SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 10-253 and 10-254
District Docket Nos. IIIB-09-0012E
and IIB-08-0018E

IN THE MATTER OF

RONALD B. THOMPSON

AN ATTORNEY AT LAW

Decision

Argued: October 21, 2010

Decided: December 8, 2010

John O. Poindexter, III appeared on behalf of the District IIIB Ethics Committee.

Mark J. Molz appeared on behalf of respondent.

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

These two disciplinary matters have been consolidated for review. In our view a single censure is the appropriate discipline for the totality of respondent's actions.

Respondent was admitted to the New Jersey bar in 1990. He maintains a law office in Marlton, New Jersey. He has no history of discipline.

DRB 10-253 – The Samuel Johnson Matter (District Docket No. IIIB-2009-0012E)

This matter came before us on a recommendation for a censure filed by the District IIIB Ethics Committee ("DEC"). The three-count complaint charged respondent with violating RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation) (mistakenly cited in the complaint as RPC 1.4(a) and RPC 1.4(b), respectively), and RPC 3.2 (failure to expedite litigation).

At the DEC hearing, the parties agreed that respondent would "stipulate to the three counts . . . contained in the Complaint." Grievant Samuel Johnson testified about the impact of respondent's conduct on him. Respondent also testified.

In early April 2006, Johnson retained respondent to pursue an appeal from the entry of a final restraining order (FRO) for stalking his ex-fiancée. The FRO was issued in Atlantic County. Immediately following the entry of the FRO, Johnson filed a pro se notice of appeal. He ordered and paid for the necessary

transcripts. Johnson, a firefighter, testified that he believed that the FRO would impede his chances of obtaining a promotion.

Although the March 9, 2006 Appellate Division scheduling order required that the appellant's brief and appendix be filed by April 10, 2006, Johnson did not retain respondent until April 6, 2006. He did not recall whether he had given respondent a copy of the scheduling order, but remembered having provided respondent with the trial transcripts. When Johnson informed respondent about the date of the FRO, respondent told him not to worry about it, that he would take care of it, and that "the time didn't matter."

According to Johnson, respondent told him that he would be able to have the FRO vacated. He charged Johnson a $4,000 fee for the appeal. Because time was of the essence, respondent indicated that he would begin working on the appeal immediately.

Even though Johnson had not given respondent the scheduling order, respondent conceded that he knew from the date of the FRO that the brief had to be filed soon. He claimed that, the very next day, he assigned the matter to an associate, who began working on it immediately. He also claimed that, periodically, he checked on the associate's progress.

At some point not specified in the record, respondent learned that the associate could find no appealable issues.

Because Johnson had been calling him, respondent personally reviewed the transcripts "within just a matter of a few days." Respondent claimed that he had informed Johnson that he was taking the matter over from the associate because of the associate's inability to find any appealable issues. Respondent, too, could find no basis for an appeal, but could not specifically recall so informing Johnson and "certainly didn't put it in writing." Respondent also claimed that he attempted to have the FRO vacated by asking the complainant to agree to it, to no avail. He conceded, however, that this approach was attempted only "more recently."

On May 15, 2006, Johnson received the court's May 10, 2006 order dismissing his appeal for failure to timely file a brief. Johnson immediately faxed a copy of the order to respondent and telephoned him. According to Johnson, respondent told him not to worry about the dismissal. He assured him that he would contact the Appellate Division, have the appeal reinstated, file the necessary brief, and move the matter forward.

After that telephone conversation, Johnson heard nothing further from respondent, despite leaving him numerous telephone messages. Eventually, on July 11, 2006, Johnson personally contacted the Appellate Division Clerk, only to discover that

respondent had not filed a motion to reinstate the appeal and that the time to do so had expired.

By letter dated July 13, 2006, Johnson terminated respondent's representation, informed him about what he had learned from the clerk, and requested an immediate and full refund of his entire $4,000 retainer and the return of his transcripts. Afterwards, he made numerous follow-up telephone calls to respondent's office, to no avail.

Approximately six weeks later, Johnson received a letter from respondent, dated September 3, 2006, offering to refund $1,000 of the retainer and to "handle any appeal to the Supreme Court at no charge." Johnson rejected respondent's proposal. He believed that something could still be done on his behalf and, therefore, wanted his fee refunded to retain a new attorney to handle his appeal.

