

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-134
District Docket No. XIII-2013-0009E

IN THE MATTER OF
JOEL F. SHAPIRO
AN ATTORNEY AT LAW

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Decision

Argued: July 17, 2014

Decided: October 23, 2014

Michael J. Rogers appeared on behalf of the District XIII Ethics Committee.

Respondent waived appearance for oral argument.

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 (reprimand) filed by the District XIII Ethics Committee (DEC). A one-count complaint charged respondent with having violated RPC 1.3 (lack of diligence) and RPC 1.4(b)

(failure to communicate with the client) in a single matter. We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1989. On January 16, 1997, he received an admonition for failure to return a client file or to recommend to his superiors that the file be turned over to the client. In the Matter of Joel F. Shapiro, DRB 96-343 (January 16, 1997).

On June 19, 2001, respondent was reprimanded for gross neglect, lack of diligence, failure to communicate with the client, and failure to set forth, in writing, the rate or basis of his legal fee. In re Shapiro, 168 N.J. 166 (2001).

In the matter now before us, in respondent's answer to the complaint and at the DEC hearing, respondent admitted the allegations of the complaint. Respondent, the only witness, testified solely on the issue of mitigation.

In September 2012, Andrew Rich retained respondent to represent him in connection with a post-judgment motion to modify alimony obligations to his former wife, Linda. Using documents and information from his client, respondent drafted and filed a motion to reduce Rich's alimony obligations. On January 24, 2013, before the motion was heard, the parties agreed to participate in a four-way settlement conference.

Counsel for the former wife agreed to prepare the draft consent order and forward it to respondent for Rich's consideration.

On January 28, 2013, counsel for the former wife sent respondent a letter containing the terms of a proposed consent order. Respondent forwarded it to Rich, who agreed to some, but not all of the terms in that proposal. Respondent, however, failed to convey to his adversary any information about Rich's review.

Thereafter, respondent's adversary repeatedly attempted to reach respondent by email and telephone to get a status update on the proposal. Rich, too, sought an update from respondent about the settlement proposal. Respondent did not reply to their requests for information.

Rich resorted to contacting the Somerset County Bar Association to complain about respondent's failure to communicate with him. Only then did respondent contact him, advising him that he was suffering from depression and assuring him that he would pursue the settlement options with the former wife and her counsel. Despite having given those assurances, respondent did nothing to pursue a settlement and failed to contact Rich again.

Thereafter, counsel for the former wife filed a cross-motion to enforce the terms of the judgment of divorce and to find Rich in violation of litigant's rights for failing to satisfy his past-due alimony obligations. Upon receipt of the cross-motion, respondent requested an adjournment, but filed no opposition to the cross-motion. He also failed to advise Rich that the cross-motion had been filed and that it had been adjourned.

When Rich appeared in court for what he thought was the return date for his motion alone, he learned about the cross-motion against him. He then obtained a further adjournment and hired new counsel to put the matter back on track. Subsequent counsel was permitted to file an opposition to the cross-motion.

Respondent offered mitigation for his misconduct, claiming that, during the time in question, he was suffering from depression and, for the first time, faced the fact that he was an alcoholic and had been for years. As evidenced by medical records introduced below as Exhibits D and E, in March 2013, respondent began treatment for depression and attention-deficit disorder. He has received prescription medications to address his various symptoms. In addition, he is an active "twelve-stepper" in Alcoholics Anonymous and has sought counseling from

the Lawyers Assistance Program and Lawyers Concerned for Lawyers.

At the DEC hearing, respondent testified that he had been alcohol-free for 158 days and had attended 212 meetings in that time, including multiple meetings on some days. He is also very committed to his recovery and readily acknowledged his wrongdoing, for which, he stated, there was "no excuse."

The DEC found respondent guilty of lack of diligence and failure to communicate with the client, violations of RPC 1.3 and RPC 1.4(b), respectively.

Although the hearing panel report noted that respondent "spoke at length about his problems and what he was doing to address them," and that respondent "seemed to be legitimately attempting to deal with his personal issues," the DEC held the impression that respondent had shown "little remorse for the problems he caused Rich."

