

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-153
District Docket Nos. XA-2013-0019E
and XA-2013-0021E

IN THE MATTER OF
ADAM S. PRIBULA
AN ATTORNEY AT LAW

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Decision

Decided: December 4, 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 XA Ethics Committee (DEC), pursuant to R. 1:20-4(f). The complaint charged respondent with gross neglect (RPC 1.1(a)), pattern of neglect (RPC 1.1(b)), lack of diligence (RPC 1.3), failure to communicate with a client (RPC 1.4(b) and (c)), failure to set forth, in writing, the basis or rate of the fee (RPC 1.5(b)), failure to terminate the representation (RPC 1.16(a)), failure to expedite litigation (RPC 3.2), failure to cooperate with disciplinary authorities (RPC 8.1(b)), violating

the Rules of Professional Conduct (RPC 8.4(a)), conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)), and conduct prejudicial to the administration of justice (RPC 8.4(d)). We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 2007. He has no prior discipline.

Service of process was proper in this matter. On March 4, 2014, the DEC sent a copy of the complaint, by both certified and regular mail, to respondent's last known office address, as listed in the attorney registration records. The certified mail was returned marked "Unclaimed." The regular mail was not returned.

On April 1, 2014, the DEC sent a second letter to the same office address, by both certified and regular mail, advising respondent that, unless he filed an answer to the complaint 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). Again, the certified mail was returned marked "Unclaimed." The regular mail was not returned.

As of the date of the certification of the record, respondent had not filed an answer to the ethics complaint.

In October 2010, Norman and Katharine Birkett retained respondent to represent them in a lawsuit that the Changebridge at Montville Condominium Association (CAM), filed against them in the Special Civil Part, for failure to pay association fees.

The Birketts had purchased a condominium at Changebridge, in 1996. As owners, they were required to join the condominium association. A few years later, their property suffered water damage. When the couple began to smell mold and to suffer from various health ailments, they investigated, but were unable to locate mold.

The situation was not fully addressed until 2008, when a contractor, in connection with repairs to the property, found a substantial amount of rotted wood in the unit. Convinced that there was a mold problem, the Birketts sought CAM's assistance to locate and ameliorate the problem. When CAM refused, the couple retained their own contractor, who located a "mold infestation" in the walls.

By October 2009, the couple's health problems were so severe that they vacated the premises, in search of "longer term housing." In addition, Norman was out of work, due to his poor

health and the couple could no longer afford to pay, and discontinued paying, the monthly association fees to CAM.

In August 2010, CAM filed a suit against the Birketts for the collection of \$4,272 in unpaid association fees. On October 10, 2010, Norman filed an answer pro se. Six days later, he retained respondent to defend the action and to file a counterclaim. Respondent accepted a \$2,000 retainer to begin working on the case. He agreed to bill the Birketts on an hourly basis. Respondent did not set forth the rate or basis of his fees, in writing, even though he had not represented the Birketts before.

On October 20, 2010, CAM moved for summary judgment on its claim and for the dismissal of the Birketts' counterclaim. Due to a court error, summary judgment was granted on November 16, 2010, some two weeks before the return date of the motion. Respondent had not filed a response, in the interim.

Following the dismissal, respondent told the Birketts that he would have the judgment vacated. He also advised Norman not to worry about an information subpoena that they had received directly from CAM.

According to the complaint, respondent failed to reply to the Birketts' telephone calls, emails, and requests for information about the case, for "several weeks between November 2010 and March 2011."

On February 15, 2011, CAM filed a motion to compel the Birketts' reply to the information subpoena. Two weeks later, on March 1, 2011, respondent filed a cross-motion to vacate the judgment, for leave to file an amended answer, and for a change of venue to the Law Division.

On March 18, 2011, the court vacated the summary judgment and granted the Birketts leave to amend the answer, but denied the requested change of venue, advising the parties that they had to file a motion under R. 6:4-1(c), if they were seeking that relief.

At 3:10 p.m., on May 17, 2011, the day before the scheduled trial date, respondent sought an adjournment. He had not yet filed an amended answer or counterclaim, despite having been granted leave to do so in March 2011. Likewise, respondent neither prepared for trial nor notified his clients that he had not filed the answer and counterclaim. Finally, respondent did not advise his clients to appear for trial.

On May 18, 2011, at 8:33 a.m., Katharine sent respondent an email with the subject line "status needed - what is new trial date:"

A month or so ago you indicated that [CAM's counsel] and you were in agreement that the trial, mistakenly scheduled for May 18, 2011, needed to be postponed. We are wondering whether he cooperated, as you'd hoped, in approaching the judge about that matter with you, or did you have to resort to motions etc...