Respondent explained that the offer in his September 3, 2006 letter did not make sense, but that Johnson had insisted on that language. Although respondent did not believe that Johnson had a viable appeal to the Supreme Court or even the Appellate Division, he did not express that opinion to Johnson. He admitted that he should have done so.

Respondent asserted that, once he learned of the appeal's dismissal, he called the clerk's office and was advised to file a brief with a motion to reinstate the appeal.

The complaint alleged that, after Johnson received respondent's September 3, 2006 letter, Johnson attempted to contact respondent "countless times over the next two years demanding his money and the transcripts back," but he was unsuccessful. Respondent, in turn, did not recall Johnson's numerous telephone calls. He claimed that there must have been a "glitch" between Johnson and whoever took his telephone calls. Nevertheless, he accepted responsibility for the unanswered calls. Respondent stated that, "at one point," he regularly communicated with Johnson, "almost daily, at least every couple days or so." He added that he was not suggesting that Johnson was not telling the truth, but merely that Johnson "may not have [called] as much as one might think." He admitted that, maybe at least once, he did not return Johnson's call. He also conceded that he never told Johnson that his appeal had been dismissed and could not be reinstated.

Johnson filed the grievance against respondent in January 2009. In late April 2009, respondent notified Johnson that he had located three of the four transcripts, which had been misplaced. Several days later, on May 1, 2009, respondent

located the fourth transcript. Johnson received all four transcripts in early May 2009. However, as of the date of the ethics complaint, September 30, 2009, respondent had not refunded Johnson's retainer. He refunded the entire $4,000 on the day of the DEC hearing, January 29, 2010, three and one-half years after Johnson terminated the representation and requested the refund.

Respondent's counsel pointed out that respondent accepted responsibility for "this" and that it occurred as the result of a combination of things, including that there was a very short deadline to file the brief; that it was a difficult case to "overturn;" that he was not able to communicate effectively because of many things "going on;" that he has changed his practice; that he is remorseful; and that he has given Johnson a full refund. Counsel had earlier mentioned that respondent's wife had been respondent's office manager, but that they had become estranged and had ultimately divorced. His office procedures, therefore, were not as they should have been.

The DEC found that respondent's failure to timely file a brief, to request an extension, to move to have the appeal reinstated, and to return Johnson's transcripts and retainer violated RPC 1.3. For the same reasons, together with respondent's failure to inform Johnson that his inaction barred

him from pursuing his remedies and that the two-year delay in returning the transcripts prevented Johnson from obtaining another attorney, the DEC found a violation of RPC 3.2. Finally, the DEC found that respondent's failure to advise Johnson that he did not file a brief on his behalf or a motion to reinstate the appeal, that he did not reply to Johnson's telephone calls, and that he gave misleading information about the likelihood of success of his appeal violated RPC 1.4(b).

In addition to these infractions, the DEC considered that it had recommended a reprimand in another matter (DRB 10-254, below) and determined that a censure was appropriate discipline here.

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

Although respondent stipulated to the allegations of the complaint, his testimony at the ethics hearing was an attempt to mitigate the seriousness of his offenses. As seen above, respondent claimed that Johnson did not have grounds to appeal the FRO and that Johnson may not have tried to contact him to the extent claimed. We find respondent's testimony to be somewhat of a stretch. While, initially, he may have adequately communicated with Johnson, as time progressed he failed to

return Johnson's numerous telephone calls; failed to promptly reply to his letter requesting the return of his retainer and transcripts; and failed to keep him informed about the status of his appeal, that is, about the dismissal of the appeal for failure to timely file a brief, his failure to move to vacate the dismissal, the expiration of the time to do so, the lack of grounds for an appeal, and, therefore, his inability to get the appeal reinstated. We, thus, find that this conduct in the aggregate, violated RPC 1.4(b), rather than RPC 1.4(c).

Respondent also lacked diligence (RPC 1.3) and failed to expedite litigation (RPC 3.2) by not taking prompt action on Johnson's behalf. Although he knew that the appellate brief had to be filed soon, there is no indication that he took steps to determine the brief's due date. He failed to timely file a brief, to seek an extension to do so, and to make a motion to vacate the dismissal, notwithstanding his claim that there was no basis for doing so. As an aggravating factor, we find that respondent also misled Johnson to believe that he had a viable case, even going so far as to offer to handle any appeal to the Supreme Court at no extra charge.

