

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-113
District Docket Nos. IIIB-2017-0032E;
IIIB-2018-0044E; and IIIB-2019-0003E

In the Matter of

Thomas M. Barron

An Attorney at Law

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Decision

Argued: July 15, 2021
Decided: September 30, 2021

Christina M. Groves appeared on behalf of the District IIIB Ethics Committee.
George H. Hulse, counsel for respondent, waived oral argument.

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

This matter was before us on a recommendation for an admonition filed
by the District IIIB Ethics Committee (DEC). We determined to treat the matter
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 1.1(a) (gross neglect); RPC 1.3 (lack of diligence – three instances); 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 – three instances); and RPC 1.5(b) (failure to set forth in writing the basis or rate of the legal fee).

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

Respondent was admitted to the New Jersey bar in 1975. He maintains a practice of law in Moorestown, New Jersey.

In 1988, respondent received a private reprimand (now an admonition) for lack of diligence, failure to communicate, and conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)). In the Matter of Thomas M. Barron, DRB 88-075 (June 24, 1988).

In the instant matter, on June 13, 2019, the DEC issued an amended complaint and charged respondent with misconduct in connection with three client matters. On July 24, 2019, respondent filed an amended answer. On December 11, 2019, the parties appeared before the DEC for a hearing and entered into a stipulation of facts, which is summarized below.

The Catlett Matter (District Docket No. IIB-2017-0032E)

On a date not set forth in the record, respondent began representing the grievant, Amy K.Z. Catlett. Respondent failed to commit the terms of his legal fee to writing. In his amended answer, respondent stated that the matter “involved statutes that provided for the award of counsel fees and [he] and [Catlett] understood that this would be the manner that [he] would be primarily compensated.”

On or about February 18, 2014, respondent entered an appearance on behalf of Catlett in the matter of Catlett v. New Jersey State Prison, et al., venued in the United States District Court for the District of New Jersey (the DNJ). In May 2015, the defendants in the civil matter filed a total of three motions for summary judgment. Respondent prepared a declaration in opposition to the motions and in support of a cross-motion, which Catlett reviewed and returned to him on May 20, 2015. At some point, respondent also prepared a counterstatement of material facts and forwarded it to Catlett for review and comment, which Catlett returned to him on October 18, 2015. Between May and October 2015, respondent and Catlett did not otherwise communicate.

On November 13, 2015, Catlett contacted respondent via e-mail and inquired as to the status of her matter. On November 16, 2015, respondent replied and apologized for the delays. Respondent did not inform Catlett that he

had not filed a response, but stated that the opposition to the defendants' motions would be completed that week. Catlett received no further communication from respondent.

Respondent filed no opposition to the motions for summary judgment and, on December 18, 2015, the DNJ entered an order granting the defendants' motions for summary judgment as unopposed and closed the case.

In February 2016, Catlett reviewed the civil docket for her case and learned that respondent had failed to file opposition or documents concerning the motions for summary judgment on her behalf. Between February and April 2016, Catlett sent respondent numerous e-mail messages, to which he failed to reply. In August 2017, Catlett filed an ethics grievance against respondent.

Based on the foregoing facts, the formal amended ethics complaint charged respondent with having violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); and RPC 1.5(b) in the Catlett matter.¹

¹ Although the amended complaint pleaded facts supporting violations of RPC 8.1(b) and RPC 8.4(c), the amended complaint did not charge respondent with having violated those Rules.

The Wolf Matter (District Docket No. IIIB-2018-0044E)

In June 2017, the grievant, Thomas Wolf, met with respondent to discuss a potential action against Wolf's employer. Between July 29, 2017 and January 2, 2018, Wolf paid respondent a total of \$3,000 toward the representation.

In November 2017, respondent met with Wolf and informed him that he would file a suit on Wolf's behalf in the Superior Court of New Jersey. Between November 27, 2017 and February 28, 2018, Wolf attempted to contact respondent on eight occasions, via e-mail and telephone, to no avail. Although respondent and Wolf communicated by telephone on February 28, 2018, that was their last communication. Thereafter, on numerous occasions between March and May 2018, Wolf unsuccessfully attempted to contact respondent.

