Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-028
District Docket No. XIV-2019-0578E

In the Matter of	:
John Charles Allen	:
An Attorney at Law	:

Decision

Decided: July 21, 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 Office of Attorney Ethics (the OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 1.15(d) (failure to

comply with recordkeeping Rules) and RPC 8.1(b) (two instances – failure to cooperate with disciplinary authorities).[1]

On April 20, 2021, respondent submitted a motion to vacate the default (an MVD), which we denied on May 21, 2021. For the reasons set forth below, we now determine to impose a one-year suspension, consecutive to the three-month term of suspension we recently imposed in In the Matter of John Charles Allen, DRB 20-296 (July 8, 2021).

Respondent was admitted to the New Jersey bar in 1995.

In May 2005, he received an admonition for gross neglect (RPC 1.1(a)) and failure to communicate with his client (now RPC 1.4(b)) in a foreclosure matter. In the Matter of John Charles Allen, DRB 05-087 (May 23, 2005).

On May 6, 2015, respondent received a censure for gross neglect; lack of diligence (RPC 1.3); failure to communicate with his client (RPC 1.4(b)); and conduct prejudicial to the administration of justice (RPC 8.4(d)). In re Allen, 221 N.J. 298 (2015). We found that respondent provided legal services to his client only after the client filed an ethics grievance against him. Also, when respondent finally worked on the client's matter, he satisfied a lien other than

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

the lien he had been hired to resolve. He failed to reply to any correspondence from his client for over a year and failed to keep his client reasonably informed about the status of the matter. Respondent also improperly sought to persuade his client to withdraw the grievance in exchange for a refund of his fees or continued work on the matter without additional fees. In the Matter of John Charles Allen, DRB 14-226 (January 22, 2015) (slip op. at 13-14).

In 2018 and 2019, the Court temporarily suspended respondent for his failure to comply with fee arbitration awards in two matters unrelated to those before us. In re Allen, 235 N.J. 363 (2018), and In re Allen, 237 N.J. 435 (2019). In both matters, the Court reinstated Allen within a month's time. In re Allen, 236 N.J. 90 (2018); In re Allen, 237 N.J. 586 (2019).

Effective July 6, 2021, the Court temporarily suspended respondent for his failure to comply with two additional fee arbitration matters. In the Matter of John Charles Allen, DRB 21-107 (May 27, 2021); In re Allen, __ N.J. __ (2021); In the Matter of John Charles Allen, DRB 21-078 (May 27, 2021); In re Allen, __ N.J. __ (2021).

Earlier this year, we heard oral argument in In the Matter of John Charles Allen, DRB 20-296, wherein the formal ethics complaint charged respondent with having violated RPC 1.15(d); RPC 3.3(a)(1) (two instances – false

statement of material fact to a tribunal); RPC 5.5(a)(1) (unauthorized practice of law – failure to maintain professional liability insurance); RPC 8.1(a) (two instances – false statement of material fact in a disciplinary matter); RPC 8.1(b) (two instances); and RPC 8.4(c) (two instances – conduct involving dishonesty, fraud, deceit or misrepresentation). In our decision dated July 8, 2021, we suspended respondent for three months, with the conditions that, prior to reinstatement, he complete a recordkeeping course, and that, after reinstatement, he be subjected to quarterly recordkeeping monitoring by the OAE for a period of two years. That decision is pending with the Court.

Turning to this matter, service of process was proper. On November 13, 2020, the OAE 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, signed by "PS," and indicated delivery on November 19, 2020. The regular mail was not returned.

On November 13, 2020, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record. The certified mail receipt was returned with an illegible signature, and indicated delivery on November 13, 2020. The record does not set forth the status of the regular mail.

On December 16, 2020, the OAE sent letters, by e-mail and regular mail, to respondent's home, office, and e-mail addresses of record, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The receipt for the e-mail message indicated that the message was delivered on December 16, 2020; the regular mail was not returned.

As of January 27, 2021, respondent had not filed an answer to the complaint and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

We now turn to the allegations of the complaint.

