Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-186
District Docket No. IIA-2016-0027E

In The Matter Of	:
Matthew Thomas Rose	:
An Attorney At Law	:

Decision

Argued: September 20, 2018

Decided: November 27, 2018

Frank V. Carbonetti appeared on behalf of the District IIA 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 IIA Ethics Committee (DEC). The two-count complaint charged respondent with violations of RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter or to promptly comply with reasonable requests for information) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The charges stem from respondent's failure to file

a complaint in a custody and support matter. His defense for not doing so was the grievant's failure to provide him with information to be included in a confidential litigation information sheet.

For the reasons expressed below, we find respondent guilty of the charges and determine to impose a censure for his misconduct.

Respondent was admitted to the New Jersey bar in 1996. He maintains a law office in Fair Lawn, New Jersey. He has no history of discipline.

At the hearing, the parties argued over the admission of evidence that the grievant, Tomi Natoli, had obtained the return of her fee, through a credit card chargeback process, and its relation to R. 1:20-7(g) (with the consent of the Attorney General, the Director of the Office of Attorney Ethics may apply for immunity from criminal prosecution for a witness in a disciplinary matter). Respondent argued that he would be unduly prejudiced if the panel did not consider testimony regarding the returned fee because it showed Natoli's "impure" state of mind, her failure to operate in good faith, and her failure to honor her obligations under the law and under their retainer agreement. He maintained that he was not barred from pursuing fee arbitration or criminal remedies against Natoli.

The DEC denied the admission of any such evidence, finding that it was irrelevant to the proceedings and that respondent could avail himself of fee

arbitration.[1] Respondent objected, asserting that Natoli could have been using the ethics proceeding to conceal her misconduct with regard to him. To the contrary, we find respondent's frivolous claims against Natoli to be a smoke screen to divert attention from his inaction in her matter.

Natoli, a project manager for an architectural engineering firm, was a member of her employer's sponsored legal services plan. Respondent provided services through that plan, at either no or reduced costs to employees.

At the relevant time, Natoli was raising her five-year-old daughter on her own. On February 4, 2016, she retained respondent to pursue child support and full custody of her daughter, via a non-dissolution complaint.

According to respondent, he informed Natoli that he would need her cooperation and assistance in providing truthful, accurate, and complete information, including the location of the daughter's father, Richard Shoup. Natoli informed respondent that Shoup lived in Georgia. Respondent advised Natoli that New Jersey would have jurisdiction over Shoup, notwithstanding his Georgia residence.

Natoli maintained that, initially, her relationship with respondent was "good." After the initial consultation, they communicated primarily via e-

[1] R. 1:20A-3(a)(1) provides that only the client may file a request for fee arbitration.

mail.[2] Respondent e-mailed documents for her review, which she signed and sent back to him by e-mail.

Respondent's February 29, 2016 e-mail to Natoli stated, "I will e-mail you a draft Family Court Complaint, on or before this Thursday, for your review and approval, before same is forwarded to the Court for filing." According to Natoli, she replied that "everything looked good," but the document stated that there was an attachment, which had not been included in the e-mail. She, therefore, requested that he forward it to her.

Respondent's March 3, 2016 e-mail to Natoli stated, "[p]ursuant to your request, attached for your review is the draft Non-Dissolution Complaint, which was prepared on your behalf. I will call you again tomorrow to discuss." According to Natoli, she reviewed the document and replied that it seemed acceptable, noting, however, that Shoup's full name included "Jr.," and questioning whether she needed to review attachments that respondent had not provided. Natoli also inquired about the status of the filing.

Sometime in March 2016, Natoli received another e-mail from respondent, requesting that she sign a certification page and mail it back to

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[2] Natoli provided the presenter with only the e-mails she believed were relevant. She did not provide e-mails that she believed contained redundant or "insignificant" information.

him, which she did. After she "followed up," respondent's March 18, 2016 e-mail reply stated, "I am on vacation this week in Florida but my secretary confirms that your signed certification page arrived this week. I plan on forwarding the complaint to the Court for filing next week upon my return from Florida. Thank you." Based on that e-mail, Natoli understood that respondent had all the information required to file the complaint.

