Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-261
District Docket No. VII-2018-0014E

In the Matter of

Edward Harrington Heyburn

An Attorney at Law

Decision

Argued: February 18, 2021

Decided: July 6, 2021

Cherylee O. Melcher appeared on behalf of the District VII Ethics Committee.

Respondent appeared pro se.

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 VII Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.3 (lack of diligence); 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 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions); RPC 3.2 (failure to expedite litigation); and R. 1:21-1(a) (failure to be reasonably accessible and available).[1]

For the reasons set forth below, we determine to impose a one-year suspension.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1997. He maintains an office for the practice of law in East Windsor, New Jersey.

On November 13, 2013, respondent received a censure for his combined misconduct in two defaults. One of the matters involved violations of the attorney advertising rules; the other involved a lack of diligence, failure to cooperate with ethics investigators, and misrepresentations by silence. In re Heyburn, 216 N.J. 161 (2013).

On June 18, 2015, respondent received a second censure for gross neglect, lack of diligence, failure to communicate, and misrepresentations to a client. In re Heyburn, 221 N.J. 631 (2015).

[1] The complaint improperly cited this Court Rule, which is neither a disciplinary Rule nor a basis for a per se violation of an RPC.

On July 9, 2018, respondent received a third censure for negligent misappropriation of client funds and recordkeeping violations. In re Heyburn, 234 N.J. 80 (2018).

On December 9, 2020, respondent received a fourth censure for failing to promptly deliver funds to a third party, knowingly disobeying an obligation under the rules of a tribunal, and engaging in conduct prejudicial to the administration of justice. In re Heyburn, 244 N.J. 427 (2020).

On March 2, 2021, we imposed a six-month suspension for respondent's gross neglect; lack of diligence; failure to communicate; failure to expedite litigation; and failure to cooperate with disciplinary authorities. In the Matter of Edward Harrington Heyburn, DRB 20-039 (March 2, 2021). That matter is pending with the Court.

On July 1, 2019, the DEC filed a formal disciplinary complaint against respondent. Respondent's alleged misconduct stemmed from his representation of the grievant, Linda Hogancamp, in a divorce proceeding. On August 23, 2019, respondent filed a verified answer. On February 13, 2020, the DEC hearing panel held a one-day hearing, where Hogancamp and respondent, appearing pro se, testified. The parties submitted a joint pre-hearing submission, including a joint stipulation of facts and joint exhibits.

At the end of 2015, Hogancamp contacted respondent, a family friend of six or seven years, about filing for divorce from Gary Hogancamp (Gary), her husband of thirty years. In February 2016, Hogancamp retained respondent and paid him $2,500 for the uncontested divorce matter.

Hogancamp completed necessary forms that respondent had provided to her and, on August 9, 2016, she delivered to respondent a $250 check for filing fees for the divorce complaint. Hogancamp expected that the complaint would be filed by September 2016.

In September 2016, Hogancamp contacted respondent, via Facebook Messenger (FM), inquired about the status of her case, stated that she was "going to have a nervous breakdown" if she "didn't get [Gary] out of the house," and noted that her filing fee check had not yet been negotiated.[2] On September 24, 2016, respondent replied via FM, and advised Hogancamp that the court notified him that he could pick up a filed copy of the complaint "on Monday" and that he was not sure why the filing fee check had not yet been cashed. Hogancamp replied that the divorce needed to be done as soon as possible.

At that point in time, Hogancamp believed that respondent had filed the divorce complaint. In late September or early October 2016, Hogancamp

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[2] Hogancamp testified that Facebook Messenger was her primary means of communicating with respondent at this point in the representation. The messages were jointly admitted into the record.

contacted respondent again, via FM, and inquired about the status of her case, as she had not received confirmation of the filing of the complaint, and because Gary, who was still living in the marital home, had not been served. Hogancamp noted that “the sooner the better” and that “the situation is killing [her].” Respondent replied that Gary should be served “by the end of the week.”

By November 3, 2016, Gary had not been served, prompting Hogancamp to again inquire with respondent, via FM, about her case. On November 10, 2016, respondent represented to Hogancamp, via FM, that service would be completed the next day. Hogancamp understood respondent’s reply to mean that respondent had a copy of the filed complaint.

