SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-171
District Docket No. IIIB-2013-0014E

IN THE MATTER OF	:
MUHAMMAD BASHIR	:
AN ATTORNEY AT LAW	:

Decision

Argued: September 15, 2015

Decided: December 28, 2015

Berge Tumaian appeared for the District IIIB Ethics Committee.

Respondent waived appearance[1].

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

[1] At respondent's request, this matter was adjourned from our July 2015 meeting to our September 2015 meeting. The presenter appeared on that date for oral argument. Respondent did not appear for argument at the appointed time, but rather telephoned Office of Board Counsel minutes before the scheduled argument to waive his appearance, resulting in a substantial delay in the presenter's argument.

This matter was originally before us on a recommendation for an admonition filed by the District IIIB Ethics Committee (DEC). We determined to bring the matter on for oral argument.

The complaint charged respondent with violations of RPC 1.2(c) (unilaterally limiting the scope of the representation), RPC 1.3 (lack of diligence), RPC 1.5(b) (failure to set forth in writing the rate or basis of the fee), and RPC 8.1(b) (failure to cooperate with ethics authorities). We determined to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1987. On March 5, 1996, he received a reprimand for grossly neglecting a litigated matter, resulting in a $41,000 judgment against the clients. In re Bashir, 143 N.J. 406 (1996). On May 25, 2005, respondent was admonished for failure to comply with court-ordered sanctions in four criminal matters, a violation of RPC 3.4(c). In the Matter of Muhammad Bashir, DRB 05-061 (May 25, 2005). On July 27, 2015, he was temporarily suspended for failure to comply with a fee arbitration award. In re Bashir, 222 N.J. 313 (2015). He remains suspended to date.

In July 2008, Jerome Brooks retained respondent to represent him in criminal matters pending in Middlesex and Union counties. At the DEC hearing below, respondent testified that he and Brooks' mother, Monique Jemerson, had entered into an oral

agreement whereby respondent would "help" Brooks, in exchange for a $5,000 fee. Respondent admitted that he had never represented Brooks or Jemerson previously and that he did not reduce the oral agreement to a writing. According to respondent, "there was no retainer agreement because I was never retained." He stated a belief that, if he did not obtain a "retainer" from the client, he was not retained:

> That particular aspect of the Rules of Professional Conduct suggests and hints, and the underlining premise of it is that there is an agreement for purposes of representation. The only agreement that we have does not have to be written. If you want to pay me something to help, I'll be more than glad to help your son, if I can. There's no need for a retainer. But the -- the premise of their argument begins by I was retained in this case. I was not retained in that particular case. She asked me to help because I was already helping in another case. And she decided that she couldn't pay the fee. I still decided that I would.
>
> [T22-13 to 25.][2]

Jemerson testified that she researched the attorneys in her area and was given respondent's name. She then contacted her son in prison and he asked other inmates about respondent's reputation. Ultimately, Brooks approved and told his mother to

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[2] "T" refers to the transcript of the May 22, 2014 DEC hearing.

retain respondent. They did not reduce their oral agreement to writing.

Brooks testified unequivocally that he had retained respondent as his attorney. He recalled that he faced a total of up to fifty years in prison for all of the charges pending against him and acknowledged that respondent had obtained a good result for him. On November 29, 2010, the Middlesex County judge sentenced Brooks to a "five-year flat" sentence with two days' credit for time served. Brooks believed that he should have received credit for about 340 days, because his bail had been revoked a year earlier, on purpose, so that he could accumulate jail credit.

According to Brooks, he had discussed the issue of jail credits with respondent, before he pleaded guilty to the Middlesex crimes. Brooks stated that, at that time, respondent offered to take care of any future problems with jail credits, after his matters were concluded.

On cross-examination, Brooks conceded that respondent had obtained all of the proper credits for him when, on June 29, 2012, he was sentenced in Union County. The judge ordered the Union County term of incarceration to run concurrently with the Middlesex County sentence. Brooks nevertheless believed that respondent should have obtained for him a separate document from

Middlesex County specifically referring to the total credits, because it was "something that he was supposed to do for me."

Respondent denied that his actions regarding the jail credits violated RPC 1.3. In his answer and testimony at the DEC hearing, respondent was clear that the representation was complete on the June 29, 2012 Union County sentencing. In addition, Brooks had not retained him to perform post-sentencing legal work. According to respondent, after the Union County sentencing, Brooks "knew it was over. His mother knew it was over. . . . They were pleased as punch that he didn't go to prison for the rest of his life."

When Brooks asked respondent to file an application to correct the time-served credits, respondent replied that the representation was terminated and that Brooks was free to write to the court directly or seek assistance from the Public Defender. Respondent testified that, before all of the matters were resolved, he and Brooks were on poor terms, having "clashed heads" over respondent's strategy, which Brooks did not fully understand. Respondent told Brooks, at the time, "when we resolve all of these cases, I'm done. Don't call me again." In fact, the presenter asked respondent if he would have represented Brooks for the Middlesex jail credit issue, if Brooks had offered a new fee. Respondent was emphatic that he

would not have done so. "It wouldn't have mattered one bit if they had -- paid me a dime or a dollar."

Although the Union County sentencing addressed the jail-credits issue for both counties, Brooks testified that, on his own, he filed a letter-application in Superior Court of New Jersey, Middlesex County, in 2012 or 2013, in order to satisfy himself that the proper credits had been allocated to him in both counties. According to respondent, by doing so, Brooks had simply followed respondent's advice to him.

With regard to RPC 1.2(c), respondent also denied that, by his actions, he had impermissibly limited the scope of the representation. Respondent argued that, because the representation was terminated on Brooks' last sentencing in Union County, with no unresolved issues, he had no further duty to represent Brooks.

As to RPC 8.1(b), the DEC sent respondent letters dated March 29, April 8, and April 27, 2013, requesting his reply to Brooks' grievance. Shortly after the April 27, 2013 letter, respondent telephoned the investigator to request an extension to reply, which was granted. On May 7, 2013, the investigator sent respondent a confirming letter. On May 13, 2013, respondent furnished his written reply to the grievance.

On June 24, 2013, the investigator sent respondent a letter to schedule an interview, complete with proposed interview dates. The letter also sought respondent's files in Brooks' matters. Hearing nothing, the investigator sent a July 12, 2013 letter to respondent, reiterating those requests.

Thereafter, on August 6, 2013, respondent telephoned the investigator to inform him of his new address and represented that he would "drop off" the Brooks files that day. Despite that promise, respondent failed to do so or to call the investigator to let him know that he was not coming that day.

On August 30, 2013, the investigator again wrote to respondent, noting the passage of three weeks since their telephone conversation and respondent's failure to deliver the files. Respondent received that letter, which had been sent to his new address in Maryland. Hearing nothing, on October 17, 2013, the investigator sent a letter to respondent's Maryland address, repeating the request for an interview and for respondent's files. Although the certified mail was returned marked "unclaimed," respondent testified that he "would have received" the DEC's letters sent to his Maryland address.

Respondent and the investigator apparently communicated with each other thereafter and respondent agreed to meet at the investigator's office on November 11, 2013. Respondent neither

appeared nor informed the investigator that he would not be attending the meeting. Two days later, he appeared at the investigator's office, unannounced, with his file. Respondent agreed that day to an on-the-spot interview about the case.

Respondent had shared an office in Elizabeth with another attorney, his brother, Hassen Abdellah. The attorneys employed separate staff. When respondent released his own staff and left that office in early 2013, his brother's staff, unbeknownst to respondent, did not always forward his mail or give him messages. Respondent did not realize the extent of the problem until much later. Nevertheless, he never thought that he needed to place a forwarding address on his mail: "I mean, you're talking about my brother's office. I would expect that that would be respected and people would look out for me the way they would look out for him."

According to respondent, he had difficulty complying with the investigator's requests because he does not own a car and because he had overdue storage bills:

> Like when I first find out that he has a complaint, I have to say, where is his file? Now I have to go to storage. By the way, the storage bill ain't paid. So now I got to figure out a way to pay the storage bill. And then get in the storage and pull the file out of storage. Now that doesn't bother me that I'm in the middle of a trial that I'm pulling out storage on him on an issue that just is shocking me [sic].
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> [T228-3 to 10.]

Although respondent did not believe that his actions constituted failure to cooperate with the investigator, he stated as follows:

> I want to apologize to counsel because I did put him through a ringer in trying to get this here. But he didn't have to cajole me or force me. Letters don't force me to do anything. They really don't. Respect for the position. Respect for the Court. Respect for the process forces me what I do what I got to do. So if you send me a letter and I get it, I'm going to do everything I can to respond. But I'm going to respond. And it may not be in the time frame that people who have major offices have. They can sit down with a secretary. It may be something simple.
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> [T227-16 to T228-2.]

The DEC found that, because respondent had not previously represented Brooks, RPC 1.5(b) required him to set forth the rate or basis of his fee in writing. His failure to do so violated that RPC. The DEC further found that respondent's failure to reply to the investigator's numerous written requests for information about the grievance and to provide Brooks' client files violated RPC 8.1(b).

The DEC concluded that respondent had terminated the Brooks representation, upon the completion of sentencing in the matters, and that, therefore, he had no duty to assist Brooks thereafter. Thus, the DEC dismissed the RPC 1.2(c) and RPC 1.3 charges for lack of clear and convincing evidence of any impropriety.

The DEC recommended an admonition.

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.

Brooks claimed that he retained respondent to represent him for criminal matters pending in Union and Middlesex counties. Brooks' mother, Jemerson, paid respondent $5,000 to represent her son, based solely on an oral agreement. Respondent had not previously represented either Jemerson or Brooks.

Respondent argued that, because he did not take a "retainer," he was never "retained." Therefore, RPC 1.5(b) does not apply. Respondent's argument, however, is disingenuous. Respondent clearly represented Brooks in these criminal matters. He proudly took credit for the good results he had achieved for his client noting that about twenty court hearings were involved in the representation. Because respondent had never represented Brooks before, RPC 1.5(b) required him to set forth the rate or basis of his fee in writing. His failure to do so violated RPC 1.5(b), regardless of his own perception of whether he had been "retained."

Respondent also failed to comply with the investigator's numerous requests for information about the Brooks grievance, a violation of RPC 8.1(b). Respondent was aware of the

investigation, failed to reply to the grievance and turn over his file. Although respondent ultimately replied to the grievance, filed an answer, and appeared at the ethics hearing, he ignored the investigator's numerous letters and twice made arrangements to meet with him, failing to appear both times. On both occasions, he did not exercise the common courtesy of calling the investigator to say that he would not be there, a scenario repeated once again when respondent failed to appear at oral argument before us, waiving his appearance only moments before the scheduled argument. Respondent's apology to the presenter rings hollow as well. Respondent stated that letters don't force him to do anything. Rather, it was respect for the investigator's position, for the court and for the process that compelled him to do what was necessary. Had respondent been sincere, he would have acted differently along the way.

The DEC correctly dismissed the remaining violations. Brooks conceded that respondent obtained the proper credits for him. The evidence adduced at the hearing established that Brooks sought more — a document from Middlesex County as well. The testimony on the issue from respondent and Brooks was equivocal.

In respondent's version of events, he informed Brooks that the representation was complete upon the sentencing and that he could write to the judge about it if he wished. Brooks did just

that. It was reasonable for respondent to consider the matter closed once the issue of proper jail credits was resolved by the Union County court.

In Brooks' version, respondent had promised to clear up any jail credit issues. It was reasonable for him to believe that respondent's offer might include the relief that he sought from Middlesex County, regardless of the credit he received from Union County.

Clearly, a written fee agreement could have avoided any ambiguity in the scope of respondent's representation. The evidence on the issue is, however, in equipoise, with one version of events just as likely as the other. For a lack of clear and convincing evidence that respondent lacked diligence or that he unilaterally limited the scope of the representation, we dismissed the RPC 1.2(c) and RPC 1.3 charges.

The remaining issue is the appropriate quantum of discipline for respondent's violations of RPC 1.5(b) and RPC 8.1(b). Conduct involving failure to prepare the writing required by RPC 1.5(b), even if accompanied by other, non-serious ethics offenses, typically results in an admonition. See, e.g., In the Matter of Osualdo Gonzalez, DRB 14-042 (May 21, 2014) (the attorney failed to communicate to the client, in writing, the basis or rate of the fee, a violation of RPC

1.5(b); he also failed to communicate with the client, choosing instead to communicate only with his prior counsel, a violation of RPC 1.4(b); in addition, at some point, the attorney caused his client's complaint to be withdrawn, based not on a request from the client, but on a statement from his prior lawyer that the client no longer wished to pursue the claim, a violation of RPC 1.2(a); in mitigation, the Board considered the attorney's pristine record in twenty-seven years at the bar and the several letters attesting to his good moral character); In the Matter of A. B. Steig, DRB 13-127 (October 25, 2013) (the attorney failed to communicate to the client, in writing, the basis or rate of the fee, a violation of RPC 1.5(b); although the attorney had received an admonition in 2011, the conduct in that matter was unrelated to the present infraction and therefore was not an indication of the attorney's failure to learn from his prior mistakes); In the Matter of Linda M. Smink, DRB 13-115 (October 23, 2013) (attorney failed to communicate in writing the basis or rate of her fee either to her client or to the client's mother, who had paid the legal fee for the appeal of a criminal conviction, in violation of RPC 1.5(b); the attorney also failed to apprise the client's mother, who was her son's emissary with respect to the details of the appeal, of important events in the case and to retain hard copies of her client files at her

office; no prior discipline in twenty-four years at the bar); In the Matter of Martin H. Kuner, DRB 13-113 (September 30, 2013) (attorney failed to enter into a written retainer agreement with the client in a personal injury matter, a violation of RPC 1.5(c); he also failed to serve the complaint, which was dismissed for lack of prosecution, and failed to inform the client of the dismissal; violations of RPC 1.5(c), RPC 1.1(a), and RPC 1.4(b); the Board considered that the attorney had no prior discipline in his twenty-five years at the bar, that the client's case "fell through the cracks," and that the attorney was winding down his practice to change careers); and In the Matter of Andrey V. Zielyk, DRB 13-023 (June 26, 2013) (the attorney failed to communicate, in writing, the basis or rate of his fee to a first-time client who had retained him to prepare a last will and testament, which named him executor and granted a general power of attorney in his favor, a violation of RPC 1.5(b); the attorney also violated RPC 1.3 and RPC 1.4(b); no prior discipline in over twenty-seven years at the bar).

Generally, failure to cooperate with an ethics investigation, standing alone, will also yield an admonition. See, e.g., In the Matter of Jeffrey M. Adams, DRB 14-243 (November 25, 2014) (attorney failed to cooperate with the

district ethics committee's attempts to obtain information from him about his representation of a client in connection with the sale of a house, a violation of RPC 8.1(b)); In the Matter of Richard D. Koppenaal, DRB 13-164 (October 21, 2013) (the attorney admittedly failed to cooperate with the district ethics committee's attempts to obtain information about his representation of a client in an expungement matter, a violation of RPC 8.1(b)); and In the Matter of Raymond Oliver, DRB 12-232 (November 27, 2012) (attorney failed to reply to the grievance and furnish a copy of the client file to the ethics investigator, despite repeated assurances that he would do so, a violation of RPC 8.1(b); the attorney ultimately appeared at the DEC hearing and participated fully during the disciplinary process).

Respondent does not fully understand his responsibilities as an attorney of this state. He appears unconcerned that he gamed the disciplinary system, cooperating only on his own terms and when it was convenient for him to do so. In addition to ignoring numerous pleas for information from the investigator, he twice failed to appear for an appointment with him, on both occasions not even notifying the investigator that he would not be appearing that day. He has taken the same approach with us. Whether it was for the lack of an automobile or delinquent storage fees, respondent's behavior demonstrates a disdain for

the discipline system that is unacceptable to us. When we consider that element alongside respondent's prior discipline, we conclude that a reprimand is warranted.

Vice-Chair Baugh and Member Clark 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 Muhammad Bashir
Docket No. DRB 15-171

Argued: September 15, 2015

Decided: December 28, 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:			6			2

By: Ellen A. Brodsky
Chief Counsel