

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-431

IN THE MATTER OF
KEVIN J. DALY
AN ATTORNEY AT LAW

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

Decided: August 15, 2000

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 VA Ethics Committee ("DEC") 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.

On September 27, 1999, the DEC forwarded a copy of the complaint to respondent by certified and regular mail. The certified mail receipt card was returned indicating delivery on September 28, 1999. The signature on the receipt card appears to be that of respondent. The regular mail was not returned. When respondent did not file an answer, the DEC sent him a second letter, on October 27, 1999, by certified and regular mail. The letter notified respondent that, if he did not reply within five days, the charges in the complaint would be deemed admitted and the matter would be certified to the Board for the imposition of

sanctions. The certified mail receipt card was returned, indicating delivery on October 28, 1999. The signature on the card appears to be respondent's. The regular mail was not returned.

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

Respondent was admitted to the New Jersey bar in 1980. At the relevant times he maintained a law office in Cranford, New Jersey.

In 1999, respondent received a three-month suspension in a default matter for violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate with client), RPC 1.15(b) (failure to notify client of receipt of funds and to promptly deliver funds) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation). In re Daly, 156 N.J. 541 (1999). Respondent has not yet applied for reinstatement.

The one-count complaint charged respondent with violations of RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate with client). Specifically, the complaint alleged that respondent had represented Morteza Khaladj in connection with his divorce. Thereafter, in June 1997, Khaladj retained respondent to represent him in connection with a post-judgment motion to enforce litigant's rights and to increase child support. The motion was returnable on July 11, 1997. Respondent informed Khaladj that he would reply to the motion that week. Thereafter, Khaladj repeatedly telephoned respondent's office requesting

information about his case. Each time, respondent promised that the matter would be heard in two weeks.

On July 11, 1997, the motion was heard unopposed. On August 8, 1997, the court entered an order increasing child support payments and requiring Khaladj to submit an updated Case Information Statement ("CIS").

On August 11, 1997, respondent's adversary sent him a copy of the August 8, 1997 order. Respondent failed to comply with the court's directive for an updated CIS. Also, respondent did not tell Khaladj that the matter had been heard or inform him of the terms of the court order. On August 25, 1997, respondent's adversary wrote to him, reminding him about the updated CIS. When respondent failed to supply the CIS, his adversary again wrote to him on November 18, 1997, complaining that respondent had not complied with the court order. As of that date, Khaladj was unaware that a hearing had taken place in July 1997, that the court had increased his child support payments and that he was required to submit an updated CIS.

On December 23, 1997, respondent's adversary forwarded to Khaladj a notice of motion to enforce litigant's rights, a proposed order for the issuance of a warrant for his arrest and a copy of Khaladj's ex-wife's certification attesting to Khaladj's failure to comply with the August 8, 1997 order. Upon receipt of these documents, Khaladj canceled a vacation with his son for the Christmas holiday and brought the motion papers to respondent for an explanation. Respondent assured Khaladj that he would take care of the matter. The

motion, which had been returnable on January 23, 1998, was adjourned to February 20, 1998. Again, respondent failed to oppose the motion. On its return date, February 20, 1998, the court ordered the issuance of a bench warrant for Khaladj's arrest and directed that he be taken into custody.

Thereafter, respondent filed an application on Khaladj's behalf. On March 4, 1998, the court ordered that Khaladj's ex-wife show cause on March 11, 1998 why an order should not issue vacating both the August 8, 1997 and the February 20, 1998 orders. The execution of the bench warrant was stayed, pending the return date of the order to show cause. The hearing on the matter, however, was adjourned to March 17, 1998. On March 26, 1998, the judge entered an order denying the relief requested in respondent's application, but vacating the bench warrant.

On April 8, 1998 and again on April 16, 1998, respondent's adversary wrote to him requesting that Khaladj comply with the order. Finally, on June 25, 1998, respondent filed a motion, returnable on July 2, 1998, to vacate the August 8, 1997 order. The motion, heard on July 17, 1998, was denied.

During the course of respondent's representation, Khaladj suspected that information supplied to him by respondent was unreliable. As a result, he took it upon himself to call the court for information about the status of his case, rather than rely on respondent's statements. Also, during the course of the representation, respondent sent Khaladj copies of several letters to the court regarding adjournments, but no other correspondence and no copies of

pleadings or of correspondence from others involved in the matter.

The complaint charged respondent with violations of RPC 1.3 and RPC 1.4(a).

* * *

Service of process was properly made in this matter. Following a review of the complaint, we find that the facts recited therein support a finding 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's conduct in failing to reply to the post-judgment motion and to provide the CIS, as ordered by the court, violated RPC 1.3. Also, his failure to inform Khaladj about the status of his case and to provide him with correspondence relating to the matter violated RPC 1.4(a).

Normally, conduct of this type merits an admonition or a reprimand. See, e.g., In the Matter of Michael K. Mullen, Docket No. DRB 98-067 (April 21, 1999) (admonition where attorney's conduct violated RPC 1.3 and RPC 1.4(a)) and In re Gavin, 153 N.J. 356 (1998) (reprimand where attorney neglected a personal injury matter, resulting in the running of the statute of limitations, and failed to communicate with his client about the matter). However, respondent's conduct was aggravated by the fact that this is his second default. As noted above, he received a three-month suspension in the earlier matter. Enhanced discipline is,

therefore, required. Accordingly, we unanimously determined to impose a prospective three-month suspension and not to consider respondent eligible for reinstatement until any pending ethics matters against him are completed.

We further directed that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 8/15/00

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

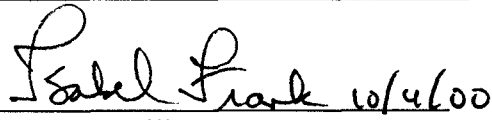
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Kevin J. Daly
Docket No. DRB 99-431

Decided: August 15, 2000

Disposition: Three-month suspension

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Peterson		x					
Boylan		x					
Brody		x					
Lolla		x					
Maudsley		x					
O'Shaughnessy		x					
Schwartz		x					
Wissinger		x					
Total:		9					

By 
Robyn M. Hill
Chief Counsel