

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-413
District Docket No. XIV-2018-0216E

In the Matter of :
Thomas Ludwig :
An Attorney at Law :
:

Decision

Decided: September 16, 2020

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 having violated RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 8.1(b) (failure to

cooperate with disciplinary authorities),¹ and RPC 8.4(d) (conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1978 and to the New York bar in 1986. At the relevant times, he maintained an office for the practice of law in Ridgewood, New Jersey.

On April 25, 2018, the Court imposed a reprimand on respondent for his violation of RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter), and RPC 8.1(b), in respect of his handling of the Estate of Evelyn Heffernan. In re Ludwig, 233 N.J. 99 (2018) (Ludwig I). The Court also ordered respondent to conclude the Heffernan estate within ninety days of the filing date of the Court's Order. Ibid.

Service of process was proper. On August 23, 2019, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's law office. On September 5, 2019, respondent accepted delivery of the certified mail. The regular mail was not returned.

¹ Due to respondent's failure to file an answer to the formal ethics complaint, the OAE amended the complaint to include the RPC 8.1(b) charge.

On October 8, 2019, the OAE sent a letter to respondent's law office, by certified and regular mail, informing him that, unless he filed 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 to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). On October 16, 2019, respondent accepted delivery of the certified mail. The regular mail was not returned.

As of October 29, 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 OAE certified this matter to us as a default.

We now turn to the allegations of the complaint.

Like Ludwig I, this matter involves respondent's handling of the Estate of Evelyn Heffernan. In 1999, respondent prepared Heffernan's last will and testament, which named respondent the executor. On December 24, 2007, Heffernan died, at the age of ninety.

On December 9, 2016, the same day that we issued our decision in Ludwig I, grievant Kevin Heffernan (Heffernan), one of the beneficiaries of the estate, filed a verified complaint seeking respondent's removal as executor, appointment of substitute co-administrators, and the elimination and refund of

all executor fees. On December 13, 2016, the Deputy Surrogate of Bergen County issued an Order to Show Cause, with a return date of January 27, 2017, before the Honorable Robert P. Contillo, P.J.Ch.

On December 19, 2016, Heffernan's counsel, Matthew J. Warner, sent the verified complaint and Order to Show Cause, by certified and regular mail, to respondent's former law office address, which the United States Postal Service forwarded to his current law office address. On December 22, 2016, Henry Neuhof, who sublet to respondent his current office space, accepted delivery of the certified mailing.

In a certification dated June 28, 2018, submitted in reply to the ethics grievance, respondent denied having received a copy of the verified complaint and Order to Show Cause from Neuhof. Thus, he did not appear for the January 27, 2017 hearing, at which time, Judge Contillo, noting the absence of opposition to the Order to Show Cause, entered an order (1) revoking respondent's letter testamentary as executor of the Estate of Evelyn Heffernan; (2) appointing Heffernan and Walter Golczewski as substitute co-administrators CTA; (3) requiring respondent to relinquish all financial records of the estate, monies, authorizations, and correspondence to the new administrators within thirty days of the date of entry of the order; (4) requiring respondent to refund

all executor fees and forgo all commissions within that same timeframe; and (5) requiring respondent to reimburse Heffernan for all reasonable attorney's fees and costs upon the submission of his attorney's certification.

Because Warner sent a copy of the order to respondent's former address, respondent did not receive it. Accordingly, he did not comply with the order within the thirty-day deadline.

On March 20, 2017, Warner filed a motion to enforce litigant's rights, and sent a copy of it to respondent, via FedEx, at both his former and current addresses. The following day, Neuhof accepted delivery of both FedEx packages. According to respondent, Neuhof informed him that the packages had been delivered and, thus, it was at this point that respondent learned of his removal as executor of the Heffernan estate. Respondent admitted that, despite that knowledge, he did not submit opposition to the motion to enforce litigant's rights.

On April 7, 2017, Judge Contillo entered an order (1) declaring respondent in violation of litigant's rights; (2) requiring respondent to comply, by May 15, 2017, with the court's January 27, 2017 order, or, upon letter application to the court, ordering him to appear before the court to show cause why he should not be held in contempt of court, and, further, providing that, if he failed to appear,

a warrant would be issued for his arrest; (3) requiring respondent to reimburse Heffernan \$3,300 in legal fees, as formerly ordered, within forty-five days; and (4) requiring respondent to reimburse Heffernan \$3,000 in legal fees for the filing of the motion to enforce litigant's rights, within forty-five days.

On April 12, 2017, Warner sent a copy of the April 7, 2017 order to respondent at his current address. In respondent's certification, he admitted that he received the order, and that he neither complied with it nor took any action. On May 16, 2017, Warner sent another copy of the order to respondent at his current address. Although respondent received the order, he failed to comply with it. That same date, Warner applied for an Order to Show Cause directing respondent to appear on June 19, 2017. A copy of the application was sent to respondent's current address. Respondent did not appear.

Respondent certified that, on May 19, 2017, Golczewski, the court-appointed co-administrator of the estate, reviewed the estate's documents at respondent's office for the purpose of preparing the final accounting. Golczewski copied the papers that he needed and left the original documents with respondent.

On May 23, 2017, Judge Contillo entered an order directing respondent to appear on June 19, 2017, to show cause why he should not be held in contempt

of court for failing to comply with the court's April 7, 2017 order; providing that, if respondent failed to appear on June 19, 2017, a warrant for his arrest would be issued, without notice; and requiring proof of service of the May 23, 2017 order on respondent to be filed at least five days prior to the June 19, 2017 hearing. On May 31, 2017, Warner sent a copy of the May 23, 2017 order to respondent, by certified and regular mail, to his current address. On June 6, 2017, Warner filed a proof of service with the court, appending both the certified mail receipt and the certified green card, which respondent had signed on June 2, 2017. Thus, the ethics complaint alleged, respondent had received a copy of the May 23, 2017 order.

Respondent did not appear for the June 19, 2017 hearing. Consequently, Judge Contillo issued a warrant for his arrest. On June 26, 2017, Warner sent a copy of the arrest warrant to respondent.

On August 28, 2017, Detective Lieutenant Carmelo Giustra, of the Office of the Bergen County Sheriff (Sheriff's Office), informed respondent that the Sheriff's Office had a warrant for his arrest and that Warner had requested that respondent "relinquish all financial records of the estate monies, authorizations and correspondence to the new Administrators." The letter asked respondent to contact Giustra to resolve the matter before the Sheriff's Office would be

“forced to act on the warrant of arrest.”

On December 7, 2017, Warner informed Judge Contillo that respondent had failed to reply to either the Sheriff’s Office or the court. On December 12, 2017, Judge Contillo referred the matter to the District XI Ethics Committee (DEC), “not with respect to counsel’s handling of the Estate, but because of his evident disregard for the Court’s Orders of April 7, 2017 and May 23, 2017, which led to the warrant for [respondent’s] arrest issued on June 19, 2017.”

On June 27, 2018, two months after the Court had reprimanded respondent in Ludwig I, respondent participated in a telephone conference with the Honorable Edward A. Jerejian, J.S.C. During the conference, Judge Jerejian found that respondent had complied with Judge Contillo’s orders, and, thus, vacated the warrant for respondent’s arrest.² Judge Jerejian also decided that respondent would continue to maintain the estate’s records and that repayment of his executor’s commission would be decided at another time.

Respondent never explained in his certification why he failed to respond to, or comply with, Judge Contillo’s orders. As of the date of the formal ethics complaint, the issue of repayment of respondent’s executor’s fee and/or

² The OAE confirmed that respondent paid the \$6,300 in fees to Heffernan, as Judge Contillo ordered.

commissions remained outstanding.

Based on the above facts, the complaint alleged that respondent violated RPC 3.4(c) and RPC 8.4(d), by failing to comply with Judge Contillo's orders dated January 27, April 7, and May 23, 2017. In addition, based on respondent's failure to file an answer to the complaint, the complaint was amended to include a charge of a willful violation of RPC 8.1(b).

We find that the facts alleged in the formal ethics complaint support some of the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

The ethics complaint alleged that respondent denied having received the December 13, 2016 Order to Show Cause and, thus, he did not appear for the January 27, 2017 hearing before Judge Contillo. He made the same claim in respect of the January 27, 2017 order. Because respondent did not receive the orders, he was unaware of the January 27, 2017 hearing. For the same reason, he could not have complied with the order entered on that date. Thus, the allegations of the complaint, which we accept as true, fail to support a finding that respondent knowingly violated the January 27, 2017 order. Accordingly, we

determine to dismiss the charges that respondent violated RPC 3.4(c) and RPC 8.4(d) in respect of the January 27, 2017 order.

In contrast, respondent did receive the April 7 and May 23, 2017 orders. He admittedly failed to comply with the April 7, 2017 order. He also failed to comply with the May 23, 2017 order, and, thus, did not appear for the June 19, 2017 hearing. Respondent's failure to appear in court, pursuant to the Orders to Show Cause, which he had received, constituted separate violations of RPC 3.4(c) and RPC 8.4(d).

Finally, respondent violated RPC 8.1(b) by failing to file an answer to the formal ethics complaint. Indeed, he wholly failed to cooperate, despite the OAE's October 8, 2019 letter, which informed him that the failure to file an answer would result in an amendment to the complaint to include a charge of a violation of RPC 8.1(b).

In sum, we find that respondent violated RPC 3.4(c), RPC 8.1(b), and RPC 8.4(d). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Ordinarily, a reprimand is imposed on an attorney who fails to obey court orders, even if the infraction is accompanied by other, non-serious violations. In re Ali, 231 N.J. 165 (2017) (attorney disobeyed court orders by failing to appear

when ordered to do so and by failing to file a substitution of attorney, violations of RPC 3.4(c) and RPC 8.4(d); he also lacked diligence (RPC 1.3) and failed to expedite litigation (RPC 3.2) in one client matter and engaged in ex parte communications with a judge, a violation of RPC 3.5(b); in mitigation, we considered his inexperience, unblemished disciplinary history, and the fact that his conduct was limited to a single client matter); In re Cerza, 220 N.J. 215 (2015) (attorney failed to comply with a bankruptcy court's order compelling him to comply with a subpoena, which resulted in the entry of a default judgment against him; violations of RPC 3.4(c) and RPC 8.4(d); he also failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b); prior admonition for recordkeeping violations and failure to promptly satisfy tax liens in connection with two client matters, even though he had escrowed funds for that purpose); and In re Gellene, 203 N.J. 443 (2010) (attorney was guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney was also guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors considered were the attorney's financial problems, his

battle with depression, and significant family problems; his ethics history included two private reprimands and an admonition).

When an attorney fails to cooperate with disciplinary authorities, and previously has been disciplined, but the attorney's ethics record is not serious, reprimands have been imposed. See, e.g., In re Larkins, 217 N.J. 20 (2014) (default; attorney did not reply to the ethics investigator's attempts to obtain information about the grievance and failed to file an answer to the formal ethics complaint; although we noted that a single violation of RPC 8.1(b), in a default matter, does not necessitate enhancement of the discipline from an admonition to a reprimand, a reprimand was imposed based on a prior admonition and, more significantly, a 2013 censure, also in a default matter, in which the attorney had failed to cooperate with an ethics investigation); In re Wood, 175 N.J. 586 (2003) (attorney failed to cooperate with disciplinary authorities; prior admonition for similar conduct); In re DeBosh, 174 N.J. 336 (2002) (failure to cooperate with disciplinary authorities; prior three-month suspension); and In re Williamson, 152 N.J. 489 (1998) (attorney failed to cooperate with disciplinary authorities; prior private reprimand for failure to carry out a contract of employment with a client in a matrimonial matter and failure to surrender the client's file to a new attorney).

Based on disciplinary precedent, the baseline level of discipline for respondent's combined violations is a censure. However, to craft the appropriate discipline in this case, we also consider both mitigating and aggravating factors. There is no mitigation to consider.

In aggravation, we consider the default status of this matter. "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) (citations omitted).

In further aggravation, respondent has an ethics history – the April 2018 reprimand in Ludwig I for his violation of RPC 1.3, RPC 1.4(b), and RPC 8.1(b) in respect of his handling of the Heffernan estate. Although the facts underlying this matter preceded the Court's April 2018 reprimand in Ludwig I, we had issued our decision on December 9, 2016, just days before the issuance of the first Order to Show Cause in the matter underlying this disciplinary case. Thus, as of December 2016, respondent was aware that, not only was his conduct under scrutiny, specifically as it related to the Heffernan estate, but also that we had recommended the imposition of discipline. Yet, he flouted the orders in this matter, which were entered for the purpose of removing him from handling the

estate, so that the matter could be finalized and closed. In addition, he did nothing to finalize and close the estate, as evidenced by the Court's directive in its April 2018 Order that the estate be concluded within ninety days. Respondent's conduct is nothing short of contumacious, and we consider his continued recalcitrance in aggravation, thereby requiring further enhancement from a censure to a three-month suspension.

On balance, we determine that a three-month suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Member Zmirich voted to impose a six-month suspension. Vice-Chair Gallipoli and Member Petrou voted to impose a one-year suspension.

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: /s/ Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: Three-Month Suspension

<i>Members</i>	Three-Month Suspension	Six-Month Suspension	One-Year Suspension	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	0	0

/s/ Ellen A. Brodsky

Ellen A. Brodsky
Chief Counsel