

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-165

IN THE MATTER OF
CLAYTON S. GATES,
AN ATTORNEY AT LAW

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

Decided: November 19, 1998

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 VB Ethics Committee ("DEC") certified the
record in this matter directly to the Board for the imposition of discipline, following
respondent's failure to file an answer to the formal ethics complaint.

On February 19, 1998 the DEC served a copy of the complaint on respondent by
certified and regular mail at his office in Short Hills, New Jersey. The certified mail receipt
was returned indicating delivery on February 21, 1998. The signature of the person accepting
delivery appears to be that of respondent. The regular mail was not returned.

Thereafter, on March 17, 1998 the DEC sent a second letter to respondent advising him that, unless he filed an answer to the complaint within five days, the allegations of the complaint would be deemed admitted. The certified mail receipt was returned indicating delivery on March 18, 1998. Once again, it appears that the signature of the person accepting delivery was respondent's. The regular mail was not returned. Respondent did not file an answer, whereupon this matter proceeded as a default.

Respondent was admitted to the New Jersey bar in 1983. He has no prior ethics history. At the relevant times respondent maintained a law office in Short Hills, New Jersey.

According to the complaint, in November 1995 respondent was retained to represent Pedro Burgos, at the request of Burgos's sister, Maria Calderone, to appeal a criminal conviction. Calderone paid respondent \$2,350 to file a notice of appeal. Several months later, the appeal was dismissed for lack of prosecution. Respondent failed to take appropriate action to protect his client's legal interests, failed to respond to various communications from both Burgos and Calderone and failed to turn over the file to the client.

The first count of the complaint charged respondent with gross neglect and pattern of neglect, in violation of RPC 1.1(a) and (b). The second count of the complaint charged respondent with failure to keep his client reasonably informed about the progress of the case, misrepresentation about the status of the matter and violation of the Rules of Professional Conduct [RPC 1.4(a), RPC 8.4(c) and RPC 8.4(a)]. The third count of the complaint charged respondent with failure to cooperate with the disciplinary authorities, in violation of

RPC 8.1(b).

* * *

Following a de novo review of the record, the Board deemed the allegations of the complaint admitted. R. 1:20-4(f)(1). The record contains sufficient evidence of respondent's unethical conduct, which includes violations of RPC 1.1(a) (gross neglect), RPC 1.4(a) (failure to keep client reasonably informed), RPC 8.4(a) (violating the Rules of Professional Conduct), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), RPC 1.3 (lack of diligence) and RPC 8.1(b) (failure to cooperate with the disciplinary authorities). On the other hand, the facts stated in the complaint do not support the charged violation of RPC 1.1(b) (pattern of neglect). Ordinarily, neglect in three matters amounts to a pattern. Here, only one matter was involved. Therefore, the Board dismissed that charge.


This leaves only the issue of appropriate discipline. Generally, in matters involving similar violations, either an admonition or a reprimand has been imposed. See In the Matter of Vera E. Carpenter, DRB 97-303 (1997) (admonition for lack of diligence and failure to communicate), In the Matter of Ben W. Payton, DRB 97-247 (1997) (admonition for gross neglect, lack of diligence and failure to communicate), In re Bildner, 149 N.J. 393 (1997) (reprimand for lack of diligence and failure to communicate for two years after client's matter was dismissed with prejudice), In re Hamilton, 147 N.J. 459 (1997) (reprimand for

failure to act diligently, to keep a client reasonably informed about the status of the matter and to cooperate with disciplinary authorities), In re Gordon, 139 N.J. 606 (1995) (reprimand for lack of diligence and failure to communicate in two matters and gross neglect and failure to return a file in one of the two matters) and In re Carmichael, 139 N.J. 390(1995) (reprimand for lack of diligence and failure to communicate). Here, because of respondent's failure to answer the complaint, the Board unanimously determined that a reprimand should be imposed. One member did not participate.

An additional point warrants mention. On the day scheduled for the Board to review this matter, respondent "faxed" to the Board a Motion to Vacate Default and In Mitigation of Discipline. Following its review, the Board determined to deny the motion on both counts. In rejecting the mitigation advanced by respondent, the Board noted that he failed to provide any documentation in support of his contention that he suffered from a medical disorder during the period of his misconduct.

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

Dated: 10/19/98

By: 
LEE HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

*DISCIPLINARY REVIEW BOARD
VOTING RECORD*

**In the Matter of Clayton S. Gates
Docket No. DRB 98-165**

Decided: November 19, 1998

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Zazzali							x
Huot			x				
Cole			x				
Lolla			x				
Maudsley			x				
Peterson			x				
Schwartz			x				
Thompson			x				
Total:			8				1

Robyn M. Hill 11/25/98
Robyn M. Hill
Chief Counsel