

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-266
District Docket No. XIV-2020-0247E

In the Matter of :
Edward Harrington Heyburn :
An Attorney at Law :

Decision

Argued: March 17, 2022

Decided: June 14, 2022

Elizabeth A. Rice appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us pursuant to R. 1:20-6(c)(1).¹ 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 communicate with a client); RPC 3.2 (failure to expedite litigation); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

For the reasons set forth below, we determine to impose a two-year suspension, consecutive to the terms of suspension the Court imposed in In re Heyburn, 249 N.J. 424 (2022), and In re Heyburn, 249 N.J. 423 (2022), with a condition.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1997. At the relevant times, he maintained a practice of law in East Windsor, New Jersey.

On November 13, 2013, respondent received a censure for his combined misconduct in two default matters. The first matter involved violations of the attorney advertising rules; the second involved a lack of diligence, failure to cooperate with disciplinary authorities, and misrepresentations by silence. In re Heyburn, 216 N.J. 161 (2013) (Heyburn I) .

¹ That Rule provides that the pleadings and a statement of the procedural history of the matter may be filed directly with us, without a hearing, if the pleadings do not raise genuine disputes of material fact, respondent does not request an opportunity to be heard in mitigation, and the presenter does not request an opportunity to present aggravating circumstances.

On June 18, 2015, respondent received a second censure for gross neglect; lack of diligence; failure to communicate with a client; and misrepresentations to the client. In re Heyburn, 221 N.J. 631 (2015) (Heyburn II).

On July 9, 2018, respondent received a third censure for negligent misappropriation of client funds and recordkeeping violations. In re Heyburn, 234 N.J. 80 (2018) (Heyburn III).

On December 9, 2020, respondent received a fourth censure for failure to promptly deliver funds to a third party, disobeying an obligation under the rules of a tribunal, and conduct prejudicial to the administration of justice. In re Heyburn, 244 N.J. 427 (2020) (Heyburn IV).

On January 13, 2022, respondent received a six-month suspension, effective February 10, 2022, for gross neglect; lack of diligence; failure to communicate with a client; failure to expedite litigation; and failure to cooperate with disciplinary authorities. In re Heyburn, 249 N.J. 424 (2022), (Heyburn V).

That same date, respondent received a one-year suspension, consecutive to the six-month suspension the Court imposed in Heyburn V, for lack of diligence; failure to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information; failure to explain a matter to the extent reasonably necessary to permit a client to make informed

decisions; and failure to expedite litigation. In re Heyburn, 249 N.J. 423 (2022) (Heyburn VI).

The facts of this matter are undisputed.

On July 27, 2010, Ronald Cohen retained respondent in connection with a work-related injury he sustained while employed as an emergency services dispatcher for Rutgers University (Rutgers). Specifically, Cohen suffered severe hearing loss when his headset malfunctioned. Based on Cohen's injuries, respondent agreed to represent him in a workers' compensation claim against Rutgers and to pursue a companion, third-party civil action against Tektron Corporation (Tektron), the company responsible for maintaining Rutgers' communications equipment. Prior to the representation, respondent and Cohen were personal acquaintances because their children went to school together.

Respondent indicated that the workers' compensation matter was settled in court, with Cohen's appearance and consent, for an amount between \$5,000 and \$6,000.²

In March 2011, respondent filed the third-party complaint against Tektron, on behalf of Cohen, in the Middlesex County Superior Court. However,

² Although respondent and the OAE could not determine when the workers' compensation matter had settled, respondent speculated that the workers' compensation matter could have resolved sometime in 2012 or 2013.

respondent admitted that he had failed to serve Tektron with the complaint and, consequently, in the “[F]all of 2011[,]” the Superior Court administratively dismissed the matter.³ Following his receipt of the administrative dismissal notice, respondent, inexplicably, did not attempt to properly serve Tektron with the complaint. Compounding matters, respondent not only failed to file a motion to reinstate the complaint, but he also failed to inform Cohen of the dismissal, claiming that he “was nervous” and “embarrassed[.]”⁴

Following the complaint’s administrative dismissal, between January 2012 and April 2019, Cohen repeatedly contacted respondent seeking an update regarding his case against Tektron. However, rather than truthfully inform Cohen that his matter had been administratively dismissed, respondent misled him into believing “that [his] case was still active.”⁵ To cover up his deception, respondent falsely told Cohen that his matter was “doing well,” “pending,” and

³ In his November 19, 2020 interview with the OAE, respondent admitted that it was “theoretically” possible that he had altogether failed to file the complaint with the Superior Court; however, he maintained his belief that he had, in fact, filed it, without providing any documentation to support his belief. Nevertheless, months after the interview, on January 25, 2021, respondent informed the OAE that he could not locate a signed and executed copy of the complaint.

