SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-401
District Docket No. IIIB-2012-0019E

IN THE MATTER OF	:
RONALD B. THOMPSON	:
AN ATTORNEY AT LAW	:

Decision

Argued: April 17, 2014

Decided: May 21, 2014

Michael O. Kassak appeared on behalf of the District IIIB Ethics Committee.

Paul Ferrell, Jr. 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 on a recommendation for a three-month suspension filed by the District IIIB Ethics Committee (DEC). The two-count complaint charged respondent with having violated RPC 1.3 (lack of diligence) and RPC 1.4, presumably (b) (failure to keep a client reasonably informed about the status of the matter or to promptly reply to reasonable requests for

information). For the reasons expressed below, we determine that a censure is warranted here.

Respondent was admitted to the New Jersey bar in 1990. At the relevant times, he maintained a law office in Marlton, New Jersey.

In 2011, respondent was censured for misconduct in two client matters, both involving appeals. In the first matter, he was retained to pursue an appeal of the entry of a final restraining order. When the appeal was dismissed, he did not file a motion to reinstate it, did not inform his client that the appeal had been dismissed, and misled the client that he was moving forward with the case.

In the second matter, he was retained to file an appeal in a criminal case, but failed to perfect the appeal, did not keep the client apprised of the status of the appeal, and misrepresented to her that the matter was proceeding properly.

Respondent was found guilty of gross neglect, lack of diligence, failure to properly communicate with clients, and failure to expedite litigation. In aggravation, we found that, in one of the matters, he gave testimony that lacked credibility, misled his client about the viability of his case, and delayed returning the client's transcripts and retainer,

thereby preventing the client from seeking other representation. In re Thompson, 205 N.J. 107 (2011).

Approximately ninety to ninety-five percent of respondent's practice is comprised of criminal matters. Grievant Teresa Ann Lucas met respondent when he represented her son in a criminal matter. Because Lucas had been satisfied with those services, she contacted respondent about her own civil problems with the Willingboro school district, by whom she was employed.

In March 2009, respondent filed a notice of tort claim on Lucas's behalf. On July 24, 2009, he filed a complaint against the Willingboro Township Board of Education and various individuals, alleging, among other things, harassment and a hostile work environment.

The Board of Education propounded interrogatories on Lucas on January 4, 2010. Respondent did not send the interrogatories to Lucas at that time. According to Lucas, she did not receive them until November 16, 2010. They were faxed to her, after she had met with respondent's then-associate, newly-hired Logan Terry.[1] Respondent claimed that, before Lucas and Terry's meeting, he had discussed with Lucas the significance of completing the interrogatories, because they had "a serious

[1] According to respondent, Terry worked in his office for only a "couple of months."

situation here now." Respondent meant the fact that, on September 2, 2010, at least two months prior to Lucas's meeting with Terry, the Board of Education had filed a motion to dismiss the complaint, without prejudice, for Lucas's failure to provide answers to interrogatories. Respondent did not inform Lucas about the motion. He claimed, however, that he had sent the interrogatories to Lucas, before the defendant had filed the motion to dismiss. He could provide no proof that he had done so.

Lucas testified that neither respondent nor Terry had informed her about the motion to dismiss, or provided her with a copy of it. As with the interrogatories, respondent had no proof that he had sent Lucas a copy of the motion and did not recall having done so.

The formal ethics complaint alleged, and respondent admitted in his answer, that an order to dismiss the complaint, without prejudice, was entered on September 24, 2010[2].

Sometime in November 2010, Terry met with Lucas, at her office, to draft answers to the interrogatories. Although the record is unclear as to the exact date of their meeting, Lucas's

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[2] At the DEC hearing, however, the presenter stated that the motion was granted on November 24, 2010.

two emails to Terry indicated that they planned to meet on November 2, 2010 (at least nine months after the interrogatories were propounded). Respondent asserted that Terry met with Lucas earlier, before October 26, 2010.

Respondent testified that, on October 26, 2010, his office sent Lucas a letter about the importance of completing the interrogatories. In turn, Lucas adamantly denied having ever received the letter, which stated:

> Please be advised that the attorney for Willingboro Township has served us with written questions (interrogatories) which must be answered by November 5, 2010.
>
> Please be further advised that if these questions are not answered your lawsuit will be dismissed and you will be forever precluded from any possible recourse in this matter.
>
> I estimate that it will take between 4-6 hours to complete these interrogatories. Kindly contact my office to set up an appointment.
>
> [Ex.GC.]

