

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-110
District Docket No. IV-2012-0038E

IN THE MATTER OF
MARK W. FORD
AN ATTORNEY AT LAW

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Decision

Argued: September 19, 2013

Decided: November 7, 2013

Christopher Soriano appeared on behalf of the District IV Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a disciplinary stipulation between respondent and the District IV Ethics Committee (DEC), arising out of a bankruptcy matter. Respondent admitted that he violated RPC 1.4(b) and (c) (failure to communicate with a client and failure to explain a matter sufficiently to enable a client to make informed decisions about the representation) and

RPC 1.5(b) (failure to communicate the basis or rate of the fee in writing).

The DEC recommended that we impose a reprimand or lesser discipline. For the reasons expressed below, we determine that a censure is the appropriate level of discipline in this case.

Respondent was admitted to the New Jersey bar in 1983. In 1998, he was reprimanded, after he falsely certified, at least ten times, to the Division of Unemployment and Disability Insurance, that he was entitled to unemployment benefits, when, during the relevant time, he was self-employed. In re Ford, 152 N.J. 465 (1998). In 2002, he was admonished for lack of diligence for failure to file claim petitions in his client's workers' compensation claims against her former employers and for failure to reasonably communicate with her about the status of her matters. In the Matter of Mark W. Ford, DRB 02-280 (October 22, 2002).

Respondent received another reprimand, in 2009, for conflict of interest and failure to withdraw from the representation. In that case, he filed an answer to a civil complaint at a time when his interests were directly adverse to his client's. Afterwards, he tried to negotiate separate settlements, to his client's detriment. He also failed to advise

his client, in writing, to seek advice from independent counsel and failed to advise the client about a potential malpractice claim against him. In re Ford, 200 N.J. 262 (2009).

Most recently, in 2011, respondent was censured for issuing trust account checks against uncollected funds, negligent misappropriation of trust funds, and recordkeeping violations. In re Ford, 208 N.J. 360 (2011)

The facts that gave rise to this matter are as follows.

In June 2010, Valerie Prinez met with respondent to discuss representation in connection with a personal bankruptcy filing. Although respondent had not regularly represented Prinez, at no time during the representation did he communicate to her in writing, the basis or rate of his fee. He claimed that this failure was an oversight.

Respondent filed a chapter 13 bankruptcy petition on Prinez' behalf in January 2012.¹ At the time the petition was filed, the accompanying plan could not have been confirmed because it showed that Prinez would be unable to make any monthly payments to support her plan, which proposed payments of

¹ The record does not explain the passage of roughly eighteen months between respondent's first meeting with Prinez and the filing of the petition.

\$76 per month. The chapter 13 petition did not state that Prinez anticipated any additional income that could support a higher payment.

When the plan was filed in January 2012, respondent proposed that Prinez pay priority claims in the amount of \$4,548.49, prior to consideration of any unsecured claims or statutorily-mandated trustee commissions. The total that Prinez would pay through the plan was \$4,560 (\$76 per month for 60 months). Thus, because no payments for the trustee commissions and any unsecured claims were included, the plan was not feasible. The chapter 13 standing trustee told respondent, on several occasions, of serious concerns about the feasibility of Prinez' plan. The trustee informed respondent of the specific amount of plan payments required to make the plan feasible. Although respondent requested additional information from Prinez, while the petition was pending, he failed to advise her that her plan could not be confirmed with payments of \$76 per month.

In May 2012, the trustee advised respondent that a payment of \$201 per month would be required to make the plan feasible. The modified chapter 13 plan that respondent filed on Prinez' behalf proposed payment of a total of \$10,346.39 in claims,

prior to trustee commission or other expenses, but did not modify the proposed payment of \$76 per month. This deficiency led to a plan shortage of over \$5,700. At the time that respondent sent the amended plan to Prinez for review and signature, he did not advise her that the plan could not be confirmed because it was not feasible.²

The chapter 13 petition was dismissed at a June 2012 confirmation hearing, due to the lack of a feasible plan. Respondent did not speak with Prinez during the time immediately preceding the hearing to advise her that the plan was not feasible and could not be confirmed.

Although several times during the representation, Prinez asked respondent about converting her filing to a chapter 7 petition, he failed to advise her that her plan was not feasible. Had he done so, she would have been able to determine whether to continue with the chapter 13 process, convert her petition to chapter 7, dismiss her petition, or take some other action.

Ultimately, Prinez discharged respondent. After her pro se application to reinstate her case was granted, she converted her

² The amended plan had already been filed with the court.

filing to a chapter 7 petition and received a discharge. The bankruptcy court ordered respondent to refund the fees that Prinez had paid to him, which he did.

Respondent conceded his violations of RPC 1.4(b), RPC 1.4(c), and RPC 1.5(b).

In aggravation, the stipulation pointed to respondent's "significant disciplinary history," which included an admonition, two reprimands and a censure. In mitigation, the stipulation noted respondent's cooperation with the DEC's investigation.

