

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-233
District Docket No. IX-2018-0012E

In the Matter of
Kevin J. Begley
An Attorney at Law

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Decision

Decided: January 17, 2020

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 IX Ethics Committee (DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with the client); RPC 3.2 (failure to expedite litigation); and R. 1:20-3(g), more properly RPC 8.1(b) (failure to cooperate in a disciplinary investigation).

For the reasons set forth below, we determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1997 and to the Pennsylvania bar in 1996. From July 22, 2019 to October 10, 2019, he was ineligible to practice law in New Jersey, for his failure to pay his annual assessment to the New Jersey Lawyer's Fund for Client Protection. On October 10, 2019, he remitted payment and became eligible to practice law. Presently, he maintains an office for the practice of law in Matawan.

On June 24, 2019, respondent received an admonition for gross neglect, lack of diligence, failure to communicate with the client, and conduct involving dishonesty, fraud, deceit or misrepresentation, in connection with an insurance coverage matter. In the Matter of Kevin J. Begley, DRB 19-088 (June 24, 2019).

Service of process was proper in this matter. On January 24, 2019, the DEC sent a copy of the formal ethics complaint, by regular and certified mail, to respondent's office address. The certified mail was delivered on January 28, 2019. The return receipt was never received, but the United States Postal Service (USPS) tracking printout showed that delivery occurred on January 28, 2019, and was "Left with Individual MATAWAN, NJ 07747." The letter sent by regular mail was not returned.

On February 25, 2019, respondent called the DEC Secretary and requested additional time to file the answer, because his wife had signed for

the mailing, but left the package in her car. Respondent claimed that he had not received the mailing until about February 25, 2019. The secretary granted his request and extended the deadline to March 12, 2019. On February 26, 2019, the DEC sent a second letter, by regular and certified mail, memorializing the conversation and warning that, if the answer were not timely filed, “the matter will proceed in accord with Court Rules where no answer has been submitted.” The USPS tracking printout revealed that, on February 28, 2019, the certified mail was signed for by “Robin Bane,” an agent of respondent, as set forth in the certification of the record, and was “Delivered, Left with Individual MATAWAN, NJ 07747.” The letter sent by regular mail was not returned.

As of May 20, 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 DEC certified this matter to us as a default.

We now turn to the allegations of the complaint.

On April 3, 2015, the grievant, Richard Linaberry, retained respondent to represent him and his wife, Shirley Linaberry, in a breach of contract action related to their home renovation. On May 18, 2017, respondent filed a complaint captioned Linaberry et al. v. W.H. Wager Homebuilders et. al., in the Superior Court of New Jersey, Law Division, Monmouth County (the Linaberry

case). Respondent failed to serve the complaint on the defendant. On December 15, 2017, the court dismissed the Linaberry case, without prejudice, for lack of prosecution. The case was never reinstated.

Although Richard attempted to contact respondent on multiple occasions, respondent never replied. Respondent neither informed the Linaberrys that their case had been dismissed nor sought reinstatement of the complaint. Richard learned that the case had been dismissed when he contacted the court. In addition, respondent did not submit a written reply to the grievance, despite multiple extensions of time.

Based on the above allegations, the complaint charged respondent with having violated RPC 1.3, RPC 1.4(b), RPC 3.2, and RPC 8.1(b).

The facts recited in the complaint support most of the charges of unethical conduct. Respondent's failure to file an answer to the complaint 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). Notwithstanding that Rule, each charge in the complaint must be supported by sufficient facts for us to determine that unethical conduct has occurred.

RPC 1.3 requires an attorney to act with reasonable diligence and promptness in representing a client. Respondent violated RPC 1.3 by allowing the Linaberrys' case to be dismissed for lack of prosecution, and by failing to

take any steps to reinstate the pleading. The Board should determine to dismiss the additional allegation that respondent violated RPC 3.2, which requires a lawyer to make reasonable efforts to expedite litigation consistent with the client's interests, as respondent's misconduct is adequately addressed by the RPC 1.3 charge. An additional charge of gross neglect, in violation of RPC 1.1(a) would have been more appropriate.

Next, RPC 1.4(b) requires an attorney to keep a client reasonably informed about the status of a matter and to promptly comply with a client's reasonable requests for information. Respondent violated RPC 1.4(b) by failing to reply to grievant's multiple attempts at communication and by failing to inform him that the case had been dismissed.¹

Finally, respondent violated RPC 8.1(b), by failing to cooperate in the disciplinary investigation and to submit a written reply to the grievance.

In sum, we find that the allegations of the ethics complaint clearly and convincingly establish that respondent violated RPC 1.3, RPC 1.4(b), and RPC 8.1(b). We determine to dismiss the additional allegation that respondent violated RPC 3.2. There remains for determination the appropriate quantum of discipline to impose on respondent for his unethical conduct.

¹ Although respondent's failure to inform his client of the case's dismissal constitutes a misrepresentation by silence, the complaint did not charge respondent with violating RPC 8.4(c). Therefore, we may not find a violation of that Rule. See R. 1:20-4(b).

