

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-213
District Docket No. IIIA-2014-0020E

IN THE MATTER OF
PAUL FRANKLIN CLAUSEN
AN ATTORNEY AT LAW

Decision

Decided: January 24, 2017

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

This matter was before us on a certification of default filed by the District IIIA Ethics Committee (DEC), pursuant to R. 1:20-4(f). A two-count amended complaint charged respondent with violations of RPC 1.4(b) (failure to communicate with a client) and RPC 8.1(b) (failure to cooperate with an ethics investigation). We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1982. On April 23, 2013, he consented to a reprimand for knowingly practicing law while ineligible for failure to pay the annual

attorney assessment to the New Jersey Lawyers' Fund for Client Protection. In re Clausen, 213 N.J. 461 (2013).

On January 13, 2016, respondent received a second reprimand for gross neglect, lack of diligence, and failure to communicate with a client in a slip-and-fall matter. In re Clausen, 224 N.J. 30 (2016).

Respondent has been administratively ineligible to practice since December 16, 2016, based on non-compliance with IOLTA requirements.

On August 30, 2016, respondent filed a motion to vacate the default and a supporting certification in the above matter.

In order to vacate a default, a respondent must overcome a two-pronged test. First, a respondent must offer a reasonable explanation for his/her failure to answer the ethics complaint. Second, a respondent must assert a meritorious defense to the underlying charges.

In respect of his failure to answer the ethics complaint, respondent maintained that he filed an answer to the original complaint in March 2015 and an amended answer in April 2015. Thereafter, an amended complaint was filed, "to which [he] apparently did not file another Answer." Respondent further stated that the amended complaint simply added a new count two, requesting discovery. According to respondent, he attached "a copy of all

requested discovery" to his notice of motion, a copy of which he sent to the presenter. Respondent did not provide us with copies of the discovery documents he claimed to have sent to the presenter.

Respondent's certification did not address the reason for his failure to file an answer to the amended complaint.

In respect of prong two, meritorious defenses, respondent urged that, because he filed an answer and amended answer to the original complaint, and has now furnished the documents requested by the presenter in count two of the amended complaint, the default should be vacated.

We determine that respondent has not satisfied the first prong of the test to vacate a default – a reasonable explanation for his failure to file an answer to the amended complaint. Therefore, we denied the motion to vacate the default.

Service of process was proper in this matter. On February 19, 2015, the DEC sent a copy of the complaint, by both certified and regular mail, to respondent, in accordance with R. 1:20-4(d). The certified mail envelope was returned to the DEC marked "Not Deliverable as Addressed, Unable to Forward." The regular mail was not returned.

On March 20, 2015, respondent filed his answer to the complaint. On April 28, 2015, he provided an amended answer to the complaint.

On July 24, 2015, respondent forwarded a verification for his earlier amended answer.

By letter dated October 14, 2015, the DEC directed respondent to file a properly verified answer. The letter was sent to the same address, by certified and regular mail. The outcome of the attempt to deliver the certified mail is not in the record. The regular mail was not returned.

On February 29, 2016, the DEC served an amended complaint on respondent, pursuant to R. 1:20-4(d), by both certified and regular mail. The certified mail envelope was returned marked "Undeliverable as Addressed, Unable to Forward." The regular mail was not returned.

As of May 23, 2016, the date of the certification of the record, respondent had not filed an answer to the amended complaint.

We now turn to the facts alleged in the complaint. In July 2006, Ubalda Jijon retained respondent to represent her in a claim for injuries sustained in a slip-and-fall at Newport Center Mall in Jersey City, New Jersey. Respondent contacted the property manager, prepared medical releases for Jijon's signature, and

arranged for her to make a formal statement about the incident for the property's loss adjuster.

Despite Jijon's repeated telephone calls and letters to respondent, sent by certified mail, he failed to contact the client, an alleged violation of RPC 1.4(b).

According to the complaint, respondent told the DEC investigator, during a telephone conversation, that he had filed a complaint for Jijon, but it had been dismissed on a summary judgment motion. On June 25, 2016, the investigator sent respondent a demand for copies of the pleadings in the lawsuit, and any correspondence from respondent to Jijon about the lawsuit, and, specifically about her right to appeal any adverse outcome on summary judgment. The demand was sent by both regular mail and facsimile.

Respondent provided none of the requested materials, an alleged violation of RPC 8.1(b).

The facts recited in the amended complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the amended complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Over the course of the representation, Jijon made repeated telephone calls to respondent and sent him certified letters

requesting information about her matter, but respondent failed to reply to those reasonable requests for information, in violation of RPC 1.4(b).

Additionally, respondent failed to comply with the DEC investigator's demands for the client file in the matter, so that he could assess the veracity of respondent's claim to have properly handled the case for Jijon. In doing so, respondent violated RPC 8.1(b).

Attorneys who fail to communicate with clients and fail to cooperate with disciplinary authorities usually receive admonitions, even if those violations are accompanied by other ethics infractions. See, e.g. In the Matter of Martin A. Gleason, DRB 14-139 (February 3, 2015) (attorney failed to inform the client that his land use application had been dismissed, a violation of RPC 1.4(b)); the attorney also failed to cooperate with ethics authorities, a violation of RPC 8.1(b)); In the Matter of Thomas E. Downs, IV, DRB 12-407 (April 19, 2013) (attorney admitted that he did not promptly communicate with his client; he also failed to reply to the ethics investigator's numerous attempts to contact him; no disciplinary history); In the Matter of Ronald L. Washington, DRB 12-138 (July 27, 2012) (attorney failed to reply to the client's reasonable requests for information, failed to advise her about important aspects of her case, and failed to

cooperate with the ethics investigator or to appear at the disciplinary hearing; no disciplinary history); and In the Matter of Douglas Joseph DelTufo, DRB 11-241 (October 28, 2011) (attorney failed to reply to numerous telephone calls from the client seeking information about the status of the case and failed to cooperate with the ethics investigation; no prior discipline).

Here, respondent's violation of RPC 1.4(b) and RPC 8.1(b) took place in a single matter, for which an admonition would ordinarily suffice. Two aggravating factors, however, require our consideration. First, respondent has prior discipline: a 2013 reprimand and a 2016 reprimand, the latter, in part, for failure to communicate, a violation also present in this matter.

Second, there is the default status of the proceeding. "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).

Based on respondent's two prior reprimands and the default nature of this proceeding, we determine to impose a censure.

Member Clark 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 Paul Franklin Clausen
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Members	Censure	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