter was served upon

respondent at that address. However, while DeWitt's letters to respondent were addressed to the correct floor and the correct suite, she wrote to respondent at 90 Headquarters Plaza North rather than 89 Headquarters Plaza North. Therefore, we cannot find that respondent was totally inaccessible and had abandoned his client.

There remains the determination of the quantum of discipline to be imposed for these ethics violations. The Supreme Court "has consistently held that intentionally misrepresenting the status of lawsuits warrants public reprimand." In re Kasdan, 115 N. J. 472, 488 (1989). This is typically the discipline imposed even where, in addition to the misrepresentation, the attorney also has engaged in gross neglect and lack of diligence and has failed to communicate with the client -- so long as the attorney has not defaulted and has no ethics history. See, e.g., In re Wiewiorka, 179 N. J. 225 (2004) (attorney reprimanded for gross neglect, lack of diligence, failure to communicate with the client, and conduct involving dishonesty, fraud, deceit or misrepresentation in one client matter where he was hired to investigate a personal injury claim for the purpose of a possible lawsuit but failed to return phone calls and told the client that he had filed suit when he had not, and the statute of limitations had expired); In

re Porwich, 159 N. J. 511 (1999) (reprimand imposed upon attorney who admitted to gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with ethics authorities in two client matters but the Disciplinary Review Board also found that attorney engaged in conduct involving dishonesty, fraud, deceit or misrepresentation based on attorney's representation to client that he had filed suit when he had not).

However, if the attorney has defaulted and has an ethics history, a suspension is usually imposed. See, e.g., In re Schlem, 175 N. J. 437 (2003) (three-month suspension imposed on defaulting attorney for gross neglect, lack of diligence, failure to communicate, and misrepresentation where he failed to inform his client that the client's appeal had been dismissed because of the attorney's failure to file a brief; ethics history included two reprimands, one of which was in a default matter); In re Paskey, 174 N. J. 562 (2002) (in second default, three-month suspension imposed on attorney for gross neglect, pattern of neglect, lack of diligence, failure to communicate in two client matters, misrepresentation of the status of the case to his client in one matter, and failure to cooperate with ethics authorities in the other matter; ethics history included a 1998 admonition and a 2002 three-month suspension for gross

neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities, as well as a temporary suspension in 2002). In this case, however, respondent has no ethics history.

We are mindful that suspensions also have been imposed on attorneys who default but have no ethics history. However, unlike here, in those cases, the misconduct typically involved more than one client matter or included violations that were different from or more serious than those with which respondent was charged. See, e.g., In re Ross, 166 N. J. 7 (2001) (attorney grossly neglected two client matters, failed to communicate with the clients, and failed to cooperate with disciplinary authorities); In re De La Carrera, 181 N. J. 296 (2004) (in two real estate matters, attorney disbursed funds prior to receiving wire transfers, invaded other client trust funds, overdrew the account, failed to disclose secondary financing, failed to obtain the mortgage company's prior written consent, certified that the information contained in the closing documents was correct, and engaged in recordkeeping violations); In re Schiavo, 165 N. J. 533 (2000) (attorney failed to promptly deliver funds to a third party and failed to comply with a court order for the disbursement of funds in one matter; in a second matter, failed to communicate with the client; failed to act

with reasonable diligence, failed to communicate with the client, failed to refund unearned fee, and misrepresented the status of the matter in a third case; and in a fourth case, failed to act with reasonable diligence and to communicate with the client); In re Uzodike, 165 N. J. 478 (2000) (in two client matters, attorney allowed the case to be dismissed; in one, more than two years passed before he told the client; in the other, attorney never filed a motion to reinstate despite his promise to do so; attorney also failed to cooperate with ethics authorities); In re Bartolett, 176 N. J. 511 (2003) (in addition to gross neglect, lack of diligence, failure to communicate with the client, attorney engaged in conflict of interest, failed to turn over the client's files, failed to cooperate with ethics authorities, committed a criminal act that reflected adversely on his honesty, trustworthiness or fitness as a lawyer, and engaged in conduct that was prejudicial to the administration of justice); In re Hall, 169 N. J. 347 (2001) (among other things, subsequent to temporary suspension, attorney failed to file R. 1:20-20 affidavit of compliance and was found in contempt for accusing her adversaries of being liars, maligning the court, refusing to abide by the court's instructions, intimating that there was a conspiracy between the court and defense counsel, and making baseless charges of racism against the court); In re

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VOTING RECORD

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Disposition: Censure

Members	Three-month Suspension	Censure	Admonition	Disqualified	Did not participate
Maudsley		X			
O'Shaughnessy		X			
Boylan		X			
Holmes		X			
Lolla					X
Pashman		X			
Schwartz		X			
Stanton		X			
Wissinger	X				
Total:	1	7			1

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