Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-012
District Docket No. XIV-2019-0312E

In the Matter of	:
Joseph Vaccaro	:
An Attorney at Law	:

Decision

Argued: June 18, 2020

Decided: December 9, 2020

Hillary K. Horton appeared in behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a), following a March 15, 2018 order of the Disciplinary Board of the Supreme Court of Pennsylvania (Pennsylvania Disciplinary Board) imposing a public reprimand

on respondent. The OAE asserted that respondent was found guilty of violating the equivalents of New Jersey RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence), RPC 3.3(a)(1) (false statement of material fact or law to a tribunal); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The OAE also noted, but did not address, respondent's violation of the equivalent of New Jersey RPC 8.1(b) – Pa.R.D.E. 203(b)(7) (failure by a respondent-attorney without good cause to reply to Disciplinary Counsel's request or supplemental request under Disciplinary Board Rules § 87.7(b) for a statement of the respondent-attorney's position, shall be grounds for discipline).

For the reasons set forth below, we determine to grant the OAE's motion and to impose a reprimand.

Respondent earned admission to the New Jersey and Pennsylvania bars in 1999. At the relevant times, he practiced law in Philadelphia, Pennsylvania.

On August 5, 2020, respondent received a censure, by consent, for his gross neglect; lack of diligence; failure to communicate with the client (RPC 1.4(b)); failure to expedite litigation (RPC 3.2); knowingly disobeying an obligation under the rules of a tribunal (RPC 3.4(c)); failure to make reasonably diligent efforts to comply with legally proper discovery requests by an opposing

party (RPC 3.4(d)); and conduct prejudicial to the administration of justice. In re Vaccaro, 243 N.J. 286 (2020).

The facts of this matter are as follows. In September 2016, the grievant, HA, retained respondent to defend her minor son, EC, in a juvenile delinquency matter in the Court of Common Pleas of Philadelphia County. Both HA and EC are from Honduras, and neither fluently spoke nor completely understood the English language. When HA retained respondent, Stephanie Lubert, Esq., of the Hebrew Immigrant Aid Society (HIAS), a non-profit legal service agency not authorized to represent clients in non-immigration matters, was concurrently representing EC in a pending immigration matter.

On September 6, 2016, respondent provided HA with a retainer agreement that required a flat, $650 fee for "all legal services performed up to and including the Intake Meeting scheduled for Wednesday, September 7, 2016 in Media, PA," and $250 per hour for any "other legal services not listed." The agreement further provided that a new fee agreement would be executed if HA retained respondent to perform the referenced "other legal services not listed."

That same date, HA signed a document authorizing the release of EC's medical records to respondent. By letter dated September 8, 2016, respondent informed Lubert that HA had retained him to represent EC in the juvenile delinquency matter, enclosed the executed medical authorization, and asked

Lubert to forward to him a complete copy of EC's immigration file. Lubert then left respondent a voice message, seeking to discuss his request and to limit the scope of the information he sought, and requesting a return call. Respondent received Lubert's message, but did not return her call.

On February 2, 2017, following a juvenile delinquency hearing, EC was detained and transferred to a juvenile facility. As a result, EC missed his scheduled counseling session with a non-profit organization that provided pro bono mental health support to immigrants. In a February 7, 2017 e-mail, Lubert sought information from respondent about EC's detention, having learned of it from HA. Although respondent received Lubert's e-mail, he failed to reply.

On February 16, 2017, Lubert called respondent, but he refused to disclose EC's detention location until she forwarded her immigration file to him, as he had requested in his September 8, 2016 letter. Respondent informed Lubert that EC had been detained for "not cooperating" and "refusing to speak English," and stated that he hoped the detention would force EC to have a "come to Jesus moment." Lubert immediately sent respondent, via e-mail, copies of three documents from her immigration file, and informed him that, since September 2016, EC had been receiving counseling services in connection with his immigration matter.

On February 21, 2017, EC appeared, before the Honorable Lori A. Dumas, at another juvenile delinquency hearing, which Lubert and the director of the pro bono counseling service also attended. During the hearing, Judge Dumas remarked that respondent had not notified the court of Lubert's concurrent representation or of EC's history of counseling. Respondent misrepresented to Judge Dumas that, prior to that date's hearing, he also had been unaware of Lubert's representation or the ongoing counseling. Respondent struggled to communicate with EC during the hearing and sought help from Lubert for Spanish translation.

Judge Dumas instructed respondent to file a motion to transfer EC from detention for his March 30, 2017 immigration hearing. Outside the courtroom, respondent asked Lubert to draft the motion, even though he was aware that she practiced only immigration law. On or about February 23, 2017, HA terminated respondent's representation of EC.

The Pennsylvania Disciplinary Board determined that respondent's statements to Judge Dumas were misrepresentations, because respondent had been aware, since September 2016, of Lubert's concurrent representation of EC, and because Lubert had informed him, on February 16, 2017, of EC's counseling history. Moreover, respondent failed to reply, within thirty days, to the

Pennsylvania Office of Disciplinary Counsel's October 12, 2017 letter requesting his reply to HA's ethics complaint.

