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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 98-473

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IN THE MATTER OF :  
:   
SAMUEL MANDEL, :  
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AN ATTORNEY AT LAW :  
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Decision  
Default [R. 1:20-4(f)(1)]

Decided: June 9, 1999

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 IIIB Ethics Committee ("DEC") certified the record in this matter directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint.

On October 19, 1998, the DEC sent a copy of the complaint by certified mail and

regular mail to respondent's last-known office address.<sup>1</sup> The certified mail return receipt (green card) was returned indicating delivery on "10-98." The signature is illegible. The regular mail was not returned. Respondent did not file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1968. At the relevant times he maintained an office in Moorestown, New Jersey. Respondent currently has a matter pending before the Board alleging lack of diligence, failure to keep client informed, failure to expedite litigation and failure to cooperate with disciplinary authorities.

According to the complaint, in November 1994, Ruby Watts's mother's house burned down due to a fire that began at the house next door. Although no one was hurt as a result of the fire, Watts and her mother lost all of their possessions. Watts, who was the court-ordered custodian of her mother's affairs, handled the insurance claims with New Jersey Manufacturers' Insurance Company. Because the insurance proceeds did not satisfy the amount of the claim, a deficiency arose.

In March 1995, Watts retained respondent to pursue a claim against the homeowner who was responsible for starting the fire. At that time, Watts gave her file to respondent, who promised to "touch base" with her after he completed some preliminary work. Several months later, when Watts did not hear from respondent, she attempted to reach him by telephone on several occasions. She was never able to reach him. Ruby Watts also made

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<sup>1</sup> Although the certification states that the complaint was served on October 1, 1998, the letter attached to the complaint is dated October 19, 1998.

several telephone calls to respondent, to no avail.

Finally, more than one year after he was retained, respondent called Watts, apologized for not getting back to her earlier and assured her that he would write to her about the status of her case. Watts waited several months, but never received the promised letter. In March 1997, Watts wrote a letter to respondent, complaining about his handling of the case and demanding information about its status. Once again, respondent failed to update her. Despite additional attempts to reach respondent by telephone, neither Watts nor her daughter was able to speak to him.

Watts ultimately retained another attorney, who wrote to respondent on November 4, 1997, requesting all records related to the Watts case. When the attorney did not receive a response, he again wrote to respondent on November 21, 1997. Respondent failed to reply to this letter as well.

According to the complaint, respondent also failed to reply to four letters from the DEC, requesting a written response to the grievance filed against him. The last letter gave respondent ten days to reply. After the expiration of the ten days, respondent sent his reply, albeit not timely. His letter, which was unsigned, reached the DEC seven days after it was written.

The complaint charged respondent with violations of RPC 1.1(b) (pattern of neglect), RPC 1.4(a) (failure to communicate with the client), RPC 3.2 (failure to reasonably expedite litigation) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

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Service of process was properly made. Following a de novo review of the record, the Board 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's failure to reply to Watts' numerous letters and telephone calls constituted a failure to communicate with his client, in violation of RPC 1.4(a). Also, respondent's failure to pursue the claim on Watts' behalf more properly violated RPC 1.1(a) (gross neglect), rather than RPC 3.2, as charged in the complaint. In addition, respondent's failure to return Watts' file to the new attorney violated RPC 1.16(d) (failure to return file upon termination of the representation). Although respondent was not specifically charged with violations of RPC 1.1(a) and RPC 1.16(d), the facts recited in the complaint gave him sufficient notice of the alleged improper conduct and of the potential violation of those RPCs. In re Logan, 70 N.J. 222, 232 (1976). Hence, the complaint is deemed amended to include charges of violations of RPC 1.1(a) and RPC 1.16(d).


With regard to the charge of a violation of RPC 1.1(b), a pattern of neglect normally requires at least three incidents of neglect. Because respondent does not have an ethics history and the complaint deals with only one matter, the Board determined to dismiss the

charge of a violation of RPC 1.1(b). Finally, respondent's failure to reply to the grievance within the stated time period constituted a failure to cooperate with the disciplinary authorities, in violation of RPC 8.1(b).

Similar misconduct ordinarily leads to the imposition of an admonition if only one matter is involved and the attorney has no prior disciplinary record. See In the Matter of Joseph M. Clark, DRB 94-302 (1994) (admonition for gross neglect, lack of diligence, failure to communicate, failure to return file to client, failure to cooperate and misrepresentation); In the Matter of Howard M. Dorian, DRB 95-216 (1995) (admonition for gross neglect, failure to communicate, failure to return file to client and failure to cooperate); In the Matter of Raymond T. Page, DRB 95-413 (1995) (admonition for gross neglect, lack of diligence, failure to communicate, failure to expedite litigation and failure to cooperate). However, because of respondent's failure to answer the complaint, resulting in this matter proceeding as a default, the Board unanimously determined that a reprimand, rather than an admonition, is the appropriate degree of discipline. Two members did not participate.

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

Dated: 6/9/99

By:   
LEE M. HYMERLING  
Chair  
Disciplinary Review Board