

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 00-378 and 00-379

IN THE MATTER OF :
:
JAMES DEBOSH :
:
AN ATTORNEY AT LAW :

:

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

Decided: August 6, 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 XIII Ethics Committee (“DEC”) certified the record in these matters directly to us for the imposition of discipline, following respondent’s failure to file an answer to the formal ethics complaints.

Respondent was admitted to the New Jersey bar in 1992. He maintains a law office at 83 South Main Street, Phillipsburg, New Jersey.

On July 13, 2000, respondent was reprimanded for violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with the client), RPC 1.5(b) (failure to prepare written fee agreement) and RPC 8.1(b) (failure to cooperate with disciplinary authorities). That case, too, proceeded on a default basis. In re DeBosh, 164 N.J. 618 (2000).

I. **The Foti Matter** (Docket No. DRB 00-378)

On July 26, 2000, the DEC forwarded a copy of the complaint to respondent's office address via certified and regular mail¹. The certified mail was returned as unclaimed. The regular mail was not returned.

Respondent did not file an answer to the complaint. The matter was certified directly to us for the imposition of discipline, pursuant to R. 1:20-4(f).

The complaint alleged that, in or about August 1997, Foti retained respondent to represent him in a divorce case. The matter ended in August 1999. After the court ordered Foti to pay alimony to his ex-wife, Foti asked respondent to appeal and to file a motion to reduce the alimony due to a change in his employment. Respondent did not comply with Foti's request and failed to reply to Foti's several requests for information about the status of the case. Eventually, Foti discharged respondent. He requested that respondent return copies of his files and some of the funds he had sent to respondent. Respondent failed to turn over the files or the funds, claiming that Foti authorized the application of \$750 to an outstanding legal bill. Foti denied such authorization and stated that he never received bills from respondent.

The complaint charged respondent with lack of diligence, in violation of RPC 1.3, failure to communicate with the client, in violation of RPC 1.4(a), and failure to keep client

¹Although the certification of the record has respondent's name and address in the caption, the certification mentions another attorney's name as the person served with the complaint. Based on the attached exhibits, that reference appears to be a typographical error.

property separate and to turn over papers and property to the client, in violation of RPC 1.15(c).

II. The Stoney Matter (Docket No. DRB 00-379)

On April 5, 1999, the DEC forwarded a copy of the complaint to respondent's office address via certified and regular mail. The certified mail was returned as "unclaimed."

On May 25, 1999, the DEC forwarded a second letter to respondent, advising him that, unless he filed an answer within five days, the allegations of the complaint would be deemed admitted, pursuant to R.1:20-4(f). The certified mail receipt was returned with an illegible signature.

When respondent did not file an answer to the complaint, the matter was certified directly to us for the imposition of discipline, pursuant to R. 1:20-4(f).

The complaint alleged that, in the fall of 1997, Edward and Carmena Stoney retained respondent to represent them in a medical malpractice case, as well as a legal malpractice case against their former attorney. At that time, the Stoneys signed numerous papers, including medical information releases and, as far as they recall, an engagement letter. The Stoneys turned over to respondent all of their papers and records the following week.

In January 1998, respondent agreed to represent Edward Stoney in connection with an automobile accident. Respondent also agreed, at an unspecified time, to represent Carmena Stoney in connection with a swimming pool accident. Respondent also

represented the Stoneys in a collection matter related to the legal malpractice case.

Although respondent agreed to represent the Stoneys in all of the above matters, he did not file pleadings in any of them.

The Stoneys repeatedly contacted respondent by telephone and fax requesting an update on their cases. Respondent did not reply to their requests for information. Ultimately, the collection matter led to a judgment against the Stoneys in the amount of \$3,500. The Stoneys then repeatedly requested respondent to return their files, to no avail.

The DEC investigator wrote to respondent about this grievance and left several messages on respondent's answering machine. Respondent failed to reply to them. On February 8, 1999, the DEC issued a subpoena for respondent to turn over all documents related to his representation of the Stoneys. On February 24, 1999, respondent delivered the documents. However, they did not contain a legal representation letter or other form of written agreement between the Stoneys and respondent. According to the Stoneys, respondent did not deliver all of the documents and audiotapes given to him.

The complaint charged respondent with gross neglect, in violation of RPC 1.1(a), lack of diligence, in violation of RPC 1.3, failure to communicate with the client, in violation of RPC 1.4(a), failure to turn over client's files, in violation of RPC 1.16(d), failure to execute a written fee agreement, in violation of RPC 1.5(b), and failure to cooperate with disciplinary authorities, in violation of RPC 8.1(b)².

² Cited in the complaint as a violation of R.1:20-3(g)(3).

