

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-159

IN THE MATTER OF :

KENNETH L. JOHNATHAN, JR.: :

AN ATTORNEY AT LAW :
_____ :

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

Decided: September 16, 2003

To the Honorable Chief Justice and Associate Justic^es of the Supreme Court of New Jersey.

Pursuant to R.1:20-4(f), the District IX 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.

Respondent was admitted to the New Jersey bar in 1985. He maintains a law office in Asbury Park, New Jersey. He has no history of discipline.

On February 12, 2003, the DEC sent a copy of the complaint to respondent by regular and certified mail, return receipt requested. The complaint was delivered on February 14, 2003. The signature of the recipient appears to be that of respondent. The

record is silent about the regular mail. Respondent did not file an answer to the complaint. The DEC sent a second letter to respondent on March 18, 2003 by regular and certified mail, return receipt requested. The certified mail was returned unclaimed. The regular mail was not returned. Respondent did not file an answer to the complaint.

On April 24, 2003, respondent wrote to the Office of Attorney Ethics (“OAE”) that he was in receipt of the grievance and correspondence forwarded to him by the DEC, but had not replied and would not reply or appear before the committee in that jurisdiction based upon his “recent previous” experience with the committee. The letter further stated that the matter needed to be heard in “a different venue in another jurisdiction, so that the obvious grievant action could be understood without prejudice. . . .” By letter dated June 11, 2003, we notified respondent that he was still required to file a motion to vacate the default.

Respondent filed a motion to vacate the default on July 18, 2003. In his certification respondent admitted that he had refused to file an answer to the complaint because he did not want to appear before the same ethics committee due to his prior experience with that committee and their overzealous efforts in a prior matter which was, nevertheless, dismissed.

The OAE opposed respondent’s motion citing respondent’s breach of duty to cooperate with the DEC, his hindrance of the grievance investigation, and his cavalier attitude towards the disciplinary system.

The complaint charged respondent with violations of RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate with client). The facts alleged in the complaint, as supplemented by the investigative report, are as follows:

Respondent filed a lawsuit on behalf of O’Kellis Williams, the grievant, in April 1998 for injuries he suffered in an automobile accident. The defendant in the matter was Frank L. Harpster. According to Williams, he had been involved in two accidents and respondent had only filed a lawsuit in the Harpster matter.

The Harpster case was dismissed twice. It was first dismissed on June 15, 1999, based on the defendant’s unopposed motion to dismiss for failure to answer interrogatories. Afterwards the court denied respondent’s motion to vacate the dismissal. Subsequently the court reinstated the matter, based on respondent’s representations that he had not received the defendant’s motion papers because they had been delivered to the wrong law office in the same building. Thereafter, on August 8, 2000, the complaint was again dismissed pursuant to a motion to dismiss for failure to meet the verbal threshold. This motion, too, proceeded unopposed. The record provided no reason for respondent’s failure to reply to the August 2000 motion.

On May 23, 2000, prior to the defendant’s first motion, defendant’s counsel wrote to respondent stating that he had unsuccessfully tried to communicate with respondent about a possible “resolution of the matter.” If the matter could not be resolved, however, the letter was to serve as a “renewal” of the defendant’s request for production of documents. Respondent did not reply to the offer until after he had been served on August 28, 2000, with the court’s August 8, 2000, order dismissing the Harpster matter. On August 31, 2000,

respondent sent to the defendant, a “summary of file and demand.” Respondent referred to the defendant’s May 2000 letter and demanded a \$25,000 settlement. Respondent took no further action in the case, other than to request that defense counsel withdraw his motion, to which he did not agree.

The complaint charged respondent with a lack of diligence.

Count two alleged that Williams tried to call respondent several times about the status of his case, to no avail. Respondent also failed to tell Williams that the Harpster case had been dismissed. The complaint, thus, charged a failure to communicate with the client.

We have considered respondent’s motion to vacate the default and agree with the OAE that respondent’s willful refusal to answer the complaint cannot be condoned. Respondent admitted that the DEC had dismissed a prior complaint against him. He, therefore, has not established prejudice on the part of the DEC. Moreover, the request for a change of venue should have been made before the matter was certified as a default.

We, therefore, denied respondent’s motion to vacate the default.

Service of process was properly made in the matter. Following a review of the record, we determined that the facts recited in the complaint support a finding of unethical conduct. Because of respondent’s failure to answer the complaint, the allegations are deemed admitted. R.1:20-4(f).

Although respondent may have experienced some problems with papers being served on the wrong office, he filed the lawsuit but, thereafter, took little or no action to either prosecute the case or settle it. In addition he failed to keep his client informed about the


status of his case and that it had been dismissed. His conduct violated RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate with the client).

Generally, in default matters involving similar violations, reprimands have been imposed. See In re Giannattasio, 165 N.J. 570 (2000) (attorney prevailed in client's case, but failed to file for a judgment, failed to reply to the client's numerous requests for information about the status of the matter, and failed to cooperate with disciplinary authorities); In re Handfuss, 165 N.J. 569 (2000) (attorney filed a complaint on behalf of his client in a personal injury matter, took no further action in the matter, and failed to communicate with the client; ultimately the complaint was dismissed); and In re Goodman, 165 N.J. 567 (2000) (attorney grossly neglected a personal injury matter for seven years by failing to file a complaint or otherwise prosecute the claim, causing it to become time-barred; he also failed to communicate with a client and failed to cooperate with disciplinary authorities; attorney had a prior private reprimand).

Because of the factual similarity to the Handfuss matter, seven members voted to impose a reprimand. Two members did not participate.

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

Disciplinary Review Board

By: 
Julianne K. DeCore
Acting Chief Counsel


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

In the Matter of Kenneth L. Johnathan, Jr.
Docket No. DRB 03-159

Decided: September 16, 2003

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				
<i>Total:</i>			7				2


Julianne K. DeCore
Acting Chief Counsel