Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-350
District Docket No. IIA-2016-0024E

In the Matter of	:
Bruce C. Morrissey	:
An Attorney At Law	:

Decision

Argued: January 17, 2019

Decided: May 6, 2019

Andrew R. Macklin 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 originally was before us on a recommendation for an admonition filed by the District IIA Ethics Committee (DEC), which we determined to treat as a recommendation for greater discipline, in accordance with R. 1:20-15(f)(4). The complaint charged respondent with violations of RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation), RPC

1.5(b) (failure to communicate, in writing, the basis or rate of the fee), and two instances of violating RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). For the reasons expressed below, we determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1976. He maintains a law office in Englewood Cliffs, New Jersey. He has no history of discipline.

In 2010, grievant Bruce Manalio, a retired pharmacist, retained respondent to pursue tax assessment appeals on a multi-use commercial building that he owned through his company, Laurel Associates, LLC, in the Borough of Bogota (the Borough). According to respondent, although he had handled between 175 and 200 property tax appeals, the majority were for residential properties. He had handled only five or six commercial tax appeals during the relevant period.

Although respondent did not provide Manalio with a written retainer agreement, they agreed to a contingent fee, whereby Manalio would pay respondent one-third of any tax savings or recovery. Respondent claimed that he believed no agreement was necessary. He conceded, however, that because he had not previously represented Manalio, he should have reduced their agreement to writing.

Manalio denied that he was aware of his financial responsibilities in connection with the representation. Other than his knowledge about the contingent fee, he did not know whether he would be charged an hourly rate if the matters proceeded to trial, or who would bear the expense of an expert witness.

Initially, respondent had been retained to challenge Manalio's 2010 taxes. If relief had been granted, it would have carried into 2011 and 2012 under the Freeze Act, N.J.S.A. §54:3-26, barring a revaluation.[1] Respondent

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[1] The Freeze Act provides, in relevant part:

> Where no request for review is taken to the Tax Court to review the action or determination of the county board involving real property the judgment of the county board shall be conclusive and binding upon the municipal assessor and the taxing district for the assessment year, and for the two assessment years succeeding the assessment year, covered by the judgment, except as to changes in value of the property occurring after the assessment date. The conclusive and binding effect of such judgment shall terminate with the tax year immediately preceding the year in which a program for a complete revaluation or complete reassessment of all real property within the district has been put into effect.

The presenter explained in his brief that, for the assessment year and two succeeding years, the Freeze Act "freezes" municipal property assessments in disputed cases resolved by a final judgment of the Tax Court.

explained his understanding of the tax appeals procedures: he believed that an appeal initially is filed with the Bergen County Board of Taxation (Tax Board), if the matter is not resolved satisfactorily or if the assessment is affirmed without prejudice (AWOPed), then an appeal must be filed with the New Jersey Tax Court (Tax Court) within forty-five days.

On Manalio's behalf, respondent (1) timely filed a 2010 appeal with the Tax Board, which affirmed the 2009 assessment without prejudice, then he timely appealed the decision to the Tax Court; (2) filed a 2011 appeal to the Tax Board, but did not appeal it to the Tax Court; (3) filed a 2012 appeal to the Tax Board, but did not file an appeal to the Tax Court; (4) did not file any form of appeal for 2013, asserting a belief that he could not do so because of a revaluation that occurred that year; (5) filed a 2014 appeal to the Tax Board, but did not appeal it to the Tax Court; and (6) filed a 2015 appeal to the Tax Board, and filed an appeal to the Tax Court, which contested the assessments for years 2010, 2011, 2012, 2014 and 2015. For each of the years, the Tax Board had affirmed the assessments without prejudice.

Respondent conceded that the 2015 appeal would not have revived the 2014 assessment because it was filed more than forty-five days after the AWOP. Although he admitted that he had not explained that point to Manalio,

respondent maintained that he had sent Manalio a copy of the 2015 appeal, and that Manalio "wasn't bashful about asking questions."

Respondent had not filed Tax Court appeals for the years 2011, 2012, and 2014 because, he claimed, such appeals were not required based on an informal understanding with the Borough attorneys that the appeals would be deemed AWOPed, his client's rights would be preserved, and the matters would be reviewed by the Tax Court without a Tax Court filing. Respondent conceded that, in hindsight, he should have filed a Tax Court appeal each year.