On March 24, 2016, Natoli e-mailed the following, "HI [sic] Matthew – hope you enjoyed vacation. Can you please advise on the status of filing with the court." Respondent replied the following day, stating, "This week, I forwarded the Complaint to the Court for filing. When I receive back a filed copy of the Complaint from the Court, I will send you a copy of same." Natoli believed that respondent had filed the complaint. She testified that she never received a call or e-mail that he had not done so. She added that, during their telephone conversations, respondent assured her that Shoup would be served with the complaint within seven to ten days.

Respondent never filed the complaint. Yet, at the DEC hearing, he testified that his March 25, 2016 e-mail was accurate at the time it was sent: "When I said forward, forward is to advance, advance it towards the mailing process. When I forward it, that was a true act. I had stamped it, placed it in the outgoing mail tray."

Patricia Rose (Patricia), respondent's sister, is his accounting manager and provides general administrative support. According to Patricia, on March 25, 2016, respondent asked her to assist him to "assembl[e]" Natoli's "proposed complaint" and attachments. She observed her brother "address it, put it in an envelope, and put it in the outgoing mail tray." Afterward, she reviewed the office copy of the "proposed complaint." In the late morning, Patricia noticed that the confidential litigation information sheet was "substantially incomplete" and brought that information to respondent's attention. Respondent claimed that he missed the fact that Shoup's address was missing because "[t]here was a bunch of other paper on that particular document." According to Patricia, respondent

> then went to the outgoing mail tray and removed the envelope, brought it back to his chair, and then I saw him -- heard him then call Ms. Natoli on the phone [on speaker phone] and said that the confidential litigant information sheet, you know, was not filled out properly, all the information, so that she would have to redo it, sign it, date it and send it back in order for the -- for the case to be filed, for the support to be filed.
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> [T162-11 to T162-19.][3]

[3] T denotes the October 25, 2017 DEC hearing transcript.

Patricia heard Natoli say, "yes, she'll do that and send it back." Contrary to Natoli's testimony, respondent, too, asserted that he called Natoli that day, before noon, to inform her that the complaint was deficient and could not be filed.[4] Patricia testified that respondent did not send another form to Natoli because she already had it. Patricia did not recall whether respondent received any further mail from Natoli and she did not follow up to ascertain whether Natoli had returned a completed form.

When Patricia was asked how she specifically remembered the events that had occurred on March 25, 2016, some seventeen months before the DEC hearing, she replied that, when she heard the name "Tomi," she thought it was unique, having never heard that name for a woman. She claimed that she remembered the date because she alerted respondent "to the document that was missing the information." Contrary to her prior testimony, Patricia asserted that she, not respondent, had pulled the complaint out of the outgoing mail tray. She admitted that she neither prepared documents for respondent, nor organized the pleadings for the Natoli case. She added that, shortly after respondent placed the complaint in the mail tray, she looked through the office

[4] Respondent asserted that he could not provide proof of the call to Natoli because he used a prepaid cell phone and did not know if he could obtain records of his calls.

copy and noticed that a section of information was missing. After she brought it to respondent's attention, he replied "thank you, let me remove that from the mail tray" and then called Natoli. Patricia was not aware of any problems between respondent and Natoli, until July 2016, when the charge back for the fee occurred.

According to respondent, when he first met with Natoli, she filled out a "divorce intake sheet," with basic information sufficient to draft a proposed complaint. Natoli, however, "always seemed to backtrack on not really knowing where [Shoup] was," leaving it up to him. When asked why Natoli would have thought respondent could file the complaint without that information, respondent failed to address the question, stating only that, because she completed the intake sheet providing only Shoup's last known address, it gave him "pause."

Respondent asserted that he called Natoli once to request that she complete the form, but never e-mailed a request, because his verbal request rendered an e-mail unnecessary. He later claimed that he called her twice; the second call was made a week after the first, and no one witnessed it.

