

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-385
District Docket No. XA-2015-0005E

IN THE MATTER OF :
CHRISTOPHER WEST HYDE :
AN ATTORNEY AT LAW :
:

Decision

Decided: June 1, 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 XA Ethics Committee (DEC), pursuant to R. 1:20-4(f). A three-count first amended complaint charged respondent with violations of RPC 1.5(a) (unreasonable fee), RPC 1.5(b) (failure to set forth in writing the basis or rate of the attorney's fee), 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 1987 and to the New York and Pennsylvania bars in 1988. On July 24, 2008, he received an admonition for practicing law, from September 2005 to

June 2006, while ineligible for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). At the time, we considered, in aggravation, respondent's three prior periods of ineligibility between September 2001 and October 10, 2004. Respondent had attributed his problems to mix-ups in the postal system. In mitigation, we considered that respondent had no prior discipline, that he had been unaware of his ineligibility and cured it as soon as he became aware of it, and that he took steps to rent a post office box in order to prevent a reoccurrence of the postal problem. In the Matter of Christopher West Hyde, DRB 08-137 (July 24, 2008).

Effective July 29, 2010, respondent was temporarily suspended for failure to pay costs assessed in connection with his admonition matter. In re Hyde, 202 N.J. 429 (2010). He was reinstated on August 9, 2010. In re Hyde, 203 N.J. 156 (2010).

On November 12, 2013, respondent received a censure for, once again, practicing law while ineligible for failure to pay the annual assessment to the CPF. In re Hyde, 216 N.J. 160 (2013).

Respondent was again declared ineligible to practice in August 2015. He remains ineligible 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 was returned signed, indicating delivery on July 8, 2016. The signature on the certified mail receipt is illegible. The regular mail was not returned.

On August 9, 2016, the DEC sent respondent a copy of the first amended complaint to the same home address, also by certified and regular mail. The certified mail return receipt was returned signed, indicating delivery on August 22, 2016, having been signed by one "Ben Rosenkrans." The regular mail was not returned.

On September 26, 2016, the DEC sent respondent a "five-day" letter at his home address, 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 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 certified mail was returned unclaimed, marked "Return to Sender, Unable to Forward." The regular mail envelope was also returned, marked "Return to Sender, Attempted - Not Known, Unable to Forward."

On October 5, 2016, Office of Attorney Ethics Statewide Ethics Coordinator and Assistant Counsel Isabel McGinty sent respondent an e-mail message requesting an updated address for him, but she received no reply.

As of October 18, 2016, the date of the certification of the record, respondent had not filed an answer.

We now turn to the facts alleged in the complaint. In April or May 2007, Diane J. Randall retained respondent to represent her in a post-judgment family matter venued in the Superior Court, Chancery Division, Family Part. Rule 5:3-5(a) requires that, in all civil family actions, an agreement for legal services must be in writing, signed by the attorney and the client. Respondent failed to provide Randall with a written fee agreement in her civil family action, an alleged violation of RPC 1.5(b).

The complaint charged respondent with a second RPC 1.5(b) violation for having failed to provide Randall with a written fee agreement "when the attorney has not regularly represented the client." The complaint, however, does not allege that respondent had not regularly represented Randall.

Additionally, in family law matters, R. 5:3-5(a)(5) requires an attorney to send the client billing statements at least every ninety days, provided that services have been rendered during that

time. During the representation, respondent sent Randall only two billing statements, one dated January 2008 and the other dated March 2008, despite the fact that the representation began in April or May 2007. The complaint alleged that because respondent had not provided any billing statements for 2007, he had failed to provide them at least every ninety days, as required by R. 5:3-5(a)(5). Therefore, the complaint alleged, "respondent should be disciplined . . . for violating the reasonableness provisions of RPC 1.5(a)."

Finally, the complaint charged respondent with a failure to cooperate with the ethics investigation, based on his failure to reply to at least five letters the DEC sent to his home between June 17, 2015 and December 10, 2015 – all requesting respondent's written reply to the Randall grievance.

On May 26, 2016, the DEC investigator spoke with respondent by telephone about an unrelated matter. During that call, respondent furnished a new home address for future mailings. The DEC used that new address for all subsequent correspondence to him. On May 31, 2016, the investigator sent respondent another copy of the grievance and a sixth request for his written reply to the new address that respondent had provided. Although respondent was given until June 10, 2016 to reply, he never did

so. The complaint alleged that, by his failure to reply to the DEC's numerous written requests for a reply to the Randall grievance, respondent failed to cooperate with the ethics investigation, a violation of RPC 8.1(b).

