Supreme Court Of New Jersey
Disciplinary Review Board
Docket No. DRB 18-304
District Docket No. XIV-2018-0031E

In The Matter Of	:
Timothy Andrew Dillon	:
Attorney At Law	:

Decision

Argued: November 15, 2018

Decided: March 7, 2019

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

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 motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a)(4), based on respondent's reprimand in Delaware for violations of the equivalents of New Jersey RPC 1.1(a) and (b) (gross neglect and pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.15(d) (recordkeeping), RPC 3.4(c) (knowingly disobeying

an obligation under the rules of a tribunal), RPC 5.3(b) and (c)(2) (failure to supervise nonlawyer staff), 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 impose a reprimand.

Respondent was admitted to the New Jersey and Delaware bars in 1999, and the Pennsylvania bar in 1997. He has no prior discipline in New Jersey.

The relevant facts are contained in a November 7, 2017 Report and Recommendations prepared by a panel of the Board on Professional Responsibility of the Supreme Court of the State of Delaware (BPR).

On March 2, 2017, the Delaware Office of Disciplinary Counsel (ODC) filed a nine-count petition for discipline with the BPR. Thereafter, on March 20, 2017, respondent filed an answer in which he admitted virtually all of the factual allegations and RPC violations contained in the petition.

On July 13, 2017, a disciplinary hearing was held before a hearing panel of the BPR. At the outset, respondent's counsel noted respondent's admission of misconduct, stating that "[t]his is not a who done it. It's an admitted petition."

The matter had been referred to Delaware ethics authorities by the Honorable John A. Parkins, Jr., a Delaware Superior Court judge, after he

dismissed, without prejudice, four complaints that respondent had filed, for failure to serve the defendants.

At the Delaware ethics hearing, respondent admitted that Delaware Superior Court Rule 4(j) limits the time for service of a summons and complaint to 120 days. A plaintiff may move for the enlargement of time to effect service or for the appointment of a process server. During the ethics investigation, respondent reviewed his files and found an additional thirteen client matters in which service issues had caused unreasonable delays, but had not resulted in dismissal. Respondent disclosed his findings to Delaware ethics authorities, as discussed below.

Respondent admitted that, during the relevant time, he was the managing attorney of the Wilmington, Delaware office of McCann & Wall, LLC, a "plaintiff's firm." He described his managing attorney title as largely honorary, because he was not a partner in the firm. Rather, respondent had been hired in 2008 as the sole attorney in the Wilmington office, "to run the Delaware caseload" and replace an attorney "who didn't work out." Since 2008, respondent's practice areas have been plaintiff's work, personal injury, premise liability, and motor vehicle cases. As managing attorney, respondent signed and filed all of the subject personal injury complaints.

Respondent had assigned to his two paralegals the responsibility of case monitoring to ensure proper service on the defendants in the seventeen cases in question. He conceded that the paralegals whom he supervised had not followed through to confirm service. In turn, respondent had failed to supervise their work to ensure that service was complete.

As previously noted, due to respondent's failure to locate defendants, the Superior Court dismissed four complaints that he had filed. In Huelsenbeck v. Fermin-Jimenez and Hichez-Sabino, respondent filed the complaint on July 18, 2012, and, on November 12, 2012, successfully moved to expand the time to serve the defendants by an additional sixty days. Thirty-six days after the expiration of the additional time, respondent moved for a second extension. On June 7, 2013, Judge Parkins denied the motion without prejudice, for failure to show "due diligence in attempting to serve defendants and therefore [respondent] has not shown 'good cause' for his failure to do so, the court has no option but to dismiss the case."

In Skinner v. Fleming, after respondent filed a March 11, 2015 complaint, the summons was returned, on April 16, 2015, not served. Seven months later, on November 18, 2015, the Prothonotary (clerk's office) issued a notice that the case would be dismissed if no further proceedings were undertaken. The following day, November 19, 2015, some 130 days after the

120-day period for service had expired, respondent moved to enlarge the time for service.

Likewise, in Oliver v. Spitelle, respondent filed an April 15, 2015 complaint, which was returned on May 15, 2015, not served. On November 18, 2015, the Prothonotary issued a similar notice that the case would be dismissed if no proceedings were undertaken. The next day, November 19, 2015 (96 days after the 120-day period for service had expired), respondent moved the Superior Court to enlarge the time for service.

