Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-265
District Docket No. IV-2020-0015E

In the Matter of	:
Ronald B. Thompson	:
An Attorney at Law	:

Corrected Decision

Argued: February 17, 2022

Decided: June 7, 2022

Gilbert J. Scutti appeared on behalf of the District IV Ethics Committee.

Respondent waived appearance for oral argument.

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

This matter previously was before us on a recommendation for an admonition filed by the District IV Ethics Committee (the DEC). On November 18, 2021, we determined to treat the admonition as a recommendation for greater

discipline, pursuant to R. 1:20-15(f)(4), and to bring the matter on for oral argument.

The formal ethics complaint charged respondent with having violated RPC 1.5(b) (failure to set forth, in writing, the basis or rate of the fee).

Although we determine that respondent committed misconduct, we are unable to reach a consensus on the proper quantum of discipline. As detailed below, four Members voted to censure respondent, four Members voted to reprimand respondent, and one Member was absent.

Respondent earned admission to the New Jersey and Pennsylvania bars in 1990. During the relevant timeframe, he maintained a law practice in Sicklerville, New Jersey.

In 2011, respondent was censured for his misconduct in two separate client matters, both involving appeals. In re Thompson, 205 N.J. 107 (2011). In the first matter, the client retained respondent to appeal a final restraining order (FRO) entered against him. The client, a firefighter, was concerned that the FRO would negatively impact his promotion prospects. Although respondent was unable to assert a cognizable basis for appeal, he failed to inform the client of that conclusion. Instead, respondent sought the consent of the complainant to vacate the FRO, to no avail. The client's appeal was dismissed, and respondent failed to file a motion to reinstate it or to inform his client that the appeal had

been dismissed. Moreover, respondent misrepresented to the client, throughout the representation, that there was a viable basis for appeal, even promising a path to certification to the Court.

In the second matter, the client retained respondent to appeal her conviction for disorderly conduct, but respondent failed to perfect the appeal, did not keep the client apprised about the status of the appeal, and misrepresented to the client that the matter was proceeding apace. As a consequence of respondent's lack of diligence, the client's appeal was time-barred.

In connection with the two client matters, respondent was found to have violated RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to properly communicate with clients); and RPC 3.2 (failure to expedite litigation). In aggravation, we noted that, in one of the disciplinary proceedings, respondent provided testimony that lacked credibility; misled one client about the viability of his case; and delayed returning the client's transcripts and retainer, thereby preventing the client from seeking other representation.

In 2014, respondent again was censured for a lack of diligence and failure to properly communicate with a client. In re Thompson, 219 N.J. 127 (2014). In that matter, the client retained respondent to represent her in a lawsuit against the school district that employed her. Respondent filed a notice of tort claim on

the client's behalf and, thereafter, filed a complaint against the Board of Education (BOE) and various individuals, alleging harassment and a hostile work environment.

Respondent did not provide his client with the BOE's interrogatories for nearly ten months, despite having been served with them. Moreover, by the time respondent provided the interrogatories to his client, the BOE already had obtained an order from the court dismissing the complaint, without prejudice. Respondent both failed to reply to the motion to dismiss and to inform his client about the motion or the order when they met, two months later, to discuss the BOE interrogatories.

We found that, although respondent initially had several conversations with his client, he later stopped returning her telephone calls altogether, prompting her to seek the services of another attorney. Furthermore, we found respondent's explanations regarding his lack of diligence to be implausible and an attempt to deflect any blame for his wrongdoing.

We considered, in aggravation, that respondent had not learned from his prior mistakes and failed to take responsibility for his actions.

Turning to the facts of this matter, on January 9, 2004, a jury in Cumberland County, New Jersey, found Lamar Milbourne guilty of eight different charges, including sexual assault; kidnapping; robbery; and possession

of a weapon. Milbourne and three co-defendants beset a couple parked overlooking a lake in Bridgeton City Park. They then robbed, beat and repeatedly sexually assaulted the woman, and savagely assaulted her male companion, including striking him with a baseball bat.