* * *

The facts recited in the complaint support some of 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). Notwithstanding that Rule, each charge in the ethics complaint must be supported by sufficient facts for us to determine that unethical conduct occurred.

Respondent was retained in or about April 2007 to represent Randall in a post-judgment civil family action. Under R. 5:3-5(a), he was required to use a written fee agreement for the matter, but failed to do so, a violation of RPC 1.5(b).

Additionally, R. 5:3-5(a)(5) required respondent to bill Randall at least every ninety days during 2007, but he did not do so. Although the complaint referred to that misconduct as a violation of RPC 1.5(a), the complaint contains no facts upon which we may conclude that the fee was unreasonable. The simple fact that respondent did not send Randall billing statements every

ninety days did not, of itself, render the fee unreasonable. For this reason, we determine to dismiss the RPC 1.5(a) charge.

We also dismiss the additional RPC 1.5(b) charge based on respondent's failure to provide Randall with a written fee agreement because he had not regularly represented her. The complaint failed to allege facts to establish that Randall was not a regular client when she retained respondent for this matter.

Finally, respondent failed to reply to six letters from the DEC requesting a written reply to Randall's grievance, a violation of RPC 8.1(b).

In summary, respondent is guilty of having violated RPC 1.5(b) and 8.1(b).

Conduct involving failure to prepare the written fee agreement required by RPC 1.5(b), even if accompanied by other, non-serious ethics offenses, typically results in an admonition. See, e.g., In the Matter of John L. Conroy, Jr., DRB 15-248 (October 16, 2015) (attorney failed to provide the client with a writing setting forth the basis or rate of his fee when drafting a will, living will, and power of attorney, and processing a disability claim for a new client, a violation of RPC 1.5(b); lack of diligence, failure to communicate with the client, practicing law while administratively ineligible, and failure to cooperate

with an ethics investigation also found; no prior discipline in forty-year legal career) and In the Matter of Osualdo Gonzalez, DRB 14-042 (May 21, 2014) (attorney failed to set forth in writing the basis or rate of the fee, a violation of RPC 1.5(b); failure to communicate with the client, and failure to abide by the client's decisions concerning the scope of the representation (RPC 1.2(a)) also found; no prior discipline).

Reprimands have been imposed on attorneys who, in addition to violating RPC 1.5(b), have defaulted, have a disciplinary history, or have committed other acts of misconduct. See, e.g., In re Yannon, 220 N.J. 581 (2015) (attorney failed to memorialize the basis or rate of his fee in two real estate transactions, a violation of RPC 1.5(b); discipline enhanced from an admonition based on the attorney's prior one-year suspension); In re Gazdzinski, 220 N.J. 218 (2015) (attorney failed to prepare a written fee agreement in a matrimonial matter, as required by R. 5:3-5(a); the attorney also failed to comply with the district ethics committee investigator's repeated requests for the file, a violation of RPC 8.1(b); the attorney also violated RPC 8.4(d) by entering into an agreement with the client to dismiss the ethics grievance against him, in exchange for a resolution of the fee arbitration between them); In re Kardash, 210 N.J. 116 (2012) (in

a default matter, the attorney failed to prepare a written fee agreement in a matrimonial matter, as required by R. 5:3-5(a)); and In re Misci, 203 N.J. 428 (2010) (default; attorney did not memorialize the basis or rate of his fee for a municipal court matter).


Here, like Gazdzinski, respondent failed to prepare a written fee agreement in a family civil matter, as required by R. 5:3-5(a). Both attorneys also failed to comply with the district ethics committee investigator's repeated requests for information in the case. Like Kardash, respondent defaulted in a matter in which he had failed to prepare a written fee agreement in a family civil action, as required by R. 5:3-5(a).

Based on Gazdzinski and Kardash, supra, without more, a reprimand would be the appropriate sanction here. There is, however, an aggravating factor for our consideration - respondent's prior 2008 admonition and 2013 censure. In Yannon, supra, the discipline imposed for an attorney's similar misconduct was enhanced from an admonition to a reprimand for the presence of prior discipline. For respondent's prior discipline, we determine to enhance the sanction from a reprimand to a censure.

Members Gallipoli and Hoberman 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

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Disposition: Censure

Members	Censure	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