

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-389

IN THE MATTER OF :
HOWARD J. HOFFMAN, :
AN ATTORNEY AT LAW :

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

Decided: August 18, 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. On June 5, 1997 the DEC mailed a copy of the complaint to respondent by certified and regular mail at his last known office address listed in the New Jersey Lawyers' Diary and Manual. Although the certified mail envelope was returned indicating that delivery was attempted on June 11 and

June 21, 1997, the regular mail envelope was not returned. Respondent did not file an answer. Therefore, on July 28, 1997 the DEC sent a second letter to respondent advising him that the allegations of the complaint would be deemed admitted if he did not file his answer within five days. The letter was sent to the same address by certified and regular mail. The certified mail envelope was returned with handwritten notes of "8/1, 8/6, and 8/16." The envelope also contained the notation "Moved 220 RTE 46 West." The regular mail envelope was not, however, returned. Respondent did not file an answer.

Respondent was admitted to the New Jersey Bar in 1976. In March 1998 respondent was reprimanded for failure to communicate, failure to cooperate with disciplinary authorities, lack of diligence and misrepresentation.

According to the complaint, respondent was retained by Joel Gutierrez, an infant, by his guardian ad litem, Nellie Gutierrez for injuries sustained by Joel in an "incident" which occurred on August 17, 1990. On January 12, 1995 respondent filed an action on behalf of Gutierrez in the Superior Court, Law Division, Hudson County.

On May 24, 1996 the case was dismissed for lack of prosecution. According to the complaint, the matter was listed on the dismissal list five times, the first time in September 1995. The complaint alleged that respondent should have known that the matter was dismissed for lack of prosecution, but that respondent did not file a motion to vacate the dismissal.

The complaint further alleged that on numerous occasions, Joel Gutierrez attempted

to contact respondent to determine the status of his case, leaving messages on most occasions. When he was able to confer with respondent, he was advised that the case was still pending. The complaint thus charged respondent with violations of RPC 1.4(a) (failure to communicate) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

In accordance with the DEC investigator's request, respondent provided a copy of his entire file by letter dated December 18, 1996. Thereafter the matter was assigned to a different investigator. The new investigator met with respondent on April 7, 1997 at which time respondent indicated that he would supply an answer to the complaint within fourteen days. When respondent did not provide an answer, the investigator wrote to respondent on April 28, 1997 again requesting a reply. Respondent promised to submit a reply by May 15, 1997. Respondent failed to file an answer. Based on the foregoing, the complaint charged respondent with a violation of RPC 8.1(b) (failure to cooperate with a disciplinary authority) and RPC 1.1(b) (pattern of neglect).

* * *

Following a de novo review of the record, the Board deemed the allegations of the complaint admitted. R. 1:20-4(f)(1). Service of process was adequate. Respondent was aware of the grievance and had communicated with the investigator. Indeed, respondent

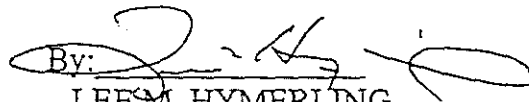
promised to supply an answer to the complaint. The letters serving the complaint by regular mail were never returned. Therefore, service is presumed. The record contains sufficient evidence of respondent's unethical conduct, except with respect to the allegation of a pattern of neglect. The facts as stated in the complaint do not support a finding of a pattern of neglect, and the Board therefore dismissed the charged violation of RPC 1.1(b).

Conduct similar to that of respondent has resulted in short-term suspensions. See In re Ortopan, 143 N.J. 586 (three-month suspension for gross neglect, failure to communicate, failure to turn over client files and failure to cooperate with disciplinary authorities); In re Kates 137 N.J. 102 (1994) (three-month suspension for lack of diligence, failure to communicate and extreme indifference toward the ethics system).

Accordingly, the Board unanimously determined to suspend respondent for three months. Two members did not participate.

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

Dated: 8/18/98

By: 
LEEM. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Howard J. Hoffman
Docket No. DRB 97-389

Decided: August 18, 1998

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:		7					2

Robyn M. Hill 9/1/98
Robyn M Hill
Chief Counsel