Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-192
District Docket No. I-2018-0013E

In the Matter of	:
Eric Craig Garrabrant	:
An Attorney at Law	:

Decision

Argued: November 18, 2021

Decided: February 1, 2022

Joanna Sykes-Saavedra appeared on behalf of the District I Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for a reprimand filed by the District I Ethics Committee (the DEC). The amended formal ethics complaint charged respondent with having violated 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 8.1(b) (failure to cooperate with disciplinary authorities); and R. 1:20-3(g)(3) (failure to comply with the duty to cooperate in a disciplinary investigation).[1]

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

Respondent earned admission to the New Jersey bar in 1996 and has no prior discipline. He maintains a practice of law in Wildwood, New Jersey.

In 2006, the grievant, Gail Amenhauser (Amenhauser), retained respondent to assist her in securing her release from an existing mortgage (and presumably, a corresponding promissory note), held by the United States Department of Agriculture (the USDA), which encumbered her prior residence. On February 28, 2006, respondent filed a complaint for partition, in the Superior Court of New Jersey, Chancery Division, Cape May County, seeking to divide Amenhauser's interest in the property located in Middle Township (the Property) from that of Stephen Hayes (Hayes), Amenhauser's former boyfriend and co-mortgagor, who still resided at the Property.[2] In the complaint,

[1] The amended complaint erroneously referred to this charge as "RPC" 1:20-3(g)(3). R. 1:20-3(g)(3) is not a Rule upon which discipline may independently be imposed. However, respondent understood that he was charged with failure to comply with his duty to cooperate in the disciplinary investigation, in violation of RPC 8.1(b), which also was charged.

[2] Partition is an equitable remedy employed to divide property among co-owners. A Superior Court may direct the sale of the property if a partition of the property cannot be made without great prejudice to the owners or persons otherwise interested in the property. See N.J.S.A. 2A:56-2.

Amenhauser alleged that she and Hayes owned the property as joint tenants with rights of survivorship. On April 13, 2006, Hayes filed an answer and counterclaim. A few months later, on July 31, 2006, respondent and Hayes' attorney executed a stipulation of settlement, which was filed with the Superior Court on August 1, 2006. The terms of the settlement required Amenhauser to execute and deliver to Hayes a quitclaim deed, conveying to him her interest in the Property. In exchange, Hayes agreed to simultaneously pay Amenhauser $5,000 and to "take all steps necessary to remove [Amenhauser's] name, and release [her] from any and all mortgages [. . .] against the [P]roperty."

On October 31, 2006, respondent sent correspondence to the USDA requesting an update regarding Amenhauser's release from the mortgage. The next day, on November 1, 2006, the UDSA replied, summarily stating that the release was "pending." On November 3, 2006, respondent forwarded the USDA's November 1, 2006 correspondence to Amenhauser, stating that the "entire transaction waits upon the USDA."

On December 27, 2006, respondent again wrote to the USDA requesting an update regarding Amenhauser's release from the mortgage. On January 8, 2007, the USDA indicated that, upon receipt of the recorded quitclaim deed, it would release Amenhauser from the mortgage. The next day, on January 9, 2007, respondent forwarded the USDA's January 8, 2007 correspondence to

Hayes' attorney and represented that Amenhauser would record and deliver the required quitclaim deed upon receipt of the $5,000 that Hayes owed to her. Respondent's file contained no reply from Hayes' attorney, but it contained an unsigned, February 6, 2007 correspondence to Northeast Abstract, purportedly directing the title company to record the quitclaim deed and copying Hayes' counsel.[3] The February 6, 2007 letter was the final correspondence contained in respondent's file. It is undisputed that respondent took no further action to advance Amenhauser's interests seven years later, in 2014, when Amenhauser again contacted him seeking assistance related to the USDA mortgage.

