SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-217
District Docket Nos. XIV-2010-0454E, XIV-2010-0455E, and XIV-2010-0472E

IN THE MATTER OF

JOHN E. TIFFANY

AN ATTORNEY AT LAW

Decision

Decided: December 12, 2012

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

This matter came before us on a certification of default, filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4 (f)(2). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a), RPC 1.4 (b), and RPC 1.4 (c) (failure to communicate with the client) in three client

matters; RPC 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation) in two matters; and RPC 3.2 (failure to make reasonable efforts to expedite litigation) in one client matter. Respondent also was charged with having engaged in a pattern of neglect (RPC 1.1(b)).

For the reasons stated below, we determine to impose a three-month suspension on respondent for the totality of his unethical conduct in all three client matters.

Respondent was admitted to the New Jersey bar in 1992. At the relevant times, he maintained an office for the practice of law in Newark. He has no disciplinary history.

Service of process was proper. On March 1, 2012, the OAE sent a copy of the formal ethics complaint to respondent's home address: 155 West 68th Street, Apartment 1805, New York, New York 10023 by regular and certified mail, return receipt requested. The certified letter was not claimed. The letter sent by regular mail was not returned to the OAE.

On April 4, 2012, the OAE sent a letter to respondent at the same address, by regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the OAE would certify the record directly to us for the

imposition of sanction. The certified letter was delivered on April 9, 2012. The letter sent by regular mail was not returned to the OAE.

On May 11, 2012, the OAE sent a final letter to respondent at the same address, by certified and regular mail. Respondent was given an additional five days to file an answer to the ethics complaint. The certified letter was not claimed. The letter sent by regular mail was marked "refused" and returned to the OAE.

On June 14, 2012, respondent informed the OAE that he had a new mailing address, 152 McClean Avenue, Staten Island, New York. On June 19, 2012, the OAE sent a copy of the complaint to respondent at that address, via United Parcel Service (UPS) overnight delivery. Respondent was given an additional five days to file an answer. UPS delivered the package on June 20, 2012.

As of June 28, 2012, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified the record to us as a default.

THE JNBAPTISTE MATTER (DISTRICT DOCKET NO. XIV-2010-0454E)

On January 11, 2007, Johny and Francine JnBaptiste retained respondent to "assist" them on two pending matters: Johny's motion to vacate a prior criminal conviction and a motion to stay an order of deportation, pending resolution of the motion to vacate. The JnBaptistes paid respondent $750 to review documents relating to the two matters and to "provide guidance." The parties agreed that, if respondent were engaged to provide additional services, the $750 would be subtracted from any future retainer.

On January 16, 2007, Francine learned that Johny's motion to vacate the conviction had been denied in November 2006. The next day, she faxed that information to respondent and requested his advice, as the JnBaptistes had not received timely notice of the decision. Specifically, Francine asked respondent whether the order could be appealed.

On January 26, 2007, Johny filed a pro se motion to stay the order of deportation, pending resolution of the motion to vacate. Four days later, Francine wrote to respondent, complaining about his failure to reply to their letters, to return their telephone calls, and to keep Johny informed about the status of his case. Specifically, Francine expressed

concern that "we are not going to have a window to appeal if we don't move quickly."

Francine enclosed a copy of the motion to stay the deportation, which had been prepared by a paralegal friend of the JnBaptistes, plus "documents relating to [Johny's] immigration decision." She concluded the January 26 letter by stating that they needed to know as soon as possible "what type of action [they could] take that would provide [them with] a positive result."

On February 8, 2007, Francine wrote another letter to respondent, enclosing a copy of "the document [they] sent to the Supreme Court and District Attorney's office regarding the fact that the court did not notify [Johny] that a decision was made in November 2006 to deny [the] motion to vacate." The letter contained a plea for respondent to review the materials that the JnBaptistes had given him and to let them know "what course of action [he] may be willing to take or if [he was] even interested in working with [them]." The letter concluded:

> I am desperately seeking an end to this nightmare in our lives. So if I appear to be pestering you, I am sorry but I ask that you try to understand why [sic] his

> case is one of many to you it is the only one to me.
>
> [C,First Count,¶17.][1]

On March 18, 2007, Francine faxed a copy of an unidentified letter to respondent for his "immediate review."

