SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. 16-413, 16-417, and 16-418
District Docket Nos. XII-2015-0025E, XII-2015-0026E, and XII-2016-0004E

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| IN THE MATTER OF | : |
| ANDREW JOHN CALCAGNO | : |
| AN ATTORNEY AT LAW | : |

Decision

Decided: June 22, 2017

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

These matters were before us on certifications of default, filed by the District XII Ethics Committee (DEC), pursuant to R. 1:20-4(f), which we have consolidated for disposition.

In all three matters, respondent was charged with failure to comply with his obligation to cooperate in a disciplinary investigation, pursuant to R. 1:20-3(g)(3), a violation of RPC 8.1(b) (knowingly failing to reply to a lawful demand for information from a disciplinary authority). In the matter docketed under DRB 16-418, respondent also was charged with

failure to communicate with the client (RPC 1.4(b)) and failure to withdraw from a representation upon discharge by the client (RPC 1.16(a)(3)).

For the reasons set forth below, we determined to impose a single reprimand on respondent for his violation of RPC 1.4(b), RPC 1.16(a)(3), and RPC 8.1(b).

Respondent was admitted to the New Jersey bar in 1991. He also was admitted to the New York and District of Columbia bars in 1991, and to the Pennsylvania bar in 1999. At the relevant times, he maintained an office for the practice of law in Cranford.

Service of process was proper in all three matters. On October 5, 2016, the DEC sent a copy of each formal ethics complaint to respondent's office address, 213 South Avenue East, Cranford, New Jersey 07016, by regular and certified mail, return receipt requested. The receipts for the certified letters were returned bearing an illegible signature and confirming delivery on October 7, 2016. The letters sent by regular mail were not returned.

On November 16, 2016, the DEC sent a letter to respondent, in each matter, at the same address, by regular and certified mail, return receipt requested. The letters directed respondent to file an answer within five days and informed him that, if he

failed to do so, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of a sanction, and the complaint would be deemed amended to include a charge of a violation of RPC 8.1(b). The receipts for the certified letters were returned bearing an illegible signature and confirming delivery on November 21, 2016. The letters sent by regular mail were not returned.

On November 26, 2016, respondent faxed a letter to the DEC, requesting an extension to November 29, 2016, at which time he would provide an answer to each complaint. Although respondent's request was granted, he did not submit an answer to any of the complaints on November 29, 2016.

As of December 2, 2016, respondent had not filed an answer to any of the three complaints. Accordingly, on that date, the DEC certified these matters to us as defaults.

**The Broderick and Amos Matters (DRB 16-413 and XII-2015-0025E; DRB 16-417 and XII-2015-0026E)**

Many of the facts pertaining to the DEC's investigation of these two grievances overlap.

In May 2015, Matthew Thomas was injured in a motor vehicle accident and treated at University Hospital in Newark. On June 4, 2015, respondent met with Thomas at the hospital, where

Thomas signed a retainer agreement, medical authorizations, and a personal injury protection application.

On an unidentified date, respondent learned that Thomas had met with Brandon Broderick, Esq., and "signed certain [unidentified] documentation[,]" which did not include a retainer agreement.[1] Respondent drafted a "stop work" letter to Broderick, which he "caused" Thomas to sign.

On June 22, 2015, Angel Amos, Jr. (Amos Jr.) was injured in a motor vehicle accident and treated at University Hospital in Newark. The next day, Amos Jr.'s parent, Angel Amos (Amos), received "an unsolicited advertising package" from respondent. Respondent followed up the package delivery with a telephone call to the Amos home for the purpose of discussing with Amos respondent's retention as counsel for Amos Jr.

On June 18, 2015, Broderick filed a grievance against respondent. On June 30, 2015, Amos filed a grievance.

In letters, dated August 5, and August 26, 2015, the DEC investigator requested a written reply to each grievance within ten days. Respondent did not comply with either request. Thus, the DEC investigator telephoned respondent, who requested

[1] Although the complaint does not state whether Thomas met with Broderick before or after he had met with respondent, we surmise that it was afterward.

additional time to submit his replies to the grievances. In both matters, respondent received two extensions of time, one to October 2 and another to October 23, 2015, to submit a written reply to the grievances, but he failed to do so.

Respondent finally submitted his reply to the Broderick grievance on November 23, 2015. He submitted his reply to the Amos grievance on December 21, 2015.

Further, in the Broderick matter, on December 17, 2015, the investigator directed respondent to explain how he had met Thomas and to produce "any and all documentation" supporting that explanation. Respondent ignored the letter.

On January 4, 2016, the DEC investigator forwarded Broderick's response to respondent's written reply to the grievance and requested that respondent "provide any further information." Respondent did not reply to the investigator's letter until August 17, 2016.

Based on these facts, the DEC charged respondent, in both the Broderick and the Amos matters, with a failure to cooperate generally with the investigation, a violation of RPC 8.1(b); failure to submit a written reply to the grievance within ten

days, a violation of R. 1:20-3(g)(3);[2] and failure to inform the investigator why the information could not be provided and to provide a date certain by which it would be provided, also a violation of R. 1:20-3(g)(3).

**The Jones Matter (DRB 16-418 and XII-2016-0004E)**

On January 23, 2015 Mary Jones (Jones) and her daughter, Nichole Jones (Nichole), were injured in a motor vehicle accident and treated at University Hospital in Newark. Later that month, Jones and Nichole met with respondent at his office, at which time Jones agreed to retain him.

After the late January 2015 meeting, Jones heard nothing from respondent. She called his office numerous times to inquire about the status of her case, but he neither answered nor returned her calls. Thus, in November 2015, Jones terminated her "retainer agreement" with respondent.

Notwithstanding the November 2015 termination, on January 21, 2016, respondent filed a civil complaint on behalf of Jones and Nichole in the Superior Court of New Jersey, Law Division, Essex County (Jones matter). Six days later, on January 27, 2016, Jones retained another attorney to represent her for the

[2] In several places, the complaint erroneously cited the Rule as R. 1:20-1(g)(3) and R. 1:20-3(d)(3).

injuries she had sustained in the January 2015 motor vehicle accident.

Also on January 27, 2016, Jones's new attorney wrote a letter to respondent, confirming that Jones had terminated respondent's representation of her, informing respondent that the new attorney now represented Jones, and requesting that respondent release the Jones file to the new attorney.

Although respondent provided Jones's new attorney with a copy of her file, it did not contain a copy of the complaint. As of October 4, 2016, respondent had not informed either Jones or her new attorney of the filing "and/or pendency" of the complaint. Further, as of October 4, 2016, respondent remained the attorney of record in the Jones matter, notwithstanding Jones's termination of his representation in January of that year.

On December 24, 2015, Jones filed a grievance against respondent. On March 4, 2016, the DEC investigator wrote to respondent and requested a written reply to the grievance within ten days. Respondent did not comply with the investigator's request.

On May 6, 2016, the investigator sent another letter to respondent, requesting a written reply to the grievance within ten days. Again, respondent did not comply.

On May 17, 2016, respondent requested that his deadline be extended to May 27, 2016. Presumably, respondent's request was granted; nevertheless, he did not submit a reply by May 27.

On June 9, 2016, respondent requested an extension of the deadline to submit a reply to the grievance to June 13, 2016. Although the complaint is silent with respect to whether the extension was granted, respondent did not submit a reply on June 13, 2016, or at anytime thereafter.

The complaint charged respondent with having violated RPC 1.4(b), based on his failure to inform Jones that he had filed the complaint and that there was "litigation currently pending relative to her rights and remedies;" RPC 1.16(a)(3), based on his failure to withdraw from the representation after Jones had discharged him as her attorney; failure to cooperate, generally, with the investigation, a violation of RPC 8.1(b); failure to submit a written reply to the grievance within ten days, a violation of R. 1:20-3(g)(3); and failure to inform the investigator why the information could not be provided and to provide a date certain by which it would be provided, also a violation of R. 1:20-3(g)(3).

* * *

The facts recited in all three complaints support the charges of unethical conduct. Respondent's failure to file an

answer to the complaints 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).

In all three matters, respondent was charged with having violated R. 1:20-3(g)(3), which requires an attorney to cooperate in a disciplinary investigation; to reply in writing within ten days of receipt of a request for information; and, when the attorney is unable to provide the requested information within ten days, to inform the investigator, in writing, of the reason(s) and to provide a date certain by which the information will be provided. RPC 8.1(b), in turn, renders the failure to comply with R. 1:20-3(g)(3) an ethics violation, a charge also alleged in the complaint.

Although respondent ultimately submitted written replies to the grievances filed against him in the Broderick and Amos matters, he violated R. 1:20-3(g)(3) because the replies were not submitted within ten days of his receipt of them. Moreover, he twice requested, and was granted, an extension of the initial ten-day deadline, yet he still defied the DEC.

In Broderick, respondent did not submit his written reply to the grievance until November 23, 2015, nearly four months after it was originally due and one month after the second extension. Moreover, he did not reply to the DEC investigator's

request for an explanation of certain information in his reply to the grievance until seven months later.

In Amos, respondent did not submit his written reply to the grievance until December 21, 2015, four-and-a-half months after the original deadline and two months after the second extension. In Jones, respondent failed to submit a reply at all, despite two extensions of the ten-day deadline.

Thus, the facts alleged in each complaint support a determination that respondent violated R. 1:20-3(g)(3) and RPC 8.1(b).

Respondent also violated RPC 1.4(b) and RPC 1.16(a)(3) in the Jones matter. RPC 1.4(b) requires an attorney to "keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Here, after Jones had retained respondent to represent her, he never updated her on the status of her case; he ignored her telephone calls, seeking information about the matter; and he failed to inform her and her new attorney that he had filed a complaint on her behalf.

RPC 1.16(a)(3) requires a lawyer to withdraw from the representation of a client when the lawyer has been discharged. Respondent violated this RPC when, after Jones had terminated

him, he filed a complaint on her behalf and failed to remove himself as counsel of record in the matter.

There remains for determination the appropriate measure of discipline to impose on respondent for his violation of RPC 8.1(b) in all three matters, in addition to his violation of RPC 1.4(b) and RPC 1.16(a)(3) in one of those matters.

Ordinarily, admonitions are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In the Matter of Carl G. Zoecklein, DRB 16-167 (September 22, 2016) (attorney lacked diligence in the representation of his client, by failing to file a complaint on the client's behalf; failed to communicate with his client; and failed to cooperate with the ethics investigation; violations of RPC 1.3, RPC 1.4(b), and RPC 8.1(b); the attorney had an unblemished disciplinary record since his 1990 admission to the bar); In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the District Ethics Committee investigator regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)); In re Gleason, 220 N.J. 350 (2015) (attorney did not file an answer to the formal ethics complaint and ignored the District Ethics Committee investigator's multiple attempts to

obtain a copy of his client's file, a violation of RPC 8.1(b); the attorney also failed to inform his client that a planning board had dismissed his land use application, a violation of RPC 1.4(b)); and In the Matter of Raymond A. 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)).

Admonitions may still be imposed even if the attorney has committed other infractions. See, e.g., In the Matter of Zoecklein, supra, DRB 16-167 (RPC 1.3, RPC 1.4(b), and RPC 8.1(b)); In the Matter of John L. Conroy, Jr., DRB 15-248 (October 16, 2015) (attorney undertook representation of a new client, without providing him with a writing setting forth the basis or rate of his fee, a violation of RPC 1.5(b); the attorney also failed to follow through on filing a claim for veteran's benefits on behalf of his client, a violation of RPC 1.3; and failed to communicate with his client and the client's sister, a violation of RPC 1.4(b); finally, he failed to reply to the disciplinary investigator's three requests for information, a violation of RPC 8.1(b)); In the Matter of Thomas E. Downs, IV, DRB 12-407 (April 19, 2013) (attorney admittedly failed to communicate with his client, a violation of RPC

1.4(b), and, after the grievance was filed, failed to reply to the ethics investigator's numerous attempts to communicate with him, a violation of RPC 8.1(b)); and In the Matter of Steven J. Plofsky, DRB 10-384 (March 7, 2011) (attorney failed to communicate with his clients in two different matters and failed to cooperate with the DEC in its investigation of grievances filed by the two clients, plus four other clients; violations of RPC 1.4(b) and RPC 8.1(b)).

Even if the attorney fails to cooperate with disciplinary authorities in their investigation of multiple grievances, in multiple client matters, an admonition still may be appropriate. See, e.g., In the Matter of Dawson, supra, DRB 15-242 (one client, three matters), and In the Matter of Plofsky, supra, DRB 10-384 (six clients, six matters).

Based on the above precedent, an admonition would be appropriate for respondent's ethics infractions. There is, however, the default nature of these three matters, which must be taken into account. "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). Thus, we determine to impose a reprimand on respondent rather than an admonition.

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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Andrew J. Calcagno
Docket Nos. DRB 16-413, 16-417, and 16-418

Decided: June 22, 2017

Disposition: Reprimand

| ***Members*** | 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