* * *

Service of process was properly made in these matters. Therefore, they may proceed as defaults. The facts recited in the complaints support findings of unethical conduct. Because of respondent's failure to file answers, the allegations of the complaints are deemed admitted. R. 1:20-4(f)(1).

In the Foti matter, respondent violated RPC 1.4(a) by failing to reply to Foti's numerous requests for information about his case, and RPC 1.3, by failing to file an appeal and a motion to reduce the alimony due to a change in Foti's employment.³

There are sufficient facts to find a violation of RPC 1.15(c) as well. Foti forwarded \$750 to respondent to pay for transcripts required for the appeal. When Foti requested the return of the funds, respondent did not comply with his request. By retaining the funds without the client's consent, respondent violated RPC 1.15(c).

As to respondent's failure to return Foti's file, a more appropriate finding is that he violated RPC 1.16(d) (failure to surrender client property upon termination of representation), rather than RPC 1.15(c). Although the complaint does not specifically cite

³ The retainer agreement, attached as an exhibit, indicates that respondent's work would not include any appeals. In his written reply to the DEC investigator's request for information and in subsequent telephone communications with the investigator, respondent indicated that Foti decided not to appeal the judgment and that respondent did communicate with Foti over the telephone. The investigator concluded that the matter "boil[ed] down to a question of credibility" and recommended diversion, pursuant to R. 1:20-3(i)(2)(B). However, because respondent failed to file an answer to the formal ethics complaint, the allegations supporting the charges of RPC 1.4(a) and RPC 1.3 are admitted, pursuant to R. 1:20-4(f)(1).

this RPC, the facts recited therein gave respondent sufficient notice of a potential finding of a violation of this rule.

In the Stoney matters, respondent failed to file pleadings in any of them. In one matter, respondent's inaction led to a \$3,500 judgment against his clients. His conduct amounted to gross neglect and lack of diligence, in violation of RPC 1.1(a) and RPC 1.3, respectively. Respondent also violated RPC 1.4(a) by failing to reply to the Stoneys' numerous requests for information about the status of their matters.

Finally, respondent's failure to cooperate with the DEC investigation violated RPC 8.1(b).

The facts recited in the complaint do not support a finding of a violation of RPC 1.5(b), however, while respondent failed to produce a written retainer agreement, the Stoneys remembered signing an engagement letter. It is not clear whether respondent failed to prepare a written retainer agreement or merely failed to produce it upon the DEC's demand. Therefore, the charge of violation of RPC 1.5(b) is not supported to a clear and convincing standard and is, therefore, dismissed.

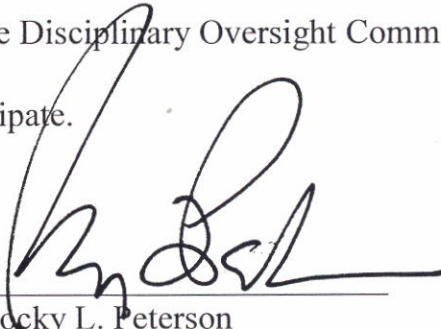
Conduct in default matters involving failure to communicate with the client, lack of diligence, failure to keep client property separate until all disputes are resolved and failure to turn over client property ordinarily results either in a reprimand or a three-month suspension. In re Mandel, 162 N.J. 100 (1999) (reprimand in a default case for gross neglect, failure to communicate with the client, failure to turn over files to new counsel and failure

to cooperate with disciplinary authorities); In re Lawnick, 162 N.J. 115 (1999) (three-month suspension in a default case for lack of diligence, failure to keep client reasonably informed, failure to protect client's interests upon termination of representation and failure to cooperate with disciplinary authorities); In re Hoffman, 163 N.J. 4 (2000) (three-month suspension in a default case involving gross neglect, lack of diligence, failure to communicate and failure to protect client's interests upon termination of representation of two clients).

Here, respondent's conduct involved two matters. In addition, his disciplinary record includes a prior reprimand. Hence, we unanimously decided to impose a three-month suspension.

We further direct that respondent reimburse the Disciplinary Oversight Committee for administrative costs. Two members did not participate.

Dated: 8/06/01

By: 
Rocky L. Peterson
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

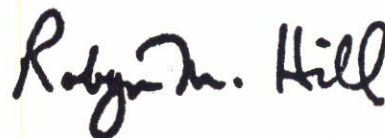
**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of James S. DeBosh
Docket No. DRB 00-378 and 00-379**

Decided: August 6, 2001

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		X					
Peterson		X					
Boylan							X
Brody		X					
Lolla							X
Maudsley		X					
O'Shaughnessy		X					
Schwartz		X					
Wissinger		X					
Total:		7					2



Robyn M. Hill
Chief Counsel