On September 19, 2019, the OAE received a grievance from Emeka K. Onyemize, who alleged that respondent failed to provide the legal services for which he had been retained. Onyemize's grievance asserted that he had paid respondent $650 in cash and $4,850 by cashier's check to prosecute a lawsuit against the United States Postal Service (USPS).

On November 12, 2019, the OAE docketed the matter for investigation and sent respondent a letter, by certified and regular mail, to his home address,

requesting a written response to the grievance by November 26, 2019. Although the letters were not returned, respondent failed to provide a written response to the grievance by the deadline.

Thereafter, on December 20, 2019, the OAE again sent respondent a letter, by certified and regular mail and by facsimile, enclosing the November 12, 2019 letter and requesting a response by January 6, 2020. The regular mail was not returned to the OAE, and the facsimile letter was confirmed to have been delivered. The certified mail was not returned to the OAE, and was listed as "in transit" as of the date of the formal ethics complaint.

Respondent failed to provide a response by the January 6, 2020 deadline. However, on January 7, 2020, the OAE received a letter from respondent, by facsimile, acknowledging his receipt of the December 20, 2019 letter and requesting a one-week extension to file his reply. The OAE granted the request, and indicated that the reply would be due on January 16, 2020.

Respondent failed to provide a reply by the extended deadline. On January 21, 2020, the OAE received another letter from respondent, again by facsimile, requesting a second extension, to January 27, 2020, to provide

a response. The OAE granted the request but indicated that there would be no further extensions.

When respondent's reply was not received by the second extended deadline, the OAE sent letters to respondent, on February 4, 2020, by facsimile and regular mail, and, on February 7, 2020, by facsimile, certified mail, and regular mail, informing respondent that his reply had not been received and was due immediately, and scheduling a demand interview for February 25, 2020.

On February 25, 2020, the day of the demand interview, respondent sent his written reply to the grievance to the OAE, by facsimile, in which he expressed his requirement that the demand interview be rescheduled. Respondent asserted that Onyemize had paid him $4,850 by money order to litigate against the USPS "for what the client insisted were money orders that he purchased from USPS and which the USPS refused to liquidate for him." Respondent further stated that, after he was retained, he inquired with the USPS and "learned that the money orders in question had already been used and/or had no value." Respondent claimed that, as a result, he sought to meet with Onyemize to discuss the matter, but that Onyemize refused to meet respondent at his office and would "disappear" for periods of time. The

record does not reveal whether respondent did any further work to advance Onyemize's interests.

On May 21, 2020, the OAE rescheduled the demand interview to occur by telephone on June 9, 2020.

On June 9, 2020, respondent was contacted to conduct the demand interview, but stated that he was not prepared to proceed and requested that the interview be rescheduled for the next day. The OAE granted respondent's request. However, on June 10, 2020, when contacted for the interview, respondent stated that he was not feeling well and asked if they could reschedule the interview for the next week. After corresponding about available dates with the OAE, respondent stated that he would be available for the demand interview on Friday, June 26, 2020.

On June 26, 2020, the OAE conducted the demand interview of respondent, wherein the OAE requested certain documents and respondent agreed to supply them by July 6, 2020. The OAE followed up with respondent by e-mail, outlining the required documents and reminding respondent of the July 6, 2020 deadline. Specifically, the OAE requested the retainer agreement between respondent and Onyemize, copies of correspondence respondent sent on behalf of Onyemize, and an itemized billing

statement and telephone records for the work respondent stated he had completed for Onyemize.

Respondent failed to provide the documents to the OAE, even after the OAE followed up, on July 15, 2020, by e-mail message and a facsimile letter.

Based on the above facts, the formal ethics complaint charged respondent with having violated RPC 1.15(d) by failing to comply with his obligation to retain Onyemize's retainer agreement in accordance with R. 1:21-6(c)(1)(C), and RPC 8.1(b) by failing to cooperate with disciplinary authorities.

During the pendency of this default case, respondent submitted an MVD which we received on April 20, 2021. Attached to his certification in support of the MVD were numerous doctors' notes, spanning from 2016 through April 13, 2021. Respondent failed to attach a proposed answer, but noted in his certification that he was "in the process of preparing an answer to the complaint and will be forwarding it in short order." Additionally, respondent asked us for a sixty-day adjournment of this matter so that he could hire counsel to represent him.

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 listed his medical problems in the certification, arguing that although he had not been as diligent in this matter as he should have been, his medical issues constituted a compelling reason for this, and that any neglect is "excusable."

Certainly, respondent's medical conditions appear severe. However, respondent failed to connect his medical issues to his failure to provide a timely answer in this case. In fact, respondent claimed that none of his clients have been harmed due to his conditions. Further, although respondent noted that he had to fly to Minnesota for treatment on three occasions, he failed to provide dates for his travel in order to connect his treatments and travel to his failure to answer the ethics complaint in this matter. Respondent claimed that he is able to maintain his law practice despite his general medical conditions but does not explain why he was unable to file an answer in this particular matter.

Nor are we able to ignore respondent's selective participation in disciplinary and fee arbitration matters. Respondent's unmet obligation to respond to the OAE's investigatory demands in this matter spanned from November 12, 2019 to July 15, 2020. Court records demonstrate that, during the

same period, respondent composed and submitted responses in two fee arbitration cases in which clients were disputing his fees. Particularly, respondent filed his Attorney Fee Arbitration Response Form (AFARF) in DRB 21-107 on March 10, 2020. Respondent filed his AFARF in DRB 21-078 on June 1, 2020. Also on June 1, 2020, respondent filed a motion to reinstate the client's complaint in the civil representation underlying DRB 21-078.

In short, we observe that respondent was able to create legal submissions when it was in his financial interest to do so. He simultaneously acted in derogation of his duty to cooperate with ethics investigations in this matter. See R. 1:20-3(g)(3) ("[e]very attorney shall cooperate in a disciplinary investigation and reply in writing within ten days of receipt of a request for information").

Respondent's selective participation in the disciplinary process left us unable to find that he had offered a reasonable explanation for his failure to answer the ethics complaint. Instead, we concluded that respondent's explanation for his failure to file an answer was neither reasonable nor credible. He therefore did not satisfy the first prong of the test.

Assuming, arguendo, that we had determined that respondent satisfied the first prong of the test, we still would have denied his MVD because he did not offer a meritorious defense to all the charges in the complaint. Respondent's

MVD does not mention Onyemize or any specifics concerning the matter at issue. Nor did he provide a proposed answer.

Thus, respondent's argument as to the merits of his defense failed to satisfy the second prong of the test for an MVD.

Accordingly, we determined to deny respondent's MVD and issued a letter decision to that effect on May 21, 2021.

Moving to our review of the record, respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). We find that the facts recited in the complaint support both of the charges of unethical conduct.

Specifically, the record supports the allegations that respondent violated RPC 1.15(d) and RPC 8.1(b). First, Onyemize claimed in his grievance that he paid respondent $650 in cash and $4,850 by cashier's check to commence a lawsuit against the USPS. Respondent conceded that he received $4,850 by money order as a retainer, and admitted to making an "inquiry" with the USPS concerning the client's matter. By not keeping a copy of a retainer agreement, respondent has limited the OAE's ability to investigate the matter and has failed

to comply with recordkeeping requirements of R. 1:21-6, a per se violation of RPC 1.15(d).[2]

Further, despite the many extensions the OAE granted to respondent, between November 2019 and July 2020, and respondent's assurances that he would cooperate, respondent repeatedly failed to reply and provide the documents requested from the Onyemize matter. Respondent strung the OAE along, seeking extension after extension and providing various reasons for his failure to comply, and then inexplicably and unprofessionally cut off communication with the OAE. In so doing, he failed to provide the required documents by the agreed upon deadline and failed to file a verified answer to the resulting formal ethics complaint. Respondent's actions constituted two independent failures to comply with disciplinary authorities, in violation of RPC 8.1(b).

