

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 03-424

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IN THE MATTER OF  
FRANCIS X. GAVIN  
AN ATTORNEY AT LAW

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

Decided: April 14, 2004

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

Pursuant to R. 1:20-4(f), the District XIII 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 ethics complaint.

Respondent was admitted to the New Jersey bar in 1981. At the relevant times he maintained a law office in Hackettstown, New Jersey.

Respondent's ethics history is extensive. In 1998, he received a reprimand for gross neglect, failure to act with diligence, and failure to communicate with a client. In re Gavin, 153 N.J. 356 (1998). All of respondent's subsequent matters proceeded as defaults. He was reprimanded in 2001 for gross neglect, lack of diligence, failure to communicate with a client, failure to refund an unearned fee, and failure to comply with reasonable requests for information from a disciplinary authority. In re Gavin, 167 N.J. 606 (2001). In 2002, respondent received a six-month suspension for lack of diligence, failure to communicate with a client, failure to surrender a client file on

termination of the representation, failure to cooperate with disciplinary authorities, and conduct prejudicial to the administration of justice (contempt of court by ignoring two court orders directing him to turn over a client's file). In re Gavin, 170 N.J. 597 (2002). In another default that year, respondent received a three-month consecutive suspension for gross neglect, pattern of neglect, lack of diligence, failure to promptly deliver to clients or third persons property to which they were entitled, failure to cooperate with disciplinary authorities, and conduct prejudicial to the administration of justice (failure to comply with court orders). In re Gavin, 172 N.J. 347 (2002). In 2003, in yet another default matter, respondent received a three-month retroactive suspension, effective December 19, 2002, for lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities. In re Gavin, 176 N.J. 267 (2003). To date he has not applied for reinstatement.

On or about July 24, 2003, the DEC sent copies of the complaint to respondent at New Jersey addresses in Washington and Hackettstown, by regular and certified mail, return receipt requested. The regular and certified mail sent to Washington were returned. The certified mail sent to Hackettstown was signed for on or about September 25, 2003. The record is silent about receipt of the regular mail. Respondent did not file an answer.

On November 5, 2003, the DEC sent a second letter to respondent to both addresses, affording him an additional five days to file an answer to the complaint, or have the matter certified to us for the imposition of discipline. The record does not indicate the status of any of the letters. Respondent did not file an answer.

The complaint charged respondent with violations of RPC 1.4(a) (failure to communicate with a client), RPC 1.15(b) (failure to promptly disburse funds to the client), and RPC 8.1(b) (failure to reply to reasonable requests for information from a disciplinary authority).

In October 2001, respondent represented Kathryn Engel, as the executrix of her mother's estate. As the result of some type of agreement reached in October 2001 between respondent and another attorney, respondent was to release the balance of the estate funds to the beneficiaries, after payment of the accountant's fees and tax obligations.

According to the grievants, Kathryn and Stephen Engel, there were no taxes due, and the accountant was paid in full in May 2002. Respondent did not release \$5,840.50 due to the "estate."<sup>1</sup>

The complaint also alleged that respondent failed to keep his clients adequately and accurately informed about the status of the matter, and failed to reply to the grievance.

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

Respondent agreed to release the balance of estate funds to Kathryn Engel upon payment of the accountant's fees and tax obligations, but failed to do so. According to the investigative report, respondent had three or four months to distribute the funds to Engel before a trustee was appointed to oversee his files and accounts. His failure to promptly turn over the funds violated RPC 1.15(b). Also, respondent's failure to keep his client informed about the status of the matter violated RPC 1.4(a). Finally, his failure to reply to the grievance violated RPC 8.1(b).

The discipline imposed in the following default matters has ranged between a reprimand to a six-month suspension, depending on the number and type of violations involved, and the attorney's ethics history. In In re Tutt, 163 N.J. 562 (2000), where the attorney failed to provide information to one of the beneficiaries of an estate, failed to promptly deliver funds to a beneficiary, and failed

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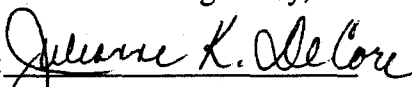
<sup>1</sup> The investigative report indicates that the Engels requested that the trustee appointed to oversee respondent's files and accounts release their funds. The trustee informed Board counsel that, as a result of this request, the Engels have paid in full.

to cooperate with disciplinary authorities, a reprimand was imposed. At the time, the attorney had no prior discipline. The existence of an ethics history has resulted in the imposition of harsher discipline. See In re Davis, 163 N.J. 563 (2000) (three-month suspension for gross neglect, lack of diligence, failure to communicate with client, and failure to cooperate with disciplinary authorities; attorney had prior admonition and three-month suspension); In re Patience, 169 N.J. 477 (2001) (three-month suspension for gross neglect, lack of diligence, failure to communicate with client, and failure to cooperate with disciplinary authorities; attorney had prior six-month suspension); In re Cubberley, 178 N.J. 103 (2003) (six-month suspension for gross neglect, lack of diligence, failure to communicate with client, and failure to cooperate with disciplinary authorities; at the time his ethics history included an admonition, two reprimands, a temporary suspension, a three-month and a six-month suspension); and In re Breingan, 165 N.J. 538 (2000) (six-month suspension where the attorney failed to cooperate with disciplinary authorities and had a private reprimand, a reprimand and two three-month suspensions).

In imposing discipline here, we consider that the misconduct in this matter occurred around the same time period as the misconduct in his earlier matters. Thus, it was part of the same overall pattern of misconduct, rather than the product of respondent's failure to learn from prior mistakes. What is troubling, though, is that respondent continues to ignore the disciplinary process. For this reason, we unanimously determine that an additional six-month suspension is required. Two members did not participate. One member recused herself.

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

Disciplinary Review Board  
William J. O'Shaughnessy, Vice-Chair

By:   
Julianne K. DeCore  
Chief Counsel

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

In the Matter of Francis X. Gavin  
Docket No. DRB 03-424


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Decided: April 14, 2004

Disposition: Six-month suspension

| <i>Members</i>       | <i>Disbar</i> | <i>Six-month<br/>Suspension</i> | <i>Reprimand</i> | <i>Admonition</i> | <i>Dismiss</i> | <i>Disqualified</i> | <i>Did not<br/>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                               |                  |                   |                |                     |                                |
| <b>Total:</b>        |               | 6                               |                  |                   |                | 1                   | 2                              |

  
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Julianne K. DeCore  
Chief Counsel