The presenter proposed that "the threshold level of discipline" for respondent's violations was an admonition. He argued that, in light of respondent's disciplinary history, the discipline should be enhanced to a reprimand. In the presenter's view, "respondent's cooperation with the disciplinary process is not enough of a mitigating factor to negate the enhancement dictated by his significant disciplinary history." Thus, the presenter recommended a reprimand or such lesser sanction as we deem appropriate.

Following a de novo review of the record, we are satisfied that the stipulation clearly and convincingly establishes that respondent's conduct was unethical and in violation of RPC

1.4(b), RPC 1.4(c) and RPC 1.5(b). Respondent failed to explain to Prinez the developments in her bankruptcy proceeding and failed to discuss options available to her. In addition, he failed to advise her, in writing, of the basis or rate of his fee.

Typically, attorneys who fail to adequately communicate with their clients are admonished. See, e.g., 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 did not learn of this development until he called the attorney, twelve days later, to inquire about the outcome; attorney also failed to comply with the client's multiple requests for a copy of the court's orders until, several months later, when the client appeared at his office to obtain them); In the Matter of Neil George Duffy, III, DRB 09-311 (March 10, 2010) (attorney orally informed client that he would no longer represent him, but, thereafter, failed to dispel the client's continuing belief that he was represented by the attorney, as evidenced by the client's sporadic telephone calls to the attorney inquiring about the status of his case); In the Matter of Shelley A. Weinberg, DRB 09-101 (June 25, 2009) (for a one-year period,

attorney failed to advise his client about important aspects of a Social Security disability matter; attorney erroneously told the client that his claim had been denied and then failed to explain his error; he also failed to notify the client that he had terminated the representation and had retained the "excess" portion of his fee while exploring avenues of appeal); and In the Matter of Marc A. Futterweit, DRB 08-356 (March 20, 2009) (attorney failed to keep his client informed about the case and failed to reply to the client's requests for information about the matter; attorney admitted his wrongdoing).

The addition of a violation of RPC 1.5(b) -- failure to reduce to writing the basis or rate of the fee -- generally does not serve to ratchet up the discipline to another level. Usually, failure to communicate and failure to provide a written fee agreement result in no more than an admonition, even if accompanied by other non-serious improprieties. See, e.g., In the Matter of Larry J. McClure, DRB 98-430 (February 22, 1999) (in two matters, attorney failed to communicate with clients and failed to act with diligence; in one of those matters, the attorney also failed to execute a written retainer agreement; in the other matter, the attorney failed to cooperate with the DEC investigator); In the Matter of Steven M. Olitsky, DRB 96-358

(November 27, 1996) (attorney failed to communicate, in writing, the basis or rate of his fee and failed to inform the client that work would not be initiated in the matter until the fee was fully paid); and In the Matter of Steven M. Olitsky, DRB 93-391 (November 22, 1993) (attorney failed to reduce fee agreement to writing and failed to reply to the client's requests for information about the matter).

In contrast, if the attorney has a disciplinary record, failure to communicate alone may lead to the imposition of a reprimand. See, e.g., In re Wolfe, 170 N.J. 71 (2001) (failure to communicate with a client; reprimand imposed because of attorney's ethics history: an admonition, a reprimand, and a three-month suspension).

We note that this is respondent's fifth brush with the disciplinary system. His previous run-ins have resulted in an admonition, two reprimands and a censure. All but the censure were imposed before respondent began his representation in the matter before us. However, the representation here was ongoing when the censure was imposed. Not only has respondent failed to learn from mistakes, he has, as we observed in our decision imposing his 2011 censure, a "propensity to violate" the Rules

of Professional Conduct. In re Ford, Docket No. 11-115 (September 27, 2011) (slip op. at 8).

As previously noted, the attorney in In re Wolf, supra, 170 N.J. 71, received a reprimand for failure to communicate with clients, after having been disciplined on three prior occasions.³ Respondent, too, failed to communicate with clients and has been disciplined on four prior occasions. Wolfe had been suspended for three months, a more serious level of discipline than respondent has received. Respondent, however, is also guilty of a violation of RPC 1.5(b), stemming from his failure to provide a written retainer. That factor, when combined with respondent's prior discipline for failure to communicate, warrants more serious discipline. We, thus, determine that a censure is the appropriate quantum of discipline in this matter.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and

³ Wolfe's prior matters were in various stages of completion at the time of the misconduct that led to his 2001 reprimand.

actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: Isabel Frank
Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

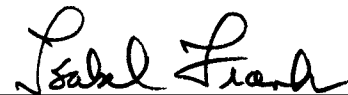
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Disposition: Censure

Members	Disbar	Suspension	Censure	Disqualified	Did not participate
Frost			X		
Baugh			X		
Clark			X		
Doremus			X		
Gallipoli			X		
Yamner			X		
Zmirich			X		
Total:			7		



Isabel Frank
Acting Chief Counsel