

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-129

IN THE MATTER OF :
:
KENNETH VAN RYE :
:
AN ATTORNEY AT LAW :
:

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

Decided: January 22, 2001

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 VI 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 November 18, 1999 a copy of the complaint was sent by certified and regular mail to respondent's last known address listed in the New Jersey Lawyer's Diary. The certified mail receipt was returned with an illegible signature, indicating delivery on November 19,

1999. The regular mail was not returned. When respondent failed to answer the complaint, the DEC forwarded him a second letter on December 14, 1999, seeking a reply within five days. The letter notified respondent that, if he did not reply, the matter would be certified to the Board for the imposition of sanctions. The letter also amended the complaint to include the charge of a violation of RPC 8.1(b) (failure to respond to a lawful demand for information by a disciplinary authority). The certification is silent as to the manner of service used for the second letter or whether there was proof of its receipt. Respondent did not file an answer to the formal ethics complaint.

Respondent was admitted to the New Jersey bar in 1979. On July 17, 1991 he received a three-month suspension for failure to maintain his attorney books and records in accordance with generally accepted accounting principles, failure to submit a written formal accounting to a client regarding receipts and disbursements, failure to properly designate an account as an "attorney trust account" and withdrawal of fees from a client account without first depositing them into his business account, in violation of RPC 1.15(b) and RPC 1.15(d). He also improperly witnessed a false signature on a document and affixed his jurat thereon, in violation of RPC 8.4(c). In re Van Rye, 124 N.J. 664 (1991).

By Supreme Court order dated June 11, 1992, respondent was suspended from the practice of law for an additional period of two years for entering into a business deal with a client without advising him to obtain independent counsel, executing a jurat on a document outside the presence of the signer, improperly altering a deed, signing closing documents

without a power-of-attorney and disbursing mortgage proceeds without obtaining the requisite authorization. In re Van Rye, 128 N.J. 108 (1992). Respondent was restored to the practice of law on January 11, 1994.

The three-count complaint charged respondent with violations of RPC 1.3 (failure to act with reasonable diligence and promptness when representing a client) (count one), RPC 1.4 (failure to keep client reasonably informed about the status of a matter and promptly comply with reasonable requests for information) (count two) and RPC 8.1(b) (failure to comply with lawful requests from a disciplinary authority) (count three).

The complaint alleges that, in February 1998, respondent was retained by Joanne Parks and Erin Moran-Beppler to represent them in a real estate transaction. Count one of the complaint alleges that respondent failed to act with reasonable diligence and promptness in representing Parks and Moran-Beppler, in violation of RPC 1.3. Although the complaint is silent as to how respondent displayed a lack of diligence, the investigative report states that he failed to record unit deeds and power-of-attorney forms, as a result of which the real estate sale was never finalized.

Count two of the complaint charges respondent with failure to keep Parks and Moran-Beppler reasonably informed about the status of their real estate transaction and to comply with their reasonable requests for information, in violation of RPC 1.4 (presumably 1.4(a)). According to the investigative report, respondent did not reply to his clients' numerous telephone inquiries about the transaction and the recording of the unit deeds.

Count three of the complaint charges that respondent with failure to schedule an appointment with the DEC investigator to discuss the grievance, despite the investigator's repeated requests, which would constitute a failure to cooperate in violation of RPC 8.1(b).

* * *

Service of process was properly made in this matter. Following a review of the complaint, we found 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).

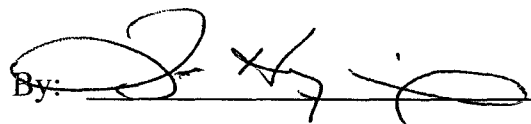
Respondent failed to act with diligence in the representation of his clients and to properly communicate with them, in violation of RPC 1.3 and RPC 1.4(a), respectively. He also failed to cooperate with the disciplinary authorities, in violation of RPC 8.1(b).

Ordinarily, conduct of this type merits an admonition. See, e.g., In the Matter of William C. Hermann, Docket No. DRB 96-460 (June 25, 1997) (admonition where the attorney failed to act with diligence and to communicate with his client regarding the status of a subdivision application and subsequent litigation, in violation of RPC 1.3 and RPC 1.4(a)); In the Matter of Ronald Thompson, Docket No. DRB 97-507 (April 27, 1998) (admonition where the attorney failed to act with diligence and to communicate with his clients in a workers' compensation matter, in violation of RPC 1.3 and RPC 1.4(a)).

Because, however, of the default nature of these proceedings and because of this respondent's serious ethics history (a three-month suspension in 1991 and a two-year suspension in 1992), an eight-member majority determined to increase the level of discipline to a three-month suspension. See In re Pollan, 163 N.J. 87 (2000) (three-month suspension in default matter, where attorney failed to represent his client diligently and to cooperate with an ethics authority, in violation of RPC 1.3 and RPC 8.1(b); the attorney had an extensive ethics history, with multiple suspensions). One member dissented, believing that the complaint contained insufficient facts to support the charged violations. That member would remand the matter to the DEC for the filing of an amended complaint or for the incorporation of the investigative report into the existing complaint.

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

Dated: 1/22/01

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Kenneth Van Rye
Docket No. DRB 00-129**

Decided: January 22, 2001

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Remand	Dismiss	Disqualified	Did not Participate
Hyerling		X					
Peterson		X					
Boylan		X					
Brody		X					
Lolla		X					
Maudsley				X			
O'Shaughnessy		X					
Schwartz		X					
Wissinger		X					
Total:		8		1			

Robyn M. Hill 2/15/01
Robyn M. Hill
Chief Counsel