SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-385
District Docket No. IV-2015-0041E

IN THE MATTER OF

DANIEL B. ZONIES

AN ATTORNEY AT LAW

Decision

Argued: February 15, 2018

Decided: April 24, 2018

Jennifer Biderman appeared on behalf of the District IV 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 District IV Ethics Committee (DEC). The seven-count formal ethics complaint charged respondent with violations of RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with a client); RPC 1.4(c) (failure to explain a matter to a client to the extent reasonably necessary to permit

the client to make informed decisions regarding the representation); RPC 1.8(e) (providing financial assistance to a client in connection with pending or contemplated litigation); RPC 1.15(c) (failure to keep separate funds in which the attorney and a third party claim an interest); RPC 1.15(d) and R. 1:21-6 (recordkeeping); and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

For the reasons detailed below, we determine to impose a censure.

Respondent earned admission to the New Jersey and Florida bars in 1970. During the relevant time frame, he maintained an office for the practice of law in Voorhees, New Jersey. Respondent received a private reprimand, in 1991, for gross neglect and lack of diligence. He has also received two reprimands: one in 2003, for failure to safeguard client funds and commingling (In re Zonies, 175 N.J. 106 (2003)), and another in 2013, for failure to communicate (In re Zonies, 214 N.J. 105 (2013)).

In April 2011, the grievant, Herbert Bell, retained respondent to represent him in connection with two car accidents that had occurred, through no fault of his own, in 2009 and 2011. In the 2009 accident, the other driver had minimal insurance; in the 2011 accident, the other driver had no

insurance. During the 2009 accident, Bell's friend, Roxanne Jenkins, was in his car. Respondent also represented Jenkins in connection with the 2009 accident.[1]

Respondent settled Bell's case related to the first accident for $16,000; the unsigned, undated settlement sheet that respondent prepared in connection with this matter reflects that, after respondent deducted costs and his one-third contingent fee, Bell's share of the settlement was $10,500. Bell, however, received only $5,700 from this settlement, via checks from respondent in October, November, and December 2011. Moreover, on December 15, 2011, respondent made a $7,500 disbursement from these settlement funds, to satisfy a prior lien obligation for Bell, but that disbursement was not included on the settlement sheet. Respondent testified that "[a]t the time, I had a good accounting of all that" and that Bell "was aware of the numbers." Respondent was unable however, to produce an accurate, signed settlement sheet, claiming that it "exists . . . [but I] did not find it."

Respondent settled Jenkins' case related to the first accident for $15,000; after respondent deducted costs and his one-third contingent fee, Jenkins' share of the settlement was

[1] Respondent was not charged with a concurrent conflict of interest in respect of the dual representation.

$9,653.33, which respondent disbursed to her on December 21, 2012.

In respect of the 2011 accident, respondent filed a lawsuit against Bell's insurance company. By agreement of the parties, the matter was submitted to binding high-low arbitration.[2] In November 2014, prior to the arbitration, Bell's insurance company paid him $50,000 in advance, the low threshold of the arbitration. As a result of the arbitration hearing, Bell was awarded a total of $100,000 in damages. Thus, Bell's insurance company paid him the additional $50,000 in January 2015. According to the signed settlement sheet that respondent prepared in connection with this matter, Bell's share of the total settlement was $64,216.67. Respondent's financial records, however, indicate that this settlement sheet was incorrect, because it listed a deduction of $19,000 for monies previously disbursed to Bell, but, as seen below, Bell previously had received only $17,000.

Both Bell and Jenkins had entered into advance funding agreements with Plaintiff Funding Group (PFG), prior to Bell's receipt of the $100,000 arbitration award. Bell claimed that

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[2] In a high-low arbitration, the parties agree to the range within which the arbitration award must fall, prior to the hearing, without disclosing the range to the arbitrator. The arbitrator's final award is then adjusted, if necessary, to the bounded range previously set by the parties.

respondent did not adequately explain the advance funding agreements to him. Respondent denied this claim, stating that Bell had dealt "directly" with PFG, and maintained that he had attempted to dissuade Bell from entering into advance funding agreements, due to their expense. Moreover, during cross-examination, Bell admitted that he had previously entered into an advance funding agreement in an unrelated matter. Pursuant to the agreements with PFG, Bell was required to apply any insurance proceeds he received in connection with the second accident toward the amounts advanced by PFG. The agreements with PFG set forth the following terms:

- June 16, 2011 – PFG advances $5,000 to Bell; Bell is required to pay $7,500 to PFG in return;
- November 12, 2011 – PFG advances $5,000 to Bell; Bell is required to pay $10,000 to PFG in return;
- April 19, 2012 – PFG advances $5,000 to Jenkins; Bell, whom respondent claims assumed the debt, is required to pay $10,000 to PFG in return; and
- December 18, 2013 – PFG advances $1,000 to Bell; Bell is required to pay $2,000 to PFG in return.

