Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-114
District Docket No. XIV-2019-0270E

In the Matter of	:
Stuart Thomas Cottee	:
An Attorney at Law	:

Decision

Argued: October 15, 2020

Decided: March 1, 2021

Colleen L. Burden appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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). The motion followed respondent's public reprimand, with conditions, issued on February 28, 2019 and administered on April 18, 2019 by the Disciplinary Board of the Supreme Court of Pennsylvania.

The OAE asserted that respondent was found guilty of violations of the equivalent of New Jersey RPC 1.1(a) (gross neglect); RPC 1.4(b) and (c) (failure to communicate with the client); RPC 1.5(b) (failure to set forth in writing the basis or rate of the fee); RPC 1.8(h)(1) and (h)(2) (a lawyer shall not settle a claim or potential claim with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel); RPC 5.3(b), (c)(1), and (c)(2) (a lawyer shall be responsible for conduct of a nonlawyer employee that would be a violation of the Rules of Professional Conduct if the lawyer orders or ratifies the conduct); RPC 8.1(a) (false statement to disciplinary authorities); RPC 8.4(a) (knowingly assist or induce another to violate the RPCs, or do so through the acts of another); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons set forth below, we determine to grant the OAE's motion and impose a three-month suspension.

Respondent earned admission to the New Jersey bar in 1999 and to the Pennsylvania bar in 2002. At all relevant times, he maintained an office for the practice of law in Philadelphia, Pennsylvania.

Respondent has no prior discipline in New Jersey.

This case arises from respondent's representation of two clients in their personal injury matters, wherein he sued the wrong defendant; misidentified the address where his clients' injuries occurred; failed to preserve his clients' claims before the statute of limitations expired; and then deceptively induced the clients to settle and release any potential malpractice claims they had against him.

Specifically, Sharon Crump and Yeves Green alleged that, on July 22, 2014, they were both injured at a property owned by James Alexander. In June 2016, respondent undertook the representation of both Crump and Green in connection with their personal injury claims. Although respondent previously had not represented either Crump or Green, he failed to communicate to them, in writing, the basis or rate of his fee.

On June 9, 2016, respondent filed suit in the Court of Common Pleas of Philadelphia County on behalf of both Crump and Green. In the complaint, he incorrectly alleged that their injuries had occurred at their home address, rather than at Alexander's address. On July 7, 2016, respondent filed a praecipe to settle, discontinue, and end the civil action, because he erroneously believed that he had sued the wrong defendant.[1]

On July 21, 2016, the day before the statute of limitations was to expire, respondent filed another civil action in behalf of Crump and Green, this time

[1] A praecipe is similar to a motion.

against the wrong defendant, SPMB Properties (SPMB), which owned the property where Crump and Green lived. On or about September 22, 2016, SPMB served respondent with Defendant's First Request for Admissions for both Crump and Green (the Requests for Admissions). Respondent failed to reply to the Requests for Admissions within the time allotted.

On March 9, 2017, the trial court ordered that, unless respondent answered the Requests for Admissions within twenty days, the court would deem the requests admitted. Respondent again failed to answer the Requests for Admissions.

On April 11, 2017, SPMB filed a motion for summary judgment, arguing that respondent's failure to reply to the Requests for Admissions required the finding that it was liable to neither Crump nor Green. On June 5, 2017, presumably while that motion was pending, respondent filed another praecipe to settle, discontinue, or end the civil action against SPMB.

By letter dated June 13, 2017, Crump and Green informed respondent that he had sued the wrong defendant, and that they had not sustained any injuries at a property owned by SPMB. Respondent received his clients' letter but failed to reply. Almost a year earlier, on July 22, 2016, the statute of limitation for his clients' claims expired, because respondent failed to re-institute a lawsuit

against Alexander. Respondent, thus, wholly failed to prosecute any personal injury claim in behalf of either Crump or Green.

