Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-442
District Docket No. VA-2018-0023E

In the Matter of

Audwin Frederick Levasseur

An Attorney at Law

Corrected Decision

Decided: September 21, 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 VA Ethics Committee (DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.4(b) (failure to communicate with the client) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).[1] On March 3, 2020, respondent filed a motion to vacate the default.

[1] Due to respondent's failure to file an answer to the formal ethics complaint, the DEC amended the complaint to charge a second violation of RPC 8.1(b).

For the reasons set forth below, we determine to deny respondent's motion to vacate the default and to impose a reprimand.

Respondent was admitted to the New Jersey bar in 2005. According to the Central Attorney Management System (CAMS), he is a partner with Harbatkin & Levasseur, which maintains an office for the practice of law at 50 Park Place, Newark, Essex County, New Jersey. Respondent, however, asserted that he is no longer affiliated with Harbatkin & Levasseur and that he resides in Jacksonville, Florida.

On March 16, 2020, the Court imposed a reprimand on respondent, in a default matter, for his violation of RPC 5.5(a)(1) (unauthorized practice of law due to failure to maintain professional liability insurance, as R. 1:21-1A(a)(3) requires) and RPC 8.1(b). In re Levasseur, 241 N.J. 357 (2020).

Service of process was proper. On April 29, 2019, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address of record. According to the USPS tracking system, the certified letter was delivered on May 3, 2019. The regular mail was not returned.

On June 10, 2019, the DEC sent a letter, by certified and regular mail, to respondent at the same law office address, informing him that, if he failed to file an answer to the complaint within five days of the date of the letter, 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 amended to charge a willful violation of RPC 8.1(b). On June 14, 2019, "C. Young" signed for the certified letter. The regular mail was not returned.

As of October 8, 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.

We now turn to the allegations of the complaint.

In February or March 2015, Flores Laureano, a resident of Toms River, New Jersey, retained respondent to represent him in a claim for property damage to his house, caused by the winds and floods of Hurricane Sandy. Beginning on October 26, 2015, Laureano made attempts to contact respondent for an update on his case, without success.

On a date not set forth in the complaint, respondent retained Jeansonne & Tschirn, LLC to represent Laureano in the Federal Emergency Management Agency's non-litigation Sandy Claim Review process, to obtain proceeds under Laureano's flood insurance policy. On May 16, 2016, Jeansonne & Tschirn recovered an unspecified sum of money for Laureano.

Thereafter, Laureano continued to seek information from respondent, via telephone calls, e-mails, and text messages, about his other property damage claim, to no avail. On June 1, 2016, respondent wrote a letter to "To Whom it

May Concern" regarding, among other things, Laureano's pending property damage claim. The letter provided a summary of the work performed investigating the claim and filing a state court action against the insurer.

On an unidentified date, Laureano authorized respondent to settle the property damage claim. Respondent informed Laureano that he would reply within two or three months. Thereafter, Laureano received no communications from respondent.

On June 14, 2018, Laureano filed a grievance against respondent. On August 7, 2018, the DEC investigator sent a copy of the grievance to respondent at his Harbatkin & Levasseur law office address of record, in Newark, and asked him to submit a written reply within ten days. Respondent did not comply with the request. On September 17, 2018, the DEC investigator sent a second request to respondent at the same address. Again, he did not comply.

On October 16, 2018, the DEC Secretary informed the investigator that all mail should be sent to respondent's home address, in Neptune, New Jersey. The next day, the investigator sent the prior letters, the grievance, and all supporting documents to respondent at the Neptune address. As of April 24, 2019, the date of the ethics complaint, respondent had not submitted a written reply to the grievance.

Based on the above facts, the complaint charged respondent with having

violated RPC 1.4(b) and RPC 8.1(b).

By letter dated February 20, 2020, respondent informed us that he had been unaware of the grievance, because he no longer resided at the address in Neptune, New Jersey where the grievance had been sent, but had relocated to Florida. Further, he claimed that he was unaware of the formal ethics complaint, because his former firm, Harbatkin & Levasseur, never forwarded it to him.

We note that the certification of the record states that the grievance was sent to respondent's office and home addresses, and that the formal ethics complaint was sent to his office address. Respondent identified neither the date that he left Harbatkin & Levasseur nor relocated from New Jersey to Florida.

In addition to the February 20, 2020 letter, on March 4, 2020, respondent submitted a motion to vacate the default. To vacate a default, a respondent must (1) offer a reasonable explanation for the failure to answer the ethics complaint and (2) assert a meritorious defense to the underlying charges.

Respondent asserted in his brief that, for personal reasons, he chose to refrain from providing details concerning his failure to consistently receive mail at his home address. He failed to request the issuance of a protective order or any other remedy to protect the confidentiality of information that he was reluctant to proffer. Therefore, his failure to set forth a detailed explanation for his failure to file an answer to the ethics complaint precludes a finding that his

explanation is reasonable.

New Jersey attorneys have an affirmative obligation to inform both the New Jersey Lawyers' Fund for Client Protection and the Office of Attorney Ethics of changes to their home and primary law office addresses, "either prior to such change or within thirty days thereafter." R. 1:20-1(c). Respondent clearly failed to comply with the Rule, because his CAMS record continues to reflect that he practices with Harbatkin & Levasseur in Newark.

Thus, although respondent may not have received the grievance or the complaint, because he no longer practiced with Harbatkin & Levasseur or resided at the Neptune address, and could not depend on the individuals working or residing at those locations to forward the mail to him, that is not a reasonable explanation, given his failure to comply with R. 1:20-1(c). Consequently, we find that respondent failed to satisfy the first prong of the two-prong test for vacating a default.

