

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 19-115  
District Docket Nos. I-2016-0010E;  
I-2016-0011E; and I-2017-0001E

---

In the Matter of  
John Joseph Hutt  
An Attorney at Law

---

:  
:  
:  
:  
:  
:  
:  
:  
:  
:

Decision

Argued: May 23, 2019

Decided: November 1, 2019

Robert P. Lang appeared on behalf of the District I Ethics Committee.

Respondent did not appear, despite proper notice.

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

This matter was before us on a recommendation for a six-month suspension, filed by the District I Ethics Committee (DEC). The complaints

charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate), RPC 1.15 (presumably (b)) (failure to promptly deliver property to the client), RPC 1.16(d) (upon termination of representation, failure to surrender papers and property to which the client is entitled), and RPC 8.1(b) (failure to cooperate).

Although we determine that respondent committed misconduct, we are unable to reach a consensus on the proper quantum of discipline. Three members voted for a censure; three members voted for a three-month suspension.

Respondent was admitted to the New Jersey bar in 1999. In 2015, he received an admonition for failing to resolve outstanding medical liens for more than one year after settling a client's personal injury claim, failing to promptly deliver funds to third parties, and failing to reply to inquiries from the client about the settlement of these liens. In the Matter of John Joseph Hutt, DRB 15-037 (May 27, 2015).

On August 21, 2017, the Court temporarily suspended respondent for failing to comply with a fee arbitration determination. In re Hutt, \_\_\_ N.J. \_\_\_ (2017) (unpublished Order).

We now turn to the facts of these matters.

On January 20, 2017, a disciplinary complaint was filed against respondent, in respect of the Monroe and DiGiacinto client matters. On June 12, 2017, respondent filed an answer four months out of time. In that answer, respondent did not reply to the allegations of count one encompassing the Monroe matter, and denied the allegations of counts two and three, encompassing the DiGiacinto matter and a charge of failure to cooperate with the investigation, respectively. Subsequently, on June 26, 2017, a disciplinary complaint was filed against respondent regarding the Beaty client matter. Respondent failed to file an answer to that complaint.

After a prehearing conference was held in the Monroe/DiGiacinto matters, the ensuing case management order (CMO) required respondent to provide court docketing entries for each client's bankruptcy proceedings, by November 10, 2017. On November 21, 2017, the Beaty matter was consolidated for hearing with the Monroe and DiGiacinto matters. The hearing was scheduled for February 22, 2018; however, on February 19, 2018, it was adjourned, based on respondent's lack of cooperation.

Thereafter, the panel chair made several attempts by e-mail to schedule a pre-hearing conference with the parties. Respondent never replied. On March 16, 2018, the panel issued a second CMO, scheduling a disciplinary hearing for

April 17 and 20, 2018, and requiring a pre-hearing conference to be conducted at respondent's office. The second CMO required respondent, prior to March 23, 2018, to provide three dates of availability for a pre-hearing conference. Respondent failed to comply. Hence, the panel chair scheduled the conference for April 11, 2018, at respondent's office. On April 10, 2018, respondent informed the panel chair that he would not be available the next day. The matter then proceeded to a hearing.

Respondent appeared pro se and attempted to submit an answer to the disciplinary complaint in the Beaty matter. The panel denied that request. The presenter moved for the suppression of respondent's answer to the Monroe and DiGiacinto matters, for his defense to be barred, and for the allegations of both complaints to be deemed admitted. In support of his motion, the presenter observed that, although respondent had been served with the complaint in those matters in January 2017, he failed to file his answer until May 2017. The presenter also stated, however, that respondent failed to produce discovery "which may have served to exonerate him, at least in part...."

The presenter argued that respondent failed to cooperate at every turn of the investigation and pre-hearing procedures. In reply, respondent apologized for his lack of participation in the process, explaining that personal issues had

inhibited his participation. In addition, he claimed that, because he was temporarily suspended, he believed that ethics proceedings could not take place at his office.

The panel granted the motion to suppress the answers in the Monroe and DiGiacinto matters, deemed the allegations in all three matters admitted, and terminated the hearing, essentially, treating these matters as defaults. The record was then closed. The allegations of the complaints are as follows.

Lorraine and Thomas Monroe retained respondent in late 2014 to file a bankruptcy petition on their behalf. Respondent filed an "incorrect" petition, failed to complete the necessary forms, and then failed to appear at the confirmation hearing, which resulted in the dismissal of the case. Respondent attempted, thereafter, to reinstate the petition, but, there too, his motions and petitions were "incorrect."<sup>1</sup>

In January 2016, the Monroes retained new counsel, who contacted respondent to obtain their file. Respondent neither communicated with subsequent counsel nor turned over his client's file, despite repeated requests that he do so. The Monroes learned about the deficiencies in their bankruptcy

---

<sup>1</sup> The record does not explain how the initial petition and subsequent motion were "incorrect."

petition from subsequent counsel.