At the ethics hearing, the new Borough attorney, Craig Bossong, testified that, in 2015, he took the position that appeals had to be filed with the Tax Court each year, contrary to an alleged informal agreement. Respondent did not notify Manalio of Bossong's position, but, thereafter, as noted above, he filed an appeal with the Tax Court for only 2015 because he was precluded from doing so for the years 2011, 2012, and 2014 as untimely.

Further, Bossong testified that he had significant experience in tax appeal matters. He served as the municipal attorney for the Borough since 2015, and as the attorney for the Borough of Waldwick. Bossong's practice concentrated on municipal government work, property tax appeals, land use, and zoning law, and he represented land use boards. As of the date of the DEC hearing, he had been involved in approximately 1,000 tax appeals. Contrary to

respondent's claim, and based on his experience, Bossong was not aware of any industry standard whereby a property owner's rights were preserved without a direct appeal filed with the Tax Court. He explained that an appeal must be filed to preserve the right for a reduction for the year under consideration. Under the Freeze Act, any settlement or judgment in 2010 would have protected only two years - 2011 and 2012.

When Bossong assumed the role as Borough attorney, he met with the tax assessor and the Borough's expert to review the outstanding tax appeals. The Laurel Associates' file contained an appeal only for 2010 and notes from predecessor counsel about settlement negotiations involving years where no appeals to the Tax Court had been filed. Other than 2010, no other years were "in play" until respondent filed an appeal for 2015.

According to Bossong, even though respondent informed him that other appeals had been filed, he supplied Bossong only with documentation for appeals to the Tax Board for years 2011, 2012, and 2013,[2] which had been AWOPed. Bossong confirmed that, because respondent had not filed appeals

[2] As stated above, however, respondent had not filed a Tax Board appeal for 2013.

with the Tax Court, other than for 2010, no relief was available for 2011, 2012, 2013, or 2014. Respondent never divulged that information to Manalio.

Bossong noted that, in 2013, a Borough-wide revaluation took place. Just as in a non-revaluation year, an appeal was required. According to Bossong, typically, the number of appeals filed in revaluation years spiked because a revaluation usually increased the property taxes.

By 2014, Manalio was extremely anxious about the lack of progress on his appeals. Respondent had failed to return Manalio's calls, prompting him to send a series of e-mails to respondent, requesting a status update. When respondent replied to Manalio's inquiries, he blamed the lack of progress on procedural delays and the municipality's changing attorneys. Two or three municipal attorneys, prior to Bossong, had been involved in the appeals. According to Manalio, respondent repeatedly told him that "2010, 2011, 2012, 2013, 2014 and now 2015 [were] under appeal."

Manalio complained that respondent was not keeping him reasonably informed about his appeals. Frustrated with respondent's lack of communication, Manalio went to respondent's office, unannounced, approximately four or five times. In 2015, during one such unannounced visit, Manalio heard a telephone conversation that respondent purportedly had with counsel, the Bogota tax assessor, and the tax court judge. Manalio, however,

believed that the call was a ruse, intended to convince him that respondent was engaged in a substantive call about the tax appeals.

Manalio's confidence in respondent was shaken, prompting him thereafter to secretly record conversations during his unscheduled visits and telephone calls with respondent, including conversations on April 9 and August 10, 2015. In the April 9, 2015 recording, respondent referred to the 2013 tax appeal as being tried "individually" because the Freeze Act had been lost for that year. In the August 10, 2015 recording, respondent asserted that tax appeals for seven years were at issue. Respondent informed Manalio that the matters would be scheduled for a hearing within thirty days, with a trial date in September 2015. Respondent never informed Manalio that Bossong's position was that Manalio was not entitled to relief for any of the years at issue. However, based on their conversations, Manalio believed that all of the years from 2010 through 2015 were under appeal and had been perfected, and that the Freeze Act applied to 2016 and 2017.

In an October 5, 2015 recording, respondent asserted that there were tax abatements of approximately $3,000 for the years 2010 through 2014, based on differing assessments of the property. Manalio believed that respondent was negotiating a settlement with Bossong and that respondent had protected his

rights for those years. Respondent never told Manalio that he was ineligible for relief for any of the years.

