SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 18-057 and 18-058
District Docket Nos. XII-2016-0032E
and XII-2016-0021E

IN THE MATTER OF

IHAB AWAD IBRAHIM

AN ATTORNEY AT LAW

Decision

Argued: April 19, 2018

Decided: August 3, 2018

Richard M. Cohen appeared on behalf of the District XII Ethics Committee.

Robert F. Clark appeared on behalf of respondent.

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

These matters were before us based on two separate recommendations for discipline filed by the District XII Ethics Committee (DEC), which we determined to consolidate for disposition. The first matter (18-057) was before us on a recommendation for an admonition, which we determined to treat as a recommendation for greater discipline, in accordance with

R. 1:20-15(f)(4). The two-count formal ethics complaint charged respondent with violating RPC 1.2(c) (a lawyer may limit the scope of the representation only if it is reasonable under the circumstances and the client gives informed consent) and RPC 1.5(b) (failure to communicate in writing the rate or basis of the fee).

The second matter (18-058) was before us on a recommendation for a reprimand. The sole count of the formal ethics complaint charged respondent with violating RPC 4.2 (improper communication about the subject of the representation with a person the lawyer knows to be represented by counsel).

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

Respondent earned admission to the New Jersey bar in 2013. He is a sole practitioner, with his primary office in Jersey City, New Jersey. On August 1, 2017, respondent was reprimanded for negligent misappropriation of client funds and recordkeeping infractions. In re Ibrahim, 230 N.J. 216 (2017).

DRB 18-057 (District Docket No. XII-2016-0032E)

Lulseged Gonitie, the grievant, retained respondent to represent him in connection with a motor vehicle citation he had been issued, on April 10, 2016, in Jersey City, for failure to obey a stop sign. Prior to the representation, during a pro se

municipal court appearance, the prosecutor had offered Gonitie a "no points" violation in return for a guilty plea. Gonitie rejected that plea offer and informed the judge that he desired to retain an attorney and take the matter to trial.

After the judge granted an adjournment, Gonitie sought out respondent, whose firm had sent him a postcard offering a free consultation. Having decided to proceed with the representation, Gonitie paid respondent $100, with an additional $100 due on the scheduled court date, which Gonitie ultimately paid. Respondent did not provide Gonitie, whom he had not previously represented, with a written retainer agreement.

In his verified answer to the formal ethics complaint and during the ethics hearing, however, respondent claimed that he had informed Gonitie that he would be charged additional fees for further court appearances or a trial, and that, after consideration, Gonitie had agreed to accept a plea agreement. Specifically, respondent claimed that Gonitie agreed that respondent's representation would be limited to a negotiated plea agreement for zero points, or a dismissal of the case if the police officer failed to appear.

On July 27, 2016, the scheduled court date, respondent's associate appeared on behalf of Gonitie. Despite purportedly having admitted to respondent's associate that he had failed to

observe the stop sign, Gonitie again rejected a plea offer from the prosecutor. In response, respondent's associate telephoned respondent, who informed Gonitie that, if he insisted on proceeding to trial, respondent would withdraw from the representation, given Gonitie's admission of guilt to the associate.

In reply, Gonitie accused respondent of being in "cahoots" with the police, and demanded a trial. The court immediately permitted respondent to withdrawal from the representation. Gonitie proceeded to trial pro se and was found guilty of the traffic offense, receiving an $85 fine, plus points. Respondent claimed that, thereafter, Gonitie began calling his firm eight to ten times per day, and that he had offered to refund his fee to Gonitie on several occasions.

Gonitie was not produced as a witness at the ethics hearing.

* * *

The DEC determined that the evidence did not support the charge that respondent violated RPC 1.2(c) in respect of his representation of Gonitie. Specifically, the DEC emphasized that, because Gonitie had not testified, no evidence controverted respondent's testimony that he had expressly set forth the scope of the representation; that Gonitie had agreed

to enter into a guilty plea; that Gonitie knew that additional fees were required for further legal services; and that respondent had been unable to take the matter to trial after Gonitie openly had admitted having committed the traffic offense.

The DEC found, however, that respondent violated RPC 1.5(b). Respondent admitted, both in his verified answer and during his sworn testimony, that he had failed to provide Gonitie, whom he had never represented, with a writing in respect of his fee basis.

In mitigation, the DEC considered that respondent had no disciplinary history and had not acted with malice or bad intent in respect of his interactions with Gonitie. The DEC found no aggravating factors.

The DEC recommended that respondent receive an admonition.

DRB 18-058 (District Docket No. XII-2016-0021E)

On February 11, 2016, H.G. contacted respondent regarding potential representation in respect of an allegation of domestic violence made by M.G., H.G.'s wife. H.G. already was represented by another attorney, and a final restraining order (FRO) hearing had been scheduled.

After speaking with both H.G. and his attorney, respondent called M.G. and requested that they meet to discuss the pending

case, on February 19, 2016, at the church they both attended. M.G. testified that respondent knew that she was already represented by counsel, because she had expressly informed him of her attorney's name during the telephone conversation. Nevertheless, on the date of the FRO hearing, respondent approached M.G., prior to the arrival of her attorney, and attempted to resolve the case, offering to secure "guarantees" from H.G. to satisfy her. Respondent admitted that, as of the date of the FRO hearing, he knew that M.G. was represented by counsel.

According to M.G.'s attorney, she attempted to immediately resolve respondent's misconduct by suggesting that he apologize to her client and voluntarily withdraw from the FRO case. He refused, however, asserting that he had committed no misconduct. Consequently, M.G.'s attorney moved for respondent's removal, prompting the court to question respondent regarding his interaction with M.G. Respondent admitted to the court that he had spoken to M.G. in an attempt to resolve the FRO matter, despite knowing she was represented by counsel. The court ordered respondent removed from the case for having violated RPC 4.2, and, by letter dated April 5, 2016, notified the DEC of his conduct.

As a result of respondent's misconduct, the court adjourned the FRO hearing so that H.G. could obtain new counsel.[1] During the ethics hearing, respondent argued that, until H.G. formally had retained him, he was permitted to contact M.G., despite her represented status, pursuant to his "First Amendment right."

* * *

The DEC determined that, by communicating with M.G., respondent had violated RPC 4.2. The DEC emphasized that respondent knew that M.G. was represented by counsel, yet, he continued to initiate communication with her, including by telephone, and in person, on the day of the FRO hearing.

In mitigation, the DEC considered that, initially, respondent "was motivated by an intent to try to assist [M.G.]." The DEC found, in aggravation, that respondent initiated communication repeatedly and that he had not been forthright in respect of the different proceedings. For example, the DEC panel noted, as evidenced by the transcript of proceedings in the Superior Court, in response to the judge's questions, respondent admitted that he told M.G. that he would be asking the court for the opportunity to conference the matter before hearing. However, during the hearing before the DEC, respondent denied

[1] Despite this impact on judicial resources, the complaint did not charge a violation of RPC 8.4(d) (conduct prejudicial to the administration of justice).

that he had engaged in any discussion with M.G. in respect of a conference or settlement. The DEC further found incredible respondent's explanation for his failure to have communicated with M.G.'s counsel (that he did not have her contact information), noting that he had texted counsel after the Superior Court hearing, thus demonstrating that he either had counsel's contact information or that he knew how to obtain it.

The DEC found respondent incredible and less than forthright in other respects as well. Specifically respondent maintained that his initial telephone conversation with M.G. lasted only three minutes, that they had discussed nothing of substance, and that he had recorded the conversation. M.G. testified that the conversation lasted between fifteen and twenty-five minutes and that respondent, indeed, had discussed the substance of the matter with her, knowing that she was represented by counsel. Notwithstanding this substantial discrepancy, the DEC noted, respondent did not produce the recording of the conversation he allegedly had made. Finally, noting first that both respondent and M.G. spoke the same language, the DEC asked respondent why he had brought an interpreter with him when he met M.G. in the courthouse on the date of the FRO hearing. Respondent testified that he had done so out of respect for the court and as a witness to his

conversation to "make sure that he [did] the Christian thing and [said] good morning to someone." Yet, the panel observed, despite the significant conflicting testimony between respondent and M.G. in respect of the substance of his communications with her in court, respondent did not produce the interpreter as a witness during the DEC hearing.

The DEC recommended that respondent receive a reprimand.

* * *

Following a de novo review, we are satisfied that the record clearly and convincingly establishes that respondent was guilty of unethical conduct. Specifically, we determine that he violated RPC 1.5(b) and RPC 4.2. We determine to dismiss the allegation that respondent violated RPC 1.2(c), given the lack of evidence in the record to refute his testimony in that regard.

First, in respect of the RPC 1.5(b) allegation, respondent admitted that he had failed to provide Gonitie, whom he previously had not represented, with a writing in respect of his fee basis. RPC 1.5(b) requires that, "when a lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation." Respondent, thus, violated RPC 1.5(b).

Next, in respect of the RPC 4.2 allegation, respondent admitted that, at the time he approached M.G. in the courthouse to attempt to resolve the FRO matter, he knew she was represented by counsel. Moreover, M.G. testified that, during their first conversation about the case, she had informed him that she was represented. RPC 4.2 states, in relevant part:

> In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows . . . to be represented . . . unless the lawyer has the consent of the other lawyer, or is authorized by law or court order to do so . . . .

Respondent had neither consent nor authorization to communicate with M.G. regarding the substance of the FRO case. He, thus, violated RPC 4.2, on at least one occasion, by communicating with M.G. in an effort to resolve the FRO matter.

