SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-349
District Docket No. IV-2017-0002E

IN THE MATTER OF	
SETH C. HASBROUCK	
AN ATTORNEY AT LAW	

Decision

Decided: April 4, 2018

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 IV Ethics Committee (DEC), pursuant to R. 1:20-4(f). A four-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client), RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 5.5(a) (practicing law while ineligible), and RPC 8.1(b) (failure to cooperate with an ethics investigation).

We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 2009. He has no prior discipline.

By Order effective August 24, 2015, the Court declared respondent ineligible to practice law for failure to pay the annual assessment for 2015 to the New Jersey Lawyers' Fund for Client Protection (CPF). On November 18, 2015, his name was removed from the Ineligibility List for that year.

By Order effective November 16, 2015, the Court again declared respondent ineligible, this time for failure to comply with mandatory attorney Continuing Legal Education requirements (CLE). Respondent's name was removed from the Ineligibility List on November 5, 2017.

Service of process was proper in this matter. On May 12, 2017, the DEC sent respondent a copy of the complaint at his last known home address listed in the attorney registration records, by certified mail, return receipt requested, and by regular mail. The certified mail receipt was returned unsigned. The regular mail was not returned.

On July 17, 2017, the DEC sent a second mailing to respondent, by regular mail, to the same home address, notifying him that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted; that, pursuant to R. 1:20-4(f) and R.

1:20-6(c)(1), the record in the matter would be certified directly to us for imposition of sanction; and that the complaint would be amended to include a charge of a violation of RPC 8.1(b). This mailing was not returned.

The time within which respondent may answer the complaint has expired. As of September 20, 2017, the date of the certification of the record, respondent had not filed an answer.

We now turn to the allegations of the complaint.

The McLean Matter

In May 2010, Kim J. McLean, the grievant, retained respondent to represent her minor child for an action to recover damages for injuries the child suffered as the result of a May 3, 2010 dog bite.

On April 30, 2012, respondent filed a complaint in the Superior Court, Camden County, against dog owner Kennita Nicholson; David Spina, the condominium owner where Nicholson lived; and LasCascata Homeowners Association (LHA).

Thereafter, respondent engaged in discovery, took depositions, and communicated with the client. In November 2013, the parties participated in court-ordered arbitration, at which time a panel found in favor of the plaintiff child, and

apportioned liability equally among the three defendants. The following month, the defendants requested a trial de novo.

On an undisclosed date, defendants Spina and LHA filed motions for summary judgment, returnable in January 2013, but withdrew those motions when, in early 2013, they reached a tentative settlement ($15,000) with the plaintiff and requested a "friendly hearing" to approve the settlement.[1]

Respondent was granted more than two continuances of the friendly hearing before it was rescheduled for November 12, 2014. Although respondent did not request a continuance for the November hearing date, he failed to appear with his client for the hearing, prompting Spina and LHA to re-file their summary judgment motions.

On April 9, 2015, the day before the summary judgment return date, respondent informed LHA's counsel that he had "reestablished contact" with his client, and would be filing responsive pleadings. Respondent, however, filed no reply and, on the April 10, 2015 return date, the court entered summary judgment in favor of Spina and LHA.

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[1] Pursuant to R. 4:44-3, a hearing before a judge is required to consummate a settlement in cases involving minors.

By letter dated April 14, 2015, defense counsel provided written notice to respondent of the filed order granting summary judgment.

Between 2014 and 2017, McLean called respondent at his office multiple times, seeking information about the status of the claim and settlement. Respondent, however, "never returned her calls."

The complaint alleged that respondent's failure to attend the scheduled friendly hearings, as well as his failure to address the motion for summary judgment or the entry of the order granting summary judgment, violated RPC 1.1(a) and RPC 1.3. His failure to reply to McLean's multiple requests for information about the case violated RPC 1.4(b).

The County of Gloucester Matter

On January 1, 2016, respondent and the County of Gloucester entered into a one-year contract for respondent's legal services. When respondent entered into the contract with the County, he was ineligible to practice law, based on his failure to comply with mandatory CLE requirements. The Court's Order was effective November 16, 2015 and remained in effect until November 5, 2017, when his name was removed from the list of ineligible attorneys.

The complaint alleged that, by accepting attorney employment with Gloucester County, respondent engaged in the unauthorized practice of law, a violation of RPC 5.5(a), R. 1:20-1, R. 1:28-2, and R. 1:28A-2.[2]

Although the complaint also charged respondent with having violated the Court's ineligibility Order, in violation of RPC 3.4(c), it did not allege facts to indicate that respondent knew of his ineligibility when he entered into the contract with Gloucester County.

