

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-395
District Docket No. XIV-2016-0723E

In The Matter Of
Diego P. Milara
An Attorney At Law

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Decision

Decided: May 28, 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 the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate); RPC 1.5(a) (unreasonable fee); RPC 1.5(b) (failure to communicate the basis or rate of the fee in writing to the client within a reasonable time after commencing representation); RPC 3.2 (failure to expedite litigation); RPC 8.1(b) (failure to

cooperate with disciplinary authorities); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

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

Respondent was admitted to the New Jersey bar in 1991 and to the New York bar in 1993. He has been ineligible to practice law in New Jersey since September 24, 2012, for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (the Fund). Respondent was temporarily suspended, effective January 22, 2015, for failure to cooperate with the OAE. In re Milara, 220 N.J. 341 (2015). He was temporarily suspended again, effective June 12, 2017, for failure to comply with a fee arbitration determination. In re Milara, 229 N.J. 262 (2017). He remains suspended to date.

On October 4, 2018, respondent was censured for violating RPC 1.3, RPC 1.15(d) (recordkeeping), RPC 5.5(a)(1) (unauthorized practice of law), RPC 8.1(b), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). In re Milara, 235 N.J. 170 (2018). In that matter, respondent failed to serve an order on parties in accordance with a court order, practiced law while ineligible, failed to maintain his client's file, failed to cooperate with

disciplinary authorities, and made several misrepresentations to the client. In the Matter of Diego P. Milara, DRB 17-274 (January 22, 2018).

On May 1, 2019, the Court suspended respondent, in a default matter, for one year for violations of RPC 1.3, RPC 1.4(b), RPC 1.16(d) (failure to protect a client's interests on termination of the representation), RPC 8.1(b), RPC 8.4(c), and RPC 8.4(d). In re Milara, N.J. (2019).

Service of process was proper in this matter. On August 1, 2018, the OAE sent a copy of the complaint, by regular and certified mail, return receipt requested, to respondent's home address in Newark, New Jersey, as provided by Eric Marmolejo, Esq., his former law partner. The certified mail was returned, marked "insufficient address – unable to forward." The regular mail was not returned.

On September 7, 2018, the OAE sent a letter, by certified and regular mail, to respondent's home address, notifying him that, if he failed to file a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the entire record would be certified directly to us for the imposition of discipline, and the complaint would be deemed amended to include a violation of RPC 8.1(b). The certified mail was

returned, marked "insufficient address – unable to forward." The regular mail was not returned.

On October 11, 2018, the OAE published notice of the complaint in the Union County Local Source, and on October 15, 2018, in the New Jersey Law Journal.

As of November 30, 2018, the date of the certification of the record, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

We now turn to the allegations of the complaint.

Respondent last maintained an office for the practice of law at the firm of Marmolejo and Milara in Harrison, New Jersey.

On October 11, 2013, grievant, Rui Reis retained respondent to represent him and his spouse in connection with a Chapter 7 bankruptcy petition. Although respondent had not previously represented Reis or his spouse, respondent did not provide them with a written fee agreement. Reis paid respondent \$3,706.

Reis provided respondent with all the necessary documentation for the bankruptcy petition. Thereafter, Reis visited respondent's office several times. Respondent informed Reis that the bankruptcy court would take two or three months to respond. Because respondent failed to contact Reis thereafter, he

visited respondent's office several more times to follow up. During his final visit, in 2014, respondent's former partner, Marmolejo, informed Reis that respondent was having issues with the OAE, and that he did not know respondent's whereabouts. Marmolejo could not assist Reis with his bankruptcy petition. Respondent neither filed the Reis bankruptcy petition nor informed Reis that he had not done so.

In 2015, Reis retained new counsel who, for a \$1,700 fee, filed the Chapter 7 bankruptcy petition, on April 23, 2015. The bankruptcy was discharged on July 27, 2015.

