

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-003
District Docket No. VIII-2015-0005E

IN THE MATTER OF
DANIELLE M. JOSEPH
AN ATTORNEY AT LAW

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Decision

Decided: September 7, 2016

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

This matter is before us on a certification of the record, filed by the District VIII Ethics Committee (DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 1.1(b) (pattern of neglect); 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).

For the reasons set forth below, we determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 2001. At the relevant times, she maintained a law practice in Piscataway, New Jersey. She has no history of discipline.

Service of process was proper in this matter. On July 29, 2015, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address. The certified mail was signed for by "Vanessa Bravo," and the regular mail was not returned. Respondent did not timely file a verified answer to the complaint.

On November 16, 2015, the DEC sent a second letter to respondent, by certified and regular mail, to her office address, informing her that, unless she 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). Again, the certified mail was signed for by "Vanessa Bravo," and the regular mail was not returned.

Respondent did not file a verified answer to the complaint as of December 17, 2015. Accordingly, on that date, the DEC certified the record to us as a default. As of March 16, 2016, the date of the amended certification of the record, respondent still had not filed an answer to the complaint.

The complaint alleged that in February 2015,¹ William J. Sullivan, Jr. retained respondent to represent him in a child support action. During the course of that representation, Sullivan informed respondent that he suffered from severe back and sleep issues, and was interested in filing for Social Security Disability (SSD) benefits. In addition to the child support matters, respondent agreed to pursue SSD benefits in Sullivan's behalf, stating that she was familiar with the application process. Sullivan paid respondent a retainer fee for two child support applications and the SSD application.

Respondent's office prepared and ultimately filed an SSD application in Sullivan's behalf. In July 2014, however, approximately two months after the application was filed, the Social Security Administration (the Administration) denied Sullivan's benefits request. After Sullivan read the denial decision and learned that he had sixty days to appeal it, he asked respondent whether she could file the appeal. Respondent assured Sullivan she could handle the appeal, and for months thereafter represented to Sullivan, in written correspondence, that his appeal was progressing.

¹ Based on dates of other events described in the complaint, the correct date is February 2014.

Sullivan began to make independent inquiries to the Administration regarding his SSD appeal. His inquiries revealed that respondent had made multiple misrepresentations to him related to payment for processing the SSD application, respondent's contact with the Administration regarding his appeal, the timeliness of the filing of his appeal, and the submission of necessary medical evidence in support of his appeal. During the same time frame, August through October 2014, grievant's efforts to speak with respondent were fruitless.

When respondent finally met with Sullivan on October 16, 2014, she admitted that his SSD appeal had not been timely filed. Respondent claimed she had been having serious health issues, which detrimentally affected her representation of Sullivan. Respondent assured Sullivan that, given her medical issues, she would be allowed to file his SSD appeal out of time. In the ten days following this meeting, Sullivan attempted to speak with respondent six or seven times, by telephone, to no avail.

On November 3, 2014, respondent again met with Sullivan. She advised him that, due to her health issues, he should seek the help of a family member to pursue his appeal of the SSD denial. Sullivan made numerous requests that respondent provide him with documentation regarding her health issues that he could

use to justify the filing of his appeal out of time. Respondent never provided Sullivan with any such proof. Sullivan refiled his application for SSD benefits, on his own, in December 2014. He also hired a new attorney to represent him in his pursuit of SSD benefits.

In a March 26, 2015 reply to Sullivan's grievance, respondent conceded that she had failed to adequately communicate with Sullivan regarding his legal matters.

On May 8 and May 21, 2015, the DEC investigator wrote to respondent, requesting a meeting and respondent's file for Sullivan's matters, and warning her that failure to respond would lead to the filing of a formal ethics complaint. On May 15, 2015, respondent's paralegal called the DEC investigator and represented that respondent would contact him within a week to schedule the meeting. Respondent, however, neither called the investigator nor replied to his letters.

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). Notwithstanding that rule, each charge in an ethics complaint must be supported by sufficient facts for us to determine that unethical conduct occurred. The facts recited in the complaint support the

charged violations of RPCs 1.3, 1.4(b), and 8.1(b). However, the facts do not support a violation of RPC 1.1(b).

In order for the Court to find a pattern of neglect, there must be at least three instances of neglect in at least three distinct client matters. See In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005), In re Rohan, 184 N.J. 287 (2005). Here, the allegations in the complaint detail only respondent's acts of neglect related to her handling of Sullivan's SSD matter. These instances in this single client matter are insufficient to support a finding that respondent engaged in a pattern of neglect, in violation of RPC 1.1(b). Thus, we determined to dismiss that charge.

The record contains sufficient facts to conclude that respondent violated RPC 1.3 in connection with Sullivan's SSD appeal. After agreeing to represent him in the appeal of the denial of his SSD benefits, respondent failed to timely file his appeal. In an attempt to hide her lack of diligence, respondent made misrepresentations about payments made, the scope of her contact with the Administration regarding his appeal, the timeliness of the filing of his appeal, and the submission of necessary medical evidence in support of his appeal. When she finally admitted the truth to Sullivan, she promised to perfect his appeal out of time, yet failed to do so. Respondent

eventually recommended to Sullivan that he seek the help of a family member to pursue his appeal. However, she did not provide him with documentation that would have supported his request to file the appeal out of time. By this conduct, respondent violated RPC 1.3.

The record also contains sufficient facts to conclude that respondent violated RPC 1.4(b). As respondent conceded in her reply to the underlying grievance, she was not accessible to Sullivan regarding his SSD appeal, making no effort to keep him reasonably informed about the status of his matter. To the contrary, respondent lied to grievant regarding the appeal, leading him to believe she was prosecuting it in his behalf. By this conduct, she violated RPC 1.4(b).

Finally, respondent violated RPC 8.1(b) for her failure to cooperate with the DEC investigator, despite his multiple efforts to meet with her and secure a copy of the Sullivan file.

The only remaining issue is the appropriate discipline to be imposed for respondent's violations of RPC 1.3, RPC 1.4(b) and RPC 8.1(b).

Conduct involving lack of diligence and failure to communicate with clients, even when accompanied by gross neglect, 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); and 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).

Generally, admonitions are imposed for failure to cooperate with disciplinary authorities, even when accompanied by other non-serious misconduct. See, e.g., In the Matter of Martin A. Gleason, DRB 14-139 (February 3, 2015), In re Gleason, 220 N.J. 350 (2015) (attorney did not file an answer to the formal ethics complaint and ignored the district ethics committee investigator's multiple attempts to obtain a copy of his client's file, a violation of RPC 8.1(b)); the attorney also failed to inform his client that a planning board had dismissed his land use application, a violation of RPC 1.4(b)); In the Matter of Douglas Joseph Del Tufo, DRB 11-241 (October 28, 2011) (attorney did not reply to the DEC's investigation of the grievance and did not communicate with the client); and In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (attorney failed to comply with DEC investigator's request for information about the grievance; attorney also violated RPC 1.1(a) and RPC 1.4(b)).

Here, gross neglect was not charged, and only one client matter is involved. In aggravation, Sullivan was forced to hire a second attorney to pursue his SSD benefits, and, thus, suffered economic harm due to respondent's misconduct.

Respondent's misrepresentations to Sullivan, and her eventual abandonment of his case are equally troubling. In mitigation, however, we considered respondent's fifteen-year unblemished record. Thus, an admonition would be the appropriate discipline for respondent's misconduct were it not for the default nature of these proceedings.

"A respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008). Respondent clearly knew about Sullivan's grievance – she filed a reply and her office reached out to the DEC investigator assigned to the matter. Simply put, respondent was aware of her obligation to cooperate with disciplinary authorities and failed to do so. Moreover, she failed to file an answer to the complaint.

We determine that respondent's ethics violations in this case – lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities – coupled with the default nature of the proceedings, warrant the imposition of a reprimand.

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