SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 01-277 and DRB 01-278

IN THE MATTER OF

MARTIN C. LATINSKY

AN ATTORNEY AT LAW

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

Decided: February 4, 2002

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

These matters were previously before us as defaults under Docket Nos. DRB 00-180 and DRB 00-181. Respondent did not file a motion to vacate the defaults. Upon a de novo review of the records, we determined to suspend respondent for three months. After respondent appealed our decision, the Court remanded the matters to us to permit respondent to file a motion to vacate the defaults.

As set forth below, we unanimously determined to deny respondent's motion and to reiterate our prior determination to suspend respondent for three months.

Respondent was admitted to the New Jersey bar in 1983. He maintains a law office in Haworth, New Jersey. In November 1999, respondent was admonished for misconduct in three matters. In all three matters, respondent failed to communicate with his clients. In addition, in one of the matters, although respondent prepared a verified complaint and had his client sign it, he never filed it because he determined that the case was not meritorious. However, respondent never informed his client of that determination. In another matter, respondent did not inform his clients that his efforts to stay a sheriff's sale had been rejected by the sheriff and did not return his client's telephone calls at a time when she was anxiously seeking information about the case. In the third matter, the client's case was dismissed because of respondent's failure to attend an arbitration proceeding. He then failed to file a motion to reinstate the complaint until nine months after an ethics grievance was filed against him. Respondent also failed to serve answers to interrogatories in the case. In the Matter of Martin C. Latinsky, Docket No. DRB 99-291 (November 29, 1999).

On August 6, 2001, we determined to reprimand respondent for taking his fee from a preference settlement without the prior approval of the bankruptcy court, failing to keep his client informed about his bankruptcy case and failing to cooperate with the district ethics committee's investigation of the grievance. As of the date of this decision, that matter is pending with the Court.

* * *

By letter dated July 16, 2001, we advised respondent that he had to file his motion to vacate the defaults no later than August 7, 2001. Respondent did not file the motion until August 14, 2001 – a week after the deadline. He stated that his mother's July 27, 2001 open-heart surgery "made it difficult to devote attention to this matter before now."

In his motion, respondent stated that he did not answer the ethics complaints because they were served one month after his father's death and he "was not emotionally able to address" the allegations. The complaints were served on March 23, 2000 and received by respondent on March 27, 2000. However, almost one month after serving the complaints, on April 19, 2000, the DEC sent a second letter to respondent, advising him that, if he did not reply within five days, the charges in the complaint would be deemed admitted and the matter would be certified to us for the imposition of sanctions. On May 15, 2000, after the DEC investigator forwarded to the DEC her certification in support of the default, respondent sent her a letter requesting "another 48 hours for my response" to the grievances. Apparently, although the investigator did not reply to the letter, the DEC did not certify the records to us until May 25, 2000. Respondent did not submit a reply to the DEC.

After these matters were certified to us, Office of Board Counsel received a copy of a letter from an attorney, who stated that he had been retained to represent respondent. On June 27, 2000, Office of Board Counsel advised the attorney, by telephone and letter, that a motion to vacate the default had to be filed by July 12, 2000, because the matters were scheduled to be reviewed by us on July 20, 2000. By letter dated July 3, 2000, we also

advised respondent that the matters would be reviewed on July 20, 2000. Respondent did not file a motion to vacate the default. Although respondent had five months, from the time the complaints were served, to answer them, request additional time to answer or file a motion to vacate the defaults, he did nothing.

I. The Garcia Matter (Docket No. DRB 01-277; District Docket No. IIA-99-023E)

The complaint alleged that, in June 1992, Modesto Garcia retained respondent to represent him in a products liability lawsuit stemming from an auto accident. Thereafter, Garcia believed that respondent was working on his case. Although Garcia attempted to contact respondent, he was unable to locate him. The complaint alleges that respondent failed to "correspond with [Garcia] in a timely manner and memorialize [his] advice that the damages from the car accident did not justify moving forward with the lawsuit and the car was either unavailable or had been repaired."

