

Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 98-028
DRB 98-099

IN THE MATTER OF :
 :
ARTHUR N. MARTIN, JR., :
 :
AN ATTORNEY AT LAW :
_____ :

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

Decided: August 18, 1998

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 VA Ethics Committee ("DEC") certified the record in this matter directly to the Board for the imposition of discipline following respondent's failure to file answers to the formal ethics complaints. In DRB 98-028, on October 16, 1997 and October 17, 1997, the DEC mailed both complaints to respondent's last known address by certified and regular mail. The certified mail receipts were returned to the DEC indicating that service was accepted on October 20, 1997. The signatures were that of respondent. The regular mail was

not returned. In DRB 98-099 the complaint was mailed on July 1, 1997 by certified and regular mail. The certified mail receipt was returned, indicating acceptance on July 3, 1997. The signature was not respondent's. The regular mail was not returned. On August 15, 1997 a second letter was sent to respondent by certified and regular mail. The certified mail return-receipt card, dated August 18, 1997, bears the signature of respondent.

After the matters were certified as defaults, the Board sent notice of the Board hearings to respondent by certified and regular mail on March 16, 1998 and by publication in the New Jersey Lawyer and the New Jersey Law Journal. Subsequently, during the first week of April 1998, respondent's counsel notified the Board that he intended to submit papers in connection with these matters. On April 15, 1998 the Board received a psychological report regarding Mr. Martin. However, respondent's counsel did not provide any information regarding the defaults pending against respondent.

Respondent was admitted to the New Jersey bar in 1973. He has an extensive ethics history. In April 1990, respondent was suspended for six months from the practice of law for gross negligence in seven cases. In re Martin, 118 N.J. 239 (1990). In January 1991, respondent was suspended for three months for failing to return the unearned portion of a retainer, failing to pursue an appeal, failing to adequately communicate with clients, and failing to respond to requests for information by a district ethics committee investigator. In re Martin, 122 N.J. 198 (1991).

Additionally, respondent was publicly reprimanded in 1993 for unethical conduct in three matters, which included violations of 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) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). In re Martin, 132 N.J. 261 (1993). In May 1997 the Board voted to suspend respondent for three years from the practice of law for violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5 (unreasonable fees), RPC 1.15(b) (failure to promptly deliver funds or property to a client), RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(c). In September 1997 the Board voted to suspend respondent for one year from the practice of law for violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5, RPC 8.1(b) and RPC 8.4(c). On April 27, 1998 the Supreme Court heard both matters.

In DRB 98-028, two formal complaints were filed:

The McClendon Matter- District Docket No. VA-96-112E

In DRB 98-028, two formal complaints were filed. According to the complaint, respondent agreed to represent Wardelle McClendon in a discrimination matter involving his termination from his job at the United States Postal Service. McClendon gave respondent a \$5,000 retainer. Over the next two to three years, complaints were filed, dismissed (for failure to exhaust administrative remedies and failure to file a brief in opposition to defendant's motion to dismiss) and refiled several times. During that period, respondent failed to communicate with his client. Respondent was charged

with violations of RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 8.1(b) (failure to respond to a request for information from a disciplinary authority) for his failure to cooperate with the OAE investigation.

The Velox-Medford Matter- District Docket No. VA-96-107E

According to the complaint, respondent represented Wenda P. Velox-Medford in an EEO/Employment Discrimination matter. Velox-Medford paid respondent a \$1,500 retainer. Although respondent filed a Charge of Discrimination, it was dismissed for failure to provide requested information. A civil action commenced by respondent was dismissed for lack of prosecution. The complaint charged respondent with violating RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate).

The Hazard Matter- District Docket No. VA-96-113E

According to the complaint, respondent represented Patricia A. Hazard in a personal injury complaint. Although respondent filed a complaint on behalf of Hazard, respondent did not take any further action and the complaint was dismissed for lack of prosecution. Hazard obtained new representation but respondent would not cooperate with new counsel or turn over Hazard's file. The complaint also charged respondent with improper termination of representation, in violation of RPC 1.16(d). Finally, the complaint charged respondent with failure to cooperate with disciplinary authorities, in violation of RPC 8.1(b).

The Soloman Matter- DRB 98-099; District Docket No. VA-97-005E

Respondent agreed to represent Herman Soloman in July 1996 concerning real estate that had been seized for non-payment of taxes. The client paid respondent \$750 for filing fees and agreed to take a one-third contingency fee. Thereafter, respondent did not take any action on behalf of his client, failed to communicate with the client and would not return the \$750 paid by Soloman. In addition, respondent failed to respond to inquiries made by the OAE. Respondent was charged with violations 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 promptly deliver funds to a client) and RPC 8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority).

* * *

Following a de novo review of the record, the Board deemed the allegations of the complaint admitted. R. 1:20-4(f)(1). The record contains sufficient evidence of respondent's unethical conduct.

This leaves only the issue of appropriate discipline. Respondent's misconduct in these matters is similar to his misconduct in prior cases. He agreed to represent individuals, accepted their money and failed to act on their behalf. Many clients have been disadvantaged by respondent's approach to the practice of law. Respondent has


also added to his list of ethics violations a continuing failure to cooperate with disciplinary authorities in violation of RPC 8.1(b), exacerbated by his failure to file answers in these three matters. Respondent's violations thus include RPC 1.3, RPC 1.4 and RPC 8.1(b) in the McClendon matter; RPC 1.3 and RPC 1.4(a) in the Velox-Medford matter; RPC 1.16(d) and RPC 8.1(b) in the Hazard matter and RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5(b) and RPC 8.1(b) in the Soloman matter.

In other matters similar to this case, where attorneys have, *inter alia*, taken "fees" from multiple clients without taking any action, disbarment was deemed the appropriate remedy. See In re Spagnoli, 115 N.J. 504 (1989) (disbarment for accepting retainers from fourteen clients over a three-year period without intending to act on behalf of clients, lying to the court in order to excuse failure to appear in court, and failing to cooperate with ethics proceedings) and In re Goldstein, 97 N.J. 545 (1984) (disbarment for failing to carry out contracts of employment with clients, failing to act competently with respect to entrusted matters, and misrepresenting status of actions being handled on clients' behalf).

Accordingly, a five member majority of the Board determined to disbar respondent from the practice of law. Three members voted to impose a two-year consecutive suspension. One member did not participate.

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

Dated: 8/18/98

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board