

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. 17-052  
District Docket No. IIA-2014-0021E

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IN THE MATTER OF :  
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GARETH DAVID DESANTIAGO- :  
KEENE :  
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AN ATTORNEY AT LAW :  
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Decision

Argued: April 20, 2017

Decided: July 28, 2017

David Torchin appeared on behalf of the District IIA Ethics Committee.

Lawrence H. Kleiner appeared on behalf of respondent.

This matter was originally before us on a recommendation for an admonition, filed by the District IIA Ethics Committee (DEC), based on its finding that respondent had violated RPC 1.4(b) and (c) (failure to communicate with the client), RPC 1.7(a)(2) (concurrent conflict of interest), and RPC 1.16(d) (improper termination of representation) during the course of his brief representation of his client. We determined to treat the matter as a recommendation for greater discipline, in accordance with R. 1:20-15(f)(4). For the reasons set forth below, we determine to impose a censure on respondent for his misconduct.

Respondent was admitted to the New Jersey bar in 1980. At the relevant times, he maintained an office for the practice of law in New Milford. He has no disciplinary history.

On July 27, 2015, the DEC filed a formal ethics complaint, charging respondent with having violated RPC 1.4(b) and (c), RPC 1.7(a)(2), RPC 1.8(e) (providing financial assistance to a client in connection with pending or contemplated litigation), RPC 1.16(d), RPC 3.4(b) (counseling or assisting a witness to testify falsely), RPC 8.4(a) (violating or attempting to violate the RPCs), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). The charges stemmed from respondent's representation of Sonia Owchariw in a matter involving Mozart, her cat.

On September 4, 2013, Owchariw retained respondent to represent her in a matter involving a local veterinarian's treatment of Mozart, and a local newspaper's article about the matter, which, according to respondent, was "a sensationalized completely false and knowingly fabricated account" of Owchariw's allegations against the veterinarian. On September 21, 2013, respondent transmitted to the Superior Court of New Jersey, Law Division, Union County, for filing, a civil complaint on Owchariw's behalf against the veterinarian, the newspaper, and

other individuals affiliated with them (the Law Division case). The complaint identified a Union address as Owchariw's residence.

On September 25, 2013, the day after the complaint was filed, respondent invited Owchariw to move into one of two spare rooms in his house, where she could reside rent-free. According to respondent, at the time, Owchariw was sleeping on a couch in someone's living room, where she had no privacy. He also claimed that she had been living in a car at a rest stop on the Garden State Parkway for six months, which he recognized "would be very strenuous and stressful on anybody." Respondent offered a room to Owchariw to "take her out of the . . . fray" and to give her "a place where she could close the door and get a good night's sleep."

Respondent testified that he sought no sexual benefit from Owchariw but, rather, "just wanted to help her." Further, it was not his intention that she live in his home permanently. Indeed, Owchariw lived with respondent for only eleven days, from September 25 to October 6, 2013.

On October 1, 2013, respondent accompanied Owchariw to a hearing in the Union Township municipal court. He did not represent her in that matter. According to respondent, Owchariw "went ballistic in the courtroom." During a break, he told her

that, "if you keep this up I can't represent you in the Law Division case, you got to calm down."

On the car ride back from the municipal court hearing, respondent and Owchariw discussed her potential deposition in the Law Division case. Because he believed that their living arrangement was a conflict of interest, he told Owchariw that, if she were deposed, she should not state that she was living in respondent's house, "unless it came up." He explained: "I mean, if she [sic] asked point blank, she has to tell the truth."

Respondent also told Owchariw that "it would be better if you didn't say you live with me." He explained that his office was in his house and that "[b]ecause she's a woman and I'm a man and [sic] it doesn't look good." Owchariw became angry because, if she had known that their living arrangement was improper, she would not have given up her prior housing.

The next morning, October 2, 2013, Owchariw told respondent that, based on their conversation, she did not believe it was a good idea for her to live in his house and that she wanted to move out. Owchariw was upset because her former housing had cost only \$50 a week. Respondent replied that it was not necessary for her to leave because she would have time to move out prior to her deposition, which had not yet been scheduled.

Because respondent regretted causing Owchariw "this trouble," he gave her \$300 and expressed the hope that she could return to her former housing. Respondent did not expect repayment of the \$300, which he considered recompense for having further disrupted her life.

Owchariw did not move out of respondent's house on October 2, 2013. He continued to represent her and, on October 3, filed an amended complaint, which identified the same Union address as Owchariw's residence, even though she was now living in respondent's New Milford home. Respondent knew this to be the case, but stated that she was receiving her mail at the Union address.