On March 15, 2018, the Pennsylvania Disciplinary Board imposed a public reprimand on respondent for his misconduct. Respondent failed to notify the OAE of his Pennsylvania discipline, as R. 1:20-13 requires.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3). In Pennsylvania, the standard of proof in attorney disciplinary matters is that the "[e]vidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof . . . is clear and satisfactory." Office of Disciplinary Counsel v. Kissel, 442 A. 2d 217 (Pa. 1982) (citing In re Berland, 328 A.2d 471 (Pa. 1974)). Moreover, "[t]he conduct may be proven solely by circumstantial evidence." Office of Disciplinary Counsel v. Grigsby, 425 A. 2d 730 (Pa. 1981) (citations omitted).

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure following in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E). We, thus, determine to impose a reprimand, the same quantum of discipline imposed in Pennsylvania.

The facts contained in the record clearly and convincingly support the finding that respondent violated the equivalents of New Jersey RPC 1.3; RPC 3.3(a)(1); RPC 8.1(b); and RPC 8.4(c). We find that the record lacks sufficient evidence, however, to support the RPC 1.1(a) and RPC 8.4(d) charges.

Specifically, respondent violated RPC 1.3 by failing to professionally coordinate, with Lubert, EC's dual representation in his immigration and juvenile delinquency matters; by failing to respond to Lubert's proper inquiries regarding EC's delinquency matter; by refusing to provide Lubert with EC's detention location unless his demands for a copy of her complete file were met; and by delegating to Lubert, whom he knew was an immigration specialist, Judge Dumas' directive that he file a motion for EC's transport between hearings. Moreover, respondent violated RPC 3.3(a)(1) and RPC 8.4(c) by blatantly lying to Judge Dumas, during a court proceeding, that he had no knowledge of Lubert's representation of EC in the immigration matter, or of EC's counseling services. Finally, he violated RPC 8.1(b) by failing to cooperate with Pennsylvania's disciplinary proceedings against him.

We dismiss the RPC 1.1(a) charge because, although respondent failed to interact professionally with Lubert, lacked diligence in his representation of EC, and made misrepresentations to the court, the record contains insufficient evidence for us to conclude that his representation of EC rose to the level of gross neglect. In addition, we determine to dismiss the RPC 8.4(d) charge, which was grounded in respondent's misrepresentations to Judge Dumas. Because the record is bereft of evidence that respondent's misrepresentations unduly delayed

or prejudiced court operations, there is insufficient evidence to support this allegation.

In sum, we find that respondent violated the equivalent of New Jersey RPC 1.3; RPC 3.3(a)(1); RPC 8.1(b); and RPC 8.4(c). We determine to dismiss the RPC 1.1(a) and RPC 8.4(d) charges. The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

The OAE recommended a reprimand, relying on In re Manns, 171 N.J. 145 (2002) (reprimand for attorney who, in a certification in support of a motion to reinstate a complaint, misled the court as to the date the attorney learned that the complaint had been dismissed, as well as for lack of diligence, failure to expedite litigation, and failure to communicate with the client; although the attorney had received a prior reprimand, his conduct in both matters had occurred during the same time frame and the misconduct in the second matter may have resulted from his poor office procedures) and In re Hummel, 204 N.J. 32 (2010) (censure in a default matter for gross neglect, lack of diligence, failure to communicate with the client, and misrepresentation in a motion filed with the court, a violation of RPC 3.3(a); no prior discipline). Here, the OAE contended that respondent's gross neglect, lack of diligence, and misrepresentation to Judge Dumas could warrant a censure, but because his misrepresentation

ultimately did not prejudice EC, a reprimand was the appropriate quantum of discipline.

By letter dated January 29, 2020, respondent informed us that he opposed neither the OAE's motion nor its recommended sanction.

The following precedent provides additional guidance regarding the appropriate sanction. Generally, the discipline imposed on an attorney who makes misrepresentations to a court or exhibits a lack of candor to a tribunal, or both, ranges from a reprimand to a long-term suspension. See, e.g., In re Marraccini, 221 N.J. 487 (2015) (reprimand imposed on attorney who attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications that had been pre-signed by the manager, who had since died; the attorney was unaware that the manager had died and, upon learning that information, withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); in mitigation, we found that the attorney's actions were motivated by a misguided attempt at efficiency, rather than by dishonesty or personal gain); In re Schiff, 217 N.J. 524 (2014) (reprimand for attorney who filed inaccurate certifications of proof in connection with default judgments; specifically, at the attorney's direction, his staff prepared signed, but undated, certifications of proof in anticipation of defaults; thereafter, when staff applied for default judgments, at the attorney's direction, they completed the