Respondent wholly failed to advance Wolf's interests. In April 2018, Wolf filed an ethics grievance against respondent. Thereafter, on May 16, 2018, Wolf sent respondent an e-mail message terminating the representation and requesting a refund of the fee and the return of his documents. Respondent failed to reply.

Based on the foregoing facts, in the Wolf matter, the formal amended ethics complaint charged respondent with having violated RPC 1.3 and RPC 1.4(b).²

² Again, the amended complaint includes facts indicating violations of RPC 8.1(b) and RPC 8.4(c), however, these Rules were not charged.

The Akva Matter (District Docket No. IIB-2019-0003E)

In July 2014, the grievants, Gabriella and Paul Akva, retained respondent to defend them in an action pending against their business, Kiddie Kastle, in the Superior Court of New Jersey, Camden County. In the course of the representation, respondent ceased replying to Ms. Akva's telephone calls and e-mail correspondence regarding the case.

On July 15, 2016, respondent sent correspondence, via e-mail, to Ms. Akva, in which he indicated that he had medical issues and falsely informed her that the trial in the case had been adjourned, without a new date having been scheduled. A week later, however, on July 22, 2016, the court entered a default judgment against Mr. and Ms. Akva.³

On November 9, 2016, respondent filed with the court a motion and supporting certification on behalf of the Akvas, which cited his medical conditions and acknowledged his failure to carry out his duties as their legal counsel. The record does not indicate the outcome of the motion.

³ Although respondent did not stipulate to the amount of the default judgment, the amended complaint indicated default judgment in the amount of \$150,000. In his amended answer, respondent neither admitted nor denied that allegation.

Based on the foregoing facts, in the Akva matter, the formal amended ethics complaint charged respondent with having violated RPC 1.3 and RPC 1.4(b).

The DEC heard these three consolidated matters at a one-day disciplinary hearing, on December 11, 2019, during which respondent was represented by George H. Hulse, Esq. Respondent testified and stipulated to the factual circumstances underlying each of the ethics violations in the amended complaint. Respondent further testified that, during 2014 through 2018, when the conduct underlying the allegations occurred, he had been in a “period of personal and professional decline.” He stated that he suffers from depression, and that he would “get in periods where [he] would work on some cases and other cases would fall in decline,” as occurred here. Although respondent was aware of the three cases and their issues prior to the filing of the grievances, and conceded he could have “physically” responded, he asserted that he had problems, mentally, dealing with the pending disciplinary cases. Respondent stated that the cases did not cause his depression, but “the depression was there and when the pressure in the cases came up and [he] wasn’t able to deal with them in a responsible manner, that’s when those things occurred.”

In addition to his testimony, respondent submitted into evidence a November 6, 2017 report by Michael Ferenschak, Psy.D. Respondent testified

that he sought out treatment with Dr. Ferenschak because he “wasn’t performing” and “wasn’t responding well.” He explained that he “would have cases that [he] would fixate on and to the exclusion of the other cases and [he] couldn’t get the balance that [he] needed to apportion [his] time and efforts for all of [his] cases.” He noted that he had no law partners or secretary and handled unique cases in “discrete limited practice areas,” which caused him to be “out on an island by [himself].” Respondent participated in treatment with Dr. Ferenschak for approximately one year, and then reached a “sort of plateau” and ceased treatment. On cross-examination, respondent stated that Dr. Ferenschak recommended that, if respondent was feeling as if he were declining, he should return to treatment. When asked whether he felt as if he was currently declining, respondent answered that “there were peaks and valleys.”

At the time of the hearing, respondent was sixty-nine years old, had three or four active cases, and indicated that he wished to retire. He described himself as seeking to have his active cases completed in early 2020, so that he could submit his resignation to the Court. He noted that he was not taking new cases, unless they were matters that could be handled in a limited time period prior to his expected retirement.

Based on the record, the DEC found that respondent had violated each of the charged RPCs.