As noted earlier, at the start of the DEC hearing, respondent admitted the allegations of the complaint. However, some of his testimony contradicted his admission and lacked

credibility, which we view as an additional aggravating factor. For instance, respondent accused Johnson of insisting on the language in the September 3, 2006 letter regarding any appeal to the Supreme Court, even though the language appeared to be an attempt to forestall the return of Johnson's retainer and transcripts; he claimed that he failed to return only one of Johnson's calls; and he contended that he had tried other methods to have the FRO vacated, but then admitted that he had done so only recently.

In all, we find respondent guilty of violating RPC 1.3, RPC 1.4(b), and RPC 3.2, misconduct aggravated by his misleading statements to Johnson and his failure to return the fee and transcripts to Johnson in a timely fashion. We will address the proper quantum of discipline in conjunction with the matter below.

DRB 10-254 – The Charlene Mims Matter (District Docket No. IIIB-2008-0018E

This matter came before us on a recommendation for a reprimand filed by the DEC. The two-count complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client accurately and adequately informed and making misrepresentations about the status of the case that was deceitful) (the complaint

combined the language of RPC 1.4(b) with that of RPC 8.4(c) (conduct involving dishonest, fraud, deceit and misrepresentation), but it did not specifically cite RPC 8.4(c)), and RPC 3.2 (failure to expedite litigation).

This matter arose from respondent's failure to perfect an appeal in a criminal matter for client Charlene Mims a/k/a Charlene Mims Garlic.

At the DEC hearing, respondent stipulated to having violated RPC 1.4(b), in that "for a long period of time" he failed to keep Mims apprised of the status of her appeal and that his office told Mims that her appeal had been timely filed and was proceeding properly, when it had not been perfected. Respondent further stipulated that Mims was not copied on correspondence relating to her matter, other than an undated letter to the Deptford Township Municipal Court Administrator, requesting that a warrant for Mims' arrest be rescinded.

In November 2002, Mims retained respondent to file an appeal from a Deptford Municipal Court finding that she was guilty of disorderly conduct. Respondent's November 18, 2002 letter to Mims stated that the deadline for filing an appeal of her conviction was November 27, 2002, but that he could not represent her until a written fee agreement was executed and she paid him a legal fee.

On November 25, 2002, Mims paid respondent a $1,500 retainer for the appeal. Respondent agreed to file the appeal and noted that they would have to wait for the court to "set a date." He told Mims that, in the interim, the penalties imposed at trial would be stayed, pending the appeal.

By letter dated November 27, 2002, respondent sent the court reporter a $150 deposit for the trial transcript. The letter stated his understanding that the amount would cover the cost of the transcript.

In a letter dated December 3, 2004, the Municipal Division Manager informed respondent that Mims' notice of appeal had been filed with the wrong office and directed him to re-file it with the Criminal Division Manager of the Criminal Division, Superior Court.

On January 27, 2003, the Deptford Municipal Court issued a warrant for Mims' arrest, based on "an unanswered complaint." Mims contacted respondent about the warrant. He in turn, notified the court that Mims' appeal was pending, whereupon the court rescinded the warrant.

Mims claimed that, afterwards, in at least ten telephone conversations with respondent, he told her that they were waiting for a court date on the appeal. She did not realize that an appeal took so long, but respondent had explained to her that

the court docket was backlogged. Periodically, the Municipal Court sent notices to Mims about her fine, but stayed it, based on Mims' and respondent's representations that the appeal was still pending.

At an undisclosed point, but apparently in 2003, Mims called respondent to inquire about her appeal. She also mentioned her need for a matrimonial attorney to handle her out-of-state case. Respondent agreed to handle her matrimonial matter for a $750 fee and succeeded in promptly obtaining her divorce. During their conversations relating to the matrimonial matter, respondent never informed Mims that he needed additional money to obtain the transcripts for her criminal appeal.

Sometime in May 2004, the Deptford Municipal Court Clerk looked into Mims' case and notified her that respondent had not filed an appeal. When Mims questioned respondent about it, he insisted that the appeal had been filed. As seen above, he had filed the appeal in the wrong court and had been advised of his mistake in December 2002 (approximately one and one-half years earlier). Mims acknowledged that respondent had made a mistake, but questioned why he did not tell her and, instead, lied about it by stating that he had not proceeded with her appeal because she had not "pa[id] him money," an additional $900 for the transcripts. Mims asserted that, had she known that additional

funds were needed, she would have paid them. She claimed that respondent's office had requested additional funds for the transcripts two years after the fact and not in writing. By that time, the appeal was time-barred.

