SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-226
District Docket No. VIII-2011-0030E

IN THE MATTER OF	:	
JOHN CHARLES ALLEN	:	
AN ATTORNEY AT LAW	:	Decision

Argued: November 20, 2014

Decided: January 22, 2015

Timothy Little appeared on behalf of the District VIII Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for discipline (reprimand) filed by the District VIII Ethics Committee (DEC). The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.4(b) (failure to keep a client informed about the status of a matter), RPC 8.4(a) (knowing violation of the RPCs) (withdrawn by the presenter at the hearing), and RPC 8.4(d) (conduct

prejudicial to the administration of justice by asking the grievant to withdraw the grievance).

For the reasons set forth below, we determine that a censure is the appropriate form of discipline.

Respondent was admitted to the New Jersey bar in 1995. In May 2005, he received an admonition for gross neglect and failure to communicate with his client in a tax sale certificate foreclosure matter. In the Matter of John Charles Allen, DRB 05-087 (May 26, 2005).

On March 21, 2012, the DEC held the first of three days of hearings in this matter. The grievant, William Wnorowski, testified by telephone from out of state. Respondent made an early objection to this testimony, on the basis that allowing telephonic testimony would violate his right to confront the witness, would make it impossible to observe the witness' demeanor during the testimony, and would prevent authentication of the exhibits offered by the presenter. The panel chair overruled the objection.

Wnorowski testified that he signed a retainer agreement and hired respondent, on May 10, 2010, to handle an outstanding debt owed to the State of New Jersey that was affecting his credit report and his ability to refinance his home in Texas. In a letter to respondent on that same day, Wnorowski explained that,

in the early nineties, he had received "a summons of sorts," from the New Jersey Department of Labor and Workforce Development (DOL), for reimbursement of unemployment payments to twelve to fifteen employees of a business he used to own. Wnorowski explained to respondent that, in 2004, he had lost all of the business records, in a flood of his basement. Conversely, respondent testified that Wnorowski hired him to resolve a matter with the Division of Taxation (DOT) and that his efforts were immediately hindered by the lack of a tax ID number for the business.

On May 30, 2010, respondent sent a letter to the DOT, requesting certain information needed for the resolution of the back taxes. On that same day, respondent sent a letter to Wnorowski, stating that he was unable to get information from the DOT, without the company's tax ID number.

Wnorowski testified that, after the beginning of the representation, he did not hear anything from respondent for some time. In August 2010, he attempted to reach respondent. After several failed attempts, he was able to reach respondent, who assured him that he was working on the matter and that everything would be fine. According to Wnorowski, it was during

this call that he first asked respondent for a refund of his retainer.[1]

Wnorowski stated that he next heard from respondent in November 2010, after he emailed respondent, who again said that everything was fine and that he had contacted "the State." Respondent also encouraged Wnorowski to be patient. Wnorowski testified that, not hearing from respondent for a few months, he once again reached out to respondent who, once again, said that he was working on the case. Wnorowski stated that, as of the date of the DEC hearing, the matter was still not resolved, a problem that was precluding the refinance of his mortgage loan.

In addressing the lack of communication charge, respondent claimed that, every time Wnorowski asked for a status update, Wnorowski was advised of the challenges caused by the lack of a tax ID number.

Respondent denied Wnorowski's contention that he had repeatedly asked respondent for the return of his retainer. Respondent alleged that, after the grievance in this matter was

---

[1] At the ethics hearing, Wnorowski was not given the opportunity to explain if or how respondent reacted to this request, because respondent made several lengthy objections and, ultimately, frustrated that line of questioning. When finally returning to the testimony, the presenter did not go back to that specific point.

filed, the investigator/presenter told him that Wnorowski wanted his money back and that they should just work it out. Respondent then called Wnorowski and offered either to return the retainer or to continue to work on the matter for no additional fee. Wnorowski asked for time to think about it. A week later, he chose to have respondent continue with the representation. Respondent made this point, in order to defend against the claim that he had interfered with the ethics investigation by attempting to have the grievance against him dismissed. He explained that he had asked the investigator/presenter to dismiss the grievance, merely because that was Wnorowski's wish.

Wnorowski agreed that he had opted to continue with respondent's representation, but added that he had done so because he had no other choice. He complained that, only after he filed the grievance, did respondent begin to pay attention to his case. Wnorowski admitted that respondent had offered to return his retainer, but stated that respondent had asked for one more week to try to resolve Wnorowski's matter. Wnorowski explained that he had agreed to respondent's request because he felt there was no other choice and did not believe that he would get his money back. He testified that, one week after he had

agreed to respondent's continued representation, respondent had found the tax ID number for the company.

The hearing panel asked respondent why he had not charged a fee for any work done in excess of the amount of the retainer. Respondent replied that it was the right thing to do, in light of the circumstances. Respondent admitted that it had taken a long while to resolve the matter, but alleged that it was not for the lack of trying, but because he had not been provided with the necessary information. Respondent claimed that he had spent a total of fifteen to twenty hours on Wnorowski's matter. He estimated that half of those hours were spent prior to the filing of the ethics grievance.

Respondent told the hearing panel that it had taken him fifteen months to find the tax ID number. According to respondent, in August 2011, about the time that he had become aware of the grievance, someone had recommended that he personally go to the DOT office, in Somerville, and that, after spending an hour there, he was able to find the tax ID number. He was then told to call the Neptune office, because that was where that particular file was handled. He eventually started working with a John Toth, at the DOT Neptune office. Toth informed him that they had no tax returns for Wnorowski's company and that New Jersey still considered the business as

being in operation, instead of closed. Respondent then provided the appropriate documents to Toth, who "recalculated" what was owed. Respondent claimed that he had successfully negotiated the DOT $40,000 lien down to $1,282.

On this topic, the panel asked respondent what proofs he had of the lien negotiation, since all that he had produced was a printout from the DOT that had the total of $1,282. The panel wanted to know what made respondent believe that he had been responsible for the reduction of the DOT taxes to $1,282. Respondent merely replied, "Because I negotiated."

On December 9, 2011, Wnorowski paid the DOT $1,282. Soon thereafter, respondent followed up with Toth, in an attempt to have the debt removed from Wnorowski's credit report. According to respondent, at this point, Toth informed him that there was an additional lien being held by the Department of Labor (DOL). Respondent then contacted the DOL and spoke with a John Buck. Buck informed him that the amount owed was in excess of $107,000, due to (1) the business' failure to file tax returns during certain periods that, Wnorowski admitted, the business was in operation and (2) other returns that were filed without the proper payment. Respondent claimed that, although he had negotiated that amount down to $80,000, Wnorowski had refused to pay it.

Wnorowski told the hearing panel a different story. He testified that the lien he had hired respondent to resolve was in the amount of $44,000, but that, when respondent contacted the State (presumably, the DOT), he resolved an outstanding balance of $1,282 instead. He paid that amount, but the original lien for $44,000, which turned out to be held by the DOL, is still outstanding. He complained that respondent had not addressed the DOL problem until recently. He confirmed that, at the time of the DEC hearing, the DOL lien for unemployment taxes exceeded $100,000, after interest and penalties.

The DEC questioned respondent about the DOL lien, pointing to an early writing from Wnorowski, in which he had referenced unemployment taxes. The DEC asked respondent what he thought that meant. Respondent eventually admitted that it meant that the lien was with the DOL. Further, the DEC pointed out that, in the retainer agreement, respondent had used the word "payroll" to describe the matter. Additionally, attached to Wnorowski's initial email to respondent was respondent's handwritten note to his secretary, instructing her to open a file with the task of "Negotiate resolution of NJ Tax Lien from 1992 for payroll taxes."

In his defense, respondent claimed that Wnorowski's matter would have been resolved much sooner, had he been given the tax ID number. He denied that he had lacked diligence in handling the matter, alleging that lack of information had caused the bulk of his work to occur in 2011, fifteen months after being retained. Respondent further alleged that, even with the tax ID number, the DOL lien would have been an issue and that, therefore, any damage that Wnorowski may have incurred was no fault of respondent.

The DEC noted that, on May 30, 2010, at the outset of the representation, respondent had sent a letter to the DOT, as his initial attempt to resolve Wnorowski's lien. Respondent's next step occurred after August 23, 2011 and after Wnorowski had filed a grievance against him. The DEC observed that respondent had failed to show that he had performed the work for which he had been retained prior to the filing of the grievance, other than the initial May 30, 2010 letter. Despite two-and-a-half days of testimony and a large volume of exhibits produced at the DEC hearing, respondent did not provide any documents or phone logs that showed any work on the matter, between May 30, 2010 and August 23, 2011.

Although respondent testified that he was unable to resolve this matter without the business tax ID number, the DEC did not

find this testimony credible, particularly because of how quickly respondent had been able to investigate and locate the tax ID number, after the filing of the grievance. The DEC remarked that respondent's credibility was further undermined by his failure to produce any documentary evidence showing that he could not complete the work because he lacked the tax ID number.

Based on this reasoning, the DEC determined that respondent had failed to work on Wnorowski's matter for a period of over sixteen months, thereby exhibiting gross neglect and a pattern of neglect.

Further, despite respondent's assertion that he had negotiated Wnorowski's debt from $44,000 down to $1,282, the DEC found it clear that the lien that respondent had resolved was not the lien that appeared on Wnorowski's credit report. In a letter of May 10, 2010, Wnorowski had notified respondent that, years ago, he had received a summons from "NJ Unemployment" to discuss money that his company owed to it (about $40,000). He also indicated, in that same letter, that the lien appeared on his credit report. $1,282.18, in turn, was the amount owed to the DOT. Exhibit R1, the State of New Jersey Division of Taxpayer Schedule of Liabilities, indicated that Wnorowski's business was incurring $25 in tax liability each quarter. The

outstanding taxes were $225. With interest and penalties, the total amount owed by Wnorowski was $1,282.18.

The DEC was at a loss to understand respondent's claim that he had located and resolved the correct tax lien. The taxes listed on the schedule of liabilities were not even close to the amount that Wnorowski initially told respondent that he owed. The DEC also could not understand why respondent had failed to request a copy of Wnorowski's credit report, which listed the actual lien. The DEC pointed out that, only after respondent attempted to remove the lien from Wnorowski's credit report did respondent learn of the $107,000 lien held by the DOL, the actual lien that he was hired to resolve. This discovery came almost two years after respondent took his first step to resolve the tax lien against Wnorowski. The DEC found that respondent's failure to identify and resolve the correct lien demonstrated a clear lack of diligence.

The DEC also found that respondent failed to keep his client informed about the status of the matter for over sixteen months and failed to comply with Wnorowski's multiple requests for information about the case. The DEC found credible Wnorowski's testimony that he did not receive updates from respondent and that, when he contacted respondent's office, he did not receive return phone calls. The DEC noted that,

although respondent had testified otherwise, he had not produced telephone logs to document his alleged long-distance phone calls to Wnorowski. The DEC determined that respondent's testimony in this regard lacked credibility.

The DEC also noted that Wnorowski had sent an email to respondent, in December 2010, seeking either a response to his request for a status update or the return of his retainer. In that same email, Wnorowski had complained about not hearing from respondent in six months. The DEC found credible both Wnorowski's certification of February 17, 2012 and his testimony that he did not receive a reply to this email.[2] Conversely, respondent failed to produce any documentation that he had replied to Wnorowski's December 2010 email.

Moreover, the DEC noted, although Wnorowski had continued to contact respondent, in early 2011, requesting an update on his case, respondent had failed to show that he had replied to those requests. The DEC concluded that respondent had no contact with Wnorowski between June 2010 and August 2011, a period of over one year.

---

[2] Wnorowski's certification was submitted in anticipation of the original hearing date of February 24, 2012. No explanation was given as to why it was submitted. Presumably, Wnorowski would not have been able to testify that day.

Finally, the DEC found that respondent violated RPC 8.4(d), when he asked Wnorowski to withdraw the grievance, in exchange for a refund of the retainer. The DEC noted that, even though Wnorowski had not specifically stated so in his testimony, he had mentioned respondent's request in the certification that he had provided to the ethics investigator. The DEC presumed that Wnorowski's failure to specifically testify that respondent had asked him to withdraw the grievance was explained by Wnorowski's desire that respondent continue to work on his matter. The DEC, thus, gave greater weight to Wnorowski's certification, which was signed at the time that Wnorowski was under the impression (based on what respondent was telling him) that the lien was resolved and would be removed from his credit report.

In addition to recommending a reprimand, the DEC suggested that respondent be required to install case-management software in his office and take courses in law firm management.

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 contains clear and convincing evidence that respondent failed to do any work on Wnorowski's matter for over sixteen months. The only reason he accomplished anything in this matter was that Wnorowski filed a grievance against him.

All work completed occurred after that filing. Also, when respondent did eventually start work on the matter, he satisfied a lien other than the one he was hired to resolve. He also failed to reply to any correspondence from his client for over one year and failed to keep his client reasonably informed about the status of the matter. The above conduct violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b).

Respondent also violated RPC 8.4(d), in that he sought to have Wnorowski drop the grievance, in exchange for either a refund of his fees or continued work on the matter without additional fees. Although Wnorowski's testimony was not entirely clear on the subject and, at times, was not responsive, the DEC conducted a credibility assessment and concluded that Wnorowski's certification, which was provided to the DEC investigator at a time when Wnorowski believed that respondent had already completed his case, was more probative than Wnorowski's testimony. The testimony was given at a time when Wnorowski was still counting on respondent's help to resolve the lien situation. Understandably, thus, Wnorowski did not want to antagonize respondent.

Because the DEC had the opportunity to observe the demeanor of the witnesses, the DEC was in a better position to assess their credibility. We, therefore, defer to the DEC with respect

to "those intangible aspects of the case not transmitted by the written record, such as, witness credibility . . . ." Dolson v. Anastasia, 55 N.J. 2, 7 (1969). Because the DEC "hears the case, sees and observes the witnesses, and [hears] them testify, it has a better perspective than a reviewing [tribunal] in evaluating the veracity of witnesses." Pascale v. Pascale, 113 N.J. 20, 33 (1988) (quoting Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)).

Respondent cannot be found guilty of a pattern of neglect, however. 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). Here, the neglect involved only one matter.

In sum, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 8.4(d), and, in turn, RPC 8.4(a). Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, and the seriousness of the attorney's disciplinary history. See, e.g., In the Matter of Robert A. Ungvary, DRB 13-099 (September 30, 2013) (admonition for attorney who, in a civil rights action, permitted the complaint to be dismissed for failure to comply

with discovery, then failed to timely prosecute an appeal, resulting in the appeal's dismissal; the attorney also failed to inform the client of his decision not to pursue the appeal or of the appeal's dismissal); In the Matter of James E. Young, DRB 12-362 (March 28, 2013) (admonition imposed on attorney who failed to file any pleadings in a workers' compensation claim and failed to appear at court-ordered hearings, resulting in the petition's dismissal with prejudice for lack of prosecution; for the next five or six years, the attorney failed to advise the client of the dismissal and failed to reply to the client's repeated requests for information; the attorney later paid the client the amount he estimated the claim was worth ($8,500)); In the Matter of Edward Benjamin Bush, DRB 12-073 (April 24, 2012) (attorney admonished for failure to reply to his client's numerous multiple telephone calls and letters over an eleven-month period and for lack of diligence in handling the client's matter); In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (admonition for attorney who filed an appearance in his client's federal civil rights action and chancery foreclosure matter, had a pending motion in the federal matter adjourned, was unable to demonstrate what work he had done on his client's behalf, who had paid him $10,000, failed to communicate with his client, and failed to reply to the

disciplinary investigator's requests for information about the grievance); In re Uffelman, 200 N.J. 260 (2009) (attorney reprimanded for 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); In re Aranguren, 172 N.J. 236 (2002) (reprimand for attorney who failed to act with diligence in a bankruptcy matter, failed to communicate with the client, and failed to memorialize the basis of the fee; prior admonition and six-month suspension); In re Zeitler, 165 N.J. 503 (2000) (attorney who lacked diligence and failed to communicate with clients was reprimanded; extensive ethics history); and In re Gordon, 139 N.J. 606 (1995) (attorney reprimanded for lack of diligence and failure to communicate with the clients in two matters; in one of the matters, the attorney also failed to return the file to the client; prior reprimand).

Here, there is additional misconduct to consider, that is, respondent's attempt to influence Wnorowski to withdraw the grievance. Conduct of this sort has been met with discipline ranging from an admonition to a censure. See, e.g., In the

Matter of R. Tyler Tomlinson, DRB 01-284 (November 2, 2001) (admonition for attorney who improperly conditioned the resolution of a collection case on the dismissal of an ethics grievance filed against the attorney by the client's parents); In re Mella, 153 N.J. 35 (1998) (reprimand imposed after the attorney communicated with the grievant in an attempt to have the grievance against him dismissed in exchange for a fee refund; the attorney was also guilty of lack of diligence and failure to communicate with clients); and In the Matter of Jeffrey R. Pocaro, 214 N.J. 46 (2013) (censure for attorney who attempted to negotiate the withdrawal of a grievance in exchange for his agreement to refrain from filing a defamation suit against his former client; significant ethics history: a one-year suspension and a censure).

Here, respondent, like the attorney in Mella, negotiated the withdrawal of a grievance, in exchange for a fee refund. Mella, like respondent, also had other, minor violations (lack of diligence and failure to communicate with the client). Mella received a reprimand. The following circumstances, however, require discipline stronger than a reprimand in this case.

First, respondent displayed a monumental lack of contrition and recognition of his wrongdoing, evidenced during the three days of hearings that took place below. That the inordinate

delay in his resolution of Wnorowski's matter caused Wnorowski's inability to refinance his mortgage for many years is something that respondent refused to accept, blaming a host of circumstances for not resolving the matter sooner, rather than blaming himself. Only after Wnorowski filed a grievance against him did respondent spring into action.

Second, in a self-serving way, respondent attempted to show to the DEC that he had obtained an extremely favorable result for Wnorowski, by negotiating a $44,000 lien down to $1,282. In evidence is a document (Ex.R1) showing that $1,282 was the total amount of the tax lien in the first place. The $44,000 lien was the one held by the DOL, not the DOT. Respondent's conduct on this score bordered on dishonesty toward the DEC.

Third, respondent's disciplinary record is not impeccable: he received an admonition in 2005, also for gross neglect and lack of communication with the client.

Fourth, as soon as respondent became aware of Wnorowski's grievance, he should have withdrawn from the representation. If an attorney who is the subject of grievance filed by a client continues to represent the client, how can the client expect that the attorney will continue to zealously and faithfully pursue the client's interests?

In light of the foregoing, we determine that a censure is appropriate in this case. Vice-Chair Baugh 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 John C. Allen
Docket No. DRB 14-226

Argued: November 20, 2014

Decided: January 22, 2015

Disposition: Censure

Members	Disbar	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:			8			1

Ellen A. Brodsky
Chief Counsel