Supreme Court of New Jersey
Disciplinary Review Board
Docket Nos. DRB 19-344, 19-345,
and 19-346
District Docket Nos. IV-2018-0044E,
IV-2018-0045E, and IV-2018-0051E

In the Matter of Seth C. Hasbrouck An Attorney at Law	:

Decision

Decided: June 4, 2020

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

These matters were before us on certifications of the record filed by the District IV Ethics Committee (DEC), pursuant to R. 1:20-4(f). The formal ethics complaints charged respondent with violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with the client); RPC 5.5(a) and R. 1:28A-2 (practicing law while ineligible); RPC

8.1(b) (failure to cooperate with disciplinary authorities); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons set forth below, we determine to impose a one-year suspension.

Respondent was admitted to the New Jersey bar in 2009. At the relevant times, he maintained an office for the practice of law in Woodbury, New Jersey.

In 2018, respondent was censured, in another default matter, for gross neglect; lack of diligence; failure to communicate with the client; practicing law while ineligible; and failure to cooperate with disciplinary authorities. In re Hasbrouck, 235 N.J. 328 (2018).

On October 19, 2016, respondent was declared ineligible to practice law for his failure to comply with the Interest on Lawyers Trust Accounts (IOLTA) obligations. Respondent regained IOLTA compliant status on March 21, 2019.

Service of process was proper. On January 17, 2019, the DEC sent copies of the three formal ethics complaints underlying this matter, by certified and regular mail, to respondent's Folsom, New Jersey address set forth in the 2019 Lawyers Diary. All the complaints were returned as undeliverable.

On June 26, 2019, the DEC sent copies of the formal ethics complaints, by certified and regular mail, to respondent's Woodbury office address of record. The certified mail was unclaimed. The regular mail was not returned.

On July 26, 2019, the DEC sent a letter, by regular mail, to respondent's Woodbury office address, informing him that, unless he filed verified answers to the complaints within five days of the date of the letter, the allegations of the complaints would be deemed admitted, the records would be certified to us for the imposition of discipline, and the complaints would be deemed amended to charge a willful violation of RPC 8.1(b). The regular mail was not returned.

As of August 21, 2019, respondent had not filed answers to the complaints, and the time within which he was required to do so had expired. Accordingly, the DEC certified these matters to us as defaults.

We now turn to the allegations of the complaints.

The Scull Matter - DRB 19-344

On April 12, 2017, grievant Shanei Scull retained respondent to represent her in connection with a breach of contract matter against Vitarelli's Catering, for which she paid respondent $1,000. Respondent told Scull that, if the matter were not resolved by the end of May 2017, they would pursue the caterers, presumably by way of a lawsuit. In a July 11, 2017 e-mail to respondent, Scull expressed frustration that, respondent had canceled a meeting to discuss the case and complained that, on June 28, 2017, he was supposed to have sent her "court papers," presumably pleadings, for her signature, but she had never received

them. Scull told respondent that, if he failed to "fulfill [their] agreement within the next few days," he should return her $1,000 fee so that she could obtain other representation.

On August 22, 2017, Scull sent respondent an e-mail inquiring as to the status of her matter, to which respondent replied, "I am awaiting a court date. Generally scheduled within three months. Unless there is unforeseen delay, I expect a court date in October." According to the complaint, a search of the "New Jersey electronic docket system" revealed no filings by respondent, in any New Jersey court, in Scull's behalf or against Vitarelli's Catering.

Thereafter, Scull continued to have difficulty communicating with respondent. On October 26, 2017, she expressed her disapproval of respondent's failure to reply to her inquiries for information.

Because respondent failed to return Scull's telephone calls, she suggested that all further communications between them take place via e-mail. In an April 18, 2018 e-mail reply, respondent asked Scull to provide a settlement amount that she would accept from Vitarelli's Catering. The next day, Scull replied with a figure of $4,000, but received no reply. Thereafter, in two May 2018 e-mails to respondent, Scull complained about his continued failure to keep her informed about the status of her matter. On May 24, 2018, respondent replied, "I believe I can get you half of your deposit back. Would that be

satisfactory to you at this time."

