

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-283
District Docket No. XIV-2015-0165E

IN THE MATTER OF :
:
:
RICHARD PATRICK EARLEY :
:
:
AN ATTORNEY AT LAW :
:
:

Decision

Decided: May 2, 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 Office of Attorney Ethics (OAE) pursuant to R. 1:20-4(f). The two-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter and to comply with reasonable requests for information), RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority), and R. 1:20-3(g)(3) (failure to cooperate in a disciplinary investigation and to reply in writing within ten

days of receipt of a request for information). For the reasons expressed below, we determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1998 and the New York bar in 1999. He does not currently maintain a law office in New Jersey. Respondent has no history of discipline in New Jersey, but has been ineligible to practice law since 2015 for failure to pay his annual assessment to the New Jersey Lawyers' Fund for Client Protection.

Service of process was proper in this matter. On June 1, 2016, the OAE sent a copy of the complaint by regular and certified mail to respondent's home address listed in the attorney registration records. The certified mail receipt indicated delivery on June 4, 2016. Although the signature on the copy of the receipt was illegible, the certification of the record stated that respondent's signature appeared on it. The regular mail was not returned.

Respondent did not file an answer within the required time. Therefore, on June 28, 2016, the OAE sent a letter to the same address, by regular and certified mail, notifying respondent that if he did not file an answer 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 certified mail was returned after the third delivery attempt. The envelope was marked "return to sender, unclaimed, unable to forward." The regular mail was not returned.

As of the date of the certification of the record, August 4, 2016, respondent had not filed an answer to the complaint.

The facts, as alleged in the complaint, are as follows. On January 27, 2003, Delia Castro passed away. Her last will and testament named Ann Marie Treppiedi as the executrix of her estate. Treppiedi retained the Law Offices of Heather J. Darling to represent Castro's estate. Respondent, an associate of the Darling firm, was assigned to handle the matter.

In June 2013, respondent left the Darling firm and opened his own office in Denville, New Jersey. Treppiedi requested respondent to continue as counsel to assist her in the administration of the Castro estate.

In a July 3, 2013 letter, respondent notified the beneficiaries that all of Castro's assets had been identified. He also informed them about (1) the role of the executrix; (2) the information that would appear in the final accounting, which he would provide at a later date; and (3) the information that

was required of them for a partial distribution. The complaint was silent about whether any distributions were made.¹

During the next year, respondent continued to work on completing the administration of the estate.

On July 9 and 15, 2014, Treppiedi e-mailed respondent, stating that she was "concerned and upset" because she had been trying to reach him for several weeks about the status of the estate.

On July 25, 2014, respondent e-mailed all of the beneficiaries, explaining the steps required to finalize the administration of the estate, and stating that the final accounting had been completed with the exception of his final invoice for legal fees, which were to be approved by Treppiedi. Respondent further stated that he was awaiting a tax refund from the Internal Revenue Service.

On August 6, 2014, respondent e-mailed Treppiedi about three problems that had prevented him from balancing the estate funds and that had delayed sending the final accounting to the beneficiaries: (1) Treppiedi needed to reimburse \$1,199.53 to the estate account; (2) an improper \$34 overdraft charge had not

¹ Exhibit 4 is respondent's e-mail to the beneficiaries implying that distributions had been made but, as of the July 25, 2014 e-mail, the final distribution had yet to be made.

been reversed and credited to the account; and (3) Treppiedi owed the estate rent in the amount of \$1,094.62. Respondent also asked Treppiedi for an explanation of a check made payable to her for \$887.16. Treppiedi e-mailed an explanation on August 15, 2014. Respondent neither informed her that her reply was insufficient nor requested additional information from her.

On September 12, 2014, Treppiedi sent respondent an e-mail stating that she had sent him two earlier text messages notifying him that the issue with the funds had been resolved and requesting an accounting as soon as possible. Respondent neither replied to nor requested any additional information from Treppiedi with regard to his prior inquiries.

Thereafter, respondent did not reply to Treppiedi's (1) September 16, 2014 e-mail; (2) September 19, 2014 certified letter requesting the final accounting for the estate; (3) October 5, 2014 e-mail complaining that she had not heard from him since July 25, 2014 and that he had not answered her e-mails, text messages, or phone calls; or (4) October 28, 2014 e-mail. The only message Treppiedi had received from respondent was that he was moving and would "get back to her."

Because respondent was unable to move into new office space in New Jersey, he placed most of the contents of his office into storage and moved to Massachusetts. During the move, a file

cabinet fell on him causing him to suffer a concussion, broken ribs, a fractured collarbone, and a bruised sternum.

