

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-228

IN THE MATTER OF :
KARL R. LAWNICK :
AN ATTORNEY AT LAW :
:

Decision

Argued: September 21, 2000

Decided: January 31, 2001

Brian D. Gillet appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us by way of a disciplinary stipulation. Respondent's conduct included violations of RPC 1.15(d) (recordkeeping violations), RPC 8.1(b) (failure to cooperate with disciplinary authorities), RPC 5.5(a) (unauthorized practice of law), RPC 1.3 (lack of diligence) and RPC 1.4 (failure to communicate with the client).

Respondent was admitted to the New Jersey bar in 1988. At the relevant times he maintained a law office in Perth Amboy, New Jersey.

In August 1998 respondent was temporarily suspended for failure to comply with the Court's order requiring him to provide certain information to the Office of Attorney Ethics ("OAE"). In re Lawnick, 155 N.J. 117 (1998).

On December 7, 1999 the Court imposed a three-month suspension for respondent's violations of RPC 1.3(lack of diligence), RPC 1.4(a) (failure to keep client reasonably informed), RPC 1.16(d) (failure to protect client's interest on termination of representation) and RPC 8.1(b) (failure to cooperate with ethics authorities). In re Lawnick 162 N.J. 115 (1999).

Also on December 7, 1999 respondent received a one-year consecutive suspension for violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 1.16(d) (failure to refund an unearned fee), RPC 8.1(b) (failure to cooperate with ethics authorities) and RPC 8.4(c) (misrepresentation). In re Lawnick, 162 N.J. 113 (1999).

In June 2000 we determined to impose an additional three-month suspension for respondent's violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and (b), RPC 1.5(a)(4) (unreasonable fee), RPC 3.2 (failure to expedite litigation) and RPC 8.1(b). In the Matter of Karl Lawnick, Docket No. 00-099. This matter is still pending before the Court.

The disciplinary stipulation set forth the following facts:

I - The Recordkeeping Deficiencies

Two checks from respondent's trust account were returned for insufficient funds. By letters dated April 7, 1997 and April 29, 1997 the OAE requested an explanation for the overdrafts. When respondent failed to provide a written explanation, the OAE scheduled a demand audit for June 5, 1997. In the interim, on May 16, 1997 the bank notified the OAE of a May 8, 1997 overdraft on respondent's trust account. That overdraft resulted in a negative balance of \$390.88.

Following the June 5, 1997 demand audit, the OAE informed respondent of the deficiencies in his trust and business accounts and gave him forty-five days to either obtain an accountant or submit a full reconstruction of all trust account activities from November 1, 1996 to June 1, 1997, together with supporting documentation. The documentation was to include all bank statements, canceled checks and deposit tickets for the business account and was to identify each deposited item in that account. The letter also notified respondent that, because of the seriousness of the violations, if he failed to comply with the OAE's instructions by July 25, 1997, the OAE would seek his immediate temporary suspension.

On August 11, 1997 the OAE received a letter from respondent requesting additional time. The OAE agreed to an extension until September 8, 1997. On that date, respondent requested more time to obtain certain records. The OAE gave respondent until October 3,

1997 to provide all the information, including a full reconstruction and reconciliation of his trust account.

On September 30, 1997 respondent notified the OAE that he had hired an accountant to prepare his trust account reconciliations. As a result, the OAE extended the time for compliance until October 31, 1997. Thereafter, respondent's accountant obtained an additional extension to November 5, 1997.

Respondent submitted the accountant's trust reconciliation on November 13, 1997. Based on the submission, the OAE agreed that respondent could enter into an agreement in lieu of discipline ("agreement") or diversion, in accordance with R.1:20-3(I)(2)(B). The agreement approved by the OAE Director on November 24, 1997 set forth the following:

After respondent could not determine the exact cause of the trust overdrafts, the OAE conducted an investigation into respondent's attorney trust and business accounts. The investigation revealed that respondent failed to maintained his attorney trust and business accounts in accordance with R.1:21-6 during the period from January 1, 1996 through June 1, 1997. Respondent's conduct included the following deficiencies:

- a. failure to maintain complete and fully descriptive client ledger cards;
- b. failure to prepare three-way trust account reconciliations;
- c. failure to keep cash receipts and cash disbursements journals for the trust and business account;
- d. failure to have client references on deposits slips;
- e. failure to maintain copies of banks statements and canceled checks;
- f. use of the trust account for personal transactions; and
- g. failure to maintain checkbook stubs.

