

Supreme Court Of New Jersey
Disciplinary Review Board
Docket No. DRB 19-038
District Docket No. VIII-2018-0003E

In the Matter of :
Joseph Ricigliano, Jr. :
An Attorney at Law :
:

Decision

Decided: August 13, 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 District VIII Ethics Committee (DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 1.1(b) (pattern of neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (erroneously referred to as RPC 1.4(a) - failure to communicate with a client); and RPC 8.1(b) (failure to cooperate with disciplinary authorities), in connection with his representation of the grievant, Ahmet Sahin.

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

Respondent earned admission to the New York bar in 1990 and to the New Jersey bar in 1991. During the relevant time frame, he maintained a law practice in Edison, New Jersey. He has no disciplinary history in New Jersey.

Service of process was proper in this matter. On October 30, 2018, the DEC sent a copy of the formal ethics complaint to respondent, at his law office address, by certified and regular mail. A certified mail receipt was returned, which reflected a delivery date of November 2, 2018, and the signature of “Kayla R;” the regular mail was not returned.

On December 13, 2018, the DEC sent a “five-day” letter to respondent, at his law office address, by certified and regular mail, 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). The certified mail was claimed and the regular mail was not returned; however, the record does not include a copy of the return receipt for the certified mail.

As of January 16, 2019, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the DEC certified this matter to us as a default.

On March 21, 2019, respondent filed a motion to vacate the default in this matter. In order to prevail on such a motion, respondent must satisfy a two-pronged test. First, he must offer a reasonable explanation for the failure to answer the ethics complaint, and, second, he must assert a meritorious defense to the underlying ethics charges.

As to the first prong, respondent's explanation for his failure to file a conforming answer is that his former legal secretary failed to complete tasks that respondent had assigned to her in response to the ethics grievance. Specifically, respondent claims that he was served with the ethics grievance underlying this matter in February 2018, and, subsequently, spoke with the DEC investigator on multiple occasions. He further asserts that he provided his former secretary with "dictation from [respondent] turning over the file" to the DEC,¹ "as well as setting forth the defense to the grievance." Respondent claims that his former

¹ Presumably, respondent is claiming that he dictated a cover letter to the DEC, enclosing a copy of his client file.

secretary, who had been diagnosed with breast cancer in January 2013, failed to complete those tasks and then left his employ in the summer of 2018, on disability, without informing him that she had not followed through in respect of the ethics grievance.

Respondent claims that he had assumed that the file and response to the grievance had been sent to the DEC in April 2018, but later “discovered that all of my notes including my dictation and the Sahin file itself [sic] was in a bag underneath” the former secretary’s desk. Thus, respondent denied that he intentionally misled the DEC or failed to cooperate with its investigation.

In October 2018, respondent received a second copy of the ethics grievance and the formal ethics complaint. He claims that, at that point, he became aware that his former secretary had sent neither a reply nor the Sahin file to the DEC. Respondent, however, does not address why he failed to file a verified answer to the ethics complaint at that time.

We conclude that respondent’s explanation for his failure to file a conforming answer is not reasonable. First, respondent’s attempt to place any blame on his former legal secretary is improper. As an attorney, he had a duty to cooperate with the DEC and a duty to supervise his secretary. Moreover, he

should have acted with a heightened sensitivity regarding any work he purportedly assigned to her in respect of the ethics grievance and the associated potential consequences to his ability to practice law.

Second, respondent acknowledges receiving a copy of the ethics grievance in February 2018, yet, contends that his failure to discover that his former secretary had not completed her tasks until six months later, in October 2018, was reasonable. Respondent's duty to diligently and personally cooperate with the DEC's investigation and to promptly reply to the ethics grievance is not delegable. It is simply not reasonable for respondent to claim that he delegated that responsibility to employees or agents, that they failed to act, and that he failed to discover their omission for six months.

Finally, respondent's motion to vacate addresses only his failure to reply to the ethics grievance. His motion wholly fails to provide any explanation, let alone a reasonable explanation, for his failure to file a verified answer to the formal ethics complaint. As set forth above, on October 30 and December 13, 2018, after his former secretary had left his employ in the summer of 2018, the DEC served respondent with the formal ethics complaint. Both times, the DEC successfully served the formal ethics complaint on respondent at his law office

address, by certified and regular mail. Despite that service, he failed to file a verified answer.

Accordingly, we conclude that respondent failed to satisfy the first prong.

Assuming, arguendo, that respondent had satisfied the first prong of the test, we would have still determined to deny his motion to vacate the default. The formal ethics complaint charged respondent with violating RPC 1.3 by failing to diligently prosecute Sahin's case, resulting in its dismissal with prejudice. In his motion to vacate the default, respondent admits that Sahin's suit was dismissed, with prejudice, due to his "failure to provide discovery to the defendant." Accordingly, respondent has failed to assert a meritorious defense to the RPC 1.3 charge.

Respondent is also charged with having violated RPC 8.1(b) for failing to file a verified answer to the formal ethics complaint, despite proper service of the complaint by the DEC. As discussed under prong one, above, respondent's motion fails to assert any defense to the RPC 8.1(b) charge.

We, thus, determine that respondent also failed to satisfy prong two of the test. Accordingly, respondent's motion to vacate the default is denied.

We now turn to the allegations of the complaint.

Respondent represented Sahin in connection with a personal injury claim stemming from a motor vehicle accident that occurred on May 5, 2011. In 2013, respondent filed a personal injury lawsuit in behalf of Sahin in the Superior Court of New Jersey, Somerset County. Sahin alleged that “respondent failed to maintain any contact with him;” “[n]ever provided him with copies of any documentation from the file;” “never answered any interrogatories;” “never attended any depositions;” and never provided to Sahin any motions that were filed in respect of the litigation.

