

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-090
District Docket No. XII-2017-0047E

In the Matter of :
:
Thaki Abdus-Sam Ismael :
:
An Attorney at Law :
:
:

Decision

Decided: October 10, 2019

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

This matter was before us on a certification of the record filed by the District XII Ethics Committee (DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4 (presumably, subsection 1.4(b), failure to communicate with a client); and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

For the reasons set forth below, we determine to impose no further discipline.

Respondent earned admission to the New Jersey bar in 1985. During the relevant time frame, he maintained a law practice in Union County, New Jersey.

Respondent has a significant ethics history. In 1992, he was privately reprimanded for misconduct in two real estate matters, including lack of diligence and failure to cooperate with disciplinary authorities. In the Matter of Thaki Ismael, DRB 91-376 (March 3, 1992). In 1994, he was again privately reprimanded for his inability to reconstruct financial records so that the owner of a trust fund could be ascertained. In the Matter of Thaki Ismael, DRB 94-091 (May 24, 1994). In 1995, he was admonished for lack of diligence, failure to communicate, and failure to reply to the DEC investigator's requests for information. In the Matter of Thaki Ismael, DRB 95-053 (March 22, 1995).

On March 23, 1999, respondent was suspended for six months for gross neglect, lack of diligence, failure to safeguard client property, failure to deliver client funds, failure to comply with recordkeeping rules, and failure to respond to lawful demands for information from disciplinary authorities. In re Ismael, 157 N.J. 632 (1999). On December 6, 2000, he was suspended for three months

for gross neglect, a pattern of neglect, lack of diligence, failure to communicate with a client, and failure to expedite litigation. In re Ismael, 165 N.J. 662 (2000).

Respondent has been suspended from the practice of law for more than twenty years and has not sought reinstatement.

Service of process was proper in this matter. On April 27, 2018, the DEC sent a copy of the formal ethics complaint to respondent, at his last known home address, by certified and regular mail. The DEC received a certified mail receipt, bearing a delivery date of April 30, 2018, and the signature of “David B. Dillard;” the regular mail was not returned.

On May 22, 2018, the DEC sent a letter to respondent, at his home address, by certified and regular mail, informing him that, unless he filed a verified answer to the complaint within five days, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). Neither the certified mail nor the regular mail was returned.

Respondent failed to file an answer to the complaint. Accordingly, the DEC certified this matter to us as a default.

We now turn to the allegations of the complaint. The grievant, Marc Sutton, retained respondent to pursue an appeal of Sutton’s 1996 New Jersey

criminal conviction. Sutton alleged that respondent neither filed the appeal nor informed him that respondent had failed to perform the work for which he had been retained.

We find that the facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Respondent agreed to represent Sutton and to file a criminal appeal in his behalf. However, respondent neither filed the appeal nor informed Sutton that he had not done so. Respondent's complete inaction in respect of Sutton's representation, combined with his failure to communicate with his client, violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b). In addition, despite the DEC's proper service of the complaint, respondent failed to file a verified answer to the complaint. Respondent, thus, violated RPC 8.1(b).

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

Conduct involving lack of diligence and failure to communicate with clients, even if accompanied by gross neglect, ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the harm to the clients, the attorney's disciplinary history, and the presence of

aggravating or mitigating factors. See, e.g., In the Matter of Clifford Gregory Stewart, DRB 14-014 (April 22, 2014) (admonition; attorney who was not licensed to practice law in Washington, D.C. filed an employment discrimination case in the United States District Court for the District of Columbia and obtained local counsel to assist him in handling the matter; after the defendant filed a motion to dismiss the complaint, however, the attorney failed to provide local counsel with written opposition to the motion until after the deadline for doing so had expired, resulting in the granting of the motion as unopposed; violations of RPC 1.1(a) and RPC 1.3; in addition, the attorney failed to keep his client informed about various filing deadlines and about the difficulty he was having meeting them, particularly with the deadlines for filing an objection to the motion to dismiss the complaint, violations of RPC 1.4(b) and (c); we considered the attorney's exemplary, unblemished career of twenty-eight years at the time of the incident); In the Matter of Robert A. Ungvary, DRB 13-099 (September 30, 2013) (admonition; due to the attorney's failure to comply with discovery, his client's civil rights complaint was dismissed; the attorney's motion to vacate the default was denied and a subsequent appeal was dismissed based on his failure to timely prosecute it; the attorney neither informed the client of the dismissal of the appeal nor discussed with him his decision not to pursue it; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b) and

