

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-323
District Docket No. VI-2015-0015E

IN THE MATTER OF :
FRANCIS C. BABCOCK, JR. :
AN ATTORNEY AT LAW :
:

Decision

Decided: April 24, 2017

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 VI Ethics Committee (DEC), pursuant to R. 1:20-4(f). The complaint charged respondent with having violated RPC 1.1 (presumably (a)) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to inform a prospective client of how, when, and where to communicate with the lawyer), RPC 1.4(b) (failure to keep the client reasonably informed about the status of the matter), RPC 1.4(c) (failure to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation), and R. 1:20-3(g)(3)

(presumably also RPC 8.1(b)) (failure to cooperate with disciplinary authorities). For the reasons set forth below, we determined to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1990. He has no history of discipline.

Service of process was proper in this matter. On May 24, 2016, the DEC sent respondent a copy of the complaint, to his office address, in accordance with R. 1:20-4(d) and R. 1:20-7(h), by regular and certified mail, return receipt requested. The regular mail was not returned. On May 26, 2016, the certified mail receipt was returned, indicating delivery, but the signature is illegible.

On June 23, 2016, the DEC sent a second letter to respondent's office, by regular and certified mail, return receipt requested, notifying him that, if he failed to file a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the entire record would be certified directly to us for the imposition of discipline, and the complaint would be deemed amended to include a violation of RPC 8.1(b). On June 27, 2016, the certified mail

receipt was returned, but, again, the signature is illegible. The regular mail was not returned.

As of July 19, 2016, the date of the certification of the record, respondent had not filed an answer to the complaint.

The complaint alleged the following facts. In November 2011, Roeshell Lowe retained respondent to assist with her claims arising from an automobile accident. Respondent failed to provide Lowe with a written fee agreement.

Between November 2011 and the summer of 2014, Lowe regularly attempted to contact respondent to discuss her matter, but to no avail. In the spring of 2014, Lowe learned that the matter respondent had filed on her behalf had been dismissed. Respondent never informed Lowe of the dismissal. Once she learned of the dismissal, Lowe increased her attempts to contact respondent by visiting his office and attaching messages to his door. She also left voicemail messages on his office phone. Respondent never replied to any of her communications.

On June 3, 2015, Lowe filed a grievance against respondent. On August 27, 2015, the DEC sent respondent a copy of Lowe's grievance, along with a request for a written response and any documentation that would assist disciplinary authorities in

understanding the matter. On October 29, 2015, the DEC sent respondent a second letter requesting his reply to the grievance. Respondent, however, failed to provide a response to the grievance.

The complaint alleges that respondent violated RPC 1.1 and RPC 1.3 in that he "appears" to have ceased working on Lowe's matter sometime in 2013, which "may have" irreparably harmed her ability to litigate her claim.

The complaint further alleges that respondent violated RPC 1.4(a) and (c) by failing, for more than one year, to adequately respond to Lowe's requests for updates on the status of her matter and that he violated RPC 1.4(b) by failing to keep Lowe reasonably informed on the status of the matter, including its dismissal.

Finally, the complaint alleges that respondent violated the strictures of R. 1:20-3(g)(3) by failing to provide a written response to Lowe's grievance.

* * *

The complaint alleges sufficient facts to support most of 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)(1).

Respondent violated RPC 1.1(a) and RPC 1.3 by doing little to no work on Lowe's matter. He apparently filed a complaint but did nothing thereafter to further advance Lowe's claims. Eventually, the matter was dismissed for reasons not set forth in the complaint.

Respondent also violated RPC 1.4(b) by failing to keep Lowe informed about the status of her matter and by failing to respond to her reasonable requests for information. Respondent failed to communicate with Lowe for more than three years regarding her matter, failing even to inform her that her matter had been dismissed. Respondent's failure to inform Lowe that her complaint had been dismissed also violated RPC 1.4(c) in that it deprived her of the opportunity to make an informed decision regarding the representation.

Finally, respondent failed to reply to the request for a written response to Lowe's grievance, a violation of RPC 8.1(b) and R. 1:20-3(g)(3).

The facts recited in the complaint do not, however, support a finding that respondent violated RPC 1.4(a). Nothing in the complaint details how respondent failed to inform Lowe of how,

when, and where she could communicate with him. Thus, we determined to dismiss the charged violation of RPC 1.4(a).

In sum, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b) and (c), and RPC 8.1(b).¹

Generally, in default matters, a reprimand is imposed for gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities. See, e.g., In re Cataline, 219 N.J. 429 (2014) (attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with requests for information from the district ethics committee investigator); In re Rak, 203 N.J. 381 (2010) (attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of a grievance); and In re Swidler, 192 N.J. 80 (2007) (attorney grossly neglected one matter

¹ We note that the complaint indicates that respondent failed to provide a written fee agreement to Lowe, which is a violation of RPC 1.5(b). Further, we have determined in the past that the failure to inform a client that his or her matter had been dismissed is a misrepresentation by silence, a violation of RPC 8.4(c). Neither of these RPCs, however, were charged in the complaint. Therefore, we did not consider them in determining the quantum of discipline.

and failed to cooperate with the investigation of an ethics grievance).

Although, the complaint asserts that respondent "may" have caused irreparable damage to Lowe's ability to bring her claim when he allowed it to be dismissed, the record lacks any detail in this respect. Rather, it begs several questions and we are left to speculate on the answers. Therefore, we did not consider this fact in aggravation.

In mitigation, however, respondent has no history of discipline in twenty-six years at the bar.

Nonetheless, respondent blatantly failed his client from the outset of the representation and, for years, ignored her requests for information while allowing her matter to languish and eventually be dismissed. He then, ignored requests from the DEC for information and failed to file an answer to the formal ethics complaint. Therefore, based on the forgoing, we determined to impose a reprimand.

Vice-Chair Baugh did not participate. Member Gallipoli was recused.

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
Ellen A. Brodsky
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Francis C. Babcock, Jr.
Docket No. DRB 16-323

Decided: April 24, 2017

Disposition: Reprimand

<i>Members</i>	Reprimand	Recused	Did not participate
Frost	X		
Baugh			X
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	7	1	1


Ellen A. Brodsky
Chief Counsel