Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-212
District Docket No. IV-2019-0033E

In the Matter of	:
Barry J. Beran	:
An Attorney at Law	:

Decision

Decided: May 5, 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 IV Ethics Committee (the DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.2(a) (failure to abide by a client's decisions concerning the scope and objectives of the representation); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter); RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed

decisions regarding the representation); RPC 5.5(a)(1) (practicing law while ineligible); and RPC 8.1(b) (failure to cooperate with disciplinary authorities).[1]

On October 26, 2020, respondent submitted a motion to vacate the default (MVD), which we denied on November 25, 2020. For the reasons set forth below, we now determine to recommend to the Court that respondent be disbarred.

Respondent earned admission to the New Jersey bar in 1981 and to the Pennsylvania bar in 1980. During the relevant timeframe, he maintained a law office in Cherry Hill, New Jersey.

Respondent has a significant disciplinary history. In 2004, he received a reprimand for negligently misappropriating client trust funds, failing to comply with recordkeeping requirements, and advancing loans to clients while representing them in personal injury matters. In re Beran, 181 N.J. 535 (2004).

In 2009, respondent received an admonition for failing to advise a client, for whom he was unable to negotiate credit card payoffs, of possible resolutions with the credit card companies, and of consequences that could result from the actions the client determined to take. Respondent also failed to communicate

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

with the client or to provide her with a writing setting forth the basis or rate of his fee. In the Matter of Barry J. Beran, DRB 09-245 (November 25, 2009).

In 2016, respondent was censured for improperly advancing personal funds to three clients in connection with their pending or contemplated litigation, negligently misappropriating client funds due to his deficient records, failing to promptly disburse client funds, and violating recordkeeping rules. In re Beran, 224 N.J. 388 (2016).

In 2017, the Court again censured respondent for lack of diligence and failure to communicate with a client in a personal injury matter. The client did not receive her settlement funds until six years after she had signed a release. Although only one client was involved, we considered, in aggravation, respondent's ethics history and his failure to learn from prior mistakes. In re Beran, 230 N.J. 61 (2017).

In 2018, the Court suspended respondent for three months. In re Beran, 231 N.J. 565 (2018). In that matter, respondent overdrew his trust account when he inadvertently withdrew more funds from the account, as legal fees, than were on deposit. When he discovered the error, he immediately replenished the funds. At the time of the overdraft, no client funds were on deposit. The ensuing Office of Attorney Ethics (the OAE) audit revealed several recordkeeping violations. Respondent was guilty of negligently misappropriating trust funds,

commingling funds, and recordkeeping violations. The Court further ordered respondent to submit monthly reconciliations of his attorney accounts to the OAE, on a quarterly basis, for a two-year period. On July 30, 2018, the Court reinstated respondent. In re Beran, 234 N.J. 264 (2018).

Effective April 10, 2020, in a default matter (DRB 19-092), the Court again suspended respondent, this time for six months, for his violations of RPC 1.3; RPC 1.4(b); RPC 1.4(c); and RPC 8.1(b). In two matters, respondent failed to communicate with his clients and took no significant action in their bankruptcy matters. In a third case, respondent failed to reply to a client seeking modification of child support, alimony, and health insurance obligations. Respondent submitted to us an MVD, claiming that he had performed a significant amount of work on behalf of these three clients, but failed to submit an answer to the formal ethics complaint, because he was so upset and distraught over receiving the complaint that he could not respond in a coherent manner. We denied the motion, determining that respondent was familiar with the disciplinary process, because this was his sixth matter before us, and because respondent had replied to two of the three grievances before he ceased cooperating. In aggravation, we considered that the case involved three clients who were in dire financial straits; that respondent had a significant disciplinary history; and that he defaulted. In re Beran, 241 N.J. 255 (2020).

Finally, effective September 22, 2020, in yet another default matter (DRB 19-339), the Court suspended respondent for three years, for his violations of RPC 1.3; RPC 1.4(b); RPC 1.4(c); and RPC 8.1(b). In one matter, respondent failed to communicate with his client and took no significant action in his bankruptcy matter. Respondent submitted to us an MVD, claiming that he had performed a significant amount of work on behalf on this client's case, but failed to respond to the formal ethics complaint, because he "experienced significant personal, emotional and financial issues." Respondent did not elaborate on the nature of those issues but acknowledged that they "should not have prevent[ed] [him] from having filed a timely Answer." We denied the motion, determining that respondent was familiar with the disciplinary process, because this was his seventh matter before us. In aggravation, we again considered that the case involved a client who was in dire financial straits; that respondent had a significant disciplinary history; and that he again defaulted. In re Beran, 244 N.J. 231 (2020).

From November 16, 2015 to April 19, 2016, respondent was administratively ineligible to practice law in New Jersey due to his failure to comply with Continuing Legal Education (CLE) requirements.

Service of process was proper. On January 30, 2020, prior to respondent's disciplinary suspension, the DEC sent a copy of the formal ethics complaint, by

certified and regular mail, to respondent's office address of record. On February 3, 2020, "D. Veazey" signed for the certified mail at respondent's office, and the regular mail was not returned.

On March 4, 2020, the DEC sent another letter, by regular mail, to respondent's office address, informing him that, unless he filed a verified answer to the formal ethics complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the entire 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). The regular mail was not returned.

As of July 23, 2020, respondent had not filed an answer to the formal ethics 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 turn now to the allegations of the complaint.

On April 7, 2016, Yvonne Harvey, the grievant, retained respondent to file a Chapter 7 bankruptcy petition in the United States Bankruptcy Court for the District of New Jersey and paid respondent $1,365 toward the representation. Respondent neither filed the petition for Harvey, nor communicated with her, despite her repeated requests for information regarding the status of her petition. After Harvey filed a fee arbitration request, the fee arbitration committee (the

Committee) determined that respondent had not earned a fee and must disgorge the entire $1,365. Respondent promptly refunded the fee to Harvey. In 2018, Harvey retained a new attorney who successfully filed the bankruptcy petition.

From November 16, 2015 to April 19, 2016, which includes a portion of the time period that respondent represented Harvey, he was administratively ineligible to practice law in New Jersey due to his failure to comply with CLE requirements. An attorney must be in good standing in New Jersey to practice in the United States Bankruptcy Court for the District of New Jersey.

In addition, during the course of the DEC's investigation of Harvey's grievance, respondent informed a DEC investigator that he intentionally had not filed a bankruptcy petition on behalf of Harvey for strategic reasons. Respondent, however, never consulted with Harvey about this decision.

Based on the foregoing facts, the formal ethics complaint alleged that respondent violated RPC 1.2(a) by failing to abide by Harvey's objective to file a Chapter 7 bankruptcy petition; RPC 1.3 by failing to act with diligence in Harvey's matter; RPC 1.4(b) by failing to communicate with Harvey about the substance of the Chapter 7 bankruptcy case, despite her numerous attempts to contact him, forcing Harvey to seek the assistance of another attorney; RPC 1.4(c) by failing to explain matters to the extent reasonably necessary to permit Harvey to make informed decisions regarding the representation; RPC 5.5(a)(1)

by practicing law while ineligible due to his noncompliance with CLE requirements; and, via amendment, RPC 8.1(b) by failing to file an answer to the complaint.

As stated previously, on October 26, 2020, respondent filed an MVD in this matter. In order to successfully vacate a default, a respondent must meet a two-pronged test by offering both a reasonable explanation for the failure to answer the ethics complaint and asserting meritorious defenses to the underlying charges.

Generally, if only one of the prongs is satisfied, the motion is denied.

As to the first prong, respondent expressed his regret for not filing an answer to the formal ethics complaint, acknowledged that he should have done so, and explained that he failed to file the answer in a timely manner because he had "experienced significant personal, emotional and financial issues," without elaborating on the nature of those issues. In addition, respondent asked us to consider that he had closed his office on March 1, 2020, due to the COVID-19 pandemic, and that he has been without secretarial support since that time. By his own admission, respondent's assertion that he did not file an answer because he experienced unspecified issues and a lack of secretarial support does not constitute a reasonable explanation for his failure to file a timely answer. Accordingly, we conclude that respondent has failed to satisfy the first prong.

Assuming, arguendo, that we had determined that respondent has satisfied the first prong of the test, we would still deny his MVD because he has not offered a meritorious defense to all the charges in the complaint. The formal ethics complaint charged respondent with having violated RPC 1.2(a); RPC 1.3; RPC 1.4(b); and RPC 1.4(c) in respect of his representation of Harvey in a bankruptcy case, RPC 5.5(a)(1) for representing Harvey while administratively ineligible to practice law, and RPC 8.1(b) for failing to file an answer to the formal ethics complaint.

