SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-004
District Docket Nos. VI-2014-0005E
and VI-2014-0009E

IN THE MATTER OF	:
KEITH O.D. MOSES	:
AN ATTORNEY AT LAW	:

Decision

Argued: April 21, 2016

Decided: September 29, 2016

Maria P. Vallejo appeared on behalf of the District VI Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for a censure filed by the District VI Ethics Committee (DEC). The two-count complaint charged respondent with violations of RPC 8.1(b) (failure to cooperate with an ethics investigation) (count one), RPC 1.3 (lack of diligence), RPC 1.4, presumably (b) (failure to communicate with the client), and RPC 8.1(b) (count two). We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1990. In 2002, he received an admonition for failing to cooperate with an ethics investigation into two grievances filed against him. In the Matter of Keith O.D. Moses, DRB 02-248 (October 23, 2002). On November 3, 2011, he received a reprimand for lack of diligence, failing to communicate with the client, and unilaterally deciding not to pursue the client's claim, without first discussing it with the client. In re Moses, 208 N.J. 361 (2011). Effective June 29, 2012, respondent was temporarily suspended for failing to pay costs assessed in the disciplinary proceedings that led to his 2011 reprimand. In re Moses, 210 N.J. 481 (2012). He was reinstated on July 19, 2012. In re Moses, 210 N.J. 614 (2012). On April 26, 2013, respondent received a reprimand for negligent misappropriation, recordkeeping violations, failing to cooperate with the Office of Attorney Ethics (OAE), failing to appear for one demand audit and to appear on time for another, and failing to provide documentation evidencing that he had corrected his recordkeeping improprieties, as directed by the OAE. In re Moses, 213 N.J. 497 (2013). Effective February 7, 2014, respondent was suspended for three months for knowingly disobeying the rules of a tribunal and engaging in conduct prejudicial to the administration of justice. In re Moses, 216 N.J. 432 (2014). Finally, on May 19,

2016, respondent received a censure for entering into an improper business transaction with a client (RPC 1.8(a)). In re Moses, 225 N.J. 4 (2016).

Respondent remains suspended to date.

We now turn to the facts.

The Taylor Matter — District Docket No. VI-2014-0005E

On April 1, 2010, William John Taylor retained respondent to file a Chapter 13 bankruptcy petition to prevent the sheriff's sale of a property in Virginia while he negotiated a mortgage loan modification with his lender, U.S. Bank. Taylor first met with respondent in January 2010 on an unrelated matter. He returned in mid-March to discuss the pending foreclosure on his Fairfax, Virginia condominium, where he lived with his family. Taylor was familiar with bankruptcy proceedings, having filed three previous business bankruptcies and one personal bankruptcy.

On Thursday, April 1, 2010, Taylor paid respondent $2,335 for the Chapter 13 matter. During their meeting, Taylor explained the need to file the petition immediately, because the Fairfax property was scheduled for sheriff's sale on Monday, April 5, 2010. According to Taylor, respondent assured him that he could file the petition before the scheduled sale. In fact,

respondent attempted to file the petition electronically, in Taylor's presence, that very day. Taylor did not recall respondent telling him that the bankruptcy court's electronic filing system would not accept the petition at that time.

Respondent testified that he also attempted to file the petition electronically on Friday, April 2 and Saturday, April 3, 2010, but an "electronic glitch" at the bankruptcy court prevented him from doing so. Respondent was out of town on Sunday, and successfully filed the petition electronically on Monday, April 5, 2010, at about 9:30 a.m.

The petition, however, was incomplete. Respondent testified that, under the Chapter 13 bankruptcy rules, a debtor may file a petition that is incomplete in some respects (a "barebones" petition). Certain deficiencies, such as those present in the petition he filed in Taylor's behalf, required correction within fifteen days, under penalty of dismissal. The petition respondent filed in Taylor's behalf lacked a Statement of Social Security Number; a Credit Counseling Certificate; a Chapter 13 Plan; and the Motion and Fee Amount on the Attorney Disclosure Statement.

The sheriff's sale took place at 8:30 a.m. on Monday. Shortly thereafter, the new owner appeared at Taylor's door and demanded that he vacate the premises. Surprised, Taylor told the

putative new owner that the sale should have been halted by his bankruptcy filing.

Respondent recalled that Taylor had called him that day "yelling" that the new owners were coming to take his house because the sale had gone through. As noted, respondent had filed the petition about an hour after the sale. According to respondent, Taylor had never given him any documentation stating the exact time that the sheriff's sale was scheduled to take place, but had indicated only that it was scheduled for April 5, 2010. Respondent promised Taylor that he would "do everything in [his] power to reverse the situation." Therefore, on April 8, 2010, respondent filed a motion to impose a stay of the sale of the Fairfax property and to shorten time, so that the court would hear the matter on an expedited basis.

