

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-349

IN THE MATTER OF
FRANCIS S. GAVIN
AN ATTORNEY AT LAW

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

Decided: November 20, 2001

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

Pursuant to R. 1:20-4(f), the District XIII 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 July 12, 2000, the DEC sent a copy of the complaint by regular and certified mail to respondent's last-known office address, P.O. Box 7112, Hackettstown, NJ 07840. The certified mail return receipt, dated July 14, 2000, was signed by a D.J. Kelleher. Respondent did not file an answer. On August 2, 2000, the DEC sent respondent a second letter by certified and regular mail, informing him that the failure to file an answer would constitute an admission of the allegations contained in the complaint. The certified mail return receipt, dated August 14, 2000, bears an illegible signature. Respondent did not file an answer to the complaint. The record was certified directly to us for the imposition of discipline, pursuant to R. 1:20-4(f).

Respondent was admitted to the New Jersey bar in 1981. During the relevant times, he maintained an office in Hackettstown, New Jersey.

In 1998, respondent was reprimanded for gross neglect, lack of diligence and failure to adequately communicate with a client, in violation of RPC 1.1(a), RPC 1.3 and RPC 1.4(a). In re Gavin, 153 N.J. 356 (1998). Most recently, respondent was reprimanded on June 5, 2001 for gross negligence in a personal injury matter, failure to communicate with the client, failure to refund an unearned fee and failure to cooperate with an ethics investigation, in violation of RPC. 1.1(a), R.P.C. 1.3, RPC 1.4(a), RPC 1.16(d) and RPC 8.1(b). In re Gavin, 167 N.J. 606 (2001). That matter, too, was before us as a default.

* * *

The first count of the two-count complaint charges respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 3.3 (candor toward the tribunal) and RPC 3.5, presumably (c) (conduct intended to disrupt a tribunal).¹ Respondent failed to file an answer to a complaint served on his client, Quinolloy, L.L.C., thereby causing a default judgment to be entered against the client. When execution proceedings ensued, the plaintiff levied upon the client's bank account.

Thereafter, Quinolloy retained another attorney, who, on numerous occasions, requested that respondent return the file. Respondent did not comply with those requests. The attorney then obtained a court order directing respondent to provide the file by August 9, 1999. As of September 3, 1999, respondent still had not complied with the court order. On that same date, the court found respondent in violation of litigant's rights

¹ Although the complaint is silent as to the applicable subsection of RPC 3.5, the investigative report refers to conduct intended to disrupt a tribunal.

and directed that the file be turned over to new counsel within forty-eight hours of receipt of the order. The complaint does not address whether respondent ever complied with that order.

In the second count of the complaint, the DEC alleges that respondent did not reply to its DEC investigator's requests for information about the grievance, in violation of R.1:20-3(g)(3) and RPC 1.6(c)(2) (a lawyer may reveal confidential information to establish a claim or defense in controversy with the client). The more appropriate charge for respondent's failure to cooperate with the investigation is RPC 8.1(b).

* * *

Service of process was properly made in this matter. Following a review of the complaint, we find that the facts recited therein support the charges of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. RPC 1:20-4(f).

Respondent never filed an answer on behalf of his client, thereby allowing the entry of a default judgment that led to financial harm to the client. He also failed to communicate with the client. Respondent's conduct in the Quinolly matter clearly violated RPC 1.1(a), RPC 1.3, RPC 1.4(a). Respondent never submitted a reply to the grievance, despite numerous requests from the DEC. His conduct violated RPC 8.1(b). Moreover, respondent never turned over the client's file to new counsel, despite two court orders directing him to do so, in violation of RPC 1.16(d) and RPC 8.4(d) (conduct prejudicial to the administration of justice — contempt of court). Although the complaint did not specifically cite RPC 1.16(d) or RPC 8.4(d); the facts alleged therein gave him sufficient notice of the alleged improper conduct and of the potential violation of those RPCs. We, therefore, deemed the complaint amended to include violations of those RPCs. In re Logan, 70 N.J. 222, 232 (1976).

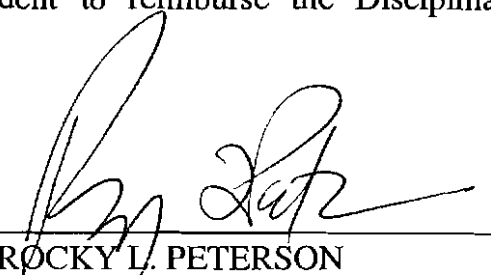
We dismissed the charges of RPC 3.3 and RPC 3.5 violations. There is no support in the record for finding that respondent exhibited either lack of candor to the court or conduct intended to disrupt a tribunal.

In default cases dealing with similar violations, we generally impose a reprimand or short-term suspension. See, e.g., In re Gruber, 152 N.J. 451 (1998) (default; reprimand for respondent who, in a tax foreclosure matter, engaged in gross neglect, lack of diligence, failure to communicate, and failure to cooperate with ethics investigators) and In re Herron, 162 N.J. 105 (1999) (default; three-month suspension where respondent was paid a retainer but failed to take any action on behalf of his client, in violation of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 8.1(b): prior suspensions contributed to the elevated quantum of discipline imposed). Here, respondent has shown both a continuing indifference to the disciplinary system – this is his second default – as well as an inability to conform his conduct to the standards required of all attorneys. This is his third encounter with the disciplinary system since 1998.

Accordingly, we unanimously determined to suspend respondent for six months. In addition, prior to reinstatement, respondent is to provide proof of psychological fitness to practice law, provided by a mental health professional approved by the Office of Attorney Ethics. One member recused herself. Two members did not participate.

Finally, we determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 11/20/01

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board