

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-317 (formerly 17-282)
District Docket No. IV-2016-0037E

In The Matter Of
Hercules Pappas
An Attorney At Law

Supplemental Decision

Decided: November 30, 2018

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

Previously, this matter was before us at our October 2017 meeting on a certification of default filed by the District IV Ethics Committee (DEC), pursuant to R. 1:20-4(f). The complaint charged respondent with violations of RPC 5.5(a)(1) (engaging in the unauthorized practice of law) and RPC 8.1(b) (failure to cooperate). We found that respondent had violated only RPC 8.1(b),

for which we determined to issue a reprimand. The decision in that matter was transmitted to the Court on January 22, 2018. Three weeks later, on February 12, 2018, respondent filed a notice of petition for review (PFR) directly with the Court. Although respondent's cover letter indicated that a copy of the PFR was sent to both the Court and the Office of Board Counsel (OBC), his certification in support of the PFR makes clear that he delivered eight copies of his petition to only the Office of the Clerk of the Supreme Court. Neither the OBC nor the DEC were served with respondent's petition.

On September 7, 2018, the Court remanded the matter to us to allow respondent to move to vacate the default. The Court further ordered us to file a supplemental decision following the disposition of respondent's motion to vacate the default (MVD). The Court retained jurisdiction.

On October 29, 2018, respondent filed a MVD with us and with the Court. For the reasons set forth below, we determine to deny the motion and rely on our previous decision to impose a reprimand based solely on the violation of RPC 8.1(b).

In his PFR, respondent stated that he became aware of the disciplinary matter against him only after we had issued our decision. He added that he has only the complaint, dated January 16, 2018, and our decision, dated January 22,

2018. Respondent presumed there was a typographical error somewhere, noting that the decision appeared to have been filed six days after the complaint was dated and signed. However, the complaint that respondent referenced (and attached to his PFR as Exhibit A) was a request for a statement of respondent's position in response to a grievance filed against him in Pennsylvania. The remainder of respondent's PFR mirrors his MVD. Therefore, we now turn to the motion.

Following receipt of the Court's remand Order, we communicated with respondent by letter dated September 11, 2018, and set a filing deadline of September 26, 2018 for his motion to vacate default. The matter was docketed for our October 2018 meeting. Soon thereafter, respondent requested an extension of time to file his MVD in order to seek and obtain the assistance of counsel. Respondent was granted an extension to October 15, 2018, and the matter was rescheduled for our November 2018 meeting. On October 11, 2018, respondent again contacted OBC, by e-mail, stating that he had secured counsel but that counsel indicated that he would enter his appearance only if "I am able to get more time." Respondent requested another extension to file his MVD. The request was granted and he was given until October 29, 2018, to file his motion.

On October 29, 2018, respondent filed a MVD with us and with the Court. Notably, he did so pro se. Further, he again failed to serve the DEC. Thus, on October 31, 2018, OBC forwarded the motion to the DEC, enclosing respondent's papers, and requesting a response by November 7, 2018. On that date, the Office of Attorney Ethics (OAE) filed a response to the motion on behalf of the DEC.

A respondent must meet a two-pronged test to move successfully to vacate a default. First, a respondent must offer a reasonable explanation for his or her failure to answer the ethics complaint. Second, a respondent must assert meritorious defenses to the underlying charges.

As to the first prong of the test, respondent outlines his involvement in the Eastern District of Pennsylvania (EDPA) matter that led to his temporary suspension there, and his "extremely limited" involvement in the District of New Jersey (DNJ) matter, which led to the underlying ethics grievance. Respondent's version of his participation in the DNJ matter does not even remotely resemble the version set forth in the Pennsylvania disciplinary complaint. Nonetheless, the order in the EDPA matter and its effects are inconsequential because we determined that respondent did not violate RPC 5.5(a)(1) since the EDPA order was not enforceable outside of that jurisdiction.

What is pertinent, however, is respondent's explanation for his failure to reply to the grievance. Respondent did not address directly why he failed to answer the formal ethics complaint. In his PFR, respondent claimed that he had not become aware of the New Jersey ethics matter until we issued our decision on January 22, 2018. A review of respondent's multiple submissions beckons a closer examination of this claim.

