

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DR~~B~~01-080

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IN THE MATTER OF :  
ARTHUR S. PATAKY :  
AN ATTORNEY AT LAW :

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

Decided: October 16, 2001

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

This matter is before us based on a certification of default filed by the District VB Ethics Committee ("DEC"), pursuant to R. 1:20-4(f).

Respondent was admitted to the New Jersey bar in 1959. He was privately reprimanded on April 15, 1977 for neglect and lack of diligence.

On November 30, 2000, the DEC forwarded a copy of the complaint by certified and regular mail to respondent's home address. The certified mail was returned, stamped by the United States Post Office, indicating acceptance. The regular mail was not returned. Respondent did not file an answer to the complaint.

On January 18, 2001, a second letter was sent to respondent by regular and certified mail, notifying him that, unless he filed an answer within five days, the record would be certified directly to us for the imposition of discipline.

Respondent did not file an answer to the formal ethics complaint. The DEC certified the record directly to us, pursuant to R. 1:20-4(f).

In late 1993, respondent was retained by John and Lenora Leone, to represent them in attempting to recover \$100,000 from the Leones' accountant, Donald Bunce.

Bunce had sold the Leones \$100,000 in fraudulent municipal bonds, causing the Leones to lose their life savings. Other victims of the scheme filed suit against Bunce in Pennsylvania. In 1995, Bunce pleaded guilty to federal mail fraud charges. As part of the plea agreement, Bunce agreed to make restitution in the amount of \$900,000. Bunce served thirty-three months in prison and died shortly after his release. According to the federal probation department, Bunce had paid only \$1,500 in restitution.

Respondent admitted that he never filed a lawsuit against Bunce nor did he refer the matter to a Pennsylvania attorney to file suit. Although respondent had knowledge of the civil suit against Bunce in Pennsylvania, he did not attempt to join the Leones as plaintiffs in the suit. In fact, respondent admitted that he never followed up on the matter and did not even follow Bunce's criminal or civil trials. He acknowledged that the Leones never received restitution. Furthermore, respondent

refused to return the Leones' file, despite their repeated requests.

In late 1993, Betty and Lester Higgins, relatives of the Leones, also retained respondent to recover \$43,000 from Bunce. Again, as a result of respondent's inaction, the Higginses received no restitution.

Although respondent accepted retainers from the Leones and the Higginses in the total sum of \$3,000, he never provided them with a retainer agreement, discussed the basis of his fee, rendered a bill or kept any time records. Respondent had not regularly represented these clients.

The complaint charges that respondent violated RPC 1.1(a) (gross neglect), RPC 1.3 (failure to act with reasonable diligence and promptness) and RPC 1.5(b) (failure to communicate the basis or rate of a fee, in writing) in the Leone and Higgins matters.

On or about December 12, 1994, respondent was declared ineligible to practice law in New Jersey for his failure to pay the 1994 annual assessment to the New Jersey Lawyers' Fund for Client Protection ("the Fund"). Between December 12, 1994 and January 1, 2000, respondent practiced law, although he was not authorized to do so. The complaint charges that respondent violated RPC 5.5(a) (unauthorized practice of law) by continuing to practice law while ineligible.

Respondent claimed that he suffered from a deep depression that started in the late 1970s or early 1980s. Respondent stated that he had been on strong anti-

depressants and at times slept in his car. In a May 2000 telephone conversation with the DEC investigator, respondent claimed that he had recently been given “a clean bill of health from his psychiatrist” and was no longer taking medication. The complaint charges that respondent violated RPC 1.16(a)(2) (failure to withdraw from representation when a physical or mental condition materially impairs the attorney’s ability to represent a client) when he “accepted a fee and undertook the representation of [the Leones and the Higginses] at a time [when] he should have declined this representation, because his mental condition materially impaired his ability to represent the clients.”

Service of process was proper. Therefore, the matter may proceed as a default. Following a de novo review of the record, we find sufficient facts to support the charges contained in the complaint.

Respondent represented two parties in their attempt to gain restitution from their former accountant. Despite his duty to protect his clients’ interests responsibly, he made no effort to advance their cases or protect their interests, in violation of RPC 1.1(a) and RPC 1.3.

Respondent also practiced law while ineligible. He was declared ineligible to practice law in New Jersey on or about December 12, 1994 for failure to pay the annual assessment to the Fund. However, from December 12, 1994 until January 1, 2000, he engaged in the unauthorized practice of law. Respondent, thus, violated

RPC 5.5(a).

Respondent also suffered from a self-described “deep depression” and was taking strong anti-depressants. The complaint charges that respondent’s mental condition impaired his ability to practice law at the time he represented the Leones and Higginses and that he should have declined to represent them due to his mental condition. Instead, he took retainer fees from those clients, in violation of RPC 1.16(a)(2).

Finally, respondent did not communicate in writing the basis or rate of his fees or provide the parties with written retainer agreements, either before or within a reasonable time after beginning the representation. Respondent did not regularly represent any of these clients. He, thus, violated RPC 1.5(b).

In addition, respondent did not return the Leones’ file, despite their repeated requests, in violation of RPC 1.15(d). Although the complaint does not specifically cite this rule, the facts recited therein gave respondent sufficient notice of a potential finding of a violation of that rule. We therefore, deemed the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

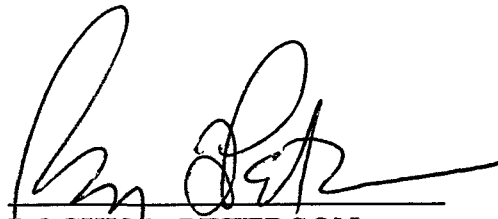
As to the quantum of discipline. In default matters, misconduct of this sort generally results in a three-month suspension. See, In re Van Wart, 162 N.J. 102 (1999) (three-month suspension in a default matter for practicing law while ineligible, failure to deliver property to which a third party was entitled and failure

to cooperate with disciplinary authorities), In re Dudas, 156 N.J. 540 (1999) ( three-month suspension in a default matter for practicing law while ineligible, lack of diligence, failure to safeguard property and failure to cooperate with disciplinary authorities).

In light of the foregoing, we unanimously determined to suspend respondent for three months. One member did not participate.

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

Dated: Oct 16 2001

By:   
ROCKY L. PETERSON  
Chair  
Disciplinary Review Board

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**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

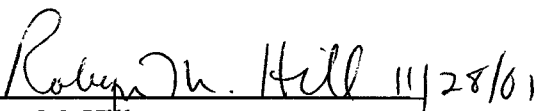
**In the Matter of Arthur S. Pataky  
Docket No. DRB 01-080**

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**Decided: October 16, 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					
<b>Total:</b>		8					1

  
Robyn M. Hill  
Chief Counsel