On the morning of October 6, 2013, Owchariw moved out of respondent's house. As she prepared to close the door behind her, she yelled "what about the case?" Respondent replied: "I'm not handling the case anymore."

The next day, October 7, 2013, respondent wrote to the court and requested that the complaint be withdrawn, without prejudice. He did not copy Owchariw on the letter. Indeed, respondent said nothing more to Owchariw, either verbally or in writing. He did not explain to her "the ramifications" of his termination of the representation. He did not tell her that he had withdrawn the complaint. He did not advise her to hire another attorney or

inform her that she could represent herself. He said nothing to her about how she should proceed.

Respondent and Owchariw did not communicate with one another from October 7 to November 20, 2013. On November 21, 2013, he called Owchariw, told her that he missed her, and invited her to Thanksgiving dinner. Respondent admitted that, during their conversation, when Owchariw inquired about the case, he replied that "the Complaint was still good and that she could find another attorney." He did not disclose that he already had withdrawn the amended complaint.

During a telephone conversation on the following day, November 22, 2013, respondent asked Owchariw whether he could be her boyfriend, if he "did a good job and . . . was a gentleman." Respondent explained that, by "boyfriend," he meant that he and Owchariw would "just be companions."

Respondent maintained that he still was not seeking a sexual benefit. He was simply happy to know another person, who shared his knowledge of their common heritage. Moreover, he interpreted their conversation to mean that, at the conclusion of the case, Owchariw would consider having him as her boyfriend if "everything went well." Respondent admitted that, by this point, he had developed "feelings" for her.

Respondent agreed to resume the representation of Owchariw, on the condition that she send him an e-mail confirming her understanding that, although he would do his best, "there would be no guarantees." Owchariw complied with respondent's request by e-mail, sent to him on that same day, at 10:03 a.m.

On November 22, 2013, presumably after respondent had received Owchariw's e-mail, he prepared and mailed for filing a motion to restore her case to active status. He did not copy Owchariw on the motion or even inform her of its filing.

On the evening of November 22, 2013, Owchariw sent an e-mail to respondent, asking if he wanted to meet for coffee on Sunday "and talk some more." He agreed, declaring that he was "[s]o happy" and "can't wait."

On Saturday, November 23, 2013, at 10:23 p.m., Owchariw e-mailed respondent, stating that she was at work, was exhausted, and had to cancel their coffee date. Consequently, he decided to withdraw from the representation because he did not want to be involved in a "game."

On Monday, November 25, 2013, respondent hand-delivered a letter to the clerk, which stated:

I AM HAND DELIVERING THIS LETTER TO WITHDRAW  
MOTION TO RESTORE CASE AS INDICATED ABOVE.  
THERE HAS BEEN A MISTAKE. PLEASE WITHDRAW AND  
DO NOT FILE THE MOTION TO RESTORE EFFECTIVE  
IMMEDIATELY. THANK YOU.

[Ex.P9.]

Between the time that Owchariw canceled their coffee date and the hand delivery of this letter, respondent had no conversation with Owchariw and, thus, did not inform her that he, again, was terminating their attorney-client relationship or withdrawing either the amended complaint or the motion to reinstate it. Moreover, he did not copy Owchariw on the letter to the clerk.

Two days later, on Wednesday, November 27, 2013, respondent sent an e-mail to Owchariw wishing her a happy Thanksgiving. In reply, she told him to stop contacting her, and instructed him not to serve any of the defendants with the complaint. Still, respondent did not inform Owchariw that he had filed and withdrawn a motion to restore the action because, he testified, she had told him not to contact her again and he "wasn't going to risk it." As instructed, he never contacted Owchariw again and, thus, did not provide her with advice on how to protect her interests.

The DEC found that respondent had violated RPC 1.4(b) and (c), reciting only the language of the RPC. The DEC also concluded that respondent had violated RPC 1.7(a)(2), because his representation of Owchariw was materially limited by his personal interest, that is, his personal feelings for her. Finally, the



DEC determined that respondent violated RPC 1.16(d), by withdrawing the complaint without notice to Owchariw and without "giving her any advice as to how to protect her rights."

In the DEC's view, the record lacked clear and convincing evidence that respondent violated RPC 1.8(e), RPC 3.4(b), and RPC 8.4(a), (c), or (d).

According to the panel, respondent did not commit "an ethical violation" by putting the Union Township address on the amended complaint because, at the time, that location was still her mailing address. Further, the panel overlooked the inconsistency in respondent's statements that the complaint was still "good" and that it had been withdrawn, by interpreting his statements to mean that, "[s]ince the matter had only been withdrawn without prejudice approximately six weeks earlier, it was 'good' in that it could be reinstated by motion." Thus, respondent's statement that the complaint was still "good" was "not proven to be dishonest."

In mitigation, the DEC noted that respondent had maintained an unblemished disciplinary record in more than thirty-five years of practice; that he readily admitted and acknowledged his mistakes; that he expressed remorse; that there was "little chance of recidivism;" that he was cooperative throughout the investigation and hearing process; and that his conduct did not

cause any harm to Owchariw, who had voluntarily abandoned her claims, knowing that the complaint had not been served.

Although not specifically identified as mitigating factors, the DEC also noted that respondent's motivation for helping Owchariw was not sexual in nature, but rather based on compassion, as "he felt badly for her." He also was motivated by his "history of helping people in need with difficult cases" and "the kinship he felt with [Owchariw] based on their shared . . . heritage."

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Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence. We cannot, however, agree with all of the DEC's findings or its specific recommendation for discipline.

The formal ethics complaint charged respondent with having violated RPC 1.4(b) and (c) and RPC 1.16(d), based on his failure to provide Owchariw with (1) "adequate notice" of his intention to withdraw both her complaint and the subsequent motion to reinstate the complaint; (2) an explanation of the ramifications of the withdrawal of those documents and what she needed to do to preserve her claims; and (3) copies of the letters withdrawing the complaint and the subsequent motion.

RPC 1.4(b) and (c) provide:

(b) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(c) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

RPC 1.16(d) provides, in pertinent part, that, upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client and allowing time for employment of other counsel.

Respondent verbally terminated his representation of Owchariw on October 6, 2013, and confirmed that decision, in writing, on the following day. He also wrote to the court the following day and requested withdrawal of the amended complaint. Respondent did nothing to protect Owchariw's interests upon termination of the representation, a violation of RPC 1.16(d). When he suddenly terminated his representation of Owchariw, in early October 2013, he failed to provide her with the opportunity to employ other counsel, choosing instead to withdraw the complaint. Although respondent communicated his decision to terminate the representation to Owchariw, verbally and in writing, he did not tell her either that he would be seeking the

immediate withdrawal of the complaint or that he had done so, a violation of RPC 1.4(b). For the same reasons, respondent committed these violations a second time when he withdrew the motion to reinstate the complaint, in November 2013, after Owchariw had canceled their coffee date and told him to stop contacting her.

By failing to discuss with Owchariw the ramifications of his withdrawal from representation, as well as his withdrawal of the amended complaint and the motion to reinstate the complaint, respondent deprived his client of the opportunity to make an informed decision regarding the representation. Although we believe that respondent's conduct in this regard violated RPC 1.4(c), we consider RPC 1.16(d) to be the more applicable Rule under the circumstances.

The complaint also charged respondent with having violated RPC 1.7(a)(2) due to his "personal feelings" for Owchariw, which guided his conduct, rather than her best interests. Specifically, respondent "repeatedly failed to act objectively" and terminated the representation, twice, "because his feelings were hurt." Further, according to the ethics complaint, respondent's filing and withdrawing the complaint and the motion "taxed Court personnel unnecessarily, and unfairly," a violation of RPC 8.4(d).

RPC 1.7(a)(2) prohibits a lawyer from representing a client if there is "a significant risk that the representation . . . will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer." Here, respondent's personal interest in Owchariw did not simply present a significant risk that his representation of her would be materially limited. Rather, the representation was, in fact, materially limited by respondent's personal interest in her.

Respondent's acts of retribution against Owchariw undercut his claim that he invited the allegedly homeless client to live with him, purely out of charity or affinity. When Owchariw moved out of respondent's house on October 6, 2013, fewer than two weeks after she had moved in, his response was to terminate his representation of her and immediately request the Clerk to "withdraw" the complaint, "without prejudice." He did not copy Owchariw on the letter, and she had no idea that the case had been withdrawn, at least at that time.

When respondent renewed contact with Owchariw, on November 21, 2013, it was not for the purpose of informing her that he had requested the withdrawal of the complaint. Rather, it was to invite her to Thanksgiving dinner, on November 27, 2013.

