SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-355
District Docket No. VA-2015-0032E

IN THE MATTER OF	
HUGO L. MORAS	
AN ATTORNEY AT LAW	

Decision

Decided: July 27, 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 VA Ethics Committee (DEC), pursuant to R. 1:20-4(f). The complaint charged respondent with violations of RPC 1.4(b) (failure to communicate with a client), RPC 1.5(b) (failure to set forth in writing the basis or rate of a fee), RPC 1.5(c) (failure to prepare a written fee agreement in a contingent fee case), RPC 1.16(d) (failure to protect a client's interests upon termination of the representation), and RPC

8.1(b) (failure to cooperate with disciplinary authorities). We determine to recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1975. He has an extensive disciplinary history.

In April 1993, respondent was suspended for six months, after issuing a trust account check to a friend to set aside a foreclosure judgment. Although the friend gave respondent two checks in repayment, one of them was dishonored. As a result, client funds held in respondent's trust account were invaded. Relying on the friend's promise to make good on her check, respondent did not stop payment on the trust account check, and the shortage was not made up until four years later, when respondent deposited his own funds to cure the shortfall. Respondent also commingled personal and client funds by leaving earned legal fees in his trust account, and violated the recordkeeping rules. In re Moras, 131 N.J. 483 (1993). He was reinstated to the practice of law on November 3, 1993. In re Moras, 134 N.J. 223 (1993).

On two occasions, in 1996 and 1997, respondent was temporarily suspended, although not for disciplinary reasons. The suspensions stemmed from respondent's failure to comply with his child support obligations. R. 1:20-11A. The suspensions lasted fifteen and twenty-seven days, respectively.

Also, in 1997, respondent received a reprimand. In that case, his business account check, issued to pay a medical bill incurred by a client, was dishonored because respondent's secretary had stolen $650 from his trust account and, thereafter, tried to disburse $650 from his business account to cover the bill. The secretary was an authorized signatory on respondent's attorney accounts, which allowed her to issue checks without respondent's signature. Respondent failed to safe-keep property, failed to supervise a nonlawyer employee, and violated the recordkeeping rules. In re Moras, 151 N.J. 500 (1997).

In 2005, respondent was again reprimanded, on a motion for discipline by consent, for failing to keep a client reasonably informed about the status of the matter and failing to set forth, in writing, the basis or rate of his fee. In re Moras, 184 N.J. 232 (2005).

On March 13, 2013, respondent was suspended for three months for failing to maintain a business account; depositing his earned legal fees into his secretary/girlfriend's account to avoid an IRS and other creditor liens, in violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); failing to prepare monthly reconciliations of his trust account records, failing to promptly disburse client balances from his

trust account; failing to maintain appropriate receipts and disbursements journals; and, once again, authorizing office staff to sign trust account checks. In re Moras, 213 N.J. 52 (2013).

Finally, on February 2, 2015, respondent was suspended for one year for the aggregate misconduct in two default matters. In DRB 14-136, respondent engaged in gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the ethics investigation. In DRB 14-137, he lacked candor in a bankruptcy court filing and failed to cooperate with the ethics investigation. In re Moras, 220 N.J. 351 (2015). Respondent remains suspended to date.

Service of process was proper in this matter. On June 12, 2014, the DEC sent a copy of the complaint, by certified and regular mail, to respondent at his home address, pursuant to R. 1:20-4(d).[1] The certified mail was returned marked "Unclaimed." The regular mail was not returned.

On November 7, 2014, the DEC sent respondent a letter to the same home address, by certified and regular mail, advising him that, unless he filed an answer to the complaint within five

[1] The certification of the record refers to the service address as respondent's law office. Because respondent was suspended at the time, he should not have been served at his office. By letter dated October 8, 2015, the Office of Attorney Ethics clarified that the address used was actually respondent's home address as listed in the attorney registration records.

days of the date of the letter, the allegations of the complaint would be deemed admitted and the record would be certified directly to us for the imposition of discipline. The certified mail was returned on November 19, 2014 marked "Unclaimed." The regular mail was not returned.

The time within which respondent may answer has expired. Respondent never filed an answer. Thus, the matter was certified to us for the imposition of discipline.

We turn now to the facts alleged in the complaint. In 2005, John Hunter retained respondent to represent him in a workers' compensation claim against the Irvington Board of Education. Respondent had previously represented Hunter in a landlord/tenant dispute.

Hunter understood respondent to have taken the case on a contingent fee basis. Respondent, however, did not provide Hunter with a written fee agreement setting forth the percentage of his fee in the event of a settlement, trial, or appeal; a method to determine litigation and other expenses; and whether those expenses were to be deducted before or after the contingent fee calculation.

Seven years later, in a July 12, 2012 telephone conversation, respondent presented Hunter with a $10,000 settlement offer. When Hunter immediately rejected it,

respondent promised to call him the next day to discuss a counter-offer, but never did.

For the next eight months, through April 2013, Hunter called respondent three or four times per day, seeking information about the case. Because respondent had no secretary, Hunter left voicemail messages for him. None of Hunter's calls garnered a reply. At the time, Hunter was not aware that respondent had been suspended as of March 13, 2013.

On an undisclosed date thereafter, Hunter called the court, presumably the workers' compensation court, and obtained a July 18, 2013 hearing date. Hunter appeared on the return date, at which time the judge informed him that respondent had been suspended from the practice of law and suggested that Hunter obtain another attorney.

Two weeks later, on July 31, 2013, the DEC sent to respondent's office address a copy of the grievance Hunter had filed, along with a letter requesting respondent's written reply. That letter was returned by the post office.

On September 27, 2013, the DEC again sent respondent the grievance for his written reply. This time the mail was sent to respondent's home address, as listed in the attorney registration records, as well his office address. The mail to

the office was returned marked "Undeliverable." The mail sent to his home address was not returned.

The facts recited in the complaint 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).

After seven years in litigation, respondent presented, and Hunter rejected, a $10,000 settlement offer for his workers' compensation claim. Thereafter, respondent failed to reply to any of Hunter's numerous and persistent requests for information about his matter, from July 2012 through April 2013, a violation of RPC 1.4(b).[2]

Respondent also failed to provide Hunter with a written fee agreement setting forth the rate or basis of his fee. RPC 1.5(b) provides that: "[w]hen the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation." The facts in the complaint state that respondent had previously represented Hunter in a landlord/tenant matter, an insufficient basis upon which to find

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[2] Respondent was not charged with gross neglect or lack of diligence in connection with his representation of Hunter.

that he "regularly" represented Hunter in the past. Moreover, presumably respondent's fees in the landlord/tenant matter would not have been structured as a contingent fee, which was the basis for the fee in the workers' compensation case. Thus, even assuming that respondent's prior singular representation sufficed for the "regularly represented" portion of the rule, the client would have had no information about respondent's fee structure in a contingent fee case. Therefore, respondent is guilty of a violation of RPC 1.5(b).

Respondent also violated RPC 1.5(c), which states:

> A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated.

Hunter understood that respondent's fee was to be a percentage of the settlement of his claim as a contingent fee. Respondent's failure to set forth in writing the details of the contingent fee was a violation of RPC 1.5(c).

In respect of RPC 1.16(d), respondent was suspended for misconduct in another matter on February 13, 2013, effective one month later, on March 13, 2013. The one-month delay of the effective date of the suspension was designed to give respondent

sufficient time to comply with the requirements of R. 1:20-20, including notifying his clients, such as Hunter, that he was suspended, returning documents, property, and files to his clients; and suggesting that they retain new counsel. Respondent failed to comply with those requirements as they related to Hunter. He took none of the appropriate steps upon termination of the representation to protect Hunter's claim, a violation of RPC 1.16(d).[3]

Finally, on September 27, 2013, the DEC sent a copy of the grievance to respondent at his home address. That mailing was not returned by the post office. A cover letter with the grievance requested respondent's written reply. Respondent failed to provide one. Thereafter, respondent failed to file an answer to the complaint, allowing the matter to proceed to us as a default, all in violation of RPC 8.1(b).

In summary, respondent is guilty of failing to communicate with his client, failing to memorialize a contingent fee agreement, failing to protect a client's interests upon termination of the representation, and failing to cooperate with disciplinary authorities, violations of RPC 1.4(b), RPC 1.5(b) and (c), RPC 1.16(d), and RPC 8.1(b).

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[3] The complaint did not charge respondent with any other RPC violations for failing to comply with R. 1:20-20.

Admonitions have been imposed on attorneys who, upon terminating the representation, have failed to take appropriate steps to protect a client's interests under RPC 1.16(d), such as giving reasonable notice to the client, thereby allowing time for the employment of other counsel. See, e.g., In the Matter of Richard R. Thomas, III, DRB 01-083 (June 29, 2001) (in matters for two separate clients, the attorney unilaterally determined to terminate the representations; by not clearly communicating to each of his clients that he was no longer acting as their lawyer, the attorney failed to protect the clients' interests upon termination of the representations, violations of RPC 1.16(d)) and In the Matter of Anthony F. Carracino, DRB 99-340 (June 29, 2001) (attorney filed a personal injury complaint on behalf of an infant and his mother, who was the sister of the attorney's paralegal; the paralegal acted as a liaison between his sister and the attorney; after filing a complaint, the attorney determined that he would be unable to make service on the defendants or obtain any recovery on her behalf; therefore, he asked the paralegal to relay that information to his sister; the paralegal told the attorney that he was not in a position to give his sister that news; thereafter, the attorney never notified his client that he had terminated the representation and, later, that the complaint had been dismissed, a violation of RPC 1.16(d)).

If other violations are present, the attorney has a disciplinary history, or other aggravating factors are present, greater discipline may be imposed. See, e.g., In re Magid, 167 N.J. 614 (2001) (reprimand for attorney who unilaterally terminated a client representation and moved to Arizona; the attorney failed to give the client reasonable notice of his departure, thereby failing to protect the client's interests upon termination of the representation, a violation of RPC 1.16(d); the attorney had a prior reprimand for unrelated misconduct); In re Hunt, 215 N.J. 300 (2013) (reprimand for attorney who terminated the representation of a client's matter with just one month remaining before the expiration of the statute of limitations, and then failed to provide the client with reasonable notice, a violation of RPC 1.16(d); other violations also found, including gross neglect, lack of diligence, failure to communicate with the client, a concurrent conflict of interest, recordkeeping deficiencies, making a false statement in connection with a disciplinary matter, and misrepresentation); In re LaVergne, 207 N.J. 28 (2011) (censure for attorney's failure to honor client's request, upon client's termination of representation, to deliver the client's files to him, a violation of RPC 1.16(d); attorney also ignored the DEC's repeated attempts to obtain the client's files so that it could

investigate the grievance, and failed to appear at the DEC hearing, violations of RPC 8.1(b), which were considered to be "egregious" and a "flagrant affront to the disciplinary system;" significant disciplinary history consisting of two reprimands and a six-month suspension; two of those matters included the failure to return the file to four clients).

In addition, in default matters, a reprimand typically is imposed for failure to communicate with clients and failure to cooperate with an ethics investigation, even when combined with other non-serious ethics infractions such as gross neglect and lack of diligence. See, e.g., In re Brandmayr, 220 N.J. 34 (2014) (attorney failed to act with diligence and failed to communicate with his client; prior reprimand); In re Rak, 203 N.J. 381 (2010) (attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of the grievance); and In re Swidler, 192 N.J. 80 (2007) (attorney failed to cooperate with an investigation of an ethics grievance and grossly neglected the matter).

Finally, conduct involving failure to prepare the written fee agreement required by RPC 1.5, 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), failed to communicate with the client (RPC 1.4(b)), and failed to abide by the client's decisions regarding the scope of the representation (RPC 1.2(a)); and In the Matter of Linda M. Smink, DRB 13-115 (October 23, 2013) (attorney failed to communicate, in writing, either to the client or his mother, who had paid the legal fee for the matter, the basis or rate of the fee, a violation of RPC 1.5(b); failed to communicate with the client (RPC 1.4(b)), and failed to retain copies of the client's files (RPC 1.15(d)).

Here, due to respondent's default, a reprimand is the baseline sanction for his misconduct, were there no aggravating factors. There is, however, the presence of respondent's extensive disciplinary history: a 1993 six-month suspension; a 1997 reprimand; a 2005 reprimand; a 2013 three-month suspension; and a 2015 one-year suspension for misconduct in two separate defaults.

This case marks respondent's third consecutive default in the span of one year, and the third time he has failed to cooperate with disciplinary authorities, a requirement for all New Jersey attorneys. Moreover, he continues to commit some of the same misconduct for which he previously has been disciplined. We conclude, thus, that he has both failed to learn from his

prior mistakes and that, by his repeated failure to cooperate and his multiple defaults, he places little value on the privilege to practice law.

In In re Rak, 217 N.J. 278 (2014), an attorney was disbarred after defaulting in four disciplinary matters. There, we found that the attorney had "displayed an unremitting disdain for the attorney discipline system, never taking step one to protect his license to practice law. Respondent has shown that his license to practice law is unimportant to him." Rak had a prior reprimand and two three-month suspensions. In re Rak, supra, 217 N.J. 278, DRB 13-069, (November 7, 2013) (slip op. at 24). We further stated that it is "well-settled that an attorney who shows a repeated disdain for the disciplinary system, the courts and his clients, may be disbarred." In re Rak, supra, 217 N.J. 278, DRB 13-069 (slip op. at 22), citing In re Kantor, 180 N.J. 226 (2004) and In re Kivler, 193 N.J. 332 (2008).

In Kantor, an attorney with a moderate disciplinary history (prior reprimand and three-month suspension) defaulted in a matter involving the abandonment of twelve clients. Although we recommended a six-month suspension, the Court disbarred Kantor for his "utter disregard for the disciplinary process as evidenced by his decision not to cooperate with the ethics investigation, to answer the complaint, to submit mitigation

evidence to the DRB, or to respond to this Court's Order to Show Cause." In re Kantor, supra, 180 N.J. at 232.

In Kivler, the attorney failed to file an answer in a fourth default, against a backdrop of serious prior discipline: two reprimands, a three-month suspension and a three-year suspension. In the disbarment matter, Kivler had substantially abandoned several clients. Citing Kantor, we recommended disbarment for Kivler's "refusal to conform his conduct to the standards governing attorneys in New Jersey, his repeated refusal to cooperate with disciplinary authorities and participate in the disciplinary process, his abysmal indifference to his clients' welfare, and his utter contempt for all arms of the disciplinary system." In re Kivler, supra, 193 N.J. at 342.

The same is true here. As previously noted, this is respondent's third consecutive default in just one year's time and the third time he has failed to cooperate with disciplinary officials. In addition, respondent's prior discipline is more serious than that of the attorneys in Rak or Kantor, above.

Respondent clearly has no respect for the disciplinary system and holds no regard for his license to practice law. Thus, we see no reason to value respondent's right to practice law more

than he does himself. Therefore, we recommend that respondent be disbarred.

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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Hugo L. Moras
Docket No. DRB 15-355

Decided: July 27, 2016

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh	X					
Boyer	X					
Clark	X					
Gallipoli	X					
Hoberman	X					
Rivera	X					
Singer	X					
Zmirich	X					
Total:	9					

Ellen A. Brodsky
Chief Counsel