Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-095
District Docket No. XIV-2018-0066E

In the Matter of	
Edward McElroy	
An Attorney at Law	

Decision

Decided: October 17, 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 Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client), RPC 8.1(b) (failure to cooperate with disciplinary authorities),[1] and RPC 8.4(c)

[1] Due to respondent's failure to file an answer to the formal ethics complaint, the complaint was amended to include the RPC 8.1(b) charge.

(conduct involving dishonesty, fraud, deceit or misrepresentation). For the reasons set forth below, we determine to impose a one-year suspension on respondent.

Respondent was admitted to the New Jersey bar in 1994. Presently, he maintains an office for the practice of law in Elizabeth. Respondent has no history of discipline.

Service of process was proper. On January 4, 2019, the OAE sent a copy of the formal ethics complaint to respondent's office address by regular and certified mail, return receipt requested. The certified letter was returned to the OAE, marked "Return to Sender, Unable to Forward." The letter sent by regular mail was not returned.

On February 6, 2019, the OAE sent a letter to respondent, at the same address, by regular and certified mail, return receipt requested. The letter informed respondent that, if he failed to file an 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 amended to include a charge of a violation of RPC 8.1(b). According to a March 12, 2019 entry on the United States Postal Service tracking system, respondent had moved and left no address. The letter sent by regular mail was not returned.

As of March 4, 2019, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

Although respondent is a sole practitioner in Elizabeth, the allegations of the formal ethics complaint are based on conduct that occurred while he was a partner with Eichen Crutchlow Zaslow & McElroy, LLP, an Edison law firm (the firm).

On October 30, 2002, Dennis Bielski retained the firm to represent him in a personal injury case, which was assigned to respondent. On November 12, 2002, the firm filed a complaint, captioned Dennis Bielski v. Rollins Truck Rental, et als., in the Superior Court of New Jersey, Law Division, Middlesex County (the Bielski case). At some point, Bielski was ordered to undergo an independent medical evaluation. Because respondent never told Bielski, he failed to appear for the examination. Accordingly, the court dismissed the Bielski case, without prejudice.

Respondent neither informed Bielski that his case had been dismissed nor sought reinstatement of the complaint. Consequently, on August 9, 2007, the court dismissed the Bielski case, with prejudice. Respondent failed to inform both Bielski and the firm of the dismissal for the following ten years.

Despite the dismissal of the Bielski case, respondent told his client that the matter was "moving toward a settlement of $800,000." He and Bielski discussed the net amount that Bielski would receive from the settlement after the disbursement of fees and costs. Respondent also told Bielski that, to ensure his receipt of $425,000, respondent would waive a portion of his attorney fee.

In the summer of 2017, ten years after the Bielski case had been dismissed, respondent traveled to Florida to meet with Bielski for the purpose of executing a release and a settlement statement. Respondent had fabricated the documents to deceive Bielski into believing that the settlement was legitimate. On August 22, 2017, Bielski signed the documents.

Two months later, Bielski contacted respondent to ask when he would receive the settlement funds. Although the complaint does not provide the details of Bielski's communication with respondent, it alleges that respondent did not have funds to pay his client.

On January 19, 2018, nearly five months after Bielski had signed the fabricated release and closing statement, respondent obtained a $425,000 personal loan. Respondent used the funds to pay Bielski the "net settlement proceeds" that same day.

On January 29, 2018, the firm learned of respondent's deception, terminated his employment, and informed Bielski of respondent's misconduct.

At a February 28, 2018, interview, respondent admitted to the OAE that he had been responsible for the dismissal of Bielski's complaint, that he had repeatedly misled Bielski into believing that the case was still active and that the matter had been proceeding toward a possible $800,000 settlement, and that he was "responsible for engineering the false settlement payment."

Based on the above allegations, the complaint charged respondent with having violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 8.1(b), and RPC 8.4(c).

Following a review of the record, 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 violated RPC 1.1(a) and RPC 1.3 by allowing Bielski's complaint to be dismissed, with prejudice, and by failing to take any steps to reinstate the pleading. He violated RPC 1.4(b) by failing to inform Bielski of the independent medical examination and the dismissal of his complaint, both without and with prejudice.

On February 6, 2019, the OAE informed respondent that if he failed to file an answer to the ethics complaint within five days of the date of the letter, the complaint would be amended to include a charge of a violation of RPC 8.1(b).

Respondent did not file an answer to the complaint and, thus, violated RPC 8.1(b).

Further, respondent violated RPC 8.4(c) by (1) concealing from Bielski and the firm the dismissal of the Bielski case, without and with prejudice, (2) telling Bielski that his case was about to settle, (3) telling Bielski that the case did settle, (4) fabricating the release and settlement statement, and (5) failing to inform Bielski that the $425,000 consisted of personal funds.

There remains for determination the appropriate quantum of discipline to impose on respondent for his violation of RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 8.1(b), and RPC 8.4(c).

