

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-282
District Docket No. IV-2015-0044E

IN THE MATTER OF
JAIME MERRICK KAIGH
AN ATTORNEY AT LAW

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Decision

Decided: March 31, 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 IV Ethics Committee (DEC) pursuant to R. 1:20-4(f). The three-count complaint charged respondent with violations of RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter or to promptly reply to reasonable requests for information), and RPC 8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority).

On October 3, 2016 respondent filed a motion to vacate the default. For the reasons set forth below, we determine to deny the motion and impose a reprimand.

Respondent was admitted to the New Jersey bar in 1983. He maintains a law office in Westmont, New Jersey. He has no history of discipline.

Service of process was proper in this matter. On April 26, 2016, the DEC sent copies of the complaint by regular and certified mail to respondent's office address at 210 Haddon Avenue, Westmont, New Jersey 08108. The certified mail receipt, signed by Linda S. Panara, indicated that delivery was made on April 28, 2016. According to the certification of the record, Panara received the mail and distributed it "through the building to the attorneys." Panara maintained that, although she did not work for respondent, he had an office in the same building and she put the certified letter and the letter sent by regular mail on respondent's table in front of his office. The regular mail was not returned.

On July 7, 2016, the DEC sent a letter by regular mail to respondent at the same address, notifying him that if he did not file an answer to the ethics complaint within five days of the date of the letter, 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 include a willful violation of RPC 8.1(b). The letter was not returned.

As of the date of the certification of the record, July 28, 2016, respondent had not filed an answer to the complaint.

Grievant J.G.¹ retained respondent in July 2013, and paid him a \$1,000 fee for a criminal expungement matter. In November 2013, respondent filed a petition for expungement. On July 30, 2014, respondent served copies of a scheduling order on various law enforcement agencies. The court order set a preliminary hearing date for February 19, 2014.²

On August 26, 2014, an assistant prosecutor (AP) from the Burlington County Prosecutor's Office (prosecutor's office) filed an objection, asserting that not all parties had been served with the petition and initial order. Specifically, the letter stated that only the order granting the hearing date and not the petition had been served on the "State," and that N.J.S.A. 2C:52-10 required all interested parties to be served with an amended copy of the petition and proposed order. Once that was accomplished, the State would review the merits of the petition. There is no other reference in the complaint to an amended petition.

¹ The identity of the grievant is confidential because his case involved an expungement matter.

² Presumably, either the dates listed in the complaint are not accurate or references to other correspondence or motions have been omitted.

In a September 11, 2014 letter, respondent enclosed copies of the signed certified mail receipts, to establish service of the order on "all of the required parties, including the State Police," and inquired whether the AP deemed the proof sufficient to withdraw her objection. The complaint does not mention whether the AP replied.

Respondent's November 21, 2014 letter to the court stated that he had served the prosecutor's office and all parties identified on an attached list with a copy of the court's order and J.G.'s verified petition and, further, that the certified mail receipts would be forwarded when received. Thereafter, the hearing was scheduled for December 10, 2014.

On January 5, 2015, the New Jersey Office of the Attorney General notified the prosecutor's office that there were no objections to the expungement. However, an additional juvenile warrant existed in Camden County, which the State maintained needed to be included in the expungement petition.

By letter dated February 10, 2015, respondent requested a thirty-day continuance because he was awaiting the release of J.G.'s juvenile record from Camden County. Respondent's letter added that he would file and serve an amended petition on all parties once he received the juvenile records.

Respondent took no further action in the expungement matter. The complaint charged that his failure to expeditiously resolve the matter constituted a violation of RPC 1.3.

Between the summer and fall of 2013, J.G. left messages for respondent, requesting the status of his expungement matter, all to no avail. In late November 2013, respondent returned J.G.'s calls. On December 16, 2013, J.G. received a text message from respondent, stating that the court had signed the expungement order and that respondent was in the process of notifying all necessary parties to remove J.G.'s conviction from their records. On February 23, 2014, J.G. received the last communication from respondent, a text message stating that J.G.'s expungement should be completed in approximately thirty days. As of June 13, 2014, respondent had not provided J.G. with an update on the status of the expungement. The complaint, thus, charged respondent with a violation of RPC 1.4(b).

Thereafter, J.G. filed a grievance. By letter dated September 18, 2015, the DEC requested that respondent reply to J.G.'s grievance within ten days. Thereafter on September 28, October 16, November 24 and December 30, 2015, the DEC sent additional letters requesting a reply to the grievance, along with other specific information, to no avail. The DEC also sent e-mails to respondent on December 15 and 30, 2015. When the DEC investigator spoke to respondent on December 4, 2015, respondent stated that he was

aware that he had to reply to the grievance and would do so "quickly." Thereafter, the DEC investigator sent additional letters on January 11, February 22, and February 26, 2016, and, in the interim, spoke to respondent on January 28, 2016. As of the date of the complaint, April 21, 2016, respondent had not submitted a reply to the grievance. Thus, the complaint charged that respondent violated RPC 8.1(b).

