SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-287
District Docket No. I-2012-0016E

IN THE MATTER OF

ANTHONY J. BALLIETTE

AN ATTORNEY AT LAW

Decision

Decided: January 30, 2014

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 I Ethics Committee (DEC) pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with two counts of having violated RPC 3.4(g) (presenting, or threatening to present, criminal charges to obtain an improper advantage in a civil matter). For the reasons set forth below, we find that respondent violated this RPC, as alleged in both

counts of the complaint and determine that a censure is the appropriate measure of discipline for that misconduct.

Respondent was admitted to the New Jersey bar in 2000. At the relevant times, he maintained an office in Stone Harbor.

In 2012, respondent received an admonition for practicing law while on the Supreme Court's list of ineligible attorneys, due to nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection, and for lack of diligence and failure to promptly satisfy a Medicaid lien in an estate matter. In the Matter of Anthony J. Balliette, DRB 12-276 (December 11, 2012). We also imposed certain conditions on respondent's continued practice of law, namely, that he follow through with his representation that he would seek treatment for his depression from the psychologist to whom he had been referred; that he notify the psychologist that the psychologist was to provide the OAE with periodic reports attesting to respondent's continued treatment; that he seek assistance from the New Jersey Lawyers' Assistance Program; and that he practice under the supervision of a proctor, until his treatment was completed. On November 19, 2013, the Supreme Court temporarily suspended him for his failure to comply with those conditions.

In re Balliette, 216 N.J. 295 (2013). He remains suspended to date.

Service of process was proper in this matter. On May 6, 2013, the DEC sent a copy of the formal ethics complaint to respondent's office address, 359 96th Street, Suite 203, Stone Harbor, New Jersey 08247, by regular and certified mail, return receipt requested. The certified letter was returned to the DEC marked "unclaimed." The letter sent by regular mail was not returned.

On July 11, 2013, the DEC sent a letter to 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 DEC would certify the record directly to us for the imposition of sanction. According to the certification of the record, neither letter was returned to the DEC.

As of July 25, 2013, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default.

The conduct that gave rise to this matter was as follows:

On July 10, 2012, Marty Fritz and his former wife, Joanne Taylor, appeared, pro se, in the Superior Court of New Jersey,

Chancery Division, Family Part, Cape May County, for a hearing on Fritz's request that a domestic violence restraining order, which had been issued against him, be rescinded.[1] The court granted Fritz's request.

Prior actions between the parties involved issues relating to the custody and support of their minor children. The parties were pro se in those matters, as well.

At some point before August 4, 2012, Fritz retained respondent to represent him with respect to the custody and child support issues. On that date, respondent wrote to Taylor and informed her that he was representing Fritz in connection with those issues, as well as matters relating to the residence jointly owned by the parties, where Taylor resided with their children and her second husband, Rick Taylor.

Respondent's August 4, 2012 letter included a "Proposed Settlement" offer and detailed the "Benefits Of Settlement For All Parties" on the issues of custody and support, as well as

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[1] Although the outcome of that proceeding is not mentioned in the complaint, respondent referred to it in a letter, which is attached to the complaint as Exhibit A.

the status of the residence, which, despite joint ownership by the parties, had undergone demolition and construction by Rick, without Fritz's authorization.

Respondent's August 4, 2012 letter to Taylor included the following statement:

> 3. Pressing Criminal and/or Civil charges for Rick Taylor's fraudulent misrepresentation as owner of the property and for the unauthorized demolition and construction performed without first obtaining proper permits, leading to "Waste" (the legal definition of which is the unreasonable or improper use of land by an individual in rightful possession but not full ownership of the land).
>
> [C1¶5.][2]
>
> . . . .
>
> If Marty is forced to pursue litigation, it will require involving state and federal government witnesses and subpoenaing their offices for various records to prove instances of fraud and misrepresentation which you have already admitted committing under oath in two separate trials. Proving these instances of fraud would obviously have far reaching consequences on your custodial rights, employment, reputation in

[2] "C" refers to the formal ethics complaint, dated May 2, 2013.

the community, as well as potentially impact your own and your parents [sic] financial interest."

[C1¶6.]

. . . .

that you have admitted under oath, in at least 2 separate trials that you have perpetrated fraud to: 1. The IRS, 2. The Welfare Board, 3. Rental Assistance and 4. The NJ Department of Taxation, is at the very least, an issue which will be raised if it become [sic] necessary to determine which part [sic] is more "Fit" to be the primary custodial parent to both children. The perpetration of this type of fraud is a crime and it will be brought to the Family Court's attention and be considered by the Judge when making its decision on which parent is more "Fit" for primary custody.