In fact, from 2007 onward, Amenhauser erroneously believed that she had been released from the USDA mortgage on the Property. However, in 2014, she discovered that she had not been released from the mortgage, because her credit report reflected that the mortgage was in arrears and that she remained liable. Consequently, on April 2, 2014, Amenhauser sent an e-mail to respondent, once again requesting his assistance to resolve the issue. On April 7, 2014, respondent met with Amenhauser and informed her that he had spoken with the USDA and

[3] It is not set forth in the record whether Hayes paid $5,000 to Amenhauser or whether the quitclaim deed was recorded.

that he had sent to the agency, via facsimile, a copy of a bargain and sale deed between Amenhauser and Hayes, and that the UDSA was "looking into it."[4]

On April 9, 2014, respondent sent Amenhauser a retainer letter, which stated, in part:

> It was good to see you on Monday, and since our meeting I have had several discussions with the USDA. At this stage, this appears to be a simple issue which can be corrected, and I will endeavor to do so. As discussed, I will not charge you for these efforts at getting this matter "straightened out" but if there is substantial work to be done, we will have to revisit the issue of attorney's fees.
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> [Ex.SP-O.][5]

Respondent was unable to recall the substance of his several discussions with the USDA or to produce any contemporaneous notes related thereto.

Almost a year later, on April 8, 2015, Amenhauser sent another e-mail to respondent, again requesting an update on her matter, after having received no communication from him following the April 9, 2014 retainer letter. That same day, respondent replied that he "was under the impression that [the matter] was cleared up" and that he would "figure out why this was still an issue." However,

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[4] The genesis or purpose of the bargain and sale deed produced by respondent, versus the quitclaim deed contemplated in the settlement agreement, is not set forth in the record.

[5] "Ex." refers to the exhibits attached to the hearing panel's July 28, 2021 report.

it is undisputed that Amenhauser received no further communication from respondent.[6]

As a result of respondent's failure to secure Amenhauser's release from the mortgage on the Property, for which he specifically had been retained, the USDA began garnishing Amenhauser's monthly social security income.[7] The United States Department of Treasury, Bureau of Fiscal Service, also redirected to the USDA a 2017 tax refund, in the amount of $3,119, due to Amenhauser and her spouse, due to the "delinquent debt."

On June 17, 2018, Amenhauser filed the underlying ethics grievance. On October 17, 2018, respondent provided the DEC investigator with his initial reply to the grievance. Thereafter, the investigator made repeated attempts to obtain additional information from respondent. Specifically, the investigator made three written requests for information, on November 5, 2018, January 29, 2019, and April 19, 2019. Respondent failed to reply to all three requests. Respondent also failed to return the investigator's December 21, 2018 telephone call and voicemail. Later, on January 14, 2019, the investigator spoke with respondent, via telephone, and respondent assured the investigator that he would

[6] Although the stipulation details neglect lasting more than eight years, respondent was not charged with having violated RPC 1.1(a) (gross neglect).

[7] The date that the garnishment began is unknown.

forward Amenhauser's file by the end of the next day. However, respondent did not send the file until four months later, in May 2019, when he sent facsimiles to the investigator which included replies to the requests for information and Amenhauser's file.

On June 10, 2019, the investigator and a public member of the DEC interviewed respondent. Respondent was unable to recall or relate the substance or outcome of his April 2014 communications with the USDA. Additionally, he could not affirmatively state that he had provided Amenhauser with an update on her matter subsequent to their April 7, 2014 meeting. Respondent had no notes in his file regarding the details of his meeting with Amenhauser, his communications with the USDA, or any subsequent communications with Amenhauser, in 2014 or 2015. His file did not contain a copy of Amenhauser's April 8, 2015 e-mail, which he also did not recall. Respondent admitted that Amenhauser's matter "fell through the cracks" and that communication had been a problem.

On August 20, 2019, the DEC investigator filed the formal ethics complaint against respondent and, on September 9, 2019, filed an amended complaint. On October 1, 2019, respondent filed a verified answer to the amended complaint. On November 11, 2019, the parties entered into the

stipulation, wherein respondent admitted all the charged RPC violations and supporting facts.

