SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-087
District Docket No. VIII-2013-0004E

IN THE MATTER OF

PAUL F. CLAUSEN

AN ATTORNEY AT LAW

Decision

Argued: May 21, 2015

Decided: October 26, 2015

Valerie Ann Jackson 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 a reprimand filed by the District VIII Ethics Committee (DEC). The formal ethics complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), and RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter).

For the reasons set forth below, we determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1982. He is engaged in the practice of law in Clinton, Hunterdon County, New Jersey.

In 2013, respondent received a reprimand, by consent, for practicing law while ineligible for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection. In re Clausen, 213 N.J. 461 (2013). One additional ethics matter, alleging gross neglect and lack of diligence, currently pending against respondent is in the hearing stage.

On July 8, 2008, Grace Casement, an elderly woman, slipped and fell in a ShopRite supermarket in Spotswood, New Jersey. Casement, who lived with her daughter and her son-in-law, Mitchell Lazar, informed them about the incident. Casement alleged that she had fallen because no warning had been posted to alert customers that a recently mopped floor was wet. Casement sustained visible injuries to her lower body and was initially examined by her general practitioner, who referred her to an orthopedist for further examination and treatment.

Lazar recommended that Casement explore a personal injury claim against ShopRite. He had previously met respondent through a mutual friend and, thus, called respondent to discuss

Casement's potential claim. Respondent agreed to represent Casement in the matter, as memorialized by a retainer agreement executed on July 28, 2008, twenty days after the fall. The retainer agreement stated, in part, that respondent's law firm would "make a claim on [Casement's] behalf against others who are responsible for your injuries and damages ... [and] will protect your legal rights and do all necessary legal work to properly represent you in this matter." In a joint stipulation of facts entered at the DEC hearing, however, respondent admitted that he never filed a complaint against ShopRite on behalf of Casement and that, as a result, the statute of limitations period expired, barring her personal injury claim.

Although Casement and respondent were the parties to the retainer agreement, it is undisputed that Casement designated Lazar as her proxy to communicate with respondent and coordinate the legal matter on her behalf and that respondent accepted that arrangement. Initially, respondent was diligent and communicative with respect to the matter. Lazar provided respondent with Casement's medical records concerning the fall and, on November 17, 2009, respondent asked Casement's orthopedist to draft a report documenting her injuries and providing his medical opinion as to their cause. Respondent later asked the orthopedist whether additional findings could be

made. However, the orthopedist was unwilling to modify his report, which was finalized on February 2, 2010, and which concluded that Casement's injuries were sustained as a result of the slip and fall at ShopRite.

Accordingly, on May 7, 2010, Lazar sent an e-mail to respondent, stating "[i]t appears that we can expect nothing further from [the orthopedist's office]. Please proceed with [Casement's] case to the best of your ability with the information/documentation available to us at this time." Respondent acknowledged at the hearing that, despite the client's clear instructions to him to proceed with the litigation, he had failed to take action. Lazar was unaware of any statute of limitations issue, as respondent admitted that he does not routinely discuss such issues with clients.

Lazar testified that, sometime after May 7, 2010, all communication from respondent's office ceased and his repeated e-mails, calls, and letters requesting updates were never returned. Respondent admitted that, at some point, in the summer of 2010, he stopped communicating with Lazar. Lazar testified that his final requests for updates, four letters sent by certified mail to respondent in February and March of 2011, went unanswered. The March letter cautioned respondent that, if he did not promptly provide an update, Lazar would engage another

attorney for Casement's claim. Respondent testified that he had no recollection of receiving these letters from Lazar.

Sometime after March 2011, Lazar engaged the law firm of grievant Kathleen Cavanaugh to pursue Casement's personal injury claim and was advised that the statute of limitations had expired. Casement's personal injury claim against ShopRite, thus, morphed into a malpractice claim against respondent.

In defense of the allegations of gross neglect and lack of diligence, respondent asserted that, in addition to his activity on the file detailed above, he had engaged ShopRite in settlement negotiations. According to respondent, ShopRite was unwilling to offer any compensation to Casement. Respondent, however, produced no evidence of negotiations with ShopRite and could not recall whether such negotiations were ever discussed with the client. He conceded that Casement's case would likely have gone to trial if a complaint had been filed.

In mitigation, respondent asserted that he had made Casement whole by accepting "full financial responsibility" and "by making a financial arrangement with [Casement], to [her] full satisfaction." On cross-examination, however, respondent conceded that the settlement was negotiated after a default judgment had been entered against him in the malpractice action brought by Cavanaugh on Casement's behalf; that the settlement

amount represented damages for both Casement's fall and his malpractice, including attorneys' fees in the amount of $9,000 for the malpractice action; that the $25,000 allocation for personal injury damages was suggested by the judge in a proof hearing for the malpractice case, which respondent did not attend; and that, as of the ethics hearing date (June 17, 2014), respondent had not made a single payment towards satisfaction of the settlement, which had been negotiated in 2011.

The DEC found Lazar's testimony credible and, thus, determined that respondent had not replied to, and had intentionally ignored, Lazar's numerous inquiries regarding the case since April 29, 2010. Although respondent refuted this specific timeframe, he offered no explanation for his cessation of all communication with Lazar, which he conceded occurred in the summer 2010, and was unable to produce evidence of any subsequent communications with Lazar. Unbeknownst to Lazar, by the time he sent the February and March 2011 letters to respondent by certified mail, the statute of limitations had long since expired, barring Casement's personal injury claim. For these reasons, the DEC determined that respondent violated RPC 1.4(b) by failing to communicate with Lazar and to keep him informed of the status of the matter.

The DEC further found that respondent exhibited a conscious and intentional lack of attention to the matter, admittedly allowing the statute of limitations to expire, and ultimately depriving Casement of the opportunity to present her case in court. The hearing panel therefore found that respondent was guilty of gross neglect, in violation of RPC 1.1(a).

The DEC did not address the RPC 1.3 charge included in the complaint.

The DEC considered, in mitigation, that judgment had been entered against respondent for Casement's pain and suffering for the fall. After noting respondent's prior reprimand as an aggravating factor, the DEC recommended that respondent receive a "Public Reprimand."

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

The DEC properly concluded that respondent violated both RPC 1.1(a) and RPC 1.4(b). Morever, although the DEC did not address the charged violation of RPC 1.3, the record contains clear and convincing evidence that respondent lacked diligence in handling Casement's matter, as well. Respondent admitted that he failed to file a complaint on behalf of Casement prior

to the expiration of the statute of limitations and, thus, her personal injury claim against ShopRite was time-barred. Casement retained respondent on July 28, 2008, only twenty days after she fell and sustained injuries. Respondent, thus, had the benefit of all but approximately three weeks of the two-year statute of limitations period to pursue Casement's claim. Armed with an orthopedist's report opining that her injuries were directly caused by the fall and having been expressly instructed by the client, on May 7, 2010, to commence litigation, well before the statute of limitations expired, respondent did nothing to advance or preserve that claim. Although respondent asserted that he had engaged ShopRite in fruitless settlement discussions, he produced no evidence of them and "could not remember" whether he had even disclosed ShopRite's alleged position to his client.

Beginning in April or May 2010, respondent inexplicably ceased all communication with Lazar. Respondent's failure to communicate with his client and his failure to even acknowledge Lazar's repeated attempts to contact him are well-documented in the record. As a result of that failure, and because respondent had not made Lazar aware of the statute of limitations, by the time Lazar retained Cavanaugh's firm, Casement's personal injury

claim already was time-barred. Thus, the DEC properly concluded that respondent violated RPC 1.4(b).[1]

Respondent's actions clearly injured Casement by depriving her of the opportunity to present her case against ShopRite to a jury. Although he later negotiated a settlement with her in 2011, that settlement was reached only after Casement had paid respondent's successor more than $9,000 to secure a default judgment against him in a malpractice action. Moreover, although respondent asked us to consider his settlement with his client in mitigation, as of the June 17, 2014 DEC hearing date, he had made no payments to Casement towards satisfaction of their negotiated settlement.

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 harm to the clients, the attorney's

[1] In this respect, although the record supports the conclusion that respondent also violated RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation) by his failure to inform his client of the approach and then the bar of the statute of limitations, the complaint did not charge respondent with a violation of that rule. Because R. 1:20-4(b) requires a complaint to "specify the ethical rules alleged to have been violated," we are precluded from making such a finding. For the same reason, we cannot find that respondent made a misrepresentation by silence, a violation of RPC 8.4(c), by failing to disclose to Casement that the statute of limitations had expired.

disciplinary history, and the presence of aggravating or mitigating factors. See, e.g., In the Matter of Robert A. Ungvary, DRB 13-099 (September 30, 2013) (admonition imposed on 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 case 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), 210 N.J. 182 (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).

Respondent's prior reprimand is not an aggravating factor in this case, as the unethical conduct under scrutiny here is dissimilar and predates the imposition of discipline in that matter.

Nothing in the record supports a finding of any mitigating factors. Respondent's failure to make a single payment towards satisfaction of the settlement with Casement, as of June 2014, after negotiating the settlement with her in 2011, belies his assertion that he had accepted "full financial responsibility . . . by making a financial arrangement with [Casement], to [her] full satisfaction." During oral argument, respondent represented to us that he had finally made settlement payments to Casement, but could not recall any details regarding the payments, including the balance owed to Casement. He offered to submit proof of such payments to us after the hearing and, by letter dated May 22, 2015, we required him to provide a written certification detailing all monetary payments made to Casement to date, including supporting documentation. On June 5, 2015, respondent submitted a certification in response, including a letter from Casement's attorney, which enclosed a warrant to satisfy the judgment against him. Respondent's submission did

not clarify when payments were made to Casement, making it difficult for us to determine whether respondent had been forthright during oral argument. However, this submission did establish that, as of June 23, 2014, respondent still had not made a payment to Casement but rather had requested and was granted a payment plan. As of June 5, 2015, the judgment was finally paid in full. Based on the vague details respondent provided at oral argument and in his post-hearing certification, a finding of mitigation is unwarranted.

Like the attorney in Uffelman, respondent is guilty of gross neglect, lack of diligence, and failure to communicate with his client. His unethical conduct resulted in serious harm to Casement, who was unable to pursue her personal injury claim due to respondent's neglect and who was not made whole until four years after she had pursued a malpractice claim against respondent. For these reasons, we find that the appropriate quantum of discipline for respondent's misconduct is a reprimand.

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 Paul F. Clausen
Docket No. DRB 15-087

Argued: May 21, 2015

Decided: October 26, 2015

Disposition: Reprimand

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

Ellen A. Brodsky
Chief Counsel