

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-264

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IN THE MATTER OF :
JOSEPH CAPODICI :
AN ATTORNEY AT LAW :

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

Decided: December 17, 1998

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.

The DEC served a copy of the complaint on respondent by certified mail sent to his last known address, as it appeared in the records of the Office of Attorney Ethics ("OAE"). The certified mail was returned as "addressee unknown." The Postal Service has no forwarding address for respondent. On May 5 and May 11, 1998, notices were published in the *Jersey Journal* and in the *New Jersey Law Journal*, respectively. Both notices directed respondent to contact the DEC about the complaint. Respondent did not file an answer to

the complaint.

Respondent was admitted to the New Jersey bar in 1988. At the relevant times he maintained an office in Jersey City, New Jersey. Respondent has no prior ethics history.

According to the complaint, in November 1997 respondent was retained by Ramon Gadia to represent him in a landlord/tenant action. Gadia met with respondent and paid him \$250.00 of the agreed upon \$750.00 fee. Thereafter, Gadia called respondent, but was unable to reach him. On December 7, 1997, Gadia went to respondent's home/law office and learned that respondent had been evicted. As of the date of the complaint, Gadia had not been able to contact respondent.

The complaint charged respondent with gross neglect [RPC 1.1(a)]; lack of diligence [RPC 1.3]; failure to keep the client reasonably informed as to the status of the matter [RPC 1.4(a)]; terminating representation without protecting the interests of the client [RPC 1.16(b)]; failing to timely notify the New Jersey Lawyers' Fund for Client Protection of the change in his home and office addresses [Rule 1:20-1(c)]; conduct involving dishonesty, fraud, deceit or misrepresentation [RPC 8.4(c)] and conduct prejudicial to the administration of justice [RPC 8.4(d)].

* * *

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).

The allegations of the complaint contain sufficient facts to support the charges that respondent exhibited gross neglect, failed to act diligently and failed to keep his client reasonably informed about the status of his matter, in violation of RPC 1.1(a), RPC 1.3 and RPC 1.4(a), respectively. Respondent has taken no action on Gadia's behalf since October 1997 and has made no attempt to contact Gadia to inform him about the status of the matter.

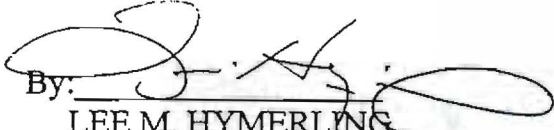
However, the Board dismissed the remaining charges. The complaint does not allege sufficient facts to support the charges that respondent violated RPC 1.16(b). That RPC is inapplicable to this matter, as it deals with a lawyer's permissible withdrawal from representation in certain situations. Additionally, the facts as alleged do not sufficiently establish that respondent has failed to notify the Lawyers' Fund for Client Protection of an address change or that he has engaged in conduct involving dishonesty, fraud, deceit or misrepresentation or conduct prejudicial to the administration of justice. The Board, thus, dismissed the charged violations of RPC 1.16(b), R. 1:20-1(c), and RPC 8.4(c) and (d).

Conduct similar to respondent's has generally resulted in an admonition. See In the

Matter of Paul Paskey, DRB-98-244 (1998) (admonition for gross neglect, lack of diligence and failure to communicate); In the Matter of Ben W. Payton, DRB-97-247 (1997) (admonition for gross neglect, lack of diligence and failure to communicate); In the Matter of Raymond A. Aslaksen, DRB 95-391 (1995) (admonition for gross neglect, lack of diligence and failure to communicate). However, because respondent failed to file an answer to the formal ethics complaint, thereby causing this matter to proceed on a default basis, the Board unanimously determined that a reprimand is appropriate. Additionally, if respondent does not refund Gadia the \$250 fee within sixty days from the date of the Court Order reprimanding him, the OAE may move for respondent's temporary suspension.

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

Dated: 12/17/98

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board