First, respondent stipulated that he failed to act with reasonable diligence and promptness in his representation of Amenhauser, in violation of RPC 1.3. Specifically, in 2007, respondent failed to secure Amenhauser's release from the USDA mortgage. Seven years later, in April 2014, respondent made an inquiry, but again failed to secure Amenhauser's release from the mortgage. In April 2015, respondent failed to secure the release a third time. Although respondent's misconduct involved only Amenhauser's matter, it persisted more than eight years, from February 2007 through April 2015.

Next, respondent stipulated that he failed to comply with Amenhauser's reasonable requests for information and to keep her reasonably informed about the status of her matter, in violation of RPC 1.4(b). Specifically, in 2007, respondent failed to keep Amenhauser apprised about the status of her matter after he purportedly forwarded the quitclaim deed to the title company. Respondent continuously failed to communicate with Amenhauser, despite her specific requests for status updates in April 2014 and April 2015. Here, again, respondent's misconduct persisted more than eight years.

Finally, although respondent ultimately cooperated with the disciplinary investigation, he admitted that he initially failed to timely comply with the

repeated written and verbal requests of the investigator. Accordingly, respondent stipulated that he had failed to cooperate with disciplinary authorities, in violation of RPC 8.1(b).

In aggravation, respondent stipulated that Amenhauser and her husband were financially harmed by his misconduct, because her monthly social security income continued to be garnished, and their 2017 joint tax refund was redirected to the USDA.

Based upon the stipulated facts and RPC violations, a limited hearing was held regarding aggravating and mitigating factors, at which respondent was the only witness.

Respondent testified that he successfully terminated Amenhauser's ownership interest in the Property through the partition action (and presumably the recording of some form of deed) but conceded that he had failed to secure her release from the mortgage. He claimed that he initially failed to cooperate with the disciplinary investigation because he panicked, but also acknowledged that his failure to affirmatively deal with the matter made the situation worse.

In mitigation, respondent requested that consideration be given to his stipulation to the underlying facts and charged violations. Respondent expressed his respect for the disciplinary process. He also expressed remorse, acknowledging that he had the opportunity to correct his mistakes in 2014, but

failed to do so. Respondent offered no excuses for his behavior but reiterated his position that Amenhauser's matter "f[e]ll through the cracks."

Respondent further testified that, since 2019, he had been enrolled in the New Jersey Lawyers Assistance Program (NJLAP) and had engaged in counseling. He also testified that, on May 17, 2021, just prior to the limited ethics hearing, he paid Amenhauser $3,119, representing full compensation for the garnished 2017 tax refund. Respondent acknowledged that Amenhauser's monthly social security benefit continued to be garnished but suggested that Amenhauser should have availed herself of other remedies. He then offered to pay further compensation to Amenhauser in connection with the social security garnishments.

In aggravation, the presenter stressed that the stipulated facts established that, as of the date of the hearing, May 21, 2021, fourteen years after respondent had been retained, Amenhauser remained liable for the mortgage on the Property. Her monthly social security income continued to be garnished and redirected to the USDA, at the rate of $89 per month, a harm that would persist through satisfaction of the debt. The presenter also argued that respondent's

initial failure to cooperate with the disciplinary investigation should be considered as an aggravating factor.[8]

In its July 28, 2021 report, the hearing panel noted that respondent admitted all the charged violations and, therefore, the panel focused its analysis on the appropriate quantum of discipline for respondent's misconduct, considering the aggravating and mitigating factors. In mitigation, the panel considered that respondent expressed remorse for his misconduct, provided forthright and honest testimony, and acknowledged that his misconduct reflected poorly upon the legal profession as a whole. The panel also considered respondent's payment of partial restitution to Amenhauser, although it observed that the restitution was made a mere four days before the ethics hearing.

