

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-014
District Docket No. XA-2019-0026E

In the Matter of
Glen M. Diehl
An Attorney at Law

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Decision

Decided: August 19, 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 XA Ethics Committee (the DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with a client); RPC 1.16(d) (failure to protect the client’s interests upon termination

of the representation); 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 three-month suspension.

Respondent earned admission to the New Jersey bar in 1986. During the relevant time frame, he maintained a law practice in Watchung, New Jersey.

Effective November 6, 2019, the Court temporarily suspended respondent for his failure to comply with OAE requests for information underlying DRB 19-384, detailed next. In re Diehl, 240 N.J. 123 (2019). He remains suspended to date.

On August 6, 2020, in connection with DRB 19-384, a default matter, we imposed a reprimand on respondent for his failure to cooperate with disciplinary authorities in the investigation underlying his temporary suspension. In the Matter of Glen M. Diehl, DRB 19-384 (August 6, 2020). That matter is pending with the Court.

Service of process was proper. On April 22, 2020, 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 was returned as unclaimed. The regular

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.

mail was not returned. Considering respondent's November 6, 2019 temporary suspension, the DEC's efforts to serve him at his office would not have constituted proper service.

On May 1, 2020, however, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record. The certified mail was claimed and the regular mail was not returned.

On June 5, 2020, the DEC sent a letter to respondent, by certified and regular mail, to his home 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 imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The certified mail was returned, indicating that the property was vacant, and the regular mail was not returned.

On September 6, 2020, Isabel McGinty, Assistant Ethics Counsel and Statewide Ethics Coordinator for the Office of Attorney Ethics, sent e-mails to respondent, to his two e-mail addresses of record, requesting that he provide disciplinary authorities with a current mailing address. One of respondent's e-mail addresses did not accept delivery; respondent failed to reply in connection with the other e-mail address.

As of October 29, 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.

In January 2018, the grievant, Mario Mannino, and his spouse, whose name is not set forth in the record, retained respondent to defend them against a foreclosure action filed by Windsor Estates LLC (Windsor), a developer in Montville, New Jersey. Respondent also agreed to pursue a counterclaim against Windsor, regarding an oral contract whereby Mario Mannino and his business entity had provided to Windsor certain earthwork services. Regarding the foreclosure action, Mannino and his wife previously had purchased a lot from Windsor, secured by both a \$100,000 promissory note and a mortgage in favor of Windsor. When the Manninos defaulted on their payments toward the lot, Windsor commenced the foreclosure action in New Jersey Superior Court, Chancery Division, Morris County.

On January 19, 2018, respondent sent to counsel for Windsor a settlement offer approved by the Manninos. The settlement offer referenced the services that Mannino claimed to have provided to Windsor and cautioned that, if the parties were unable to settle, respondent would commence litigation against Windsor on behalf of the Manninos. The parties did not settle and, on February

7, 2018, respondent filed a motion to set aside a default judgment that had been entered in favor of Windsor in the foreclosure action. In support of the motion, Mannino's wife filed a certification stating that the Manninos had intended to pay the mortgage but had been "counting on" Windsor to pay Mannino for the earthwork services he had provided. She represented that, when Windsor failed to pay Mannino, the couple was unable to pay the mortgage.

By stipulation dated March 16, 2018, the parties informed the trial court that the foreclosure action had been "amicably adjusted," and the matter was dismissed, without prejudice. The ethics complaint explained that the stipulation was the result of the Manninos having paid off the promissory note, but that the Manninos still intended to pursue damages from Windsor for the unpaid earthwork services. On June 18, 2018, respondent wrote to counsel for Windsor, stating that the Manninos would settle their claims against Windsor for \$195,000, and enclosing a draft complaint regarding the Manninos' potential cause of action.

Thereafter, despite their numerous efforts to contact respondent, the Manninos received no further communications from him. In 2019, respondent also failed to communicate with the Manninos' new counsel, Robert Garofalo, Esq., despite Garofalo's efforts. Respondent also failed to provide the Manninos' file to Garofalo, notwithstanding Garofalo's requests that he do so.

Respondent never filed the draft complaint he had sent to Windsor and, following his June 18, 2018 letter to Windsor, took no action to advance the Manninos' interests.

On July 1, 2019, Mannino filed with the DEC an ethics grievance against respondent. Attempts by the DEC to serve the grievance on respondent at his two known law office addresses were unsuccessful. The DEC ultimately served respondent, on September 20, 2019, at his home address. Respondent failed to reply to Mannino's grievance; consequently, in October 2019, the DEC sent letters to respondent, via regular and certified mail, at his home address, reminding him of his obligation to cooperate with the DEC's pending investigation. Despite the DEC's efforts, respondent failed to reply to the grievance.

Based on the foregoing facts, the complaint charged respondent with having violated RPC 1.1(a) and RPC 1.3 by failing to pursue the Manninos' claims against Windsor; in fact, the complaint alleged that respondent had abandoned the Manninos. Next, the complaint charged respondent with having violated RPC 1.4(b) by failing to communicate with either the Manninos or their subsequent counsel, despite their repeated requests for information. Third, the complaint charged respondent with having violated RPC 1.16(d) by failing to comply with Garofalo's requests that respondent provide to him the Manninos'

file. Finally, the complaint charged respondent with having twice violated RPC 8.1(b) – by failing to reply to the ethics grievance and by failing to file an answer to the formal ethics complaint.

