

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-410

IN THE MATTER OF
THOMAS A. PENN
AN ATTORNEY AT LAW

Decision

Decided: April 22, 2002

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

This matter was 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 1977. In 1996 he admitted violating *RPC 5.5(a)* and *RPC 8.4(c)*, by practicing law while ineligible due to his failure to

pay the New Jersey Lawyers' Fund for Client Protection annual assessment. The matter was diverted pursuant to *R.1:20-3(1)(2)(B)(i)*. In November 2001 we determined to impose a three-year suspension after respondent fabricated and signed a court order, made misrepresentations (including in a certification) to his client, his adversary and the ethics investigator, failed to communicate with his client, failed to explain a matter to permit the client to make informed decisions regarding the representation and practiced law while ineligible, in violation of *RPC 1.4(a) and (b)*, *RPC 5.5(a)*, *RPC 8.1(b)*, *RPC 8.4(c)* and *RPC 8.4(d)*. That matter is pending with the Court.

* * *

On August 28, 2001 the DEC sent a complaint by regular and certified mail to respondent's last known office address: 303 Park Avenue, Orange, New Jersey 07050. Both the certified and regular mail were returned stamped "moved left no address." On September 24, 2001 the DEC published a notice of the matter in the *Star-Ledger*, a newspaper of general circulation in Essex County.

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

* * *

On August 2, 1996 Brenda Potter, the grievant, retained respondent to represent her to contest a will allegedly executed by her uncle. As required by the retainer agreement, Potter gave respondent \$750 to begin working on the case. In an August 2, 1996 letter, respondent represented to Potter that he would contact her the following week to review the documents that he intended to file with the court. Respondent, however, neither performed any services in Potter's behalf nor contacted her. According to the grievance, after Potter "searched" for respondent for seven months, he assured her that he was working on her case. Potter's subsequent efforts to contact respondent by telephone, mail and personal visits were unsuccessful.

On September 22, 2000 the DEC investigator served respondent with the grievance, notifying him that a reply within ten days was required. In a further attempt to serve respondent, the investigator also contacted the attorney who had represented respondent in a prior ethics matter. Respondent failed to reply to the grievance or to contact the investigator.

The complaint charged respondent with violations of *RPC* 1.3 (lack of diligence), *RPC* 1.4(a) (failure to communicate with a client) and *R.1:20-3(g)(3)* (failure to cooperate with a disciplinary authority), more properly a violation of *RPC* 8.1(a).

* * *

Service of process was properly made in this matter. After the DEC's attempts to serve respondent by mail proved unsuccessful, respondent was served by publication. Therefore, the matter may proceed as a default.

The complaint contains sufficient facts to support findings of violations of *RPC* 1.3, *RPC* 1.4(a) and *RPC* 8.1(a). Respondent agreed to represent Brenda Potter, accepted a \$750 retainer and performed no work in her behalf. He failed to keep her informed of the status of the matter and failed to return her telephone calls and letters. Finally, respondent failed to reply to the grievance.

The remaining issue is the quantum of discipline to be imposed. In default cases involving similar violations, reprimands have been imposed. *See In re Gruber*, 152 *N.J.* 451 (1998) (reprimand in a default case for gross neglect, lack of diligence, failure to communicate and failure to cooperate); *In re Lampidis*, 153 *N.J.* 367 (1998) (reprimand in a default case for gross neglect, failure to communicate and failure to cooperate); *In re Skokos*, 147 *N.J.* 556 (1997) (reprimand in a default case for gross neglect, lack of diligence and failure to communicate).

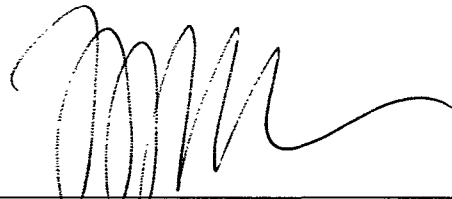
Where the attorney's disciplinary history is extensive, the sanction has been enhanced to a three-month suspension. *See In re Pollan*, 163 *N.J.* 87 (2000) (three-month suspension

in a default case for lack of diligence and failure to cooperate; attorney had prior six-month and two-year suspensions); *In re Herron*, 162 N.J. 105 (1999) (three-month suspension in a default case for gross neglect, failure to communicate and failure to cooperate; attorney had two prior one-year suspensions).

In light of respondent's disciplinary history (a three-year suspension and a diverted matter) and the default nature of this case, we unanimously voted to impose a three-month suspension, to be served concurrently with the three-year suspension that we voted to impose in November 2001. Two members recused themselves. Two members did not participate.

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

By:



MARY J. MAUDSLEY, ESQ.
Vice-Chair
Disciplinary Review Board

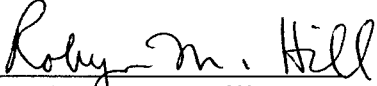
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Thomas A. Penn
Docket No. DRB 01-410

Decided: April 22, 2002

Disposition: three-month suspension

| <i>Members</i> | <i>Disbar</i> | <i>three-month Suspension</i> | <i>Reprimand</i> | <i>Admonition</i> | <i>Dismiss</i> | <i>Disqualified</i> | <i>Did not participate</i> |
|----------------------|---------------|-----------------------------------|------------------|-------------------|----------------|---------------------|--------------------------------|
| <i>Peterson</i> | | | | | | X | |
| <i>Maudsley</i> | | X | | | | | |
| <i>Boylan</i> | | | | | | | X |
| <i>Brody</i> | | X | | | | | |
| <i>Lolla</i> | | X | | | | | |
| <i>O'Shaughnessy</i> | | | | | | X | |
| <i>Pashman</i> | | X | | | | | |
| <i>Schwartz</i> | | | | | | | X |
| <i>Wissinger</i> | | X | | | | | |
| Total: | | 5 | | | | 2 | 2 |

 4/30/02
 Robyn M. Hill
 Chief Counsel