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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 97-088, 97-109 & 97-141

IN THE MATTER OF
DOUGLAS R. SMITH
AN ATTORNEY AT LAW

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

Decided: December 16, 1997

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 XII Ethics Committee ("DEC") certified the record in this matter directly to the Board for the imposition of discipline, following respondent's failure to file answers to the formal ethics complaints. In Docket No. DRB 97-088, the complaint was served on respondent by regular and certified mail to his last known home address (23 Weir Place, Ringwood, New Jersey 07456) and law office address (295 Godwin Avenue, Midland Park, New Jersey 07432) on January 21, 1997. Certified mail was accepted by "Douglas R. Smith" at respondent's home address on January 29, 1997. Certified mail to respondent's office address was returned as "unclaimed." The regular mail was not returned.

In Docket No. DRB 97-109, the complaint was served on respondent by certified and regular mail to his last known office address on November 14, 1996. The certified mail receipt was returned

as "unclaimed." The regular mail was not returned. On December 20, 1996, Boyd Cote, Esq., a DEC investigator, personally served the formal complaint on respondent at 295 Godwin Avenue, Midland Park, New Jersey. On December 5 and 19, 1996 a second letter was sent to respondent advising him that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted and the record would be certified directly to the Board for the imposition of sanction. That letter was sent by regular mail to 295 Godwin Ave, Midland Park, New Jersey. The mail was not returned.

In Docket No. DRB 97-141, the complaint was sent to respondent on February 22, 1995 via certified and regular mail. A five-day letter, pursuant to R. 1:20-4(f), was sent to respondent on July 12, 1995. Subsequently, a new address (295 Godwin Avenue, Midland Park, New Jersey 07432) was obtained for respondent. The complaint was sent to that address by certified and regular mail on November 21, 1996. Another five-day letter was sent to that address by certified and regular mail on December 17, 1996. On March 6, 1997, C. Boyd Cote, Esq. personally served a copy of the complaint on respondent at 295 Godwin Avenue, Midland Park, New Jersey 07432.

In all of these matters, service was either made by personal delivery or certified mail, or presumed made by unreturned regular mail.

Respondent was admitted to the New Jersey bar in 1974. He has an extensive disciplinary history. On November 23, 1993 he was privately reprimanded for representing clients with adverse interests without disclosing the circumstances of the multiple representation to the clients and obtaining their consent thereto and for failing to file an answer to the formal ethics complaint. Respondent has been under suspension since March 14, 1994, when the first of three term-suspensions was imposed. On that date, he was first suspended for a period of one year for gross

neglect, pattern of neglect, lack of diligence, misrepresentation and entering into a business relationship with a client without advising the client to seek independent counsel. In re Smith, 135 N.J. 122 (1994). On May 18, 1995, respondent was suspended for a second time, this time for six months, for lack of diligence in connection with an appellate matter and failure to cooperate with the disciplinary authorities. In re Smith, 140 N.J. 212 (1995). Finally, the Court ordered a three-year suspension on March 11, 1997 for gross neglect, misrepresentation and failure to cooperate with the disciplinary authorities. In re Smith, 148 N.J. 375 (1997). Respondent did not apply for reinstatement to the practice of law after either of the first two suspensions.

Altogether, the formal complaints charged respondent with violations of RPC 1.1(a) (gross neglect) (two counts), RPC 1.1(b) (pattern of neglect) (two counts), RPC 1.3 (lack of diligence) (two counts), RPC 1.4(a) (failure to communicate) (two counts), RPC 1.4(b) (failure to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation) (two counts), RPC 2.1 (duty to render candid advice), RPC 4.1(a) (false statements of material fact to a third party), RPC 4.4 (rights of third parties), RPC 5.5 (unauthorized practice of law) (three counts), RPC 8.1(b) (failure to cooperate with disciplinary authorities) (two counts) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (two counts).

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Count one of the complaint alleged that from July 3, 1996 to August 15, 1996 respondent represented Mr. and Mrs. Alfred Daniels in connection with the sale of property located at 369-371 East 31st Street, Paterson, New Jersey. Respondent had already been suspended from the practice of law at that time.

Count two of the complaint alleged that from about November 1, 1996 to November 30, 1996 respondent represented Steven Gitlin in connection with the purchase of property located in Bergen County, New Jersey. Here, too, respondent was suspended from the practice of law during that time.

