

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-186
District Docket No. XIII-2018-0029E

In the Matter of
Richard Del Vacchio
An Attorney at Law

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Decision

Decided: April 26, 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 XIII Ethics Committee (DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 8.1(b) (two

instances – failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice).¹

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

Respondent was admitted to the New Jersey bar in 1993. He has no disciplinary history. Respondent maintains a law firm named Del Vacchio O’Hara, in Flemington, New Jersey.

Service of process was proper. On January 15, 2020, the DEC sent a copy of the complaint, by certified and regular mail, to respondent’s office address. The certified mail receipt was returned, dated January 23, 2020, and bearing a signature that appears to be “C. Massey;” the regular mail was not returned.

On February 21, 2020, the DEC sent a letter to respondent, by certified and regular mail, to his office address, informing him that, unless he filed a verified 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 deemed amended to charge willful violations of RPC 8.1(b) and RPC 8.4(d).

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 and the RPC 8.4(d) charge.

The certified mail receipt was returned, dated February 24, 2020, and bearing an illegible signature; the regular mail was not returned.

The DEC then verified respondent's address with the Office of Attorney Ethics Statewide Ethics Coordinator and via judiciary records. As of May 27, 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 August 14, 2018, the grievant, Robert Wilson, filed an ethics grievance against respondent. The grievance stemmed from the December 12, 2012 retention of respondent by Timothy Wilson, Robert's brother, who had engaged respondent in connection with a slip and fall matter.

Timothy died on December 20, 2015, and Robert became the executor of Timothy's estate. A few months before his death, Timothy told Robert that respondent had informed Timothy that his case had settled, and that Timothy soon would receive settlement proceeds. After Timothy's death, Robert claimed to have reached out to respondent "more than 100 times" to follow up on the proceeds of the settlement. Respondent, however, failed to communicate with Robert.

Between February and September 2019, the DEC investigator attempted to call respondent nine times. Each time, respondent's staff promised to transmit the investigator's message to respondent, and to convey the urgent need for proof that Timothy had received what was termed a "drop letter."² Respondent failed to return the DEC investigator's telephone calls.

Respondent also failed to reply to the DEC investigator's May 22, 2019 letter requesting additional information relating to proof that Timothy received the December 26, 2012 "drop letter."

The DEC investigator's letter of May 22, 2019 asked respondent to contact the investigator to advise whether there was any evidence that Timothy received the January 6, 2014 "drop letter." Respondent failed to reply to the DEC investigator's requests.

Based on these facts, the complaint charged respondent with a violation of RPC 8.1(b) for failing to respond to the telephone calls and letter of the DEC

² The complaint fails to explain what a "drop letter" is, or its effect, if any, on Timothy's understanding of the settlement of his case. Moreover, the complaint references both a December 26, 2012 and a January 6, 2014 "drop letter," but does not explain how the investigator came to understand that those documents might exist. We infer that at some point, the investigator came to understand that respondent might take the position that he had terminated Timothy's representation, and requested the letters memorializing that termination as part of his investigation. In any event, the drop letters are not part of the record before us and no RPC 1.6 violation was charged.

investigator, and a second violation of RPC 8.1(b), plus a violation of RPC 8.4(d), for his failure to answer the complaint.

We find that the facts recited in the 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's failure to reply to the DEC investigator's numerous telephone calls and letter, although the investigator left urgent messages with his staff for respondent to do so, constitutes a violation of RPC 8.1(b). Moreover, respondent's failure to answer the complaint constitutes an additional violation of RPC 8.1(b) and a violation of RPC 8.4(d).

In sum, we find that respondent violated RPC 8.1(b) (two instances) and RPC 8.4(d). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

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)).

In aggravation, however, we must consider the default status of this matter. Here, respondent defaulted in this matter, despite the DEC's extensive efforts to garner his cooperation. "[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). In light of respondent's default, an enhanced sanction is warranted.

The only mitigation for us to consider is respondent's unblemished disciplinary record since his 1993 admission to the bar. Although his twenty-seven years of reputable practice deserve due consideration, the default status

of this matter warrants the enhancement of the sanction in this case. The RPC 8.4(d) charge that the DEC added to the complaint via amendment, which appears to be a new practice in default matters, does not affect the appropriate quantum of discipline.

On balance, we determine that a censure is the quantum of discipline necessary to protect the public and preserve confidence in the bar. Additionally, we refer the issue of respondent's disposition of the Wilson settlement funds to the Office of Attorney Ethics (the OAE) for an investigation.

Members Boyer, Joseph, and Singer voted to impose a reprimand, and concurred in the referral to the OAE. Member Petrou voted to impose a three-month suspension, and also supported the referral to the OAE.

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: 

Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Richard Del Vacchio
Docket No. DRB 20-186

Decided: April 26, 2021

Disposition: Censure

<i>Members</i>	Censure	Reprimand	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:	5	3	1	0	0



Johanna Barba Jones
Chief Counsel