

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-393
District Docket No. IIIB-2016-0011E

IN THE MATTER OF :
RICHARD DONNELL ROBINSON :
AN ATTORNEY AT LAW :

Decision

Decided: June 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 the record, filed by the District IIIB Ethics Committee (DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.5(b) (when the lawyer has not regularly represented the client, failure to communicate to the client, in writing, the basis or rate of the fee before or within a reasonable time after commencing the representation), RPC 1.7(a) and (b) (concurrent conflict of interest), RPC 1.8 (improper business transaction with the client), RPC 3.1 (frivolous claim), RPC 8.1(a) (knowingly making a false statement of material fact

in connection with a disciplinary matter), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Respondent filed a timely motion to vacate the default.

For the reasons set forth below, we determined to dismiss the complaint, without regard to the content of respondent's motion. In our view, the allegations of the complaint, even if deemed admitted, did not clearly and convincingly establish any of the charged RPC violations. Consequently, we dismissed the motion to vacate, as moot.

Respondent was admitted to the New Jersey bar in 2004. At the relevant times, he maintained an office for the practice of law in Merchantville. Respondent has no disciplinary history.

Service of process was proper. On September 1, 2016, the DEC sent a copy of the formal ethics complaint to respondent's home address, by regular and certified mail, return receipt requested. The letter sent by certified mail was returned, marked "Return to Sender Unclaimed." The letter sent by regular mail was not returned.

On October 3, 2016, the DEC sent a letter to respondent, at the same address, by regular and certified mail, return receipt requested. The letter informed respondent that, unless he filed an answer within five days, the allegations of the complaint

would be deemed admitted, the DEC would certify the record directly to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b).

As of October 18, 2016, neither the letter sent by regular mail nor the letter sent by certified mail had been returned. On November 1, 2016, however, the DEC submitted to the Office of Attorney Ethics the envelopes for both certified letters, which, by that point, had been returned to the DEC. The envelope containing the October 3, 2016 letter did not identify the reason for the return, however.

As of October 18, 2016, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default.

The ethics complaint alleged that, on an unidentified date, grievant Letecia R. Benjamin retained respondent to represent her in a Chapter 7 Bankruptcy proceeding, upon the recommendation of her former husband, whom respondent had represented previously in their divorce action. When Benjamin retained respondent, he did not provide her with either a written retainer agreement or a "written conflicts statement due to his representation of the ex-husband," and he did not obtain "written waivers" of the

"conflict." The complaint did not include any documents that would have been entered into evidence.

On September 7, 2012, respondent filed Benjamin's Chapter 7 bankruptcy petition. He informed Benjamin that, once the petition was filed, the condominium charges for the Benjamins' former marital home, a condominium located in Mantua (Mantua property), would be suspended until the bankruptcy court discharged her debts, at which time the fees "would continue until [her] name was taken off title to the property via sale or transfer."

On December 21, 2012, the bankruptcy court discharged Benjamin's debts. On an unidentified date, "[s]ubsequent" to the discharge, Benjamin vacated the Mantua property. Thereafter, also on an unidentified date, respondent allowed third parties, including family members, to occupy the Mantua property, without Benjamin's knowledge or consent, and without payment of any consideration for the use of the property.

On an unidentified date, Benjamin sought eviction of the occupants of the Mantua property, by filing landlord-tenant actions against them. The ethics complaint contains no further information about the eviction proceedings.

On another unidentified date, which also was "[s]ubsequent" to the discharge of Benjamin's debts, the condominium association sued Benjamin for unpaid condominium fees and obtained a judgment

against her for "continuing condo fees." Benjamin then sued respondent for "these losses." Respondent did not file an answer to Benjamin's civil complaint, resulting in the entry of a default judgment against him. Although the court granted respondent's motion to vacate the default judgment, he still did not file an answer. The ethics complaint contains no further information about the lawsuit.

