Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-339
District Docket No. IV-2018-0034E

In the Matter of	:
Barry J. Beran	:
An Attorney at Law	:

Corrected Decision

Decided: May 13, 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 District IV Ethics Committee (DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to keep a 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); and RPC 8.1(b) (failure to cooperate with disciplinary

authorities). On December 18, 2019, respondent submitted a motion to vacate the default and a proposed answer to the ethics complaint.

For the reasons set forth below, we determine to deny respondent's motion and impose a three-year suspension.

Respondent earned admission to the New Jersey bar in 1981 and to the Pennsylvania bar in 1980. He maintains a law office in Cherry Hill, New Jersey.

Respondent has a significant disciplinary history. In 2004, he received a reprimand for negligently misappropriating client trust funds, failing to comply with recordkeeping requirements, and advancing loans to clients while representing them in personal injury matters. In re Beran, 181 N.J. 535 (2004).

In 2009, we admonished respondent for failing to advise a client, for whom he was unable to negotiate credit card payoffs, of possible avenues available and of consequences that could result from the actions the client determined to take. Respondent also failed to communicate with the client or to provide her with a writing setting forth the basis or rate of his fee. In the Matter of Barry J. Beran, DRB 09-245 (November 25, 2009).

In 2016, respondent was censured for advancing personal funds to three clients in connection with their pending or contemplated litigation, negligently misappropriating client funds due to his deficient records, failing to promptly

disburse client funds, and violating recordkeeping rules. In re Beran, 224 N.J. 388 (2016).

In 2017, the Court again censured respondent for lack of diligence and failure to communicate with a client in a personal injury matter. The client did not receive her settlement funds until six years after she had signed a release. Although only one client was involved, we considered, in aggravation, respondent's ethics history and his failure to learn from prior mistakes. In re Beran, 230 N.J. 61 (2017).

In 2018, the Court suspended respondent for three months. In re Beran, 231 N.J. 565 (2018). In that matter, respondent overdrew his trust account when he inadvertently withdrew more funds from the account, as legal fees, than were on deposit. When he discovered the error, he immediately replenished the funds. At the time of the overdraft, no client funds were on deposit. The ensuing Office of Attorney Ethics (OAE) audit revealed several recordkeeping violations. Respondent was guilty of negligently misappropriating trust funds, commingling funds, and recordkeeping violations. The Court further ordered respondent to submit monthly reconciliations of his attorney accounts to the OAE, on a quarterly basis, for a two-year period. On July 30, 2018, the Court reinstated respondent. In re Beran, 234 N.J. 264 (2018).

Finally, in another default matter, the Court again suspended respondent, this time for six months, effective April 20, 2020, for his violations of RPC 1.3, RPC 1.4(b), and RPC 8.1(b). In two matters, respondent failed to communicate with his clients and took no significant action in their bankruptcy matters. In a third case, respondent failed to reply to a client seeking modification of child support, alimony, and health insurance obligations. Respondent submitted to us a motion to vacate the default, claiming that he had performed a significant amount of work on behalf of these three clients, but failed to respond to the formal ethics complaint, because he was so upset and distraught over receiving the complaint that he could not respond in a coherent manner. We denied the motion, determining that respondent was familiar with the disciplinary process, because this was his sixth matter before us, and because respondent had replied to two of the three grievances before he ceased cooperating. In aggravation, we considered that the case involved three clients who were in dire financial straits, that respondent had a significant disciplinary history, and that he defaulted.

Service of process was proper. On June 14, 2019, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home and office addresses of record. On June 17, 2019, "D. Veazey" signed for the certified mail at respondent's office, and the regular mail was not returned.

On July 3, 2019, respondent obtained a two-week extension to file an

answer to the complaint, but failed to comply with that deadline. Therefore, on July 18, 2019, the DEC sent another letter, by regular mail, to respondent's office address, observing that the extension he obtained had expired, and informing respondent that, unless he filed a verified answer to the formal ethics 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 amended to charge a willful violation of RPC 8.1(b). The regular mail was not returned.

As of August 21, 2019, respondent had not filed an answer to the formal ethics 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.

As stated above, respondent filed a motion to vacate the default in this matter. In order to prevail on such a motion, he 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 expressed his regret for not filing an answer to the formal ethics complaint, acknowledged he should have done so, and explained that his "reason for not have [sic] filed the Answer in a timely manner was due to my having experienced significant personal, emotional and

financial issues." Respondent did not elaborate on the nature of those various issues, but acknowledged that they "should not have prevent[ed] [him] from having filed a timely Answer." By his own admission, respondent's assertion that he did not file an answer because he experienced unspecified issues does not constitute a reasonable explanation for his failure to file a timely answer. Accordingly, we conclude that respondent's explanation for his failure to file a conforming answer is not reasonable.

Moreover, respondent has not offered a meritorious defense to all the charges in the complaint. Although he asserted potential meritorious defenses to the RPC 1.3, RPC 1.4(b), and RPC 1.4(c) allegations, he failed to proffer any defense to the RPC 8.1(b) charge. Rather, respondent admitted that his "issues" should not have prevented him from filing an answer. Therefore, we determine that respondent has failed to satisfy either prong of the test, and deny his motion to vacate the default.

We now turn to the allegations of the complaint.

On a date not specified in the record, Luis Correa, the grievant, retained respondent to file a Chapter 13 bankruptcy petition and paid respondent $1,970 for the representation. Respondent failed to file a Chapter 13 petition for Correa, taking "virtually no action" in Correa's behalf. After Correa filed a fee arbitration request, the fee arbitration committee (the Committee) determined

that respondent had not earned any fee and must disgorge the entire $1,970. On June 11, 2018, the Committee referred this matter to the DEC.

On March 19, 2019, the DEC sent letters to respondent's home and office addresses, requesting his file in Correa's matter and his cooperation in the investigation. Respondent failed to reply to the DEC's requests. On April 23, 2019, the DEC attempted to contact respondent at his office, but he failed to reply. As noted above, respondent was served with the formal ethics complaint, received an extension, but failed to file an answer by the new deadline, or after the DEC sent him a "five-day" letter.

The formal ethics complaint alleged that respondent violated RPC 1.3 by failing to act with diligence in Correa's matter; violated RPC 1.4(b) by failing to communicate with Correa about the substance of the Chapter 13 bankruptcy case, despite Correa's numerous attempts to contact him, and, thus, forced Correa to seek the assistance of another attorney; and violated RPC 1.4(c) by failing to adequately explain the Chapter 13 bankruptcy matter to Correa. Finally, the complaint alleged that respondent violated RPC 8.1(b) by failing to reply to two letters from the DEC seeking information regarding Correa's grievances, and by failing to answer the formal ethics complaint.

We find that the facts recited in the formal ethics complaint support 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).

Respondent violated RPC 1.3, RPC 1.4(b), and RPC 1.4(c) by failing to make any effort to assist Correa in his Chapter 13 bankruptcy proceeding, failing to communicate with Correa about the substance of the matter, and forcing Correa to retain another attorney to pursue the bankruptcy relief he sought. Based on the record, respondent did virtually no work in Correa's matter, resulting in the Committee's order that he disgorge the entire fee. Respondent also violated RPC 8.1(b) by failing to reply to the DEC's letters regarding Correa's matter, and failing to answer the formal ethics complaint.

In sum, we find that respondent violated RPC 1.3, RPC 1.4(b), RPC 1.4(c), and RPC 8.1(b). The sole issue left for us to determine is the appropriate quantum of discipline to impose for respondent's unethical conduct.

Generally, in default matters, a reprimand is imposed for lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities, even if this conduct is accompanied by other ethics infractions, such as gross neglect. See, e.g., In re Cataline, 219 N.J. 429 (2014) (reprimand for attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with requests for information from the district ethics committee investigator); In re Rak, 203 N.J. 381 (2010) (reprimand for

attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of a grievance); In re Van de Castle, 180 N.J. 117 (2004) (reprimand for attorney who grossly neglected an estate matter, failed to communicate with the client, and failed to cooperate with disciplinary authorities); and In re Goodman, 165 N.J. 567 (2000) (reprimand for attorney who failed to cooperate with disciplinary authorities and grossly neglected a personal injury case for seven years by failing to file a complaint or to otherwise prosecute the client's claim; the attorney also failed to keep the client apprised of the status of the matter; prior private reprimand).

In crafting the appropriate quantum of discipline, however, we must also consider aggravating and mitigation factors. In aggravation, this case involved yet another client in difficult financial circumstances whom respondent completely abandoned. Although respondent received his fee, he utterly failed to protect Correa's interests, taking no action to prosecute the Chapter 13 bankruptcy in his behalf. Respondent previously has committed identical misconduct, as we emphasized in our decision in DRB 19-092, resulting in his six-month suspension. Based on the foregoing precedent, a reprimand is the baseline sanction for respondent's misconduct, until we consider the additional aggravation present in this case.

Respondent continues to demonstrate a failure to learn from his past mistakes. The Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such situations, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system).

Here, progressive discipline is warranted, in light of respondent's significant disciplinary history: a 2004 reprimand; a 2009 admonition; a 2016 censure; a 2017 censure; a 2018 three-month suspension; and a 2020 six-month suspension. This is respondent's seventh time before us. Thus, it is clear that he has not learned from his prior mistakes. Because it is not clear whether the events in this case pre-date respondent's misconduct in DRB 19-092, we do not consider that misconduct as an aggravating factor. However, we consider the remainder of respondent's disciplinary history in aggravation.

Although this case involves harm to only one client, respondent again has defaulted. Through this seventh disciplinary matter, respondent has established an alarming pattern of grossly neglecting clients' matters, and then failing to respond to disciplinary authorities. Moreover, he has demonstrated an inability to learn from his past mistakes, in light of his pattern of inflicting harm on his clients. There is no mitigation for us to consider. Thus, based on respondent's

ethics violations in this matter, his disciplinary history, his failure to learn from prior mistakes, and the principle of progressive discipline, we determine that enhancement of the quantum of discipline to a three-year suspension is required to protect the public and preserve confidence in the bar.

Vice-Chair Gallipoli and Members Hoberman and Zmirich voted to recommend respondent's disbarment. Member Boyer 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: **/s/ Ellen A. Brodsky**
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Barry J. Beran
Docket No. DRB 19-339

Decided: May 13, 2020

Disposition: Three-Year Suspension

Members	Three-Year Suspension	Disbar	Recused	Did Not Participate
Clark	X			
Gallipoli		X		
Boyer				X
Hoberman		X		
Joseph	X			
Petrou	X			
Rivera	X			
Singer	X			
Zmirich		X		
Total:	5	3	0	1

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