

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-062
District Docket Nos. IIIB-2020-0004E and
IIIB-2020-0013E

In the Matter of
Richard Donnell Robinson
An Attorney at Law

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Decision

Decided: August 23, 2022

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 IIIB Ethics Committee (the DEC), pursuant to R. 1:20-4(f). The amended ethics complaint for IIIB-2020-0004E (the Robinson matter) charged respondent with having violated RPC 1.1(a) (engaging in gross neglect), RPC

1.3 (lacking diligence), and RPC 8.1(b) (failing to cooperate with disciplinary authorities).¹

The ethics complaint for IIIB-2020-0013E (the Wilson matter) charged respondent with having violated RPC 1.1(a); RPC 1.2(a) (failing to abide by the client's decision concerning the scope and objectives of representation); RPC 1.4(a) (failing to inform a prospective client of how, when, and where the client may communicate with the attorney); RPC 1.4(b) (failing to communicate with the client); RPC 1.4(c) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions); and RPC 8.1(b).²

For the reasons set forth below, we determine that a reprimand is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 2004. During the relevant timeframe, he maintained an office for the practice of law in Mount Holly, New Jersey. Respondent has no history of final discipline.

Service of process was proper. On December 30, 2021, the DEC sent two separate mailings to respondent at his home address of record, by certified and

¹ Due to respondent's failure to file an answer in the Robinson matter, the OAE amended the complaint to include an additional RPC 8.1(b) charge.

² Due to respondent's failure to file an answer in the Wilson matter, the complaint also was deemed amended to include an RPC 8.1(b) charge.

regular mail; one contained the Wilson complaint and the other contained the Robinson complaint.

Although delivery of the Robinson complaint was not confirmed by the United States Postal Service (the USPS) tracking system, the regular mail was not returned. The USPS tracking system confirmed the Wilson complaint was delivered on January 3, 2022. That regular mail also was not returned.

On February 15, 2022, the DEC sent another letter to respondent's home address of record, by certified and regular mail, informing him that, unless he filed verified answers to both complaints within five days of the letter, the allegations of the complaints would be deemed admitted, the records would be certified to us for the imposition of discipline, and the complaints would be deemed amended to charge a willful violation of RPC 8.1(b). The certified letter was delivered to an individual at respondent's residence on February 17, 2022.³

As of February 28, 2022, respondent had not filed answers to the formal ethics complaints, and the time within which he was required to do so had expired. Accordingly, the DEC certified these matters to us as a default.

On May 23, 2022, the Office of Board Counsel published a Notice to the Bar in the New Jersey Law Journal, stating that we would review the

³ The certification of the record is silent on the status of the letter sent via regular mail.

consolidated ethics matter on July 21, 2022. That notice further informed respondent he had until May 30, 2022 to file a motion to vacate the default (MVD). Respondent failed to file an MVD.

We now turn to the allegations of the complaints.

The Robinson Matter (IIIB-2020-0004E)

In January 2015, Amberly Robinson⁴ retained respondent for her family court matter. On December 13, 2019, Robinson filed a grievance against respondent, claiming that he failed to appear in court “on a few scheduled court dates;” present significant evidence and arguments on her behalf to the court; and file an appeal of the unfavorable determination in her matter. Based on these facts, the complaint charged respondent with having violated RPC 1.1(a) and RPC 1.3.

The complaint further charged respondent with failing to cooperate with disciplinary authorities in the investigation of the grievance, in violation of RPC 8.1(b). Specifically, on February 27, 2020, the assigned investigator sent a letter, by certified and regular mail, to respondent’s office address of record, enclosing

⁴ The original complaint redacted the name of this client without explanation. Client names are generally not considered personal identifiers. R. 1:38.

a copy of the grievance and requesting his written reply within ten days. Respondent signed for the certified mail.

Thereafter, on April 7, 2020, the investigator followed up with respondent by e-mail, seeking his reply to the February 27, 2020 letter. Respondent replied that same date, via e-mail, stating that he had been away from his office, which had closed, with mail being forwarded to his home address. Despite having signed for the February 27, 2020 letter, respondent denied having received that letter and requested that another copy be sent to him. Later that same date, the investigator's assistant sent another copy of the February 27, 2020 letter to respondent by e-mail.

A second investigator was assigned to this matter on May 18, 2022. On August 25, 2020, having received no reply from respondent, the second investigator left a voicemail message for respondent, providing her name and contact information.

Respondent returned that voicemail message on September 10, 2020. During that call, respondent confirmed that he received mail at his home address and confirmed receipt of the grievance.

The second investigator inquired about his failure to reply to the grievance. When respondent expressed confusion as to the identity of the grievant, the second investigator identified the grievant.

Between December 1 and December 8, 2020, the second investigator left additional voicemail messages for respondent, which he ignored. Therefore, on December 8, 2020, the second investigator sent a third letter to respondent, at his home address, by certified and regular mail, enclosing the grievance against him. The December 8, 2020 letter directed respondent to reply within thirty days and advised that his failure to comply would be deemed a violation of RPC 8.1(b). The USPS tracking system confirmed that the certified letter was delivered on December 14, 2020.⁵

The Wilson Matter (IIB-2020-0013E)

In 2019, Patricia Wilson retained respondent in connection with both a Chapter 7 bankruptcy matter and a municipal court matter.

Regarding the bankruptcy matter, on July 10, 2019, respondent and Wilson executed a retainer agreement and Wilson paid respondent's \$1,500 fee. On September 18, 2019, respondent filed Wilson's bankruptcy petition. However, respondent subsequently failed to appear at November 25 and

⁵ The complaint is silent on the status of the letter sent via regular mail.

December 20, 2019 creditors' meetings.⁶ He did, however, arrange for another attorney to appear at the later meeting on his behalf, but that attorney had no knowledge of Wilson's matter and, therefore, could not adequately respond to the trustee's questions.

Respondent also failed to file documents required to complete the bankruptcy petition, forcing Wilson to file the documents herself. On June 5, 2020, the bankruptcy court issued a final order of discharge.

The formal ethics complaint charged respondent with having violated RPC 1.1(a) by failing to appear for scheduled hearings in the bankruptcy matter; file required documentation in the bankruptcy matter; and adequately prepare the attorney appearing at the December 20, 2019 creditors' meeting on his behalf.

Respondent's subsequent representation of Wilson in a municipal court matter was not governed by a retainer agreement. However, on December 23, 2019, Wilson paid respondent's \$450 fee and he provided her with a handwritten receipt for the "Winslow Municipal Court" representation. Thereafter,

⁶ The creditors' meeting, also called the 341 hearing, is a meeting at which the bankruptcy trustee and creditors ask the petitioner questions, under oath, about the petition. See Cara O'Neil, Questions to Expect at the 341 Meeting in Your Bankruptcy Case, The Bankruptcy Site (August 8, 2022), <https://www.thebankruptcysite.org/resources/bankruptcy/chapter-13/questions-expect-341-meeting>.

respondent failed to appear for a scheduled hearing at the Winslow Municipal Court, without notifying the municipal court or Wilson of his unavailability. At a subsequent hearing, respondent appeared but failed to present any defense. The formal ethics complaint charged respondent with having violated RPC 1.1(a) by failing to appear for scheduled hearings in the municipal court matter and by failing to advance certain arguments on behalf of Wilson.

Respondent also failed to explain to Wilson the options and alternatives of entering a guilty plea in municipal court. Respondent, thus, precluded Wilson from making informed decisions about the municipal court matter. Based on these facts, the formal ethics complaint charged respondent with having violated RPC 1.2(a) and RPC 1.4(c).

Respondent further failed to inform Wilson of the relocation of his law office. He also failed to keep Wilson apprised of the status of her matters and to reply to reasonable requests for information. Based thereon, the formal ethics complaint charged respondent with having further violated RPC 1.4(a) and (b).

Last, the complaint charged respondent with having violated RPC 8.1(b) by failing to cooperate with the disciplinary authorities. The complaint alleged that respondent “failed to respond to all written requests by the [DEC] Investigator,” but neither alleged the dates of those contacts nor appended copies of those requests for information.

