Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-126
District Docket No. VIII-2020-0033E

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

Decision

Decided: December 6, 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 VIII 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 keep a client reasonably informed about the status of a matter and to comply with reasonable

requests for information); RPC 1.16(d) (upon termination of the representation, failure to refund any advance payment of fee that has not been earned or incurred); and RPC 8.1(b) (two instances – failure to cooperate with disciplinary authorities).[1]

For the reasons set forth below, we recommend to the Court that respondent be disbarred.

Respondent was admitted to the New Jersey bar in 1995.

In May 2005, respondent received an admonition for gross neglect and failure to communicate with his client 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; failure to communicate with the client; and conduct prejudicial to the administration of justice (RPC 8.4(d)). In re Allen, 221 N.J. 298 (2015). In that matter, we determined that respondent provided legal services to his client only after the client filed an ethics grievance against him. Also, when respondent finally performed work on the client's matter, he satisfied a lien other than the lien he had been hired to resolve. He failed to reply to any correspondence from

[1] The original ethics complaint is dated January 27, 2021. The amended ethics complaint is erroneously dated February 26, 2022 and appears to have been executed on February 26, 2021. Due to respondent's failure to file an answer to the amended ethics complaint, the DEC amended the complaint to include the second RPC 8.1(b) charge.

his client for more than 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 after he satisfied the awards. In re Allen, 236 N.J. 90 (2018), and In re Allen, 237 N.J. 586 (2019).

In April 2021, we heard oral argument in In the Matter of John Charles Allen, DRB 20-296, a presentment, in which the formal ethics complaint charged respondent with having violated RPC 1.15(d) (failure to comply with the recordkeeping provisions of R. 1:21-6); 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). We determined to suspend 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 Office of Attorney Ethics (the OAE) for a period of two years. On July 8, 2021, that decision was transmitted to the Court and remains pending.

In May 2021, we considered In the Matter of John Charles Allen, DRB 21-028, a default matter, in which the formal ethics complaint charged respondent with having violated RPC 1.15(d) and RPC 8.1(b) (two instances). In that matter, respondent received a $4,850 fee from the client but failed to keep a copy of the retainer agreement, thereby violating the recordkeeping requirements of R. 1:21-6 and limiting the OAE's ability to investigate the client's grievance. Respondent filed a motion to vacate the default. We denied that motion and imposed a one-year suspension, consecutive to the three-month suspension imposed in DRB 20-296, with the requirement that respondent practice under the supervision of a proctor for a period of no less than one year upon reinstatement. On July 21, 2021, that decision was transmitted to the Court and remains pending.

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 21-078 (May 27, 2021); In re Allen, __ N.J. __

(2021); In the Matter of John Charles Allen, DRB 21-107 (May 27, 2021); In re Allen, __ N.J. __ (2021). Respondent remains temporarily suspended to date.

Service of process was proper. On February 4, 2021, the DEC sent a copy of the original formal ethics complaint, by certified and regular mail, to respondent's office address of record. The certified mail receipt was returned, signed by "LF," and indicated delivery on February 6, 2021. The regular mail was not returned.

On March 5, 2021, the DEC sent a copy of the amended formal ethics complaint, by certified and regular mail, to respondent's office address of record. The certified mail receipt was returned, signed by "LF," and indicated delivery on March 8, 2021. The regular mail was not returned.

On April 9, 2021, the DEC sent letters, by certified and regular mail, to respondent's office address, informing him that, unless he filed a verified answer to the amended complaint within five days of the date of the letter, the allegations of the amended complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the amended complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The certified mail receipt was returned with an illegible signature and indicated delivery on April 12, 2021. The regular mail was not returned.

As of May 11, 2021, respondent had not filed an answer to the amended complaint, and the time within which he was required to answer had expired. Accordingly, the DEC certified this matter to us as a default.

Moreover, on August 2, 2021, the Office of Board Counsel published a notice in the New Jersey Law Journal, stating that we would consider this matter on September 23, 2021. The notice informed respondent that, unless he filed a successful motion to vacate the default by August 25, 2021, his failure to answer the complaint would be deemed an admission of the allegations of the complaint. Respondent did not file a motion to vacate the default.

We now turn to the allegations of the complaint.

On February 18, 2019, the grievant, Aloysius Paulrat Pangiras, retained respondent in connection with a divorce matter. On February 20, 2019, Pangiras paid respondent $3,250 toward the representation; five days later, Pangiras paid respondent an additional $650 toward translation costs, for a total of $3,900.

On March 5, 2019, Pangiras met with respondent to sign a draft complaint and related documents. Following that initial meeting, respondent failed to communicate with Pangiras for over eight months. On November 23, 2019, Pangiras met with respondent for a status update, at which time respondent told him "it is a process" and that he would inform Pangiras when the complaint had been served.