During the course of the representation, Crump and Green made multiple attempts to contact respondent regarding the status of their cases, but he failed to inform them of the status of the matters, or that their claims ultimately had been barred by the statute of limitations. To conceal his misconduct, respondent directed his investigator, Wayne Oliver, to falsely inform Crump and Green that respondent had settled the personal injury matter against Alexander, and that Crump and Green each would receive $4,000.

At a July 1, 2017 meeting, Oliver, in respondent's behalf, obtained executed releases of potential malpractice claims against respondent from Crump and Green. The $4,000 for each client was to be paid by future settlement funds in respondent's other matters. Despite the execution of these releases, respondent failed to promptly pay the entirety of the promised funds to either Crump or Green. Instead, on or about July 1, 2017, respondent paid $975 to Crump and $2,100 to Green.

Neither respondent nor Oliver advised Crump and Green that they should consult independent counsel regarding the proposed settlement or the potential for a malpractice claim against respondent. Respondent further failed to provide Crump or Green with a distribution sheet for the purported settlement.

By letter dated September 13, 2017, Crump and Green requested a distribution letter and a copy of their files. Although respondent received this letter, he failed to reply or to provide their files.

On March 13, 2018, the Office of Disciplinary Counsel of the Supreme Court of Pennsylvania (the ODC) sent respondent a DB-7 Request for Statement of Respondent's Position (the Request), which set forth allegations regarding his misconduct in the representation of Crump and Green, and directed him to reply to the allegations. The ODC further directed respondent to provide copies of the entire case files at issue, the purported malpractice releases, and the front and back of all checks that he had written to both Crump and Green. On April 17, 2018, respondent summarily denied all allegations set forth in the Request, but failed to produce the requested files or documents.

By letter dated August 3, 2018, the ODC followed up on the Request and respondent's summary denial of the allegations of misconduct. In this letter, the ODC memorialized the status of its investigation, including respondent's November 8, 2017 admissions to ODC disciplinary counsel that he had not actually settled his clients' personal injury matters; that he had filed the lawsuit against Alexander "right on the statute," but that the Delaware County Sherriff had told him he had the wrong address; that he had subsequently sued the wrong defendant, SPMB; that he knew that he had committed malpractice; that, through

Oliver, he had deceptively induced Crump and Green to sign documents releasing him from a potential malpractice claim; that he had agreed to pay each client $4,000 to settle their potential malpractice claims; that these settlement funds would be paid via future settlements in other cases; that he had paid $975 to Crump and "several thousand dollars" to Green as "advances;" that he had failed to prepare or provide to either client a distribution sheet in connection with the releases; that he had failed to advise either client to consult an independent lawyer concerning their settlement or release of a potential malpractice claim; and that he knew that both Crump and Green were confused and did not understand the transaction by which respondent had induced them to settle their potential malpractice claims.

The ODC, thus, asserted that respondent's April 17, 2018 answer to the Request, in which he denied all allegations against him, was false, and that he knew his denials were false when he made them, in violation of Pennsylvania RPC 8.1(a), RPC 8.4(c), and RPC 8.4(d).

On February 28, 2019, following respondent's failure to reply to subsequent efforts to obtain a verified answer or to produce the requested documents, the Disciplinary Board of the Supreme Court of Pennsylvania (the Disciplinary Board) determined to publicly reprimand respondent, and ordered him to provide proof that he had paid the remainder of the $4,000 in promised

funds to both Crump and Green. In addition, the Disciplinary Board directed respondent to send letters informing both Crump and Green that he had never settled the personal injury claims on their behalf; that he had failed to file any personal injury action within the applicable statute of limitation; that his conduct constituted legal malpractice; that the releases had been obtained in violation of the Pennsylvania RPCs; and that both Crump and Green may retain independent counsel to advise them on pursuing legal malpractice actions against respondent. Respondent's public reprimand was administered on April 18, 2019.

