Supreme Court Of New Jersey
Disciplinary Review Board
Docket No. DRB 18-247
District Docket No. XII-2018-0024E

In The Matter Of	:
Ulysses Isa	:
An Attorney At Law	:

Decision

Decided: January 7, 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 District XII Ethics Committee (DEC), pursuant to R. 1:20-4(f). The two-count formal ethics complaint charged respondent with violations of RPC 1.7(b)(1) (conflict of interest) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

For the reasons set forth below, we determine to impose no additional discipline.

Respondent earned admission to the New Jersey bar in 2006. During the relevant time frame, he maintained a law practice in North Bergen, New Jersey. Respondent has been administratively ineligible to practice law since November 21, 2016. He was temporarily suspended, effective May 9, 2018, for failure to comply with a fee arbitration determination, and remains suspended to date.

Recently, on December 7, 2018, in another default matter, respondent received a three-month suspension for his violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep the client adequately informed and to promptly reply to the client's reasonable requests for information), RPC 1.5(b) (failure to communicate in writing the rate or basis of the fee), RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6), RPC 1.16(c) (failure to comply with applicable law when terminating a representation), RPC 5.5(a)(1) (unauthorized practice of law), RPC 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter), and RPC 8.1(b). In re Isa, ___ N.J. ___ (2018).

Service of process was proper in this matter. On April 6, 2018, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's his home address. Neither the certified mail receipt nor the

certified letter was returned. The regular mail was not returned. Respondent failed to file an answer to the complaint.

On May 1, 2018, the DEC sent a letter, by certified and regular mail, to respondent's home address, informing him that, unless he filed a verified answer to the complaint within five days, 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 charge a willful violation of RPC 8.1(b). A certified mail receipt was returned, which reflected delivery and the signature of "Elvira Isa." The regular mail was not returned.

Because respondent failed to file an answer to the complaint, the DEC certified the record to us as a default.

The facts alleged in the complaint are as follows. In May 2015, grievant Kathy Protogiannis and Freddie Recio retained respondent to, as they understood it, represent them both "in connection with a settlement they [had] reached regarding monies owed by Recio to Protogiannis." Specifically, respondent agreed to assist the parties in respect of the execution of a promissory note, in favor of Protogiannis. Respondent neither provided the parties with full disclosure and consultation regarding the conflict of interest, nor sought their informed, written consent to the conflict, both of which are

required, pursuant to RPC 1.7(b)(1), in cases where an attorney seeks to engage in the representation of multiple parties in a single matter. Moreover, there is no evidence that respondent reasonably believed that he would be able to provide competent representation to both Protogiannis and Recio, as RPC 1.7(b)(2) requires.

On August 2, 2017, after multiple failed attempts to communicate with respondent at an office address, the DEC sent a copy of the ethics grievance underlying this matter to him, via certified mail, at his home address. A certified mail receipt was returned, which reflected delivery on August 7, 2017 and respondent's signature. On September 15, 2017, the DEC again wrote to respondent, via certified mail, at his home address, imposing a ten-day deadline for him to reply to the grievance. That certified mailing was returned marked "Undeliverable." Respondent failed to reply to the ethics grievance.

The facts recited in the formal ethics complaint support all of the charges of unethical conduct set forth therein. Respondent's failure to file a verified answer to the complaint 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)(1).

In May 2015, grievant Kathy Protogiannis and Freddie Recio retained respondent to represent them both "in connection with a settlement they [had]

reached regarding monies owed by Recio to Protogiannis." Pursuant to RPC 1.7, an attorney seeking to represent both the creditor and debtor in such a scenario must immediately recognize the concurrent conflict of interest of the parties, and, prior to commencing such representation, must obtain their informed, written consent in respect of that conflict. Respondent failed to comply with the informed consent requirements of RPC 1.7 prior to commencing the representation, and, thus, violated RPC 1.7(a)(1)[1].

Additionally, despite the DEC's proper service, respondent neither replied to the grievance nor filed a verified answer to the formal ethics complaint. He, thus, violated RPC 8.1(b), in both respects.

In summary, we determine that respondent violated RPC 1.7(a)(1) and RPC 8.1(b). The only remaining issue is the appropriate quantum of discipline to be imposed for respondent's misconduct.