The next day, November 11, 2016, respondent claimed to Hogancamp, via FM, that he appeared at the Mercer County Courthouse and, although they had documents for her case and the uncashed filing fee check, they did not have a signed copy of the complaint. Respondent informed Hogancamp that the court did not provide an explanation as to the missing complaint, and that, because he had her sign only one copy of the complaint, he requested that Hogancamp meet him to sign another copy. Hogancamp was “upset” and felt “misled” and “lied to” when she read respondent’s message, because he previously had represented that the complaint had been filed.

On November 14, 2016, respondent met Hogancamp at her place of employment to obtain her signature on the complaint. A week later, on November 21, 2016, respondent again met Hogancamp at her place of employment to obtain additional paperwork necessary for the filing of the complaint.

In December 2016, Hogancamp sent a note, via FM, to respondent, requesting a status update on her case, to which she received no response.

On January 3, 2017, Hogancamp, via FM, again questioned respondent about her case. She noted that it had been over four months since she had tried to file for divorce and, because Gary was unemployed, she was concerned that, if she should file for divorce at that time, she would be responsible for alimony and her credit rating would suffer. Further, Hogancamp stated that the court had not yet cashed her filing fee check, indicating to her that the divorce complaint had not yet been filed. She therefore requested that respondent not file the complaint. Hogancamp noted that the $2,500 she had paid to respondent could be used for her bills and, accordingly, asked that part of the $2,500 fee be refunded to her "since this proceeding has not been worked on." Hogancamp testified that this correspondence occurred during the holidays, and the divorce and the marriage was causing her a great financial and emotional burden.

Within the next few days, despite Hogancamp's direction not to do so, respondent filed the divorce complaint. On January 4, 2017, respondent advised Hogancamp, via FM, that Gary would be served with the complaint the following day. Respondent further stated that he would "sit down" and address her "issue about the money" on "Thursday, after [Gary] receives the complaint." Hogancamp never met with respondent to address her financial issues.

On January 8, 2017, respondent served a complaint for divorce on Gary.

On February 4, 2017, respondent advised Hogancamp, via FM, that Gary consented to a default in connection with the divorce proceeding, and that he had left Gary a message about deeding over title to the marital residence.

One month later, in March 2017, Hogancamp requested, via FM, a status update. Respondent promptly informed her that the complaint was filed and served; that the house was the only issue; that Gary was not contesting the divorce; and that the divorce could be completed by April 2017. In March 2017, respondent and Hogancamp exchanged multiple messages, through FM, about the house, and respondent requested a meeting with Hogancamp and Gary. Hogancamp, Gary, and respondent did not meet to discuss the house due to Hogancamp's work schedule, but Hogancamp advised respondent that Gary was going to "sign the house over" to her.

On April 11, 2017, FM communications confirmed that respondent had spoken to Gary, who did not object to Hogancamp retaining the house. Respondent represented that he was working on the necessary paperwork.

Throughout May 2017, Hogancamp attempted to contact respondent, via FM, for a status of her case, but received no replies.

Sometime later, in early June 2017, respondent advised Hogancamp, via FM, that he had spoken to Gary to make arrangements for Gary to sign the house over to Hogancamp, and to have Gary execute a Property Settlement Agreement (PSA).

In June 2017, Gary and Hogancamp signed a PSA. At the time she signed the PSA, Hogancamp and respondent had a discussion that the PSA would be filed and a default hearing date would be requested.

From August through October 2017, Hogancamp reached out to respondent, via FM, asking for a status update and emphasizing her urgency to secure a date for her divorce. On October 11, 2017, respondent informed Hogancamp that the court had scheduled a hearing date for November 11, 2017, and that the divorce would be finalized by December. Thus, based on respondent's message, Hogancamp believed the divorce would be finalized in November or December 2017.

