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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-055

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

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

Decided: May 6, 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.

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

suspension was not warranted. In re Cubberley, 164 N.J. 363 (2000). That same year, 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, effective March 5, 2002, 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). Also in 2002, he received a six-month suspension 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) (unreported order). Recently, we vacated yet another default and remanded it to the DEC to allow respondent to file an answer to the complaint. He failed to file a proper and timely answer. Upon reconsideration of the matter, we determined to impose another six-month suspension for respondent's gross neglect, lack of diligence, failure to communicate with the client and failure to cooperate with disciplinary authorities. In the Matter of Mark D. Cubberley, Docket No. DRB 02-343. That matter is under Supreme Court review.

In short, respondent's ethics history includes one admonition, two reprimands, a three-month suspension, a six-month suspension, a potential six-month suspension and a temporary suspension.

* * *

On December 19, 2002, the OAE sent a copy of the complaint, by regular and certified mail, to respondent's last address listed on the attorney registration system, 105 Winstead Drive, Westampton, New Jersey, the same address that respondent listed on his motion to vacate the prior default. The certified mail was returned as "unclaimed." The regular mail was not returned. When respondent did not file an answer, the OAE sent him a second letter, by regular and certified mail, affording him five days to file an answer. As of the date of the certification of the record, February 14, 2003, neither the certified mail, the certified mail receipt, or the regular mail had been returned. Respondent did not file an answer.

* * *

The two-count complaint charged respondent with violations of RPC 8.1(b) (failure to comply with a reasonable request for information from a disciplinary authority), R.1:20-20(a) (prohibited association with a suspended attorney) and (b) (prohibitions on conduct, once suspended), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice) in count one. Count two charged respondent with failure to file a detailed affidavit about his compliance with R.1:20-20.

As noted earlier, respondent was temporarily suspended on March 30, 2001 for failure to cooperate with his supervising attorney. The order was mailed to him on April

2, 2001 by regular and certified mail, return receipt requested. The certified mail was returned as "unclaimed," but the regular mail was not returned. On April 12, 2001, an OAE investigator personally served respondent with a copy of the order.

The OAE received a May 10, 2001 letter from Lori A. Efaw, the grievant, claiming that she had retained respondent and had agreed to pay him \$100 a week towards his fee. Unaware of respondent's March 30, 2001 temporary suspension, she continued to make the weekly payments, which he accepted. Respondent came to her place of employment on May 4, 2001 to collect the weekly \$100 payment, but she refused to pay him because she had learned about his suspension. Her grievance states as follows, in relevant part:

As per our verbal agreement I was giving him \$100.00 per week towards the fee. To date I have given him \$500.00. I have since learned that his license was suspended I believe since March 30th. He never informed me of this and continued to take my money weekly. I had asked him on numerous occasions for a receipt of the money I was giving to him and he would promise me to bring it the next time, which of course he did not. He came to my work on May 4th to collect his \$100.00 payment. I informed him at that time that I was aware of the circumstances and I was not going to give him any more money. He told me that I was not to worry about it that he would have everything taken care of by the time of my court case which [sic] in June and that I should continue to pay him. I of course did not and have since hired another attorney to represent me, but have not received any money back from Mr. Cubberley [Emphasis supplied].

[Exhibit 5 to the complaint]

On March 21, 2001, nine days before his temporary suspension, respondent filed with the Hamilton Township Municipal Court a notice of appearance on Efaw's behalf and a request for discovery. He did not notify the court and Efaw that the court had ordered his suspension from the practice of law.

Between November 27, 2001 and May 31, 2002, the OAE had telephone conversations with and forwarded correspondence to Steven B. Sacharow, an attorney retained by respondent. Sacharow did not submit a reply to the Efaw grievance. On June 28, 2002, Sacharow notified the OAE that he was no longer representing respondent. Thereafter, on June 27 and August 2, 2002, the OAE forwarded to respondent's home address, by regular and certified mail, copies of prior correspondence to Sacharow, as well as Efaw's grievance. Although the certified mail was returned as "unclaimed," the regular mail was not returned. Respondent did not reply to the grievance.

The complaint charged respondent with a violation of RPC 8.1(b) for failing to reply to the OAE's requests for information; R.1:20-20(a) and (b) for taking a fee from Efaw during his suspension and failing to advise her and the Hamilton Township Municipal Court of his suspension; and RPC 8.4(c) and RPC 8.4(d) for practicing law while suspended.

Count two alleged that the temporary suspension order directed respondent to comply with R.1:20-20. R.1:20-20(b)(15) requires an attorney, within thirty days after his or her suspension, to file with the OAE Director a detailed affidavit specifying how the attorney has complied with each of the provisions of the rule and with the Supreme Court's order. As stated above, the Court's order was mailed to respondent by certified and regular mail on April 2, 2001 and personally served on him on April 12, 2001. By letter dated November 1, 2002, the OAE notified respondent that he had not complied with R.1:20-20. Respondent never filed the required affidavit with the OAE Director.

* * *

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

The complaint alleges that respondent practiced law while suspended. He was temporarily suspended from the practice of law on March 30, 2001 and had actual notice of the suspension on April 12, 2001, if not before. Yet, from that date on and until May 4, 2001, he continued to accept fee payments from Efaw, thereby holding himself out to her as an attorney in good standing. R.1:20-20(a)(13) permits an attorney to be compensated for the reasonable value of services rendered and disbursements incurred prior to the effective date of the suspension. However, R.1:20-20(a)(6) prohibits the solicitation or procurement of retainers once suspended. In this case, respondent accepted — indeed, solicited — legal fees from Efaw for future services. His conduct, therefore, violated R.1:20-20, RPC 8.4(c) and RPC 8.4(d). This impropriety was compounded by his false assurance to her, in May 2001, that his disciplinary problems would be resolved by the following month. Respondent had to know that this was untrue because at the time there were several unresolved disciplinary matters against him.

Finally, respondent's failure to notify Efaw or the court of his suspension and failure to file an affidavit with the OAE Director violated R.1:20-20.

Ordinarily, the level of discipline for practicing law while suspended ranges from a two-year suspension to disbarment, depending on several factors, including the attorney's level of cooperation with the disciplinary proceedings, the presence of other misconduct and the attorney's disciplinary history.

A two-year suspension was imposed in In re Wheeler, 140 N.J. 321 (1995), where the attorney practiced law while suspended, made multiple misrepresentations to clients, displayed gross neglect and pattern of neglect, engaged in negligent misappropriation and in a conflict of interest situation and failed to cooperate with disciplinary authorities.

Three-year suspensions were imposed in In re Beltre, 130 N.J. 437 (1992), and In re Kasdan, 132 N.J. 99 (1993). In Beltre, the attorney appeared in court after having been suspended, misrepresented his status to the judge, failed to carry out his responsibilities as an escrow agent, lied to us about maintaining a bona fide office and failed to cooperate with an ethics investigation. In Kasdan, the attorney continued to practice law after being suspended and after the Court expressly denied her request for a stay of her suspension. In addition, she failed to inform her clients, her adversary and the court of her suspension, failed to keep complete trust records, failed to advise her adversary of the whereabouts and amount of escrow funds and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

In In re Goldstein, 97 N.J. 545 (1984), the attorney was disbarred for multiple instances of misconduct in eleven matters, for failure to comply with an agreement with disciplinary authorities to limit his practice to criminal matters and failure to comply with a temporary suspension order. But see In re Lisa, 158 N.J. 5 (1999) (attorney appeared

before a New York court during his New Jersey suspension; in imposing only a one-year suspension, the Court considered a serious childhood incident that made the attorney anxious about offending other people or refusing their requests; out of fear of offending a close friend, he agreed to assist as "second chair" in the New York criminal proceeding; there was no venality or personal gain involved; the attorney did not charge his friend for the representation).

Here, there are no mitigating factors to consider. Respondent had only his own interests in mind when he extracted fees from his client. His significant disciplinary history and his pattern of failure to cooperate with disciplinary authorities are serious aggravating factors. Under these circumstances, we determined that, in order to protect the public from further harm, this respondent must be disbarred. Two members did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Robyn M. Hill
Robyn M. Hill
Chief Counsel

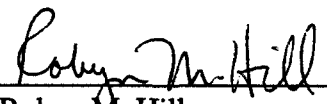
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Mark D. Cubberley
Docket No. DRB 03-055

Decided: May 6, 2003

Disposition: Disbar

<i>Members</i>	<i>Disbar</i>	<i>Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>	X						
<i>O'Shaughnessy</i>	X						
<i>Boylan</i>							X
<i>Holmes</i>	X						
<i>Lolla</i>	X						
<i>Pashman</i>	X						
<i>Schwartz</i>							X
<i>Stanton</i>	X						
<i>Wissinger</i>	X						
Total:	7						2

 5/7/03
Robyn M. Hill
Chief Counsel