

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 99-106

IN THE MATTER OF :
:
:
KARL R. LAWNICK :
:
:
AN ATTORNEY AT LAW :
:

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

Decided: August 24, 1999

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

Pursuant to R.1:20-4(f), the Office of Attorney Ethics ("OAE") 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 December 16, 1998, the District VIII Ethics Committee ("DEC") served a copy of the complaint on respondent by regular and certified mail, return receipt requested. The certified mail receipt was returned indicating delivery on December 18, 1998. When respondent did not file an answer, on January 6, 1999, the DEC sent a second copy of the

complaint to respondent by regular and certified mail, return receipt requested. The record indicates that the certified mail receipt was returned initialed by respondent. When respondent did not file an answer, this matter proceeded directly to the Board as a default.

Respondent was admitted to the New Jersey bar in 1988. In November 1997, he signed an agreement in lieu of discipline for his failure to maintain a basic trust account. In the Matter of Karl R. Lawnick, District Docket Nos. XIV-97-155E and XIV-97-200E (November 21, 1997). The matter was diverted, pursuant to R. 1:20-3(i)(2)(B). In 1998, when respondent refused to cooperate with the OAE during an audit, the Court ordered him to submit documents and information to the OAE. In August 1998, the Supreme Court temporarily suspended respondent for not complying with its prior Order. In re Lawnick, 155 N.J. 117 (1998).

In September 1998, the Board determined that respondent should pay a \$500 sanction for failure to comply with a fee arbitration award. In the Matter of Karl R. Lawnick, Docket No. DRB-98-294 (1998). Because respondent was already suspended, the OAE withdrew that part of the motion seeking respondent's temporary suspension. On May 10, 1999, the Board voted to suspend respondent for three months in another default matter. In the Matter of Karl R. Lawnick, Docket No. DRB-98-384 (1998). In that matter, respondent took a retainer, performed no services and then refused to turn over the client's file to a new attorney. The Board determined that respondent's three-month suspension was not to begin until after respondent complied with the OAE's audit and the fee arbitration determination.

Respondent remains suspended to date.

The complaint charged misconduct in six separate client matters. In the Adamusik Matter, the complaint stated that respondent undertook to represent Janine Adamusik in three different cases: a divorce matter, a claim for damages resulting from a dog bite and a breach of contract claim against an insurance company. In September 1998, Adamusik notified respondent that she no longer wanted his representation and requested that he turn over all three files to her. In October 1998, the DEC wrote to respondent, requesting that he contact the investigator in this matter. Respondent did not reply to either Adamusik or the DEC investigator and did not return Adamusik's file to her.

The complaint charged respondent with violations of RPC 1.4(a) (failure to communicate), RPC 3.2 (failure to expedite litigation) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

In the Connolly Matter, the complaint stated that, in June 1998, Steven J. Connolly retained respondent for representation in an employment termination dispute. Connolly gave respondent \$500, in addition to various documents that supported his claim. Despite numerous attempts by Connolly to communicate with respondent, respondent did not communicate with him and did not perform any legal service in his behalf. In October 1998, the DEC investigator wrote to respondent and requested that he contact him about this matter. Respondent did not contact the investigator.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC

1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

In the Totka Matter, the complaint stated that Thomas A. Totka paid respondent \$1500 to represent him in a breach of contract claim. After accepting the retainer, respondent did not perform any services, did not contact Totka and did not return Totka's money. In October 1998, the DEC investigator sought information from respondent, to no avail.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 1.5(a) (unreasonable fee), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

In the Lesniak Matter, the complaint stated that, in March 1996, Paul P. Lesniak paid respondent \$1500 to represent him in a real estate transaction. Thereafter, Lesniak made several attempts to contact respondent, but respondent failed to communicate with him, to perform any services or to return the \$1500 retainer. In September 1998, the DEC investigator wrote to respondent and requested that respondent contact him about this matter. Respondent did not contact the investigator.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 1.5(a) (unreasonable fee),

RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

In the Olejak matter, the complaint stated that Michael Olejack paid respondent \$750 to represent him in a personal injury claim. After taking the retainer, respondent did not take any action and did not return any of Olejak's telephone calls or reply to his letters or facsimiles. Respondent did not cooperate with the DEC investigator, who mailed him a copy of the grievance and requested information about the matter.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 1.5(a) (unreasonable fee), two violations of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

