

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 97-328

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IN THE MATTER OF :  
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 HARVEY VAN SCIVER, JR. : Decision  
 :  
 AN ATTORNEY AT LAW :  
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Argued: November 20, 1997

Decided: August 18, 1998

James H. Landgraf appeared on behalf of the District IIIB Ethics Committee.

Respondent did not appear, despite proper notice of the hearing.

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 IIIB Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1980. By Order of the Supreme Court dated September 13, 1993, respondent was placed on the New Jersey Lawyer's Fund for Client Protection ("CPF") list of attorneys ineligible to practice law for failure to pay the annual attorney assessment for 1993. Respondent remained ineligible to practice until January

11, 1995 when he paid the annual assessments for both 1993 and 1994. He was transferred to disability inactive status by Order of the Supreme Court dated September 12, 1995. Respondent remains on disability inactive status to date. There are no other ethics matters pending against him. The five-count complaint alleged violations of RPC 1.1(a)(gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(a)(failure to communicate); RPC 1.5 (failure to prepare a retainer agreement); RPC 1.16 (failure to decline representation); RPC 5.5 (practicing law while ineligible); and RPC 3.3 (candor toward a tribunal).

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This matter originally came to the Board after respondent failed to pay a fee arbitration award to his client, Steven Marshall, the grievant herein, in the amount of \$7500. Although respondent retained an attorney to make an application to the Supreme Court to reopen the fee arbitration matter, the attorney was not engaged to handle the ethics matter. On January 25, 1995 respondent was served with the amended complaint in this matter. Respondent did not file an answer or appear at the DEC hearing of July 10, 1997, despite proper notice by publication in the New Jersey Lawyer on June 2, 1997.

In addition to the above, it should be noted that the ethics matter could not proceed on a default basis under R. 1:20-4 because respondent was served with the complaint prior to the March 1, 1995 effective date of the default rule.

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In or about October 1992 Steven Marshall alleged that he retained respondent to represent him in four matters: a) an appeal from a Southampton Township denial of Marshall's kennel license; b) a personal injury/rabbit bite action; c) a federal civil rights action; and d) a defamation action.

Only one of the above four matters was discussed at the DEC hearing, Marshall vs. Slotnick, a civil case originating in Burlington County.

Count one of the formal ethics complaint alleged violations of RPC 1.1 (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate) based on respondent's failure to file counterclaims in Slotnick, to take appropriate action once that was brought to his attention and to respond to trial calls. The complaint also alleged that respondent allowed default judgments to be entered against Marshall. For unknown reasons, Marshall did not testify at the DEC hearing. The sole witness was Robert F. Lyle, an attorney representing some of the defendants in the civil case.

Lyle testified that he had filed counterclaims against Marshall and had obtained several default judgments against him. According to Lyle, respondent acknowledged the existence of the judgments at that time, but took no action to vacate the defaults. The judgments represented Lyle's legal fees for defending his clients against Marshall's "meritless" lawsuit.

Count two of the complaint alleged a violation of RPC 1.5 for respondent's failure to prepare a retainer agreement or to adequately document the manner in which the \$7500 retainer was to be utilized. Apparently, after reviewing the events surrounding a fee arbitration rehearing ordered by the Supreme Court in Marshall's matter, the presenter determined that there was insufficient evidence to proceed on this charge. Accordingly, the DEC dismissed it.

Count three of the complaint alleged a violation of RPC 1.16 based on respondent's failure to decline Marshall's representation, when he knew that he was "under a physical and mental disability." The DEC dismissed this charge as well after the presenter cited the lack of medical proofs to establish that respondent had any medical condition at the time of the alleged misconduct.

Count four of the complaint charged that respondent violated RPC 5.5 for practicing law while ineligible, having failed to pay the CPF annual assessment. As previously noted, on September 13, 1993 respondent was placed on the CPF's ineligible list for his failure to pay the 1993 assessment. According to the complaint, respondent took no action to pay the assessment for 1993 or subsequent years. In support of this allegation is a letter from the CPF, dated February 18, 1994, enclosing a copy of the September 13, 1993 Court Order placing respondent on the ineligible list. As previously noted, respondent did not pay the CPF annual assessments for 1993 and 1994 until January 11, 1995. The DEC investigation revealed three instances in which respondent appeared in municipal court cases after he was declared

ineligible to practice law: (1) respondent entered an appearance in State vs. Coverly, a matter venued in the Township of Delran, via correspondence to the court in August 1994. Also, according to the certification of the court administrator, respondent appeared in court on October 12, 1994; (2) respondent entered an appearance in Burlington City Municipal Court, on October 17, 1994, in a matter titled State vs. Blackburn; and (3) respondent made an appearance, by letter dated January 17, 1995, in a Westampton Township matter captioned State vs. Mullen, as detailed below.

