

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-061
District Docket No. VA-2018-0022E

In the Matter of
Darryl M. Saunders
An Attorney at Law

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Decision

Decided: February 3, 2021

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 violations of RPC 1.1(a) (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with a client); RPC 1.4(c) (failure to explain a

matter to the extent reasonably necessary to permit the client to make informed decisions); and RPC 8.1(b) (two instances – failure to cooperate with disciplinary authorities).¹

For the reasons set forth below, we determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1990. At the relevant times, he maintained an office for the practice of law in Elizabeth, New Jersey. Respondent has no disciplinary history.

Effective April 2, 2020, the Court temporarily suspended respondent from the practice of law for his failure to comply with a fee arbitration determination. In re Saunders, 241 N.J. 222 (2020).

Service of process was proper. On April 1, 2019, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address of record. The certified mail receipt was returned, reflecting a delivery date of April 9, 2019, and bearing an illegible signature. The regular mail was not returned.

On June 10, 2019, the DEC sent a letter, by certified and regular mail, to respondent's office address, informing him that, unless he filed a verified answer

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

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). According to the United States Postal Service, the certified mail was delivered. The regular mailing was not returned.

At a point not identified in the record, the DEC learned that there was some issue with its ability to confirm whether respondent had been served the formal ethics complaint. The DEC's certification does not offer any further explanation; however, respondent recently had moved to a new office address. Thus, to ensure proper service, on January 7, 2020, the DEC sent a copy of the formal ethics complaint and its two prior letters, by certified and regular mail, to respondent's new office address in Elizabeth, New Jersey. The certified mail receipt was returned, reflecting a delivery date of January 8, 2020, signed by the office "receptionist." Additionally, although the DEC sent the formal ethics complaint by regular mail, the certification does not specify whether the regular mail was returned.

The DEC's January 7, 2020 letter granted respondent an additional twenty-one days to respond to the formal ethics complaint and informed him that, unless he filed a verified answer to the complaint by the designated

deadline, 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).

As of February 3, 2020, 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.

On March 21, 2016, the grievant, Edmour Armand Giguere, retained respondent to represent his construction company, Universal Sales Consultants (USC), in two potential litigation matters. Thereafter, on April 8, 2016, respondent and Giguere executed a superseding retainer agreement for the same representation. The negotiated fee was \$10,000; Giguere made an initial payment of \$1,500 and later transferred a 1997 Jaguar to respondent. The retainer agreement provided that respondent would represent USC in any potential criminal investigation, or criminal complaint, arising from work it had performed for Viola Moore in Bayonne, New Jersey, and that he would defend any civil action for work that USC had performed for Erminio and Denise Liotta in Lincroft, New Jersey.

In May 2016, despite the purported scope of the retainer agreement, respondent filed a three-count civil complaint against Moore, in behalf of USC, alleging breach of contract, fraud, and other causes of action based on work USC had performed at Moore's property. The complaint was captioned Universal Renovation Consultants, A Division of Universal Sales Consultants, Inc. v. Viola Moore, in the Superior Court of New Jersey, Civil Division, Hudson County, and the case was assigned to the Honorable Joseph A. Turula, J.S.C.. On a date not set forth in the record, Moore filed a third-party complaint naming Giguere, individually, as a third-party defendant.

On June 6, 2016, the Liottas filed a multi-count complaint against both USC and Giguere, individually, arising from USC's work on their property, captioned as Erminio Liotta and Denise Liotta v. Universal Sales Consultants, Inc., et al., in the Superior Court of New Jersey, Civil Division, Monmouth County, before the Honorable Marc C. Lemieux, J.S.C. Giguere, however, was unaware that he had been named individually in the Liotta matter. Instead, he believed that the Liottas had sued him solely in respect of his role as an employee of USC, and that respondent represented him in that capacity. On August 30, 2016, in behalf of USC, respondent filed an answer and counterclaim against the Liottas.

On September 15, 2016, the Liottas moved for partial summary judgment on several counts, against both USC and Giguere. On October 28, 2016, the trial court granted the motion. Three days later, on October 31, 2016, USC filed for Chapter 7 bankruptcy protection in the United States Bankruptcy Court for the District of New Jersey.

In early December 2016, Giguere and respondent exchanged a series of e-mails regarding the Liotta matter, which included a proposed consent judgment of \$200,000 against Giguere, in his individual capacity. On December 6 and 7, 2016, Giguere sent the draft consent judgment to USC's bankruptcy counsel, Leonard Singer, Esq. Singer explained to Giguere that he had been named as an individual defendant in the Liotta matter, and that respondent represented only USC.

By letter dated December 27, 2016, the bankruptcy trustee, Steven P. Katzman, requested a stay of both the Moore and Liotta matters. Thereafter, the matters were stayed as to USC; the litigation continued against Giguere. The record is unclear as to when the stay was lifted.

On December 29 and 30, 2016, Giguere and respondent exchanged another series of e-mails in which Giguere accused respondent of failing to file an appeal of the October 28, 2016 order granting summary judgment in favor of

the Liottas. On January 4, 2017, respondent replied that he had not been retained for such an appeal. On January 6, 2017, Giguere disputed respondent's claim and asserted that respondent had promised to file an appeal by December 12, 2016.

In that exchange, Giguere also complained that respondent had failed to return his telephone calls and e-mails, accused him of malpractice, and sought to terminate respondent's representation. Despite this exchange, respondent continued to represent Giguere in both the Liotta and Moore matters, and respondent and Giguere continued to regularly correspond via e-mail.

On May 19, 2017, respondent and Giguere executed a new retainer agreement, in which respondent agreed to represent Giguere, individually, in both the Moore and Liotta matters, for a flat fee of \$3,500. Giguere began to pay that fee in \$200 installments but, on or about June 2017, he ceased making any payments after respondent stopped returning his telephone calls.

On August 4, 2017, the Liottas filed a second motion for partial summary judgment. Respondent neither informed Giguere that the Liottas had filed this motion nor opposed it. On September 1, 2017, Judge Lemieux granted the motion, and entered final judgment against Giguere for \$217,388.68. Respondent sent Giguere a copy of the final judgment four months later, on

December 6, 2017.

On September 17, 2017, the Liottas filed a motion for fees and costs. Again, respondent failed to oppose this motion. The record is unclear whether respondent informed Giguere about the motion. On October 13, 2017, Judge Lemieux granted the motion, awarding the Liottas attorneys' fees of \$48,876.30, plus costs of \$1,069.90, against USC and Giguere.

In the Moore matter, on a date not identified in the record, Moore moved to strike Giguere's third-party defendant pleadings for his failure to comply with discovery obligations. Respondent neither timely informed Giguere of this motion nor opposed it. On November 17, 2017, Judge Turula granted Moore's motion striking Giguere's third-party defendant pleadings with prejudice.

By letter dated June 7, 2018, the DEC investigator forwarded a copy of Giguere's grievance to respondent, by certified and regular mail, and directed respondent to provide a written reply and to produce his original files in the matters at issue, within ten days. Respondent failed to reply to the DEC investigator's letter.

By letter dated August 20, 2018, the DEC investigator sent respondent a second letter, by certified and regular mail, noting that the DEC had not received a reply to its prior letter, and informing him that, if a reply was not received by

August 20, 2018, the DEC investigator would complete the investigation and accept Giguere's allegations as true. This second letter was refused, and respondent did not reply. On or about August 20, 2018, the DEC investigator left a voicemail for respondent, and requested that he provide a response, but, again, respondent failed to reply.

Based on the above facts, the complaint alleged that respondent violated RPC 1.1(a); RPC 1.1(b); RPC 1.3; RPC 1.4(b); and RPC 1.4(c), because he failed to inform Giguere that he had been named as an individual defendant in the Liotta matter; failed to keep Giguere reasonably informed about the status of the matters; failed to respond to Giguere's numerous requests for information; and failed to oppose motions in both the Liotta and Moore matters. Further, the DEC alleged that respondent twice violated RPC 8.1(b) by failing to reply to the DEC investigator's multiple inquiries regarding Giguere's grievance and failing to file an answer to the complaint.

We find that the facts recited in the complaint support most of 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).

Notwithstanding that Rule, each charge in the complaint must be supported by sufficient facts for us to determine that unethical conduct has occurred.

In March 2016, Giguere retained respondent to represent USC in two potential litigation matters. Giguere believed that respondent also represented him in his individual capacity. Respondent, however, failed to adequately counsel Giguere regarding the scope of the representation, or to inform him that he had been sued individually in the Liotta matter. Giguere learned of these facts from Singer, USC's bankruptcy attorney. Additionally, following the Liottas' first partial motion for summary judgment, respondent neglected to file an appeal, even though he had informed Giguere he would do so. Giguere also asserted that respondent was often difficult to reach and unresponsive to his attempts to communicate by telephone and e-mail. The record contains multiple communications between respondent and Giguere; however, at a critical time, when dispositive motions were filed in both the Liotta and Moore matters, respondent failed to adequately communicate with Giguere.

Moreover, in the Liotta matter, respondent failed to oppose a motion for summary judgment, or to inform Giguere of its filing, or of the outcome. Additionally, respondent failed to oppose the Liottas' motion for attorneys' fees

and costs. In the Moore matter, respondent failed to oppose Moore's motion to strike Giguere's third-party pleadings, resulting in the striking of those pleadings with prejudice. Finally, after Giguere submitted the underlying ethics grievance in this matter, respondent failed to reply to the DEC investigator's repeated attempts to contact him regarding the grievance, and, thereafter, failed to file an answer to the formal ethics complaint. Respondent, thus, violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.4(c), and RPC 8.1(b) (two instances).

We determine to dismiss the RPC 1.1(b) charge for lack of clear and convincing evidence. It is well-settled that, to find a pattern of neglect, at least three instances of neglect, in three distinct matters, are required. In re Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). Here, although the record is replete with numerous examples of respondent's neglect, the neglect is limited to the Liotta and Moore matters. Two client matters, thus, are insufficient to support a finding that respondent engaged in a pattern of neglect.

In sum, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.4(c); and RPC 8.1(b) (two instances). We dismiss the RPC 1.1(b) charge. The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, the presence of additional violations, and the seriousness of the attorney's disciplinary history. See, e.g., In the Matter of Esther Maria Alvarez, DRB 19-190 (September 20, 2019) (admonition for attorney who was retained to obtain a divorce for her client but, for the next nine months, failed to take any steps to pursue the matter, and failed to reply to all but one of the client's requests for information about the status of her case, violations of RPC 1.1(a) and RPC 1.4(b)); in another matter, the attorney agreed to seek a default judgment, but waited more than eighteen months to file the necessary papers with the court; although the attorney obtained a default judgment, the court later vacated it due to the passage of time, which precluded a determination of the timing of the damage to the property, violations of RPC 1.1(a) and RPC 1.3); In the Matter of Michael J. Pocchio, DRB 18-192 (October 1, 2018) (admonition for attorney who filed a divorce complaint and permitted it to be dismissed for failure to prosecute the action; he also failed to seek reinstatement of the complaint, and failed to communicate with the client; violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 3.2); In re Burro, 235

N.J. 413 (2018) (reprimand for attorney who grossly neglected and lacked diligence in an estate matter for ten years and failed to file New Jersey Inheritance Tax returns, resulting in \$40,000 in accrued interest and a lien on property belonging to the executrix, in violation of RPC 1.1(a) and RPC 1.3; the attorney also failed to keep the client reasonably informed about events in the case (RPC 1.4(b)); return the client file upon termination of the representation (RPC 1.16(d)); and cooperate with the ethics investigation (RPC 8.1(b)); in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand; in mitigation, the attorney suffered a stroke that forced him to cease practicing law and expressed his remorse); and In re Abasolo, 235 N.J. 326 (2018) (reprimand for attorney who grossly neglected and lacked diligence in a slip-and-fall case for two years after filing the complaint; after successfully restoring the matter to the active trial list, the attorney failed to pay a \$300 filing fee, permitting the defendants' order of dismissal with prejudice to stand, in violation of RPC 1.1(a) and RPC 1.3; in addition, for four years, the attorney failed to keep the client reasonably informed about the status of the case, in violation of RPC 1.4(b)).

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, formal 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)).

Pursuant to disciplinary precedent, in light of the significant financial harm caused to Giguere, the baseline level of discipline for respondent's misconduct is a reprimand. To craft the appropriate discipline, however, we must also consider aggravating and mitigating factors.

In aggravation, respondent defaulted in this matter, despite the DEC's repeated efforts to contact him. "A respondent's default or failure to cooperate with the investigative authorities operates 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). This factor alone warrants the enhancement of the appropriate sanction from a reprimand to a censure. In mitigation, respondent has an unblemished disciplinary history in thirty years at the bar.

On balance, considering the significant harm caused to the client and respondent’s repeated failures to cooperate with disciplinary authorities, the aggravation clearly outweighs the mitigation in this case. Accordingly, we determine that a censure is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Member Joseph voted to impose an admonition. Chair Clark and Member Boyer voted to impose a reprimand. Members Petrou and Zmirich voted to impose a three-month 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

A handwritten signature in black ink, appearing to read "Johanna Barba Jones". The signature is fluid and cursive, with the first name being the most prominent.

By: _____
Johanna Barba Jones
Chief Counsel

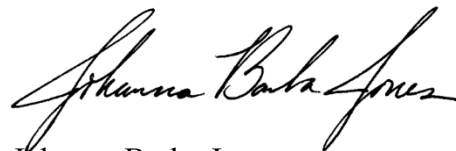
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Darryl M. Saunders
Docket No. DRB 20-061

Decided: February 3, 2021

Disposition: Censure

| <i>Members</i> | Censure | Reprimand | Admonition | Three-Month Suspension | Recused | Did Not Participate |
|----------------|---------|-----------|------------|---------------------------|---------|------------------------|
| Clark | | X | | | | |
| Gallipoli | X | | | | | |
| Boyer | | X | | | | |
| Hoberman | X | | | | | |
| Joseph | | | X | | | |
| Petrou | | | | X | | |
| Rivera | X | | | | | |
| Singer | X | | | | | |
| Zmirich | | | | X | | |
| Total: | 4 | 2 | 1 | 2 | 0 | 0 |



Johanna Barba Jones
Chief Counsel