Scull and respondent exchanged no further correspondence until July 9, 2018, when she sent him a letter, by certified mail, requesting a meeting to discuss the status of her case. The letter further stated that, on May 24, 2018, respondent told her that the case "would be going to court soon." By letter dated July 27, 2018, Scull asked respondent for a copy of her client file.

On October 29, 2018, the DEC sent respondent a copy of the grievance (and two other grievances, as detailed below), by certified mail, to his law office address, plus a letter informing him of the investigation and requesting his written reply to the grievance within ten days.

On November 1, 2018, the DEC sent another request for respondent's written reply to the grievance, this time by regular mail, to his office address. On November 27, 2018, the investigator left a voicemail message for respondent, who returned the call, acknowledged receipt of the grievance, and represented that he would reply within seven days.

Also on November 27, 2018, the investigator sent respondent a letter, by certified and regular mail and by e-mail, in which he memorialized their telephone conversation. On December 6, 2018, the investigator sent a final letter to respondent by those same methods, informing him that, if the DEC did not receive his written reply to the grievance within seven days, it would conclude

the investigation without respondent's input.

The complaint alleged that respondent's failure to file a complaint or otherwise prosecute Scull's claims constituted gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively, and that his failure to reply to her inquiries about her case amounted to a failure to communicate with the client, a violation of RPC 1.4(b).

Because respondent continued to practice law in the Scull matter after October 19, 2016, the date that he was declared IOLTA-ineligible to practice law, the complaint alleged that he violated RPC 5.5(a) and R. 1:28A-2.

For respondent's failure to reply to the DEC's repeated requests for information about the grievance and to cooperate with the ethics investigation, the complaint charged respondent with a violation of RPC 8.1(b).

Finally, the complaint alleged that respondent had provided Scull with information that he knew to be false. Specifically, in an August 22, 2017 e-mail, respondent misrepresented that he was awaiting a court date that was generally scheduled within three months, and that he expected a court date in October 2017. That statement was "less than forthright," inasmuch as respondent had not filed a complaint at the time. According to the complaint, respondent intended to deceive Scull, leading her to believe that a complaint had been filed and that a court date was imminent, misrepresentations that violated RPC 8.4(c).

The Magee Matter – DRB 19-345

In January 2018, the Gloucester County Board of Freeholders sponsored a free, simple will program for senior citizens. Grievant Ronald Magee participated in the program and met with respondent for the drafting of his will. Magee also paid respondent $200 to prepare a living will and power of attorney (POA). Respondent failed to provide Magee with a written fee agreement for the additional legal services, but the complaint did not charge him with having failed to set forth, in writing, the basis or rate of his fee.

On February 7, 2018, the program's executive director scheduled a February 14, 2018 meeting for Magee to execute the will and additional documents that respondent drafted. However, when respondent's documents were presented to Magee for execution, it was discovered that a signature page for the POA had been prepared for someone other than Magee, and already contained signatures. Thereafter, Magee asked respondent to contact him about the missing page and incorrect signatures. Respondent, however, failed to do so.

According to the complaint, respondent's failure to reply to Magee's request to correct what appeared to be a simple scrivener's error constituted lack of diligence and failure to reply to the client's reasonable request for information, violations of RPC 1.3 and RPC 1.4(b), respectively.

As noted above, on October 19, 2016, respondent was declared IOLTA-ineligible and remained ineligible to practice law through January 15, 2019, the date of the formal ethics complaint. The complaint alleged that, by undertaking Magee's legal matter and drafting the will, living will, and POA, while ineligible to practice law, respondent violated RPC 5.5(a).

As discussed in the Scull matter above, respondent failed to reply to the DEC investigator's inquiries regarding Magee's grievance. For respondent's failure to reply to the DEC's repeated requests for his reply to the grievance and to cooperate with ethics authorities during the investigation, the complaint charged respondent with a violation of RPC 8.1(b).