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 readily admitted that he lacked diligence, when representing Rich to reduce his alimony obligations to his former wife. Specifically, after filing a motion and receiving a

cross-motion from his adversary, respondent failed to file an opposition to the cross-motion, a violation of RPC 1.3.

In addition, respondent failed to inform Rich about important aspects of the representation, despite Rich's attempts to obtain information about his matter. In particular, respondent failed to inform Rich that his former wife had filed a cross-motion, leaving Rich vulnerable to receiving that news on the return date of his own motion for the alimony reduction. Respondent's conduct in this regard violated RPC 1.4(b).

Lack of diligence and failure to communicate with the client generally result in an admonition. See, e.g., In the Matter of John David DiCiurcio, DRB 12-405 (July 19, 2013) (attorney who was retained to file a bankruptcy petition did no work on the file, other than to draft one letter to the client one month after being retained; the attorney did not inform the client that the failure to file the petition was due to the client's non-payment of a legal fee); In the Matter of Edward Benjamin Bush, DRB 12-073 (April 24, 2012) (attorney failed to reply to his client's multiple telephone calls and letters over an eleven-month period, a violation of RPC 1.4(b), and lacked diligence in handling the matter, as he failed to follow through on his agreement to file a complaint, an order to show cause,

and other pleadings, a violation of RPC 1.3); In the Matter of Rosalyn C. Charles DRB 08-290 (February 11, 2009) (attorney failed to respond to his client's attempts to communicate with him about the status of her divorce matter; his inaction led to the dismissal of the client's complaint for failure to prosecute; violations of RPC 1.3 and RPC 1.4(b)); In the Matter of James C. Richardson, DRB 06-010 (February 23, 2006) (attorney lacked diligence in an estate matter and did not reply to the beneficiaries' requests for information about the estate); In the Matter of Jonathan Saint-Preux, DRB 04-174 (July 19, 2004) (in two immigration matters, attorney failed to appear at the hearings, thereby causing orders of deportation to be entered against the clients, and failed to apprise the clients of these developments); and In the Matter of Susan R. Darqay, DRB 02-276 (October 25, 2002) (attorney failed to promptly submit to the court a final judgment of divorce in one matter and failed to reply to the client's letters and phone calls in another matter).

When, as in this case, the attorney has a disciplinary record, the level of discipline may be enhanced from an admonition to a reprimand. See, e.g., In re Marcus, 208 N.J. 178 (2011) (in addition to engaging in a lack of diligence, the

attorney failed to inform a client that her minor son's personal injury claim against a public entity was no longer pending and that a motion for turnover of funds had been filed in a related lawsuit by a medical provider who had obtained a judgment for his medical bills; the attorney had two prior reprimands for unrelated conduct) and In re Oxfeld, 184 N.J. 431 (2005) (reprimand by consent for lack of diligence and failure to communicate with a client in a pension matter; the attorney had received two prior admonitions).


Here, in aggravation, respondent received a 1997 admonition and a 2001 reprimand, the latter for similar misconduct.

In mitigation, and in contrast to the DEC's finding of lack of contrition, it appears that respondent has accepted full responsibility for his misdeeds and has offered no excuses for them. He has also faced his medical and alcohol-related problems head-on, receiving treatment for depression and attention deficit disorder, as well as counseling for his addiction. Because of respondent's prior discipline, however, particularly his 2001 reprimand for violations that included lack of diligence and failure to communicate with the client, an admonition is insufficient. We determined to impose a reprimand.

In addition, we require respondent to submit to the OAE, within sixty days of the Court's order of discipline, proof of fitness to practice law, as attested by a mental health professional approved by the Office of Attorney Ethics.

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: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Joel F. Shapiro
Docket No. DRB 14-134

Argued: July 17, 2014

Decided: October 23, 2014

Disposition: Reprimand

<i>Members</i>	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Gallipoli			X			
Hoberman			X			
Rivera			X			
Singer			X			
Yamner			X			
Zmirich			X			
Total:			9			


Ellen A. Brodsky
Chief Counsel