SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-197
District Docket No. XII-2013-0029E

IN THE MATTER OF	:
MUHAMMAD BASHIR	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 20, 2016

Decided: December 19, 2016

Robert J. Logan appeared on behalf of District XII.

Respondent did not appear for oral argument, despite proper notice.

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 reprimand filed by the District XII Ethics Committee (DEC). A six-count amended complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) and (c) (failure to communicate with the client), RPC 1.16(a)(2) (a lawyer shall withdraw from the representation if the lawyer's physical or mental condition materially impairs the

lawyer's ability to represent the client), RPC 1.16(d) (failure to protect the client's interests upon termination of the representation), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1987. On March 5, 1996, he received a reprimand for grossly neglecting a litigated matter, resulting in a $41,000 judgment against the clients. In re Bashir, 143 N.J. 406 (1996).

On May 25, 2005, respondent was admonished for failure to comply with court-ordered sanctions in four criminal matters, a violation of RPC 3.4(c). In the Matter of Muhammad Bashir, DRB 05-061 (May 25, 2005).

On June 24, 2015, respondent was temporarily suspended, effective July 27, 2015, for failure to comply with a fee arbitration award. In re Bashir, 222 N.J. 313 (2015). He remains suspended to date.

On May 18, 2016, respondent received a reprimand for failure to set forth in writing the rate or basis of the legal fee and to cooperate with an ethics investigation. In re Bashir, 225 N.J. 8 (2016).

Dawud Bahr, a long-time client, retained respondent sometime between August 2010 and January 2011 to revive the

appeal of a ruling in Essex County, in a domestic violence matter filed by his wife. Bahr had previously been represented by Jude Nelson, Esq., but became dissatisfied with Nelson's handling of the case after an appeal filed with the Appellate Division had been dismissed.

According to Bahr, he agreed to pay respondent $3,000 to prosecute the appeal, and paid him $1,300 at the inception of the case toward the fee.

On January 11, 2011, respondent's motion to reinstate the appeal was granted. The appellant's brief was due by February 10, 2011. Bahr testified that he later learned, after contacting the Appellate Division, that the appeal had been dismissed, on March 21, 2011, for failure to file a brief.

Bahr indicated that he then confronted respondent with that information, and was told that the prior attorney had "messed up" the case, that "we got to get you a trial," and that the Essex County court had to grant him a new trial "because they know they messed up," a reference to Bahr's belief that his prior attorney had engaged in a conflict of interest in the underlying matter.

Notwithstanding this testimony, Bahr conceded that, in 2011, after respondent had reviewed the trial transcripts in the underlying matter, he had told Bahr that the appeal was very

weak, and that they should seek a new trial based on newly discovered evidence. Bahr believed that he could provide a new witness or witnesses who would contradict his wife's version of events surrounding her domestic violence claim.

Bahr denied having received the following documents that respondent turned over during the ethics investigation: a May 6, 2012 letter to Bahr, a notice of motion for a new trial, an affidavit for Bahr's signature, and a proposed form of order.

Bahr admitted that his communications with respondent continued until early 2013, when he delivered to respondent a folder containing documents about an altercation at Federal Express, his employer. He had asked respondent to review that file with a view to appealing an adverse decision after a hearing related to the altercation.

Bahr later revised his testimony, stating that his final contact with respondent, which involved the Federal Express matter, took place "after tax season," in March 2012.

When asked whether respondent had refunded any part of the $1,300 fee, Bahr stated that he had not. He added that he had not requested a refund from respondent.[1]

[1] Respondent was not charged with an ethics violation related to the reasonableness of the fee or a failure to return an unearned retainer.

Bahr acknowledged that respondent had also taken on other legal matters for him during the time period in question, unrelated to the appeal. Respondent represented Bahr and appeared with him at a February 29, 2012 child support hearing in Passaic County. Respondent also reviewed documents related to another child support matter in Essex County. He did not ask Bahr for additional fees to handle the Federal Express and child support matters, even though they were unrelated to the original appeal.