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Respondent was retained to represent the Ringwood Borough Sewerage Authority ("Ringwood") in an action brought by the Wanaque Valley Sewerage Authority ("Wanaque"). Judgment was entered in favor of Wanaque in the amount of \$894,860.12 on September 2, 1992. Respondent was then retained to represent Ringwood in an appeal of the judgment. Although respondent filed a notice of appeal, he refused to participate in settlement negotiations with Wanaque and did no further work on the appeal. Ultimately, the attorney for Wanaque obtained a writ of execution, levied upon certain bank accounts of Ringwood and filed a motion for the release of the funds. The day before the return date on the motion, respondent sent a facsimile request to Wanaque's attorney for an adjournment, but failed to file it with the court. The court then signed a release order, whereupon the funds were transferred to Wanaque's account. Subsequently, respondent made various misrepresentations to Ringwood about the case and about his actions in furtherance of the case, which actions were never taken.

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Sometime in 1994 Mr. and Mrs. Michael Hoek entered into a contract to purchase real property from Timothy A. Crowell. Throughout the course of the transaction, respondent

represented to Crowell's attorney that he was the attorney for the purchasers. Furthermore, the Hoeks were under the impression that respondent was a practicing attorney and that he was representing them in the purchase. Respondent never advised the Hoeks or their attorney that he was suspended from the practice of law. All parties attended the August 5, 1994 closing, at which sellers signed a deed and purchasers executed a note and mortgage. The original deed and mortgage, as well as various checks, were given to respondent. The checks were never cashed and the deed and mortgage were never recorded. Respondent also failed to comply with the parties' request for the return of the original documents and checks.

* * *

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 Docket DRB 97-088, the facts alleged in the complaint support two separate violations of RPC 5.5 (unauthorized practice of law), based on respondent's representation of clients during a time when he was suspended.

In Docket DRB 97-109, the factual allegations support a finding of violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and (b), RPC 8.1(b) and RPC 8.4(c). Because, however, respondent's actions took place in 1992 and 1993 and are similar in time and substance to the offenses that led to a one-year suspension in 1994, they are considered part and parcel of the prior misconduct. Had this matter been consolidated with the others, the level of discipline would not have been enhanced. The Board, therefore, dismissed this matter.

In Docket DRB 97-141, the facts alleged in the complaint support a finding of violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and (b), RPC 4.1(a), RPC 8.1(b) and RPC 8.4(c). In addition to exhibiting gross neglect, lack of diligence, failure to communicate, misrepresentations and failure to cooperate, respondent practiced law during his suspension, in violation of RPC 5.5. The facts alleged in the complaint do not, however, support findings of violations of RPC 2.1 and RPC 4.4. Those charges are, thus, dismissed.

This leaves only the issue of appropriate discipline. Similar misconduct has resulted in disbarment. See In re Costanzo, 128 N.J. 108 (1992) (where attorney was disbarred for conduct similar to that of respondent, including gross neglect, misrepresentation, lack of diligence and failure to communicate. In addition, the attorney had a prior private reprimand and a public reprimand, and the misconduct occurred while respondent was ineligible to practice law for failure to pay to the New Jersey Lawyers' Fund for Client Protection); In re Goldstein, 97 N.J. 545 (1984) (where attorney was disbarred for grossly neglecting eleven matters and misrepresenting the status of the cases to his clients, aggravated by his continued representation while temporarily suspended). But see In re Kasdan, 132 N.J. 99 (1993) (where an attorney was suspended for three years after deliberately continuing to practice law while she was serving a three-month suspension, as well as misrepresenting her status as an attorney to adversaries and to courts where she appeared).

In light of the foregoing, the Board unanimously determined to recommend that respondent be disbarred. Two members did not participate.

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

Dated: 12/16/57



LEE M. HYMERLING
Chair
Disciplinary Review Board

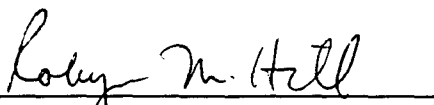
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Douglas R. Smith
Docket Nos. DRB 97-088, DRB 97-109 & DRB 97-141

Decided: December 16, 1997

Disposition: Disbar

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						
Total:	7						2

 1/8/98
Robyn M. Hill
Chief Counsel