SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-204
District Docket No. IIIB-2010-0028E

IN THE MATTER OF	:
BRYAN C. SCHROLL	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 18, 2012

Decided: December 4, 2012

Theresa Diana Brown appeared on behalf of the District IIIB Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for discipline (six-month suspension) filed by the District IIIB Ethics Committee (DEC). In a single client-matter, respondent was charged with gross neglect (RPC 1.1(a)), lack of diligence (RPC 1.3), failure to communicate with the client (RPC 1.4(b), recordkeeping violations (RPC 1.15(d)), failure to expedite

litigation (RPC 3.2), knowingly making a false statement of fact or law to a third person (RPC 4.1(a)(1)), conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)), and lying to ethics authorities (RPC 8.1(a)). We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1992. He has no prior discipline.

On April 27, 2003, Patricia Van Dyke, the grievant, fell in the shower at the Best Western Leisure Inn (Best Western), in Lakewood, New Jersey, where she and her husband were guests. Van Dyke retained a Pennsylvania attorney, Jonathan Russell, to represent her in a slip-and-fall personal injury action.

Shortly thereafter, Russell sent Van Dyke correspondence indicating that she might be better served by a New Jersey attorney. He forwarded to her a prospective retainer agreement between her and respondent. Van Dyke signed the agreement and forwarded it to respondent, who undertook the representation.

On April 26, 2005, respondent filed a complaint against Best Western and five additional defendants. About six months later, on November 11, 2005, the complaint was dismissed for lack of prosecution.

Van Dyke testified by telephone at the DEC hearing.[1] She recalled having retained respondent to represent her for her injuries in the hotel fall, which included a broken arm. She recalled that respondent came into the picture after Russell experienced problems obtaining information from the New Jersey defendants.

Van Dyke recalled signing a fee agreement with respondent, but noted that she never met him and never spoke with him, during the representation. She believed that respondent had not filed a complaint on her behalf, because she never received a copy of it from him.

According to Van Dyke, early in the case, she called respondent at his office, seeking information about the status of the matter. She left messages for him to call her, but he never returned those calls.

Van Dyke further testified that, in addition to the utter lack of communication from respondent, he never sent her a copy

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[1] The transcriber at the DEC hearing misinformed the panel chair that Van Dyke could not be sworn-in over the telephone. Therefore, her statement was taken without an oath-taking. Respondent did not object to Van Dyke's unsworn version of events.

of the complaint, letters, or any other documentation about the case.

After Van Dyke filed the ethics grievance against respondent in September 2006, she received correspondence from the DEC Secretary, Cynthia Earl. In addition, she received copies of correspondence that Earl sent to respondent, seeking information about the case. Some of Earl's correspondence to respondent requested him to contact Van Dyke and give her an update for the status of her case. Van Dyke testified that she still maintained the same telephone number and address that respondent always had for her. Yet, he never contacted her, even after Earl's letters to him.

Earl's initial letter to respondent was dated September 29, 2006. On October 12, 2006, respondent sent the following reply:

> I am in receipt of the grievance that has been filed. Please be advised that this matter is presently pending and that I sent a letter to Ms. Van Dyke regarding the status of this matter. At this point, I will again send a letter to this [sic] and am pursuing her case. Accordingly, I would request that this matter not be docketed and if Ms. Van Dyke is dissatisfied with my contact with her in the future, then she can re-file the grievance.
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> [Ex.J-7.]

Based on the representations in respondent's letter, on October 17, 2006, Earl wrote to Van Dyke notifying her that, because her personal injury case was still pending, Supreme Court policy required the DEC to place the ethics grievance on hold, until that lawsuit was concluded.

On May 3, 2007, Earl wrote to Van Dyke for a status update on her litigation, as it was still on hold. On May 19, 2007, Van Dyke replied that she had called and left messages for respondent on "a couple" of occasions, since October 2006, but had heard nothing from him.

At the DEC hearing, Van Dyke recalled that Earl "had contacted [respondent], and he said he would get back to her with all the details, you know. That he had contacted me and everything else." Although respondent's letters to Earl stated that he had contacted Van Dyke, she was certain that she never received a single written, telephonic, or other communication from him.

Respondent, acting pro se at the hearing, elected not to cross-examine Van Dyke.