In his brief in support of his motion to vacate default, respondent, providing no dates, states that, when he first became aware of the grievance filed against him by Vasyl Kavatsiuk, he was confused as to how Kavatsiuk had standing to file a grievance since respondent had never represented him at any time. Further, although respondent did not believe the EDPA order prohibiting him from practicing in the DNJ was enforceable, he entered into a consent order with the U.S. Trustee's Office and removed himself from the matter in the DNJ matter. After "being notified by the Board of the matter, I believed that they were unaware of the Consent Order and I instructed my paralegal to forward a copy of same. I believed the matter was over at that point." Based on respondent's own assertions, it certainly appears that respondent was aware of the grievance. Yet, instead of responding to it in any manner, respondent simply

determined that he did not need to submit a response. Instead, he merely forwarded the consent order and took no further action.

Respondent's failures continued in the months that followed. Specifically, he states that he recalls two conversations with his paralegal, inquiring why he was still receiving notices from the DEC "when it was already resolved." Respondent states that he asked her to make inquiries and she assured him that it was a mistake, and that it had been handled. Thereafter, respondent relied on his certification in support of his motion, which render his claims somewhat suspect.

Specifically, in his certification, respondent did not refer to his belief that the matter had been resolved and that his paralegal had assured him that the notices he was receiving from the DEC were a mistake. Instead, he stated, "I did not find out this action was pending until . . . January 22, 2018." Respondent then provided a lengthy explanation that his office is a "paperless office" and that all documents (including mail) are scanned, which he then reviews on his computer. His paralegal determined that the notices regarding the ethics matter were of such importance, that she had created a special electronic folder for them. However, she apparently neglected to inform respondent of this new folder, but thought she had, and, therefore, she assumed that he was handling it.

During this time, she was experiencing serious health issues that "had a deleterious effect on her performance," resulting in her probable failure to inform him of the folder.

Despite the conflict within respondent's submissions to the Court and to us, the fact remains that he does not deny receiving any of the correspondence from the DEC. In fact, he admits that he was aware of the grievance when it was filed. Subsequently, despite his belief that it was resolved, respondent was aware that he was still receiving correspondence from disciplinary authorities. Yet, he did nothing to determine whether the DEC had received, or was satisfied by, his alleged submission of the consent order.


We examined respondent's failure to at least follow up with the DEC in the context of the OAE's response to respondent's MVD. Specifically, according to the OAE, the DEC states that, during the investigation into the underlying grievance, the investigator not only sent correspondence to respondent but also had a telephone conversation during which respondent confirmed that he understood that a grievance was pending against him and, further, that he would submit his written response to the same. Thus, we determined that respondent has failed to satisfy the first prong of the test.

Should the Court determine that respondent has established excusable neglect for his failure to file an answer to the complaint, we note that respondent can satisfy the second prong of the test. First, as we previously determined, and respondent has reasserted, the order barring respondent from appearing in any bankruptcy court is unenforceable outside of the EDPA. Hence, his appearance in the DNJ did not violate RPC 5.5(a)(1). If respondent is deemed to have satisfied the first prong, he inherently has a meritorious defense against the allegation that he failed to cooperate in violation of RPC 8.1(b). It would follow then that the motion should be granted and, ultimately, the complaint dismissed.

Our review, however, leads us to a determination to deny the motion. Respondent received multiple notifications of the grievance against him, spoke with the DEC investigator on the telephone about the grievance, and, during that conversation, assured him that he would file a written response thereto. Respondent's explanations are internally inconsistent and belied by the general facts of the matter. Therefore, we rely on our decision, filed with the Court on January 22, 2018, that respondent receive a reprimand for his violation of RPC 8.1(b).

We further reiterate our determination 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 Matter of Hercules Pappas
Docket No. DRB 18-317, former Docket No. DRB 17-282

Decided: November 30, 2018

Disposition: Deny

| <i>Members</i> | Deny | Recused | Did Not Participate |
|----------------|------|---------|---------------------|
| Frost | X | | |
| Clark | X | | |
| Boyer | X | | |
| Gallipoli | X | | |
| Hoberman | X | | |
| Joseph | X | | |
| Rivera | | | X |
| Singer | X | | |
| Zmirich | X | | |
| Total: | 8 | 0 | 1 |


Ellen A. Brodsky
Chief Counsel