The Sherf Matter – DRB 19-346

On September 29, 2015, grievant Kathleen Sherf retained respondent to represent her in connection with injuries she sustained in a fall at a Payless/Avis Rental Car (Payless) location at a Denver, Colorado airport. Respondent provided Sherf with a written, contingent fee agreement for the matter.

In late 2015, respondent told Sherf that he was sending a demand letter to Payless's insurance carrier, to begin settlement negotiations. On November 8, 2015, respondent and Sherf discussed the status of the matter in an e-mail exchange, wherein respondent claimed that he was actively pursuing the matter.

No further communication took place between respondent and Sherf until

April 29, 2016, when Sherf informed respondent that an individual from Payless had contacted her about the airport incident. She expressed surprise that it had taken so long for Payless to reply to respondent, and informed respondent that she had directed the individual to contact him regarding her claim. On July 17, 2016, respondent informed Sherf that he intended to file a complaint that month.

Almost a year later, in June 2017, Sherf informed respondent that she had received a questionnaire from Payless's insurance carrier seeking information about her accident. She asked respondent for a status update because the accident had occurred nearly two years earlier. The next day, respondent replied, "Do not complete the form – I will speak with you tomorrow. All is fine." On July 10, 2017, Sherf e-mailed respondent for a status update, having received a call from a "specialized claim adjuster."

On September 15, 2017, respondent filed a complaint on Sherf's behalf, fourteen months after promising to do so. Thereafter, on multiple occasions, Sherf requested information about respondent's progress, but those efforts went unanswered.

On February 3, 2018, the court issued a lack of prosecution notice in Sherf's matter. Finally, on April 7, 2018, Sherf sent respondent a letter relating that she was "totally baffled" at the length of time her matter was taking, and asking whether there was "some way you can put the thumbscrews to Payless to

settle this?" Respondent replied, "I left you a message. Give me a call when you get a chance. All is fine. We can discuss possible settlement figure." Apparently unbeknownst to Sherf, also on April 7, 2018, the complaint was dismissed for lack of prosecution.

In a September 21, 2018 letter to respondent, Sherf stated that, with "absolutely no response from you about the status of this case and it is now beyond 3 years since this accident occurred," she was retaining another attorney to represent her. She also demanded her client file. Respondent never replied.

According to the complaint, respondent's failure to serve the defendants or request a continuance to do so, thereby permitting the dismissal of Sherf's complaint for failure to prosecute, constituted gross neglect and lack of diligence, in violation of RPC 1.1(a) and RPC 1.3, respectively. The complaint further alleged that his failure to reply to her numerous requests for information about the matter constituted a violation of RPC 1.4(b).

The complaint also alleged that, as in the Scull and Magee matters, respondent practiced law while ineligible, a violation of RPC 5.5(a).

As in the Scull and Magee matters, respondent's failure to comply with the DEC's repeated requests for his written reply to the grievance and to cooperate during the ethics investigation led to a charged violation of RPC 8.1(b).

Finally, respondent was charged with having provided Sherf with knowingly false information in his November 2, 2017 e-mail, wherein he stated that he was awaiting the defendant's answer to the complaint. Although respondent had filed a complaint on September 15, 2017, he knew at the time that he had not served the complaint upon Payless. Another "less than forthright" statement appeared in respondent's April 4, 2018 e-mail to Sherf, as follows: "I left you a message. Give me a call when you get a chance. All is fine. We can discuss a possible settlement figure." The complaint alleged that, at the time, respondent knew that all was not fine. In fact, the complaint would be dismissed three days later, on April 7, 2018. According to the complaint, respondent intended to mislead Sherf that her case was "fine," and that he was awaiting Payless's answer, violations of RPC 8.4(c).

* * *

We find that the facts recited in the complaints support the charges of unethical conduct. Respondent's failure to file answers to the complaints 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).

Specifically, for a $1,000 fee, Scull retained respondent in April 2017 to represent her in a contractual dispute with a caterer. For more than a year thereafter, through July 2018, respondent failed to negotiate a settlement with

the defendant or to file a complaint. Although Scull repeatedly requested status updates throughout the representation, respondent largely ignored those requests, never revealing his inaction to the client. For respondent's failure to prosecute his client's claim, he is guilty of gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively. By failing to reply to Scull's reasonable requests for information, he violated RPC 1.4(b).

