

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-385

IN THE MATTER OF :
:
RICHARD W. RAINES :
:
AN ATTORNEY AT LAW :

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

Decided: April 1, 2003

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

This matter was before us based on a certification of default filed by the District VC Ethics Committee ("DEC"), pursuant to R.1:20-4(f).

Respondent was admitted to the New Jersey bar in 1977. During the relevant time, he maintained an office in West Orange, Essex County. He has been disciplined on two occasions. He was privately reprimanded in 1993 for failure to communicate with his client and failure to return the balance of her retainer, as promised. In the Matter of Richard W. Raines, Docket No. DRB 93-158 (July 2, 1993). He received a six-month suspension in 1995 for misconduct in five matters, including gross neglect, lack of

diligence, failure to maintain a bona fide office, practicing law while on the ineligible list and criminal conduct. In re Raines, 139 N.J. 446 (1995).

More recently, respondent was temporarily suspended by order dated September 9, 2002 for failure to comply with a previous Court order that imposed deadlines for him to submit to the OAE outstanding proctor reports and periodic drug and alcohol screening reports. In re Raines, 174 N.J. 333 (2002).

Respondent has been declared ineligible to practice law on five occasions for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. Respondent's period of ineligibility from September 24, 2001 to July 3, 2002 is relevant to this matter.

* * *

On August 5, 2002 the DEC mailed a copy of the complaint to respondent's last known address, 80 W. Main Street, West Orange, New Jersey 07052 and JFK Center, 796 E. Hazlewood Avenue, Rahway, New Jersey 07065, via certified and regular mail. The certified mail to West Orange was returned stamped "Not Deliverable As Addressed." The regular mail to West Orange was returned stamped "No Mail Receptacle." The certified mail return receipt for the Rahway address was returned indicating delivery on August 6, 2002. The signature of the agent accepting delivery is illegible. The regular mail to the Rahway address was not returned.

On September 26, 2002¹ the DEC sent a second letter to respondent, advising him of his potential temporary suspension if he failed to answer the complaint within five days. The letter also served to amend the complaint to charge him with a violation of RPC 8.1(b), based on his failure to file an answer. The letter was sent to the Rahway address via certified and regular mail. The certified mail was returned as unclaimed. The regular mail was not returned.

Respondent did not file an answer to the complaint.

* * *

In September 2001 Susan Mariani retained respondent to represent her at an arbitration hearing arising from her dismissal as a school crossing guard. Respondent met with Mariani on October 26, 2001, at which time she paid him \$150 and provided him with documentation about her case. The following week, Mariani advised respondent that her hearing would be held on November 2, 2001, at the Robert Treat Hotel, in Newark.

On November 2, 2001 Mariani waited for respondent at the Robert Treat Hotel, but he never appeared. Mariani represented herself at the proceeding and was reinstated in her job. Thereafter, Mariani did not hear from respondent, despite her numerous attempts to reach him by telephone. She was told at various times that respondent had been discharged from his job, then rehired, or was out on vacation. Respondent never returned her phone calls. On January 6, 2002 Mariani finally was able to reach respondent. When asked about his failure to appear at the arbitration, respondent stated

¹ The letter is misdated September 26, 2001.

that on November 2, 2001 he had gone to the Green Street Jail for the proceeding. Respondent agreed to return Mariani's \$150 fee, along with her paperwork. On January 15, 2002, after Mariani failed to receive the money and documents from respondent, she again called his office. She was told that he had been dismissed, and was asked not to call again. Thereafter, respondent never contacted Mariani and did not return her money or documents.

The complaint charged respondent with a violation of RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate with the client).

* * *

On June 3, 2002 the DEC investigator left a telephone message at respondent's place of employment. On June 4, 2002, respondent returned the call, at which time the investigator advised him that Mariani had filed a grievance against him. The investigator instructed respondent to file a reply to the grievance. By letter of even date, the investigator requested that respondent reply to the grievance within ten days. Respondent did not comply with the investigator's request. By letter dated July 3, 2002, the investigator requested that respondent submit a reply within five days. The letter was sent via certified and regular mail. The certified mail was delivered on July 8, 2002. The signature on the green return receipt card is illegible. The regular mail was not returned. Respondent did not reply to the investigator's requests for information.

