SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 15-413 and 15-414
District Docket Nos. VII-2015-0002E
and VII-2014-0011E

IN THE MATTERS OF	
MARK H. JAFFE	
AN ATTORNEY AT LAW	

Decision

Argued: April 21, 2016

Decided: September 9, 2016

Christopher Josephson appeared on behalf of the District VII Ethics Committee (Docket No. DRB 15-413).

Colleen M. Crocker appeared on behalf of the District VII Ethics Committee (Docket No. DRB 15-414).

Pamela Lynn Brause appeared on behalf of respondent.

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

These matters were before us on disciplinary stipulations filed by the District VII Ethics Committee (DEC). They were consolidated for the purpose of issuing a single form of discipline. In DRB 15-413, respondent admitted having violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the

status of a matter), RPC 8.1(b) (failure to cooperate with disciplinary authorities), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). In DRB 15-414, respondent admitted that he lacked diligence, failed to communicate with a client, and failed to protect a client's interests upon termination of the representation, violations of RPC 1.3, RPC 1.4(b), and RPC 1.16(d), respectively.

We determine to impose a censure for the combined misconduct in these matters.

Respondent was admitted to the New Jersey bar in 1988. On June 30, 1998, he received a reprimand for gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with an ethics investigation. In re Jaffe, 154 N.J. 136 (1998).

On July 18, 2012, respondent was reprimanded for lack of candor to a tribunal. Prior to a hearing in municipal court, respondent sent an untruthful and misleading letter, by facsimile, to the municipal court, addressed to the judge, in which he stated that he could not continue to represent a client whose case was scheduled for the following week. Respondent claimed that the client had not contacted him in any fashion about the case. That statement was untrue. When the judge

addressed the issue with respondent before his appearances that morning, respondent again misled the judge that the client in the upcoming case had not communicated with him. Based on respondent's representations, the judge permitted respondent to withdraw from the case. Respondent then failed to abide by the court's directive that he notify the client that he had been relieved as counsel. The client first learned of it when he appeared in court on the scheduled hearing date a week later. Respondent did not appear, and the client provided testimony and documentary evidence of communications over the course of the entire representation. In re Jaffe, 211 N.J. 1 (2012).

I. The B.M.O. Matter — DRB 15-413 (District Docket No. VII-2015-0002E)

The facts are contained in a signed, undated disciplinary stipulation between respondent and the DEC.

In January 2012, B.M.O. retained respondent to file an expungement petition in Middlesex County, pursuant to N.J.S.A. 2C:52-2(a)(2).[1] On December 15, 2012, B.M.O. paid respondent his full $2,000 fee.

[1] Because expungement matters are confidential, we refer to grievant by initials.

In September 2005, B.M.O., a Florida resident, had been charged with aggravated assault and disarming a law enforcement officer. In April 2006, he pleaded guilty to an amended charge of aggravated assault (fourth degree), and was sentenced to three years' probation. In 2007, he was discharged early from probation.

When he retained respondent, B.M.O. understood that he would become eligible for an expungement in November 2012. B.M.O. flew from Florida to New Jersey to meet with respondent on three occasions between March 2012 and March 2013, to facilitate the expungement.

The first meeting took place at respondent's office on March 24, 2012. B.M.O.'s parents were present with him. During the meeting, respondent took a telephone call from another client and placed the caller on speaker phone. The other client had been arrested for assaulting his father. B.M.O. and his parents, thus, became privy to the other client's confidential information.[2]

On August 23, 2012, B.M.O. again met with respondent. On this occasion, too, respondent took telephone calls from other clients in B.M.O.'s and his parents' presence. He then

[2] The stipulation did not address respondent's potential violation of RPC 1.6 in this regard.

instructed B.M.O. to discuss his matter not with him, but with an office intern, David Lee.

On March 23, 2013, B.M.O. again flew to New Jersey to meet with respondent but, once he arrived at his law office, respondent told him that he was unavailable for their meeting.

From June 2012 to April 2013, B.M.O.'s parents sent numerous e-mails and other correspondence to respondent, requesting information about the case and expressing concern about his apparent lack of attention to their son's matter. The e-mails specifically indicated that respondent had "passed off" B.M.O.'s case to his paralegal, while failing to inform the paralegal about pertinent facts and the law governing expungements.

On April 10, 2013, B.M.O. sent respondent's paralegal, Marshall Ferguson[3], five character statements, which were required for the expungement petition. On that same day, Ferguson confirmed his receipt of those documents.

As of June 3, 2013, respondent had not yet filed the expungement petition, prompting B.M.O. to send him an e-mail, that day, asking respondent to dedicate himself to obtaining the expungement. He requested, in the alternative, that respondent

[3] Alternately referred to in the record as Marshawn Ferguson.

return his legal fee, so that he could retain another attorney. Respondent then assigned the matter to David Lee, an intern, who sent B.M.O. three sets of incorrect and incomplete documents for his signature.

On June 12, 2013, still without an expungement, B.M.O. called and e-mailed respondent to terminate the representation. He also demanded a refund of the $2,000 that he had paid respondent. Later that day, respondent called B.M.O., pleading for another chance to complete the case and agreeing to personally handle the matter. Despite that promise, later that same day, Ferguson, respondent's paralegal, e-mailed expungement documents to B.M.O. that were incorrect and incomplete. Ferguson told B.M.O. that the documents would be corrected later.

On June 18, 2013, respondent asked B.M.O. to call him between 2:00 p.m. and 3:00 p.m. that day, to discuss his case. When B.M.O. called at the appointed time, respondent told him that he was in court, could not speak with him, and to call him back at 8:00 p.m. that evening. When B.M.O. called as directed, respondent told him that he was in a meeting with other clients and then hung up the telephone.

The next day, June 19, 2013, B.M.O. sent respondent an e-mail, terminating the representation. On June 20, 2013, he sent respondent a certified letter confirming the termination of the

representation and requesting the return of the $2,000 legal fee and his case file.

Also on June 20, 2013, but after B.M.O. had terminated the representation, respondent filed an expungement petition in Middlesex County. The petition lacked required character statements and law enforcement agency letters. The Middlesex County Prosecutor's office filed an objection that identified other deficiencies, namely, respondent's failure to include the petition, a proposed final order, and certain "demographic" information.

On July 15, 2013, B.M.O. sent respondent an e-mail reiterating his June 20, 2013 letter-termination of the representation and again requesting the return of both the legal fee and his file. Respondent did not reply to the e-mail.

Unaware that respondent had already filed a petition on his behalf, B.M.O. attempted to file a pro se expungement petition, on October 11, 2013, with the Middlesex County authorities. B.M.O. called the county, on October 16, 2013, to confirm its receipt of his petition. He then learned that respondent had filed an expungement petition, on June 21, 2013, and had already paid the filing fee. Because respondent's petition was filed first, B.M.O.'s petition was rejected. When B.M.O. called

respondent about the matter, respondent "refused to speak with him."

On November 8, 2013, the Honorable Alberto Rivas, J.S.C., allowed B.M.O.'s petition to proceed. Thereafter, on March 4, 2014, Judge Rivas granted B.M.O.'s petition and dismissed respondent's for failure to comply with N.J.S.A. 2C:52-1 et seq.

According to the stipulation, respondent "asserts that he attempted" to refund B.M.O.'s fee by sending him a check for that purpose. B.M.O., however, never received such a check. Moreover, there is no evidence in the record to support respondent's assertion that he sent a check to B.M.O. On October 19, 2015, respondent assured the DEC investigator, through counsel, that he would send B.M.O. a refund check for $2,000.

On March 14, 2014, the DEC sent respondent a letter enclosing B.M.O.'s grievance and requesting a reply within ten days. Respondent failed to reply.

On March 27, 2014, the DEC sent respondent a second letter requesting his cooperation with the ethics investigation. Respondent failed to reply to that letter as well.

Subsequently, the DEC learned that respondent had relocated his law office from 195 Nassau Street to 245 Nassau Street, Princeton. Although the DEC had sent the March 14 and March 27, 2013 letters to respondent at 195 Nassau Street, they were not

returned as "unclaimed" or "undeliverable." Nonetheless, on April 25, 2014, the DEC sent another letter to respondent at the new, 245 Nassau Street address. Respondent failed to reply.

On May 1, 2014, the DEC investigator spoke with respondent by telephone and requested a reply to the grievance by May 22, 2014. Respondent failed to file a reply.

Respondent stipulated that his failure to act on B.M.O.'s behalf constituted gross neglect and a lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively. He also failed to keep his client adequately and accurately informed about events in the case, a violation of RPC 1.4, presumably (b).

Respondent stipulated that, by filing a deficient expungement petition after B.M.O. had terminated the representation, and by refusing to return his fee and case file, he had engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, violations of RPC 8.4(c).

Respondent also stipulated that his petition, filed after the representation was terminated, caused "substantial confusion and delay in adjudicating the petition," constituting conduct prejudicial to the administration of justice, a violation of RPC 8.4(d).

Finally, respondent concededly failed to reply to numerous lawful demands from ethics authorities for information about the case, a violation of RPC 8.1(b). The DEC recommended a reprimand for respondent's misconduct in the B.M.O. matter.

II. The Matlock Matter – DRB 15-414 (Docket No. VII-2014-0011E)

The facts are contained in a signed, undated disciplinary stipulation between respondent and the DEC.

On February 22, 2013, Torrey Matlock retained respondent to defend him against criminal charges of second-degree possession of a controlled dangerous substance with intent to distribute (N.J.S.A. 2C:35-5B(10)(B)), and fourth-degree possession of a controlled dangerous substance, marijuana over 50 grams (N.J.S.A. 2C:35-10A(3)).

At a meeting with respondent a few days later, Matlock signed a fee agreement providing for a $3,800 fee and gave respondent two cashier's checks totaling $3,500 toward the fee. On March 21, 2014, he gave respondent an additional $100.

Between February and July 2014, respondent appeared with Matlock in criminal court in Mercer County approximately six to eight times. Respondent requested an adjournment each time. Respondent neither told his client why the adjournments were necessary nor what actions he was taking in Matlock's defense,

beyond having sent a single letter to the prosecutor about the case. Respondent stipulated that his inaction constituted lack of diligence, a violation of RPC 1.3.

During the fourteen months that respondent represented Matlock, respondent never explained to Matlock the need for adjournments. Matlock was aware only that respondent sought to have the second-degree charge amended to a third-degree charge, and that he sent a single letter to the prosecutor. Respondent stipulated that he had failed to explain the matter to Matlock to the extent reasonably necessary for him to make informed decisions about the representation.[4]

Respondent repeatedly had assured Matlock that he was always available at his office, including weeknights and weekends. However, respondent failed to meet with Matlock on multiple occasions when he visited respondent's office.

Although Matlock appeared for the six to eight court appearances on time, respondent was consistently tardy, prompting even the trial judge to comment on respondent's chronic tardiness.

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[4] The stipulation did not address a violation of RPC 1.4(c) in this regard.

When Matlock arrived at respondent's office for his final appointment, he discovered that respondent had relocated. He called respondent, who told him that he was on another call and to call back. Matlock had no prior notice that respondent had relocated his law practice.

Respondent stipulated that his failure to keep his client reasonably informed about the status of his case and to consult with Matlock in preparing a defense violated RPC 1.4(b).

At a July 9, 2014 court appearance attended by Matlock and respondent, Matlock requested that respondent be relieved as his counsel, in favor of a public defender. He also requested a copy of his file from respondent, because its documents were vital to his continued defense.

At an undisclosed point in time, respondent told Matlock that he had lost the client file in his office relocation. Respondent made no further attempt to locate it. Matlock did not receive a copy of his file until November 14, 2014, after the DEC investigator requested it from respondent. Moreover, the investigator, not respondent, copied the file and provided it to Matlock.

Respondent stipulated that he violated RPC 1.16(d) by his failure to provide Matlock with a copy of his file within a reasonable time after the termination of the representation.

The stipulation contains no mitigating or aggravating factors, and no mention of respondent's prior disciplinary history or the existence of the companion stipulation.

The stipulation called for a reprimand or censure in the Matlock matter. The DEC recommended a reprimand.

Following a review of the stipulations, we are satisfied that the facts recited therein clearly and convincingly establish that respondent's conduct was unethical.

In the B.M.O. matter, respondent failed to file an expungement petition for his client, despite many attempts by the client and his parents to spur respondent to action. He also failed to communicate with B.M.O., despite his numerous attempts to obtain information, violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b), respectively.

Immediately after B.M.O. terminated the representation, respondent filed a petition that inherently misrepresented to the court that he still represented him. Moreover, respondent never told his now former client that he had filed a petition. Respondent stipulated that his actions constituted a violation of RPC 8.4(c). Respondent's filing also caused delay and confusion, which prejudiced the administration of justice in the case, a violation of RPC 8.4(d). Finally, respondent failed to

cooperate with the ethics investigation, a violation of RPC 8.1(b).

In Matlock, respondent failed to diligently defend his client against criminal charges and ignored numerous requests for information about the case, violations of RPC 1.3 and RPC 1.4(b), respectively. Respondent also failed to provide Matlock or his new attorney with a copy of the client file for an extended period of time after Matlock terminated the representation, a violation of RPC 1.16(d).

Respondent's most serious misconduct occurred in the B.M.O. matter, when he misrepresented in court filings that he still represented B.M.O., even though B.M.O. had already terminated the representation, violations of RPC 8.4(c) and RPC 8.4(d). When an attorney's lack of candor occurs in multiple court matters or is present alongside other misconduct, prior discipline, or a default posture of the disciplinary proceeding, reprimands or censures have been imposed. See, e.g., In re Marraccini, 221 N.J. 487 (2015) (reprimand for attorney who, in approximately fifty eviction complaints filed on behalf of a property management company, attached verifications that had been pre-signed by the manager, who had since died; the attorney was unaware that the manager had died and, upon learning of it, withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c),

and RPC 8.4(d); mitigation considered); In re Schiff, 217 N.J. 524 (2014) (reprimand for attorney who filed inaccurate certifications of proof in connection with default judgments; specifically, at the attorney's direction, his staff prepared signed, but undated, certifications of proof in anticipation of defaults; thereafter, when staff applied for a default judgment, at the attorney's direction, staff completed the certifications, added factual information, and stamped the date; although the attorney made sure that all credits and debits reflected in the certification were accurate, the signatory did not certify to the changes, after signing, a practice of which the attorney was aware; the attorney was found guilty of lack of candor to a tribunal and failure to supervise non-lawyer employees, in addition to RPC 8.4(a) and RPC 8.4(c)); and In re Manns, 171 N.J. 145 (2002) (attorney reprimanded for misleading the court, in a certification in support of a motion to reinstate the complaint, as to the date the attorney learned of the dismissal of the complaint, a violation of RPC 3.3(a)(1) and RPC 8.4(c); the attorney also lacked diligence in the case, failed to expedite litigation, and failed to properly communicate with the client; prior reprimand; in mitigation, we considered that the conduct in both matters had occurred during the same time frame and that the misconduct in the second matter may have resulted

from the attorney's poor office procedures); In re Duke, 207 N.J. 37 (2011) (censure for attorney who failed to disclose his New York disbarment on a form filed with the Board Of Immigration Appeals, a violation of RPC 3.3(a)(5); the attorney also failed to adequately communicate with the client and was guilty of recordkeeping deficiencies; prior reprimand; the attorney's contrition and efforts at rehabilitation justified only a censure); In re Hummel, 204 N.J. 32 (2010) (censure in a default matter for attorney who made misrepresentations in a motion filed with a court, a violation of RPC 3.3(a) and RPC 8.1(b); gross neglect, lack of diligence, and failure to communicate with the client also found); and In re Monahan, 201 N.J. 2 (2010) (censure for attorney who submitted two certifications to a federal district court in support of a motion to extend the time within which to file an appeal; the attorney misrepresented that, when the appeal was due to be filed, he was seriously ill and confined to his home on bed rest and, therefore, either unable to work or unable to prepare and file the appeal, a violation of RPC 3.3(a)(1); the attorney also practiced law while ineligible).

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients, even when found alongside additional violations, such as failure to return the client file

upon termination of the representation and failure to cooperate with ethics authorities, generally results in the imposition of an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, and the seriousness of the attorney's disciplinary history. See, e.g., In the Matters of Ralph Gerstein, DRB 14-049 and 14-050 (June 19, 2014) (admonition for attorney who, in two separate client matters, engaged in gross neglect, lack of diligence, and failure to communicate with the clients, in violation of RPC 1.1(a), RPC 1.3, and RPC 1.4(b); in one matter, he failed to return the client file upon termination of the representation (RPC 1.16(d)), failed to cooperate with the ethics investigator (RPC 8.1(b)), and misrepresented to the client the status of the case; the admonition was premised on compelling mitigation: the attorney's unblemished disciplinary record; the aberrational nature of the conduct; the nexus between the misconduct and the attorney's development of a condition that required a medical procedure; his severe depression at the time of the misconduct, for which he sought treatment; his admission of wrongdoing; and his deep remorse); In the Matter of James E. Young, DRB 12-362 (March 28, 2013) (admonition for attorney who was retained to take over a workers' compensation claim for which prior counsel had already

filed a petition; thereafter, the attorney took no action and failed to appear at court-ordered hearings, resulting in the dismissal of the petition, with prejudice, for lack of prosecution; for the next five or six years, despite the client's attempts to obtain information about the status of the case, the attorney failed to inform him of the dismissal; the attorney finally admitted his mistakes to the client and paid him an amount from his own funds that he estimated the claim to be worth, to make the client whole; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b); in mitigation, the attorney had no prior discipline in thirty-two years at the bar); In re Calpin, 217 N.J. 617 (2014) (reprimand for attorney who failed to oppose the plaintiff's motion to strike his client's answer, resulting in the entry of a final judgment against his client; the attorney never informed his client of the judgment; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b); notwithstanding the presence of some mitigation in the attorney's favor, the attorney received a reprimand because of the "obvious, significant harm to the client," that is, the judgment); In re Burstein, 214 N.J. 46 (2013) (reprimand for attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; although the attorney had no disciplinary record, the significant economic harm to the client justified a

reprimand); In re Coffey, 206 N.J. 324 (2011) (on a motion for discipline by consent, reprimand imposed for attorney's gross neglect, lack of diligence, and failure to adequately communicate with clients in three matters; prior admonition; mitigating factors included the attorney's admission of wrongdoing, his discharge from his employment, and his parents' failing health); In re Shapiro, 201 N.J. 201 (2010) (reprimand for misconduct in two client matters; in one matter, the attorney engaged in gross neglect and lack of diligence by failing to probate a will, settle the estate, and re-file pleadings that had been rejected by the court; in the second matter, the attorney failed to set forth in writing the basis or rate of his fee and lacked diligence by failing to forward his client's discovery responses to defense counsel and by failing to oppose the defendant's motions to dismiss the complaint, which were granted; in both matters, the attorney failed to communicate with his clients; prior reprimand); and In re Uffelman, 200 N.J. 260 (2009) (reprimand imposed for gross neglect, lack of diligence, and failure to communicate with a client; although the attorney had no disciplinary record, the reprimand was premised on the extensive harm caused to the client, who was forced to shut down his business for three months as a result of the attorney's misconduct).

There are, however, aggravating factors for our consideration.

First, there is respondent's totally dismissive treatment of his clients. In the B.M.O. matter, the client traveled from Florida three times to meet with respondent. During the first two meetings, respondent took telephone calls from other clients and discussed their matters over speakerphone in B.M.O.'s presence, an embarrassing circumstance for B.M.O. and his parents, who were also present at both meetings, as well as an apparent breach of attorney/client confidence with those other clients.

On the third occasion, B.M.O. flew to New Jersey from Florida specifically to meet with respondent, only to have respondent inform him that he was unavailable for their meeting, an unprofessional show of callousness toward his client.

In further aggravation, in the Matlock matter, the client's liberty was at stake, yet respondent took no action to properly defend him. Respondent also caused Matlock to appear in court eight times, just to seek trial adjournments for respondent's own, undisclosed reasons. For respondent's $3,600 fee, Matlock received precious little before seeking the assistance of a public defender. In fact, after sixteen months and $3,600 in legal fees, Matlock considered his legal situation unchanged. He

had no prior criminal convictions and was anxious for a resolution of the charges against him, so that he could seek employment.

Lastly, there is respondent's prior discipline. In 1998, he was reprimanded for gross neglect, lack of diligence, failure to communicate events in the case to the client, and failing to cooperate with the ethics investigation – some of the very same violations present in the B.M.O. matter.

More recently, in July 2012, respondent was again reprimanded, for lack of candor to a tribunal. In that matter, respondent sent an untruthful and misleading letter to a municipal judge in which he claimed that he could not continue representing his client because his client would not contact him, an untrue statement. When respondent appeared before the judge, he again misled the judge about the extent to which the client and he had communicated regarding the case.

Less than a year after his 2012 reprimand for lack of candor in his dealings with a municipal judge, respondent engaged in the same misconduct here, in the B.M.O. matter, again sending a misleading letter to a municipal judge. Clearly, respondent has learned nothing from his prior mistakes.

In In re Duke, supra, 207 N.J. 37, the attorney was censured for failing to disclose his disbarment in New York to

the Board of Immigration Appeals. He also failed to communicate with the client and engaged in recordkeeping improprieties. Like respondent, Duke had prior discipline – a reprimand.

Thus, we determine that a single censure is the appropriate sanction for the totality of respondent's misconduct in these matters.

We further require respondent to provide proof to the OAE, within thirty days, that he refunded B.M.O.'s $2,000 fee, as he promised ethics authorities he would, in October 2015.

Member Gallipoli 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 Mark H. Jaffe
Docket Nos. DRB 15-413 and DRB 15-414

Argued: April 21, 2016

Decided: September 9, 2016

Disposition: Censure

Members	Disbar	Suspension	Censure	Disqualified	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