

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 18-035
District Docket No. XIV-2017-0117E

IN THE MATTERS OF
MUHAMMAD BASHIR
AN ATTORNEY AT LAW

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Decision

Decided: July 19, 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 Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). A one-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep the client reasonably informed about the status of the matter and to reply to reasonable requests for information), RPC 1.4(c) (failure to explain the matter to the extent reasonably necessary for the client to make informed decisions about the representation), RPC 1.5(b) (failure to set forth in writing the rate or basis of the legal fee), RPC 1.15(d) (recordkeeping), RPC

1.16(a)(1) (a lawyer shall not represent a client when to do so would violate the Rules of Professional Conduct), RPC 1.16(d) (failure to return an unearned retainer), RPC 5.5(a) (practicing law while suspended), RPC 8.4(b) (committing a criminal act), 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 recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1987. He has an extensive disciplinary history consisting of an admonition, three reprimands, a censure, and a temporary suspension. Specifically, on March 6, 1996, respondent received a reprimand for grossly neglecting a litigated matter, resulting in a \$41,000 judgment against the clients. In re Bashir, 143 N.J. 406 (1996).

On May 25, 2005, respondent received an admonition. In five separate criminal representations between August 2000 and November 2002, respondent failed to comply with court deadlines. As a result, four Superior Court judges ordered sanctions against him. Thereafter, respondent failed to pay the sanctions timely, in contravention of RPC 3.4(c). In the Matter of Muhammad Bashir, DRB 05-061 (May 25, 2005).

On July 27, 2015, respondent was temporarily suspended for failing to comply with a fee arbitration determination. In re Bashir, 222 N.J. 313 (2015).

On May 18, 2016, respondent received a reprimand for failing to set forth in writing the rate or basis of his legal fee and to cooperate with an ethics investigation. In re Bashir, 225 N.J. 8 (2016).

On June 15, 2017, the Court reprimanded on respondent on respondent for his failure to keep a client adequately informed about the case (RPC 1.4(b) and (c)). In re Bashir, 229 N.J. 330 (2017).

Finally, on March 26, 2018, the Court censured respondent for his willful violation of the Court's Order that he comply with R. 1:20-20, governing suspended attorneys. Despite having been granted an extension of time, respondent failed to take the steps required of all suspended attorneys, including notifying clients and adversaries of the suspension and providing clients with their files, in violation of RPC 8.1(b), RPC 8.4(d), and R. 1:20-20. In re Bashir, 232 N.J. 332 (2018).

Respondent remains suspended to date.

Service of process was proper in this matter. On December 6, 2017, the OAE sent respondent a copy of the complaint by certified

and regular mail to his home address as listed in the attorney registration records.

In addition, the OAE served the complaint in accordance with the provisions of R. 1:20-4(d), by publication on December 8, 2017, in The Baltimore Sun, and on December 11, 2017, in the New Jersey Law Journal.

On December 22, 2017, the certified mailing to respondent was returned to the OAE marked "Return to Sender, Attempted - Not Known, Unable to Forward."

On January 8, 2018, the OAE sent another copy of the complaint to respondent at his home address, by regular mail. As of January 30, 2018, the date of the certification of the record, the regular mail had not been returned.

The time within which respondent may answer the complaint expired. As of January 30, 2018, he had not filed an answer.

* * *

We turn to the facts alleged in the complaint.

Respondent registered a Wells Fargo Bank attorney trust account (ending in #2305) and attorney business account (ending in #2318) with the OAE, but Wells Fargo had no record of those accounts.

In February 2015, respondent agreed to represent Aneesha Ghaly, pro bono, in a criminal matter in Union County. He made one

court appearance with Ghaly, but, thereafter, informed her that he was being disciplined by way of a reprimand. Ghaly asked whether she should retain new counsel, and respondent replied that, if he "paid some bills, the matter should be resolved." He then agreed to continue to represent her for a \$2,500 fee.

As previously stated, the Court temporarily suspended respondent, effective July 27, 2015. On July 29, 2015, two days into his temporary suspension, respondent met with Ghaly at the Elizabeth Public Library, where she gave him \$2,500 for the continued representation. Respondent gave Ghaly a receipt for the \$2,500, using attorney letterhead that referred to him as "Esq.," and "Attorney at Law." According to the receipt, the payment was "for legal representation in the Union County Criminal Court."

Although the meeting took place on July 29, 2015, in one place on the receipt, respondent typed the date "July 25, 2015." Next to his signature, he wrote by hand, "7/25/15." Respondent never provided Ghaly with a written fee agreement. After their July 29, 2017 meeting, respondent ceased taking Ghaly's telephone calls and ignored her text messages to him seeking information, prompting Ghaly to retain new counsel to complete her case.

Ghaly did not meet with respondent on July 25, 2015, as she was vacationing in Cancun, Mexico from July 23 to July 27, 2015. She provided ethics investigators with documentary proof of her

vacation and of her withdrawal of \$2,000 from her bank account on July 29, 2015, in preparation for her meeting with respondent that day.

Respondent failed to deposit Ghaly's retainer into either his attorney trust or business account. On March 17, 2017, the OAE subpoenaed respondent's trust and business account records from Wells Fargo, using the account numbers that respondent had provided, but the bank found no accounts bearing those account numbers. Rather, the bank furnished the OAE with records for an undisclosed account ending in #0287, designated "Muhammad I Bashir, DBA Muhammad Ibn Bashir Esquire PA."

The OAE's review of those account records revealed no deposit of Ghaly's \$2,500 legal fee.

On February 28, 2017, the District XII Fee Arbitration Committee issued a determination requiring respondent to refund the entire \$2,500 fee to Ghaly. Respondent, however, never did so.

According to the complaint, respondent's actions violated the RPCs as follows:

- a. RPC 1.1 - in that respondent neglected Ghaly's criminal matter, which was entrusted to respondent, in such manner that respondent's conduct constituted gross negligence.
- b. RPC 1.3 - in that respondent failed to act with reasonable diligence and promptness in representing Ghaly.
- c. RPC 1.4(b) - in that respondent failed to keep Ghaly reasonably informed about the status of her

matter and promptly comply with Ghaly's reasonable requests for information.

d. RPC 1.4(c) - in that respondent failed to explain the matter to the extent reasonably necessary to permit Ghaly to make informed decisions regarding the representation.

e. RPC 1.5(b) - in that respondent did not regularly represent Ghaly, and the basis or rate of the fee was not communicated in writing to Ghaly before or within a reasonable time after commencing the representation.

f. RPC 1.15(d) - in that respondent failed to comply with R. 1:21-6(a)(1) and (2), requiring respondent to maintain separate trust and business accounts, which must be prominently designated as Attorney Business Account and Attorney Trust Account, and failed to comply with R. 1:21-6(a)(2), requiring that all funds respondent received for professional services shall be deposited into a business account.

g. RPC 1.16(a)(1) - in that respondent agreed to represent Ghaly, and did not withdraw from representing Ghaly, when this representation resulted in a violation of the Rules of Professional Conduct or other law.

h. RPC 1.16(d) - in that, upon termination of representation, respondent did not return unearned retainers.

i. RPC 5.5(a) and R. 1:20-20(b)(3) - in that respondent practiced law while suspended from the practice of law.

j. RPC 8.4(b) - in that respondent committed criminal acts that reflect adversely on his honesty, trustworthiness or fitness as a lawyer in other respects, namely theft by deception, in violation of N.J.S.A. 2C:20-4, and unauthorized practice of law, in violation of N.J.S.A. 2C:21-22.

k. RPC 8.4(c) - in that respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation when he (1) backdated the receipt that he provided to Ghaly to create the

appearance that he accepted her money before he was suspended from the practice of law, and (2) registered ABA and ATA accounts with the OAE that did not exist.

1. RPC 8.4(d) - in that respondent engaged in conduct prejudicial to the administration of justice when he failed to notify Ghaly that he was suspended from the practice of law, as required by R. 1:20-20(b)(1), and agreed to represent her in a criminal matter.

[C128.]¹

* * *

The facts recited in the complaint support most, but not all, 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). Nevertheless, each charge must contain sufficient facts to support a finding of unethical conduct.

On July 29, 2015, respondent accepted a \$2,500 retainer to represent Ghaly in a criminal matter, and then performed no legal services on her behalf, requiring her to retain another attorney to complete her case. In so doing, respondent grossly neglected and lacked diligence in the case, violations of RPC 1.1(a) and RPC 1.3, respectively.

¹ "C" refers to the November 30, 2017 formal ethics complaint.

After accepting Ghaly's \$2,500 retainer, respondent neither accepted her telephone calls nor replied to her text messages seeking information about her case. Respondent's failure to keep Ghaly reasonably informed about her matter and to explain the matter to the extent reasonably necessary for her to make informed decisions about the representation violated RPC 1.4(b) and (c), respectively.

In respect of the RPC 1.5(b) charge, respondent did not regularly represent Ghaly. Consequently, he was required to set forth the rate or basis of his fee in writing, but failed to do so, a violation of RPC 1.5(b).

