

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-030
District Docket No. IV-2010-0038E

IN THE MATTER OF
FRED R. BRAVERMAN
AN ATTORNEY AT LAW

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Decision

Argued: April 17, 2014

Decided: July 24, 2014

Jason Sunkett appeared on behalf of the District IV Ethics Committee.

Robert N. Braverman appeared on behalf of respondent.

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

This matter was originally before us at our January 16, 2014 session, as a recommendation for an admonition filed by the District IV Ethics Committee (DEC), which we determined to treat as a recommendation for greater discipline, pursuant to R. 1:20-15(f). The six-count complaint charged respondent with violating RPC 1.1, presumably (a) (gross neglect), RPC 1.3 (lack

of diligence), RPC 1.4, presumably (b) (failure to keep a client reasonably informed about the status of a matter), RPC 3.2 (failure to expedite litigation), RPC 8.1(b) (failure to cooperate with disciplinary authorities), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

In respondent's answer, he admitted that he violated RPC 1.1, RPC 1.3, RPC 1.4, and RPC 3.2, but denied violating RPC 8.1(b) and RPC 8.4(c). One of the bases for the violation of RPC 1.1(a) was respondent's alleged misrepresentation to his client that he "was handling her case." Although unclear, the language of respondent's answer appears to indicate that he did not admit that aspect of the charge.

On the day of the DEC hearing, respondent and the presenter entered into a stipulation of facts, in which respondent again admitted his violations of RPC 1.1, RPC 1.3, and RPC 1.4. The stipulation does not address the three remaining charges. Although, during the DEC hearing, respondent admitted that he failed to expedite litigation, he did not concede that his conduct violated RPC 3.2.

We determine to impose a reprimand on respondent.

Respondent was admitted to the New Jersey bar in 1980. He has no history of discipline.

Linda Lee retained respondent to represent her in connection with a 2002 motor vehicle accident that occurred in Maryland and a 2005 accident that occurred in New Jersey. The Maryland case had previously been handled by another attorney, who turned it over to respondent in 2004. Respondent testified that he was given the Maryland case seven- to-ten days before the expiration of the statute of limitations. Lee was badly injured in the Maryland accident. According to her grievance against respondent, her vehicle flipped three or four times. She had to be flown by helicopter to a hospital. She has lingering back, neck, and leg injuries.

The ethics complaint alleged that respondent did not file a suit on Lee's behalf, in connection with the 2005 accident. After the ethics complaint was filed, however, respondent produced copies of complaints that he had filed in both of Lee's matters.

As to the 2002 accident, respondent testified that Lee's prior attorney had told him that the file was complete. Respondent later learned that a certification of permanent injury from Lee's treating physician was missing. He then filed a complaint before the statute of limitations ran and attempted to obtain the necessary certification. Lee's doctor refused to

provide it, however. According to respondent, at that point, he "froze" and did not know what to do.

As to the 2005 accident, respondent explained that to pursue a claim, it would have been necessary for him to provide information relating to the first case, which remained unresolved. He explained that he filed the complaint believing that he would "figure out a way how to straighten [the cases] out." However, he "buried [his] head and didn't do anything." Both lawsuits were dismissed for lack of prosecution.

Respondent stipulated that, "at some point" during his representation of Lee, he stopped communicating with her. He conceded that he did not reply to "several [of her] phone calls" and that her attempts to learn the status of "her New Jersey claim" were unsuccessful. In his answer, respondent stated that he last communicated with Lee in late 2008 or early 2009. He recognized that he should have informed her that he had been unable to obtain the certification from the doctor, at the time that the issue arose. His explanation, however, was that he continued to believe that he would find a way to resolve the situation.

Respondent also failed to reply to the DEC investigator's requests for information about the grievance. The record contains letters from the DEC secretary and from the

investigator to respondent, seeking a reply to Lee's grievance. Although, in early January 2011, respondent told the investigator that his reply to Lee's grievance was forthcoming, respondent never replied to the investigator. He explained that he "was like an ostrich with [his] head in the sand." The parties stipulated, however, that, after the complaint was filed and respondent retained counsel, he provided relevant information to the DEC.

Respondent testified about the changes that he has made to his practice to avoid a similar situation in the future. He no longer accepts personal injury cases. His practice is now ninety-five percent bankruptcy and municipal court work.

Respondent also testified that, during the time in question, he had health insurance "on and off." He was "energyless" and believes that he was suffering from depression and undiagnosed diabetes. He, however, provided no medical records to support this claim. He acknowledged that he still had a duty to protect his clients' interests.

Respondent's counsel asked the DEC to consider, in mitigation, that respondent's conduct was not malicious or intentional, that he has no final discipline in his thirty years at the bar, and that he is the sole wage earner for himself and his grown children, who live with him. Counsel also noted the

changes that respondent made to his law practice to avoid a similar problem in the future. Both the presenter and respondent's counsel urged the DEC to consider respondent's ultimate cooperation with disciplinary authorities.

The DEC found that respondent violated RPC 1.1, RPC 1.3, RPC 1.4, RPC 3.2, and RPC 8.1(b) and dismissed the charged violation of RPC 8.4(c). That charge was based on respondent's statement to Lee that he had filed a lawsuit on her behalf, which the presenter believed had never been filed. Based on the proofs presented during the hearing, the DEC concluded that the presenter had failed to meet his burden of proof and dismissed that charge.

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

We agree with the DEC's findings that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 3.2, and RPC 8.1(b). Respondent stipulated all but the RPC 3.2 and RPC 8.1(b) violations, although he admitted the conduct that formed the basis for those charges.

We are unable to agree with the DEC's dismissal of the RPC 8.4(c) charge, however. Respondent never told Lee that her


complaints had been dismissed. By his silence, he misled her that her claims were still proceeding. The record, thus, supports a finding that respondent violated RPC 8.4(c) through his "misrepresentation by silence," an infraction that requires the imposition of a reprimand. "In some situations, silence can be no less a misrepresentation than words." Crispen v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984).

A compelling mitigating factor here is respondent's unblemished thirty-four years at the bar, evidencing that his misconduct was aberrational. Ordinarily, that factor could serve to downgrade the appropriate measure of discipline for a misrepresentation (reprimand) to an admonition. But we must consider the harm to Lee. Although it is unclear how critically she was injured, respondent's inaction left her with no legal recourse. Harm to a client is an aggravating factor. See, e.g., In re Uffelman, 200 N.J. 231 (2009) (reprimand for attorney found 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).

Moreover, respondent's misrepresentations by silence, which occurred in Lee's two cases, continued for years and until Lee filed her grievance. At some point, respondent had to know that he would not "find a way" to pursue her claim and that he had to so inform her. We find, thus, that a reprimand is the appropriate discipline in this case.

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 Fred R. Braverman
Docket No. DRB 14-030

Argued: April 17, 2014

Decided: July 24, 2014

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Gallipoli			X			
Hoberman			X			
Singer			X			
Yamner			X			
Zmirich			X			
Total:			8			


Ellen A. Brodsky
Chief Counsel