Milbourne was sentenced to serve forty years in prison, and his conviction was upheld on appeal.[1] See State v. Milbourne, No. A-3068-04, 2007 N.J. Super. Unpub. LEXIS 2308 (App. Div. Dec. 14, 2007) (direct appeal affirming jury verdict), certif. denied, 194 N.J. 443 (2008); State v. Milbourne, No. A-3313-10T2 (App. Div. December 13, 2012) (affirming denial of petition for post-conviction relief), certif. denied, 214 N.J. 117 (2013).

Thereafter, in August 2013, Milbourne filed a petition for habeas corpus, pursuant to 28 U.S.C. § 2254, alleging that he was in custody in violation of the United States Constitution (the federal habeas case); that petition was denied. Milbourne v. Hastings, 2017 U.S. Dist. LEXIS 118404 (D.N.J. July 27, 2017). Milbourne's pro se petition to amend that order arguing that the Court failed to address one of the grounds raised in the petition also was denied, later that year. Milbourne v. Hastings, 2017 U.S. Dist. LEXIS 206494 (D.N.J. December 16, 2017).

[1] The matter was remanded for re-sentencing in light of State v. Natale, 184 N.J. 458, 495-96 (2005). Public Department of Corrections records state that Milbourne will be eligible for parole on May 3, 2033.

In January 2017, Sherry King[2] retained respondent to pursue post-conviction appeals for Milbourne, who, at the time, was her fiancé. Respondent previously had not represented King or Milbourne. King initially paid respondent $1,000 toward the representation, and respondent visited Milbourne in prison to discuss the representation.

After respondent's meeting with Milbourne, King paid respondent an additional $4,000 toward the representation. At no time did respondent provide King or Milbourne with a writing setting forth the basis or rate of his fee, although respondent provided King with receipts for her payments. Respondent maintained that, although he failed to provide King with a written retainer agreement in this matter, it was his usual practice to provide such agreements to clients.

Respondent claimed that the additional, $4,000 fee was intended to cover the "cost of searching for Post-Conviction Relief (PCR)" avenues. Respondent maintained that, when he met with Milbourne, he informed him that a PCR petition ordinarily would be time-barred, but that a petition based on newly discovered evidence could be filed at any time. Respondent agreed to review all available evidence to search for "new evidence," which could be the basis to pursue a belated PCR petition.

[2] Subsequent to her retention of respondent, King and Milbourne married.

On February 3, 2017, respondent began to send King text messages regarding Milbourne's case.[3] Later, on December 2, 2017, King sent a text message to respondent, stating that she had "made several attempts" to contact him. King implored respondent to "truly get this ball rolling," emphasizing that her mother was seventy-five-years-old and wanted to spend time with Milbourne, her then fiancé, outside of prison.

On December 11, 2017, King and respondent exchanged text messages in order to schedule a telephone call with Milbourne. Respondent agreed to the proposed date and time. On the date of the scheduled call, approximately two hours before the agreed-upon time, King sent a text message to respondent, reminding him of the call. Later, respondent informed King that he was in court. When King asked respondent whether he knew he had a scheduled court appearance the evening he agreed to have a phone call with Milbourne, he said he would explain when he next spoke with King.[4]

[3] King authenticated those text messages during the ethics proceeding.

[4] PACER records reflect that Milbourne filed a pro se Notice of Appeal with the Third Circuit on January 16, 2018. In those documents, he sought to challenge the District Court's orders of July 28, 2017, denying his habeas petition, and the December 15, 2017 order denying his motion for reconsideration. The Third Circuit denied Milbourne's application for a certificate of appealability by way of order dated May 17, 2018. In so doing, the Third Circuit observed, "Jurists of reason would not debate the District Court's decision to deny Milbourne's motion for reconsideration. See Slack v. McDaniel, 529 U.S. 473, 484 (2000); see also Max's Seafood Cafe by Lou-Ann, Inc. v. Quinteros, 176 F.3d 669, 677 (3d Cir. 1999) (explaining when reconsideration is warranted)." That order terminated the case.

On February 18, 2018, King sent respondent a text message inquiring whether he was "able to file or make a notice of appearance on [Milbourne's] behalf to Federal court in Philadelphia?" While not clear from the record, we infer that this was a reference to Milbourne's pending, pro se application to challenge both 2017 District Court orders. On February 25, 2018, after receiving no reply from respondent, King sent two more similar inquiries. Three days later, King sent respondent another text message asking respondent to let her know when he filed a notice of appearance in Milbourne's case because "Tammy"[5] informed her it had not yet been submitted.

