

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-067
District Docket No. VC-2012-0038E

IN THE MATTER OF

SEAN LAWRENCE BRANIGAN

AN ATTORNEY AT LAW

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Decision

Argued: May 21, 2015

Decided: September 29, 2015

Jeffrey Wactlar appeared on behalf of the District VC Ethics Committee.

Christopher Fritz appeared on behalf of respondent.

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

This matter was before us on a recommendation for a reprimand filed by the District VC Ethics Committee (DEC). The complaint charged respondent with violating RPC 1.1(b) (pattern of neglect) and RPC 1.4(b) (failure to communicate with the client). For the reasons set forth below, we determined to dismiss the charges against respondent.

Respondent was admitted to the New Jersey bar in 2005. In June 2014, he received an admonition for his failure to communicate with a client. Respondent ignored his client's reasonable requests for an accounting, a bill, or an invoice. He also failed to return the client's multiple telephone calls and emails. In the Matter of Sean Lawrence Branigan, DRB 14-088 (June 23, 2014).

On August 8, 2011, respondent's law office was retained by the grievant, Natalia Aleksandrov, concerning a matrimonial matter. The failure to communicate charge in this matter arises solely out of the allegation that respondent failed to send Aleksandrov timely invoices in accordance with R. 5:3-5. That rule requires an attorney in a matrimonial matter to render bills to the client no less frequently than once every ninety days, provided services have been rendered during that period. R. 5:3-5(a)(5).

Respondent maintains that his firm sent regular invoices to Aleksandrov over the course of the representation. He was able to produce only the last of those invoices, dated April 25, 2012, because his former associates used a decentralized billing system and, thus, he could not access their bills. Moreover, respondent claimed that a subsequent flood damaged his files.

Aleksandrov, who did not participate in the DEC hearing because she was unreachable, had previously acknowledged her receipt of the April 25, 2012, invoice and provided a copy of it to the investigator.

The DEC found, by clear and convincing evidence, that respondent failed to provide invoices every ninety days for legal services to a matrimonial client, as required by R. 5:3-5. The DEC determined that a violation of that rule is a per se violation of RPC 1.4(b), a position urged by the presenter, citing In re Harris, 182 N.J. 594 (2005). The DEC also determined that this matter represents respondent's third ethics violation, which constitutes a pattern of neglect, in violation of RPC 1.1(b). The DEC reached that determination on its finding that respondent had been the subject of discipline twice before. In fact, discipline had been imposed only once before. The formal complaint in the second matter identified by the DEC had been dismissed after a hearing.

Following a de novo review of the record, we determined that the DEC's findings are without legal support. The Harris case does not stand for the proposition that a violation of a court rule is a per se ethics violation. The Harris case involved multiple client matters. In the Matter of E. Lorraine

Harris, DRB 03-150 (August 15, 2003) (slip op. at 5). In particular, the Rochester client matter dealt specifically with Harris' failure to communicate. Id. at 29-30.

In Harris, the Court determined that the attorney failed to communicate with her client because she ignored his repeated requests that she disburse settlement funds that she was holding on his behalf and that she provide him with a copy of the divorce decree and a final bill. Id. at 35-36. There is no mention or treatment of R. 5:3-5 in that case and the Court's decision did not rest on its application. Thus, the DEC's reliance on Harris to support its finding of a per se violation simply for failure to send timely bills, as required by R. 5:3-5, is misplaced.

Moreover, not every rule violation rises to the level of an ethics violation. In the Matter of Stanley E. Marcus, DRB 11-014 (June 28, 2011) (slip op. at 11); In re Marcus, 208 N.J. 178 (2011). Even if respondent stipulated that he did not send a bill to his client every ninety days, as required by the rules, there would still be no ethics violation because the record is devoid of any evidence suggesting that respondent ignored his client's requests for invoices or that he didn't otherwise

respond to her requests for information. Therefore, we determined to dismiss the charged violation of RPC 1.4(b).

Further, we determined to dismiss the second count of the complaint, alleging a pattern of neglect. It is well-settled that, a pattern of neglect requires a finding of at least three instances of neglect. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005). Respondent never has been charged with, let alone found guilty of, neglect, either in this or in any previous disciplinary matter. In finding a pattern of neglect, the DEC considered an ethics complaint that had been dismissed, respondent's previous admonition for failure to communicate with his client, and the within matter, in which no neglect was charged. Thus, no pattern of neglect has been established.

After full consideration, we determine that the matter should be dismissed for lack of clear and convincing evidence of any unethical conduct.

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 Sean L. Branigan
Docket No. DRB 15-067

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Disposition: Dismiss

<i>Members</i>	Disbar	Suspension	Dismiss	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Gallipoli			X			
Hoberman			X			
Rivera			X			
Singer			X			
Zmirich			X			
Total:			8			


Ellen A. Brodsky
Chief Counsel