The next day, on November 22, 2013, respondent filed a motion to reinstate the complaint. That evening, he and Owchariw agreed to meet for coffee on Sunday, November 24, 2013, but Owchariw canceled on Saturday night. As respondent himself testified, he withdrew the motion to reinstate the complaint on Monday, because he did not want to play Owchariw's "game." Respondent's actions demonstrate, clearly and convincingly, that he was engaged in an impermissible conflict of interest vis-à-vis his representation of Owchariw.

Respondent's actions also violated RPC 8.4(d), which prohibits an attorney from engaging in conduct prejudicial to the administration of justice. By withdrawing the amended complaint and then the motion to reinstate the amended complaint, respondent used judicial system resources to avenge perceived personal wrongs committed against him and, thus, perverted the purpose of the courts, which is to dispense justice, not to exact revenge. See, e.g., In re Delgado-Shafer, 210 N.J. 127 (2012) (attorney violated RPC 8.4(d) by repeatedly filing deficient bankruptcy petitions, which was found to be "a perverse form of legal bullying," designed to delay her former clients' civil action seeking recompense for the ill effects of her misdeeds, committed while she was their attorney).

The complaint charged respondent with another conflict of interest, under RPC 1.8(e). The alleged violation stemmed from his provision of financial assistance to Owchariw, in the form of rent-free housing and the payment of \$300 to her when she moved out of his home.

With certain exceptions not applicable here, RPC 1.8(e) prohibits a lawyer from providing a client with financial assistance "in connection with pending or contemplated litigation." Attorneys typically violate this Rule by lending funds to their personal injury clients, who agree to repay the monies out of the proceeds of their recoveries. See, e.g., In the Matter of Frank J. Shamy, DRB 07-346 (April 15, 2008) (attorney made small, interest-free loans to three clients, who agreed that, upon settlement of their cases, the loans would be deducted from their recoveries).

Here, respondent did not lend funds to Owchariw. Rather, he permitted her to live in his house, rent-free. He gifted \$300 to her, with no expectation of repayment. His conduct in this regard did not violate RPC 1.8(e). We, therefore, dismiss that alleged violation.

Finally, the complaint charged respondent with having violated RPC 8.4(c), based on respondent's "various acts." In its analysis of respondent's conduct under this Rule, the DEC

identified the following conduct: respondent's identification, in the amended complaint, of a Union address as the location of Owchariw's residence; his instruction that she not identify his address as hers when she was deposed in the civil action; and his representation that the complaint was "good," even though he had withdrawn it. According to the DEC, none of these facts supported the finding that respondent violated RPC 8.4(c). We disagree.

R. 1:4-1(a) requires the first pleading in a civil action to include the party's "residence address" – not his or her mailing address. Respondent testified that, when he drafted the amended complaint, he knowingly identified, as Owchariw's residence, the Union address, where she was not residing, rather than his New Milford address, where she was residing at the time. This was a misrepresentation and, thus, a violation of RPC 8.4(c). In our view, respondent's attempt to justify this misrepresentation, on the ground that Owchariw continued to receive mail at the Union address, was based on his intent to conceal that he and Owchariw were sharing the same residence, which he believed was a conflict of interest.

In respect of the issue of whether respondent told Owchariw to conceal her true address at her deposition, the complaint alleged, on the one hand, that respondent "advised" Owchariw that, when she was deposed, "she cannot use his address as being



where she lives." On the other hand, in the same paragraph, the complaint alleged that respondent told Owchariw that, "as they got closer to the deposition, they would find her someplace else to live." In respondent's answer to the ethics complaint, he admitted these allegations.

At the hearing, respondent testified that, when he and Owchariw discussed her potential deposition in the Law Division case, he told Owchariw that, if she were deposed, she should not state that she was living in respondent's house, "unless it came up," in which case she would have to tell the truth. Respondent also testified that he told Owchariw that "it would be better if you didn't say you live with me" because "it doesn't look good."

RPC 3.4(b) prohibits a lawyer from counseling a witness to testify falsely. RPC 8.4(a) bars a lawyer from violating the RPCs or knowingly assisting or inducing another to do so. Although it is clear that, if Owchariw were deposed, respondent did not want her to disclose that they lived together, the evidence does not establish that respondent told Owchariw to lie. Further, respondent's desire that Owchariw not disclose their living arrangement, in our view, was tempered by his recognition that, if she were directly asked the question, she would have to tell the truth, as well as his stated goal of finding her another place to live before she was deposed. Thus, when considered as a

whole, neither respondent's answer to the ethics complaint nor his testimony constitute clear and convincing evidence that he violated either RPC. Rather, his statements simply conveyed to Owchariw that she had to "change her residence address prior to any deposition in her matter." For these reasons, we dismiss the alleged violations of RPC 3.4(b) and RPC 8.4(a).

