

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-344

IN THE MATTER OF :
 :
DONALD DEVIN :
 :
AN ATTORNEY AT LAW :
 :

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

Decided: April 1, 2003

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

Pursuant to R.1:20-4(f), the Office of Attorney Ethics (“OAE”) 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.

Respondent was admitted to the New Jersey bar in 1969. He has been disciplined on three occasions. In October 1994 he was suspended for three months for failing to keep a client reasonably informed, making a misrepresentation to the client and lying to a police officer. In re Devin, 138 N.J. 46 (1994). In June 1996 he was reprimanded for gross neglect, lack of diligence, failure to communicate with the client, failure to provide

a written retainer agreement, failure to expedite litigation, misrepresentation about the status of the case and failure to cooperate with ethics authorities. In re Devin, 144 N.J. 476 (1996). On June 5, 2002, he was reprimanded for failure to cooperate with disciplinary authorities. In re Devin, 172 N.J. 321 (2002). On that same date he was temporarily suspended for failure to cooperate with an investigation by the Office of Attorney Ethics. In re Devin, 172 N.J. 320 (2002). He remains suspended to date.

On June 21, 2002 the District X Ethics Committee ("DEC") sent a copy of the complaint by regular and certified mail to respondent's last known office address, P.O. Box 314, Rockaway, N.J. 07866. The certified mail was returned as "unclaimed." The regular mail was not returned. On July 30, 2002 the DEC sent a copy of the complaint to 30 Arthur Terrace, P.O. Box 314, Hackettstown, N.J. 07840, by certified and regular mail. The certified mail receipt was returned with an illegible signature. The record does not reveal if the regular mail was returned. On September 2, 2002 the DEC sent a second letter to respondent, advising him that, if he did not file an answer to the complaint within five days, the charges against him would be deemed admitted and the record would be certified to us for the imposition of sanctions. The letter also served to amend the complaint to charge respondent with a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities). The letter was sent by certified and regular mail to the Hackettstown address. The certified mail receipt was returned indicating delivery. The signature of the accepting agent is illegible. The record does not state if the regular mail was returned. Respondent did not file an answer to the complaint.

By letter dated September 18, 2002 the OAE certified the record to us.

Count One

Julie Haysley, the grievant, is a district manager for Financial Adjustment Services, Inc., a commercial collection agency. In September 1998 Haysley retained respondent for assistance in recovering a refrigeration unit. Thereafter, Haysley attempted to contact respondent on numerous occasions to determine the status of the matter. According to the complaint, she received "unsatisfactory replies." Ultimately, a third party advised Haysley that respondent had relocated his office and changed his telephone number. For the forty-five days prior to her filing the grievance, Haysley "continuously" attempted to contact respondent. The only reply she received was a "faxed" copy of an old pleading.

Count Two

On December 31, 2001 the DEC investigator forwarded a copy of the grievance to respondent and requested that he reply to the allegations within ten days. Respondent did not comply with the investigator's request. Thereafter, respondent failed to reply to the investigator's additional requests for information. By letter dated March 4, 2002, the investigator advised respondent that a charge of a violation of RPC 8.1 would be filed against him if he did not cooperate with the investigation of the grievance. The letter was sent via certified and regular mail. Respondent signed the green return receipt card, but never submitted a reply to the grievance.

* * *

Service of process was proper. Following a review of the record, we found that the facts recited in the complaint support the charges of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R.1:20-4(f)(1).

Respondent failed to communicate with a client and failed to reply to the DEC investigator's requests for information about the grievance, in violation of RPC 1.4(a) and RPC 8.1(b).

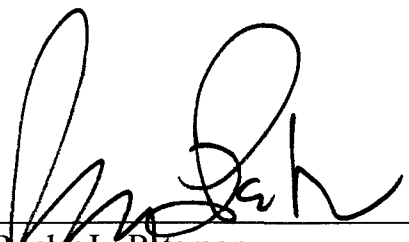
Generally, in cases involving only one client, violations of this sort have led to admonitions. See In the Matter of Alan Zark, Docket No. DRB 01-421 (February 8, 2002) (admonition for failure to communicate with the client in a personal injury matter and failure to cooperate with disciplinary authorities); and In the Matter of Gerald A. Nunan, Docket No. DRB 98-263 (October 20, 1998) (admonition for gross neglect, lack of diligence, failure to communicate, violation of the Rules of Professional Conduct and failure to cooperate with disciplinary authorities).

Respondent, however, has a lengthy disciplinary history that includes several instances of conduct of the same nature. As noted above, he has been disciplined three times. In two instances he failed to communicate with his client and failed to cooperate with disciplinary authorities. Furthermore, respondent was recently suspended for failure to cooperate with an investigation conducted by the OAE. Clearly, he has failed to learn from previous mistakes and continues to willfully ignore the disciplinary system's requests for information. Under those circumstances, at least a reprimand is warranted.

When we add to the mix respondent's failure to file an answer to the complaint, causing this record to be certified to us as a default, more serious discipline is required. We, therefore, unanimously determined to impose a three-month suspension. See In re Davis, 162 N.J. 7 (1999) (three-month suspension in a default matter involving gross neglect, lack of diligence, knowingly disobeying the rules of a tribunal and failure to cooperate with disciplinary authorities; attorney had prior admonition); In re Herron, 162 N.J. 105 (1999) (three-month suspension in a default matter for gross neglect, lack of diligence, failure to communicate with client and failure to cooperate with disciplinary authority; attorney had two prior one-year suspensions); and In re King, 157 N.J. 548 (1999) (three-month suspension in a default matter for gross neglect, pattern of neglect, lack of diligence, failure to communicate with client and failure to cooperate with disciplinary authorities; attorney had prior reprimand).

One member did not participate.

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



Rocky L. Peterson
Chair
Disciplinary Review Board

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

In the Matter of Donald Devin
Docket No. DRB 02-344

Decided: April 1, 2003

Disposition: Three-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-month Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>		X					
<i>Maudsley</i>		X					
<i>Boylan</i>		X					
<i>Brody</i>		X					
<i>Lolla</i>		X					
<i>O'Shaughnessy</i>		X					
<i>Pashman</i>		X					
<i>Schwartz</i>							X
<i>Wissinger</i>		X					
Total:		8					1

Robyn M. Hill 4/2/03
Robyn M. Hill
Chief Counsel