

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-182

IN THE MATTER OF
CHARLES R. BREINGAN
AN ATTORNEY AT LAW

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

Decided: November 2, 1998

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

Pursuant to R. 1:20-4(f), the District IIIB 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 March 5, 1998 the DEC sent respondent a copy of the complaint by regular and certified mail to 4 Linden Road, Burlington, New Jersey, respondent's last known address. The record is unclear as to whether the regular mail was delivered or returned. However, the certified mail receipt (green card) was returned, apparently signed by respondent, without a date of delivery.

Respondent did not file an answer. On April 18, 1998 the DEC sent respondent a second letter by regular and certified mail, informing him that, if he did not reply within five days, the matter would be certified to the Board for the imposition of sanctions. Although the record is silent as to the regular mail, the green card from the certified mail was returned indicating delivery on April 18, 1998. The signature appears to be that of respondent. Respondent did not file an answer to the formal ethics complaint.

Respondent was admitted to the New Jersey bar in 1983. At the relevant times he maintained an office in Burlington, New Jersey. In December 1986 respondent was privately reprimanded for issuing a personal check that was twice dishonored by the bank due to insufficient funds and for misrepresenting to the payee that a replacement check had been issued. In the Matter of Charles R. Breingan, DRB-85-251 (1986). In 1990 respondent was publicly reprimanded for a pattern of neglect, failure to communicate with clients, lack of diligence and failure to cooperate with the ethics authorities. In re Breingan, 120 N.J. 161 (1990).

The complaint alleges that, on June 16, 1996, Edwin Partridge paid respondent a \$325 retainer to file a contract action on his behalf. Respondent did not return Partridge's phone calls for two and one-half months. Partridge then encountered respondent at "an establishment" in Burlington Township. When Partridge questioned respondent about the status of the case, respondent claimed that he was "waiting for a court date." Partridge asked respondent to contact him within a couple of weeks. Two weeks later, Partridge still had not

heard from respondent and had to telephone his office to obtain information about the progress of the case. Respondent again told Partridge that he was waiting for a court date. Partridge waited two more weeks before again calling respondent. At that time, respondent finally admitted to Partridge that he had not filed any action on Partridge's behalf.

Partridge demanded the return of both his money and the contract that was to be the subject of the action. Respondent asked for another opportunity to represent Partridge. Partridge refused. One week later, on September 9, 1996, after several telephone calls from Partridge, respondent returned the contract by placing it in Partridge's mailbox. However, respondent did not return the retainer, alleging that he had bills to pay and that he did not know when he would be able to refund Partridge's money.

Thereafter, Partridge filed a complaint for fee arbitration, to which respondent failed to answer. Respondent also failed to appear before the fee arbitration committee. In respondent's absence, the committee determined that the entire fee should be returned. Although respondent refunded the fee to his client, when the DEC investigator requested a copy of the canceled check, respondent did not comply with the investigator's request. In fact, respondent failed to reply to any correspondence from the DEC.

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

* * *

Following a de novo review of the record, the Board deemed the allegations of the complaint admitted. R.1:20-4(f)(1). The record contains sufficient evidence of respondent's unethical conduct.

Partridge repeatedly telephoned respondent over two and one-half months to ensure that his action would be filed. When Partridge and respondent had a chance meeting, respondent assured him that the action had been filed. When respondent finally admitted that he had not instituted suit, he did not refund Partridge's fee until after a fee arbitration proceeding. In this context, respondent's failure to take any action on behalf of Partridge constituted gross neglect, in violation of RPC 1.1(a).

The Board also found violations of RPC 1.4(a) and RPC 8.4(c). Respondent failed to return Partridge's numerous telephone calls for over two months. When respondent was finally forced to interact with Partridge, he misrepresented that an action had been filed and that he was waiting for a court date.

Respondent also violated RPC 8.1(b). Not only did he refuse to correspond with the DEC during the investigation, but he failed to answer the complaint. Additionally, respondent refused to cooperate with the fee arbitration committee and failed to appear at the fee proceeding. Respondent, who had already been publicly reprimanded for failure to cooperate with the disciplinary authorities, has obviously failed to learn from past mistakes.

Additionally, respondent's refusal to refund the retainer upon Partridge's request

violated RPC 1.16(d). Although the complaint did not cite a violation of that RPC, the facts in the record were sufficient to put respondent on notice of that violation. Accordingly, the allegations may be deemed amended to conform to the proofs. In re Logan, 70 N.J. 223, 232 (1976).

In summary, respondent violated RPC 1.1(a), RPC 1.4(a), RPC 1.16(d), RPC 8.1(b) and RPC 8.4(c). Normally, cases involving mixed combinations of violations such as these would require either a reprimand or a short-term suspension. In In re Onorevole, 144 N.J. 477 (1996), the attorney was reprimanded when for over six months he misrepresented to a client that he had filed a complaint. The attorney was also found guilty of gross neglect, lack of diligence, failure to communicate with a client and failure to cooperate with the disciplinary authorities. The attorney had been previously admonished for gross neglect, lack of diligence and failure to communicate. In In re Weinstein, 144 N.J. 367 (1996), the attorney was suspended for three months after misrepresenting to his clients that he had filed complaints, when he had not. In addition, the attorney was found guilty of gross neglect, lack of diligence, failure to communicate, failure to turn over a file, pattern of neglect and failure to cooperate with the disciplinary authorities.

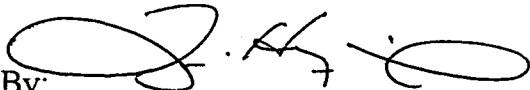
Although respondent neglected only one client, his behavior was most analogous to that of Weinstein. Respondent failed to file a complaint, failed to return the client's phone calls and misrepresented to the client that the case was proceeding normally. Like Weinstein, respondent also failed to return Partridge's file, refused to return the unearned fee and failed

to cooperate with the ethics authorities. Additionally, respondent did not cooperate with the fee arbitration committee. When considering all of the charges as well as respondent's prior discipline, the Board unanimously determined that a three-month suspension is warranted.

As a condition of reinstatement, respondent must complete fifteen hours of professional responsibility courses offered by the Institute for Continuing Legal Education within one year of the Board's decision.

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

Dated: 11/2/88

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Charles R. Breingan
Docket No. DRB 98-182

Decided: November 2, 1998

Disposition: Three-month Suspension

Members	Disbar	Three-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Zazzali		x					
Brody		x					
Cole		x					
Lolla		x					
Maudsley		x					
Peterson		x					
Schwartz		x					
Thompson		x					
Total:		9					

Robyn M. Hill 11/16/98
Robyn M. Hill
Chief Counsel