On March 4, 2018, King sent a fifth text message to respondent, inquiring about his notice of appearance in the federal habeas case. Respondent replied to King that day and apologized for not having communicated with her. Respondent stated he could not read King's text message at that moment because he was driving and did not have his glasses. Respondent informed King that he would call her later. Later, at 7:20 p.m., King sent a text message to respondent expressing disappointment that he had not called her, and her desire to discuss his notice of appearance in Milbourne's case. The next day, King again sent a text message to respondent asking when he would be able to work on the notice

[5] There is no information in the record regarding the identity or role of Tammy in connection with this matter.

of appearance for Milbourne's case. Respondent replied that he had been "tied up on a time sensitive project" and asked King to "allow [him] to give [her] a call tomorrow to let [her] know exactly where we are with that."

On May 17, 2018, the Third Circuit denied Milbourne's application for a certificate of appealability.

On June 5, 2018, King sent a text message to respondent, stating "I'm sure you noticed that I have made several attempts in trying to contact you. Please forgive me if I sound blunt, but I cannot and will not allow another year to pass by without seeing some progress in [Milbourne's] case." King requested that respondent "communicate with [her] a bit more and refrain from avoiding/ignoring my calls and texts. You encourage me to contact you, but again, your actions show otherwise."

Respondent maintained that he had not seen King's text messages at all, despite receiving a copy of the text messages as an exhibit in the ethics proceeding, and despite claiming that he had checked his phones. Respondent testified that it was during the ethics hearing that he first learned King had sent him text messages regarding the federal habeas case.[6] Nonetheless, respondent testified that, despite his failure to provide a written retainer agreement, he

[6] In reply to King's twenty-two text messages to respondent from February 2017 through June 2018, respondent sent six text messages.

believed he was clear with King and Milbourne that he was not going to represent Milbourne in the federal habeas case.

In connection with the instant disciplinary proceedings, respondent did not contest that his conduct violated RPC 1.5(b), but he requested a mitigation hearing.

During the August 2, 2021 hearing before the DEC, respondent explained that King had been referred to him. When she met with respondent "it became apparent to [respondent] that she didn't really understand [Milbourne's case]," because she had mixed up some of the pertinent dates. Respondent further explained that it had become "clear to [him] that [he] couldn't get a complete understanding unless [he] spoke with Mr. Milbourne."

After meeting with Milbourne in January 2017, respondent learned that Milbourne had already filed a direct appeal, which the Court denied. Milbourne also had filed for post-conviction relief, which also had been denied. Milbourne also told respondent that he was "in the process" of filing a federal petition for a writ of habeas corpus and was awaiting an answer. Milbourne also told respondent he had an issue with the Third Circuit Court and was seeking a certificate of appealability.[7]

[7] According to Fed. Rules App. Proc. 22(b)(1), "in a habeas corpus proceeding in which the detention complained of arises from process issues by a state court [. . .] the applicant cannot take an appeal unless a circuit justice or a circuit or district judge issues a certificate of

Respondent testified that he informed Milbourne, "very early on," that he was not going to "get involved" with the federal habeas case or the certificate of appealability. Thus, respondent testified that Milbourne agreed to have respondent "review everything" to try to find newly-discovered evidence which would support a new trial, via a state PCR petition.

Moreover, respondent testified that he did not provide a written retainer agreement to King because, when she met with respondent, he did not yet know what his legal strategy would be in Milbourne's case. Although respondent did not provide a written fee agreement, he contended that, following his meeting with King, he completed an internal "new case memo." In the new case memo he prepared, he noted that he needed to (1) provide King with a fee agreement and (2) visit Milbourne in prison as soon as possible. Respondent testified that he simply "forgot" to provide the fee agreement to King.

Respondent testified that Milbourne arranged to have King provide respondent with the "boxes of material" he needed to review. Respondent asserted that, during the representation, he reviewed each document King provided to him. Following his months-long review of the evidence, respondent testified that it became apparent to him that any attempt to obtain a new trial, via a PCR based on newly-discovered evidence, would be unsuccessful.

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appealability under 28 U.S.C. § 2253(c)."

Thus, respondent "came up with an idea and [he] wanted to discuss that with [Milbourne] in person." Respondent asserted that his plan was "of a sensitive nature" and that he did not wish to discuss it over the phone. The plan involved Milbourne providing information that would assist prosecutors in an unrelated, ongoing investigation, which would then serve as a basis for Milbourne's own resentencing. However, respondent conceded the plan was problematic because Milbourne was in jail and, thus, likely was unaware of information that would assist authorities in any ongoing investigation.

Respondent testified that Milbourne appeared interested in the plan but did not "seem to completely understand it." However, King approached respondent and told him she did not agree with the plan because "what she was seeking was [Milbourne's] complete vindication." Thereafter, Milbourne no longer was interested in respondent's plan and "it was all about his innocence."

Respondent also testified that, after King and Milbourne rejected his plan to offer information regarding ongoing investigations, "time passed, [he] didn't hear from Ms. King. I didn't hear from Mr. Milbourne and our relationship had all but ended."[8] Respondent contended that "sometime later," when he was at

[8] There is no information in the record which could support a finding that respondent informed King or Milbourne that he had ended work in connection with Milbourne's representation.

the Cumberland County Courthouse, he saw King and he asked her how Milbourne was doing. Then, to respondent's surprise, approximately two months later, he received a fee arbitration complaint from King.[9] Respondent contended that the basis for King's fee arbitration complaint was that respondent failed to take any action in Milbourne's appeal.

Respondent testified that his reading of RPC 1.5(b) was that the Rule merely required the rate and basis of the fee to be in writing and that, ultimately, King had never disagreed with him about the rate of his fee.

Respondent contended that, in mitigation, he disgorged to King the entirety of the fee. Moreover, respondent asserted that neither King nor Milbourne were harmed due to his failure to provide a fee agreement. Respondent also claimed that he reviewed all his files and had located only three or four cases where he did not provide a fee agreement, but that he previously had represented those clients. Nonetheless, respondent testified that he purchased a software program so that, in the future, he would not forget to provide a fee agreement to a client.

[9] In connection with the fee arbitration proceeding, respondent admitted that he failed to file the required response to her request for fee arbitration. See R. 1:20A-3(b)(2). Therefore, he was barred from further participation and the matter proceeded uncontested. R. 1:20A-3(a)(2)(i). As a result of that uncontested proceeding, respondent was ordered by the fee arbitration committee to refund to King the entirety of the fee, and he did so. The fee arbitration committee referred respondent for the ethics investigation pursuant to R. 1:20A-4.

Additionally, respondent invited the panel to view certain features of his practice in respect of mitigation. Particularly, he highlighted that he "substitute[s] into cases where someone has been represented by other counsel." In so doing, respondent typically reduces the fee he charges to account for what a client already had paid to prior counsel. Respondent also testified that he offers guidance to younger attorneys who have questions about the practice of law. Respondent also maintained that he provides "more than [his] share of pro bono work." Finally, respondent offered that he always had been professional and cordial toward King.

King also testified at the ethics hearing, stating that she had hired respondent to obtain Milbourne's freedom, and that it did not matter to her how he accomplished that objective. Additionally, King testified that she never had received a written fee agreement from respondent, but that she had sent him many text messages about the case. Thus, King testified that, as of the date of the ethics hearing, she was still unclear regarding the scope of the representation. King also testified that, if respondent was not in communication with her via text message, he spoke with her on the telephone, although it was not often.

In his post-hearing summation to the DEC, the presenter argued that respondent created confusion regarding the scope of the representation of Milbourne by failing to provide King with a written fee agreement. The

presenter contended that King's text messages to respondent asking when he was going to enter his appearance in the federal habeas case would have been "superfluous" had she known the scope of the representation for which she paid respondent. Indeed, the presenter argued that, during the representation and ethics proceedings, King demonstrated persistent confusion as to the scope of respondent's representation.

Regarding mitigating factors, the presenter noted that respondent had fully cooperated with the ethics investigation; promptly admitted his RPC violation; and "returned the entirety of the legal fee in response to the decision of the Fee Arbitrators (albeit after he learned of my investigation .I [sic] also agree that [respondent] performed the work he says he did, and Lamar Milbourne suffered no harm because unfortunately nothing could be done for him."

In aggravation, the presenter characterized respondent's disciplinary history as "serious." The presenter emphasized that respondent's prior discipline involved his failure to communicate and that, in the instant matter, "his failure to communicate more effectively (a symptom of not reducing a fee to writing) caused unnecessary confusion and frustration" for King.

Nevertheless, the presenter argued that an admonition was the usual discipline imposed on attorneys who violate RPC 1.5(b), and that respondent's

mitigating evidence outweighed his two prior censures and supported the imposition of an admonition in this case.

In oral argument before us, the presenter asserted that the purpose of providing a client with a writing setting forth the rate or basis of a fee was to eliminate a client's misunderstanding regarding the terms of representation. The presenter maintained that respondent's admitted lack of communication exacerbated his failure to memorialize the scope of the representation in writing.

In his post-hearing summation, respondent argued that RPC 1.5 did not require him to provide his client with a fee agreement. Respondent contended that his admitted failure to provide King with a retainer agreement was not a per se violation of RPC 1.5(b), while conceding that, had he provided her with a retainer agreement, King would have known the basis and rate of his fee. Respondent reiterated that he had made a note to send King a retainer agreement, but that he had forgotten to do so.

Respondent recounted that King had filed a request for fee arbitration against him. Respondent claimed that, prior to the fee arbitration hearing, he attempted to communicate with King, but that she declined to speak with him. Respondent admitted that he "failed to timely respond to her fee arbitration complaint" and, thus, had been barred from participating in the proceeding. However, during the ethics proceeding, respondent refuted King's claim that he

did not perform work on Milbourne's case. Nevertheless, he conceded that the fee arbitration committee ordered him to return the entire $5,000 fee King had paid, and that he had complied. Respondent contended that the value of his work on the case exceeded $8,000 and claimed that he remained uncompensated for his work due to his compliance with the Fee Arbitration Order, which he viewed as a mitigating factor.

Respondent argued, in further mitigation, that he was always courteous to King; he fully cooperated with the ethics investigation; he traveled multiple times to prison to meet with Milbourne; he spent many hours reviewing Milbourne's file; his failure to reduce the basis of his fee to a writing did not harm Milbourne; his Rule violation was not willful; and that he has taken steps, such as purchasing law office management software, to reduce the likelihood that he will violate RPC 1.5(b) in the future.

Although he acknowledged his disciplinary history, respondent argued that the mitigating factors in his case outweighed any aggravation attributable to his prior misconduct. Therefore, respondent requested that the DEC impose no more than an admonition.

After reviewing the evidence and testimony presented at the ethics hearing, the DEC concluded that respondent violated RPC 1.5(b).

The panel found the facts alleged in the formal ethics complaint, which respondent admitted in his verified answer, to be credible. However, the panel noted that the "question in this case" was whether respondent's two prior censures, or any other applicable aggravation, warranted the imposition of a more severe sanction than the typical admonition imposed for a violation of RPC 1.5(b).

Ultimately, the panel determined that respondent's disciplinary history did not warrant the imposition of more than an admonition, finding that the two censures were "sufficiently remote in time," that there was not an ongoing pattern of misconduct, and that respondent's previous RPC violations were dissimilar from the allegations in this matter. Therefore, the panel found there was no reason to believe that respondent had failed to "learn his lesson" from his prior ethics matters.

Thus, the panel found the mitigating factors, including respondent's cooperation[10] with the ethics investigation; his ready admission to wrongdoing; the work he performed on Milbourne's case; and the procedures he implemented to avoid future RPC 1.5(b) violations served to outweigh his disciplinary history. However, the panel rejected respondent's assertion that his payment of the fee

[10] Attorneys are required to cooperate with disciplinary authorities or face temporary suspension for a failure to do so. See R. 1:20-3(g)(3); In the Matter of John E. Maziarz, DRB 18-251 (January 9, 2019), so ordered, 238 N.J. 476 (2019).

arbitration award was a mitigating factor, finding that, had he failed to do so, he risked the temporary suspension of his law license.

