SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-371
District Docket No. XII-2013-0012E

IN THE MATTER OF	:	
RICHARD P. RINALDO	:	
AN ATTORNEY AT LAW	:	Decision

Argued: March 19, 2015

Decided: June 16, 2015

James Johnson appeared on behalf of the District XII Ethics Committee.

Edward Kologi appeared on behalf of respondent.

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 XII Ethics Committee (DEC). The four-count complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate with the client), and RPC 1.16(b) (improper termination of representation). For the reasons set forth below, we determine that a three-month suspension is the appropriate form of discipline in this case.

Respondent was admitted to the New York and New Jersey bars in 2003. He has no history of discipline.

On July 18, 2007, grievant Diana Rodriquez fell in the hallway outside her hospital room, after slipping in water left by a lunch cart. On August 2, 2007, Rodriguez retained respondent to represent her in a personal injury case against Jamaica Queens Hospital (JQH).

Throughout her testimony before the DEC, Rodriguez maintained that she had very little communication with respondent, after having retained his services for a New York case. She recalled that, on September 5, 2007, she called respondent's office about an upcoming court appearance scheduled for October and requested that it be rescheduled. Presumably, it was.

Soon thereafter, Rodriguez contacted respondent's office, seeking advice as to what to do with her medical records. She remembered that she spoke to a "receptionist," but received no return call from respondent. She followed up again, in December 2007, requesting a call back from respondent, again, to no avail. She also stated that she attempted to contact respondent through 2008, but never received a phone call back. In fact, she claimed that there was no actual communication with

respondent until 2011, when she found his cell phone number, through an online search.

Respondent's testimony differed from Rodriguez' with regard to the number of times that they communicated over the years and on whether respondent had given Rodriguez his cell phone number, instead of Rodriguez' finding it online. Rodriguez and respondent, however, agreed on the principal points, as follows.

In the summer of 2008, respondent decided to focus on his law practice in New Jersey, rather than New York. Because he began to take more personal injury cases and overflow work from his father and his uncle, attorneys in their seventies, he needed assistance with the cases. To that end, he arranged for another attorney, Jonathan Behrins, to take over several of his cases. On August 18, 2008, respondent sent an email to Behrins, confirming the details of the agreement between them to transfer eight cases, including Rodriguez', to Behrins.

On September 22, 2008, respondent sent a letter to Rodriguez, identifying Behrins as an associate of his New York firm who would be handling her matter, since respondent was no longer practicing in New York. He added, however, that he would continue to oversee the case. On October 20, 2008, respondent sent a substitution of attorney to Behrins for his signature and submission to the court for three matters, including Rodriguez'.

Sometime thereafter, respondent decided to relinquish any association with the matters transferred to Behrins. Respondent testified that he received oral consent from Rodriguez to have Behrins take over the matter fully. He believed the oral consent to be sufficient, because the transfer was to an associate of his firm and an attorney with whom Rodriguez was familiar.

Less than one month later, on November 14, 2008, respondent received a letter from an attorney for JQH regarding delinquent interrogatory responses in Rodriguez' case. Several months later, on May 15, 2009, respondent received a motion to compel discovery, filed by JQH. Respondent forwarded that motion and a second substitution of attorney to Behrins.

Sometime thereafter, two co-defendants in the Rodriguez matter filed a motion for summary judgment. That motion was granted, on October 20, 2009. Respondent received that order and forwarded it to Behrins, on November 2, 2009. In his cover letter, respondent referenced an August 31, 2009 letter to Behrins, attaching the motion. Respondent noted that he was "alarmed" that the substitution of attorney had not been filed, since he was still receiving court notices about the case. Respondent also demanded that Behrins give him updates on all the cases transferred to him. The record is silent on whether

Behrins responded to this letter. The record is also silent about any communications between respondent and Behrins for the next six months.

On May 5, 2010, however, respondent received from JQH's attorney another court order regarding discovery responses for the Rodriguez matter. Six days later, on May 11, 2010, respondent forwarded that order to Behrins, again demanding that Behrins file the substitution of attorney and that he comply with the terms of the court order.

Six months later, respondent's assistant emailed Behrins, on November 13, 2010, about a medical lien against Rodriguez. Behrins acknowledged receipt of the email, on the same day. Three days later, on November 16, 2010, respondent's assistant emailed Behrins again. She informed Behrins that, during a recent conversation, Rodriguez had denied any knowledge of Behrins or ever having spoken with him. On November 17, 2010, Behrins sent an email to respondent, stating that he would contact Rodriguez. Behrins noted that he had spoken to Rodriguez in the past, that he knew that respondent had directed her to call his office on several occasions, and that he did not know "what is up with her."

Three months later, in February 2011, Rodriguez contacted respondent, on his cell phone, and spoke with him directly for,

according to Rodriguez, the first time in years. Rodriguez testified that, during this conversation, she heard the name Behrins for the first time and was informed that Behrins was handling her case. Rodriguez recalled that respondent had mentioned, during that conversation, that Behrins had told him that the case was going well. Respondent gave her a number to contact Behrins directly, which she did, on that same day, leaving Behrins a message.

Several months later, on May 22, 2011, Rodriguez emailed respondent, asking for a status update and again complaining that no one had called her and that no one had told her that her case had been transferred to another attorney. Respondent replied on the same day, reminding Rodriguez that they had spoken, two months ago, and that he had asked her to call him immediately, if Behrins did not return her phone calls. Respondent then asked her to contact his office, Monday morning, to schedule an appointment so that they could figure out the situation together.

Sometime during this period, after looking into the Rodriguez matter through online tools available for the New York Court System, respondent learned that the matter had been dismissed in its entirety. He then wrote a letter to Behrins, demanding an explanation as to why Rodriguez' case had been

dismissed and threatening to file ethics charges against Behrins.[1]

In August 2011, respondent and Rodriguez had another phone conversation, in which he told her that Behrins had indicated to him that he was in contact with her. Rodriguez denied that she had ever spoken with Behrins. Respondent referenced this phone conversation in a February 15, 2012 letter to Rodriguez. In that letter, respondent also noted that, because he had not heard from her, after their August 2011 conversation, he assumed that she and Behrins had been in contact with each other.

At the DEC hearing, respondent expressed surprise at Rodriguez' lack of recollection of having met or spoken with Behrins. Respondent asserted that, in fact, he, Rodriguez, and her husband had met with Behrins at Behrins' Jersey City office, early in the representation. Nonetheless, respondent acknowledged that he had remained the attorney of record for Rodriguez. He told the DEC that, for a period during the representation, there was nothing to cause him concern that Behrins was not properly handling the Rodriquez matter.

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[1] This letter was marked as R-18 at the DEC hearing. Despite being discussed during respondent's testimony, however, it was never admitted into evidence.

According to respondent, in 2011, he finally realized that there was a problem, when Rodriguez claimed that she was not in communication with Behrins. Respondent conceded that he should have been more pro-active to ensure that Behrins was managing the case adequately and that the court had been informed that Behrins was the attorney of record. Respondent added, however, that he had never hid the truth from Rodriguez and that, once he learned that Behrins had been neglecting the matter and it had been dismissed, he advised Rodriguez to seek new counsel.

The DEC found clear and convincing evidence that respondent had violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.16(b). Specifically, as the attorney of record, respondent should have known that Behrins was not taking the necessary steps to advance Rodriguez' case. Further, he should have seized multiple opportunities to intervene, aware that Behrins was not handling the case diligently. Also, he should have kept Rodriguez reasonably informed about the case, such as, for instance, apprising her of the summary judgment order entered in 2009, dismissing a portion of her case. Finally, the DEC concluded that respondent improperly withdrew from the representation, causing material adverse consequences to his client.

In mitigation, the DEC noted that respondent cooperated fully with the ethics investigation and testified candidly at

the hearing. The DEC found no aggravating factors. As mentioned earlier, the DEC recommended a reprimand.

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 amply supports a finding that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.16(b).

Respondent should have known, on November 14, 2008, the date he received a letter from the attorney for JQH regarding the delinquent discovery, that his attention to the Rodriguez matter was required. Even if we are to assume that this issue was resolved in a suitable manner not evident in the record, respondent should have reasonably known that there was a problem, on May 15, 2009, when he received a motion for summary judgment and, for the second time, had to send a substitution of attorney form to Behrins. At that point, respondent should have taken action to properly withdraw from the representation, paying special attention to the protection of Rodriguez' interests. To that end, he should have either taken personal action to handle the case or to ensure that Rodriguez obtained other, competent representation. After all, he assured her that, although Behrins would be handling her case, he would "personally oversee it." The record is replete with "red flags"

that Behrins was not taking care of Rodriguez' case. Respondent's feeble attempt to "oversee" Rodriguez' case amounted to making one telephone call and sending several letters and emails to Behrins.

Specifically, on November 2, 2009, respondent sent a letter to Behrins, expressing his concern that the substitution of attorney had not been filed and demanding an update on all the matters transferred to Behrins. The multiple warning signs leading up to November 2009 are enough to support a finding of unethical conduct on respondent's part. That he put in writing his "alarm" and still did virtually nothing to protect Rodriguez' interests shines a light on the severity of his insouciance.

The conclusion that respondent failed to properly withdraw from the representation is unavoidable. Not only did he not give Rodriguez an opportunity to seek counsel of her own choice, he also failed to make sure that the attorney whom he had selected for her had properly replaced him in the case. Further, he knew or reasonably should have known that his improper withdrawal was causing an adverse effect on Rodriguez' case. For years, the Rodriguez case went virtually unattended, resulting in the loss of her ability to pursue her claims.

Altogether, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.16(b).

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 and 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 re Russell, 201 N.J.

409 (2009) (admonition for attorney whose failure to file answers to divorce complaints against her client caused a default judgment to be entered against him; the attorney also failed to explain to the client the consequences flowing from her failure to file answers on his behalf); In re Calpin, 217 N.J. 617 (2014) (reprimand for attorney who failed to oppose the plaintiff's motion to strike his client's answer resulting in the entry of a final judgment against his client; the attorney never informed his client of the judgment; notwithstanding the presence of some mitigation in the attorney's favor, the attorney received a reprimand because of the "obvious, significant harm to the client," that is, the judgment); and In re Burstein, 214 N.J. 46 (2013) (reprimand for attorney guilty of lack of diligence, gross neglect, and failure to communicate with the client; although the attorney had no disciplinary record, the significant economic harm to the client justified a reprimand).

Respondent also failed to properly withdraw from the representation, causing Rodriguez great harm - - she lost her ability to pursue her claim.

Furthermore, respondent did not allow Rodriguez time for the employment of a substitute attorney. He simply assigned her another. Although he claimed that Rodriguez had already been

working with Behrins for one year, Rodriguez denied that claim. She testified that she had not ever met or spoken to Behrins.

At oral argument before us, counsel for respondent took the position that there was no misconduct in this matter and that, consequently, there should be no discipline. Alternatively, counsel argued that, if we were to disagree and find that the withdrawal was inadequate, then respondent deserves an admonition, at most.

Counsel argued that respondent's withdrawal from the representation was complete, that any problems that arose accrue to Behrins, and that the lack of the substitution of attorney filed with the court is not a dispositive issue. Counsel's position was that the withdrawal here occurred in two parts. The first part occurred with the original letter, on September 22, 2008, in which respondent told Rodriguez that, although Behrins would handle her matter, he would personally continue to supervise it. The second part happened orally, at some point, when respondent, during a telephone conversation with Rodriguez, informed her that he was fully withdrawing from the representation. Allegedly, Rodriguez consented to Behrins' taking over the matter completely during that conversation, for which counsel provided no date.

We make no finding either way concerning the formal filing of a substitution of attorney with the court and its part in a proper withdrawal from representation, under the RPCs. We are unable to agree, however, with the balance of counsel's argument. As we noted above, respondent had many opportunities to recognize that Behrins was not giving proper attention to the Rodriguez case and to take appropriate action. He failed to do so. The record does not contain sufficient evidence that Rodriguez ever consented to his withdrawal or Behrins' substitution. Further, respondent failed to observe the safeguards of RPC 1.16(d), in that he simply chose another attorney for his client, did not afford her time to choose an attorney of her own, and did not protect her interests, upon termination of his representation. We find such conduct to be an aggravating factor.

In an analogous matter, an attorney received a six-month suspension for improperly withdrawing from the representation of a client, while a court matter was pending, thereby causing the client's complaint to be dismissed. In re Feuerstein, 115 N.J. 278 (1989).

The attorney in Feuerstein represented a client in a tax dispute for $200,000. In the Matter of Stephen Feuerstein, DRB 86-303 (December 28, 1988) (slip op. at 1-2). At some point,

Feuerstein was introduced to a New York attorney, identified as his client's corporate counsel, and was told that the client had great faith in the judgment of that attorney and that Feuerstein should deal directly with the attorney and an accountant. Id. at 2.

After receiving interrogatories from his adversary, the New York attorney instructed Feuerstein to answer them vaguely. Feuerstein believed his client to be withholding documents relevant to the interrogatories. Id. at 3. Soon thereafter, Feuerstein learned that the New York attorney had answered and forwarded the interrogatories to the adversary, without an opportunity for Feuerstein's review. Feuerstein immediately called the client and the New York attorney to inform them that he was withdrawing from the representation. Id. at 4-5.

Feuerstein testified that he was not proud of the behavior he exhibited thereafter. He admitted that any further correspondence that he received about the case was left unopened and either put in the file or forwarded to the New York attorney. Id. at 5. As a result, a pre-trial memorandum was not filed, resulting in the dismissal of the complaint and a judgment entered against Feuerstein's client. Id. at 5-6. The complaint, however, was eventually reinstated. Id. at 6.

We found that, although Feuerstein's decision to discontinue representing his client was reasonable, he had failed to give due notice to the client and to the court. Id. at 9. Feuerstein asserted that he had notified others of his withdrawal, including the New York attorney to whom he had transferred the case. Nonetheless, we determined that the client had to be properly advised of such a development. Id. at 10.

Of equal concern to us was Feuerstein's lack of regard for his client's interests, as demonstrated by his inadequate office procedure of having his secretary automatically forward to the New York attorney any correspondence pertaining to the litigation. Feuerstein would not review the correspondence, prior to the mailing, or include a cover letter in the mailing. We found that his "reckless indifference" was appalling and that his "willful blindness" towards the developments of the litigation could not operate as an excuse to his gross neglect of his client's interests. Id. at 11.

In mitigation, we noted that Feuerstein had limited experience as a litigator and truly believed that his withdrawal was an ethical obligation, based on his opinion that the New York attorney's method for answering interrogatories fell short of the integrity expected of a member of the bar. Id. at 12-13.

Feuerstein also truly thought that, instead of filing a motion to be relieved as counsel, his client and the New York counsel would forward to him a substitution of attorney, so that the court would be properly informed of his withdrawal from the case. Moreover, no harm befell the client, because the resulting judgment was vacated and the complaint reinstated. Id. at 13. We determined that, although Feuerstein's behavior was the result of ignorance, instead of design, his failure to transmit important correspondence to the client could not be excused. Id. at 13.

In aggravation, we found that not only did Feuerstein have a prior reprimand for neglect in three matters, but also the behavior in those matters was strikingly similar to the one displayed in the new matter. Id. at 13-14. As indicated before, Feuerstein received a six-month suspension.

Respondent's behavior differs in some ways from that of Feuerstein. Respondent did not send a letter to Rodriguez, saying that Behrins would be handling her matter, as he transitioned from his New York to his New Jersey practice. He assured, however, that he would still be overseeing her matter. He did not. He never sent Rodriguez written notice of his intent to fully withdraw from the representation. He did so only during a phone conversation with her. According to

respondent, during that same conversation, Rodriguez gave her oral consent for Behrins to take over the representation in earnest. Regardless of whether this telephone conversation happened as respondent recalls, it still cannot serve as a proper withdrawal, as he did not get Rodriguez' consent, in writing, or give her adequate time to choose her own attorney, whether Behrins or someone else.

Further, unlike Feuerstein, respondent forwarded notices to Behrins and, at times, followed up with him about filing the substitution of attorney or getting an update on Rodriquez' and other transferred cases. Unlike Feuerstein, respondent did not completely bury his head in the sand.

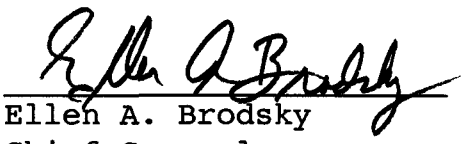
In addition, respondent readily acknowledged, at the DEC hearing, that he should have acted differently to ensure that Rodriguez' interests were being protected and, unlike Feuerstein, he has no disciplinary record. Feuerstein's conduct was repetitive, in that his former transgressions had been similar and, therefore, reflective of a failure to learn from prior errors.

On balance, when Rodriguez' loss of her ability to pursue her claim - - meritorious or not - - is considered, we find that the suitable sanction in this case is a three-month suspension.

Member Singer voted for a censure.

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 Richard P. Rinaldo
Docket No. DRB 14-371

Argued: March 19, 2015

Decided: June 16, 2015

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Gallipoli		X				
Hoberman		X				
Rivera		X				
Singer			X			
Zmirich		X				
Total:		7	1			

Ellen A. Brodsky
Chief Counsel