Because respondent was ineligible to practice law when he represented Scull, he engaged in the unauthorized practice of law, a violation of RPC 5.5(a).

Moreover, on at least two occasions, respondent misrepresented the status of the case to Scull. In an August 22, 2017 e-mail, respondent told Scull that he was awaiting a court date in the matter. He knew that was a false statement, because he had not filed a complaint in her behalf. Almost a year later, in a May 24, 2018 conversation with Scull, respondent again misrepresented to her that they would be going to court soon, and that they were much closer to resolving the matter. For respondent's lies to Scull that the matter was proceeding apace, when he had taken no action on her behalf, respondent is guilty of having violated RPC 8.4(c).

In the Magee matter, in January 2018, respondent was retained to prepare a will, a living will, and a POA. When, on February 14, 2018, those documents were presented to Magee for execution, one of the signature pages contained

the wrong name and signatures, apparently belonging to another client in an unrelated matter. Although Magee asked respondent to contact him to correct that simple error, respondent never did so, constituting lack of diligence, a violation of RPC 1.3. Respondent's failure to reply to his client's request for that information violated RPC 1.4(b).

Respondent was ineligible to practice law when he accepted Magee's case and prepared Magee's will, living will, and POA. Respondent, thus, engaged in the unauthorized practice of law, a violation of RPC 5.5(a).

In the Sherf matter, in September 2015, respondent was retained to file a complaint for injuries that Sherf sustained in a slip and fall at a Denver airport. In July 2016, respondent told Sherf that he was filing a complaint, but failed to do so until September 15, 2017, fourteen months later. Thereafter, respondent failed to serve the complaint and ignored Sherf's multiple requests for information about the status of her case. On April 7, 2018, the complaint was dismissed for failure to prosecute, after which respondent failed to seek its reinstatement. Respondent's failure to prosecute his client's claim constituted gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively. His failure to reply to Sherf's numerous requests for information about the matter violated RPC 1.4(b).

Respondent was ineligible to practice law during the entire Sherf

representation. He, thus, engaged in the unauthorized practice of law, a violation of RPC 5.5(a).

Moreover, respondent misrepresented the status of Sherf's matter by claiming, in a November 2, 2017 e-mail, that he was awaiting Payless's answer to the complaint. Respondent knew at the time that, although he had filed a complaint in September 2017, he had not served Payless. Respondent also lied in his April 4, 2018 e-mail to Sherf, in which he stated that all was "fine" with her case. Respondent knew that a dismissal warning had been issued two months earlier, and that, without action on his part, the complaint's dismissal was imminent. Indeed, the complaint was dismissed on April 7, 2018, just three days later. Respondent's statements were intended to mislead Sherf that her matter was proceeding apace, when the opposite was true. Respondent's misrepresentations violated RPC 8.4(c).

Finally, in respect of the Scull, Magee, and Sherf ethics grievances, respondent ignored four letters that the DEC sent him between October 29 and December 6, 2018, all requesting his written reply to the grievances. Although respondent returned one telephone call from investigators during that time, acknowledged receipt of the grievances, and promised to provide his written replies within seven days, he never did so. For respondent's failure to cooperate during the ethics investigations and his later failure to answer the formal ethics

complaints in these matters, respondent is guilty of multiple violations of RPC 8.1(b).

In sum, we find that, in three client matters, respondent violated RPC 1.3, RPC 1.4(b), RPC 5.5(a), and RPC 8.1(b). In two matters (Scull and Sherf), respondent also violated RPC 1.1(a) and RPC 8.4(c). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand still may be imposed even if, as here, the misrepresentation is accompanied by violations of RPC 1.3 and RPC 1.4(b), or other non-serious ethics infractions. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney made a misrepresentation by silence to his client, by failing to inform her, despite ample opportunity to do so, that her complaint had been dismissed, a violation of RPC 8.4(c); the complaint was dismissed because the attorney had failed to serve interrogatory answers and ignored court orders compelling service of the answers, violations of RPC 1.1(a), RPC 1.3, and RPC 3.2; the attorney also violated RPC 1.4(b) by his complete failure to reply to his client's requests for information or to otherwise communicate with her; the attorney never informed his client that a motion to compel discovery had been filed, that the court had entered an order granting the motion, or that the court