On May 11, 2016, Natoli inquired, via e-mail, whether Shoup had been served and whether he could be served at his workplace if his home address could not be found. Respondent replied, later that day, that he would call her

"again" on Friday, with an update. At the ethics hearing, when respondent asked Natoli why she believed he could file a complaint with an incomplete confidential litigation information sheet, she replied:

> Based on . . . my initial consultation with you, I had informed you I had no idea where . . . Richard Shoup lived and you had said the courts would find him. Even in my follow-up e-mails in May, I was very confused as to our conversations because you were always implying the courts were going to find him, and then the conversation changed to you finding him. I was very specific in that e-mail saying I was very confused about the process because you had said the courts were going to find him. So my understanding was . . . and especially, you know the fact he has another family court case for child support for his older daughter that [the court] would be able to find him. Which is why in all my e-mails I asked have the courts been able to find him, and have you searched for him.
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> [T148-9 to T148-24.]

According to Natoli, respondent told her that the courts would be able to find Shoup because she had provided his social security and driver's license numbers, and because Shoup had another child support case pending against him in Georgia. In turn, respondent denied Natoli's assertion and blamed her for not providing him with Shoup's address. He stated that he is not a detective or an investigator, but told Natoli that he would "attempt to work with her" to try to obtain Shoup's current address. Respondent maintained that he attempted to locate Shoup by performing "internet based research" and searching on

LinkedIn. He believed they were working together to try to locate Shoup's address. He claimed that he exchanged many phone calls and e-mails with Natoli and told her on the phone that he could not locate Shoup. He asserted that he told Natoli that, if they filed the complaint, it would have to be served within four to six months to avoid its dismissal for lack of prosecution, pursuant to R. 1:13-7.

By June 2016, Natoli began questioning respondent's conduct. She believed he was not being truthful and that he did not have the proper addresses for Shoup's home and workplace. She, therefore, wanted to view her file and requested a copy of it. In a June 29, 2016, e-mail, she asked if she could stop by respondent's office the following day to photocopy her file. She followed up with a June 30, 2016 e-mail, inquiring whether 1:30 would be a suitable time. Shortly thereafter, she received the following reply from respondent's office (presumably from Patricia), "No. Office Hours are by appointment only and the office is closed today through the holiday weekend. An additional copy of the documents in your file will be mailed to you. Mr. Rose will be pleased to schedule another appointment with you at a mutually-convenient time on Friday, 7/8/16. Best regards." According to Natoli, the only documents she received from respondent, despite his promise in his retainer

agreement to provide every copy of every document, was the draft complaint and paperwork that she needed to complete and return.

Also on June 30, 2016, Natoli forwarded a Federal Express shipping label to Patricia's attention, for respondent's use to forward all documents relating to her file. Natoli never received a copy of her file, however.

Natoli's suspicions about respondent's conduct prompted her to contact the legal service plan for advice and assistance to obtain her file. The plan's attempts to obtain her file from respondent were also unavailing.

On July 11, and twice on July 13, 2016, Natoli e-mailed respondent's office inquiring whether respondent had served Shoup with the complaint, and pointing out that he neither returned her call on June 30, scheduled an appointment on July 8, 2016, nor sent her file, despite her having forwarded a prepaid Federal Express slip. She, therefore, requested the docket number for her case and confirmation that it had been filed in Morris County, or the venue in which it had been filed, and asked that either Patricia or respondent reply to her requests for information. Notwithstanding her multiple requests, respondent never informed her that he had not filed the complaint.

On July 15, 2016, Natoli again requested the docket number and the venue for the complaint. On July 17, 2016, she remarked that she had not received any documentation even though she had requested copies of her file

weeks earlier, e-mailed requests several times, and sent a prepaid mailing label. She emphasized that, had she received her file, she would not have continued to ask for it. She informed respondent that she was pursuing other legal alternatives and again requested her complete file, offering to send another prepaid label or to pick up her file in person. Natoli maintained that respondent never informed her that there was no docket number, or that the complaint had never been filed.

Respondent's July 23, 2016 reply e-mail stated, in relevant part:

> The allegations contained in your e-mails are hereby disputed and denied because they are incorrect. As you know, I have always responded to each and every one of your telephone calls with telephone calls and/or e-mails within 24 hours . . . . I previously sent you a copy of all the documents in your file, I previously had an Office Meeting with you on the only mutually-convenient occasion . . . I previously provided you with a copy of the Retainer Agreement which you signed, I have always kept you apprised of everything, in a timely manner . . . including my recent communications to you on June 30, 2016, July 10, 2016 and July 15, 2016, regarding this matter, I have always diligently made my maximum professional efforts on your behalf since the date I was retained. I would appreciate your cooperation in this matter. As you know, I have always cooperated with you in this matter. I have always provided you with copies of all documents in your file.
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> [Ex.G-10;T81-82.]

Again, respondent's e-mail did not mention that he had not filed the complaint. On July 24, 2016, frustrated with respondent's lack of meaningful communication, Natoli reiterated her previous requests for her file, the docket number, and the venue in which the complaint was filed. She reasoned that she would not be requesting the information again had she received it previously. She asked respondent what address he had used when he allegedly sent her a copy of her file and why he disregarded her ongoing requests about information on a case he filed in March 2016.

Respondent's August 13, 2016 e-mail reply was virtually identical to his July 23, 2016 e-mail, but referenced a recent communication on August 6, 2016. According to Natoli, it was the standard e-mail she received through most of July and August in response to her requests.

Notwithstanding respondent's claim that he had sent Natoli's file, she never received it, and eventually realized that respondent had neither filed the complaint nor informed her of his failure to do so. At one point, Natoli contacted the legal services plan, which advised her to call the Morris County Court Clerk. When she did, she discovered that no complaint had been filed anywhere in the state. Her inquiries to officials in three counties in Georgia yielded similar results.

On July 15, 2016, Natoli filed a pro se complaint against Shoup for custody and child support. A hearing took place on August 18, 2016, at which time the case was resolved.

Respondent claimed that Natoli's e-mails to him contained false statements, leading him to wonder "what kind of games she was playing." His reply e-mails, therefore, denied and disputed her statements and made it clear that he was "diligent, honest, and communicative with her and ethical every step of the way."

Respondent found Natoli's e-mails "disingenuous, misleading, and accusatory," particularly in light of their previous telephone conversations, wherein he told her he could not file the complaint. On a number of occasions, he accused her of trying "to set [him] up for something." For those reasons, his e-mails were not specific. In addition, he asserted that he told her verbally, on at least two occasions, why he could not file the complaint. The second time was after he received the shipping label from Natoli. He testified that he did not use the label to "again" mail her the documents because he had done so previously and that "when he certified under oath that he mailed something, it's equivalent to certified mail." In addition, he believed it was improper to use the corporate label.[5]

Respondent had no proof that he had sent Natoli her documents, which he claimed to have sent by regular mail. He testified:

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[5] Respondent maintained that Natoli's sending him her company's Federal Express label exemplified her bad character. She explained, however, that it was her company's practice to charge employees for their use of labels. The company would have charged her only if respondent used the shipping label to forward the documents she had requested.

> as an officer of the court and an attorney at law in the State of New Jersey, when I say I mailed something, okay, I don't require certified mail. I'm an officer of the court. When I say something under oath as I'm doing today, that's, you know, the gospel truth, with all due respect. So not only have I been an officer of the court for more than 20 years, I used to work at the prosecutor's office before that, so I take my obligation to tell truth [sic] honestly and very seriously.
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> [T217-8 to 217-17.]

Respondent maintained that he could have mailed the documents by certified mail if he was being "paranoid and if I think I'm guilty, but I'm not guilty."

Respondent accused Natoli of using his legal work to prepare her own pro se complaint, without paying his fee. Respondent further asserted that he was communicative, sent Natoli "maybe thousands of e-mails. . . . definitely hundreds," and participated in many phone calls with her. He repeatedly asked her to cooperate, but had nothing in writing, except e-mails to her that stated "I appreciate your cooperation." He was not more specific in his e-mails because he had spoken to Natoli twice and thought she understood.

When respondent was asked how Natoli tried to "set him up" when she sent a shipping label that was traceable, he replied:

> by sending me the Fed Ex label for a file that she received a week before in the mail, and which when I got back I was going to mail her again, okay, that would be an acknowledgement that I had not mailed it already, and I

was going to mail it again when I got back, you know, the Fed Ex envelope was just playing games.

[T229-4 to 229-15.]

Respondent testified that he kept records of the time he spent on Natoli's case and provided the DEC investigator with a "summary billing statement," a "compilation time summary" of time spent from February 4 to July 19, 2016.[6] He did not maintain time sheets, asserting that he was not required to keep "a chargeable time journal on a daily basis" based on their retainer agreement. He, therefore, had no time records to reflect the number of phone calls with Natoli or their subject matter.

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[6] The last entry, for 2 hours and 45 minutes, read:

> REQUEST COMPLETED DOCUMENTATION FROM CLIENT TO SUPPORT POSSIBLE CASE; PREPARE DRAFT COMPLAINT WITHOUT ADEQUATE, NECESSARY, COMPLETED, SUPPORTING DOCUMENTATION FROM CLIENT; TEL. CONFERENCES WITH CLIENT RE: INCOMPLETE DOCS & WEAKNESS IN HER POSSIBLE CASE & NEED FOR MORE COMPLETED, SUPPORTING DOCUMENTATION FOR POSSIBLE COMPLAINT; & REMIND CLIENT THAT I WILL NOT FILE ANY POSSIBLE COMPLAINT WITHOUT COMPLETED DOCUMENTS & A GOOD-FAITH, REASONABLE FACTUAL/LEGAL BASIS

Respondent asserted that he had prepared the time sheet in mid-July, about the time of the chargeback.

According to respondent, he charged Natoli a "maximum discounted legal fee on the front end and . . . put in more than seven and a half hours legal work in and . . . ended up losing money on the deal." Respondent reduces his rate for clients to make his fees more affordable. He stated "[t]hat's one of those things where I'm a good person and a good attorney, so sometimes I'll provide a discounted rate based upon circumstances of a particular client such as this."[7] Although he was "shocked" that Natoli requested a chargeback refund, he claimed that his honesty, integrity, and his clients' happiness are more important to him than money.

Respondent tried to impeach Natoli's testimony by accusing her of making an inaccurate statement in her ethics grievance, claiming that she paid $2,000, when, in fact, she was charged $2,070. Natoli maintained that the $70 was a credit card service charge and respondent's fee was only $2,000. Respondent equated Natoli's omission of Shoup's address on the client litigation information sheet to a violation of their retainer agreement. He also blamed the delay in the case on Natoli because she had waited five years to seek child support, which, respondent asserted, put her credibility at issue.

Over the presenter's objection, Patricia testified about respondent's character. She agreed with respondent that she did not know anyone "who takes honesty and

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[7] We note, however, that the services were provided through a legal service plan.

integrity more important than [respondent];" that he treats people fairly and honestly; that he is "the best brother I've had;"[8] and "he's a great attorney" because he handled "numerous matters" for her and other family members.

In closing, respondent claimed, among other things, that, at all times, he was honest, truthful, and diligent in his communications with Natoli. In respondent's opinion, Natoli was trying to set him up for the purpose of avoiding payment.

In turn, the presenter maintained that many of respondent's statements "were straight out lies." He refused to answer Natoli's questions by skirting the issue, knowing all the while that he had not filed the complaint. He, therefore, failed to communicate with the client and explicitly misrepresented, in an e-mail, that he had filed the complaint.

The presenter emphasized that respondent could produce no credible evidence to substantiate his claim that he had removed Natoli's complaint from the mail tray, or that he had sent Natoli a copy of her file. He also highlighted respondent's testimony that he need not reply to Natoli's e-mails requesting status updates, because he allegedly once told her, via telephone, that he could not file the complaint without Shoup's address.

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[8] The Rose family consists of eight siblings, five of whom are boys.

The presenter contended that respondent's testimony was not credible, that the evidence established clearly and convincingly that he failed to reasonably inform Natoli about the status of her case, and that he misrepresented that the complaint had been filed and that he had sent the file to Natoli, violations of RPC 1.4(b) and RPC 8.4(c), respectively.

The DEC found that Natoli's testimony was credible, and was supported by detailed e-mails, which showed a pattern of her attempts to obtain information from respondent. Respondent, however, failed to answer her questions. None of the e-mails mentioned that respondent had not filed the complaint or that he had so informed Natoli in a phone call. The DEC found that respondent's and Patricia's testimony was not credible. Respondent had numerous opportunities to inform Natoli that he had not filed the complaint, but failed to do so. He had no plausible explanation for this failure.

The DEC found a violation of RPC 1.4(b) for respondent's failure to keep Natoli reasonably informed about her matter and failure to reply to her reasonable requests for information. The DEC also found a violation of RPC 8.4(c) because respondent willfully failed to inform Natoli that he had not filed the complaint after she repeatedly inquired about its status.

Taking into consideration respondent's unblemished record, counterbalanced by his lack of remorse for his conduct, the DEC recommended the imposition of a

reprimand. The DEC determined that an admonition was not appropriate discipline because respondent's violations were not minor.

In a July 23, 2018 letter brief to us, respondent argued that his due process rights were violated because the hearing panel chair precluded him from presenting evidence that Natoli had obtained a fee refund through a credit card chargeback process. Respondent maintained that the chair acted "partially, arbitrarily and capriciously to, in effect (a) invoke [Natoli's] constitutional right to remain silent to avoid self-incrimination" and prevent him from fully confronting her. According to respondent, he was, therefore, prevented from demonstrating that Natoli lacked credibility as a witness because she is fundamentally dishonest and was motivated to file a baseless grievance to avoid paying him for his services and to steal his legal work.

Respondent also argued that the presenter failed to meet the applicable burden of proof. He accused Natoli of failing to provide information required under the Court Rules, thereby violating their retainer agreement.

Finally, respondent asserted that he started his legal career at Dughi & Hewit, where he learned from "ethical attorneys." He added that

> I would never do anything dishonest or unethical because I will never disappoint my mentors, my clients, my family, my colleagues, our great justice system, or my wonderful Mother in Heaven. My honesty, my integrity, my commitment to providing excellent service to my clients,

> and my personal and professional ethics mean everything to me.
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> [Rb8.][9]

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

At the outset we note that, although we consider respondent's constitutional challenge to be meritless, the challenge "shall be preserved, without Board action, for Supreme Court consideration as a part of its review of the matter on the merits." R. 1:15(h). We find that respondent's other arguments similarly lack merit.

In this case, the e-mails speak for themselves. On March 18, 2016, respondent informed Natoli that he planned to file the complaint when he returned from vacation. On March 25, 2016, he informed Natoli that he had "forwarded" the complaint to the court for filing and would send her a filed copy when he received it. Respondent claimed that the e-mail was truthful, testifying, "[w]hen I said forward, forward is to advance, advance it towards the mailing process. When I forward it, that was a true act. I had stamped it, placed it in the outgoing mail tray." Respondent, however, neither filed the

[9] Rb refers to respondent's July 23, 2018 letter-brief.

complaint nor informed Natoli that he had not or could not file the complaint because of missing information. After respondent's March 25, 2016 e-mail, Natoli sent respondent a number of e-mails requesting the status of the filing, the docket number, the venue of the filing, and copies of the file. Respondent's reply e-mails were non-responsive and defensive, and suggested that Natoli had not cooperated. Respondent also misrepresented that he had mailed copies of the file to Natoli twice.

The DEC's finding that Natoli's testimony was credible and respondent's and Patricia's testimony was not credible is supported by the record. Moreover, we defer to the DEC with respect to "those intangible aspects of the case not transmitted by the written record." Dolson v. Anastasia, 55 N.J. 2, 7 (1969). We consider that deference here to be well-grounded.

Natoli's testimony was unequivocal - respondent never told her that he did not file the complaint or that, as he had alleged, he removed the complaint from the outgoing mail because he could not file it without the defendant's address. Furthermore, she testified that, during a number of conversations, respondent informed her that Shoup would be served within seven to ten days, notwithstanding that she had told respondent during their initial meeting that she did not know Shoup's address. We, therefore, find her testimony credible.

