Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-005
District Docket No. IX-2018-0004E

In the Matter of	:
Jonathan S. Rudnick	:
An Attorney at Law	:

Decision

Argued: May 20, 2021

Decided: August 16, 2021

John R. Tatulli appeared on behalf of the District IX Ethics Committee.

Respondent waived appearance for oral argument.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

On November 19, 2020, this matter was before us on a recommendation for an admonition filed by the District IX Ethics Committee (the DEC). We determined to treat the admonition as a recommendation for greater discipline, pursuant to R. 1:20-15(f)(4), and to bring it on for oral argument. The formal

ethics complaint charged respondent with having violated RPC 1.3 (lack of diligence); RPC 1.4(b) and (c) (failure to communicate with a client); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).[1]

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

Respondent earned admission to the New Jersey bar in 1990 and to the New York bar in 1991. During the relevant timeframe, he was the managing member of the law firm Carton and Rudnick, in Tinton Falls, New Jersey. He has no prior discipline.

On April 16, 2019, respondent, through his attorney Charles J. Uliano, Esq., submitted a verified answer to the February 12, 2019 complaint, admitting all the allegations and requesting to be heard in mitigation. On September 11, 2019, the parties entered into a stipulation, wherein respondent again admitted the allegations of the complaint.

The facts of the case are as follows. The grievant, William Lampman, retained respondent for an action against Classic Nissan; Nissan Infinity LT; Nissan Infinity Lease Trust; Nissan Motor Corporation USA; and Nissan North America, Inc. On October 24, 2016, respondent filed the civil action in the

[1] The pleadings and stipulation in this matter erroneously cited RPC 1.4(a) and (b). Based on the narrative description of the RPCs charged in those documents, it is clear that the parties intended to cite RPC 1.4(b) and (c).

Superior Court of New Jersey, Law Division, Burlington County, alleging consumer fraud, misrepresentations for selling a damaged Nissan vehicle, and breach of warranty. On December 23, 2016, Thomas J. Sateary, Esq., the attorney for Nissan Motor Acceptance Corporation (improperly named in the complaint as Nissan Infinity LT and Nissan Infiniti Lease Trust) and Nissan North America, Inc. (together, the Nissan defendants), filed an answer to the complaint and served Lampman with a first set of interrogatories.

Lampman sent his answers to those interrogatories to respondent, who failed to serve the answers on the Nissan defendants. Consequently, on March 21, 2017, the Nissan defendants filed a motion to dismiss the complaint, which the trial court granted on May 5, 2017.

In his statement of mitigation attached to his answer, respondent asserted that he had served the complaint on the manufacturer, but had been unable to serve Classic Nissan, the dealer. Both the process server and Lampman had informed respondent that Classic Nissan was no longer in business. Based on that information, respondent explained to Lampman that he had no case against the dealer.

On March 10, 2017, the Court sent a notice that the claims against defendant Nissan Infinity Lease Trust would be administratively dismissed on May 9, 2017, presumably because the defendant had asserted that Nissan Infinity

Lease Trust was not a properly named party to the lawsuit and that assertion went unchallenged.

Respondent's file did not contain a copy of the signed order of dismissal without prejudice, and respondent admitted that he had never filed a motion to reinstate the complaint.

In October 2017, when Lampman called respondent to inquire about the status of his case, respondent informed Lampman that the dealer was out of business and that the case had been dismissed against the manufacturer. He withheld from Lampman, however, that the case had been dismissed against the manufacturer for respondent's failure to reply to interrogatories. Respondent stated that, after their conversation, he sent a letter to Lampman refunding his money, and falsely claiming that the entire case had been dismissed because the dealer had gone out of business. Respondent admitted that he, thus, made a misrepresentation to Lampman.

In a November 13, 2017 e-mail, Lampman asked respondent for a copy of the motion and stated that "[he did not] understand how the lien can be dismissed without giving [him] any chance of disputing it since liens usually have to be cleared up when properties transfer ownership."

Thereafter, Lampman contacted the court and learned that the case against the Nissan defendants had been dismissed for respondent's failure to respond to

interrogatories; on December 17, 2017, Lampman filed the underlying ethics grievance against respondent.