In any case, since the original trial date is this week, we are of course interested in knowing what the new trial date is, and what comes next.

We called you a few times this week and last. I hope you're doing well. I'm sure it's real estate closing season. We'll look forward to hearing from you.

[C¶63.]¹

Respondent appeared for the trial call, on May 18, 2011, and orally requested an adjournment. The court denied that request, indicating that the case would be either tried or settled that day. During a court break, respondent placed a "frantic call" to Norman, strenuously urging him to accept a tentative settlement that he had just negotiated with CAM's

¹ "C" refers to the formal ethics complaint.

attorney. Norman reluctantly agreed to settle the matter, believing that he had no choice but to do so.

Under the terms of the settlement, the complaint and counterclaim would be dismissed without prejudice;² Norman would pay CAM \$7,000, \$2,000 of which was to be applied to past due maintenance fees and \$5,000 to be held in escrow for future maintenance fees. CAM's right to assert a statute of limitations defense was preserved.

Respondent told the Birketts that CAM would shortly refile its lawsuit, at which time they could reassert their counterclaim. He advised the Birketts that they could not file a claim against CAM until it refiled its suit against them, but did not explain to them why that was the case. He did not, however, ensure that the settlement contained a date certain by which CAM had to reinstitute its claim.³

On June 22 and July 7, 2011, Katharine emailed respondent, requesting an update, the latter stating as follows:

I hope you've been receiving my emails. I've been hoping to find out where things stand on reopening the case. It's been about six

² The record is not clear as to why the settlement addressed a counterclaim that respondent had not yet filed.

³ The record is not clear as to why CAM would reinstate its claim, if there was a settlement.

weeks I think now, since that strange day in court [May 18, 2011]...Thanks Adam, for anything you can tell us. And if the answer is that it's all stalled, please just give us a few details. We understand not everything is under your control, and probably you'd rather not write till there's good news, but we'd just like news. Thanks!

[C175.]

Months passed without any action by respondent. Having received "no meaningful information" about the status of their case, in March 2012, Katharine called respondent's law partner, his father, concerned that respondent may not be well. The father told Katharine that respondent was "fine" and that he would pass along a message to his son that the Birketts urgently needed to speak with him about their case.

On March 8, 2012, respondent advised the Birketts that he had experienced some health issues that had affected his ability to work. He assured them, however, that he was able to continue handling their case. Nevertheless, for sixteen months, from May 2011 into the fall of 2012, respondent did nothing to advance the Birketts' interests.

On April 19, 2012, CAM filed a new complaint against Norman, amended on May 23, 2012, seeking outstanding association fees.

On July 9, 2012, Norman called respondent to express his concern about delays in the case and respondent's lack of communication with them. He also requested a copy of their client file, because he was considering hiring a new lawyer. "Incredulous" that the Birketts might terminate the representation, respondent told Norman that he would not turn the file over, unless he was paid in full. Respondent convinced Norman that respondent was in good health and that, if they paid him an additional sum for legal fees, he could expedite their matter. Because, however, respondent never furnished the Birketts with a bill, they could not determine the amount of additional fees that were owed, if any. The record is silent on whether the Birketts paid respondent additional fees.

On July 19, 2012, respondent promised Katharine that he would file an action, without first waiting for CAM to refile its suit. CAM, however, had already done so. A few days later, respondent changed course, telling Katharine that he could not file an action without first obtaining a certain document from CAM. He never clarified what document was required. Despite his promises to do so, respondent never filed the lawsuit on the Birketts' behalf.

On September 22, 2012, the Birketts were served with CAM's amended complaint. Having heard nothing from respondent in the interim, on October 18, 2012, Katharine emailed respondent, pleading for advice.

On November 3, 2012, the court dismissed CAM's amended complaint for lack of prosecution. On November 5, 2012, respondent filed an answer, counterclaim, and jury demand. A few weeks later, CAM filed an answer to the counterclaim.

On January 2, February 7, and April 10, 2013, the Birketts emailed respondent, requesting information about the case, but heard nothing from him. Their April 10, 2013 email noted that "critical deadlines" were approaching.

Later on that day, respondent advised Norman, in a telephone conversation, that he might not be able to handle the matter going forward and that he would provide the names of attorneys who might be able to replace him.

On February 14, 2013, CAM's complaint was reinstated by consent order.

On April 26, 2013, respondent left Norman a message that he would be sending him CAM's discovery requests. Failing to receive them, Norman sent respondent reminder emails, on May 2 and 8, 2013. Norman also renewed his request for a copy of his

file. Respondent never replied to Norman's requests for CAM's discovery or for the file. Moreover, respondent never propounded discovery on CAM, either for CAM's claim or the Birketts' counterclaim.

On May 20, 2013, CAM's counsel served respondent with a deficiency letter for the overdue discovery responses and indicated his intention to file a motion to strike the Birketts' answer and dismiss their counterclaim.

On June 14, 2013, Norman sent respondent an email complaining about his lack of communication. Respondent never replied to that email.

On June 21, 2013, CAM filed a motion to strike the Birketts' answer and to dismiss their counterclaim, returnable on July 12, 2013. On July 11, 2013, respondent obtained a short adjournment, but neither followed up with an objection to CAM's motion nor complied with the outstanding discovery issue.

By order dated August 1, 2013, the court struck the Birketts' answer and dismissed their counterclaim. The order noted that CAM's motion had been unopposed, that respondent was absent, and that Norman was present in court that day.

That same month, the Birketts filed a pro se motion to terminate respondent's representation and for additional time to

retain new counsel. That order, or a separate one (the complaint is unclear), also stated that respondent had been served with an order compelling him to turn over the Birketts' file to them. Respondent never turned over the file to his former clients.

On July 16, 2013, the DEC investigator sent respondent a copy of Norman's grievance, with a request for his reply. Respondent did not reply.

On August 14, 2013, the DEC investigator sent another letter to respondent about a separate grievance from Katharine (the grievances were later combined). Respondent did not reply.

On September 6, November 18, and December 17, 2013, the DEC investigator sent respondent additional correspondence seeking his cooperation, none of which prompted respondent's written reply. Respondent did, however, call the investigator, on December 23, 2013, and left a message requesting a return call. On December 27, 2013, the investigator did so, but did not reach respondent. In turn, the investigator left a message requesting that respondent immediately call him and cooperate with the investigation. Respondent never replied to that call or to the investigator's follow-up email to him of even date.

The complaint alleged that respondent's following representations to the Birketts were untrue: that he would have

the erroneously entered judgment vacated and that Norman need not reply to CAM's information subpoena; that he would seek an adjournment of the trial within a week, yet, he waited until the eve of trial to do so; and that the trial would be postponed and the venue changed from the Special Civil Part to the Law Division. According to the complaint, the above statements constituted misrepresentations because they "proved to be false as the Respondent had no control over whether the trial would go forward, and he never moved to transfer venue after the initial request was denied."

The complaint also alleged that, because respondent failed to file an amended answer and counterclaim, his representation that he would do so was false; that his statement that the Birketts must wait for CAM to refile its suit, before proceeding with their own counterclaim, was also false, because the Birketts could have filed a complaint independently of CAM's complaint; and that respondent's assertion that health issues affected his ability to work were also untrue, inasmuch as he later advised the Birketts that he was healthy enough to continue the representation.

The complaint charged respondent with numerous other instances of misrepresentation. Specifically, according to the

complaint, his July 19, 2012 statement to Katharine that he would file an action against CAM for the mold infestation damages, without waiting any longer for CAM to refile its complaint, was a lie because, on July 24, 2012, he told her that he could not file suit without first obtaining "a document" from CAM, which document was never articulated to them, and because he had still not filed an action on their behalf two months later; his similar statement to Katharine, on September 21, 2012, that he still required a document from CAM before filing suit was untrue; and his April 26, 2013 statement to Norman that he would forward to him CAM's discovery requests was false because he never did so thereafter.

As to RPC 8.4(d), the complaint charged that, in August 2013, the court had ordered respondent to turn over the client file to the Birketts so that they could retain new counsel, but respondent "failed and refused" to do so. The court then stayed the pending action to allow the Birketts time to obtain new counsel.

* * * *

The facts recited in the complaint support the charges of unethical conduct, with one exception. 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)(1).

Respondent grossly neglected the Birketts' case, lacked diligence in its handling, and failed to expedite litigation, in connection with CAM's first lawsuit. He initially lacked diligence by failing to oppose CAM's October 2010 motion for summary judgment and, from November 2010 until March 2011, by failing to move to vacate the erroneously entered judgment.

Respondent's gross neglect continued. Despite having been granted leave of court, in March 2011, he failed to file an amended answer and counterclaim; failed to propound any discovery requests on CAM; failed to timely request an adjournment of the trial date; and failed to arrange for witnesses to appear for trial or prepare evidence in support of his clients' claims.

Also, for the eighteen months from May 2011 (when CAM's first complaint was voluntarily dismissed) to November 2012 (when respondent answered CAM's second complaint), respondent took no action to advance his clients' claim for damages against CAM; failed to comply with March 2012 discovery requests, despite receiving a deficiency letter in that regard; failed to propound any discovery requests on CAM in

the second matter; failed to oppose CAM's motion to strike the Birketts' answer and to dismiss their counterclaim; and failed to appear at the hearing on CAM's motion, leaving Norman to attend the hearing alone. For all of it, respondent violated RPC 1.1(a), RPC 1.3, and RPC 3.2.

Respondent also failed to communicate with the Birketts. Although they frantically sought information about the status of their matter, respondent kept them in the dark about important aspects of CAM's initial litigation. He also failed to explain the matter to them, to the extent reasonably necessary for them to make informed decisions about the representation. Indeed, from November 2010 through May 18, 2011, the trial date, Katharine repeatedly wrote to respondent asking for information about the case, specifically about a new trial date (which respondent never secured).

In addition, from June 2011 through March 2012, the Birketts sought information about the status of their case, even contacting respondent's father to see if respondent was ill. From October 2012 to June 2013, they sent respondent emails, begging him for information about their case, to no avail. Respondent's failure to communicate in this case was pervasive and in violation of RPC 1.4(b) and (c).

In addition, respondent failed to set forth, in writing, the rate or basis of his fee, a violation of RPC 1.5(b). Because he had no prior attorney/client relationship with the Birketts, a writing was required.

The complaint also charged respondent with a violation of RPC 1.16(a)(2). That rule requires an attorney to terminate the representation when a physical or mental condition materially impairs the attorney's ability to represent the client. Here, when respondent could no longer effectively represent his clients, he was required to end the representation. In March 2012, respondent advised the Birketts that his health issues (of an undisclosed nature) were affecting his ability to represent them. He had an affirmative duty to terminate the representation at the point in time when he could no longer effectively advocate for them. His failure to do so violated RPC 1.16(a).

Respondent also failed to cooperate with the ethics investigation, ignoring the DEC investigator's numerous written and telephonic requests for information about the matter, a violation of RPC 8.1(b).

As to respondent's numerous alleged misrepresentations to the Birketts, in most instances, it is not clear that

respondent intended to misrepresent the truth to his clients. Rather, it appears that he made promises of action that he did not fulfill. There is no indication in the complaint that respondent lied about action taken, when he had taken none. Rather, it seems that he just never followed through with the necessary legal services.

In one regard, however, respondent did make a misrepresentation to his clients. He told the Birketts that he could not file a complaint on their behalf until CAM refiled its complaint. Yet, CAM had already done so. Later, he told the Birketts that he could not file a complaint until CAM sent him a document. He must have known that no document from CAM could prevent the filing of an action against it. Importantly, respondent never identified the document to his clients. His statements were likely made to buy some time, so that he could avoid telling his clients the truth about the status of their case. For respondent's misrepresentation in this regard, we find a violation of RPC 8.4(c).

Additionally, respondent was ordered to turn over the client file to the Birketts so that they could retain new counsel, but he failed – or refused – to do so, resulting in a stay of the CAM litigation. Respondent's failure to obey that

court order constituted conduct prejudicial to the administration of justice, a violation of RPC 8.4(d). In this context, his refusal to turn over the file, as Norman requested, is an aggravating factor. Although the complaint did not specifically cite RPC 1.16(d), the facts alleged therein gave respondent ample notice of a potential finding of that rule. No due process impropriety, thus, will occur by finding that the failure to turn over the file to the clients is an aggravating factor.

Contrary to the allegation in the complaint, however, respondent did not engage in a pattern of neglect. For a finding of a pattern of neglect, at least three instances of neglect are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). The gross neglect here took place in only one client matter. Therefore, we dismiss the RPC 1.1(b) charge.

In sum, respondent is guilty of gross neglect, lack of diligence, failure to communicate with his clients, failure to set forth in writing the basis or rate of his fees, failure to withdraw from the representation, failure to expedite litigation, failure to cooperate with an ethics investigation, misrepresentations to the clients, and failure to obey a court

order, violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b) and (c) RPC 1.5(b), RPC 1.16(a), RPC 3.2, RPC 8.1(b), RPC 8.4(a), RPC 8.4(c), and RPC 8.4(d).

The following attorneys who have failed to obey court orders were reprimanded, even when their conduct was accompanied by other violations. See, e.g., In re Gellene, 203 N.J. 443 (2010) (attorney was found guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney was also guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors considered were the attorney's financial problems, his battle with depression, and significant family problems; his ethics history included two private reprimands and an admonition); In re Geller, 177 N.J. 505 (2003) (attorney failed to comply with court orders (at times defiantly) and with the disciplinary special master's direction not to contact a judge; the attorney also filed baseless motions accusing judges of bias against him; failed to expedite litigation and to treat with courtesy judges, his adversary, the opposing party, an

unrelated litigant, and a court-appointed custody evaluator; used means intended to delay, embarrass or burden third parties; made serious charges against two judges without any reasonable basis; made unprofessional and demeaning remarks toward the other party and opposing counsel; and made a discriminatory remark about a judge; in mitigation, the attorney's conduct occurred in the course of his own child custody case); In re Holland, 164 N.J. 246 (2000) (attorney was required to hold in trust a fee in which she and another attorney had an interest, but took the fee, in violation of a court order); In re Milstead, 162 N.J. 96 (1999) (attorney disbursed escrow funds to his client, in violation of a court order); and In re Hartmann, 142 N.J. 587 (1995) (attorney intentionally and repeatedly ignored four court orders to pay opposing counsel a fee, resulting in a warrant for the attorney's arrest; the attorney also displayed discourteous and abusive conduct toward a judge with intent to intimidate her).

Censures were imposed in In re D'Arienzo, 207 N.J. 31 (2011) (attorney failed to appear in municipal court for a scheduled criminal trial and thereafter failed to appear at two orders to show cause stemming from his failure to appear at the trial; by scheduling more than one matter for the trial date,

the attorney inconvenienced the court, the prosecutor, the complaining witness, and two defendants; in addition, his failure to provide the court with advance notice of his conflicting calendar prevented the judge from scheduling other cases for that date; prior three-month suspension and two admonitions plus failure to learn from similar mistakes justified a censure) and In re LeBlanc, 188 N.J. 480 (2006) (attorney's misconduct in three client matters included conduct prejudicial to the administration of justice for failure to appear at a fee arbitration hearing, failure to abide by a court order for failure to produce information, gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client, failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation, charging an unreasonable fee, failure to promptly remit funds to a third party, failure to expedite litigation, failure to cooperate with disciplinary authorities, and failure to comply with the rule prohibiting non-refundable retainers in family law matters; mitigation included, among other things, the attorney's recognition and stipulation of his wrongdoing, his belief that his paralegal had handled post-closing steps, and a lack of intent to disregard his obligation

to cooperate with ethics authorities). But see In re Block, 201 N.J. 159 (2010) (six-month suspension for attorney who violated a court order that he had drafted by failing to transport his client from prison to a drug treatment facility, instead leaving the client at a church while he made a court appearance in an unrelated case; the client fled and encountered more problems while on the run; the attorney also failed to file an affidavit in compliance with R. 1:20-20; failed to cooperate with disciplinary authorities; failed to provide clients with writings setting forth the basis or rate of the fees; lacked diligence; engaged in gross neglect; and failed to turn over a client's file; prior reprimand and one-year suspension).

This case, absent its default posture, is similar to Gellene (reprimand), who failed to appear for an order to show cause, grossly neglected the case, lacked diligence in handling it, and failed to communicate with clients. Respondent's additional violations, not present in Gellene, are offset by Gellene's pattern of neglect and prior discipline (two prior reprimands and an admonition). Respondent has no ethics history.

The censure and suspension cases are more serious than this matter, in that they involve either a combination of multiple or

more serious violations of court orders; multiple client matters; or prior discipline. None of those elements are present here.


There is the default nature of his proceeding to consider, however. "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." In re Kivler, 193 N.J. 332, 342 (2008).

We, therefore, determine that a censure is the appropriate level of discipline in this case.

Member Gallipoli voted for a three-month suspension. Members Yamner and Rivera 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

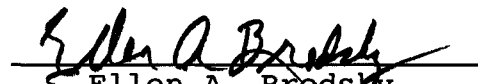
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Adam S. Pribula
Docket No. DRB 14-153

Decided: December 4, 2014

Disposition: Censure

<i>Members</i>	Disbar	Three-month Suspension	Censure	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	6			2


Ellen A. Brodsky
Chief Counsel