In his MVD, respondent asserted that, after "a significant period of time performing work" and reviewing Harvey's finances to determine whether he could file a Chapter 7 bankruptcy rather than a Chapter 13 bankruptcy, she "decided to seek other counsel." In his proposed answer attached to his MVD, respondent alleges that he had "frequent" and "numerous" communications with Harvey, including discussions regarding her finances and the filing of a bankruptcy petition. In support of his proposed answer, respondent attached what appears to be Harvey's draft bankruptcy petition with her unredacted financial information. Respondent's assertions that he performed considerable work and consistently communicated with Harvey, if true, might support a meritorious defense to the RPC 1.3, RPC 1.4(b), and RPC 1.4(c) charges. The complaint, however, also charged respondent with having violated RPC

5.5(a)(1), for practicing while administratively ineligible, and RPC 8.1(b) for failing to file a verified answer to the formal ethics complaint. This latter charge was added to the complaint via the March 4, 2020 letter that the DEC sent to respondent. Respondent's MVD fails to assert a defense to either the RPC 5.5(a)(1) or RPC 8.1(b) charges.

Moreover, this is respondent's eighth matter before us, and his third MVD in connection with a default matter. Respondent, thus, is intimately familiar with the procedures required to file answers to formal ethics complaints, and the consequences for failing to do so. In DRB 19-092, in respondent's first attempt to vacate a default, he had replied to two of the three grievances, but, thereafter, failed to cooperate. His MVD in that matter asserted that he had failed to respond because he was extremely upset and distraught over receiving the complaint. We denied his MVD because we found that respondent's prong one explanation was not reasonable.

In DRB 19-339, respondent filed an MVD strikingly similar to the one before us, in which he expressed his regret for not filing an answer to the formal ethics complaint, acknowledged that he should have done so, and explained that his "reason for not have [sic] filed the Answer in a timely manner was due to my having experienced significant personal, emotional and financial issues." In that case, as here, respondent failed to elaborate on the nature of those various

issues but conceded that they "should not have prevent[ed] [him] from having filed a timely Answer." Moreover, respondent did not offer a meritorious defense to all the charges in the complaint, because he failed to proffer a defense to the RPC 8.1(b) charge. Rather, respondent admitted that his "issues" should not have prevented him from filing an answer. We denied that MVD, finding that respondent failed to satisfy either prong of the test. Thus, in the instant matter, respondent had full knowledge of his obligation to file a timely answer.

Accordingly, we determined to deny respondent's MVD and entered a letter decision to that effect on November 25, 2020.

Moving to our review of the record, the facts alleged in the formal ethics complaint support all but one of the charges of unethical conduct. Respondent's failure to file an answer to the complaint 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). Notwithstanding that Rule, each charge in the complaint must be supported by sufficient facts for us to determine that unethical conduct has occurred.

Respondent violated RPC 1.3, RPC 1.4(b), and RPC 1.4(c) by failing to make any effort to advance Harvey's interests in her Chapter 7 bankruptcy proceeding; failing to adequately communicate with Harvey about the substance of the matter, despite her efforts to elicit information from him; and by forcing

Harvey, through his inaction, to retain another attorney to pursue the bankruptcy relief she sought.

Moreover, he committed that misconduct, in part, while he was administratively ineligible to practice law, in violation of RPC 5.5(a)(1). Based on the record, respondent appears to have not performed any substantive work in Harvey's matter, resulting in the Committee's order that he disgorge the entire fee. Respondent also violated RPC 8.1(b) by failing to answer the formal ethics complaint.

Finally, the complaint charged respondent with having violated RPC 1.2(a). This Rule, however, is inapplicable. It states:

> [a] lawyer shall abide by a client's decision concerning the scope and objectives of representation . . . and as required by RPC 1.4 shall consult with the client about the means to pursue them. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation . . .

RPC 1.2(a) is violated when an attorney acts contrary to the client's wishes, not simply when the attorney fails to act at all. See, e.g., In re Castiglia, 220 N.J. 582 (2015) (attorney settled the client's lawsuit without consulting the client or obtaining the client's consent to the proposed settlement). Rather, RPC 1.1(a) and RPC 1.3 address respondent's misconduct in this respect. Accordingly, we dismiss the RPC 1.2(a) charge.

In sum, we find that respondent violated RPC 1.3; RPC 1.4(b); RPC 1.4(c); RPC 5.5(a)(1); and RPC 8.1(b). We dismiss the charge that respondent further violated RPC 1.2(a). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Generally, in default matters, a reprimand is imposed for lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities, even if this conduct is accompanied by other ethics infractions, such as gross neglect. See, e.g., In re Cataline, 219 N.J. 429 (2014) (reprimand for attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with requests for information from the district ethics committee investigator); In re Rak, 203 N.J. 381 (2010) (reprimand for attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of a grievance); In re Van de Castle, 180 N.J. 117 (2004) (reprimand for attorney who grossly neglected an estate matter, failed to communicate with the client, and failed to cooperate with disciplinary authorities); and In re Goodman, 165 N.J. 567 (2000) (reprimand for attorney who failed to cooperate with disciplinary authorities and grossly neglected a personal injury case for seven years by failing to file a complaint or to otherwise prosecute the client's claim; the

attorney also failed to keep the client apprised of the status of the matter; prior private reprimand).

