

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-200
District Docket No. IX-2018-0008E

In the Matter of
Thomas James Catley
An Attorney at Law

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Decision

Argued: November 19, 2020

Decided: June 2, 2021

Lisa C. Krenkel appeared on behalf of the District IX Ethics Committee.

Charles P. Stone, respondent’s counsel, 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 recommendation for a censure filed by the District IX Ethics Committee (DEC). The formal ethics complaint charged respondent with having violated RPC 1.3 (lack of diligence); RPC 1.4(a) (failure to inform a prospective client of how, when, and where the client may communicate with the attorney); RPC 1.4(b) (failure to keep a client reasonably

informed about the status of a matter and to comply with reasonable requests for information); RPC 1.15(d) (failure to comply with recordkeeping requirements); and RPC 1.16(d) (failure to protect a client's interests upon termination of representation).

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

Respondent gained admission to the New Jersey bar in 1988 and has no prior discipline. He maintains an office for the practice of law in Neptune, New Jersey.

In his verified answer, respondent stipulated to most of the facts set forth in the complaint, admitted all the RPC violations, and asked to be heard in mitigation.

On January 5, 2018, respondent's former client, Deborah Kelly,¹ filed a grievance against him, alleging that she had retained him to pursue a personal injury claim in her behalf, but that, despite her efforts, she had been unable to communicate with him about her case. Kelly claimed that respondent failed to return her telephone calls or text messages and, when she was able to contact him by telephone, he hung up on her. She further alleged that his law office

¹ Kelly failed to appear at the disciplinary hearing, which had been rescheduled at her request.

telephone was no longer operational and that he had relocated his office without notice to her.

Respondent and Kelly knew each other through her prior employment as a caretaker in the nursing home where respondent's elderly mother had lived. Sometime between June and December 2013, respondent met Kelly for an initial consultation and possible representation in connection with a June 25, 2013 New Jersey Transit bus incident. Respondent testified that, according to Kelly, the bus had stopped suddenly, which propelled her into the seat in front of her, causing her to be injured. On September 26, 2013, Kelly was treated for her alleged injuries at Monmouth Total Health Care. Respondent asserted that, at the time of the bus accident, Kelly had "extensive pre-existing injuries," and several pending workers' compensation cases.

Respondent conceded that Kelly had retained him and that he had performed work on her case, including researching whether a New Jersey Tort Claims Notice was required to preserve her claim; obtaining Kelly's signature on a December 16, 2013 authorization to file a lien form; and issuing a letter of protection to one of Kelly's medical providers. He did not recall whether a retainer agreement had been executed.

Because respondent handled primarily criminal and municipal matters, he consulted with a personal injury attorney about the possible referral of Kelly's

case. The other attorney reviewed the file and declined to take the case because there was no incident or police report documenting the accident; Kelly's medical records documented her pre-existing injuries; Kelly could not be located; and Kelly may have discontinued medical treatment.

Sometime in 2014, respondent went to visit his mother at her nursing home and saw Kelly. During that encounter, Kelly informed him that she was quitting her job at the nursing home and moving to Philadelphia. Respondent testified that his immediate reaction was "remorse" for his mother, because she would lose Kelly as a caretaker. As an afterthought, respondent asked Kelly about her case. Kelly replied that she would be attempting to obtain treatment in Philadelphia. When he asked her for her forwarding address, she said she did not have one yet, and would communicate with him when she did. It is undisputed that, after that conversation, the parties had no further contact until Kelly filed the ethics grievance.

In December 2014, respondent's landlord notified him of the termination of his law office lease and required that respondent vacate his Ocean Grove office by the end of January 2015. Respondent then rented office space in Neptune, New Jersey from Charles P. Stone, Esquire, his attorney in this matter, and moved seventy-eight boxes of client files to the new space. Respondent

testified that, after he received the grievance, he searched the boxes but could not locate Kelly's file.

Respondent conceded that he had not pursued Kelly's case, but claimed that it was not meritorious due to her pre-existing injuries. He admitted that he failed to make any affirmative efforts to contact Kelly; that the statute of limitations on Kelly's personal injury claim had expired during a time when she believed that he, as her attorney, was pursuing her claim; and that he never informed Kelly that he would not be pursuing the personal injury claim in her behalf, as the RPCs require. Respondent testified that he "would never in a million years want to hurt Ms. Kelly," because she had been "wonderful" to his mother.