According to respondent, although the letter contained his signature, he had not authored it. He speculated that Terry must have written and signed it.

Respondent did not recall following up with Lucas, after November 5, 2010, the purported due date of the answers to the interrogatories, to inform her that he had not received her

answers. According to respondent, Lucas was aware of the deadline. Also, he had a question in his mind as to whether she even wanted to continue with the case. In addition, he asserted, moving forward with the case presented some difficulties because Lucas had legitimate "personal things going on" at the time.

During Lucas and Terry's three-hour meeting, they worked on the answers, but did not complete them. Terry typed Lucas's answers on his laptop computer. Lucas asserted that she was not given a paper copy of the answers or the interrogatories at that time.

Lucas testified that, when she gave Terry her answers, he questioned her about them and "repeatedly kept saying he didn't understand or see how this was a case or not a case." They completed only a third of the interrogatories. At the end of their meeting, Terry informed her that he would take the interrogatories to "see what he could do." According to Lucas, that was her last communication with him. Afterwards, she sent respondent draft answers to some of the interrogatory questions and listed respondent's name on the questions that she could not answer.

Respondent claimed that he had not opposed the motion to dismiss because "Ms. Lucas hadn't completed [the answers]." When asked whether he had ever looked at the information that Terry

had taken down on his laptop, respondent replied that he had not, adding that, if "not mistaken," Terry had taken it with him, when he had left respondent's employ. Respondent admitted that he never petitioned the court for additional time to complete the interrogatories, either after the first motion was filed or after the second motion to dismiss with prejudice was filed (the date of the second motion was not mentioned). According to respondent, the case was originally scheduled for dismissal on November 5, 2010, but the judge did not sign the order of dismissal, with prejudice, until February 18, 2011.

Respondent did not recall sending Lucas a copy of the order of dismissal with prejudice claiming that, he may have incorrectly assumed that his secretary had done so. He added that it was his office's practice to send such orders to the clients. He maintained that he had orally notified Lucas of the dismissal.

According to respondent, he tried to resolve the case with the Board of Education's attorney, who agreed to mediation, and there was more than one mediation session scheduled. "But . . . I don't want to say fell apart [sic], but the recovery one would get in a mediation was not merely what Ms. Lucas was looking for. So it was of limited value, I think." Respondent produced

no evidence of any mediations or of any dates on which they purportedly occurred.

Respondent admitted that he had never propounded interrogatories or conducted any depositions in Lucas's matter. He added that he did not make notations in her file about the work he had performed in her case, because of his relationship with Lucas, that is, because he knew her. Similarly, he stated that he would talk to her frequently, but would not memorialize their conversations. Although he claimed that he "occasionally" sent her letters updating the status of the case, there were no such letters in the file. He conceded that it would have been a better practice to document any developments in the case. He explained further that many of his conversations with Lucas took place while he was in his car, on weekends, or after hours, when he was not in a position to make notations in her file about the conversations.

As noted previously, respondent could not locate any letters sending Lucas interrogatories, motions to dismiss, or orders of dismissal, even though he admitted that it was his practice, "generally," to keep such letters in client files. Moreover, there was no correspondence informing Lucas that, if she did not answer the interrogatories, her complaint would not be reinstated.

At the DEC hearing, respondent presented a March 2011 email from Lucas, which was not admitted into evidence, requesting a copy of the interrogatories. He could not explain why she would still be asking for them at that time if, as he claimed, he had told her the month before, February 2011, that her complaint had been dismissed with prejudice.[3] When questioned as to why he had not immediately notified Lucas, upon receipt of her email, that her case had been dismissed, he replied that he had not seen Lucas's email until he began preparing for the ethics hearing.

Lucas complained about periods of time during which respondent would not return her telephone calls. When she spoke to him, he claimed he was experiencing problems with his office personnel. At one point, he gave her his cell phone number, but he still would not promptly return messages left on his cell phone. According to Lucas, "it just became more of a burden than anything else." She stated that respondent had promised her that she would be satisfied with his services and had asked her to be patient.

Notwithstanding respondent's entreaties, Lucas remarked, the pattern continued. He was either not available to talk, or told her that they needed to get together, but they never did.