Respondent's brief in support of his motion provided a detailed description of (1) his agreement with the Voss Law Firm, a Texas-based law firm, to serve as local counsel for first-party property insurance cases involving New Jersey residents who suffered property damage due to Hurricane Sandy; (2) the Voss Law Firm's alleged failure to honor the terms of the agreement; and (3) respondent's claimed efforts to provide New Jersey clients, including

Laureano, with competent representation despite the Voss Law Firm's conduct. The brief barely addressed the merits of this ethics case, which includes charges of failure to communicate with the client and failure to reply to the grievance.

In respect of the RPC 1.4(b) charge, respondent stated only that he and his staff "advised [Laureano] of our inability to prosecute his claim despite his objections and insistence on causation." He did not elaborate on that claim.

Attached to the brief for our consideration are many pages of documentation from respondent's file in the Laureano matter. In our view, the documentation does not establish a meritorious defense to the RPC 1.4(b) charge. Specifically, we refer to the last two documents.

The first document is a May 31, 2016 e-mail from Laureano, presumably to either respondent or to someone at Harbatkin & Levasseur, regarding Laureano's continued attempts to learn the status of the pending property damage claim. Specifically, Laureano was, "[a]gain . . . trying to reach out to contact you to see how everything is rolling along." He asked whether the recipient was "going to proceed with the wind damage" or "sub it out to another lawyer." This e-mail supports the allegations of the complaint pertaining to respondent's failure to communicate with Laureano.

The second document is the June 1, 2016 "To Whom It May Concern" letter, mentioned in the complaint. Presumably, a copy of the letter, prepared on

Harbatkin & Levasseur letterhead and signed by respondent, was sent to Laureano via the reply to his e-mail.[2]

The letter appears to be written to subsequent counsel, even though, based on Laureano's e-mail, the decision to transfer the case to another attorney had not yet been made. In pertinent part, respondent's letter stated that Harbatkin & Levasseur had sent a formal written demand to counsel for the insurer involved in the pending property damage claim, and that the firm was awaiting a response.

Based on the allegations of the ethics complaint, a settlement offer must have been made, because Laureano had authorized respondent to settle the claim. Further, the complaint alleged that respondent had informed Laureano that he would contact him, but he never did. In the absence of any evidence that respondent's representation of Laureano had been terminated or that respondent had reached out to Laureano, respondent failed to satisfy the second prong of the test in respect of the RPC 1.4(b) charge.[3]

To the extent that respondent's meritorious defense to the RPC 8.1(b) charge is the same as the reasonable explanation for having failed to file an answer to the complaint, respondent failed to satisfy that prong, as well.

For these reasons, we deny respondent's motion to vacate the default.

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[2] The e-mail does not reflect the date it was sent to Laureano.

[3] We note, too, that respondent failed to submit a proposed answer to the ethics complaint, which could have shed further light on any meritorious defense to the charges.

The facts alleged in the formal ethics complaint support 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).

Respondent's failure to reply to Laureano's multiple telephone calls, e-mails, and texts violated RPC 1.4(b). He further violated the Rule by failing to inform Laureano of the insurer's reply, if any, to the settlement demand, even after stating that he would reply to Laureano within two or three months.

R. 1:20-3(g)(3) requires a lawyer to cooperate in a disciplinary investigation and to reply in writing within ten days of receipt of a request for information. RPC 8.1(b), in turn, prohibits a lawyer from knowingly failing to reply to a lawful demand for information from a disciplinary authority. By ignoring the DEC's requests for a written reply to the grievance, respondent violated RPC 8.1(b). Respondent committed an additional violation of RPC 8.1(b) by failing to file an answer to the ethics complaint.

In sum, respondent violated RPC 1.4(b) and RPC 8.1(b) (two instances). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Ordinarily, an admonition or a reprimand is imposed for misconduct similar to respondent's, absent aggravating factors. See, e.g., In the Matter of

Carl G. Zoecklein, DRB 16-167 (September 22, 2016) (admonition for attorney who ignored three letters from a district ethics committee investigator seeking information about a grievance; he also lacked diligence in the representation of his client and failed to communicate with him; no prior discipline); In re Kaigh, 231 N.J. 7 (2017) (default; attorney reprimanded for failing to submit a written reply to the grievance; he also lacked diligence and failed to communicate with a client; no prior discipline); and In re Saluti, 214 N.J. 6 (2013) (reprimand for attorney who failed to reply to three letters from the district ethics committee requesting a reply to a grievance; two prior admonitions).

We must consider, however, that respondent defaulted in this matter, which calls for enhanced discipline. "[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). We, thus, enhance what could have been an admonition to a reprimand.

In respect of respondent's disciplinary history, we do not consider the recently imposed reprimand in aggravation of the conduct in this case. Both the investigation into respondent's misconduct in that matter and the imposition of the 2020 reprimand post-dated the underlying conduct in this case. Thus, it cannot be said that respondent should have had a heightened awareness of his

obligations under the RPCs or that he failed to learn from his mistakes, which would have warranted progressive, enhanced discipline.

Therefore, we determine to deny respondent's motion to vacate the default and impose a reprimand for his violation of RPC 1.4(b) and RPC 8.1(b).

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

Members	Reprimand	Recused	Did Not Participate
Clark	X		
Gallipoli	X		
Boyer	X		
Hoberman	X		
Joseph	X		
Petrou	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	9	0	0

Ellen A. Brodsky
Chief Counsel