In sum, we find that respondent violated RPC 1.15(d) and RPC 8.1(b) (two instances). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

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[2] Respondent was not charged with having violated RPC 1.5(b) (failure to set forth in writing the basis or rate of the legal fee), but there is no evidence in the record indicating that a retainer agreement or other written agreement existed.

Recordkeeping irregularities ordinarily are met with an admonition, as long as they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014); and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014).

When an attorney fails to cooperate with disciplinary authorities, and previously has been disciplined, but the attorney's ethics record is not serious, reprimands have been imposed. See, e.g., In re Larkins, 217 N.J. 20 (2014) (default; attorney failed to reply to the ethics investigator's attempts to obtain information about the grievance and failed to file an answer to the formal ethics complaint; although we noted that a single violation of RPC 8.1(b), in a default matter, does not necessitate enhancement of the discipline from an admonition to a reprimand, a reprimand was imposed based on a prior admonition and, more significantly, a 2013 censure, also in a default matter, in which the attorney had failed to cooperate with an ethics investigation); In re Wood, 175 N.J. 586 (2003) (attorney failed to cooperate with disciplinary authorities; prior admonition for similar conduct); In re DeBosh, 174 N.J. 336 (2002) (failure to cooperate with disciplinary authorities; prior three-month suspension); and In re Williamson, 152 N.J. 489 (1998) (attorney failed to cooperate with disciplinary

authorities; prior private reprimand for failure to carry out a contract of employment with a client in a matrimonial matter and failure to surrender the client's file to a new attorney).

Here, applicable disciplinary precedent for respondent's misconduct warrants discipline of a reprimand or censure. In crafting the appropriate discipline, however, we also consider aggravating and mitigating factors.

There is no mitigation to consider. We weigh, in aggravation, respondent's failure to learn from his past mistakes. 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).

Moreover, respondent has not used his prior experiences with the disciplinary system as a foundation for reform. See In re Zeitler, 182 N.J. 389, 398 (2005) ("[d]espite having received numerous opportunities to reform himself, respondent has continued to display his disregard, indeed contempt, for our disciplinary rules and our ethics system"). Indeed, respondent's ethics history includes a pattern of temporary suspensions and reinstatements, as well as non-compliance with fee arbitration awards and misrepresentations.

Respondent has not shown the initiative to correct his misconduct on his own, without the intervention of the ethics system to curb his behavior.

As noted above, respondent's approach to his disciplinary obligations needlessly consumes judicial and volunteer resources. In particular, we note with disapproval his repeated delay in satisfying fee arbitration obligations; his inaction to satisfy the obligations until the Court has entered an Order of suspension; and his prosecution of petitions for reinstatement within days of the effective date of each suspension Order. Consistently, here, respondent created opportunities for delay in the investigation of his representation of Onyemize, straining public disciplinary resources. Respondent's pattern of behavior is abusive and arguably violates RPC 8.4(d).

Further, in aggravation, the default status of this matter must be considered. "[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).

On balance, we determine that the aggravating factors support a one-year suspension as the quantum of discipline necessary to protect the public and preserve confidence in the bar. That term of suspension is imposed consecutive

to the three-month term of suspension we recently imposed in connection with DRB 20-296. Given respondent's recurring failure to adhere to professional standards, we further recommend that he be required practice under the supervision of a proctor for a period of no less than one year upon any reinstatement to the practice of law in New Jersey.

Vice-Chair Singer and Member Rivera voted to impose a three-month suspension, consecutive to the term of suspension recently imposed in DRB 20-296, with the same condition imposed by the majority.

Member Joseph was recused.

Member Boyer was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: _____
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John Charles Allen
Docket No. DRB 21-028

Decided: July 21, 2021

Disposition: One-Year Suspension

Members	One-Year Suspension	Three-Month Suspension	Recused	Absent
Gallipoli	X			
Singer		X		
Boyer				X
Campelo	X			
Hoberman	X			
Joseph			X	
Menaker	X			
Petrou	X			
Rivera		X		
Total:	5	2	1	1

Johanna Barba Jones
Chief Counsel