On December 11, 1999, the DEC served the Garcia grievance on respondent and requested that he reply to the grievance, in writing, within ten days. When respondent failed to reply, the DEC sent him a second letter, on December 27, 1999. By letter dated January 7, 2000, respondent told the investigator that he had received the December 27 letter, but that a copy of the grievance was not enclosed. Respondent did not address the fact that he had already received the grievance via the DEC's December 11, 1999 letter. The

investigator forwarded another copy of the grievance, which respondent received on January 21, 2000. On February 14, 2000, respondent finally provided a reply to the grievance.

The complaint charged that respondent violated RPC 1.1(b) by failing to "document his decision to not file a lawsuit on behalf of [Garcia]" and that his negligence in this case "represents a continuing pattern of neglect in the handling of legal matters." The complaint also charged that respondent failed to cooperate with the DEC's investigation of the grievance, in violation of RPC 8.1(b).

In his motion to vacate the default, respondent stated that he did not file a lawsuit on behalf of Garcia because Garcia

> suffered no bodily injury. His automobile was damaged, as he struck several parked cars, but my recollection is his insurance either covered these repairs or totaled his vehicle minus the deduction. As his damages were minimal to non-existent, there was no lawsuit to file. Furthermore, the only legal grounds to file a complaint would have been on some sort of product liability theory, which would have been next to impossible as Mr. Garcia's vehicle was for [sic] from new.

Respondent's motion did not state whether he communicated to Garcia his decision not to pursue a lawsuit on Garcia's behalf. However, in his reply to the grievance, respondent stated that he had "tried to explain" to Garcia that his damages did not justify a lawsuit. Respondent admitted that, after meeting with Garcia, he should have explained to him, in writing, that he had decided not to file suit on Garcia's behalf.

As to his alleged failure to cooperate with the DEC's investigation of the grievances, respondent stated that it was due to the "emotional difficulty of dealing with [his father's

cancer] on both myself and my mother." According to respondent, the investigation "began at the height of our family coming to grips with what turned out to be a debilitating and ultimately unsuccessful treatment" of his father's cancer. Respondent also claimed that he did not have time to reply to the grievances because of the time spent assisting his parents, who lived sixty miles from his home.

II. The Williams Matter (Docket No. DRB 01-278; District Docket No. IIA-00-003E)

The complaint alleged that James Williams retained respondent in 1999, to represent him in a Chapter 13 bankruptcy.[1] At that time, Williams was ill and in a hospital. Respondent and Williams agreed that respondent's fee would be $1,500 for filing the petition and representing Williams to the "conclusion" of the bankruptcy case. There was no written fee agreement. At their first meeting, Williams paid $200 to respondent. Sometime thereafter, "on the eve of the foreclosure" on Williams' property, respondent demanded an additional $700 before he would "continue with the work." After Williams wired the money to respondent, respondent filed a bankruptcy petition. However, respondent did not include the necessary schedules, despite having received "all necessary paperwork."

According to the complaint, Williams later learned from the bankruptcy court that his petition had been dismissed because the required schedules were not filed within fifteen days

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[1] The complaint alleges that Williams retained respondent "in or about July, 1999." The bankruptcy court's notice of dismissal is dated June 15, 1999.

of the filing of the petition. The bank foreclosed on Williams' property. According to the complaint, respondent "never intended to conclude the case when he took [Williams'] money."

Williams and his sister made numerous, but fruitless, attempts to locate respondent, leaving many telephone messages requesting information about his case. Ultimately, Williams filed a complaint against respondent with the Edison Police Department. Apparently, the police located respondent.

By letter dated January 21, 2000, the DEC investigator forwarded the Williams' grievance to respondent, requesting a reply within ten days of receipt. The signed return receipt card showed that it was delivered on January 26, 2000. Respondent did not reply to the grievance.

The Williams complaint charged that respondent violated RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate with the client or to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation), RPC 1.5(a)(4) (excessive fee), RPC 1.5(b) (failure to provide in writing the basis or rate of his fee), RPC 3.2 (failure to expedite litigation), RPC 8.1(b) (failure to cooperate with ethics authorities), RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

In his motion to vacate the default, respondent claimed that Williams' loss of his property was caused by Williams' failure to pay the mortgage, instead of respondent's failure to file the necessary bankruptcy schedules. According to respondent, Williams assured him that he would resume his mortgage payments, after the bankruptcy petition was filed. Therefore, according to respondent, "dismissal of [Williams'] bankruptcy case became inevitable regardless of whether or not the balance of his petition was filed." Respondent did not explicitly state whether he had filed the required schedules.

