

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 99-357 & 99-424

IN THE MATTER OF :
: :
GERARD V. ROSS :
: :
AN ATTORNEY AT LAW :
:

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

Decided: August 15, 2000

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

Pursuant to R.1:20-4(f), the District VC Ethics Committee ("DEC") certified the records directly to us for the imposition of discipline, following respondent's failure to file answers to the formal ethics complaints.

In DRB 99-357, a copy of the complaint was sent to respondent's last known office address by regular and certified mail on July 28, 1999. The certified mail receipt was returned, indicating delivery on July 29, 1999. The signature of the agent accepting delivery is illegible. The regular mail was not returned.

Upon respondent's failure to file an answer to the formal ethics complaint within the specified period, on September 16, 1999 the DEC sent respondent a second letter by certified and regular mail, notifying him that failure to file an answer within five days would

constitute an admission of all the charges and could result in his immediate temporary suspension. The certified mail receipt was returned, indicating delivery on September 18, 1999. The signature of the agent accepting delivery is illegible. The regular mail was not returned.

In DRB 99-424, a copy of the complaint was sent to respondent's last known address by regular and certified mail on October 6, 1999. The certified mail was returned as "unclaimed." The regular mail was not returned.

Upon respondent's failure to file an answer to the formal ethics complaint within the prescribed period, on November 3, 1999 the DEC sent respondent a second letter by regular and certified mail, notifying him that failure to file an answer within five days would constitute an admission of the charges and could result in his immediate temporary suspension. The certified mail receipt was returned, indicating delivery on November 4, 1999. The signature of the agent accepting delivery is illegible. The regular mail was not returned.

When respondent did not file answers to the formal ethics complaints, the records were certified directly to the Board for the imposition of discipline, pursuant to R. 1:20-4(f)(1).

Respondent was admitted to the New Jersey bar in 1988. At the relevant times, he maintained a law office in Belleville, New Jersey.

Respondent was temporarily suspended from the practice of law, effective July 14, 1999, for failure to comply with the determination of a district fee arbitration committee. In re Ross, 158 N.J. 450 (1999). He remains suspended to date.

In October 1999 we reviewed a default matter that alleged violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 7.1(a) (lawyer shall not make false or misleading statements about the lawyer's services), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.1(b) (failure to cooperate with disciplinary authorities). We unanimously voted to impose a three-month suspension. In the Matter of Gerard V. Ross, Docket No. DRB 99-271 (1999).

More recently, on April 13, 2000, after we reviewed the present matter, another default case came before us, alleging a violation of RPC 8.4(c). We unanimously determined to impose a six-month suspension in that case. In the Matter of Gerard V. Ross, Docket No. DRB 00-040 (2000).

* * *

I. DOCKET NO. DRB 99-357 (The Panzarella Matter)

According to the complaint, on March 10, 1998 respondent was retained by Michael Panzarella to file a motion and "clear [] up a matter in the special civil part." Panzarella paid respondent a \$1,000 retainer on March 14, 1998.. There was no written fee agreement.

During the period in question, respondent was a partner in the firm of Iacullo & Ross, but subsequently left that firm to work as a sole practitioner. Prior to his departure, however,

he failed to deposit the retainer checks into either the firm's business or trust account. After receiving payment, respondent failed to return any of Panzarella's phone calls, failed to work on the file and failed to notify Panzarella that he was changing his address.

On June 13, 1998 Panzarella filed for fee arbitration. Although respondent was given proper notice of the hearing, he failed to submit a reply or to appear. On December 2, 1998 the fee arbitration committee entered a determination requiring him to return the \$1,000 to Panzarella within thirty days. The ethics complaint states that, as of July 6, 1999, respondent still had not paid Panzarella.

On December 23, 1998 the Office of Attorney Ethics forwarded to the District V-C Ethics Committee the original request for arbitration and a referral from the fee arbitration committee. On March 3, 1999 the DEC investigator wrote respondent and requested a reply to the request for arbitration and the fee committee's determination. Service of this letter was properly made by both regular and certified mail. Respondent failed to reply to this and to a second letter by the DEC investigator.

The complaint charges that respondent's failure to do any work for Panzarella after accepting the retainer, to return Panzarella's phone calls and to inform Panzarella that he had changed addresses amounted to violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4 (failure to communicate). The complaint also charges that respondent's failure to pay the fee arbitration award to Panzarella within the thirty-day period and to reply to the DEC investigator's requests for information amounted to violations of R. 1:20A-3(e) and R. 1:20-3(g)(4), respectively.

II. DOCKET NO. DRB 99-424 (The Pedalino Matter)

In March 1998 Louis Pedalino retained respondent to represent him in connection with a personal injury that occurred at Bally's Park Place ("Bally's"), Atlantic City, New Jersey in April 1997. During the initial meeting, respondent told Pedalino that he had a good case and that it should settle in the \$4,000 to \$7,000 range. Pedalino does not recall signing a contingent fee agreement.