On April 23, 2010, respondent filed a proposed plan of reorganization. On April 28, 2010, before the court ruled on the motion and plan, the bankruptcy petition was dismissed because respondent had not corrected the aforementioned deficiencies within the fifteen-day period.

Respondent corrected the deficiencies in the petition and, on May 5, 2010, the bankruptcy court vacated the dismissal. On May 12, 2010, however, respondent's motion to impose the automatic stay on the Fairfax property was denied. That same

day, respondent filed a new Chapter 13 plan to correct his use of the wrong bankruptcy form in his original submission. Subsequently, however, the bankruptcy court notified respondent that the new plan, too, had been submitted on the wrong form.

On June 24, 2010, the bankruptcy court granted U.S. Bank's application for relief from the automatic stay, to complete the sale of the Fairfax property. On June 30, 2010, after a contested confirmation hearing on Taylor's proposed Chapter 13 plan, the bankruptcy petition was once again dismissed, ostensibly based on creditors' objections to the Chapter 13 plan.

One month later, on July 23, 2010, respondent filed a motion to reinstate the case, which generated objections from various creditors. Respondent also filed an appeal on instructions from Taylor, who still sought to "buy time" while he tried to obtain a modification of U.S. Bank's mortgage loan. At an October 13, 2010 hearing, respondent's motion to reinstate the petition was denied and the matter was dismissed.

Bankruptcy court records indicate that, thereafter, several administrative actions took place to conclude the case, none of which required input from the parties to the bankruptcy.

Taylor maintained that respondent had not adequately communicated with him during the representation, leaving him in

the dark about the events in his bankruptcy case. On cross-examination, however, respondent elicited testimony from Taylor to the contrary. Taylor ultimately admitted that he was aware of important events in the case as they transpired, because the bankruptcy court generated notices of the filings in the case. In addition, Taylor had visited the bankruptcy court in May 2010, reviewed various documents there, and was fully aware of the status of the case that month.

Taylor also admitted that he and respondent met in respondent's office in May 2010, at which time respondent explained the petition, amendments to his Chapter 13 plan, and respondent's April 8, 2010 filing immediately after the sheriff's sale, which was designed to restore the case.

In late May or early June, Taylor and respondent discussed the case again, including the bank's pending relief from stay motion. Taylor admitted that respondent explained the bankruptcy stay process to him at that time.

In August and September 2010, Taylor and respondent discussed further developments in the case, including respondent's pending motion to reinstate the petition and objections filed by creditors. On September 7, 2010, Taylor and respondent appeared together in bankruptcy court for a hearing on the automatic stay of the Fairfax property.

Finally, Taylor testified that he and respondent were in court on October 13, 2010, when the bankruptcy court denied his motion to reinstate the petition, as memorialized in a court order entered on October 18, 2010. Taylor later testified that his prior testimony had been incorrect and that respondent had failed to appear at the October 13, 2010 court hearing. Respondent insisted that he was, in fact, present for the hearing that day.

We cannot discern from the record why the Chapter 13 petition was dismissed in October 2010. According to Taylor, he had concluded, through his own research, that his total debts may have exceeded the maximum allowed for a Chapter 13 debtor. Respondent was asked if, as of October 2010, he knew that to be the case. Respondent testified that it may have come to light that Taylor's total assets, not debts, exceeded the allowable amount for Chapter 13, but that "the only device that can stop the foreclosure of your home [is still] a bankruptcy filing."

Respondent further testified that, throughout the representation, he kept his client informed about events in the case, and that Taylor also received regular notices from the bankruptcy court whenever any action was taken in the case. He stated that all communications between the two ceased in late 2010.

In 2011, respondent moved his Jersey City office from 665 Newark Avenue to 591 Summit Avenue. Taylor asserted that he had visited respondent's office to discuss his matter, only to find that it had been closed. Respondent, however, noted that Taylor easily could have called or e-mailed him, as he had done in the past, because respondent maintained the same office telephone number, cellular number, and e-mail address after relocating his office. Therefore, "the lines of communications were always open [irrespective] of where I was located." Despite those open lines of communication, Taylor did not contact him for all of 2011 and 2012. Respondent next heard from Taylor in 2013, when Taylor filed a request for fee arbitration.

The complaint also charged that respondent failed to cooperate with the ethics investigation in the Taylor matter. Respondent admitted receiving the grievance. By letter dated April 24, 2014, he requested additional time to reply to it. On April 27, 2014, respondent sent the investigator a second letter stating that he had suffered a personal tragedy, the loss of his son, and, therefore, needed additional time to reply to the grievance.

In light of respondent's loss, the presenter waited three months, until July 22, 2014, before requesting his reply to the grievance. On that date, and again on August 7, 2014, the

investigator sent respondent e-mail requests for a written reply and for his file in the matter. In an August 25, 2014 e-mail reply, respondent requested, and was given, until the end of the month to submit his reply. Respondent admitted, however, that he never filed a reply to Taylor's grievance.

In respect of the DEC's requests for Taylor's client file, respondent maintained that he had difficulty obtaining it. The file was stored in the basement of his former law office at 665 Newark Avenue. When he moved to 591 Summit Avenue "in 2011 or 2012," he left a number of files behind. In 2013, when he asked his former landlord for access to those files, he was rebuffed, because he still owed the former landlord back rent. He was not able to recover his files, including Taylor's file, until sometime in 2014.

Respondent ultimately took some responsibility for his inaction, stating that he "should have been more forthcoming" with the investigator and should have replied in writing to the grievance.

II. The Baez Matter – District Docket No. VI-2014-0009E

On April 28, 2014, Marisol Baez filed a grievance against respondent based on his handling of her medical disability claim. Because Baez failed to cooperate with the ethics

investigation, the presenter recommended dismissal of the underlying grievance.

According to the complaint, although the grievance was eventually dismissed, respondent failed to cooperate with the DEC during the investigation. At the DEC hearing, respondent admitted that he did not promptly reply to requests for information about the grievance or for a copy of Baez' client file.

Respondent received a copy of Baez' April 16, 2014 grievance. As in the Taylor matter, above, on April 24, 2014, respondent sent a letter requesting additional time to reply. On April 27, 2014, he sent a letter requesting additional time due to his son's recent death.

As in the Taylor matter and out of respect for respondent's loss, the investigator held the matter for three months. On July 22 and August 7, 2014, she renewed her requests in e-mails to respondent. In an August 25, 2014 reply e-mail, respondent requested until the end of the month to submit a reply and to turn over his file.

Respondent admitted at the hearing that he never replied in writing or produced his file. He also conceded that he should have cooperated sooner with the investigator.

In mitigation, respondent offered anecdotal evidence of his own medical maladies during the pendency of these matters. He was taken ill in May 2010, following the loss of his son, and hospitalized in August 2010, due to complications from diabetes and high blood pressure. In addition, he and his spouse were in the process of divorcing during this time.

In the Taylor matter, the DEC concluded that, as respondent admitted, his failure to promptly reply to the grievance and to produce his client file constituted a violation of RPC 8.1(b).[1]

The DEC dismissed the charge that respondent lacked diligence in the representation. The DEC noted that, although respondent made "some strategic blunders" in Taylor's bankruptcy, he worked diligently and did not charge Taylor for additional legal services to correct his mistakes along the way.

Likewise, the DEC dismissed the allegation that respondent failed to communicate with Taylor about the case, specifically concluding that Taylor was aware of the events in his case, through his communications with respondent, visits to the bankruptcy court, and his receipt of notices from the court. Moreover, the DEC found that, after communications between respondent and Taylor ceased in late 2011, Taylor still had

[1] This Rule is mistakenly referred to as RPC 8.1(g) in the hearing panel report.

access to his lawyer via telephone and e-mail, but chose not to contact him.

In the Baez matter, the DEC found respondent guilty of having violated RPC 8.1(b) for his admitted failure to promptly comply with the investigator's requests for a written reply to the grievance and for the client's file.

The panel cited mitigation, including the death of respondent's son within days of his receipt of the grievances, respondent's own poor health, and his divorce. In aggravation, the panel cited respondent's 2002 admonition, 2011 reprimand, 2012 temporary suspension, 2013 reprimand, and 2014 three-month suspension, mistakenly referred to as another temporary suspension.

The DEC recommended a censure.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Respondent admitted that he failed to cooperate with the ethics investigator in both the Taylor and Baez matters. In both matters, he failed to submit a written reply to the grievances and to produce his client files, despite many opportunities to do so. In so doing, respondent violated RPC 8.1(b).

In the Taylor matter, respondent was also charged with lack of diligence and failure to communicate with the client. In respect of the former, Taylor retained respondent on Thursday, April 1, 2010, to file a Chapter 13 petition. By Taylor's own account, respondent attempted to file it electronically that day, with Taylor in attendance in the office. Respondent experienced problems filing it electronically that day and two days later. He finally succeeded on Monday, April 5, 2010, four days after his retention. Taylor was obviously distressed that the sheriff's sale had occurred an hour before the petition was filed. However, there is no evidence that respondent was aware of the scheduled time of the April 5, 2010 sheriff's sale, namely 8:30 a.m. Thus, especially in the context of respondent's eleventh-hour retention, we cannot conclude that respondent lacked diligence in his attempts to timely file the petition.

Likewise, we do not find that respondent lacked diligence in his subsequent actions. It is true that he filed a "barebones" Chapter 13 petition, which lacked essential information and documents. However, that conduct alone does not bespeak a lack of diligence, as the bankruptcy rules allow for a later filing of such documents and information. Although respondent did not timely amend the petition to include the missing documents and information, which resulted in its

dismissal, he promptly and successfully moved for its reinstatement.

Ultimately, Taylor's petition was again dismissed, but not due to fault on respondent's part. Rather, the record suggests only that the petition was dismissed at the confirmation hearing because the value of Taylor's assets exceeded the allowable limits for Chapter 13. Still, as respondent testified, the filing of a Chapter 13 petition was the only way to stay the foreclosure of Taylor's home.

That, indeed, was Taylor's purpose in retaining respondent at the outset. Specifically, Taylor wanted to stall the foreclosure and sale process while he attempted to negotiate a mortgage modification. Respondent's actions certainly provided Taylor with the opportunity to do so. That Taylor was unsuccessful in his efforts to obtain a mortgage modification and that the petition ultimately was unsuccessful does not render respondent's efforts less than diligent. For these reasons, we agree with the DEC that respondent is not guilty of a lack of diligence and, therefore, dismiss the charged violation of RPC 1.3.

It also is clear from the testimony of both respondent and Taylor that Taylor was well aware of events in his case, as they transpired. Discussions and meetings with respondent, notices

from the bankruptcy court, court appearances attended by respondent and the client, and Taylor's own familiarity with the bankruptcy system from prior encounters, belie the allegation that he was kept in the dark about his matter. We, therefore, agree with the DEC and dismiss the charged violation of RPC 1.4(b).

In summary, we find that respondent failed to cooperate with the ethics investigation in both the Taylor and Baez matters, violations of RPC 8.1(b).

Generally, failure to cooperate with a DEC's investigation results in an admonition, if the attorney does not have an ethics history. See, e.g., In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the District Ethics Committee investigator regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)); In the Matter of Jeffrey M. Adams, DRB 14-243 (November 25, 2014) (attorney failed to cooperate with the District Ethics Committee's attempts to obtain information from him about his representation of a client in connection with the sale of a house, a violation of RPC 8.1(b); in mitigation, we considered that he had no prior final discipline since his 2000 admission to the New Jersey bar); In the Matter of Richard D. Koppenaal,

DRB 13-164 (October 21, 2013) (the attorney admittedly failed to cooperate with the District Ethics Committee's attempts to obtain information about his representation of a client in an expungement matter, a violation of RPC 8.1(b); the attorney had no other final discipline since his 1983 admission to the New Jersey bar); and In the Matter of Raymond A. Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written, formal reply to the grievance and a copy of the filed pleadings in the underlying case, despite repeated assurances that he would do so, a violation of RPC 8.1(b); we took into consideration that the attorney's failure to cooperate was confined to the period during the investigation and that, thereafter, he appeared at the DEC hearing and participated fully during the disciplinary process).

Here, respondent offered mitigation for his misconduct, inasmuch as the loss of his son, his own medical issues, and his divorce affected his ability to timely cooperate with the ethics investigation into these grievances. Still, although he requested, and was given, ample additional time to address these matters, he admittedly failed to do so.

In aggravation, respondent's ethics history demonstrates that he has not learned from prior, similar mistakes. This is the third disciplinary proceeding involving respondent's failure

to cooperate with ethics authorities. Therefore, an admonition is insufficient to address his otherwise minor misconduct here. On that basis alone, a reprimand is warranted.

When we add respondent's prior final discipline to the mix, enhanced discipline is warranted: an October 2002 admonition; a November 2011 reprimand; an April 2013 reprimand; a February 2014 three-month suspension; and a May 2016 censure.

Given respondent's failure to learn from his past mistakes, and his significant disciplinary history, we determine to impose a censure.

Vice-Chair Baugh was recused. 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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Keith O.D. Moses
Docket No. DRB 16-004

Argued: April 21, 2016

Decided: September 29, 2016

Disposition: Censure

MEMBERS	Censure	Recused	Did not participate
Frost	X		
Baugh		X	
Boyer	X		
Clark	X		
Gallipoli			X
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	7	1	1

Ellen A. Brodsky
Chief Counsel