Supreme Court Of New Jersey
Disciplinary Review Board
Docket No. DRB 18-326
District Docket No. VIII-2017-0056E

In The Matter Of

Christopher Roy Higgins

An Attorney At Law

Decision

Decided: March 21, 2019

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 1.3 (lack of diligence), RPC 1.4(a) (failure to inform a prospective client of how, when, and where the client may communicate with the lawyer), RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter or to comply with reasonable requests for information), RPC 1.15(b) (failure to promptly notify a client of the receipt of funds and failure to promptly deliver such funds), RPC 8.1(b) (failure to

comply with a lawful demand for information from a disciplinary authority), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

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

Respondent was admitted to the New Jersey bar in 2012. On November 29, 2018, we transmitted a decision to the Court imposing a reprimand for respondent's violations of RPC 1.4(b) for failing to keep a client properly informed about the status of a matter and RPC 8.1(b) for failing to provide a reply to the DEC's request for information. We enhanced the discipline because respondent permitted the matter to proceed as a default. In the Matter of Christopher Roy Higgins, DRB 18-195 (November 29, 2018). That matter is pending with the Court.

Respondent was temporarily suspended, effective September 21, 2018, for failure to cooperate with the Office of Attorney Ethics. In re Higgins, 235 N.J. 214 (2018).

Service of process was proper in this matter. On June 18, 2018, the DEC sent copies of the ethics complaint by regular and certified mail to respondent's office address in Woodbridge, New Jersey. The signature on the certified mail receipt is illegible. The regular mail was not returned.

Respondent did not file an answer to the complaint. Therefore, on August 9, 2018, the DEC sent a "five-day" 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 signature on the certified mail receipt is "A. Damato." The regular mail was not returned.

As of the date of the certification of the record, September 11, 2018, respondent had not filed an answer to the complaint.

We now turn to allegations of the complaint.

Similar to respondent's prior matter, the complaint alleged that his office address is "unclear," because his letterhead lists only a post office address in Parlin, New Jersey, a website, and telephone and fax numbers. His website indicates that his office is "conveniently located in Central New Jersey" and that he serves clients in central New Jersey. It lists "approximately" twenty counties in New Jersey where he serves clients. Neither respondent's website nor his letterhead lists a location offering accessibility to clients.

On a date not mentioned in the complaint, grievant Bryan Douglas Daniel located respondent on the internet and retained him for a collection

matter for his company, Intercapital Funding, LLC (Intercapital). Daniel did not sign a retainer agreement. Presumably, respondent did not provide Daniel with a writing setting forth the basis or rate of the fee. Nevertheless, the complaint did not charge respondent with a violation of RPC 1.5(b).

Hossein Lellahi owed money to Intercapital. By letter dated August 2, 2016, respondent notified Lellahi that he represented Intercapital, and that Lellahi owed a balance of $8,700 to Intercapital. The letter added, "[t]his is an attempt to collect a debt and any information obtained will be used for that purpose. We are debt collectors."

In a November 9, 2016 letter, Lawrence A. Vastola, Esq., notified respondent that he represented Lellahi in connection with Intercapital's claim, and that Lellahi admitted owing Intercapital money, but disputed the amount. Vastola offered to settle the matter for $5,000.

Daniel and Lellahi entered into an agreement whereby Lellahi agreed to make payments of $130 per month. Daniel further agreed that respondent would send him $86.67, and respondent would retain the balance of the payments as his fee. The complaint does not mention any other terms of the agreement.

Respondent's last $86.67 trust account check, issued to Daniel on September 1, 2017, was "apparently returned for insufficient funds."[1] The Bank of America listed an $86.67 "return item chargeback" on September 13, 2017, on the checking account for "Darco Enterprises, LLC" (Darco), not Intercapital, as mentioned in the disciplinary complaint. The complaint does not explain the discrepancy in the names of the companies.

After the Bank of America chargeback, on several occasions, Daniel requested that respondent replace the returned check, to no avail. His telephone calls and text messages went unanswered. Finally, after Daniel's September 29, 2017 text message, respondent replied via text message, "I told you I am handling it, you did not need to call 100 times a day."

Thereafter, Daniel heard nothing further from respondent, and the September 1, 2017 check never cleared. Daniel incurred bank charges as a result of respondent's returned check.

According to the complaint, respondent (1) failed to provide Daniel with a physical location to meet to discuss Daniel's matter or to enable him to retrieve documents, in violation of R. 1:21-1 and RPC 1.4(a); (2) failed to

[1] The complaint does not make clear whether the payment was the final payment owed by Lellahi, whether it was the last payment that respondent transmitted to Daniel, or whether Lellahi still owed or transmitted payments to respondent.

communicate with Daniel or to "zealously represent him," violating RPC 1.4(b) and RPC 1.3, respectively; (3) committed a trust account violation by issuing a trust account check to Daniel without having sufficient funds in the account, and failed to promptly notify Daniel of his receipt of funds or promptly deliver the funds, thereby violating RPC 1.15(b); (4) failed to cooperate with the DEC investigation by refusing to meet with the investigator, stating he had "'no time' for ethics investigations," and failed to provide a written reply to the DEC's request for information, thereby violating RPC 8.1(b); (5) engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, a violation of RPC 8.4(c), and conduct prejudicial to the administration of justice, in violation of RPC 8.4(d).

Following a review of the record, we find that the facts recited in the complaint support only some of the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Notwithstanding that Rule, each charge must be supported by sufficient facts for us to determine that unethical conduct has occurred.

The complaint failed to allege facts to support violations of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) or (d)

(conduct prejudicial to the administration of justice). Therefore, we dismiss both the RPC 8.4(c) and (d) charges.

RPC 1.15(b) states, in relevant part, that, upon receiving funds in which a client has an interest, the lawyer shall promptly notify the client and promptly deliver those funds to the client. The allegations of the complaint, likewise, do not support finding such a violation. The complaint does not allege that respondent received additional funds for Daniel of which he did not notify him or that he did not transmit such funds. The more applicable violation, which was not charged, is RPC 1.15(a) (failure to safeguard client funds), because respondent's trust account check to Daniel was returned for insufficient funds.

We also dismiss RPC 1.3, because sufficient facts are not alleged to support respondent's lack of diligence in his representation of Daniel. The complaint does not mention when Daniel retained respondent or allege that respondent failed to act on the matter between August 2, 2016, the date he notified Lellahi of his debt to Intercapital, and November 9, 2016, when Lellahi's attorney wrote to respondent to settle the matter. Thus, the three-month unexplained gap does not give rise to a lack of diligence on respondent's part.

The complaint further charged respondent with violating RPC 1.4(a) and R. 1:21-1, presumably (a)(1), which provides:

> [a]n 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.

RPC 1.4(a) states that a lawyer "shall fully inform a prospective client of how, when, and where the client may communicate with the lawyer." Daniel was not a prospective client; therefore, section (a) of this rule is inapplicable. However, respondent failed to promptly comply with reasonable requests for information from Daniel. We, therefore, find a violation of RPC 1.4(b).

Finally, we find that respondent violated RPC 8.1(b). Not only did he fail to provide a written reply to the grievance, but he also refused to meet with the DEC investigator, stating that he had "no time" for ethics investigations. He also permitted the matter to proceed as a default. The "five-day" letter states specifically that the letter "will serve as an amendment to the complaint

against you to charge you with a willful violation of *RPC 8.1(b)* by reason of your failure to answer."

Thus, we find that the allegations of the complaint support only violations of RPC 1.4(b) and RPC 8.1(b). 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 re Gleason, 220 N.J. 350 (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).

In respondent's previous matter, we voted to impose a reprimand, enhancing the discipline due to the default nature of the proceedings. We found the same ethics violations in his earlier matter that are present here. The timeframe of both matters overlap substantially. Had the two matters been heard simultaneously, it is likely that respondent would have received the same discipline for the two matters. However, respondent, once again, has defaulted. "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). While ordinarily a reprimand would have been warranted, given respondent's disregard for the ethics process, by admittedly failing to make time for the investigation, we determine that a censure is warranted.

Member Gallipoli voted to impose a three-month suspension.

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 Christopher Roy Higgins
Docket No. DRB 18-326

Decided: March 21, 2019

Disposition: Censure

| ***Members*** | Censure | Three-Month Suspension | Recused | Did Not Participate |
|---|---|---|---|---|
| Frost | X | | | |
| Clark | X | | | |
| Boyer | X | | | |
| Gallipoli | | X | | |
| Hoberman | X | | | |
| Joseph | X | | | |
| Rivera | X | | | |
| Singer | X | | | |
| Zmirich | X | | | |
| Total: | 8 | 1 | 0 | 0 |

Ellen A. Brodsky
Chief Counsel