Respondent's gross neglect, lack of diligence, and failure to communicate with the client, coupled with his default, warrant the imposition of at least a reprimand. See, e.g., In re Babcock, 231 N.J. 8 (2017) (attorney failed to inform his client that her claim had been dismissed, failed to reply to her attempts to communicate with him, and failed to submit a written reply to the grievance; violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b) and (c), and RPC 8.1(b)), and 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). We also must consider respondent's dishonesty, however.

Attorneys who lie to clients or supervisors and fabricate documents to conceal their mishandling of legal matters have received discipline ranging from a short-term suspension to disbarment. See, e.g., In re Brollesy, 217 N.J. 307 (2014) (three-month suspension imposed on attorney who misled his client, a Swedish pharmaceutical company, that he had obtained visa-approval for one of the company's top-level executives to begin working in the United States; although the attorney had filed an initial application for the visa, he took no further action and failed to keep the client informed about the status of the case; in order to conceal his inaction, the attorney lied to the client, fabricated a letter purportedly from the United States Embassy, and forged the signature of a fictitious United States Consul to it, in violation of RPC 8.4(c); the attorney also violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b); mitigation included the attorney's twenty years at the bar without prior discipline and his ready admission of wrongdoing by entering into a disciplinary stipulation); In re Yates, 212 N.J. 188 (2012) (three-month suspension imposed on attorney who, after a client's personal injury matter had been assigned to him, neglected to file a complaint prior to the expiration of the statute of limitations; when the attorney realized what had happened, he panicked and hid the information from the firm and from the client for nearly a year; the attorney fabricated a settlement agreement, which falsely stated that a complaint had been filed on a date that

preceded the firm's representation of the client, and misrepresented that the defendant had filed an answer and had agreed to settle the matter for $600,000; about six weeks later, the attorney confessed to the client that he had "screwed up;" the attorney violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.4(c)); In re Bar-Nadav, 174 N.J. 537 (2002) (three-month suspension for attorney who submitted two fictitious letters to the district ethics committee in an attempt to justify his failure to file a divorce complaint on behalf of a client; the attorney also filed a motion on behalf of another client after his representation had ended, and failed to communicate with both clients); In re Morell, 180 N.J. 153 (2004) (Morell I) (reciprocal discipline matter; one-year suspension imposed on attorney who, over the course of several months, told elaborate lies to his clients about the status of their personal injury case; he also fabricated documents, including a court notice and release; in another case, he led his creditor client to believe, for a period of several months, that he had located the debtor's assets); In re Katsios, 185 N.J. 424 (2006) (two-year suspension for attorney who improperly released escrow funds to his cousin, a party to the escrow agreement, and then falsified bank records and trust account reconciliations to mislead the ethics investigator that the funds had remained in escrow); and In re Morell, 184 N.J. 299 (2005) (Morell II) (disbarment, in a default matter, for attorney who, after he had neglected to file a medical malpractice complaint, misled the client

about the status of the case for four years, culminating in the false claim that a $1 million settlement offer had been made, which the client accepted and then signed a release that the attorney had fabricated).

In this case, respondent's conduct is most aligned with that of the attorneys in Yates and Morell I and Morell II. In Yates, the attorney worked for the law offices of William J. Courtney, LLC. In the Matter of Mark G. Yates, DRB 12-003 (June 15, 2012) (slip op. at 2). In April 2008, Magdi Gadalla hired the firm to represent him. Ibid. When Yates reviewed the file, in January 2010, for the purpose of drafting a complaint, he discovered that the statute of limitations had expired in December 2009. Id. at 3. Instead of telling Courtney and taking remedial action, Yates panicked and concealed what had happened from the firm and his client for the rest of the year. Ibid.

In late 2010, Gadalla asked Yates about the status of the case. Ibid. Yates misrepresented that the complaint had been filed in 2004, which was prior to the firm's representation of Gadalla, and that the hospital had filed an answer and had agreed to settle the matter for $600,000. Ibid. Yates fabricated a settlement agreement, which Gadalla signed. Ibid.

For the next six weeks, Gadalla repeatedly asked Yates about the status of the settlement monies. Ibid. Yates repeatedly misrepresented that the hospital's check was in the mail. Id. at 3-4. Finally, the client and his wife appeared at the

office, at which point, Yates admitted that he had "'screwed up'" and directed them to talk to Courtney. Id. at 4.

In addition to finding that Yates had violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b), we found that he had engaged in a cover-up, which included a series of lies to his client, ultimately leading to the fabrication of the $600,000 settlement agreement, which was followed by another series of lies when the client questioned when he would receive the settlement funds. Id. at 5-6.

In imposing a censure, we weighed Yates's unblemished career of more than thirty years and his admission of wrongdoing against his deceit, which led the client to believe that he would be receiving hundreds of thousands of dollars. Id. at 12. The Court imposed a three-month suspension. In re Yates, 212 N.J. 188.