On September 11, 2019, the DEC held the ethics hearing in this matter. Respondent did not attend the hearing, but Uliano appeared on his behalf. William and Carol Lampman were the only witnesses. Uliano noted that respondent admitted the undisputed facts of the case and that he sought to present mitigating factors to the panel.

William Lampman testified to the facts of the case and stated that he had a retainer agreement with respondent and had paid him $850 for representation. When respondent informed Lampman that the case had been dismissed, Lampman told respondent that he was "out $850." Respondent agreed to return $600 to Lampman, by check, which constituted all but the $250 spent to file the complaint. Lampman testified that he received the check for $600.

Carol Lampman testified that she and her husband have a high school education, needed help to understand the proceedings, and felt stuck in a bad position. She testified:

> Here we are with this car, we don't feel comfortable with, we have this attorney that we not only would have [sic] told that he was a good attorney, we were told he was the best attorney to represent us. My husband than [sic] I have never sued anybody before in our life, so we really trusted him to guide us to where we should have been at this point.

[T34.] [2]

Based on the foregoing facts, respondent stipulated that he had violated RPC 1.3, RPC 1.4(b) and (c), and RPC 8.4(c). Although he had requested a mitigation hearing, respondent did not testify. He explained, via a statement of mitigation that, at the time of Lampman's legal action, he was "embroiled in a very contentious divorce." As a result of the stress of the divorce and custody arrangement concerning his children, respondent received psychological treatment. Respondent emphasized that he had cooperated with the DEC throughout the investigation of the disciplinary matter, was remorseful, and had an unblemished disciplinary history.

Further, during his closing at the ethics hearing, Uliano noted that respondent did return the $600 and that he fully "understood that he had failed the client." Uliano argued that respondent's conduct was an "isolated incident," cited respondent's unblemished record, and asked that the panel recommend that respondent be admonished for his misconduct.

In turn, the presenter argued that "the key here is the misconduct under 8.4(c)." Noting that the matter was not eligible for diversion because of that specific misconduct, the presenter argued:

> Again, I do think the respondent has been cooperative, he has admitted from the beginning his wrongdoing, but

[2] "T" refers to the transcript of the September 11, 2019 ethics hearing.

> the charges are what they are and because one of the hallmarks of the Rules of Professional Conduct is to protect the public, the clients here, Mr. Rudnick's clients have been harmed.
>
> They had a car that was not good that they entrusted him to help them with. And they had gave [sic] the car back, they had a financial loss. They could not just sell it to anyone, so they were wronged here. They had to go themselves to find out the truth, and Mr. Rudnick received the discovery documents, he knew the case was dismissed. He even could have restored the case because this was a without prejudice dismissal . . . .
>
> And you know, but for really that misrepresentation under [RPC] 8.4(c), we wouldn't be here right now.
>
> [T44-T45.]

Based on the foregoing, the presenter urged the panel to impose a reprimand.

The DEC found that respondent neither kept Lampman reasonably informed about the status of the case nor responded to his inquiries and texts. Further, the DEC found that respondent's failure to inform Lampman that the case had been dismissed for failure to answer interrogatories was egregious. Because he failed to act diligently on behalf of his client, and failed to communicate with his client, the DEC found that respondent violated RPC 1.3 and RPC 1.4(b) and (c). Finally, the DEC found that respondent acted dishonestly, in violation of RPC 8.4(c), when he replied to Lampman's inquiry about the dismissal of the case and provided a false reason for it.

In mitigation, the DEC considered respondent's lack of disciplinary record, and the contemporaneous stress of his divorce proceeding. In response to our questioning concerning the extent of any financial harm to Lampman, the presenter noted that the damaged car was traded in for a new car. Ultimately, the DEC recommended that we impose an admonition.

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 violated RPC 1.3 by failing to address the Nissan defendants' discovery request and by failing to file a motion to reinstate the complaint after it had been dismissed. Simply put, respondent failed to advance his clients' interests with the standard of care required of New Jersey attorneys. Although respondent's misconduct further constituted gross neglect, in violation of RPC 1.1(a), because the complaint did not charge him with violating that RPC, we may not make such a finding.

