

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-276

IN THE MATTER OF
RICHARD J. CARROLL
AN ATTORNEY AT LAW

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

Decided: May 15, 2001

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 VI 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 May 10, 2000, the DEC mailed a copy of the complaint to respondent's last known office address by regular and certified mail. The certified mail envelope was

returned as unclaimed. The regular mail was not returned. When respondent did not file an answer, on July 11, 2000, the DEC sent respondent a second letter, informing him that, unless he filed an answer within five days, the allegations of the complaint would be deemed admitted and the matter would be certified to the Board for the imposition of sanctions. Again, the certified mail was returned as unclaimed, while the regular mail was not returned.

Respondent did not file an answer to the formal ethics complaint. The record was then 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 1970. At the relevant times he maintained an office at 255 Route 3 East, Secaucus, New Jersey.

In 1984, respondent was privately reprimanded for grossly neglecting a matter. In the Matter of Richard J. Carroll, Docket No. DRB 83-323 (December 4, 1984). Respondent received an admonition in 1995 for lack of diligence, failure to communicate, failure to turn over a client file to new counsel and failure to cooperate with disciplinary authorities. In the Matter of Richard J. Carroll, Docket No. DRB 95-017 (June 25, 1995). A second admonition was imposed in 1997 for respondent's lack of diligence and failure to communicate with the client. In the Matter of Richard J. Carroll, Docket No. DRB 97-289 (October 27, 1997). On December 7, 1999, respondent received a three-month suspension for gross neglect, lack of diligence and failure to cooperate with ethics authorities. In re Carroll, 162 N.J. 97 (1999). Respondent was suspended for another three months on November 22, 2000 for failure to correct recordkeeping deficiencies and failure to cooperate

with the OAE in connection with an audit. In re Carroll, N.J. (2000). The last two matters proceeded on a default basis. Respondent remains suspended.

The formal ethics complaint alleged two counts of unethical conduct. The first count of the complaint charged respondent with violations of RPC 1.1(a) (gross neglect) and RPC 1.4(a) (failure to communicate), while the second count alleged a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities). In August 1995, respondent agreed to represent grievant Kelly Bua and her two infant children in connection with a claim for damages arising from an apartment fire. Respondent filed a complaint on grievant's behalf on or about March 1, 1996. Grievant again sought respondent's representation in May of 1998 in a matter involving fire damage to another apartment.

From late 1997 to August of 1999, it became increasingly difficult for grievant to contact respondent. He did not return her telephone calls and routinely missed scheduled appointments with her. Unbeknownst to grievant, the complaint in the first matter was dismissed in 1997 for lack of prosecution. The grievant did not learn of the dismissal until she contacted court personnel two years after the dismissal. Moreover, respondent performed no work in the second matter.

As to the charge of failure to cooperate, the complaint alleged that, on December 3, 1999, a copy of the grievance was sent to respondent via certified and regular mail. The certified mail was returned signed. Respondent never responded to the grievance.

* * *

Service of process was properly made in this matter. Following a de novo 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 file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f)(1).

Respondent failed to prosecute the complaint he filed on behalf of grievant in the first matter, which ultimately led to its dismissal. In the second matter, respondent did no work in grievant's behalf. His conduct in both matters violated RPC 1.1(a) (gross neglect).

Respondent also failed to keep grievant informed about the status of her cases. He did not return grievant's phone calls and even missed scheduled appointments. Grievant did not learn that her complaint had been dismissed until two years after the fact. Respondent's failure to reply to grievant's numerous requests for information violated RPC 1.4(a) (failure to communicate). In addition, respondent's failure to disclose to his client that her complaint had been dismissed constituted a misrepresentation by silence. Crispen v. Volkswagenwerk, 96 N.J. 336, 347 (1984). Although the complaint did not specifically charge respondent with a violation of RPC 8.4(c), the facts alleged therein were sufficient to put him on notice of a potential finding of this violation. In re Logan, 70 N.J. 222 (1976).

Finally, respondent never submitted a reply to the grievance, in violation of RPC 8.1(b).

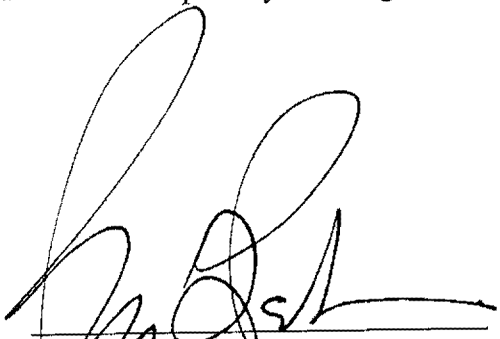
Default cases dealing with similar violations generally result in a reprimand or short-term suspension. See, e.g., In re Hoffman, 156 N.J. 579 (1999) (default; three-month suspension for failure to communicate, failure to cooperate with disciplinary authorities and misrepresentation of the status of the case to the client; and In re Bernstein, 144 N.J. 369 (1996) (default; reprimand for gross neglect, lack of diligence, failure to communicate, failure to cooperate and continuous misrepresentation of the status of the case to the client). However, where the attorney has been previously disciplined for similar unethical conduct, a lengthier suspension is appropriate. In re Dudas, 162 N.J. 101 (1999) (default; six-month suspension for gross neglect, lack of diligence, failure to communicate, failure to cooperate with ethics authorities, and misrepresentation regarding the status of client's case; respondent's ethics history, including two suspension, mandated an increased quantum of discipline).

This respondent has an extensive history of discipline - a private reprimand, two admonitions and two short-term suspensions. Moreover, respondent has demonstrated a pattern of indifference to the disciplinary system - this is his third default - and an inability to conform to the standards of the profession.

In light of respondent's ethics history and the default nature of this proceeding, the Board unanimously determined to impose a six-month suspension, consecutive to that imposed in November 2000.

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

Dated: 8/15/01

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Richard J. Carroll
Docket No. DRB 00-276**

Decided: May 15, 2001

Disposition: Six-month suspension

Members	Disbar	Six-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling		X					
Peterson		X					
Boylan		X					
Brody		X					
Lolla		X					
Maudsley		X					
O'Shaughnessy		X					
Schwartz		X					
Wissinger		X					
Total:		9					

By Robyn M. Hill 6/6/01
Robyn M. Hill
Chief Counsel