

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 99-271

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IN THE MATTER OF :  
 :  
GERARD V. ROSS :  
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AN ATTORNEY AT LAW :  
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Decision  
Default [R. 1:20-4(f)(1)]

Decided: June 12, 2000

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 VC Ethics Committee ("DEC") certified the record directly to us for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint.

On April 16, 1999 a copy of the complaint was sent to respondent's last known office address by regular and certified mail. The certified mail receipt was returned, indicating delivery on April 19, 1999. The signature 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, the DEC sent a second letter by regular and certified mail, dated June 9, 1999, notifying him that failure to file an answer within five days would constitute an

admission of all charges and could result in his immediate temporary suspension. The certified mail receipt was returned, indicating delivery on June 11, 1999. The signature is illegible. The regular mail was not returned.

Respondent was admitted to the New Jersey bar in 1988. He currently maintains an office in Belleville, New Jersey.

By Supreme Court Order dated June 15, 1999 respondent was temporarily suspended from the practice of law for his failure to comply with a determination of a district fee arbitration committee. He remains suspended to date.

According to the general allegations of the complaint, respondent was retained by Kurt Peterson on August 13, 1996 for representation in connection with a temporary restraining order that had been issued against him in Pequannock Municipal Court. Pursuant to the order, Peterson's hunting guns, bows and arrows, firearms I.D. card and firearms license were confiscated.

Respondent charged \$1,500 for the representation, but did not provide Peterson with a written retainer agreement. On August 14, 1996 respondent and Peterson appeared in Superior Court, when a permanent restraining order ("PRO") was issued and a formal charge of stalking and harassment was made against Peterson. During the course of this appearance, respondent failed to request that the order remain temporary, assuring Peterson that he would file an appeal on Peterson's behalf.

During the next four months, respondent repeatedly failed to return any of Peterson's numerous phone calls. After receiving no communication from respondent, Peterson went to the courthouse and learned for the first time that his charges had been downgraded and had been referred to the municipal court.

Peterson received several trial dates, but respondent was not prepared to proceed. Thereafter, respondent requested and received several postponements. Each time, respondent allegedly pressured Peterson to accept a plea offer.

When the case was again ready to be heard, respondent negotiated a plea offer with the prosecutor, calling for Peterson to enter the Pre-Trial Intervention Program. Respondent did not consult with his client about the plea offer. Peterson, who maintained his innocence, refused the plea offer initially. Several more trial dates ensued, but were adjourned because of Peterson's subsequent refusals of the offer. Ultimately, the charges were dismissed due to the non-appearance of the complaining witness.

After the dismissal of the charges, respondent advised Peterson that his confiscated weapons and firearms documents had been transferred from Sussex County to Morris County. However, upon contacting Morris County, Peterson was informed that the weapons were still in Sussex County. During a subsequent phone call to Sussex County authorities, Peterson learned that they did have the weapons. They had no information on file indicating that Peterson was represented by counsel. When questioned about this,

respondent stated that he had spoken to the detective in charge in Sussex County and clarified the issue. The detective reportedly denied ever speaking to respondent.

After several weeks, Peterson attempted to learn the whereabouts of his weapons and firearms. He called respondent several times and wrote him at least two letters. Respondent eventually called Peterson back and assured him that the appeal was being processed and that the weapons could not be returned until the appeal was heard. Respondent also stated that he was awaiting copies of the dismissal documents before the appeal could be resolved. Peterson then went to the municipal court and obtained the copies of the dismissal documents. He turned them over to respondent and also asked that copies of any paperwork related to the appeal be provided to him. Despite respondent's promise, he failed to give those copies to Peterson.

After eighteen months of calling respondent, Peterson called the Superior Court Clerk and wrote a letter to the trial judge. In his reply, the trial judge advised Peterson that the time to file an appeal had expired and that the PRO was effective for two years from the date of issuance. When Peterson advised respondent of this, respondent countered that the trial judge was mistaken and that the PRO could be vacated at any time.

One year after the issuance of the PRO, Peterson's weapons were destroyed, pursuant to a court order obtained on motion filed by the Sussex County Prosecutor's Office. Apparently, due to a clerical error, the notice of the destruction was mailed to the wrong

address and returned to the court. Peterson was not notified of the motion. Notice was not sent to respondent because the court did not have him listed as Peterson's counsel.

Thereafter, Peterson wrote to the Superior Court (Sussex County) and was granted a hearing on the issue of the destruction of the weapons. He attended the hearing without respondent and was informed that nothing could be done, since the weapons had been destroyed under a valid order. Respondent subsequently informed Peterson that he would file suit against Sussex County for the value of the destroyed weapons.

For the next month Peterson tried unsuccessfully to contact respondent. In late March 1998 Peterson called respondent at his law firm. Peterson was informed that respondent was leaving the firm as of April 1, 1998 and that a message would be delivered to respondent. Despite this message, respondent made no contact with Peterson and failed to give him any notice that he was leaving the firm. Respondent also failed to give Peterson any information about his new office location.

Respondent eventually left a message for Peterson, which included both a pager and telephone numbers. Upon his attempts to contact respondent at these numbers, Peterson learned that neither was in service. Peterson then called respondent's home and spoke with respondent's wife. Respondent returned this call and left an office number where he could be reached. Peterson called this number several times only to reach an answering machine, on which he left several messages for respondent and requested that his file be released.

Four days after his last call respondent mailed Peterson what was purported to be his entire file. The material contained no return address or any information that Peterson did not already have.

After two years, Peterson wrote to the court and was granted a hearing. He appeared before the court pro se and was successful in having the PRO vacated.

According to the complaint, respondent's conduct in this matter amounted to violations of RPC 1.1(a) (gross neglect), 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).

\* \* \*

Service of process was properly made in this matter. Following a review of the complaint, we find 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's inaction throughout the representation of Peterson amounted to gross neglect, in violation of RPC 1.1(a). Furthermore, respondent's failure to keep Peterson informed about the status of his case, his failure to promptly comply with Peterson's requests

for information and to return Peterson's numerous phone calls and messages constituted a failure to communicate, in violation of RPC 1.4(a).

As to the charge of a violation of RPC 7.1(a), that rule provides as follows:

A lawyer shall not make false or misleading communications about the lawyer, the lawyer's services, or any matter which the lawyer has or seeks a professional involvement. A communication is false or misleading if it:

\* \* \*

(2) is likely to create an unjustified expectation about results the lawyer can achieve ....

Respondent made false and misleading statements to Peterson with regard to his ability to have the PRO lifted at any time. These statements, which created in Peterson an unjustified expectation about the results that could be achieved, constituted a violation of RPC 7.1(a).

In addition, respondent's repeated assurances to Peterson that his appeal was being processed, despite the fact that an appeal was never filed, and the false assurance that he had informed the Superior Court of his representation of Peterson constituted conduct involving misrepresentation, in violation of RPC 8.4(c).

Lastly, respondent's failure to comply with the DEC's requests for information about the grievance constituted a failure to cooperate with ethics authorities, in violation of RPC 8.1(b).

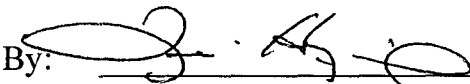
Ordinarily, a minimum of a three-month suspension would be the appropriate discipline for misconduct of this nature. See, e.g., In re Bernstein, 144 N.J. 369 (1996)

(three-month suspension in non-default matter for gross neglect, lack of diligence, failure to communicate, misrepresentations to client and failure to cooperate); In re Hanlon, 152 N.J. 002 (1997) (three-month suspension in default matter for attorney who grossly neglected the matter, misrepresented the status of the case to client by claiming to be in negotiations when the case had already been dismissed and continually disregarded the DEC's requests for information.) Thus, based on the default nature of this case and its similarity to Hanlon, a three-month suspension is the appropriate level of discipline.

Accordingly, we unanimously determined to impose a three-month prospective suspension, to go into effect only after respondent meets the requirements of his temporary suspension.

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

Dated: 6/2/00

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 No. DRB 99-271**

**Decided: June 12, 2000**

**Disposition: Three-Month Suspension**

Members	Disbar	3 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					
<b>Total:</b>							

*Robyn M. Hill 9/28/00*  
Robyn M. Hill  
Chief Counsel