

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-184

IN THE MATTER OF :
RUSSELL W. GRAYSON :
AN ATTORNEY AT LAW :

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

Decided: December 14, 2001

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

Pursuant to R. 1:20-4(f), the District IIA 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 January 9, 2001, the DEC mailed a copy of the complaint to respondent at his last-known office address via certified and regular mail. The certified mail return receipt, dated January 19, 2001, bears a signature that appears to be respondent's. The regular mail was not returned.

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

Respondent was admitted to the New Jersey bar in 1985. He has no record of discipline.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with a client about the status of a matter, RPC 1.4 (b) (failure to explain a matter to the extent reasonably necessary to permit informed decisions about the representation), RPC 1.5(b) (failure to communicate the basis or rate of the fee to the client in writing) and RPC 1.16 (a)(2) (failure to withdraw from representation of a client when the lawyer's physical or mental condition materially impairs ability to represent that client).

* * *

The Green Matter (District Docket No. IIA-00-009E)

On May 14, 1997, Sandra Green retained respondent to represent her in a potential dental malpractice claim. Although respondent did not give Green a written retainer agreement, she paid him \$1,500 to investigate the claim

According to the complaint, respondent represented to Green that he would complete the investigation and report back to her within the time frame necessary to protect her rights. After their initial meeting, however, respondent failed to keep Green informed about the status of her matter and failed to comply with her reasonable requests for information. In addition, Green's claim for dental malpractice became time-barred because of the running of the statute of limitations. As a result, Green filed a legal

malpractice claim against respondent. However, respondent does not carry malpractice insurance.

The complaint charged that respondent violated RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(a), RPC 1.4(b) and RPC 1.5(b) in the Green matter. The complaint also charged that respondent failed to withdraw from the representation when he learned that he was suffering from an unspecified condition that materially impaired his ability to continue to represent Green, in violation of RPC 1.16(a)(2) (failure to terminate representation of a client when lawyer's physical or mental condition materially impairs ability to represent that client).

The Cantalupi-Sweet Matter (District Docket No. IIA-00-010E)

Diane Cantalupi-Sweet retained respondent on February 27, 1996 to represent her in a personal injury action against the Ramada Hotel. Respondent did not give Sweet a written fee agreement. Thereafter, respondent represented to Sweet that he would complete his investigation and report back to her within the appropriate time frame to protect her rights. Respondent apparently filed a lawsuit in Sweet's behalf. After their initial meeting, however, respondent failed to communicate with Sweet, failed to keep her informed about the status of her matter and failed to promptly comply with her requests for information to permit her to make informed decisions about her case.

Sweet's case was dismissed on September 14, 1999 because of respondent's failure to appear at a scheduled arbitration. Sweet then retained a new attorney, who succeeded in having the dismissal vacated and the case restored to the active trial list.

The complaint also charges that respondent failed to withdraw from the representation upon learning that he suffered from a condition that materially impaired his ability to continue to represent Cantalupi-Sweet.

The complaint charged respondent with violations of RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(b) and RPC 1.16(a)(2) in the Cantalupi-Sweet matter.

* * *

Service of process was properly made in this matter. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted pursuant to R.1:20-4(f). Following a review of the complaint, we find that the complaint contains sufficient facts to support a majority of the charges.

Respondent is guilty of gross negligence and lack of diligence in both the Green and Cantalupi-Sweet matters. His misconduct led to Green's dental malpractice case being time-barred because of the expiration of the statute of limitations and the dismissal of a lawsuit in the Cantalupi-Sweet matter. In both, respondent failed to communicate with his clients, failed to promptly comply with his clients' reasonable requests for

information about their matters and failed to provide his clients with a written fee agreement.

As to the allegation that respondent violated RPC 1.16(a)(2), there is no support in the record of either Green or Cantalupi-Sweet that respondent suffered from any condition that materially impaired his ability to represent these clients. Those two charges are, therefore, dismissed.


In addition, we normally do not find a pattern of neglect unless at least three matters establish the pattern. Here, there are only two matters. Therefore, the charge of a pattern of neglect is dismissed.

Misconduct similar to this respondent's generally results in discipline ranging from an admonition to a short-term suspension. See, e.g. In the Matter of Theodore F. Kozlowski, Docket No. DRB 96-460 (February 18, 1998) (admonition for lack of diligence and failure to communicate in two matters); In re Cubberley, 164 N.J. 363 (2000) (reprimand in default matter where attorney's conduct in one case violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate); the attorney had an ethics history); In re Banas, 157 N.J. 18 (1999) (three-month suspension in a default matter for gross neglect, lack of diligence, failure to communicate, failure to give client written fee agreement and failure to cooperate with disciplinary authorities; attorney had a disciplinary history).

Because this is respondent's first brush with the disciplinary system, we have unanimously determined to reprimand respondent for his misconduct in these two cases.

The Board is concerned that two of respondent's clients were disadvantaged as a direct result of his inaction, and that respondent defaulted in this case, thereby demonstrating a lack of respect for the disciplinary system. Two members did not participate.

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

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Russell W. Grayson
Docket No. DRB 01-184**

Decided: December 14, 2001

Disposition: reprimand

Members	Disbar	Three-month suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not participate
Peterson			X				
Maudsley			X				
Boylan			X				
Brody			X				
Lolla							X
O'Shaughnessy			X				
Pashman			X				
Schwartz							X
Wissinger			X				
Total:			7				2

Robyn M. Hill 1/9/02
Robyn M. Hill
Chief Counsel