However, in his petition for review, respondent stated that he filed only a "bare bones" petition on behalf of Williams. Respondent did not dispute that the petition was dismissed for failure to file the required schedules. Instead, he contended that

> Williams was unable to make even one more mortgage payment, despite a two month window of opportunity. He lost the property due to his inability to keep up those payments. The bankruptcy afforded him an additional opportunity to make those payments. Its dismissal had nothing to do with his losing the property – it was already lost.

Respondent also confirmed that Williams was in the hospital and "quite ill" when he retained respondent and that Williams was "extremely motivated to save" his property.

* * *

The DEC vehemently opposed respondent's motion to vacate the default. Initially, the DEC pointed out that, despite our December 1999 letter of admonition, which warned respondent that any future instances of unethical conduct would be met with more severe

discipline, respondent continued his pattern of non-cooperation with the DEC. The DEC argued that to grant respondent's motion to vacate would be to send the wrong message to the bar:

> This Respondent had a letter of admonition for his lack of communication and lack of diligence. This Respondent did not file answers to the complaints because he neglected to do so and failed to diligently follow through on his own file. He failed to communicate with ethics authorities. He was on notice that future conduct would be scrutinized more closely because of his history of ethical misconduct. If that Respondent is provided an order vacating defaults, what attorney would not?

With respect to respondent's reasons for failing to answer the complaints or to file a motion to vacate the defaults, the DEC stated that, in December 1999, respondent sought extensions of time to answer two other ethics complaints, in order to obtain counsel. Respondent obtained counsel and answered the complaints. Thereafter, a hearing was scheduled for May 24, 2000. On May 23, 2000, respondent's counsel requested an adjournment of the scheduled hearing because respondent's wife had given birth on May 22, 2000. The hearing was adjourned to August 4, 2000. Therefore, according to the DEC, respondent had counsel at the time these complaints were served and at the time the records were certified to us. Furthermore, the DEC pointed out that, due to the adjournment of the hearing to August, respondent and his counsel had time to file a motion to vacate the defaults. According to the DEC, "one could argue that [r]espondent was unconcerned about the consequences of his actions [in these matters] until he received a three month suspension."

The DEC also argued that, if respondent's motion to vacate were granted, we would be sending the wrong message to the public and to the grievants:

> How does one explain to the the public and to [the grievants] that their attorney, who chose to not cooperate with the ethics process, is given the privilege of vacating defaults to the complaints? When procrastination, neglect, and failure to communicate are the bases of ethics complaints, as well as the bases for punishment in the past for prior transgressions, how can an attorney then obtain a vacation of a default due to his procrastination, neglect and failure to communicate?

The DEC also disputed respondent's assertion that he has meritorious defenses to the complaints. In the Garcia matter, the DEC pointed out, respondent only addressed why he did not file a lawsuit on behalf of Garcia, which was not the focus of the ethics complaint. Rather, the complaint charged that respondent failed to advise Garcia that he would not file the lawsuit.

With respect to respondent's asserted defenses to the charges in the Williams matter, the DEC correctly stated that respondent failed to address most of the charges and that he did not dispute that the petition was dismissed because he failed to filed the required schedules.

* * *

We denied respondent's motion to vacate the defaults for many of the reasons expressed by the DEC. Respondent failed to provide sufficient justification for his failure to answer the complaints or to file a motion to vacate the defaults when these matters were originally reviewed by us. The complaints were served on March 23, 2000. We did not

review the defaults until July 20, 2000. Respondent claimed that, during that time, he was unable to address these matters due to his father's illness and death. Yet, during that same time period, he retained an attorney in two other matters pending before the DEC, answered the complaints and was involved in the scheduling of those matters.

