SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-363

IN THE MATTER OF

ROBERT J. BURNS

AN ATTORNEY AT LAW

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

Decided: March 17, 2004

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

This matter was before us based on a certification of default filed by the Office of Attorney Ethics ("OAE"), pursuant to *Rule* 1:20-4(f).

Respondent was admitted to the New Jersey bar in 1990. On September 18, 2002, he was temporarily suspended for failure to cooperate with the OAE. *In re Burns*, 174 *N.J.* 340 (2002). He remains suspended to date. Before his suspension, respondent maintained a law office in Somerville, New Jersey. On October 25, 2002, an attorney trustee was appointed to inventory respondent's active files and to take control of his trust and business accounts.

On September 16, 2003, the OAE sent a complaint by regular and certified mail to respondent's home address: 138 Briarwood Drive West, Berkeley Heights, New Jersey. The return receipt for the certified mail, indicating delivery on September 17, 2003, was returned to the OAE signed by respondent. The regular mail was not returned. On September 25, 2003, respondent informed the OAE that he intended to file an answer to the complaint. On October 10, 2003, the OAE sent a second letter by certified and regular mail to the same address, 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. Neither the return receipt for the certified mailing nor the letter sent by regular mail was returned to the OAE.

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

Count One – Golden Law Firm

On December 31, 1998, respondent left his employment as an associate with the law firm of Golden, Rothschild, Spagnola, Lundell and Levitt, P.C. ("the Golden firm"). A dispute arose about the numerous files that respondent had taken with him when he left the Golden firm. After the Golden firm sued respondent, the parties reached a settlement agreement, dated June 8, 2000, requiring respondent to make certain payments to the Golden firm. Because respondent failed to

comply with the terms of the settlement agreement, the Honorable Roger F. Mahon, J.S.C., entered an order dated June 8, 2001, granting the Golden firm's motion to enforce the agreement and requiring respondent to make the necessary payments, provide an accounting, and pay counsel fees of $1,000. Based on respondent's continuing noncompliance, Judge Mahon entered additional orders dated August 3, August 21, October 16, and December 21, 2001, requiring respondent to comply with each prior order and to pay counsel fees, referring the matter to the District XIII Ethics Committee, and appointing a certified public accountant to prepare an accounting of respondent's records, at his expense.

Respondent failed to pay the sums due the Golden firm and failed to communicate or cooperate with the appointed certified public accountant, resulting in the entry of judgments against respondent in favor of the Golden firm, as follows:

- May 2, 2002: $3,148.68 for the cost of the accounting that the Golden firm paid upon respondent's failure to do so;
- May 13, 2002: $9,341.83 for sums due the Golden firm and counsel fees;
- May 14, 2002: $1,000 for counsel fees;
- December 12, 2002: $45,804.83.

The complaint charged respondent with violations of *RPC* 1.15(a), (b), and (c) (safekeeping property), *RPC* 3.2 (failure to expedite litigation), *RPC* 3.4(c) (fairness to opposing party and counsel), and *RPC* 8.4(d) (conduct prejudicial to the administration of justice).

Count Two – Kroll

During respondent's association with the Golden firm, Sharon Kroll retained him to represent her in a personal injury action arising from a September 1996 motor vehicle accident. Respondent retained the Kroll file when he terminated his relationship with the Golden firm. After a jury awarded Kroll $15,000, Allstate Insurance Company issued a $17,230.40 check dated February 21, 2002, payable to both Kroll and the Golden firm. Kroll endorsed the check and sent it to the Golden firm, who also endorsed it and forwarded it to respondent with instructions regarding payment to Kroll and to the firm, in accordance with the court orders discussed above. Although respondent deposited the check in his trust account on March 21, 2002, he failed to issue checks to Kroll or the Golden firm. He issued two checks to himself, each in the amount of $3,000, on April 4 and April 14, 2002.

