

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 04-278  
District Docket No. IIB-02-024E

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IN THE MATTER OF  
HOWARD M. DORIAN  
AN ATTORNEY AT LAW

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

Decided: November 22, 2004

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

This matter was before us on a certification of default  
filed by the District IIB Ethics Committee ("DEC"), pursuant to  
Rule 1:20-4(f).

Respondent was admitted to the New Jersey bar in 1978. In  
1995, he received an admonition for gross neglect, failure to  
communicate with a client, failure to withdraw as counsel,  
failure to promptly turn over his client's file to a new attorney,

and failure to reply to requests for information from a disciplinary authority. In the Matter of Howard M. Dorian, Docket No. DRB 95-216 (August 1, 1995). In 2001, respondent was reprimanded for gross neglect, lack of diligence, and failure to communicate with a client. In re Dorian, 166 N.J. 558 (2001). He received another reprimand in 2003 for failure to promptly deliver funds to a third person and failure to cooperate with disciplinary authorities. In re Dorian, 176 N.J. 124 (2003).

On August 28, 2003, the DEC sent a complaint by certified and regular mail to respondent's office address in Cliffside Park, New Jersey. The certified return receipt, indicating delivery on August 29, 2003, was signed by a Robin Restivo; the regular mail was not returned. On January 27, 2004, the DEC sent a second letter by regular mail, advising respondent that, unless he filed an answer, the allegations of the complaint would be deemed admitted and the record in the matter would be certified directly to us for the imposition of discipline. The letter further informed respondent that the complaint was deemed amended to include a charge of failure to cooperate with a disciplinary authority, based on his failure to answer the complaint. The regular mail was not returned.

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

In February 1995, Cheryl Phillips, the grievant, retained respondent to represent her in a personal injury action after she was involved in a December 17, 1994 automobile accident. Phillips had sustained a back injury and had incurred more than \$1,000 in medical expenses. She gave respondent \$200 for the complaint filing fee, receiving a receipt from him.

Phillips called respondent's office periodically and was told by respondent's secretary that her case was "in litigation." After more than two years lapsed without Phillips' receiving correspondence from respondent, she visited his office, then located in Irvington, to find it boarded up and locked. Eventually, in 2002, Phillips located respondent's office in Cliffside Park and was advised by his secretary that she could not find the file and that she believed the case had been dismissed. At a later time, respondent decided not to represent Phillips. He did not inform her of this decision. He also did not file the lawsuit on her behalf, allowing the statute of limitations to expire. He never advised Phillips of these developments, or that he had moved his office.

Respondent told the DEC investigator that he had informed Phillips by telephone that her case was not viable. Respondent claimed that, when he determines to terminate representation, he routinely sends letters so informing his clients. He was not able to produce such a letter to Phillips and had no independent recollection of having sent a letter to her. Respondent's file contained various medical reports diagnosing Phillips with post-traumatic lumbar sprain and post-traumatic headache. The file also contained a July 20, 1995 letter from Allstate Insurance Company indicating that Phillips had failed to meet the verbal threshold and that no settlement negotiations would take place.

The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) and (b) (failure to communicate with a client and to explain the matter to the client to the extent reasonably necessary to allow the client to make an informed decision about the representation), RPC 1.16(d) (failure to protect a client's interest upon termination of the representation), and RPC 3.2 (failure to expedite litigation).

Service of process was properly made. The complaint contains sufficient facts to support findings of most of the violations charged in the complaint. Because of respondent's

failure to file an answer, the allegations of the complaint are deemed admitted. Rule 1:20-4(f).

The record demonstrates that respondent mishandled Phillips' case. After agreeing to represent her in a personal injury action, he failed to inform her that, upon receipt of medical reports indicating that her case was not viable, he unilaterally terminated the representation. Respondent did not communicate with Phillips, failing to inform her that he was not filing the lawsuit, that the statute of limitations had expired, and that he was moving his office from Irvington to Cliffside Park. He did not give her the opportunity to decide on her next course of action. Although respondent probably intended to send Phillips a letter notifying her of his decision to discontinue the representation, he could not provide proof that he had done so and Phillips denied receiving any such notification. Respondent, thus, violated RPC 1.4(a) and (b) and RPC 1.16(d). By failing to take any action to advance Phillips' case, respondent was guilty of gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3. Finally, by failing to file an answer to the complaint, respondent failed to cooperate with disciplinary authorities, a violation of RPC 8.1(b).

