SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-139
District Docket No. XIII-2013-0002E

IN THE MATTER OF	
MARTIN ALBERT GLEASON	
AN ATTORNEY AT LAW	

Decision

Decided: November 5, 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 XIII Ethics Committee (DEC), pursuant to R. 1:20-4(f). The complaint alleged that respondent failed to communicate with a client, a violation of RPC 1.4(b), and failed to cooperate with disciplinary authorities, a violation of RPC 8.1(b). For the reasons expressed below, we determine to impose an admonition on respondent.

Respondent was admitted to the New Jersey bar in 1992. He received a reprimand, in 2011, for negligently misappropriating client funds, failing to communicate in writing the basis or rate of his fee, and failing to comply with the recordkeeping requirements. In re Gleason, 206 N.J. 139 (2011).

Service of process was proper in this matter. On January 14, 2014, the DEC sent the complaint, by certified and regular mail, to respondent's office address at 114 East Union Avenue, Bound Brook, New Jersey. The certified mail receipt was returned, bearing a signature that appears to be respondent's, showing delivery on January 22, 2014. The regular mail was not returned.

On February 28, 2014, the DEC sent a letter to the same address, by regular mail, informing respondent that, if he did not file an answer within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of sanction, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The letter was not returned.

As of the date of the certification of the record, March 24, 2014, respondent had not filed an answer.

On July 2, 2014, respondent filed a motion to vacate the default. In the certification in support of the motion, respondent acknowledged that, although he replied to the DEC investigator's letter seeking information about the grievance, he was unable to comply with the investigator's request for a copy of his client file, because his secretary had given the file to the client, without photocopying it. He did not inform the investigator of this circumstance. Thereafter, he was occupied by the health problems of a family member who was hospitalized.

On March 23, 2014, the day before the DEC secretary executed the certification of the record, respondent sent a letter to the DEC secretary, admitting the ethics violations and explaining that he had a family health crisis at the time of the ethics investigation. According to respondent's certification, he believed that his March 23, 2014 "admission of guilt" and explanation constituted a sufficient answer and should be part of the record.

Respondent attached to his motion a proposed answer to the formal ethics complaint, in which he admitted virtually all of the allegations of the complaint.

In order to vacate a default, we must be persuaded that a respondent has overcome a two-pronged test. First, a respondent must offer a reasonable explanation for his or her failure to answer the ethics complaint. Second, a respondent must assert a meritorious defense to the underlying charges. In this case, although respondent explained his reasons for not filing an answer to the ethics complaint, he has not offered a meritorious defense to the underlying charges. Indeed, he has admitted that he is guilty of them.

For respondent's failure to satisfy the second prong of the test, we, thus, denied his motion to vacate the default. As seen below, however, we determined not to enhance the discipline to be imposed, as usually happens in defaults, in light of the fact that respondent did not ignore the disciplinary authorities.

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

On a date not mentioned in the complaint, Daniel Stein, the grievant, retained respondent to represent him in the purchase of a real estate parcel. In October 2008, respondent filed "an application for a site plan and subdivision for a variance," before the Bound Brook Planning Board (BBPB). After the BBPB discussed the application, at its November 2013 meeting, it sent

a letter to respondent, indicating that it deemed the application incomplete and suggesting that he reschedule the hearing, after he corrected the deficiencies.

On February 12, 2009, respondent replied to the BBPB. Nevertheless, the BBPB dismissed Stein's application, without prejudice, on April 23, 2009, and so informed respondent in a letter, indicating that a copy had been sent to Stein. Between April 2009 and May 2010 (thirteen months), the BBPB requested certain items from respondent to complete the application. Respondent replied to those requests.

On June 3, 2010, the BBPB notified respondent that Stein's application was again dismissed without prejudice, "as a result of your failure to supply information and properly submit reasons for the subdivision plan waiver." Unlike the prior letter, the June 3, 2010 letter did not indicate that a copy had been sent to Stein. Stein denied that respondent had ever informed him that his application had been dismissed, claiming that he had learned about it only after he had retained another attorney.

As previously stated, respondent replied to the disciplinary investigator's initial request for information about the grievance. In that reply, respondent asserted that

part of the reason for the delay of the planning board application was Stein's lack of funds, as well as the appointment of a new BBPB attorney, who disagreed with respondent about the status of the application. According to respondent, he met with Stein, who would appear at his office without an appointment, more than thirty times.

By letter dated October 17, 2013, the investigator asked respondent for a copy of his file. On Friday, October 25, 2013, the investigator called respondent, who assured the investigator that he would produce his file on Monday, October 28, 2013. Although the investigator subsequently left a message for respondent and sent another letter requesting the file, respondent never produced it. As of the date of the filing of the complaint, respondent had neither produced the file nor explained his reasons for not doing so.

In his March 23, 2014 letter to the DEC secretary, respondent indicated that some of the delays in the planning board application were his fault and some were not in his control. Respondent, however, accepted full responsibility for the dismissal of the application and refunded his entire fee to Stein.

Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file a timely 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)(1).