On April 12, 2019, respondent sent the letters to Crump and Green as the Disciplinary Board had directed. On the same date, he issued a check to Crump, in the amount of $3,025, and a check to Green, in the amount of $1,900, constituting the remaining funds previously promised to each.

In its May 12, 2020 brief, the OAE asserted that respondent's conduct in Pennsylvania warrants similar discipline in New Jersey – specifically, that we should impose a reprimand. In aggravation, the OAE asserted that respondent harmed both Crump and Green, because he allowed the statute of limitations on their personal injury claims to expire. In mitigation, the OAE asserted that respondent has no prior discipline, and has been practicing law since 1999.

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:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;

> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
>
> (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 followed 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.

Subsection (E) applies in this matter because the unethical conduct warrants substantially different discipline than imposed in Pennsylvania.

Crump and Green retained respondent for injuries sustained, in July 2014, on property that Alexander owned. Respondent previously had not represented them, but failed to prepare written fee agreements, in violation of RPC 1.5(b). He then failed to sue Alexander at his correct address, erroneously withdrew his suit against Alexander, and subsequently instituted an action against the wrong defendant, SPMB. His mishandling of the personal injury action ultimately resulted in the expiration of the statute of limitations, thus precluding his clients from seeking redress for their injuries. Respondent's conduct constituted gross neglect, in violation of RPC 1.1(a).

During the pendency of the representation, respondent failed to reply to Crump and Green's repeated inquiries about the status of their cases and failed

to inform them that their claims had been barred by the applicable statute of limitations. Respondent, thus, violated RPC 1.4(b) and (c).

Making matters worse, in an attempt to conceal his misconduct and obvious legal malpractice, respondent enlisted his nonlawyer investigator, Oliver, to misrepresent to his clients that he had settled their personal injury matters, for $4,000 each, and to induce them to execute releases of their potential malpractice claims against him. That egregious behavior violated RPC 1.8(h)(1) and (h)(2), RPC 5.3(b), (c)(1), and (c)(2), and RPC 8.4(a) and (c).

During a November 8, 2017 ODC interview, respondent unequivocally admitted his misconduct and malpractice. In his reply to the ODC's March 13, 2018 Request, however, respondent inexplicably denied all the formal allegations levied against him. By denying his prior admissions with no basis in law or fact, respondent violated RPC 8.1(a) and again violated RPC 8.4(c).[2]

In sum, we find that respondent violated RPC 1.1(a); RPC 1.4(b) and (c); RPC 1.5(b); RPC 1.8(h)(1) and (h)(2); RPC 5.3(b), (c)(1), and (c)(2); RPC 8.1(a); and RPC 8.4(a) and (c) (two instances). The only remaining issue for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

[2] Although the ODC's August 3, 2018 letter alleged that respondent also violated RPC 8.4(d), the reprimand order in Pennsylvania does not include a finding that respondent violated that Rule.

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 had precluded a determination on the merits, 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 the accrual of $40,000 in interest and the imposition of 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)).

Conduct involving the failure to memorialize the basis or rate of a fee, as RPC 1.5(b) requires, typically results in an admonition, even if accompanied by other, non-serious ethics offenses. See, e.g., In the Matter of Peter M. Halden, DRB 19-382 (February 24, 2020) (attorney failed to set forth in writing the basis

or rate of the legal fee, and failed to abide by the client's decisions concerning the scope of the representation; no prior discipline); In the Matter of Kenyatta K. Stewart, DRB 19-228 (October 22, 2019) (attorney failed to set forth in writing the basis or rate of the legal fee, and engaged in a concurrent conflict of interest; no prior discipline); and In the Matter of Alan Monte Kamel, DRB 19-086 (May 30, 2019) (attorney failed to provide the client with a writing setting forth the basis or rate of his fee in a collection action, failed to communicate with the client, and failed to communicate the method by which a contingent fee would be determined; no prior discipline).

Cases involving violations of RPC 1.8(h) are exceedingly rare. In In re Regojo, 180 N.J. 523 (2004), a reprimand was imposed on an attorney who admitted that he had failed to advise his client to seek independent counsel before negotiating a potential malpractice claim. In the Matter of Fernando Regojo, DRB 03-457 (April 6, 2004) (slip op. at 14). The attorney also was guilty of violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b). Id. at 13.

Attorneys who merely fail to supervise their nonlawyer staff and have no serious prior discipline typically receive an admonition or reprimand, depending on the presence of other ethics infractions or aggravating and mitigating factors. See, e.g., In re Bardis, 210 N.J. 253 (2012) (admonition; attorney failed to reconcile and review his attorney records, thereby enabling an individual who

helped him with office matters to steal $142,000 from his trust account, causing a shortage of $94,000; mitigating factors were the attorney's deposit of personal funds to replenish the account, his numerous other corrective actions, his acceptance of responsibility for his conduct, his deep remorse and humiliation for not having personally handled his own financial affairs, and his lack of disciplinary record) and In re Murray, 185 N.J. 340 (2005) (reprimand; attorney failed to supervise nonlawyer employees, which led to an unexplained misuse of client trust funds and to negligent misappropriation; the attorney also failed to maintain books and records that would have revealed the mysterious scheme; she also failed to perform quarterly reconciliations of her trust account and, for a time, failed to maintain an active trust account; prior admonition for similar deficiencies).

Harsher discipline has been imposed in cases where the attorney failed to make a reasonable investigation that could have uncovered instances of misconduct by nonlawyer employees, resulting in egregious consequences that otherwise could have been prevented if discovered. See, e.g., In re Brown, 218 N.J. 387 (2014) (censure by consent for attorney who failed to reconcile his attorney trust account and to supervise a nonlawyer (his paralegal/bookkeeper), who forged checks and conducted real estate closings without the attorney's knowledge, in most cases in furtherance of a mortgage fraud scheme to which

she eventually pleaded guilty; the attorney also made misrepresentations on HUD-1 forms in two matters, was guilty of gross neglect and pattern of neglect, and negligently misappropriated trust funds; in aggravation, we considered that the improprieties could have been avoided if the attorney had paid close attention to his accounting responsibilities; mitigation included the attorney's ready acknowledgement of wrongdoing by entering into a stipulation, and his full cooperation with law enforcement authorities investigating his employee); In re Hecker, 167 N.J. 5 (2001) (three-month suspension for attorney whose clerk stole $15,000 from the attorney's trust account; thereafter, the clerk was sentenced to five-year's imprisonment for an unrelated criminal offense; when the clerk was released from prison, the attorney rehired him; the clerk, thereafter, stole $6,850 from an estate for which the attorney was serving as the administrator; the attorney was guilty of failing to supervise a nonlawyer employee, negligent misappropriation of client trust funds, failure to safeguard funds, recordkeeping violations, gross neglect, and lack of diligence); In re Ejiogu, 197 N.J. 425 (2009) (one-year suspension for attorney who abdicated his responsibilities in a busy immigration and real estate practice; the attorney's utter failure to supervise his primary nonlawyer employee allowed that employee to divert and misappropriate client trust funds); and In re Stransky, 130 N.J. 38 (1992) (one-year suspension for attorney who failed to supervise a

nonlawyer employee by abdicating his non-delegable fiduciary responsibilities for client trust funds to his secretary/bookkeeper wife by improperly designated signatory power to her; his wife then misappropriated trust account funds and diverted audit and temporary suspension notices from his attention; he also engaged in recordkeeping improprieties).

