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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 97-219

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IN THE MATTER OF :  
FRANCIS X. GAVIN :  
AN ATTORNEY AT LAW :  
\_\_\_\_\_

Decision

Argued: September 18, 1997  
Decided: February 17, 1998

Ellen M. Gillespie appeared on behalf of the District XIII Ethics Committee ("DEC").  
Respondent waived appearance.

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

This matter was before the Board based on a recommendation for discipline filed by the District XIII Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1981. He maintains a law office in Hackettstown, New Jersey. Respondent has no prior ethics history.

The complaint alleged violations of RPC 1.1(a)(gross neglect); RPC 1.3(lack of

diligence); RPC 1.4(a)(failure to communicate); RPC 1.16(declining or terminating representation); and RPC 8.1(b)(failure to cooperate with the ethics authorities)[mistakenly cited by the DEC as RPC 1:20(3)(g)].

In June 1989 Genevieve O'Brien ("grievant")(also referred to as Genevieve O'Brien Foca and Genevieve Foca) retained respondent to represent her in a personal injury action arising from an automobile accident. At the time respondent was a member of the law firm of Mulligan, Mulligan and Gavin, in Hackettstown.

Respondent worked on the preliminary aspects of the case during July and August 1989, contacting the defendant's insurance carrier, gathering medical reports and drafting a complaint. Shortly thereafter, the law firm was dissolved. Respondent took grievant's case with him when he opened his own law practice. After September 1989 respondent did no further work on grievant's case. Although drafted, the complaint was never filed, causing grievant to lose her claim forever.

Grievant testified at the DEC hearing concerning her attempts to obtain information about the case. According to grievant, respondent never sent any "papers" related to her case and failed to return her telephone calls. Grievant enlisted the aid of her sister-in-law, a paralegal in Florida, who sent respondent an undated letter intended to spur him into action. Respondent never contacted grievant in response to that letter.

For his own part, respondent conceded that he neglected the case. He admitted that he did not return grievant's telephone calls or respond to her written requests for information

about the case and did not diligently prosecute the case. Respondent admitted the following:

The reality of it is that I screwed up monumentally. I don't dispute that I violated the RPC's that we just went through. I stuck my head in the sand. Ms. O'Brien came to me with a complaint for a motor vehicle accident. I probably should have never taken on the case since it wasn't an area of work that I would normally do.

I did some work on it. I had some communications with the insurance company, the adjuster. I procrastinated. I had a complaint prepared. It is in the file. I don't know why I didn't file it and then screwed up by not meeting the statute of limitations by sticking my head in the sand and ignoring Ms. O'Brien. It was wrong. It was inappropriate. It certainly is not conduct becoming a member of the bar, something for which I certainly have pride in. [sic] I am embarrassed beyond embarrassment. I am ashamed of myself.

Essentially, it is true the allegations are accurate. I don't necessarily agree that it constitutes gross negligence. It certainly constitutes neglect. I have no — it is accurate. I did not handle it the way it should have been handled. Once I made the mistake it was incumbent to get ahold of Mrs. O'Brien and say, 'I screwed up. Let's solve the problem.' I can't believe I screwed it up to start with, and I acted like a horse's rear end.

[T 1/14/97 9-10]<sup>1</sup>

With regard to the alleged violation of RPC 8.1(b)(failure to cooperate with the disciplinary authorities), respondent acknowledged that letters from the DEC investigator went unanswered. Respondent denied a failure to cooperate, however, asserting that he filed his response one day after receiving a DEC letter dated September 3, 1996 requiring his

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<sup>1</sup> T denotes the transcript of the DEC hearing on January 14, 1997.

response within five days. Indeed, respondent's answer to the complaint was filed the next day, on September 4, 1996.

\* \* \*

The DEC found (and respondent admitted) violations of RPC 1.1(a); RPC 1.3 and RPC 1.4(a). The DEC also found violations of RPC 1.16 and RPC 8.1(b)[mistakenly cited in the panel report as RPC 1.20(3)(g)].

\* \* \*

Upon a de novo review of the record, the Board is satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

The record supports violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(a). Indeed, respondent admitted these violations. However, the Board dismissed the alleged violation of RPC 1.16 as inapplicable because the record is devoid of any evidence of failure to decline or terminate representation. The Board also dismissed the alleged violation of RPC 8.1(b) because, although respondent did not answer a series of letters from the DEC investigator, he filed an answer within the time allowed by the investigator in his September 3, 1996 letter.

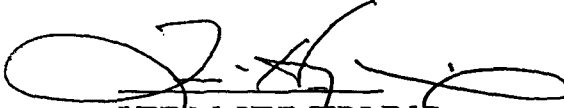
Thereafter, respondent appeared at the DEC hearing and cooperated with the ethics authorities.

In aggravation, the Board noted that grievant forever lost her claim. However, there is no evidence in this record to quantify the worth of that claim. In mitigation, respondent was quick to acknowledge his wrongdoing, for which he expressed genuine regret and, as noted, was fully cooperative with the DEC at the hearing below.

For respondent's misconduct the Board unanimously determined to impose a reprimand. In re Wildstein, 138 N.J. 48 (1994)(reprimand imposed where the attorney showed gross neglect and lack of diligence in two matters, with a failure to communicate in a third matter); In re Carmichael, 139 N.J. 390(1995)(reprimand imposed where the attorney showed a lack of diligence and failure to communicate in two matters. The attorney had a prior private reprimand); and In re Gordon, 121 N.J. 400(1990)(reprimand imposed where the attorney showed gross neglect and a failure to communicate in two matters). One member recused herself.

The Board also required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 2/17/98

  
LEE M. HYMERLING  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

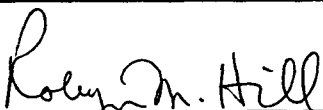
**In the Matter of Francis X. Gavin  
Docket No. DRB 97-219**

**Argued: September 18, 1997**

**Decided: February 17, 1998**

**Disposition: Reprimand**

Members	Disbar	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				
<b>Total:</b>			<b>8</b>			<b>1</b>	

  
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Robyn M. Hill  
Chief Counsel