had dismissed her complaint for failure to serve the interrogatory answers and to comply with the court's order, violations of RPC 1.4(c)); In re Ruffolo, 220 N.J. 353 (2015) (knowing that the complaint had been dismissed, the attorney assured the client that his matter was proceeding apace, and that he should expect a monetary award in the near future; both statements were false, in violation of RPC 8.4(c); the attorney also exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, not working on it after filing the initial claim, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter, violations of RPC 1.1(a) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates); and In re Falkenstein, 220 N.J. 110 (2014) (attorney led the client to believe that he had filed an appeal and concocted false stories to support his lies, a violation of RPC 8.4(c); he did so to conceal his failure to comply with his client's request that he seek post-judgment relief, violations of RPC 1.1(a) and RPC 1.3; because he did not believe the appeal had merit, the attorney's failure to withdraw from the case was a violation of RPC 1.16(b)(4); the attorney also practiced law while ineligible, although not knowingly, a violation of RPC 5.5(a)).

Ordinarily, when an attorney practices while ineligible, an admonition will be imposed, if he or she is unaware of the ineligibility. See, e.g., In the

Matter of Jonathan A. Goodman, DRB 16-436 (March 22, 2017) (attorney practiced law during two periods of ineligibility; he was unaware of his ineligibility); In the Matter of James David Lloyd, DRB 14-087 (June 25, 2014) (attorney practiced law during an approximate thirteen-month period of ineligibility; among the mitigating factors considered was his lack of knowledge of the ineligibility); and In the Matter of Adam Kelly, DRB 13-250 (December 3, 2013) (during a two-year period of ineligibility for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection, the attorney handled at least seven cases that the Public Defender's Office had assigned to him; in mitigation, the record contained no indication that the attorney was aware of his ineligibility, and he had no history of discipline since his 2000 admission to the New Jersey bar). Here, the complaint does not reveal whether respondent was aware of his ineligibility when he engaged these three clients in their representations. Consequently, an admonition is implicated for that misconduct.

Finally, admonitions typically are 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 district ethics committee 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 totality of respondent's misconduct, encompassing his neglect of three client matters, his deceptive behavior toward his clients, and his lack of cooperation with disciplinary authorities, would warrant at least a reprimand. In aggravation, we must consider the default status of this matter. "[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, alone, the enhanced sanction of a censure is warranted.

In October 2018, however, respondent was censured in DRB 17-349, also a default, for some of the same ethics violations presented here. In that matter,

as here, respondent had acknowledged receipt of the grievance and, in February 2017, communicated to the investigator that he would provide his written reply. Respondent then failed to reply to the grievance or to file an answer to the complaint. Having been placed on notice in February 2017 that his conduct in DRB 17-349 was being scrutinized by disciplinary authorities, he should have been more mindful of his obligations to the clients in the within matters. Yet, he neglected them after February 2017. For this reason alone, the principle of progressive discipline requires the imposition of a three-month suspension. Further, these matters mark respondent's second, third, and fourth consecutive defaults. Indeed, he has now defaulted in all four of his New Jersey disciplinary matters, which we find warrants a further enhancement of the sanction.

These additional defaults make clear that respondent cares little about his clients or his license to practice law in New Jersey, and that he has learned little from his prior dealings with disciplinary authorities. There is no mitigation for us to consider.

On balance, we determine that a one-year suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar. Vice-Chair Gallipoli voted to recommend respondent's disbarment. Member Boyer 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: **/s/ Ellen A. Brodsky**
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Seth C. Hasbrouck
Docket Nos. DRB 19-344, 19-345, and 19-346

Decided: June 4, 2020

Disposition: One-Year Suspension

Members	One-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:	7	1	0	1

/s/ Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel