

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-122

IN THE MATTER OF :
ROBERT C. SPIESS :
AN ATTORNEY AT LAW :

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

Decided: August 24, 1999

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 this matter directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint. On December 14, 1998, the DEC sent a copy of the complaint to respondent's address by regular and certified mail. The signature of the agent accepting delivery was illegible. The regular mail was not returned. Respondent did not file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1970. He maintains a law office in Pompton Plains, Morris County, New Jersey. Respondent has no previous discipline.

The complaint stated that, in June 1997, Trevor Jones retained respondent to represent him in litigation already pending in New Jersey. The plaintiff in the litigation was Dendrite International, Inc. ("Dendrite"). The court scheduled a mandatory arbitration hearing for August 27, 1997. Although retained to represent Jones, respondent failed to attend or adjourn the arbitration hearing. On August 29, 1997, the court entered a default against Jones for his failure to appear at the hearing. Also, as a result of his failure to pay the required annual payment to the New Jersey Lawyer's Fund for Client Protection, respondent was ineligible to practice law in the state of New Jersey from September 15, 1997 through June 29, 1998.

Dendrite filed a motion to strike Jones' pleadings and to enter a default judgment against him. On September 11, October 7 and October 10, 1997, Jones requested that respondent inform him about the status of the suit. Although it is not clear from the record, it appears that Jones had previously requested that respondent make a motion to vacate the default judgement and to compel discovery, which request respondent had ignored. Jones also informed respondent that the court had advised him that he was still listed as pro se in the litigation.

On October 10, 1997, the court dismissed Jones' pleadings, entered judgment of default in Dendrite's favor and scheduled a proof hearing. On or about October 27, 1997, Jones forwarded another letter to respondent, repeating his instructions. According to Jones, respondent assured him that he would file a motion to vacate the judgment of default by

October 24, 1997.

In November 1997, respondent filed a motion to vacate the default and to compel discovery. The motion was granted, but Jones was required to pay Dendrite's attorney's fees. Jones sent respondent a check for \$250, with instructions to forward the check to Dendrite's counsel, along with the discovery demands. According to Jones, respondent assured him that he had sent the check to Dendrite's counsel. Jones, however, maintains that Dendrite's counsel never received the check, which has never been cashed.

In January 1998, Dendrite filed another motion to strike Jones' pleadings with prejudice and to enter a default judgment in Dendrite's favor. Jones sent a letter to respondent directing him to reply to Dendrite's motion. When respondent did not comply with Jones' instruction, on March 6, 1998 the court entered an order granting Dendrite's motion.

By letters dated March 16 and April 16, 1998, Jones requested that respondent remedy the situation by performing the work for which he had been retained. On May 14, 1998, Jones received a copy of an order of judgement against him for \$21,062.53 on an unopposed application made by Dendrite, together with costs of suit. The order also dismissed Jones' counterclaim with prejudice. Jones then moved pro se to vacate the default and judgment. His motion was granted on July 1, 1998. The court also ordered that, under certain conditions, Jones pay Dendrite's counsel fees from June 26, 1998 to the conclusion of the litigation.

On August 4, 1998, the DEC wrote to respondent requesting the file and a full disclosure of the facts surrounding the litigation. Respondent received this letter on August 5, 1998. When the investigator did not receive a response, he again wrote letters to respondent on August 24 and September 2, 1998. Each letter was sent by certified mail and was signed as received, although it is not known by whom. Respondent acknowledged that he received them, however.

Respondent did not provide the investigator with a statement or disclosure of facts. During a conversation with the investigator on September 2, 1998, respondent advised the investigator that he had received the certified letters and acknowledged that he had been remiss in providing a response. As of the date of the complaint, respondent had not given any information to the investigator.

The complaint charged respondent with violations of RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and (b) (failure to explain matters to permit client to make an informed decision), RPC 3.2 (failure to expedite litigation), RPC 5.5(a) (unauthorized practice of law) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

* * *

Service of process was properly made in this matter. Following a review of the

record, the Board found that the facts recited 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 Board found that respondent violated RPC 1.4(a) and (b). Respondent's failure to reply to Jones' inquiry about the status of the litigation constituted a failure to communicate and a failure to explain matters to permit the client to make an informed decision. The Board also found that respondent violated RPC 1.3 and RPC 3.2. By not replying to Dendrite's motions, allowing judgement to be entered against Jones on two occasions and failing to timely move to vacate the default judgment, respondent clearly demonstrated a lack of diligence and a failure to expedite litigation.

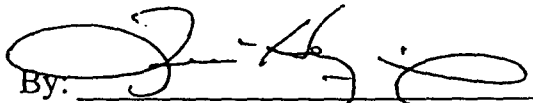
Furthermore, although the complaint is silent about a charge of gross neglect, the Board determined that respondent violated RPC 1.1(a). When a complaint fails to charge a specific ethics violation, but the facts in the record are sufficient to put respondent on notice of that violation, the allegations may be deemed amended to conform to the proofs. In re Logan, 70 N.J. 223, 232 (1976). Here, the Board deemed the allegations of the complaint amended to include the charge of a violation of RPC 1.1(a) (gross neglect).

In addition, respondent's representation in Jones at a time when he was ineligible to practice law for failure to pay the annual assessment to the New Jersey Fund for Client Protection violated RPC 5.5(a). Lastly, respondent's lack of cooperation with the DEC violated RPC 8.1(b). In mitigation, respondent has no prior disciplinary history.

Ordinarily, a reprimand would be sufficient discipline for respondent's ethics infractions. See, e.g., In re Namias, 157 N.J. 15 (1999) (reprimand for lack of diligence, failure to communicate and unauthorized practice of law). Because, however, of the default nature of these proceedings, the Board unanimously determined that respondent's violations warrant a three-month suspension.

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

Dated: 8/24/99

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

*DISCIPLINARY REVIEW BOARD
VOTING RECORD*

**In the Matter of Robert C. Spiess
Docket No. DRB 99-122**

Decided: August 24, 1999

Disposition: Three-Month Suspension

Members	Disbar	Three-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling		x					
Cole		x					
Boylan		x					
Brody		x					
Lolla		x					
Maudsley		x					
Peterson		x					
Schwartz		x					
Wissinger		x					
Total:		9					

By *Robyn M. Hill* 9/21/99
Robyn M. Hill
Chief Counsel