

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-195
District Docket No. VIII-2017-0027E

In The Matter Of
Christopher Roy Higgins
An Attorney At Law

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Decision

Decided: November 29, 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 default, filed by the District VIII Ethics Committee (DEC) pursuant to R. 1:20-4(f). The complaint charged respondent with violations of RPC 1.4, presumably subsection (a) (failure to fully inform a prospective client on how, when, and where to communicate with the lawyer), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter or to reply to reasonable requests for information), RPC 1.16(d) (upon termination of the representation, failure to refund an unearned fee), and R. 1:20-3(g)(3), more properly RPC 8.1(b)

(failure to comply with a reasonable demand for information from a disciplinary authority).

For the reasons expressed below, we determine to impose a reprimand for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 2012. He was temporarily suspended, effective September 21, 2018, for failure to cooperate with the Office of Attorney Ethics.

Service of process was proper in this matter. On December 19, 2017, the DEC sent a copy of the complaint by regular and certified mail to respondent's office address in Parlin, New Jersey. The certified mail receipt indicates that the letter was delivered on December 2, 2017. The signature of the recipient appears to be respondent's. The regular mail was not returned.

Respondent did not file an answer. Therefore, on February 23, 2018, the DEC sent a letter, by regular and certified mail, to the same address, notifying respondent that, if he did not file an answer within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to include a willful violation of RPC 8.1(b). The certified mail receipt, which appears to be signed by respondent, shows that the letter was delivered on March 9, 2018. The regular mail was not returned.

As of the date of the certification of the record, April 23, 2018, respondent had not filed an answer to the complaint.

We now turn to the allegations of the complaint.

Respondent's office address is "unclear," as his website lists a telephone and fax number, but no street address for his office. The website indicates that respondent's office is located in Parlin, New Jersey; is "conveniently located in Central New Jersey;" and lists "approximately twenty" counties where he serves clients. Neither respondent's website nor his stationery lists a location where he can personally meet with clients.

On December 6, 2016, grievant John Scott Jenkins met with respondent at what appeared to be a temporary office in East Brunswick, New Jersey, as respondent's name was not listed at the location. Jenkins retained respondent for representation, as plaintiff, in a landlord-tenant matter to be venued in Middlesex County. At that meeting, he paid respondent \$202, but did not sign a retainer agreement.

As of January 14, 2017, Jenkins had not received any information from respondent about the status of his matter. He, therefore, e-mailed respondent and left him "repeated" telephone messages. "[S]everal days later," respondent informed Jenkins that he had been delayed by personal problems, but had filed a complaint and was awaiting a court date. When Jenkins contacted the

Superior Court of New Jersey, Middlesex County, Landlord-Tenant Division, he discovered that no complaint had been filed.

On January 23, 2017, Jenkins left a telephone message, and sent both an e-mail and a letter, via certified mail, to respondent, terminating his services. The certified mail was sent to respondent's post office box address. On January 25, 2017, Jenkins received the certified mail receipt confirming delivery of the letter.

Although he had terminated respondent's services, Jenkins received notice that his landlord-tenant matter was scheduled to be heard on February 22, 2017. Respondent did not appear for the hearing. Jenkins, therefore, resolved the matter pro se.

Prior to Jenkins' January 27, 2017 hearing, he had filed suit against respondent in Special Civil Part of the Superior Court of New Jersey, Middlesex County, demanding the return of his \$202 retainer and \$42 for court costs. By letter dated February 22, 2017, respondent informed Jenkins that he had filed a frivolous complaint. Respondent did not appear at the March 7, 2017 hearing. On November 9, 2017, the court entered a \$251 default judgment against respondent. Thereafter, Jenkins was unable to serve respondent with "any supplementary proceedings" to obtain satisfaction of the judgment.

According to the complaint, respondent failed to comply with R. 1:21-1(a)(1)¹ and RPC 1.4, presumably (a), because he failed to "fully inform the prospective client of how, when and where the client may communicate with the lawyer," and RPC 1.4(b) because he failed to keep "a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

The complaint alleged that respondent failed to fully cooperate with the investigation of this matter. He failed to reply to the DEC's October 26, 2017 letter, sent to his post office address, which requested a written explanation of how he was in compliance with R. 1:21-1(a)(1).

¹ R. 1:21-1(a)(1) provides:

An attorney need not maintain a fixed physical location for the practice of law, but must structure his or her practice in such a manner as to assure, as set forth in RPC 1.4, prompt and reliable communication with and accessibility by clients, other counsel, and judicial and administrative tribunals before which the attorney may practice, provided that an attorney must designate one or more fixed physical locations where client files and the attorney's business and financial records may be inspected on short notice by duly authorized regulatory authorities, where mail or hand-deliveries may be made and promptly received, and where process may be served on the attorney for all actions, including disciplinary actions, that may arise out of the practice of law and activities related thereto.

The complaint charged respondent with violating R. 1:21-1(a)(1) and, therefore, RPC 1.4(a) and (b); R. 1:20-3(g)(3), for failing to cooperate with the ethics investigation (which is a violation of RPC 8.1(b)); and RPC 1.16(d), for failing to return the unearned portion of the retainer.

We determine that the facts recited in the complaint support some, but not all, of the charges of unethical conduct. A respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and provide a sufficient basis for the imposition of discipline under R. 1:20-4(f)(1). Nevertheless, each charge in an ethics complaint must be supported by sufficient evidence for a determination that unethical conduct occurred.

After Jenkins obtained a default judgment against respondent, he was unable to serve him with "supplementary proceedings" to satisfy the judgment. While this may have been a violation of the portion of R. 1:21-1(a)(1), which requires an attorney to designate where process may be served on him, respondent did not violate RPC 1.4(a). Although Jenkins could not locate respondent to enforce the judgment, Jenkins was not a "prospective client." He already had retained respondent. However, because Jenkins could not locate respondent to enforce the default judgment and because respondent failed to keep Jenkins properly informed about the status of the matter, he is guilty of violating RPC 1.4(b).

Respondent performed some services on Jenkins' behalf. Apparently, he filed the landlord-tenant complaint, which resulted in the scheduling of a hearing. Respondent did not appear at the hearing, however, which was scheduled for a date after Jenkins had terminated his services.

The complaint states that "[n]o Retainer Agreement was signed," presumably, meaning that respondent did not provide Jenkins with a writing setting forth the basis or rate of his fee. The complaint, however, did not charge respondent with a violation of RPC 1.5(b). Therefore, we do not find a violation of RPC 1.5(b) in this matter. The record does not reveal the basis of respondent's fee – whether it was hourly or fixed – or the amount of time respondent spent on Jenkins' case. The complaint charged respondent with a violation of RPC 1.16(d), but contains insufficient facts for us to determine whether Jenkins was entitled to the return of his entire fee, a portion of it, or none at all, notwithstanding the entry of default judgment against respondent. The complaint lacked any facts relating to the basis of respondent's fee and the amount of work respondent performed to file the complaint on Jenkins' behalf. We, therefore, cannot find clear and convincing evidence that respondent violated RPC 1.16(d), and, therefore, dismiss that charge.

Finally, respondent failed to provide a reply to the DEC's request for information. The complaint alleged that he failed to fully cooperate with the

DEC's investigation and that he violated R. 1:20-3(g)(3). Respondent's due process rights are not violated by our finding that he violated RPC 8.1(b) in this regard because the facts alleged in the complaint and the charged violation of R. 1:20-3(g)(3) gave him sufficient notice of such a violation. Moreover, the DEC's February 23, 2018 letter notified respondent that the complaint would be deemed amended to include a willful violation of RPC 8.1(b) if he failed to file an answer to the ethics complaint.

In summary, we find that respondent violated RPC 1.4(b) and RPC 8.1(b). We dismiss the charged violations of RPC 1.4(a) and RPC 1.16(d).

Typically, an admonition is sufficient discipline when an attorney is found guilty of failure to communicate with a client and failure to cooperate with an ethics investigation, even if other non-serious violations are found. See, e.g., In the Matter of Carl G. Zoecklein, DRB 16-167 (September 22, 2016) (attorney failed to communicate with his client, lacked diligence by failing to file a complaint on the client's behalf, and failed to cooperate with the ethics investigation; in mitigation, the attorney had an unblemished disciplinary record since his 1990 admission to the bar, and, ultimately, he cooperated with ethics authorities, and admitted his wrongdoing by entering into a disciplinary stipulation); In the Matter of Martin A. Gleason, DRB 14-139 (February 3, 2015) (the attorney failed to inform his client that a planning


board had dismissed his land use applications, ignored the district ethics committee investigator's multiple attempts to obtain a copy of his client's file, and did not file an answer to the formal ethics complaint; in mitigation, we considered that the attorney accepted full responsibility for the dismissal of his client's application, refunded the entire fee, and erroneously believed that his reply to the grievance and a subsequent letter to the ethics committee secretary, admitting the allegations of the complaint, satisfied his obligation to file a formal answer); and In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (attorney failed to communicate with the client, engaged in gross neglect, and failed to comply with the ethics investigator's request for information about the grievance).

Here, respondent permitted this matter to proceed as a 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). Thus, because of the default, we determine to enhance the discipline to a reprimand. There are no mitigating circumstances cited to warrant reducing the sanction to an admonition.

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

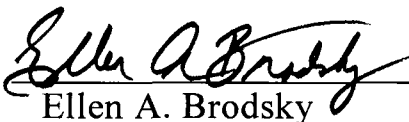
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: Reprimand

| <i>Members</i> | Reprimand | Recused | Did Not Participate |
|----------------|-----------|---------|---------------------|
| Frost | X | | |
| Clark | X | | |
| Boyer | X | | |
| Gallipoli | X | | |
| Hoberman | | | X |
| Joseph | X | | |
| Rivera | X | | |
| Singer | X | | |
| Zmirich | X | | |
| Total: | 8 | 0 | 1 |


Ellen A. Brodsky
Chief Counsel