

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-046
District Docket Nos. IIIIB-2012-0018E
and IIIIB-2012-0020E

IN THE MATTER OF
JOSEPH S. CHIZIK
AN ATTORNEY AT LAW

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Decision

Decided: August 15, 2013

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

This matter was before us on a certification of default filed by the District IIIIB Ethics Committee (DEC), pursuant to R. 1:20-4(f). The complaint charged respondent with lack of diligence (RPC 1.3), failure to communicate with clients (RPC 1.4(b)), failure to provide a written fee agreement (RPC 1.5(b)), and failure to cooperate with ethics authorities (RPC 8.1(b)). We determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1976. On June 23, 1988, he received a private reprimand (now an

admonition) for lack of diligence and failure to communicate with the client. In the Matter of Joseph S. Chizik, DRB 86-045 (June 23, 1988).

On May 27, 1997, respondent received a reprimand for lack of diligence and failure to communicate with clients. In re Chizik, 149 N.J. 377 (1997).

On March 6, 2013, respondent received a second reprimand, this time for gross neglect, lack of diligence, failure to adequately communicate with the client, failure to return the file upon termination of the representation, and failure to cooperate with an ethics investigation. In re Chizik, 213 N.J. 81 (2013).

Service of process was proper in this matter. On August 24, 2012, the DEC sent a copy of the complaint to respondent, in accordance with the provisions of R. 1:20-4(d) and R. 1:20-7(h). A service letter accompanied the complaint, which was sent by certified and regular mail. The certified mail to respondent's office address, 1155 Route 73, Suite B, Mt. Laurel, New Jersey 08054, was accepted by "Todd" (illegible last name). The regular mail was not returned.

On September 26, 2012, the DEC sent a "five-day" letter to respondent, also by certified and regular mail, notifying him

that, if he did not file an answer to the ethics complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to include a charge of a willful violation of RPC 8.1(b). Neither the certified mail green card nor the regular mail sent to respondent at his office address was returned.

As of the date of the certification of the record, October 15, 2012, respondent had not filed an answer.

According to count one of the complaint, in August 2011, Vernon Mobley retained respondent to represent him in Burlington County Family Court, in connection with a child support and custody matter. Mobley sent respondent a \$1,500 check, which respondent "cashed" on August 16, 2012. Mobley also sent respondent the documents required to file a motion to protect Mobley's interests. Yet, respondent took no action thereafter on his client's behalf. In fact, Mobley never spoke with respondent, after retaining him, despite his several attempts to contact respondent about the status of the case.

Respondent also never presented Mobley with a written fee agreement for the representation.

Finally, respondent failed to reply to the DEC investigator's requests for information about Mobley's grievance.

Count two alleged that, in September 2010, Danielle Maguire retained respondent to represent her in her Chapter 7 bankruptcy matter. Respondent failed to file a petition until January 2011.

During the pendency of the bankruptcy, Maguire found it necessary to keep respondent informed of deadlines and to provide him with duplicate documentation and information that she had already given him. At a final meeting with the bankruptcy trustee, in December 2011, at which time Maguire expected to receive her discharge, Maguire received an order dismissing the case, effective January 2012.

Maguire spoke with respondent, in January 2012, at which time he promised that he would rectify the matter, claiming that there was a "misunderstanding" with the bankruptcy trustee. Despite Maguire's numerous attempts to contact respondent thereafter, she "never heard from respondent again."

Respondent also never set forth, in writing, the rate or basis of his fee and failed to reply to the DEC investigator's requests for information about the grievance.

The facts recited in the complaint support 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 Mobley matter, respondent was retained to handle child support and custody issues. Mobley paid him \$1,500 and provided him with the documents necessary for the filing of a motion that would protect his interests. Yet, respondent cashed Mobley's check and took no action thereafter. Respondent's inaction was a violation of RPC 1.3.

Respondent also ignored Mobley's several attempts to contact him about the status of his matter. In fact, respondent was completely unavailable to his client after their initial meeting. Respondent's conduct in this regard violated RPC 1.4(b).

In addition, respondent did not set forth, in writing, the rate or basis of his fee, a violation of RPC 1.5(b).

Finally, respondent failed to reply to the DEC investigator's requests for information about the grievance, a violation of RPC 8.1 (b).

In Maguire, respondent was retained for a Chapter 7 bankruptcy matter. He failed to file the petition for five months after his retention. Thereafter, he took little or no action on his client's behalf, allowed the petition to be dismissed, and he took no action to have it reinstated. We find him guilty of having violated RPC 1.3.

Respondent also failed to reply to Maguire's numerous attempts to contact him about the status of her matter. When she appeared at a bankruptcy hearing, expecting to receive a discharge of her debts, she was, instead, greeted with an order of dismissal. Thereafter, respondent failed to reply to all of her pleas for help. His lack of communication with Maguire violated RPC 1.4(b).

Respondent also failed to utilize a written fee agreement, a violation of RPC 1.5(b), and ignored the investigator's requests for information about the grievance, a violation of RPC 8.1(b).

In all, we find respondent guilty of having violated RPC 1.3, RPC 1.4(b), RPC 1.5(b), and RPC 8.1(b) in the two matters.

Conduct involving lack of diligence and failure to communicate with clients, even where other violations, such as gross neglect, are present, will ordinarily result 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 the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (admonition for attorney who filed an appearance in his client's federal civil rights action and chancery foreclosure matter and had a pending motion in the federal matter adjourned; he was unable to demonstrate what work he had done on his client's behalf, who had paid him \$10,000; he also failed to communicate with his client and failed to reply to the disciplinary investigator's requests for information about the grievance); In re Russell, 201 N.J. 409 (2009) (admonition imposed on attorney who failed to file answers to divorce complaints against her client, causing 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); and In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008) (attorney admonished when his 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 did not communicate with the client about the status of 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) and In re Aranquren, 172 N.J. 236 (2002) (attorney reprimanded for failure to act with diligence in a bankruptcy matter, failure to communicate with the client, and failure to memorialize the basis of the fee; prior admonition and six-month suspension).

In addition, respondent failed to cooperate with ethics investigators, misconduct that would ordinarily warrant an admonition. See, e.g., In the Matter of Lora M. Privetera, DRB 11-414 (February 21, 2012); In the Matter of Douglas Joseph Del Tufo, DRB 11-241 (October 28, 2011); and In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011).

Here, however, we considered significant aggravating factors. Respondent's handling of these two matters was particularly troubling. In the Mobley matter, he accepted a \$1,500 fee and then took no action on his client's behalf. He refused thereafter to communicate at all with his client, who

then remained with his child support and custody issues unresolved.

In the Maguire matter, respondent allowed a bankruptcy petition to be dismissed and then never reinstated it, leaving his client in the vulnerable and humiliating position of learning in court, for the first time, that, instead of receiving a discharge of her debts, her case had been dismissed.

Additional aggravation exists. Respondent has been disciplined three times for similar misconduct: a July 23, 1988 private reprimand for lack of diligence and failure to communicate with the client; a May 27, 1997 reprimand for lack of diligence and failure to communicate with clients; and a March 6, 2013 reprimand for gross neglect, lack of diligence, failure to communicate with the client, failure to return the file upon termination of the representation, and failure to cooperate with an ethics investigation. Respondent would have received more severe discipline in this latter reprimand case, were it not for the considerable weight that we gave to mitigating factors - the remoteness in time (fifteen and twenty-four years) between the commission of the misconduct and that of the earlier matters and his suffering from depression at the time.

With a private reprimand and two reprimands for nearly identical misconduct as that presented in this matter, it is clear to us that respondent has not learned from his prior mistakes. Thus, the principle of progressive discipline warrants the imposition of an enhanced sanction – at least a censure.

However, there is another aggravating factor. Respondent has allowed this matter to proceed to us as a default. In a default matter, the appropriate discipline for the found ethics violations is enhanced to reflect the attorney's failure to cooperate with disciplinary authorities as an aggravating factor. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366 (March 11, 2004) (slip op. at 6).

With a censure as the baseline discipline for respondent's ethics violations, and given the default nature of this proceeding, we determine that a three-month suspension is in order in this case.

Because of respondent's claim of depression, at the time of his most recent discipline, we also require him to provide, prior to reinstatement, proof of fitness to practice law, as attested by a qualified mental health professional approved by the Office of Attorney Ethics.

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
Bonnie Frost, Chair

By:



Julianne K. DeCore
Chief Counsel

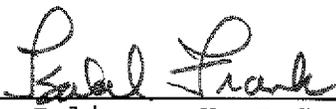
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Joseph S. Chizik
Docket No. DRB 13-046

Decided: August 15, 2013

Disposition: Three-month suspension

<i>Members</i>	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Gallipoli		X				
Yamner		X				
Zmirich		X				
Total:		7				



by Julianne K. DeCore
Chief Counsel