

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 14-051 and 14-109
District Docket Nos. XIV-2013-0306E
and IX-2012-0035E

IN THE MATTERS OF
STEVEN E. SAVAGE
AN ATTORNEY AT LAW

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Decision

Decided: October 31, 2014

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

These matters were before us based on two certifications of defaults, filed by the Office of Attorney Ethics (OAE) (DRB 14-051) and the District IX Ethics Committee (DEC) (DRB 14-109), pursuant to R. 1:20-4(f). We consolidated both matters for the purpose of imposing a single discipline. For the reasons expressed below, we determine that a six-month suspension is appropriate for respondent's combined rule violations.

Respondent was admitted to the New Jersey bar in 2003. At the relevant time, he maintained a law office in Newark, New Jersey.

On April 16, 2013, respondent was temporarily suspended for failure to cooperate with the OAE investigation. In re Savage, 213 N.J. 378 (2013).

In 2013, respondent was suspended for three months for misconduct in two consolidated default matters. In one of the matters, he failed to cooperate with the OAE by not providing information that the OAE repeatedly requested and not appearing at an OAE demand audit. He also permitted an individual not admitted to practice law in New Jersey to be a signatory on his trust account. In the other matter, respondent did not reply to the ethics investigator's requests for information about a grievance. In re Savage, 216 N.J. 406 (2013).¹

DRB 14-051 – District Docket No. XIV-2013-0306E

The three-count complaint charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter or to promptly comply with reasonable requests for information), RPC 1.5(a) (unreasonable fee), RPC 1.5(b) (failure to provide a client with a writing setting forth the

¹ We had determined to impose a censure for respondent's combined violations. The Court enhanced the discipline to a three-month suspension, because respondent failed to appear for the Court's order to show cause.

basis or rate of the fee), RPC 1.15(a) (failure to hold property of a client in connection with a representation separate from the lawyer's own property), RPC 1.15(d) (recordkeeping violations), RPC 8.1(b) (failure to comply with a lawful demand for information from a disciplinary authority), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

Service of process was proper in this matter. On December 5, 2013, the OAE sent copies of the complaint, by regular and certified mail, to respondent's home address. The certified mail was returned unclaimed. The regular mail was not returned. Respondent did not file an answer within the prescribed time.

On December 31, 2013, the OAE sent a letter to the same address, by regular and certified mail. The letter notified respondent 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 certified mail was returned unclaimed. The regular mail was not returned.

As of the date of the certification of the record, February 26, 2014, respondent had not filed an answer to the ethics complaint.

We now turn to the allegations of the complaint.

In April 2011, Manny Santana III was incarcerated at the Mid-State Correctional Facility. On April 23, 2011, respondent sent an email to Santana's domestic partner, Magdalena Carrero, confirming (1) his meeting with Santana to discuss Santana's options for post-conviction relief and/or an appeal in his criminal case and (2) Santana's retention of respondent's law firm. Two days later, on April 25, 2011, Santana's sister and his brother-in-law, Leon Stickle (the grievant), paid respondent's flat fee of \$4,500. Respondent did not provide them with a writing about their fee agreement.

Respondent guaranteed Santana's family that he would be able to file a motion for a lesser conviction, in lieu of the one previously entered.

After respondent's meeting with Santana's family, he met with Santana only once. Thereafter, he failed to reply to Magdalena's and Stickle's written and telephone inquiries. He also failed to file a petition for post-conviction relief or to take any action on Santana's behalf.

After fourteen month's incarceration, Santana was released to a Newark half-way house. By letter dated March 12, 2012, he requested information about the status of respondent's efforts to obtain post-conviction relief, complained about his family's

numerous, unsuccessful efforts to contact him, remarked that they had not heard from him in almost a year, and inquired about how to reach him. Respondent did not reply.² More than a year later, on May 16, 2013, Stickle filed a grievance against respondent.

Count one of the complaint charged respondent with having violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.5(a) and (b), and RPC 8.4(c).

By letter dated June 25, 2013, sent by regular and certified mail to respondent's home address, the OAE requested (1) a reply to the grievance by July 10, 2013, (2) a copy of Santana's file, and (3) respondent's accounting records, inasmuch as Santana's fee had not been deposited into respondent's trust or business accounts.

The certified mail was returned unclaimed. The regular mail was not returned. Respondent did not submit a written reply to the OAE.

On July 19, 2013, the OAE sent a second letter to respondent's home address, by regular and certified mail, imposing a deadline of July 26, 2013 for the submission of previously requested information. On July 24, 2013, respondent signed for the

² The complaint erroneously states that the letter is dated May 12, 2012 and refers to it as "a letter of grievance."

certified mail. The regular mail was not returned. Again, respondent failed to reply.

By letter dated November 18, 2013, sent to respondent's home address by regular and certified mail, the OAE instructed him to appear, on December 2, 2013, at the OAE offices for a demand audit/interview. On November 23, 2013, the United States Postal Service left notice of the certified mail at respondent's home address. The regular mail was not returned. Respondent neither appeared nor informed the OAE that he would not appear.

