

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 15-167 and 15-168
District Docket Nos. IV-2013-0032E
and IV-2013-0034E

IN THE MATTERS OF

JOHN A. KLAMO

AN ATTORNEY AT LAW

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Decision

Argued: September 15, 2015

Decided: December 28, 2015

Jean S. Chetney appeared on behalf of the District IV Ethics Committee.

Steven K. Kudatzky appeared on behalf of respondent.

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

These consolidated matters were before us based on a recommendation for a six-month suspension filed by the District IV Ethics Committee (DEC). For the totality of respondent's violations in both matters, we determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1982. He maintains a law office in Cherry Hill, New Jersey.

In 1996, respondent was reprimanded for delegating his recordkeeping responsibilities to an employee whom he never supervised or instructed on recordkeeping practices. As a result, the employee misappropriated client funds. Respondent was found guilty of gross neglect, negligent misappropriation of client trust funds, commingling fees and trust account funds, recordkeeping violations, and failure to cooperate with ethics authorities. In re Klamo, 143 N.J. 386 (1996).

In 2013, respondent was suspended for three months for charging improper expenses in contingent fee matters (photocopying, postage, and telephone calls); failing to promptly deliver funds belonging to clients and third parties by amassing approximately \$100,000 in his trust account and failing to disburse deductibles and co-pays, in some instances for as long as thirteen years, until the Office of Attorney Ethics (OAE) began its investigation and instructed him to disburse the funds; recordkeeping violations; engaging in conduct involving dishonesty, deceit and misrepresentation, and making material misstatements of fact to ethics authorities. We also found that respondent failed to maintain malpractice insurance, but he was not charged with or found guilty of violating RPC 5.5(a) (unauthorized practice of law). In re Klamo, 213 N.J. 494 (2013).

Respondent was reinstated to practice law, effective September 25, 2013, and was ordered to practice under the supervision of an OAE-approved proctor for a two-year period and to submit to the OAE, for a two-year period, on a quarterly basis, monthly reconciliations of his attorney accounts, prepared by an accountant. In re Klamo, 215 N.J. 520 (2013).

DRB 15-167 – The Ward Matter

The eight-count complaint charged respondent with having violated RPC 1.2(a) (failure to abide by a client's decision about the scope and objectives of the representation), RPC 1.3 (lack of diligence), RPC 1.4, presumably (b), (failure to communicate with a client), RPC 3.2 (failure to expedite litigation), RPC 8.1, presumably (b), (failure to comply with requests for information from a disciplinary authority), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

At the DEC hearing, respondent objected to (1) the telephone testimony of grievant William Ward (at the time, Ward lived in Georgia); (2) the same panel hearing three matters, particularly since respondent believed only two would be considered (after the hearing, one of the matters was dismissed

and was not before us);¹ and (3) the presenter's failure to provide him with Ward's file. In response, the presenter pointed out that (1) respondent had not requested discovery in the Ward matter, (2) by letter dated June 30, 2014, respondent requested the Ward file from another attorney, Howard Gross, who at one point represented Ward; and (3) she had provided him with copies of all exhibits used at the DEC hearing as well as a copy of the investigative report in the matter. The hearing panel chair overruled respondent's objections and proceeded with the hearing in the three matters. We find that the Chair's determination was proper.

Ward was injured in February 2007 while working as a maintenance superintendent for an apartment complex. Prior to retaining respondent in 2008, he had consulted with another attorney, whom he believed did nothing on his behalf. He then met with respondent, who had come highly recommended, retained him, and executed documents to have his file transferred to respondent.

Afterwards, Ward's efforts to obtain information about the status of his case were unavailing. He contacted respondent's

¹ The hearing panel chair pointed out that all of the pre-hearing correspondence referenced three docket numbers.

office approximately "every month or so." Each time, he was informed that respondent was waiting for a court date.

At some point, a worker's compensation case was filed on Ward's behalf. Thereafter, on August 19, 2009, it was dismissed without prejudice for lack of prosecution. At the time of the dismissal, respondent was the attorney of record.

According to Ward, "one day" respondent informed him that Howard Gross would be taking over his case and that his file had already been transferred to Gross.² Thereafter, Ward met with Gross and spoke to him approximately half a dozen times. Ward did not understand the relationship between respondent and Gross, but assumed that Gross was "just doing some of the work for [respondent], when he was overloaded or something." Ward stated, "I was never informed exactly why Howard Gross was . . . taking over the case." Ward was, therefore, uncertain whether respondent continued to represent him. Neither respondent nor Gross ever informed Ward that his case had been dismissed. Ward, therefore, believed that the attorneys were pursuing a settlement on his behalf.

Respondent contended that he had informed Ward about Gross's involvement in the matter, explaining that Gross was

² Documents submitted by respondent following argument before us show that the substitution occurred on August 19, 2009.

"more of an expert in worker's compensation, because that's a lot of things he does [sic], in getting the matter restored." By order dated September 30, 2009, Gross succeeding in having Ward's case restored.

Ward met with Gross several times but became dissatisfied with his services and discovered that Gross could not achieve the results he had promised. Ward, therefore, asked respondent to take the case back. Although Ward executed a release for his file, he did not know whether respondent obtained it from Gross. An April 14, 2010 receipt indicated that respondent had retrieved the file from Gross.³ At that point, Ward still did not know the status of his case. He asserted that, each time he called respondent's office, respondent's staff informed him that they were waiting to obtain paperwork from Gross or waiting for a court date.

On February 7, 2011, the case was again dismissed for lack of prosecution. Thereafter, a May 2011 substitution of attorney form showed that Gross substituted back into the case. According to respondent, the substitution was to have Gross again restore the case. Respondent remarked that Gross was more familiar with

³ Respondent's post argument submission shows that he substituted back into the case on May 7, 2010 and that Gross substituted back into the case on May 16, 2011.

the judge handling workers' compensation matters and more familiar with getting matters restored. Respondent conceded that, on February 2011, when the case was again dismissed, he was the attorney of record.

In June 2011, Ward moved to Georgia. He understood that, at that time, respondent was representing him. Prior to moving, Ward informed respondent's office that he would provide them with a new address and telephone number as soon as it was available. He later did so.

After moving, Ward spoke to respondent approximately "four or five times," but could not recall the dates of their conversations because he suffered from health problems: a heart attack and a quadruple bypass. Ward testified that, after he moved, he would call respondent's office, would wait to hear from him, to no avail, and would call back a couple of months later. On the occasions they spoke, respondent never informed him that his case had been dismissed.

Contrary to Ward's testimony, respondent recalled telling Ward about the dismissal in 2011 and seeking information about Ward's social security disability benefits, because those benefits had to be deducted from a worker's compensation award. Ward confirmed that respondent had requested information relating to the disability payments as well as some other

information, which he provided immediately. According to Ward, respondent did not explain the purpose for that information. Afterwards, Ward unsuccessfully attempted to reach respondent six or more times.

At some point, Ward learned that respondent had been suspended and that they could not converse about the case. Respondent's office informed Ward that Mitchell Goldfield (respondent's then law partner) would handle his case, "but they were waiting for some paperwork from [Gross]." Goldfield did not return any of Ward's telephone calls. At that point, Ward did not know who was representing him. He stated:

I didn't know who was my attorney at the time. They -- they just kept telling me that Goldfield was handling [respondent's] clients, and so he was representing me. So I was assuming that Goldfield was -- my attorney at the time.

[1T35-13 to 35-17.]⁴

Unable to obtain information about his case from any attorney, sometime around June 2013, Ward called the workers' compensation office and discovered that his case had been dismissed in February 2011. He then contacted the DEC and filed a grievance against respondent.

⁴ 1T refers to the October 16, 2014 DEC hearing transcript in the Ward matter.

When asked if any attorney had worked on his case since he learned of its dismissal, Ward replied

To my knowledge? I don't know. I have no idea. I've been lied to for so many times by every attorney that's been on this case, I don't know what to believe. And I don't recall anybody telling me they was working on my case after it had been closed.

[1T60-3 to 60-7.]

Ward added that even though there was talk about reopening the case, as far as he knew, it was only "talk." Ward believed that respondent was the last attorney to represent him. He did not know whether he wanted respondent to try to reopen the worker's compensation matter because nothing had been accomplished in seven-and-a-half years. Everyone "let the ball drop" and no one told him that the case had been dismissed. Ward remarked that he had retained respondent because he wanted results on his worker's compensation claim. His first attorney "wasn't doing diddly squat," so he went to respondent. He added that the case went from respondent to Gross, back to respondent, from respondent to Goldfield, then from Goldfield back to respondent. Ward stated "I don't know who's got what." Ward emphasized that not one attorney ever called him back or sent him a letter to let him know that his case had been dismissed. Rather, he learned about the dismissal on his own.

Ward further testified that "over the past couple months," he and respondent had been talking about re-filing the worker's compensation case and that respondent had contacted him, both on the night before the DEC hearing and three days earlier. It was only during those more recent conversations that respondent had informed him that any workers' compensation recovery would be affected by the amount of social security disability benefits he had received.

According to respondent, Ward had contacted him in February and in the fall of 2013. Contrary to Ward's testimony, respondent claimed that it was Ward who had called him the night before the DEC hearing and told him that he would not be attending it. During that conversation, he told Ward that he was still pursuing his worker's compensation case, to which Ward agreed.

Respondent conceded that, since February 2011, he failed to reinstate Ward's case and that "the ball was dropped at certain points." He added, "[s]ometimes files just slip through the cracks, but we're not supposed to have files slip through the cracks." Respondent admitted further that there was a communication problem with Ward. He blamed it on the fact that three or four attorneys were involved in the case. He denied sending Ward's case to Gross without Ward's authority. He

claimed that there was "implied authority" for Gross to take it over because Gross and Ward had discussions about the case. Respondent also admitted that although the litigation "wasn't expedited . . . the situation could be rectified."

As previously noted, the complaint charged respondent with a violation of RPC 8.1(b), based on his failure to submit a written reply to Ward's grievance. Respondent admitted that he had not replied to it, but maintained that he had been unable to do so without the client file, which he was attempting to obtain. He emphasized that he had filed an answer to the formal ethics complaint. In his answer, respondent explained that he did not have Ward's file but had requested it from Gross and from Goldfield, to no avail. In addition, he asserted that he had requested from the presenter documentation of the dismissals and that he informed her that he would be able to properly reply to the charges once he received the file.

In her argument before the DEC, the presenter emphasized Ward's confusion regarding the transfer of his case to Gross. Respondent did not inform Ward that Gross had more experience in the field. He simply told Ward that he was "shipping [him] off" to Gross. Respondent did not explain the transfer, confer with Ward about it, or ask for his opinion. The presenter added that

Ward did not understand that it was for him to decide to whom to transfer the case.

Based on respondent's conduct, the presenter maintained that respondent was guilty of misrepresentation for (1) his failure to make Ward aware of his affiliation or non-affiliation with Gross or that Gross was handling his case, and (2) failing to inform Ward that his case had been twice dismissed.

DRB 15-168

The Horn Matter

The four-count complaint charged respondent with having violated RPC 1.1, presumably (a) (gross neglect), RPC 1.15 (failure to safeguard property), no subsection cited, (for respondent's failure to maintain the grievant's file), R. 1:21-1A(3) (failure to maintain professional liability insurance), and RPC 8.1(b) (failure to comply with a request for information from a disciplinary authority).

On May 11, 2008, grievant Joseph Horn was injured while on a Princess Cruise Line cruise. According to Horn, he slipped and fell down wet marble steps, hitting his head and injuring his back. Horn met with respondent within a week or two of returning from the cruise and retained him to pursue a claim against the

cruise line. At that time, respondent may have handled only one other maritime case.

On October 2, 2009, more than a year after Horn's injury, respondent sent a demand letter to Princess Cruise's corporate headquarters, seeking \$150,000 to settle Horn's claim. This was respondent's first communication with Princess. At the time respondent submitted the claim, he believed that there was a two-year statute of limitations to file it. After submitting the demand letter, he learned that the passenger ticket/contract limited a passenger's ability to file a claim to one year from the date of an accident.

After respondent sent the demand letter, he advised Horn to retain a lawyer from California. Horn then called the California Bar Association, which gave him the name of a California maritime lawyer. The California attorney informed Horn that it was too late to pursue a claim against the cruise line. The attorney recommended that Horn contact the Newark, New Jersey law firm of Maran and Maran to pursue a legal malpractice action against respondent, which Horn did.

By letter dated November 11, 2009, David Maran requested respondent to notify his insurance carrier of Horn's malpractice claim and to instruct the carrier to contact Maran. Maran further requested that respondent forward a copy of Horn's

entire file, for which he had enclosed Horn's authorization. Maran was not able to determine that respondent did not maintain malpractice insurance for almost a full year. Thereafter, he chose not to pursue the malpractice claim. According to Horn, Maran told him that without malpractice insurance "you won't get blood out of a stone." Horn contended that he then called approximately ten other lawyers, each of whom refused to take the malpractice case.⁵

Although respondent admitted that he did not file a timely claim with Princess and that he was negligent in failing to do so, he maintained that his conduct was not unethical. He submitted Horn's malpractice claim to his insurance carrier. However, the carrier denied the claim because he was not covered during the period in question.

In 2009, about a year after the Princess cruise injury, Horn fell down an escalator at a J.C. Penney (Penney) Store and sustained injuries that required him to undergo knee replacement surgery. Respondent represented Horn in a lawsuit against Penney as well. Horn emphasized that it was not his practice to file claims against insurance companies. Those were the first two matters that he had ever pursued. According to Horn, during the

⁵ Horn also filed a claim with the New Jersey Lawyers' Fund for Client Protection. That claim was denied.

Penney matter, respondent forgot about the Princess Cruise claim.

Horn stated that, during respondent's suspension, respondent's partner took over the Penney matter and settled the case. Respondent contended that he had been ready to proceed with the trial prior to his suspension.

At the DEC hearing, when respondent asked Horn whether he had any problem with respondent's handling of the Penney matter, Horn replied: "What am [sic] going to do, call some other lawyer in court and they'd sent [sic] them down to me? I mean, I kept you because you started it."

On November 2, 2009, Horn obtained a copy of his Princess Cruise file from respondent. Respondent's letter-receipt for the file informed Horn that he no longer represented him in that matter. Horn pointed out that respondent gave him the file because he was "done with it," he had "messed it up," and he was suspended for three months (the suspension took effect on May 27, 2013). Ultimately, Horn filed a grievance against respondent.

By letter dated August 16, 2013, the presenter requested that respondent reply to Horn's grievance within fourteen days.

By letter dated September 2, 2013, respondent replied to the DEC investigator, indicating that he intended to cooperate

fully with the investigation. However, because he was serving a term of suspension, he could not go to his office to retrieve the client file, which he needed to compose a written response to the grievance. He, therefore, requested her permission to return to his office to obtain the necessary documents.

Although the presenter gave respondent written authorization to return to his office to retrieve the client file, respondent contended that, based on "numerous, numerous other things with my partner, I really didn't want to do that because it was just going to make a major problem of things." He, therefore, informed the presenter that, although his suspension ended in August, "the Board" did not meet that month, but he hoped to be reinstated in September, return to his office, and then address her concerns. Respondent testified that, if he had had access to Horn's file in August 2013, he would have "gladly" replied to the grievance.⁶

Respondent added that he did not try to file a substantive reply to the grievance without the benefit of the client file because he understood that, when "dealing with the Ethics Committee, any investigation you have to be truthful and I'm not going to make a statement that I don't have any basis for." For

⁶ Horn noted that he had provided the presenter with his copy of the file because respondent had been unable to locate his copy.

that reason, he admitted that he did not reply to Horn's substantive claims. That notwithstanding, he maintained that he had filed an answer to the formal complaint and had spoken to the presenter by telephone.

Respondent admitted that he did not maintain professional liability insurance. He pointed out, however, that he had been found guilty of failure to maintain malpractice insurance in a prior ethics matter for that same time period.

Respondent was suspended from May 27, 2013 to September 25, 2013. During that period, his former law partner, Goldfield, had control of his files. Respondent maintained that, during the course of the DEC investigation, he discovered that Goldfield had taken more than ninety of his files. He added that, at least twice, he asked Goldfield to return the files, but Goldfield did not reply. Respondent, therefore, asked for the presenter's "help in having these files forwarded to [his] office." He also tried to subpoena the files from Goldfield, who refused to turn them over.⁷

Whether Goldfield actually had custody of the relevant files is not clear. One of respondent's exhibits is an October 23, 2013 letter from Goldfield replying to an inquiry from

⁷ The subpoena is dated September 30, 2014, about one year after respondent was reinstated to the practice of law.

respondent's proctor, Richard L. Friedman, Esq.⁸ The letter states that, in addition to several other files, Goldfield had Horn's file, the files were closed, but, as the attorney of record in those files, Goldfield was required to retain them for seven years. The letter contradicts Goldfield's November 4, 2013 letter to the presenter denying that he ever had the files in the Ward or Horn matters. Although the letter to Friedman was signed, the copy of the letter to the presenter does not appear to be signed.

In her argument before the DEC, the presenter argued that respondent lacked competence because he had failed to obtain all of the relevant facts, to determine whether Horn's claim was limited by the statute of limitations or by contract, and to make a demand until after the one-year contractual statute of limitations expired. In addition, she contended that respondent was required to maintain Horn's files for a seven-year period and to make the file available to Horn or "anyone else who needed it within seven years." She alleged that his failure to do so constituted a failure to safekeep property.

⁸ Goldfield's letter was in response to an earlier letter from Friedman requesting that he release several of respondent's files.

Following the hearing in these matters, the DEC concluded that, in the Ward matter:

The overwhelming impression is that Respondent treated Greivant's case as a commodity, an asset to be managed and invested but never worked on. Respondent "sub-contracted" the file to Attorney Gross who apparently accomplished nothing. Respondent produced absolutely no evidence that he ever took any productive action on behalf of Grievant.

[HR8.]⁹

The DEC, thus, found that respondent (1) failed to provide "even the most minimally acceptable standard of legal representation of Grievant," (2) failed to act diligently, (3) failed to adequately communicate with Ward, and (4) failed to expedite the worker's compensation case.

As to the Horn matter, the DEC found that respondent was guilty of gross neglect as he "failed to competently represent" Horn. The DEC noted that respondent had minimal experience in maritime matters and no apparent experience with cruise lines. That, notwithstanding, he made no effort to research the issue of the statute of limitations to file a claim for the injury. Although the DEC acknowledged that missing the statute of limitations generally constitutes malpractice and is not

⁹ HR refers to the December 18, 2014 hearing panel report.

automatically considered an ethics violation, it found that, when an attorney has "essentially" no experience with maritime issues, "competent representation" requires an attorney to determine the actual statute of limitations, not what the attorney assumes." The DEC, thus, found that respondent's failure to make any such effort constituted gross negligence.

The DEC also found that respondent was guilty of violating RPC 1.15 (safekeeping property) for not maintaining Horn's file.

According to the hearing panel:

It is unclear whether or not there ever was a legal file in this matter. Respondent blames his former partner for keeping the file. The partner denies ever having the file. Respondent believes that the Grievant has at least a copy of the file. Last year when Respondent was suspended from the practice of law for a period of three months, Respondent was obligated to locate, secure and entrust the file. No evidence was presented to establish that this was ever done. The evidence clearly and convincingly supports a conclusion that Respondent failed to properly maintain a file.

[HR3.]

The DEC did not find respondent guilty of violating R. 1:21-1A(a)(3) because he had been previously found guilty of violating this rule, during the same time period, in his prior ethics matter.

Finally, the DEC did not find a violation of RPC 8.1(b) because, even though respondent did not file a written reply to the grievance, he filed an answer to the formal ethics complaint and engaged in the hearing process. In addition, the DEC determined that finding respondent guilty of failing to maintain Horn's file was "sufficient to deal with this issue," as he argued that he could not "intelligently respond" to the presenter's requests for information without his file.

The DEC found respondent guilty of violating multiple ethics rules. In the Horn matter, the DEC found respondent guilty of having violated RPC 1.1, presumably (a), (gross neglect) and RPC 1.15 (failure to safekeep property by failing to maintain the client's file). In the Ward matter, the DEC found respondent guilty of having violated RPC 1.2(a) (failure to abide by a client's decisions concerning the scope and objectives of the representation), RPC 1.3 (lack of diligence), RPC 1.4, presumably (b), (failure to communicate with the client), and RPC 3.2 (failure to expedite litigation).

The DEC considered respondent's ethics history, his 1996 reprimand (which it mistakenly referred to as an admonition) and his 2013 three-month suspension. The DEC concluded that respondent's prior three-month suspension did not have "much of

an impact" on him. Therefore, it determined that a minimum six-month suspension was warranted.

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.

In the Ward matter, respondent candidly admitted that the case "slipped through the cracks" and that he had communication problems with Ward. He blamed those problems on the fact that multiple attorneys had been involved in the case. Moreover, Ward's testimony clearly and convincingly established that respondent failed to reply to his numerous requests for information, a violation of RPC 1.4(b).

Respondent also violated RPC 1.2(a) (scope of the representation). Although he claimed that he had "implied" authorization to transfer Ward's workers' compensation case to Gross, there is simply no evidence in the record to substantiate his assertion. The credible evidence is that respondent informed Ward, after the fact, that his case had been transferred. He never conferred with Ward prior to transferring the case to determine whether Ward agreed to the transfer, wanted to transfer it to Gross or to a different attorney, or whether transferring it to Gross was in Ward's best interests. Moreover, respondent failed to explain his relationship to Gross. In this regard,

respondent also failed to properly communicate with Ward. Although the complaint alleged that respondent misrepresented the nature of his relationship to Gross to avoid having to obtain Ward's consent to transfer the file, there was no evidence, let alone clear and convincing evidence, of an RPC 8.4(c) violation in this regard.

Respondent transferred Ward's case after it was dismissed to have Gross restore it. In fact, while respondent was the attorney of record, the case was dismissed twice. Respondent, therefore, lacked diligence and failed to expedite litigation, in violation of RPC 1.3 and RPC 3.2. In addition, as previously noted, he failed to reply to Ward's numerous requests for information about the case and, despite respondent's claim to the contrary, failed to disclose the dismissals to Ward, violations of both RPC 1.4(b) and RPC 8.4(c) (misrepresentation by silence). In some situations, silence can be no less a misrepresentation than words. Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984).

Finally, the complaint charged that respondent violated RPC 8.1(b). There was little testimony on this point. Respondent admitted that he never provided a reply to the grievance, but maintained that he had been trying to obtain a copy of the file and, nevertheless, filed an answer to the formal ethics complaint. His answer also asserted that he had requested the

file from both Gross and Goldfield, to no avail, and had requested specific documentation from the presenter. We find that respondent's failure to submit a reply to the grievance, when it appears that he took some steps to obtain the client file and communicated with the presenter, does not rise to the level of an ethics violation. We, therefore, dismiss the RPC 8.1(b) charge in this matter.

As to the Horn matter, there can be no doubt that respondent failed to properly handle the slip and fall case. He was unfamiliar with the contractual limitations for filing such a claim against the cruise line and, thus, owed a duty to his client either to immediately decline the representation or to conduct sufficient research to ascertain the proper time in which to file a claim. Instead, he assumed that a two-year statute of limitations applied. His failure to adequately research the matter resulted in Ward's loss of a cause of action. Clearly, respondent's failure to thoroughly research the matter constitutes neglect and malpractice. However, we do not consider his conduct to rise to the level of gross neglect and, therefore, dismiss the RPC 1.1(a) violation.

Horn was unable to pursue a malpractice case against respondent because he failed to maintain professional liability insurance, as charged in the complaint (R. 1:21-1A(3)). We

recognize that respondent previously was found guilty of violating this rule in a prior ethics matter. We note, however, that in neither this nor his prior ethics matter was he charged with the attendant ethics violation - RPC 5.5(a) (unauthorized practice of law). We, therefore, cannot find this violation here.

The DEC found a violation of RPC 1.15(a) for respondent's failure to "maintain" Ward's litigation file. Although that rule requires attorneys to maintain their clients' property, i.e., files, for seven years, it is not clear that respondent violated this rule. The evidence established that Horn had a copy of his file and that, while respondent was suspended, his former partner, Goldfield, purportedly had taken over his cases. Moreover, the record contains conflicting exhibits from Goldfield - one stated that he was the attorney of record in the Horn matter and had to retain the file for seven years (Ex.C to respondent's answer) while the other letter stated that he never had either the Horn or Ward files (Ex.R-3). Thus, there is no clear and convincing evidence that respondent should have been in possession of the Horn file. We, therefore, dismiss the RPC 1.15(a) charge.

Finally, respondent was again charged with violating RPC 8.1(b). Even though he failed to file a substantive reply to the grievance, this is not a situation where he simply ignored

multiple requests to reply to it. As in the Ward matter, his efforts may be viewed as half-hearted – making excuses for not formalizing a substantive reply, rather than attempting to piece one together. He did not, however, directly ignore the presenter's requests. He had telephone conversations with the presenter and wrote to her about his problems obtaining the file resulting from his suspension and from his issues with his former partner. In addition, respondent filed an answer to the formal ethics complaint and otherwise participated in the proceedings against him. Based on respondent's efforts, although meager, we determine that a dismissal of the RPC 8.1(b) charge is warranted here as well.

In sum, the totality of respondent's misconduct in both matters include violations of RPC 1.2, RPC 1.3, RPC 1.4(b), RPC 3.2, RPC 8.4(c), and R. 1:21-1A(3). The only issue left for determination is the proper quantum of discipline.

Generally, a misrepresentation to a client requires the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still be imposed even if the misrepresentation is accompanied by other ethics infractions. See, e.g., In re Ruffolo, 220 N.J. 353 (2015) (attorney exhibited gross neglect and lack of diligence by allowing his client's case to be dismissed, not working on it after filing the initial

claim, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter; the attorney also failed to promptly reply to the client's requests for status updates and assured the client that the matter was proceeding apace and that he should expect a monetary award in the near future, knowing that the complaint had been dismissed); In re Falkenstein, 220 N.J. 110 (2014) (attorney did not comply with his client's request that he seek post-judgment relief; failed to inform the client that he had not complied with the client's request; misled the client that he had filed an appeal and made misrepresentations to support his lies; failed to withdraw from the case when he believed that the appeal had no merit; and practiced law while ineligible, but not knowingly); In re Braverman, 220 N.J. 25 (2014) (attorney failed to inform his client that complaints filed on her behalf in two personal injury actions had been dismissed, thereby misleading her by his silence; engaged in gross neglect and lack of diligence, failed to communicate with the client, failed to expedite litigation, and failed to cooperate with the ethics investigation; we found that the attorney's unblemished thirty-four years at the bar outweighed his inaction that left the client with no legal recourse); In re Winston, 219 N.J. 428 (2014) (attorney failed to file a brief resulting in the dismissal of the client's appeal;

failed to notify the client of the expiration of the deadline for filing the brief; failed to keep the client informed about the status of the matter; and misrepresented to the client that the brief had been timely filed and that the appeal was proceeding apace; compelling mitigation considered); In re Lowden, 219 N.J. 129 (2014) (for nine years the attorney misled her client that she had filed a motion on his behalf and was awaiting a determination in the matter, engaged in gross neglect and lacked diligence, failed to communicate with the client, failed to provide the client with a written fee agreement, and failed to reply to the DEC investigator's repeated requests for a written reply to the grievance, a copy of her file, and billing records; in aggravation, a \$70,000 judgment was entered against the client; mitigating factors included the attorney's lack of discipline in twenty-three years and her quick acknowledgment of wrongdoing); In re Morin, 218 N.J. 163 (2014) (in a consent matter, the attorney failed to file an appellate brief, resulting in the dismissal of the appeal for lack of prosecution; although the attorney's employment had been terminated prior to the due date for the brief, the attorney did not inform the client or his law firm of the dismissal, instead he misrepresented to the client that the appeal was still active; in mitigation, the appellate brief was due in the midst of the attorney's career and

personal turmoil, and through his counsel, he provided substantial assistance to the former client's new attorney; he had no history of discipline in his almost twenty-years at the bar and was active in the community); and In re Merqus, 210 N.J. 222 (2012) (attorney engaged in misrepresentations, failed to abide by the client's decisions concerning the scope of the representation, commingled funds and engaged in recordkeeping violations; no ethics history).

See, also, In re Dzwilewski, 221 N.J. 212 (2015) (reprimand for attorney who failed to abide by the client's decision concerning the scope and objectives of the representation, failed to communicate with the client and failed to explain the matter to the extent reasonably necessary for the client to make informed decisions about the representation; prior reprimand).

In recommending a six-month suspension, the DEC placed great emphasis on respondent's ethics history – a reprimand (failure to supervise, negligent misappropriation, commingling, and recordkeeping violations) and a three-month suspension (charging improper expenses, failing to promptly deliver funds, recordkeeping violations and misrepresentations to ethics authorities), finding that his prior suspension had little "impact" on him. However, the earlier cases involve different types of misconduct, from that present here and, therefore, it

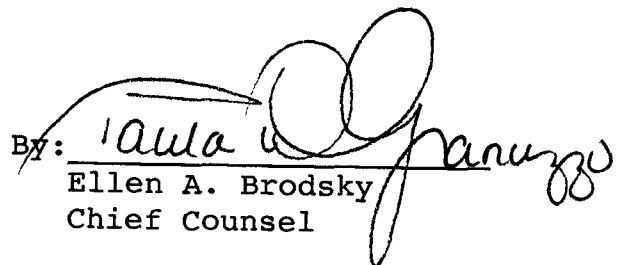
cannot be said that he failed to learn from his prior mistakes. He does, however evince a propensity to violate the Rules of Professional Conduct.

Had this been respondent's first brush with the ethics system, a reprimand could have been justified. However, his disciplinary history warrants increasing the discipline to a censure.

Member Gallipoli and Member Zmirich voted to impose a six-month suspension. 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

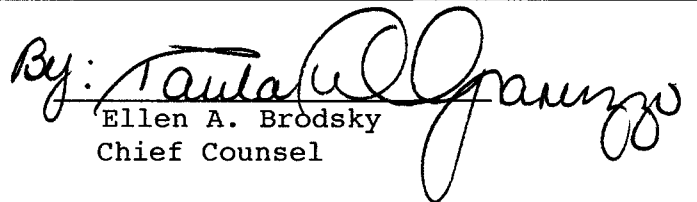
In the Matters of John A. Klamo
Docket Nos. DRB 15-167 and DRB 15-168

Argued: September 15, 2015

Decided: December 28, 2015

Disposition: Censure

<i>Members</i>	Disbar	Six-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:		2	4			2

By: 
Ellen A. Brodsky
Chief Counsel