

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-343

IN THE MATTER OF
MARK D. CUBBERLEY
AN ATTORNEY AT LAW

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

Decided: April 2, 2003

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

Pursuant to R.1:20-4(f), the District VII 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.

Respondent was admitted to the New Jersey bar in 1984. In 1996 he received an admonition for failure to cooperate with the DEC investigation. In the Matter of Mark D. Cubberley, Docket No. DRB 96-090 (April 16, 1996). On June 20, 2000, in the first of a series of defaults, he was reprimanded for gross neglect in one case and lack of diligence and failure to communicate in two cases. We were persuaded by mitigating factors that a short-term suspension was not warranted. In re Cubberley, 164 N.J. 363 (2000).

Respondent was again reprimanded for lack of diligence and failure to communicate in two matters and, in addition, a pattern of neglect. In re Cubberley, 164 N.J. 532 (2000). On March 30, 2001, respondent was temporarily suspended for failure to cooperate with the attorney designated to supervise his practice. Thereafter, he received a three-month suspension for lack of diligence in one matter and failure to cooperate with an ethics investigation in a second matter. In re Cubberley, 171 N.J. 32 (2002). He received a six-month suspension in 2002 for gross neglect in one matter, lack of diligence, failure to communicate with client, failure to prepare written fee agreements in two matters and a pattern of neglect. In re Cubberley, N.J. (2002).

* * *

On February 19, 2002 the DEC mailed a copy of the complaint to respondent by regular and certified mail, return receipt requested, to his home address in Westampton, New Jersey. The certified mail was returned undelivered. The regular mail was not returned. When respondent did not file an answer, a second letter was sent to him on March 13, 2002, again by regular and certified mail, return receipt requested. Although the regular mail was not returned, the certified mail was returned undelivered.

Respondent did not file an answer to the ethics complaint.

Following our review of this matter in May 2002, under Docket No. DRB 02-134, respondent submitted a letter contending that his attorney in the ethics matter had unilaterally terminated the representation. He further claimed that, by the time the

attorney had forwarded the relevant materials to him, it was impossible for him to file a timely submission. Respondent added that he had been diagnosed with a "serious depressive disorder." Based on these claims, we determined to vacate the default and remand the matter to the DEC. We directed respondent to file an answer to the ethics complaint on or before July 25, 2002.

On July 25, 2002, respondent notified Board counsel that, by court order dated July 11, 2002, Robert Ramsey had been appointed to represent him in the ethics matters. He further stated that, as of that date, he had not met with Ramsey to discuss the case.

In a July 26, 2002 telephone conversation with Ramsey's office, Board counsel received verbal confirmation of the appointment as well as information that their attempts to contact respondent had not succeeded until July 25, 2002. Respondent was, therefore, given "one last chance" to file an answer to the ethics complaint by August 5, 2002.

Again respondent failed to comply with the deadline. As a result, the DEC Secretary wrote to respondent's counsel on September 4, 2002, notifying him that respondent's answer was almost one month late. He again extended the time for respondent to file a verified answer to September 10, 2002. Although an answer was submitted within that time period, it was not properly verified, as required by R. 1:20-4(e). The DEC Secretary, therefore, sent the attorney a verification form on September 9, 2002 and gave respondent an additional day to submit the proper verification. Notwithstanding the extension, it was not until October 22, 2002 that respondent purportedly executed the verification and sent it to the DEC. The verification, however, was not included with the cover letter sent to the DEC. Ultimately, it was sent

to the DEC and Board counsel on October 31, 2002, more than two months late. In the interim, the matter had again been certified to us as a default.

Following our receipt of the October 31, 2002 submission, we requested that Ramsey submit either an affidavit or certification explaining the reasons for respondent's delay in submitting to the DEC the signed verification to the answer. This was to afford respondent a final opportunity to be heard on the merits, if the delay was not caused by his own conduct.

Ramsey's certification failed to provide an adequate explanation for the delay. Instead, it provided a chronology of events. It also stated, in part, that he had "made numerous attempts" to meet with respondent to discuss the case, but was unable to schedule an appointment with him until August 12, 2002 (seven days beyond the second extension). The certification concluded that "[e]ssentially, the delay was caused by a certification on the verification that did not conform to the requirements of Rule 1:4-4(b)" and that the delay in the disposition of the case was due to "clerical errors." There was no explanation for respondent's failure to comply with the deadlines.

Based on the foregoing, we unanimously determined to deny respondent's motion to vacate the default and to reach the merits of the case.

* * *

The four-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client)

and RPC 8.1(b) (failure to comply with reasonable requests for information from a disciplinary authority).

Count one charged that, on October 5, 2001, the DEC sent a letter to respondent requesting a reply to the grievance. Thereafter, when the DEC investigator learned that respondent had been represented by an attorney in another ethics matter, he forwarded a copy of the letter to that attorney on January 3, 2002. Respondent failed to contact the investigator about the matter, in violation of RPC 8.1(b).

Count two charged that Louis Cicalese retained respondent on October 30, 2000 to obtain a site plan approval. According to the investigative report, Cicalese paid respondent a \$2,000 retainer. The complaint further alleged that Cicalese made numerous attempts to contact respondent after their initial meeting, to no avail. On March 30 and April 18, 2001, Cicalese wrote to respondent requesting the return of his retainer. Respondent did not reply to Cicalese's letters. As of the date of the complaint, respondent had not communicated with Cicalese. The complaint, thus, charged that respondent's conduct constituted gross negligence for not communicating with his client after receiving a fee.

Count three charged respondent with a lack of diligence for failing to represent Cicalese in connection with the site plan approval, even though he had taken possession of the site plans and had accepted a fee.

Finally, count four charged that Cicalese attempted to contact respondent several times, without success, and that respondent failed to keep him informed about the status of his case or to comply with his requests for information, in violation of RPC 1.4.

* * *

Service of process was properly made. Following a review of the record, we determined that the facts recited in the complaint support a finding of unethical conduct. Because of respondent's failure to timely and properly answer the complaint, the allegations are deemed admitted. R.1:20-4(f).

Respondent met with Cicalese on October 30, 2000 and agreed to represent him in connection with obtaining a site plan approval. Not only did he take possession of the site plans, but he also accepted a \$2,000 retainer. Thereafter, Cicalese heard nothing further from respondent. Cicalese's attempts to obtain the return of his fee were unsuccessful. Moreover, respondent did not communicate with Cicalese after their initial meeting or take any action in his behalf. The allegations, therefore, support findings of gross neglect, lack of diligence, failure to communicate with the client and failure to cooperate with the disciplinary authorities.

Ordinarily, similar misconduct in default matters warrants the imposition of a three-month suspension. See In re Banas, 157 N.J. 18 (1999) (three-month suspension in a default matter for gross neglect, lack of diligence, failure to communicate with client, failure to provide written fee agreement and failure to cooperate with disciplinary authorities) and In re Gorman, 156 N.J. 435 (1998) (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).

Respondent's conduct here evidenced a pattern of misconduct in a number of cases. He has already received an admonition, two reprimands, a three-month suspension and a six-month suspension. Respondent's conduct in this matter occurred on the heels of the conduct in the two earlier matters that led to his suspensions. We, therefore, unanimously determined that respondent's abandonment of his clients, total inattention to his own matters and continued disregard of the ethics process require an additional six-month suspension. See In re West, 156 N.J. 451 (1998) (six-month suspension in a default matter for gross neglect, pattern of neglect, lack of diligence, failure to communicate with client, failure to surrender papers and unearned fee and failure to cooperate with disciplinary authorities; attorney had prior admonition, a temporary suspension and a three-month suspension) and In re Chen, 153 N.J. 362 (1998) (six-month suspension in default matter for gross neglect, improper termination of representation and failure to cooperate with disciplinary authorities; the attorney's ethics history included a reprimand and two three-month suspensions). One member recused himself and one member did not participate.

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

By: 

MARY J. MAUDSLEY
Vice-Chair
Disciplinary Review Board

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

In the Matter of Mark D. Cubberley
Docket No. DRB 02-343

Decided: April 2, 2003

Disposition: Six-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Six-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:		7				1	1

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