Count two of the complaint charged respondent with having violated RPC 8.1(b) and R. 1:20-3(g)(3) for failing to reply to a lawful demand for information from a disciplinary authority, as well as RPC 1.15(d), RPC 8.1(b), and R. 1:21-6(i)³ for failing to produce his accounting records.

Receiving no information from respondent, the OAE subpoenaed records from Stickle's bank and, thereafter, from Citibank. The subpoenaed records revealed that, from January 1, 2011 to July 17, 2013, the date of the subpoena, both respondent and Carol Savage were signatories on a personal account that respondent used as his

³ This section of the rule states that "[a]n attorney who fails to comply with the requirements of this rule in respect of the maintenance, availability and preservation of accounts and records or who fails to produce or to respond completely to questions regarding such records as required shall be deemed to be in violation of RPC 1.15(d) and RPC 8.1(b)."

"attorney account," by depositing legal fees into it. From January through July 2011, respondent deposited legal fees into that account in connection with fifteen matters.

Count three charged respondent with violating RPC 1.15(a) for failing to keep client funds separately from his own property and RPC 1.15(d) and R. 1:21-6(a)(2) for failing to maintain a business account into which all funds for legal services are to be deposited.

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 establish that, after being retained, respondent failed to take any action on Santana's behalf and failed to reply to his or his family's requests for information, violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b), respectively. He also failed to provide the client with a writing setting forth the basis or rate of his fee, a violation of RPC 1.5(b).

The allegations do not establish, however, that respondent charged an unreasonable fee (RPC 1.5(a)). Had he performed the services for which he was retained, the fee charged might have been reasonable. Thus, we dismiss the RPC 1.5(a) charge. We also

dismiss the RPC 8.4(c) charge for lack of factual support in the complaint.

Count two alleged sufficient facts to sustain a finding that respondent violated RPC 8.1(b) by failing to reply to the OAE's requests for information and failing to appear at the OAE demand audit. The allegations also support the charges in count three, that is, respondent's failure to keep client funds separately from his own funds (RPC 1.15(a)) and failure to deposit legal fees into a business account (RPC 1.15(d) and R. 1:21-6(a)(2)).

DRB 14-109 – District Docket No. IX-2012-0035E

The two-count complaint charged respondent with having violated RPC 1.1, presumably (a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), and RPC 8.1(b) (failure to comply with a lawful demand for information from a disciplinary authority).

Service of process was proper in this matter. On March 29, 2013, the DEC sent copies of the complaint, by regular and certified mail, to respondent's home address. Neither the regular nor the certified mail was returned.

On October 22, 2013, the DEC sent another copy of the complaint, by regular and certified mail, to respondent's home

address and, on October 28, 2013, to respondent's office address.⁴ The certified mail sent to respondent's home address was returned marked, "Return to Sender, Unclaimed, Unable to Forward." The regular mail was not returned. The receipt for the certified mail sent to respondent's office address showed that it was delivered on October 28, 2013. The certification of the record does not indicate the whereabouts of the regular mail sent to the office address. Respondent did not file an answer within the prescribed time.

On February 18, 2014, the DEC sent a letter to respondent's office address, by regular and certified mail. The letter notified respondent 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 signature on the certified mail receipt is illegible. The date of delivery is February 20, 2014. No mention was made about the regular mail. As of the date of the certification of the record,

⁴ The postmark shows it was sent on October 25, 2013.

April 1, 2014, respondent had not filed an answer to the ethics complaint.⁵

We now turn to the allegations of this complaint, which are sparse and somewhat confusing.

On an unspecified date, grievant Roger McFarlane retained respondent for representation in "criminal indictable matters in the Superior Court of New York." McFarlane was detained in a correctional facility in North Carolina (it is not clear whether McFarlane retained respondent before or after his incarceration). McFarlane complained that he had difficulty communicating with respondent; that their communications were sporadic; that respondent visited him infrequently; that respondent did not discuss defense strategy; and that respondent did not file a motion to sever his case from that of his co-defendants, despite McFarlane's "strong desire for this to occur." McFarlane also claimed that, because respondent was unprepared for trial, he felt coerced into accepting a plea agreement; that respondent neither discussed the plea agreement with him, in detail, nor informed him of the sentencing consequences; and that respondent failed to provide the sentencing judge with character letters.

⁵ Because respondent had been suspended, in April 2013, and had not applied for reinstatement, the complaint should not have been sent to an office address.

Count one of the complaint charged respondent with having violated RPC 1.1, RPC 1.3, and RPC 1.1(b).

Count two alleged that respondent failed to reply to the ethics investigator's January 4 and January 18, 2013 letters, requesting information about the grievance. Copies of the second letter were sent to respondent's home and office addresses, by regular and certified mail. The certified mail receipts indicated delivery at both locations. The regular mail envelopes were not returned.

Count two charged respondent with having violated RPC 8.1(b) and RPC 1.1(b).