In a January 8, 2016 letter opinion, Judge Parkins dismissed the Skinner and Oliver cases, without prejudice, finding that "Plaintiff did absolutely nothing to complete service after the original summons was returned *non est* [not served]. Months went by and the 120 day deadline came and went without any attempt to locate and serve the defendant."

In Ricketts v. Brown and GEICO, respondent filed a complaint on April 21, 2015, the summons for which was returned on June 1, 2015 not served, as to defendant Brown. Geico was properly served. On August 25, 2015 (6 days after the 120-period for service had expired), respondent successfully moved to enlarge the time for service by another 120 days. Thereafter, on April 24, 2016 (95 days after the additional 120-day service period had expired), respondent moved to appoint a special process server. On June 3, 2016, Judge

Parkins denied that motion, and dismissed the case, without prejudice, for respondent's failure to timely serve defendant Brown.

In the thirteen additional matters, too, respondent had filed complaints whose summonses were then returned, not served. Thereafter, he filed untimely motions for the enlargement of time to serve the defendants. The time past the 120-day service deadline ranged from as few as ten days to as many as 106 days, with an average lateness of forty-six days.

According to respondent, he managed to refile the four dismissed complaints under the "Delaware Saving Statute." Most of the thirteen additional matters resulted in settlements. None of those clients was harmed beyond the delay in having their matters reach the settlement stage. Respondent conceded, however, that his inaction in these matters had wasted judicial resources.

In respect of recordkeeping violations, respondent admitted that, as the managing attorney of McCann & Wall's Wilmington office, he had the primary responsibility to maintain the attorney books and records of the Wilmington law office. Those records, including the firm's Delaware attorney escrow and operating account records, were maintained, apparently by others, in the law firm's Philadelphia office. Respondent had mistakenly assumed that the

Philadelphia office properly maintained them, although he had no specific assurances from anyone to that effect.

During the ethics investigation, the Delaware Lawyers' Fund for Client Protection conducted an audit of McCann & Wall's attorney books and records for the six months ending September 30, 2016. The audit revealed several recordkeeping violations, as follows: a fiduciary account at PNC Bank was not listed on respondent's 2015 or 2016 Supreme Court Certificates of Compliance, as discussed more fully below; and twenty checks drawn on that account remained outstanding for longer than six months.

The audit also found deficiencies involving a second fiduciary account at TD Bank: (1) incorrect account title; (2) thirteen checks or transfers remained outstanding for periods in excess of six months during five of the six months audited; (3) in four of the six months, adjusted bank balances did not match the general ledger; (4) no monthly client subsidiary ledgers were prepared in four of the six audit months; (5) in four of the six months reviewed, the reconciled month-end cash balances did not match the total client funds held, as a result of the failure to prepare monthly client subsidiary ledgers; (6) during one audit month, a subsidiary client ledger had been prepared, but the total cash balance held for clients did not match the reconciled month-end cash balance; (7) because monthly listings of the client balances were not prepared for four of

the audit months, auditors could not establish whether any balances were old or negative, or constituted earned legal fees.

In addition, respondent admitted that his 2015 and 2016 Delaware Supreme Court Certificates of Compliance had contained misrepresentations. Specifically, he failed to disclose an attorney escrow account, and had answered "yes" to six questions about the law firm's accounts that should have been answered in the negative. Respondent testified that there had been "an older PNC account when we switched banks that I did not include [in the 2015] Certificate of Compliance. I did not do that intentionally." The presenter then asked, "you admit, those answers on your 2015 Certificate of Compliance were inaccurate, correct?" to which respondent replied, "That's correct."

In 2016, respondent again failed to list the older PNC account on the Certificate of Compliance, rendering it inaccurate. Respondent conceded that, by filing inaccurate certifications with the Delaware Supreme Court, he had misrepresented the status and maintenance of the law firm's attorney books and records.

Respondent admitted that his faulty certificates also prejudiced the administration of justice, because a potential for injury to the judicial system existed, "as the Court may have relied on the Certificates of Compliance."

In aggravation, the Delaware authorities considered respondent's prior discipline in Delaware – a private admonition in 2012. While at a prior law firm, respondent had served as preceptor for a more senior member of the law firm who was attempting to gain admission to the Delaware bar. As preceptor, respondent certified the attorney's completion of a candidate checklist, but inadvertently certified the attorney's completion of a required five-month clerkship, which had not occurred. Delaware also considered, as additional aggravation, the pattern of misconduct in multiple offenses and respondent's substantial experience (eighteen years) in the practice of law.

In mitigation, respondent cooperated with the ethics investigation and apologized to both the BPR and to Judge Parkins for his misconduct. Respondent also testified about steps taken to address the systemic problems in the office. Nonlawyer staff is no longer responsible for service of process, and the two paralegals assigned to track service issues are no longer employed by the law firm. Attorneys now handle service issues, aided by a newly installed software "tickler" system called "Needles," and bi-weekly meetings with respondent. The law firm also employs a special process server for all of its cases. Respondent stated, as follows:

> With the service issues and the inconvenience it would have caused my clients, certainly the inconvenience it caused the court, and the fact that I feel like I'm letting down the members of the bar as a Delaware attorney in

> doing that, and I'm very, very sorry, and I am very committed to ensuring that that never happens again.
>
> [T129.] [1]

Respondent has taken corrective measures to ensure the proper maintenance of the law firm's attorney books and records as well, including the retention of Renee Villano, a certified public accountant, who testified that she was retained in June 2017 to perform quarterly pre-certifications of the firm's attorney books and records, in order to ensure compliance with RPC 1.15.

Finally, respondent offered the testimony of Robert McCann, Esq., a partner at McCann & Walls, Mark Reardon, Esq., and Yvonne Takvorian Saville, Esq., all of whom attested to respondent's good character and reputation as an attorney.

On December 14, 2017, the Delaware Supreme Court entered an order accepting the BPR's findings and recommendations, imposing a reprimand, and ordering a two-year period of probation during which an accountant would audit respondent's 2018 and 2019 Compliance Certificates.

In a September 18, 2018 brief to us (Rb), respondent requested either no discipline or the imposition of a "private reprimand," apparently unaware that New Jersey no longer has that sanction. Respondent requested no discipline on

[1] T refers to the transcript of the July 13, 2017 BPR hearing.

the basis that he was on "inactive status" in New Jersey during the time that the Delaware misconduct occurred (2015 – 2016), apparently also unaware that New Jersey does not offer "inactive status" for attorneys. Respondent added that he did not practice law in New Jersey at the time of the misconduct.

Respondent also urged us to consider that the Pennsylvania disciplinary authorities exercised prosecutorial discretion and determined not to pursue reciprocal discipline against him.

In his brief, respondent stated as follows:

> My humble position is that as I do not practice law at all in the State of New Jersey, the imposition of reciprocal discipline in New Jersey would only serve to be punitive against me, as opposed to protecting the citizens of the State of New Jersey, or to educate lawyers that practice in New Jersey.
>
> Reciprocal discipline will also unfairly cause damage to my firm and its reputation which would not be fair. As such, please consider the issuance of a private reprimand as opposed to a public reprimand. As an alternative to reciprocal discipline, I am willing to submit to a discipline wherein I remain on inactive status in New Jersey for a prescribed period of time if this would be acceptable to the Board.
>
> [Rb9.]

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to

practice in this state. . . is guilty of unethical conduct in another jurisdiction. . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined. . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3). In Delaware, the standard of proof in attorney disciplinary matters is clear and convincing evidence.[2]

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> > (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
> >
> > (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;
> >
> > (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
> >
> > (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
> >
> > (E) the unethical conduct established warrants substantially different discipline.

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[2] See Delaware Rules of Disciplinary Procedure: Rule 15(c).

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E).

The Delaware Supreme Court imposed a reprimand after a Superior Court judge referred four of respondent's matters to ethics authorities. In all of them, the judge had dismissed the complaints for failure to comply with the 120-day service requirements of Delaware Court Rule 4(j). For example, in Skinner v. Fleming, respondent neglected the complaint for 130 days after the 120-day deadline had passed. Respondent acknowledged his misconduct and found thirteen additional Superior Court files wherein the complaints had also languished, unserved.

Respondent's inaction in seventeen matters in the Delaware Superior Court constituted gross neglect, pattern of neglect, and lack of diligence, violations of RPC 1.1(a) and (b), and RPC 1.3, respectively.

As the managing attorney of McCann & Wall's Wilmington office, respondent was responsible for the law firm's attorney books and records. He failed to monitor those books and records, apparently under the mistaken belief that they were being managed by the Philadelphia office. The forensic audit revealed several deficiencies that respondent readily admitted. To his credit, during the disciplinary proceedings, respondent and the law firm addressed those issues and put safeguards in place to prevent similar issues in the future.

