

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-408
District Docket No. IV-2015-0055E

IN THE MATTER OF
JOSEPH PETER HOWARD
AN ATTORNEY AT LAW

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Decision

Decided: June 5, 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 the record filed by the District IV Ethics Committee (DEC), pursuant to R. 1:20-4(f). The four-count complaint charged respondent with violations of RPC 1.3 (lack of diligence), RPC 1.15(b) (failure to promptly notify clients of receipt of funds in which they have an interest and to promptly disburse those funds), RPC 1.16(d) (upon termination of the representation, failure to take steps reasonably practicable to protect a client's interests), and RPC 3.2 (failure to expedite litigation) (count one); RPC 1.3 (count two); RPC 1.1(b) (pattern of neglect), RPC 1.3, RPC

1.15(b), and RPC 1.16(d) (count three); and RPC 8.1(b) (failure to cooperate with disciplinary authorities) (count four).

For the reasons set forth below, we determine to impose a censure.

Respondent earned admission to the New Jersey bar in 2010. During the relevant time frame, he maintained an office for the practice of law in Cherry Hill, New Jersey. He has no history of discipline.

Service of process was proper in this matter. On July 28, 2016, the DEC sent a copy of the formal ethics complaint to respondent, by certified and regular mail, at his law office address. The certified mail receipt was returned to the DEC bearing a signature, presumably of an employee of respondent, and the regular mail was not returned.

Accordingly, on September 28, 2016, the DEC sent a second letter to respondent, by regular mail, at his law office address, informing him that, unless he filed a verified answer to the complaint within five days, 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 charge a willful violation of RPC 8.1(b). Once again, the regular mail was not returned.

Respondent failed to file a verified answer to the complaint. Accordingly, on November 17, 2016, the DEC certified the record to us as a default.

We now turn to the allegations of the complaint.

Count One

On February 15, 2013, grievant Alan Gottlob retained respondent to recover monies owed to Gottlob and his limited liability company. To begin recovery efforts, respondent filed a complaint against several defendants, in the Superior Court of New Jersey, Camden County, on behalf of Gottlob and his company. Respondent, however, failed to redact from the complaint some of the personal identifiers for one of the defendants; as a result, he was required to file an amended complaint.

In January 2014, subsequent to the amendment of the complaint, Gottlob provided respondent with documents and answers to interrogatories, compiled in response to a defendant's formal discovery requests. At the end of April 2014, despite Gottlob's cooperation, respondent had not complied with the discovery requests; consequently, defense counsel successfully filed a motion to dismiss the complaint.

By letter dated May 18, 2014, Gottlob terminated the representation and asked respondent for a copy of his file,

which respondent failed to produce. Ultimately, Gottlob retained another attorney, who successfully reinstated the complaint and settled the dispute.

Count Two

In June 2013, Gottlob retained respondent to represent him in another collection matter, which involved the debtor's bankruptcy issues. Respondent filed a complaint on behalf of Gottlob in the bankruptcy court, asserting that the debtor's obligation to Gottlob was not dischargeable, due to the debtor's fraudulent conduct. The debtor, acting pro se, filed a motion to dismiss the complaint. Respondent filed no opposition to the debtor's motion, and was unprepared for oral argument, which occurred on March 4, 2014.

Following oral argument, the bankruptcy court allowed respondent to file an amended complaint, and rescheduled oral argument for the debtor's motion to dismiss on March 25, 2014. Subsequently, the court dismissed two of the three counts of the complaint filed on behalf of Gottlob. The pro se debtor then successfully moved for summary judgment in the case.

Count Three

Sometime in 2013, Gottlob retained respondent to negotiate a dispute with Merrill Lynch, where Gottlob had worked from June 28, 2011 through July 2, 2013, when he had voluntarily resigned. Gottlob desired to settle the matter without involving the Financial Industry Regulatory Authority (FINRA).¹ In June 2011, Gottlob had executed a \$100,000 promissory note in favor of Merrill Lynch. When Gottlob resigned, Merrill Lynch claimed he still owed more than \$86,000. Gottlob asserted that he was entitled to an offset against that amount, maintaining that Merrill Lynch still owed him significant insurance and management commissions.

Although respondent performed some work on the matter during the summer of 2013, he did nothing to advance Gottlob's position between August 2013 and January 2014. Ultimately, Merrill Lynch commenced a FINRA action against Gottlob, seeking satisfaction of the debt memorialized by the promissory note. Respondent missed the deadline to respond to Merrill Lynch's FINRA complaint.

¹ FINRA is a non-governmental organization that, among other functions, regulates brokerage firms, such as Merrill Lynch. FINRA also provides arbitration for the resolution of disputes between member firms and employees. In turn, FINRA is regulated by the Securities and Exchange Commission.

As set forth under count one, Gottlob terminated the representation on May 18, 2014 and asked that respondent provide his file, which respondent failed to do. Gottlob later negotiated a settlement with Merrill Lynch on his own, and retained another attorney to review a written settlement agreement drafted by Merrill Lynch.