Ordinarily, when an attorney practices while ineligible, and is unaware of the ineligibility, an admonition will be imposed. See, e.g., In the Matter of Jonathan A. Goodman, DRB 16-436 (March 22, 2017) (attorney practiced law during two periods of ineligibility; he was unaware of his ineligibility); In the Matter of James David Lloyd, DRB 14-087 (June 25, 2014) (attorney practiced law during an approximate thirteen-month period of ineligibility; among the mitigating factors considered was his lack of knowledge of the ineligibility); and In the Matter of Adam Kelly, DRB 13-250 (December 3, 2013) (during a two-year period of ineligibility for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection, the attorney handled at least seven cases that the Public Defender's Office had assigned to him; in mitigation, the record contained no indication that the attorney was aware of his ineligibility, and he had no history of discipline since his 2000 admission to the New Jersey bar).

Here, there is no evidence that respondent was aware of his ineligibility when he engaged in the misconduct under scrutiny. Consequently, we would ordinarily impose an admonition. However, due to respondent's accompanying lack of diligence, failure to communicate with the client, and failure to cooperate

with disciplinary authorities, a reprimand is the baseline sanction for his misconduct.

In crafting the appropriate quantum of discipline, however, we also must consider aggravating and mitigating factors. In aggravation, this case involved yet another client in difficult financial circumstances whom respondent failed to properly represent. Although respondent received his fee, he utterly failed to protect Harvey's interests, taking no action to prosecute the Chapter 7 bankruptcy on her behalf. Respondent previously has committed identical misconduct, as we emphasized in our decisions in DRB 19-092 and DRB 19-339, resulting in his six-month and three-year suspensions, respectively. Based on the foregoing precedent, and as stated above, a reprimand is the baseline sanction for respondent's misconduct, until we consider the additional aggravation present in this case.

Specifically, respondent continues to demonstrate an alarming failure to learn from his past mistakes. The Court has signaled an inclination toward progressive discipline and the stern treatment of repeat offenders. In such situations, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system).

Here, severe progressive discipline is warranted, just as in Kantor, in light of respondent's significant disciplinary history: a 2004 reprimand; a 2009 admonition; a 2016 censure; a 2017 censure; a 2018 three-month suspension; and the six-month and three-year suspensions imposed in 2020. This is respondent's eighth time before us, and his third consecutive default. Thus, it is clear that he has failed to learn from his prior mistakes.

Although this case involves harm to only one client, respondent again has defaulted. Through this eighth disciplinary matter, respondent has continued his pattern of grossly neglecting clients' matters and failing to cooperate with disciplinary authorities. Simply put, his behavior exhibits an utter disdain toward his clients and New Jersey's disciplinary system. Moreover, his misconduct continues to inflict harm on vulnerable clients who seek his counsel due to dire financial straits. There is no mitigation for us to consider.

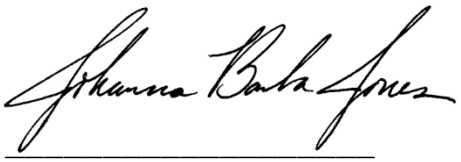
At this point, we can neither ignore nor accept what is clearly respondent's dangerous, improper practice of law. Nor can we ignore or accept that respondent is incapable of following the most basic regulations imposed on New Jersey attorneys. The imposition of prior discipline, including multiple terms of suspension, has not convinced respondent to change his ways. He is, in a word, unsalvageable, and we must endeavor to protect the public from his pernicious practices.

Thus, based on respondent's ethics violations in this matter; his deplorable disciplinary history; his failure to learn from prior mistakes; and the principle of progressive discipline, we determine that a recommendation for disbarment is required to protect the public and preserve confidence in the bar.

Chair Clark and Members Boyer and Joseph voted to impose a three-year suspension, consecutive to respondent's previously imposed terms 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: 
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Docket No. DRB 20-212

Decided: May 5, 2021

Disposition: Disbar

Members	Disbar	Three-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:	6	3	0	0

Johanna Barba Jones
Chief Counsel