

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-369

IN THE MATTER OF
DAVID WITHERSPOON
AN ATTORNEY AT LAW

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Decided: March 13, 2003

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

Pursuant to R. 1:20-4(f), the District VA Ethics Committee (“DEC”) certified the record in this matter directly to us for the imposition of discipline, following respondent’s failure to file an answer to the formal ethics complaint.

The two-count complaint alleged that respondent lacked diligence in his handling of a real estate tax appeal.

On August 27, 2002 the DEC sent a copy of the complaint to respondent’s last known office address at 60 Park Place, Suite 1306, Newark, New Jersey, 07102, by certified and regular mail. Neither mail was returned. On September 30, 2002 the DEC sent a second letter to the same address, by certified and regular mail, notifying respondent that, unless he filed

an answer within five days of the date of the letter, the matter would proceed directly to us for the imposition of discipline. Neither the certified nor the regular mail was returned. Respondent has not answered the complaint.¹

Respondent was admitted to the New Jersey bar in 1994. On March 18, 2002 he received an admonition for numerous recordkeeping violations, failure to maintain a bona fide office and the use of a misleading maildrop address on his letterhead.

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On or about March 1, 2001 respondent sent an undated solicitation letter to Edward J. Chrystal regarding a potential appeal of Chrystal's real estate tax assessment. Respondent also enclosed a retainer agreement form, which Chrystal signed and returned on March 1, 2001, with a \$35 filing fee. Thereafter, during a telephone conversation with respondent, respondent told him that he would locate the file and call him back. Despite ten to fifteen further calls to respondent, Chrystal heard nothing more about the matter.

On or about March 28, 2001 respondent filed a petition of appeal, which was later withdrawn, as evidenced by a July 13, 2001 Memorandum of Judgement from the Union County Board of Taxation. Respondent did not notify his client that he had filed the petition or the Judgement. Thereafter, respondent took no further action in the matter.

¹On November 15, 2002 respondent sent an answer to the OAE. Because the matter had already been certified to us, the OAE returned the answer to respondent and advised him that he had to file a motion to vacate the default. Respondent did not do so.

Between February 4, 2002 and May 9, 2002 the OAE wrote two letters to respondent and called him twice about the ethics grievance. Respondent failed to comply with the OAE' requests for information about the case.

The complaint alleges that respondent violated RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client) and RPC 8.1(b) (failure to cooperate with ethics authorities).

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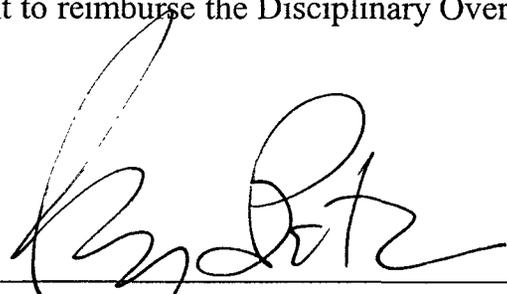
Service of process was properly made. Following a review of the record, we found that the facts recited in the complaint support the charges of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R.1:20-4(f).

After respondent filed a tax appeal for Chrystal, it was withdrawn, presumably by respondent. Because the record does not reveal if the appeal was dismissed or voluntarily withdrawn, we are unable to find that respondent exhibited lack of diligence in the handling of the appeal. Therefore, we dismissed the allegation of a violation of RPC 1.3. However, respondent failed to communicate the status of the case to Chrystal and failed to cooperate with ethics authorities in the investigation of the grievance. Respondent, thus, violated RPC 1.4(a) and RPC 8.1(b).

Ordinarily, an admonition would constitute sufficient discipline for similar

misconduct. See In the Matter of Richard J. Carroll, Docket No. DRB 95-017 (June 26, 1995) (admonition for failure to communicate with the client, failure to turn over the client's file to new counsel for an extended period of time after his services were terminated and failure to cooperate with ethics authorities during the investigation of this matter); and In the Matter of John J. Dudas, Jr., Docket No. DRB 95-383 (November 29, 1995) (admonition for failure to communicate, failure to turn over file and failure to cooperate with ethics authorities). However, because this matter arose as a default, suggesting a disregard for the ethics system on the part of respondent, and because respondent had a prior admonition, we unanimously determined to impose a reprimand for respondent's misconduct. One member did not participate.

We also determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.



ROCKY L. PETERSON
Chair
Disciplinary Review Board

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

In the Matter of David J. Witherspoon
Docket No. DRB 02-369

Decided: March 13, 2003

Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>			X				
<i>Maudsley</i>			X				
<i>Boylan</i>			X				
<i>Brody</i>			X				
<i>Lolla</i>			X				
<i>O'Shaughnessy</i>			X				
<i>Pashman</i>			X				
<i>Schwartz</i>							X
<i>Wissinger</i>			X				
Total:			8				1

Robyn M. Hill 3/18/03
Robyn M. Hill
Chief Counsel