Count Four

By letter dated November 14, 2015, the DEC served respondent with the three grievances underlying counts one through three of this matter, and required him to provide a written response to each grievance within ten days. Because respondent neither contacted the DEC nor provided written responses to the grievances by that deadline, the DEC, by letter dated December 21, 2015, once again demanded written responses to the grievances. Respondent failed to comply. Therefore, by letters dated January 19 and March 23, 2016, the DEC again demanded written responses to the grievances, and warned respondent that his failure to reply would constitute violations of R. 1:20-3(g) and RPC 8.1(b). The March 23, 2016 letter further cautioned respondent that his failure to comply would be deemed an admission of all alleged ethics violations.

As of July 26, 2016, respondent had not contacted the DEC; had not provided written responses to the grievances; had not appeared for an interview; and had not produced his files relating to Gottlob.

* * *

The facts recited in the formal ethics complaint support most of the charges of unethical conduct set forth therein. Respondent's failure to file a verified answer to the complaint 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). Notwithstanding that Rule, each charge in an ethics complaint must be supported by sufficient facts for us to determine that unethical conduct occurred.

In respect of count one, on February 15, 2013, Gottlob retained respondent to recover monies owed to him and his company. Although respondent filed a complaint on Gottlob's behalf, he then failed to timely respond to a defendant's discovery demands, despite Gottlob's cooperation in compiling the discovery. Consequently, defense counsel filed a successful motion to dismiss the complaint and Gottlob then sent respondent a letter terminating the representation and requesting his file, a request with which respondent failed to comply. Ultimately,

with the assistance of another attorney, Gottlob reinstated the complaint and settled the dispute.

Respondent's failure to comply with the defendant's discovery request, notwithstanding his client's full cooperation in compiling the discovery responses, led to the dismissal of Gottlob's complaint, and could have severely prejudiced Gottlob's interests. Respondent's conduct constituted a lack of diligence and failure to expedite litigation, violations of RPC 1.3 and RPC 3.2, respectively.

Respondent's failure to surrender Gottlob's file, despite Gottlob's written demand, violated RPC 1.16(d). Pursuant to that Rule, once the representation was terminated, respondent was obligated to protect Gottlob's interests and surrender papers and property to which he was entitled. Clearly, respondent's obligation included providing Gottlob with his own case file so that he could pursue the collection action.

Respondent's failure to return Gottlob's file did not violate RPC 1.15(b), however. This aspect of respondent's misconduct is more specifically addressed by the RPC 1.16(d) allegation, which applies on termination of the representation. Accordingly, we dismiss the RPC 1.15(b) charge.

In respect of count two, in June 2013, Gottlob retained respondent to pursue another collection matter, complicated by

the debtor's pending bankruptcy. Respondent filed a complaint on Gottlob's behalf, arguing that the debtor's obligation was not dischargeable. The pro se debtor moved to dismiss the complaint, and respondent failed to file opposition. Making matters worse, he was unprepared for the oral argument on the motion.

Following respondent's poor performance at oral argument, the bankruptcy court allowed him to file an amended complaint, and rescheduled oral argument on the motion to dismiss. Subsequently, however, the court dismissed two of the three counts of the complaint, and the pro se debtor then prevailed on a motion for summary judgment.

Respondent's failure to oppose the motion to dismiss his client's complaint, as well as his failure to prepare for argument on the motion, violated RPC 1.3.

In respect of count three, Gottlob retained respondent, in 2013, to negotiate his indebtedness to his former employer, Merrill Lynch. Gottlob wanted to settle the matter without involving FINRA, and asserted that he was entitled to a significant offset, representing compensation he was still owed.

Although respondent performed some work on the matter during the summer of 2013, he took no further action in the case. Furthermore, when Merrill Lynch commenced a FINRA action against Gottlob, respondent missed the deadline to reply to the

complaint. After Gottlob terminated the representation, respondent failed to comply with Gottlob's request for a copy of his file. Gottlob eventually negotiated a settlement with Merrill Lynch on his own, and retained another attorney to review the written agreement.

Respondent's failure to file a pleading in the FINRA action was inexcusable, could have severely prejudiced Gottlob's interests, and violated RPC 1.3.

Respondent's lack of diligence in all three of Gottlob's matters also constitutes a pattern of neglect, comprising at least three instances of neglect in at least three distinct client matters. See In re Rohan, 184 N.J. 287 (2005), In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005). The Court previously has found a pattern of neglect involving a single client with multiple matters. See, e.g., In re Guzman, 227 N.J. 232 (2016), In the Matter of Francisco S. Guzman, DRB 15-374 (August 3, 2016); and In re Manns, 157 N.J. 532 (1999).

For the same reasons set forth under count one, respondent's failure to surrender Gottlob's file, despite his client's written demand, is sufficient for us to conclude that respondent violated RPC 1.16(d). Also for the same reasons previously stated, we determine to dismiss the RPC 1.15(b) charge.

Finally, respondent completely failed to cooperate with the DEC's investigation of this matter by his failure to respond to the grievances, to meet with the DEC investigator, or to produce Gottlob's file, all violations of RPC 8.1(b).

