

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-033

IN THE MATTER OF
BERNARD J. MCBRIDE, JR.
AN ATTORNEY AT LAW

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

Decided: May 3, 2004

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

This matter was before us based on a certification of
default filed by the District I Ethics Committee ("DEC"),
pursuant to Rule 1:20-4(f).

Respondent was admitted to the New Jersey bar in 1990. He
has no disciplinary history.

On November 25, 2003, the DEC sent a complaint by certified
mail, return receipt requested, to respondent's office address:
501 Mill Road, Northfield, New Jersey. The return receipt for
the certified mail indicating delivery on December 1, 2003 was

returned to the DEC signed by Jody Davis. On December 29, 2003, the DEC sent two letters¹ by certified mail to the same address, advising respondent that, unless he filed an answer, the allegations of the complaint would be deemed admitted and the record in the matter would be certified directly to us for the imposition of discipline. The letter further informed respondent that the complaint was deemed amended to include a charge of failure to cooperate with a disciplinary authority, based on his failure to answer the complaint. The certification of the record filed by the DEC does not contain a copy of the return receipt for the December 29, 2003 letters or state whether the envelopes containing those letters were returned.

Respondent did not file an answer to the complaint. The DEC certified the record directly to us for the imposition of discipline, pursuant to Rule 1:20-4(f).

In August 2001, Charles Ellis and Clarence Manyfield, the grievants in this matter, retained respondent to represent them

¹ Two letters were sent because, although only one complaint was filed, two grievances had been docketed by two different grievants.

in pending federal litigation against their employer, in which they alleged civil rights violations and racial discrimination. Ellis and Manyfield had filed the complaint pro se and then asked respondent to represent them. Although initially reluctant, respondent agreed to the representation. Respondent's hesitation was based on his opinion that the grievants lacked the necessary proofs to sustain their claims. On August 6, 2001, Ellis and Manyfield signed a retainer agreement and, on September 27, 2001, respondent filed an appearance in the litigation on their behalf.

On August 30, 2001, Ellis and Manyfield met with respondent, who instructed them to provide a list of witnesses and an "evidence package" to help prove their claims. Respondent attended depositions, served interrogatory answers and made several court appearances on the grievants' behalf.

From the commencement of the representation through August 2002, Ellis and Manyfield tried on many occasions to contact respondent to discuss the status of their case. In most instances, they were able to reach respondent's secretary, but not respondent. Finally, they began to appear at respondent's office without an appointment to meet with him, without success.

At some point in May or June 2002, respondent determined that his clients' proofs were inadequate to support their claims. He claimed that, although he tried to contact the witnesses whose names had been provided by the grievants, some of the telephone numbers were inaccurate or out of date, some of the witnesses had no information, and other witnesses did not want to testify. The grievants contended that the unavailability of the witnesses resulted from respondent's delay in contacting them.

In June 2002, the defendant filed a motion for summary judgment. Although respondent indicated to defense counsel that he intended to oppose the motion, he later decided not to contest it. The motion was granted and the complaint was dismissed in August 2002. Respondent failed to notify Ellis and Manyfield that the motion had been filed, that he had determined not to oppose it, and that the complaint had been dismissed. Although respondent contended that he had continually advised the grievants that their complaint would be dismissed if they did not provide him with witnesses and facts to support their claims, he did not recall specifically advising them that the complaint had been dismissed. The grievants asserted that they

had provided the requested information to respondent, who failed to take any action.

The complaint charged respondent with a violation of RPC 1.4(a) and (b) (failure to keep a client informed about the status of a matter and failure to explain a matter to the extent necessary to permit the client to make informed decisions about the representation). By means of the letter of December 29, 2003, the formal ethics complaint was amended to charge a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities).

Service of process was properly made. The certified mail return receipt indicated that the complaint was delivered to respondent's office on December 1, 2003.

Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. Because respondent failed to file an answer, the allegations of the complaint are deemed admitted. Rule 1:20-4(f).

Respondent failed to return his clients' telephone calls. Although Ellis and Manyfield were able to reach respondent's secretary, they were not able to discuss the status of their case with respondent. Their frustration at their inability to

contact respondent resulted in their appearance at his office without appointments to try to obtain information about their case. In addition, respondent failed to inform Ellis and Manyfield of the filing of the motion for summary judgment and of the dismissal of the complaint. Respondent's failure to keep his clients informed about the status of the matter violated RPC 1.4(a).

Respondent's failure to explain the import of the summary judgment motion and his failure to obtain their consent to allow the motion to proceed uncontested violated RPC 1.4(b). He failed to explain the matter to the extent reasonably necessary to permit his clients to make informed decisions, such as whether to seek other witnesses or to obtain other counsel.

Finally, respondent violated RPC 8.1(b) by failing to file an answer to the ethics complaint.

Although respondent permitted the complaint to be dismissed, we do not find him guilty of gross neglect, given the apparent lack of support for his client's claims. Because the DEC investigator determined that respondent's misconduct did not rise to the level of gross neglect, that charge was not included in the complaint.

The remaining issue is the quantum of discipline to be imposed. In cases involving similar violations, usually admonitions have been imposed. See, e.g., In the Matter of Gerald M. Lynch, Docket No. DRB 99-105 (1999) (attorney who failed to communicate with a client, failed to safeguard client funds, and failed to cooperate with disciplinary authorities received an admonition); In the Matter of John J. Dudas, Jr., Docket No. DRB 95-383 (1995) (admonition imposed for failure to communicate with a client, failure to protect a client's interests upon termination of the representation, and failure to cooperate with disciplinary authorities); In the Matter of Thaki Ismael, Docket No. DRB 95-053 (1995) (admonition imposed for lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities).

Reprimands are usually imposed for similar violations in default cases. See, e.g., In re Leff, 174 N.J. 508 (2002) (attorney who failed to communicate with a client and failed to cooperate with disciplinary authorities received a reprimand); In re Giannattasio, 165 N.J. 570 (2000) (attorney reprimanded for lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities); In re

Gonzalez-Alfonso, 158 N.J. 13 (1999) (reprimand imposed on attorney for failure to communicate with a client and failure to cooperate with disciplinary authorities).

Because of the default nature of this matter, we unanimously determine that a reprimand is the appropriate level of discipline. One member recused herself. Two members did not participate.

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

Disciplinary Review Board
William J. O'Shaughnessy, Vice Chair

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


**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Bernard J. McBride, Jr.
Docket No. DRB 04-033

Decided: May 3, 2004

Disposition: Reprimand

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>						X	
<i>O'Shaughnessy</i>			X				
<i>Boylan</i>			X				
<i>Holmes</i>							X
<i>Lolla</i>			X				
<i>Pashman</i>			X				
<i>Schwartz</i>							X
<i>Stanton</i>			X				
<i>Wissinger</i>			X				
Total:			6			1	2



Julianne K. DeCore
Chief Counsel