It is well-settled that, absent egregious circumstances or serious economic injury, a reprimand is the appropriate discipline for a conflict of

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[1] Although the complaint charged a violation of RPC 1.7(b)(1), that subsection sets forth the requirements necessary to establish informed consent to dual representation in the face of a recognized concurrent conflict. The complaint more appropriately should have charged a violation of subsection (a), which defines the conflict. However, the factual allegations of the complaint clearly establish both the existence of the conflict and the failure to obtain informed consent to the dual representation. Thus, respondent was on adequate notice of the specific charges of misconduct lodged against him.

interest. In re Berkowitz, 136 N.J. 134, 148 (1994). See, also, In re Simon, 206 N.J. 306 (2011) (the attorney engaged in a conflict of interest by suing an existing client for the payment of his legal fees); In re Pellegrino, 209 N.J. 511 (2010) and In re Feldstein, 209 N.J. 512 (2010) (companion cases; the attorneys simultaneously represented a business that purchased tax-lien certificates from individuals and entities for whom the attorneys prosecuted tax-lien foreclosures, violations of RPC 1.7(a) and RPC 1.7(b); the attorneys also violated RPC 1.5(b) by failing to memorialize the basis or rate of the legal fee charged to the business); In re Ford, 200 N.J. 262 (2009) (the attorney filed an answer to a civil complaint against him and his client, and then tried to negotiate separate settlements of the claim against him, to the client's detriment; prior admonition and reprimand); In re Mott, 186 N.J. 367 (2006) (attorney prepared, on behalf of buyers, real estate agreements that provided for the purchase of title insurance from a title company that he owned; notwithstanding the disclosure of his interest in the company to the buyers, the attorney did not advise buyers of the desirability of seeking, or give them the opportunity to seek, independent counsel, and did not obtain a written waiver of the conflict of interest from them); and In re Poling, 184 N.J. 297 (2005) (the attorney engaged in a conflict of interest when he prepared, on behalf of buyers, real estate agreements that pre-provided for the purchase of title

insurance from a title company that he owned — a fact that he did not disclose to the buyers, in addition to his failure to disclose that title insurance could be purchased elsewhere).

Ordinarily, admonitions are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In the Matter of Carl G. Zoecklein, DRB 16-167 (September 22, 2016) (attorney lacked diligence in the representation of his client, by failing to file a complaint on the client's behalf; failed to communicate with his client; and failed to cooperate with the ethics investigation; violations of RPC 1.3, RPC 1.4(b), and RPC 8.1(b); the attorney had a previously unblemished disciplinary record since his 1990 admission to the bar); In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the district ethics committee investigator regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)); and In re Gleason, 220 N.J. 350 (2015) (attorney did not file an answer to the formal ethics complaint and ignored the district ethics committee investigator's multiple attempts to obtain a copy of his client's file, a violation of RPC 8.1(b); the attorney also failed to inform his client that a planning board had dismissed his land use application, a violation of RPC 1.4(b)).

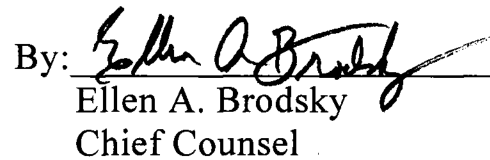
No evidence in the record suggests that respondent's clients suffered serious economic injury as a result of his misconduct. Therefore, absent the default component, the disciplinary precedent for respondent's misconduct in this matter would warrant a reprimand. The default status of this matter must be considered as an aggravating factor. "A respondent's default or failure to cooperate with the investigative authorities acts 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). There is no mitigation for us to consider. On balance, thus, the sanction for respondent's misconduct would merit a censure.

In crafting the appropriate quantum of discipline in this case, however, we also consider respondent's ethics history — that is, the recently imposed three-month suspension. The misconduct in this matter predates the misconduct in the suspension matter, and injects a violation of RPC 1.7(a)(1) and two additional violations of RPC 8.1(b). Had these matters been consolidated for our review and imposition of a global sanction, however, the aggregate quantum of discipline — a three-month suspension — would likely have been the same, in light of respondent's previously unblemished disciplinary history in twelve years at the bar, and the lack of aggravating

factors in this case. Accordingly, although we find violations of RPC 1.7(a)(1) and RPC 8.1(b), we determine to impose no additional discipline.

Member Gallipoli voted to impose a censure. Member Joseph did not participate.

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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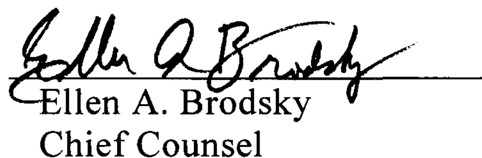
Disposition: No Additional Discipline

Members	No Additional Discipline	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	1	0	1



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