SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-436

IN THE MATTER OF	:
ELLIOTT D. MOORMAN	:
AN ATTORNEY AT LAW	:

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

Decided: April 27, 2004

Steven A. Weiner appeared on behalf of the District VB Ethics Committee.

Respondent appeared pro se.

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 VB Ethics Committee ("DEC"), pursuant to R.1:20-4(f).

Respondent was admitted to the New Jersey bar in 1977. He was publicly reprimanded in 1990 for failure to maintain proper time records and to preserve the identity of client funds. In re Moorman, 118 N.J. 422 (1990). In 1994, he was suspended for three months for gross neglect, lack of diligence, failure to keep a client informed about the status of the matter, and failure to

explain the matter to the extent reasonably necessary to permit the client to make informed decisions. In re Moorman, 135 N.J. 1 (1994). In 1999, he received another reprimand for lack of diligence, failure to provide a written retainer agreement, failure to comply with bookkeeping requirements, and failure to cooperate with disciplinary authorities. In re Moorman, 159 N.J. 523 (1999).

On January 28, 2003, the Supreme Court suspended respondent for three months, effective February 28, 2003, for conduct prejudicial to the administration of justice, conflict of interest, release of escrow funds without the consent of the parties, withdrawal of fees without the client's consent, and failure to utilize a retainer agreement. In re Moorman, 175 N.J. 154 (2003). On June 20, 2003, the Court suspended respondent for three months, effective May 28, 2003, for forging a client's name on a settlement check, deceiving the client's prior attorney about the attorney's portion of the fee, and improperly calculating his own fee in a tort action. In re Moorman, 176 N.J. 510 (2003). On November 25, 2003, the Court suspended respondent for one year, effective August 28, 2003, for misconduct in two matters. In the first, a default matter, respondent lacked diligence, failed to communicate with the client, failed to utilize a retainer agreement, and failed to cooperate with ethics authorities. In the second matter, he failed to appear twice for his client's deportation hearings. The client was facing imminent arrest and immediate deportation at the time

that he sought respondent's assistance. Respondent had recklessly elected to appear instead in another matter that he had accepted only days earlier. Moreover, he did so without notifying his client, the immigration court or his adversary that he would not appear at the deportation hearing. In re Moorman, 178 N.J. 110 (2003).

On May 7, 2003, the DEC sent a copy of the complaint to respondent's last known office address listed in the New Jersey Lawyers' Diary and Manual, 55 Washington Street, Suite 202, East Orange, New Jersey 07017, by certified and regular mail. The certified mail was returned marked "unclaimed". The regular mail was not returned.

On June 10, 2003, the DEC sent a five-day letter to respondent at the same address. The certified mail and the mail receipt were not returned. Likewise, the regular mail was not returned.

On June 20, 2003, the DEC received a facsimile from respondent acknowledging receipt of the complaint.

On July 3, 2003, respondent filed a non-conforming, unverified answer to the ethics complaint.

On August 29, 2003, the DEC notified respondent of the deficiency, and granted a ten-day extension of time to file a conforming answer.

Respondent never filed a verified answer to the complaint.

Cheryl Jackson, the grievant, retained respondent to represent her in a consumer fraud suit against an automobile dealership. A trial in the matter was scheduled for October 30, 2000. On the day of the trial, respondent presented Jackson with a settlement offer of $15,000, which she refused. Unbeknownst to Jackson, and against her wishes, respondent later accepted the offer in her behalf. Respondent also tried to convince Jackson to sign a settlement agreement in December 2000, but she refused to do so, as evidenced by her December 4, 2000 handwritten letter to respondent.

Aware of Jackson's claim about the settlement, on February 20, 2001, the trial court judge vacated the settlement and set a new trial date. Defendants' appealed. Therefore, on April 6, 2001, the Appellate Division reversed the trial court and reinstated the settlement.

Almost five weeks later, on May 15, 2001, respondent advised Jackson of the outcome of defendants' appeal. With little time remaining to act, Jackson immediately requested that respondent file a motion for reconsideration in the Appellate Division. According to the complaint, respondent advised Jackson that a $500 fee was required to file such a motion. Therefore, on May 17, 2001, Jackson requested that respondent verify the amount of the fee before she paid it. Hearing nothing from respondent, Jackson contacted the Appellate Division clerk's office, and learned that the filing fee was approximately $30.