Finally, on January 24, 2017, the DEC sent respondent a copy of the grievance in the McLean matter to his last known home address, and requested his written reply. The correspondence was returned as undeliverable. On February 7, 2017, the investigator sent a copy of the earlier letter to respondent at his last known office address, and left a voice message for respondent at the number for his last known business telephone.

On an unspecified date, respondent returned the call, informed the investigator that he had moved to Philadelphia, and

[2] R. 1:20-1 and R. 1:28-2 address an attorney's obligation to pay an annual fee to the CPF. R. 1:28A-2 involves an attorney's obligations regarding IOLTA accounts. The complaint contains no facts implicating these violations.

provided his new home address, along with an e-mail address where he could be reached.

Thereafter, the DEC sent the earlier correspondence to respondent by e-mail and certified mail to the new home address respondent had provided. Respondent acknowledged receipt of the e-mailed documents and indicated that he would review the grievance and provide his reply. Between February 16 and March 24, 2017, the investigator "had multiple e-mail correspondence with Respondent, but no response was ever given."

On March 28, 2017, respondent delivered a box of documents to the investigator, but it did not contain a reply to the grievance.

* * *

The facts recited in the complaint support some, but not all, 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). Nevertheless, each charge must contain sufficient facts to support a finding of unethical conduct.

In the McLean matter, respondent was retained to prosecute a claim for injuries sustained by McLean's child. Respondent filed a timely complaint in April 2012, engaged in discovery,

took depositions, and entered into settlement negotiations with at least two defendants. Thereafter, in 2013, respondent apparently "dropped the ball," never requesting a continuance of the November 12, 2014 "friendly hearing" on a proposed $15,000 settlement with Spina and LHA. He failed to appear at the hearing with his client, and subsequently failed to oppose the defendants' renewed, April 2015 summary judgment motion, which was then granted in favor of the defendants.

By his failure to prosecute McLean's case to conclusion, and to thereafter take steps to vacate summary judgment, respondent is guilty of gross neglect and a lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively.

From 2014 to 2017, respondent failed to keep McLean adequately informed about events in the case, and failed to reply to her reasonable requests for information, violations of RPC 1.4(b).[3]

In the Gloucester County matter, respondent engaged in the unauthorized practice of law, a violation of RPC 5.5(a), by executing an employment contract, under which he was to provide legal services to the County for a period of one year. At the

[3] Although respondent's failure to inform McLean of the summary judgment order constitutes a misrepresentation by silence, we make no such finding because the complaint did not charge a violation of RPC 8.4(c). See R. 1:20-4(b).

time, January 1, 2016, he was ineligible to practice law, having been declared ineligible effective November 16, 2015. Respondent remained ineligible until two years later, November 5, 2017.

In respect of the RPC 3.4(c) charge, however, because the complaint contains no facts that respondent knew of his ineligibility when he signed the contract with Gloucester County, it cannot be said that he knowingly disobeyed an order of a tribunal. Thus, for lack of clear and convincing evidence, we dismiss the RPC 3.4(c) charge.

Finally, although respondent was in contact, to some extent, with the investigator, he failed to reply to the grievance, a violation of RPC 8.1(b).

In sum, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 5.5(a), and RPC 8.1(b).

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, and the seriousness of the attorney's disciplinary history. See, e.g., In the Matter of Craig C. Swenson, DRB 16-278 (January 20, 2017) (admonition for attorney who filed four workers' compensation claims for his client and, after the client agreed to accept the workers' compensation carrier's

$5,000 settlement offer for two of them, failed to obtain Social Security/Medicare approval or to monitor the client's matters; the attorney also failed to oppose a motion to dismiss three of the claims, resulting in their dismissal; the remaining claim was dismissed for failure to provide medical information; the attorney also failed to inform his client of the dismissals and failed to take action to have the petitions reinstated; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b); we considered, in mitigation, that the attorney stipulated to the violations, had no prior discipline in twenty-eight years at the bar, and entered into therapy for "the causes and consequences" of his actions); In the Matter of Walter N. Wilson, DRB 15-338 (November 24, 2015) (admonition for attorney who neither filed his client's tax appeal from the loss of a special assessment, nor advised the client of the deadline to do so, thus foreclosing any opportunity to perfect an appeal; violations of RPC 1.1(a) and RPC 1.3; in mitigation, we considered that the attorney had no prior discipline, his misconduct involved only one client matter and did not result in significant injury to the client, the misconduct was not for personal gain, and, at the time of the misconduct, the attorney was caring for his girlfriend, who was seriously ill); In the Matter of Josue Jean Baptiste, DRB 15-211 (September 21, 2015) (admonition for

