

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 98-344

IN THE MATTER OF
RICHARD J. CARROLL,
AN ATTORNEY AT LAW

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

Decided: August 18, 1999

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 VI 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 May 5, 1998, the
DEC sent a copy of the complaint to respondent by certified and regular mail addressed to

his last known office address, as listed in the New Jersey Lawyers' Diary and Manual. Neither the certified mail nor the regular mail was returned. On June 18, 1998, a second letter was sent to the same address by certified and regular mail. The certified mail receipt was returned, indicating delivery on June 19, 1998. The signature of the agent accepting delivery was M. Coll. The regular mail was not returned. Notice that this matter would be reviewed as a default on November 19, 1998 was published in both the New Jersey Lawyer and the New Jersey Law Journal. Respondent did not file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1970. At the relevant times he maintained an office in Secaucus, New Jersey.

Respondent was admonished on June 25, 1995 for lack of diligence, failure to communicate, failure to turn over a client file to new counsel and failure to cooperate with disciplinary authorities [RPC 1.3, RPC 1.4(a), RPC 1.16(d) and RPC 8.1(b)]. Respondent was also admonished on October 27, 1997 for lack of diligence and failure to communicate with his client, in violation of RPC 1.3 and RPC 1.4(a).

Additionally, the Board recently docketed a second default, where respondent was charged with failure to comply with the OAE's requests to correct recordkeeping deficiencies discovered in a random audit.

According to the first count of the complaint, in 1995 respondent was retained by Joseph Stella. At that time, Breen Capital Services Corporation had initiated foreclosure proceedings on a residential property owned by Stella. In a letter dated November 3, 1995,

respondent advised Breen Capital that he was pursuing a refinancing arrangement with Stella and requested that Breen discontinue the foreclosure proceedings on Stella's residential property. Respondent further stated that, upon consummation of the refinancing arrangement, the lien held by Breen Capital would be satisfied in full. Respondent had no other contact with Breen Capital on behalf of Stella. As a result, Stella's property was the subject of foreclosure.

According to the second count of the complaint, respondent failed to reply to several written notices and telephone messages from an investigator regarding the allegations made by Stella. Finally, on March 1, 1998, respondent "faxed" a note to the investigator, apologizing for the delay and stating that he would send a full response within the week. Respondent failed to provide the promised information. On April 23, 1998, the investigator left a telephone message for respondent. Respondent returned the telephone call on the same day and promised to reply in writing by the end of the week. Once again, he failed to furnish the promised information.

The complaint charged respondent with violations of RPC 1.1(a) (gross neglect) RPC 1.3 (failure to act with reasonable diligence), RPC 1.4(a) (failure to communicate with the client) RPC 1.4(b) (failure to explain the matter reasonably necessary to permit the client to make informed decisions regarding the representation), RPC 4.1(a) (knowingly making a false statement or failing to disclose a material fact), RPC 4.1(b) (duties of truthfulness to others apply even if compliance requires disclosure of information otherwise protected by

RPC 1.6) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

* * *

On November 18, 1998, respondent filed a motion to vacate the default and to permit him to answer the formal ethics complaint. Respondent contended that there is no basis for the charge against him because he never had an attorney-client relationship with Stella. Additionally, respondent claimed that secretarial difficulties and his daughter's wedding prevented him from answering the complaint within the stated time.

The Board denied respondent's motion to vacate the default for lack of a meritorious defense to the ethics charges.

* * *

Service of process was properly made in this matter. Following a de novo review of the record, 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)(1).

Respondent's failure to take any action on behalf of his client constituted gross neglect and a failure to act with reasonable diligence, in violation of RPC 1.1(a) and RPC 1.3.

Additionally, respondent's failure to reply to numerous letters and telephone calls and his failure to provide a written response, as he promised the ethics investigator on two separate occasions, constituted a failure to cooperate with disciplinary authorities, in violation of RPC 8.1(b).

On the other hand, the complaint does not state any facts to support the allegations that respondent failed to communicate with his client, failed to provide his client with enough information to make an informed decision and knowingly made a false statement or failed to disclose a material fact when necessary. Therefore, the alleged violations of RPC 1.4(a) and (b), and RPC 4.1(a) and (b) should be dismissed.

This leaves only the issue of appropriate discipline. While ordinarily a reprimand would constitute appropriate discipline, see In re Gordon, 139 N.J. 606 (1995) (reprimand for gross neglect, lack of diligence, failure to keep client informed and failure to return file to client) and In re Carmichael, 139 N.J. 390 (1995) (reprimand for lack of diligence and failure to communicate), respondent's ethics history and failure to file an answer in the present matter raises the appropriate level of discipline to a three-month suspension. See In re Marra, 149 N.J. 650 (1997) (three-month suspension for lack of diligence, gross neglect and failure to communicate; the attorney had previously received a private and a public reprimand); In re Saginario, 142 N.J. 424 (1995) (three-month suspension where the attorney grossly neglected a matter and had been privately reprimanded on two previous occasions). A five-member majority of the Board determined to impose a three-month suspension. One

member voted to dismiss count one and impose a reprimand based solely on count two.

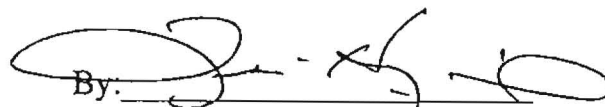
Three members did not participate.

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

Dated: _____

8/18/99

By: _____



LEE M. HYMERLING

Chair

Disciplinary Review Board