

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 98-105

IN THE MATTER OF :
:
DANNY M. VNENCHAK :
:
AN ATTORNEY AT LAW :
:

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

Decided: October 15, 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 X 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 October 6, 1997, the DEC sent a copy of the complaint to respondent by certified and regular mail. The certified mail return receipt (green card) indicates delivery on October 11, 1997, with an illegible signature. On November 5, 1997, in response to a telephone message left by the hearing panel chair, respondent requested another copy of the complaint. On November 7, 1997, the hearing panel chair sent a copy of the complaint and notice of the scheduled hearing date to respondent. The certified mail return receipt was signed by

respondent showing delivery on November 8, 1997. On December 5, 1997, a second letter was forwarded to respondent, advising him that failure to file an answer to the complaint within five days would result in treatment of the matter as a default. The certified mail return receipt was returned with an illegible signature. Respondent did not file an answer; therefore, the matter will be treated as a default.

Respondent was admitted to the New Jersey bar in 1985. He was temporarily suspended in September 1997 for failure to appear at an audit to investigate a possible charge of knowing misappropriation. He is currently still suspended.

According to the complaint, grievant Dawn A. DeBolle retained respondent in 1996 to file a lawsuit against her brother and his fiancé regarding property that DeBolle and her brother had acquired. Respondent accepted a retainer and assured DeBolle that he would file a complaint after his printer was fixed. He failed to file the complaint. At an unknown time when DeBolle tried to contact respondent, she learned that his telephone had been temporarily disconnected and that his office was closed. DeBolle thus retained other counsel to file the lawsuit.

The complaint further alleged that grievant Kristopher Gordon retained respondent to represent him in a matrimonial proceeding. Respondent failed to appear in court on the scheduled hearing date in the matter. In respondent's absence, Gordon represented himself.

Finally, the complaint alleged that respondent failed to cooperate in the investigations of the *DeBolle* and *Gordon* matters despite the written and verbal requests of the ethics investigator.

As a result of the foregoing, the complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with the client), RPC 3.2 (failure to expedite litigation), R. 1:20-3 (rather than RPC 8.1(b)) (failure to cooperate with disciplinary authorities), RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

* * *

Following a de novo review of the record, the Board deemed the allegations contained in the complaint admitted. The record contains sufficient evidence of respondent's unethical conduct.

In the *DeBolle* matter, respondent accepted a retainer fee to file a lawsuit and subsequently failed to file suit. In addition, he misrepresented to the client that he would file a complaint and then failed to communicate with the client, causing the client to retain other counsel. In the *Gordon* matter, respondent failed to appear at a scheduled hearing, causing the client to represent himself. Respondent's conduct in these cases constitutes a violation of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 3.2, RPC 8.4(c) and RPC 8.4(d). Although the complaint charged respondent with a violation of RPC 8.4(c) for failure to appear in court

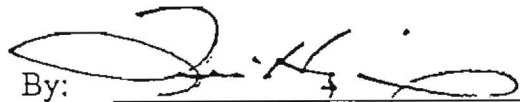
on the *Gordon* matter, that charge is not applicable and is accordingly dismissed. Furthermore, because the complaint alleged only two instances of neglect, the Board declines to find a pattern of neglect, in violation of RPC 1.1(b).

The complaint charged a violation of R. 1:20-3; however, it is more appropriate to consider a charge of a violation of RPC 8.1(b). Respondent's failure to respond to a lawful demand for information from a disciplinary authority violated RPC 8.1(b).

Ordinarily, a reprimand would constitute appropriate discipline for respondent's infractions. See *In re Gordon*, 139 N.J. 606 (1995) (reprimand for lack of diligence, failure to communicate, gross neglect and failure to return a file) and *In re Carmichael*, 139 N.J. 390 (1995) (reprimand for lack of diligence and failure to communicate). However, because respondent compounded his infractions by failing to cooperate with the investigation, the Board deemed further discipline warranted. Accordingly, the Board unanimously determined to suspend respondent for a three-month period to run consecutively to his compliance with an Office of Attorney Ethics ("OAE") audit. One member did not participate.

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

Dated: 10/15/98

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board