We disagree with the DEC's finding that, because the amended complaint could be reinstated, respondent did not violate RPC 8.4(c) when he told Owchariw that her case was "good." In respondent's answer to the ethics complaint, he admitted that, when Owchariw asked him about the status of her case, during their November 21, 2013 telephone call, respondent told her that "the Complaint was still good and that she could find another attorney, but he did not inform her . . . that he had previously withdrawn the Complaint." We cannot accept the DEC's determination that respondent did not deceive Owchariw when he told her that the status of her case was "good," knowing that he had withdrawn the amended complaint. His statement was false. That the complaint could be reinstated does not render the lie true.

To conclude, the clear and convincing evidence established that respondent violated RPC 1.4(b) and (c), RPC 1.16(d), RPC 1.7(a)(2), and RPC 8.4(c) and (d). We dismiss the alleged violations of RPC 1.8(e), RPC 3.4(b), and RPC 8.4(a).

There remains for determination the appropriate quantum of discipline to impose on respondent for his ethics infractions.

Generally, misrepresentations, conflicts of interest, and conduct prejudicial to the administration of justice each require, at a minimum, the imposition of a reprimand. See, e.g., In re Ruffolo, 220 N.J. 353 (2015) (among other acts of unethical conduct, the attorney violated RPC 8.4(c), by assuring his client that his matter was proceeding apace, knowing that the complaint had been dismissed, and that the client should expect a monetary award in the near future); In re Berkowitz, 136 N.J. 148 (1994) (conflict of interest); and In re Cerza, 220 N.J. 215 (2015) (attorney failed to comply with an order requiring him to produce subpoenaed documents in a bankruptcy matter, a violation of RPC 3.4(c) and RPC 8.4(d); he also exhibited a lack of diligence and failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b)). Thus, at a minimum, a reprimand is warranted for respondent's violations of RPC 1.7(a)(2) and RPC 8.4(c) and (d) alone.

In the case of a conflict of interest, if the conflict involves "egregious circumstances," discipline greater than a reprimand is warranted. Berkowitz, supra, 136 N.J. at 148. Here, respondent's conduct was vindictive in nature and his acts of retribution against Owchariw undercut his claim that he invited

the allegedly homeless client to live with him, purely out of charity or affinity. When she moved out of his house, he terminated the representation and notified the clerk of the withdrawal of the complaint, without notice to Owchariw. Likewise, after she canceled their coffee date, respondent withdrew the motion to reinstate the complaint, again without notice to her. Respondent's acts of revenge were compounded by his failure to protect Owchariw's interests upon termination of the representation. In our view, these facts constitute "egregious circumstances," sufficient to enhance to a censure what would ordinarily be a reprimand.

Moreover, respondent also violated RPC 1.4(b) and RPC 1.16(d), a combination which has resulted in the imposition of an admonition. See, e.g., In the Matter of Gary A. Kraemer, DRB 14-085 (June 24, 2014) (attorney repeatedly failed to reply to his client's -- and his prior counsel's -- numerous requests for information about the two matters, a violation of RPC 1.4(b); also, for several months after final judgment was entered against his client, the attorney failed to turn over the file to appellate counsel, a violation of RPC 1.16(d); the attorney also violated RPC 1.3 (lack of diligence)).

Certainly, there are mitigating factors weighing in respondent's favor, not the least of which is his multi-decade


unblemished disciplinary history. Still, respondent's misconduct was serious, especially his use of the courts to exact revenge on Owchariw.

For these reasons, we determine to impose a censure on respondent for his violation of RPC 1.4(b), RPC 1.4(c), RPC 1.7(a)(2), RPC 1.16(d), and RPC 8.4(c) and (d).

Members Boyer and Singer voted to impose a reprimand. Member Gallipoli 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:   
Ellen A. Brodsky  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Gareth David DeSantiago-Keene  
Docket No. DRB 17-052

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Argued: April 20, 2017

Decided: July 28, 2017

Disposition: Censure

<i>Members</i>	Censure	Reprimand	Did not participate
Frost	X		
Baugh	X		
Boyer		X	
Clark	X		
Gallipoli			X
Hoberman	X		
Rivera	X		
Singer		X	
Zmirich	X		
Total:	6	2	1

  
Ellen A. Brodsky  
Chief Counsel