Additionally, as noted above, respondent failed to file an answer to either of the two formal ethics complaints, and the time within which he was required to do so has expired.

We determine that the facts recited in complaints support most of the charged ethical violations by clear and convincing evidence. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Notwithstanding that Rule, each charge in the complaint must be supported by sufficient facts for us to determine that unethical conduct has occurred. See In re Pena, 164 N.J. 222 (2000) (stating that the Court's "obligation in an attorney disciplinary proceeding is to conduct an independent review of the record, R. 1:20-16(c), and determine whether the ethical violations found by [us] have been established by clear and convincing evidence"); see also R. 1:20-4(b) (entitled "Contents of Complaint" and requiring among other notice pleading requirements that a complaint "shall set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct").

Applying this standard, we decline to find a violation of a Rule of Professional Conduct where the admitted facts within the certified record do not constitute clear and convincing evidence that the Rule was violated. See,

e.g., In the Matter of Philip J. Morin, III, DRB 21-020 (September 9, 2021) at 26-27 (declining to find a charged RPC 3.3(a)(4) violation based upon insufficient evidence in the record), so ordered, 250 N.J. 184 (2022); In the Matter of Christopher West Hyde, DRB 16-385 (June 1, 2017) at 7 (declining to find a charged RPC 1.5(b) violation due to the absence of factual support in the record); so ordered, 231 N.J. 195 (2017); In the Matter of Brian R. Decker, DRB 16-331 (May 12, 2017) at 5 (declining to find a charged RPC 8.4(d) violation due to the absence of factual support in the record); so ordered, 231 N.J. 132 (2017).

First, RPC 1.1(a) states that “[a] lawyer shall not . . . [h]andle or neglect a matter entrusted to the lawyer in such a manner that the lawyer’s conduct constitutes gross negligence.” RPC 1.3 furthers that “[a] lawyer shall act with reasonable diligence and promptness in representing a client.”

It is undisputed that respondent failed to appear at scheduled hearings in both the Robinson and Wilson matters. In the Robinson matter, respondent also failed to file the appeal for which he specifically had been retained. In the Wilson matter, respondent also failed prepare the attorney appearing at the December 20, 2019 creditors’ meeting and to file required documents in the bankruptcy matter, forcing the client to file those documents herself. Thus,

respondent violated RPC 1.1(a) in both the Robinson and Wilson matters, and RPC 1.3 in the Robinson matter.⁷

For completeness, we note that we were unable to determine that respondent's failures to present certain arguments and evidence to the court on behalf of Robinson constituted additional violations of RPC 1.1(a) and RPC 1.3. Certainly, attorneys are afforded leeway to exercise their professional judgment in the ultimate presentation of a case to the court. Likewise, respondent should have discussed his trial strategy with the client. However, based on the limited record before us, we cannot conclude, by a clear and convincing standard, that respondent's decision to forego presenting certain arguments and evidence constituted either gross neglect or a lack of diligence.

Next, regarding RPC 1.4(c), it is undisputed that respondent failed to explain to Wilson the options and alternatives of entering a guilty plea in municipal court. RPC 1.4(c) states that "[a] lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Here, respondent's omissions precluded Wilson from making informed decisions about the representation. Thus, respondent violated RPC 1.4(c).

⁷ Only the Robinson complaint charged respondent with having violated RPC 1.3.

RPC 1.4(a) provides that “[a] lawyer shall fully inform a prospective client of how, when, and where the client may communicate with the lawyer.” Here, it is undisputed that respondent failed to advise Wilson of the closure of his law office, in violation of RPC 1.4(a).

However, there is insufficient evidence to prove, by clear and convincing evidence, that respondent also violated RPC 1.4(b). That Rule states that “[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.” The complaint generally alleges that respondent “failed to keep [Wilson] reasonably informed about the status of her matters and also failed to promptly respond to her reasonable requests for information.” However, the complaint lacks any specific allegation or documentation which might support that conclusory allegation. For example, there is no allegation in the limited record before us of Wilson having expressed confusion about the status of her matters, nor proof of respondent having ignored her specific request for information.