Ultimately, based on the lack of progress on the appeals, Manalio discharged respondent and retained new counsel, Douglas Standriff. In 2016, Standriff discovered that respondent had failed to file the tax appeals for 2013 and 2014, and so informed Manalio. In June 2016, Standriff and Bossong negotiated a settlement, requiring Manalio to withdraw his appeals for 2010 and 2015, for an extra reduction in the 2016 property assessment and for future years until another revaluation occurred. The settlement was to "equalize" Manalio's benefit for the prior years. Manalio contended that respondent's failure to file appeals for 2013 and 2014 was significantly detrimental to Standriff's negotiations with Borough officials.

As mentioned previously, Manalio complained that he received little information from respondent. However, Manalio received a copy of an October 19, 2015 letter that respondent purportedly sent to Donald Helmstetter, their tax appeal expert. Manalio accused respondent of having drafted the fictitious letter to "lay a trail" for future use. The letter stated, in relevant part:

> [A]s you are aware, I am trying to establish a meeting with my office, yourself and my client, [Manalio], to go over the proposed offers received from the

> Borough of Bogota through Craig Bossong, Esq., to resolve 2010, 2011 & 2012 tax appeals . . . .
>
> At this juncture there is also an appeal filed for 2013, 2014 & 2015, which the Borough has said they will review once the current matter is resolved.
>
> My client does not want to resolve just the 2010, 2011 & 2012 appeal without regard to the additional and future appeals since he does not want to be in the situation, as he currently is, still dealing with the 2010 appeal on the subject property.
>
> [Ex. P-17.]

The letter led Manalio to believe that respondent had protected his appeal rights for 2013, 2014, and 2015.

Respondent denied that the letter had been fabricated to mislead Manalio. He testified that he had sent the letter to Helmstetter or had intended to do so, by instructing his secretary to fax it. Respondent had no fax confirmation records to corroborate that the letter had been sent. Although he asserted that his inexpensive fax machine did not create transmittal verification reports, he had fax verification reports for faxes sent to other recipients. Respondent maintained that, if the letter had not been sent to Helmstetter, it was a mistake on his part. He denied that the letter had been drafted solely for Manalio's benefit.

Helmstetter executed a certification confirming that he did not recall receiving respondent's letter and could not locate a copy of it in his files.

Respondent admitted that the letter falsely stated that an appeal had been filed for Manalio for 2013 and 2014. Six months earlier, Bossong had informed him that no relief would be provided for those years.

Respondent's testimony was somewhat confusing in respect of the appeal to the Tax Board for 2013. Respondent claimed that he had not realized, until the day of the DEC hearing, that he had not filed an appeal for 2013. He maintained that, although the signature on the appeal form was his, he did not recall preparing it or discussing with Manalio whether or not he was going to file it. Respondent admitted that he had notes in his file that he had not filed the 2013 appeal. Respondent denied that he had made a false statement to Manalio, claiming that he had made an "error" or an "honest mistake," notwithstanding that, six months earlier, Bossong had told respondent that no relief was available for 2013 and 2014.

At the DEC hearing, respondent admitted that he violated RPC 1.5(b) by failing to provide a writing to Manalio setting forth the basis or rate of his fee, but denied violating RPC 8.4(c). Instead, he claimed he had simply made a mistake when he informed Manalio about the status of his appeals.

Respondent blamed the delay in resolving Manalio's appeals on the changes in counsel and the political climate in Bogota, including, but not limited to, the passage of bond obligations and Moody's downgrading the quality of the bonds.

The presenter contended that respondent made misrepresentations to his client, both explicitly and by silence. Shortly after Bossong became Borough counsel, in spring 2015, he notified respondent that no relief could be granted for 2013 or 2014, because respondent had not filed appeals. Respondent, however, never shared that information with Manalio, but, rather made statements, verbally and in writing, to Manalio that his rights would be protected. The presenter argued that the letter to Helmstetter was an additional RPC 8.4(c) violation because respondent never intended to send the original to Helmstetter, but sent a copy of it only to appease Manalio.

The DEC found, as undisputed, that respondent failed to communicate in writing with Manalio the basis or rate of the fee. Respondent acknowledged this omission and expressed contrition for not having provided the writing. The DEC found that the confusion over who was to bear the expense of the costs for expert fees highlighted the problems that occur when there is no written retainer agreement. The DEC, thus, found a violation of RPC 1.5(b).

The DEC found that, although respondent represented to Manalio that he had filed tax appeals for all of the years from 2010 through 2016, no appeal had been filed for 2013 or 2014. According to the DEC, respondent's failure to provide information to Manalio about the appeals impeded his ability to understand their status or settlement issues. The DEC believed, however, that respondent's letter to Manalio, stating that an appeal had been filed for 2013 was erroneous. Nevertheless, the error would have prevented "a reasonably educated client (or even one of higher than average sophistication such as [Manalio]), from evaluating settlement offers or deciding how to proceed with his tax appeals." The DEC viewed respondent's failure as "similar to not telling a client of a case being dismissed" and found clear and convincing evidence that respondent violated RPC 1.4(c), based on his affirmative written representations that tax appeals had been filed for 2013 and 2014, when they had not.

The DEC concluded further that "the statement(s) by [respondent] that all years of the tax appeals were filed was consistent with an honest mistake" or mere negligence, because the tax appeals' status was confusing. The cases that were pending for several years involved

> multiple appeal filings; a town-wide revaluation during the cases' pendency; filings to the County Tax Board that were sometimes "AWOPed" to the Tax

> Court; and multiple attorneys and assessors handling the matter for the municipality in the interim, all of whom would need to familiarize themselves about the matters and none of whom would necessarily be bound by their predecessors' actions. All of these facts would increase the likelihood of Respondent making an erroneous communication about the status of the matter, even innocently. Under the circumstances present here, the Panel does not believe there exists clear and convincing evidence of a violation of RPC 8.4(c).
>
> [HR20-21.][3]

The DEC further determined that respondent neither deliberately failed to provide Helmstetter with the October 19, 2015 letter, nor drafted the letter solely to "appease" Manalio and, thus, this conduct likewise did not violate RPC 8.4(c).

In assessing the appropriate discipline to recommend for respondent's violation of RPC 1.4(c) and RPC 1.5(b), the DEC considered that respondent did not commit any acts with the intent to deliberately deceive Manalio; that he had a forty-year unblemished disciplinary record; that he displayed contrition; that he acknowledged his failure to provide Manalio a written retainer agreement; and that Bossong, whom the DEC determined to be a credible witness, testified that Manalio's appeals were settled in a manner that

[3] HR refers to the June 8, 2018 hearing panel report.

made him "essentially" whole – that is, respondent's failure to file the 2013 and 2014 appeals caused Manalio no harm.

In his brief to us, the presenter maintained that respondent communicated with Manalio on more than twenty occasions by phone, in person, by e-mail, and by letter, knowing that he had not preserved Manalio's right to challenge taxes for the years 2013 and 2014. He told Manalio, in person, that all tax appeals were filed and that 2013 "would be tried on its own" because of the revaluation. He also purportedly sent Helmstetter a letter suggesting that appeals were pending for 2013-2015. According to the presenter:

> [a]t best, these statements constitute dishonesty by virtue of Respondent's failure to reveal to [Manalio] a fact crucial to the case. At worst, these statements are outright misrepresentations. In either event, respondent violated RPC 8.4(c) by representing to the client that the matter was proceeding smoothly at a time when he knew it was not.
>
> [PB3.][4]

The presenter stressed that both respondent and Bossong had testified about their discussions that no appeals had been filed to protect Manalio's

[4] PB refers to the presenter's August 6, 2018 brief to us.

interests for tax years 2013 and 2014. Nevertheless, respondent made at least four separate false statements to Manalio about the status of the matter. Manalio learned of the true status of his appeals only after he terminated respondent's services and retained new counsel. Further, he argued that, regardless of whether Manalio suffered harm, we should find violations of RPC 8.4(c).

Following a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent was guilty of violating RPC 1.4(c) and RPC 1.5(b) is fully supported by clear and convincing evidence. We disagree, however, with the DEC's conclusions with regard to the RPC 8.4(c) allegations.

There is no dispute that respondent violated RPC 1.5, relating to fees. Subsection (b) states that, when a lawyer has not regularly represented a client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation. Clearly, this did not occur. However, RPC 1.5(c) is the more applicable section of the Rule, as it relates to contingent fees, which was the basis for the fee in these appeals. RPC 1.5(c) similarly requires a lawyer to provide the client with a contingent fee agreement that states the method by which the fee is to be

determined. Thus, we find that respondent violated RPC 1.5(c), rather than RPC 1.5(b).

The facts further establish that respondent did not inform Manalio that he had failed to perfect the appeals for 2013 and 2014. RPC 1.4(c) requires a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation. Because respondent did not inform Manalio about the status of his appeals, respondent violated RPC 1.4(c).