The sole issue left for determination is the proper quantum of discipline for respondent's misconduct. Conduct involving failure to prepare the writing required by RPC 1.5, even if accompanied by other, non-serious ethics offenses, typically results in an admonition. See, e.g., In the Matter of John L. Conroy, Jr., DRB 15-248 (October 16, 2015) (attorney violated RPC 1.5(b) when he agreed to draft a will, living will, and power of attorney, and to process a disability claim for a new client, but failed to provide the client with a writing setting

forth the basis or rate of his fee; thereafter, the attorney was lax in keeping his client and the client's sister informed about the matter, which resulted in the client's filing of the disability claim, a violation of RPC 1.3 and RPC 1.4(b); the attorney also practiced law while administratively ineligible to do so, a violation of RPC 5.5(a); finally, he failed to reply to the ethics investigator's three requests for information, a violation of RPC 8.1(b); we considered that, ultimately, the attorney had cooperated fully with the investigation by entering into a disciplinary stipulation, that he agreed to return the entire $2,500 fee to help compensate the client for lost retroactive benefits, and that he had an otherwise unblemished record in his forty years at the bar); and In the Matter of Osualdo Gonzalez, DRB 14-042 (May 21, 2014) (the attorney failed to communicate to the client, in writing, the basis or rate of the fee, a violation of RPC 1.5(b); he also failed to communicate with the client, choosing instead to communicate only with his prior counsel, a violation of RPC 1.4(b); in addition, at some point, the attorney caused his client's complaint to be withdrawn, based not on a request from the client, but rather, on a statement from his prior lawyer that the client no longer wished to pursue the claim, a violation of RPC 1.2(a); in mitigation, we considered the attorney's pristine

record in twenty-seven years at the bar, and several letters attesting to the attorney's good moral character).

Attorneys found guilty of communicating with represented persons have received discipline ranging from an admonition to a censure, depending on the presence of other violations, and the consideration of aggravating and mitigating factors. See, e.g., In the Matter of Mitchell L. Mullen, DRB 14-287 (January 16, 2015 (admonition for attorney who, in the course of an e-mail chain, communicated directly with the grievant on at least three occasions, when he knew or should have known that the grievant was represented by counsel; the communications involved the subject of the representation; the attorney also sent a notice of deposition directly to the grievant and never attempted to notify opposing counsel of the deposition date, in violation of RPC 4.2; in mitigation, we considered that the attorney's conduct was minor and caused no harm to the grievant, and that he had been a member of the bar for thirty-nine years, with no disciplinary record); In re Tyler, 204 N.J. 629 (2011) (reprimand for attorney who, in one of six bankruptcy matters, communicated directly with the client about a disgorgement order in the matter, although she knew or should have known that subsequent counsel had been engaged, a violation of RPC 4.2; gross neglect and pattern of neglect, lack of diligence, and

failure to communicate with the clients also found; in mitigation, the attorney had no prior discipline and was struggling with medical issues at the time of the misconduct); and In re Veitch, 216 N.J. 162 (2013) (censure for attorney who, in a criminal matter, communicated with his client's co-defendant, who had pleaded guilty, about the merits of the criminal case, even though counsel for the co-defendant had previously denied the attorney's request to talk to his client, a violation of RPC 4.2; the attorney's unblemished disciplinary history of thirty-eight years mitigated against a term of suspension, and neither any party nor the judicial system suffered any actual harm).

Here, respondent's communication with M.G., in the courthouse, despite her represented status, constitutes his most serious misconduct. Respondent offered to secure "guarantees" from his client for M.G., in a brazen attempt to negotiate a settlement between the parties, just prior to M.G.'s attorney's arrival for the FRO hearing. Given disciplinary precedent for such a serious violation of RPC 4.2, the clear harm to the judicial system that resulted from the court's rescheduling the matter so that H.G. could obtain new counsel, and respondent's noted lack of candor during the ethics hearing, a reprimand is the minimum appropriate discipline. Additionally, respondent

violated RPC 1.5(b) in his representation of Gonitie. In further aggravation, respondent, who was admitted to the bar only five years ago, recently was reprimanded for misconduct that occurred in 2015, prior to the matters at hand. Respondent has advanced no mitigation. Thus, on balance, we determine that the appropriate quantum of discipline is a censure.

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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ihab Awad Ibrahim
Docket Nos. DRB 18-057 and 18-058

Argued: April 19, 2018 (18-058)

Decided: August 3, 2018

Disposition: Censure

Members	Censure	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer			X
Gallipoli	X		
Hoberman	X		
Joseph			X
Rivera	X		
Singer	X		
Zmirich	X		
Total:	7	0	2

Ellen A. Brodsky
Chief Counsel