

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 98-304

IN THE MATTER OF :
 :
STEVEN F. HERRON, :
 :
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 IV 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 27, 1998, the DEC served a copy of the complaint on respondent by certified mail sent to his last known address. The certified mail return receipt (green card) was returned indicating delivery on June 1, 1998. The signature is illegible. On June 25, 1998, a second letter was sent to the

same address by certified and regular mail. The certified mail return receipt (green card) was returned indicating delivery on June 29, 1998. The signature of the person accepting delivery was Holly Herron. The regular mail envelope was not returned.

Respondent did not file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1978. In June 1995, he was suspended for one year from the practice of law for misconduct in seven matters, including gross neglect [RPC 1.1(a)], pattern of neglect [RPC 1.1(b)], failure to act diligently (RPC 1.3), failure to keep clients informed about the status of their matters [RPC 1.4(a)], failure to deliver client funds [RPC 1.5(b)], failure to protect a client's interest by surrendering papers [RPC 1.16(d)], failure to cooperate with disciplinary authorities [RPC 8.1(b)] and misrepresentation of the status of matters to clients [RPC 8.4(c)]. Respondent has not applied for reinstatement.

According to the first count of the complaint, Peter Bartolf retained respondent in April 1992 to represent him in converting a duplex home into a condominium. Bartolf paid respondent a legal fee of \$1,000, although no written fee agreement was executed. Respondent did not perform any legal services for Bartolf. Several months after he retained respondent, Bartolf attempted unsuccessfully to contact respondent. He refused to take Bartolf's telephone calls and refused to return his telephone messages.

According to the second count of the complaint, on three separate occasions respondent failed to submit a written reply to the grievance filed against him within the time

provided. Finally, on March 4, 1998, respondent supplied a written reply to the grievance, claiming that Bartolf had paid him \$1,000, that he had prepared the necessary documents for Bartolf, and that he had not proceeded further at Bartolf's request.

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

* * *

Service of process was properly made in this matter by certified mail on two separate occasions. 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 failure to act with reasonable diligence, in violation of RPC 1.1(a) and RPC 1.3, respectively. Additionally, respondent's failure to contact Bartolf or reply to his numerous attempts to contact him constituted a failure to communicate, in violation of RPC 1.4(a). Finally, respondent's failure to reply to the DEC letters within the specified time constituted failure to cooperate with disciplinary authorities, in violation of RPC 8.1(b).

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 to the formal ethics complaint requires that the discipline be elevated 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). The Board unanimously so voted. Three members did 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