

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-286
District Docket No. VI-2016-0008E

IN THE MATTER OF
JAMES PETER BYRNE
AN ATTORNEY AT LAW

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Decision

Decided: February 1, 2018

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 VI Ethics Committee (DEC), pursuant to R. 1:20-4(f). A ten-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to inform a prospective client how, when, and where the client may communicate with the attorney), RPC 1.4(b) (failure to communicate with the client), RPC 1.5(a) (unreasonable fee), RPC 1.15(a) (failure to safeguard client property), RPC 1.16(d) (failure to protect the client's interests upon termination of the representation), RPC 3.2 (failure to expedite litigation), RPC 8.1(b) (failure to

cooperate with an ethics investigation), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

We determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1991. On September 6, 2006, respondent received a reprimand for a conflict of interest when representing both the driver and passenger in filing claims against each other, and for failure to set forth, in writing, the rate or basis of his legal fee in nine personal injury matters. In re Byrne, 188 N.J. 249 (2006).

By Supreme Court Order, effective December 2, 2016, respondent was temporarily suspended for failure to comply with the terms of a fee arbitration determination. In re Byrne, 227 N.J. 189 (2016). He remains suspended to date.

On August 24, 2015, the Court entered an Order declaring respondent ineligible to practice for failure to pay his annual registration to the Lawyers' Fund for Client Protection (CPF). He remains ineligible to date.

Service of process was proper in this matter. On April 20, 2017, the DEC sent respondent a copy of the complaint by certified and regular mail to his home address in the State of Washington. The certified mail green card was not returned, and the United States Postal Service (USPS) tracking information

shows attempted but incomplete delivery for the certified mail, as it was unclaimed. The regular mail was not returned.

On June 16, 2017, the DEC sent a second letter to respondent, to the same home address in Washington, also by regular and certified mail, informing him that if he did not answer the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted; that, pursuant to R. 1:20-4(f) and R. 1:20-6(c)(1), the record in the matter would be certified directly to us for imposition of sanction; and that the complaint would be amended to include a charge of a violation of RPC 8.1(b).¹

The original certified mail green card was returned signed, but the signature is illegible, and no date of delivery was affixed thereto. USPS tracking information, however, shows a delivery date of June 23, 2017, having been forwarded to an address for another town in the State of Washington. The regular mail was not returned.²

¹ The certification of the record does not reveal whether the Washington address was obtained from the attorney registration system or another source.

² Office of Board Counsel used the tracking number in Exhibit E to view a more complete version of the USPS tracking document, which showed that this certified mailing was undeliverable as originally addressed, after which the USPS delivered it, presumably to that forwarding address in another town in the State of Washington.

The time within which respondent was required to answer the complaint has expired. As of August 4, 2017, the date of the certification of the record, respondent had not filed an answer.

The complaint alleges the following facts. On October 24, 2009, Elaine Spath retained respondent to file a chapter 7 bankruptcy petition. Respondent's legal fee was \$2,200 plus a \$300 filing fee, for a total of \$2,500. From November 3, 2009 through March 4, 2010, Spath paid respondent the \$2,500 in five equal installments. Respondent negotiated all of the checks and mailed Spath receipts for each check.

Over the course of four years, respondent met with Spath three times to review debts for inclusion in the bankruptcy petition. Spath provided respondent with bills, presumably substantiating those debts. Nevertheless, respondent failed to file a petition in her behalf.

For four years, respondent misled Spath that her matter was proceeding apace, that the courts were backlogged, and that it "would be a while until her bankruptcy case would get into court." Respondent failed to disclose to his client that he had never filed the bankruptcy petition in her matter. Likewise, respondent never provided Spath with a billing statement indicating which legal services had been rendered or how the

retainer was applied "to satisfy fees incurred for professional services provided."

Spath met with respondent for the last time in February 2014.

In 2015, Spath called respondent several times, but "was given [no] further information." In June 2016, she called respondent again and learned that his telephone was no longer in service. According to the complaint, by these actions, respondent effectively terminated the representation, but failed to return the unearned retainer or the original bills that Spath had given him.

Following his retention, respondent was declared ineligible to practice law for failure to comply with the requirements of the CPF, Continuing Legal Education (CLE), and Interest on Lawyer Trust Accounts (IOLTA) programs, as follows: (1) CPF from September 26, 2011 to October 27, 2011 and August 24, 2015 to present; (2) CLE from November 17, 2014 to present; and (3) IOLTA from November 4, 2013 to July 30, 2014 and October 27, 2015 to present. Moreover, respondent failed to reply to an Office of Attorney Ethics' (OAE) e-mail, requesting that he update his contact information, and informing him of his ineligibility.

