

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 17-234  
District Docket No. XII-2016-0017E

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IN THE MATTER OF  
ERIC B. BAILEY  
AN ATTORNEY AT LAW

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Decision

Decided: December 27, 2017

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

This matter was before us by way of default filed by the District XII Ethics Committee (DEC), pursuant to R. 1:20-4(f). The complaint charged respondent with violations of RPC 1.1(a) (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.3 (lack of diligence); RPC 1.4 (presumably (b)) (failure to communicate with the client); RPC 3.2 (failure to expedite the litigation); RPC 8.1(b) (failure to cooperate); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). For the reasons set forth below, we determined to impose a censure.

Respondent was admitted to the New Jersey and New York bars in 2006. On January 27, 2016, he received a reprimand for lack of diligence, failure to communicate with his client, and failure to cooperate with ethics authorities. In re Bailey, 224 N.J. 100 (2016).

On November 12, 2015, respondent was transferred to disability inactive status, where he remains to date. In re Bailey, 223 N.J. 357 (2015).

Service of process was proper in this matter. By letter dated February 17, 2017, the DEC sent the complaint to respondent at his home address, by both regular and certified mail, return receipt requested. The regular mail was not returned. The letter sent by certified mail was not accepted and, eventually, was returned.

On March 1, 2017, the DEC sent a copy of the amended complaint to respondent at his home address, by both regular and certified mail, return receipt requested. Again, the regular mail was not returned. The certified mail was not accepted and, eventually, was returned.

On April 17, 2017, the DEC sent respondent a letter informing him that, if he failed to file a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the entire record would be

certified directly to us for the imposition of discipline, and the complaint would be deemed amended to include a violation of RPC 8.1(b).

The time within which respondent may have filed an answer has expired. As of the date of the certification of the record, no answer had been filed by or on behalf of respondent.

On July 12, 2012, grievant, Catherine Morales, was assaulted on the property of Jean Realty Corporation and suffered personal injuries. Morales, referred to respondent by a friend, met with him at his office in Jersey City, New Jersey regarding her case. On August 6, 2012, Morales signed a retainer agreement.

Ten months later, on June 6, 2013, respondent filed a complaint and jury demand on behalf of Morales, who never received a copy of the complaint from respondent. In fact, shortly after retaining respondent, she was unable to contact him. Respondent did not return any of the voicemail messages Morales left for him at his office and otherwise failed to communicate with her to keep her informed of the progress of her matter.

Eventually, on January 17, 2014, Morales' complaint was dismissed. Respondent did not notify Morales of the dismissal. On

June 6, 2014, Morales' complaint was reinstated. Still, she received no notice from respondent.

Subsequently, counsel for defendants in the personal injury matter filed various discovery motions. On September 19, 2014, an order was entered compelling Morales to appear on October 1, 2014 for a deposition and to provide medical authorizations. Morales was never informed of the discovery motions or whether respondent had answered them.

Morales was informed, however, that her deposition was scheduled for October 1 and October 20, 2014. Respondent later informed Morales that the depositions had been adjourned at the defendant's request, which was untrue. Morales failed to appear for her depositions. Hence, on November 21, 2014, an order was entered again dismissing Morales' complaint, without prejudice, for failure to provide discovery and attend the depositions. Respondent did not inform Morales that her complaint had been dismissed.

In August 2015, respondent told Morales that he was having difficulty keeping up with the case and that he was looking for another lawyer for her. This was the last communication Morales had with respondent. Although she called his office weekly through the fall of 2015 and left messages, respondent never returned her calls.

On December 20, 2015, Adam J. Adrignolo, respondent's attorney, informed Morales that her complaint had been dismissed and that she should seek replacement counsel. Shortly thereafter, Morales retained the services of Rafael Triunfel, Esq. to reinstate her complaint.

On March 15, 2016, Morales filed an ethics grievance against respondent. The DEC investigator requested that respondent turn over his entire file for Morales and that he provide an answer to the grievance. Respondent did not produce the client file and, further, failed to cooperate in the investigation.

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Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence.

The complaint alleges sufficient facts to support 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 an ethics complaint must be supported by sufficient facts for us to determine that unethical conduct occurred.

Respondent grossly neglected and lacked diligence in handling Morales' matter. Although he filed a complaint on her behalf, he did absolutely nothing to further the matter, but, rather, ignored discovery requests and eventual court orders compelling discovery, leading to the dismissal of the complaint on two separate occasions. This conduct violated RPC 1.1(a) and RPC 1.3.

Respondent's conduct, however, involves neglect in only one matter and, therefore, does not establish a pattern of neglect. See, In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12) (a finding of a pattern of neglect requires a finding of negligence in at least three separate matters). Accordingly, we dismiss the violation of RPC 1.1(b).

Respondent also failed to respond to numerous communications from Morales and failed to keep her informed of the status of her matter. His conduct in this regard violated RPC 1.4(b).

Respondent allowed Morales' matter to linger for years, resulting in the dismissal of her complaint on two occasions. He also failed to comply with a court order to respond to discovery requests and to produce his client for depositions. In fact, at one point, he informed Morales that the scheduled depositions had been adjourned, which was untrue. Respondent, therefore, violated RPC 3.2

by allowing the matter to linger for several years, and RPC 8.4(c) by making misrepresentations to his client regarding the depositions. Respondent also made misrepresentations by silence by his failure to inform Morales that her matter twice had been dismissed, allowing her to believe that her case was progressing in the normal course.

Finally, respondent failed to respond to the DEC investigator's requests for information, failed to reply in writing to the ethics grievance, and failed to produce his client file. Respondent's failure to cooperate with the DEC's investigation of this matter violated RPC 8.1(b).

In sum, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 3.2, RPC 8.1(b), and RPC 8.4(c).

A misrepresentation to a client generally requires the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney made a misrepresentation by silence to his client, by failing to inform her, despite ample opportunity to do so, that her complaint had been dismissed, a violation of RPC 8.4(c); the complaint was dismissed because the

attorney had failed to serve interrogatory answers and ignored court orders compelling service of the answers, violations of RPC 1.1(a), RPC 1.3, and RPC 3.2; the attorney also violated RPC 1.4(b) by his complete failure to reply to his client's requests for information or to otherwise communicate with her from June 2009 through January 2011, and his failure to communicate with her, except on occasion, between January 2011 and April 2014, when the client filed a grievance; the attorney never informed his client that a motion to compel had been filed, that the court had entered an order granting the motion, or that the court had dismissed her complaint for failure to serve the interrogatory answers and to comply with the court's order, violations of RPC 1.4(c)); In re Ruffolo, 220 N.J. 353 (2015) (attorney exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, not working on it after filing the initial claim, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter, violations of RPC 1.1(a) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates; finally, by assuring his client that his matter was proceeding apace, knowing that the complaint had been dismissed, and that he should expect a monetary award in the near future, the attorney violated



RPC 8.4(c)); and In re Braverman, 220 N.J. 25 (2014) (reprimand imposed on attorney who failed to tell his client that the complaints filed on her behalf in two personal injury actions had been dismissed, thereby misleading her, by his silence, into believing that both cases remained pending, a violation of RPC 8.4(c); the attorney also violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 3.2, and RPC 8.1(b); we found that the attorney's unblemished thirty-four years at the bar were outweighed by his inaction, which left the client with no legal recourse).

Based on the aforementioned cases involving similar conduct and RPC violations, the starting point in assessing the appropriate quantum of discipline for respondent is a reprimand. That discipline is enhanced to a censure based on the aggravating factor of respondent's default. In re Kivler, 193 N.J. 332, 342 (2008) ("a respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced").

Moreover, in further aggravation, we note respondent's prior reprimand. In that matter, respondent's conduct was similar to his conduct in handling Morales' case. He severely neglected his

client's matter from August 2013 through April 2014. In the Matter of Eric B. Bailey, DRB 15-133 (October 27, 2015) (slip op. at 5 & at 8). Although respondent replied in writing to the grievance, he failed to produce his file to the investigator or to further cooperate in any regard. That matter, too, proceeded by way of default. Id. at 9.

The most relevant fact from respondent's prior disciplinary matter is the timeline. He neglected his client's matter between August 2013 and April 2014. The grievance was filed in May 2014. Here, respondent's misconduct occurred between August 2012 and December 2015. While it predates his conduct in the prior matter, it continued for over a year after the grievance was filed in that matter. Therefore, respondent was aware that he was struggling to keep up with his client matters, yet still did nothing to either withdraw from Morales' case or amend his behavior to comply with his ethics responsibilities.

Based on the foregoing and the principles of progressive discipline, a further enhancement to a three-month suspension would otherwise be justified. However, in his previous matter, respondent submitted evidence of mental health issues that contributed to his misconduct and that are the subject of a protective order. Because

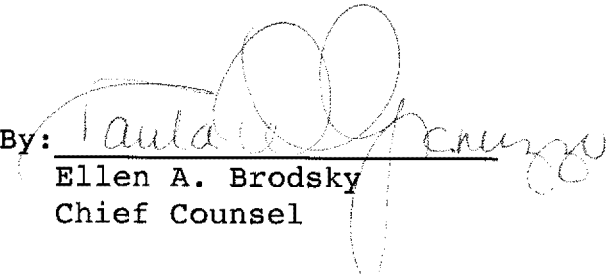
of those issues, he has been on disability inactive status since November 12, 2015.

Hence, on balance, considering the aforementioned mitigation, we determine to impose a censure.

Members Clark 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

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

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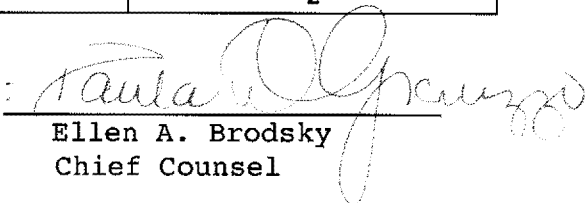
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Decided: December 27, 2017

Disposition: Censure

<i>Members</i>	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

By:   
Ellen A. Brodsky  
Chief Counsel