In a January 20, 1995 letter to the DEC investigator, the Westampton municipal judge expressed his belief that respondent was ineligible to practice law at the time of his appearance. The judge recalled having seen a notice to that effect circulated by the assignment judge. The judge then notified respondent, on January 20, 1995, that his appearance in Mullen would not be entered. The notice from the assignment judge is not a part of the record. Likewise, there is no information from the CPF indicating respondent's status as of January 17, 1995, the date of his letter to the municipal court judge.

Count five of the complaint alleged three violations each of RPC 3.3(a)(1) and RPC 3.3(a)(5) for respondent's failure to alert the Delran court of his ineligibility to practice law. There was no testimony or evidence adduced at the hearing regarding this allegation.

\* \* \*

The DEC's recommendations are contained in the transcript of the hearing. No separate panel report was filed. The DEC found that, based on the testimony of attorney Lyle and the exhibits in Slotnick, respondent grossly neglected Marshall's case and showed a lack of diligence, in violation of RPC 1.1(a) and RPC 1.3, respectively. The DEC also found that respondent engaged in the practice of law, while on the CPF's ineligible list, by appearing in the Delran, Westampton and Burlington City matters, in violation of RPC 5.5. The DEC further found that respondent violated RPC 3.3 (a)(1) by making false statements to the courts, that is, by practicing law while ineligible to do so, and RPC 3.3(a)(5) by misleading the courts that he "was a valid member of the New Jersey bar."

As previously noted, the DEC dismissed the charges of violations of RPC 1.4, RPC 1.5 and RPC 1.16. The dismissal of these three charges apparently stemmed from information that the DEC gathered from the fee arbitration matter. The record does not contain any specific findings as to these charges.

The DEC recommended the imposition of a four-month suspension to take effect upon respondent's payment of all outstanding CPF assessments.

\* \* \*

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

The wrinkle in this record is the lack of any testimony from Marshall regarding the four cases for which respondent was allegedly retained. There is no testimony or any other evidence to sustain violations of RPC 1.1(a) and RPC 1.3. The only testimony in this matter was that of attorney Lyle, respondent's adversary in Slotnick. Lyle's testimony was limited to the issue of respondent's knowledge of the entry of the default judgments. There was no testimony to the effect that Marshall instructed respondent to vacate the judgments and that respondent failed to do so. Lyle did not testify that respondent told him that he intended to vacate the defaults. Therefore, the Board was unable to find sufficient evidence that respondent neglected Marshall's case. It is entirely possible that Marshall instructed respondent to do no further work on the case or to leave the judgments intact. While such a scenario may seem implausible, the standard of proof in ethics matters requires more than the paltry evidence presented in this case. In re Pennica, 36 N.J. 401 (1962) (where the Court held that, in disciplinary proceedings, discipline or disbarment is warranted only where the evidence of the unethical conduct or unfitness to continue in practice against an attorney is clear and convincing.) For all of these reasons, the Board dismissed the charges of violations of RPC 1.1(a) and RPC 1.3.

As to the charge that respondent misrepresented to the municipal courts his status as an attorney eligible to practice law, although the record developed below does not contain

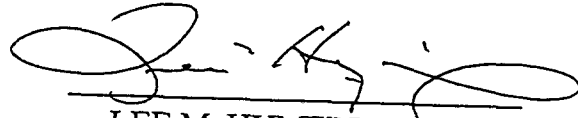
conclusive evidence that respondent was ineligible to practice when he made his three appearances, as previously noted, respondent was ineligible to practice law at the time of these events. The Board found that respondent's conduct in this context violated RPC 5.5(a). Because that RPC more appropriately addresses this type of conduct, the Board dismissed the charges of violation of RPC 3.3(a)(1) and (5). Also, for the reasons expressed in the DEC's decision, the Board agreed with the dismissal of the charges of violation of RPC 1.4, RPC 1.5 and RPC 1.16.

For a period of six months and in three separate matters, respondent represented clients at a time when he was ineligible to practice law for failure to pay the CPF annual assessment. For this misconduct and for respondent's failure to answer the complaint and to appear at the DEC hearing, in violation of RPC 8.1(b), the Board unanimously determined to impose a three-month suspension, with the further requirement that respondent be returned to disability inactive status upon the termination of the suspension. See In re Beltre, 119 N.J. 190 (1990) (where the attorney received a three-month suspension for practicing law while on the ineligible list, failure to maintain trust and business accounts in the required manner, failure to meet bona fide office regulations and failure to cooperate with the ethics authorities in the investigation of the matter.) One member did not participate.



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

Dated: 8/18/98



LEE M. HYMERLING  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

**In the Matter of Harvey Van Sciver, Jr.  
Docket No. DRB 97-328**

**Argued: November 20, 1997**

**Decided: August 18, 1998**

**Disposition: Three-Month Suspension**

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

*Robyn M. Hill* 8/24/98  
Robyn M. Hill  
Chief Counsel