Similarly, there is insufficient evidence to prove, by clear and convincing evidence, that respondent violated RPC 1.2(a), which provides:

(a) A lawyer shall abide by a client’s decisions concerning the scope and objectives of representation, subject to paragraphs (c) and (d), and as required by RPC 1.4 shall consult with the client about the means to pursue them. A lawyer may take such action on behalf of the client as is impliedly authorized to carry

out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall consult with the client and, following consultation, shall abide by the client's decision on the plea to be entered, jury trial, and whether the client will testify.

The Wilson complaint did not detail any client instructions which had been ignored by respondent. Moreover, unfavorable outcomes of a case, without more, do not rise to the level of a violation of RPC 1.2(a). Additionally, the charge that respondent further violated RPC 1.2(a) by failing to explain to Wilson the options and alternatives of entering a guilty plea in municipal court is fully addressed by the RPC 1.4(c) charge.

Last, respondent violated RPC 8.1(b) in the Robinson and Wilson matters.

Regarding the Robinson investigation, on February 27, 2020, the DEC provided respondent with a copy of the grievance and requested his reply. The DEC followed-up with respondent (1) twice via e-mail on April 7, 2020, (2) via telephone voicemail messages on August 25, 2020 and again between December 1 and 8, 2020, and (3) via letter on December 8, 2020. Despite the DEC's extensive efforts, respondent failed to reply to the grievance. Respondent, thus, further violated RPC 8.1(b) in the Robinson matter.

Additionally, respondent was obligated to cooperate with the disciplinary authorities and to file a verified answer to the formal ethics complaints, within

21 days. R. 1:20-4(e). Respondent failed to file an answer to either complaint. He, thus, violated RPC 8.1(b) in both matters.

We find ourselves unable, however, to determine that the record of the Wilson matter contained clear and convincing evidence of a third violation of RPC 8.1(b), on the theory that respondent failed to respond to all written requests by the DEC investigator. Although deemed admitted, the complaint did not set forth the dates of those written requests or provide copies of those demands for information.

In sum, we determine that respondent violated RPC 1.1(a) (Robinson and Wilson); RPC 1.3 (Robinson); RPC 1.4(a) and (c) (Wilson); and RPC 8.1(b) (Robinson and Wilson). We also dismiss the charges that respondent violated RPC 1.2(a) and RPC 1.4(b) in the Wilson matter. 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 clients, and failure to cooperate with disciplinary authorities, even if this conduct is accompanied by other ethics infractions, such as gross neglect. See, e.g., In re Vena, 227 N.J. 390 (2017) (reprimand for attorney who failed to communicate with a client, failed to explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation, and failed to cooperate with disciplinary

authorities; attorney also violated RPC 1.16(a) (failure to withdraw from representation on discharge by client), RPC 3.3(a) (false statement of material fact or law to a tribunal), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); no disciplinary history); In re Cataline, 219 N.J. 429 (2014) (reprimand for attorney who engaged in 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; no disciplinary history); In re Rak, 203 N.J. 381 (2010) (reprimand for attorney who engaged in gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of a grievance; no disciplinary history).

Like the attorneys in Vena, Cataline, and Rak, respondent failed to communicate with clients and to cooperate with the disciplinary authorities. Just like the attorneys in Cataline and Rak, respondent also engaged in gross neglect and lack of diligence, in violation of RPC 1.1(a) and RPC 1.3.

Based on Vena, Cataline, and Rak (which already weigh, in aggravation, an attorney's default) at least a reprimand is warranted for respondent's combined gross neglect; lack of diligence; failure to communicate; and failure to cooperate with disciplinary authorities. In crafting the appropriate discipline, however, we also consider aggravating and mitigating factors.

Here, there is no additional aggravation or mitigation to consider, as respondent's default and lack of a disciplinary history have already been considered in the baseline calculation of the appropriate quantum of discipline.

Thus, we determine that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Chair Gallipoli and Members Petrou and Rivera voted to impose a censure, citing, as additional aggravation, that respondent's misconduct involved two client matters.

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: 

Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Richard Donnell Robinson
Docket No. DRB 22-062

Decided: August 23, 2022

Disposition: Reprimand

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



Johanna Barba Jones
Chief Counsel