

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-095

IN THE MATTER OF :
RICHARD B. GIRDLER :
AN ATTORNEY AT LAW :

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

Decided: October 16, 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 VA Ethics Committee (“DEC”) certified the record directly to us for the imposition of discipline, following respondent’s failure to file an answer to the formal ethics complaint.

Respondent was admitted to the New Jersey bar in 1972. He was privately reprimanded in 1991 for violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate) in two matters. Additionally, he was publicly reprimanded in 1994 for violations of RPC 1.3, RPC 1.4(a) and RPC 1.5(c) (failure to obtain a signed contingent fee agreement).

On December 28, 2000, the DEC forwarded a copy of the complaint by regular and certified mail to respondent's office address. The certified mail receipt was returned, indicating delivery on January 4, 2001. The signature is illegible. The regular mail was not returned.

When respondent failed to file an answer to the complaint within the specified period, the DEC sent a second letter by regular and certified mail, dated January 26, 2001, notifying respondent that failure to file an answer within five days would constitute an admission of all the charges and could result in his immediate temporary suspension. The certified mail was returned unclaimed. The regular mail was not returned.

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

* * *

The complaint charges violations of RPC 1.1(a), RPC 1.3, RPC 1.4, RPC 3.2 (failure to expedite litigation), RPC 3.3(a)(1) (making false statements to a tribunal), RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

In July 1997, Pamela Paul retained respondent to sue several parties on behalf of Wilfred L. Raynor, Inc. ("Raynor"), a real estate agency, for a commission owed to Raynor. Although the fee agreement shows that the client was Raynor, Paul signed the agreement in

her individual, not representative, capacity. Respondent filed the complaint on behalf of Raynor and prepared several summonses, but never forwarded the summonses to the sheriff for service or made any other attempt to serve them.

Respondent asked Pamela's husband, Duane Paul, for additional address information and a check for service of process costs, but did not disclose whether the defendants had been served. By letter dated February 3, 1998, respondent requested "the latest address for the estate" from Duane and advised that he had a "postal search letter for the current address of the others." On February 11, 1998, however, respondent stated in another letter that "I will do a postal search for the current address of the others." Respondent's file contained no indication that he ever requested such a postal search.

In April 1998, the court clerk sent respondent a notice of dismissal for lack of prosecution. In June 1998, respondent filed an amended complaint and opposition to the notice of dismissal. Although the amended complaint added several new defendants, respondent failed to name two of them in the complaint's caption. Additionally, in his certification opposing the dismissal, respondent stated that two of the original defendants had been served with the complaint and that he expected answers to be filed and served within the next three weeks. On July 24, 1998, this assertion was repeated in another certification to the court. The ethics complaint alleged that, because there was no indication that respondent had sent the initial complaint for service and because no defendant had ever been successfully served, respondent violated RPC 3.3 (a)(1) (false statement of material

fact or law to a tribunal) when he submitted the untruthful certifications. The complaint further charged that respondent misrepresented the status of the case to the Pauls, misinforming them about the dates on which the initial and amended complaints were filed and the dates of service upon the various defendants. According to the complaint, respondent also misrepresented that defaults had been entered against several defendants.

On July 24, 1998, respondent sent letters to two of the new defendants, enclosing copies of the first amended complaint and purporting to serve them pursuant to R. 4:4-3(b). In August 1998, an attorney for one of the defendants named in the body of the complaint but not in the caption contacted respondent and suggested that respondent dismiss the complaint as to those defendants. Thereafter, according to the complaint, respondent attempted to serve those defendants, as well as two other defendants.

In his subsequent letters to respondent, Duane requested copies of documents and asked about the parties' factual disputes, respondent's litigation strategy and the status of service on the defendants. In December 1998, respondent claimed to have completed the first draft of a summary judgment motion, although no such motion was found in his client file. The complaint alleged that respondent did not explain the true posture of the litigation to the Pauls, including the fact that none of the defendants had been properly served up to that point.

In April 1999, the court dismissed the amended complaint as to one of the defendants without prejudice. Five days later, respondent misrepresented to Duane that the complaint

was not dismissed and that the matter was “set for Friday.” According to the ethics complaint, in May 1999, respondent misrepresented to Duane that he had filed a motion.

In April 1999, another defendant answered the complaint, even though the complaint had not been properly served, and filed a counterclaim against Raynor. Respondent never filed an answer to the counterclaim.

In July 1999, the sheriff’s office served two of the defendants who were not included in the caption. However, the court returned the proofs of service to respondent with the comment “no amended complaint naming [the two defendants].” Thereafter, respondent attempted, unsuccessfully, to obtain defaults against the two defendants. The court entered an order permitting respondent to file a second amended complaint to include in the caption the names of the two defendants, to be filed and served within fourteen days of the order. However, respondent never filed a second amended complaint.