On April 25, 2020, having heard nothing from respondent regarding the service of the complaint or the translation of documents, Pangiras sent a letter, via United States Postal Service courier and certified mail, to respondent's office address terminating representation and requesting the full refund of his $3,900. The certified mail was returned to Pangiras.

In May 2020 and on August 4, 2020, Pangiras again sent the letter by certified mail. The May letter was returned to Pangiras; the August letter was delivered. As of February 26, 2021, Pangiras had not received any reply or updates from respondent and learned that the divorce complaint had never been filed.

Respondent failed to provide Pangiras with an executed copy of the retainer agreement and failed to provide invoices for billable work completed, despite the retainer agreement's language that said invoices would be provided and as R. 5:3-5, governing family court representation, requires.[2] Moreover, despite having performed no work on the file, respondent failed to return to Pangiras any portion of the retainer fee. Further, Pangiras had paid respondent

[2] Although the amended complaint noted that respondent failed to provide a fully-executed retainer agreement and/or invoices to Pangiras, the DEC did not charge respondent with a violation of RPC 1.5(b) (failure to set forth in writing the basis or rate of the legal fee).

$650 to provide translated documents, which respondent did not provide. Respondent did not refund the translation fee.

From November 2019 to the filing of the amended complaint, Pangiras attempted to reach out to respondent for status updates via e-mail messages, letters, and phone calls, but respondent failed to reply to Pangiras's requests for information.

In addition to failing to reply to Pangiras's requests for information, respondent failed to reply to the ethics grievance and to the DEC investigator's requests for a copy of Pangiras's file. The DEC investigator forwarded the grievance to respondent and requested a reply on three occasions between October 2020 and January 2021, and also left a voicemail for respondent. However, respondent failed to reply to any of the DEC investigator's correspondence and requests.

Based on the above facts, the amended ethics complaint charged respondent with having violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.16(d); and RPC 8.1(b) (two instances).

We find that the facts recited in the amended ethics complaint support all the charges of unethical conduct. Respondent's failure to file a verified answer to the amended complaint is deemed an admission that the allegations of the

amended complaint are true and that they provide a sufficient basis for the imposition of discipline. See R. 1:20-4(f)(1).

Specifically, the record demonstrates that respondent accepted a total of $3,900 in fees and costs to represent Pangiras in a divorce matter and to translate documents from India, yet he failed to serve the divorce complaint or to have the relevant documents translated. Respondent drafted the divorce complaint, but failed to file or serve it, and otherwise performed no legal work for Pangiras. His failure to provide the services for which he was retained support the charges that respondent violated RPC 1.1(a) and RPC 1.3.

Between November 2019 and February 26, 2021, the date of the amended complaint, respondent also repeatedly failed to reply to Pangiras's reasonable requests for information, including e-mail messages, letters, and telephone calls. Respondent, thus, failed to communicate with his client, in violation of RPC 1.4(b). Respondent's failure to update Pangiras regarding the status of his divorce case, despite Pangiras's requests for information, forced Pangiras to utilize the attorney ethics process to attempt to elicit a response.

Moreover, the record reflects that Pangiras requested that the representation be terminated, and that the fee be refunded, claiming that respondent had not completed the legal work for which he had been retained. Respondent ignored Pangiras's request. By not returning the unearned portion

of Pangiras's retainer fee and costs, totaling $3,900, despite having performed minimal legal work for Pangiras, respondent violated RPC 1.16(d).

Finally, respondent knowingly failed to respond to a lawful demand for information from a disciplinary authority, in violation of RPC 8.1(b), in two respects: first, he failed to provide the information requested by the DEC, and, second, he failed to answer the complaint and allowed this matter to proceed as a default.

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 us to determine is the appropriate quantum of discipline for respondent's misconduct.

Generally, in default matters, a reprimand is imposed for lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities, even if this conduct is accompanied by other ethics infractions, such as gross neglect. See In re Cataline, 219 N.J. 429 (2014) (reprimand for attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with requests for information from the district ethics committee investigator) and In re Rak, 203 N.J. 381 (2010) (reprimand for attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of a grievance).

Ordinarily, an admonition is the appropriate sanction for an attorney's failure to promptly refund the unearned portion of a fee. See, e.g., In re Gourvitz, 200 N.J. 261 (2009); In the Matter of Larissa A. Pelc, DRB 05-165 (July 28, 2005); and In the Matter of Stephen D. Landfield, DRB 03-137 (July 3, 2003).

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).

In a vacuum, the totality of respondent's misconduct, in this single client matter, could warrant a reprimand or a censure. In crafting the appropriate discipline, however, we also consider aggravating and mitigating factors.