On May 25, 2001, Jackson sent respondent the filing fee by certified mail, but it was returned marked "unclaimed."[1] Jackson's attempts to contact respondent thereafter were unsuccessful.

Pursuant to the Appellate Division determination, on July 9, 2001, the trial court dismissed Jackson's complaint with prejudice.

On July 31 and October 11, 2001, Jackson wrote to respondent about the status of her case, but he did not reply to those requests.

Jackson later filed a pro se motion for reconsideration before the Appellate Division, which was denied.

On November 30, 2001, Jackson wrote a final letter to respondent reiterating her dissatisfaction with his handling of the case, and his failure to protect her rights on appeal.

In December 2001, and again in March 2002, respondent filed motions in the trial court, claiming fees totaling $15,000 in the matter. The first motion was denied on procedural grounds. The record is silent about the outcome of the second motion.

The complaint alleged that respondent violated RPC 1.1(a) (gross neglect), RPC 1.2 (failure to abide by the client's decisions concerning the objectives of the representation), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate with the client), RPC 1.5 (b) (failure to utilize retainer agreement), and

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[1] Jackson sent her correspondence to respondent at the same 55 Washington Street address that respondent continues to use to date.

R. 1:20-3(g)(4), more properly RPC 8.1(b) (failure to cooperate with ethics authorities).

Service of process was properly made. Following a review of the record, we find 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 produced an unverified answer, but failed to remedy that deficiency, despite notice that a verified answer was required. In his unverified answer, respondent admitted that he received letters from the DEC investigator dated December 4, 2002, January 13, 2003, and April 1, 2003, all of which specifically required the filing of a verified answer. Respondent's answer further admitted that he did not reply to those demands for information about the grievance, instead asserting that he was preoccupied with other ethics matters at the time.

We considered the issue of whether the default should proceed, since respondent filed an answer, albeit an unverified one. R. 1:20-4(e) states that an "answer that has not been verified within 10 days after the respondent is given notice of the defect shall be deemed a failure to answer as defined within these Rules." Despite having been given three notices that a verified answer was required, respondent did not file one. Thereafter, he was notified

that his answer was deficient because it had not been verified. Respondent did not file a motion to vacate the default.

We have previously vacated defaults and remanded matters for hearing in which attorneys have filed unverified, or unresponsive, answers to ethics complaints. See In the Matter of Sharon Hall, Docket No. DRB 99-202 (October 28, 1999). In Hall, the initial remand predated the amendment to R. 1:20-4(e). Furthermore, the attorney filed a motion to vacate the default. We also remanded In the Matter of Pasquale Cardone, Docket No. DRB 99-281 (December 18, 2000), after the rule amendment. In Cardone, the attorney submitted a handwritten letter in reply to the ethics complaint, explaining that he did not have a typewriter, computer or office, and that he sometimes lived in his car or a motel room. The DEC concluded that the letter did not constitute a formal answer. Thereafter, the DEC published legal notices in three newspapers that a complaint had been filed and that the attorney had to file an answer to the complaint. Cardone was remanded to the DEC for hearing because a concern arose that the attorney may not have been properly notified of the DEC's determination that his letter did not constitute an answer to the complaint. There, the DEC had not sent notification of its determination to the attorney at his last known address. Furthermore, the legal notices did not indicate that the attorney's letter was deficient as an answer. Therefore, even had the attorney

seen the notices, he could have concluded that he had complied with the answer requirements.

Unlike the cited cases, we find that there are no factors present here that necessitate a remand. The complaint alleged that respondent failed to cooperate with the DEC investigator, in violation of RPC 8.1(b). In his unverified answer, respondent admitted that he never replied to the investigator's letters. Moreover, we are not persuaded by his explanation that he did not do so because he was too busy with other ethics matters. Thereafter, once on notice that his answer was deficient, he failed to remedy the defect. Finally, respondent did not move to vacate the default. Therefore, we determined to proceed on the merits of the case.

