

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-035
District Docket No. IIB-2011-0027E

IN THE MATTER OF :
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:
RONALD J. BRANDMAYR, JR. :
:
AN ATTORNEY AT LAW :
:
:

Decision

Decided: August 28, 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 IIB Ethics Committee (DEC), pursuant to R. 1:20-4(f). The complaint charged respondent with lack of diligence (RPC 1.3) and failure to communicate with the client (RPC 1.4(b)). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 2002. On December 6, 2012, he received a reprimand by consent for practicing law while ineligible to do so, a violation of RPC 5.5(a)(1).

Service of process was proper in this matter. On October 22, 2012, the DEC sent a copy of the complaint, by regular and

certified mail, to respondent's office address, 4400 Route 9 South, Suite 1000, Freehold, New Jersey 07728. The certification of the record does not indicate the outcome of the certified and regular mail. However, respondent received the complaint. On December 5, 2012, he sent a letter to the DEC that was, in effect, a non-conforming answer. In it, he admitted the allegations of the complaint.

After receipt of respondent's non-conforming answer, the DEC placed numerous calls to respondent's office, apparently reaching his secretary. Respondent did not return the calls. Therefore, on June 26, 2013, the DEC sent him a letter, at the office address above, advising him that, if he did not file a verified answer within ten days of the date of the letter, the allegations of the complaint would be deemed admitted and the record would be certified directly to us for the imposition of discipline. The letter closed by requesting that respondent submit an amended answer no later than July 17, 2013. The certification does not specify the mailing method for this letter.

As of January 24, 2014, the date of the certification of the record, respondent had not filed an answer or otherwise communicated with the DEC about this matter.

The facts are as follows:

In 2008, Ruben Retamar retained respondent to defend him in an Essex County action captioned Ortiz v. Retamar, et al., a personal injury claim arising from an alleged fight in 2006. Respondent handled the initial phases of the action without incident, but thereafter ceased communicating with Retamar and became unavailable to him.

According to the complaint, in about July 2010, respondent closed his office, due to "financial difficulties." He did not advise Retamar of the closing of his office, seek to withdraw from the case, or advise his client to obtain new counsel.

In January 2011, respondent ceased practicing law completely and took a position as a sales representative for a communications company. He failed to notify Retamar of an address and telephone number where Retamar could reach him in the future.

Meanwhile, the Ortiz action had been adjourned on various occasions, not because of respondent's conduct, but due to the absence of a third-party defendant.

After Retamar filed a July 8, 2011 ethics grievance against respondent, the ethics investigator located respondent, in 2012.

The ethics investigator then restored communication between respondent and Retamar.

As of the filing date of the formal ethics complaint (August 28, 2012), the Ortiz action was scheduled for a September 10, 2012 trial.¹

On April 24, 2014, respondent filed a letter-motion with the Office of Board Counsel, seeking to vacate the default. Respondent denied that he had failed to answer the complaint and pointed to his December 5, 2012 letter to the DEC secretary. He urged us to consider that he had been able to put Retamar's case back on track and that he ultimately had achieved a good result for his client. As in his deficient December 5, 2012 letter-answer, respondent admitted that

[a]t the time, and as I stated to Mr. Mark Heinze, who investigated this complaint originally in 2012, I had closed my Hackensack office due to financial difficulties [sic] in 2010 and obtained employment with AT&T in Morristown [sic]. I did not abandon my client, but in the confusion of the [move] briefly lost contact with him and did in fact miss an arbitration date. However, I soon reestablished

¹ Respondent provided to the DEC a November 13, 2012 judgment by the Honorable James S. Rothschild, Jr., J.S.C., in which Retamar (spelled Radimore) was found not liable for Ortiz' injuries.

[sic] contact with my client [sic] and apologized to him. Mr. Heinze was satisfied with my explanation and indicated that he would not recommend any disciplinary action. I had assumed the matter was closed.

. . . .

