

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. 98-091 and 98-326

IN THE MATTER OF :
:
:
JACK D. BERSON, :
:
:
AN ATTORNEY AT LAW :
:

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

Decided: April 5, 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 I Ethics Committee ("DEC") certified the records in these matters directly to the Board for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaints.

Respondent was admitted to the New Jersey bar in 1980. At the relevant times, he maintained an office in Absecon, New Jersey.

In November 1996, respondent was admonished for failure to incorporate a non-profit

corporation and failure to return the retainer upon the client's demand. In November 1997, the Board determined to suspend respondent for three months for gross neglect, lack of diligence, failure to communicate and failure to cooperate with the disciplinary authorities, in violation of RPC 1.1(a), RPC 1.3, RPC 1.4 and RPC 8.1(b), respectively. That matter is under review by the Court.

I. DRB 98-091 (The Winslow Matter)

The Board originally considered this matter in May 1998 and determined to remand it to the Office of Attorney Ethics ("OAE") on the issue of a possible knowing misappropriation. On remand, the OAE found no evidence of knowing misappropriation.

On January 6, 1998, the DEC served a copy of the Winslow complaint on respondent by certified mail. The certified mail receipt was returned indicating delivery on January 9, 1998. The signature of the person accepting delivery is illegible. Thereafter, on January 27, 1998, the DEC sent a second letter to respondent, advising him that, if he did not file an answer within five days, the allegations of the complaint would be deemed admitted. The record does not show whether there was proper service regarding the second letter. Notice that this matter would be reviewed as a default on May 19, 1998 was published both in the New Jersey Lawyer and the New Jersey Law Journal. When respondent did not file an answer, this matter proceeded as a default.

The first count of the complaint charges that, sometime prior to March 1997, Elizabeth Winslow retained respondent to institute a sexual harassment/wrongful discharge action on her behalf. In March or April 1997, respondent advised her of a settlement offer of \$7,500. Winslow agreed over the telephone to accept that offer. Respondent represented to her that she would be receiving the settlement funds within three weeks. Four weeks later Winslow called respondent about the status of the settlement, at which time respondent told her that he would inquire about the cause for the delay. Several times thereafter, Winslow tried unsuccessfully to obtain information from respondent about the status of her case.

The first count of the complaint charged that respondent did not perform the work requested in a competent and timely manner, in violation of RPC 1.1(a) and RPC 1.3, and that he failed to keep his client reasonably informed about the status of the matter, in violation of RPC 1.4.¹

The second count of the complaint alleges that respondent did not cooperate with the DEC investigator by failing to reply, in writing, to the investigator's request for information about the grievance. The complaint charged that respondent's conduct in this regard violated RPC 8.1(b).

¹ For some unknown reason, the complaint also charged respondent with conduct involving deceit and misrepresentation, citing the wrong RPC (1.4).

II. DRB 98-326 (The Marino Matter)

On May 27, 1998, the DEC served a copy of the complaint on respondent by certified mail at his last-known address. The certified mail return receipt (green card) was returned indicating delivery on June 15, 1998; the signature is illegible. On July 12, 1998, a second letter was mailed to respondent by certified and regular mail to the same address. The certified mail return receipt (green card) was returned indicating delivery on July 21, 1998. Once again, the signature is illegible. Apparently, the regular mail envelopes were not returned.

When respondent did not file an answer, the record was certified directly to the Board for the imposition of discipline.

According to the complaint, on July 29, 1996, Carlo J. Marino retained respondent to institute a civil action regarding an automobile accident that occurred on February 18, 1996. On several occasions after that date, Marino called respondent to inquire about the status of the case, but was never able to contact him. Finally, on July 23, 1997, Marino was able to speak to respondent at his office. During the course of that conversation, respondent told Marino that he would contact him within one week to report on the status of the case.

As of May 22, 1998, the date of the complaint, respondent had not contacted Marino. Additionally, respondent had not replied to subsequent letters and phone calls by Marino.

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 the disciplinary authorities).

* * *

Service of process was properly made. 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).

In DRB 98-091, respondent's failure to settle the Winslow matter and distribute any settlement funds constituted gross neglect and a lack of diligence, in violation of RPC 1.1(a) and RPC 1.3, respectively. Also, respondent's failure to reply to Winslow's inquiries about the status of the matter constituted a failure to communicate, in violation of RPC 1.4(a). There are insufficient facts in the complaint, however, to support a finding that respondent acted with deceit or made a misrepresentation to Winslow.

In DRB 98-326, respondent's failure to take any action on behalf of Marino constituted gross neglect and a failure to act with reasonable diligence, in violation of RPC 1.1(a) and RPC 1.3, respectively. Additionally, respondent's failure to contact Marino within one week, as promised, and to respond to Marino's 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 letters sent to him from the DEC constituted a failure to cooperate with

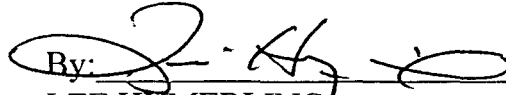
the disciplinary authorities, in violation of RPC 8.1(b).

This leaves only the issue of appropriate discipline. Similar misconduct along with a similar ethics history has resulted in a reprimand or a three-month suspension. See In re Daniel, 146 N.J. 490 (1996) (reprimand for lack of diligence and failure to communicate, where the attorney had previously received two private reprimands), In re Carmichael, 139 N.J. 390 (1995) (reprimand for lack of diligence and failure to communicate in two matters, where the attorney had previously received a private reprimand); In re Marra, 149 N.J. 650 (1997) (three-month suspension for lack of diligence, gross neglect and failure to communicate in one case, and failure to abide by a client's directions and misrepresentation in another case; the attorney had previously received a private and a public reprimand); In re Bernstein, 144 N.J. 369 (1996) (three-month suspension for gross neglect, lack of diligence, failure to communicate, misrepresentation and failure to cooperate with disciplinary authorities; the attorney had previously received a private reprimand); and In re Saginario, 142 N.J. 424 (1995) (three-month suspension where the attorney grossly neglected a matter; he had been privately reprimanded on two previous occasions).

Because of respondent's failure to file an answer to the complaint, the Board unanimously determined that a three-month suspension, rather than a reprimand, is the appropriate degree of discipline. The Board also determined to require respondent to practice under the supervision of a proctor approved by the OAE for a period of one year. One member recused herself.

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

Dated: 4/5/98

By: 
LEE HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Jack D. Berson
Docket No. DRB 98-091 & DRB 98-326**

Decided: April 5, 1999

Disposition: Three-Month Suspension

Members	Disbar	Three-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling		x					
Zazzali		x					
Brody		x					
Cole		x					
Lolla		x					
Maudsley						x	
Peterson		x					
Schwartz		x					
Thompson		x					
Total:		8				1	

By Robyn M. Hill 4/20/99
Robyn M. Hill
Chief Counsel