Although the complaint charged respondent with a violation of RPC 3.2, that rule addresses the failure to expedite litigation. Because respondent never filed the lawsuit, he cannot be found guilty of RPC 3.2. We, thus, dismiss that charge.

In sum, based on the allegations of the complaint, which are deemed admitted, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(a) and (b), RPC 1.16(d), and RPC 8.1(b).

The remaining issue is the quantum of discipline to be imposed. Ordinarily, the level of discipline for the combination of violations presented in this case ranges from a reprimand to a short suspension. See, e.g., In re Tunney, 176 N.J. 272 (2003) (reprimand where, in three matters involving the same client, the attorney was guilty of gross neglect, lack of diligence, failure to communicate with the client, failure to turn over a file to the client, failure to cooperate with disciplinary authorities, and misrepresentation); In re Taylor, 176 N.J. 123 (2003) (reprimand for gross neglect, lack of diligence, failure to communicate with clients, and failure to notify clients of termination of representation; the attorney suffered from severe emotional problems and had made some effort to close her practice); In re Mandel, 162 N.J. 100 (1999) (reprimand in a default case for gross neglect, failure to communicate with the

client, failure to turn over files to new counsel, and failure to cooperate with disciplinary authorities); In re DeBosh, 170 N.J. 185 (2001) (three-month suspension in a default case for gross neglect, lack of diligence, failure to communicate with the client, failure to safeguard property, failure to release client files, and failure to cooperate with disciplinary authorities; the attorney had received a prior reprimand); In re Handfuss, 169 N.J. 591 (2001) (three-month suspension for gross neglect, lack of diligence, failure to communicate with a client, failure to promptly deliver property to a client, failure to turn over a file and provide an accounting, failure to cooperate with disciplinary authorities, and misrepresentation; the attorney had a prior reprimand); In re Hoffman, 163 N.J. 4 (2000) (three-month suspension imposed on an attorney who neglected four client matters, closed his law practice but failed to advise his clients to find new counsel, failed to protect their interests upon termination of the representation, and failed to cooperate with disciplinary authorities; the attorney had a prior reprimand and a three-month suspension); In re Lawnick, 162 N.J. 115 (1999) (three-month suspension in a default case for lack of diligence, failure to keep a client reasonably informed about the matter, failure to protect a

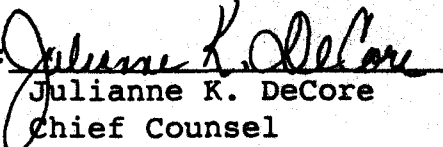
client's interests upon termination of representation, and failure to cooperate with disciplinary authorities).

We consider respondent's disciplinary history, consisting of an admonition and two reprimands, as an aggravating factor. Moreover, respondent has failed to cooperate with disciplinary authorities in two of those prior matters, in addition to this one. In mitigation, it appears that Phillips' case was very weak and that she would not have obtained a significant recovery, if any, even if respondent had properly handled her claim.

Based on respondent's disciplinary history and the default nature of this proceeding, we determine that a suspension of three months is warranted. Vice-Chair William J. O'Shaughnessy, Esq. and Members Matthew P. Boylan, Esq. and Barbara F. Schwartz did not participate.

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

Disciplinary Review Board  
Mary J. Maudsley, Chair

BY:   
Julianne K. DeCore  
Chief Counsel



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

In the Matter of Howard M. Dorian  
Docket No. DRB 04-278


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Decided: November 22, 2004

Disposition: Three-month suspension

Members	Three-month Suspension	Reprimand	Admonition	Disqualified	Did not participate
Maudsley	X				
O'Shaughnessy					X
Boylan					X
Holmes	X				
Lolla	X				
Pashman	X				
Schwartz					X
Stanton	X				
Wissinger	X				
<b>Total:</b>	6				3

  
Julianne K. DeCore  
Chief Counsel