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[3] As seen below, Lucas denied being aware of the dismissal with prejudice.

Eventually, he stopped taking her calls. Lucas then told respondent's secretary that, if respondent was unable to handle her case, he should let her know, so that she could look for another attorney.

In March 2012, before Lucas learned that her case had been dismissed, she told respondent's secretary that she had retained another attorney and, therefore, needed her file. On her way to the appointment with the new attorney, respondent called her and asked her to "hold on a little bit longer," assuring her that he would contact the Board of Education's attorney.

Lucas conceded that respondent was always very apologetic and courteous and that they had had a good rapport. Their conversations made her confident that he would follow through, but he never informed her about the status of her case or that her complaint had been dismissed with prejudice. According to Lucas, she learned about the dismissal only when she met with another attorney, who informed her that she had no further recourse. She obtained a second opinion from another attorney, who confirmed that she no longer had a case. Lucas complained that, had she known that her case had been dismissed, she would not have bothered meeting with the other attorneys.

Respondent claimed that he tried to call Lucas, when he learned that she was terminating his services, possibly before

she filed the ethics grievance against him (April 11, 2012), and then immediately after he was served with a copy of her grievance. He stated that he had communicated with Lucas over the phone more than with any of his other clients. He conceded that he may not have returned her calls immediately, but asserted that he did so within what he considered to be a reasonable period of time. He added that he had not made "a lot of money off of, or even attempted to make much money off of [sic]. I quite honestly viewed it somewhat as kind of trying to help Ms. Lucas doing a bit of a favor for her."

The presenter, in turn, took the position that respondent "just washed his hands and said I gave it my best shot and if it's dismissed with prejudice, it gets dismissed with prejudice."

According to the DEC, respondent's defense rested on his claim that he had kept Lucas informed about the progress of her case; that she had been given the interrogatories and was instructed to answer them; that she had been made aware of the consequences of failing to do so; that he had informed her about the motions to dismiss; that she had been informed orally about the status of her matter; and that the dismissal of Lucas's lawsuit had been the result of her failure to provide him with

answers to interrogatories, rather than his failure to communicate with her or to represent her with due diligence.

The DEC found that the weight of the credible evidence established that respondent had not informed Lucas that there was a deadline to provide the answers and that he had not disclosed to her, either in writing or orally, that her case had been dismissed, both with and without prejudice. The DEC concluded that respondent had no contact with Lucas about her case, from November 2010 to March 2012, a violation of RPC 1.4.

The DEC also found that respondent's failure to provide Lucas with the interrogatories for almost ten months; failure to file a motion to expand the time to answer the interrogatories; failure to follow up with Lucas to ensure that she replied to the interrogatories; and failure to oppose the dismissal of the complaint violated RPC 1.3.

The DEC found, as mitigation, that respondent was always cordial and courteous with Lucas; that he was apologetic and remorseful about the dismissal of her case; that he was not motivated by personal gain; and that his misconduct was not likely to recur. As aggravation, the DEC cited respondent's disciplinary history, namely, his 2011 censure for similar misconduct (failure to communicate, lack of diligence, and gross neglect), which the DEC believed might be indicative of a

pattern of behavior, requiring "harsher" discipline, that is, a three-month suspension.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

The record demonstrates that, initially, respondent and Lucas had a number of conversations, although he may not have returned her calls as promptly as she would have liked. Later, respondent stopped returning her calls altogether, prompting her to seek the services of another attorney.

Despite respondent's claims that he kept Lucas orally apprised of the status of her matter, the DEC found that the weight of the credible evidence established otherwise. We, too, find that respondent failed to communicate important events to Lucas, such as, the motions to dismiss the complaint and the court's orders of dismissal. Respondent produced no documentary evidence to show that he had submitted any such information to Lucas, with the exception of an October 26, 2010 letter that Lucas adamantly denied receiving. That letter failed to inform her that one of the defendants had already filed a motion to dismiss the complaint without prejudice for her failure to answer the interrogatories that had been propounded nine months earlier.

Lucas's constant calls to respondent, her attempt to hire another attorney, and her effort to obtain a copy of the interrogatories, after her case had already been dismissed with prejudice, show that respondent failed to keep her informed about the status of her case, either orally or in writing. Moreover, respondent's entreaties to Lucas support the conclusion that he was trying to conceal the fact that her complaint had been dismissed, due to his inaction. The record, thus, clearly and convincingly supports a finding that respondent violated RPC 1.4(b).

