

DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

BONNIE C. FROST, ESQ., CHAIR
BRUCE W. CLARK, ESQ., VICE-CHAIR
PETER J. BOYER, ESQ.
HON. MAURICE J. GALLIPOLI
THOMAS J. HOBERMAN
REGINA WAYNES JOSEPH, ESQ.
EILEEN RIVERA
ANNE C. SINGER, ESQ.
ROBERT C. ZMIRICH



RICHARD J. HUGHES JUSTICE COMPLEX
P.O. BOX 962
TRENTON, NEW JERSEY 08625-0962
(609) 815-2920

ELLEN A. BRODSKY
CHIEF COUNSEL
PAULA T. GRANUZZO
DEPUTY CHIEF COUNSEL
MELISSA URBAN
FIRST ASSISTANT COUNSEL
TIMOTHY M. ELLIS
LILLIAN LEWIN
BARRY R. PETERSEN, JR.
COLIN T. TAMS
KATHRYN ANNE WINTERLE
ASSISTANT COUNSEL

June 26, 2018

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: **In the Matter of Carlos Andujar, Jr.**
Docket No. DRB 18-135
District Docket No. I-2015-0021E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems appropriate) filed by the District I Ethics Committee (DEC), pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a reprimand with twenty-four credits of additional continuing legal education (CLE) over the next twenty-four months, in addition to the CLE credits required of all attorneys, is the appropriate quantum of discipline for respondent's violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Specifically, on June 1, 2012, grievant, Stuart Barden, retained respondent to represent him after Virginia Nye, the mother of a child she alleged was Barden's, filed an application for child support. Because Barden and Nye were never married, the application included a request for a paternity determination. Respondent failed to appear in court on behalf of Barden, despite admittedly having received notice of the court dates on two occasions – one from the

court and the other from Barden, who had received notice directly from the court.

On July 5, 2012, after respondent failed to appear in court, an order was entered against Barden for child support. Thereafter, respondent repeatedly failed to take sufficient action to vacate the order, despite his representations to Barden that he had done so. Respondent eventually filed an application to vacate the support order; however, the court denied that application for procedural deficiencies. Respondent took no action to rectify the deficiencies.

Respondent failed to inform Barden of the court's rejection of the application and its reasons for doing so. Further, during the course of his representation of Barden, respondent failed to reply to Barden's numerous attempts to reach him. Respondent's explanation was that he has "a very busy practice".

A hearing to enforce the child support order was scheduled for November 13, 2012. Respondent led Barden to believe that the hearing was in connection with the application to vacate the support order. In fact, at that hearing, respondent again failed to inform Barden that the application to vacate the order had been rejected due to procedural deficiencies that respondent had not attempted to cure. Instead, respondent instructed Barden to leave the courthouse, and represented that he would finalize the necessary paperwork. Respondent admitted that he instructed Barden to leave the courthouse to hide his prior misrepresentations and failures.

Because respondent had taken no action to vacate the support order, Barden was required to pay \$7,602.87 to Nye. On September 24, 2013, more than a year after the entry of the order, Barden's new counsel successfully vacated it. On September 22, 2014, respondent made restitution of \$7,602.87 to Barden – the full amount he had paid to Nye.

In aggravation, the stipulation noted that respondent had not been consistent in his representations of the factual history of this matter. In mitigation, respondent made restitution to Barden, albeit only after the DEC filed the underlying disciplinary complaint. Moreover, respondent completed a CLE course prior to the conclusion of this matter before the DEC.

Respondent's repeated failure to both appear in court on Barden's behalf, and to take the necessary steps to vacate the child support order constitutes gross neglect and a lack of

diligence, in violation of RPC 1.1(a) and RPC 1.3. Respondent's misconduct in this respect resulted in financial damage to Barden.

Further, respondent admitted that many phone calls and written communications from Barden went unanswered during the course of the representation, a violation of RPC 1.4(b). Additionally, respondent failed to keep his client informed of the status of the matter by never disclosing that the court had rejected, as deficient, the application to vacate the order, and that the purpose of the November 13, 2012 hearing was not related to that application, but, rather, was to enforce the support order. In addition, he affirmatively misrepresented to Barden that the November 13, 2012 hearing was for the purpose of enforcing the support order. Moreover, respondent engaged in deceitful conduct when he instructed Barden to leave the courthouse, assuring his client that he would finalize all the paperwork. Respondent admitted that he did so in order to conceal his prior misrepresentations and failures. Respondent's misrepresentations by silence and his affirmative misrepresentations violated 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. See, e.g., In re Ruffolo, 220 N.J. 353 (2015) (attorney exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, failing to work on it 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; finally, by assuring his client that his matter was proceeding apace, knowing that the complaint had been dismissed, and that the client should expect a monetary award in the near future, the attorney violated RPC 8.4(c).

In aggravation, according to the DEC, respondent lacked consistency in his explanation of the matter to disciplinary authorities. In mitigation, respondent has made restitution to Barden, albeit only after the DEC filed the underlying disciplinary complaint. In addition, respondent entered into this stipulation and admitted the facts, evidencing a willingness to take responsibility for his misconduct and to move forward in a positive direction. Finally, respondent has no history of final discipline.

On balance, the Board determined that a reprimand, and the completion of twenty-four credits of CLE (in addition to the mandatory amount of credits) within twenty-four months, as

June 26, 2018

Page 4 of 4

respondent agreed in the stipulation, is the appropriate quantum of discipline for respondent's misconduct.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, undated.
2. Stipulation of discipline by consent, dated March 28, 2018.
3. Affidavit of consent, dated March 19, 2018.
4. Ethics history, dated June 26, 2018.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

EAB/trj

Enclosures

c: (w/o enclosures)

Bonnie C. Frost, Chair

Disciplinary Review Board (e-mail)

Lisa M. Radell, Presenter

District I Ethics Committee

Melissa Rosenblum Pisetzner, Chair

District I Ethics Committee (e-mail)

Jacqueline Hawkins Stiles, Secretary,

District I Ethics Committee (e-mail and regular mail)

Christopher C. Fallon, III, Vice-Chair

District I Ethics Committee (e-mail)

Isabel K. McGinty, Statewide Ethics Coordinator

Office of Attorney Ethics (e-mail)

Robert J. Pinizzotto, Esq., Respondent's Counsel (e-mail and regular mail)

Stuart Robert Barden, Grievant (regular mail)