On January 6, 2017, the OAE sent a letter to respondent, by regular and certified mail, requesting a written reply to the Reis grievance by January 18, 2017. The certified mail was returned, marked "unclaimed." The regular mail was not returned. On September 29, 2017, the OAE sent a second letter to respondent, demanding a written response to the grievance by October 9, 2017. Respondent did not reply. By letter dated October 13, 2017, the OAE scheduled an October 26, 2017 demand interview, but respondent failed to appear.

Following a review of the record, we find that the facts recited in the complaint support some, but not all, of the charges of unethical conduct. Respondent's failure to file an answer to the complaint 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.

Based on the record, it appears respondent did little to no work on Reis' matter, despite collecting a fee to pursue a Chapter 7 bankruptcy on his behalf. Respondent misrepresented that the matter was pending before the court when he told Reis to wait for a few months for the court to address his petition. However, respondent never filed that application. Reis eventually hired subsequent counsel who successfully completed a Chapter 7 bankruptcy on his behalf. By failing to pursue Reis' matter, or doing any substantive work on his behalf, respondent violated RPC 1.1(a) and RPC 1.3.

Although the complaint alleged a violation of RPC 1.4(b), the record does not support this allegation because respondent did respond to Reis' inquiries. Even though respondent provided false information, he still communicated with Reis. Therefore, we dismissed the RPC 1.4(b) charge. Instead, respondent's misrepresentation that he had filed a bankruptcy petition violated RPC 8.4(c). Because the complaint did not charge respondent with a violation of RPC 8.4(c), we cannot make such a finding. See R. 1:20-4(b) (ethics complaint shall set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct, specifying the ethics rules alleged to have been violated).

Although the complaint also alleged that respondent charged an unreasonable fee, in violation of RPC 1.5(a), because he did not provide services as agreed, that Rule is not applicable. Respondent's failure to perform the services as agreed does not render his fee unreasonable. Rather, such conduct constitutes the failure to return an unearned fee, a violation of RPC 1.16(d). The complaint, however, did not charge respondent with a violation of that RPC and, for the same reasons discussed in respect of RPC 8.4(c), we can make no finding of a violation of RPC 1.16(d). Because RPC 1.5(a) (unreasonable fee) is inapplicable, we dismissed that charge.

Additionally, we dismissed the alleged violation of RPC 3.2. Respondent never filed the bankruptcy application; therefore, there was no litigation to expedite.

We find that respondent's failure to reply to the OAE in connection with its investigation of the Reis grievance, his failure to appear for a scheduled demand interview, and his general failure to cooperate with the OAE violated RPC 8.1(b).

Finally, although the complaint referenced RPC 8.4(d) in the caption of count one, the record contains no further mention of that Rule. Because the complaint failed to specify how respondent's conduct, during his representation


of Reis, was prejudicial to the administration of justice, we dismissed the RPC 8.4(d) charge.

In sum, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.5(b), and RPC 8.1(b). We dismissed the remaining allegations of RPC 1.4(b), RPC 1.5(a), RPC 3.2, and RPC 8.4(d).

As noted above, in respondent's prior matters, he was guilty of ethics infractions similar to the misconduct now before us, in the context of bankruptcy matters. The timeline of his previous matters overlaps with the timeline here. Had this case been combined with respondent's previous matters, our recommended discipline would not have changed. Although a pattern of neglect might have been supported, respondent was not charged with a violation of RPC 1.1(b) in the instant or prior matters and, thus, we cannot find that violation. For the foregoing reasons, we recommend no further discipline.

Members Gallipoli and 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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Docket No. DRB 18-395

Decided: May 28, 2019

Disposition: No Additional Discipline

<i>Members</i>	No Additional Discipline	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli			X
Hoberman	X		
Joseph			X
Rivera	X		
Singer	X		
Zmirich	X		
Total:	7	0	2


Ellen A. Brodsky
Chief Counsel