[C1¶7.]

. . . .

and you will have to deal with the consequences from the scrutiny that will result from the government entities and agencies who will need to be notified regarding the instances of fraud committed by you over the years. Bringing in those entities to expose such fraud will have consequences that will affect your employment, and will almost assuredly result in fines and demands for restitution from all parties involved in perpetrating such fraud. In addition, because they are serious crimes, they could jeopardize your own equal custody rights as well as have potential criminal consequences. However, if you accept Marty's proposal, these issues will not be brought up again and there will

> be no litigation. This will be guaranteed in writing.
>
> [C1¶8.]

Based on these facts, the first count of the complaint alleged that, by presenting, participating in presenting, or threatening to present criminal charges to obtain an improper advantage in a civil matter, respondent violated RPC 3.4, presumably (g).

On August 14, 2012, respondent sent an email to Taylor, which specifically referred to the August 4, 2012 letter. According to the complaint, the email reiterated and re-published the previous statements to Taylor about the criminal consequences of her actions. Respondent wrote, in pertinent part:

> In that letter I recommended you discuss the issues with your own attorney; however I caution you; attorneys tend to advise clients not to respond or do anything unless and until you are served with a copy of a Complaint or Motion. I do not recommend you follow that advise [sic] because if you do, you risk us beginning a process that may be too late for us to stop – this pertains to the legal question of your own fitness as custodial parent which will require us to contact the Welfare Board and State/Federal Departments of Taxation and other entities, to investigate your instances of deliberate fraud and misrepresentation. As potential crimes, this is an issue Marty will pursue

> in order to prove that it demonstrates conduct that serve [sic] as negative influences on your minor children, and therefore it is in your children's best interests for he [sic] to have primary custody of them and not you.
>
> [C2¶2.]

As with the first count of the complaint, the second count alleged that, by presenting, participating in presenting, or threatening to present criminal charges to obtain an improper advantage in a civil matter, respondent violated RPC 3.4, presumably (g).

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Here, the quoted portions of respondent's August 4, 2012 letter and August 14, 2012 email contain unequivocal threats of presenting criminal charges against Taylor to obtain an improper advantage in a civil matter, that is, the "Proposed Settlement," violations of RPC 3.4(g). The only issue left for determination is the suitable degree of discipline for respondent's conduct.

The level of discipline for threatening to present, or presenting, criminal charges to obtain an unfair advantage in a civil matter ranges from an admonition to a suspension, depending on the severity of the conduct, the attorney's disciplinary history, and any aggravating or mitigating factors. See, e.g., In the Matter of Alan Ozarow, DRB 13-096 (September 26, 2013) (admonition for attorney who, within three weeks, sent four letters to his adversary, threatening to present to the Essex County Prosecutor criminal charges of fraud against the adversary's client; in mitigation, we considered that the attorney was not motivated by self-interest; that he was frustrated by what he perceived to be outrageous circumstances that his client was forced to endure; that he expressed remorse; that he claimed to be unaware of the disciplinary rule and discontinued his behavior, upon learning of it from his adversary; that he readily acknowledged his wrongdoing, showing a sense of professional accountability; and that he had an unblemished disciplinary history in his twenty-six years at the bar); In the Matter of Jeffrey R. Grow, DRB 11-199 (March 26, 2012) (attorney admonished for writing a letter to his client threatening to file criminal charges against her if she did not pay his fee for services provided in her grandmother's estate

matter; the attorney had never entered into a fee agreement with the client, whose first notice of the charge was in the estate's tax return; mitigating factors were the attorney's failure to follow through with the threat, his lack of awareness of the unethical nature of his conduct, his sincere remorse for the letter, which was prompted by his belief that the client was trying to cheat him out of the fee, and his unblemished disciplinary history during his thirty-five years at the bar); In re Levow, 176 N.J. 505 (2003) (admonition imposed on attorney who, while representing a client alleging medical malpractice, sent a letter to the client's doctor mentioning "criminal assault" and stating that the attorney had directed his client to contact "all relevant and proper authorities"); In the Matter of Mitchell J. Kassoff, DRB 96-182 (1996) (admonition for attorney who, after being involved in a car accident, sent a letter to the other driver indicating his intent to file a criminal complaint against him for assault; the letter was sent the same day that the attorney received a letter from the other driver's insurance company denying his damage claim); In re Mason, 213 N.J. 571 (2013) (reprimand for attorney who, in a letter to the lawyer for the buyer in an assets purchase transaction, threatened criminal charges against the buyer if he