Specifically, in the Catlett matter, the DEC found that respondent failed to timely oppose multiple motions for summary judgment, failed to communicate with Catlett for nearly five months after beginning to draft opposition, and failed to communicate after the DNJ granted defendants' unopposed motions for summary judgment and dismissed Catlett's lawsuit, conduct which constituted violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b). Additionally, the DEC found that respondent's failure to commit to writing the terms of his fee arrangement with Catlett constituted a violation of RPC 1.5(b).

In the Wolf matter, the DEC found that respondent's failure to file a civil action and failure to reply to Wolf's reasonable inquiries clearly and convincingly established violations of RPC 1.3 and RPC 1.4(b).

In the Akva matter, the DEC found that respondent's failure to reply to telephone calls and e-mail messages, during the course of active litigation, as well as respondent's admission that his own failures resulted in a default judgment against the Akvas, clearly and convincingly supported the charged violations of RPC 1.3 and RPC 1.4(b).

Thus, the DEC found that respondent violated RPC 1.1(a) (one instance – the Catlett matter); RPC 1.3 (three instances – the Catlett, Wolf, and Akva matters); RPC 1.4(b) (three instances – the Catlett, Wolf, and Akva matters); and RPC 1.5(b) (one instance – the Catlett matter).

The DEC did not cite any aggravating factors in its report, but set forth the following mitigating factors: respondent's lack of disciplinary history in over forty-four years as a member of the bar; respondent's admission of wrongdoing and expression of remorse; respondent's testimony regarding psychological conditions that impaired his ability to adequately represent the interests of his clients, as set forth in his doctor's report; that respondent's conduct was not motivated by personal gain; respondent's testimony that he had entered into "a financial settlement with [a] client who suffered a financial hardship as a result of Respondent's violations of the Rules of Professional Conduct to make his client whole;" and respondent's testimony that he "intends to wind down his practice following the conclusion of several trials scheduled for early 2020."⁴

Based on the foregoing, the DEC recommended that an admonition be imposed for the totality of respondent's misconduct.

* * * *

Respondent, through counsel, waived oral argument before us but submitted a letter stating:

[a]t the hearing before the Panel, Mr. Barron testified it was his then intention to retire from the practice of law. Since that time, however, due to unforeseen financial

⁴ We note that respondent's license to practice law remains active and in good standing at the time of this decision.

and medical circumstances[,] Mr. Barron has a need to continue a limited practice. Hopefully that need will not continue long and he will fully retire.

At oral argument, the DEC presenter appeared and recommended an admonition, citing the mitigating factors presented.

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, in the Catlett matter, respondent entered his appearance on behalf of Catlett in her ongoing litigation, and then failed to file opposition to three summary judgment motions, resulting in the dismissal of Catlett's case. Although respondent had provided Catlett with a draft counterstatement of material facts, which she promptly reviewed and returned, respondent failed to file it with the DNJ on her behalf. Respondent's inaction in allowing three dispositive motions to proceed, unopposed, constituted gross neglect and a lack of diligence, in violation of RPC 1.1(a) and RPC 1.3, respectively.

Moreover, Catlett attempted to contact respondent by e-mail numerous times, and respondent failed to reply to her messages. Respondent further failed to inform Catlett of the DNJ's December 18, 2015 order granting the defendants' unopposed summary judgment motions. By failing to inform Catlett about

dispositive developments in her litigation, and by further failing to respond to her reasonable inquiries, respondent violated RPC 1.4(b).

Finally, respondent failed to set forth the basis or rate of his fee in a writing provided to Catlett. Respondent failed to execute a written fee agreement, instead pleading in his amended answer that the Catlett matter “involved statutes that provided for the award of counsel fees and [he] and [Catlett] understood that this would be the manner that [he] would be **primarily** compensated” (emphasis added). Respondent’s statement reveals that the rate or basis of respondent’s fee was not clear, even to respondent, and demonstrates that respondent violated RPC 1.5(b).

