

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-331
District Docket No. IIA-2016-0013E

IN THE MATTER OF
BRIAN R. DECKER
AN ATTORNEY AT LAW

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Decision

Decided: May 12, 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 IIA Ethics Committee (DEC), pursuant to
R. 1:20-4(f). A two-count complaint charged respondent with
violations of RPC 1.4(a) (a lawyer shall fully inform a
prospective client of how, when, and where the client may
communicate with the lawyer), RPC 1.4(b) (failure to keep a
client reasonably informed about the status of a matter and
comply with reasonable requests for information), and RPC
8.4(d) (conduct prejudicial to the administration of justice).
We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 2009. He has no prior final discipline. However, effective December 23, 2013, the Supreme Court temporarily suspended respondent for failure to comply with an attorney fee arbitration award. In re Decker, 216 N.J. 369 (2013). Respondent remains suspended to date.

Service of process was proper in this matter. On July 6, 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 respondent's home address as listed in the attorney registration system. The certified mail return receipt and a United States Postal Service tracking receipt indicate delivery on July 12, 2016. The signature on the certified mail receipt is illegible.

On August 26, 2016, the DEC sent respondent a letter at his home address, by 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 the letter would serve as an amendment to the complaint to charge respondent with a violation of RPC 8.1(b) for his failure to answer. The regular mail was not returned.

As of September 2, 2016, the date of the certification of the record, respondent had not filed an answer.

Count one of the complaint alleged that, on an unspecified date, Cheryl Star retained respondent to represent her in a FINRA dispute.¹ According to the complaint, FINRA is the financial industry's regulatory body for brokers.

Thereafter, Star provided respondent with stock statements and tax returns and paid him \$2,000 against a contingent fee for the representation.

After the FINRA arbitration was adjourned to July 2012 with no notice to Star, she became dissatisfied with respondent's lack of communication and terminated the representation. Prior to the adjourned date, Star retained a new attorney.

At some point, respondent had closed his office and moved first to California and then to Chicago. He never notified Star of his relocation.

According to the complaint, respondent violated RPC 1.4(a) and (b) by failing to: (1) keep Star informed about the status of her matter; (2) comply with a reasonable request for

¹ Star is not identified by name in the complaint, appearing as "grievant." Her name, however, appears on exhibits attached to the complaint.

information; (3) make appropriate "accommodations for the handling of her claim;" and (4) contact her during the pendency of her claim.

Count two of the complaint alleged that respondent moved to California without informing Star or providing her with his new address, and that he was silent about any plan to continue representing her. Further, respondent failed to notify the Supreme Court "that he was moving [out] of the State of New Jersey."

As a result of respondent's silence, Star was left to wonder what happened to her file and whether respondent had filed her FINRA claim, actions "contrary to the proper administration of justice and the proper handling of this matter."

* * *

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). That notwithstanding, each charge in the complaint must be supported by sufficient facts on which to determine that unethical conduct occurred. We conclude that the facts recited in the complaint support a finding that respondent was guilty of unethical conduct.

Specifically, respondent was retained sometime prior to July 2012 to represent Star in a FINRA dispute. Before the scheduled hearing on that dispute, respondent closed his office and moved out of state. He failed to inform his client that he was doing so, made no provision for her to collect her client file,² failed to reply to her request for information about her matter, and failed to keep her informed about the status of her claim. After being kept in the dark, Star retained another attorney to represent her. Respondent's conduct in this regard amounted to a violation of RPC 1.4(b). Although the complaint charged respondent with a violation of RPC 1.4(a), based on his failure to inform Star of his relocation, we consider that charge to be subsumed by respondent's violation of RPC 1.4(b).

The complaint, however, contained no facts upon which to conclude that respondent engaged in conduct that prejudiced the administration of justice. Thus, we dismiss that charge.

In summary, respondent is guilty of a sole violation of RPC 1.4(b).

Typically, attorneys who fail to adequately communicate with their clients are admonished. See, e.g., In the Matter of

² Respondent was not charged with failing to protect a client's interests upon termination of the representation or to return the unearned portion of the fee (RPC 1.16(d)).

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 and that the matter appeared to be an isolated event that may have been exacerbated by the confluence of several random events, including the flooding to 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 was 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 from the attorney 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).

This case, however, requires discipline greater than an admonition, due to the default nature of the proceedings. "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 light of the default, we determine to impose 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 Brian R. Decker
Docket No. DRB 16-331

Decided: May 12, 2017

Disposition: Reprimand

<i>Members</i>	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