The sole issue left for determination is the proper quantum of discipline for respondent's misconduct. When an attorney is guilty of a pattern of neglect, a reprimand ordinarily ensues. See, e.g., In re Weiss, 173 N.J. 323 (2002) (lack of diligence, gross neglect, and pattern of neglect); In re Balint, 170 N.J. 198 (2001) (in three matters, attorney engaged in lack of diligence, gross neglect, pattern of neglect, failure to communicate with clients, and failure to expedite litigation); and In re Bennett, 164 N.J. 340 (2000) (lack of diligence, failure to communicate in a number of cases handled on behalf of an insurance company, gross neglect, and pattern of neglect).

Typically, attorneys with no disciplinary history, who violate RPC 1.3, RPC 1.4(b), and RPC 1.16(d), receive admonitions. See e.g., In the Matter of William E. Wackowski, DRB 09-212 (November 25, 2009) (attorney permitted a complaint to be administratively dismissed, failed to inform his client of the dismissal, and failed to turn over the file to the client upon termination of the representation); In re Cameron, 196 N.J. 396 (2007) (attorney twice permitted a personal injury matter to

be dismissed, failed to disclose the dismissals to the client, failed to return the client's telephone calls, and failed to turn the file over to successor counsel; in addition to RPC 1.3, RPC 1.4(b), and RPC 1.16(d), the attorney was deemed to have engaged in gross neglect, a violation of RPC 1.1(a)); and In the Matter of Vera Carpenter, DRB 97-303 (October 27, 1997) (in a personal injury matter, attorney failed to act diligently to advance the client's claim, failed to return the client's telephone calls, and failed to turn over the client's file to new counsel). But see In re Lu Sane, 124 N.J. 31 (1991) (attorney publicly reprimanded for failing to keep his client reasonably informed about the status of the case, in violation of RPC 1.4(a), failing to comply with his client's wish that he cease his representation of him, in violation of RPC 1.16(a)(3), and failing to file an answer to the ethics complaint, in violation of RPC 8.1(b); three prior private reprimands).

An admonition has been imposed for failure to expedite litigation, even when accompanied by another violation. See, e.g., In the Matter of Leonard B. Zucker, DRB 12-039 (April 23, 2012) (after the attorney had filed a foreclosure complaint against a California resident, the defendant retained a New Jersey attorney, who provided proof that the defendant was not the proper party and requested the filing of a stipulation of

dismissal; the attorney ignored the request, as well as all telephone calls and letters from the other attorney; only after the other attorney had filed an answer, a motion for summary judgment, and a grievance against him did he forward a stipulation of dismissal; violations of RPC 3.2 and RPC 5.3(a); in mitigation, we considered the attorney's otherwise unblemished record of fifty-two years, his semi-retired status at the time of the events, his firm's apology to the grievant and reimbursement of his legal fees, and the firm's institution of new procedures to avoid the recurrence of similar problems).

Finally, respondent is guilty of violating RPC 8.1(b). Failure to cooperate with a disciplinary investigation results in an admonition if the attorney does not have an ethics history. See, e.g., In the Matter of Jeffrey M. Adams, DRB 14-243 (November 25, 2014) (attorney failed to cooperate with the district ethics committee's attempts to obtain information from him about his representation of a client in connection with the sale of a house, a violation of RPC 8.1(b)); In the Matter of Richard D. Koppenaar, DRB 13-164 (October 21, 2013) (the attorney admittedly failed to cooperate with the district ethics committee's attempts to obtain information about his representation of a client in an expungement matter, a violation of RPC 8.1(b)); and In the Matter of Raymond Oliver, DRB 12-232

(November 27, 2012) (attorney failed to submit a written, formal reply to the grievance and a copy of the filed pleadings in the underlying case, despite repeated assurances that he would do so, a violation of RPC 8.1(b); we took into consideration that the attorney's failure to cooperate was confined to the period during the investigation and that, thereafter, he appeared at the ethics hearing and participated fully during the disciplinary process).

Here, the default status of this matter is an aggravating factor. "A respondent's default or failure to cooperate with the investigative authorities acts 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). The only mitigation we consider is respondent's lack of a disciplinary history.


On balance, we determine that respondent's misconduct in this matter demands a censure. For reasons unknown, respondent repeatedly failed to represent Gottlob with diligence. When Gottlob terminated the representation, respondent refused to comply with the requests that the case files be sent to his former client. Such misconduct, given respondent's unblemished six years at the bar, would generally warrant a reprimand. Respondent, however, succeeded in exacerbating what otherwise might appear to be aberrational misconduct by completely

ignoring the DEC's repeated efforts to investigate these matters, thus, signaling an unfounded disdain for the attorney disciplinary system. He continued in his disdain by his failure to file an answer to the ethics complaint, warranting enhancement of the otherwise appropriate discipline 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

In the Matter of Joseph Peter Howard
Docket No. DRB 16-408

Decided: June 5, 2017

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