Generally, an admonition is the typical measure of discipline for lack of diligence and failure to communicate with the client, even when accompanied by gross neglect. See, e.g., In the Matter of Kendall S. Murphy, DRB 14-274 (November 24, 2014) (attorney was retained in 2005 to file three expungement petitions on behalf of his client; the first two, which were filed in 2005 and 2009, were dismissed, without prejudice, for procedural defects; the third, filed in August 2010, failed to include three of his client's arrests, but was amended on April 7, 2011, and an order of expungement was entered four days later, which the attorney sent to his client with the advice that he could now represent that he had not been convicted of a crime; however, on June 28, 2011, the court sua sponte entered an amended order of expungement, excluding a disorderly persons offense, which the attorney sent to his client, without cautioning him that the disorderly persons offense had not been expunged; violations of RPC 1.3 and RPC 1.4(b); we considered that the attorney's client eventually received the only relief available to him under the law, in addition to the attorney's previously unblemished professional record of nineteen years); In the Matter of Frances Ann Hartman, DRB 14-138 (July 22, 2014) (despite zealous representation at the beginning of respondent's representation of her client in a medical malpractice action, the attorney failed to act with diligence after the client's complaint was dismissed, a violation of RPC 1.3; attorney also failed

to return the client's repeated phone calls and e-mails for almost an entire year, a violation of RPC 1.4(b), and failed to explain to the client, in detail, what she considered to be problematic with the claim, so that the client could make an informed decision on whether to proceed with it, a violation of RPC 1.4(c)); and In the Matter of Stephen A. Traylor, DRB 13-166 (April 22, 2014) (attorney was retained to represent a Venezuelan native in pending deportation proceedings instituted after he had overstayed his visa; although the attorney and his client had appeared before the immigration court on three separate occasions, the attorney failed to file a Petition for Alien Relative Form (I-130) until several days after his client was ordered deported; the appeal from that order was denied, which the attorney did not disclose to the client, but the petition was granted months later; violations of RPC 1.3 and RPC 1.4(b); we considered the difficulties faced by the attorney, notably the client's attempt to obtain permanent status while in the midst of deportation proceedings, after having twice attempted to obtain permanent status by marrying an American citizen, and that the granting of the petition did not save the client from deportation; in addition, this was the attorney's first encounter with the disciplinary system in his thirty years of practice).

Respondent's misconduct also included failure to cooperate with the disciplinary investigation. Standing alone, an admonition is imposed for failure

to cooperate with disciplinary authorities. See, e.g., In the Matter of Carl G. Zoecklein, DRB 16-167 (September 22, 2016) (attorney ignored three letters from a district ethics committee investigator seeking information about a grievance; he also lacked diligence in the representation of his client and failed to communicate with him). If an attorney has a disciplinary history, the discipline may be enhanced to a reprimand. See, e.g., In re Saluti, 214 N.J. 6 (2013) (attorney failed to reply to three letters from the DEC requesting a reply to a grievance; two prior admonitions).

In crafting the appropriate discipline, however, we must also consider aggravating and mitigating factors. There is no mitigation to consider. Respondent's ethics history is an aggravating factor that must be considered in this case. In June 2019, he received an admonition for misconduct including violations of RPC 1.3 and RPC 1.4(b). Although respondent had not yet received the admonition, in July 2018, when the present grievance was served, the June 2019 matter may serve to enhance discipline in the present instance. The grievance underlying that matter was filed in January 2014 and docketed in March 2014. The investigative report was issued in August 2014. Respondent and grievant entered into the retainer agreement for the present matter in April 2015. Thus, at the time the facts undergirding the present grievance occurred, respondent had notice that his conduct was under scrutiny due to the

investigation resulting in the June 2019 admonition, and he should have conformed his conduct accordingly. See, e.g., In re Furino, 210 N.J. 124 (2012) (default; three-month suspension imposed on attorney who ignored a letter from the district ethics committee and failed to submit a written reply to a grievance; in aggravation, we considered that, at the time he received the grievance, he was “well aware that his inaction vis-à-vis the district ethics committee in two prior disciplinary matters was under scrutiny,” yet “he continued to evade and avoid the system;” prior reprimand and three-month suspension). A reprimand, thus, is the minimum quantum of discipline warranted for respondent’s violations of RPC 1.3, RPC 1.4(b), and RPC 8.1(b).

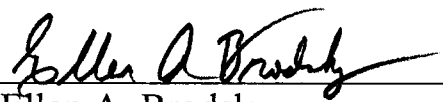
In further aggravation, however, the default status of this matter must also be considered. “[A] respondent’s default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced.” In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted). In light of respondent’s default, the enhanced sanction of a censure is warranted.

On balance, we determine that a censure is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Member Joseph 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 Kevin J. Begley
Docket No. DRB 19-233

Decided: January 17, 2020

Disposition: Censure

<i>Members</i>	Censure	Recused	Did Not Participate
Clark	X		
Gallipoli	X		
Boyer	X		
Hoberman	X		
Joseph			X
Petrou	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8	0	1


Ellen A. Brodsky
Chief Counsel