In this case, it is unquestionable that respondent failed to communicate with his client, a violation of RPC 1.4(b). The BBPB dismissed Stein's land use application, not once, but twice. Stein denied that respondent had told him about these dismissals, one of which had been conveyed by letter to respondent only. Despite having replied to the grievance and having sent a letter to the DEC secretary, respondent did not explain why he had not told Stein that the application had been dismissed.

Respondent also failed to cooperate with the disciplinary investigation, a violation of RPC 8.1(b). He ignored the investigator's attempts to obtain a copy of his file. He alleged that his secretary had given the original to Stein, without having made any copies. Instead of repeatedly ignoring the investigator, respondent should have explained that he could not comply with the investigator's request.

It must be pointed out, however, that, typically, respondents who are found guilty of failure to cooperate with disciplinary authorities ignore the ethics officials' attempts to investigate the grievances against them from the outset; they do not comply with the ethics investigators' requests for information about the grievance, do not reply to the investigators' letters, and do not produce requested documents or files, thereby frustrating the investigators' efforts to reach a complete and fair evaluation of the allegations of impropriety levied against them. Then, when a formal complaint is filed, they make themselves inaccessible for service and, when served, choose not to answer the charges. Those are the respondents who deserve increased discipline for their blatant indifference to their obligation to cooperate with ethics authorities.

Here, respondent did reply to the grievance. He also sent a letter to the DEC secretary, admitting all of the allegations in the complaint. Apparently, respondent believed that, having communicated with the DEC secretary and admitting his guilt, he was not required to file an answer to the formal ethics complaint.

The foregoing does not equate to the typical indifference to the ethics system that is almost always found in default cases.

Instead, it reflects respondent's willingness to accept his wrongdoing. In sum, respondent's conduct in this disciplinary matter does not compare to that of attorneys who defiantly turn a deaf ear to disciplinary authorities' attempts to reach a just resolution of ethics grievances. It certainly does not demonstrate that he "knowingly failed to respond to a lawful demand for information from a[] . . . disciplinary authority [emphasis added]," RPC 8.1(b), as required for a finding of a violation of that rule.

As to the quantum of discipline for respondent's conduct, attorneys who fail to communicate with clients and fail to cooperate with disciplinary authorities usually receive admonitions, even if those violations are accompanied by other ethics infractions. See, e.g., In the Matter of Thomas E. Downs, IV, DRB 12-407 (April 19, 2013) (attorney admitted that he did not promptly communicate with his client; he also failed to reply to the ethics investigator's numerous attempts to contact him; no disciplinary history); In the Matter of Ronald L. Washington, DRB 12-138 (July 27, 2012) (lawyer representing a client in a personal injury matter failed to reply to her reasonable requests for information, failed to advise her about important aspects of her case, and failed to cooperate with the

ethics investigator or to appear at the disciplinary hearing; no disciplinary history); In the Matter of Douglas Joseph DelTufo, DRB 11-241 (October 28, 2011) (attorney failed to reply to numerous telephone calls from the client seeking information about the status of the case and failed to cooperate with the ethics investigation; no prior discipline); In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (attorney grossly neglected a federal civil rights action and a chancery foreclosure matter, failed to communicate with the client about those matters, and failed to cooperate with the ethics investigation; no prior discipline); and In the Matter of Steven J. Plofsky, DRB 10-384 (March 7, 2011) (attorney failed to communicate with his clients in two different matters and failed to cooperate with the district ethics committee in its investigation of grievances filed by the two clients, plus four other clients; attorney's lack of disciplinary history since his 1989 admission to the bar considered in mitigation).

Here, although respondent has a disciplinary history (a reprimand in 2011 for negligent misappropriation), that conduct is unrelated to the conduct in the matter now before us. It does not reflect a failure to learn from prior, similar mistakes. An admonition, thus, would be the appropriate quantum of discipline

for respondent's violations of RPC 1.4(b) and RPC 8.1(b). We are aware that, typically, in default cases, the discipline is enhanced to reflect the attorney's failure to cooperate with disciplinary authorities as an aggravating factor. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366 (March 11, 2004) (slip op. at 6). Here, however, because respondent apparently believed that his letter to the DEC secretary, in which he admitted the allegations of the complaint, removed the requirement that he file an answer to the formal ethics complaint, we chose not to enhance the discipline for the default nature of this matter. See In re Bjorkland, 200 N.J. 273 (2009) (admonition for conflict of interest; discipline not enhanced because respondent believed that, by acknowledging service of the ethics complaint and indicating his intention not to dispute the disciplinary charges, he was not required to file an answer).

In light of the foregoing, we determine that, here, as in Bjorkland, an admonition is the appropriate quantum of discipline for respondent's infractions.

Member Gallipoli voted to reprimand respondent.

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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Martin A. Gleason
Docket No. DRB 14-139

Decided: November 5, 2014

Disposition: Admonition

Members	Disbar	Reprimand	Admonition	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Gallipoli		X				
Hoberman			X			
Rivera			X			
Singer			X			
Yamner			X			
Zmirich			X			
Total:		1	8			

Ellen A. Brodsky
Chief Counsel