

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 17-344  
District Docket No. VI-2015-0016E

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IN THE MATTER OF  
GARY CLARIN ABASOLO  
AN ATTORNEY AT LAW

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Decision

Argued: January 18, 2018

Decided: April 3, 2018

Richard J. Villanova appeared on behalf of the District VI Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for a reprimand filed by the the District VI Ethics Committee (DEC). A one-count complaint charged respondent with violations of RPC 1.1(a) and (b) (gross neglect and pattern of neglect), RPC 1.3 (lack of diligence), and RPC 1.4(b) (failure to keep the client adequately informed and to promptly reply to the client's

reasonable requests for information). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1994. He has no prior discipline.

In his answer to the complaint and again at the DEC hearing, respondent admitted the essential facts underlying his misconduct, as follows:

Carmen Cruz, the grievant, retained respondent in October 2007 to represent her for injuries sustained in an August 25, 2007 slip-and-fall accident. Exactly two years later, on August 25, 2009, respondent filed a timely complaint in Superior Court of New Jersey.

On May 3, 2010, defendant's counsel served respondent with interrogatories. On July 19, September 22, and November 17, 2010, defendant's counsel informed respondent that the time to answer interrogatories had expired, and that a motion to dismiss would follow, if answers were not received.

Hearing nothing from respondent, on February 16, 2011, defendant's counsel filed a motion to dismiss the complaint, without prejudice, for plaintiff's failure to provide answers to interrogatories. On April 15, 2011, the court granted the motion. Respondent neither provided answers nor moved for reinstatement of the complaint for months thereafter.

On December 13, 2011, defendant's counsel filed a motion to dismiss the complaint, with prejudice. On January 14, 2012, Cruz completed the interrogatories, which respondent served on his adversary. Defendant's counsel then withdrew the motion to dismiss the complaint, with prejudice, that he had filed in December 2011.

On July 12, 2012, defendant's counsel reminded respondent that the April 15, 2011 order of dismissal, without prejudice, was still in place, and asked whether respondent intended to reinstate the complaint. Counsel asserted that, if respondent failed to do so, defendant intended again to move to dismiss the complaint, with prejudice.

Having heard nothing from respondent in the interim, on October 17, 2012, defendant's counsel filed a second motion to dismiss the complaint, with prejudice. Thereafter, on December 6, 2012, respondent filed a motion to reinstate the complaint and, on December 21, 2012, obtained an order dismissing defendant's motion to dismiss and restoring the matter to the active trial calendar. The restoration of the case was conditioned on payment of a \$300 restoration fee.

Respondent did not pay the \$300 restoration fee because he did not have sufficient funds. When a DEC panel member asked

respondent whether he knew that the complaint would be dismissed for failure to pay the fee, he explained as follows:

Oh likely to lead to a dismissal, well actually yeah, I actually was aware that it could have -- a subsequent motion could've been filed by the -- by the defendant's attorney seeking to dismiss the matter with prejudice. But that actually -- that actually was never done. There was a motion filed but that was withdrawn because answer [sic] to interrogatories were provided. But yes, I guess I was aware in general that the matter could lead to being dismissed with prejudice. But that actually the -- nothing ever else was filed, other than when I filed the motion to vacate and restore. But the restoration fee was never paid. The defense attorney never filed any other subsequent motions after that.

[T28-22 to T29-10.]<sup>1</sup>

Respondent was remorseful that he had neither found a way to pay the fee nor suggested that Cruz pay it. He testified that he "did not inform the client . . . that [the complaint] was dismissed until . . . March of 2015. I guess because I was afraid of telling the client of bad or negative news." At that time, respondent also turned over the client file to Cruz, and told her that she could consult with another attorney, although he thought that it was unlikely that the court would restore the case "two years and three months" after its dismissal.

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<sup>1</sup> "T" refers to the transcript of the hearing, dated October 21, 2016, before the DEC.

In respect of his communications with the client, respondent testified that, although he spoke with Cruz once every few months, he "had basically told the client that the matter was pending" on those occasions.

Cruz neither testified nor appeared at the DEC hearing.

In mitigation, respondent urged that he would have paid the \$300 restoration fee, but he had insufficient funds to do so. He had hoped to obtain sufficient funds in the months following the restoration order. However, because respondent was a sole practitioner handling "a handful" of cases, those funds did not materialize.

The DEC found that, after lacking diligence in the matter, respondent grossly neglected the case by permitting it to be dismissed for failure to pay the \$300 restoration fee, violations of RPC 1.1(a) and RPC 1.3, respectively. The DEC dismissed the RPC 1.1(b) charge for lack of evidence of a pattern, as this was "a single occurrence."

The DEC also found a violation of RPC 1.4(b) inasmuch as respondent

knowingly misrepresented the status of the case, thereby failing to reasonably keep the grievant informed, in violation of RPC 1.4(b). The respondent, in his testimony and post hearing report, indicated that he did not inform the grievant of the true status of her case until approximately March 9, 2015, nearly four (4) years later, because he was "afraid." Here, the

respondent's failure to inform the grievant of the true status of her case prevented her from exercising other options, such as obtaining other counsel or even paying the restoration fee, herself, in an effort to have the case restored to the active trial calendar.

[HPR4.]<sup>2</sup>

The complaint did not charge respondent with having made misrepresentations to Cruz about the status of her case, which would have constituted violations of RPC 8.4(c).

Although the panel did not cite aggravating or mitigating factors, it noted that respondent had expressed remorse for his actions.

A majority of the DEC hearing panel recommended a reprimand. One member sought "a higher measure of discipline."

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

In October 2007, Cruz retained respondent to initiate an action for injuries sustained in a slip-and-fall accident. Yet, in April 2011, two years after respondent filed an answer, the case was dismissed for failure to answer interrogatories.

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<sup>2</sup> HPR refers to the August 25, 2017 hearing panel report.

In December 2011, respondent obtained an order restoring the case to the active trial list, subject only to the payment of a \$300 filing fee. By failing to pay that fee, respondent permitted the defendants' April 15, 2011 order of dismissal with prejudice to stand. Clearly, respondent's inaction amounted to gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively.

Respondent also failed to keep Cruz adequately informed about the status of her case. From April 2011 until March 2015, he failed to tell her that the complaint had been dismissed, admittedly because he was "afraid" to do so. By keeping his client in the dark for almost four years about the true status of her matter, respondent violated RPC 1.4(b).

Although respondent admitted that he had misrepresented the status of the case to his client, when telling her that the matter was pending, rather than the truth - that the complaint had been dismissed years earlier, the complaint did not charge a violation of RPC 8.4(c). Thus, we make no finding in that regard. See R. 1:20-4(b).

The DEC's dismissal of the RPC 1.1(b) charge was correct. A finding of a violation of RPC 1.1(b) requires the presence of, at least, three instances of neglect, whether simple or gross. See In re Rohan, 184 N.J. 287 (2005); In the Matter of Donald M.

Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). Respondent did not engage in a pattern of neglect.

Conduct involving gross neglect and lack of diligence, even when found alongside other non-serious infractions, ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, and the seriousness of the attorney's disciplinary history. See, e.g., In the Matter of Walter N. Wilson, DRB 15-338 (November 24, 2015) (admonition; attorney, hired to handle a tax appeal from the loss of a special assessment, neither filed an appeal nor advised his client of the deadline, thus depriving the client of the opportunity to perfect an appeal, violations of RPC 1.1(a) and RPC 1.3; in mitigation, we considered that the attorney had no prior formal discipline; his misconduct involved only one client matter, and did not result in significant injury to him; his misconduct was not for personal gain; and, at the time of the misconduct, he was caring for his girlfriend, who was seriously ill); In the Matter of Josue Jean Baptiste, DRB 15-211 (September 21, 2015) (admonition; due to the attorney's error, a \$1.5 million default judgment was entered on the defendant's counterclaim against his client and his client's employer; throughout the representation, the attorney did not inform his client of adverse procedural



developments and court rulings, such as the default judgment, a subpoena seeking information in connection with the default judgment, and a warrant for the client's arrest issued as a result of the attorney's failure to honor the subpoena; seven months later, the attorney obtained an order vacating the judgment, but the client elected to proceed pro se; the case was dismissed on summary judgment, and the client was ordered to pay the defendant's attorney fees, in excess of \$4,000, due to what the client described as his lack of legal acumen in submitting a meaningful opposition to the motion; in mitigation, we considered that the attorney's misconduct involved only one client matter; he had no prior discipline; he readily admitted a portion of his misconduct (and contested the gross neglect charge in good faith); and exhibited genuine contrition and remorse for his conduct; in aggravation, we considered the mental and economic impact that his misconduct had on his client); In the Matter of Steven H. Salami, DRB 15-106 (May 27, 2015) (admonition imposed on attorney who failed to include the proper filing fee when he filed an answer to a complaint on behalf of his client; he then submitted the correct fee, but did not do so timely and the answer was rejected, a violation of RPC 1.1(a) and RPC 1.3; in mitigation, we considered that the attorney had been a member of the bar for fifteen years with no

history of discipline); In re Sachs, 223 N.J. 241 (2015) (reprimand imposed on attorney who had represented two sisters in the sale of a home, against which two liens had attached; the title company required the amount of the liens to be held in escrow, and the sisters provided the funds; despite his promise to do so, the attorney did not negotiate the pay-off of the judgments, leaving the title company to do so, with the escrowed monies, and retaining the balance as its fee; the attorney neither obtained a bill from the title company, justifying its fee, nor told his clients that the title company had taken a fee; he also failed to return one of the client's telephone calls for several years after the escrow funds had been disbursed; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b); reprimand imposed due to economic loss suffered by the clients); In re Calpin, 217 N.J. 617 (2014) (reprimand for attorney who failed to oppose the plaintiff's motion to strike his client's answer, resulting in the entry of a final judgment against his client; the attorney never informed his client of the judgment; notwithstanding the presence of some mitigation in the attorney's favor, the attorney received a reprimand because of the "obvious, significant harm to the client," that is, the judgment); and In re Burstein, 214 N.J. 46 (2013) (reprimand for attorney guilty of gross neglect, lack of diligence, and failure

to communicate with the client; although the attorney had no disciplinary record, the significant economic harm to the client justified a reprimand).

Here, in mitigation, respondent has no prior discipline in twenty-three years at the bar. In addition, he expressed deep remorse for his misconduct.

Although respondent urged us to consider his inability to pay the restoration fee in mitigation, we find his failure to pay the restoration fee as an aggravating factor. At oral argument before us, respondent stated that Cruz had suffered neck, back, and shoulder impingement injuries that, in his experience, carried a "full value" of about \$15,000 to \$20,000. We were disturbed that, under those circumstances, he had allowed his client to suffer the loss of her valuable claim over \$300, without ever telling her the truth – first, that he could not pay the restoration fee, and later, that her case had been permanently dismissed.

For the presence of this aggravating factor, we determine to impose a reprimand.

Chair Frost and Member Zmirich did not participate.

Member Gallipoli was recused.

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  
Bruce W. Clark, Vice-Chair

By: Ellen A. Brodsky  
Ellen A. Brodsky  
Chief Counsel

SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD


In the Matter of Gary Clarin Abasolo  
Docket No. DRB 17-344

Argued: January 18, 2018

Decided: April 3, 2018

Disposition: Reprimand

<b>Members</b>	Reprimand	Recused	Did not participate
Frost			X
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich			X
Total:	6	1	2

  
Ellen A. Brodsky  
Chief Counsel