

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-273

IN THE MATTER OF
JACK DAVID BERSON
AN ATTORNEY AT LAW

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

Decided: December 14, 2001

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

Pursuant to R.1:20-4(f), the District I 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 March 27, 2001 the DEC forwarded a copy of the formal ethics complaint to respondent’s last known address, P.O. Box 33, Absecon, New Jersey, 08201, by regular and certified mail. The certified mail receipt was returned, indicating delivery on April 9, 2001. The signature on the mail receipt is illegible. The regular mail was not returned. On May 22, 2001 the DEC sent respondent a letter by regular and certified mail, advising him that,

unless he filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted and the record would be certified directly to us for the imposition of sanction. The certified mail was returned on June 13, 2001 marked "unclaimed." The regular mail was not returned.

Respondent did not file an answer to the formal ethics complaint. Therefore, the record was certified directly to us for the imposition of discipline, pursuant to R.1:20-4(f).

On or about September 5, 2001 respondent filed a motion to vacate the default in this matter. In his affidavit in support of the motion, respondent claimed that he did not answer the complaint because of psychological problems. Respondent also claimed that he was suicidal and undergoing weekly psychotherapy at about the time that the answer was due. No medical proofs were included with the motion. Respondent alleged as a meritorious defense that his clients failed to pay the latter half of his legal fee. According to respondent, he expended \$175 on the filing fee and over three hours in preparing the matter and filing it. Respondent also claimed that his clients knew that he would not proceed on their behalf without first receiving the balance of his fee. With or without the final payment, however, respondent was obligated to protect his client's interests until the termination of the representation. There is no hint in the complaint or respondent's motion papers that he terminated the representation. Respondent did not raise other defenses in his motion papers. Therefore, we denied the motion to vacate the default for lack of a meritorious defense to the charges.

Respondent was admitted to the New Jersey bar in 1980. On March 18, 1999, effective April 20, 1999, he was temporarily suspended from the practice of law for failure to pay a fee arbitration award. He remains suspended to date.

On November 26, 1996 respondent received an admonition for failure to incorporate a non-profit corporation and failure to return the retainer upon the client's demand. He was suspended for three months, effective April 20, 1999, for gross neglect, lack of diligence, failure to communicate with the client, failure to return an unearned retainer and failure to cooperate with ethics authorities. In re Berson, 157 N.J. 634 (1999). On July 20, 1999, respondent was suspended for three months in another default matter for gross neglect, lack of diligence, failure to communicate with the client and failure to cooperate with ethics authorities. In re Berson, 159 N.J. 508 (1999). The above two matters proceeded on a default basis.

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In May 1998 Robert and Reneé Conti retained respondent to prepare and file a chapter seven bankruptcy petition in their behalf. At the time, the Contis paid respondent \$350 of a \$750 retainer.

Shortly thereafter, respondent filed a bankruptcy petition in the Contis' behalf. He did not, however, file several other documents that were critical to the case. Those documents included the following: schedules A through J; the debtors' statement of intention; a creditor matrix; the statement of financial affairs and the attorney compensation disclosure.

On or about October 21, 1998 the bankruptcy court notified respondent that the failure to file those documents within fifteen days would result in the dismissal of the case. Respondent never filed the documents. On or about December 2, 1998 the bankruptcy court dismissed the case.

On six separate occasions, during the period 1998 through 2000, the Contis called respondent for information about their case and to discuss the notice of dismissal. Although respondent knew of the dismissal and took no action to reinstate the petition, he repeatedly assured the Contis that he was properly handling their matter.

The complaint alleged violations of RPC 1.1(a) (gross neglect) and (b) (pattern of neglect), RPC 1.3(lack of diligence), RPC 1.4(a) (failure to communicate), RPC 3.2 (failure to expedite litigation) and RPC 8.4(c) (misrepresentation).

* * *

Service of process was properly made in this matter. Following a de novo review of the record, we found that 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).

Respondent was retained to represent the Contis in a simple chapter seven bankruptcy. However, he failed to file other essential documents, virtually assuring the dismissal of the case. In this context, respondent violated RPC 1.1(a), RPC 1.3 and RPC 3.2. After the dismissal, respondent failed to inform his clients of the true status of their case,

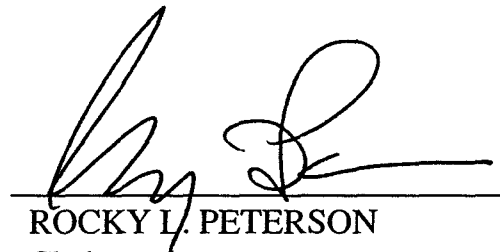
despite their numerous requests for information. His conduct in this regard violated RPC 1.4(a). It is not clear from the complaint, however, that respondent misrepresented that the case was proceeding apace. Without more facts, we cannot say that he lied to the Contis about taking some action beyond the filing of the petition. Therefore, we cannot find a violation of RPC 8.4(c).

We also found a pattern of neglect, when this matter is combined with respondent's previous misconduct, including several instances of gross neglect. RPC 1.1(b).

Ordinarily, misconduct of this sort in default matters results in either a reprimand or a short-term suspension. See, e.g., In re Cubberly, 164 N.J. 532 (2000) (reprimand imposed in a default matter where the attorney engaged in a pattern of neglect, lack of diligence and failure to cooperate in two separate client matters; the attorney had been previously admonished in 1996 for failing to reply to the district ethics committee investigator's request for information until a subpoena was finally issued); In re King, 157 N.J. 548 (1999) (three-month suspension imposed in a default matter where the attorney engaged in gross neglect, a pattern of neglect, lack of diligence, failure to communicate with a client in a personal injury matter and failure to cooperate with disciplinary authorities during the investigation of the case; the attorney had been previously reprimanded for gross neglect, pattern of neglect, lack of diligence, failure to communicate and failure to return an unearned fee); and In re Vnenchak, 156 N.J. 548 (1999) (three-month suspension imposed in a default matter where the attorney was guilty of gross neglect, pattern of neglect, lack of diligence, failure

to communicate, failure to expedite litigation, failure to cooperate with disciplinary authorities and misrepresentations to clients; the attorney had been temporarily suspended from the practice of law in New Jersey since September 1997 for failure to appear at an Office of Attorney Ethics' demand audit.) This is respondent's third consecutive default case. We, therefore, unanimously determined to impose a three-month suspension. Two members did not participate.

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

A handwritten signature in black ink, appearing to read 'Rocky L. Peterson', is written over a horizontal line. The signature is stylized and cursive.

ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Jack David Berson
Docket No. DRB 01-273**

Decided: December 14, 2001

Disposition: Three-month suspension

Members	Disbar	Three-month suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not participate
Peterson		X					
Maudsley		X					
Boylan		X					
Brody		X					
Lolla		X					
O'Shaughnessy							X
Pashman		X					
Schwartz							X
Wissinger		X					
Total:		7					2

Robyn M. Hill 12/20/01
Robyn M. Hill
Chief Counsel