On April 11, 2007, Francine wrote to respondent again, complaining about his lack of communication. The letter stated, in part:

> I have faxed you letters requesting a call. I have called you on so many occasions until I have your cell phone number memorized. I called your office number and asked for an appointment. The young lady in the office is very vague about how we can get a chance to talk with you. . . . As usual I am giving you all of [my] phone numbers again and hoping for a reply.
>
> [C,First Count,¶19.]

At some point, respondent spoke to Johny and requested a copy of the motion for stay of removal. In an April 18, 2007 fax to respondent, Francine informed him that the motion had been filed with the pro se office of the "Eastern District Court," on January 30, 2007.

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[1] "C" refers to the formal ethics complaint, dated February 29, 2012.

In August 2007, respondent and the JnBaptistes entered into a written fee agreement for his representation of Johny in the immigration matter. The retainer was in the amount of $5000, less the $750 that the JnBaptistes had already given to respondent. The balance was due within sixty days. Between August 22 and October 22, 2007, the JnBaptistes made five payments to respondent, totaling $3900.

In September 2007, Johny learned from the United States Court of Appeals, and the "Supreme Court" that respondent had not entered his appearance on Johny's behalf, in either forum. When Francine confronted respondent with this information, he stated that the court personnel were lying and that he had "turned his papers in." He also told Francine that he had spoken to the district attorney regarding the case. Although respondent was asked to forward a copy of the paperwork to the JnBaptistes, he failed to do so.

On November 5, 2007, Johny contacted respondent and left an urgent message relaying that an INS officer had stated to him on that date that, if he did not produce his passport at his scheduled visit to the INS, on January 7, 2008, he would be sent to jail. Respondent returned the call and instructed the

JnBaptistes to download INS Form G-28 (notice of entry of appearance). They complied and faxed the form to him.

Respondent told the JnBaptistes that he would send a letter to the INS, cautioning them not to threaten Johny, as he had cases pending in the courts. He never sent such a letter, however.

Between November 5, 2007 and January 6, 2008, respondent failed to return the JnBaptistes' telephone calls or reply to their letters, one of which requested a refund of their $5000 retainer. On the morning of January 7, 2008, the JnBaptistes called respondent and left a frantic message for him. Respondent returned the call and stated that he would fax a letter to the INS officer, which he did. The letter stated that he represented Johny and that he had provided the Columbus, Ohio, district office with notice of his representation. He also said that his client would appear that day with an executed form G-28.

After January 7, 2008, the JnBaptistes never heard from respondent again. By letter dated March 26, 2008, Francine complained to respondent that

> [w]e have attempted to reach you in several ways. We have emailed, faxed, called your office, paged you and until recently been

> able to leave voicemail messages on your cell phone. We have not spoken to you since January. We would like to have some communication with you.
>
> We would like to know where you are and how we may be able to speak with you. We worked hard and paid you the money you requested. We retained you to represent my husband but the courts have no record of you being involved in my husband's case.
>
> Please respond as soon as you receive this correspondence.
>
> [C,First Count,¶45.]

On April 10, 2008, the JnBaptistes filed a grievance with New York ethics authorities, who transferred the matter to New Jersey.

Based on these facts, respondent was charged with having violated RPC 1.1(a), RPC 1.3, RPC 1.4(a) and (b), and RPC 8.4(c).

THE BEEKS MATTER (DISTRICT DOCKET NO. XIV-2010-0455E)

On April 16, 2007, Johnny Beeks, acting pro se, filed in the Superior Court of New Jersey, Union County, Special Civil Part, a lawsuit against Mercedes Benz to recover damages for its unauthorized and shoddy repairs to a vehicle, as well as

"balance billing." On May 3, 2007, Beeks retained respondent to represent him in the lawsuit.

On July 26, 2007, Mercedes Benz filed a motion to dismiss the complaint with prejudice, arguing that, by virtue of the doctrines of collateral estoppel and entire controversy, the complaint had failed to state a claim upon which relief could be granted, because Beeks had previously filed the same lawsuit in Essex County. On September 20, 2007, Mercedes Benz's motion was granted. Beeks' complaint was dismissed with prejudice.

On October 4, 2007, respondent filed a motion to vacate the dismissal and to reinstate the complaint. On January 7, 2008, the court entered an order denying the motion to vacate but permitting the complaint to be "re-filed" in Essex County. The court "reiterated this instruction" in a March 28, 2008 order.

On January 17, 2008, respondent wrote to counsel for Mercedes Benz, stating that "the best litigation plan" for his client would be to move the matter "into upper court," which would expose Mercedes Benz to "a jury trial, treble damages and legal fees." It was Beeks' understanding that respondent intended to take the action described in his letter to Mercedes Benz's lawyer. Contrary to this understanding, however, respondent did not take any action.

Based on these facts, respondent was charged with having violated RPC 1.1(a), RPC 1.3, RPC 1.4(b) and (c), and RPC 3.2.

THE LAZARRE MATTER (DISTRICT DOCKET NO. XIV-2011-0472E)

On June 30, 2004, Jocelyn Lazarre, a Connecticut resident, was convicted of unlawful possession of marijuana, in a New York state court. On February 24, 2005, Lazarre returned to the United States from an overseas trip. "[C]ustoms officials of the Department of Homeland Security" stopped Lazarre and retained his green card, as the drug conviction "affected his immigration status." However, they issued Lazarre "a piece of paper that evidenced his lawful admission for permanent residence until February 23, 2006." Lazarre was ordered to appear at INS offices in New York, on April 25, 2006, even though he resided in Connecticut.

In the spring of 2006, Lazarre's mother paid respondent $5000 to represent her son in the immigration matter. After respondent entered his notice of appearance for Lazarre, a hearing was scheduled for June 29, 2006, in Connecticut.

Respondent missed three court dates before the immigration judge. Presumably, Lazarre appeared on these dates because, on the third date, the judge advised Lazarre that, if he did not

appear with respondent, he would be arrested. When Lazarre told respondent what the judge had said, respondent stated that "the next court date was not the final date and that he still was awaiting a cancellation of deportation notice."

Between May 2007 and April 2010, Lazarre and his wife sent twenty-four emails to respondent, asking for information about the status of his immigration matter. Respondent rarely replied to the emails. When he did, his statements did not directly respond to the Lazarres' inquiries.

During a May 3, 2010 meeting with "ICE personnel," Lazarre learned that he had had a court date more than two years before, on February 1, 2008. Respondent had advised Lazarre that this date had been cancelled. That was untrue. Because Lazarre failed to appear, an order of deportation was entered against him, in absentia.

Based on these facts, respondent was charged with having violated RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(b), and RPC 8.4(c).

The facts recited in the complaint support most of the charges of unethical conduct. Respondent's failure to file an answer 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).

In the JnBaptiste matter, allegations of the complaint support the finding that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.4(c). They are insufficient, however, to sustain a finding that he violated RPC 1.4(a).

Respondent exhibited gross neglect (RPC 1.1(a)) and a lack of diligence (RPC 1.3) in his handling of JnBaptiste's immigration matter. In January 2007, the JnBaptistes paid respondent $750 to "review documents" and to "provide guidance" with respect to pending motions in Johny's criminal and immigration matters. The complaint does not identify the specific guidance they had requested of respondent or whether he provided it.

The complaint alleges only that, after the JNBaptistes had paid the $750 to respondent, in January 2007, they learned that the motion to vacate the conviction was not pending but, rather, had been denied months before, in November 2006. At that point, they asked respondent a simple question: could that order be appealed?

By April 11, 2007 – three months after the JnBaptistes first consulted with respondent, and five months after the order

had been entered – respondent still had not communicated with his clients about the issue of appealing the order, notwithstanding their repeated attempts to discuss the matter with him.

RPC 1.4 provides as follows:

> (a) A lawyer shall fully inform a prospective client of how, when, and where the client may communicate with the lawyer.
>
> (b) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

In this case, respondent's failure to answer the JnBaptistes' question about whether the November 2006 order could be appealed, as well as his failure to return their telephone calls and to reply to their written communications, constituted a violation of RPC 1.4(b), but not RPC 1.4(a).

Respondent violated RPC 1.4(b) when he ignored JnBaptiste's and his wife's repeated attempts to communicate with him about the two pending motions and the January 8, 2008 meeting with the INS officer. Respondent continued to ignore JnBaptiste's communications after the fee agreement was executed and JnBaptiste had paid him a substantial portion of the retainer.

Nothing in the complaint suggests that the JnBaptistes did not know how, when, or where they could communicate with respondent. To the contrary, they knew respondent's address and telephone number. The problem was that he ignored them. Thus, there are no allegations in the complaint that clearly and convincingly establish that respondent violated RPC 1.4(a).

The complaint is vague in its identification of the courts where the criminal and immigration matters were pending. The references to the "Court of Appeals" likely apply to the immigration matter, given that federal law governs immigration. The references to the "Supreme Court" and the "district attorney" likely apply to the criminal matter. The matters appear to have been related, inasmuch as the deportation order was based on the criminal conviction. Therefore, the question of respondent's gross neglect and lack of diligence with respect to the criminal matter appears to go hand-in-hand with his gross neglect and lack of diligence in the immigration matter.

The complaint alleged that, in August 2007, the parties entered into a fee agreement with respect to the immigration matter. It says nothing about the criminal matter. Yet, respondent told the JnBaptistes that he had entered his appearance in both matters and, more specifically, that he had

spoken to the district attorney. Thus, according to the complaint, respondent appears to have agreed to undertake work on the JnBaptistes' behalf in both matters.

Respondent violated RPC 1.1(a) and RPC 1.3 in his handling of the criminal and immigration matters. First, he failed to do anything "to assist" JnBaptiste on the two pending motions. He failed to follow through on his representation that he would contact the INS officer who had threatened Johny with incarceration, if Johny did not produce a passport in January 2008. Respondent did nothing with respect to that matter until the day of the January 2008 meeting between Johny and the INS officer and, then, only after Johny had left "a frantic telephone message" for him.

Finally, respondent violated RPC 8.4(c), when he told Francine, in September 2007, that he had entered his appearance in both the criminal and immigration matters, which was not true.

In the Beeks matter, respondent's failure to either amend or re-file the complaint in Essex County or to file a new complaint in the Law Division was a violation of RPC 1.1(a) and RPC 1.3. Respondent did not violate RPC 3.2, however. Unlike RPC 1.3, which requires a lawyer to act with "reasonable

diligence and promptness in representing a client," RPC 3.2 requires a lawyer to "make reasonable efforts to expedite litigation consistent with the interests of the client." In Beeks' case, there was no litigation to expedite, as the complaint had been dismissed, due to respondent's gross neglect and lack of diligence.

Respondent also violated RPC 1.4(b), when he led Beeks to believe that he would amend or re-file the complaint but failed to do so, without first consulting with Beeks or later explaining to Beeks the reason why he did not take that action. Further, he violated RPC 1.4(c), when he failed to inform Beeks of his true intention in telling counsel for Mercedes Benz that "the best litigation plan" for his client was to file a complaint in the Law Division.

RPC 1.4(c) requires an attorney to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Prior to making his comment to defense counsel, respondent was required to confer with Beeks and to discuss with him whether he actually wanted the matter moved to the Law Division or whether he wanted respondent to mention the possibility merely as a matter of strategy. As it turned out, respondent appears to have made the

decision for Beeks, leaving his client with the belief that the assertion was a matter of fact, that is, that a complaint would be filed in the Law Division.

In the Lazarre matter, respondent's gross neglect and lack of diligence was troubling. He failed to pay any attention to Lazarre's matter. He repeatedly failed to appear in court with his client. He also told Lazarre that what turned out to be the final court date had been canceled, which was not true. As a result, Lazarre did not appear. An order of deportation was issued. By this conduct, respondent violated RPC 1.1(a), RPC 1.3, and RPC 8.4(c).

Respondent's failure to communicate in any meaningful way with Lazarre about the immigration matter and his repeated failure to acknowledge the numerous attempts on the part of Lazarre to obtain information violated RPC 1.4(b).

In addition, respondent's neglect in the Lazarre matter, when combined with his neglect in the JnBaptiste and Beeks matters, amounted to a pattern of neglect, in violation of RPC 1.1(b). See, e.g., In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12) (three instances of neglect establishes a pattern).

There remains for determination the quantum of discipline to be imposed on respondent for his violations of RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(b), RPC 1.4(c), and RPC 8.4(c).

When an attorney exhibits a pattern of neglect, a reprimand may be imposed even if that offense is combined with other non-serious violations. See, e.g., In re Gellene, 203 N.J. 443 (2010) (attorney guilty of gross neglect, pattern of neglect, and lack of diligence by failure to timely file three appellate briefs); In re Weiss, 173 N.J. 323 (2002) (attorney engaged in gross neglect, pattern of neglect, and lack of diligence); In re Balint, 170 N.J. 198 (2001) (in three client matters, attorney engaged in gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, and failure to expedite litigation); and In re Bennett, 164 N.J. 340 (2000) (attorney guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate in a number of cases handled on behalf of an insurance company).

A misrepresentation to a client also requires the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). That may be the result even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Singer, 200 N.J. 263 (2009) (attorney misrepresented

to his client for a period of four years that he was working on the case; the attorney also exhibited gross neglect and lack of diligence, and failed to communicate with the client; no ethics history); In re Wiewiorka, 179 N.J. 225 (2004) (attorney misled the client that a complaint had been filed; in addition, the attorney took no action on the client's behalf and did not inform the client about the status of the matter and the expiration of the statute of limitations); In re Onorevole, 170 N.J. 64 (2001) (attorney made misrepresentations about the status of the case; he also grossly neglected the case, failed to act with diligence, and failed to reasonably communicate with the client; prior admonition and reprimand); In re Till, 167 N.J. 276 (2001) (over a nine-month period, attorney lied to the client about the status of the case; the attorney also exhibited gross neglect; no prior discipline); and In re Riva, 157 N.J. 34 (1999) (attorney misrepresented the status of the case to his clients; he also grossly neglected the case, thereby causing a default judgment to be entered against the clients, and failed to take steps to have the default vacated).

Here, respondent's violation of RPC 8.4(c) was not limited to a single misrepresentation made to a single client. Rather, he made several misrepresentations to two different clients,

that is, the JnBaptistes and Lazarre. Nevertheless, a reprimand could still be imposed for these violations. See, e.g., In re Casey, 170 N.J. 6 (2001).

In Casey, the attorney made multiple misrepresentations to each client in four different client matters. In the Matter of Patrick M. Casey, DRB 00-186 (February 6, 2001) (slip op. at 2-7). He also engaged in a pattern of neglect and committed other less serious violations. Id. at 10.

We noted, in Casey, that, ordinarily, a reprimand would be sufficient discipline for the attorney's transgressions, given that his conduct was not motivated by financial gain or venality and that he had previously enjoyed an unblemished career of ten years. Id. at 12-13. Nevertheless, he was suspended for three months because he had engaged in a "pattern of misrepresentations." Id. at 12-13. We note that Casey was decided prior to 2002, when the Court added censure to the types of sanctions that may be imposed for unethical conduct.

When the underlying principle is extrapolated from Casey, that is, the propriety of imposing a reprimand on an attorney who has made several misrepresentations to four different clients, but who also had an otherwise unblemished disciplinary record of at least ten years and did not act for personal gain,

we may conclude that a reprimand would be sufficient in this case because (1) respondent's misrepresentations were made to two clients, (2) he was not motivated by personal gain, and (3) he had practiced law, without incident, for fifteen years, prior to the first act of misconduct in the underlying cases. However, the cases in which he made the misrepresentations to the clients are of a nature that requires enhancement of what would be a reprimand to a censure.

Johny's case was not about money. It was about his liberty. The court already had entered an order of deportation, which Johny was trying to stay. Johny was subject to arrest if he did not present his passport at the January 2008 meeting with INS. Respondent knew both of these things, agreed to "provide guidance" to Johny with respect to the first and agreed to contact INS with respect to the second, but did nothing as to either. He ignored the JnBaptistes' multiple attempts to communicate with him about the status of both, to the point where respondent's silence caused Johny to be panic-stricken, by the morning of the INS meeting. This conduct on respondent's part was egregious and indifferent to the client's emotional well-being.

Similarly, respondent's neglect of Lazarre's matter and his lies to the client ultimately led to an order of deportation, issued in absentia.

In our view, the unique nature of Johny's and Lazarre's matters warrant enhancement of the reprimand to a censure. Moreover, the default nature of this matter justifies further enhancement from a censure to a three-month suspension. In re Kivler, 193 N.J. 332, 342 (2008) ("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").

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 Matter of John E. Tiffany
Docket No. DRB 12-217

Decided: December 12, 2012

Disposition: Three-month suspension

Members	Disbar	Three-month suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Gallipoli		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		9				

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel