

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-283
District Docket No. VB-2016-0006E

IN THE MATTER OF
RONALD THOMPSON
AN ATTORNEY AT LAW

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Decision

Argued: October 19, 2017

Decided: January 30, 2018

Kingsuk Bhattacharya appeared on behalf of the District VB Ethics Committee.

Marc D. Garfinkle appeared on behalf of respondent.

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

This matter was before us pursuant to R. 1:20-6(c)(1).¹ The District VB Ethics Committee (DEC), filed a two-count complaint

¹ That Rule provides that the pleadings and a statement of the procedural history of the matter may be filed directly with the Board, without a hearing, if the pleadings do not raise genuine disputes of material fact, respondent does not request an opportunity to be heard in mitigation, and the presenter does not request an opportunity to present aggravating circumstances.

charging respondent with violating RPC 1.4(b) (failure to keep the client reasonably informed about the status of the matter) and RPC 1.4(c) (failure to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation). For the reasons expressed below, we determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1980 and the Pennsylvania bar in 1979. On April 27, 1998, he received an admonition for lack of diligence and failure to communicate with his client in one matter. Specifically, in a workers' compensation case, respondent sued the wrong defendant, allowed the petition to be dismissed, successfully filed an amended petition, allowed it to be "discontinued," and wrote to his client at an erroneous address, before finally being relieved as counsel. In the Matter of Ronald Thompson, DRB 97-507 (April 27, 1998).

Twelve years later, on June 23, 2010, respondent received a second admonition for gross neglect, lack of diligence, and failure to communicate with the client in a personal injury matter. In that case, he represented a guardian ad litem on behalf of her then minor daughter. Because respondent failed to serve the defendant, the complaint was dismissed. The court denied

respondent's attempt to restore the matter because he had waited more than a year after the dismissal to attempt to do so. Four years after respondent filed the original complaint, the minor reached the age of eighteen. Respondent failed to refile the lawsuit in her name alone or to take any further action, allowing the statute of limitations to expire. We did not consider respondent's prior admonition as an aggravating factor, based on the passage of time. In the Matter of Ronald Thompson, DRB 10-148 (June 23, 2010).

The facts in this matter are as follows. On June 25, 2014, Jewel Griner, the grievant, retained respondent to handle a personal injury matter arising from injuries she had sustained in a slip and fall incident on February 22, 2014. Thereafter, respondent obtained Griner's medical records and other relevant claim information, and submitted it to the defendant's insurance carrier.

In August 2015, after receiving notice of the claim, the carrier wrote to respondent on several occasions. In the last of these communications, dated August 28, 2015, the insurance carrier denied Griner's claim. Between August 2015 and February 2016,

Griner attempted to contact respondent on at least one occasion, and possibly more, but never heard from him.

By letter dated February 3, 2016, respondent informed Griner that the insurance carrier continued to deny her claim and that he was not inclined to pursue the matter into litigation. This letter was respondent's first communication with Griner since his receipt of the August 28, 2015 letter. On February 16, 2016, in response to his letter, Griner called respondent, leaving a message that she needed to speak with him urgently.

When respondent and Griner spoke directly, he advised her to pick up her file on February 20, 2016. He prepared a complaint for Griner to file pro se in order to preserve the statute of limitations, which expired Monday, February 22, 2016. He informed Griner of the date of the statute of limitations and instructed her on where and how to file the complaint. Griner never filed the complaint.

* * *

Following a review of the record, we are satisfied, by clear and convincing evidence, that respondent is guilty of unethical conduct.

Respondent failed to communicate with his client between the receipt of the August 28, 2015 letter from the insurance carrier, and his February 3, 2016 letter to her. During that period, Griner attempted to contact respondent, to no avail. Further, respondent neither informed Griner of the denial of the claim by the insurance carrier nor explained her options to pursue the matter further. He failed to convey information about the matter so as to permit Griner to make an informed decision regarding the representation. Indeed, it was not until nineteen days before the statute of limitations on Griner's matter was to expire that respondent finally contacted her. That communication, however, was merely to inform her that he would not pursue the matter any further on her behalf. Respondent's conduct in this regard violated RPC 1.4(b) and (c).

The complaint alleges facts that could support a finding that respondent violated several other Rules. Specifically, respondent's failure to move Griner's matter forward in any significant fashion and his delay in informing her of the approaching statute of limitations violated RPC 1.1(a) and RPC 1.3. Further, his failure to inform Griner, for six months, that the insurance carrier had denied her claim was a misrepresentation

by silence, a violation of RPC 8.4(c). These violations, however, were not charged in the complaint. Therefore, we make no finding in that regard. See R. 1:20-4(b) (requiring the complaint to set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct and to specify the ethics rules alleged to have been violated).

Typically, attorneys who fail to adequately communicate with their clients are admonished. See, e.g., In the Matter of Sean Lawrence Branigan, DRB 14-088 (June 23, 2014) (attorney failed to send the client an invoice for the time spent on her matrimonial case and ignored her e-mail and telephone calls seeking an accounting of the work he had performed and the amount she owed; a violation of RPC 1.4(b); the Board considered that the attorney had an unblemished record in fourteen years at the bar and that the matter seemed to be an isolated event that may have been exacerbated by the confluence of several random events, including the flooding to his office in the wake of hurricane Irene, the hacking of his e-mail system, and the fact that his firm was undergoing a change of its billing program and process); In the Matter of William Robb Graham, DRB 13-274 (January 23, 2014) (attorney who filed a claim with the Veterans' Administration on

behalf of his client failed to notify the client that the claim had been dismissed, and failed to discuss the options available to the client, specifically, to file either a request for reconsideration or a lawsuit; further, the client's attempts to obtain information about the case, including the return of his file and medical records from the attorney, were unavailing; a violation of RPC 1.4(b); we considered that no disciplinary infractions had been sustained against the attorney since his 1983 admission to the New Jersey bar, that he had admitted his wrongdoing, and that he was beset by illness at the relevant time, for which he sought treatment); and In the Matter of Dan S. Smith, DRB 12-277 (January 22, 2013) (attorney failed to inform his client that his case had been dismissed on summary judgment, as had the appeal from that order; a violation of RPC 1.4(b)).

If the attorney has a disciplinary record, a reprimand may result. See, e.g., In re Tyler, 217 N.J. 525 (2014) (attorney violated RPC 1.4(b) when, after a client had retained her to re-open a Chapter 7 bankruptcy on his behalf in order to add a previously omitted creditor and to discharge that particular debt, she ceased communicating with him and never informed him that the creditor had been added to the bankruptcy schedules, that the debt

had been discharged, and the bankruptcy closed; prior reprimand for, among other things, failure to communicate in six bankruptcy cases); In re Tan, 217 N.J. 149 (2014) (attorney violated RPC 1.4(b) when he failed to return approximately twenty calls from his client; due to his disciplinary history, which included, among other things, a censure for failure to communicate with a client, a reprimand was imposed for his failure to learn from his prior ethics mistakes); and In re Wolfe, 170 N.J. 71 (2001) (failure to communicate with client; reprimand imposed because of the attorney's ethics history: an admonition, a reprimand, and a three-month suspension).

Respondent, too, has a relevant ethics history. Thus, the starting point to assess the appropriate quantum of discipline is a reprimand. While it is true that respondent's two admonitions occurred nineteen and seven years ago, respectively, both of those matters involved a failure to communicate with his clients, along with neglect of their matters. Therefore, we consider them here, in aggravation, along with what is now his third instance of the same behavior.

In mitigation, respondent stipulated to the conduct. That mitigation, however, is insufficient to justify a downward departure

from the otherwise appropriate reprimand. We so determine.

Members Gallipoli, Rivera, and Zmirich would consider the uncharged ethics infractions as aggravating factors and, therefore, would impose a censure.

Vice-Chair Baugh and Member Boyer 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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD


In the Matter of Ronald Thompson
Docket No. DRB 17-283

Argued: October 19, 2017

Decided: January 30, 2018

Disposition: Reprimand

<i>Members</i>	Reprimand	Censure	Did not participate
Frost	X		
Baugh			X
Boyer			X
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera		X	
Singer	X		
Zmirich		X	
Total:	4	3	2



Ellen A. Brodsky
Chief Counsel