On October 20, 2014, respondent e-mailed his clients, including Treppiedi, to inform them of his relocation, the injuries he had sustained, and his intention to return to New Jersey and contact his estate clients on October 24 or 27, 2014. He informed the clients that they could contact him by sending mail to his New Jersey post office box, for forwarding to Massachusetts; by e-mail; or by phoning his mobile phone or his new office telephone number, but not to leave messages on both. Respondent further indicated that the temporary arrangements would remain in effect for six to eight months, during which time he expected to be physically present in New Jersey on average of five days per month. He also apologized for the difficulty they may have encountered trying to contact him over the summer.

On December 8, 15, and 29, 2014, Delia Castro, the decedent's daughter and a beneficiary of the estate, e-mailed respondent requesting the status of the final accounting. Respondent did not reply to the e-mails or complete the final accounting, and took no further action to complete the administration of the estate.

As a result of respondent's failure to communicate with Treppiedi and to complete the administration of the estate, on December 23, 2014, Treppiedi retained another attorney to prepare the final accounting and administer the estate.

The complaint, thus, charged respondent with violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b).

The decedent's daughter filed a grievance against respondent. On April 24, May 19, June 8, June 19, and July 8, 2015, the OAE sent letters to respondent at various addresses of record, by both regular and certified mail, requesting a written and documented reply to Castro's grievance. The certified mail was returned as unclaimed and all of the regular mail was returned.

On October 2, 2015, the OAE e-mailed respondent about the returned mail and requested that he contact the OAE. On October 6, 2015, respondent replied by e-mail, stating that he assumed that the OAE had contacted him about his ineligibility due to his failure to certify completion of required continuing legal education requirements. He indicated that he had not practiced law in the previous year, during which time he resided in Massachusetts. The e-mail listed respondent's Massachusetts address and his mobile phone number.

Thereafter, on October 7 and December 10, 2015, the OAE sent two additional letters to respondent, by regular and certified mail, at his Massachusetts address, requesting a reply to Castro's grievance. The regular mail was not returned and the returned certified mail receipts were signed by respondent. In a February 4, 2016 e-mail, the OAE notified respondent that if he did not submit a written, documented reply by February 12, 2016, the OAE would file a complaint charging him with failure to cooperate with disciplinary authorities. Respondent failed to reply to the grievance. The complaint, thus, charged that respondent violated RPC 8.1(b) and R. 1:20-3(g)(3).

* * *

The facts recited in the complaint support the charges 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).

The allegations of the complaint establish that respondent failed to conclude the administration of the estate and failed to provide the beneficiaries with a final accounting. He further failed to communicate with the executrix of the estate and one of the beneficiaries, the decedent's daughter. As a result of respondent's inaction and failure to communicate, Treppiedi was

obligated to retain another attorney to conclude the estate. Respondent, therefore, violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b).

Thereafter, although given numerous opportunities, respondent failed to submit a reply to Castro's grievance and failed to file an answer to the ethics complaint, resulting in this matter proceeding as a default, a violation of RPC 8.1(b).

The only issue left for determination is the proper quantum of discipline.

The discipline imposed in estate or trust matters involving neglect, failure to communicate, and failure to cooperate has ranged from an admonition to a term of suspension, depending on the seriousness of other factors present. See, e.g., In the Matter of Andrey V. Zielyk, DRB 13-023 (June 26, 2013) (admonition for attorney guilty of lack of diligence, failure to keep the beneficiaries adequately informed about the status of the estate, and failure to set forth, in writing, the basis or rate of the fee); In the Matter of David Leonard Roeber, DRB 12-057 (April 24, 2012) (admonition for attorney who failed to keep the beneficiary of an estate reasonably informed about the status of the matter and failed to comply with reasonable requests for information, and failed to reply to the OAE's demand for information; unblemished ethics history since his

admission in 1997); In the Matter of James C. Richardson, DRB 06-010 (February 23, 2006) (admonition for attorney who lacked diligence in completing an estate matter and who, for two years did not reply to many of the beneficiaries' telephone calls and faxes; we considered that the attorney accepted the matter as a family friend); In re Elsas, 198 N.J. 379 (2009) (reprimand for attorney who lacked diligence, failed to communicate with the client, and negligently misappropriated client funds; the estate remained open for two years after the decedent's death; the attorney failed to comply with the requests of the heir and subsequent counsel for information about the administration of the estate); In re Yetman, 113 N.J. 556 (1989) (reprimand for attorney, inexperienced in estate matters, who grossly neglected and lacked diligence in the administration of an estate, adopting a "head-in-the-sand" approach; as a result of his inaction, a bank issued penalty deductions against an account held jointly by the client and the decedent; he also ignored his client's requests for information about the status of the estate, and, on numerous occasions, ignored the ethics committee's requests for information in connection with the investigation; mitigation included the attorney's candid admission of wrongdoing, remorse, apologies to the client and the committee members, lack of personal gain, and agreement to