Respondent violated RPC 1.4(b) and (c) by failing to reply to Lampman's inquiries about his case, and by failing to keep Lampman informed about the status of the matter. Making matters worse, respondent omitted from his conversations with Lampman the true reason for the dismissal of the complaint. Respondent's failure to provide the Lampmans with such basic information

denied them the opportunity to fully consider their options regarding the litigation and risked extinguishing their opportunity to seek redress for damages they had incurred.

Finally, respondent violated RPC 8.4(c) by misrepresenting to Lampman that the entire case had been dismissed because the Nissan dealer was no longer in business, rather than admitting the truth – that he had failed to timely file the answers to the Nissan defendants' interrogatories.

In sum, we find that respondent violated RPC 1.3, RPC 1.4(b) and (c), and RPC 8.4(c). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand still may be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney made a misrepresentation by silence to his client, failing to inform her, despite ample opportunity to do so, that her complaint had been dismissed, a violation of RPC 8.4(c); the complaint was dismissed because the attorney had failed to serve interrogatory answers and ignored court orders compelling service of the answers, violations of RPC 1.1(a), RPC 1.3, and RPC 3.2; the attorney also violated RPC 1.4(b) by his complete failure to reply to his client's requests for information or to otherwise

communicate with her; the attorney never informed his client that a motion to compel discovery had been filed, that the court had entered an order granting the motion, or that the court had dismissed her complaint for failure to serve the interrogatory answers and to comply with the court's order, violations of RPC 1.4(c)); In re Ruffolo, 220 N.J. 353 (2015) (knowing that the complaint had been dismissed, the attorney assured the client that his matter was proceeding apace, and that he should expect a monetary award in the near future; both statements were false, in violation of RPC 8.4(c); the attorney also exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, not working on it after filing the initial claim, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter, violations of RPC 1.1(a) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates); and In re Falkenstein, 220 N.J. 110 (2014) (attorney led the client to believe that he had filed an appeal and concocted false stories to support his lies, a violation of RPC 8.4(c); he did so to conceal his failure to comply with his client's request that he seek post-judgment relief, violations of RPC 1.1(a) and RPC 1.3; because he did not believe the appeal had merit, the attorney's failure to withdraw from the case was a violation of RPC 1.16(b)(4); the attorney also practiced law while ineligible, although not knowingly, a violation of RPC 5.5(a)).

Here, standing alone, respondent's blatant misrepresentation to Lampman as to the causes of the dismissal warrants a reprimand. That conclusion is reinforced when one considers his additional lack of diligence and failure to communicate with Lampman.

In mitigation, respondent has no prior discipline since his 1990 admission to the bar. When Lampman complained about losing his $850, respondent refunded his fee, minus the filing fee for the complaint, on his own accord. Respondent admitted that he made a mistake and has accepted responsibility.

On balance, considering the disciplinary precedent, the facts surrounding respondent's misconduct, and the mitigating factors, we impose a reprimand.

Vice-Chair Singer would admonish respondent, as the hearing panel recommended, in light of the following exceptionally strong mitigation: this was respondent's first ethics infraction in almost thirty years at the bar, occurring at a time when he was going through a difficult divorce; it involved one client and one misrepresentation to that client that respondent promptly admitted when confronted; respondent also voluntarily and quickly refunded his client's full fee before any ethics complaint was filed or threatened; respondent was remorseful, cooperating fully with ethics authorities during their investigation, immediately admitting his wrongdoing and all allegations of the complaint and entering into a stipulation; and the client suffered no harm because the car dealership,

successor to the defendant dealership in the client's lawsuit, took the client's defective used car back in exchange for a new car. Based on the above factors, Vice-Chair Singer finds that respondent misconduct is an isolated and aberrant deviation from his usual ethical mode of practice, easily sufficient to reduce what would usually be a reprimand to an admonition.

Member Joseph voted to impose a censure.

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 Jonathan S. Rudnick
Docket No. DRB 21-005

Argued: May 20, 2021

Decided: August 16, 2021

Disposition: Reprimand

Members	Reprimand	Admonition	Censure	Absent
Gallipoli	X			
Singer		X		
Boyer				X
Campelo	X			
Hoberman	X			
Joseph			X	
Menaker	X			
Petrou	X			
Rivera	X			
Total:	6	1	1	1

Johanna Barba Jones
Chief Counsel