Bell fully repaid PFG as required under the agreements; specifically, he paid PFG $7,500 on December 31, 2011, and $22,000 on February 10, 2015. Jenkins made no payments to PFG in respect of the $5,000 advanced to her in April 2012, either directly or from the proceeds of her settlement. Bell, however, disputed respondent's assertion that he had assumed Jenkins'

obligation to repay PFG; rather, he claimed that respondent simply had forgotten to deduct the repayment to PFG from Jenkins' settlement. Bell claimed that, due to that mistake, respondent improperly used Bell's funds to repay Jenkins' obligation to PFG, which he complained to respondent was "not fair." Bell's December 2013 agreement with PFG, however, states that he agreed to pay Jenkins' obligation. Respondent claimed that Bell had agreed to repay Jenkins' debt to PFG to persuade her to leave his home.

Prior to the November 2011 advance of $5,000 from PFG to Bell, respondent had loaned Bell $4,500. Bell claimed that, when PFG funded the $5,000 advance to him, in November 2011, respondent kept that money as repayment for the $4,500 loan, and that, thus, Bell "was out of $500 from that $5,000." Respondent denied that claim. He asserted that he lent Bell an additional $6,000 in January 2012, but had no financial records to support this claim. As a result of the loans from respondent, Bell may have received $2,700 more than he was entitled to receive in connection with his settlements.

Bell testified that respondent never fully explained the retainer agreement to him, and that he consistently had difficulty contacting respondent to discuss his case. He claimed that, although he was deposed in respect of both accidents,

respondent prepared him only by telephone. Respondent denied those claims, stating that he had prepared Bell for medical exams and the arbitration, and "had a lot of communication" with Bell.

On January 26, 2013, respondent prepared three promissory notes for Bell's signature. Respondent defended the notes, testifying, "I was meeting with Mr. Bell and we were going over what he owed, and it was basically a recapitulation of what he owed at the time." Respondent was the payee under each note, which set forth the following obligations:

- Payment, by Bell, of $6,000 by December 31, 2013, as repayment for $6,000 advanced to Bell, by respondent, on January 26, 2012;

- Payment, by Bell, of $7,500 by March 1, 2013, as repayment for $7,500 paid to PFG, by respondent, on behalf of Jenkins; and

- Payment, by Bell, of $4,500, by December 31, 2013, as repayment for $6,000 advanced to Bell, by respondent, in 2011.

During the ethics hearing, Bell claimed that the three promissory notes were blank when he signed them, and that respondent never explained why he would direct Bell to sign blank documents. Moreover, Bell asserted that respondent leveraged the disbursement of the settlement funds related to the second accident to force him to sign the blank promissory notes. Respondent denied those claims. The record contains no

evidence that Bell repaid the obligations set forth in these notes.

Bell disagreed with the disbursement sheet that respondent had prepared in connection with the second lawsuit, which led to Bell's dispute with respondent and the filing of an ethics grievance. Although respondent admitted that, during his representation of Bell, a complaint was dismissed for failure to comply with a discovery request, he denied that the dismissal constituted a lack of diligence, citing the possibility that Bell had missed an appointment or failed to answer interrogatories, rather than any neglect on his part. Respondent asserted that he had successfully reinstated the complaint within thirty days of the dismissal. Moreover, respondent maintained that he had acted diligently in his representation of Bell and had achieved an excellent result for him in respect of the two car accidents.

In respect to the failure to cooperate charges, respondent denied that he ceased communicating with the DEC regarding this ethics matter, and that his failure to respond to a May 2016 e-mail from the DEC investigator constituted unethical conduct. Although he admitted that he had been unable to provide certain financial records that the DEC had requested, he claimed that he had diligently worked to obtain them from his bank, up to the

date of the ethics hearing, and had spoken to the DEC investigator on the telephone several times since May 2016.

* * *

The DEC found no clear and convincing evidence that respondent had lacked diligence in his representation of Bell or that he had failed to communicate with Bell. Accordingly, the DEC determined to dismiss the alleged violations of RPC 1.3 and RPC 1.4(b).

In respect of the RPC 1.4(c) allegation, however, the DEC characterized the financial structures underlying respondent's representation of Bell as "complicated" and "inscrutable," including the unexplained promissory notes respondent required Bell to execute, adding that the hearing panel spent "countless hours to unravel" them. The DEC determined that respondent had failed to "explain the significance of these complicated transactions" to Bell, and had, thus, violated RPC 1.4(c).

The DEC further found that respondent violated RPC 1.8(e) by providing financial assistance to Bell in connection with pending litigation. Specifically, respondent admitted, in both his answer and during his testimony, that he made loans of $4,500 and $6,000 to Bell, representing advances of anticipated settlement monies from the binding arbitration.

Next, the DEC found respondent guilty of violating RPC 1.15(b) and (d), citing respondent's failure to prepare accurate settlement and disbursement statements in connection with Bell's matters. The DEC found respondent's testimony regarding these transactions not credible, and determined that respondent had failed to perform his duty to satisfy Jenkins' obligation to PFG from her settlement funds. The DEC found, however, no clear and convincing evidence that respondent had violated RPC 1.15(c).[3]

Finally, the DEC found no clear and convincing evidence that respondent had failed to cooperate with disciplinary authorities, and dismissed the charged violation of RPC 8.1(b).

Taking all factors into consideration, including respondent's disciplinary history, the DEC recommended that respondent be reprimanded.

* * *

Following a de novo review, we are satisfied that the record clearly and convincingly establishes that respondent was guilty of unethical conduct.

Bell retained respondent to represent him in connection with two car accidents, in which Bell was not at fault, and had sustained injuries. Based on the record, respondent appears to

[3] The complaint had not charged respondent with a violation of subsection (b). Rather, it charged that respondent had failed "to safeguard property in which more than one person had an interest" – specifically, PFG.

have adequately represented Bell, resulting in aggregate settlements, totaling $116,000, in his favor. Thus, like the DEC, we conclude that the record does not support the allegation that respondent violated RPC 1.3. Specifically, the presenter did not prove her theory that the dismissal of a complaint during the course of the representation, which respondent subsequently reinstated, was attributable to misconduct on respondent's part, rather than Bell's failure to perform a client obligation.

Respondent admitted, both in his answer to the complaint and during his testimony before the DEC panel, that, in 2011 and 2012, during his representation of Bell, he improperly provided loans, totaling $10,500, to Bell. These loans, which respondent made to financially assist Bell pending the receipt of the settlement proceeds in his matters, violated RPC 1.8(e).

Despite his successful settlement of both of Bell's cases, respondent was unable to produce signed, accurate settlement sheets. The statements he did produce to the DEC were both unsigned and inaccurate. During the ethics hearing, respondent struggled to sufficiently explain the disbursements he had made in Bell's cases, except to conclude that, if anything, Bell received a windfall in the case, a conclusion with which the DEC agreed. Respondent testified that, "[a]t the time, I had a good

accounting of all that" and that Bell "was aware of the numbers." By failing to create and to maintain accurate financial records regarding Bell's matters, however, respondent violated the recordkeeping requirements of RPC 1.15(d) and R. 1:21-6.

Bell and respondent dispute whether Bell had agreed to assume Jenkins' obligation to repay PFG in connection with the $5,000 advanced to her. Bell testified that respondent had simply forgotten to deduct the $7,500 repayment to PFG from Jenkins' settlement proceeds, and had subsequently been forced to pay a higher amount, $10,000, to PFG, making that payment from Bell's settlement proceeds in the second case. Bell testified that he complained to respondent that this was "not fair," and that this disagreement over the disbursement had led to the ethics grievance.

In turn, respondent testified that Bell had told him that he had agreed to assume Jenkins' debt to PFG to persuade her to leave his home. Arguably, respondent's position is supported by the fact that, in Bell's December 2013 agreement with PFG, Bell appears to have expressly assumed Jenkins' debt to PFG. Moreover, respondent also required Bell to sign a promissory note, in 2013, memorializing his obligation to repay Jenkins' debt to PFG, for reasons not explained in the record. Given the

conflicting testimony and evidence, and the lack of clear and convincing evidence for either competing position, we determine to dismiss the charges that respondent violated RPC 1.15(b) and (c). Although the DEC found that respondent had violated RPC 1.15(b) by failing to repay PFG directly from Jenkins' settlement proceeds, Bell's express agreement with PFG to repay Jenkins' obligation undercuts the clear and convincing evidence standard necessary to reach such a conclusion. Because respondent did not have a competing claim of an interest in those funds, like the DEC, we conclude that RPC 1.15(c) is not applicable and, thus, we dismiss that charge.

Although respondent should receive the benefit of the doubt as to those RPC 1.15 violations, we cannot extend that same benefit in respect of his failure to explain Bell's matters such that Bell was able to make informed decisions. Bell's grievance and his testimony establish that he was confused, and understandably so, by respondent's handling of the monies in these cases. The record makes clear that respondent's accounting of the settlement funds in this case was improper and deficient. Respondent was unable to produce signed, accurate settlement statements memorializing the disbursement of $131,000 in aggregate proceeds, where liens of PFG, advanced costs, improper loans from respondent, and contingent legal fees were at issue.

Moreover, respondent required his client to execute promissory notes that Bell claimed were not properly explained to him and were leveraged against his $100,000 settlement. As the DEC found, the financial structures underlying respondent's representation of Bell, including the promissory notes respondent required Bell to execute, were "complicated" and "inscrutable." We conclude that respondent failed to adequately "explain the significance of these complicated transactions" to Bell, and, thus, violated RPC 1.4(c).

Finally, like the DEC, we determine to dismiss the RPC 1.4(b), and RPC 8.1(b) charges. The presenter failed to produce adequate evidence that respondent neither communicated with Bell, nor cooperated with the DEC. As to the latter allegation, it appears that respondent provided the DEC with his entire file on Bell's matters, but the file itself was woefully deficient, as adequately addressed by the charges of misconduct substantiated in this case.

In sum, respondent violated RPC 1.4(c), RPC 1.8(e), and RPC 1.15(d).

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) and In the Matter of William Robb Graham, DRB 13-274 (January 23, 2014). If

the attorney has a disciplinary record, a reprimand may result. See, e.g., In re Tyler, 217 N.J. 525 (2014) (attorney was retained to re-open a Chapter 7 bankruptcy to add a previously omitted creditor and to discharge that particular debt; the attorney ceased communicating with the client and never informed him that she had added the debtor to the bankruptcy schedules, that the debt had been discharged, and that the bankruptcy had been closed; prior reprimand for misconduct including failure to communicate in six bankruptcy cases); In re Tan, 217 N.J. 149 (2014) (attorney failed to return approximately twenty calls from his client; attorney's disciplinary history included a censure for failure to communicate with a client).

Generally, advancing funds to only one client, without more, results in an admonition. See, e.g., In the Matter of James LaSala, DRB 93-119 (May 5, 1993) (attorney loaned $3,000 to a client in a personal injury matter). Reprimands have been imposed when the attorney advanced funds to more than one client on multiple occasions, violated other RPCs, had a disciplinary history, or defaulted in the matter. See, e.g., In re Tutt, 170 N.J. 63 (2001) (in a default matter, the attorney advanced funds to a client and failed to cooperate with disciplinary authorities); In re Rinaldo, 165 N.J. 579 (2000) (attorney advanced funds to a client and acquired a proprietary interest

in the litigation; ethics history included a private reprimand, a public reprimand, and a three-month suspension); In re Rubin, 153 N.J. 354 (1998) (attorney advanced funds to ten clients whom he believed were very needy at the time; he stopped making the loans after the Office of Attorney Ethics (OAE) informed him that they were prohibited; and he failed to comply with recordkeeping requirements; ethics history included two prior private reprimands); and In re Powell, 142 N.J. 426 (1995) (attorney advanced personal funds to clients in eight personal injury matters, violated the recordkeeping rules, and negligently misappropriated more than $45,000).

An admonition is the usual form of discipline for recordkeeping violations, so long as the attorney has not negligently misappropriated funds. See, e.g., In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (attorney recorded erroneous information in client ledgers, which also lacked full descriptions and running balances, failed to promptly remove earned fees from the trust account, and failed to perform monthly three-way reconciliations, in violation of R. 1:21-6 and RPC 1.15(d); in mitigation, we considered that the attorney had been a member of the New Jersey bar for forty-nine years without prior incident and that he had readily admitted his misconduct by consenting to discipline); In the Matter of

Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014) (attorney maintained outstanding trust balances for a number of clients, some of whom were unidentified; no prior discipline); and In the Matter of Stephen Schnitzer, DRB 13-386 (March 26, 2014) (an audit conducted by the OAE revealed several recordkeeping deficiencies; the attorney also commingled personal and trust funds for many years; prior admonition for unrelated conduct).

In light of the above disciplinary precedent, including Tyler, Tutt and Rinaldo, a reprimand would normally suffice for the totality of respondent's misconduct in this case. We consider, in aggravation, respondent's two prior reprimands, albeit for dissimilar misconduct. We can discern no mitigating factors in the record. On balance, given that this matter represents respondent's third formal disciplinary adjudication, we determine to impose a censure for his misconduct.

Vice-Chair Baugh and Member Gallipoli 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 Daniel B. Zonies
Docket No. DRB 17-385

Argued: February 18, 2018

Decided: April 24, 2018

Disposition: Censure

Members	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

Ellen A. Brodsky
Chief Counsel