In his October 1, 2016 certification in support of his motion to vacate default, respondent admitted that he timely received the grievance in the matter but failed to cooperate with the ethics investigation and failed to timely answer the ethics complaint. Respondent further conceded that his failure to do so could not be excused and he accepted full responsibility for his inaction.

In mitigation, respondent explained that his physical health is fragile, that he has a compromised immune system, and that he is frequently ill, having survived cancer and chemotherapy that ended in 2009. He asserts that he was disabled with a ruptured eardrum from mid-July to mid-September 2016 and, thus, was bedridden due to vertigo. He acknowledged, however, that this matter was pending long before that time period. He conceded further that he "continued to try a volume of cases," and could not use his health as an "explanation."

Respondent offered, as a meritorious defense, that he had pursued the expungement, which was granted on February 11, 2015. He attached a copy of the order to his certification.

We determine to deny respondent's motion to vacate the default. To succeed on a motion to vacate default, respondent must establish both excusable neglect for his failure to have filed an answer to the complaint and a meritorious defense to the charges. Respondent has failed in both respects. First, respondent did not provide an explanation for failing to file an answer: his recovery from cancer occurred years before he was asked to reply to the grievance and his disabling vertigo occurred after he was to have filed an answer to the ethics complaint. Indeed, respondent admitted that he had no excuse for his failure to file an answer. Further, respondent did not offer a meritorious defense. Although he had obtained the February 11, 2015 order granting expungement, he did not do so in a timely manner. It did not reference J.G.'s Camden County juvenile warrant, which the Attorney General's Office pointed out should have been included. Thus, respondent did not fully satisfy the tasks for which he was retained. Moreover, respondent offered no meritorious defenses to the failure to communicate and failure to cooperate charges.

* * *

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer to the

ethics complaint is deemed an admission that the allegations of the complaint are true and provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Specifically, the facts alleged support a finding that respondent lacked diligence in his efforts to obtain an expungement of J.G.'s entire record, failed to reply to J.G.'s requests for information or to keep him advised about the status of his matter, and failed to cooperate with the DEC's investigation, violations of RPC 1.3, RPC 1.4(b), and RPC 8.1(b), respectively.

Respondent's conduct also implicates RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) in that he appeared to have misrepresented to J.G., in December 2013 and again in February 2014, that he had obtained an expungement order when the order was not executed until February 11, 2015. The complaint, however, did not charge respondent with a violation of RPC 8.4(c). Thus, we can make no finding in that respect. R. 1:20-4(b).

In a non-default matter, conduct similar to respondent's resulted in an admonition. See, e.g., In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (attorney grossly neglected a federal civil rights action and a chancery foreclosure matter, failed to communicate with the client about the matters, and

failed to cooperate with the ethics investigation; no history of discipline).


Generally, however, in default matters, the discipline is enhanced to a reprimand for various combinations of gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities. See, e.g., In re Williams, 223 N.J. 289 (2015) (attorney accepted a fee for a mortgage foreclosure action, but performed no substantive work on the matter; failed to reply to the client's multiple attempts to communicate with her; and failed to cooperate with disciplinary authorities); In re Brandmayr, 220 N.J. 34 (2014) (attorney failed to pursue a client's claim, failed to attend an arbitration hearing, and failed to keep the client informed about the status of the case or of his own whereabouts after he ceased practicing law so that the client could obtain information about his case; the discipline was enhanced to reflect the attorney's failure to cooperate as an aggravating factor; a mitigating factor considered was the attorney's ability to get the case "back on track" and achieve a good result for the client; prior reprimand for practicing while ineligible); In re Rak, 203 N.J. 381 (2010) (attorney was guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of the grievance; after cashing the client's check, it took the attorney nine months to file a bankruptcy petition; he further failed to

accept the client's telephone calls, and failed to inform him that the petition had been dismissed); and In re Swidler, 192 N.J. 80 (2007) (attorney was guilty of gross neglect and failure to cooperate with the investigation of the grievance; he failed to take any action on his client's behalf in a foreclosure proceeding, which resulted in an Order of Taking on her property).

When an attorney defaults in a matter, the discipline is enhanced. In re Kivler, 193 N.J. 332, 342 (2008) ("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"). Thus, because respondent permitted this matter to proceed as a default, even though he moved to vacate it, and has no ethics history in his thirty-three years at the bar, we determine that he, too, should receive a reprimand.

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 Jaime Merrick Kaigh
Docket No. DRB 16-282

Decided: March 31, 2017

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