(c); although the attorney had been admonished previously, we noted that his conduct in the present matter predated the conduct in the prior matter, and that the client and his family had continued to use the attorney's legal services, despite his shortcomings in the civil rights matter); In re Burstein, 214 N.J. 46 (2013) (reprimand for attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; although the attorney had no disciplinary record, the significant economic harm to the client justified a reprimand); and In re Kurts, 206 N.J. 558 (2011) (attorney reprimanded for mishandling two client matters; in one matter, he failed to complete the administration of an estate, causing penalties to be assessed against it; in the other, he was retained to obtain a reduction in child support payments but, at some point, ceased working on the case and closed his office; the client, who was unemployed, was forced to attend the hearing pro se, at which time he obtained a favorable result; in both matters, the attorney was found guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to memorialize the basis or rate of his fee; illness considered in mitigation; no prior discipline).

Admonitions are typically imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the district ethics

committee investigator regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)); In re Gleason, 220 N.J. 350 (2015) (attorney did not file an answer to the formal ethics complaint and ignored the DEC investigator's multiple attempts to obtain a copy of his client's file, a violation of RPC 8.1(b)); the attorney also failed to inform his client that a planning board had dismissed his land use application, a violation of RPC 1.4(b)); and In the Matter of Raymond A. Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written, formal reply to the grievance and a copy of the filed pleadings in the underlying case, despite repeated assurances that he would do so, a violation of RPC 8.1(b)).

Here, the default status of this matter must also be considered as an aggravating factor. “[A] respondent’s default or failure to cooperate with the investigative authorities acts 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) (citations omitted).

In crafting the appropriate quantum of discipline in this case, we allocate substantial mitigation to the passage of approximately twenty-five years since the alleged misconduct in this case occurred. Such passage of time is considered a mitigating factor. See, e.g., In re Verdiramo, 96 N.J. 183 (1984) (finding mitigation where events occurred more than eight years earlier, holding that “the

public interest in proper and prompt discipline is necessarily and irretrievably diluted by the passage of time”); and In the Matter of Robert B. Davis, 230 N.J. 385 (2017) (imposing significantly lesser discipline than otherwise warranted because, as stated in the Order, there was “extraordinary delay in initiating disciplinary proceedings”).

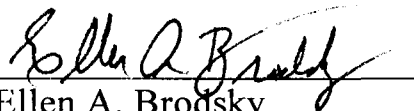
Had Sutton filed his ethics grievance in a timely fashion, respondent likely would have been censured for his misconduct, especially given his failure to learn from past mistakes in respect of the RPC 1.3, RPC 1.4(b), and RPC 8.1(b) violations, which would have triggered progressive discipline. Sutton, however, waited more than two decades to file the grievance underlying this matter. Such extraordinary delay in initiating disciplinary proceedings serves to seriously undermine a respondent’s ability to meaningfully defend against the charges levied against him or her, and to warrant significantly lesser discipline than would otherwise be appropriate.

It is well-settled that “[t]he primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar.” In re Principato, 139 N.J. 456, 460 (1995). Based on the passage of time since the misconduct at hand, combined with the extraordinary delay in commencing disciplinary proceedings, imposition of further discipline would not serve the purposes of the attorney disciplinary system. Accordingly, we find respondent

guilty of the charges alleged in the formal ethics complaint but determine to impose no further discipline.

Vice-Chair Gallipoli voted to impose a censure. Members Petrou, Rivera, and Singer did not participate.

Disciplinary Review Board
Bruce W. Clark, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Thaki Abdus-Sam Ismael
Docket No. DRB 19-090

Decided: October 10, 2019

Disposition: No Additional Discipline

<i>Members</i>	No Additional Discipline	Censure	Recused	Did Not Participate
Clark	X			
Gallipoli		X		
Boyer	X			
Hoberman	X			
Joseph	X			
Petrou				X
Rivera				X
Singer				X
Zmirich	X			
Total:	5	1	0	3

Ellen A. Brodsky
Chief Counsel