Finally, Bahr denied that respondent had told him that he was terminating the representation concerning the appeal, for lack of an appealable issue. In 2012, however, respondent told Bahr that he would no longer represent him. Bahr could not explain why he believed that respondent's reference to terminating the representation was limited to the appeal.

Respondent gave the following version of events. On January 7, 2011, he took over Bahr's representation from Nelson, and filed a substitution of attorney in the Appellate Division. By order dated January 11, 2011, the appeal was reinstated, with respondent's brief due on February 10, 2011. On March 21, 2011, the appeal was dismissed for failure to file a brief.

Respondent conceded that he had not informed Bahr, in writing, that the appeal had been dismissed, but claimed to have told his client that the appeal was not worth pursuing. He also provided the aforementioned May 6, 2012 letter, motion, affidavit, and certification of counsel, as proof of his intent to seek a new trial in Essex County. He admitted that he had not filed the motion.

Respondent explained that, when initially pursuing the appeal and, later, when seeking new evidence for a new trial, he investigated numerous leads from his client, all of which proved to be unsubstantiated or untruthful. For example, Bahr led respondent to believe that Bahr's wife may have been involved in a scam to "get his house" and to gain immigration status in the United States, all by claiming an act of domestic violence. Bahr also told respondent that his wife confided in a friend that, by charging him with domestic violence, she could "get his house." Bahr told respondent that the hospital where the alleged domestic violence incident took place had made a tape of the incident, and that Bahr's former lawyer, who had the tape, had not presented it to the trial court. Yet, when respondent contacted former counsel about the issue, he learned that no such tape existed.

When respondent reviewed the trial transcripts, he discovered that, contrary to his client's version of events, witnesses identified by Bahr had not been present during the domestic violence incident. Furthermore, respondent learned that the trial judge had determined that the wife's testimony was credible, while Bahr's was not.

At some point, respondent told Bahr that they should pursue a new trial, instead of the appeal, if Bahr could provide him with newly discovered evidence.

According to respondent, Bahr claimed that an imam at his mosque, who had acted as the couple's marriage counselor, could refute his wife's claims about domestic violence, and would serve as the newly discovered witness. Respondent interviewed the imam, who made disclosures that rendered him unsuitable as a witness for Bahr.

Eventually, as Bahr's various claims proved untrue or unsupportable, respondent grew "skeptical about the representation." Therefore, very shortly after respondent generated the May 6, 2012 letter and new trial documents, he and Bahr met at respondent's office, where an "angry conversation" ensued. During that conversation, respondent told his client that there was nothing more that he could do to help him, and that

> [y]ou can take your files, you can take whatever else you want, let me know, let me know where to send them, I'll be more than glad to give you your stuff back. As far as I'm concerned, you and I are done. Probably could have been much more diplomatic.
>
> [T101-17 to 22.][2]

Respondent testified that he had been particularly upset by Bahr's alleged untruthfulness, because he had considered Bahr to be his religious "brother":

> The person who was angry the night that we ended this, believe it or not, was me. That's why it became an angry discussion. Because he had been angry from day one. Everybody was victimizing him. The lawyer victimized him, the judge victimized him, the Passaic County judge victimized him. Now I'm victimizing him. And finally I said enough is enough and I terminated the relationship. Could I have done it by letter and should I have done it according to the rules? I sure should have. I should have sent him a letter saying as of this date, this is our history, you know, you're too volatile for me, you are constantly showing up late night hours and I'm sitting here waiting for you. You are, you're yelling, you're frightening the people in my office. That kind of stuff. And I said enough is enough. And that's how it ended.
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> [T87-12 to 23.]

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[2] "T" refers to the transcript of the February 5, 2015 DEC hearing.

When the presenter asked respondent whether he ever specifically informed Bahr that the appeal had been dismissed for failure to timely file the appellate brief, the following exchange took place:

> A. There is no such -- there is no such letter or formal communication regarding that, yes. But it doesn't mean that he was not informed of it or the basis and the reason of kind [sic].
>
> Q. Are you telling me in so many words that there was a time when you said to Mr. Bahr your appeal got dismissed because I didn't file the brief when I was supposed to?
>
> A. No. I'm telling you that we had -- we even had this discussion prior to, that his appeal was going nowhere.
>
> Q. Sure.
>
> A. And that if we didn't file a brief, and if I didn't have any evidence in it, there would be no need to file a brief because then we would be locked into putting stuff on the record that either wasn't true or was frivolous, and he would have to pay for that. Why would you go through that unless we come up with another strategy. That's what the discussion was.
>
> [T93-11 to T94-4.]

Respondent later clarified his remarks:

> I'm not putting my name to something that I don't have any confidence in, and I don't need your money that much to be able to have to bill you just by filing something frivolous. Because at any moment I could have done that. At any moment.
>
> [T102-5 to 9.]

After terminating the representation, respondent claimed, he referred Bahr to another attorney as an extra measure to review the appeal file to make sure that respondent had not "missed anything."

Respondent conceded that "[i]f negligence is that I didn't send him a notice, I didn't send him a notice that the relationship was over." He believed, however, that he had done everything he could for Bahr, "but I didn't end it the way it should have ended . . . ."

The DEC concluded that, by failing to advise Bahr, in writing, that he was terminating the representation, respondent violated RPC 1.16(d). The DEC relied on In re Fuerstein, 115 N.J. 278 (1989), wherein the Court stated:

> Respondent breached his obligation to properly advise his client that he was withdrawing from the matter. Why respondent did not reduce to writing his intention to withdraw is beyond comprehension. Certainly a prudent attorney, who shared concern for his client's interests and for his license to practice law, would have done so.
>
> [Id. at 278,286.]

The panel also relied on a comment to the year 2000 ABA Model Rules of Professional Conduct: "any [d]oubt about whether a lawyer-client relationship still exists should be clarified by the lawyer, preferably in writing, so that the client will not

mistakenly suppose the lawyer is looking after the client's affairs when the lawyer has ceased to do so."

The DEC dismissed the remaining charges without elaboration: RPC 1.1(a), RPC 1.3, RPC 1.4(b) and (c), RPC 1.16(a)(2), and RPC 8.4(c). Citing the existence of prior discipline, the panel recommended that respondent receive a reprimand.

Upon a de novo 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.

As between Bahr and respondent, in our view, respondent had the better grasp of facts in the case. It appears from his testimony, which the DEC found credible, that he was diligent when pursuing the appeal for which he was retained. However, after reading the trial transcripts, respondent became concerned that his client had not been completely forthright with him about the facts underlying the domestic violence incident.

Respondent also pursued numerous leads from the client, but found no appealable issues. At that point, he determined to allow the appeal to be dismissed by failing to file the required appellant's brief.

Once respondent determined that the appeal was without merit, he discussed seeking a new trial, inasmuch as Bahr had led

him to believe that witnesses existed who would counter the wife's version of events about the domestic violence incident.

In the interim, Bahr brought respondent documents regarding three matters unrelated to the representation. Two of them involved child support cases brought against Bahr in Passaic and Essex counties. Respondent appeared as counsel for Bahr in one of them. In a third matter, respondent reviewed documents involving an adverse determination at Federal Express, arising out of a workplace altercation.

In early May 2012, respondent prepared motion papers seeking a new trial on the domestic violence issue. He claimed to have sent them to Bahr for his review and signature, although Bahr did not recall receiving them. Very soon thereafter, respondent and Bahr had a volatile meeting at respondent's office, during which respondent confronted his client with his alleged untruthfulness. Respondent orally terminated the representation that day.

From the above facts, we cannot find that respondent lacked diligence or grossly neglected Bahr's matter or matters. He purposefully allowed the appeal to be dismissed after realizing that he could no longer pursue it in good faith. Thereafter, he investigated other avenues, which turned out to be dead ends, and helped Bahr with three unrelated matters in the interim. For lack

of clear and convincing evidence, we determine to dismiss the RPC 1.1(a) and RPC 1.3 charges.

Respondent did not, however, adequately communicate to Bahr that he was allowing the appeal to be dismissed and could produce no evidence to indicate that he specifically informed his client that he was allowing dismissal of the appeal. Rather, Bahr testified that he learned on his own, through the Appellate Division, about the dismissal. Thus, respondent failed to keep Bahr adequately informed about the case, and hindered his client's ability to make informed decisions about the representation, violations of RPC 1.4(b) and (c), respectively.

In respect of the RPC 1.16 charges, subsection (a)(2) states, in relevant part, that a lawyer shall withdraw from a representation if his or her physical or mental condition materially impairs the lawyer's ability to represent the client. Although there are hints in the record that respondent was ill at some nebulous point in time, that issue was not explored with respondent at the DEC hearing. Moreover, there is no evidence that any illness adversely affected the Bahr representation. Therefore, we also dismiss the RPC 1.16(a)(2) charge.

RPC 1.16(d) requires, a lawyer, upon termination of the representation, to take steps reasonably practicable to protect the client's interests, such as giving reasonable notice to the

client to employ new counsel, and returning client property and any unearned fees. The DEC concluded that respondent had failed, upon termination of the representation, to inform Bahr in writing, that the representation was terminated, in violation of RPC 1.16(d).

Both respondent and Bahr agreed that they had a heated meeting at respondent's office that ended their attorney/client relationship. Bahr was uncertain when that meeting took place and believed that it was only in reference to the appeal, while respondent clearly stated that it was very soon after his May 6, 2012 correspondence to Bahr about a new trial and that he terminated their entire relationship that day.

The DEC found credible respondent's testimony that he had terminated the representation, finding only that he violated RPC 1.16(d) by failing to do so in writing.

There is no requirement for a writing, however. Neither RPC 1.16 nor the case cited by the DEC, Fuerstein, supra, require a lawyer to terminate a representation in writing. The Court in Fuerstein commented that a "prudent" attorney would use a writing. Likewise, the ABA Model Rule cited by the DEC is aspirational, stating that it is "preferable" for attorneys to terminate representations in writing.

The parties agree that a meeting took place, at which respondent discussed with Bahr terminating the representation. The DEC concluded that respondent had informed his client that the representation was terminated. In the absence of a requirement that such a termination be in writing, we determine to dismiss the RPC 1.16(d) charge.

Finally, the record is virtually devoid of any evidence to support a finding of a violation of RPC 8.4(c). For lack of clear and convincing evidence, we dismiss that charge as well.

In summary, respondent is guilty only of failing to communicate with the client in one matter.

Typically, attorneys who fail to adequately communicate with their clients are admonished. See, e.g., In the Matter of Sean Lawrence Branigan, DRB 14-088 (June 23, 2014) (attorney failed to send the client an invoice for the time spent on her matrimonial case and ignored her e-mail and telephone calls seeking an accounting of the work he had performed and the amount she owed; a violation of RPC 1.4(b); we considered that the attorney had an unblemished record in fourteen years at the bar; that the matter seemed to be an isolated event that may have been exacerbated by the confluence of several random events, including the flooding of his office, in the wake of hurricane Irene, the hacking of his e-mail system, and the fact that his firm was undergoing a change

of the program and process to track and bill for its time) and In the Matter of William Robb Graham, DRB 13-274 (January 23, 2014) (attorney who filed a claim with the Veterans' Administration on behalf of his client failed to notify the client that the claim had been dismissed and failed to discuss the options available to the client, namely, to file a request for reconsideration or to start a lawsuit; further, the client's attempts to obtain information about the case, including the return of his file and medical records, were unavailing; violations of RPC 1.4(b); we considered that no disciplinary infractions had been sustained against the attorney since his 1983 admission to the New Jersey bar, that he had admitted his wrongdoing, and that he was beset by illness, at the relevant time, for which he sought treatment).

Here, however, there is the additional element of respondent's prior discipline: a 1996 reprimand; a 2005 admonition; and a 2016 reprimand. Although not final discipline, respondent has remained temporarily suspended since 2015.

Because of respondent's prior dealings with the disciplinary system, he should have had a heightened awareness of his duty to communicate with this client. Instead, he cut corners. For that reason, we determine that enhanced discipline, a reprimand, is required.

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 Matter of Muhammad Bashir
Docket No. DRB 16-197

Argued: October 20, 2016

Decided: December 19, 2016

Disposition: Reprimand

Members	Reprimand	Recused	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