Thereafter, on December 14, 2017, Hogancamp informed respondent, via FM, that she was "getting extremely frustrated," and that she knew, having worked in a law office for eighteen years, that "cases are listed periodically." She stated that she had "to get this divorce done," that she "cannot wait any longer," and instructed respondent to contact the court for a hearing date. Respondent replied hours later, stating that he understood Hogancamp's frustration, and claiming that he was "working actively to get the date."

At that point, Hogancamp felt that respondent was misleading her, and was not sure whether to believe him. Therefore, she reached out to Rachel Stark, of Stark & Stark (her former employer), and asked for help. Stark contacted the court and learned that Hogancamp's case had been dismissed on July 26, 2017, for failure to file pertinent paperwork. Respondent had failed to disclose the dismissal to Hogancamp.

On December 14, 2017, Hogancamp contacted respondent, via FM, informing him that she now knew that, on July 26, 2017, her case had been dismissed due to his failure to provide paperwork. Hogancamp noted that she was "furious" and asked respondent how he was "going to fix this." The same day, respondent replied to Hogancamp, via FM, and apologized. He stated that he had filed a motion to reinstate the complaint and enter default, explaining, in part:

> When Gary did not answer and I did not request a default, the court entered an administrative dismissal. I fell behind in my work and that is my fault. I am sorry. You deserve better as a client and as a friend. The motion will rectify it. I am sending you a copy of the motion over night [sic] mail and Gary by Certified mail. Again I am so sorry.
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> [J-13;T71-T72.][3]

The motion to reinstate the complaint, filed by respondent, was dated December 14, 2017, the same day as the above messages. In Hogancamp's opinion, respondent filed the motion to reinstate after she advised him of the dismissal, despite his claim that he had already filed the motion. In January 2018, Hogancamp sent respondent a message, via FM, stating that she was "disappointed in the fact that [respondent had] been lying to [her]."

Because the motion had a return date of January 11, 2018, Hogancamp reached out to respondent to determine if she had to appear in court that day. Respondent informed Hogancamp that she did not have to appear for the motion, and that the clerk would ask the judge if they could proceed with the divorce sometime in the next week.

On January 31, 2018, respondent informed Hogancamp that the court denied the motion to reinstate because it had not been timely filed, and that he had to refile the complaint. He told Hogancamp that he would refile the

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[3] "T" refers to the February 13, 2020 hearing transcript.

complaint the next day, noting that he would "request a hearing ASAP," and that he was "sorry" and would be "making it a priority to push this."

In February 2018, Hogancamp sent respondent a message, via FM, stating that an attorney advised her "to file a malpractice suit and/or an ethics complaint with the bar" against him, and that she wanted to avoid that but respondent "leaves [her] no choice." She added that, if the divorce complaint was not filed in the next month, and the divorce finalized by the end of May 2018, she would seek damages against respondent. Respondent replied that he would serve Gary with the new complaint.

On March 1, 2018, Hogancamp sent respondent an e-mail and asked him to provide her a copy of the filed complaint. The next day, respondent replied that Hogancamp would need to complete a new confidential litigation statement. Hogancamp completed the form and delivered it to respondent the next day.

On March 26, 2018, Hogancamp requested a status update, by e-mail, because she had not heard from respondent. On March 29, 2018, respondent replied to Hogancamp, via e-mail, representing that he mailed in the confidentiality statement and the complaint, that the complaint was filed, and that he was working on getting a hearing date for April. Based on the e-mail message from respondent, Hogancamp believed that the new complaint had been filed and that she would be divorced by April 2018.

However, on April 9, 2018, Hogancamp had not yet received a copy of the filed complaint, and Gary had not been served; thus, Hogancamp requested another status update from respondent.

On May 17, 2018, Hogancamp sent respondent an e-mail stating that she was "sorry to say that since I have not yet had the return of my money, nor have you filed the divorce complaint, that I have no alternative but to file repercussions against you." That day, respondent replied that he would call the court and try to get a hearing date. Hogancamp replied, stating that Gary had not yet been served, so "how can it be listed?"

On that date, May 17, 2018, Hogancamp filed the ethics grievance against respondent.

At some point after her May 17, 2018 correspondence, respondent provided Hogancamp with a copy of the filed complaint. The cover letter to the complaint was dated February 9, 2018, and the complaint was dated February 10, 2018. However, the complaint was not marked filed by the Family Court until March 29, 2018.

On August 2, 2018, more than a year after the PSA was executed, Hogancamp sent respondent an e-mail, informing him that she received a court notice that her divorce case would be dismissed on September 28, 2018, due to failure to file proof of service that Gary had been served with the complaint.

Respondent did not reply to that message. However, the next day, on August 3, 2018, respondent filed with the court an affidavit of service and request to enter default. The affidavit of service noted that Gary was personally served with the divorce complaint on June 12, 2018.

Hogancamp followed up with a second message on August 12, 2018. Respondent replied the next day, indicating that, during the prior week, he had served the complaint, filed proof of service, and requested default, noting that he would send Hogancamp a copy and that the hearing should be "soon."

Pursuant to an August 17, 2018 court notice, a default divorce hearing was scheduled to take place on October 15, 2018 before the Honorable Catherine Fitzpatrick, J.S.C. Hogancamp and Gary appeared for the hearing, however, respondent was running late. When the hearing was canceled due to Judge Fitzpatrick being ill, Hogancamp called respondent and told him not to appear, because the judge was sick. A sheriff's officer informed Hogancamp that the calendar was being rescheduled to December, but that, if her attorney called, the attorney could possibly get an earlier date. The hearing was rescheduled by the court for December 7, 2018. Respondent attempted to get an earlier date, but Judge Fitzpatrick informed him that she would decide the matter on the papers.

On November 1, 2018, Hogancamp appeared before a notary and executed an affidavit in support of her application for divorce to be decided on the papers.

Prior to her signing the affidavit, respondent advised Hogancamp that he could not proceed with the divorce if she continued with the ethics complaint because it would be a conflict of interest. He asked her how she wanted to proceed – whether he should submit the papers to Judge Fitzpatrick, or whether she wanted to drop the matter.[4] Hogancamp told him that she wanted the divorce done.

On November 5, 2018, respondent submitted to Judge Fitzpatrick the affidavit, the fully executed PSA, a proposed judgment of divorce, and requested that the matter be decided on the papers. On November 7, 2018, Judge Fitzpatrick granted respondent's application and entered a final judgment of divorce.

Hogancamp did not withdraw her ethics grievance, testifying that she thought respondent's reply to the grievance "had so many misrepresentations in it that [she] was going to go ahead and go through with it." She testified that, from the time she first submitted the required paperwork to respondent, to the time the divorce was final in November 2018, she suffered financially, "took a hit" with filing her tax return as married filing separately, still had Gary living in the home, and that it was "hard."

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[4] Respondent was not charged with misconduct in connection with this statement, which could constitute a per se violation of RPC 8.4(d). See A.C.P.E. Opinion 721, 204 N.J.L.J. 928 (June 27, 2011) ("an attorney may not seek or agree, as a condition of settlement of an underlying dispute, that the client not file an ethics grievance with regard to conduct of the attorney in the matter or withdraw a grievance already filed").

On cross-examination by respondent, Hogancamp noted that a fee agreement was signed, but not presented to the DEC investigator because she had misplaced it. She admitted that respondent informed her that family law was not his area of expertise. Although she had respondent's e-mail address, she chose to contact him through Facebook. Hogancamp testified that she used FM because it allowed her to see when respondent read her messages. At some point, she switched to e-mail to contact respondent.

Hogancamp testified that respondent had appeared at her home and place of employment to obtain signatures, and that he had personally served Gary with the complaint; yet, he did not charge her any additional fees; did not charge her for filing the motion to reinstate the complaint; did not charge her for the second complaint's filing fee; and did not charge her for preparing the affidavit to have the divorce proceed on the papers. Hogancamp also conceded that a portion of the delay in her divorce was due to her own issues in getting paperwork to respondent, and due to the court rescheduling matters.