By letter dated April 22, 2002, Kroll complained to Judge Mahon that respondent had not disbursed her share of the settlement proceeds and refused to communicate with her. Although Judge Mahon forwarded Kroll's letter to respondent, and although the OAE sent to respondent two letters dated May 10 and July 25, 2002, respectively, inquiring about the disbursement to Kroll, respondent failed to reply. When the OAE investigator contacted respondent by telephone, respondent represented that he either would send a check to Kroll, or had already done so. Those statements were not true.

The complaint charged respondent with violations of *RPC* 1.1(a) (gross neglect), *RPC* 1.4(a) (failure to communicate with a client), *RPC* 1.3 (lack of diligence), *RPC* 1.15(b), and *RPC* 8.1(a) and (b) (false statement to, and failure to cooperate with, disciplinary authorities).

Count Three – Lefkowitz

Respondent represented Irwin and Naomi Lefkowitz in a negligence matter and a related workers' compensation case. On June 17, 2002, St. Paul Fire and Marine Insurance Company ("St. Paul") issued a $90,000 check payable to respondent and the Lefkowitzes in settlement of the negligence case. On June 21, 2002, after he and the Lefkowitzes endorsed the check, respondent deposited it in his trust account, notifying his clients that he would disburse their share of the proceeds after the check cleared in ten days. Five days later, respondent issued a $20,000 check to himself, which he deposited in his business account, and a $1,000 check stamped "for deposit only," which was not deposited in either of respondent's two business accounts. On November 22, 2002, respondent issued a $350 check against the Lefkowitz funds, payable to himself, and endorsed this check to an individual named Ed Cihanowyz. On December 2, 2002, respondent issued a $240 check against the Lefkowitz funds, payable to himself and endorsed this check to "Fast Eddie, Inc., T/A Kisko Tavern."

On May 3, 2002, well before respondent received the settlement check, St. Paul's attorney, Michael Salvo, notified respondent that he had received a notice of a $33,009.40 workers' compensation lien asserted by the employer of respondent's client. The attorney proposed forwarding a $33,009.40 check to the employer and a check for the balance of $56,990.60 to respondent. On June 10, 2001, however, respondent sent a certification to Salvo in which respondent acknowledged the workers' compensation lien and confirmed that "out of the third party settlement proceeds the appropriate worker's compensation lien will be satisfied" and

that "the third party proceeds shall be disbursed immediately." The Lefkowitzes were not notified about Salvo's letter dated May 3, 2002, or about respondent's certification. They had not consented to the payment of the lien from the settlement funds. As of the date of the ethics complaint, the Lefkowitzes had not received their settlement and the lien had not been resolved.

The complaint charged respondent with violations of *RPC* 1.4, *RPC* 1.15(b), and *RPC* 8.4(c).

Count Four - Christiansen

In July 2001, Vern Christiansen telephoned respondent to discuss an administrative proceeding involving the possible suspension of his driver's license. Respondent agreed to represent Christiansen and to appear at an administrative hearing on his behalf. Although Christiansen sent respondent a $1,000 retainer and a copy of the suspension notice, he did not sign a retainer agreement or meet respondent. Respondent deposited the retainer check in his trust account.

Over the next several weeks, Christiansen tried to contact respondent to inquire about the status of the matter and to find out whether respondent intended to represent him. Christiansen also "faxed" a copy of the negotiated retainer check. Respondent did not reply to Christiansen.

On March 6, 2002, about three months after Christiansen filed the grievance, respondent refunded the $1,000 retainer. In the interim, Christiansen's driver's license was suspended.

Respondent represented to the OAE that although in January 2002, he had sent a refund, Christiansen failed to negotiate the check. According to respondent, he instructed his bank to

stop payment on the check. Despite requests from the OAE, respondent did not produce evidence of the January 2002 check or of any work performed on the file.

The complaint charged respondent with violations of *RPC* 1.1, *RPC* 1.3, and *RPC* 1.4.

Count Five – Kulik

On or about April 4, 2000, Richard C. Kulik retained respondent to represent him and his daughter in a personal injury action. Respondent permitted the statute of limitations to lapse without filing a lawsuit. He also failed to return Kulik's telephone calls or to reply to his letters. After Kulik discharged respondent and requested his file by letter dated January 18, 2002, respondent failed to turn over Kulik's file.

