

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-025

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

:
:
:
:
:
:

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

Decided: October 18, 2000

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 this matter directly to us for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint.

This matter was scheduled to proceed as a default at our April 13, 2000 hearing. However, respondent filed a motion to vacate default on that date and the matter was adjourned

to June 15, 2000 to permit us to consider respondent's submission. Following our review of the motion, we determined to deny it, but to accept the information submitted as mitigation.

* * *

On August 24, 1999, the DEC forwarded a copy of the complaint to respondent by certified and regular mail. Neither the certified mail nor the regular mail envelope were returned. The letters, however, had been addressed incorrectly. Therefore, on November 18, 1999 the DEC forwarded a second letter to respondent at the correct address, by certified and regular mail. The letter informed respondent that, if he did not reply within five days, the charges would be deemed admitted and the record would be certified to us as a default. The certified mail receipt was returned with an illegible signature. The certification of default does not mention whether the regular mail was returned.

Respondent did not file an answer to the formal ethics complaint. Thus, 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. He maintains a law office in Hackettstown, New Jersey. Respondent was reprimanded in 1998 for violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate with client). In re Gavin, 153 N.J. 356 (1998).

The one-count complaint charged respondent with failure to act with reasonable diligence, mistakenly cited as RPC 1.16(d), rather than RPC 1.3. The complaint also charged respondent with violations of RPC 1.1(a) (gross neglect); RPC 3.2 (failure to expedite

litigation); RPC 1.4(a) (failure to communicate with client) and RPC 1.16(d) (failure to refund unearned fee). The complaint also erroneously charged a violation of RPC 1.6(c)(2) (a lawyer may reveal such information he believes reasonably necessary to establish a defense in his behalf in a controversy between himself and the client in a disciplinary complaint), instead of RPC 8.1(b) (failure to comply with reasonable requests for information from a disciplinary authority) for respondent's failure to reply to the grievance.

The complaint alleged that Patricia M. Murphy retained respondent on November 13, 1998 to represent her in a post-divorce proceeding to enforce an alimony order previously entered. Murphy's former husband had unilaterally reduced alimony payments, in violation of the court's order. Murphy claimed that respondent failed to take any action to enforce the original order.

According to the complaint, respondent failed to reply to Murphy's telephone calls, "faxes" and letters requesting information about her case and asking that certain action be taken in her behalf. Under cover letter dated November 13, 1998, Murphy forwarded to respondent the retainer agreement and check for fees in the amount of \$250. Murphy's letter also posed "certain questions" to respondent. There is no indication that respondent replied to the letter. Thereafter, on December 28, 1998, Murphy again wrote to respondent, but received no reply. Respondent also failed to reply to a letter that Murphy "faxed" to respondent and to return her telephone call.

On January 18, 1998 Murphy again wrote to respondent, complaining that he had not complied with her request to call her and that he had failed to take any action on her behalf to enforce the prior alimony order. She, therefore, terminated his services and requested that he return her retainer.

The complaint also alleged that respondent failed to reply to two letters, dated November 19, 1999 and January 14, 1999, from his adversary in the Murphy matter.

Finally, the complaint alleged that respondent failed to reply to the DEC's request for information. While on June 7, 1999 he left a message with the DEC investigator's office that he would reply to the grievance in ten days, he failed to do so.

In respondent's motion to vacate default, he claimed that he had several conversations with Murphy about her matter and that he corresponded with adverse counsel on several occasions. Respondent also alleged that he needed Murphy's past records and requested Murphy to obtain them.

Respondent also stated that he became ill "during the process" and was out of the office for several weeks. Upon his return he was behind in his matters and was "in the midst of a trial."

According to respondent, he had performed substantial work on Murphy's file before his illness and Murphy did not suffer any harm from his conduct.

Respondent admitted that he had no compelling reason for failing to file an answer to the complaint. He put the ethics matter "second" to his clients' matters.

* * *

Because there is evidence that the second letter sent to respondent by certified mail was received, service of process was properly made in this matter. This matter is, therefore, properly before us as a default. R.1:20-4(f)(1).

Following a review of the complaint, we find that the facts recited therein support a finding of unethical conduct. Respondent violated RPC 1.1(a) and RPC 1.3, in that he failed to take action in his client's behalf. He also failed to communicate with his client by not returning her telephone calls and not replying to her "faxes" or letters, in violation of RPC 1.4(a). We find, however, that RPC 3.2 is not applicable to this matter, because there is no evidence that respondent ever filed suit on Murphy's behalf.

On January 18, 1999 Murphy terminated respondent's services and requested that he return her retainer. Although the complaint does not specifically state that respondent failed to return the fee, this can be implied from respondent's failure to communicate with his client. We, therefore, find that respondent did not return the retainer, a violation of RPC 1.16(d). Finally, based on respondent's failure to reply to the DEC's requests for information, we also find that he violated RPC. 8.1(b).

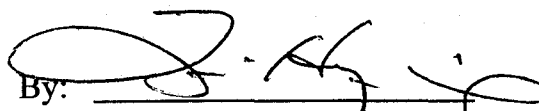
The discipline imposed in matters involving similar types of violations has ranged from a reprimand to short-term suspension. See, e.g., In re Wildstein, 138 N.J. 48 (1994) (reprimand where attorney was guilty of gross neglect and lack of diligence in two matters and failure to communicate in a third matter); In re Ortopan, 143 N.J. 586 (1996) (three-

month suspension for lack of diligence, failure to keep client informed about the status of the matter and failure to cooperate with disciplinary authorities).

After consideration of this matter, we determined to refrain from imposing enhanced discipline, as we do in default matters, because of the mitigation submitted by respondent. We, therefore, unanimously voted to impose a reprimand. One member recused herself. One member did not participate.

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

Dated: 10/18/00

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

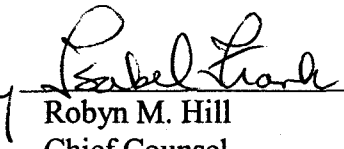
**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Francis X. Gavin
Docket No. DRB 00-025**

Decided: October 18, 2000

Disposition: Reprimand

Members	Disbar	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			1	1

By  1/31/01
Robyn M. Hill
Chief Counsel