In the Wolf matter, Wolf paid respondent at least \$3,000 for representation in a labor issue. Although respondent informed Wolf that he would file a civil action for him, respondent utterly failed to do so, without explanation to Wolf. This inaction demonstrates respondent’s lack of diligence in this matter, and violated RPC 1.3. Additionally, Wolf attempted to contact respondent no less than eight times, between November 2017 through February 2018, but respondent had only one telephone call with Wolf, on February 28, 2018. He then ceased to respond to Wolf’s attempts to communicate, thereby forcing Wolf to file a grievance and to hire a new attorney. Respondent’s failure to reply to

Wolf's telephone calls and e-mail messages demonstrate that respondent failed to communicate with Wolf, in violation of RPC 1.4(b).

In the Akva matter, the clients retained respondent during ongoing litigation for their business. Respondent ceased replying to the Akvas' telephone calls and e-mail correspondence, explained to them that he had medical issues, and falsely informed them that a trial was adjourned without a new date having been scheduled. The Akvas' attempts to communicate with respondent about the litigation were reasonable, and respondent's failure to communicate with his clients violated RPC 1.4(b). Further, the court entered a costly default judgment against the Akvas, which respondent admitted was a result of his failures as their counsel. In mishandling the Akva matter by not providing legal advice or taking action on behalf of his clients, respondent showed a lack of diligence, in violation of RPC 1.3.

In sum, we find that respondent violated RPC 1.1(a) (one instance – the Catlett matter); RPC 1.3 (three instances – the Catlett, Wolf, and Akva matters); RPC 1.4(b) (three instances – the Catlett, Wolf, and Akva matters); and RPC 1.5(b) (one instance – the Catlett matter). There remains for determination the appropriate quantum of discipline to impose on respondent for his misconduct.

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)).

Conduct involving the failure to memorialize the basis or rate of a fee, as RPC 1.5(b) requires, typically results in an admonition, even if accompanied by other, non-serious ethics offenses. See, e.g., In the Matter of Peter M. Halden, DRB 19-382 (February 24, 2020) (attorney failed to set forth in writing the basis or rate of the legal fee, and failed to abide by the client's decisions concerning the scope of the representation; no prior discipline); In the Matter of Kenyatta K. Stewart, DRB 19-228 (October 22, 2019) (attorney failed to set forth in

writing the basis or rate of the legal fee, and engaged in a concurrent conflict of interest; no prior discipline); and In the Matter of Alan Monte Kamel, DRB 19-086 (May 30, 2019) (attorney failed to provide the client with a writing setting forth the basis or rate of his fee in a collection action, failed to communicate with the client, and failed to communicate the method by which a contingent fee would be determined; no prior discipline).

Here, considering applicable disciplinary precedent, the number of respondent's ethics violations, and the harmful consequences to his multiple clients, we determine that the admonition recommended by the DEC would be insufficient discipline. It appears that respondent cost Catlett and Wolf the chance to litigate their claims, and directly caused significant financial harm to the Akvas by allowing the entry of the default judgment against them. We, therefore, view the baseline discipline as a reprimand or a censure.

Based on the record, and considering the significant mitigating factors presented, including respondent's nearly unblemished disciplinary record in over forty years as an attorney, his willingness to enter into the stipulation, his cooperation with the investigation, his showing of remorse, and his testimony concerning his mental health condition, we determine that a reprimand is the quantum of discipline necessary to protect the public and preserve confidence in the bar.


Additionally, we require respondent to attend psychological counseling and provide proof of fitness to practice law, as attested to by a mental health professional approved by the OAE, within sixty days of the Court's disciplinary Order in this matter. Further, respondent is directed to provide to the OAE quarterly reports documenting his continued psychological counseling, for a period of two years.

Member Joseph voted to impose a censure, with the above conditions.

Member Boyer was recused.

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 Thomas M. Barron
Docket No. DRB 21-113

Argued: July 15, 2021

Decided: September 30, 2021

Disposition: Reprimand

<i>Members</i>	Reprimand	Censure	Recused
Gallipoli	X		
Singer	X		
Boyer			X
Campelo	X		
Hoberman	X		
Joseph		X	
Menaker	X		
Petrou	X		
Rivera	X		
Total:	7	1	1



Johanna Barba Jones
Chief Counsel