The complaint charged respondent with violations of *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4, and *RPC* 1.16(d) (failure to protect a client's interests upon termination of the representation).

Count Six – Lani

While still employed by the Golden firm, respondent was retained by Patricia Lani to represent her in a dental malpractice action. Respondent retained an expert, Dr. Anthony Captline, to provide a report and testimony. At Dr. Captline's *de bene esse* deposition, he admitted during cross-examination that, in April 1997, he had been censured and placed on probation for two years by the American Association of Oral Maxillofacial Surgeons for failing to testify fairly and impartially as an expert witness in a malpractice matter. The deposition took place on April 14, 1998, within two years of the April 1997 sanction. According to the

investigative report, respondent settled the dental malpractice lawsuit for $35,000 shortly thereafter. On April 12, 2000, respondent filed a lawsuit against Dr. Captline. Although respondent allowed that complaint to be dismissed, Lani hired another attorney, who obtained an order reinstating it. As of the date of the complaint, that matter was awaiting trial.

Respondent also represented Lani in a personal injury action. Although respondent filed a lawsuit on April 17, 2000, the complaint was dismissed on December 7, 2001, for failure to comply with discovery requests. Respondent did not notify Lani of the dismissal, reply to her numerous telephone calls and letters, appear at scheduled appointments with her, or comply with her requests to turn over her file. In addition, respondent misrepresented to Lani the status of the litigation, telling her that the trial had been scheduled for December 2001, March 2002, and June 2002, when the complaint had been dismissed in December 2001. Finally, Lani telephoned respondent's home and reached respondent's wife, who informed Lani that, instead of appearing at his office every day, respondent went to a bar. On June 11, 2002, Lani discharged respondent and retained new counsel, who filed a motion to reinstate the complaint. The ethics complaint is silent as to the outcome of that motion.

The complaint charged respondent with violations of *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4, *RPC* 1.16(d), and *RPC* 8.4(c).

Count Seven – Earle

In 1999, Patricia Bevan retained respondent to represent her in a personal injury matter. Although Bevan was married, she and her husband, grievant Ralph Earle, had been separated

since 1995 and only Bevan signed the retainer agreement. Bevan had been referred to respondent by Michael Toppin, a New York attorney. On May 21, 1999, Toppin instructed respondent to add to the complaint a claim for loss of consortium on Earle's behalf. Respondent complied with Toppin's instructions and named both Earle and Bevan as plaintiffs in the complaint. Upon settlement of the litigation, Earle's name was included on both the release and the settlement check. Earle signed the release based on Bevan's representation that his signature was required because he was still her husband. Only Bevan and respondent endorsed the settlement check.

Earle had not retained respondent to represent him. Moreover, respondent filed the complaint naming Earle as plaintiff without Earle's knowledge or consent. According to the formal ethics complaint, the claim made on Earle's behalf was frivolous, because he did not have standing to seek damages for loss of consortium as a consequence of the years of separation.

On December 20, 2001, respondent deposited the $35,000 settlement check in his attorney trust account. On December 26, 2001, he issued a $10,000 trust account check to himself, depositing the funds in his business account. Respondent wrote in the memo portion of the check "partial fee on Bevan." Almost two months later, on February 14, 2002, respondent issued a $1,000 trust account check for "Fees/Costs" and deposited the funds in his business account. Respondent failed to disburse the settlement proceeds to either Bevan or Earle.

The complaint charged respondent with violations of *RPC* 1.2(d) (more appropriately, *RPC* 1.2(a) – scope of representation)[1], *RPC* 1.15(b) [mistakenly cited as *RPC* 1.15(d)], *RPC* 3.1

---

[1] *RPC* 1.2(d) prohibits attorneys from counseling or assisting clients in conduct that is illegal, criminal, or fraudulent. That charge is not applicable in this matter.

(meritorious claims and contentions), *RPC* 4.1(a)(1) and (2) (truthfulness in statements to others), and *RPC* 8.4(c).

Count Eight – Frank

In early 2000, respondent represented Thomas E. Morrison in a personal injury matter. On February 15, 2000, respondent requested that Morrison's physician, Dr. Burt Frank, provide medical records, a narrative report, and an itemized bill. On May 5, 2000, respondent signed a lien agreement representing that, in exchange for Dr. Frank's deferring payment for his services, respondent would promptly pay him directly from any recovery received for Morrison. Although on April 4, 2002, respondent received a $5,000 settlement check on Morrison's behalf, he did not issue a check to Dr. Frank. Instead, on May 14, 2002, he issued two $500 checks to himself. He did not disburse any sums to Morrison or to Dr. Frank.

On June 6, 2002, Dr. Frank sent a letter to respondent indicating his awareness of the settlement and requesting payment of $1,411.25. He also cautioned respondent that he would file a lawsuit if he did not receive prompt payment. Respondent did not reply. On July 12, 2002, Dr. Frank, *pro se*, filed a lawsuit in Somerset County. Because respondent failed to appear, a default judgment for $1,430.25 was entered against him on September 6, 2002. As of the date of the complaint, $4,000 remained in respondent's trust account from the Morrison settlement.

The complaint charged respondent with a violation of *RPC* 1.15(b).

Count Nine – Failure to Cooperate

Respondent failed to appear at demand audits scheduled by the OAE on May 21 and August 27, 2002, and failed to appear at a meeting with the OAE on January 30, 2003, despite his assurances that he would appear. He also failed to reply to the OAE's requests for information.

The complaint charged respondent with a violation of *RPC* 8.1(b).

Count Ten – Abandonment and Pattern of Neglect

According to the complaint, respondent failed to reply to inquiries from his clients, including Christiansen, Kroll, Lefkowitz, Kulik, and Lani; neglected his practice; and failed to perform his professional responsibilities for his clients. The complaint alleged that, as a result of respondent's neglect, he was temporarily suspended on September 17, 2002, and an attorney trustee was appointed. Following respondent's failure to cooperate, the attorney trustee filed motions to compel respondent to provide information. The investigative report provided to us with the record in this matter stated that respondent's trust account contained a balance of almost $200,000 and that respondent had not cooperated with the appointed attorney trustee to disburse those funds to respondent's clients.

The complaint charged respondent with violations of *RPC* 1.1(b) (pattern of neglect) and *RPC* 1.16(d) (abandonment of clients).

Service of process was properly made. Following a review of the record, we find 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. *Rule* 1:20-4(f).

The pattern that emerges from this record is one of neglect of files and abandonment of clients. Because respondent failed to file an answer to the complaint, there is no evidence of mitigation and we reach our determination based on the record as certified by the OAE.

In the Golden firm matter, although respondent reached a settlement agreement, he failed to comply with it, or with the subsequent orders enforcing the agreement. By failing to disburse to the Golden firm its share of fees, respondent violated *RPC* 1.15(b) (failure to promptly notify a third person of receipt of funds in which the third person has an interest and to deliver the funds). By refusing to comply with Judge Mahon's orders and causing respondent's adversary to file additional motions, respondent failed to expedite litigation; knowingly disobeyed an obligation under the rules of a tribunal; and engaged in conduct prejudicial to the administration of justice, in violation of *RPC* 3.2, *RPC* 3.4(c), and *RPC* 8.4(c). Although the complaint also charged respondent with violations of *RPC* 1.15(a) (attorney shall hold separately property of clients and third parties from attorney's own property) and *RPC* 1.15(c) (attorney shall hold separately property in which both the lawyer and another person claim interests), the complaint did not establish that respondent failed to hold the funds separately from his own funds. We, thus, dismiss those charges.

