

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 16-016  
District Docket No. IIIA-2014-0016E

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IN THE MATTER OF  
EDMUND P. GLASNER  
AN ATTORNEY AT LAW

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Decision

Decided: October 12, 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 the record filed by the District IIIA Ethics Committee (DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with the client); and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

We determine to impose a reprimand for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 1985. At the relevant times, he maintained a law practice in Toms River, New

Jersey. Pursuant to R. 1:20-12, the Court entered an Order transferring respondent to disability inactive status, effective June 15, 2006. In re Glasner, 187 N.J. 70 (2006).

Effective January 14, 2008, respondent was temporarily suspended from the practice of law for failure to comply with fee arbitration determinations in three client matters. In re Glasner, 194 N.J. 160 (2007). The Court further ordered that, on respondent's satisfaction of all financial obligations, he be returned to disability inactive status.

Effective June 2, 2008, respondent was suspended for one year in a default case encompassing eight client matters. Respondent's misconduct occurred between 2001 and 2006 and consisted of gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client, failure to withdraw from representation, failure to protect a client's interests upon termination of the representation, conduct involving dishonesty, fraud, deceit or misrepresentation, conduct prejudicial to the administration of justice, and failure to cooperate with disciplinary authorities. In re Glasner, 195 N.J. 13 (2008). The Court further ordered that, prior to any reinstatement to practice or return to active status, respondent must provide proof of

fitness to practice, and that, on reinstatement, he practice under the supervision of a proctor for a period of two years.

Service of process was proper in this matter. On December 11, 2014, the DEC sent a copy of the formal ethics complaint, by certified and regular mail to respondent's home address in Massachusetts. The certified mail receipt was returned, indicating delivery on December 12, 2014. The signature, however, is illegible. The regular mail was not returned. Respondent did not timely file a verified answer to the complaint.

On December 4, 2015, the DEC sent a second letter to respondent, by regular mail to his home address, informing him that, unless he filed a verified answer to the complaint within five days, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The regular mail was not returned.

Respondent did not file a verified answer to the complaint by December 17, 2015. Accordingly, on that date, the DEC certified the record to us as a default.

The facts of this matter are similar to the facts that we considered in the prior default matter, in which respondent received a one-year suspension for his misconduct in eight separate client matters. In that case, respondent committed the same violations charged here, during the same time period, but, additionally, he was determined to have abandoned his clients, a more serious infraction than alleged in this case. For the reasons discussed below, we determine that additional discipline is warranted.

In May 2005, Anthony Raymond retained respondent to defend him against a lawsuit filed by a third-party sports memorabilia auction site, Robert Edward Auctions, LLC (REA). Raymond disputed the amount of storage and transaction fees that REA alleged he owed. Respondent agreed to (1) file an answer, counterclaim, and third-party complaint in the pending litigation; (2) seek to have the case removed from Special Civil Part to the Law Division, based on the amount of damages claimed in Raymond's counterclaim and third-party complaint; and (3) keep Raymond apprised of all court dates and deadlines.

Respondent failed to prepare or file the answer, counterclaim, and third-party complaint. Consequently, on August

29, 2005, a default judgment was entered against Raymond, in favor of REA. Respondent failed to inform Raymond that he was unable to prepare and file the answer, counterclaim, and third-party complaint, and failed to contact Raymond regarding the status of his matter. Raymond subsequently retained other counsel to represent him in connection with the REA litigation.

The facts recited in the complaint support most of the charges of unethical conduct set forth therein. Respondent's failure to file a verified answer to the complaint 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). Notwithstanding that rule, each charge in an ethics complaint must be supported by sufficient facts for us to determine that unethical conduct occurred.

The record contains sufficient facts to conclude that respondent violated RPC 1.3 in connection with Raymond's matter. After being retained by Raymond for a specific purpose, respondent completely failed to perform any work in behalf of Raymond, resulting in the entry of the default judgment.

The record also contains sufficient facts to conclude that respondent violated RPC 1.4(b). Respondent made no effort to keep

Raymond informed about the status of his matter. Rather, he allowed a default judgment to be entered against his client, who assumed that respondent was preparing and filing an answer, counterclaim, and third-party complaint in his behalf. By failing to adhere to one of the fundamental duties of counsel – communication with the client – respondent violated RPC 1.4(b).

We decline, however, to find that respondent violated RPC 8.1(b), based solely on his failure to file an answer to the complaint. That RPC, in relevant part, prohibits a lawyer from knowingly failing to respond to a lawful "demand for information" from a disciplinary authority. We do not view a failure to file an answer to a formal complaint to constitute a failure to respond to a demand for information. Indeed, our Court Rules contemplate that a respondent may elect not to file an answer to the complaint and set forth certain consequences for that failure.

Specifically, R. 1:20-4(f) provides that a failure to file a verified answer shall be deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. That Rule does not provide that such a failure shall also constitute a violation of RPC 8.1(b), such as is the case in other Court Rules. See R. 1:20-20(c)

(providing that a failure to comply with that Rule shall also constitute violations of RPC 8.1(b) and RPC 8.4(d)) and R. 1:21-6(i) (providing that a failure to comply with the requirements of the recordkeeping rule or to respond to a request to produce such records shall be deemed a violation of RPC 1.15(d) and RPC 8.1(b)).

Moreover, generally, we have imposed greater discipline in a default matter. See In re Kivler, 193 N.J. 332, 342 (2008), which provides that a respondent's default operates as an aggravating factor, which is sufficient to permit a penalty for misconduct to be further enhanced. Thus, in our view, to find a violation of RPC 8.1(b), based solely on an attorney's failure to file an answer to the complaint, would subject an attorney to double discipline for the same act. We decline to do so.

Thus, the only remaining issue is the appropriate discipline to be imposed for respondent's violations of RPC 1.3 and RPC 1.4(b).

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the harm to the clients, the attorney's disciplinary history, and the presence of aggravating or

mitigating factors. See, e.g., In the Matter of Clifford Gregory Stewart, DRB 14-014 (April 22, 2014) (admonition; attorney who was not licensed to practice law in Washington, D.C. filed an employment discrimination case in the United States District Court for the District of Columbia and obtained local counsel to assist him in handling the matter; after the defendant filed a motion to dismiss the complaint, however, the attorney failed to provide local counsel with a written opposition to the motion until after the deadline for doing so had expired, resulting in the granting of the motion as unopposed; violations of RPC 1.1(a) and RPC 1.3; in addition, the attorney failed to keep his client informed about various filing deadlines and about the difficulty he was having with meeting them, particularly with the deadlines for filing an objection to the motion to dismiss the complaint, violations of RPC 1.4(b) and RPC 1.4(c); we considered the attorney's exemplary, unblemished career of twenty-eight years at the time of the incident); In the Matter of Robert A. Ungvary, DRB 13-099 (September 30, 2013) (admonition; due to the attorney's failure to comply with discovery, his client's civil rights complaint was dismissed; the attorney's motion to vacate the default was denied and a subsequent appeal was dismissed for his failure to timely



prosecute it; the attorney neither informed the client of the dismissal of the appeal nor discussed with him his decision not to pursue it; violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.4(c); although the attorney had been admonished previously, we noted that his conduct in the present matter predated the conduct in the prior matter and that the client and his family had continued to use the attorney's legal services, despite his shortcomings in the civil rights matter); 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 Kurts, 206 N.J. 558 (2011) (attorney reprimanded for mishandling two client matters; in one matter, he failed to complete the administration of an estate, causing penalties to be assessed against it; in the other, he was retained to obtain a reduction in child support payments but at some point ceased working on the case and closed his office; the client, who was unemployed, was forced to attend the hearing pro se, at which time he obtained a favorable result; in both matters, the attorney was found guilty of gross neglect, lack of diligence, failure to communicate with the client, and

failure to memorialize the basis or rate of his fee; mental illness considered in mitigation; no prior discipline).

Here, gross neglect was not charged, only one client matter was involved, and respondent had no prior discipline at the time of the misconduct. In aggravation, however, Raymond suffered economic harm due to respondent's misconduct. Raymond relied on respondent to defend him in the REA litigation. Due to respondent's inaction, a default judgment was entered against Raymond, and he was required to pay a second attorney to defend his interests. Thus, a reprimand is the proper discipline for respondent's misconduct.

As we have noted, generally, greater discipline is imposed in a default matter. Here, however, we decline to increase the quantum of discipline because respondent's conduct in this case occurred during the same period of time as the conduct that led to his suspension in the prior matter, also before us as a default, for factually similar misconduct. See, e.g., In re Hediger, 197 N.J. 21 (2008) (progressive discipline is not required when similar misconduct takes place during the same approximate time, but the disciplinary matters are heard separately).

In sum, based on respondent's ethics violations, his lack of disciplinary history at the time of the underlying misconduct, and the timing of his misconduct, we determine to impose a reprimand.

Member Zmirich voted to impose a censure. 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

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Edmund P. Glasner  
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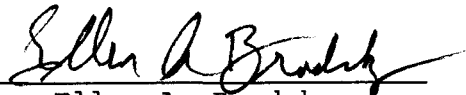
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Decided: October 12, 2016

Disposition: Reprimand

<i>Members</i>	Reprimand	Censure	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