

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-313

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

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

Decided: July 29, 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 X 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 July 17, 2000, the DEC forwarded a copy of the complaint to respondent’s office address, in a certified and regular mail. The certified mail receipt was returned, signed by R. Spiess. The regular mail was not returned.

On August 16, 2000, the DEC forwarded a second copy of the complaint to respondent’s office address, advising him that, unless he filed an answer within five days, the allegations of the complaint would be deemed admitted, pursuant to R. 1:20-4(f). The

certified mail receipt was returned, signed by R. Spiess. The regular mail was not returned.

Respondent did not file an answer to the complaint. The matter was certified directly to us for the imposition of discipline, pursuant to R. 1:20-4(f).

Respondent was admitted to the New Jersey bar in 1981. During the relevant time, he maintained a law office in Pompton Plains, Morris County, New Jersey.

In an earlier default matter, respondent was suspended for three months, effective January 3, 2000, for violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client), RPC 1.4(b) (failure to explain a matter to the client to the extent necessary 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). In re Spiess, 162 N.J. 121 (2000). Also in a default matter, effective March 3, 2000, respondent was suspended for three months, the suspension to be served at the expiration of the first suspension. In re Spiess, 156 N.J. 473 (2000). There, respondent violated RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client), RPC 1.15(b) (failure to promptly deliver funds to a client), RPC 5.5(a) (unauthorized practice of law) and RPC 8.1(b) (failure to cooperate with disciplinary authorities). Respondent has not applied for reinstatement.

The complaint alleged that, in or about January 1998, Anthony and Victoria Boniello retained respondent to represent them in connection with a real estate claim. Respondent failed to file suit and then misrepresented to his clients that the matter was proceeding. Later,

the Boniellos repeatedly tried to contact respondent regarding their case. Respondent failed to return their phone calls.

When respondent was first suspended, in January 2000, he did not notify the Boniellos of his suspension. In February 2000, the Boniellos retained another attorney to represent them.

When the DEC investigator's secretary telephoned respondent's office, in May 2000, the message on respondent's answering machine indicated that the caller had reached respondent's law offices. According to the complaint, this message suggested that respondent was practicing law after his suspension.

The complaint also alleged that respondent failed to comply with the DEC investigator's requests for information about the grievance.

The complaint charged respondent with failure to "institute appropriate timely litigation," in violation of RPC 1.3, failure to keep his clients reasonably informed, in violation of RPC 1.4(a)¹, failure to notify his clients of his suspension, in violation of R.1:20-20(b)(10) (mistakenly cited as Regulation 45:2-2), practicing law while suspended, in violation of RPC 5.5(a) (mistakenly cited as Regulation 45:3-1), and failure to cooperate with disciplinary authorities, in violation of RPC 8.1(b).

¹The complaint does not cite a specific subsection. However, the language of the complaint indicates that a charge of RPC 1.4(a) was intended.

* * *

Service of process was properly made in this matter. Following a de novo review of the complaint, we found that the facts recited therein support a finding of unethical conduct. Because respondent failed to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f)(1).

Respondent's failure to file suit on behalf of the Boniellos constituted a violation of RPC 1.3 (lack of diligence). Moreover, respondent had not filed suit as of his January 2000 suspension, more than two years after his clients retained him. Such an extended period of inaction elevates respondent's misconduct to the level of gross neglect, in violation of RPC 1.1(a). Additionally, respondent violated RPC 8.4(c) (conduct involving misrepresentation) when he falsely assured the Boniellos that he had filed suit. Although respondent was not charged with violations of RPC 1.1(a) and RPC 8.4(c), there are sufficient facts in the complaint to give him notice of a potential finding of a violation of those rules. Therefore, we deemed the complaint amended to conform to the proofs. In re Logan, 70 N.J. 222, 232 (1976).

Respondent also violated R.1:20-20(b)(11), by failing to inform the clients of his suspension, and R.1:20-20(b)(3) and (7), by leaving a misleading outgoing message on his answering machine. However, the facts alleged in the complaint do not fully support a finding that respondent was practicing law while suspended. We, therefore, dismissed the charge of a violation of RPC 5.5(a).

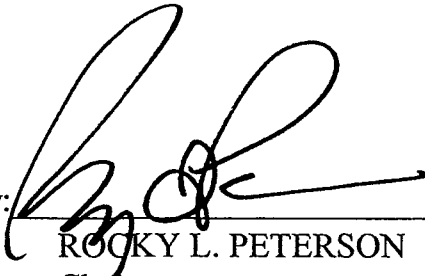
In addition, respondent violated RPC 1.4(a), by failing to reply to numerous inquiries from the Boniellos about the status of their case, and RPC 8.1(b), by failing to cooperate with the DEC investigator.

Conduct involving lack of diligence, gross neglect, misrepresentation, failure to communicate with the client, failure to comply with the rules governing suspended attorneys and failure to cooperate with disciplinary authorities ordinarily results in a suspension of either six-months or one-year. In re Marlowe, 165 N.J. 25 (2000) (default case; six-month suspension for gross neglect, failure to cooperate, misrepresentation and failure to notify clients of his suspension); In re Lester, 165 N.J. 510 (2000) (default case; one-year suspension for gross neglect, failure to communicate, failure to protect client's interests upon termination of representation, failure to cooperate and failure to notify client of suspension); In re Gordon, 165 N.J. 476 (2000) (one-year suspension for gross neglect, pattern of neglect, lack of diligence, failure to communicate, misrepresentation, failure to file an affidavit of compliance with the rule governing suspended attorneys, failure to abide by the prohibition against recommending another attorney and failure to notify clients of suspension).

Because of the default posture of this matter and respondent's prior history — two three-month suspensions in two default cases — we unanimously determined to impose a one-year suspension, to be served at the expiration of respondent's last term of suspension. Additionally, respondent is to practice law under a proctorship for a period of two years after his reinstatement. Two members did not participate.

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

Dated: 7/29/01

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

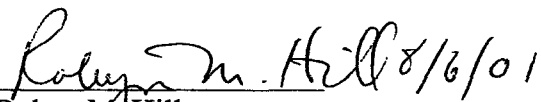
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Robert C. Spiess
Docket No. 00-313

Decided: July 29, 2001

Disposition: One-Year Suspension

Members	Disbar	One-year Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Peterson		X					
Boylan		X					
Brody		X					
Lolla		X					
Maudsley							X
O'Shaughnessy		X					
Schwartz							X
Wissinger		X					
Total:		7					2


Robyn M. Hill
Chief Counsel