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).

In January 2018, the Manninos retained respondent to defend Windsor’s foreclosure action and to pursue a counterclaim against Windsor for the unpaid earthwork services provided by Mannino. Subsequently, when the parties did not settle, despite respondent’s offer made on behalf of the Manninos, respondent filed a motion to set aside a default judgment that had been entered in favor of Windsor in the foreclosure action. The Manninos then paid off the promissory note, but informed respondent that they still desired to pursue damages from Windsor for the unpaid earthwork services.

By stipulation dated March 16, 2018, the parties informed the trial court that the foreclosure action had been settled, and that component of the litigation was dismissed, without prejudice. On June 18, 2018, respondent informed counsel for Windsor that the Manninos would settle their remaining claims

against Windsor for \$195,000 and provided a draft complaint regarding the Manninos' potential cause of action.

Thereafter, respondent ceased all communication with the Manninos, despite their numerous efforts, and performed no further work regarding their claims against Windsor. Moreover, respondent failed to communicate with the Manninos' subsequent counsel, Garofalo, and failed to provide the Manninos' file to Garofalo, despite Garofalo's requests that he do so. Respondent never filed the draft complaint he had sent to Windsor and, following his June 18, 2018 letter to Windsor, took no action to advance the Manninos' interests. Respondent, thus, violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); and RPC 1.16(d).

On July 1, 2019, Mannino filed an ethics grievance against respondent. On September 20, 2019, the DEC properly served the grievance on respondent at his home address. Respondent, however, failed to reply to Mannino's grievance. Accordingly, in October 2019, the DEC sent letters to respondent, via regular and certified mail, at his home address, reminding him of his obligation to cooperate with the DEC's pending investigation. Despite the DEC's efforts, respondent failed to reply to the grievance. On May 1, 2020, the DEC properly served the formal ethics complaint on respondent, but he failed to file a verified answer. Respondent, thus, twice violated RPC 8.1(b).

In sum, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.16(d); and RPC 8.1(b) (two instances). The sole issue left for our determination is the appropriate quantum of discipline.

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, the presence of additional violations, and the attorney's disciplinary history. See, e.g., In the Matter of Esther Maria Alvarez, DRB 19-190 (September 20, 2019) (admonition for attorney who was retained to obtain a divorce for her client but, for the next nine months, failed to take any steps to pursue the matter, and failed to reply to all but one of the client's requests for information about the status of her case, violations of RPC 1.1(a) and RPC 1.4(b); in another matter, the attorney agreed to seek a default judgment, but waited more than eighteen months to file the necessary papers with the court; although the attorney obtained a default judgment, the court later vacated it due to the passage of time, which precluded a determination on the merits; violations of RPC 1.1(a) and RPC 1.3); In the Matter of Michael J. Pocchio, DRB 18-192 (October 1, 2018) (admonition for attorney who filed a divorce complaint and permitted it to be dismissed for failure to prosecute the action; he also failed to seek reinstatement of the complaint, and failed to communicate with the client;

violations of RPC 1.1(a); RPC 1.3; RPC 1.4(b); and RPC 3.2); In re Burro, 235 N.J. 413 (2018) (reprimand for attorney who grossly neglected and lacked diligence in an estate matter for ten years and failed to file New Jersey Inheritance Tax returns, resulting in the accrual of \$40,000 in interest and the imposition of a lien on property belonging to the executrix, in violation of RPC 1.1(a) and RPC 1.3; the attorney also failed to keep the client reasonably informed about events in the case (RPC 1.4(b)); to return the client file upon termination of the representation (RPC 1.16(d)); and to cooperate with the ethics investigation (RPC 8.1(b)); in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand; in mitigation, the attorney expressed remorse and had suffered a stroke that forced him to cease practicing law); and In re Abasolo, 235 N.J. 326 (2018) (reprimand for attorney who grossly neglected and lacked diligence in a personal injury case for two years after filing the complaint; after successfully restoring the matter to the active trial list, the attorney failed to pay a \$300 filing fee, permitting the defendants' order of dismissal with prejudice to stand, in violation of RPC 1.1(a) and RPC 1.3; in addition, for four years, the attorney failed to keep the client reasonably informed about the status of the case, in violation of RPC 1.4(b)).

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 did not 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).

Respondent's additional violation of RPC 1.16(d) does not serve to enhance the quantum of discipline beyond the baseline quantum of a censure established by the above precedent. To craft the appropriate discipline, however, we also consider aggravating and mitigating factors. In aggravation, respondent defaulted in this matter, despite the DEC's proper service of the complaint. This

matter constitutes respondent's second consecutive default, with our third consecutive default decision (DRB 21-076) to follow. "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).

There is no mitigation to consider. On balance, we determine that a three-month suspension 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
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 Glen M. Diehl
Docket No. DRB 21-014

Decided: August 19, 2021

Disposition: Three-Month Suspension

| <i>Members</i> | Three-Month Suspension | Absent |
|----------------|---------------------------|--------|
| Gallipoli | X | |
| Singer | X | |
| Boyer | X | |
| Campelo | | X |
| Hoberman | X | |
| Joseph | X | |
| Menaker | | |
| Petrou | X | |
| Rivera | X | |
| Total: | 8 | 1 |



Johanna Barba Jones
Chief Counsel