Respondent ran afoul of recordkeeping requirements that he maintain attorney trust and business accounts that complied with R. 1:21-6(a)(1) and (2), in violation of RPC 1.15(d). In fact, the accounts that he registered with the OAE were non-existent.

By agreeing to represent Ghaly just two days after being temporarily suspended on July 27, 2015, respondent improperly represented a client when doing so would result in a violation of the RPCs, a violation of RPC 1.16(a)(1). Moreover, he violated RPC 1.16(d) by his failure to return the entire unearned \$2,500 retainer upon termination of the representation.

By accepting a \$2,500 legal fee from Ghaly, and agreeing to represent her in her criminal case, respondent also practiced law while suspended, in violation of RPC 5.5(a).

Just as serious, respondent engaged in theft by deception when, on July 29, 2015, he accepted a fee, knowing that he was suspended at that time. He backdated the Ghaly receipt to July 25, 2015, to give the appearance that he had accepted her fee before his July 27, 2015 temporary suspension took effect. When respondent took that action, he was aware that: (1) the Court had entered an Order suspending him from the practice of law, effective July 27, 2015; (2) he was prohibited from accepting fees and performing legal services at the time; and (3) if he attempted to appear with Ghaly in her Superior Court criminal matter while suspended, his misconduct would have been discovered. Respondent clearly had no intention of providing the legal services for which Ghaly had paid him in advance. He, therefore, engaged in theft by deception, in contravention of N.J.S.A. 2C:20-4, and engaged in the unauthorized practice of law, in contravention of N.J.S.A. 2C:21-22, criminal acts that violated RPC 8.4(b).

Specifically, N.J.S.A. 2C:20-4 provides:

A person is guilty of theft if he purposely obtains property of another by deception. A person deceives if he purposely:

a. Creates or reinforces a false impression, including false impressions as to law, value,

intention or other state of mind, and including, but not limited to, a false impression that the person is soliciting or collecting funds for a charitable purpose; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;

b. Prevents another from acquiring information which would affect his judgment of a transaction; or

c. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing or exaggeration by statements unlikely to deceive ordinary persons in the group addressed.

In addition, N.J.S.A. 2C:21-22 states as follows:

a. A person is guilty of a disorderly persons offense if the person knowingly engages in the unauthorized practice of law.

b. A person is guilty of a crime of the fourth degree if the person knowingly engages in the unauthorized practice of law and:

(1) Creates or reinforces a false impression that the person is licensed to engage in the practice of law; or

(2) Derives a benefit; or

(3) In fact causes injury to another.

Respondent's practice of law while suspended violated both statutes. He accepted the \$2,500 payment from Ghaly for the representation, and used his attorney letterhead, thereby creating

the false impression that he was licensed to engage in the practice of law at a time when he was suspended. Moreover, respondent backdated the Ghaly receipt, a dishonest, fraudulent, or deceitful act, in violation of RPC 8.4(c).

Finally, the complaint alleged that respondent engaged in conduct prejudicial to the administration of justice when he failed to notify Ghaly that he was suspended and agreed to represent her in a criminal matter. No facts in the complaint, however, establish that the administration of justice was actually prejudiced, or that judicial resources were expended as a result of respondent's misconduct. Therefore, we determined to dismiss the RPC 8.4(d) charge.

In sum, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.4(c), RPC 1.5(b), RPC 1.15(d), RPC 1.16(a)(1), RPC 1.16(d), RPC 5.5(a), RPC 8.4(b), and RPC 8.4(c).

The level of discipline for practicing law while suspended ranges from a lengthy suspension to disbarment, depending on the presence of other misconduct, the attorney's disciplinary history, and aggravating or mitigating factors. See, e.g., In re Brady, 220 N.J. 212 (2015) (one-year retroactive suspension imposed on attorney who, after a Superior Court judge had restrained him from practicing law, represented two clients in municipal court, and, after the Supreme Court had temporarily suspended him, appeared

in a municipal court on behalf of a third client; the attorney also failed to file the required R. 1:20-20 affidavit following the temporary suspension; significant mitigating factors, including the attorney's diagnosis of a catastrophic illness and other circumstances that led to the dissolution of his marriage, the loss of his business, and the ultimate collapse of his personal life, including becoming homeless, and, in at least one of the instances of his practicing while suspended, his desperate need to provide some financial support for himself; prior three-month suspension); In re Bowman, 187 N.J. 84 (2006) (one-year suspension for attorney who, during a period of suspension, maintained a law office where he met with clients, represented clients in court, and served as planning board solicitor for two municipalities; prior three-month suspension; extremely compelling circumstances considered in mitigation); In re Lisa, 158 N.J. 5 (1999) (one-year suspension for attorney who appeared before a New York court during his New Jersey suspension; in imposing only a one-year suspension, the Court considered a serious childhood incident that made the attorney anxious about offending other people or refusing their requests; out of fear of offending a close friend, he agreed to assist as "second chair" in the New York criminal proceeding; there was no venality or personal gain involved; the attorney did not charge his friend for the representation; prior admonition and

three-month suspension); In re Wheeler, 140 N.J. 321 (1995) (Wheeler I) (two-year suspension imposed on attorney who practiced law while serving a temporary suspension for failure to refund a fee to a client; the attorney also made multiple misrepresentations to clients, displayed gross neglect and pattern of neglect, engaged in negligent misappropriation and in a conflict of interest, and failed to cooperate with disciplinary authorities);² In re Marra, 183 N.J. 260 (2005) (three-year suspension for attorney found guilty of practicing law in three matters while suspended; the attorney also filed a false affidavit with the Court stating that he had refrained from practicing law during a prior suspension; the attorney had received a private reprimand, a reprimand, two three-month suspensions, a six-month suspension, and a one-year suspension – also for practicing law while suspended); In re Cubberley, 178 N.J. 101 (2003) (three-year suspension for attorney who solicited and continued to accept fees from a client after he had been suspended, misrepresented to the client that his disciplinary problems would be resolved within one month, failed to notify the client or the courts of his suspension, failed to file the affidavit of compliance required by Rule 1:20-20(a), and

² In that same Order, the Court imposed a retroactive one-year suspension on the attorney, on a motion for reciprocal discipline, for his retention of unearned retainers, lack of diligence, failure to communicate with clients, and misrepresentations.

failed to reply to the OAE's requests for information; the attorney had an egregious disciplinary history: an admonition, two reprimands, a three-month suspension, and two six-month suspensions); In re Wheeler, 163 N.J. 64 (2000) (Wheeler II) (attorney received a three-year suspension for handling three matters without compensation, with the knowledge that he was suspended, holding himself out as an attorney, and failing to comply with Administrative Guideline No. 23 (now R. 1:20-20) relating to suspended attorneys; prior one-year suspension on a motion for reciprocal discipline and, on that same date, two-year consecutive suspension for practicing while suspended); In re Walsh, Jr., 202 N.J. 134 (2010) (attorney disbarred in a default case for practicing law while suspended by attending a case conference and negotiating a consent order on behalf of five clients and making a court appearance on behalf of seven clients; the attorney was also guilty of gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities during the investigation and processing of the grievances; the attorney failed to appear on an order to show cause before the Court; extensive disciplinary history: reprimanded in 2006, censured in 2007, and suspended twice in 2008); In re Olitsky, 174 N.J. 352 (2002) (disbarment for attorney who agreed to represent four clients in bankruptcy cases

after he was suspended, did not notify them that he was suspended from practice, charged clients for the prohibited representation, signed another attorney's name on the petitions without that attorney's consent and then filed the petitions with the bankruptcy court; in another matter, the attorney agreed to represent a client in a mortgage foreclosure after he was suspended, accepted a fee, and took no action on the client's behalf; in yet another matter, the attorney continued to represent a client in a criminal matter after the attorney's suspension; the attorney also made misrepresentations to a court and was convicted of stalking a woman with whom he had had a romantic relationship; prior private reprimand, admonition, two three-month suspensions, and two six-month suspensions); and In re Costanzo, 128 N.J. 108 (1992) (attorney disbarred for practicing law in two of ten matters, while serving a temporary suspension for failure to pay administrative costs incurred in a prior disciplinary matter; in a total of nine (predominately bankruptcy) matters, Costanzo was guilty of gross neglect, lack of diligence, failure to keep clients reasonably informed and to explain matters in order to permit them to make informed decisions about cases, pattern of neglect, and failure to set forth, in writing, the rate or basis of his fee; in the nine client matters, the attorney took legal fees and performed little or no work, before misrepresenting to the clients

that he was pursuing their claims, a violation of RPC 8.4(c) and, further, an abandonment of those clients; prior private reprimand and reprimand).

Thus, as seen in Brady, Bowman, and Lisa, the threshold discipline for respondent's practice of law while suspended is a one-year suspension.

Here, however, respondent allowed this matter to proceed by way of 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). On that basis alone, a two-year suspension is warranted for respondent's practice of law while suspended.

Respondent is also guilty of theft by deception. Generally, theft by an attorney results in a period of suspension, the length of which depends on the severity of the crime and other mitigating or aggravating factors. See, e.g., In re Pariser, 162 N.J. 574 (2000) (six-month suspension for deputy attorney general (DAG) who pleaded guilty to one count of third-degree official misconduct for stealing items from co-workers, including cash; his conduct was not an isolated incident but viewed as a series of petty thefts occurring over a period of time; the attorney received a three-

year probationary term and was ordered to pay a \$5,000 fine, to forfeit his public office as a condition of probation, and to continue psychological counseling until medically discharged; the attorney's status as a DAG was considered an aggravating factor); In re Burns, 142 N.J. 490 (1995) (six-month suspension for attorney who admittedly committed three instances of knowing and unlawful burglary of an automobile, two instances of theft by unlawful taking, and one instance of unlawful possession of burglary tools); In re Kopp, 206 N.J. 106 (2011) (retroactive three-year suspension for identity theft, credit card theft, theft by deception, and burglary; the attorney used the fruits of her criminal activity to support her addiction; mitigating factors included her "tremendous gains" in efforts at drug and alcohol rehabilitation); In re Bevacqua, 185 N.J. 161 (2005) (three-year suspension for attorney who used a stolen credit card to attempt to purchase merchandise at a K-Mart store under the assumed name, and had five additional fraudulent credit cards and a phony driver's license in his possession at the time; prior reprimand and six-month suspension); and In re Meaden, 165 N.J. 22 (2000) (three-year suspension for attorney who wrongfully obtained the credit card number of a third party, then attempted to commit theft by using the credit card number to purchase \$5,800 worth of golf clubs, and made multiple misrepresentations on firearms purchase

identification cards and handgun permit applications by failing to disclose his psychiatric condition and involuntary commitment; prior reprimand); But see In re Walzer, 203 N.J. 582 (censure for attorney employed by the Department of Human Services who, on at least fourteen occasions, took various items, totaling approximately \$100, from a blind refreshment vendor).

Here, respondent's single theft of \$2,500 is more serious than the attorney's conduct in Walzer, but less serious than that of the attorneys in the long-term suspension cases, Kopp, Bevacqua, and Meaden, all of which involved more severe criminality. Respondent's theft is, therefore, more in line with the six-month suspension cases, Burns and Pariser.

Finally, an admonition would ordinarily suffice for a combination of less serious infractions, including gross neglect, lack of diligence, failure to communicate, recordkeeping violations, failure to return an unearned retainer, failure to withdraw from the representation, failure to prepare a writing setting forth the rate or basis for the fee, and failure to cooperate with disciplinary authorities, so long as it occurs in the absence of prior discipline. See, e.g., In the Matter of Thomas Sandberg Durst, DRB 16-098 (July 27, 2016); In re Gleason, 220 N.J. 350 (2015); and In the Matter of John L. Conroy, Jr., DRB 15-248 (October 16, 2015).

There are aggravating factors for our consideration. Respondent has a significant ethics history: (1) a 1996 reprimand for similar misconduct – gross neglect of a litigated matter; (2) a 2005 admonition for failing to comply with court-ordered sanctions in four criminal matters; (3) a 2016 reprimand for similar misconduct – failing to reduce the fee basis to writing and to cooperate with an ethics investigation; (4) a June 2017 reprimand for similar misconduct – failure to communicate with a client; and (5) a March 2018 censure, in a default matter, for willful violation of the affidavit requirement of R. 1:20-20.

Respondent also has demonstrated a disdain for the New Jersey courts and the attorney discipline system. As noted above, in his 2005 admonition matter, four Superior Court judges sanctioned him for repeatedly missing court-imposed deadlines. In the 2016 reprimand matter, respondent failed to cooperate with ethics authorities. Earlier this year, in the censure matter, respondent failed to file the R. 1:20-20 affidavit required of suspended attorneys, despite OAE efforts to spur him into action, failed to cooperate with the OAE investigation into his matter, and then defaulted.

For respondent's criminal conduct, coupled with the aggravating factors, an abysmal disciplinary record and a chronic failure – or refusal – to conform his behavior to that expected

of all New Jersey attorneys, we conclude that respondent is irredeemable. We, therefore, recommend his disbarment.

Member Clark voted for a three-year prospective suspension. Members Boyer and Joseph 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 Muhammad Bashir
Docket No. DRB 18-035

Decided: July 19, 2018

Disposition: Disbar

<i>Members</i>	Disbar	Three-year Suspension	Recused	Did Not Participate
Frost	X			
Clark		X		
Boyer				X
Gallipoli	X			
Hoberman	X			
Joseph				X
Rivera	X			
Singer	X			
Zmirich	X			
Total:	6	1	0	2


Ellen A. Brodsky
Chief Counsel