The complaint charged respondent with having violated RPC 1.1(a) and RPC 1.3, by failing to adequately pursue the Monroes' matter and to remedy the defects in the petition; RPC 1.4(b), by failing to keep the Monroes adequately informed about the status of their matter; and RPC 1.16(d), by failing to cooperate with subsequent counsel for the Monroes.

Carmen DiGiacinto retained respondent in 2013 to file a petition in bankruptcy on his behalf. Subsequently, DiGiacinto filed a grievance, claiming that respondent failed to prosecute his matter, failed to appear at hearings, and caused the case to be dismissed five times. Thereafter, because respondent assured DiGiacinto that he would complete the task for which he had been retained, DiGiacinto withdrew his grievance, disavowed the claims he had made, and refused to cooperate in the investigation.

Based on the allegations in the DiGiacinto matter, combined with other acts of neglect set forth in the pleading, the complaint charged respondent with having engaged in a pattern of neglect.

On June 18, 2016, the disciplinary investigator requested that respondent provide a written reply to the Monroe and DiGiacinto grievances. On July 11, 2016, the investigator made a second request for a response. On July 20 and

August 3, 2016, respondent called the investigator, representing that he would provide the requested reply. Respondent failed to reply to the grievances or to cooperate with the investigation in any manner. Based on the foregoing, the complaint charged respondent with violating RPC 8.1(b).

Wallis Beaty retained respondent to file a petition in bankruptcy on his behalf. On February 12, 2015, the bankruptcy matter was discharged.

In May 2016, Beaty contacted respondent to inquire about a Warrant to Satisfy Judgment that he had not received. Between May and October 2016, respondent failed to reply to many of Beaty's inquiries and when he did reply, he promised to obtain the warrant. In October 2016, respondent finally obtained the warrant. Yet, claiming he misfiled it, respondent failed to send it to Beaty. Finally, on January 7, 2017, respondent provided Beaty with the warrant.

Based on the foregoing conduct, the complaint alleged that respondent violated RPC 1.3 and RPC 1.15 (presumably (b)).

On January 19 and March 1, 2017, the disciplinary investigator requested that respondent provide a written reply to the Beaty grievance. In early May 2017, respondent obtained a one-week extension to reply. On May 25, 2017, respondent submitted his written reply "well beyond the original deadline and

even beyond the self-imposed deadline by the respondent."<sup>2</sup>

The complaint alleged that respondent's failure to cooperate with the investigation in the Beaty matter violated RPC 8.1(b) and RPC 1.3.

The DEC deemed the allegations of the complaints admitted and found that respondent violated RPC 1.1(a); RPC 1.1(b); RPC 1.3 (three counts); RPC 1.4(b); RPC 1.15 (no subsection noted); RPC 1.16(d); and RPC 8.1(b) (two counts).

Without addressing the specific facts of each client matter, the DEC remarked that respondent either lacked interest in defending his license to practice law in New Jersey or, that something in his personal life prevented him from doing so. In either case, the DEC determined that significant discipline is necessary to protect the public's interests. In aggravation, the DEC noted respondent's current temporary suspension and his lack of responsiveness. In mitigation, the DEC again noted unspecified circumstances in respondent's personal life, his respectful demeanor at the hearing, and his remorse.

The DEC recommended a six-month suspension.

---

<sup>2</sup> No dates other than the date of respondent's submission were identified in the record.

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent's conduct was unethical is fully supported by clear and convincing evidence.

The DEC correctly determined that respondent violated most of the RPCs alleged in the complaints. This matter is similar to a default because the facts of the complaint are deemed admitted, but, as with a default, each charge in an ethics complaint must be supported by sufficient evidence for us to find unethical conduct.

We find that respondent violated RPC 1.1(a), RPC 1.3 (two counts), RPC 1.4(b), RPC 1.16(d), and RPC 8.1(b) (two counts). We determine to dismiss the remaining alleged violations, as discussed in more detail below.

In the Monroe matter, respondent violated RPC 1.1(a) and RPC 1.3 by filing a bankruptcy petition that was incorrect and incomplete. He then failed to appear for a hearing, resulting in the dismissal of the petition. Subsequently, respondent filed inadequate petitions attempting to reinstate the petition. He never remedied the deficiencies. Further, he violated RPC 1.4(b) by failing to inform the Monroes about important events in respect of their petition.<sup>3</sup>

---

<sup>3</sup> The complaint did not charge respondent with a violation of RPC 8.4(c), based on a misrepresentation by silence by failing to inform his clients of the petition's dismissal.

Moreover, despite repeated requests from subsequent counsel, respondent failed to turn over the Monroes' client file after his representation was terminated, in violation of RPC 1.16(d).

In both the Monroe and DiGiacinto matters, despite assuring the investigator in telephone conversations that a written response to the grievances would be forthcoming, respondent never replied, and therefore, he failed to cooperate with the investigation, a violation of RPC 8.1(b).

