

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-304

IN THE MATTER OF :
: :
GERALD A. NUNAN :
: :
AN ATTORNEY AT LAW :
: :

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

Decided: July 24, 2002

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

This matter was before us on a certification of default filed by the District X Ethics Committee ("DEC").

Pursuant to R.1:20-4(f)(1), the District X Ethics Committee ("DEC") certified the record in this matter to us for the imposition of discipline, following respondent's failure to file an answer to a formal ethics complaint. Thereafter, on October 16, 2001, respondent filed a motion to vacate the default. Because the motion failed to adequately explain respondent's failure to answer the complaint and to provide a meritorious defense to the charges in the complaint, we determined to deny it.

Respondent was admitted to the New Jersey bar in 1983. During the relevant time, he

maintained an office for the practice of law in Morristown, Morris County.

Respondent was previously admonished for gross neglect, lack of diligence, failure to communicate, violation of the Rules of Professional Conduct and failure to cooperate with disciplinary authorities, arising out of his representation of a client in a matrimonial matter. That matter also came before us as a default. In the Matter of Gerald Nunan, Docket No. DRB 98-263 (October 20, 1998).

On or about April 18, 2001 the DEC sent a copy of the complaint in the within matter by certified and regular mail to respondent's last known office address in New Jersey. The undated certified return receipt was signed by a Sheree Schmidt. The regular mail was not returned. Also, on or about April 18, 2001 a copy of the complaint was sent to respondent at an address in Texas. The certified mail was returned marked "unclaimed." The regular mail was not returned.

On or about June 1, 2001 the DEC sent a letter to respondent advising him that, unless he filed an answer to the complaint within five days, the allegations of the complaint would be deemed admitted and, pursuant to R.1:20-4(f) and R.1:20-6(c)(1), the record would be certified directly to us for the imposition of sanction. Respondent was further advised that the letter served as an amendment to the complaint to include a charge of violation of RPC 8.1(b). That letter was mailed to the above addresses by certified and regular mail. Sheree Schmidt signed for one of the certified letters. Although the record does not indicate what happened to the regular mail sent to the Texas address, the regular mail to the Morristown

address was not returned.

Respondent did not file an answer to the complaint.

The complaint charged respondent with a violation of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client), RPC 5.5 (practicing law while ineligible) and RPC 8.1(b) (failure to cooperate with the DEC), arising from his handling of a matrimonial matter.

In or about July 1999 respondent undertook the representation of David L. Crotty, the grievant herein, in a matrimonial action. During the course of the representation – specifically between September 20, 1999 and August 17, 2000 – respondent had been ineligible to practice law for non-payment of the annual assessment to the New Jersey Lawyers' Fund for Client Protection ("CPF"). Notwithstanding that respondent was ineligible, he appeared in court on Crotty's behalf on December 23, 1999. On or about that date, John Murray, who represented Tracy M. Crotty, David Crotty's then-estranged wife, filed an application to enforce litigant's rights. The court set the matter down for disposition on January 21, 2000. Respondent filed responsive papers and appeared in court on January 21, 2000. On January 26, 2000 the court entered an order. Murray served a copy of the order on respondent. However, respondent failed to advise Crotty of the substance of the order or that a warrant had been issued for Crotty's arrest. In addition, respondent failed to provide Crotty with a copy of the court's January 26, 2000 order.

The Crotty matter was set down for a case management conference on March 13,

2000. Respondent did not notify Crotty of that proceeding. As a result of respondent's failure to appear at the case management conference, the court dismissed Crotty's answer and suppressed his defenses. Although Murray served respondent with a copy of the March 13, 2000 order, respondent failed to advise Crotty that an order had been entered striking his answer and suppressing his defenses.

On or about May 25, 2000 respondent filed a motion to reinstate Crotty's answer and defenses. Respondent failed to give notice to or consult with Crotty about the motion. Instead of submitting a certification from Crotty in support of the application, respondent submitted a certification signed by himself. He failed to advise Crotty that the motion was returnable on June 16, 2000. On that date, the court considered the motion for reinstatement. Murray opposed the motion on the grounds that Crotty had failed to answer interrogatories and was delinquent in his support obligation to Tracy Crotty and their children. In fact, Crotty never received a copy of the interrogatories.

As a result of Crotty's purported failure to provide discovery, failure to appear in court and failure to cure the arrearages, the court denied respondent's motion to reinstate Crotty's answer and defenses. The court order, entered on June 16, 2000, specifically directed Crotty to appear within twenty days to account for his income and explain why he had failed to bring his support obligations current. Respondent did not provide Crotty with a copy of the order or notify him that he was obligated to appear in court within twenty days.

Respondent took no further action in Crotty's behalf after June 16, 2000. He failed to

return Crotty's telephone calls and also ignored a registered letter from Crotty requesting a reply to his calls.

* * *

On August 9, 2000 the DEC investigator wrote to respondent requesting that he reply to the allegations in the grievance. Respondent did not comply with that request. The investigator sent a second letter to respondent on August 23, 2000, asking for the requested information and advising respondent that his failure to cooperate was a violation of RPC 8.1(b). Respondent did not reply. By letter dated September 13, 2000 the investigator requested a reply to her letters of August 9 and 23, 2000. The letter advised respondent that Crotty was seeking to retain new counsel and had been prejudiced in the underlying lawsuit as a result of respondent's failure to turn over the file to new counsel. The investigator demanded that respondent turn over Crotty's file to her office within seven days. Respondent did nothing. Similarly, Rozalyn A. Metzger, Crotty's new attorney, wrote to respondent requesting that he turn over Crotty's file. Her request was also ignored.¹

On February 21, 2001 the investigator wrote to respondent at four addresses where he potentially lived or practiced law. Respondent did not reply.

In addition, respondent ignored numerous telephone calls from the DEC investigator and from Metzger.

* * *

¹Respondent was not charged with failure to turn over the file.

Service of process was properly made in this matter. The facts recited in the complaint 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).

During the course of the representation, respondent inexplicably stopped acting in his client's behalf and stopped communicating with him. Even when respondent was pursuing Crotty's interests, his representation was far from adequate. Respondent failed to 1) advise Crotty of the substance of the January 26, 2000 order; 2) advise him that a warrant had been issued for his arrest; 3) appear at the March 13, 2000 case management conference; 4) notify Crotty of the conference; 5) disclose to Crotty that his answer and defenses had been stricken; 6) advise Crotty of his May 25, 2000 motion to reinstate the pleadings; 7) give the interrogatories to Crotty for his answers and 8) advise Crotty of the June 16, 2000 order compelling Crotty's appearance within twenty days. From June 16, 2000 forward, respondent took no further action in Crotty's behalf and failed to reply to his client's attempts to contact him via telephone and registered letter. As noted in the complaint, between January 26, 2000 and June 2000, when the court was deciding substantive matters, respondent's communication with Crotty was "limited at best." Between March 13, 2000 and June 2000 respondent had no communication with Crotty. In addition, respondent failed to reply to communications from Crotty's new attorney and from the DEC investigator.

These violations, standing alone, ordinarily would merit the imposition of a reprimand. See, e.g., In re Gruber, 152 N.J. 451 (1998), (also a default matter, where the

attorney, in a tax foreclosure matter, engaged in gross neglect, lack of diligence, failure to communicate, failure to cooperate with the OAE's requests for information).

When we add to the mix respondent's practicing law while ineligible, more serious discipline is warranted. The record does not reveal if respondent's failure to pay the CPF was an oversight or a knowing course of conduct. The record also does not reveal if respondent was aware that he had been ineligible, when he represented Crotty. Attorneys, however, are responsible for paying the assessment to the CPF and are held accountable when they do not, regardless of awareness of the dereliction.

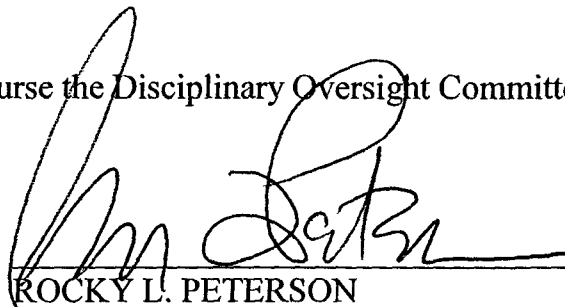
In In re Van Sciver, Jr., 158 N.J. 4 (1999), a three-month suspension was imposed where the attorney practiced law while ineligible and failed to cooperate with disciplinary authorities. The attorney represented clients in three matters over a period of a six-month ineligibility. Similarly, a three-month suspension was imposed for lack of diligence, failure to safeguard property, practicing while ineligible and failure to cooperate with disciplinary authorities in In re Dudas, 156 N.J. 540 (1999). Dudas forgot to pay his assessment to the CPF and continued to practice law, ultimately paying the assessment when he realized his transgression. Dudas also failed to timely complete an estate accounting and was consistently unable to determine the amount he held in trust for the estate. Dudas was also before us as a default matter.

When we considered respondent's previous admonition, the call for a suspension became even more compelling. He was admonished in 1998 for similar misconduct, well

before he began his representation of Crotty. Obviously, he did not learn from his prior mistakes. The fact that that matter, too, came before us as a default confirms respondent's indifference to the disciplinary system. A term of suspension will serve to make the point clearer for him. We, therefore, unanimously determined to suspend respondent from the practice of law for a period of three months.

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

By:

A handwritten signature in black ink, appearing to read "Rocky L. Peterson", written over a horizontal line.

ROCKY L. PETERSON

Chair

Disciplinary Review Board

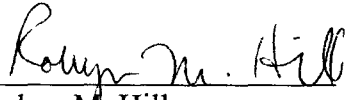
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Gerald A. Nunan
Docket No. DRB 01-304

Decided: July 24, 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:		9					


 Robyn M. Hill
 Chief Counsel

8/1/02