Nevertheless, respondent's failure to maintain proper attorney books and records violated RPC 1.15(d).

Respondent also failed to supervise his nonlawyer staff, to whom he had assigned the responsibility of monitoring the service of complaints in Superior Court matters. Respondent admittedly failed to supervise his paralegals to ensure that their efforts were compatible with his professional obligations as a lawyer. Thereafter, he failed to take action when the consequences of his delinquency could have been avoided or mitigated, violations of RPC 5.3(b) and (c)(2), respectively.

Respondent acknowledged, and the Delaware Supreme Court found, that he knowingly disobeyed an obligation under the rules of a tribunal – to serve defendants timely, in the four matters dismissed by Judge Parkins. However, respondent's inaction was more dilatory in nature than knowing or purposeful. That misconduct already has been addressed by the gross neglect, pattern of neglect, lack of diligence, and failure to supervise findings. Therefore, notwithstanding respondent's admission and Delaware's finding of a violation, we dismiss the RPC 3.4(c) charge as duplicative.

Likewise, respondent admitted having made misrepresentations in his 2015 and 2016 Supreme Court Certificates of Compliance. Those forms contained inaccuracies, inasmuch as he failed to list an older PNC fiduciary

account. Respondent testified that those omissions were inadvertent, not intentional acts. Because the evidence does not establish that respondent intentionally misrepresented the existence of the PNC account, we dismiss the RPC 8.4(c) charge.

Respondent engaged in conduct prejudicial to the administration of justice. Clearly, his failure to serve defendants in these matters within the prescribed 120-day period or to seek an enlargement of time to do so caused substantial judicial delays – so substantial that a Superior Court judge dismissed complaints and referred the matters to Delaware ethics authorities. Respondent conceded that his inaction had wasted judicial resources, actions that prejudiced the administration of justice, in violation of RPC 8.4(d).

The Delaware authorities also found an RPC 8.4(d) violation because the inaccurate certificates posed "a potential" for injury to the judicial system, "as the Court may have relied on the Certificates of Compliance." The potential for harm is insufficient to form the basis of a violation. For lack of clear and convincing evidence that the administration of justice was prejudiced by respondent's inaccurate certifications, we dismiss this latter RPC 8.4(d) charge as well.

In summary, respondent is guilty of gross neglect and pattern of neglect, lack of diligence, recordkeeping violations, failure to supervise nonlawyer staff, and conduct prejudicial to the administration of justice.

Conduct prejudicial to the administration of justice comes in a variety of forms, and the discipline imposed for the misconduct typically results in either a reprimand or a censure, depending on other factors, including the existence of other violations, the attorney's ethics history, whether the matter proceeded as a default, the harm to others, and mitigating or aggravating factors. See, e.g., In re Cerza, 220 N.J. 215 (2015) (reprimand for attorney who failed to comply with an order requiring him to produce subpoenaed documents in a bankruptcy matter, a violation of RPC 3.4(c) and RPC 8.4(d); he also exhibited a lack of diligence and failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b)); In re Gellene, 203 N.J. 443 (2010) (reprimand for attorney found guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney was also guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients in three matters; mitigating factors included the attorney's financial problems, his battle with depression

and significant family problems; his ethics history included two private reprimands and an admonition); and In re Geller, 177 N.J. 505 (2003) (reprimand for attorney who failed to comply with court orders (at times defiantly) and the disciplinary special master's direction not to contact a judge; the attorney also filed baseless motions accusing judges of bias against him, failed to expedite litigation and to treat with courtesy judges, his adversary, the opposing party, an unrelated litigant, and a court-appointed custody evaluator, used means intended to delay, embarrass or burden third parties, made serious charges against two judges without any reasonable basis, made unprofessional and demeaning remarks toward the other party and opposing counsel, and made a discriminatory remark about a judge; in mitigation, we considered that the attorney's conduct occurred in the course of his own child custody case).