be responsible for any legal fees, costs, or charges incurred with the final resolution of the matter); In re Finkelstein, ___ N.J. ___ (2010) (censure for attorney who engaged in gross neglect, lack of diligence, failure to communicate, negligent misappropriation of trust funds, and recordkeeping violations; an OAE audit, encompassing approximately seven years, uncovered the decedent's United States Savings Bonds, worth about \$5,000; in that time, the attorney failed to ascertain the ownership of those bonds on the death of the contingent beneficiary, had not taken any steps to obtain the necessary tax waiver for the estate, failed to keep the administrator of the estate informed about the status of the matter, and failed to complete the New Jersey inheritance tax return required to obtain a tax waiver for the estate; in mitigation, the attorney was prepared to reimburse or make the beneficiaries whole for any losses incurred by the estate; prior admonition and reprimand); In re Goldsmith, 190 N.J. 196 (2007) (censure for attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, failure to promptly deliver funds, and knowingly disobeying a court order; the attorney, as the executor of an uncomplicated estate, failed to distribute funds to the beneficiaries during the first nineteen months, even though funds were available, failed to negotiate a check representing

the proceeds of the sale of real estate, and failed to obtain an inheritance tax waiver for the transaction, resulting in \$91,000 of estate funds lying dormant; the attorney further failed to file various estate tax returns or request extensions to file them and ignored the beneficiaries' numerous requests for information about the status of the estate, leading a beneficiary to file an action seeking the attorney's removal as executor; he further failed to comply with a court order requiring an accounting, the turnover of estate records to a new executor, and the return of executor commissions; very compelling mitigating factors considered; attorney had a prior private reprimand and an admonition); In re Carlin, 188 N.J. 250 (2006) (censure for attorney who, acting as a fiduciary, failed to promptly terminate a trust and to distribute the trust funds that were due; failed to provide a final accounting of the trust for almost a year after the trust had terminated; failed to communicate with the beneficiary of the trust; engaged in dishonest and deceitful conduct; and engaged in recordkeeping violations; prior reprimand); In re Avery, 194 N.J. 183 (2008) (three-month suspension in a default for an attorney guilty of gross neglect, lack of diligence, and failure to communicate with clients in four estate matters; the attorney also failed to cooperate with ethics authorities and to comply with a court's

turnover requirement in one of the matters); In re Rodgers, 177 N.J. 501 (2003) (three-month suspension for attorney, who as the administrator of an estate, displayed gross neglect, failure to communicate, and failure to promptly deliver funds or property to a client or third person; the successor administrator obtained a judgment against the attorney for \$70,000 plus interest); In re Cubberly, 171 N.J. 32 (2002) (three-month suspension in a default; the attorney failed to complete an informal accounting in an estate matter for more than eight months, failed to reply to numerous requests for documents by the beneficiary of the estate, and failed to cooperate with ethics authorities; prior admonition, two reprimands, and a temporary suspension); and In re Onorevole, 185 N.J. 169 (2005) (six-month suspension in a default where the attorney, who was retained to probate an estate, obtained his client's signature on forms to permit the attorney to correspond with banks to verify amounts in the decedent's accounts; nine months later, the attorney directed the client to sign the same forms; he also failed to timely file estate tax forms; a successor attorney filed an amended inheritance tax return to correct errors in the initial return; as a result of the errors, interest was charged against the estate; the attorney was found guilty of gross neglect, lack of diligence, failure to communicate with a

client, failure to cooperate with disciplinary authorities, and pattern of neglect when his conduct in the matter was considered with his prior disciplinary matters for which he had received an admonition and two reprimands).

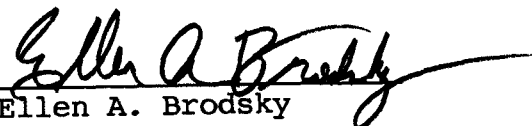
Here, respondent's case is not as egregious as the cases that resulted in suspensions. Only one matter was involved and respondent has no ethics history. Had he not defaulted, a reprimand would have been justified, as in the Elsas or Yetman matters. Respondent, however, consistently failed to cooperate, not only with his client and a beneficiary, but also with ethics authorities. He refused to reply to the grievance, despite the numerous opportunities he was given to do so, and permitted this matter to proceed as a default, warranting enhanced discipline. 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").

Under the totality of the circumstances, we determine that respondent's conduct warrants a censure.

Members Gallipoli and Zmirich voted to impose a three-month suspension.

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 Richard Patrick Earley
Docket No. DRB 16-283

Decided: May 2, 2017

Disposition: Censure

<i>Members</i>	Censure	Three-month suspension	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich		X	
Total:	7	2	


Ellen A. Brodsky
Chief Counsel