

9

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 02-033

---

IN THE MATTER OF  
ROBERT B. FEUCHTBAUM  
AN ATTORNEY AT LAW

---

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

Decided: June 20, 2002

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

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

Respondent was admitted to the New Jersey bar in 1972. He no longer maintains a law office in New Jersey and presently resides in Delray Beach, Florida. In 2000 he was reprimanded for violations of RPC 1.15(b) (failure to safeguard property of a third party by improperly releasing escrow funds), RPC 1.16(d) (failure to return a client's file on termination of representation) and RPC 8.4(d) (conduct prejudicial to the

administration of justice for his failure to timely comply with a court order). In re Feuchtbaum, 165 N.J. 472 (2000).

\* \* \*

On October 19, 2001, the DEC mailed a copy of the complaint to respondent by certified and regular mail to his Florida address. The certified mail receipt indicates delivery on October 24, 2001. The signature of the recipient is illegible. The regular mail was not returned. When respondent did not file an answer, a second letter was forwarded to him on December 4, 2001 by certified and regular mail. The signature of the recipient on the certified mail receipt is illegible. The regular mail was not returned. Respondent did not file an answer, but instead sent a facsimile transmission, on December 17, 2001, about his medical condition. Because the transmission was incomplete and did not include an answer to the complaint, the DEC mailed a third letter to respondent on December 19, 2001, informing him that he still had to file an answer within five days or the record would be certified to us for appropriate disposition. The certified mail receipt contains an illegible signature. The regular mail was not returned. Respondent did not file an answer.

On March 5, 2002, by facsimile transmission, respondent filed a motion to vacate the default. Although the motion detailed the residual medical complications that respondent was experiencing from a serious car accident in November 1999 and his ensuing extensive medical treatment, it did not state a reasonable explanation for his

failure to timely file an answer or present meritorious defenses to the charges in the complaint. The motion alleged that respondent advised his client to wait until his release from prison to pursue an action for malicious interference, in order to protect him from being "targeted" while in custody. Respondent's confusing submission also alluded to the possibility that he might not have been able to pursue his client's claim because he received inadequate records from the prison. Respondent's submission also alluded to the fact that Maggette could not afford an expert's report.

\* \* \*

The complaint charged respondent with violations of RPC 1.1, presumably (a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4, presumably (a) (failure to communicate with client) and R.1:20-3(g)(3), more properly RPC 8.1(b) (failure to comply with a reasonable request for information from a disciplinary authority).

The complaint alleged that in 1991-1992, Jerry Maggette, the grievant, retained respondent to represent him in connection with a dental malpractice action for injuries allegedly sustained on August 23, 1991, while Maggette was incarcerated at the Bayside State Prison. Respondent filed a dental malpractice complaint on August 16, 1993, naming as defendants the dentist, the administrator of the prison, the commissioner of the Department of Corrections and the State of New Jersey.

Thereafter, respondent neglected Maggette's case. He failed to engage in discovery, failed to provide a medical expert's report and failed to answer interrogatories.

The defendants filed a motion to dismiss the complaint, which proceeded unopposed. The motion was granted on June 7, 1996 and the complaint was finally dismissed on October 18, 1996.

Respondent failed to notify Maggette of the dismissal and took no action to have the complaint reinstated. He also failed to keep Maggette reasonably informed about the status of the case and failed to promptly comply with Maggette's requests for information about the matter.

The complaint also alleged that respondent failed to reply to inquiries from the DEC investigator.

\* \* \*

Because of respondent's failure to provide a reasonable explanation for not filing an answer to the formal ethics complaint and failure to offer meritorious defenses to the ethics charges, we determined to deny it and to proceed with the review of this matter as a default.

Service of process was properly made in this matter. A review of the record shows that the facts recited in the complaint support a finding of unethical conduct. The allegations are, thus, deemed admitted. R.1:20-4(f).

After filing the Maggette complaint, respondent failed to comply with discovery requests and failed to obtain discovery on his client's behalf. Thereafter, the defendants' motion to dismiss proceeded unopposed and the case was finally dismissed on October

18, 1996. Respondent took no steps to have the matter reinstated. His conduct in this regard violated RPC 1.1(a) and RPC 1.3. Afterwards, respondent failed to inform Maggette of the dismissal of the case and failed to keep him reasonably informed about the matter, in violation of RPC 1.4(a). Finally, respondent failed to reply to the DEC investigator's inquiries about the grievance, in violation of RPC 8.1(b).

In default cases involving similar violations, short-term suspensions have generally been imposed. See In re Pollan, 163 N.J. 87 (2000) (three-month suspension in a default case where attorney took no action in an estate matter, except for placing estate funds into a certificate of deposit – where they remained for over twenty-five years – and failed to cooperate with ethics authorities, in violation of RPC 1.3 and RPC 8.1(b); attorney had prior six-month and two-year suspensions); In re Banas, 157 N.J. 18 (1999) (three-month suspension in a default matter where attorney accepted a retainer from a client, failed to take any action in the client's behalf, failed to reply to the client's repeated attempts to contact him, failed to provide client with a written fee agreement and failed to cooperate with ethics authorities, in violation of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5(b) and RPC 8.1(b)); and In re Herron, 162 N.J. 105 (1999) (three-month suspension in a default matter where attorney, while representing a client in a conversion of a duplex into a condominium, grossly neglected the matter, failed to communicate with the client and failed to cooperate with ethics authorities, in violation of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 8.1(d); attorney had two prior one-year suspensions).

Although respondent's motion to vacate the default did not comply with the required standards, his attempt to cooperate with the ethics system, albeit belatedly,

cannot be ignored. In addition, this case presents compelling mitigating circumstances: respondent's serious medical problems and continuing need for treatment. In light of these factors, we unanimously determined to impose only a reprimand. Two members did not participate.

We further determined to require respondent to submit, within ninety days of the Court's order, proof of fitness to practice law, as attested by a mental health professional approved by the Office of Attorney Ethics.

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

By: 

ROCKY L. PETERSON

Chair

Disciplinary Review Board

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

In the Matter of Robert B. Feuchtbaum  
Docket No. DRB 02-033

Decided: June 20, 2002

Disposition: Reprimand

<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>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				
<b>Total:</b>			7				2

*Robyn M. Hill 6/25/02*  
Robyn M. Hill  
Chief Counsel