In aggravation, the panel noted that Amenhauser suffered substantial harm as a result of respondent's misconduct; namely, her credit was compromised; her 2017 tax refund was garnished; her monthly social security benefit continued to be garnished; and she remained liable for the mortgage on the Property. The panel noted that:

> Respondent has demonstrated his cooperation with ethics authorities to the extent that he has stipulated to each allegation of ethical misconduct brought against him in the Amended Complaint. Respondent initially

[8] We, like the DEC, do not consider respondent's non-cooperation to be an aggravating factor. Respondent's initial failure to cooperate is captured by the RPC 8.1(b) charge and may not be double-counted.

> failed to cooperate in the investigation of this grievance which resulted in a delay in the investigation and additional allegations of ethical violations. The Panel therefore recognizes Respondent's willingness to stipulate to ethical violations, but must consider Respondent's failure to cooperate as an aggravating factor [. . . .]
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> * * *
>
> Here, Respondent failed to timely comply with repeated written and verbal requests for a response to [Amenhauser's] allegations. Though Respondent did ultimately cooperate with the investigation, Respondent's failure to timely communicate with the investigator delayed the investigation. Respondent also stipulated that he violated these RPCs.
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> [HPR,pp8-9,11.][9]

The panel also noted that, although respondent testified to having been enrolled in NJLAP, he had presented no evidence regarding the personal issues that he asserted contributed to his misconduct. Therefore, the panel determined that it could not find that respondent had engaged in bona fide rehabilitative efforts. However, after considering respondent's enrollment in NJLAP, his admission to his misconduct, and that only one client matter was involved, the panel found that there was little likelihood that such misconduct would reoccur.

[9] "HPR" refers to the hearing panel's July 28, 2021 report.

The panel concluded that respondent violated RPC 1.3; RPC 1.4(b); RPC 8.1(b); and R. 1:20-3(g)(3) by clear and convincing evidence. The panel recommended that respondent be disciplined by way of a reprimand, citing the disciplinary precedent analyzed below.[10]

Following a de novo review of the record, we determine that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Specifically, for more than eight years, respondent failed to act with reasonable diligence and promptness in his representation of Amenhauser, despite her repeated requests that he do so. Moreover, despite the extensive passage of time, and multiple opportunities to cure his prior errors, respondent failed to complete the sole purpose of the representation – to secure Amenhauser's release from the USDA mortgage. He, thus, violated RPC 1.3.

Next, respondent failed to comply with Amenhauser's reasonable requests for information and to keep her reasonably informed about the status of her matter, during his initial representation of her, in 2007, and later in April 2014 and 2015, when Amenhauser specifically reached out to him regarding her

[10] The Office of Board Counsel (the OBC) provided the presenter and respondent a deadline of October 18, 2021 for the filing of any brief for the Board's consideration. We heard oral argument in this matter on November 18, 2021. On November 22, 2021, respondent filed a letter brief with the OBC. Because we already had reviewed the record and heard the argument of the parties, we declined to consider respondent's late submission.

continuing liability for the mortgage. He, thus, violated RPC 1.4(b).

Finally, respondent failed to cooperate with disciplinary authorities by initially ignoring the investigator's multiple written and verbal requests for information. Although he eventually complied with all the investigator's requests, it took six months for him to do so. He, thus, violated RPC 8.1(b).

The amended complaint also charged respondent with violating R. 1:20-3(g)(3). That Rule establishes an attorney's affirmative legal duty to comply with a lawful demand for information from a disciplinary authority but does not itself provide an independent basis for discipline. Rather, RPC 8.1(b), which respondent was also charged with violating, addresses an attorney's failure to promptly cooperate with a disciplinary investigation.[11] We, thus, dismiss the purported R. 1:20-3(g)(3) charge.

