

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-266
District Docket No. IIIA-2019-0006E

In the Matter of
William M. Witherspoon
An Attorney at Law

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Decision

Decided: June 15, 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 IIIA Ethics Committee (DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.3 (lack of

diligence), RPC 1.4(b) (failure to communicate with the client), 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 earned admission to the New Jersey and Pennsylvania bars in 1988. At the relevant times, he maintained an office for the practice of law in Lakehurst, New Jersey. He has no prior discipline.

Since July 22, 2019, respondent has been administratively ineligible to practice law in New Jersey for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

Service of process was proper. On December 4, 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 with an illegible signature; the certification does not indicate whether the regular mail was returned.

On July 14, 2020, the DEC sent a letter, by certified and regular mail, to respondent's 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

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.

imposition of discipline, and the complaint would be amended to charge a willful violation of RPC 8.1(b). The certified mail receipt was returned with a different illegible signature; again, the certification does not reveal whether the regular mail was returned.

As of September 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 a date not set forth in the record, Katherine Ann Hoffman retained respondent to settle the estate of her deceased brother, James H. Robinson, Jr. Hoffman paid respondent's fee on an hourly basis, and he advised her that it would take approximately fourteen months to settle the estate. Hoffman called respondent numerous times to discuss the matter but was told either by respondent's assistant that respondent was not available, or by respondent that the estate would be settled in a matter of months. Respondent blamed the delay on the New Jersey Department of the Treasury, Division of Taxation.

On March 1, 2017, respondent spoke to Hoffman and advised her that the estate would be settled within thirty days. In April 2017, Hoffman went to respondent's office, where she was told that the estate would be settled within six months.

Thereafter, Hoffman asked respondent's assistant for the name of the individual at the Division of Taxation with whom respondent had been communicating. Respondent refused to provide Hoffman with the name. By letter dated August 18, 2017, Hoffman again requested the name of respondent's contact at the Division of Taxation, but received no reply.

On October 4, 2017, Hoffman directly contacted the Division of Taxation and an employee, Donald Fowler, told her that respondent had not been in contact with him for four-and-a-half years, and that the Division of Taxation had sent letters to respondent. That day, Hoffman relayed her conversation with Fowler to respondent, who denied Fowler's statement, asserting that he had been in contact with the Division of Taxation over the course of the prior several months and twice in the past week.

On October 13, 2017, Hoffman retained Ann Marie Schreiber, Esq. to assume the representation. Schreiber sent two letters to respondent, but he failed to reply.

On January 31, 2019, Hoffman filed the grievance from which this matter arose. The DEC forwarded Hoffman's grievance to respondent on May 10, 2019. Respondent failed to reply to the grievance, failed to reply to the DEC's June 10, 2019 follow-up letter concerning the grievance, and failed to reply to a DEC telephone message left with his assistant.

Based on the above facts, the complaint charged respondent with having violated RPC 1.3 by failing to act diligently in settling the estate for Hoffman, and for taking no action on her behalf; RPC 1.4(b) by failing to reply to Hoffman's numerous inquiries as to the status of the matter, and RPC 8.1(b) by failing to cooperate in the disciplinary investigation and by failing to file an answer to the complaint.²

We find that the facts recited in the complaint support all 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. See R. 1:20-4(f)(1).

The record supports the allegations that respondent violated RPC 1.3, RPC 1.4(b), and RPC 8.1(b). Specifically, respondent violated RPC 1.3 by failing to diligently perform the legal services for which he was hired – the settlement of Hoffman's deceased brother's estate. Instead, he took little or no action to advance Hoffman's interests in respect of the estate.

Respondent also violated RPC 1.4(b) by repeatedly failing to reply to Hoffman's inquiries regarding the status of the matter. To ascertain the status of

² Despite respondent's false statement to Hoffman that he had recently contacted the Division of Taxation, the complaint did not charge him with misrepresentation, in violation of RPC 8.4(c).

the estate, Hoffman was forced to directly contact the Division of Taxation. Respondent's lack of diligence and failure to communicate also made it necessary for Hoffman to hire new counsel to protect her interests.

Finally, respondent twice violated RPC 8.1(b). First, by failing to reply to the grievance. Second, by failing to file an answer the ethics complaint.

In sum, we find that respondent violated RPC 1.3, RPC 1.4(b), and RPC 8.1(b) (two instances). The sole issue left for our determination is the appropriate quantum of discipline.

Generally, an admonition is imposed for lack of diligence and failure to communicate with the client. See, e.g., In the Matter of Kyle G. Schwartz, DRB 19-222 (September 20, 2019) (after the attorney agreed to represent the executrix of an estate, for the purpose of filing tax returns and to assist in the sale of real estate, he neither communicated with the client nor completed the estate work; after the client threatened to file a grievance against the attorney, he apologized, promised to provide draft documents within days, but, once again, failed to communicate with her and failed to complete the documents; violations of RPC 1.3 and RPC 1.4(b)); In the Matter of Christopher G. Cappio, DRB 15-418 (March 24, 2016) (after the client retained the attorney to handle a bankruptcy matter, paid his fee, and signed the bankruptcy petition, the attorney failed to file the petition or to return his client's calls in a timely manner); and

In the Matter of Charles M. Damian, DRB 15-107 (May 27, 2015) (attorney filed a defective foreclosure complaint and failed to correct the deficiencies, despite notice from the court that the complaint would be dismissed if they were not cured; after the complaint was dismissed, he took no action to vacate the dismissal, a violation of RPC 1.3; the attorney also failed to tell the clients that he had never amended the original complaint or filed a new one, that their complaint had been dismissed, and that it had not been reinstated, a violation of RPC 1.4(b); in mitigation, the attorney had no other discipline in thirty-five years at the bar; staffing problems in his office negatively affected the handling of the foreclosure case; he was battling a serious illness during this time; and other family-related issues consumed his time and contributed to his inattention to the matter).

Admonitions likewise 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 Richard D. Koppenaal, DRB 13-164 (October 21, 2013) (attorney failed to cooperate with the district ethics committee's attempts to obtain information about his representation of a client in an expungement matter).

Here, applicable disciplinary precedent for respondent's misconduct warrants at least a reprimand. In crafting the appropriate discipline, however, we also consider aggravating and mitigating factors. In aggravation, respondent appears to have taken no action in behalf of Hoffman, causing Hoffman harm, both in delay and financial expenses, because she was forced to hire another attorney to settle the estate. By failing to reply to the grievance and to the ethics complaint, respondent ignored both Hoffman's matter and this disciplinary proceeding.

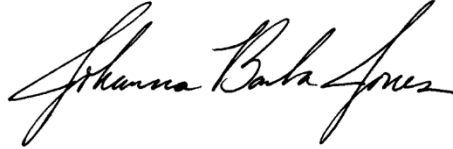
In further aggravation, we must consider the default status of this matter. "[A] respondent's default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted). In light of respondent's default, the enhanced sanction of a censure is warranted.

In mitigation, respondent has no disciplinary history in more than thirty years as a member of the bar.

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

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 William M. Witherspoon
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Disposition: Censure

| <i>Members</i> | Censure |
|----------------|---------|
| Clark | X |
| Gallipoli | X |
| Boyer | X |
| Hoberman | X |
| Joseph | X |
| Petrou | X |
| Rivera | X |
| Singer | X |
| Zmirich | X |
| Total: | 9 |



Johanna Barba Jones
Chief Counsel