⁴ In his November 19, 2020 interview with the OAE, when asked why he failed to file the motion to reinstate, he stated that he “wish[ed] [that he] had an answer because [he did not] know.”

⁵ Respondent rationalized that he continued to lie to Cohen in hope that he might assemble enough of his own money to be able to “settle” the matter with Cohen.

“moving forward[,]” but that the “courts were backed up” and that his matter could take years to resolve. On one occasion, respondent told Cohen to stop asking respondent’s wife about the Tektron case and, on another occasion, respondent even warned Cohen to “back-off” because he “was taking care of” Cohen’s matter.

In April 2019, unable to continue to deceive Cohen because he “just could [not] do [it] anymore[,]” respondent finally informed Cohen that he had been misleading him regarding the status of his case and advised him “to speak with an independent attorney.” However, respondent acknowledged that, by April 2019, Cohen’s opportunity to pursue a court claim against Tektron had expired. According to Cohen, respondent’s confession occurred just one week after Cohen had encountered respondent at a restaurant and respondent falsely had claimed that the case “was going well.”

On May 7, 2019, respondent sent Cohen a letter, wherein he apologized for not moving to reinstate the complaint and again advised him to speak with another attorney.⁶ In his letter, respondent maintained that, although he had filed a timely complaint in the Superior Court, he failed to serve Tektron with the filing, and, thus, the Superior Court had dismissed the matter, without prejudice.

⁶ Respondent separately advised Cohen to seek independent counsel “to sue” respondent.

Additionally, although respondent claimed that he had provided Cohen with a copy of the file, he later admitted to the OAE that he had merely sent Cohen “copies of [the] paperwork that [Mr. Cohen] had previously provided” him.

Following respondent’s letter, Cohen spoke with other attorneys regarding the Tektron matter, but none were willing to pursue Cohen’s case. As a result, Cohen stated that he was “lost” and had been trying to get help for a year before he eventually filed a grievance against respondent.

In his October 18, 2021 answer, respondent admitted the allegations of the complaint and acknowledged that his misconduct violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 3.2; and RPC 8.4(c). Respondent did not offer any insight or potential mitigation for his misconduct.

At oral argument before us, the OAE recommended the imposition of a one-year suspension, consecutive to the terms of suspension the Court imposed in Heyburn V and VI. In aggravation, the OAE emphasized respondent’s failure to file a motion to reinstate Cohen’s Tektron complaint and his repeated lies to Cohen, spanning almost a decade, regarding the status of the matter. The OAE also emphasized respondent’s egregious disciplinary history, including the fact that his misconduct underlying his censures in Heyburn I and II and his suspensions in Heyburn V and VI, was strikingly similar to his misconduct in the instant matter. The OAE, thus, argued that, although respondent had a

heightened awareness of his ethical obligations to diligently handle client matters and to conduct himself honestly, he repeatedly failed to attempt to salvage Cohen's case or otherwise advise Cohen of the truth regarding his matter, despite multiple opportunities to do so.

In respondent's presentation to us, he expressed his agreement with the OAE's recommended one-year, consecutive suspension; acknowledged that he stood upon the precipice of disbarment; apologized to us for his misconduct; and stated that he was "embarrassed" and "disappointed" by his own behavior. Respondent also claimed that he now understands the importance of adhering to the Rules of Professional Conduct and has enrolled in professional counseling to take a "personal inventory" of his unethical behavior. Respondent, moreover, acknowledged the harm that he had caused to Cohen⁷ and how his actions reflected adversely on him as an attorney and also on all members of the bar. Finally, respondent claimed that he has now learned that he must "be honest" and "face things" and expressed his hope that, upon any future reinstatement, he will conduct himself ethically.

Following our de novo review of the record, we are satisfied that the facts recited in the formal ethics complaint and admitted in respondent's verified

⁷ Respondent noted that, although Cohen had not pursued a malpractice claim against him, he had advised Mr. Cohen to seek an independent attorney to resolve that potential claim.

answer support the charges of unethical conduct by clear and convincing evidence.