In sum, we find that respondent violated RPC 1.3, RPC 1.4(b), and RPC 8.1(b). We determine to dismiss the legally deficient R. 1:20-3(g)(3) charge. 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

[11] Rule 1:20 repeatedly expresses that unethical conduct occurs through commission of "a violation of the Rules of Professional Conduct, case law or other authority." See generally, R. 1:20-3(e) (entitled, "Screening; Docketing"); R. 1:20-3(i)(3)(A) (defining unethical conduct).

diligence and failure to communicate with a client. See, e.g., In the Matter of Christopher G. Cappio, DRB 15-418 (March 24, 2016). However, reprimands have been imposed when an attorney's lack of diligence and failure to communicate with a client has resulted in significant harm to the client. See, e.g., In re Sachs, 223 N.J. 241 (2015) (reprimand imposed due to the financial harm suffered by the clients; the attorney represented two sisters in the sale of real estate, against which two judgments were attached; the title company required the amount of the liens to be held in escrow and the sisters provided the funds; despite his representations, the attorney failed to negotiate the payoff of the judgments; consequently, the title company satisfied the judgments, using the escrow funds, and retained the balance as its fee; the attorney also failed to return one client's telephone calls for several years after the escrow funds had been disbursed; the attorney violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b); prior reprimand); In re Calpin, 217 N.J. 617 (2014) (reprimand imposed on attorney who violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b); the attorney failed to oppose a motion to strike his client's answer, after having failed to reply to discovery requests, resulting in the entry of a final judgment against the client; the attorney never informed his client of the judgment, which totaled more than $80,000; no disciplinary history); and In re Burstein, 214 N.J. 46 (2013) (reprimand imposed on attorney who violated RPC 1.1(a), RPC 1.3, and RPC

1.4(b); the attorney's misconduct, which caused the client's personal injury lawsuit to be dismissed, caused significant economic harm to the client, who had suffered severe injuries after a motor vehicle accident; no disciplinary history).[12]

Respondent, however, also failed to promptly cooperate with disciplinary authorities, in violation of RPC 8.1(b). Admonitions typically are imposed for an attorney's delayed cooperation in a disciplinary investigation, in violation of RPC 8.1(b). See, e.g., In the Matter of Leticia Zuniga, DRB 19-432 (March 20, 2020) (the attorney violated RPC 8.1(b) by initially failing to reply to the DEC investigator's two correspondences and one telephone call; the attorney became responsive upon the filing of a formal ethics complaint; the attorney also violated RPC 1.3; RPC 3.2 (failure to make reasonable efforts to expedite litigation and to treat with courtesy and consideration all persons involved in the legal process); RPC 3.4(c) (disobeying the rules of a tribunal); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice)); In the Matter of Kevin R. Shannon, DRB 04-152 (June 22, 2004) (the attorney violated RPC 8.1(b) by failing to promptly reply to the DEC investigator's request for information about a grievance); and In the Matter of Mark D. Cubberley, DRB

[12] Although respondent was not charged with having violated RPC 1.1(a), a charge present in Sachs, Calpin, and Burstein, the disciplinary precedent is instructive in that we determined to enhance discipline from an admonition to a reprimand, in part, due to the harm that resulted from the attorneys' misconduct.

96-090 (April 19, 1996) (the attorney violated RPC 8.1(b) by initially failing to reply to the investigator's requests for information, but subsequently cooperated after being served with a subpoena duces tecum; in another matter, the attorney failed to reply to the investigator's two requests for a reply to the grievance).

However, the quantum of discipline for delayed cooperation with a disciplinary investigation has been enhanced when accompanied by other RPC violations. See In re Bronson, 204 N.J. 76 (2010) (reprimand; the attorney delayed his response to three written requests for information from the Office of Attorney Ethics (the OAE) and also failed to comply with the OAE's efforts to schedule a demand audit, in violation of RPC 8.1(b); the attorney also violated RPC 1.15(a) (failure to safeguard funds) and RPC 1.15(d) (recordkeeping violations; prior reprimand and a temporary suspension related to a pending criminal charge)), and In re Higgins, 247 N.J. 20 (2021) (three-month suspension, which ran concurrent with another three-month suspension; although the attorney ultimately filed a reply to the grievance, for a lengthy period of time prior he failed to comply with the OAE's numerous requests for information and written responses to the matters under investigation, in violation of RPC 8.1(b); the attorney also violated numerous other RPCs, namely, RPC 1.1(a); RPC 1.3; RPC 1.5(b) (failure to set forth in writing the basis or rate of the attorney's fee); RPC 1.15(a); RPC 1.15(d); RPC 1.16(c)

(notice requirement upon termination of representation); RPC 1.16(d) (protection of a client's interest upon the termination of representation); RPC 3.2; RPC 3.4(c); and RPC 8.4(d); prior reprimand, censure, and temporary suspension, all of which included the attorney's failure to cooperate with the disciplinary authorities; thus, exhibiting a pattern of behavior).

Here, like the attorneys in Sachs, Calpin, and Burstein, who were reprimanded, respondent's lack of diligence and failure to communicate resulted in substantial financial harm to his client. Thus, despite his lack of disciplinary history, an admonition, as was imposed in Cappio, is insufficient for his violation of RPC 1.3 and RPC 1.4(b).

Also, like the attorneys in Bronson and Higgins, whose additional violation of RPC 8.1(b) resulted in enhanced discipline, respondent initially failed to cooperate with the disciplinary investigation. However, the instant matter is distinguishable from Higgins, who received a three-month suspension, because respondent has not exhibited an extensive pattern of failing to cooperate with the disciplinary authorities, committed far fewer RPC violations, and has no disciplinary history. In our view, the instant matter is most similar to Bronson, who received a reprimand, and who, unlike respondent, had a disciplinary history.

We, thus, conclude that the totality of respondent's misconduct warrants

at least a reprimand. In crafting the appropriate discipline, however, we also consider aggravating and mitigating factors.

As noted in connection with our Sachs and Calpin analysis, Amenhauser suffered substantial harm as a direct consequence of respondent's misconduct. Her credit was compromised, her 2017 tax refund was garnished, and her monthly social security benefit continues to be garnished. We do not consider this aggravation twice, however. That harm to Amenhauser already serves as the basis for the enhanced baseline of a reprimand for respondent's lack of diligence and failure to communicate. There is no additional aggravation.

In mitigation, respondent accepted responsibility for his misconduct; ultimately cooperated with the disciplinary authorities and entered into a stipulation; paid restitution to Amenhauser in the sum of her 2017 tax refund; enrolled in NJLAP; and has engaged in counseling. In further mitigation, respondent has no disciplinary history in his twenty-five years at the bar. Finally, we find that his misconduct is unlikely to recur.

We, thus, conclude that this matter is most similar to Bronson, who received a reprimand for having violated RPC 8.1(b) by ignoring three written directives from disciplinary authorities and committed additional RPC violations. Additionally, here, unlike in cases warranting harsher discipline,

there is substantial mitigation presented. Accordingly, we determine that a reprimand is the appropriate quantum of discipline for respondent's misconduct.

Chair Gallipoli and Members Hoberman and Rivera voted to impose a censure, concluding that, pursuant to disciplinary precedent, respondent's violation of RPC 1.3 and RPC 1.4(b) warrants a reprimand, and that, considering respondent's additional RPC 8.1(b) violation, the quantum of discipline should be enhanced to a censure. On balance, these Members determined that the mitigation presented did not outweigh the significant harm to Amenhauser, which continues to date, and that a reprimand was, thus, insufficient discipline.

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 Eric Craig Garrabrant
Docket No. DRB 21-192

Argued: November 18, 2021

Decided: February 1, 2022

Disposition: Reprimand

Members	Reprimand	Censure	Absent
Gallipoli		X	
Singer	X		
Boyer			X
Campelo	X		
Hoberman		X	
Joseph	X		
Menaker	X		
Petrou	X		
Rivera		X	
Total:	5	3	1

Johanna Barba Jones
Chief Counsel