certifications, added factual information, and stamped the date; although the attorney made sure that all credits and debits reflected in the certification were accurate, the signatory did not certify to the changes, after signing, a practice of which the attorney was aware and directed; the attorney was found guilty of lack of candor to a tribunal and failure to supervise nonlawyer employees, in addition to RPC 8.4(a) and RPC 8.4(c)); In re McLaughlin, 179 N.J. 314 (2004) (reprimand imposed on attorney, who had been required by the New Jersey Board of Bar Examiners to submit quarterly certifications attesting to his abstinence from alcohol, but falsely reported that he had been alcohol-free during a period within which he had been convicted of driving while intoxicated, a violation of RPC 8.4(c); in mitigation, after the false certification was submitted, the attorney sought the advice of counsel, came forward, and admitted his transgressions); In re Duke, 207 N.J. 37 (2011) (attorney received a censure for failure to disclose his New York disbarment on a form filed with the Board of Immigration Appeals, a violation of RPC 3.3(a)(5); the attorney also failed to adequately communicate with the client and was guilty of recordkeeping deficiencies; prior reprimand; the attorney's contrition and efforts at rehabilitation justified only a censure); In re Monahan, 201 N.J. 2 (2010) (attorney censured for submitting two certifications to a federal district court in support of a motion to extend the time within which to file an appeal;

the attorney misrepresented that, when the appeal was due to be filed, he was seriously ill and confined to his home on bed rest and, therefore, either unable to work or unable to prepare and file the appeal, a violation of RPC 3.3(a)(1); the attorney also practiced law while ineligible); In re Clayman, 186 N.J. 73 (2006) (censure imposed on attorney who misrepresented the financial condition of a bankruptcy client in filings with the bankruptcy court to conceal information detrimental to the client's Chapter 13 bankruptcy petition; in mitigation, we observed that, although the attorney had made a number of misrepresentations in the petition, he was one of the first attorneys to be reported for his misconduct by a new Chapter 13 trustee who had elected to enforce the strict requirement of the bankruptcy rules, rather than permit what had been the "common practice" of bankruptcy attorneys under the previous trustee; violations of RPC 3.3(a)(1), (2), and (5); RPC 4.1(a)(1) and (2); and RPC 8.4(c) and (d); in mitigation, the attorney also had an unblemished disciplinary record, was not motivated by personal gain, and did not act out of venality); In re Trustan, 202 N.J. 4 (2010) (three-month suspension for attorney who, among other things, submitted to the court a client's case information statement that falsely asserted that the client owned a home, and drafted a false certification for the client, which was submitted to the court in a domestic violence trial; violations of RPC 3.3(a)(1) and (4); other violations included RPC 1.8(a) and (e), RPC 1.9(c), and RPC

8.4(a), (c), and (d)); In re Perez, 193 N.J. 483 (2008) (on motion for final discipline, three-month suspension for attorney guilty of false swearing; the attorney, then the Jersey City Chief Municipal Prosecutor, lied under oath at a domestic violence hearing that he had not asked the municipal prosecutor to request a bail increase for the person charged with assaulting him; violations of N.J.S.A. 2C:28-2a and RPC 8.4(b)); In re Stuart, 192 N.J. 441 (2007) (three-month suspension for assistant district attorney in New York who, during the prosecution of a homicide case, misrepresented to the court that he did not know the whereabouts of a witness; however, the attorney had made contact with the witness four days earlier; violations of RPC 8.4(c) and (d); compelling mitigation justified only a three-month suspension); In re Forrest, 158 N.J. 428 (1999) (six-month suspension imposed on attorney who, in connection with a personal injury action involving injured spouses, failed to disclose the death of one of his clients to the court, to his adversary, and to an arbitrator, and advised the surviving spouse not to voluntarily reveal the death; violation of RPC 3.3(a)(5), RPC 3.4(a), and RPC 8.4(c); the attorney's motive was to obtain a personal injury settlement); In re Telson, 138 N.J. 47 (1994) (after an attorney concealed a judge's docket entry dismissing his client's divorce complaint, the attorney obtained a divorce judgment from another judge without disclosing that the first judge had denied the request; the attorney then denied his conduct to a

third judge, only to admit to this judge one week later that he had lied because he was afraid; the attorney was suspended for six months; violation of RPC 3.3(a)(1) and (5) and RPC 8.4(c) and (d)); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve; violation of RPC 3.3(a)(1) and (2), RPC 3.5(b), and RPC 8.4(c) and (d); two prior private reprimands [now admonitions]); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who had been involved in an automobile accident and then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing; violations of RPC 3.3(a)(4), RPC 3.4(f), and RPC 8.4(b)-(d)).

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).

Here, New Jersey disciplinary precedent supports a reprimand, the identical discipline imposed in Pennsylvania. In aggravation, respondent failed to comply with his professional obligation to promptly report his discipline to the OAE. There is no mitigation to consider.

On balance, we determine to grant the OAE's motion and to impose a reprimand.

Member Joseph voted to impose a censure, concluding that the totality of respondent's misconduct, including his blatant lies to Judge Dumas in open court, provided evidence sufficient to sustain the additional charged violations of RPC 1.1(a) and RPC 8.4(d).

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 Joseph Vaccaro
Docket No. DRB 20-012

Argued: June 18, 2020

Decided: December 9, 2020

Disposition: Reprimand

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

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