The agreement further stated that, during the period in question, respondent's trust account activity was limited and many of the transactions appeared to have been of a personal nature. Seemingly, the numerous problems in respondent's trust account were caused by his failure to prepare and maintain basic trust account records in accordance with R.1:21-6 and RPC 1.15(d). There was no evidence that respondent misappropriated client funds.

As a condition to the diversion, the agreement required respondent to comply with the following conditions within sixty days:

1. Cease all activities in his current CoreStates Bank trust account and open a new trust account;
2. determine to whom the funds remaining in the CoreStates Bank trust account belonged and disburse those funds appropriately;
3. provide a certification to the OAE that respondent was in full compliance with requirements of R.1:21-6; and
4. prepare and submit to the OAE quarterly three-way trust account reconciliations from November 1, 1997 to July 31, 1998.

Within six months from the agreement, respondent was to attend and complete ICLE's "Trust and Business Accounting for Attorneys" course or a reasonable equivalent and was to attend the New Jersey State Bar Association Diversionary Continuing Legal Education Program.

Notwithstanding the OAE's numerous requests for documents and records and despite respondent's repeated assurances to the OAE that he would submit them, he failed to do so. Therefore, on June 19, 1998 the OAE filed a petition for emergent relief, seeking respondent's temporary suspension. Respondent "faxed" a reply to the Court on June 24,

1998, representing that he would provide certain documents on June 25, 1998. On June 29, 1998 the OAE informed the Court that it had not received the documentation directly from respondent; it had been provided by the Supreme Court Clerk's Office. The documentation still did not include the information requested by the OAE. Therefore, on June 30, 1998 the Court ordered respondent to submit to the OAE all documents requested within thirty days and warned him that failure to do so would result in his temporary suspension without further notice.

After several letters between the OAE and respondent, on July 31, 1998 the OAE notified the Court that respondent had not provided an explanation for the trust account overdraft or complied with the OAE's requests for the documents. Afterwards, respondent submitted certain documents to the OAE, which apparently were not adequate. Hence, on August 10, 1998 the Court temporarily suspended him, in accordance with its June 30, 1998 order.

Following respondent's temporary suspension, he informed the OAE that he would bring all requested records. Once again, respondent failed to submit the documents or to adequately explain the March 26, 1998 trust account overdraft.

The stipulation states that respondent's conduct violated R.1:21-6, RPC 1.15(d) and RPC 8.1(b).

I - The Roginski, Lindsey and Stromenger Matters

Kenneth Roginski retained respondent to represent him in municipal court in connection with a December 20, 1998 DWI charge. Roginski paid respondent \$800. He did not inform Roginski that he was suspended at the time and, therefore, could not represent him. Thereafter, respondent contacted another attorney to represent Roginski. By letter dated December 23, 1998 that attorney advised the East Brunswick Township municipal court that he was representing Roginski.

Similarly, when respondent was under suspension, Joe Edward Lindsey retained him in connection with a DWI charge. Lindsey paid respondent a \$300 retainer. Respondent did not disclose to Lindsey that he was suspended. Thereafter, respondent contacted the same attorney and asked him to represent Lindsey. Respondent did not refund the \$300 that Lindsey had paid him.

Lastly, Annice Stromenger retained respondent to represent her in connection with an accident that occurred On October 8, 1995. Respondent filed a civil suit in her behalf within the applicable statute of limitations. However, in June 1998, the complaint was dismissed for lack of prosecution. Respondent did not advise Stromenger that her suit had been dismissed and did not inform her that he had been suspended on August 10, 1998, so that she could obtain another attorney. After his suspension, respondent kept the Stromenger file, leading his client to believe that he was actively pursuing her case.

According to the stipulation, respondent's conduct in the Roginski, Lindsey and Stromenger matters was unethical and in violation of RPC 5.5(a) (unauthorized practice of law) for practicing law while suspended and a violation of R.1:20-16(j) for violating the Court's order of suspension. Respondent also stipulated that, in the Stromenger matter, he violated RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate) and R.1:20-20 (future activities of an attorney who has been suspended or disbarred).

* * *

The stipulation listed the following as aggravating circumstances: (1) respondent's failure to explain the March 26, 1998 overdraft in his attorney trust account; (2) his failure to provide the three-way trust account reconciliations, as required by the diversionary agreement; (3) his "[previous suspension] by the Supreme Court in connection with several aspects of this stipulation;" (4) the Disciplinary Review Board's determination, in September 1998, that respondent had to pay a \$500 sanction for failure to comply with a fee arbitration award; and (5) respondent's three-month and one-year suspensions in two matters, the latter being a default.

