

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-014

IN THE MATTER OF
AARON SMITH
AN ATTORNEY AT LAW

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

Decided: October 9, 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 IV 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 August 22, 2000, the DEC mailed a copy of the complaint by regular and certified mail to respondent's last known office address in Camden, New Jersey. The returned certified mail receipt, dated August 24, 2000, contained an illegible signature. The regular mail was not returned. Respondent did not file an answer. On November 1, 2000, the DEC

sent respondent a second letter informing him that if he did not reply within five days, the matter would be certified to us for the imposition of sanctions and the allegations of the complaint would be deemed admitted. Again, the certified mail receipt was returned with an illegible signature. The regular mail was not returned. Respondent did not file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1981. At the relevant times he maintained an office in Camden, New Jersey. Although he has not previously been disciplined, on September 9, 1998 he received a diversion of discipline, pursuant to R. 1:20-3(a)(2)(b).

The complaint charged that respondent represented William Wilson in a criminal matter. On June 25, 1999, a plea agreement was entered providing Wilson with credit for "time served." At the sentencing, Wilson was given only one day of credit, although he was supposed to have received more. Both Wilson and the court made numerous requests to respondent to address this alleged error. The complaint charged that respondent never replied to Wilson or provided the court with the requested information, in violation of RPC 1.4(a) (failure to communicate) and RPC 3.2 (failure to expedite litigation).

According to the complaint, respondent was ineligible to practice law from September 21, 1998 through November 11, 1999 for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection ("the fund"). The second count of the complaint alleged that respondent continued to practice law "notably" in continuing to

represent Wilson throughout this period, in violation of RPC 5.5 (unauthorized practice of law).

Respondent failed to reply to the DEC's numerous requests that he reply to the grievance. Count three of the complaint, thus, charged him with failure to cooperate with disciplinary authorities, in violation of RPC 8.1(b).

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Service of process was proper. Therefore, the matter may proceed as a default. Pursuant to R.1:20-4(f)(1), the allegations of the complaint are deemed admitted.

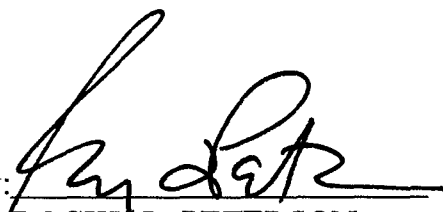
Respondent never replied to Wilson's requests for information about the case, in violation of RPC 1.4(a). Also, respondent failed to expedite litigation, in violation of RPC 3.2, by failing to address the alleged error in Wilson's sentence. Respondent's representation of Wilson while ineligible to practice law was a violation of RPC 5.5. Finally, respondent's failure to cooperate with the DEC investigation violated RPC 8.1(b).

Ordinarily, misconduct of this nature would warrant a reprimand. See In re Namias, 157 N.J. 15 (1999) (reprimand for practicing while ineligible, lack of diligence and failure to communicate) and In re Maioriello, 140 N.J. 320 (1995) (reprimand for practicing while ineligible, lack of diligence, gross neglect and failure to communicate in six matters). Based on the default nature of this matter, however, we unanimously determined to impose a three-

month suspension. See In re Van Wart, 162 N.J. 102 (1999) (three-month suspension in a default matter where attorney failed to turn over a deed to a third party and practiced law while on the ineligible list for failure to pay the fund) and In re Dudas, 156 N.J. 540 (1999) (three-month suspension in a default matter where attorney practiced law while ineligible, failed to cooperate with disciplinary authorities, displayed a lack of diligence and failed to safeguard property). One member did not participate.

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

Dated: Oct 9 2001

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Aaron Smith
Docket No. DRB 01-014**

Decided: October 9, 2001

Disposition: Three-month suspension

| Members | Disbar | Three-month suspension | Reprimand | Admonition | Dismiss | Disqualified | Did not participate |
|---------------|--------|------------------------|-----------|------------|---------|--------------|---------------------|
| Peterson | | X | | | | | |
| Maudsley | | X | | | | | |
| Boylan | | | | | | | X |
| Brody | | X | | | | | |
| Lolla | | X | | | | | |
| O'Shaughnessy | | X | | | | | |
| Pashman | | X | | | | | |
| Schwartz | | X | | | | | |
| Wissinger | | X | | | | | |
| Total: | | 8 | | | | | 1 |

Robyn M. Hill 10/28/01
Robyn M. Hill
Chief Counsel