Respondent is also guilty of lack of diligence for not obtaining Lucas's answers to interrogatories; not asking for additional time to answer the interrogatories; not opposing the motions to dismiss; not attempting to reinstate the complaint, after the first dismissal; and allowing the complaint to be dismissed with prejudice. Respondent's excuse for not opposing the motions to dismiss was that Lucas had not completed the interrogatories. Yet, her complaint was about to be dismissed without prejudice even before he provided her with the interrogatories and she was not apprised of any deadlines to complete them. We, therefore, find respondent's explanations implausible and view them as an attempt to absolve himself of any blame for foreclosing Lucas's ability to pursue her claims.

Generally, an admonition is the appropriate form of discipline for lack of diligence and failure to communicate with the client. See, e.g., In the Matter of John David DiCiurcio, DRB 12-405 (July 19, 2013) (attorney who was retained to file a bankruptcy petition did no work on the file, other than to draft one letter to the client one month after being retained; the attorney did not inform the client that the failure to file the petition was due to the client's non-payment of a legal fee); In the Matter of Edward Benjamin Bush, DRB 12-073 (April 24, 2012) (attorney failed to reply to his client's multiple telephone calls and letters over an eleven-month period and lacked diligence in handling the matter; the attorney failed to follow through on his agreement to file a complaint, an order to show cause, and other pleadings); In the Matter of Rosalyn C. Charles DRB 08-290 (February 11, 2009) (attorney failed to respond to her client's attempts to communicate with her about the status of the client's divorce matter; the attorney's inaction led to the dismissal of the client's complaint for failure to prosecute; mitigating factors included the attorney's unsuccessful attempt to have the complaint reinstated and her admission of wrongdoing); In the Matter of James C. Richardson, DRB 06-010 (February 23, 2006) (attorney lacked diligence in an estate matter and did not reply to the beneficiaries' requests

for information about the estate); and In the Matter of Anthony R. Atwell, DRB 05-023 (February 22, 2005) (attorney did not disclose to the client that the file had been lost, canceled several appointments with the client for allegedly being unavailable or in court when, in fact, the reason for the cancellations was his inability to find the file; the attorney then took more than two years to attempt to reconstruct the lost file).

The presence of a disciplinary record or other aggravating factors may serve to enhance an admonition to a reprimand. See, e.g., In re Carmen, 210 N.J. 141 (2010) (reprimand for attorney who, for a period of two years, failed to communicate with the 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) and 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).

An attorney who lacked diligence and failed to communicate with his clients in four matters received a three-month suspension. In re Lowenstein, 200 N.J. 227 (2009). That matter

was the attorney's fourth brush with the disciplinary system. In the space of two years, from 2006 to 2008, he was disciplined three times. Altogether, his unethical behavior extended to fourteen matters (three in the matter that led to his 2006 admonition, one in the 2007 reprimand, six in the matter that resulted in his 2008 censure, and four in the matter then under consideration). Although the evidence supported only findings of lack of diligence and failure to communicate with clients, the attorney conceded that he was negligent in the matters, thereby allowing a finding of a pattern of neglect, an aggravating factor.

In fashioning the right level of discipline for respondent's conduct in this matter, we have considered that he has not learned from his prior ethics mistakes; that this matter involves misconduct similar to that found in his prior disciplinary matters; and that he failed to take responsibility for his actions, instead blaming Lucas for not completing answers to interrogatories.

Based on these factors, we determine that discipline greater than a reprimand is warranted, but not a suspension, as was imposed in Lowenstein, where the conduct was significantly more serious. We emphasize that, there, the attorney faced discipline for the fourth time and mishandled a total of

fourteen client matters, while here, it is respondent's second time before us and only one client matter was involved. We, therefore, determine that a censure is the proper discipline in this case.

Vice-Chair Baugh recused herself and did not participate in the deliberation of the matter.

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: _____
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ronald B. Thompson
Docket No. DRB 13-401

Argued: April 17, 2014

Decided: May 21, 2014

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh					X	
Clark			X			
Gallipoli			X			
Hoberman			X			
Singer			X			
Yamner			X			
Zmirich			X			
Total:			7		1	

Ellen A. Brodsky
Chief Counsel