

~~CONFIDENTIAL~~

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket Nos. DRB 98-262

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IN THE MATTER OF :  
:   
CHARLES R. BREINGAN :  
:   
AN ATTORNEY AT LAW :  
:

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

Decided: November 2, 1998

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

Pursuant to R. 1:20-4(f), 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 May 1, 1998 the

DEC sent respondent a copy of the complaint by regular and certified mail to 4 Linden Road, Burlington, New Jersey 08016. The record is unclear as to whether the regular mail was delivered or returned. However the certified mail receipt (green card) was returned, apparently signed by respondent, indicating delivery on May 2, 1998. Respondent did not file an answer. On June 1, 1998 the DEC sent respondent a second letter by regular and certified mail, informing him that, if he did not reply within five days, the matter would be certified to the Board for the imposition of sanctions. Although the record is silent as to the regular mail, the green card was returned indicating delivery on June 3, 1998, signed by R. K. Breingan.

Notice of the Disciplinary Review Board hearing was published in New Jersey Lawyer on August 31, 1998. The day before the Board hearing, September 16, 1998, at 4:02 P.M., respondent "faxed" to the Board a motion to vacate the default. The Board denied that motion for lack of a meritorious defense to respondent's failure to answer the complaint and to the underlying ethics charges.

Respondent was admitted to the New Jersey bar in 1983. At the relevant times he maintained an office in Burlington, New Jersey. In December 1986 respondent was privately reprimanded for issuing a personal check that was twice dishonored by the bank due to insufficient funds and for misrepresenting to the payee that a replacement check had been issued. In the Matter of Charles R. Breingan, DRB-85-251 (1986). In 1990 respondent was publicly reprimanded for a pattern of neglect, failure to communicate with clients, lack of

diligence and failure to cooperate with the ethics authorities. In re Breingan, 120 N.J. 161 (1990). In July 1998 the Board voted to suspend respondent for three months for gross neglect, failure to communicate, failure to protect a client's interest, failure to cooperate with the ethics authorities and misrepresentation. In the Matter of Charles R. Breingan, DRB -98-182 (1998).

The complaint alleges that, on May 5, 1997, Steven D. Raymond paid respondent a \$200 retainer to defend him in a municipal court traffic violation. On May 8, 1997, Raymond contacted respondent by telephone. Respondent told Raymond that he had contacted the municipal court and that the Raymond had to appear personally on the assigned court date to enter a not guilty plea and have his rights explained to him. Raymond appeared at court and entered the plea. However, when Raymond asked the court clerk about respondent's contacts with the court, Raymond was told that respondent had made no contact. Raymond's court date was rescheduled for August 12, 1997.

In mid-July Raymond telephoned the court clerk to find out if respondent had made any contact yet and was informed that he had not. Raymond made numerous telephone calls to respondent to inquire about the status of the case. Respondent failed to return any of Raymond's calls. Eventually, Raymond left a message terminating respondent's services and demanding a refund of the \$200 retainer. Raymond obtained a new attorney, who represented him in the proceedings. As of April 27, 1998, respondent had not returned Raymond's \$200.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect)<sup>1</sup>, RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.1(b) (failure to cooperate with the disciplinary authorities).

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Service of process was properly made by certified mail in both cases. Pursuant to R. 1:20-4(f), the allegations of the complaint are deemed admitted.

The record supports the finding that respondent violated RPC 1.1(a). Raymond was relying on respondent to defend him in municipal court on a traffic violation. Respondent failed to take any action on Raymond's behalf, forcing Raymond to obtain a new attorney at further expense. Respondent's misrepresentation that he had contacted the municipal court on behalf of Raymond was a clear violation of RPC 8.4(c). Respondent also violated RPC 8.1(b). Not only did he refuse to correspond with the DEC during the investigation, but he failed to answer the complaint. Additionally, respondent's failure to refund Raymond's fee

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<sup>1</sup>The complaint mistakenly cites the violation as RPC 121(a).

violated RPC 1.16(d), a rule not cited in the complaint.

However, when a complaint fails to charge a specific ethics violation, but the facts in the record are sufficient to put respondent on notice of that violation, the allegations may be deemed amended to conform to the proofs. In re Logan, 70 N.J. 223, 232 (1976). Accordingly, the Board deemed the complaint amended to include a charge of a violation of RPC 1.16(d).

Furthermore, the Board deemed the complaint amended to include a charge of a violation of RPC 1.4(a) (failure to communicate). Raymond made numerous telephone calls to respondent to inquire about the status of the case. Respondent never returned any of those calls. Had Raymond not obtained different representation of his own accord, Raymond would not have been represented by counsel before the municipal court. Respondent's failure to return Raymond's telephone calls was a clear violation of RPC 1.4(a).

In summary, respondent violated RPC 1.1(a), RPC 1.4(a), RPC 1.16(d), RPC 8.1(b) and RPC 8.4(c). Normally, cases involving mixed combinations of violations such as these require either a reprimand or a short-term suspension. In In re Onorevole, 144 N.J. 477 (1996), the attorney was reprimanded when, for over six months, he misrepresented to a client that he had filed a case. The attorney was also found guilty of gross neglect, lack of diligence, failure to communicate with a client and failure to cooperate with the disciplinary authorities. The attorney had been previously admonished for gross neglect, lack of diligence and failure to communicate. In In re Weinstein, 144 N.J. 367 (1996), the attorney

was suspended for three months after misrepresenting to his clients that he had filed complaints when he had not. In addition, the attorney was found guilty of gross neglect, lack of diligence, failure to communicate, failure to turn over a file, pattern of neglect and failure to cooperate with the disciplinary authorities.

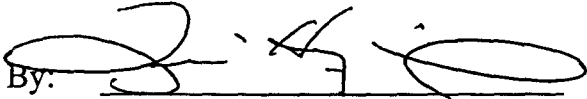
Although respondent neglected only one client, his behavior was most analogous to that of Weinstein. Respondent failed to file an action, failed to return the client's phone calls and misrepresented to the client that the case was proceeding normally. Although there was no file to return, as in Weinstein, respondent has refused to return the unearned fee. Additionally, like Weinstein, respondent failed to cooperate with the ethics authorities. This contrasts with Onorevole, where there was no failure to return a client's fee. While the attorney in Onorevole had a prior disciplinary history, it was only an admonition and it did not include a charge of failure to cooperate with the disciplinary authorities.

After considering the within ethics infractions together with respondent's prior disciplinary history - a private reprimand, a public reprimand and a three-month suspension imposed in DRB-98-182 - an eight-member majority of the Board determined to impose a three-month suspension, to be served consecutively to the three-month suspension in DRB-98-182. The majority further determined that respondent's reinstatement should be conditioned upon demonstration that he has returned Raymond's entire fee. One member would have imposed a reprimand.

The Board further determined to require respondent to reimburse the Disciplinary

Oversight Committee for administrative costs.

Dated: 11/2/98

By: 

LEE M. HYMERLING  
Chair  
Disciplinary Review Board

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

**In the Matter of Charles R. Breingan**  
**Docket No. DRB 98-262**

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**Decided: November 2, 1998**

**Disposition: Three-month Suspension**

Members	Disbar	Three-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Zazzali		x					
Brody		x					
Cole		x					
Lolla		x					
Maudsley			x				
Peterson		x					
Schwartz		x					
Thompson		x					
<b>Total:</b>		<b>8</b>	<b>1</b>				

*Robyn M. Hill* 11/16/98  
Robyn M. Hill  
Chief Counsel