

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-336

IN THE MATTER OF :
JOHN H.C. WEST, III :
AN ATTORNEY AT LAW :

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

Decided: May 10, 2000

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

Pursuant to R. 1:20-4(f)(1), the District VIII 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.

On June 10, 1999 the DEC forwarded a copy of the formal ethics complaint to respondent at two addresses: 6601 Ventnor Avenue, Suite 101, Ventnor, New Jersey, and

17 South Sacramento Avenue, Ventnor, New Jersey, both by regular and certified mail. The certified mail sent to 6601 Ventnor Avenue was returned, indicating a new address of 17 South Sacramento Avenue. The certified mail sent to respondent at 17 South Sacramento Avenue was returned marked "unclaimed." Neither of the complaints sent by regular mail were returned.

Respondent was admitted to the New Jersey bar in 1989. He has a significant ethics history. On October 6, 1997 he was temporarily suspended for failure to comply with a fee arbitration award in the amount of \$2,100. In re West, 151 N.J. 460 (1997). Respondent has not satisfied the fee arbitration award and remains suspended to date. On February 15, 1996 respondent was admonished for violating RPC 1.1(a) and (b), RPC 1.3 and RPC 1.4(a). In the Matter of John H. C. West, Docket No. DRB 95-441 (February 15, 1996). On October 22, 1998 respondent was suspended for three months for violations of RPC 1.1(a) and (b), RPC 1.3 and RPC 1.4(a). In re West, 156 N.J. 391 (1998). Also on October 22, 1998, in a default proceeding, the Court suspended respondent for six months for violations of RPC 1.1(a) and (b), RPC 1.3, RPC 1.4(a), RPC 1.16(d) and RPC 8.1(b) in three client matters. In re West, 156 N.J. 451 (1998).

The complaint alleges that in or about 1995 respondent was retained by Dennis James Raso to appeal a decision of the parole board on his behalf. Raso paid respondent a retainer of \$13,000 in a series of three installments. Respondent never filed an appeal of the parole board's determination. Respondent avoided all communication with Raso.

At some point thereafter, Raso retained Richard Haines to represent him in a civil

litigation matter. On June 3, 1996 Haines informed respondent, in writing, that respondent was discharged from Raso's representation. In that letter, Haines requested that respondent forward to his office Raso's file along with an itemized bill. Respondent never surrendered the file, provided an itemized bill or returned any of the unearned fees.

The complaint charges respondent with violations of RPC 1.1(a)¹ (gross neglect), RPC 1.3 (failure to act with reasonable diligence), RPC 1.4(a)² (failure to keep client reasonably informed) and RPC 8.1(b) (failure to cooperate with disciplinary authorities). The complaint also charges respondent with a violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) for his acceptance of a \$13,000 retainer in consideration for services that he never performed.

* * *

Service of process was properly made in this matter. Following a review of the complaint, we find that the facts recited therein support a finding 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)(1).

The record supports findings that respondent violated RPC 1.1(a), RPC 1.3, RPC

¹ The complaint merely states that respondent's conduct "constitutes gross negligence." An RPC 1.1(a) violation may be inferred from that language.

² The complaint charges a violation of RPC 1.4 generally. The language of the complaint makes clear that the complaint intended a charge of RPC 1.4(a).

1.4(a) and RPC 1.16(d). Respondent accepted \$13,000 from Raso and, over a period of at least one year, failed to file an appeal on Raso's behalf. After respondent's representation was terminated, in June 1996, he failed to forward Raso's file or an itemized bill to Raso's new attorney, as requested. Respondent further failed to return any unearned legal fees paid by Raso and never replied to correspondence from either Raso or Haines. Lastly, respondent failed to cooperate with the disciplinary authorities by ignoring their requests for information about the grievance.

However, we determined to dismiss the charge that respondent's conduct violated RPC 8.4(c). The complaint does not allege that, at the time respondent accepted the retainer fee, he did not intend to file an appeal on Raso's behalf. Respondent's refusal to return the unearned fee is more appropriately addressed by a finding that he violated RPC 1.16(d).

Ordinarily, where an attorney has prior discipline, similar misconduct will result in a short-term suspension. See In re Ortopan, 143 N.J. 586 (1996) (three-month suspension where attorney violated RPC 1.1(a), RPC 1.4(a), RPC 1.16(d) and RPC 8.1(b); attorney had previously been reprimanded); In re Smith, 151 N.J. 483 (1997) (six-month suspension where attorney violated RPC 1.1(a) in two matters, RPC 1.4(a), RPC 1.16(d), RPC 1.15(a) and RPC 8.1(b) in three matters; the attorney had a prior reprimand).

Each of respondent's three prior disciplines has been the result of the same conduct at issue here: his acceptance of retainers and subsequent failure to perform any work for the clients. Because of respondent's repetitive conduct and the default nature of this matter, the

level of discipline must be substantially increased. Accordingly, we unanimously determined to impose a one-year suspension. Prior to reinstatement, respondent must demonstrate proof of fitness to practice law. In addition, upon his reinstatement, respondent is to practice law under the supervision of a proctor for a period of two years.

We further direct that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 5/2/00

By. 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John H. C. West, III
Docket No. DRB 99-336

Decided: May 10, 2000

Disposition: One-year suspension

Members	Disbar	One-Year Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Cole		x					
Brody		x					
Boylan		x					
Lolla		x					
Maudsley		x					
Peterson		x					
Schwartz		x					
Wissinger		x					
Total		9					

By Robert Frank 10/5/00
Robyn M. Hill
Chief Counsel