Respondent's version of events in the case differed from Van Dyke's in key respects. He stated:

> Contrary to the allegations, I do not believe I ever received any telephone calls from [Van Dyke]. I never received any messages. I did send a few things to her. I did not do a whole lot on the case because I took it in, I filed the complaint, I sent her a copy of the complaint. I can't remember everything that happened. I remember we had trouble getting hold of viable defendants, and I sent the complainant a letter explaining that it looks like they went out of business. I can't find anyone to hold responsible. If you want to proceed, let me know. And I didn't receive anything back. And then I got the grievance letters, and I sent her, you know, a response to that, again, explaining the situation, and I never heard back. I never received any phone calls. I don't know what happened. Obviously, there was a breakdown in communication. I wish I had handled things differently because I don't like -- I don't like clients to be left in the dark like that. It is not the way I practice law. So I really regret where things have gone or how things have gone this way. I should have sent things [sic] certified mail. I could have done a couple things differently, but I never received any phone calls from her, or letters from her, and I did send her a couple of things,

> admittedly not a lot, but a couple of things explaining what has happened with the case.
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> [T31-2 to T32-4.][2]

When asked, at the hearing, for copies of correspondence that he claimed to have sent to Van Dyke, respondent stated that he did not maintain paper copies of such correspondence sent to clients. He further stated that he had "lost" his computer back-ups of correspondence to Van Dyke, when changing computers, at some unspecified time.

With regard to telephonic communications with Van Dyke, respondent testified that he kept no telephone logs or notes that might have helped him to reconstruct events in that regard. Nevertheless, he asserted that Van Dyke had never called him "and because of the distance, [he] was doing everything by mail to her."

Respondent recalled the events surrounding the dismissal of the complaint:

> My recollection is I received a notice saying it was going to be dismissed, and I contacted Ms. Van Dyke by letter, didn't

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[2] "T" refers to the transcript of the February 24, 2012 DEC hearing.

> hear anything back, and then it was dismissed, and I didn't take any action at that point because I had not heard back from Ms. Van Dyke.
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> [T35-5 to 11.]

Respondent was asked why he had informed Earl, in October 2006, that Van Dyke's "matter is presently pending," prompting Earl to place the grievance on hold, when he knew that the complaint had been dismissed over a year earlier. Respondent replied, "My belief was that if she wanted to proceed, we could still try to get somebody and we could do a motion to open."

Respondent was also asked why he did not disclose the dismissal of the complaint to Earl, in other letters that he sent to her, over a three-year period. The letters are dated May 31, 2007, February 18, 2009, December 15, 2009, and February 25, 2010. The letters stated that respondent was trying to reach out to Van Dyke, and that he was working to resolve the matter by searching for a viable "subsequent entity," because the original defendant appeared to be insolvent. About his failure to include information about the dismissal, respondent merely replied, "I don't know what I was thinking at the time. . . . I should have said more."

Respondent was questioned about attorney Russell's letter to him, dated January 25, 2006, seeking an update on the status of the case. In it, Russell memorialized a then-recent conversation with respondent, stating, "You advised me that a default judgment had been entered against the defendant in this matter and you were attempting to obtain a response from the insurance company." Respondent did not specifically recall telling Russell that he had obtained a judgment, but conceded, "I must have said that."

When asked what action he had taken after the dismissal, respondent answered that he "was doing name searches to the corporations, mail forwarding, some stuff like that, but I don't specifically recall."

Respondent ultimately conceded that the only legal action he took in the case was to prepare the complaint, file it, and engage in "some efforts to find the defendants."

Respondent offered mitigation for his conduct:

> You know, we talked about this. I know at times back then I was overwhelmed with a lot of things trying to develop a practice, family, other activities. I don't want to throw up an excuse, but in retrospect I was probably suffering from depression at the time. I know I didn't seek treatment. I didn't. I believe now, you know, I have brought in a partner so we can share things

> with, we can divide the load. In a case like this, if somebody couldn't get hold of me, they could call him. I hope to say that this would never happen again. In 20 years of practice, people never said that they couldn't get hold me. I think I was having depression and didn't handle this properly. But I didn't treat for it, and so I'm not sure that, I mean, it is not a good excuse. But I've taken some actions to try to make sure this doesn't happen again. And in 20 years of practice, this is the only thing like this.
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> [T46-3 to 21.]

Respondent announced that he now "backs up" his correspondence to clients on four different computers. He still prefers not to maintain paper copies of such correspondence.

At the conclusion of the ethics hearing, the presenter recommended the imposition of a reprimand for respondent's misconduct, without citing case law in support of that recommendation.

