

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-061
District Docket No. VA-2019-0027E

In the Matter of :
Audwin Frederick Levasseur :
An Attorney at Law :

Decision

Decided: September 24, 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 VA Ethics Committee (the DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 1.3 (lack of

diligence), RPC 1.4(b) (failure to communicate with a client), and RPC 8.1(b) (two instances – failure to cooperate with disciplinary authorities).¹

On May 12, 2021, the Office of Board Counsel (the OBC) received from respondent a certification in support of vacating the default. Although respondent filed no notice of motion, proposed answer, or other supporting documents, we determined to treat respondent's submission as a motion to vacate the default (MVD). In his MVD, respondent also requested the appointment of counsel.

On June 22, 2021, we denied respondent's MVD and request for appointment of counsel. For the reasons set forth below, we now determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 2005.

On March 16, 2020, the Court reprimanded respondent, in a default matter, for his violation of RPC 5.5(a)(1) (unauthorized practice of law due to failure to maintain professional liability insurance, as R. 1:21-1A(a)(3) requires) and RPC 8.1(b). In re Levasseur, 241 N.J. 357 (2020). In that matter, from January 23, 2012 through August 16, 2014, respondent failed to maintain the

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

required malpractice insurance for his firm, a professional corporation. In the Matter of Audwin Frederick Levasseur, DRB 19-138 (September 13, 2019) (slip op. at 7).

On December 9, 2020, the Court again reprimanded respondent, in a second default matter, for his violation of RPC 1.4(b) and RPC 8.1(b). Respondent filed an MVD in that matter, asserting personal reasons for his failure to receive mail at his former home address. However, we denied the MVD, citing the obligation of New Jersey attorneys to update their home and office addresses with the Office of Attorney Ethics (the OAE) and the New Jersey Lawyers' Fund for Client Protection. In re Levasseur, 244 N.J. 410 (2020). In that matter, the charges stemmed from misconduct occurring in 2015 through 2016, including failure to communicate with a client and failure to cooperate with disciplinary authorities. In the Matter of Audwin Frederick Levasseur, DRB 19-442 (September 21, 2020) (slip op. at 4-5).

Respondent currently resides in Jacksonville, Florida and is not engaged in the practice of law in New Jersey.

Service of process was proper. On November 17, 2020, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's prior home and office addresses of record, in Neptune and Newark,

New Jersey, respectively. The certified and regular mail sent to the Neptune home address was returned. The certified and regular mail to the Newark office address was not returned.

Thereafter, the DEC obtained respondent's Jacksonville, Florida address (the Jacksonville address) from the OAE. The Court's Central Attorney Management System now lists the Jacksonville address as respondent's current home and office address. On December 21, 2020, the DEC sent a copy of the formal ethics complaint, by Federal Express and regular mail, to the Jacksonville address. The Federal Express delivery confirmation indicated that delivery was effectuated on December 22, 2020, and the regular mail was not returned.

On February 9, 2021, the DEC sent a letter, by Federal Express and regular mail, to both respondent's prior home address in Neptune, New Jersey and to the Jacksonville 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 Federal Express delivery confirmations indicated a delivery date of February 10, 2021 to both the Jacksonville and Neptune addresses. The regular mail was not returned.

As of March 2, 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 DEC certified this matter to us as a default.

On May 3, 2021, the OBC published a disciplinary notice in the New Jersey Law Journal, stating that a formal ethics complaint had been filed against respondent. This notice informed respondent that, unless he filed an MVD by May 11, 2021, his failure to answer would be deemed an admission of the allegations of the complaint.

We now turn to the allegations of the complaint.

In October 2012, the grievant, Michele Blaso, filed a claim with her insurance company, Farm Family Insurance (Farm Family), concerning damage to her Cream Ridge, New Jersey home caused by Super Storm Sandy. A dispute arose between Blaso and Farm Family, which prompted Blaso to contact the Voss Law Firm for representation. The Voss Law Firm then referred Blaso to respondent.

