SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-363
District Docket No. IV-2010-0039E

IN THE MATTER OF	:	
	:	Decision
DANIEL B. ZONIES	:	
	:	
AN ATTORNEY AT LAW	:	
	:	

Argued: April 18, 2013

Decided: April 30, 2013

Mark A. Rinaldi appeared on behalf of the District IV Ethics Committee.

Jay Martin Herskowitz appeared on behalf of respondent.

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

This matter was before us pursuant to R. 1:20-15(e)(1)(ii). It arose out of the grievant's appeal from the District IV Ethics Committee's (DEC) decision to dismiss the formal ethics complaint, following a hearing. We determined to grant the appeal and to schedule the matter for oral argument before us.

The complaint charged respondent with having violated RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to inform a

prospective client of how, when, and where the client may communicate with the lawyer), and 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). We determine that a reprimand is the appropriate quantum of discipline for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 1970. In 1991, he was privately reprimanded for his conduct during the representation of a client in a personal injury action. Specifically, he was found guilty of a lack of diligence, failure to keep a client informed about the status of the matter, failure to expedite litigation, and failure to promptly forward the client's file to subsequent counsel, violations of RPC 1.3, RPC 1.4(a) [now RPC 1.4(b)], RPC 3.2, and RPC 1.16(d). In the Matter of Daniel B. Zonies, DRB 91-298 (October 29, 1991).

In 2003, respondent was reprimanded for failing to safeguard client funds, commingling client and personal funds, failing to deliver funds promptly to clients and third parties, and failing to comply with the recordkeeping rules, violations of RPC 1.15(a), (b), and (d), and R. 1:21-6. In re Zonies, 175 N.J. 106 (2003). The Court also ordered that respondent submit quarterly reconciliations to the Office of Attorney Ethics for a period of two years and that a trustee be appointed, at

respondent's expense, to disburse client funds remaining in his trust account.

On March 7, 2012, the day of the ethics hearing in this matter, the presenter and respondent entered into a stipulation of facts in which they agreed that, on September 27, 2003, grievant Katherine Pryor retained respondent in connection with a personal injury claim against Rutgers University, Camden, following a September 15, 2003 slip and fall accident; at that time, respondent's office address was 1522 Route 38, Cherry Hill, New Jersey; Logan Terry, respondent's associate at that time, was authorized to enter into the September 27, 2003 retainer agreement on respondent's behalf; on August 12, 2005, respondent filed a complaint on Pryor's behalf; and, on March 3, 2006, the court dismissed Pryor's complaint.

Specifically, in December 2005, Pryor visited respondent's office to deliver draft answers to interrogatories that the defendant had served on her. At that time, respondent's legal assistant, LaWanda Bell, informed Pryor that, because Terry was no longer associated with the law firm, respondent had assumed the representation of her case.

Thereafter, Pryor telephoned respondent's office from time to time to determine the status of her case. Although she left messages on the office's answering machine, her telephone calls

were not returned. Pryor then went to respondent's office on Route 38 in Cherry Hill, only to learn that respondent had moved his office to Camden. When Pryor attempted to visit respondent at his Camden office, she was not able to locate the office building.

After Pryor telephoned several ethics and court agencies, she received contact information for respondent's current office location. At some point in 2006, when Pryor was able to locate respondent and ask about the status of her case, he replied that it had been dismissed. Respondent asked whether she had received a letter from him and, upon being told that she had not, promised to send a copy of it to her. Despite this representation, Pryor did not receive any subsequent communications from respondent, by letter or otherwise. According to Pryor, respondent did not tell her the reason for the dismissal of her complaint.

For his part, respondent asserted that, although he did not believe that Pryor's injuries would meet the threshold required under the Tort Claims Act, "out of an abundance of caution" he filed a complaint on her behalf. According to respondent, the defendant had filed a motion to dismiss Pryor's complaint, based on the Charitable Immunity Act. Respondent did not recall having replied to the motion.

Respondent admitted that he had not sent a copy of the motion to Pryor. Because he recalled having had only two telephone conversations with Pryor – one before the complaint was filed and another after the complaint had been dismissed – he acknowledged that he had not informed Pryor of the filing of the motion, while it was pending. Contrary to Pryor's testimony, however, respondent claimed that, during the 2006 telephone call, he had informed Pryor that the reason for the complaint's dismissal was the Charitable Immunity Act.

Respondent was not able to produce his file in the Pryor matter to the DEC because, in 2006, his office computers were not linked. Therefore, if his legal assistant had documents on her computer concerning the Pryor matter, he could not retrieve them. Moreover, after he moved his office, some of his files, including Pryor's, were stored in the basement of a property that became flooded. As a result, he did not have the physical file. In addition, other than a list of the docket entries, the court records were not available. Respondent, thus, reconstructed the file as best he could.

Two additional points warrant mention. First, the complaint alleged that respondent had indicated to Pryor that her complaint had been dismissed for failure to answer interrogatories. At the ethics hearing, the presenter and

respondent stipulated that Pryor's complaint against Rutgers had been dismissed for reasons other than the failure to answer interrogatories. During her testimony, Pryor unequivocally denied having told anyone, including ethics authorities, that respondent had informed her that her complaint had been dismissed because she had not answered interrogatories. In the presenter's brief to the DEC, he explained that, within the DEC, there had been a misunderstanding about the basis for the complaint's dismissal. He emphasized that none of the documents that Pryor had sent in connection with her grievance referred to the failure to answer interrogatories as the reason for the dismissal of her complaint.

Second, in the brief to the DEC and during oral argument before us, respondent's counsel asserted that the presenter had withdrawn the RPC 1.4(a) and (b) charges, leaving only RPC 1.3. As previously noted, however, the presenter withdrew the RPC 1.3 charge only. The matter proceeded on the alleged violations of RPC 1.4(a) and (b).

The DEC dismissed the charges that respondent violated RPC 1.4(a) and (b), finding no clear and convincing evidence to support those allegations. The DEC concluded that, during respondent's representation of Pryor, there was "necessary" communication, albeit the communication could have been better.

The DEC further found no clear and convincing evidence that respondent failed to inform Pryor how, when, and where she may communicate with him. The DEC, therefore, dismissed the complaint.

Following a de novo review of the record, we find clear and convincing evidence that respondent failed to communicate with Pryor.

As indicated previously, Pryor retained respondent to represent her in a personal injury claim against Rutgers. Although respondent had doubts about whether the claim met the requirements of the Tort Claims Act, he filed a complaint nevertheless. At oral argument before us, respondent's counsel acknowledged that, when respondent filed the complaint, he was not aware of the Charitable Immunity Act.

After the complaint was filed and served, Rutgers filed a motion to dismiss it, based on the Charitable Immunity Act. It is undisputed that respondent neither provided Pryor with a copy of the motion nor informed her, while it was pending, that it had been filed. Moreover, respondent told Pryor that her complaint had been dismissed only after she contacted him. He took no affirmative steps to inform her of the dismissal. We, therefore, find that, by respondent's own admission, he failed to keep Pryor informed about the status of her matter, a violation of RPC 1.4(b).

We agree with the DEC's dismissal of the charge that respondent violated RPC 1.4(a). That rule, requiring a lawyer to inform a prospective client about how, when, and where the client may communicate with the lawyer does not apply to current clients. Although attorneys must keep existing clients informed when they relocate their offices and respondent should have apprised Pryor of his office move, RPC 1.4(a) does not apply to that circumstance. We, therefore, dismissed the charge of a violation of that rule.

Respondent, thus, stands guilty of failure to keep a client informed about the status of a matter, a violation of RPC 1.4(b). The remaining issue is the quantum of discipline.

Attorneys who fail to communicate with their clients usually are admonished. See, e.g., In the Matter of Dan S. Smith, DRB 12-277 (January 22, 2013) (attorney failed to inform his client that a motion to dismiss his appeal had been filed or that the appeal had been dismissed; the attorney had a prior admonition for failure to communicate and lack of diligence in two client matters); In the Matter of David A. Tykulsker DRB 12-040 (April 24, 2012) (attorney failed to inform his client that the court had denied a motion to vacate an order dismissing the client's claim; the client learned of the order when he contacted the attorney, twelve days later, to inquire about the

outcome; the attorney also failed to comply with the client's multiple requests for a copy of both the order of dismissal and the order denying the motion to vacate until the client appeared at the attorney's office to obtain them); In the Matter of Jennifer L. Kovach, DRB 10-323 (January 28, 2011) (for six months, attorney failed to reply to his clients' inquiries about attorney's disbursements following their real estate closing); and In the Matter of Shelley A. Weinberg DRB 09-101 (June 25, 2009) (for a one-year period, attorney failed to advise her client about important aspects of a Social Security disability matter; the attorney erroneously advised the client that his claim had been denied and then failed to explain her error; the attorney also failed to notify the client that she had terminated the representation and had retained the "excess" portion of her fee while exploring avenues of appeal).

The presence of a disciplinary record or other aggravating factors may enhance the level of discipline from an admonition to a reprimand. See, e.g., In re Marcus, 208 N.J. 178 (2011) (in addition to engaging in a lack of diligence, attorney failed to inform a client that her minor son's personal injury claim against a public entity was no longer pending and that a motion for turn over of funds had been filed in a related lawsuit by a medical provider who had obtained a judgment for his medical

bills; the attorney had two prior reprimands: one for a pattern of neglect and failure to communicate in six client matters and the other for recordkeeping violations and negligent misappropriation of client trust funds); In re Carmen, 201 N.J. 141 (2010) (reprimand for attorney who, for a period of two years, failed to communicate with clients in a breach-of-contract action and failed to diligently pursue it; aggravating factors were the attorney's failure to withdraw from the representation when his physical condition materially impaired his ability to properly represent the clients and a prior private reprimand for conflict of interest); In re Oxfeld, 184 N.J. 431 (2005) (reprimand by consent for lack of diligence and failure to communicate with the client in a pension plan matter; two prior admonitions); In re Wolfe, 170 N.J. 71 (2001) (failure to communicate with client; reprimand imposed because of attorney's ethics history: an admonition, a reprimand, and a three-month suspension, all of which involved a failure to communicate, in addition to other ethics infractions).

Here, respondent was privately reprimanded in 1991 for, among other things, failing to communicate with a client, the same violation found here. He later was reprimanded (failure to safeguard funds, commingling client and personal funds, failure to deliver funds promptly to clients and third parties, and

failure to comply with recordkeeping rules). We consider, as aggravating factors, respondent's disciplinary history, the repetition of the misconduct found in the 1991 private reprimand matter, and his failure to inform Pryor of the relocations of his office. A four-member majority, thus, determine that a reprimand is the appropriate discipline in this matter.

Chair Frost and Vice-Chair Baugh voted for an admonition, finding respondent's prior unethical conduct too remote to be considered as an aggravating factor and determining that his forty-three year career constitutes a mitigating factor.

Member Clark 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
Morris Yamner, Esq.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Daniel Zonies
Docket No. DRB 12-363

Argued: April 18, 2013

Decided: April 30, 2013

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Disqualified	Did not participate
Frost				X		
Baugh				X		
Clark						X
Doremus			X			
Gallipoli			X			
Yamner			X			
Zmirich			X			
Total:			4	2		1

for: Julianne K. DeCore
Chief Counsel