The DEC and the OAE made several unsuccessful attempts to contact respondent about the Spath grievance, but were unable to reach him to conduct an interview: (1) on July 12, 2016, the DEC sent respondent a letter with a copy of the grievance, by certified mail and regular mail, at the office address listed for him on the grievance; (2) on August 3, 2016, the DEC sent a second letter, with a copy of the grievance, to respondent, by certified and regular mail, to his home and office addresses listed in the attorney registration system; (3) on two unspecified dates, the OAE sent respondent e-mails to the two e-mail addresses on file with the attorney registration system stating, "Attorney address needed - response required;" and (4) on October 17, 2016, the DEC sent respondent a third letter and copy of the grievance, by certified and regular mail, to an additional address provided by the OAE from respondent's bankruptcy filing.³

According to counts one through three of the complaint, respondent's failure to "institute appropriate timely litigation," amounted to gross neglect, lack of diligence, and failure to expedite litigation, violations of RPC 1.1(a), RPC 1.3, and RPC 3.2, respectively.

³ The record contains no information regarding this bankruptcy filing.

Counts three and four charged respondent with failure to inform Spath how, when, and where she could communicate with him, and his failure to reply to her reasonable requests for information, in violation of RPC 1.4(a) and (b), respectively.

Count five of the complaint charged that respondent's \$2,500 fee was not reasonable, inasmuch as he failed to file a bankruptcy petition and never provided Spath with a bill substantiating or explaining the legal services allegedly performed, in violation of RPC 1.5(a).

Count six charged that respondent's failure to return the "unearned professional service fees" and Spath's personal, original bills, constituted a failure to safeguard client funds and property, in violation of RPC 1.15(a).

According to count seven of the complaint, respondent violated RPC 1.16(d) by his failure to return the unearned fee or Spath's original documents, and to notify her that he could no longer represent her after being declared ineligible to practice law.

Count nine of the complaint charged that respondent's failure to reply to the DEC's lawful demands for information amounted to a violation of RPC 8.1(b).

Finally, according to count ten, respondent violated RPC 8.4(c) by: (1) accepting \$2,500 from Spath and then failing to

file the petition or provide her with billing statements; (2) failing to return unearned legal fees; (3) failing to return the original bills entrusted to him; (4) failing to keep Spath reasonably informed about the status of her matter and to promptly comply with reasonable requests for information; and (5) failing to take steps to the extent reasonably practicable to protect Spath's interests upon termination of the representation.

* * *

The facts recited in the complaint support most of 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). Nevertheless, each charge must contain sufficient facts to support a finding of unethical conduct.

Spath retained respondent in 2009 to file a bankruptcy petition on her behalf, for which she provided him with a \$2,200 retainer and a \$300 filing fee. Over the next four years, respondent took little, if any, action on Spath's behalf, and never filed a bankruptcy petition for her. Respondent, therefore, grossly neglected and lacked diligence in the case, violations of RPC 1.1(a) and RPC 1.3, respectively.

Although the complaint also charged respondent with having failed to expedite litigation, respondent never commenced litigation. Therefore, we dismissed the RPC 3.2 charge as inapplicable.

From 2009 through 2014, respondent and Spath were in communication with each other; yet, respondent failed to inform her that he had never filed a petition on her behalf. In 2015, respondent failed to reply to her several telephone requests for information about her matter. Finally, when Spath called respondent in 2016, she learned that his telephone line had been disconnected. Thus, respondent is guilty of having violated RPC 1.4(b). To the extent that the complaint also charged respondent with a violation of RPC 1.4(b) for his four-year pattern of lies, we dismissed the charge as inapplicable. That misconduct is addressed below.

We dismissed the violation of RPC 1.4(a). That Rule addresses an attorney's obligation to inform a prospective client of how, when, and where the client may communicate with the attorney. Here, Spath was an actual, not a prospective, client. That Rule, therefore, is inapplicable.

As to Spath's inability to reach respondent in 2015 and 2016, the complaint alleges that respondent effectively terminated the representation after being declared ineligible to

practice law. Respondent, therefore, was required to return the unearned legal fee and bankruptcy filing fee, which totaled \$2,500. He also failed to return Spath's original bills - important documents without which any future filing would be made more difficult. By doing so, respondent violated RPC 1.16(d).

We also dismissed, as inapplicable, the alleged violation of RPC 1.15(a), based on respondent's failure to safeguard Spath's \$2,500 and original bills. Rather, that misconduct is addressed by the RPC 1.16(d) charge, above.

The complaint contains no factual allegations to sustain a finding that the amount of respondent's fee was unreasonable for the work, had he actually performed the services for which he was retained. Rather, respondent apparently performed no legal services, and failed to return the fee, conduct already addressed by RPC 1.16(d). Thus, we dismissed the RPC 1.5(a) charge as inapplicable.

Respondent's failure to reply to the DEC's numerous requests for information about the grievance, and to file an answer to the formal ethics complaint constitute a violation of RPC 8.1(b).

Lastly, respondent lied to his client for four years about the status of her bankruptcy matter, leading her to believe that

it was proceeding apace, when, in fact, he had done nothing to further her claim. By so doing, respondent violated RPC 8.4(c). As noted, the complaint also charged respondent with additional violations of that Rule for: (1) accepting \$2,500 from Spath and then failing to file the petition or provide her with billing statements; (2) failing to return unearned legal fees; (3) failing to return the original bills entrusted to him; (4) failing to keep Spath reasonably informed about the status of her matter and to reply to her reasonable requests for information; and (5) failing to take steps to protect Spath's interests upon termination of the representation. However, the complaint does not contain facts alleging any dishonest, fraudulent, or deceitful intent by respondent in respect of those five acts, which have been addressed by other findings, above. Therefore, we dismissed the additional RPC 8.4(c) charge based on those actions.

In summary, in one client matter, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.16(d), RPC 8.1(b), and RPC 8.4(c).

A misrepresentation to a client 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, as is the

case here. 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 one 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)) and In re Ruffolo, 220 N.J. 353 (2015) (attorney gave the client false assurances that the client's matter was proceeding apace, knowing that it had been dismissed, and that the client should expect a monetary award in the near future, which was false, violations of RPC 8.4(c); the attorney also exhibited gross neglect and a lack of diligence by allowing his client's case

to be dismissed, failing to perform any legal services for the client 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).

An admonition would ordinarily suffice for respondent's violation of RPC 1.16(d). See, e.g., In the Matter of Anthony J. Giampapa, DRB 07-178 (November 15, 2007) (admonition for attorney who failed to return the client's funds and file upon the termination of the representation, despite numerous attempts by the client to secure them, in violation of RPC 1.16(d); violations of RPC 1.4(b) and RPC 1.15(b) also found).

For the totality of respondent's misconduct, discipline greater than a reprimand is required, because of the default nature of the proceedings. "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." In re Kivler, 193 N.J. 332, 342 (2008). Thus, a censure is the baseline sanction for respondent's actions.

In aggravation, respondent has a prior 2006 reprimand for engaging in a conflict of interest. In further aggravation,

respondent essentially abandoned Spath. He took her \$2,500, accomplished nothing for four years, and misrepresented to her the status of the case. Respondent eventually became unavailable to Spath by moving out of state, without informing her that he was doing so.

In In re Jennings, 147 N.J. 276 (1997) an attorney received a three-month suspension for abandoning a single client and failing to cooperate with ethics authorities. In that matter, the attorney was retained to file a breach of contract complaint on behalf of his clients, the Larsens, against numerous defendants. Mr. Larsen alleged that he had performed masonry work totaling \$123,000 in a housing development, for which he was not paid. He entered into an agreement to purchase a house in the same development, using some or all of the funds owed to him. The developer's bank later took the property back by deed in lieu of foreclosure and the Larsens were evicted. They paid Jennings a \$6,000 retainer, after which he filed a complaint for them. Thereafter, the Larsens could not locate the attorney, except through an accountant intermediary who had recommended him to them. Finally, following the Larsens' numerous attempts to contact Jennings for updates on their litigation, he sent them a handwritten letter bearing a Hollywood, California address. In it, he enclosed a refund check for \$5,000 and an

apology that he had been unable to complete their matter or turn it over to another attorney. In imposing a three-month suspension, we considered all of the relevant circumstances, including the absence of mitigating circumstances to explain the attorney's actions. Unlike respondent, Jennings had no prior discipline.


Thus, in light of the default status of this matter, and the aggravating factors of respondent's abandonment of Spath, the harm that he caused her, and his disciplinary history, we determine to impose a three-month suspension.

Members Gallipoli and Zmirich voted to impose a six-month suspension.

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
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of James Peter Byrne
Docket No. DRB 17-286

Decided: February 1, 2018

Disposition: Three-month Suspension

<i>Members</i>	Three-month Suspension	Six-month Suspension	Did not participate
Frost	X		
Baugh			X
Boyer			X
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich		X	
Total:	5	2	2



Ellen A. Brodsky
Chief Counsel