

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 15-282  
District Docket No. IIA-2014-0014E

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IN THE MATTER OF  
JONATHAN GREENMAN  
AN ATTORNEY AT LAW

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Decision

Decided: May 20, 2016

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

This matter was before us on a certification of default filed by the District IIA Ethics Committee (DEC), pursuant to R. 1:20-4(f). The four-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to inform a prospective client of how, when, and where the client may communicate with the lawyer), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to allow the client to make informed decisions), RPC 1.5(b) (failure to set forth in writing the rate or basis of a fee), RPC 1.5(c)

(failure to prepare a written fee agreement in a contingency fee matter), RPC 8.1(b) and R. 1:20-3(g)(3) (failure to cooperate with disciplinary authorities); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). We recommend a three-month suspension.

Respondent was admitted to the New Jersey and Pennsylvania bars in 2003. On January 23, 2014, he received an admonition for lack of diligence and failure to communicate with his client. In the Matter of Jonathan Greenman, DRB 13-328 (January 23, 2014). On February 20, 2015, he was temporarily suspended for his failure to appear for an audit at the Office of Attorney Ethics (OAE) with requested files. In re Greenman, 220 N.J. 490 (2015). He remains suspended to date.

On May 19, 2016, respondent received a censure in a case that proceeded by default, for his failure to cooperate with an ethics investigation, in violation of RPC 8.1(b). In re Greenman, \_\_\_\_ N.J. \_\_\_\_ (2016).

Service of process was proper in this matter. On February 26, 2015, the DEC sent the amended complaint to respondent by regular and certified mail to his home address, in accordance with R. 1:20-7(h). The DEC served respondent at his home address because he was temporarily suspended. The certified mail was delivered on February 26, 2015, but the signature on the return

receipt is illegible. Although the record is silent in respect of the regular mailing, it does contain a USPS confirmation of delivery of the amended complaint on March 3, 2015.

On April 10, 2015, the DEC sent a second letter to respondent at the same home address, by regular mail, which was not returned. The letter directed respondent to file a verified answer to the complaint within five days of the date of the letter and informed him that, if he failed to do so, the allegations of the complaint would be deemed admitted, the entire record would be certified directly to us for the imposition of discipline, and the complaint would be deemed amended to include a violation of RPC 8.1(b). That letter was not returned.

As of May 12, 2015, the date of the certification of the record, respondent had not filed an answer to the complaint.

The complaint alleges that Philip Zolotarevskiy retained respondent in 2010 to represent him in a personal injury and property damage matter arising from a February 10, 2010 motor vehicle accident. Respondent agreed to represent Zolotarevskiy on a contingent fee basis. Nonetheless, he failed to communicate the basis of the fee or to reduce the agreement to writing. Respondent had not previously represented Zolotarevskiy.

Respondent filed a complaint in the personal injury/property damage action on behalf of Zolotarevskiy; however, he took no further action to advance the claim. He did not gather medical reports or other relevant documents, respond to discovery requests, or serve his own discovery requests. Eventually, in September 2012, the action was dismissed for failure to answer interrogatories. Respondent took no action to restore the complaint, which was reinstated only after Zolotarevskiy retained other counsel to represent him.

Respondent neither informed Zolotarevskiy that the complaint had been dismissed nor complied with his reasonable requests for information. Zolotarevskiy struggled to contact respondent throughout the representation. Respondent's answering machine was always full, preventing Zolotarevskiy from leaving messages. Respondent lacked any office staff to assist him when he was unavailable, and his office failed to accept at all, or accept in a timely fashion, mailing and overnight deliveries.

In addition, respondent misled Zolotarevskiy about the status of his matter. In a number of e-mails, respondent informed Zolotarevskiy that the matter was in good order, leading Zolotarevskiy to believe that the matter was moving forward in the normal course. Specifically, respondent told Zolotarevskiy that he had been in contact with counsel for the

defendant, was scheduling depositions and mediation proceedings, and was awaiting word from a claims adjuster, despite the fact that, by that point, the matter already had been dismissed. Respondent continued to mislead Zolotarevskiy about the status of his matter for approximately sixteen months after the complaint's dismissal.

Finally, respondent failed to reply to the grievance that Zolotarevskiy filed. In October 2014, after the grievance had been sent to respondent three times, he retrieved a copy of it from the investigator's office. Respondent initially claimed that he had never received the grievance, and then alleged that it was missing pages.

The complaint alleges sufficient facts to support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Respondent violated RPC 1.1(a) and RPC 1.3 by failing to perform any substantive work on the matter after he filed the complaint. His neglect resulted in the eventual dismissal of the matter, which he further neglected by failing to seek reinstatement of the complaint.

Respondent violated RPC 1.4(b) by failing to comply with reasonable requests for information and by failing to inform Zolotarevskiy that his matter had been dismissed. However, we dismiss the alleged violation of RPC 1.4(a) as inapplicable. That rule requires attorneys to notify prospective clients of how, when, and where to contact them. Here, Zolotarevskiy was a client, not a prospective client. Moreover, it appears from the record that respondent did provide Zolotarevskiy a working telephone number and legitimate address at which he could be reached. He simply failed to respond to his client's communications thereafter. Similarly, we dismiss the charged violation of RPC 1.4(c) as duplicative of the RPC 8.4(c) charge.

Respondent's failure to prepare a written fee agreement violated both RPC 1.5(c), which requires contingent fee agreements to be in writing, and RPC 1.5(b) because he had not previously represented Zolotarevskiy.

Further, respondent violated RPC 8.1(b) by failing to reply to the grievance, despite multiple opportunities to do so. Respondent was aware of the grievance, as he informed the investigator on one occasion that he had not received the mailing. He then picked up the grievance in person from the investigator's office, only to later complain that the grievance was missing pages. Although he repeatedly interacted with the

investigator, respondent never formally or substantially replied to the grievance.

Finally, respondent made significant misrepresentations, in violation of RPC 8.4(c). He led Zolotarevskiy to believe his matter was proceeding by informing him that he was in contact with counsel for the defendant, was scheduling depositions and mediation proceedings, and was waiting to hear back from a claims adjuster. He made these claims after the complaint had been dismissed, stringing Zolotarevskiy along for sixteen months.

In summary, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.5(b) and (c), RPC 8.1(b), and RPC 8.4(c). The only issue remaining is the appropriate quantum of discipline.

An attorney who committed almost identical misconduct received a reprimand. In re Lowden, 219 N.J. 129 (2014). There, the attorney, for nine years, led her client to believe that she had filed a motion regarding a reduction in his alimony payments and was awaiting a determination, a violation of RPC 8.4(c). In the Matter of Susan A. Lowden, DRB 13-387 (May 21, 2014) (slip op. at 3). The attorney, like respondent here, also was guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to provide a written fee agreement Id. at 5. Also like respondent, Lowden failed to reply to the DEC

investigator's repeated requests for a written reply to the grievance and a copy of her file and billing records, a violation of RPC 8.1(b) Id. at 4. In aggravation, we considered the nine-year period that Lowden had allowed her client to believe that she was pursuing the matter on his behalf, in addition to the serious harm caused by her inaction, that is, the entry of a \$70,000 judgment against him. We also considered, in mitigation, the attorney's impeccable professional record of twenty-three years and her quick acknowledgment of wrongdoing, which militated against greater discipline Id. at 7.

Respondent does not enjoy the same pristine ethics history as the attorney in Lowden. As noted earlier, respondent's ethics history includes an admonition for conduct strikingly similar to his conduct in this matter - allowing a complaint he had filed on behalf of a client to be dismissed and then failing to respond to that client's reasonable requests for information about the matter. Here, not only has respondent not learned from his prior mistakes, but also, he ratcheted his misconduct up to include misrepresentation and a failure to cooperate.

Moreover, respondent received a censure for failing to cooperate with the DEC in its investigation of another client grievance. That matter, too, proceeded by way of default, resulting in escalation of the quantum of discipline. Similarly,




here, respondent has failed to file an answer to the complaint, allowing the matter to proceed as a default and exhibiting a pattern of obstinacy towards the disciplinary system.<sup>1</sup> In a default matter, the otherwise appropriate discipline is enhanced to reflect an attorney's failure to cooperate with disciplinary authorities. In re Kivler, 193 N.J. 332, 342 (2008).

Therefore, under the totality of the circumstances, including respondent's continuing refusal to comply with his obligation to cooperate with disciplinary officials, we determine that a three-month suspension is warranted.

Member Boyer abstained.

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

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<sup>1</sup> In this regard, it has not escaped our attention that the Court temporarily suspended respondent, over one year ago, also based on his failure to cooperate with the OAE's audit of his books and records.

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Jonathan Greenman  
Docket No. DRB 15-282


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Decided: May 20, 2016

Disposition: Three-month suspension

<i>Members</i>	Disbar	Three-month Suspension	Reprimand	Dismiss	Abstained	Did not participate
Frost		X				
Baugh		X				
Boyer					X	
Clark		X				
Gallipoli		X				
Hoberman		X				
Rivera		X				
Singer		X				
Zmirich		X				
Total:		8			1	

  
Ellen A. Brodsky  
Chief Counsel