

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-188

IN THE MATTER OF :
:
PHILIP L. KANTOR :
:
AN ATTORNEY AT LAW :
:

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

Decided: September 15, 2003

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 IV Ethics Committee (“DEC”) certified the record directly to us for the imposition of discipline, following respondent’s failure to file an answer to the formal ethics complaint.

On September 6, 2002, the DEC mailed a copy of the complaint to respondent, by certified and regular mail, to his last known office address listed in the New Jersey Lawyers’ Diary and Manual, 375 North Main Street, Williamstown, New Jersey 08009. The certified mail envelope was returned marked “Not Deliverable As Addressed - Unable to Forward - Return to Sender.” The envelope bore handwritten notations including “Suite A1,” “MLNA” [Moved Left No Address] and a corrected zip code. The

regular mail was returned marked "Moved Left No Address - Unable to Forward - Return to Sender." On September 12, 2002, the DEC sent a copy of the complaint to the corrected address of 375 North Main Street, Suite A-1, Williamstown, New Jersey 08094 via certified and regular mail. The certified mail was returned marked "Other," with a handwritten note "MLNA." The regular mail was returned marked "Moved left No Address - Unable to Forward - Return to Sender."

On April 15, 2003, a copy of the complaint was sent to respondent, by certified and regular mail, at his last known home address, 1014 Elk Road, Monroeville, New Jersey 08343. The certified mail was returned marked "Other" with a handwritten notation "Unclaimed." The regular mail was not returned.

On May 8, 2003, the OAE sent a letter to respondent advising him that, if he failed to answer the complaint within five days, the allegations of the complaint would be deemed admitted and the record certified directly to the Board for the imposition of sanctions.¹ The letter was sent to the Monroeville address, via certified and regular mail. As of May 22, 2003, neither the certified mail envelope, nor the green card had been returned to the OAE. The regular mail envelope had also not been returned to the OAE. Respondent did not file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1990. During the relevant time he maintained an office in Williamstown, Gloucester County.

¹ The letter stated that it served to amend the complaint to charge a violation of RPC 8.1(b) for failure to file an answer. A violation of that rule had already been charged in the complaint for failure to cooperate with disciplinary authorities.

Respondent was temporarily suspended on March 17, 2003, following his apparent abandonment of his law practice. In re Kantor, 175 N.J. 555 (2003). He remains suspended to date. Previously, in November 2000, respondent was reprimanded for making a false statement of material fact or law to a tribunal, offering evidence he knew to be false, and misrepresentation. In re Kantor, 165 N.J. 572 (2000).

According to the report of the New Jersey Lawyers' Fund for Client Protection, respondent has been ineligible to practice law since September 30, 2002, for failure to pay his annual assessment to the fund.

Count One (The Paskett Matter)

Katherine Paskett retained respondent in 1999, in connection with an appeal in a personal injury matter. Respondent failed to provide Paskett with a written retainer agreement or otherwise communicate the basis or rate of his fee to her in writing. Over an undisclosed time period, Paskett paid respondent a total of \$2,100. In addition, Paskett ordered and paid for the transcripts of her trial and turned those over to respondent when she retained him.

Over the course of the next two years, Paskett received only one written communication from respondent's office. In addition, respondent broke scheduled appointments with her and, at other times, she was advised that he was unavailable to meet with her. Eventually, Paskett was unable to contact respondent.

Respondent, in fact, filed a notice of appeal in Paskett's behalf on September 13, 1999. He failed, however, to file a brief and the appeal was dismissed on January 8,

2001. Respondent did not advise Paskett that the appeal had been dismissed and he took no further action in her behalf.

Count Two (Failure to Cooperate with Disciplinary Authorities)

By letters dated November 14, 2001, and January 9, 2002, the DEC secretary requested that respondent reply to the allegations in Paskett's grievance. Respondent did not reply. Thereafter, the matter was forwarded to the Office of Attorney Ethics ("OAE") for investigation. The OAE attempted through two letters to respondent and a message left on his telephone answering machine to obtain his reply to Paskett's grievance, all to no avail.

Service of process was proper in this matter. At a minimum, the regular mail sent to respondent's home address on April 15, 2003, enclosing a copy of the complaint, has not been returned to the OAE and delivery has been assumed. In addition, neither the certified nor the regular mail sent on May 8, 2003, had been returned to the OAE as of the date the record was certified to the Board. A review of the record shows that the facts recited in the complaint support a finding of unethical conduct.

The complaint charged respondent with a violation of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 1.5(b) (failure to communicate the basis or rate of fee in writing to the client), and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

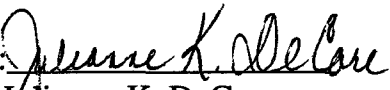
Were this respondent's first appearance before us, a reprimand would typically be imposed. See In re Stalcup, 140 N.J. 622 (1995), where a reprimand was imposed for failure to perfect an appeal and to so inform her client. Stalcup also failed to withdraw from the representation when her services were terminated; the Court ordered her to refund \$750 for costs advanced by the client. See, also, In re Gaffney, 133 N.J. 65 (1993) (reprimand for failure to file an appellate brief in a criminal matter and failure to reply to various orders of an appellate judge, resulting in a finding that the attorney was in contempt of court).

As noted above, however, respondent has previously been reprimanded for misconduct toward a tribunal. His reprimand was issued in November 2000, during the course of his representation of Paskett. Respondent, thus, has not learned from his mistakes and more serious discipline is required. In light of that fact, and the default nature of this proceeding, the Board determined that a three-month suspension is appropriate. See In re Banas, 157 N.J. 18 (1999) (three-month suspension in a default matter where the attorney, after accepting a retainer from a client, did not provide a written fee agreement, take any action on the client's behalf, communicate with the client or cooperate with the DEC; Banas had received an earlier reprimand). We also determined to require respondent to submit, prior to reinstatement, proof of fitness to practice law, as attested by a mental health professional approved by the Office of Attorney Ethics.

Two members did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Julianne K. DeCore
Acting Chief Counsel

ATTORNEY VIOLATED R. 1:20-20(b), BY NOT COMPLYING
THEREWITH AND BY NOT FILING AN AFFIDAVIT CERTIFYING
COMPLIANCE IN ACCORDANCE WITH THAT RULE.

11/27/02 DAG - REC'D CALL FROM RHODA AT FLEET BANK, THEY
HAVE NO RECORD OF ACCT WITH TRUST ACCT # ON SUBPOENA. SHE
DID A COMPUTER SEARCH AS WE SPOKE AND FOUND TRUST ACCT #
999104632 (NOT ..432 AS IN ATTY REG) FOR THIS R. SHE WILL
SEND STMTS ON BOTH ACCTS PER SUBPOENA.

12/2/02 DAG - COMPLETED ATTY REG CHANGE FORM FOR TRUST
ACCT # - TO CEDIE TODAY.

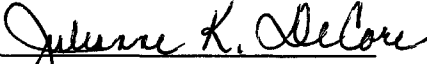
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Philip L. Kantor
Docket No. DRB 03-188

Decided: September 15, 2003

Disposition: Three-month suspension

| <i>Members</i> | <i>Disbar</i> | <i>Three-month 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: | | 7 | | | | | 2 |


Julianne K. DeCore
Acting Chief Counsel