The facts recited in the complaint support only one of the charges of unethical conduct, RPC 8.1(b). Respondent's failure to file an answer is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f).

The complaint does not make it clear whether McFarlane was facing state or federal charges or when respondent was retained to represent him. What is clear is that respondent was able to secure a plea agreement on McFarlane's behalf. That McFarlane was dissatisfied with the plea does not make respondent guilty of unethical conduct.

The complaint alleges only what McFarlane claimed were the facts. There is no indication that the investigator conducted an independent investigation to ascertain what measures respondent took in the case. Instead, the investigator relied on McFarlane's statements. Indeed, paragraphs two through seven of the first count of the complaint merely recited that "McFarlane claims that" Accordingly, all that we may find is that McFarlane claimed that respondent was guilty of unethical conduct, but not that respondent actually was guilty of the alleged conduct.

Because the complaint does not set out sufficient facts to support findings of violations of RPC 1.1(a), RPC 1.1(b), and RPC 1.3, we dismiss those charges. The complaint, however, alleges sufficient facts to establish that respondent failed to reply to the investigator's requests for information about the grievance, a violation of RPC 8.1(b).

In sum, we find that respondent violated RPC 8.1(b) in both matters and, in the first matter, RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.5(b), and RPC 1.15(a) and (d).

The discipline in default matters with similar ethics violations varies greatly, depending on the number of client matters involved and the attorney's ethics history. In In re Porwich, 205 N.J. 230 (2011) a censure was imposed where the attorney was guilty of only failure to communicate with a client,

and failure to cooperate with disciplinary authorities. The attorney was previously reprimanded for similar misconduct. In In re Gross, _____ N.J. _____ (2011), the attorney also received a censure for misconduct in three matters, including gross neglect in all three matters, lack of diligence in two matters, failure to communicate in two matters, failure to safeguard funds (the client's check) in one matter, and failure to cooperate with disciplinary authorities in two matters. The attorney had no history of discipline.

A three-month suspension was imposed in In re Main, 208 N.J. 330 (2011) where, in one client matter, the attorney engaged in gross neglect and lack of diligence for failing to pursue a case and permitting the statute of limitations to run, pattern of neglect, failure to adequately communicate with a client, failure to turn over the client's file, and failure to cooperate with disciplinary authorities. The attorney's disciplinary history included an admonition and a three-month suspension.

A six-month suspension was imposed in In re Davidson, 204 N.J. 175 (2011), for the attorney's fourth brush with the ethics system. In one client matter, the attorney was found guilty of gross neglect; lack of diligence; failure to expedite litigation for failing to answer interrogatories, to provide discovery, or to move to have a complaint restored before its dismissal with

prejudice; failure to communicate with the client; and failure to cooperate with disciplinary authorities. The attorney's ethics history included a reprimand and three-month and six-month suspensions.

A one-year suspension resulted in In re Carlin, 208 N.J. 592 (2012), where, in three client matters, the attorney was guilty of gross neglect, pattern of neglect, failure to communicate with the client, failure to provide the client with a writing setting forth the basis or rate of the fee, recordkeeping improprieties, and failure to cooperate with disciplinary authorities. The attorney's ethics history included a reprimand, a censure, a three-month suspension, and a temporary suspension (for failing to provide the OAE with proctorship reports).

The rule violations here resemble those in Gross (censure) and Carlin (one-year suspension). In contrast, however, Gross had no disciplinary record. As to Carlin, his ethics history (a reprimand, a censure, a three-month suspension, and a temporary suspension) was more serious than respondent's, who has only a three-month suspension. In terms of defaults, this case is like Davidson. Davidson defaulted four times; these are respondent's third and fourth defaults (his prior matter involved two consolidated defaults). From the number of disciplinary matters involving respondent (four), we find that he has not learned from

his prior mistakes. We also find that he has a pattern of failure to cooperate with disciplinary authorities, including not answering the complaints. We, therefore, determine that, like attorney Davidson, respondent should be suspended for six months. The suspension is to be prospective.

We also determine that, prior to reinstatement, respondent shall provide to the OAE proof that his attorney records are in compliance with the rules.

Members Gallipoli and Zmirich voted to impose a one-year prospective suspension, with the above condition. Vice-Chair Baugh did not participate. Member Rivera abstained.

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

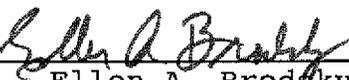
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Steven E. Savage
Docket Nos. DRB 14-051 and DRB 14-109

Decided: October 31, 2014

Disposition: Six-month prospective suspension

<i>Members</i>	Disbar	Six-month Prospective Suspension	One-year Suspension	Dismiss	Abstained	Did not participate
Frost		X				
Baugh						X
Clark		X				
Gallipoli			X			
Hoberman		X				
Rivera					X	
Singer		X				
Yamner		X				
Zmirich			X			
Total:		5	2		1	1



Ellen A. Brodsky
Chief Counsel