SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-156
District Docket No. XIV-2016-0246E

IN THE MATTER OF	
MARK JOHNS	
AN ATTORNEY AT LAW	

Decision

Argued: July 20, 2017

Decided: October 18, 2017

Reid A. Adler appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument, despite proper notice.

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

This matter was before us on a motion for reciprocal discipline, pursuant to R. 1:20-14(a), filed by the Office of Attorney Ethics (OAE). The motion was based on respondent's suspension for one year and one day in Pennsylvania, for the New Jersey equivalents of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status

of a matter and to promptly reply to reasonable requests for information), RPC 1.15(b) (failure to promptly deliver funds to a client), RPC 1.16(d) (failure to protect a client's interests on termination of the representation), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The OAE recommends the imposition of a censure. For the reasons set forth below, we determine to impose a three-month suspension for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 2001 and the Pennsylvania bar in 2000. At the relevant time, he maintained a law practice in Horsham, Pennsylvania. He has no history of discipline in New Jersey, but has been ineligible to practice law here since September 12, 2016.

This motion involves respondent's mishandling of two client matters. The first related to a litigation matter; the second involved the restoration of a driver's license.

On December 30, 2014, the Supreme Court of Pennsylvania ordered respondent's suspension for one year and one day based on the October 2, 2014 Report and Recommendation of the Disciplinary Board of the Supreme Court of Pennsylvania. The facts obtained from the Court's decision are supplemented by the Disciplinary Board's petition for discipline, to which respondent stipulated.

The Sheryl Youngblood Matter

In August 2011, Sheryl Youngblood retained respondent to defend her in an arbitration case filed in Lackawanna County Court of Common Pleas, arising from a speeding ticket. Youngblood paid respondent a $600 fee, but the receipt he provided her did not indicate whether the fee was a flat fee, or "earned upon receipt," or whether it was a non-refundable fee. Apparently, he did not provide Youngblood with a writing communicating the basis or rate of the fee.

On December 23, 2011, the arbitration was "discontinued" without prejudice. Respondent had neither entered an appearance in the matter nor filed any pleadings. He did not return Youngblood's fee.

In another Lackawanna Court case, plaintiff's counsel in the matter of Capital One Bank (USA), N.A. v. Sheryl A. Youngblood, served Youngblood with a notice of intent to enter a default judgment. On or about August 24, 2012, Youngblood notified respondent that she had received the notice, had filed a timely answer and "New Matter," and inquired why the notice had been sent to her. The following day, she e-mailed a copy of the notice to respondent.

Respondent advised Youngblood to confirm that the documents had been filed with the Prothonotary of Lackawanna County, which

she did. Thereafter, he informed her that no further action was necessary because of her timely filings. Respondent agreed to represent Youngblood in the new action and to apply the fee that she had previously paid to the new matter.

On September 17, 2012, plaintiff's counsel mistakenly entered a default judgment against Youngblood, believing she had not filed an answer. On September 18, 2012, Youngblood e-mailed the default judgment to respondent, who informed her that "a simple phone call" to plaintiff's counsel "should" resolve the mistake.

Youngblood had only thirty days to file a petition to strike the judgment. She called respondent "several times," about it. Respondent represented that he would call plaintiff's counsel to resolve the issue of the erroneously filed default judgment. Thereafter, Youngblood left four voice-mail messages for respondent on successive dates, as well as an e-mail message, to which he did not reply. He claimed that his phone was not working properly on those dates.

By October 6, 2012, respondent "may have tried to contact plaintiff's counsel," but did not persuade counsel to vacate the default judgment, did not inform Youngblood that he had tried to reach plaintiff's counsel, and did not provide the ethics authorities with proof of his efforts to vacate the judgment.

In an October 6, 2012 e-mail, Youngblood requested a refund of her $600 retainer, and expressed her disappointment with respondent's efforts, negligence, and failure to reply to her attempts to contact him. She then retained new counsel, who resolved the situation by placing one telephone call to plaintiff's counsel.

Despite Youngblood's multiple requests, respondent did not return the documents she had provided "in electronic format," and did not return the fee until January 14, 2014, the date of the ethics hearing.

On January 14, 2014, respondent entered into a joint stipulation of fact, law, and exhibits with the Pennsylvania Office of Disciplinary Counsel. Respondent stipulated, among other things, that he might have tried to contact the plaintiff's counsel and, if he did, he was not successful in persuading counsel to vacate the default judgment. He, nevertheless, neither informed Youngblood that he had tried to reach counsel, nor provided any documentary evidence to Disciplinary Counsel of his purported efforts. Respondent admitted that he violated the RPCs with which he was charged.

The Ann Stevens/Ryan Cepeda Matter

On November 9, 2012, Ann Stevens, a North Carolina resident, contacted respondent for assistance with the Pennsylvania driver's license suspension of her grandson, Ryan Cepeda, which was to be in effect for approximately one year, until November 17, 2013. Cepeda needed either a driver's license or a state identification card in order to enroll at the local community college in North Carolina, where he resided at the time. He, therefore, had to clear his Pennsylvania license as quickly as possible for North Carolina officials to issue any identification documents to him. He needed a North Carolina driver's license to drive to work and to attend college classes, which were starting in January 2013.

During Stevens' initial and subsequent conversations with respondent, he repeatedly informed her that the restoration process would take six weeks.

Following their November 9, 2012 telephone conversation, respondent e-mailed a receipt to Stevens for her $500 fee payment. The PayPal receipt did not include information relating to the representation.

From November 9, 2012 through May 29, 2013, Stevens made repeated telephone and e-mail inquiries to ascertain when Cepeda's driver's license would be restored and whether any fees

had to be paid to the Pennsylvania Department of Transportation (PennDOT) for the license restoration.

On November 20, 2012, respondent again informed Stevens that the matter would be resolved in approximately six weeks. Thereafter, in a December 19, 2012 e-mail, respondent notified Stevens that he was "pushing [the] da to list asap. I will call him again. Da controls the schedule for these cases. Need to list in front of the judge." Understanding that respondent had spoken to the district attorney (D.A.), after the D.A. had conferred with the judge, Stevens immediately requested that respondent find out about Cepeda's case. Respondent's e-mail was misleading because he had not spoken to the D.A.

Respondent did not reply to Stevens' e-mail until almost two months later, when, on February 14, 2013, he notified Stevens in an e-mail that he would appear in court on February 20, 2013, at which time the matter either would be resolved or scheduled for a hearing. Thereafter, respondent's March 4, 2013 e-mail to Stevens stated that he expected to receive an order, that week, reinstating Cepeda's Pennsylvania driver's license. Because respondent had not obtained a restoration letter from PennDOT, Cepeda was unable to register or attend classes at the local community college.

By March 25, 2013, Cepeda's license had not been restored. Stevens, therefore, requested an update. On March 29, 2013, respondent promised to call Stevens with an update on April 1, 2013, after he returned from vacation. He failed to do so, however.

Stevens requested status updates on April 24 and 30, 2013, and telephoned respondent nine times in May 2013. In a May 7, 2013 e-mail to Stevens, respondent stated that Cepeda "should soon expect to receive the paperwork from PennDOT and that [he] would be following up with PennDOT on May 10, 2013." When Stevens contacted respondent on May 13, 2013, he had no new information to provide. In a May 15, 2013 e-mail to Stevens, respondent stated that he planned to communicate with PennDOT's counsel and would update her "no later than May 16, 2013." He failed to do so. Respondent's May 21, 2013 e-mail stated that he "had finally spoken with his contact at PennDOT and that Mr. Cepeda should receive the Restoration Letter 'any day.'" Steven's repeated requests for status updates from respondent stemmed from her concern that her grandson would not be able to register for summer classes at the local community college.

On May 20, 2013, PennDOT issued a restoration requirements letter to Cepeda, which stated that his driving privileges could not be restored until after November 17, 2013, his eligibility

date, provided that he complied with the other conditions listed in the letter. Respondent had not informed Stevens or Cepeda that PennDOT would not restore the license until after November 17, 2013.

After Cepeda received the letter from PennDOT, Stevens attempted to contact respondent several times, seeking an explanation of the letter and a refund of the $500 fee. Because respondent did not reply, Stevens contacted the Horsham Police Department. Following the police department's intervention, on June 18, 2013, respondent refunded the fee.

Because Cepeda had not been able to attend college for the majority of 2013, he was required to immediately repay a $1,000 grant that he had received. Unless he did so, he would not be permitted to register for classes during the fall 2013 semester.

Respondent's answer to the petition established that he was familiar with traffic matters as he had represented clients in "at least 100" matters per year. He stipulated that he had informed Stevens (1) on November 20, 2012, that he expected "to have the matter cleared up in approximately six (6) weeks;" (2) on March 4, 2013, that he expected an order that week restoring Cepeda's license; and (3) on May 7, 2013, that Cepeda would soon receive paperwork from PennDot. For this matter, too, respondent stipulated that he violated all of the charged RPCs.

The Pennsylvania Disciplinary Proceedings

In recommending discipline, the Pennsylvania Board (Pa. Board) considered that respondent represented Youngblood "during his prior disciplinary action" for which he received the October 3, 2012 private reprimand. In that matter, he had represented a client in a divorce, and failed to reply to discovery requests and demands for the production of documents, failed to reply to "a formal request for documents," and failed to reply to successor counsel's request that he withdraw from the representation. He was found guilty of lack of diligence and failure to communicate, and was ordered to refund court-imposed sanctions ($615) against the client.

Previously, in 2010, respondent was admonished for his misconduct in a divorce matter in which he failed to take any steps to advance his client's divorce and equitable distribution matter. He was guilty of lack of diligence and failure to communicate. Respondent's inaction and failure to reply to the client's numerous requests for a status update over a three-month period prompted his client to terminate his services and demand a refund of the $750 retainer.

Here, the Pa. Board found that, despite respondent's prior discipline, and the fact he was on notice of problems in his

practice, "he failed to take any corrective measures to improve interactions with clients."

The Pa. Board found respondent guilty of failure to provide competent representation to a client and a pattern of "serial" neglect (PaRPC 1.1); lack of diligence and promptness in representing a client (PaRPC 1.3); failure to keep a client reasonably informed about the status of the matter (PaRPC 1.4(a)(3)) and to promptly comply with reasonable requests for information (PaRPC 1.4(a)(4)); failure to promptly deliver property to the client and to promptly render a full accounting regarding the property (PaRPC 1.15(e)); on termination of the representation, failure to protect a client's interests (PaRPC 1.16(d)); and conduct involving dishonesty, fraud, deceit or misrepresentation (PaRPC 8.4(c)).

The Pa. Board determined that respondent failed to provide services for which he had been paid and ignored communications from his clients, leaving them "dangling for months." The Pa. Board noted that respondent could have resolved Youngblood's matter with a simple telephone call to opposing counsel, which was how successor counsel resolved the matter. As to Stevens and Cepeda, respondent routinely provided misleading explanations and excuses about the restoration of Cepeda's driving privileges. During the six months that he represented Cepeda, he

consistently relayed that the matter would be resolved in six weeks, "misleading [Stevens] to believe that he was actively fulfilling his obligation to her."

The Pa. Board found that respondent engaged in a pattern "of serial neglect" during his thirteen years at the bar. Despite his contacts with the disciplinary system, he "failed to conform his conduct to the standards required of the legal profession . . . . His ongoing disregard for his obligations has placed members of the public at risk of substandard representation."

As noted previously, on December 30, 2014, the Supreme Court of Pennsylvania suspended respondent for one year and one day. He failed to notify the OAE of the suspension, as required by R. 1:20-14(a)(1).

In its brief to us, the OAE argued that respondent is guilty of the above violations, with the exception of RPC 1.1(a) and RPC 1.1(b). As to RPC 1.1(a), the OAE stated that "Pennsylvania has a higher standard of 'competent representation' [and] New Jersey employs a lower standard of gross negligence as opposed to simple negligence." As to RPC 1.1(b), citing In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16), the OAE pointed out that

this matter involved only two instances of simple neglect, when three are required to find a pattern of neglect.

The OAE maintained that, under New Jersey precedent, respondent's misconduct warrants substantially different discipline from that imposed in Pennsylvania, R. 1:20-14(a)(4)(E), and that respondent's combination of violations typically warrants a reprimand. To support its argument, the OAE cited In re Wiewiorka, 179 N.J. 225 (2004) (reprimand for attorney who engaged in gross neglect, lack of diligence, failure to communicate with a client, and misrepresentation in one client matter; the attorney failed to return the client's telephone calls, misrepresented to the client that he had filed a lawsuit, when he had not, and permitted the statute of limitations to expire); and In re Tunney, 176 N.J. 272 (2003) (reprimand for misconduct in three matters involving the same client; the attorney permitted the complaints to be dismissed in two of the client's matters, failed to file a complaint in the third matter, failed to reply to the client's repeated requests for information, misrepresented the status of the three cases, failed to turn over the client's files, and failed to cooperate with disciplinary authorities).

Moreover, the OAE argued, admonitions are typically imposed when an attorney fails to promptly disburse funds to a client,

even if the attorney has committed additional non-serious violations; citing In the Matter of David J. Percely, DRB 08-008 (June 9, 2008) (for more than three years, the attorney failed to remit to the client the balance of the settlement funds, lacked diligence, failed to cooperate with ethics authorities, and wrote a trust account check to "cash" in violation of the recordkeeping rules; significant mitigating factors considered including the attorney's unblemished disciplinary history in his twenty years at the bar, the passage of nine years since the underlying conduct occurred, his family health problems, his own bouts of depression, and his service to the community) and In the Matter of William F. Aranguren, DRB 97-101 (June 30, 1997) (the attorney failed to make prompt distributions to his client, and failed to provide the client with a detailed breakdown of expenses, fees and deductions; in another matter he failed to properly prosecute the matter resulting in its dismissal, failed to have the matter reinstated, failed to follow up on the client's requests to determine the status of his matter, and took insufficient steps to turn the file over to the client).

The OAE pointed out that respondent presented no mitigating factors for our consideration. Aggravating factors are his disciplinary history in Pennsylvania, consisting of an admonition and a private reprimand for similar misconduct, and

his failure to report his suspension to the OAE. Thus, his "conduct has not improved despite Pennsylvania's disciplinary actions." The OAE argued that the aggravating factors warrant increasing the discipline from a reprimand to a censure.

* * *

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state."

Reciprocal disciplinary proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

> The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not

> remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

Subsection (E) applies because the unethical conduct warrants substantially different discipline. Specifically, the cases that the OAE cited establish that New Jersey precedent does not support a one-year suspension for respondent's violations.

The Pa. Board's report clearly and convincingly established that respondent lacked diligence in the Youngblood matter as he performed almost no services for her (RPC 1.3); failed to reply to her numerous requests for information (RPC 1.4(b)); failed to promptly return the unearned fee (more specifically RPC 1.16(d), instead of RPC 1.15(b)); failed to return her documents (RPC 1.16(d)); and misrepresented to Youngblood that he would call opposing counsel to have the default vacated (RPC 8.4(c)), which easily and quickly would have resolved the matter.

In the Stevens/Cepeda matter, respondent likewise lacked diligence by failing to take little, if any, action in the six-month period he represented Cepeda; failed to keep Stevens and Cepeda properly informed about the true status of the matter;

failed to return the unearned fee until he was contacted by the police; and engaged in a pattern of misrepresentations about the status of the matter and the actions he was taking.

The OAE submits that New Jersey "employs a lower standard of gross negligence as opposed to simple negligence." The Pennsylvania version of RPC 1.1(a) states that an attorney must provide "competent representation," whereas New Jersey's version prohibits attorneys from engaging in "gross negligence." According to the Report of the New Jersey Supreme Court Committee on the The Model Rules of Professional Conduct (Debevoise Committee Report), Section VI Lawyer Competence, Rule 1.1 (June 24, 1983), RPC 1.1 was designed to address "deviations from professional standards which are so far below the common understanding of those standards as to leave no question of inadequacy." Black's Law Online Dictionary defines gross negligence as

> A severe degree of negligence taken as reckless disregard. Blatant indifference to one's legal duty, other's safety, or their rights are examples.

A finding of gross neglect is fact-sensitive. In our view, respondent's inaction in these cases, in the context of his clients' repeated and continuing efforts to contact him about their matters and pressing him to act justifies a finding that he is guilty of gross neglect. We so find.

Moreover, although the OAE correctly asserts that at least three instances of neglect are required to establish a pattern of neglect, these cases represent respondent's third and fourth instances of neglect, when considered with his prior Pennsylvania matters. The Pa. Board and the Pa. Supreme Court found a pattern of neglect. We, too, find this violation.

As to the proper level of discipline in New Jersey, the above cases are instructive. Here, suspensions have been imposed where the attorneys' violations of RPC 8.4(c) included the fabrication of documents, a factor not present here. See, e.g., In re Brollesy, 217 N.J. 307 (2014) (three-month suspension in an immigration matter; attorney was guilty of gross neglect, lack of diligence, failure to communicate with the client, misrepresentations to the client, fabrication of a letter from the United States Embassy, and forgery of the signature of a fictitious United States Consul to it); In re Yates, 212 N.J. 188 (2012) (three-month suspension in a malpractice matter; attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; attorney hid the fact that the statute of limitations expired on a medical malpractice claim and eventually fabricated a $600,000 settlement; mitigation considered); and In re Bosies, 138 N.J. 169 (1994) (six-month suspension for misconduct in four matters; attorney guilty of

gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; in one matter, for a period of five months, the attorney engaged in an elaborate scheme to mislead his client by engaging in a pattern of misrepresentations, including preparing a motion for sanctions against a witness, which he showed to the client but never filed with the court).

Although respondent made repeated misrepresentations to his clients, he did not create or forge documents. He also failed to return their retainers until forced to do so, failed to return documents in one matter, failed to promptly or properly communicate with his clients, and engaged in a pattern of neglect, gross neglect and lack of diligence. No mitigating factors have been presented. In aggravation, respondent's two prior disciplinary matters for similar misconduct establish that he has not learned from his prior mistakes. Moreover, other aggravating factors include respondent's failure to notify the OAE of his suspension in Pennsylvania, and the harm to Cepeda, who was unable to enroll in college courses for two semesters and, as a result, was required to repay a $1,000 grant. We find that the significant aggravating factors and respondent's serial misrepresentations and serial neglect over the course of his legal career warrant a three-month suspension.

Member Boyer voted to impose a censure. Member 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 Mark Johns
Docket No. DRB 17-156

Argued: July 20, 2017

Decided: October 18, 2017

Disposition: Three-month suspension

Members	Three-month Suspension	Censure	Did not participate
Frost	X		
Baugh	X		
Boyer		X	
Clark	X		
Gallipoli	X		
Hoberman			X
Rivera	X		
Singer	X		
Zmirich	X		
Total:	7	1	1

Ellen A. Brodsky
Chief Counsel