

**SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-341**

_____ :
IN THE MATTER OF :
 :
ALEXANDER A. DeFRANCIS :
 :
AN ATTORNEY AT LAW :

Decision

Argued: December 21, 2000

Decided: May 7, 2001

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite proper notice.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"), based on a June 14, 1999 decision by the Supreme Court of New York, Appellate Division, Second Judicial Department, to disbar respondent.

Respondent was admitted to the New Jersey bar in 1987. On October 8, 1998 the New York Grievance Committee for the Tenth Judicial District, filed a petition charging respondent

with neglect of three matters, failure to communicate with the clients in those matters and failure to cooperate with disciplinary authorities. Respondent did not file an answer.

On December 31, 1998 the New York court temporarily suspended respondent for his failure to cooperate with ethics authorities. On June 14, 1999 the court issued a default judgment against respondent:

By decision and order of this court dated December 31, 1998, the respondent was suspended from the practice of law pursuant to NYCRR 691.4 (1) (1) (i), pending further order of this court, upon a finding that he was guilty of professional misconduct immediately threatening the public interest in that he failed to cooperate with the investigation of the Grievance Committee for the Tenth Judicial District. That order also directed the Grievance Committee to institute and prosecute a disciplinary proceeding against the respondent, directed the respondent to file an answer to the petition within 10 days, and referred the issues to the Honorable Harry H. Kutner, as Special Referee to hear and report. The petition contained nine charges of failure to cooperate, failure to communicate with clients, and neglect.

Respondent was personally served with this court's decision and order on January 12, 1999. To date, he has failed to file an answer to the petition, notwithstanding the court's order. The Grievance Committee now moves to impose discipline against the respondent on the ground that he has failed to serve and file an answer to the petition. The respondent was served with the instant motion of the Grievance Committee to imposed [sic] discipline on February 4, 1999, and has failed to submit any papers in response.

Based on the foregoing, the respondent is in default and the charges against him must be deemed established. The Grievance Committee's motion to impose discipline upon the respondent based on his failure to appear and answer is, therefore, granted. The respondent is disbarred on default and his name is stricken from the roll of attorneys and counselors-at-law, effective immediately.

The OAE is asking that respondent be suspended for three months.

* * *

Upon a de novo review of the full record, we determined to grant the OAE's motion. We adopted the findings of the Supreme Court of New York, Appellate Division, Second Judicial Department, that respondent violated RPC 1.1 (b) (pattern of neglect), RPC 1.4 (a) (failure to communicate with clients) and RPC 8.1 (b) (failure to cooperate with disciplinary authorities). In re Pavalonis, 98 N.J. 36, 40 (1984); In re Tumini, 95 N.J. 18, 21 (1979); and In re Kauffman, 81 N.J. 300, 302 (1979).

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a)(4), which states as follows:

. . . The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the misconduct established warrants substantially different discipline.

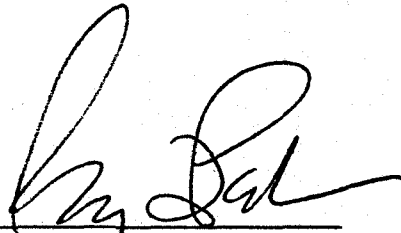
A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). With regard to paragraph (E), New York disbars attorneys who default upon their obligation to file answers to formal ethics petitions (complaints). A disbarment in New York is tantamount to a seven-year suspension, not a permanent bar from the practice of law, as in New Jersey. See 22 N.Y.C. § 603.14; In re Stier, 112 N.J. 22 (1988). According to the OAE, respondent's misconduct does not warrant a seven-year suspension under New Jersey law. As previously noted, the OAE recommended a three-month suspension. Based, however, on respondent's mishandling of the client matters and, moreover, on his failure to cooperate with the disciplinary authorities in both New Jersey and New York, a four-member majority of this Board determined that a suspension greater than three months is required. Those members voted for a six-month suspension. See In re Parker, 119 N.J. 398 (1990) (six-month suspension imposed where the attorney grossly neglected a case after accepting a retainer to institute a divorce action, failed to communicate with the client, failed to return the unearned retainer, failed to cooperate with disciplinary authorities in the investigation of the matter and failed to appear at the ethics hearing); In re Malfara, ___ N.J. ___ (2000) (six-month suspension imposed where the attorney grossly neglected three client matters, failed to communicate with the clients in those matters, failed to utilize a written retainer agreement and failed to cooperate with disciplinary authorities; prior reprimand); In re Ismael, 157 N.J. 632 (1999) (six-month suspension imposed where the attorney engaged in gross neglect and a pattern of neglect in three matters, failed to disburse client funds for almost a decade, was guilty

of recordkeeping violations and failed to cooperate with disciplinary authorities during the investigation of the matters; the attorney had two prior private reprimands and an admonition); and In re Frost, 152 N.J. 25(1997) (six-month suspension imposed where the attorney grossly neglected three client matters, displayed lack of diligence in those matters and failed to communicate with clients in two other matters; the attorney had received two prior private reprimands).

Three members would have imposed a three-month suspension. Two members did not participate.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: May 7, 2001

By: 
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Alexander A. DeFrancis
Docket No. DRB 00-341**

Argued: December 21, 2000

Decided: May 7, 2001

Disposition: Three-month suspension

Members	Disbar	Six- Month Suspension	Reprimand	Admonition	Three- Month Suspension	Disqualified	Did not Participate
Hyerling		X					
Peterson					X		
Boylan					X		
Brody		X					
Lolla		X					
Maudsley							X
O'Shaughnessy					X		
Schwartz							X
Wissinger		X					
Total:		4			3		2

Robyn M. Hill 7/16/01
Robyn M. Hill
Chief Counsel