Blaso retained respondent and, on October 23, 2013, he filed a lawsuit on her behalf against Farm Family in Superior Court, Law Division, Monmouth County (the Farm Family litigation). After the Farm Family litigation commenced, respondent failed to adequately communicate with Blaso and, from

2015 through 2016, failed to provide her any updates. On limited occasions, respondent communicated with Blaso by text message or via telephone calls at odd hours. These text messages to Blaso often involved last minute requests for information. For example, on November 6, 2015 at 11:38 a.m., respondent sent a text message to Blaso advising her, for the first time, that her court-ordered deposition was scheduled for that day and inquiring whether she was available to appear. In another example, on April 7, 2016, Blaso sent a text message to respondent for an update on the Farm Family litigation, and sent him four more messages in April, before respondent provided an update five weeks later, on May 16, 2016. From May through June 2016, Blaso attempted to contact respondent for an update on her case through text messages but received no substantive replies.

From February through April 2017, respondent failed to update Blaso on the status of her case. Therefore, on April 19, 2017, Blaso requested and obtained a copy of the court's file in the Farm Family litigation, and discovered that her case had been dismissed, more than a year earlier, on January 22, 2016, for respondent's failure to comply with discovery requirements. Respondent had failed to inform Blaso of the dismissal.

On April 19, 2017, the day she learned of the dismissal, Blaso sent a text message to respondent, expressing that she was “outraged” and “mortified” that he had failed to inform her of the dismissal. Respondent and Blaso spoke by telephone that day, and respondent acknowledged that the Farm Family litigation had been dismissed. Respondent then offered to personally pay Blaso \$18,500, by May 19, 2017, to resolve the dismissal of the Farm Family litigation. Blaso asked respondent his reasons for offering to pay her personally, and respondent answered that he would rather pay her than the court or insurance company to get the case reinstated.

Blaso agreed to the \$18,500 settlement. However, respondent did not provide those funds to her. Text messages revealed that Blaso asked respondent for a written communication of the settlement agreement. On June 8, 2017, respondent sent a text message to Blaso stating that he was “arranging the funds.” On June 12, 2017, respondent informed Blaso, by text message, that he was waiting on two cases to settle in order to provide the funds to Blaso, and that he would provide \$10,000 to her by that Friday, and the remainder by the end of June.

On June 11, 2018, having received no funds from respondent, Blaso filed a breach of contract action against him in the Superior Court of New Jersey,

Law Division, Essex County, Special Civil Part. Respondent failed to answer the Special Civil complaint, and the court entered a default judgment against him, for \$18,500.

On August 9, 2019, Blaso filed the underlying ethics grievance against respondent. On July 7, 2020, the DEC sent respondent a letter, enclosing the grievance and requiring a reply within ten days. The record provides no explanation regarding the cause of the delay between the date of the filing of the grievance and the service of the grievance on respondent.

Nonetheless, respondent failed to respond to the July 7, 2020 letter and, on September 21, 2020, the DEC sent a follow-up letter, again requiring that respondent reply within ten days. Respondent failed to reply to the September 21, 2020 letter.

Based on the foregoing, on November 11, 2020, the DEC filed the formal ethics complaint against respondent, charging him with having violated RPC 1.3, RPC 1.4(b), and RPC 8.1(b) (two instances). Respondent failed to answer the complaint.

As stated previously, on May 11, 2021, the OBC received, via e-mail correspondence, respondent's undated certification (Cert), which we determined to treat as an MVD. 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.

Here, respondent has offered sympathetic excuses in support of the first prong but has asserted no contrary facts or defenses concerning the underlying charges. Respondent also requested the appointment of counsel to assist him in this matter.

As to the first prong, respondent stated that, in 2017, following the death of his mother, he relocated his family to Florida and began “winding down” his New Jersey law practice. In 2020, due to the COVID-19 pandemic, respondent’s firm and income was “decimated,” and his New Jersey home was foreclosed upon by his lender. Respondent currently is unemployed and residing in Florida, with no intention of relocating to New Jersey. He currently relies on loans from family members, has child support obligations that remain outstanding, and remains actively in search of employment.

Respondent stated that, because of his financial troubles and family losses incurred with the COVID-19 pandemic, “mustering the mental faculties, and

clarity of mind and opportunity needed to cope with [his] present circumstances has significantly hindered [his] abilities to represent [himself].”

Although the facts relayed by respondent concerning his failure to answer the ethics complaint are forthcoming and sympathetic, respondent has failed to refute the service of the complaint and failed to connect the facts alleged in his MVD to his failure to answer the complaint. Indeed, service of the ethics complaint was proper, as detailed above. Thus, the reasons for respondent’s inability to answer the complaint remain unclear, and he has failed to satisfy the first prong necessary to vacate the default.

Assuming, arguendo, that we had determined that respondent has satisfied the first prong of the test, we would still have denied his MVD because he has not offered a meritorious defense to all the charges in the complaint. Respondent’s MVD does not mention Blaso or any specifics concerning the Farm Family matter, and he did not provide a proposed answer to the complaint.

Respondent has not presented any meritorious defenses to the allegations of the complaint and, thus, failed to satisfy the second prong of the test to vacate the default. Accordingly, we determined to deny respondent’s MVD and entered a letter decision to that effect on June 22, 2021.

Regarding his request for counsel, respondent stated, in relevant part

My financial insolvency[,] aggravated following last year's spiral downturn in business operations[,] have [sic] caused great hardship and impeded my abilities to retain counsel via my own financial means.

Also mustering the mental faculties, and clarity of mind and opportunity needed to cope with my present circumstances has significantly hindered my abilities to represent myself.

To be blunt. Over the last year and half, I have been trying to survive and make a living. These life challenges have impeded my abilities to defend myself in the present action in any reasonable capacity.

Furthermore, it is also unclear to me as to whether I have received all the pleadings in the present action, and I would request that an [sic] further correspondence be sent via email . . . as I remain unclear of the present claims even as I review my files here in in [sic] Florida.

The difficulty of my present circumstances has incited me to make an application for appointment of counsel in another ethics matter pending. My application for appointment of counsel remains pending. Without question I need help and I need the assistance of counsel to help me navigate through that matter.

If seeking leave to retain counsel is not an option in the present proceeding, than [sic] I simply request that I be allocated more time and opportunity to respond to the present matter. Please understand that by no means, am I seeking to be uncooperative. My law practice in NJ has historically provided great opportunity to provide [for] my family and my mother before her passing. I have never taken this privilege [for] granted. My delay

is intricately related to my present exceedingly difficult life circumstances transpiring over the last year and five months.

[Cert¶¶19-24.]

Respondent requested that the default be vacated, that he be permitted to present his case, with or without counsel, and that all prior and future pleadings be sent to him by e-mail so that he can be assured that he has the appropriate documents to defend the matter.

Respondent failed to cite any Rule or law to support his argument for the appointment of counsel. However, R. 1:20-4(g)(2) provides, in relevant part, that “[a] respondent desiring representation but claiming inability to retain counsel by reason of indigency, shall promptly notify the vice chair and special ethics master, if one is appointed, and shall, within 14 days after service of the complaint, make written application to the Assignment Judge of the vicinage in which respondent practices or formerly practiced” Respondent must serve the application on the parties and us, and submit to the Assignment Judge a certification demonstrating indigency, pursuant to R. 1:4-4(b).

Although respondent mentioned a pending application for counsel, it is unclear as to which matter he referred. Further, respondent has not offered any documentation to support his claim of indigency. Clearly, he is out of time,

pursuant to R. 1:20-4(g), for the filing of an application for counsel in this matter. Respondent stated that he does not have the mental clarity to proceed without counsel, yet he did not claim to be mentally incapacitated or ill, and did not connect any condition or specific issue he may be having to his inability to comply with disciplinary authorities. Moreover, this is respondent's third default and, thus, at this point, he should be familiar with the Rules and requirements for ethics proceedings, including the criteria for successfully vacating a default. Finally, because this matter proceeded by default, and respondent has failed to demonstrate that the motion to vacate the default should be granted, we determined to deny respondent's request for counsel.

Moving to our review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. 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).

Specifically, the record supports the allegation that respondent violated RPC 1.3. Respondent failed to timely prosecute the Farm Family litigation on behalf of Blaso, resulting in the case being dismissed and the likely loss of Blaso's potential avenues for relief. Despite knowing of the dismissal,

respondent failed to file a motion to reinstate the litigation and, more egregiously, intentionally failed to inform Blaso of the dismissal of her case.

Further, the complaint and record support the allegation that respondent failed to properly communicate with Blaso and to keep her informed of the status of the Farm Family litigation. Blaso repeatedly sent text messages to respondent and appeared to be a willing, active litigant. Yet, respondent often ignored her requests for information concerning her case. As a result, Blaso was forced to procure the court's file on her own behalf. Respondent also failed to inform Blaso that a motion to reinstate the matter was a viable option to proceed after dismissal of the Farm Family litigation. Consequently, respondent committed numerous violations of RPC 1.4(b).

Finally, the DEC sent respondent the grievance in this matter on July 7 and September 21, 2020, both times informing him that he had ten days to reply. Respondent's failure to reply to the grievance or to contact the DEC constituted a violation of RPC 8.1(b). After being served with the ethics complaint on December 21, 2020, as well as the follow-up letter on February 9, 2021, respondent neither replied to the DEC nor requested an extension of time to answer the complaint. This constituted a second violation of RPC 8.1(b).

In sum, we find that respondent violated RPC 1.3, RPC 1.4(b), and RPC 8.1(b) (two instances). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

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 failed to disclose to the client, but the petition was granted months later; violations of RPC 1.3 and 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 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 the totality of respondent's misconduct warrants a censure. In crafting the appropriate discipline, however, we must also consider aggravating and mitigating factors.

There is no mitigation to consider. We must 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). Here, respondent was reprimanded twice in 2020 for similar misconduct, including failure to communicate with his clients, failure to cooperate with disciplinary authorities, and for the unauthorized practice of law.

Specifically, Blaso retained respondent in 2013, and the default judgment was entered against her in 2018. During the pendency of respondent's representation of Blaso, in 2018, respondent was under investigation for having violated RPC 1.4(b) and RPC 8.1(b) in In the Matter of Audwin Frederick Levasseur, DRB 19-442 (September 21, 2020). In that matter, respondent failed to reply to the 2018 grievance, as well as the 2019 ethics complaint, and proceeded by default. Likewise, in In the Matter of Audwin Frederick Levasseur, DRB 19-138 (September 13, 2019), respondent was under investigation in 2018 for having violated RPC 5.5(a)(1) and failed to respond to disciplinary authorities. Respondent, thus, had a heightened awareness of his obligation to cooperate with and engage in New Jersey's attorney discipline system.

Moreover, respondent has neither learned from his past contacts with the disciplinary system nor used those prior experiences 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, this is respondent's third default in less than eighteen months.

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). As noted, this matter represents respondent’s third default proceeding in less than eighteen months. Respondent was informed of the Blaso grievance in July 2020. The Court imposed the first reprimand on respondent in March 2020, and the second reprimand in December 2020.

On balance, we determine that the aggravating factors support a three-month term of suspension to protect the public and preserve confidence in the bar.

Member Joseph would have granted the MVD and recommended the appointment of counsel to assist respondent in defending himself in these matters, as respondent requested of the Board when he wrote that he does not have the mental capacity to represent himself, given the family and financial misfortunes he has experienced. Alternatively, she voted to impose a censure.

Vice-Chair Singer and Member Boyer also voted to impose a censure.

Member Rivera 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: /s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Audwin Frederick Levasseur
Docket No. DRB 21-061

Decided: September 24, 2021

Disposition: Three-month suspension

| <i>Members</i> | Three-month suspension | Censure | Absent |
|----------------|------------------------|---------|--------|
| Gallipoli | X | | |
| Singer | | X | |
| Boyer | | X | |
| Campelo | X | | |
| Hoberman | X | | |
| Joseph | | X | |
| Menaker | X | | |
| Petrou | X | | |
| Rivera | | | X |
| Total: | 5 | 3 | 1 |

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel