

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 00-308 and DRB 00-375

IN THE MATTER OF

SCOTT E. WALTERSCHIED

AN ATTORNEY AT LAW

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

Decided: December 4, 2001

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

Pursuant to *R.* 1:20-4(f), the District X Ethics Committee ("DEC") certified the record in these matters directly to us for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaints.

In DRB 00-308, the DEC sent a complaint on April 19, 2000 by regular and certified mail to respondent's last known address: 64 Jesse Court, Montville, New Jersey 07045. The signature on the May 22, 2000 certified mail return receipt was illegible. The complaint sent by regular mail was not returned. On July 8, 2000 the DEC sent a second 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. Neither the regular mail nor the certified mail return receipt was returned. After reviewing another disciplinary matter in October 2000 at which respondent appeared for oral argument, we gave him the opportunity to file a motion to vacate the default. Respondent failed to file the motion or to answer the complaint.

In DRB 00-375, the DEC sent a complaint by regular and certified mail on August 10, 2000 to the Montville address. The certified mail envelope was returned, marked "unclaimed." The complaint sent by regular mail was not returned. On October 22, 2000 the DEC sent a second 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 receipt was returned, signed by respondent. The regular mail was not returned.

Respondent did not file an answer to either of the two complaints. The records were 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 1992. On November 6, 2000 he consented to being temporarily suspended until the final disposition of numerous ethics grievances pending against him. On July 10, 2001 we determined to impose a one-year suspension on respondent for violations of *RPC* 8.1(b) (failure to cooperate) and *RPC* 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) in two matters, as well as violations of *RPC* 1.1(a) (gross neglect), *RPC* 1.3 (lack of diligence), and *RPC* 1.4(a) (failure to communicate in one of the matters and *RPC* 7.1(a) (false or misleading communications about the lawyer or his services) in the second matter. As of the date of this decision, that matter was pending with the Court.

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DRB 00-308 –*The Puccetti Matter (District Docket No. X-99-086E)*

In or about 1995 the grievant, Peter F. Puccetti, retained respondent to file a disability claim against the United States government. Respondent did not provide a written retainer agreement. At their initial (and only) meeting, Puccetti gave respondent all of his original documents, including letters, medical reports and military documents, to support his claim. Puccetti did not retain copies of the documents. After this meeting, Puccetti tried on

numerous occasions to contact respondent by telephone. He concluded that, because respondent's telephone had been disconnected, respondent had moved his office. At one point, Puccetti was able to reach respondent at an address in Parsippany. Although Puccetti asked respondent to return his file, respondent failed to do so.

The complaint charged that respondent violated *RPC* 1.3 and *RPC* 1.4(a)

DRB 00-375 –*The Scotese Matter (District Docket No. X-00-096E)*

The grievant, Steven Scotese, retained respondent in early 1999 to represent him in a violation of probation matter. Scotese paid respondent about \$2,500 to file an application for termination of probation. Respondent failed to file the application, to appear in court or to return Scotese's telephone calls. Although respondent told Scotese that he had filed the application for termination of probation, he had not. Further, after respondent met with the DEC investigator and represented that he would supply copies of Scotese's file and his billing records, respondent failed to provide any of the requested documents. Respondent also failed to reply to the DEC investigator's numerous requests for information.

The complaint charged that respondent violated *RPC* 1.3, *RPC* 1.4(a) and *RPC* 8.1(b).

* * *

Service of process was properly made in both of these matters. Following a review of the record in DRB 00-308 and DRB 00-375, we find that the facts recited support findings of unethical conduct. Because of respondent's failure to file answers, the allegations of the complaints are deemed admitted. *R. 1:20-4(f)(1)*.

The complaints contain sufficient facts to support findings of misconduct. In DRB 00-308, respondent never contacted Puccetti after their initial meeting, despite Puccetti's numerous attempts to reach respondent and regain possession of his file. Respondent's failure to take any action to advance Puccetti's disability claim or to return his telephone calls violated *RPC 1.3* and *RPC 1.4(a)*, as charged in the complaint. Moreover, respondent's failure to reduce the fee agreement to writing, to return Puccetti's file and to answer the complaint violated *RPC 1.5(b)* (failure to reduce fee agreement to writing), *RPC 1.16(d)* (failure to return client file) and *RPC 8.1(b)* (failure to cooperate), respectively. Although the complaint did not specifically charge these *RPC* violations, the facts alleged therein provide a sufficient basis for these findings. *In re Logan*, 70 N.J. 222, 232 (1976).

In DRB 00-375, respondent's failure to file an application for termination of probation on Scotese's behalf violated *RPC 1.3*. By failing to communicate with his client or to reply to the investigator's requests for information, he violated both *RPC 1.4(a)* and *RPC 8.1(b)*. Moreover, respondent represented to Scotese that the application had been filed with the court. This misrepresentation violated *RPC 8.4(c)* (conduct involving dishonesty,

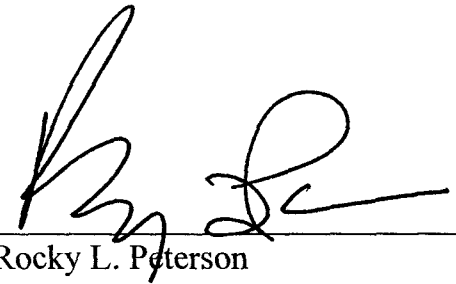
fraud, deceit or misrepresentation). Although the complaint did not specifically cite this *RPC*, the facts recited therein gave respondent sufficient notice of a potential finding of that rule. *In re Logan, supra*, 70 *N.J.* 222, 232 (1976).

In sum, in two matters, respondent displayed a lack of diligence, failed to communicate with a client and failed to cooperate with disciplinary authorities; in one of the matters, he also failed to reduce a fee agreement to writing and failed to return a client's file; in the second matter, he also engaged in conduct involving misrepresentation. Similar violations have been met with suspensions ranging from three to six months. *See, e.g., In re Robinson*, 164 *N.J.* 597 (2000) (six-month suspension where attorney failed to take any action, resulting in the dismissal with prejudice of the client's lawsuit, failed to communicate with the client and failed to cooperate with ethics authorities; matter proceeded as a default and attorney had received a prior three-month suspension, also by way of default); *In re Dudas*, 162 *N.J.* 101 (1999) (six-month suspension where attorney failed to timely file a claim on behalf of his client, misled his client regarding this failure, failed to turn over client's file to new counsel, and refused to cooperate with a DEC investigation; attorney had been previously suspended twice); *In re Banas*, 157 *N.J.* 18 (1999) (three-month suspension where attorney, after taking retainers, did not provide a written fee agreement, take any action on his clients' behalf, return clients' phone calls or cooperate with the ethics investigator).

Here, respondent has displayed little regard for his clients or the disciplinary system. Although given a second chance to answer the ethics complaint in DRB 00-308, respondent declined to do so. In light of the default nature of both of these matters, as well as his previous encounter with the disciplinary system, we voted to suspend respondent. In Docket No. DRB 00-308, we unanimously voted to impose a three-month suspension, to run consecutive to respondent's one-year suspension. Two members did not participate. In Docket No. DRB 00-375, we unanimously voted to impose an additional three-month suspension, to commence upon the expiration of respondent's three-month suspension in Docket No. DRB 00-308.

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

By:



Rocky L. Peterson
Chair
Disciplinary Review Board

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

In the Matter of Scott E. Walterschied
Docket No. DRB 00-308

Decided: December 4, 2001

Disposition: Three-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-month 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:		7					2

Robyn M. Hill 12/10/01
Robyn M. Hill
Chief Counsel

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

In the Matter of Scott E. Walterschied
Docket No. DRB 00-375

Decided: December 4, 2001

Disposition: Three-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-month Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Hymerling</i>		X					
<i>Peterson</i>		X					
<i>Boylan</i>		X					
<i>Brody</i>		X					
<i>Lolla</i>		X					
<i>Maudsley</i>		X					
<i>O'Shaughnessy</i>		X					
<i>Schwartz</i>		X					
<i>Wissinger</i>		X					
Total:		9					

Robyn M. Hill 12/10/01
Robyn M. Hill
Chief Counsel