After Mims learned that she had lost her right to appeal the conviction, she and the clerk worked out a monthly payment plan, in lieu of another arrest warrant. She satisfied the fine, which amounted to more than $600.

According to respondent, after he received the letter stating that he had filed the notice of appeal in the wrong court, he wrote a "post-it" note to his secretary saying that "it looks like we filed this in the wrong place, please have it filed in the correct place." He assumed that his secretary had re-filed it, but took responsibility for it not having been re-filed. He conceded that, once he discovered that the appeal had been filed in the wrong court, he could have re-filed it without the transcripts to preserve Mims' right to go forward. Respondent also received an "incorrect transcript request form," dated December 6, 2002, noting that he had not submitted a sufficient fee for the transcript and requesting an additional $500. He claimed that he immediately had his secretary contact Mims for the balance, but that Mims had refused to pay any additional amounts.

Respondent alleged that, thereafter, he explained to Mims that the appeal would not proceed if she did not pay the additional transcript costs. He did not send her a letter to memorialize that conversation. Exhibit G4 contains a handwritten note from an unidentified person. The noted, dated "4-19-04," stated the following: "Spoke to Atty's Secretary – Waiting for extra money from client – will inform us what they are doing by end of week – If no money – they will dism the Appeal."

Respondent could not corroborate that he had advised Mims, prior to November 2004, that she had to pay additional amounts for the transcripts. In addition, he admitted that neither he nor anyone from his office had ever informed Mims that her appeal had not been perfected.

Respondent could not recall advising Mims about the status of her appeal, during the course of her divorce matter. He stated:

> I really don't recall having any recollection of what might have been discussed with her during the appeal, but I'll say this, Ms. Mims, I charged her $750 for the divorce, and it was understood that the reduced fee was because she had already paid $1500 and hadn't really gotten

> anything. It wasn't formal, but that's why I charged her $750.
>
> [T56-14 to T56-20.][1]

Respondent added that he did not recall informing Mims about the status of her appeal and did not put anything in writing to her, but believed that she understood what was going on with it.

After Mims' divorce was finalized, respondent still did not check the status of her appeal. He claimed that, when he met with her about her divorce, he did not necessarily know that the appeal had not been re-filed because

> when she filed her grievance - - I did the post-it note. I assumed my staff had turned around and sent it to the criminal division because her appeal not proceeding [sic] wasn't because - - in my view wasn't because she didn't pay the transcript request form as evidenced by the fact after she filed the grievance I actually went to the criminal division to see if they had any record of it.
>
> [T59-19 to T60-1.]

Respondent stated that he was unaware that the appeal had not been re-filed until after Mims filed her grievance.

Mims complained that respondent's failure to act on her appeal had a profound impact on her. She had a criminal record

[1] T refers to the DEC hearing transcript in the matter under District Docket No. IIB-08-0018E.

and claimed that, as a result, she had lost her grandchildren to the foster care system. She feared also that her real estate license would be affected if she had to reveal her conviction.

The DEC found that respondent violated RPC 1.4(b) when he failed to keep Mims apprised about the status of her appeal; and RPC 1.1(a), RPC 1.3 and RPC 3.2 when he failed to properly file Mims' appeal in a timely fashion, instead leaving that task to his clerical staff, and never determined whether the appeal had been filed.

The DEC found no aggravating factors. For the totality of respondent's ethics violations, the DEC recommended a reprimand.

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

We find that the evidence supports most of the charges in the complaint. Respondent filed Mims' notice of appeal at the end of November 2002. In early December, he learned that he had filed the notice of appeal in the wrong office. Although respondent testified at the DEC hearing that he thought that his staff had re-filed it in the correct division, based on his instructions on a post-it note, he testified that, "when [Mims] filed her grievance - - [he] did the post-it note." Mims filed the grievance in April 2008. If respondent waited until then to

have his staff re-file the notice of appeal or to check the status of the appeal, by that time Mims' case had long become time-barred. Respondent, therefore, engaged in gross neglect (RPC 1.1(a)), and lack of diligence (RPC 1.3). We dismiss the charge of failure to expedite litigation (RPC 3.2) as inapplicable because respondent did not fail to expedite litigation within the meaning of that rule.

Respondent also failed to keep Mims apprised about the status of her matter. He never informed her that there was a problem with her appeal or that her appeal had not been perfected. Instead, he told her that the courts were backlogged, that they would just have to wait, and that her appeal was proceeding normally. In this context, respondent was guilty of violating RPC 1.4(b).

