

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-355

IN THE MATTER OF :
:
ALAN H. MARLOWE :
:
AN ATTORNEY AT LAW :
:

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

Decided: July 18, 2001

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

Pursuant to R. 1:20-4(f)(1), the District II A 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 April 18, 2000 the DEC forwarded a copy of the complaint to respondent’s last known office address, via certified and regular mail. The certified mail receipt was returned as “unclaimed.” The regular mail was returned as well. Because respondent could not be located, on August 14, 2000 the DEC published a notice in The Record, a Bergen County newspaper. The notice detailed the charges against respondent and advised him that, unless

he filed an answer within twenty-one days, the allegations of the complaint would be deemed admitted, pursuant to R. 1:20-4(f).

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

Respondent was admitted to the New Jersey bar in 1971. He has an extensive record of discipline. In 1990 he was reprimanded for misrepresenting to a trial judge that he had his adversary's consent to an adjournment. In re Marlowe, N.J. (1990) (unreported case). That same year, respondent was suspended for three months for misconduct in two matters, including lack of diligence, pattern of neglect, failure to communicate with client and misrepresentation. In re Marlowe, 121 N.J. 236 (1990). In 1991 he was again reprimanded for failure to cooperate with disciplinary authorities and then suspended for fourteen months, retroactively to September 1990, for inadequate recordkeeping practices, failure to correct the accounting deficiencies uncovered by an Office of Attorney Ethics' (OAE) audit and failure to cooperate with the OAE in demonstrating compliance with the recordkeeping rules. In re Marlowe, 126 N.J. 379 (1991). In 1997 respondent was suspended for one year for gross neglect, failure to abide by a client's decision, lack of diligence, failure to keep the client reasonably informed, failure to comply with attorney recordkeeping requirements, failure to cooperate with disciplinary authorities and failure to notify existing clients of his suspension. In re Marlowe, 152 N.J. 20 (1997). That matter proceeded on a default basis. Finally, in 2000, also in a default matter, respondent was suspended for six months for gross

neglect, misrepresentation, failure to notify clients of his suspension and failure to cooperate with disciplinary authorities. In re Marlowe, 165 N.J. 20 (2000). That suspension expired on January 13, 2001. Respondent has not applied for reinstatement.

* * *

In October 1996, Armando La Guardia, who was incarcerated at the time, retained respondent to appeal his conviction in federal court. La Guardia's family paid respondent \$18,000. Respondent filed a timely notice of appeal, but failed to comply with the strict submission schedule set by the federal court. Respondent then misled La Guardia that the appeal was proceeding, when in fact the appeal had been dismissed on February 20, 1997. Respondent continued to mislead La Guardia and his family until February 1998. By then respondent was serving a one-year suspension that became effective on December 8, 1997. In February 1998 respondent asked La Guardia's wife for \$190 for additional filing fees. Respondent never accounted for the \$18,000 fee.

In March 1998 La Guardia learned that the appeal had been dismissed by the court. Unable to find respondent, La Guardia was forced to file a motion, *pro se*, to reinstate the appeal.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect)¹, RPC 1.3 (lack of diligence), RPC 3.2 (failure to expedite litigation), RPC 8.4(d) (conduct prejudicial to the administration of justice), RPC 1.4(a)

¹Mistakenly cited as RPC 1.1(a).

(failure to keep the client adequately informed about the status of the matter), RPC 8.4(a) (violation of the Rules of Professional Conduct), RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness to practice), RPC 8.4(c) (misrepresentation) and RPC 8.1(b) (failure to cooperate with disciplinary authorities)².

* * *

Service of process was properly made in this matter. Following a review of the complaint, we found that the facts recited therein support a finding of unethical conduct. Because respondent failed to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f)(1).

By taking an \$18,000 retainer and failing to pursue an appeal, thereby causing its dismissal, respondent violated RPC 1.3, RPC 1.1(a) and RPC 3.2. Respondent also violated RPC 1.4(a), when he failed to inform LaGuardia that the appeal had been dismissed, and RPC 8.4(c), when, for more than one year, he misrepresented to LaGuardia that the appeal was still pending.