The DEC found respondent guilty of the following ethics infractions, without tying the findings to specific facts: gross neglect; lack of diligence; failure to communicate with the client; recordkeeping; failure to expedite litigation; knowingly making a false statement of material fact or law to a third

person; and conduct involving dishonesty, fraud, deceit or misrepresentation.

The DEC was more specific about its finding that respondent had knowingly made false statements of material fact to the DEC secretary, Earl. In its hearing panel report, the DEC stated as follows: "The case was dismissed by the court more than seven years prior to any communication with the secretary and [respondent] failed to notify her of that and in fact attempted to sugar coat the status by explaining that he was searching for solvent defendants."

The DEC recommended a six-month suspension, finding that the "aggravating factors significantly outweighed the mitigating factors and in fact one of the most significant aggravating factor was the lack of candor to the committee secretary." It did not support the recommendation for a suspension with case law.

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

Respondent was retained to prosecute an uncomplicated slip-and-fall claim for his client, but failed to do so. Although he filed a complaint, it was dismissed six months later for lack of

prosecution. Thereafter, he took no steps to have the complaint reinstated.

Respondent faulted his client for the inaction after the dismissal, claiming that Van Dyke failed to reply to his letter to her, asking if she wanted to pursue the claim. There is, however, no evidence that respondent ever sent such a letter. Moreover, Van Dyke denied receiving one. Respondent's unsupported assertion was juxtaposed with Van Dyke's credible version of events in this regard.

For having allowed the complaint to be dismissed and then taking no action to reinstate it, respondent is guilty of gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively.

In addition, Van Dyke testified that respondent never met with her and never communicated with her in any manner, at any time, even when pressed by the DEC secretary to do so. Although respondent told Earl that he had sent Van Dyke a copy of the complaint and correspondence about the dismissal, he produced no evidence of any correspondence to Van Dyke. He then claimed to have lost computerized versions of the correspondence in a change of computers, but furnished no evidence in support of that assertion.

Given the total lack of evidence that respondent communicated at all with his client and Van Dyke's credible testimony to the contrary, we find that respondent failed to adequately communicate with his client about the status of the case, a violation of RPC 1.4(b).

There remains the issue of the letters from respondent to Earl, the contents of which were either untrue or misleading. The first letter, dated October 12, 2006, was in reply to the grievance. Respondent misrepresented that Van Dyke's matter was "presently pending," when he knew that it had been dismissed a year earlier and that he had taken no further action to have it reinstated. Respondent's only explanation for his statement was feeble – that, by pending, he meant that he could file a motion to restore the complaint.

In several other letters to Earl, dated between May 31, 2007 and February 25, 2010, respondent never disclosed to her that the complaint had been dismissed in 2005. Instead, the letters led Earl to believe that the matter was active, that the defendant appeared to be insolvent, and that respondent was trying to find other entities to hold accountable. Although there is no evidence that respondent was not undertaking these

efforts, those statements were misleading because, by that time, there had been no pending complaint for five years.

For respondent's misrepresentations to Earl, either affirmative or by omission, he is guilty of having violated RPC 8.1(a).

Finally, respondent conceded that, in a conversation with attorney Russell early in the case, he misrepresented that he had obtained a default judgment against Best Western, when the complaint had actually been dismissed for his inaction. Respondent's conduct amounted to a false statement to a third person, a violation of RPC 4.1(a)(1) and RPC 8.4(c).

We dismiss, however, the RPC 1.15(d) recordkeeping charge. The recordkeeping rules require the maintenance of certain records. Here, respondent did not fail to maintain one of those records. He misplaced a written fee agreement, a totally different situation.

In summary, in a single client-matter, respondent is guilty of gross neglect, lack of diligence, failure to communicate with the client, making a false statement/misrepresentation to a third person, and lying to ethics authorities about the status of the underlying case.

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in an admonition where, as here, a single matter is involved, and the attorney has no prior discipline. See, e.g., In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (attorney filed an appearance in his client's federal civil rights action and chancery foreclosure matter and had a pending motion in the federal matter adjourned; he was unable to demonstrate what work he had done on his client's behalf, who had paid him $10,000; he also failed to communicate with his client, and failed to reply to the disciplinary investigator's requests for information about the grievance); In re Russell, 201 N.J. 409 (2009) (attorney failed to file answers to divorce complaints against her client, causing a default judgment to be entered against him; the attorney also failed to explain to the client the consequences flowing from her failure to file answers on his behalf); and In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008) (attorney's inaction in a personal injury action caused the dismissal of the client's complaint; the attorney took no steps to have it reinstated; also, the attorney did not communicate with the client about the status of the case).