Here, contrary to respondent's repeated false assurances to Cohen, spanning almost a decade, that his matter was "pending" and "doing well[,]," respondent failed to properly serve Tektron with the purported March 2011 complaint, which failure resulted in the dismissal of Cohen's complaint, without prejudice. Thereafter, rather than attempt to properly serve the complaint and file a motion to vacate the dismissal, respondent, inexplicably, failed to take corrective action, thereby allowing the statute of limitations to run and permanently extinguishing Cohen's potential cause of action. Respondent's gross and inexcusable neglect, lack of diligence, and total failure to advance Cohen's complaint left his client lost, bewildered, and without a remedy to salvage his case, in clear violation of RPC 1.1(a), RPC 1.3, and RPC 3.2.

Compounding matters, respondent, for nearly a decade, not only failed to keep Cohen informed about the status of his case, but also failed to reply to his reasonable requests for information. Rather than provide his client an honest assessment, respondent repeatedly lied to him regarding the status of his matter, stating that it was "pending" and "doing well," despite the fact it already had been dismissed. To delay having to explain his misconduct to Cohen, respondent not only told him to "back off" from communicating with him, but also

concocted phony excuses, claiming that the “courts were backed up” and that his matter could take years to resolve. Respondent’s years-long deception and refusal to truthfully inform Cohen of the status of his matter, thus, deprived Cohen of the opportunity to make informed decisions and to pursue a claim against Tektron, in violation of RPC 1.4(b) and RPC 8.4(c).

In sum, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 3.2; and RPC 8.4(c). The sole issue left for us to determine is the appropriate quantum of discipline for respondent’s misconduct.

Generally, misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand or censure may be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (reprimand for attorney who made a misrepresentation by silence to his client; specifically, the attorney failed to inform his client, despite ample opportunity to do so, that her complaint had been dismissed, in violation of RPC 8.4(c); the complaint was dismissed because the attorney had failed to serve interrogatory answers and ignored court orders compelling service of the answers, in violation of RPC 1.1(a), RPC 1.3, and RPC 3.2; the attorney also violated RPC 1.4(b) by his complete failure to reply to his client’s requests for information or to otherwise communicate with her; the attorney never informed his client that a motion to

compel discovery had been filed, that the court had entered an order granting the motion, or that the court had dismissed her complaint for failure to serve the interrogatory answers and to comply with the court's order, in violation of RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions); the attorney had no prior discipline); In re Ruffolo, 220 N.J. 353 (2015) (reprimand for attorney who, knowing that the complaint had been dismissed, assured the client that his matter was proceeding apace and that he should expect a monetary award in the near future; both statements were false, in violation of RPC 8.4(c); the attorney also exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, not working on it after filing the initial claim, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter, in violation of RPC 1.1(a) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates; in imposing a reprimand, we noted that, although the attorney had no prior discipline, his misconduct caused significant harm to his client, who was left without a viable remedy for the injuries he sustained); In re Kalma, 249 N.J. 538 (2022) (censure for attorney, in a default matter, who represented a client in a criminal and a civil matter arising out of the client's employment with Monmouth County; although the attorney competently represented the client in the criminal matter,

he failed to file the civil complaint prior to the expiration of the applicable statute of limitations; thereafter, the attorney engaged in multiple communications with his client, in which he falsely claimed that he had timely filed the civil complaint against Monmouth County; the attorney even sent his client a false letter, purporting to show that the matter was scheduled for a court date; when the client showed up for court, the attorney claimed that he had been “sent home” and advised his client to do the same because there was a “two-hour window wait time[;]” to further his deception, the attorney told his client that the court was “backed up” and reassured his client that he would “see the case through to the end[;]” the client eventually learned, from court staff, that the complaint had never been filed; when the client confronted the attorney with that discovery, the attorney claimed that “it was all part of a cover up[;]” weighed, in aggravation, the default status of the matter, the significant harm to the client, who lost the ability to pursue a claim, and the lengths to which the attorney went to conceal his misconduct; the attorney had no prior discipline).