The complaint charged respondent with a violation of R.1:20-3(g)(3), more properly a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities).

* * *

Service of process was properly made. Following a review of the record, we found that the facts recited in the complaint support the charges 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).

The charges of violations of RPC 1.3 and RPC 1.4(a) are well-founded. Respondent failed to diligently pursue his client's case and to communicate with her. On the other hand, we dismissed the charge of a violation of RPC 1.1(b). The DEC deemed that rule to be applicable to respondent's conduct in Mariani's matter, "combined with other acts of neglect as alleged in [the complaint]." Because the Mariani matter is the only client matter at issue here, RPC 1.1(b) does not apply. Finally, the complaint charged respondent with a violation of R.1:20-3(g)(3) for failure to reply to the DEC investigator's requests for information. More appropriately, that misconduct is a violation of RPC 8.1(b).

The facts set forth in the complaint also reveal that respondent practiced law while ineligible. He was placed on the ineligible list on September 24, 2001. His representation of Mariani began that month and continued through at least November of that year. Although respondent was not specifically charged with a violation of RPC 5.5 (practicing law in violation of the rules governing the profession), the complaint stated that he was ineligible in 2001. Thus, he was on notice that his conduct in this regard was improper and under scrutiny. We, therefore, found a violation of RPC 5.5.

Discipline ranging from an admonition to a reprimand is generally appropriate when an attorney is found guilty of gross neglect, lack of diligence and failure to communicate with the client in one or several matters. See, e.g., In the Matter of Paul Paskey, DRB 98-244 (1998) (admonition imposed where the attorney exhibited gross neglect, lack of diligence and failure to communicate with client by twice allowing a complaint to be dismissed and failing, over a four-year period, to apprise the client of the dismissals and to reply to the client's numerous requests for information); In re Hamilton, 147 N.J. 459 (1997) (reprimand for lack of diligence, failure to keep a client reasonably informed about the status of the matter and failure to cooperate with disciplinary authorities); and In re Fody 139 N.J. 432 (1995) (reprimand for lack of diligence and failure to cooperate with disciplinary authorities). Attorneys who have practiced law while ineligible can receive more serious discipline. See In re Van Sciver, Jr., 158 N.J. 4 (1999) (three-month suspension imposed where the attorney practiced law while ineligible and failed to cooperate with disciplinary authorities; the attorney represented clients in three matters over a period of a six-month ineligibility).

When we add to the mix respondent's disciplinary history and the default nature of this proceeding, more severe discipline is required. Respondent's misconduct here is quite similar to the conduct for which he was privately reprimanded in 1993. In 1995 he was suspended for six months. It is obvious, thus, that he has failed to learn from his prior mistakes.

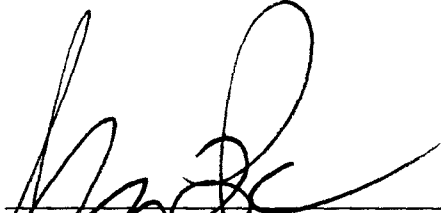
We unanimously determined that a three-month suspension is appropriate for respondent's mishandling of Mariani's matter, practicing law while ineligible and

indifference toward the disciplinary system, as demonstrated by his disciplinary history. See In re Kates, 137 N.J. 102 (1994) (three-month suspension in a non-default matter for lack of diligence, failure to communicate with the client and extreme indifference toward the ethics system).

We also determined to require respondent to submit, prior to reinstatement, proof of fitness to practice law, as attested by a mental health professional approved by the Office of Attorney Ethics. In addition, he is to comply with all prior Court orders regarding his submission of the outstanding proctor reports and periodic drug and alcohol screening reports.

One member did not participate.

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



Rocky L. Peterson
Chair
Disciplinary Review Board

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

In the Matter of Richard W. Raines
Docket No. DRB 02-385

Decided: April 1, 2003

Disposition: Three-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Three-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:		8					1

Robyn M. Hill 3/2/03
Robyn M. Hill
Chief Counsel