It was sometime after this (I believe in early 2013) that again I was asked to answer this very same complaint. I responded to it and included [sic] a copy of the judge's [sic] verdict.

For [sic] the reasons stated above, I categorically deny failing to provide a timely answer to this [sic] complaint, and respectfully request that the default be vacated and the matter dismissed.

[April 23, 2014 letter-motion at 1-2.]

In order to vacate default matters, a respondent must satisfy a two-pronged test. First, a respondent must offer a reasonable explanation for the failure to answer the ethics complaint. Second, a respondent must assert a meritorious defense to the underlying charges.

As to his failure to answer the ethics complaint, respondent urged us to consider his December 5, 2012 letter as his answer to the complaint. R. 1:20-4(e), however, requires that an answer be verified and respondent was so informed. Yet, he has done nothing to cure that deficiency, failing, even now, to provide a proposed verified answer with his motion. We find,

thus, that respondent has failed to satisfy the first prong of the test.

With regard to the second prong, the presentation of meritorious defenses, respondent admitted having lost contact with his client, after closing his office in 2010. As discussed below, the loss of contact may not have been so brief and, in fact, amounted to a temporary abandonment. In other words, respondent's meritorious defenses fall short. Because respondent failed to satisfy the two prongs of the test to vacate a default, we denied his motion.

* * *

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).

In July 2008, respondent was retained to defend Retamar against Ortiz' personal injury claim. In July 2010, respondent closed his law office. In January 2011, he ceased practicing law. Subsequently, Retamar's matter must have been put back on track, for judgment was entered absolving him of any liability.

In 2012, the DEC investigator located respondent. In the interim, however, respondent did not pursue Retamar's claim and failed to attend an arbitration hearing. Respondent also failed to keep Retamar informed of the status of the case and of respondent's whereabouts. After closing his law office and ceasing the practice of law, respondent failed to advise Retamar how and where he could reach respondent for information about his case. For his failure to protect Retamar's interests and to communicate with him from July 2010 through sometime in 2012, we find that respondent violated RPC 1.3 and RPC 1.4 (b), respectively.

Lack of diligence and failure to communicate with the client generally result in an admonition. See, e.g., In re Bush, 210 N.J. 182 (2012) (attorney failed to file a complaint, an order to show cause, and other pleadings; he also failed to reply to the client's multiple telephone calls and letters over an eleven-month period); 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); In the Matter of Jonathan Saint-Preux, DRB 04-174 (July 19, 2004) (in two immigration matters, attorney failed to appear at the hearings, thereby

causing orders of deportation to be entered against the clients and failed to apprise the clients of these developments); In the Matter of Susan R. Dargay, DRB 02-276 (October 25, 2002) attorney failed to promptly submit to the court a final judgment of divorce in one matter and failed to reply to the client's letters and phone calls in another matter); and In the Matter of Mark W. Ford, DRB 02-280 (October 22, 2002) (attorney failed to file a workers' compensation claim and to reasonably communicate with the client about the status of the case).


Ordinarily, an admonition would suffice for respondent's violations of RPC 1.3 and RPC 1.4(b). However, 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 re Kivler, 193 N.J. 332, 342 (2008). In further aggravation, respondent has a 2012 reprimand for practicing law while ineligible to do so.

In mitigation, it appears that respondent managed to get Retamar's case back on track and obtained a good result for him. Balancing the aggravating factors against the mitigating factors, we determine that there is insufficient reason to impose discipline higher than a reprimand.

Member Gallipoli 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: 
Ellen A. Brodsky
Chief Counsel

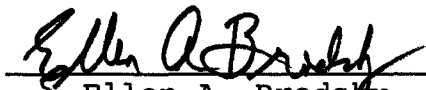
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ronald J. Brandmayr, Jr.
Docket No. DRB 14-035

Decided: August 28, 2014

Disposition: Reprimand

<i>Members</i>	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:			7			1


Ellen A. Brodsky
Chief Counsel