Furthermore, respondent failed to show that he had meritorious defenses to the charges in the complaint. In the Garcia matter, respondent did not dispute that he failed to timely reply to the grievance. Nor did respondent contend that he advised Garcia of his decision not to pursue a lawsuit on Garcia's behalf. Although respondent claimed, in his petition for review, filed with the Supreme Court, that he "tried to explain" that Garcia's damages did not justify a lawsuit, he did not contend that he had explicitly told Garcia that he would not pursue the claim. In fact, respondent admitted that, after meeting with Garcia, he should have explained to him, in writing, that he had decided not to file suit on Garcia's behalf. Furthermore, respondent did not dispute that Garcia unsuccessfully attempted to contact him about the lawsuit. Therefore, respondent's motion presented no defenses to the charges that he violated RPC 8.1(b) and RPC 1.4(a) and RPC 1.4(b) (mistakenly identified as RPC 1.1(b) in the complaint) in the Garcia matter.

With respect to the Williams matter, respondent did not dispute that he was retained to represent Williams to the "conclusion" of Williams' Chapter 13 bankruptcy case, that he was given the information required to complete the schedules to the bankruptcy petition and that he failed to file the required schedules. Respondent confirmed that Williams was

seriously ill, in the hospital, when he retained respondent and that his reason for the bankruptcy filing was to save his property from foreclosure. In light of those facts, respondent's contention that he discharged his responsibilities to Williams by filing a "bare bones" petition is troubling. In fact, respondent's cavalier statements, as well as his unavailability when Williams attempted to contact him, tend to support the charge that respondent never intended to complete the work for which he was retained. Respondent did not dispute that Williams and his sister made numerous attempts to contact him, ultimately resorting to filing a complaint with the police.

Although respondent did not provide Williams with a writing setting the basis for his fee, he did not dispute the charge that he told Williams that his fee for representation to the conclusion of the Chapter 13 bankruptcy would be $1,500 and that he received $900, in exchange for which he filed a "bare bones" petition.

Finally, respondent did not dispute that he failed to reply to the ethics grievance.

In light of the foregoing, we found that respondent has not set forth any meritorious defenses to the charges that he violated RPC 1.1(a), RPC 1.3, RPC 1.4, RPC 1.5(a)(4), RPC 1.5(b), RPC 3.2, RPC 8.1(b) and RPC 8.4(c) in the Williams matter. However, we declined to find a violation of RPC 1.1(b) because, generally, three instances of neglect are required to find a pattern of neglect. Here, respondent exhibited neglect in the Williams case only; in the matters for which he received an admonition, he showed a lack of diligence in

only one of the cases. Therefore, there is not sufficient evidence of a pattern of neglect. We also dismissed the charge of a violation of RPC 8.4(a) as cumulative.

There remains the issue of the proper discipline. Respondent has already received an admonition for ethics transgressions in three matters. His misconduct in those matters was remarkably similar to his misconduct here. Also, we recently determined to reprimand respondent for taking his fee from a preference settlement without the prior approval of the bankruptcy court, failing to keep his client informed about his bankruptcy case and failing to cooperate with the district ethics committee's investigation of the grievance. We have previously determined that respondent should be suspended for three months for his misconduct in these matters. We see no reason to change that determination. In fact, we are even more convinced that a suspension is appropriate, in light of respondent's cavalier attitude toward his client and his attempted justification of his misconduct in the Williams matter. Like the DEC, we perceive that respondent does not take seriously his responsibilities to his clients or to the disciplinary system.

Three-month suspensions have been imposed in matters involving conduct similar to that of respondent. See In re Bernstein, 144 N.J. 369 (1996) (three-month suspension for gross neglect, lack of diligence, failure to communicate, misrepresentations and failure to cooperate with disciplinary authorities; attorney had prior private reprimand); In re Kates, 137 N.J. 102 (1994) (three-month suspension for lack of diligence, failure to communicate and failure to cooperate with ethics authorities).

In light of the foregoing, we unanimously determined to suspend respondent for three months. Three members did not participate.

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

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Martin C. Latinsky
Docket Nos. DRB 01-277 and DRB 01-278

Decided: February 4, 2002

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:		6					3

Robyn M. Hill 2/21/02
Robyn M. Hill
Chief Counsel