Generally, in matters involving misrepresentations to ethics authorities, the discipline ranges from a reprimand to a term of suspension, depending on the gravity of the offense, the presence of other unethical conduct, and aggravating or mitigating factors. See, e.g., In re DeSeno, 205 N.J. 91 (2011) (reprimand for attorney who misrepresented to the district ethics committee the filing date of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand); In re Otlowski, 220 N.J. 217 (2015) (censure for attorney who made misrepresentations to the OAE and the client's lender by claiming that funds belonging to the lender, which had been deposited into the attorney's trust account, were frozen by a court order; to the contrary, they had been disbursed to various parties); In re Freeman, 235 N.J. 90 (2018) (three-month suspension for pool attorney with the Office of the Public Defender (OPD); the attorney failed to communicate with his client about an upcoming hearing on a petition for post-conviction relief; the attorney

appeared at the hearing without the client, took actions that were contrary to the client's wishes, and made misrepresentations to the court and the OPD; those statements would later negatively impact the client's ability to pursue an appeal; during the ethics investigation, the attorney lied to the DEC investigator, and later to the hearing panel; violations of RPC 1.2(a), RPC 1.4(b), RPC 3.3(a), RPC 4.1(a), RPC 8.1(a), and RPC 8.4(c) found); In re Brown, 217 N.J. 614 (2014) (three-month suspension, in a default matter, for an attorney who made false statements to a disciplinary authority; failed to keep a client reasonably informed about the status of the matter; charged an unreasonable fee; failed to promptly turn over funds; failed to segregate disputed funds; failed to comply with the recordkeeping rule; and failed to cooperate with disciplinary authorities); In re Silberberg, 144 N.J. 215 (1996) (two-year suspension imposed on attorney who, in a real estate closing, allowed the buyer to sign the name of the co-borrower; the attorney then witnessed and notarized the "signature" of the co-borrower; the attorney stipulated that he knew at the time that the co-borrower was deceased; after the filing of the ethics grievance against him, the attorney falsely stated that the co-borrower had attended the closing; on another occasion, the attorney sent a false seven-page certification to the district ethics committee in order to cover up his improprieties); and In re Penn, 172 N.J. 38 (2002) (three-year suspension for attorney who failed to file an answer in a

foreclosure action, thereby causing the entry of default against the client; thereafter, to placate the client, the attorney lied that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible).

Standing alone, misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989).

Based on New Jersey disciplinary precedent, a term of suspension is required for the totality of respondent's misconduct. A reprimand would be the baseline level of discipline merely for respondent's misrepresentations to his clients or his tricking his clients into waiving their malpractice claims against him. Further considering his gross neglect; his egregious failure to communicate, including his failure to inform his clients that the statute of limitations had run; and his failure to provide his clients with fee agreements, at least a censure would be required.

Respondent, however, committed additional, serious misconduct, in an attempt to conceal his legal malpractice and to minimize his own financial and reputational consequences. Specifically, he directed Oliver to induce his clients, under completely false pretenses, to waive their potential claims for legal malpractice. Respondent, thus, exceeded the misconduct of attorneys who

merely failed to supervise their employees, by affirmatively directing his employee to engage in misconduct. Respondent then failed to pay the sums he had promised to his clients to secure the nonconsensual, improvident releases that he had directed his employee to obtain. Further, respondent made a false statement to Pennsylvania disciplinary authorities, denying that he had committed any misconduct. For such brazenly dishonest behavior toward clients and disciplinary authorities, a term of suspension is required to protect the public and preserve confidence in the bar.

To craft the appropriate discipline in this case, we also must consider both aggravating and mitigating factors. In aggravation, respondent caused irreparable legal and financial harm to both Crump and Green by allowing their claims to be extinguished by the statute of limitations. The only mitigation to consider is respondent's unblemished disciplinary history since his 1999 admission to the bar and his meager attempt to financially compensate his former clients for his egregious mishandling of their personal injury claims.

On balance, we determine that a three-month term of suspension is the appropriate quantum of discipline.

Vice-Chair Gallipoli voted to impose a one-year term of 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/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Stuart Thomas Cottee
Docket No. DRB 20-114

Argued: October 15, 2020

Decided: March 1, 2021

Disposition: Three-Month Suspension

Members	Three-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:	8	1	0	0

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel