

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-163
District Docket No. IIIA-2012-0015E

IN THE MATTER OF :
EDWARD BENJAMIN BUSH :
AN ATTORNEY AT LAW :
:

Decision

Decided: October 30, 2013

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

This matter was before us on a certification of default, filed by the District IIIA Ethics Committee (DEC), pursuant to R. 1:20-4(f). The three-count complaint charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 3.2 (failure to expedite litigation), RPC 1.4(b) (failure to keep the client informed about the status of the matter) (cited in the complaint as RPC 1.4(a)), RPC 1.16, presumably (d) (upon termination of the representation, failure to turn over the client's file), RPC 8.1, presumably (b) (failure to cooperate with disciplinary authorities), and RPC 8.4(c) (misrepresentation).

On September 17, 2013, respondent's counsel filed a motion to vacate the default, which, for the reasons expressed below, we determined to deny. In our view, a censure is the appropriate level of discipline in this matter.

Respondent was admitted to the New Jersey bar in 1984. He maintains a law office in Toms River, New Jersey.

In 2012, respondent was admonished, on a motion for discipline by consent, for failure to keep a client reasonably informed about the status of a matter and to promptly comply with the client's reasonable requests for information about the case. Specifically, respondent failed to reply to his client's multiple telephone calls and letters, over an eleven-month period, and lacked diligence by failing to follow through on his agreement to file a complaint, an order to show cause, and other pleadings. In re Bush, 210 N.J. 182 (2012).

Service of process was proper in this matter. On October 25, 2012, the DEC sent copies of the complaint, by regular and certified mail, to respondent's office address, 2310 South Street, Toms River, New Jersey 08753. According to the certification of the record, the regular mail was not returned. Although the certification does not mention whether respondent received the certified mail, the record contains a copy of the

certified mail receipt, which was signed on November 6, 2012. The signature appears to be respondent's.

On April 4, 2013, the DEC sent a letter to respondent, by regular mail, to the same Toms River address. The letter notified him that, if he did not file an answer within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to include a willful violation of RPC 8.1(b). The regular mail was not returned.

As of the date of the certification of the record, April 11, 2013, respondent had not filed an answer to the complaint.

By letter dated September 16, 2013, respondent's counsel filed a motion to vacate the default. According to counsel, respondent admitted the allegations of the complaint, but requested that the default be vacated to enable him to present mitigating factors. Counsel stated that respondent's failure to file an answer was not due to respondent's indifference or disrespect to the ethics system, but a result of his "genuine remorse and a fatalistic view of what would occur as the result of this ethics case." According to counsel, respondent did not file an answer to the ethics complaint because his prior brushes with the ethics system caused him to hope "that the matter would

just go away." Counsel remarked that respondent's difficulty in "following-up on cases" was part of the reason that he failed to answer the complaint and that respondent has voluntarily sought help from the New Jersey Lawyers' Assistance Program (LAP) to address this issue.

Counsel pointed out that respondent is a sixty-seven year old Vietnam veteran and a former Camden police officer. He obtained his law degree at night, while working during the day. Counsel highlighted respondent's previous twenty-nine-year unblemished record.

Counsel contended that there is a "human side of this case" that is not reflected in the record and that respondent, who served his country in the war and his community as a police officer, should be given an opportunity to have his day in court to show his good reputation and character, ready admission of wrongdoing, contrition, and remorse.

To succeed on a motion to vacate the default, a respondent must satisfy a two-pronged test: (1) offer a reasonable explanation for the failure to file an answer and (2) assert meritorious defenses to the ethics charges.

As to the first prong, respondent did not provide a reasonable explanation for failing to file an answer. According to counsel, respondent's failure to do so was caused by his

"genuine remorse and a fatalistic view" of what would result. This explanation does not satisfy the first prong of the test, particularly in light of respondent's prior run-ins with the ethics process. Respondent's service to the country and to the Camden community notwithstanding, he ignored the formal ethics complaint and, like other respondents who did so without a reasonable excuse, should not have his default vacated.

We, therefore, deny respondent's motion to vacate the default.

The conduct that gave rise to the complaint against respondent was as follows:

Respondent represented George Pearce in connection with a December 10, 1998 motor vehicle accident. The case was settled, in May 2002, for \$15,000. Thereafter, respondent agreed to pursue an underinsured motorist claim (UIM) against New Jersey Manufacturers. However, respondent failed to file a UIM claim on Pearce's behalf and, for the next ten years, misled Pearce that the matter was proceeding properly. In fact, the statute of limitations had run on any viable claim.

By letter to Pearce, dated June 24, 2008, respondent confirmed their earlier conversation, told Pearce that the UIM claim had not yet been resolved, that three arbitrators would be

selected, and that he would notify Pearce when the hearing was scheduled.

The following year, by letter dated June 5, 2009, respondent confirmed his telephone conversation with Pearce about the UIM claim and stated that "[t]he claim has not been resolved and is still pending. The arbitration hearing has not been scheduled yet. I will notify you when the hearing is scheduled."

The complaint charged that respondent's failure to institute "appropriate, timely litigation and investigation" on Pearce's behalf constituted gross neglect, in violation of RPC 1.1(a), RPC 1.3, and RPC 3.2; that his failure to keep Pearce adequately and accurately informed of events in the case constituted a violation of RPC 1.4(a) (more properly, RPC 1.4(b)), and that his misrepresentations to Pearce violated RPC 8.4(c).

On November 17, 2011, Pearce retained attorney Roy Curnow to pursue his UIM claim. Curnow requested that respondent turn over Pearce's file, within twenty days of the date of his letter. Curnow did not receive a reply to his letter, a copy of Pearce's file, or a reply to his follow-up telephone calls. The complaint alleged that respondent's failure to turn over the file to Pearce's new lawyer constituted a violation of RPC 1.16.

Pearce filed a grievance against respondent on May 15, 2012. After the DEC investigator left numerous messages with respondent's answering service, in a July 23, 2012 telephone conversation with the investigator, respondent told him that he was not familiar with the details of the grievance. That day, the investigator emailed a copy of the grievance to respondent and asked him to call him back to discuss the matter. Respondent did not call the investigator.

By letter dated August 28, 2012, the investigator requested respondent's reply to the grievance, within fourteen days. Respondent had no further communications with the investigator. The complaint charged respondent with violating RPC 8.1(b).

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f).

The allegations, which not only are deemed admitted but, according to respondent's counsel, respondent admitted, establish that respondent was guilty of gross neglect and lack of diligence for failing to timely pursue Pearce's UIM claim, violations of RPC 1.1(a) and RPC 1.3, respectively. He cannot be deemed to have violated RPC 3.2 (failure to expedite

litigation), however, because he had not yet instituted the litigation. We, therefore, dismiss this charged violation.

Respondent also failed to keep Pearce informed about the status of his matter and, more seriously, misrepresented to him that a hearing would be scheduled. In fact, the statute of limitations had already expired. In this context, respondent violated RPC 1.4(b) and RPC 8.4(c). He also failed to turn over his client's file to new counsel, a violation of RPC 1.16(d), and failed to cooperate with the DEC's investigation, a violation of RPC 8.1(b).

In all, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.16(d), RPC 8.1(b), and RPC 8.4(c).

It is well-settled that misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still result, even if coupled with other, non-serious infractions, such as the ones displayed by respondent in the Pearce matter. See, e.g., In re Singer, 200 N.J. 263 (2009) (attorney misrepresented to his client, for a period of four years, that he was working on the case; the attorney also exhibited gross neglect and lack of diligence and failed to communicate with the client; no ethics history); In re Wiewiorka, 179 N.J. 225 (2004) (attorney misled the client that a complaint had been filed; in addition, the attorney took no

action on the client's behalf, and did not inform the client about the status of the matter and the expiration of the statute of limitations); In re Onorevole, 170 N.J. 64 (2001) (attorney made misrepresentations about the status of the case; he also grossly neglected the case, failed to act with diligence, and failed to reasonably communicate with the client; prior admonition and reprimand); and In re Till, 167 N.J. 276 (2001) (over a nine-month period, the attorney lied to the client about the status of the case; the attorney also exhibited gross neglect; no prior discipline).

Singer is somewhat similar to this case. Singer was guilty of misrepresenting the status of the case, gross neglect, lack of diligence, and failure to communicate with the client. Singer, however, had no disciplinary history. Here, respondent has a prior admonition and is also guilty of failing to turn over the client's file. Furthermore, he failed to cooperate with ethics authorities by not replying to the grievance and not filing an answer to the complaint. "A respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008). We, therefore, determine that the otherwise appropriate discipline

for respondent's violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 8.4(c), a reprimand, should be elevated to a censure.

Member Zmirich 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
Bonnie C. Frost, Chair

By: Isabel Frank
Isabel Frank
Acting Chief Counsel

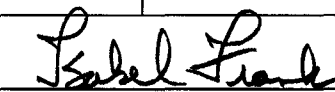
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Edward B. Bush
Docket No. DRB 13-163

Decided: October 30, 2013

Disposition: Censure

<i>Members</i>	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Gallipoli			X			
Yamner			X			
Zmirich						X
Total:			6			1



Isabel Frank
Acting Chief Counsel