

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-405

IN THE MATTER OF
CRAIG V. O'CONNOR
AN ATTORNEY AT LAW

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

Decided: April 23, 2002

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

Pursuant to R. 1:20-4(f), the District XI 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 8, 2001 a copy of the complaint was sent by certified and regular mail to respondent's last known business address at 20 Park Place, Suite 201, Morristown, New Jersey 07960. Exhibit A. On September 14, 2001 a second letter was sent to the Morristown address, advising respondent of the committee's right to seek his temporary suspension from the practice of law if he did not reply within five days. R. 1:20-4(f). Exhibit B. Both

certified mailings were received by a “Jennifer Till” on August 9, 2001 and September 17, 2001, respectively. Exhibit C. The regular mail was not returned. Respondent did not answer the complaint.

* * *

On March 5, 2002 respondent filed a motion to vacate the default. (See respondent’s March 4, 2002 letter with attached motion.) In order to succeed in having a default vacated, a respondent must overcome a two-pronged test. First, a respondent must offer a reasonable explanation for his/her failure to answer the ethics complaint. Second, a respondent must assert a meritorious defense to the underlying charges. In this matter, respondent accomplished neither. He offered no explanation for his failure to answer the formal ethics complaint. Instead, his motion missed the mark by focusing on his failure to comply with the terms of an agreement in lieu of discipline that he failed to fulfill. In fact, respondent has never retreated from the position that the matter “slipped through the cracks” in his office. Moreover, he offered no meritorious defense to his conduct in Bonner, the matter that formed the basis for the formal ethics complaint.

In light of the foregoing, the Board denied respondent’s motion and proceeded with its review of the matter as a default.

* * *

Respondent was admitted to the New Jersey bar in 1976. He has no prior discipline.

On or about August 21, 1998 Stephen P. Bonner retained respondent to represent him in connection with fraud and breach-of-contract issues. He gave respondent a \$750 retainer. Thereafter, Bonner contacted respondent on several occasions to determine the status of the case. On those occasions when respondent replied, he told Bonner that the case was proceeding apace. In fact, respondent misrepresented to Bonner that he had filed a complaint. Apparently, respondent had sent Bonner's file to storage without reviewing its status.

Subsequently, Bonner made several more attempts to obtain information about his case, to no avail.

After Bonner filed a grievance, an ethics investigator spoke with respondent about the matter. Respondent admitted that he had inadvertently lost track of the file and acknowledged responsibility for the oversight.

On April 4, 2000 respondent signed an agreement in lieu of discipline, which the Office of Attorney Ethics (OAE) approved. The agreement required respondent to return to Bonner the \$750 retainer with a written apology and to attend a diversionary course for lawyers.

On July 26, 2000 the OAE wrote to respondent informing him that, because he had failed to comply with the terms of the agreement, the matter was being remanded for the filing of a complaint and hearing.

The complaint charged respondent with failure to communicate with the client, in violation of RPC 1.4(a), and misrepresentation of the status of the matter to Bonner, in violation of RPC 8.4(c). The complaint also alleged a violation of RPC 1.1(b) (pattern of neglect).

* * *

Service of process was properly made. Following a review of the record, we found that the facts recited in the complaint support the charges 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).

Respondent violated RPC 1.4(a) by failing to reply to Bonner's requests for information about the case. Thereafter, he misrepresented to Bonner that he had filed a complaint and that the case was proceeding smoothly. In fact, respondent had not filed a complaint, having already sent the file to storage. Respondent's conduct in this regard violated RPC 8.4(c).

Although there is an allegation of a pattern of neglect, normally we require three instances of neglect to find a violation of RPC 1.1(b). Therefore, we dismissed that charge.

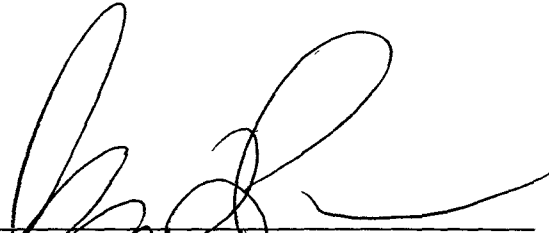
Cases dealing with misrepresentation of the status of the case warrant a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). Where misrepresentations are present alongside

other violations such as gross neglect, lack of diligence and failure to communicate, the appropriate degree of discipline is generally either a reprimand or a short-term suspension. See, e.g., In re Silverberg, 142 N.J. 428 (1995) (reprimand imposed where the attorney exhibited gross neglect, lack of diligence and misrepresentation in a real estate matter, when he failed to amend a RESPA statement to accurately reflect the terms of the transaction); In re Martin, 120 N.J. 443 (1990) (public reprimand imposed where the attorney displayed a pattern of neglect in six matters, in addition to misrepresenting to a client in one of the matters that the case was pending, when it had been dismissed); In re Cervantes, 118 N.J. 557 (1990) (reprimand imposed where the attorney failed to pursue two workers' compensation matters, exhibited lack of diligence and failed to keep the clients reasonably informed of the status of the matters; in one matter the attorney misrepresented the status of the case); In re Bernstein, 144 N.J. 369 (1996) (three-month suspension imposed where the attorney exhibited gross neglect, lack of diligence, failure to communicate and misrepresentation, in addition to failure to cooperate with disciplinary authorities; prior private reprimand for similar misconduct); and In re Chen, 143 N.J. 416 (1996) (three-month suspension imposed where the attorney engaged in a pattern of neglect, misrepresentation, failure to communicate and failure to cooperate with disciplinary authorities in two matters; prior reprimand for gross neglect and failure to communicate in two matters).

In aggravation, we considered that respondent failed to abide by the terms of the agreement in lieu of discipline and to answer the complaint. In mitigation, we took into account that he has no prior discipline.

In view of the above, a six-member majority determined to impose a reprimand. One member would have suspended respondent for three months, based on his repeated failure to cooperate with disciplinary authorities. Two members did not participate.

We also determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.



ROCKY L. PETERSON
Chair
Disciplinary Review Board

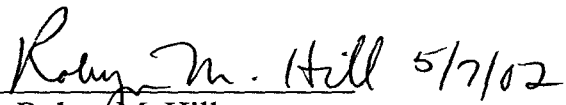
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Craig V. O'Connor
Docket No. DRB 01-405

Decided: April 23, 2002

Disposition: reprimand

<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:		1	6				2


Robyn M. Hill
Chief Counsel