

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-164
District Docket No. VIII-2017-0016E

In the Matter of
Thomas E. Downs, IV
An Attorney at Law

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Decision

Argued: July 18, 2019

Decided: December 11, 2019

Jose D. Roman appeared on behalf of the District VIII Ethics Committee.

Gerard E. Hanlon appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a recommendation for a reprimand filed by the District VIII Ethics Committee (DEC). The formal ethics complaint charged respondent with having violated RPC 1.5(b) (failure to set forth, in writing, the

basis or rate of the fee) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).¹

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

Respondent was admitted to the New Jersey bar in 1975. At the relevant times, he maintained an office for the practice of law in South Amboy, New Jersey.

On April 19, 2013, respondent received an admonition for his violation of RPC 1.4(b) (failure to communicate with the client) and RPC 8.1(b). In the Matter of Thomas E. Downs, IV, DRB 12-407 (April 19, 2013). In March 2016, the Court imposed a censure on respondent for his violation of RPC 1.4(b), RPC 1.5(b), RPC 1.16(d) (upon termination of representation, failure to return unearned retainer), and RPC 8.1(b). In re Downs, 224 N.J. 272 (2016). Finally, on November 1, 2018, the Court reprimanded respondent for his violation of RPC 1.3 (lack of diligence) and RPC 1.4(b). In re Downs, 235 N.J. 412 (2018).

On June 3, 2013, Lori Zadlock retained respondent to represent her in connection with injuries that she had sustained in a December 2012 automobile accident. Respondent had not represented Zadlock previously and, thus, he and Zadlock signed a retainer agreement.

¹ The complaint mistakenly identified the RPC as 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter).

On November 3, 2014, respondent filed a civil complaint captioned Lori Zadlock v. James Borsh (the Zadlock matter) in the Superior Court of New Jersey, Law Division, Middlesex County. At some point, respondent reviewed Zadlock's file for the purpose of preparing answers to the defendant's interrogatories. He noticed that the June 2013 fee agreement was not in the file. Accordingly, in April 2015, respondent and Zadlock entered into a second retainer agreement. Zadlock acknowledged having signed both retainer agreements.

The Zadlock matter was dismissed on October 6, 2016. Respondent neither obtained a fee in the matter nor received reimbursement of his expenses. Thereafter, Zadlock filed an ethics grievance against him.

On April 20, 2017, the DEC sent a copy of Zadlock's grievance to respondent and requested that he submit a written reply within ten days. Respondent did not comply with the DEC's request.

On May 11, 2017, the DEC sent a copy of its April 20, 2017 letter and the grievance to respondent and again requested a written reply within ten days. Respondent ignored this request as well.

On June 1, 2017, the DEC sent another follow-up request, via FedEx and regular mail, which included copies of the April 20 and May 11, 2017 letters and the grievance. On June 5, 2017, "T Downs" signed for the FedEx delivery.

Respondent also ignored this mailing.

On August 1 and 2, 2017, the DEC investigator called respondent's office, but was told that he was not there. On both days, the investigator left a message for respondent to call him. Respondent did not return either call.

On March 29, 2018, the DEC issued a formal ethics complaint, charging respondent with violations of RPC 1.5(b) and RPC 8.1(b). On July 10, 2018, respondent filed an answer to the complaint.

Respondent testified that he had not provided the retainer agreement to the DEC because he was a busy sole practitioner and had put the ethics matter on the "back burner and just kept avoiding it." By the time respondent filed the answer to the formal ethics complaint, he had located both the June 2013 and the April 2015 fee agreements.

The DEC found that respondent did not violate RPC 1.5(b), as he and Zadlock had entered into a written retainer agreement in June 2013. In respect of the RPC 8.1 charge, the DEC found that the complaint had mistakenly charged respondent with having violated RPC 8.1(a), instead of RPC 8.1(b), because the allegations in the ethics complaint and the testimony focused on respondent's failure to cooperate with the ethics investigation. The DEC determined that respondent did not cooperate with the investigation and, therefore, he violated RPC 8.1(b).

The DEC recommended the imposition of a reprimand, emphasizing respondent's ethics history.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Count one of the formal ethics complaint charged respondent with having violated RPC 1.5(b). That Rule requires an attorney, who has not regularly represented a client, to communicate to the client, in writing, the basis or rate of the fee either before or within a reasonable time after commencing the representation. Here, respondent undertook the representation of Zadlock on June 3, 2013. Both respondent and Zadlock testified that they had entered into a written retainer agreement on that date. Thus, as the DEC found, respondent did not violate RPC 1.5(b).

Although count two of the formal ethics complaint charged respondent with having violated RPC 8.1(a), the allegations demonstrate that the DEC intended to charge RPC 8.1(b), which requires an attorney to cooperate in a disciplinary investigation. Indeed, the first substantive paragraph of count two asserted that respondent had "failed to respond to or cooperate with the District VIII Ethics Committee." Thus, like the DEC, we view the citation to RPC 8.1(a) as a typographical error.

The parties' stipulation and respondent's testimony clearly and convincingly establish that respondent failed to cooperate with the DEC in its investigation of Zadlock's grievance. Prior to the filing of the formal ethics complaint, respondent ignored the DEC's written communications and telephone calls because, in his words, he had put the matter on the "back burner and just kept avoiding it."

In sum, we find that respondent violated RPC 8.1(b). We dismiss the additional charge that respondent violated RPC 1.5(b). The only remaining issue is the appropriate quantum of discipline to be imposed for respondent's misconduct.

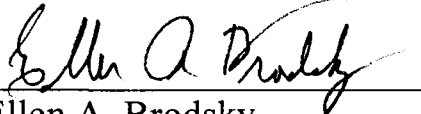
Ordinarily, an admonition is imposed for failure to cooperate with disciplinary authorities. See, e.g., In the Matter of Jaime Merrick Kaigh, DRB 16-282 (March 31, 2017) (attorney failed to submit a written reply to the grievance) and In the Matter of Peter A. Cook, DRB 16-243 (March 30, 2017) (attorney failed to produce requested documents). If an attorney has a disciplinary history, the discipline is enhanced to a reprimand. See, e.g., In re Saluti, 214 N.J. 6 (2013) (reprimand imposed on attorney who failed to reply to three letters from the DEC requesting a reply to a grievance; two prior admonitions).

Here, respondent has a significant disciplinary history, comprising an admonition, a reprimand, and a censure. In light of that aggravation, we enhance the discipline from an admonition to a reprimand.

Member Petrou 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
Bruce W. Clark, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

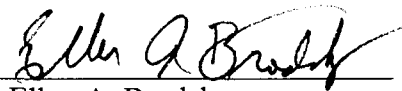
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Disposition: Reprimand

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



Ellen A. Brodsky
Chief Counsel