Ultimately, the complaint that respondent had filed in Sahin’s behalf was dismissed with prejudice, presumably for failure to comply with discovery requirements. Respondent failed to notify Sahin of the dismissal, and, according to the complaint, apparently misled Sahin regarding the status of the litigation.² Based on text messages attached to the ethics grievance, Sahin learned of the dismissal of his case, in May 2017, through his own inquiries with the court.

Following a review of the record, we find that the facts recited in the complaint support all but one of the charges of unethical conduct. Respondent’s

² The complaint did not charge respondent with a violation of RPC 8.4(c) in respect of this allegation.

failure to file a verified 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.

Respondent represented Sahin and filed a personal injury lawsuit in his behalf. Because respondent then failed to diligently prosecute the case or to adequately communicate with his client, the complaint was dismissed with prejudice. Respondent failed to notify Sahin of the dismissal. In fact, Sahin learned of the dismissal only through his own inquiries with the court. Respondent's conduct in respect of Sahin's representation, thus, violated both RPC 1.3 and RPC 1.4(b).

Further, despite proper service of the complaint by the DEC, respondent failed to file a verified answer, in violation of RPC 8.1(b).

We determine to dismiss the allegation that respondent violated RPC 1.1(b). For us to find a pattern of neglect, at least three instances of neglect, in three distinct client matters, are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). Here, the allegations of the

complaint deal exclusively with Sahin's matter. These instances, in this single client matter, are insufficient to support a finding that respondent engaged in a pattern of neglect, in violation of RPC 1.1(b).

In sum, respondent violated RPC 1.3, RPC 1.4(b), and RPC 8.1(b). The only remaining issue is the appropriate quantum of discipline to be imposed for respondent's misconduct.

Conduct involving lack of diligence and failure to communicate with clients, even if accompanied by gross neglect, a violation not charged in this matter, ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the harm to the clients, the attorney's disciplinary history, and the presence of aggravating or mitigating factors. See, e.g., In the Matter of Clifford Gregory Stewart, DRB 14-014 (April 22, 2014) (admonition; attorney who was not licensed to practice law in Washington, D.C. filed an employment discrimination case in the United States District Court for the District of Columbia and obtained local counsel to assist him in handling the matter; after the defendant filed a motion to dismiss the complaint, however, the attorney failed to provide local counsel with written opposition to the motion until after the deadline for doing so had expired, resulting in the granting of the

motion as unopposed; violations of RPC 1.1(a) and RPC 1.3; in addition, the attorney failed to keep his client informed about various filing deadlines and about the difficulty he was having meeting them, particularly with the deadlines for filing an objection to the motion to dismiss the complaint, violations of RPC 1.4(b) and (c); we considered the attorney's exemplary, unblemished career of twenty-eight years at the time of the incident); In the Matter of Robert A. Ungvary, DRB 13-099 (September 30, 2013) (admonition; due to the attorney's failure to comply with discovery, his client's civil rights complaint was dismissed; the attorney's motion to vacate the default was denied and a subsequent appeal was dismissed based on his failure to timely prosecute it; the attorney neither informed the client of the dismissal of the appeal nor discussed with him his decision not to pursue it; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b) and (c); although the attorney had been admonished previously, we noted that his conduct in the matter then before us predated the conduct in the prior matter, and that the client and his family had continued to use the attorney's legal services, despite his shortcomings in the civil rights matter); In re Burstein, 214 N.J. 46 (2013) (reprimand; attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; although the attorney had

no disciplinary record, the significant economic harm to the client justified a reprimand); and In re Kurts, 206 N.J. 558 (2011) (reprimand; attorney mishandled two client matters; in one matter, he failed to complete the administration of an estate, causing penalties to be assessed against it; in the other, he was retained to obtain a reduction in child support payments but, at some point, ceased working on the case and closed his office; the client, who was unemployed, was forced to attend the hearing pro se, at which time he obtained a favorable result; in both matters, the attorney was found guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to memorialize the basis or rate of his fee; no prior discipline; additional mitigation considered).

Admonitions typically 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 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)); In re Gleason, 220 N.J. 350 (2015) (attorney did not file an answer to the formal ethics complaint and ignored the

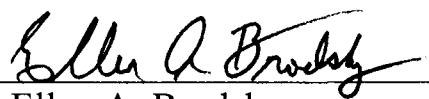
district ethics committee investigator's multiple attempts to obtain a copy of his client's file, a violation of RPC 8.1(b); the attorney also failed to inform his client that a planning board had dismissed his land use application, a violation of RPC 1.4(b)); and In the Matter of Raymond A. Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written, formal reply to the grievance and a copy of the filed pleadings in the underlying case, despite repeated assurances that he would do so, a violation of RPC 8.1(b)).

Thus, the baseline level of discipline is an admonition. However, the default status of this matter must also 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). As to mitigation, we afforded significant weight to respondent's lack of a disciplinary history, given his more than twenty-seven years at the bar. In our view, the mitigation does not outweigh the aggravating factor of the default nature of this matter. Accordingly, we determine that a reprimand is the appropriate quantum of discipline to protect the public and to preserve the integrity of the bar.

Vice-Chair 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
Bruce W. Clark, Chair

By: 
Ellen A. Brodsky
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Joseph Ricigliano, Jr.
Docket No. DRB 19-038

Decided: August 13, 2019

Disposition: Reprimand

<i>Members</i>	Reprimand	Censure	Recused	Did Not Participate
Clark	X			
Gallipoli		X		
Boyer	X			
Hoberman	X			
Joseph	X			
Petrou	X			
Rivera	X			
Singer	X			
Zmirich	X			
Total:	8	1	0	0


Ellen A. Brodsky
Chief Counsel