

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-047

IN THE MATTER OF :
:
JOHN H. C. WEST :
:
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 I 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.

This matter consolidates three DEC cases that resulted in two formal complaints. On September 29, 1997, the DEC Secretary sent a copy of the first complaint to respondent via certified mail. The certified mail was returned marked "Unclaimed." On November 25, 1997, the DEC Secretary caused the Sheriff to make personal service - this time, of both complaints - upon respondent. The Sheriff served the complaints on respondent's father-in-law. On January 6, 1998, the DEC Secretary sent a letter via certified mail to respondent at the same address at which personal service was accomplished, advising respondent that, if he did not

file an answer, the DEC had the right to seek his temporary suspension. The certified mail was returned marked "Unclaimed." Respondent did not file an answer. Because personal service was made, the matter will be treated as default.

Respondent was admitted to the New Jersey bar in 1989. He was temporarily suspended by Order of the Supreme Court dated October 6, 1997 for failure to pay a fee arbitration award. In re West, 151 N.J. 460 (1997). He currently remains temporarily suspended. On August 6, 1997, the Board recommended that respondent be suspended for a period of three months for several ethics violations, including gross neglect, pattern of neglect, lack of diligence, failure to communicate and failure to cooperate with disciplinary authorities. In the Matter of John H. C. West III, Docket No. DRB 97-051 (August 6, 1997). The Court has yet to act on the Board's recommendation. Respondent was admonished by letter dated February 15, 1996 for lack of diligence and failure to communicate. In the Matter of John H. C. West III, Docket No. DRB 95-441 (Feb. 15, 1996).

The Wolenter Matter - District Docket No. I-97-014E

According to the complaint, grievant John Wolenter retained respondent in July 1996 for the purpose of reducing the time that Wolenter was required to serve on parole as a result of a criminal conviction. Wolenter paid respondent a retainer of \$1,000 and turned his relevant papers over to respondent. Thereafter, Wolenter made regular telephone and written inquiries of respondent regarding the status of his case; after getting no response, he

demanded a return of his papers - again, to no avail. In March of 1997, Wolenter filed a grievance against respondent. On April 26, 1997, a representative of the DEC hand delivered to respondent Wolenter's grievance and requested cooperation and a written response within ten days. Respondent admitted to the representative that day that he had neither taken action on behalf of Wolenter nor returned Wolenter's papers.

The complaint charged respondent with violations of RPC 1.1(a) (gross negligence), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 1.16(d) (failure to surrender papers and refund any advance fee not earned) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

The Marshall Matter - District Docket No. I-97-005E

The complaint alleged that respondent was retained by Vincent Marshall in April 1996 to handle Marshall's municipal court case on charges of assault. Marshall paid respondent a retainer of \$500. Respondent handled the court matter, but Marshall was found guilty. Marshall requested that respondent file an appeal. He made regular telephone and written inquiries of respondent regarding the status of the appeal, but received no response. In January of 1997, Marshall filed a grievance against respondent. On April 26, 1997, a representative of the DEC hand-delivered to respondent Marshall's grievance, and requested cooperation and a written response within ten days. Respondent admitted to the DEC representative that he had taken no action to respond to Marshall's inquiries about his appeal.

The record is silent as to whether the initial retainer agreement provided for an appeal or whether respondent was paid to handle the appeal.

The complaint charged respondent with violations of RPC 1.1(a) (gross negligence), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

The Hoffman Matter - District Docket No. I-97-17E

According to the complaint, Claudia M. Hoffman retained respondent in September 1995 to defend her against charges of criminal theft by deception. Hoffman paid respondent a retainer of \$1,000 and gave him all of her relevant papers. Thereafter, Hoffman made regular telephone and written inquiries about the status of her case and later demanded that respondent return her papers. She received no response. In September 1996, Hoffman filed a Fee Arbitration Request against respondent. Respondent failed to appear at the hearing and the Fee Arbitration Committee forwarded the matter to the DEC. On July 17, 1997 a representative of the DEC mailed Hoffman's grievance to respondent and requested a written response within ten days. The complaint generally alleged that, on numerous occasions after that date, the DEC representative advised respondent to reply to the grievance and urged him to comply with the ethics investigation. Respondent has neither replied to the DEC's request nor returned Hoffman's papers.

The complaint charged respondent with violations of RPC 1.1(a) (gross negligence), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 1.16(d) (failure to surrender papers and refund any advance fee not earned) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

* * *

Following a de novo review of the record, the Board deemed the allegations of the complaint admitted. The record contains sufficient evidence to support a finding of unethical conduct.

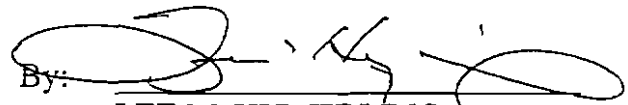
In at least two of the three matters, *Wolenter* and *Hoffman*, respondent accepted a retainer and failed to take any action. Respondent also failed to take any action in the *Marshall* matter. Respondent's conduct thus constitutes gross neglect, lack of diligence and pattern of neglect. In addition, respondent has admitted to charges of failure to communicate and failure to surrender papers. Finally, by not answering the complaint, respondent failed to cooperate with the DEC investigation. Respondent thus violated RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(a), RPC 1.16(d), and RPC 8.1(b).

Ordinarily, similar misconduct would result in a suspension of three months. See In re Brantley, 139 N.J. 465 (1995) (three-month suspension for lack of diligence, failure to communicate, failure to cooperate, and pattern of neglect); In re Hodge, 130 N.J. 354 (1993) (three-month suspension for pattern of neglect, failure to communicate, failure to turn over client property, gross neglect, lack of diligence, failure to maintain a bona fide office, and

failure to cooperate). However, because of respondent's significant history of unethical conduct and his total disregard for the ethics system, the Board determined that a greater level of discipline was warranted. Accordingly, the Board unanimously voted to impose a suspension of six months. 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