The stipulation recites, in mitigation, that from 1992 until July 1995 respondent worked as an associate for an attorney who died in May 1995. On July 7, 1995 that attorney's wife dismissed all of the employees, including respondent, and closed the office.

At that time respondent had three children under four years of age. In September 1995, respondent began sharing office space with another attorney for whom he also worked on some cases. Respondent also attempted to build his own practice. During that time, his income dropped substantially and his wife was required to return to work. Shortly thereafter, respondent began to abuse alcohol and cocaine. After respondent's suspension in August 1998, his alcohol abuse increased. Following a church retreat in October 1998, respondent sought counseling with his parish priest. Respondent stopped drinking, but experienced "one-day slips" through 1999. In October 1999, respondent sought counseling with a therapist from the Behavioral Sciences Department of the University of Medicine and Dentistry of New Jersey.

The OAE endorsed the imposition of a one-year suspension. In support of this sanction, the OAE cited In re Wheeler, 163 N.J. 64 (2000) (attorney received a three-year suspension, consecutive to his earlier suspension, for practicing law in three separate matters while suspended and exhibiting conduct involving fraud, dishonesty, deceit or misrepresentation; attorney previously suspended for multiple ethics violations, including practicing while suspended) and In re Lisa, 158, N.J. 5 (1999). In Lisa, a suspended attorney represented to a New York court, while actively involved in an ongoing litigation, that he was in good standing. It was found that the attorney violated RPC 3.3(a)(1) (false statement of material fact to a court), RPC 5.5 (unauthorized practice of law) and RPC 8.4(c) (conduct

involving dishonesty, fraud, deceit or misrepresentation) and (d) (conduct prejudicial to the administration of justice). The attorney was suspended for one year.

Respondent stipulated that his conduct included violations of RPC 1.3, RPC 1.4, RPC 1.15(d), RPC 5.5(a) and RPC 8.1(b). His conduct in these matters was serious. Generally, the discipline imposed in cases involving similar violations has ranged from a reprimand to a short-term suspension. See In re Namias, 157 N.J. 15 (1999) (reprimand where attorney displayed a lack of diligence and failure to communicate with client and practiced law while ineligible); In re Armorer, 153 N.J. 358 (1998) (reprimand for gross neglect, failure to communicate with client, failure to maintain a bona fide office and practicing law while ineligible); In re Dudas, 156 N.J. 540 (1999) (three-month suspension where attorney exhibited a lack of diligence, failed to safeguard property, practiced law while ineligible and failed to cooperate with disciplinary authorities; he also had a prior admonition).

Unlike the above attorneys, respondent has a significant ethics history. In assessing the proper discipline, however, we have considered that respondent's ethics problems are closely related to his addiction problems. We, therefore, unanimously determined that, if safeguards are put in place to control respondent's addiction and, in turn, protect the public from harm, a one-year suspension, following his reinstatement from his present suspensions, is sufficient discipline for his ethics infractions.

We also determined that, prior to reinstatement, respondent is to complete the Skills and Methods courses offered by the Institute for Continuing Legal Education. In addition,

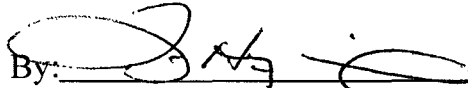
respondent is to present proof of fitness to practice law, certified by a health care professional approved by the OAE. Respondent is also to identify his treatment program for his addiction, which must be approved by the OAE. Finally, upon reinstatement, respondent is to practice under the supervision of a proctor for an indefinite period.

Two members did not participate in this decision.

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

Dated:

1/3/01

By: 

LEE M. HYMERLING

Chair

Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

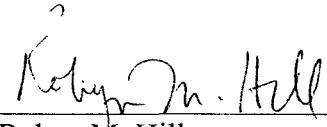
**In the Matter of Karl R. Lawnick
Docket No. DRB 00-228**

Argued: September 21, 2000

Decided: January 31, 2001

Disposition: One-year suspension

Members	Disbar	One-year Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling		X					
Peterson							X
Boylan		X					
Brody		X					
Lolla		X					
Maudsley		X					
O'Shaughnessy		X					
Schwartz							X
Wissinger		X					
Total:		7					2


Robyn M. Hill 5/15/01
Chief Counsel