When respondent moved his office to Neptune, he was unable to keep his existing telephone number. Respondent acknowledged that, after he had moved his office to Neptune and his telephone number changed, Kelly "wasn't the only client that had trouble locating" him. Respondent claimed that he learned of Kelly's new address upon receipt of her grievance, and acknowledged that, on July 25, 2018, he wrote to her, providing his version of events in respect of her case, and thanking her for her care of his mother, who had died in 2017. In that letter, respondent informed Kelly that he had never filed a lawsuit in her behalf, based on considerations of her pre-existing injuries, her lack of medical

treatment in connection with the bus accident, and her relocation and the subsequent lack of communication between them.

During the ethics hearing, respondent stated that he recognized his mistake, that he was now “in with Mr. Stone,” and that they had implemented law firm procedures to prevent a similar occurrence.

In response to questioning from the panel, respondent testified that he had sent announcements of his new office location to some of his clients, but not to Kelly, because he knew she had moved. He did not have a computer file for Kelly, but his secretary found the electronic version of the letter of protection he had sent in Kelly’s behalf. Although he had a forwarding telephone number on his prior telephone, the telephone company kept it active for only approximately ninety days. Respondent also testified that Kelly’s two-year statute of limitations was due to expire in June 2015 and that, after the initial meeting with Kelly, he attempted to obtain treatment for her so that he could assess the viability of a lawsuit. Along with her grievance, Kelly submitted a medical care certificate filed demonstrating that she was treated at Monmouth Total Health Care on September 26, 2013.

In his closing comments, Stone essentially testified as a character witness for respondent, citing his “well revered” reputation, and emphasizing that respondent previously had served as the mayor of Neptune, and currently served

as the public defender in Wall Township and assistant county counsel for Monmouth County. Stone also stated that, in his experience, respondent is “extremely diligent” in overseeing files; that this matter stemmed from a “breakdown in communication” between respondent and his office, including his part-time secretary; and that “the file got lost in the shuffle . . . [.]”

The DEC found that respondent failed to diligently pursue Kelly’s personal injury claim, as evidenced by his minimal work on her behalf, and that his handling of her case was “perhaps, furthest from the diligence required of an attorney,” in violation of RPC 1.3. Noting that respondent admittedly ceased communicating with Kelly and made no effort to discuss her matter after their initial informal discussions, the DEC further found that respondent failed to adequately communicate with Kelly, leaving her wholly unaware of the status of her matter, in violation of RPC 1.4(a) and (b). Because respondent failed to inform Kelly that he had decided not to file suit in her behalf, the DEC further found that he had failed to properly terminate the representation and to protect Kelly’s interests, in violation of RPC 1.16(d).

The DEC found that the RPC 1.15(d) recordkeeping charge had not been proven by clear and convincing evidence. In support of this determination, the DEC stated that there was no testimony that respondent had failed to comply with the recordkeeping requirements of R. 1:21-6.

The DEC further commented that respondent's conduct was not willful but, rather, was neglectful, and, at best, could be described as "sloppy and inattentive." The DEC found no mitigating factors but observed that the Kelly matter was an isolated incident. However, the DEC also noted that the conduct was severe because respondent completely failed Kelly. Thus, citing In re Riva, 157 N.J. 34, 40 (1999), and In re Park, 152 N.J. 27 (1997), the DEC recommended that respondent be censured for his misconduct.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence as to RPC 1.3, RPC 1.4(b), and RPC 1.16(d). We part company with the DEC with respect to RPC 1.15(d); we find that respondent was proven to have violated that Rule by clear and convincing evidence. We dismiss the RPC 1.4(a) charge as inapplicable.

Kelly retained respondent to pursue a personal injury claim for injuries she sustained in June 2013. Respondent performed minimal work on behalf of Kelly, and his mishandling of her matter resulted in the expiration of the statute of limitations, thus, precluding Kelly from any opportunity to pursue her potential claim. Respondent's conduct constituted lack of diligence, in violation of RPC 1.3. Although respondent also was guilty of gross neglect, in violation

of RPC 1.1(a), because the complaint failed to charge respondent with gross neglect, we may not find a violation of that RPC.

During the pendency of the representation, respondent failed to reply to Kelly's repeated inquiries about the status of her case and failed to adequately inform her of his change of office address and telephone number. He further failed to inform her of his purported decision not to pursue her case, and the lapsing of the applicable statute of limitations in June 2015. Respondent, thus, violated RPC 1.4(b) by failing to keep his client informed of the status of her matter.

By contrast, RPC 1.4(a) requires an attorney to inform a prospective client of how, when, and where the client may communicate with the attorney. Because Kelly was an existing, not a prospective, client, RPC 1.4(a) does not apply. Rather, respondent's failure to inform Kelly of his office relocation constitutes a violation of RPC 1.4(b). Therefore, we dismiss the RPC 1.4(a) charge as inapplicable.

Further, respondent admittedly failed to maintain a copy of Kelly's file, as R. 1:21-6 requires. His claim that he must have lost her file during his office relocation does not excuse his misconduct, but, rather, serves as an admission that he failed to ensure that he maintained all his clients' files during that transition, in violation of RPC 1.15(d).

Finally, respondent violated RPC 1.16(d) by failing to notify Kelly that he had determined not to pursue her claim and, thus, was terminating the representation. His failure to notify his client of such a critical decision failed to protect her interests and deprived her of the ability to make an informed decision as to whether she wished to pursue her claim, whether pro se or with another attorney.

In sum, we find that respondent violated RPC 1.3; RPC 1.4(b); RPC 1.15(d); and RPC 1.16(d). We dismiss the RPC 1.4(a) charge as inapplicable. There remains for determination the appropriate quantum of discipline for respondent's ethics infractions.

Attorneys with no disciplinary history who violate RPC 1.3, RPC 1.4(b), and RPC 1.16(d), even when accompanied by other, non-serious ethics infractions, receive admonitions. See e.g., In the Matter of William E. Wackowski, DRB 09-212 (November 25, 2009) (attorney permitted a complaint to be administratively dismissed, failed to inform his client of the dismissal, and failed to turn over the file to the client upon termination of the representation); In re Cameron, 192 N.J. 396 (2007) (attorney twice permitted a personal injury matter to be dismissed, failed to disclose the dismissals to the client, failed to return the client's telephone calls, and failed to turn the file over to successor counsel; in addition to RPC 1.3, RPC 1.4(b), and RPC 1.16(d), the

attorney was deemed to have engaged in gross neglect, a violation of RPC 1.1(a)); and In the Matter of Vera E. Carpenter, DRB 97-303 (October 27, 1997) (in a personal injury matter, attorney failed to act diligently to advance the client's claim, failed to return the client's telephone calls, and failed to turn over the client's file to new counsel).

Ordinarily, an admonition also is imposed on attorneys who violate R. 1:21-6(c) and, thus, RPC 1.15(d), in connection with non-financial recordkeeping irregularities. See, e.g., In re Garruto, 241 N.J. 549 (2020), and In the Matter of Charles M. Damian, DRB 19-107 (May 30, 2019).

Based on New Jersey precedent, a reprimand is the baseline level of discipline for respondent's lack of diligence, failure to communicate, and recordkeeping violations. Given his further, utter failure to protect Kelly's interests upon his unilateral termination of the representation, that reprimand is cemented.

To craft the appropriate discipline, we also must consider both mitigating and aggravating factors. In aggravation, respondent caused irreparable legal and, possibly, financial harm to Kelly by allowing the statute of limitations to extinguish her personal injury claim. In mitigation, respondent has no discipline in more than thirty years at the bar; testified that he was remorseful; and has taken measures to prevent a reoccurrence of such completely avoidable


misconduct. The egregious harm to Kelly, which could have been avoided had respondent taken the most basic steps required in an attorney-client relationship, outweighs the mitigation.

On balance, thus, we determine that a censure is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Members Boyer, Joseph, Petrou, and Singer voted for a reprimand.

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 Thomas James Catley
Docket No. DRB 20-200

Argued: November 19, 2020

Decided: June 2, 2021

Disposition: Censure

<i>Members</i>	Censure	Reprimand	Recused	Did Not Participate
Clark	X			
Gallipoli	X			
Boyer		X		
Hoberman	X			
Joseph		X		
Petrou		X		
Rivera	X			
Singer		X		
Zmirich	X			
Total:	5	4	0	0



Johanna Barba Jones
Chief Counsel