Admonitions have been imposed for failure to expedite litigation, even when accompanied by another violation. See, e.g., In the Matter of Leticia Zuniga, DRB 19-432 (March 20, 2020) (the attorney failed to provide discovery to the plaintiff, which failure prompted the plaintiff’s attorney to file a motion to suppress the defendant’s answers and defenses; the attorney subsequently

failed to appear for the motion hearing, despite the court's multiple notifications that required the attorney to appear; thereafter, the attorney failed to cooperate with disciplinary authorities; violations of RPC 1.3, RPC 3.2, RPC 3.4(c) (disobeying the rules of a tribunal), RPC 8.1(b) (failure to cooperate with disciplinary authorities), and RPC 8.4(d) (conduct prejudicial to the administration of justice); in mitigation, the attorney had no prior discipline in her sixteen years at the bar); In the Matter of Michael J. Pocchio, DRB 18-192 (October 1, 2018) (the attorney filed a divorce complaint and then allowed 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 mitigation, the attorney had no prior discipline in his twenty-five years at the bar); In the Matter of Diane Marie Acciavatti, DRB 18-162 (July 23, 2018) (the attorney failed to file a motion to vacate a default judgment and to dismiss the complaint for eleven months after her retention, despite the attorney's repeated assurances that she would take such action; violations of RPC 1.3 and RPC 1.1(a); in mitigation, the attorney had no prior discipline in her thirty-four years at the bar, was no longer practicing law, and had compelling personal and professional mitigation).

Here, respondent's misconduct is similar to the censured attorney in Kalma. Like Kalma, who failed to take the affirmative steps necessary to

preserve his client's right to pursue a civil matter, respondent failed to properly file Cohen's complaint against Tektron, which failure extinguished his opportunity to pursue his claim. Also like Kalma, respondent misrepresented the status of the matter to Cohen for many years, during which he falsely claimed that the matter was proceeding apace, but that the "courts were backed up."

Respondent's disciplinary history, however, is far more egregious than that of the attorney in Kalma, who had no prior discipline. By contrast, respondent, within the past nine years, has received four censures and two suspensions, some for misconduct similar to his behavior in this matter. On January 13, 2022, respondent received a six-month suspension, in Heyburn V, for allowing two complaints, in separate client matters, to be dismissed, with prejudice. By respondent's own assessment, one client had a meritorious personal injury case that the court dismissed, with prejudice, due to respondent's lack of diligence in properly serving the defendant, one of the most basic tasks a litigator is bound to complete. In that client matter, respondent failed to inform his client, for years, that his lawsuit had been dismissed. In the second client matter, a federal court dismissed the client's complaint, with prejudice, after respondent failed to file an amended complaint. Respondent failed to inform the client of the dismissal. The misconduct in those client matters occurred from 2014 through 2017.

Also on January 13, 2022, the Court imposed a one-year suspension, in Heyburn VI, after respondent failed to properly file a client's divorce complaint, essentially causing an uncontested divorce matter, that should have taken no more than a few months to a year to resolve, to linger for more than two years. Respondent's misconduct in that matter occurred from 2015 through 2018.

Respondent's 2015 censure, in Heyburn II, stemmed from misconduct that arose in 2007, when he promised a client that he would appeal the dismissal of a nursing home wrongful death complaint, but failed to do so. Thereafter, he ignored the client's repeated requests for information regarding the appeal.

Additionally, respondent's 2013 censure, in Heyburn I, stemmed from his failure to file an affidavit of merit within sixty days of the defendant's answer to his medical malpractice lawsuit. Consequently, the trial court dismissed the complaint on that basis, and although respondent informed the clients of the dismissal, he did not disclose the reason. For several months, after the clients sought to retrieve the file from respondent to retain another attorney, respondent failed to return their messages or turn over the requested documents.

The Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such situations, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system).

In the current matter, between 2010 and 2019, respondent failed to properly file Cohen's complaint against Tektron; failed to reinstate the complaint following the Superior Court's administrative dismissal; and, for almost a decade, repeatedly lied to Cohen regarding the status of his matter. In that timeframe, respondent had a heightened awareness of his obligations to properly handle client matters and truthfully communicate with his clients, given his repeated involvement in the disciplinary system for similar misconduct. Consequently, respondent's misconduct in this case clearly requires enhanced discipline.

Considering respondent's failure to learn from his past mistakes, his significant disciplinary history, and the danger that he continues to pose to the public, we determine to impose a two-year suspension, consecutive to the suspensions the Court imposed in Heyburn V and Heyburn VI, in order to effectively protect the public and preserve confidence in the bar. Given respondent's recurring failure to adhere to professional standards, we also determine to impose a condition that, upon reinstatement, he be required to practice under the supervision of a proctor for a period of no less than two years.

Chair Gallipoli, Member Menaker and Member Rivera voted to recommend to the Court that respondent be disbarred.

Member Campelo 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 Edward Harrington Heyburn
Docket No. DRB 21-266

Argued: March 17, 2022

Decided: June 14, 2022

Disposition: Two-Year Suspension

<i>Members</i>	Two-Year Suspension	Disbar	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