

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-041

IN THE MATTER OF :
:
JEFFREY F. NIELSEN :
:
AN ATTORNEY AT LAW :
:

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

Decided: August 15, 2000

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

Pursuant to R. 1:20-4(f), the District VC 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 November 2, 1999, the DEC sent a copy of the complaint to respondent’s office by regular and certified mail. The certified mail receipt was returned, signed by an individual other than respondent, showing a delivery date of November 4, 1999. The regular mail was not returned. On December 9, 1999, the DEC sent a second letter to respondent, by regular and certified mail, advising him that his failure to file an answer would constitute an admission of the allegations contained in the complaint and could result in his temporary

suspension. The certified mail receipt was returned, again signed by the same individual, showing a delivery date of December 10, 1999. The regular mail was not returned.

* * *

The day before the Board's review of this matter, respondent "faxed" to Office of Board Counsel a motion to vacate the default, alleging that his failure to file the complaint was due, among other things, to the closing of his office, depression and alcoholism. After a review of the motion, we were unpersuaded that the reasons cited by respondent were compelling enough to warrant vacating the default entered against him.

* * *

Respondent was admitted to the New Jersey bar in 1990 and maintains an office for the practice of law in Newark, New Jersey. He has no prior ethics history.

The complaint charged respondent with misconduct involving two clients, the Gorda Biera matter and the David Maisano matter.

I. The Biera Matter

In May 1996, Gorda Biera, a resident of South Carolina, retained respondent to file a motion to reduce his outstanding child support arrearages and monthly support payments and to obtain visitation rights with his daughter. Respondent charged Biera \$1,500, the first \$750 to be paid up front and the remainder to be paid in installments.

By letter dated August 22, 1996, respondent told Biera that he received the information he requested and was “in the process of putting the paperwork together so that we can file the motion we spoke about. If I need further information from you (which I am sure I will), I will call you.”

Despite Biera’s full payment to respondent by November 6, 1996, respondent never filed the motion. On June 15, 1997, Biera sent a letter to respondent, complaining that he had tried to contact him “numerous times” and had left “several messages” to ascertain what respondent had done in his case and that respondent had failed to contact him.

Because respondent did not reply to the letter, Biera called the DEC secretary, who apparently contacted respondent. Thereafter, respondent telephoned Biera, apologized for Biera’s case “falling through the cracks” and promised to file the motion. Again, respondent failed to file the motion. By letter dated November 15, 1997, Biera terminated respondent’s services and demanded the return of the \$1,500, which respondent did.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4 (failure to communicate with client).

II. The Maisano Matter

In August 1995, David Maisano retained respondent to represent him in a “civil rights action.” Thereafter, except for one or two occasions, respondent failed to return Maisano’s telephone calls. In November 1997, Maisano saw respondent in a supermarket and

confronted him about his failure to return telephone calls and keep Maisano apprised of the status of his case. Respondent promised to call Maisano, but did not do so.

The formal ethics complaint alleges that Maisano is unaware if respondent had filed a complaint or if the statute of limitations has run on his claim.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4 (failure to communicate with client).

* * *

Service of process was proper. 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 answer the complaint, the allegations of the complaint are deemed admitted. R.1:20-4(f)(1).

Respondent was retained in May 1996 to file a motion on behalf of Biera. Despite telephone calls and letters from Biera and from the DEC, he never filed the motion. Respondent also failed to communicate with his client. Therefore, we found respondent guilty of gross neglect, lack of diligence and failure to communicate with Biera.

In the Maisano matter, respondent was retained in August 1995 to file a "civil rights action," but apparently failed to do so through at least November 1997, when Maisano met him in the supermarket. In addition, respondent did not keep Maisano informed of the status of his matter. We find, thus, that respondent violated RPC 1.3 and RPC 1.4(a). We noted

that complaint does not specifically allege that respondent never filed an action on behalf of Maisano. Rather, it states that Maisano “is not aware if any pleadings were filed on his behalf” and that respondent’s failure to “timely file documents” constituted gross neglect and lack of diligence. In his reply to the Maisano grievance,¹ respondent claimed that he filed the complaint before the expiration of the statute of limitations and that an order “has been entered permitting the restoration of the case to the active list and the late service of the summons and complaint on the defendants.” Apparently, the DEC did not attempt to confirm respondent’s statements or investigate whether respondent ever served the defendants. We, therefore, are unable to find a violation of RPC 1.1(a), as the record contains insufficient facts to support a finding of gross neglect on respondent’s part.


Conduct similar to that of respondent in one or two matters has generally resulted in an admonition or a reprimand. See In the Matter of Paul Paskey, Docket No. DRB 98-244 (October 23, 1998) (admonition where the attorney exhibited gross neglect, lack of diligence and failure to communicate with a client); In re Hamilton 147 N.J. 459 (1997) (reprimand for lack of diligence, failure to keep a client informed about the status of a matter and failure to cooperate with disciplinary authorities); In re Gordon, 139 N.J. 606 (1995) (reprimand for lack of diligence and failure to communicate in two matters, gross neglect and failure to return a file in one of the two matters).

¹ The DEC received respondent’s reply to the Maisano grievance on March 17, 1999, after the investigative report was completed, but before the formal ethics complaint was filed.

In light of the default nature of these matters, seven members of this Board determined to impose a reprimand. One member voted to grant the motion to vacate the default. One member did not participate.

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

Dated: 8/15/00

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

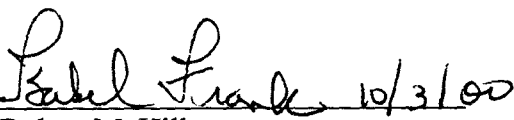
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jeffrey F. Nielsen
Docket No. DRB 00-041

Decided: August 15, 2000

Disposition: reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Remand	Disqualified	Did not Participate
Hyerling			X				
Peterson			X				
Boylan							X
Brody			X				
Lolla			X				
Maudsley			X				
O'Shaughnessy					X		
Schwartz			X				
Wissinger			X				
Total:							

By  10/3/00
Robyn M. Hill
Chief Counsel