In the Bove matter, the complaint stated that Joseph E. Bove gave respondent \$500 for representation in a landlord-tenant matter. Thereafter, respondent misrepresented to Bove the date of court hearings, failed to attend a court hearing and performed no services for Bove. In April 1998, the fee arbitration committee directed respondent to refund the \$500 retainer. The DEC forwarded a copy of the grievance to respondent in April 1998, but respondent did not reply to the DEC's request for information.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), RPC 1.5(a) (unreasonable fee), two violations of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or

misrepresentation) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

* * *

Service of process was properly made in this matter. The Board found that the facts recited in the complaint support a finding of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20(4)(f).

In all six of these matters, respondent agreed to represent clients, then did nothing. In five of the matters, he accepted retainers, ranging from \$500 to \$1500, and thereafter took no action in behalf of those clients. Respondent also refused to reply to any communications from his clients and, in every matter, refused to cooperate with the DEC's investigation.

In some instances, however, the ethics complaint does not contain a sufficient factual basis to support the violations charged. The charges of misrepresentation are unfounded in all but the Bove matter, where it is alleged that respondent misrepresented court dates to his client. Additionally, the charge of failure to expedite litigation in the Adamusik matter is unsupported. The complaint does not contain any details about this charge. Finally, the four allegations of charging an unreasonable fee must be dismissed. The record does not contain a sufficient factual basis to allow a finding that the fee charged was unreasonable. In fact, the issue is not whether the retainer charged was unreasonable for the work contemplated, but whether respondent took the fee, knowing that he had no intention of performing the

required work. This, at a minimum, constitutes a dishonest taking, if not fraudulent conduct, in violation of RPC 8.4(c). Such a charge was not, however, made here.

The complaint was deemed amended to find that respondent's failure to refund the retainers to his clients violated RPC 1.16(d) (failure to refund any advance payment of fee that has not been earned), instead of RPC 1.5(a). Also, the complaint was deemed amended to include a charge that respondent exhibited a pattern of neglect, as demonstrated by five findings of gross neglect, in violation of RPC 1.1(b). In re Logan, 70 N.J. 223, 232 (1976).

In sum, the Board found that respondent violated RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(a), RPC 1.16(d), RPC 8.1(b) and RPC 8.4(c).

The purpose of discipline is not to punish the attorney, but to protect the public from an attorney "who cannot or will not measure up to the high standard of responsibility required of every member of the profession." In re Rosenthal, 118 N.J. 454, 464 (1990) (Citation omitted). Respondent has not measured up to this standard and the public must be protected from further harm by him.

In October 1998, the court suspended an attorney for six months for conduct similar to that of respondent. See In re West, 156 N.J. 451 (1998). In three matters, the attorney demonstrated a pattern of accepting retainers, performing no services, failing to do any work for his client and failing to cooperate with the ethics investigations. While remarking that ordinarily this conduct might result in only a suspension of three months, the Board unanimously recommended a six-month suspension because of the attorney's history of

unethical conduct and his "total disregard for the ethics system." That case, too, proceeded on a default basis.

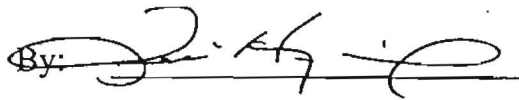
Here, because the pattern was demonstrated in six matters, the Board unanimously determined to suspend respondent for one year. The suspension is to be consecutive to respondent's three-month suspension in the previous default matter in which he took a retainer, performed no services and then refused either to return the retainer or to turn over the client's file to a new attorney. In the Matter of Karl R. Lawnick, Docket No. DRB-98-384 (1998). As noted earlier, the Board determined in that matter that respondent's three-month suspension was not to begin until after respondent complied with the OAE's audit and the fee arbitration determination. Respondent's reinstatement is contingent upon his demonstration that he has turned over the client files in all six of these matters and has complied with the OAE's requests for records.

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

Dated: _____

8/24/99

By: _____



LEE M. HYMERLING
Chair
Disciplinary Review Board