In the Beaty matter, respondent failed, for nine months, to obtain the Warrant to Satisfy Judgment after Beaty's bankruptcy was discharged on February 12, 2016. Once he obtained the warrant, in October 2016, he failed to deliver it to Beaty for another three months, until January 7, 2017. Presumably, this delay caused harm to Beaty, by hindering his ability to timely file the warrant with the court. Respondent's twelve-month delay in delivering the warrant to Beaty, violated RPC 1.3.

Finally, despite his eventual written response to the grievance in the Beaty matter, respondent failed to cooperate with disciplinary authorities. His written response to the grievance was over four months late, even with consideration for his self-imposed one-week extension. Thereafter, he failed to answer the complaint, allowing it to proceed by way of default. Respondent's misconduct

in this regard, violated RPC 8.1(b).

In the DiGiacinto matter, although the complaint charged respondent with a pattern of neglect, the allegations do not support a finding of a violation of RPC 1.1(b). For a finding of a pattern of neglect, at least three instances of neglect are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). We, therefore, dismissed the RPC 1.1(b) charge.

Additionally, in the Beaty matter, we dismissed the alleged RPC 1.15(b) and RPC 1.3 violations. The RPC 1.15(b) allegation pertains to respondent's failure, between October 2016 and January 2017, to deliver the Warrant to Satisfy Judgment to Beaty. This misconduct is subsumed by the RPC 1.3 violation. The complaint also alleged that respondent's failure to cooperate constitutes a violation of RPC 1.3. That RPC is not applicable because it pertains to an attorney's conduct during the representation of a client and not in a disciplinary investigation. The failure to cooperate is captured by RPC 8.1(b).

In sum, respondent violated RPC 1.1(a), RPC 1.3 (two counts), RPC 1.4(b), RPC 1.16(d), and RPC 8.1(b) (two counts).

Generally, admonitions have been imposed on attorneys who have failed to turn over their clients' files to new counsel, even when additional ethics violations, such as failure to cooperate, gross neglect, lack of diligence, and

failure to communicate with a client, are found. See, e.g., In the Matter of Gary A. Kraemer, DRB 14-085 (June 24, 2014) (attorney failed to file his appearance for several months in two litigation matters and, in one of the matters, he also failed to take prompt action to compel an independent medical examination of the plaintiff; violations of RPC 1.3; in addition, throughout the representation, the attorney repeatedly failed to reply to his client's – and his prior counsel's – numerous requests for information about the two matters; violations of RPC 1.4(b); finally, 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); we considered his unblemished record of thirty-five years at the bar); In the Matter of Robert A. Ungvary, DRB 10-004 (March 31, 2010) (attorney lacked diligence in the representation of his clients in two matters and failed to promptly deliver to their new counsel portions of their file); In re Muhlbaier, DRB 08-165 (October 1, 2008) (upon termination of representation, attorney ignored, over a period of months, several requests of client's new counsel to turn over his files); and In re Giampapa, DRB 07-178 (November 15, 2007) (upon termination of representation, attorney failed to turn over his former client's file to new counsel, despite his many requests; attorney also violated RPC 1.4(b) and RPC 1.15(b)).

Here, we note that respondent received an admonition in 2015 for misconduct similar to the misconduct here. Although the Monroe matter began prior to respondent's involvement with the disciplinary system in his prior matter, it continued beyond the resolution of that matter. Further, his misconduct in the Beaty matter occurred after he received the admonition. Therefore, based on the principles of progressive discipline, the otherwise appropriate admonition should be enhanced to a reprimand.

Although respondent's failure to cooperate with the investigation of these matters is addressed in the finding of an RPC 8.1(b) violation, we further enhance the recommended discipline based on what would be the equivalent to respondent's default in these matters. "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).

Finally, while a hint of mitigation arose at the outset of the hearing below regarding respondent's experiencing some sort of difficulty in his personal life, it does not serve to counterbalance the aggravating factors discussed. Respondent has not asserted any mitigation directly or provided any support therefor. The DEC, however, considered in mitigation respondent's respectful

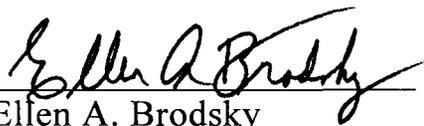
demeanor at the hearing and his expression of remorse.

For these reasons, Chair Clark and Members Boyer and Hoberman vote to impose a censure. However, Vice-Chair Gallipoli and Members Joseph and Zmirich vote for a three-month suspension based on the totality of respondent's misconduct and his blatant refusal to participate with the investigation into these matters, despite feigning to do so on several occasions.

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 John Joseph Hutt  
Docket No. DRB 19-115

Argued: May 23, 2019

Decided: November 1, 2019

Disposition: Other

<i>Members</i>	Three-Month Suspension	Censure	Recused	Did Not Participate
Clark		X		
Gallipoli	X			
Boyer		X		
Hoberman		X		
Joseph	X			
Petrou				X
Rivera				X
Singer				X
Zmirich	X			
Total:	3	3	0	3

  
Ellen A. Brodsky  
Chief Counsel