More seriously, however, respondent practiced law while suspended. His one-year suspension became effective on December 8, 1997. Two months later, February 19, 1998, respondent was still misleading LaGuardia that the appeal was proceeding and, moreover, requested the payment of \$190 for a filing fee. Not only, thus, did respondent fail to inform LaGuardia that he had been suspended, in violation of the Supreme Court Order and R. 1:20-

²Mistakenly cited as RPC 8.2(c).

20, but also practiced law during the period of his suspension, in violation of RPC 5.5(a). Although the complaint did not cite this RPC, the facts alleged therein gave respondent sufficient notice of a potential finding of this violation. In re Logan, 10 N.J. 222, 232 (1976).

Lastly, respondent violated RPC 8.1(b) by failing to cooperate with the DEC investigation and RPC 8.4(a) by violating the Rules of Professional Conduct.

On the other hand, there is no basis to find a pattern of neglect. While respondent's disciplinary record demonstrates a pattern of neglect, there is no connection made here to respondent's conduct during the same period of time. Therefore, we dismissed the charge of a violation of RPC 1.1(b). We also dismissed the allegation that respondent violated RPC 8.4(b) and RPC 8.4(d) for lack of sufficient factual support in the complaint.

The level of discipline for practicing law while suspended generally ranges from a long-term suspension to disbarment, depending on a number of factors, including the attorney's level of cooperation with the disciplinary system, the presence of other misconduct and the attorney's prior disciplinary history. See In re Lisa, 158 N.J. 5 (1999) (one-year suspension when the attorney, while under a suspension, agreed to assist as "second chair" in a New York criminal proceeding involving a friend; no venality or personal gain motivated the attorney's actions; the attorney's cooperation with the ethics system was taken into consideration); In re Grabler, 127 N.J. 38 (1992) (two-year suspension for practicing law while suspended, gross neglect and misrepresentation to clients; the


attorney had two prior suspensions); In re Beltre, 130 N.J. 437 (1992) (three-year suspension for appearing in court after suspension became effective, misrepresenting his status to the judge, failing to carry out his responsibility as an escrow agent, lying to the Disciplinary Review Board about maintaining a bona fide office and failing to cooperate with the ethics investigation); In re Kasdan, 132 N.J. 99 (1993) (three-year suspension for practicing law while suspended after the Supreme Court's express denial of attorney's request for a stay of her suspension; the attorney also failed to disclose her suspension to her clients, her adversary and the courts, to keep complete trust account records and to advise her adversary of the whereabouts and amount of escrow funds); In re Wheeler, 163 N.J. 64 (2000) (attorney received a three-year suspension for representing clients in three matters, while he was suspended; attorney had a significant disciplinary history, including an early suspension for practicing law while suspended); and In re Goldstein, 97 N.J. 545 (1984) (disbarment for misconduct in eleven different matters and practicing law while temporarily suspended by the Court and in violation of an agreement with the Disciplinary Review Board that he would limit his practice to criminal matters).

In assessing the appropriate level of discipline for this respondent, we have considered that this is his seventh encounter with the disciplinary system. He has received two reprimands, a three-month suspension, a six-month suspension, a one-year suspension and a fourteen-month suspension. Two of those matters proceeded on a default basis. Obviously, this respondent has shown contempt for disciplinary authorities, indifference to

his clients' well-being, inability — indeed, refusal— to conform to the standards of the profession and, moreover, unwillingness to learn from his prior mistakes. He should not be allowed to practice law again. We unanimously determined that respondent must be disbarred. Two members did not participate.

We further directed that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: July 18 2001

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Alan H. Marlowe
Docket No. DRB 00-355**

Decided: July 18, 2001

Disposition: Disbar

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



Robyn M. Hill
Chief Counsel