There is no mitigation to consider.

However, we accord significant weight to multiple, profound aggravating factors. First, we weigh respondent's substantial disciplinary history and its similarity to the instant default matter.

As discussed above, on July 8, 2021, in DRB 20-296, we imposed a three-month suspension, with conditions, for respondent's violations of RPC 1.15(d); RPC 3.3(a)(1) (two instances); RPC 5.5(a)(1); RPC 8.1(a) (two instances); RPC 8.1(b) (two instances); and RPC 8.4(c) (two instances). The misconduct under scrutiny in that matter occurred from 2015 to 2016, and respondent's failure to comply with the OAE occurred in 2017.

On July 21, 2021, in DRB 21-028, we imposed a one-year suspension with conditions, for respondent's violations of RPC 1.15(d) and RPC 8.1(b) (two instances). The timeframe of the client matter misconduct under scrutiny in that case was not set forth in the record, but respondent's failure to comply with the

OAE occurred from September 2019 to 2020. As noted above, both decisions have been transmitted to the Court and remain pending.

Consistently, the Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such scenarios, 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).

By defaulting in this matter, respondent refused to acknowledge and account for his wrongdoing, let alone express remorse for his gross exploitation of his client's trust in him. "[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). Notably, this is respondent's second consecutive default matter. See In the Matter of John Charles Allen, DRB 21-028 (July 21, 2021).

It is clear that respondent has not learned from his past contacts with the disciplinary system, nor has he 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"). We emphasize that respondent's ethics history reveals a pattern of temporary suspensions and reinstatements, as well as numerous cases indicating non-compliance with fee arbitration awards and corresponding misrepresentations, to us, regarding the status of the payment of those awards.

Moreover, respondent should have a heightened awareness that his mistreatment of his own clients will result in progressively harsher disciplinary sanctions. Specifically, in 2015, the Court censured respondent for misconduct similar to that addressed in this matter, including gross neglect, lack of diligence, failure to communicate, and misrepresentation. In re Allen, 221 N.J. 298 (2015). Respondent clearly has not demonstrated the initiative to reform his conduct, necessitating the repeated intervention of the disciplinary system to curb his behavior.

Respondent has a demonstrated penchant for breaching his duties to his clients and failing to cooperate with disciplinary authorities. His behavior exhibits disdain toward both his clients and New Jersey's disciplinary system. We can neither ignore nor accept what is clearly respondent's dangerous, improper practice of law. Nor can we ignore respondent's refusal to follow the most basic regulations imposed on New Jersey attorneys.

In determining that disbarment is appropriate for the totality of respondent's misconduct, we rely on In the Matter of Marc D'Arienzo, DRB 16-345 (May 25, 2017) (slip op. at 26-27) in which we stated:

> Given the contemptible set of facts present in these combined matters, we must consider the ultimate question of whether the protection of the public requires respondent's disbarment. When the totality of respondent's behavior in all matters, past and present, is examined, we find ample proof that he is unsalvageable, and that no amount of redemption, counseling, or education will overcome his penchant for disregarding ethics rules. As the Court held in another matter, "[n]othing in the record inspires confidence that if respondent were to return to practice [from his current suspension] that his conduct would improve. Given his lengthy disciplinary history and the absence of any hope for improvement, we expect that his assault on the Rules of Professional Conduct would continue." In re Vincenti, 152 N.J. 253, 254 (1998). Similarly, we determine that, based on his extensive record of misconduct and demonstrable refusal to learn from his mistakes, there is no evidence that respondent can return to practice and improve his conduct. Accordingly, we recommend respondent's disbarment.

The Court agreed with our recommendation and disbarred D'Arienzo. In re D'Arienzo, 232 N.J. 275 (2018).

Here, we view enhanced discipline as required to curb respondent's inattention to his practice and to his clients, and to confront his continuing disregard for the directives of New Jersey's attorney discipline system. We find respondent to be, in a word, unsalvageable, and we endeavor to protect the

public from his pernicious practices. Accordingly, we determine that the aggravating factors support the ultimate discipline and recommend to the Court that respondent be disbarred.

Member Boyer voted to impose a two-year, consecutive suspension.

Vice-Chair Singer and Member Joseph were 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 John Charles Allen
Docket No. DRB 21-126

Decided: December 6, 2021

Disposition: Disbar

Members	Disbar	Two-year suspension	Recused
Gallipoli	X		
Singer			X
Boyer		X	
Campelo	X		
Hoberman	X		
Joseph			X
Menaker	X		
Petrou	X		
Rivera	X		
Total:	6	1	2

Johanna Barba Jones
Chief Counsel