Respondent testified, calling himself as his only witness. He knew Hogancamp because she had been his children's schoolteacher. He stated that he informed Hogancamp that he primarily handled criminal and personal injury law, but that, because her divorce was uncontested, he thought that he could represent her. Prior to this matter, respondent had filed four or five uncontested

divorces in his twenty-plus years as an attorney. Respondent provided Hogancamp a "substantial break" on his fees because she was his children's teacher. Respondent informed Hogancamp that his schedule would be busy in 2016, because he was involved in a murder trial which would consume a lot of his time.

Respondent noted that he had "some problems" filing with the Family Court because Criminal and Civil courts had moved to an electronic file system, but Family had not yet done so. He acknowledged that there were delays in Hogancamp's matter, but claimed that he did file the original complaint by mail, even though the court did not receive it. Respondent did not realize that there had been a Rule change in family court practice, which stated that, if a complaint were dismissed, the situation had to be rectified within two months, or a new complaint would have to be filed.

Respondent stated that because Hogancamp was "desperate for money" and working two jobs, he thought he could help by being the process server to serve Gary the complaint. However, Gary was not responsive to calls. Respondent was eventually "able to track him down" and serve him with the complaint.

Respondent admitted that his handling of Hogancamp's case was not "perfect," but that he thought he was doing her a favor. He stated that he no

longer engaged in correspondence through social media, and that he wished he had restricted that with Hogancamp, because it caused "confusion" and "complicated the communication" between them. Now in his practice, respondent allows clients to contact him only by telephone, e-mail, or facsimile. He further asserted that Hogancamp's work schedule made it "virtually impossible" for her to come to his office and drop off paperwork.

In the course of his testimony, respondent recognized that he did "bear a certain responsibility for the delay and things had to be done to rectify it," also noting that the issues were, in fact, rectified, and Hogancamp did obtain her divorce. Respondent agreed with Hogancamp that additional expenses should have been, and were, paid by him. Finally, respondent testified:

> And just—my final—I guess my final point is I don't think that every mistake is an ethical violation, okay? I think that there are certain times where an attorney violates the ethical rules, but then there are sometimes [sic] where the Court administratively dismisses a complaint and the attorney files it to get it reinstated, or in this case, files the new complaint. If we get to a point where every administrative dismissal equates to an ethical violation, I just think we're going down a horrible path. You know, we as attorneys make mistakes, you know. It happens, Sometimes the mistakes are fatal to a case. Sometimes they're things that we can correct.
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> If we're not afforded the opportunity to correct them, and everything turns into an ethical complaint, I think that it's going to be problematic for—for the system. I tried to do the best I could. I thought that I was doing

> her a favor. I now am a firm believer that the road to hell is paved with good intentions. But I ultimately—ultimately, she was divorced. Ultimately, she only paid $2,500. And, you know, there was some delay.
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> [T132-T133.]

On cross-examination, respondent admitted that he replied to Hogancamp via FMs and never advised her to not use that method of communication. He further admitted that, as of August 2016, he had what he needed to file the first divorce complaint, but failed to file it until January 2017. Respondent admitted that, when Hogancamp asked him if she had to appear in court on November 10, 2017 for the motion to reinstate, he told her that she did not and that the matter would be handled administratively. He also admitted that, at that time, he had not yet filed the motion, and the case had been dismissed in July 2017. When, in February 2018, respondent told Hogancamp that Gary was accepting service of the new complaint that day, the new complaint had not yet been filed. Indeed, respondent admitted that the second complaint was filed on March 29, 2018 and was not served on Gary until June 2018.

Upon questioning by the panel, respondent testified that, at the time he handled Hogancamp's divorce, he had no office staff or associates. He worked out of a home office, and was "of counsel" for Gage Fiore, in Lawrenceville, New Jersey, where he used office space and equipment. Since Hogancamp's divorce was finalized in 2018, respondent had handled one other divorce case,

which was "semi-contested" and took about eighteen months to conclude. Respondent further admitted that he was aware that he would be doing more work on Hogancamp's case than for which he would be paid.

Although the hearing panel allowed the parties to submit written summations by March 20, 2020, there are no summations in the record.

The hearing panel found that respondent violated RPC 1.3; RPC 1.4(b); RPC 1.4(c); and RPC 3.2, but dismissed the alleged violation of R. 1:21-1(a), because it is not a Rule of Professional Conduct.

Particularly, with regard to respondent's violation of RPC 1.3, the panel found that, by August 9, 2016, respondent had everything necessary to file the divorce complaint, and yet, from August through December 2016, respondent failed to properly advance Hogancamp's interests. The panel found that respondent filed the complaint in January 2017, only after Hogancamp asked him not to file the complaint, and had requested a return of a portion of her fee. Additionally, respondent's failure to perfect a default against Gary and to timely file to reinstate the complaint, resulted in the complaint not being filed until March 29, 2018. The panel attributed the delay between August 2016 and March 2018 solely to respondent, further noting that respondent acknowledged fault by not charging Hogancamp for the additional work and filing fees associated with re-filing the second complaint. The panel pointed out that Hogancamp made

clear that she needed to secure the divorce with haste, due to her desire to be out of the marriage. As such, the panel found that respondent lacked diligence, and found a violation of RPC 1.3.

Regarding the charge that respondent failed to communicate with Hogancamp, in violation of RPC 1.4(b) and RPC 1.4(c), the panel found that respondent communicated with Hogancamp "sporadically," and seldom initiated communication. The panel noted that respondent failed to produce a single letter to Hogancamp, nearly all FMs were initiated by Hogancamp, and no telephone call log was supplied. More concerning to the panel was that respondent communicated untruthful and inaccurate information to conceal the fact that he failed to actively handle Hogancamp's divorce matter, including: falsely indicating that the complaint had been filed; falsely indicating that a motion to reinstate had been filed; falsely informing Hogancamp of hearing dates that did not exist; and failing to inform Hogancamp that her divorce complaint had been dismissed for lack of prosecution. Because respondent failed to advise Hogancamp of material information, failed to inform her that her complaint had been dismissed, and failed to keep her informed in a timely and accurate manner, the panel found that respondent violated RPC 1.4(b) and RPC 1.4(c).

Further, regarding the charge that respondent failed to expedite litigation, in violation of RPC 3.2, the panel found that respondent admitted that he delayed

and got behind in his work, and concluded that respondent's "extraordinary procrastination in filing the complaint after receiving all payments and necessary documents for filing led to an inexplicable five-month delay." The panel found credible Hogancamp's testimony that the continuation of the marriage was causing her harm and that she wanted a divorce as soon as possible. The panel, thus, determined that respondent was acutely aware of Hogancamp's urgency. As such, the panel found that respondent violated RPC 3.2 by failing to expedite litigation.

No mitigating factors were found, but the panel considered the following aggravating factors: accepting a fee and failing to act, intentionally misleading the client regarding the timing and existence of court filings, and prior attorney discipline.

"Mindful" that respondent had been censured three previous times, the panel nonetheless recommended a censure for respondent's misconduct.

On February 2, 2021, the presenter submitted a brief for our consideration. After summarizing the testimony and evidence presented at the hearing, the presenter recommended that we affirm the hearing panel's determination and find that respondent violated the Rules as charged. Further, the presenter argued that the principle of progressive discipline should be applied in connection with any discipline imposed on respondent and argued in favor of a term of

suspension. Regarding discipline, the presenter noted that "Respondent has already had three bites at the apple with censures that have not been effective to deter unethical behavior as Respondent continues to make the same mistakes and violate the same RPCs."

Respondent did not file any written submission with us. However, at oral argument, respondent minimized the three years that it took to conclude the divorce, blamed Hogancamp for part of that delay, and doubled down on his demonstrably false position that he had never misrepresented the status of the case to her.

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.

Specifically, respondent failed to act with reasonable diligence by failing to secure the filing of Hogancamp's initial divorce complaint for over four months, from August 2016 to January 2017. His failure to file for default within the time provided by the Court Rules resulted in Hogancamp's divorce complaint being dismissed, and further demonstrated respondent's lack of diligence. Although the motion to reinstate the complaint was denied in December 2017, respondent failed to file the second divorce complaint until March 29, 2018, and failed to serve it on Gary until June 2018. Respondent's

delays constituted a failure to act with reasonable diligence, in violation of RPC 1.3.

Moreover, respondent failed to keep Hogancamp informed of the status of her case, failed to reply to her reasonable inquiries and requests for status updates, and made misrepresentations to her about filings and court proceedings. As such, Hogancamp was deprived of the ability to make informed decisions about her case, and was required to doggedly seek communication with respondent. Respondent's actions, and inaction, in communicating with Hogancamp demonstrated a failure to communicate, in violation of both RPC 1.4(b) and RPC 1.4(c).

Further, respondent's lack of diligence and his delay in filing pleadings and motions demonstrated that respondent failed to pursue the litigation in an active, timely manner, resulting in delays to Hogancamp and to the court. Hogancamp's uncontested divorce litigation spanned two years, an unreasonable amount of time given the circumstances of the case. Therefore, respondent failed to expedite litigation, in violation of RPC 3.2.

Moreover, respondent repeatedly provided Hogancamp with false information concerning the filing and service of her complaint. Hogancamp lost trust in him and had to reach out to a former employer for information regarding

her case.[5] As late as October 2017, respondent led Hogancamp to believe that her divorce would be finalized by November or December 2017, even though the matter had been dismissed in July 2017. When confronted by Hogancamp about the July 2017 dismissal, respondent told Hogancamp that he had filed a motion to reinstate, when actually, he filed the motion later that same day.

Inexplicably, respondent filed the complaint only after Hogancamp asked him not to file it, without concern for her instructions, or discussion with her. He did not serve the complaint until Hogancamp informed him that she had received a court notice that the complaint would be dismissed, again, if proof of service was not filed.

Hogancamp's frustration with respondent's conduct was warranted, especially given the fact that Gary was willing to work with respondent; did not contest the divorce; signed the PSA; and consented to a default. The divorce, which should have taken no more than a few months to, at most, a year, lingered for two years and two months, from August 2016 to November 2018.

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[5] The complaint omitted to charge respondent with having violated RPC 1.2(a) (failure to abide by the client's decisions concerning the scope and objectives of representation) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), although the record would support a finding that respondent violated these Rules.

In sum, we find that respondent violated RPC 1.3; RPC 1.4(b); RPC 1.4(c); and RPC 3.2. We dismiss the deficient charge citing R. 1:21-1(a). The sole issue left for our determination is the appropriate quantum of discipline.

Generally, an admonition is the appropriate form of discipline for lack of diligence and failure to communicate with the client. See, e.g., In the Matter of Christopher G. Cappio, DRB 15-418 (March 24, 2016) (after the client had 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); 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); and In the Matter of

Stephen A. Traylor, DRB 13-166 (April 22, 2014) (attorney was retained to represent a Venezuelan native in pending deportation proceedings instituted after he had overstayed his visa; although the attorney and his client had appeared before the immigration court on three separate occasions, the attorney failed to file a Petition for Alien Relative Form until several days after his client was ordered deported; the appeal from that order was denied, which the attorney did not disclose to the client, but the petition was granted months later; violations of RPC 1.3 and RPC 1.4(b)).

Likewise, an admonition is the proper discipline for a violation of RPC 1.4(c), even when accompanied by other minor misconduct. See In the Matter of Joel I. Rachmiel, DRB 18-064 (April 24, 2018) (attorney failed to reply to requests for information about the status of a matter or to explain a matter to the extent necessary for the client to make informed decisions about the representation; the attorney also engaged in gross neglect and lack of diligence) and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 15-161 (July 22, 2015) (attorney, representing a personal injury client, failed to keep her apprised about critical events in the case, which prevented her from making informed decisions about the representation; he also failed to provide the client with a writing setting forth the basis or rate of the fee).

Admonitions have been imposed for failure to expedite litigation, even when accompanied by another violation. See In the Matter of Leonard B. Zucker, DRB 12-039 (April 23, 2012) (after the attorney had filed a foreclosure complaint against a California resident, the defendant retained a New Jersey attorney, who provided proof that the defendant was not the proper party and requested the filing of a stipulation of dismissal; the attorney ignored the request, as well as all telephone calls and letters from the other attorney; only after the other attorney had filed an answer, a motion for summary judgment, and a grievance against him did he forward a stipulation of dismissal; violations of RPC 3.2 and RPC 5.3(a); in mitigation, we considered the attorney's otherwise unblemished record of fifty-two years, his semi-retired status at the time of the events, his firm's apology to the grievant and reimbursement of his legal fees, and the firm's institution of new procedures to avoid the recurrence of similar problems).

Here, respondent's misconduct caused significant harm to Hogancamp. Respondent was aware of the exigency of Hogancamp's need for a divorce, as evidenced by her living and financial situation, yet her complaint was dismissed as a direct result of respondent's misconduct. Respondent's decision to represent Hogancamp in her divorce complaint for a reduced fee should not have impacted the urgency of his actions taken in her behalf and did not diminish his duty to

provide competent representation. His claim that communications were confused due to his use of social media to confer with clients lacks support, as it is clear that respondent failed to communicate with Hogancamp in any other manner.

Although respondent categorizes his actions as "mistakes" and not ethics violations, we find that, in the aggregate, respondent's treatment of Hogancamp and of her divorce matter certainly supports the ethics violations charged and warrants a significant quantum of discipline.

Here, the baseline level of discipline for the totality of respondent's violations is a censure. However, to craft the appropriate discipline in this case, we must consider both mitigating and aggravating factors.

In aggravation, respondent has four prior censures, some for misconduct similar to his behavior in this matter. Also, recently we voted to impose a six-month suspension on respondent after client complaints in two separate matters were dismissed, with prejudice, as a direct result of respondent's misconduct. In the Matter of Edward Harrington Heyburn, DRB 20-039 (March 2, 2021). By respondent's own assessment, one client had a meritorious personal injury case that the court dismissed with prejudice due to respondent's lack of diligence in properly serving the defendant, one of the most basic tasks a litigator is bound to complete.

Respondent's 2015 censure stemmed from misconduct that arose in 2007, when he promised a client that he would appeal the dismissal of a nursing home wrongful death complaint but failed to do so. In the Matter of Edward Harrington Heyburn, DRB 14-279 (March 10, 2015). Thereafter, he ignored the client's repeated requests for information about the appeal.

Additionally, in 2010, after respondent filed a medical malpractice lawsuit, the defendant filed a motion to dismiss the complaint due to respondent's failure to file an affidavit of merit within sixty days of the filing of the defendant's answer. The trial court dismissed the complaint on this basis, and although respondent informed the clients of the dismissal of the case, he did not disclose the reason. For several months, after the clients sought to retrieve the file from respondent to retain another attorney, respondent failed to return their messages or turn over the requested documents. In the Matter of Edward Harrington Heyburn, DRB 13-028 and 13-062 (July 29, 2013).

The Court has signaled an inclination toward progressive discipline and 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). Respondent's prior censures, for similar misconduct, clearly beckon such an enhancement.

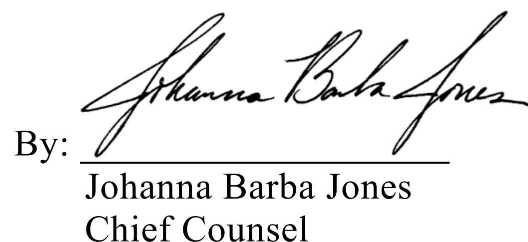
In our view, there is no mitigation to consider.

Considering respondent's failure to learn from his past mistakes, his significant disciplinary history, and the danger that he clearly is posing to his clients, over a prolonged period of time, we conclude that a one-year suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Vice-Chair Gallipoli voted to recommend to the Court that respondent be disbarred.

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 Edward Harrington Heyburn
Docket No. DRB 20-261

Argued: February 18, 2021

Decided: July 6, 2021

Disposition: One-year suspension

Members	One-year suspension	Disbar
Clark	X	
Gallipoli		X
Boyer	X	
Hoberman	X	
Joseph	X	
Petrou	X	
Rivera	X	
Singer	X	
Zmirich	X	
Total:	8	1

Johanna Barba Jones
Chief Counsel