Respondent's and Patricia's version of events, however, were simply not believable. Both respondent and Patricia asserted that respondent called Natoli, on March 25, 2016, to inform her that he was not filing the complaint because Natoli needed to provide Shoup's address. Yet, Patricia was inconsistent in her testimony, claiming that both she and respondent were the ones to remove the complaint from the mail tray. Likewise, respondent claimed that he had called Natoli once to inform her about the deficiency. Later, he testified he had called her twice. However, none of his subsequent e-mails to Natoli even hinted that the complaint had not been filed. His excuse for not memorializing the problem was not believable - he had relayed the information in a phone call, therefore, it was not necessary to do so in writing in response to his client's specific written request for that information. Natoli's subsequent e-mails to respondent establish that she believed the complaint had been filed. Respondent's assertions that Natoli's e-mails were drafted to "set him up" to avoid payment are simply unfounded.

Likewise, respondent's claim that he sent Natoli her documents are not credible. He had no proof that he had done so, but, rather, relied on his word as an officer of the court and his repeated refrain that he was honest and ethical. Why then did Natoli continue to request those documents?

We find that the tangible evidence, bolstered by Natoli's credible testimony and respondent's implausible explanations, clearly and convincingly establish that respondent violated RPC 1.4(b) by failing to keep Natoli informed about the status of her matter and by failing to comply with her requests for information about her case. Further, he violated RPC 8.4(c) by misrepresenting to Natoli that he had filed a complaint on her behalf and that he had sent her the documents in her matter.[10]

The only issue remaining is the appropriate quantum of discipline for respondent's misconduct.

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 infractions. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney was guilty of a misrepresentation by silence when he failed to inform the client that her complaint had been dismissed for failing to engage in discovery and ignoring court orders compelling service of the answers, thereby violating RPC 1.1(a), RPC 1.3, and RPC 3.2; he also failed to reply to the client's requests for information or to otherwise communicate with her); In re Ruffolo, 220 N.J.

[10] The facts also could have supported violations of RPC 1.3 (lack of diligence) and, possibly, RPC 1.1(a) (gross neglect), but those RPCs were not charged.

353 (2015) (attorney engaged in gross neglect and lack of diligence by permitting his client's case to be dismissed by failing to work on it after filing the initial claim, failing to prevent its dismissal, and failing to ensure its reinstatement; he also failed to promptly reply to the client's requests for status updates, and told the client to expect a monetary award in the near future, knowing that the case had been dismissed and that the statement was false); In re Braverman, 220 N.J. 25 (2014) (attorney failed to tell his client that the complaints filed on her behalf in two personal injury actions had been dismissed, thereby misleading her to believe that both cases were pending, and engaged in gross neglect, lack of diligence, failure to communicate with the client, failure to expedite litigation, and failure to cooperate with disciplinary authorities); and In re Winston, 219 N.J. 428 (2014) (attorney failed to file a brief, which resulted in the dismissal of the client's appeal; failed to notify the client of the expiration of the deadline for filing the brief; and failed to keep the client informed about the status of the matter; instead, the attorney misrepresented to the client that the brief had been timely filed and that the appeal was proceeding apace; compelling mitigation considered).

Here, respondent's mitigation of a twenty-two year unblemished legal career is offset by his untruthful testimony during the ethics hearing and his failure to acknowledge his wrongdoing, instead blaming his client and

accusing her of wrongdoing and of harboring dishonest motives. Under the totality of the circumstances, including respondent's non-meritorious defense to the charges and, thus, his lack of remorse or contrition, we determine that a censure is warranted.

Vice-Chair Clark and Members Boyer and Joseph voted to impose a reprimand. Member Hoberman 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 Matthew Thomas Rose
Docket No. DRB 18-186

Argued: September 20, 2018

Decided: November 27, 2018

Disposition: Censure

Members	Censure	Reprimand	Recused	Did Not Participate
Frost	X			
Clark		X		
Boyer		X		
Gallipoli	X			
Hoberman				X
Joseph		X		
Rivera	X			
Singer	X			
Zmirich	X			
Total:	5	3	0	1

Ellen A. Brodsky
Chief Counsel