Based on the above facts, the ethics complaint charged respondent with having violated the following RPCs:

- RPC 1.5(b), by failing to provide Benjamin with a written retainer agreement (First Count);
- RPC 1.7, by failing to disclose his conflict of interest to Benjamin, present a "conflicts statement" to her, and obtain a written waiver of the conflict (Second Count);
- RPC 1.8, by knowingly acquiring an interest in the Mantua property "without the mandated safeguards and conditions" (Third Count);
- RPC 8.4(c), by failing to disclose the rental value of the Mantua property (Fourth Count);
- RPC 8.1(a), by making inconsistent statements in his written reply to the grievance and "at a deposition" (Fifth Count);
- RPC 1.7(a), based on his prior representation of Benjamin's former husband, which adversely affected his representation of Benjamin (Sixth Count);

- RPC 1.7(b), because his "personal use of [Benjamin]'s property materially limited his responsibility to [her]" (Seventh Count); and
- RPC 3.1, by failing to file "responsive pleadings" after the court had vacated the default judgment entered against him (Eighth Count).

* * *

Respondent's failure to file an answer to the complaint is deemed an admission that the allegations 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 complaint must be supported by sufficient facts for us to determine that unethical conduct had occurred. Nevertheless, we find that the facts recited in the complaint do not support any of the charges of unethical conduct.

RPC 1.5(b) requires an attorney who "has not regularly represented the client," to communicate to the client, in writing, the basis or rate of the fee "before or within a reasonable time after commencing the representation." The ethics complaint alleged that respondent did not provide Benjamin with a written fee agreement. Even were we to assume, for the sake of argument, that the "writing" must be a fee agreement, the complaint is silent regarding whether respondent had regularly represented Benjamin. Thus, the charge cannot be sustained.

When read together, the Second Count (RPC 1.7) and the Sixth Count (RPC 1.7(a)) suggest that respondent engaged in a conflict of interest, but failed to comply with the requirements necessary to proceed with the representation. Specifically, the Sixth Count charged that respondent's prior representation of Benjamin's former husband, in their divorce action, adversely affected his representation of Benjamin, in her bankruptcy proceeding. The Second Count charged respondent with having failed to take the steps necessary to proceed with the representation, notwithstanding the conflict of interest.

RPC 1.7 prohibits an attorney from representing a client if the representation involves "a concurrent conflict of interest." Thus, the Rule applies only when an attorney represents more than one client at the same time. Respondent did not represent Benjamin at the same time that he represented her former husband. Rather, he represented her former husband in the divorce proceeding, which already had concluded by the time he was retained by Benjamin. Thus, neither RPC 1.7 charge can be sustained.¹

The Third Count of the ethics complaint charged respondent with having violated RPC 1.8. Based on the language of the Third

¹ The complaint did not charge a violation of RPC 1.9 (regarding duties to former clients).

Count, which alleges that respondent knowingly acquired an interest in the Mantua property, we presumed that RPC 1.8(a) is the applicable provision.

In the absence of certain safeguards, RPC 1.8(a) prohibits a lawyer from entering into a business transaction with a client or knowingly acquiring an ownership, possessory, security or other pecuniary interest adverse to a client. The ethics complaint does not identify the facts on which the RPC 1.8(a) charge is based. Perhaps the intent was to allege that respondent violated the Rule when he allowed his family members and others to occupy the property, without Benjamin's knowledge and consent and the payment of compensation to her. However, RPC 1.8(a) does not apply to these circumstances.

Rather, cases that fall under the acquisition-of-an-adverse-interest clause of RPC 1.8(a) involve, for example, attorneys who seek to secure the payment of their legal fees by taking a second mortgage on their clients' houses. See, e.g., In the Matter of Stephen Schnitzer, DRB 01-392 (December 21, 2001) (admonition imposed on attorney who obtained a mortgage on his client's house to secure the payment of \$16,000 in legal fees, in addition to all subsequent billed fees and charges). Thus, the Rule presumes that the lawyer has acquired an actual interest from the client.

Here, the ethics complaint alleges that respondent unilaterally acquired possession of and control over the Mantua property and invited squatters to move in, all without Benjamin's knowledge or consent. Although this possessory interest certainly would have been "adverse" to Benjamin, it was not a conflict of interest. If true, respondent's conduct may have constituted a fourth degree crime, be it criminal trespass, N.J.S.A. 2C:18-3(a), or conspiracy to commit criminal trespass, N.J.S.A. 2C:5-2 - conduct governed by RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), not RPC 1.8(a). Moreover, respondent was not representing Benjamin at the time he or his family members occupied her property without her permission. By that point, the bankruptcy proceedings for which he was retained had been concluded. Thus, this charge cannot be sustained.

The other charges, presumably arising out of respondent's takeover of the Mantua property, also cannot be sustained. The Fourth Count charged respondent with having violated RPC 8.4(c), which prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. The basis for this charge is respondent's failure to disclose "the rental value" of the Mantua property. Yet, according to the ethics complaint, respondent did not "rent" the property, but rather

simply squatted or allowed others to do so. Thus, this charge, too, cannot be sustained.

Similarly, the allegations of the ethics complaint cannot sustain the RPC 1.7(b) charge, set forth in the Seventh Count. As stated above, RPC 1.7 governs concurrent conflicts of interest. According to the complaint, respondent's "personal use" of the Mantua property "materially limited" his responsibility to Benjamin, in contravention of the Rule. Although these words describe a conflict, as defined by RPC 1.7(a)(1), the Seventh Count did not charge respondent with that violation. Rather, that count charged respondent with RPC 1.7(b), which lists the circumstances under which an attorney may proceed with a representation involving a concurrent conflict of interest.

The facts alleged do not support the conclusion that, by occupying the Mantua property, respondent materially limited his responsibility to Benjamin. In the context of Benjamin's lack of knowledge, respondent's conduct was not a conflict; it was a crime. Further, as noted above, when respondent took control of the property, it appears that his representation of Benjamin had concluded. Indeed, the bankruptcy court had discharged her debts by that time. Because the allegations of the ethics complaint do not establish a violation of RPC 1.7(a)(1), respondent was not

obligated to comply with RPC 1.7(b). Thus, that charge cannot be sustained.

The Fifth Count of the ethics complaint charged respondent with having violated RPC 8.1(a), which prohibits an attorney from knowingly making a false statement of material fact in connection with a disciplinary matter. According to the complaint, a statement in respondent's reply to the grievance contradicted his testimony during a deposition. This charge cannot be sustained by the allegations of the complaint because the complaint does not identify the statements made by respondent and the complaint did not include the referenced documents.

Finally, the Eighth Count charged respondent with a violation of RPC 3.1 (prohibiting an attorney from asserting a frivolous claim or defense), based on his failure to file an answer to Benjamin's civil complaint, after he had obtained an order vacating the default judgment and was granted leave to file the pleading. As with all other counts of the ethics complaint, this count cannot be sustained.


The allegations of the ethics complaint do not explain why respondent never filed an answer to the civil complaint. Even if we were to assume that respondent knew that he had no defense to the allegations of Benjamin's civil complaint, we cannot divine

whether that was the actual reason for his inaction. Thus, the Eighth Count also cannot be sustained.

To conclude, we determined to dismiss all eight counts of the ethics complaint, because the facts alleged did not support a violation of the RPCs alleged. Consequently, we dismissed, as moot, respondent's motion to vacate the default.

Member Zmirich voted to impose a reprimand on respondent for his violation of RPC 1.5(b). Members Gallipoli and Hoberman did not participate.

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 Donnell Robinson
Docket No. DRB 16-393

Decided: June 12, 2017

Disposition: Dismiss

Members	Reprimand	Dismiss	Did not participate
Frost		X	
Baugh		X	
Boyer		X	
Clark		X	
Gallipoli			X
Hoberman			X
Rivera		X	
Singer		X	
Zmirich	X		
Total:	1	6	2


Ellen A. Brodsky
Chief Counsel