Respondent violated RPC 1.5(b) by failing to utilize a retainer agreement. In fact, a March 25, 2002, letter from Jackson to respondent suggests that he may have attempted to charge her both hourly "lump sum" fees and a one-third contingency fee in the matter. The record contains no evidence that respondent ever presented Jackson with a retainer agreement for the matter.

Respondent violated RPC 1.1(a) and RPC 1.3 by failing to file a motion for reconsideration, or to otherwise protect Jackson's rights for eight months after the April 6, 2001, Appellate Division determination.

Respondent violated RPC 1.2 by failing to abide by his client's unequivocal rejection, both oral and written, of the $15,000 settlement offer. Instead, respondent sought to press ahead without his client's assent. Thereafter, he violated RPC 1.4(a) by failing to communicate with Jackson. Respondent's rejection of certified mail from Jackson was egregious, and came at a time when she was desperately attempting to spur respondent to action.

Finally, respondent violated RPC 8.1(b) by failing to cooperate with ethics authorities during the investigation of the grievance, and allowing the matter to proceed to us as a default.

Respondent continues to exhibit a disdain for clients and the disciplinary system. First, he ignored Jackson's directives not to settle her matter for $15,000. Thereafter, he abandoned her, as evidenced by his failure to file a motion for reconsideration or accept certified mail addressed to him. This is not the first time that he has abandoned a client at a critical juncture. As noted above, the Court recently suspended respondent for one year for misconduct that included abandoning a client during deportation proceedings. In that matter, the client faced arrest and immediate deportation at the time he sought respondent's aid.

Cases involving conduct similar to respondent's, combined with the presence of a disciplinary record, have resulted in suspension. See, e.g., In re Aranguren, 165 N.J. 664 (2000) (six-month suspension for attorney who, in five matters, exhibited gross

neglect, a pattern of neglect, lack of diligence, failure to communicate, and failure to expedite litigation; the attorney made misrepresentations in three of the matters, including one in a certification to a trial court; the attorney also failed to return the files to the client or client's counsel in three of the matters and failed to cooperate with the disciplinary system during the investigation; prior admonition); In re Waters-Cato, 142 N.J. 472 (1995) (one-year suspension for gross neglect, pattern of neglect, misrepresentation and failure to disclose material facts, failure to cooperate with disciplinary authorities, and conduct prejudicial to the administration of justice; the attorney had a prior three-month suspension in 1995 and a private reprimand); and In re Herron, 140 N.J. 229 (1995) (one-year suspension for misconduct in two matters, including gross neglect, lack of diligence, failure to communicate with clients, and failure to cooperate with ethics authorities; prior one-year suspension for similar misconduct in seven client matters). Similarly, attorneys who abandon clients and/or engage in other serious violations have received lengthy suspensions. See, e.g., In re Mintz, 126 N.J. 484 (1992) (two-year suspension where the attorney engaged in a pattern of neglect, abandoned four matters, failed to maintain a bona fide office, and failed to cooperate with disciplinary authorities); and In re Foushee, 149 N.J. 399 (1997) (three-year suspension where, in a series of four matters, the attorney displayed gross neglect,

failure to communicate, failure to provide written fee agreements, misrepresentations, and failure to cooperate with disciplinary authorities). Here, respondent's callous disregard for his duties as an attorney, in combination with a lengthy disciplinary history, (a public reprimand in 1990, a three-month suspension in 1994, another reprimand in 1999, a three-month suspension on January 28, 2003, another three-month suspension on June 20, 2003, and a one-year suspension on November 25, 2003, effective August 28, 2003) compels us to impose a one-year suspension from the date of this decision, to run concurrently to, but not coextensively with, the one-year suspension effective August 28, 2003. Two members did not participate. One member recused himself.

We also determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Elliott D. Moorman
Docket No. DRB 03-436

Decided: April 27, 2004

Disposition: One-year suspension

Members	*Disbar*	*One-year Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Maudsley		X					
O'Shaughnessy		X					
Boylan		X					
Holmes						X	
Lolla							X
Pashman							X
Schwartz		X					
Stanton		X					
Wissinger		X					
Total:		6				1	2

Julianne K. DeCore
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Chief Counsel