In Kroll, respondent failed to disburse any of the $17,230.40 settlement proceeds to his client or to the Golden firm. He, nevertheless, issued checks totaling $6,000 to himself from the

settlement funds. Despite intervention by Judge Mahon and the OAE, respondent failed to act. In addition, he misrepresented to the OAE investigator that he either had sent a check to Kroll or would do so in the future. Respondent also failed to reply to Kroll's inquiries about the case. Respondent, thus, violated *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4(a), *RPC* 1.15(b), and *RPC* 8.1(a) and (b).

Similarly, in the Lefkowitz matter, although respondent notified his clients that he would disburse their share of the settlement proceeds, he failed to do so. He also failed to honor his certification that he would satisfy the workers' compensation lien from the settlement funds. Moreover, respondent did not have his clients' authority when he made that commitment. Respondent, thus, violated *RPC* 1.4(b), *RPC* 1.15(b), and *RPC* 8.4(c).

In the Christiansen matter, respondent accepted a $1,000 retainer and performed no services for his client. He failed to reply to his client's inquiries about the matter. By the time respondent refunded the retainer, Christiansen's driver's license had been suspended. Although respondent told the OAE that Christiansen had failed to negotiate a refund check that respondent had previously issued, he produced no evidence of the check. Respondent violated *RPC* 1.1(a), *RPC* 1.3, and *RPC* 1.4(a).

As to Kulik, respondent allowed the statute of limitations to expire in a personal injury matter, in violation of *RPC* 1.1(a) and *RPC* 1.3. He also failed to communicate with his client or to turn over the file upon termination of the representation, in violation of *RPC* 1.4(a) and *RPC* 1.16(d).

In Lani, respondent mishandled two litigation matters. He permitted the complaint against the dental malpractice expert to be dismissed. In the personal injury matter, respondent permitted that complaint to be dismissed as well. Not only did respondent fail to inform Lani of the dismissal, he misrepresented that the matter had been scheduled for trial. He also failed to reply to her attempts to contact him. Respondent violated *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4(a), and *RPC* 8.4(c). Because the complaint does not contain sufficient allegations to sustain a violation of *RPC* 1.16(d), we dismiss that charge.

In the Earle matter, respondent named Ralph Earle as a plaintiff, without Earle's knowledge or consent, in a personal injury matter filed on behalf of Bevan, Earle's wife. Because Earle and Bevan had been separated, Earle did not have a valid claim for loss of consortium. Respondent violated *RPC* 1.2(a), *RPC* 3.1, and *RPC* 8.4(c). Because the complaint did not allege facts sufficient to support a charge that respondent violated *RPC* 4.1(a) and (b) (truthfulness in statements to others), we dismiss those charges. As in other matters discussed above, although respondent received a settlement check on Bevan's behalf and disbursed funds to himself, he failed to disburse settlement proceeds to Bevan, in violation of *RPC* 1.15(b).

As to Frank, although respondent signed a fee agreement requiring that he pay Dr. Frank from settlement funds received on his client's behalf, respondent failed to honor his agreement. Again, he issued checks to himself, permitting the balance of the settlement proceeds to remain in his trust account. Respondent, thus, violated *RPC* 1.15(b).

The allegations of the complaint also support findings that respondent failed to cooperate with the OAE, in violation of *RPC* 8.1(b), that he displayed a pattern of neglect, in violation of *RPC* 1.1(b), and that he abandoned his clients, in violation of *RPC* 1.16(d).

In sum, in the Golden firm matter, respondent violated *RPC* 1.15(b), *RPC* 3.2, *RPC* 3.4(c), and *RPC* 8.4(c). In Kroll, respondent violated *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4(a), *RPC* 1.15(b), and *RPC* 8.1(a) and (b). In Lefkowitz, respondent violated *RPC* 1.4(b), *RPC* 1.15(b), and *RPC* 8.4(c). In Christiansen, respondent violated *RPC* 1.1(a), *RPC* 1.3, and *RPC* 1.4(a). In Kulik, respondent violated *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4(a), and *RPC* 1.16(d). In Lani, respondent violated *RPC* 1.1(a), *RPC* 1.3, *RPC* 1.4(a), and *RPC* 8.4(c). In Earle, respondent violated *RPC* 1.2(a), *RPC* 1.15(b), *RPC* 3.1, and *RPC* 8.4(c). In Frank, respondent violated *RPC* 1.15(b). Respondent also displayed a pattern of neglect, abandoned his clients, and failed to cooperate with disciplinary authorities, in violation of *RPC* 1.1(a), *RPC* 1.16(d), and *RPC* 8.1(b).

The remaining issue is the quantum of discipline to be imposed. In cases involving similar violations, suspensions have been the standard discipline. *See, e.g., In re Ortopan*, 143 *N.J.* 586 (1996) (three-month suspension for gross neglect, failure to communicate, failure to turn over client files and failure to cooperate with disciplinary authorities in one matter); *In re Weinstein*, 144 *N.J.* 367 (1996) (the attorney was suspended for three months after misrepresenting to his clients in four matters that he had filed complaints, when he had not, including one matter in which he allowed the statute of limitations to lapse; in addition, the attorney was found guilty of gross neglect, pattern of neglect, lack of diligence, failure to communicate, failure to turn over a file, and failure to cooperate with disciplinary authorities); *In*

re Bernstein, 144 *N.J.* 369 (1996) (three-month suspension for gross neglect, lack of diligence, failure to communicate, misrepresentations, and failure to cooperate with disciplinary authorities in one matter); *In re Medford*, 148 *N.J.* 81 (1997) (three-month suspension for gross neglect, lack of diligence, failure to communicate, failure to promptly deliver funds to a client, failure to surrender client's file on termination of representation, practicing law while ineligible, conduct involving dishonesty, fraud, deceit or misrepresentation, and failure to cooperate with disciplinary authorities in one matter); *In re Daly*, 156 *N.J.* 541 (1999) (three-month suspension in a default matter for gross neglect, lack of diligence, failure to communicate with a client, failure to promptly deliver funds to a client, and conduct involving misrepresentation in one matter); *In re Peluso*, 156 *N.J.* 545 (1999) (three-month suspension for gross neglect in six matters, pattern of neglect, failure to abide by a client's decision, lack of diligence, failure to communicate, failure to explain a matter to a client, recordkeeping deficiencies, and failure to surrender client's file on termination of representation in one matter); *In re Venenchak*, 156 *N.J.* 548 (1999) (three-month suspension in a default case for gross neglect, pattern of neglect, lack of diligence, failure to communicate with client, failure to expedite litigation, failure to cooperate with disciplinary authorities, conduct involving misrepresentation, and conduct prejudicial to the administration of justice in two matters); *In re Banas*, 157 *N.J.* 18 (1999) (three-month suspension in a default matter where, in one matter, the attorney accepted a retainer, did not provide a written fee agreement, did not take any action on his clients' behalf, did not return clients' phone calls, and did not cooperate with the ethics investigator); *In re DeBosh*, 170 *N.J.* 185 (2001) (three-month suspension in a default case for gross neglect, lack of diligence, failure

to communicate, failure to safekeep property, failure to release client files, and failure to cooperate in two matters).

In the above cases, including defaults, the attorneys, just as respondent, had no previous ethics infractions, and all were suspended for three months. Respondent did not advance any mitigating factors because he failed to answer the ethics complaint.

Based on the foregoing, we unanimously determine that a three-month suspension is the appropriate level of discipline. Before reinstatement, respondent must submit a report from a mental health professional approved by the Office of Attorney Ethics, concluding that he is fit to practice law. Also, before he is reinstated, respondent must cooperate in disbursing to his clients almost $200,000 in his trust account. Upon reinstatement, respondent must practice under the supervision of a proctor for two years. Two members 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
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Robert J. Burns
Docket No. DRB 03-363

Decided: March 17, 2004

Disposition: Three-month suspension

Members	*Disbar*	*Three-month Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Maudsley		X					
O'Shaughnessy							X
Boylan		X					
Holmes		X					
Lolla							X
Pashman		X					
Schwartz		X					
Stanton		X					
Wissinger		X					
Total:		7					2

Julianne K. DeCore
Chief Counsel