

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-100
District Docket No. XIV-2015-0565E

IN THE MATTER OF
JEFFREY R. GROW
AN ATTORNEY AT LAW

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Decision

Decided: September 15, 2017

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

This matter was before us on a certification of default filed
by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). A
two-count complaint charged respondent with having violated RPC
8.1(b) (failure to cooperate with an ethics investigation), RPC
8.4(c) (conduct involving dishonesty, fraud, deceit or
misrepresentation), and RPC 8.4(d) (conduct prejudicial to the
administration of justice).

We determine to impose a three-month suspension.

Respondent was admitted to practice in 1975. On March 12, 2012, respondent received an admonition for violating RPC 1.5(b) (failure to set forth in writing the rate or basis of the legal fee) and RPC 3.4(g) (threatening to present criminal charges to obtain an improper advantage in a civil matter). In re Grow, 209 N.J. 424 (2012).

On October 23, 2015, respondent received a censure in a consent matter. There, he unilaterally terminated the representation of his client, on relatively short notice, in a civil case that had been scheduled for trial. Respondent also failed to disclose that, because he had been declared administratively ineligible to practice law, he could not represent the client. Instead, respondent sent the client, who required an American Sign Language interpreter, to trial by himself. At the time, the client faced counterclaims including a request for treble damages and attorney fees. Violations of RPC 1.16(b), (c), and (d), and RPC 8.4(d) were found. In re Grow, 223 N.J. 342 (2015).

Since March 12, 2015, respondent's status with the New Jersey Lawyers' Fund for Client Protection (CPF) has been "retired."

Service of process was proper in this matter. On November 15, 2016, the OAE sent a copy of the complaint to respondent in accordance with R. 1:20-7(h) at his last known home address, as

listed in the attorney registration records, by certified and regular mail.

The certified mail receipt was returned to the OAE signed by Judith Grow, indicating delivery on December 1, 2016. The regular mail was not returned.

On January 23, 2017, the OAE sent a second letter to respondent, at his home address, by both certified and regular mail. The letter notified respondent that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, and 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. The letter further advised that the complaint would be amended to include a charge of RPC 8.1(b).

The certified mail was returned to the OAE marked "Unclaimed - Unable to Forward." The regular mail envelope was not returned. The time within which respondent may answer the complaint has expired. As of March 20, 2017, the date of the certification of the record, respondent had not filed an answer to the ethics complaint.

We now turn to the facts alleged in the complaint. On March 16, 2015, Debra Roberts, a former client of respondent, filed a grievance with the District XB Ethics Committee (DEC), alleging that

respondent failed to communicate with her and to turn over her client file to subsequent counsel.

The DEC docketed the Roberts grievance and assigned the matter to Aaron J. Stahl, Esq. for investigation. On March 30, 2015, Stahl sent a letter to respondent at the address that he had provided in his attorney registration statement. Respondent failed to reply to the investigator's letter.

On June 8, 2015, Stahl sent respondent a second letter, requesting that he contact him to discuss Roberts' grievance. Thereafter, on June 16, 2015, respondent called Stahl, acknowledged receipt of the letters, and informed Stahl that he had not received the letters until his return to New Jersey from a trip to Florida. Respondent told Stahl that, due to an upcoming, months-long trip to Europe, he could not meet in person to discuss the Roberts grievance. Respondent also informed Stahl that he had no file to provide for the matter, because he had turned it over to Roberts' new attorney.

On October 8, 2015, the DEC filed and served on respondent a formal ethics complaint in the Roberts matter.

On October 28, 2015, respondent sent a letter to the OAE, stating that he had retired from the practice of law and wished to resign from the New Jersey bar. Attached to the letter was an affidavit dated October 23, 2015, submitted pursuant to R. 1:20-22

(Resignation Without Prejudice), in which respondent certified that no disciplinary or criminal proceedings were pending against him. The certification was false, inasmuch as "there were pending disciplinary proceedings of which he was aware," doubtless a reference to the Roberts complaint.

Count one charged respondent with having violated RPC 8.4(c) and RPC 8.4(d).

According to count two, on January 5, 2016, the OAE sent respondent a letter by certified and regular mail, requesting his written reply, by January 19, 2016, to the OAE's investigation into the alleged misrepresentation in his resignation affidavit.

On January 25, 2016, respondent accepted the certified mail. The regular mail was not returned to the OAE. Nevertheless, respondent thereafter failed to reply to the OAE's request for information.

On February 19, 2016, the OAE sent respondent another letter, by certified and regular mail, requiring him to appear for a demand designated interview on March 16, 2016. Respondent accepted the certified mail envelope on February 22, 2016, but failed to appear on the designated interview date.

Count two charged respondent with a violation of RPC 8.1(b).

* * *

The facts recited in the complaint 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).

On June 16, 2015, respondent called the DEC investigator, Stahl, and acknowledged receipt of the investigator's letters requesting information about the representation. He informed Stahl that he had no file to provide, having turned it over to Roberts' attorney.

Thereafter, on October 8, 2015, the DEC filed a formal ethics complaint in the Roberts matter. Although the copy of the complaint sent to respondent by certified mail was returned unclaimed, respondent is deemed to have received the copy sent by regular mail, as that mailing was not returned. Even if respondent had not received the complaint, he was aware of the pendency of the Roberts matter, because on June 16, 2015, he called Stahl to discuss the grievance he had received in that case.

Therefore, it is beyond doubt that respondent knew a disciplinary matter was pending against him when, on October 23, 2015, he provided the Court and the OAE with his certification stating that no disciplinary or criminal proceedings were pending

against him in any jurisdiction. Respondent made this false statement during his bid to resign from the New Jersey bar. His misrepresentation to the Court and the OAE violated RPC 8.4(c). Moreover, respondent's false affidavit caused the OAE to expend time and other resources to investigate the basis of his misrepresentation. Thus, respondent's conduct in this regard prejudiced the administration of justice in his resignation matter, a violation of RPC 8.4(d).

In respect of the RPC 8.1(b) charge, respondent ignored numerous letters from both the DEC and the OAE during their respective investigations: three letters during the Roberts investigation; two letters in the false affidavit investigation; and two letters in an effort to serve the complaint in this matter. Thereafter, respondent permitted this matter to proceed to us as a default, all in violation of RPC 8.1(b).

Discipline ranging from a reprimand to a suspension generally has been imposed for misrepresentations to a court and/or lack of candor to a tribunal. See, e.g., In re Marraccini, 221 N.J. 487 (2015) (reprimand imposed on attorney who attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications that had been pre-signed by the manager, who had since died; the attorney was unaware that the manager had died

and, upon learning that information, withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); mitigation considered); In re Schiff, 217 N.J. 524 (2014) (reprimand for attorney who filed inaccurate certifications of proof in connection with default judgments; specifically, at the attorney's direction, his staff prepared signed, but undated, certifications of proof in anticipation of defaults; thereafter, when staff applied for a default judgment, at the attorney's direction, staff completed the certifications, added factual information, and stamped the date; although the attorney made sure that all credits and debits reflected in the certification were accurate, the signatory did not certify to the changes, after signing, a practice of which the attorney was aware and directed; the attorney was found guilty of lack of candor to a tribunal and failure to supervise nonlawyer employees, in addition to RPC 8.4(a) and RPC 8.4(c)); In re McLaughlin, 179 N.J. 314 (2004) (reprimand imposed on attorney, who had been required by the New Jersey Board of Bar Examiners to submit quarterly certifications attesting to his abstinence from alcohol, for falsely reporting that he had been alcohol-free during a period within which he had been convicted of driving while intoxicated, a violation of RPC 8.4(c); in mitigation, after the false certification was submitted, the attorney sought the advice of counsel, and admitted

his transgressions); In re Duke, 207 N.J. 37 (2011) (attorney received a censure for failure to disclose his New York disbarment on a form filed with the Board of Immigration Appeals, a violation of RPC 3.3(a)(5); the attorney also failed to communicate with the client and was guilty of recordkeeping deficiencies; prior reprimand; the attorney's contrition and efforts at rehabilitation justified only a censure); In re Hummel, 204 N.J. 32 (2010) (censure imposed on attorney in a default matter for gross neglect, lack of diligence, failure to communicate with the client, and misrepresentation in a motion filed with the court, a violation of RPC 3.3(a) and RPC 8.1(b); the attorney had no disciplinary record); In re Monahan, 201 N.J. 2 (2010) (attorney censured for submitting two certifications to a federal district court in support of a motion to extend the time within which to file an appeal; the attorney misrepresented that, when the appeal was due to be filed, he was seriously ill and confined to his home on bed rest and, therefore, either unable to work or unable to prepare and file the appeal, a violation of RPC 3.3(a)(1); the attorney also practiced law while ineligible); In re Trustan, 202 N.J. 4 (2010) (three-month suspension for attorney who, among other things, submitted to the court a client's case information statement that falsely asserted that the client owned a home and drafted a false certification for

the client, which was submitted to the court in a domestic violence trial; violations of RPC 3.3(a)(1) and (4); other violations included RPC 1.8(a) and (e), RPC 1.9(c), and RPC 8.4(a), (c), and (d)); In re Gross, 216 N.J. 401 (2014) (default; six-month suspension imposed on attorney who, after he was declared ineligible to practice law, filed an affidavit with the Court, in March 2011, misrepresenting that he had sent a check to the CPF to cure his ineligibility, even though he did not pay his annual assessment to the Fund until September 2012; violation of RPC 3.3(a) and RPC 8.1(b); attorney also violated RPC 1.15(b), RPC 5.5(a), RPC 8.1(a), and RPC 8.4(c); two prior censures, both in default matters); and In re Forrest, 158 N.J. 428 (1999) (six-month suspension imposed on attorney who, in connection with a personal injury action involving injured spouses, failed to disclose the death of one of his clients to the court, to his adversary, and to an arbitrator, and advised the surviving spouse not to voluntarily reveal the death; violations of RPC 3.3(a)(5), RPC 3.4(a), and RPC 8.4(c); the attorney's motive was to obtain a personal injury settlement).

Lengthier suspensions have resulted in cases involving more serious misconduct than is presented herein.

This case is factually similar to McLaughlin (reprimand) and Gross (three-month suspension). Those attorneys received

substantially different sanctions based on the presence of mitigating and aggravating factors. In McLaughlin, after a 1999 driving while intoxicated conviction, the attorney was required by the Board of Bar Examiners to submit periodic certifications that he had abstained from drinking alcohol. Thereafter, he falsely certified that he had been alcohol-free during a Board of Bar Examiners reporting period within which he had a second driving while intoxicated conviction, a violation of RPC 8.4(c). In mitigation, the attorney stipulated to his misconduct, had no prior discipline, and, after submitting the false certification, came forward and reported his transgression to the OAE.

The attorney in Gross filed an affidavit with the Court, misrepresenting that he had sent a check to the CPF to cure an ineligibility, when he had not yet done so. Gross' sanction was enhanced for the presence of his then third consecutive default, and for his two prior censures.

We find that the appropriate discipline for respondent's conduct falls between that imposed in McLaughlin and Gross. McLaughlin had mitigation, but no prior discipline. Respondent has prior discipline but no mitigation. Respondent's admonition and censure, however, are facially less serious than Gross' two censures. Moreover, neither of respondent's prior matters proceeded


as a default. Based on these distinctions, had this matter not been before us as a default, we would have imposed a censure. Respondent, however, allowed this matter to proceed to us as a default. "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). For these reasons, we determined to impose a three-month suspension for respondent's misconduct.

Member Singer voted to impose a censure.

Vice-Chair Baugh and Members Rivera and Zmirich 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 Jeffrey R. Grow
Docket No. DRB 17-100

Decided: September 15, 2017

Disposition: Three-month Suspension

<i>Members</i>	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:	5	1	3


Ellen A. Brodsky
Chief Counsel