This misconduct also supports a finding that respondent violated RPC 8.4(c) in his misrepresentation by silence. In some situations, silence can be no less a misrepresentation than words. Crispen v. Volkswagenwerk, A.G. 96 N.J. 336, 347 (1984). Moreover, respondent made affirmative misrepresentations to Manalio as revealed by the telephone recordings, as well as written misrepresentations in his letter to Helmstetter, which only Manalio received. In that letter, respondent misrepresented that he had filed tax appeals for the tax years 2013 and 2014, when he had not done so. We, therefore, find that respondent violated RPC 8.4(c).

In some respects, respondent's testimony appeared to be less than forthright. For example, he asserted that he did not recall preparing or discussing with Manalio the 2013 appeal to the Tax Board and he asserted that

his fax machine did not provide delivery verifications, when two such verifications were part of the record.

Respondent's testimony with regard to the Helmstetter letter was likewise suspect. Manalio believed that respondent had created the letter simply to mislead him, to convince him that his rights had been protected for all the years mentioned therein, and that he was working toward a resolution of the matter. Clearly, the letter contained misrepresentations. Bossong previously had informed respondent that no relief was available for the years lacking appeals. Yet, respondent's letter claimed that he was trying to resolve tax appeals for 2010, 2011, and 2012, and that appeals had been filed for 2013 and 2014. Because respondent could present no proof that he mailed, faxed, or e-mailed the letter to Helmstetter, who had no record of having received it, a logical conclusion is that it was not sent. There is no clear and convincing evidence, however, that respondent created the letter solely for Manalio's benefit, and, therefore, we find no clear and convincing evidence of a violation of RPC 8.4(c) in this regard.

In sum, respondent is guilty of having violated RPC 1.4(c), RPC 1.5(c), and RPC 8.4(c).

As to the quantum of discipline, it is well-settled that a reprimand is the appropriate quantum of discipline for misrepresentation. In re Kasdan, 115

N.J. 472, 488 (1989). A reprimand may be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Ruffolo, 220 N.J. 353 (2015) (respondent exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, not working on it after filing the initial claim, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter; the attorney also failed to promptly reply to the client's requests for status updates; finally, his assurances that the client's matter was proceeding apace, knowing that the complaint had been dismissed, and that he should expect a monetary award in the near future were false, thereby violating RPC 8.4(c)); 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, by his silence, into believing that both cases remained pending, a violation of RPC 8.4(c); the attorney also violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 3.2, and RPC 8.1(b); we found that the attorney's unblemished thirty-four years at the bar were outweighed by his inaction, which left the client with no legal recourse); and In re Winston, 219 N.J. 428 (2014) (attorney's failure to file a brief resulted in the dismissal of the client's appeal; the attorney failed to notify his client of the expiration of the deadline for filing the brief or to keep him 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, a violation of RPC 8.4(c); the attorney presented compelling mitigation).

Generally, an admonition is imposed for failure to provide a client with a writing setting forth the basis or rate of the fee, and failure to properly communicate with a client, even when other non-serious violations are found. See, e.g., In the Matter of Martin G. Margolis, DRB 02-166 (July 22, 2002); In the Matter of Alan D. Krauss, DRB 02-041 (May 23, 2002); and In the Matter of John S. Giava, DRB 01-455 (March 15, 2002).

We find that respondent's violations of RPC 1.4(c), RPC 1.5(c), and RPC 8.4(c) warrant discipline greater than an admonition, especially in light of his misrepresentation. The fact that Manalio was "essentially" made whole does not influence our determination in this matter, particularly because he did not obtain any relief for a five-year period, until he retained new counsel to finalize the settlement with the municipality. In addition, had respondent acted diligently in the first place, Manalio may have found himself in a better position to negotiate with Bogota officials.

Further, we afford little weight to any mitigation presented by respondent. Unlike the DEC, we do not find in this record that respondent expressed remorse or contrition for his conduct. While he did admit his failure

to provide Manalio with a written communication of his fees, that fact alone does not demonstrate contrition. Additionally, we have considered respondent's otherwise unblemished disciplinary record of more than forty years. However, based on respondent's ongoing misrepresentations, we find that his ethics record does not warrant a reduction in the otherwise appropriate quantum of discipline.

Member Gallipoli voted to impose a censure.

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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Bruce Carlton Morrissey
Docket No. DRB 18-350

Argued: January 17, 2019

Decided: May 6, 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:	8	1	0	0

Ellen A. Brodsky
Chief Counsel