In September 1999, the court dismissed Raynor’s claim against one of the defendants and entered a default for that defendant against Raynor on the counterclaim, due to respondent’s failure to file an answer to the counterclaim and to answer interrogatories. Respondent did not advise the Pauls of these developments and, despite promises to the contrary, he did no further work on the case.

It was not until Pamela contacted the court on or about November 30, 1999 that she learned of the dismissal and the default. Although respondent prepared a motion to vacate the dismissal and default, it was never filed with the court. In March and April 2000,

respondent promised the Pauls that he would rectify the problems with the case and requested that they “tell the ethics committee to put your complaint on hold while I work on your case.” However, respondent failed to do any further work on the case.

As to the charge that respondent violated RPC 8.1(b), the complaint alleged that, despite three requests by the OAE, respondent failed to reply to the grievance and to produce his original client file. The OAE then scheduled an audit for July 17, 2000. Respondent did not appear and did not contact the OAE. After four telephone calls from the OAE, respondent finally appeared for the interview on July 25, 2000. At the conclusion of that meeting, he was permitted to retain his client file in order to prepare a written reply to the grievance. Respondent also agreed to contact the court to determine the status of Raynor’s case and provide the OAE with that information. Although he returned the file and provided a brief reply, respondent never advised the OAE of the status of Raynor’s case.

* * *

Service of process was proper. Therefore, the matter may proceed as a default. Pursuant to R. 1:20-4(f), the allegations of the complaint are deemed admitted. The complaint contains sufficient facts to support the charges of misconduct.

In July 1997, Pamela Paul retained respondent to file a complaint against several defendants on behalf of Raynor. Although respondent filed the complaint, he did not serve the defendants, resulting in the court’s notice of dismissal. In reply to the dismissal,

respondent misrepresented to the court that some of the defendants had been served. During this time, respondent also misrepresented the status of the case to his client.

Respondent then filed an amended complaint but failed to include two of the defendants in the caption. Although the court permitted him to file a second amended complaint to correct that deficiency, respondent failed to do so. In the first amended complaint, respondent also failed to plead the facts against one of the defendants with the necessary specificity, resulting in its dismissal as to that defendant. Although the dismissal was without prejudice, respondent failed to properly amend the complaint. Respondent also failed to file an answer to a counterclaim, resulting in a default being entered against Raynor. Respondent, thus, violated RPC 1.1(a) and RPC 1.3. In addition, respondent failed to make reasonable efforts to expedite litigation consistent with the interests of his client, in violation of RPC 3.2.

Respondent also violated RPC 1.4 by failing to advise the Pauls of the status of the litigation. In fact, respondent made numerous misrepresentations to the Pauls about the case, thereby violating RPC 8.4(c).

As to the violation of RPC 3.3(a)(1), in his June 3, 1998 certification to the court, respondent claimed that “[t]wo of the previous defendants have been served with services [sic] of process and answers are expected to be filed and served within the next three weeks.” At the time of the certification, respondent had not even attempted to serve the named defendants. Respondent’s false assertion was repeated in another certification to the

court on July 24, 1998. Respondent, thus, knowingly made false statements of material fact to a tribunal, in violation of RPC 3.3(a)(1).

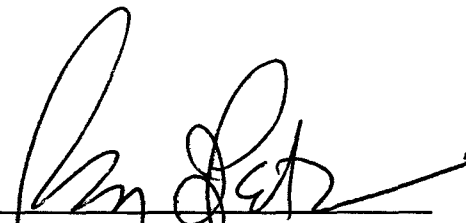
Finally, respondent violated RPC 8.1(b) by repeatedly failing to comply with the OAE's demands that he reply to the grievance and produce his client file. In fact, he never complied with the OAE's request that he ascertain the status of Raynor's case. In addition, he failed to file an answer to the complaint.

As to the quantum of discipline, respondent has already received private and public reprimands for misconduct that included gross neglect, lack of diligence and failure to communicate with clients. In this matter, respondent also made misrepresentations to his client and to the court. In addition, this matter is proceeding as a default. Therefore, a short suspension is warranted. See In re Kubulak, 157 N.J. 74 (1999) (in a default matter, three-month suspension for gross neglect, failure to abide by a client's decision, lack of diligence, failure to communicate, failure to expedite litigation, failure to cooperate, conduct involving dishonesty, fraud, deceit or misrepresentation and conduct prejudicial to the administration of justice); In re Venenchak, 156 N.J. 548 (1999) (in a default matter, three-month suspension for gross neglect, pattern of neglect, lack of diligence, failure to communicate, failure to expedite litigation, failure to cooperate, conduct involving dishonesty, fraud, deceit or misrepresentation and conduct prejudicial to the administration of justice).

In light of the foregoing, we unanimously determined to suspend respondent for three months. Two members did not participate.

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

Dated: Oct 16 2001

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY


**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Richard B. Girdler
Docket No. DRB 01-095**

Decided: October 16, 2001

Disposition: three-month suspension

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 12/16/01
Chief Counsel