The panel also noted that, in this matter, respondent was not charged with a lack of diligence or lack of communication. Nevertheless, the panel acknowledged the presenter's argument that the text messages King sent to respondent demonstrated her confusion as to the scope of his representation. Although respondent denied receiving King's text messages, the panel found that, because King had sent the messages to respondent's personal cellular telephone number, and that she used that same telephone number to speak with respondent, he "likely" received the text messages.

Notwithstanding its finding, the DEC questioned whether King's confusion regarding the scope of respondent's representation constituted an aggravating factor when his charged misconduct solely involved failing to set forth the basis or rate of his fee in writing. Ultimately, the panel answered its own inquiry by concluding that King's confusion as to the scope of respondent's representation was not the result of respondent's failure to comply with RPC 1.5(b) and, thus, was not an aggravating factor.

Therefore, the panel found that the DEC had proven respondent's RPC 1.5(b) violation by clear and convincing evidence and recommended the imposition of an admonition.

Respondent waived his appearance at oral argument and agreed with the conclusions and recommendations of the DEC.

Following a de novo review of the record, we are satisfied that the hearing panel's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence. Specifically, the facts contained in the record support the charge that respondent violated RPC 1.5(b).

That Rule requires an attorney to set forth, in writing, the basis or rate of the fee. Respondent admittedly failed to provide King and Milbourne with such a writing, in violation of RPC 1.5(b). Indeed, he failed to provide them with any retainer agreement, despite knowing his obligation to do so.

In sum, we find that respondent violated RPC 1.5(b). The only remaining issue for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

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); 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; prior admonition and private reprimand for advertising misconduct).

However, greater discipline has been imposed on attorneys who, in addition to violating RPC 1.5(b), have defaulted, have a disciplinary history, or have committed other acts of misconduct. See, e.g., In re Gonzalez, 244 N.J. 271 (2020) (in a default matter, censure for an attorney who failed to provide in writing the basis or rate of his fee in two immigration matters involving children; thereafter, respondent failed to meet with the children to evaluate the merits of their asylum claims; respondent failed to appear at a removal hearing and consequently, the court ordered the children's removal from the United States; attorney had previously received a three-month suspension); In re Yannon, 220 N.J. 581 (2015) (attorney failed to memorialize the basis or rate of his fee in two real estate transactions, a violation of RPC 1.5(b); discipline enhanced from an admonition based on the attorney's prior one-year suspension); In re Gazdzinski, 220 N.J. 218 (2015) (attorney failed to prepare a written fee agreement in a

matrimonial matter; the attorney also failed to comply with the district ethics committee investigator's repeated requests for the file, a violation of RPC 8.1(b), and violated RPC 8.4(d) by entering into an agreement with the client to withdraw the ethics grievance against him, in exchange for a resolution of the fee arbitration between them); In re Kardash, 210 N.J. 116 (2012) (in a default matter, the attorney failed to prepare a written fee agreement in a matrimonial case).

Therefore, because attorneys who have violated RPC 1.5(b) and who have defaulted or have a disciplinary history have received either a reprimand or a censure, in order to craft the appropriate discipline in this matter, we evaluate all aggravating and mitigating factors.

In aggravation, respondent violated the mandate of RPC 1.8(f) in the course of this representation. Although not charged in this case, that Rule states that "[a] lawyer shall not accept compensation for representing a client from one other than the client unless: (1) the client gives informed consent; (2) there is no interference with the lawyer's independence of professional judgment or with the lawyer-client relationship; and (3) information relating to representation of a client is protected as required by RPC 1.6." In that context, respondent's awareness of his need to communicate clearly with his client, Milbourne, and King, who was paying the fee, should have been heightened, clearer, and

cemented through the safeguard of informed consent.

In further aggravation, four Members noted the similar communication failures undergirding this and respondent's two prior disciplinary matters. Although respondent's 2011 and 2014 matters resulted from his lack of diligence and failure to communicate with clients, as detailed above, respondent's failure to communicate with King exacerbated his failure to comply with RPC 1.5(b).

Particularly, although not charged in this case, RPC 1.4(b) requires an attorney to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information.[11] Here, King, as Milbourne's proxy, asked respondent, five times, to advise her regarding his plan to enter his appearance in Milbourne's federal habeas case. Rather than expressly inform King that he was not representing Milbourne in that matter, respondent told King he would call her to let her know "exactly where we are with that."

Worse, some of respondent's failures to reply occurred when the federal habeas petition already had been dismissed. Thus, arguably, respondent's

[11] The DEC found that it was only "likely" that respondent received the text messages that King sent to respondent's personal telephone number. However, the unrefuted evidence demonstrates that, not only did respondent actually receive King's text messages, but he also replied to some, albeit with no substantive information regarding Milbourne's case. The DEC went on to find that King's confusion as to the scope of respondent's representation was not attributable to his RPC 1.5(b) violation. It did not address respondent's failure to reply to King's multiple requests that he enter his notice of appearance in Milbourne's federal habeas case.

silence led King to believe – albeit by omission – that the federal action and the representation were ongoing. Therefore, respondent's position during the ethics proceeding – that he was clear with King and Milbourne that he had no intention to represent Milbourne in the federal habeas case – is at odds with the documentary evidence.

As respondent himself testified, when he first met with King he observed that she "didn't really understand" Milbourne's case. Thus, his initial failure to provide her with a retainer agreement specifying the scope of the representation was compounded by his repeated communication failures.

Consequently, the four Members who voted to impose a censure disagreed with the DEC's finding that respondent's failure to provide King with the information she sought regarding the scope of his representation was unlike his two prior censures, because, although not charged as a Rule violation, it is clear respondent has not learned from his prior mistakes.

Conversely, the four Members who voted to impose a reprimand found that respondent's ethics history was sufficiently remote in time so as to not warrant consideration as an aggravating factor.

Overall, we depart from the DEC's view of the aggravating factors and weigh: (1) respondent's choice to not reply to King's numerous requests for information, as RPC 1.4(b) requires, and (2) respondent's failure to secure

Milbourne's informed consent, as RPC 1.8(f) requires. See, e.g., In re Kim, 227 N.J. 455 (2017); In re Steiert, 201 N.J. 119 (2010); and In re Ahl, 164 N.J. 222, 231-32 (2000) (it is well-settled that evidence of unethical conduct contained in the record can be considered in aggravation, despite the fact that such unethical conduct was not charged in the formal ethics complaint). In Steiert, by way of example, we considered, in aggravation, that the attorney's conduct toward the grievant amounted to witness tampering, contrary to N.J.S.A. 2C:28-5(a). Although Steiert was not charged with having violated RPC 8.4(b) (commission of a crime), we relied on the holding in Pena, which dealt with attorneys suborning perjury, and considered the conduct as aggravation sufficient to enhance discipline.

Accordingly, Chair Gallipoli and Members Campelo and Menaker conclude that respondent's violation of RPC 1.5(b), including the aggravation of respondent's ethics history and uncharged misconduct, warrants the imposition of a censure. Member Rivera concludes that respondent's violation of RPC 1.5(b) was solely aggravated by his ethics history and warranted the imposition of a censure.

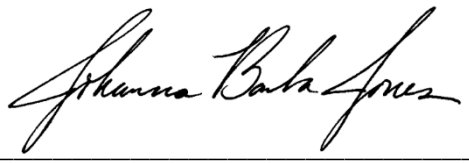
Similarly, although Vice-Chair Singer and Members Boyer, Joseph, and Petrou found that respondent's conduct violated RPC 1.5(b), they conclude that his disciplinary history was sufficiently remote in time as to warrant the

imposition of a reprimand.

Member Hoberman 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: 

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SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ronald B. Thompson
Docket No. DRB 21-265

Argued: February 17, 2022

Decided: June 7, 2022

Disposition: Other

Members	Reprimand	Censure	Absent
Gallipoli		X	
Singer	X		
Boyer	X		
Campelo		X	
Hoberman			X
Joseph	X		
Menaker		X	
Petrou	X		
Rivera		X	
Total:	4	4	1

Johanna Barba Jones
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