attorney who, due to an error, had a $1.5 million default judgment entered against his client and his client's employer; throughout the representation, the attorney failed to inform his client of events in the case, such as the default judgment, a subpoena seeking information in connection with the default judgment, and a warrant for the client's arrest issued as a result of the attorney's failure to honor the subpoena; seven months later, the attorney succeeded in a motion to vacate the judgment, but the client elected to proceed pro se; the case was later dismissed on summary judgment; in mitigation, we considered that the misconduct involved a single client matter, the attorney had no prior discipline, he readily admitted misconduct, and he exhibited genuine contrition and remorse; in aggravation, the client suffered mental and economic hardships as a result of the misconduct); In re Sachs, 223 N.J. 241 (2015) (reprimand for attorney who had represented two sisters in the sale of a home, against which two liens had attached; the title company required the amount of the liens to be held in escrow, and the sisters provided the funds; the attorney thereafter failed to negotiate the pay-off of the judgments, leaving the title company to do so using the escrowed monies, and retaining the balance as its fee; the attorney neither obtained a bill from the title company justifying its fee, nor told his clients

that the title company had taken a fee; he also failed to return one of the client's telephone calls for several years after the escrow funds had been disbursed; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b); reprimand imposed due to economic loss suffered by the clients); and In re Calpin, 217 N.J. 617 (2014) (reprimand for attorney who failed to oppose the plaintiff's motion to strike his client's answer, resulting in the entry of a final judgment against his client; the attorney never informed his client of the judgment; notwithstanding the presence of some mitigation in the attorney's favor, the attorney received a reprimand because of the "obvious, significant harm to the client," that is, the judgment).

Practicing law while ineligible is generally met with an admonition if the attorney is either unaware of the ineligibility or advances compelling mitigating factors. An admonition may be sufficient even if the attorney displays other, non-serious, conduct. See, e.g., In the Matter of Jonathan A. Goodman, DRB 16-436 (March 22, 2017) (attorney practiced law while ineligible for failure to file annual IOLTA registration statements during two periods of ineligibility; mitigation included the attorney's forty-year career without prior discipline, his lack of awareness of his ineligibility, the swift corrective measures he took to cure the deficiencies,

and medical issues of his own and those of his parents) and In the Matter of John L. Conroy, Jr., DRB 15-248 (October 16, 2015) (attorney practiced law while administratively ineligible to do so for failure to submit the required IOLTA forms, a violation of RPC 5.5(a); the attorney also violated RPC 1.5(b) when he agreed to draft a will, living will, and power of attorney, and to process a disability claim for a new client, but failed to provide the client with a writing setting forth the basis or rate of his fee; thereafter, the attorney was lax in keeping his client and the client's sister informed about the matter, which resulted in the client's filing the claim, a violation of RPC 1.3 and RPC 1.4(b); finally, the attorney failed to reply to the ethics investigator's three requests for information, a violation of RPC 8.1(b); we considered that, ultimately, the attorney had cooperated fully with the investigation by entering into a disciplinary stipulation, that he agreed to return the entire $2,500 fee to help compensate the client for lost retroactive benefits, and that he had an otherwise unblemished record in his forty years at the bar).

Here, there is no evidence that respondent was aware of his ineligibility when he entered into a contract with the County. As such, an admonition is implicated for practicing while ineligible.

Failure to cooperate with an ethics investigation, without more, results in an admonition. See, e.g., In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015); In the Matter of Martin A. Gleason, DRB 14-139 (February 3, 2015); and In the Matter of Jeffrey M. Adams, DRB 14-243 (November 25, 2014).

In aggravation, respondent permitted this matter to proceed to us as a default. "A respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008). For that reason, the baseline level of discipline is enhanced to a reprimand.

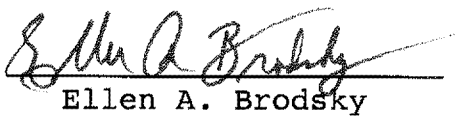
In further aggravation, however, there was harm to the client, inasmuch as the minor child forever lost a claim for injuries sustained in the dog-bite incident. For the presence of this additional aggravating factor, we determine that a censure is the appropriate sanction for the totality of respondent's wrongdoing.

Chair Frost and Member Zmirich 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
Bruce W. Clark, Vice-Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Seth C. Hasbrouck
Docket No. DRB 17-349

Decided: April 4, 2018

Disposition: Censure

Members	Censure	Abstained	Did not participate
Frost			X
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman	X		
Rivera		X	
Singer	X		
Zmirich			X
Total:	6	1	2

Ellen A. Brodsky
Chief Counsel