were to disturb any of the subject collateral; the attorney also had an ethics history evidencing a pattern of mistreating clients and attorneys); In re Hutchins, ___ N.J. ___ (2005) (no further discipline for an attorney who sent fourteen form letters to debtors, in an attempt to collect debts on behalf of a collection agency; the letters included the threat of presenting a criminal action; the Court agreed with three of our members that the reprimand imposed in 2003 (cited below) was sufficient discipline for the totality of the attorney's conduct in both matters); In re Hutchins, 177 N.J. 520 (2003) (reprimand imposed on attorney who, in attempting to collect a $142 bounced-check debt for a collection agency, told the seventy-three year-old debtor that he had no alternative but to recommend to his client that civil and criminal remedies be pursued; the attorney would not provide a copy of the bounced check to the debtor, claiming it was too difficult to obtain it; in a second matter, the attorney sent two similar letters to a corporate debtor); In re McDermott, 142 N.J. 634 (1995) (attorney filed criminal charges for theft of services against a client and her parents after the client stopped payment on a check for legal fees; reprimand imposed); In re Ledingham, 189 N.J. 298 (2007) (three-month suspension for attorney who

threatened his client with criminal action for theft of services in order to collect his excessive fee); In re Supino, 182 N.J. 530 (2005) (three-month suspension imposed on attorney who threatened criminal charges against his former wife, the court administrator, and police officers in order to obtain an improper advantage in the attorney's own child-custody and visitation case; the attorney also exhibited a pattern of rude and intimidating behavior toward judges, the court administrator, and law enforcement authorities); and In re Dworkin, 16 N.J. 455 (1954) (one-year suspension for attorney who wrote a letter threatening criminal prosecution against an individual who forged an endorsement on a government check, unless the individual paid the amount of the claim against him and the legal fee that the attorney ordinarily charged in a criminal matter "of this type;" the Court found that the attorney had resorted to "coercive tactics of threatening a criminal action to effect a civil settlement").

In our view, a suspension would be too severe in this case. The attorneys who received suspensions were motivated by personal gain and, in some cases, their threats were outrageous, both in number and in degree. The allegations of the complaint in this matter do not demonstrate either of these factors.

In some of the cases that led to admonitions, the discipline seems to have turned on the attorney's emotional involvement in the matter, a circumstance that tends to explain, although not justify, the improper conduct. In Ozarow, for example, the attorney was frustrated by the outrageous circumstances that he believed his client was forced to endure. Moreover, there was no self-interest involved on his part. In Grow, the letter was sent to the client during a fit of anger prompted by the client's failure to pay his fee. In Levow, we noted the absence of self-interest and the rage that the attorney might have felt by the allegations his client had raised. In Kassoff, the attorney, after being involved in an auto accident, sent the letter to the other driver on the same day that the attorney received a letter from that driver's insurance company, denying the attorney's claim for damages. Again, although these circumstances do not excuse the conduct, they provide an explanation therefor.

Because this is a default, we are without the benefit of respondent's frame of mind, when he wrote the letter and the email. Thus, there is no context to the letter and email and no indication of contrition or remorse on respondent's part. It is possible, though, that what appears to have been a contentious

post-judgment matrimonial matter colored respondent's judgment. We do not know.

We do find, however, that respondent's behavior was not as severe as that of the attorneys who received reprimands. In Mason, for example, there was evidence of a pattern of threats and of obnoxious behavior towards people involved in the legal process. In Hutchins, the attorney sent sixteen threatening letters and, in addition, would not provide a copy of the bounced check to the debtor, claiming it was too difficult to obtain. In McDermott, the attorney moved beyond a threat and actually filed a complaint against his client, in order to collect legal fees.

In this case, respondent's behavior was not aggravated by other actions or by the number of threats. Thus, an admonition seems to be the appropriate measure of discipline for his unethical conduct, standing alone. However, respondent does have an ethics history (2012 admonition for practicing while ineligible) and he has defaulted in this matter. These two aggravating factors serve to affect the measure of discipline to be imposed. 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"). Thus, we determine to elevate the admonition by two degrees, one for the prior discipline and another for the default. In our view, a censure is the appropriate quantum of discipline in this case.

Members Clark and Singer voted to impose a reprimand. Member Doremus 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
Bonnie C. Frost, Chair

By: Isabel Frank
Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Anthony J. Balliette
Docket No. DRB 13-287

Decided: January 30, 2014

Disposition: Censure

Members	Disbar	Reprimand	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark		X				
Doremus						X
Gallipoli			X			
Hoberman			X			
Singer		X				
Yamner			X			
Zmirich			X			
Total:		2	6			1

Isabel Frank
Acting Chief Counsel