Censures were imposed in In re D'Arienzo, 207 N.J. 31 (2011) (attorney failed to appear in municipal court for a scheduled criminal trial, and thereafter failed to appear at two orders to show cause stemming from his failure to appear at the trial; by scheduling more than one matter for the trial date, the attorney inconvenienced the court, the prosecutor, complaining witness, and two defendants; in addition, the attorney's failure to provide the court with advance notice of his conflicting calendar prevented the judge from scheduling other cases for that date; prior three-month suspension and two admonitions

plus failure to learn from similar mistakes justified a censure) and In re LeBlanc, 188 N.J. 480 (2006) (attorney's misconduct in three client matters included conduct prejudicial to the administration of justice for failure to appear at a fee arbitration hearing; the attorney also failed to abide by a court order in a divorce action requiring the husband to produce pension information for the wife; in a total of three matters, the attorney also engaged in gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client (RPC 1.4(a) and (b), receipt of an unreasonable fee (RPC 1.5(a)), failure to promptly remit funds to a third party (RPC 1.15(b), failure to expedite litigation (RPC 3.2), failure to cooperate with ethics authorities (RPC 8.1(b), and failure to comply with the Rule prohibiting non-refundable retainers in family law matters (R. 5:3-5(b)); mitigation included the attorney's recognition and stipulation of his wrongdoing, a belief that his paralegal had handled post-closing steps, and a lack of intent to disregard his obligation to cooperate with ethics authorities).

Recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not caused a negligent misappropriation of clients' funds. See, e.g. In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014); and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014) (attorney

maintained outstanding trust balances for a number of clients, some of whom were unidentified).

In aggravation, respondent has prior discipline in Delaware – a private admonition in 2012, about which we know nothing else. Delaware also considered that respondent's pattern of misconduct occurred in multiple offenses, and that he had substantial experience as an attorney when the misconduct took place.

Further, according to the OAE, respondent did not notify that office of his Delaware discipline, as R. 1:20-14(a)(1) requires.

In mitigation, respondent cooperated with Delaware authorities, admitted his misconduct, expressed remorse, and took substantial steps to reform the Wilmington law office practices, so as to prevent the recurrence of similar problems. Additionally, respondent produced witnesses who testified as to his good character and abilities as an attorney.

This case is similar to the reprimand case, Gellene, above. Like respondent, Gellene was found guilty of gross neglect, pattern of neglect, and lack of diligence in three matters. Like respondent, Gellene engaged in conduct prejudicial to the administration of justice. Gellene's prior discipline, two private reprimands and an admonition, are more serious than respondent's single private admonition in Delaware. Although Gellene neglected fewer

matters than respondent (three versus seventeen), Gellene knowingly disobeyed the rules of a tribunal when failing to appear in court or to notify the court that he would not appear, an element not present here. Finally, respondent failed to notify the OAE of his Delaware discipline.

The censure cases, D'Arienzo and LeBlanc, involve significantly greater misconduct than presented here. In D'Arienzo, the attorney failed to appear for a criminal trial, and at two subsequent orders to show cause arising from his failure to appear at trial. In addition, D'Arienzo had significant aggravation: a three-month suspension, two admonitions, plus failure to learn from similar mistakes. LeBlanc involved the attorney's failure to appear at a fee arbitration hearing requested by the client. In addition, LeBlanc failed to heed a court order. Finally, he engaged in several ethics violations not present here: failure to communicate with the client; taking an unreasonable fee; failure to promptly remit funds to a third party; failure to expedite litigation; failure to cooperate with ethics authorities; and failure to comply with the Rule prohibiting non-refundable retainers in family law matters.

In respect of respondent's brief to us, New Jersey has neither private discipline, nor "inactive status." Attorney registration records have listed respondent as "active" for every year since his 1999 bar admission. Finally, to the extent that respondent now seeks to avoid further tarnishing of his name or

that of his law firm, we note that he failed to notify the OAE of his Delaware discipline.

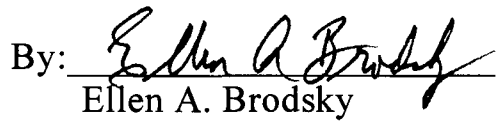
Based on the similarities to Gellene, and the mitigation presented, we determine that a reprimand sufficiently addresses the totality of respondent's misconduct.

Member Gallipoli voted to impose a censure.

Member Rivera 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 Timothy Andrew Dillon
Docket No. DRB 18-304

Argued: November 15, 2018

Decided: March 7, 2019

Disposition: Reprimand

Members	Reprimand	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

Ellen A. Brodsky
Chief Counsel