

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-361
District Docket No. VI-2018-0011E

In the Matter of
Ulysses Isa
An Attorney at Law

Decision

Argued: February 20, 2020

Decided: June 23, 2020

Jay B. Yacker appeared on behalf of the District VI Ethics Committee.

Respondent waived appearance for oral argument.

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 VI Ethics Committee (DEC). The formal ethics complaint charged respondent with having violated RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to keep the client reasonably informed about the status of a matter); RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to

permit the client to make informed decisions regarding the representation); RPC 1.16(d) (upon termination of representation, failure to refund the unearned portion of the retainer); and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

For the reasons set forth below, we determine to impose a censure on respondent, with conditions.

Respondent was admitted to the New Jersey bar in 2006. During the relevant time frame, he maintained an office for the practice of law in Union City, New Jersey.

Since November 21, 2016, respondent has been administratively ineligible to practice law for failure to comply with mandatory continuing legal education requirements. He also has been ineligible to practice law, since August 28, 2017, for his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. Effective May 9, 2018, respondent was temporarily suspended from the practice of law for failure to comply with a fee arbitration determination. He remains suspended to date.

On December 7, 2018, respondent received a three-month suspension from the practice of law for misconduct including gross neglect (RPC 1.1(a)); lack of diligence; failure to keep the client adequately informed and

to promptly reply to the client's reasonable requests for information; failure to communicate in writing to the client the basis or rate of the fee (RPC 1.5(b)); recordkeeping violations (RPC 1.15(d)); failure to comply with applicable law when terminating a representation (RPC 1.16(c)); unauthorized practice of law (RPC 5.5(a)(1)); false statement of material fact in connection with a disciplinary matter (RPC 8.1(a)); and failure to cooperate with disciplinary authorities. As a condition of reinstatement, respondent must practice under the supervision of a proctor approved by the Office of Attorney Ethics (OAE). In re Isa, 236 N.J. 587 (2018).

Effective July 17, 2019, the Court again temporarily suspended respondent from the practice of law, this time for his failure to cooperate with disciplinary authorities. In re Isa, 238 N.J. 515 (2019).

On July 19, 2019 the Court found that respondent engaged in a conflict of interest and failed to cooperate with disciplinary authorities. Pursuant to our recommendation, no further discipline was imposed for these violations, in light of the timing and the nature of the misconduct in respect of the disciplinary matter resulting in his three-month suspension. In re Isa, 239 N.J. 2 (2019).

On January 3, 2017, Gloria Parra, the grievant, retained respondent to represent her in a divorce action, signed a retainer agreement, and paid \$100

cash toward respondent's \$500 retainer. Respondent represented that he would file the complaint after she paid the full retainer. On March 10, 2017, Parra paid the remaining \$400 of the retainer, plus a \$250 filing fee, for a total of \$750.

Because Parra was not promptly notified of a court date for her divorce, she went to respondent's office to inquire about the status of the matter. Respondent blamed his secretary for being negligent, stated that the complaint must have been lost in the mail, and informed Parra that he could not locate the paperwork, because his secretary had left for the day. Parra testified that respondent claimed to have prepared the divorce papers, but he never actually filed them. Specifically, respondent told Parra that she had a court hearing on August 22, 2017. However, when Parra attended court that date, Judiciary staff informed her that they did not have any record of her case.¹

On December 15, 2017, Parra asked respondent for a refund of her \$750, because he had not performed any work on her case. Although he gave her a \$750 check, it was returned, on January 22, 2018, for insufficient funds. On March 5, 2018, Parra returned to respondent's office, and he gave her another \$750 check. On March 13, 2018, that check also was returned for insufficient funds.

¹ The complaint did not charge respondent with making a misrepresentation to a client (RPC 8.4(c)) in connection with this conduct.

According to Parra, often, when she went to respondent's office, he was not present, or the office was closed. However, he was at his office the last time she went there. Parra called respondent on the telephone and knocked on the office door, but respondent failed to answer the telephone or open the door. Parra waited, and when respondent exited the office, she told him that the second check had been returned. Respondent instructed her to return to his office and represented that he would pay her cash. Despite Parra's multiple subsequent attempts, respondent never refunded the \$750. As of the date of the ethics hearing, she had not obtained her divorce, because she needed the \$750 refund from respondent to hire another attorney.

Respondent failed to reply to Parra's ethics grievance against him, despite the investigator's attempts to obtain his cooperation via four written requests sent to his home or office addresses, and three voicemail messages left on his office and cellular telephones.

For his part, respondent testified that, from 2015 to 2017, he felt useless and depressed, and was no longer going to his law office, which was being managed by three secretaries. Two of the secretaries eventually left, because respondent could no longer pay them, and one remained, because she "felt bad for [respondent]." The remaining secretary managed the office and handled the bookkeeping.

In May 2017, respondent sought treatment with a psychiatrist, Dr. Leonie Johnson-Sena, and was diagnosed with various disorders, for which Dr. Johnson-Sena prescribed medications. In 2018, after respondent's depression worsened, despite monthly appointments with Dr. Johnson-Sena, she prescribed an additional medication, which helped initially, but later caused significant side effects.

According to respondent, between 2015 and 2017, on a typical day, when he was in a depressive state, he would find getting out of bed and going to the office very difficult. He could not focus and had a "hard time" seeing clients. Upon receipt of a prior ethics complaint against him, he did not even open it, and "just let it go," because he was afraid of what it would say. He also did not reply to the instant complaint initially, maintaining that he "just couldn't deal with it . . . I hid from it." Respondent testified that, as of the date of the ethics hearing, he continued to take four medications; believed that he was getting better, but it was a day-to-day process; and asserted that he never lost touch with reality, but was hiding from it.

Since June 2019, respondent has attended weekly group meetings with the New Jersey Lawyers Assistance Program (NJLAP), and once a month has attended therapy with Raymond Ortiz, senior attorney counselor with NJLAP. Respondent stated that the sessions are extremely helpful, because they include

people who understand his situation. In a July 22, 2019 letter, Ortiz wrote that respondent has admitted having an alcohol abuse problem, is committed to abstinence from alcohol and non-prescribed drugs, and has participated in both Alcoholics Anonymous, and Lawyers Concerned for Lawyers group support meetings. Ortiz commended respondent for seeking help and noted that he has agreed to participate in these meetings as part of his NJLAP “Helping Plan.”

Respondent expressed extreme remorse for his misconduct. As of the date of the ethics hearing, he had not refunded the \$750 to Parra, but agreed, through his attorney, to do so within thirty days. Respondent’s attorney asserted that respondent had not refunded Parra’s funds prior to the hearing to avoid the appearance of impropriety or an inference that he was attempting to “buy her silence.”

Respondent’s counsel requested, in light of the mitigation presented regarding respondent’s mental health issues, the imposition of the lowest level of discipline for respondent’s admitted misconduct.

The DEC panel found that Parra had retained respondent to file her divorce complaint, that he failed to file the complaint, and that he issued two \$750 refund checks to her, which were dishonored. As of the date of the ethics hearing, respondent still had not refunded the \$750 to Parra, and he had failed to reply to the DEC investigator’s request for a written reply to the ethics

grievance. Parra could not afford to retain another attorney to obtain her divorce, because respondent had not refunded the \$750 fee to her.

The panel, thus, determined that respondent failed to pursue the grievant's divorce with due diligence, in violation of RPC 1.3; failed to communicate with the grievant multiple times, in violation of RPC 1.4(b) and (c); failed to refund the unearned portion of the retainer when he provided the grievant with two checks that were returned for insufficient funds, in violation of RPC 1.16(d); and failed to cooperate with the ethics investigator, in violation of R. 1:20-3(g)(3) and RPC 8.1(b).

The panel did not find any aggravating factors. In mitigation, the panel recognized respondent's mental health struggles, which he claimed had prevented him from working on Parra's divorce and from responding to Parra's grievance. The DEC noted that respondent acknowledged that he was currently still not able to function. In addition, at the hearing, respondent offered to repay Parra within thirty days.

The DEC determined that, although respondent cited mental illness as a mitigating factor, he did not seek a transfer to disability-inactive status, and he already was suspended at the time of the hearing. The DEC concluded that a reprimand was the proper quantum of discipline, because of the extent and duration of respondent's admitted neglect of Parra's matter, and his issuance of

multiple checks to Parra that were dishonored.

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.

Respondent admittedly violated RPC 1.3 by failing to file Parra's divorce complaint, despite having received his fee plus required costs. Further, he admittedly violated RPC 1.4(b) by failing to communicate with Parra in multiple instances. In addition, respondent violated RPC 1.16(d) by failing to refund the unearned portion of the retainer that Parra had paid, as evidenced by his two dishonored checks. Finally, respondent violated RPC 8.1(b) by failing to reply to the DEC's extensive efforts to obtain his reply to the grievance.

We find, however, that the facts contained in the record do not establish that respondent violated RPC 1.4(c). That Rule requires a lawyer to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, and more typically applies to scenarios where lawyers perform some work, but fail to inform their clients of material events in their cases, such as the dismissal of a complaint.

In sum, we find that the clear and convincing evidence supports finding violations of RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 8.1(b). We determine to dismiss the remaining charge that respondent violated RPC 1.4(c). The sole

issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Admonitions typically are imposed for gross neglect, lack of diligence, and failure to communicate with the client. See, e.g., In the Matter of Michael J. Pocchio, DRB 18-192 (October 1, 2018) (attorney filed a complaint for divorce in behalf of his client, but failed to perfect service, resulting in the dismissal of the complaint for lack of prosecution; the attorney failed to inform the court of the reason for the lack of service, made no effort to reinstate the complaint, and failed to inform the client of the dismissal, violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b); a violation of RPC 3.2 (failure to expedite litigation) also was found; we considered the attorney's lack of prior discipline and his admission of his misconduct by entering into a disciplinary stipulation); In the Matter of Joel I. Rachmiel, DRB 18-064 (April 24, 2018) (attorney settled a client's personal injury matter, distributed to the client her settlement proceeds, but delayed paying medical liens for almost six years; the attorney then failed to reply to the client's inquiries about the liens, and his delay caused the medical obligations to be placed in collections, affecting the client's credit rating; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b) and (c); the attorney had no prior discipline); and In the Matter of Clifford Gregory Stewart, DRB 14-014 (April 22, 2014) (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, on behalf of his client, and obtained local counsel to assist him in handling the matter; after the defendant had filed a motion to dismiss the complaint, 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; the attorney also failed to keep his client informed about various filing deadlines and about the difficulty he was having with meeting them, particularly with the deadlines for filing an objection to the motion to dismiss the complaint, a violation of RPC 1.4(b) and RPC 1.4(c); we considered the attorney's exemplary, unblemished career of twenty-eight years at the time of the incident).

Similarly, an admonition is ordinarily the appropriate sanction for an attorney's failure to promptly return the unearned portion of a fee. See, e.g., In re Gourvitz, 200 N.J. 261 (2009); In the Matter of Larissa A. Pelc, DRB 05-165 (July 28, 2005); and In the Matter of Stephen D. Landfield, DRB 03-137 (July 3, 2003).

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 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)).

In light of the totality of respondent's misconduct, a reprimand would be the minimum appropriate sanction in this matter. In crafting the appropriate discipline to be imposed, we considered relevant aggravating and mitigating factors. Although the hearing panel found no aggravating factors, we considered the severe harm to Parra resulting from respondent's failure to perform the work for which he was retained, and his failure to refund her \$750 fee, despite his agreement to do so. Parra first sought her divorce in January 2017, more than three years ago, and sustained significant and unnecessary delay due solely to respondent's misconduct.

Further, we considered the heightened awareness that respondent should have displayed, based on his disciplinary history. Specifically, the misconduct underlying respondent's three-month suspension matter occurred from June to October 2016, when he was retained to pursue a post-divorce custody action, but failed to successfully file a notice of appearance or any motions in the client's behalf. He attempted to file the motions, but the court rejected them as insufficient. The grievance underlying that matter was filed in September 2016, and the investigative report and complaint were filed in October 2017.

Accordingly, in January 2017, when Parra retained him, respondent was on notice that his conduct as a lawyer was under scrutiny. Moreover, the misconduct addressed in respondent's two prior matters is similar to his infractions in the present case, including lack of diligence, failure to communicate, and failure to cooperate with disciplinary authorities. We find respondent's further misconduct, despite his heightened awareness, to be an aggravating factor. See, e.g., In re Furino, 210 N.J. 124 (2012) (three-month suspension imposed, in a default matter, on attorney who ignored a letter from the DEC and failed to submit a written reply to a grievance; in aggravation, we considered that, at the time he received the grievance, he was "well aware that his inaction vis-à-vis the district ethics committee in two prior disciplinary matters was under scrutiny," yet, "he continued to evade and avoid the system;")

prior reprimand and three-month suspension). Thus, we determine that respondent's disciplinary history, including his repeated refusals to cooperate with ethics authorities, coupled with the significant harm to Parra, requires enhancement of the reprimand to a censure.

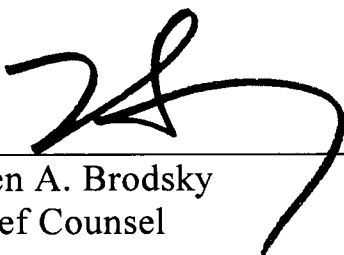
In mitigation, at the time of his misconduct in this case, it appears that respondent was suffering from significant mental health issues. To date, he is actively seeking assistance for his illness. Also, he expressed remorse for his misconduct. In our view, the aggravating factors, including respondent's ethics history and the significant harm to Parra, outweigh the mitigating factors, including respondent's struggles with his mental health.

We determine that, on balance, a censure is the appropriate sanction for respondent's misconduct. Respondent is further required to disgorge the \$750 retainer and filing fee within thirty days of the date of the Court's Order, and to provide satisfactory proof of same to the Office of Board Counsel and the OAE. Finally, prior to reinstatement from his current suspension, respondent is required to provide to the OAE copies of all NJLAP monitoring reports and proof of his fitness to practice law, attested to by an OAE-approved mental health professional.

Member Joseph was recused. Vice-Chair Gallipoli and 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: 
for: Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ulysses Isa
Docket No. DRB 19-361

Argued: February 20, 2020

Decided: June 23, 2020

Disposition: Censure

<i>Members</i>	Censure	Recused	Did Not Participate
Clark	X		
Gallipoli			X
Boyer	X		
Hoberman	X		
Joseph		X	
Petrou			X
Rivera	X		
Singer	X		
Zmirich	X		
Total:	6	1	2

For:


Ellen A. Brodsky
Chief Counsel