However, respondent committed more serious acts of misconduct. The false statement to Russell and the lies to ethics authorities call for more severe discipline. False statements to third persons have resulted in reprimands. See, e.g., In re Lowenstein, 190 N.J. 59 (2007) (attorney failed to advise an insurance company of the existence of a lien that had to be satisfied out of the settlement proceeds; the attorney's intent was to avoid the satisfaction of the lien) and In re Agrait, 171 N.J. 1 (2002) (despite being obligated to escrow a $16,000 deposit in a real estate transaction, the attorney failed to collect it, but caused it to be listed on the RESPA as a deposit; the attorney also failed to disclose a prohibited second mortgage to the lender).

Ascending sanctions, starting with a reprimand, have been imposed on attorneys who have lied to ethics authorities, depending on the number of client matters involved, the existence of other misconduct, such as the creation of fictitious documents, and the existence of prior discipline. See, e.g., In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who lied to the Office of Attorney Ethics during its investigation; the attorney had permitted two matters to be dismissed and created a phony arbitration award to mislead his

partner; he also failed to consult with his clients before allowing their matters to be dismissed; considerable mitigation considered: the passage of ten years since the occurrence of the event, the attorney's otherwise unblemished record, his professional achievements, his participation in a variety of bench/bar committees, pro bono contributions, the lack of financial gain to the attorney or harm to the client, and the attorney's contrition and remorse); In re Allocca, 185 N.J. 404 (2005) (censure for attorney who mishandled a real estate transaction; specific findings were truthfulness in statements to others, lying to ethics authorities, and conduct involving dishonesty, fraud, deceit or misrepresentation; in correspondence to the ethics committee investigator, the attorney made material misrepresentations regarding the real estate mortgage pay-off, payment of taxes, and recording of the deed, in order to obscure his mishandling of the underlying matter; the attorney also lacked diligence in the matter; no prior discipline); In re Bar-Nadav, 174 N.J. 537 (2002) (three-month suspension for attorney who, after the grievance was filed, fraudulently created two fictitious letters about the underlying client matters as part of his defense and submitted them to the ethics committee in connection with charges of his

failure to communicate with the two clients; no prior discipline); and In re Verni, 172 N.J. (2002) (three-month suspension for attorney who knowingly made false statements of material fact to a disciplinary authority by lying to the ethics committee claiming that he had drafted his own interrogatories in a case, when he had actually used form interrogatories; the attorney also charged excessive fees in three matters; prior reprimand).

Respondent's misconduct did not involve the creation of false documents prepared for the client, as found in Sunberg (reprimand), and prepared for ethics authorities in Bar-Nadav (three-month suspension). So, too, there is no prior discipline here, as in Verni.

We also note that Sunberg received only a reprimand largely because of the significant mitigation presented.

Bar-Nadav was decided in November 2002, after censure was adopted as a measure of discipline. Thus, Bar-Nadav could have been censured for his misconduct, but was not. Due to the seriousness of his infractions, the fabrication of two letters from whole cloth to cover up otherwise minor misconduct (failure to communicate), a three-month suspension was imposed. Bar-Nadav

then presented the letters to ethics authorities, in defense of his case.

The level of deceit toward ethics authorities in this matter did not rise to the preparation of phony documents, as in Bar-Nadav. It is more akin to that in Allocca (censure), inasmuch as both Allocca and respondent misrepresented the true nature of their clients' cases in correspondence to ethics investigators, hoping to conceal their mishandling of an underlying matter.

In mitigation, respondent has no prior discipline, since his admission to the New Jersey bar, in 1992. We gave his self-diagnosed depression, for which he did not seek treatment, no weight as a mitigating factor.

Precedent requires, at the minimum, a reprimand for respondent's most serious transgression, misrepresentations to ethics authorities and to Russell. His misconduct is aggravated, however, because he squandered several opportunities to "come clean" and to tell the truth about the dismissal of the complaint. Yet, with each new letter, he "doubled down" on his lies until, all told, six letters failed to include crucial information, that is, that the matter had been dismissed. We,

therefore, determine that a censure is the suitable sanction in this case.

Member Doremus did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Bryan C. Schroll
Docket No. DRB 12-204

Argued: October 18, 2012

Decided: December 5, 2012

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus						X
Gallipoli			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			8			1

Julianne K. DeCore
Chief Counsel