Respondent's conduct is almost identical to Yates's, except that Yates's conduct occurred over a number of months, not years. Further, when respondent failed to inform Bielski that the complaint had been dismissed with prejudice, in August 2007, he had been practicing law for about thirteen years, not more than thirty, as was the case with Yates. In addition, respondent has defaulted in this matter. Thus, a three-month suspension would be insufficient.

Although Morell I appears to be comparable to the facts of this case, there are significant differences. In Morell I, the attorney represented a married couple

in a personal injury action arising from a car accident. In the Matter of Philip M. Morell, DRB 03-316 (February 18, 2004) (slip op. at 2). Between June and December 1997, he led the clients to believe that their case, which had been dismissed, was restored to the trial calendar, even though the motion had not been decided. Id. at 2-3. Thereafter, he falsely represented that he was awaiting a trial date, that negotiations and conferences were ongoing, that the case was scheduled for trial in early December 1997, and that the defendants' insurance carriers had offered to settle the case for $200,000. Id. at 3. When the case was restored to the trial calendar, Morell altered the decision by obscuring the date so that his clients would not discover his earlier misrepresentation. Ibid.

In another matter, Morell represented a creditor in his attempt to collect on a judgment. Ibid. In 1996, he misrepresented to the client that he had located the debtor's assets. Ibid. Three months later, he confessed that he had not located assets. Ibid. Based on Morell's "elaborate lies" and the fabricated and altered documents, we imposed a one-year suspension on him. Id. at 5.

Morell's conduct involved a time span of months rather than years. Although his misrepresentations involved two different clients, he did not lead either of them to believe that their case had actually settled or provide them with a fabricated release.

Respondent's conduct is strikingly similar to that of the attorney in Morell II, which like this case, was a default. There, Morell agreed to represent a young professional baseball player in a medical malpractice case against a doctor and hospital for career-ending damages caused by surgeries to repair four herniated discs in his lower back, which he had sustained in an automobile accident. In the Matter of Philip M. Morell, DRB 04-245 (October 26, 2004) (slip op. at 2). Morell never filed a lawsuit, but, for the following four years, he claimed that suit had been filed, that experts had been retained, and that, after meeting with representatives from one of the defendant's insurance carriers, he believed that the case was worth $10 million. Id. at 3.

Thereafter, Morell reported to his client that the insurance carrier had offered a $250,000 settlement, which his client rejected. Ibid. Later, he claimed that the carrier had increased its offer to $700,000, but suggested that he could obtain a higher settlement. Ibid.

Finally, Morell obtained his client's approval to settle the case for $1.1 million. Ibid. Because no such offer had been made, Morrell fabricated a settlement release, which his client signed. Ibid. Morrell told his client that he could now purchase the car of his dreams. Ibid. The client borrowed money from his father and purchased a Lexus. Ibid.

For the next four months, Morell continued to misrepresent the status of the case, even telling the attorney for the workers' compensation carrier that he had obtained a $1.4 million settlement. Ibid. He also told his client that he had received the monies, which he would wire to his client immediately. Id. at 4. Several days later, when the money did not appear, Morell admitted that he had not filed suit and that "his story was a fabrication." Ibid.

When Morell was served with the ethics complaint, he filed an unverified answer. Ibid. He, thus defaulted. Ibid. We determined that he had violated RPC 1.1(a), RPC 1.3, and RPC 1.4(a) (now RPC 1.4(b)). Id. at 5. Given the default and Morell's "outrageous contravention of the facts, about every aspect of a litigation that existed only in [his] head," even going so far as to fabricate the settlement authorization and direct his client to buy a car, we voted to impose a two-year suspension. Id. at 7-8.

The Court disbarred Morell. 184 N.J. at 306. Prior to doing so, the Court had provided Morell with the opportunity to challenge our determination or to seek vacation of the default, but Morell did nothing. Id. at 303. The Court also observed that Morell had a disciplinary record comprising the one-year suspension in Morell I and a previous diversion for lack of fairness to opposing counsel and failure to expedite litigation, to diligently prosecute a claim, and to comply with his adversary's discovery request. Id. at 300.

In our view, notwithstanding respondent's default, disbarment is unwarranted because, unlike the attorney in Morell II, respondent does not have an ethics history, and the level of harm to Morell's client is not present in this case. Thus, we determine to impose a one-year suspension.

Vice-Chair Gallipoli voted to disbar respondent, and Member Zmirich voted to impose a two-year suspension. Members Petrou, Rivera, and Singer 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
Bruce W. Clark, Chair

By: _____
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Edward McElroy
Docket No. DRB 19-095

Decided: October 17, 2019

Disposition: One-Year Suspension

Members	One-Year Suspension	Two-Year Suspension	Disbar	Recused	Did Not Participate
Clark	X				
Gallipoli			X		
Boyer	X				
Hoberman	X				
Joseph	X				
Petrou					X
Rivera					X
Singer					X
Zmirich		X			
Total:	4	1	1	0	3

Ellen A. Brodsky
Chief Counsel