Additionally, although the complaint did not specifically charge respondent with violating RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), it stated that "his misrepresentation as to the status of her appeal was deceitful." Mims' testimony established respondent's misrepresentations to her. We, therefore, consider the misrepresentation and deceitful statement to Mims as an aggravating factor.

We turn now to the issue of the proper quantum of discipline for respondent's violations in both cases: RPC 1.1(a) in the Mims matter; RPC 1.3 in both matters; RPC 1.4(b) in both matters; and RPC 3.2 in the Johnson matter. Aggravating factors in the Johnson matter were that some of respondent's testimony lacked credibility, that he misled Johnson about the viability of his case, and that his extreme delay in returning Johnson's transcripts and refunding his retainer prevented Johnson from seeking other representation. Respondent also made misrepresentations to Mims about the status of her case. In addition, Mims' criminal record had a detrimental effect on her.

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, and the seriousness of the attorney's disciplinary history. See, e.g., In re Russell, 201 N.J. 489 (2009) (admonition for attorney whose failure to file answers to divorce complaints against her client caused a default judgment to be entered against him; the attorney also failed to explain to the client the consequences flowing from her failure to file answers on his behalf); In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008) (admonition for attorney whose inaction in

a personal injury action caused the dismissal of the client's complaint; the attorney took no steps to have it reinstated; also, the attorney failed to communicate with the client about the status of the case); In re Dargay, 188 N.J. 273 (2006) (admonition for attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; prior admonition for similar conduct); In the Matter of Anthony R. Atwell, DRB 05-023 (February 22, 2005) (admonition for attorney who did not disclose to the client that the file had been lost, canceled several appointments with the client for allegedly being unavailable or in court when, in fact, the reason for the cancellations was his inability to find the file, and then took more than two years to attempt to reconstruct the lost file); In the Matter of Ben Zander, DRB 04-133 (May 24, 2004) (admonition for attorney whose inaction caused a trademark application to be deemed abandoned on two occasions; the attorney also failed to comply with the client's requests for information about the case); In re Uffelman, 200 N.J. 260 (2009) (reprimand for attorney guilty of gross neglect, lack of diligence, and failure to communicate with a client; although the attorney had no disciplinary record, the reprimand was premised on the extensive harm caused to the client, who was forced to shut down his business for three months because of the attorney's failure to

represent the client's interests diligently and responsibly); In re Aranguren, 172 N.J. 236 (2002) (reprimand for attorney who failed to act with diligence in a bankruptcy matter, failed to communicate with the client, and failed to memorialize the basis of the fee; prior admonition and six-month suspension); In re Zeitler, 165 N.J. 503 (2000) (reprimand for attorney guilty of lack of diligence and failure to communicate with clients; extensive ethics history); In re Gordon, 139 N.J. 606 (1995) (reprimand for lack of diligence and failure to communicate with clients in two matters; in one of the matters, the attorney also failed to return the file to the client; prior reprimand); and In re Wildstein, 138 N.J. 48 (1994) (reprimand for misconduct in three matters, including gross neglect, lack of diligence, and failure to communicate with clients).

In In re Giampapa, 195 N.J. 10 (2008), the attorney was censured for misconduct in one client matter, including gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities. Giampapa's ethics history included two prior private reprimands and an admonition. The discipline was elevated from a reprimand because of Giampapa's pattern of failure to cooperate with disciplinary authorities.

In this case, we have weighed the fact that respondent has no history of discipline, that he encountered problems with his practice when he and his wife, who was his office manager, began having marital problems, and that respondent was remorseful. Against those factors, we took into account that two client matters were involved, that respondent made misrepresentations to both clients, and that, in both matters, even though respondent admitted his conduct, his justifications for his actions did not ring true.

Based on the totality of the circumstances, we determine that one censure is appropriate discipline for the combination of respondent's violations in both cases.

Member Wissinger would have voted for a censure in DRB 10-253 (Johnson) and a reprimand in DRB 10-254 (Mims). Member Baugh recused herself.

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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Ronald B. Thompson
Docket Nos. DRB 10-253 and 10-254

Argued: October 21, 2010

Decided: December 8, 2010

Disposition: Censure

Members	Disbar	Reprimand	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh						X
Clark			X			
Doremus			X			
Stanton			X			
Wissinger		X				
Yamner			X			
Zmirich			X			
Total:		1	7			1

Julianne K. DeCore
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Chief Counsel