

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-242
District Docket No. IIIB-2015-0027E

IN THE MATTER OF
JOSEPH S. CHIZIK
AN ATTORNEY AT LAW

Decision

Decided: January 25, 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 IIIB Ethics Committee (DEC), pursuant to R. 1:20-4(f). The one-count, first amended complaint (complaint) charged respondent with failure to cooperate with an ethics investigation into alleged misconduct stemming from a fee arbitration committee referral, in violation of RPC 8.1(b) and R. 1:20-3(g)(3). We recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1976. He has a significant ethics history. On June 23, 1988, respondent received a private reprimand (now an admonition) for lack of diligence and failure to communicate with the client. In the Matter of Joseph S. Chizik, DRB 86-045 (June 23, 1988).

On May 27, 1997, respondent received a reprimand for lack of diligence and failure to communicate with clients. In re Chizik, 149 N.J. 377 (1997).

On March 6, 2013, respondent received a second reprimand, this time for gross neglect, lack of diligence, failure to communicate with the client, failure to return the file upon termination of the representation, and failure to cooperate with an ethics investigation. In re Chizik, 213 N.J. 81 (2013).

On February 14, 2014, in a default matter, respondent was suspended for three months in two client matters for lack of diligence, failure to communicate with clients, failure to provide a written fee agreement, and failure to cooperate with ethics authorities. In re Chizik, 216 N.J. 399 (2014).

Finally, in another default, the Court suspended respondent for two years, effective September 8, 2016, for lack of diligence, failure to communicate with the client, failure to cooperate with disciplinary authorities, and conduct involving dishonesty, fraud, deceit or misrepresentation in a bankruptcy matter. In addition, respondent was guilty of a failure to cooperate with disciplinary authorities and conduct prejudicial to the administration of justice for failure to comply with the requirements of R. 1.20-20 following his three-month suspension. In re Chizik, 226 N.J. 473 (2016).

Respondent remains suspended to date.

Service of process was proper in this matter. On March 31, 2016, the DEC sent a copy of the complaint, by both certified and regular mail, in accordance with R. 1:20-4(d) and R. 1:20-7(h), to three addresses. The certified mail return receipts for two of the addresses were returned, indicating delivery on April 5, 2016, one signed by respondent and the other signed by a "Michael McEwan." The regular mail to those two addresses was not returned.

On May 3, 2016, the DEC sent respondent a "five-day" letter at the two successful addresses, by certified and regular mail, notifying him that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record in the matter would be certified directly to us for imposition of a sanction, and, further, that the letter would serve as an amendment to the complaint to charge respondent with a violation of RPC 8.1(b), based on his failure to file an answer to the complaint. The certified mail receipt cards were returned, one having been signed by respondent on May 9, 2016, and the other by Michael McEwan on that same date. The regular mail to those addresses was not returned.

As of June 3, 2016, the date of the certification of the record, respondent had not filed an answer.

As previously noted, respondent was suspended from the practice of law for three months, effective February 14, 2014. Pursuant to the Court Order, he was required to comply with R. 1:20-20, governing suspended attorneys. That Rule requires, among other things, that the attorney file with the Director of the Office of Attorney Ethics (OAE), his "current residence or other address and telephone number . . . to which communications may be directed," and to "thereafter inform the Director of any change in such residence, address, or telephone number." R. 1:20-20(b)(15). Respondent failed to provide his address information to the OAE, in violation of R. 1:20-20 and R. 1:20-1.

On May 1, 2014, John Sergeiko filed a request for fee arbitration against respondent. Following its determination, the fee arbitration committee referred the matter to ethics authorities, pursuant to R. 1:20A-4, based on suspected unethical conduct that had raised a substantial question as to respondent's honesty, trustworthiness and fitness as a lawyer.

On July 13, 2015, the DEC initiated an ethics investigation into respondent's representation of Sergeiko. The DEC's initial attempts to communicate with respondent were unsuccessful. Ultimately, after learning of respondent's suspension, on

August 3, 2015, the DEC sent another letter to respondent, by regular mail, to his forwarding address in California, enclosing the fee arbitration file for his review and reply. The regular mail was not returned to the DEC and respondent did not submit a reply.

Finally, on November 4, 2015, the DEC sent respondent another letter, this time by certified and regular mail, to the California address, enclosing the fee arbitration file and requesting that he review it, reply in writing within ten days, and include a copy of his client file for the Sergeiko representation. The certified mail receipt was returned, having been signed by respondent on November 12, 2015.

Respondent did not reply to any of the DEC's requests for information about the Sergeiko grievance. The complaint, thus, alleged that he violated RPC 8.1(b).

The facts recited in the complaint support the charge of unethical conduct. Respondent's failure to file an answer 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). By failing to reply to the DEC's letters investigating the Sergeiko grievance, respondent violated 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 DEC investigator regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)) and In the Matter of Martin A. Gleason, DRB 14-139 (February 3, 2015) (attorney did not file an answer to the formal ethics complaint and ignored the DEC 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)).

Respondent's conduct in this matter requires discipline greater than an admonition for several reasons, including the default nature of this matter. "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).

In addition, two highly aggravating factors are present. First, respondent has a lengthy ethics history: a 1988 private reprimand; a 1997 reprimand; a 2013 reprimand for misconduct


including failure to cooperate with an ethics investigation; a 2014 three-month suspension; and a September 2016 two-year suspension.

Second, this is respondent's third consecutive default since 2014. Notably, even after respondent was served with our May 4, 2016 decision recommending a two-year suspension, he failed to reply to the DEC's "five-day" letter, sent on May 3, 2016. With the two-year suspension meted out just days before we considered his latest default, respondent's decision to default in this matter leads us to no other logical conclusion than that he has no interest in keeping his license to practice law. Thus, for his total disdain of the discipline system, we recommend that respondent be disbarred.

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
Chief Counsel

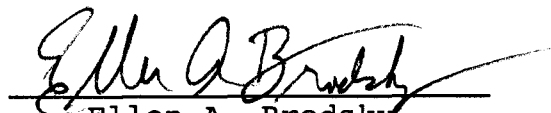
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Joseph S. Chizik
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Decided: January 25, 2017

Disposition: Disbar

Members	Disbar	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