In late April 1998 Pedalino met respondent at the Meadowlands Race Track and inquired about the status of his matter. Respondent assured him that he had been in contact with Bally's and was negotiating a settlement. That was the last time Pedalino spoke with respondent.

In March 1999 Pedalino began calling respondent. Respondent, however, did not return any of these phone calls and did no work on the file. By letter dated August 10, 1999 Bally's confirmed that there had been an incident on April 14, 1997 involving Pedalino, but stated that the claims department had no further contact with anyone concerning the matter.

On May 3, 1999 Pedalino filed a grievance against respondent. On June 28, 1999 the DEC investigator wrote to respondent and requested a reply to the grievance, to no avail. The investigator wrote to respondent a second time and informed him that failure to reply to the grievance could result in his immediate temporary suspension. Respondent failed to reply to these requests for information and failed to file an answer to the formal ethics complaint.

The complaint charges that respondent's conduct in this matter constituted violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and R.1:20-3(g)(4) (failure to cooperate with the ethics authorities).

* * *

Service of process was properly made in both matters. Following a review of the complaints, we find that the facts recited therein support findings of unethical conduct. Because of respondent's failure to file answers, the allegations of the complaints are deemed admitted. R. 1:20-4(f)(1).

In the Panzarella matter, respondent's failure to do any work on the case after he accepted a retainer and to return Panzarella's phone calls amounted to violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4 (failure to communicate). Furthermore, respondent's refusal to comply with the DEC investigator's requests for information constituted a failure to cooperate with disciplinary authorities. This conduct, which was cited in the complaint under R.1:20-3(g)(4), is more properly a violation of RPC 8.1(b).

We dismissed, however, the charge that respondent violated R.1:20A - 3(e) by his failure to pay the fee arbitration award within the specified thirty-day period. That rule does not apply to ethics matters. Rather, it sets out a specific procedure for enforcement of arbitration determinations.

In the Pedalino matter, respondent's failure to do any work on the matter after his initial meeting with Pedalino constituted violations of RPC 1.1(a) and RPC 1.3. Furthermore, respondent's failure to comply with the DEC investigator's requests for information constituted a failure to cooperate with disciplinary authorities. This conduct, which was cited in the complaint under R. 1:20-3(g)(4), is more properly a violation of RPC 8.1(b).

Lastly, although this rule was not cited in the complaint, we find that respondent violated RPC 8.4(c). Respondent told Pedalino that he had been in contact with Bally's and was negotiating a settlement, when, in fact, that was untrue. Our finding does not violate respondent's due process rights, as the facts recited in the complaint gave him sufficient notice of a potential finding of a violation of RPC 8.4(c).

* * *

In summary, respondent violated RPC 1.1(a) (two counts), RPC 1.3 (two counts), RPC 1.4(a) (one count), RPC 1.15(b) RPC 8.1(b) (two counts) and RPC 8.4(c) (one count).

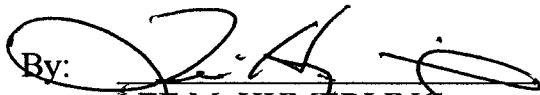
Taken separately, respondent's misconduct in Panzarella and Pedalino most likely would warrant either a reprimand, see In re Gruber, 152 N.J. 451 (1998) (reprimand for gross neglect, lack of diligence, failure to communicate with client and failure to cooperate with disciplinary authorities), or a three-month suspension. See In re Sampson, 147 N.J. 281 (1997) (three-month suspension for gross neglect, misrepresentation to a client and failure to cooperate with disciplinary authorities); In re Scalessa, 144 N.J. 166 (1996) (three-month

suspension for gross neglect, misrepresentation to a client and failure to cooperate with disciplinary authorities); In re Bernstein, 144 N.J. 369 (1996) (three-month suspension for gross neglect, lack of diligence, failure to communicate, misrepresentation and failure to cooperate with disciplinary authorities).

In light of the default nature of these matters, we unanimously determined that the appropriate discipline is a three-month suspension, to be served at the expiration of the three-month suspension imposed in the matter under Docket No. DRB 99-271. Three members did not participate.

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

Dated: 8/13/01

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Gerard V. Ross
Docket Nos. DRB 99-357 and 99-424

Decided: August 15, 2000

Disposition: Three-month suspension

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling		x					
Peterson		x					
Boylan		x					
Brody		x					
Lolla							x
Maudsley							x
Schwartz							x
Wissinger		x					
Total:		5					

by Ellen A. Brody 10/4/00
Robyn M. Hill
Chief Counsel