

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-179
District Docket No. VIII-2021-0022E

In the Matter of
John Anthony Feloney, IV
An Attorney at Law

Decision

Decided: March 23, 2023

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

This matter was before us on a certification of the record filed by the District VIII Ethics Committee (the DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter); RPC 5.5(a)(1) (unauthorized practice of law); RPC 8.1(b)

(failure to cooperate with disciplinary authorities); and RPC 8.4(d) (conduct prejudicial to the administration of justice).¹

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 2016 and to the Massachusetts bar in 2014. He has no prior discipline in New Jersey. At the relevant times, he lived and worked in South Weymouth, Massachusetts.

On July 22, 2019, the Court declared respondent ineligible to practice law in New Jersey for his failure to pay his annual assessment to the New Jersey Lawyers' Fund for Client Protection (the CPF).

On November 16, 2020, the Court declared respondent ineligible to practice law in New Jersey for his failure to comply with New Jersey continuing legal education (CLE) requirements.

Respondent has not cured those CPF and CLE deficiencies and, thus, remains ineligible to practice law in New Jersey on both bases.

Service of process was proper. On June 30, 2022, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home

¹ Due to respondent's failure to file an answer to the formal ethics complaint, and on notice to respondent, the DEC amended the complaint to include the RPC 8.1(b) and RPC 8.4(d) charges.

address of record. The certified mail receipt was returned with an illegible signature. The regular mail was not returned.

On September 7, 2022, the DEC sent a second letter, by certified and regular mail, to respondent's home address, informing him that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted; the record would be certified to us for the imposition of discipline; and the complaint would be deemed amended to charge willful violations of RPC 8.1(b) and RPC 8.4(d) in connection with his failure to answer. The certified mail receipt was returned with respondent's signature. The regular mail was not returned.

As of September 28, 2022, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the DEC certified this matter to us as a default.

Moreover, on November 15, 2022, Acting Chief Counsel to the Office of Board Counsel (the OBC) sent respondent, by certified and regular mail, a letter stating that the matter had been certified by the DEC as a default due to respondent's failure to timely answer the ethics complaint, and that the matter would be reviewed on the written record at our January 19, 2023 session. The letter further informed respondent that any motion to vacate the default must be filed by December 12, 2022. According to the United States Postal Service

tracking service, the certified mail was delivered on November 19, 2022. The regular mail was not returned.

Finally, on December 5, 2022, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on January 19, 2023. The notice informed respondent that, unless he filed a successful motion to vacate the default by December 12, 2022, his failure to answer would remain deemed an admission of the allegations of the complaint.

Respondent did not file a motion to vacate the default.

We now turn to the allegations of the complaint.

In or about January 2021, Panayiotis Spanos, Esq., retained respondent to seek compensation from a New Jersey based moving company in connection with its mishandling of Spanos's furniture. Spanos believed that respondent remained eligible to practice law in New Jersey. At the outset of the representation, Spanos paid respondent a \$1,000 legal fee to write a demand letter to the moving company. He later paid respondent an additional \$2,000 to file suit against the moving company.

Respondent, however, failed to submit the demand letter or to file suit on behalf of Spanos. Moreover, despite Spanos's repeated efforts to communicate with respondent, he replied to Spanos on only a "sporadic and limited basis."

On August 19, 2021, Spanos filed an ethics grievance against respondent for his failure to perform the requested legal work. In his grievance, Spanos alleged that it had “been three weeks” since respondent had replied to his last communication. He asserted that “I’ve asked for my fees back if he’s not going to handle the case, and a referral to another attorney, but I’ve been met with no response.” He pointed out that respondent still had “\$3,000 of my money” and stated that “I believe my claim will be prejudiced by not filing timely.”

On October 21, 2021 and again on January 12, 2022, the DEC sent respondent a copy of the grievance, at his New Jersey and Massachusetts addresses of record, and requested that he reply to the allegations, in writing, within ten days. Respondent, however, did not reply, given that he no longer resided at either of the addresses.

In April 2022, the DEC located respondent at his new address in South Weymouth, Massachusetts. Thereafter, on April 13, 2022, the DEC sent respondent another letter, again requesting that he submit a written reply to the allegations of the grievance.

On April 23, 2022, respondent sent the DEC a reply letter, explaining that soon after he first discussed with Spanos the issue with the moving company, respondent’s father was diagnosed with cancer. Respondent claimed that he had informed Spanos that his father’s diagnosis had taken a significant mental and

emotional toll on him. Moreover, respondent stated that his father was hospitalized for much of August 2021, and that he was “mostly, if not entirely, thinking about him almost every minute of the day when I was not otherwise sitting with him in the hospital.”

Additionally, respondent acknowledged that “in the months immediately following” his father’s death, on September 1, 2021, he “was unable to process anything in my day-to-day life.” He attributed his lack of communication with Spanos to these events and offered his “sincere apologies to Mr. Spanos,” adding, “I can only hope that he understands the unfortunate life circumstances that indisputably lead [sic] to this.”

Respondent’s April 23, 2022 letter to the DEC also addressed the DEC’s prior unsuccessful attempts to contact him, explaining that, after his father’s death, he had relocated to his mother’s home. He sought to assure the DEC “that the inability to effectively contact me from the outset was inadvertent and in no way intentional.” Additionally, he apologized to the DEC “for the time you have spent in handling this matter.”

Respondent enclosed with his April 2022 correspondence a \$3,000 cashier’s check made payable to Spanos. The DEC promptly returned respondent’s cashier’s check to him, explaining it could have no part in the transaction.

On May 19, 2022, respondent wrote to Spanos, enclosing the same \$3,000 cashier's check and explaining he had not sent it to Spanos directly upon hearing about the grievance because he "belie[ved] it would be inappropriate to communicate with you directly given the pending grievance." In closing, he wrote, "I would like to take this opportunity to apologize to you and I can only hope for your understanding as to the unfortunate events that unfolded in my life as further discussed" in his letter to the DEC, which he forwarded to Spanos.

Also in May 2022,² respondent informed the DEC that he did not intend to move back to New Jersey to practice law in the foreseeable future.

As of June 22, 2022, the date of the formal ethics complaint, information provided to the DEC indicated Spanos had been unsuccessful with respect to any claim relating to his furniture.

Based on the foregoing, the formal ethics complaint charged respondent with having violated RPC 1.3; RPC 1.4(b); and RPC 5.5(a). As noted above, on notice to respondent, the DEC amended the complaint to add the RPC 8.1(b) and RPC 8.4(d) charges after respondent failed to file an answer to the formal ethics complaint.

² Although the complaint lists the date as "May 2019," the context makes clear that the year was 2022, not 2019.

The facts recited in the complaint support most of the charges of unethical conduct. 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.

Specifically, the complaint supports the allegations that respondent lacked diligence by failing to write a demand letter to the moving company and by subsequently failing to commence suit against the company – the express legal tasks Spanos retained him to accomplish. Bolstering his default admission to the complaint's allegations, in his April 2022 letter to the DEC, respondent did not mention performing any work on the matter. Rather, he proffered that he had been overwhelmed and preoccupied by his father's terminal illness and death. Further, respondent's reimbursement of the total amount paid by Spanos suggests that he clearly recognized he had not provided the agreed-upon services. The above-referenced failures demonstrate respondent's lack of diligence, in violation of RPC 1.3.

Further, we determine that respondent failed to keep Spanos informed about the status of his matter. At best, respondent communicated only "on a sporadic and limited basis" with Spanos. By failing to inform Spanos that he had

not sent the demand letter, and by assuring Spanos that he would file the lawsuit but then failing to do so, he deprived Spanos of the opportunity to hire a different attorney who could address timely the claims against the moving company. The above failures and inaction violated RPC 1.4(b).

Additionally, respondent's representation of Spanos, after the Court had declared respondent administratively ineligible to practice law in New Jersey, violated RPC 5.5(a)(1). Because the complaint failed to allege that respondent was aware of his ineligible status, we determine, for purposes of imposing discipline for this violation, that respondent was unaware of his ineligibility.

Finally, although respondent replied promptly to the DEC's April 2022 correspondence and addressed issues raised in the grievance, he then failed to answer the formal ethics complaint. That failure alone violated RPC 8.1(b).

However, we determine to dismiss the charge that respondent violated RPC 8.4(d). This charge was added contemporaneously with the RPC 8.1(b) charge, with both charges stemming from respondent's failure to answer the formal ethics complaint. Although failure to file an answer to a complaint does constitute a violation of RPC 8.1(b), it is not per se grounds for an RPC 8.4(d) violation. See In re Ashley, 122 N.J. 52, 55 n.2 (1991) (after respondent failed to answer formal ethics complaint and cooperate with investigator, the DEC charged her with violating RPC 8.4(d); upon review, the Court noted that

“[a]lthough the committee cited RPC 8.4(d) for failure to file an answer to the complaint, RPC 8.4(d) deals with prejudice to the administration of justice. RPC 8.1(b) is the correct rule for failure to cooperate with disciplinary authorities.”).

In sum, we find that respondent violated RPC 1.3; RPC 1.4(b); RPC 5.5(a)(1); and RPC 8.1(b). We dismiss the charge that respondent further violated RPC 8.4(d).

Generally, an admonition is the appropriate form of discipline for lack of diligence and failure to communicate with the client. See, e.g., In the Matter of Christopher J. LaMonica, DRB 20-275 (January 22, 2021) (the attorney promised to take action to remit his client’s payment toward an owed inheritance tax; despite the attorney’s assurances that he would act, he failed to remit the payment until two years later; the attorney also failed to return his client’s telephone calls or to reply to correspondence; violations of RPC 1.3 and RPC 1.4(b); we considered, in mitigation, the attorney’s unblemished disciplinary history in more than twenty-five years at the bar); In the Matter of Christopher G. Cappio, DRB 15-418 (March 24, 2016) (after the client had retained the attorney to handle a bankruptcy matter, paid the fee, and signed the bankruptcy petition, the attorney failed to file the petition or to return his client’s calls in a timely manner); In the Matter of Charles M. Damian, DRB 15-107 (May 27, 2015) (the attorney filed a defective foreclosure complaint and failed to correct

the deficiencies, despite notice from the court that the complaint would be dismissed if they were not cured; after the complaint was dismissed, he took no action to vacate the dismissal, a violation of RPC 1.3; the attorney also failed to tell the clients that he never amended the original complaint or filed a new one, that their complaint had been dismissed, and that it had not been reinstated, a violation of RPC 1.4(b); in mitigation, the attorney had no other discipline in thirty-five years at the bar; staffing problems in his office negatively affected the handling of the foreclosure case; he was battling a serious illness during this time; and other family-related issues consumed his time and contributed to his inattention to the matter).

In addition, when an attorney practices while ineligible, an admonition ordinarily will be imposed, if the attorney is unaware of the ineligibility. See, e.g., In the Matter of Jonathan A. Goodman, DRB 16-436 (March 22, 2017) (the attorney practiced law during two periods of ineligibility; he was unaware of his ineligibility); In the Matter of James David Lloyd, DRB 14-087 (June 25, 2014) (the attorney practiced law during an approximate thirteen-month period of ineligibility; among the mitigating factors considered was his lack of knowledge of the ineligibility); In the Matter of Adam Kelly, DRB 13-250 (December 3, 2013) (during a two-year period of ineligibility for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection, the attorney

handled at least seven cases that the Public Defender's Office had assigned to him; in mitigation, the record contained no indication that the attorney was aware of his ineligibility, and he had no history of discipline since his 2000 admission to the New Jersey bar). Here, the complaint does not allege that respondent was aware of his ineligibility when he engaged in the misconduct under scrutiny. Consequently, an admonition is implicated for that misconduct.

We determine that the discipline imposed for respondent's practice of law while ineligible should not be merged with the discipline for his violations of RPC 1.3 and RPC 1.4(b) in connection with a client matter. Rather, we conclude that respondent's violation of RPC 5.5(a)(1), in conjunction with his mishandling of Spanos's matter, raises the baseline quantum of discipline for the totality of respondent's misconduct to a reprimand. However, to craft the appropriate discipline in this case, we also consider aggravating and mitigating factors.

In aggravation, respondent's failure to let Spanos know he could not handle the matter timely left Spanos in limbo, unclear on whether he could or should retain a different attorney to pursue his claims. Also in aggravation, having received \$3,000 from Spanos in or about January 2021, when the representation commenced, respondent then kept these fees until he received a

copy of the grievance, in April 2022, despite knowing he had yet to send the demand letter, let alone to file the lawsuit.

Further, respondent allowed this matter to proceed as a default, which serves as an aggravating factor. See In re Kivler, 193 N.J. 332, 342 (2008) (“[A] respondent’s default . . . acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced.”); see also R. 1:20-4(e) (“A respondent is required to file an answer even if the respondent does not wish to contest the complaint.”).

Although it is well-settled that harm to the client also constitutes an aggravating factor, we decline to apply that factor to the instant matter because the record does not include sufficient evidence to clearly establish such harm. See, e.g., In re Burro, 235 N.J. 413 (2018) (client experienced significant harm due to attorney’s neglect of estate matter, which resulted in the accrual of \$40,000 in interest and the imposition of a lien on property belonging to the executrix; reprimand imposed for violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 8.1(b)); In re Calpin, 217 N.J. 617 (2014) (reprimand for attorney who failed to oppose the plaintiff’s motion to strike his client’s answer, resulting in the entry of a final judgment against his client; the attorney never informed his client of the judgment; notwithstanding the presence

of some mitigation in the attorney's favor, the attorney received a reprimand because of the "obvious, significant harm to the client," that is, the judgment).

However, in this case, although respondent's inaction needlessly delayed Spanos's pursuit of claims against the moving company, the record contains no evidence that the misconduct compromised those claims or prevented Spanos from pursuing those claims going forward. Although Spanos had not succeeded on any claim relating to his furniture as of June 2022, the evidence does not establish whether this lack of success was attributable to respondent's failure to pursue the matter during the time Spanos believed that respondent was handling it, or rather resulted from a defect in the underlying claim or some other obstacle to recovery. Nor does the record indicate that Spanos's claims had expired.

In mitigation, respondent has no other disciplinary history (but has only been admitted to our bar since 2016). Respondent's family faced a significant health crisis in the months after Spanos retained him: respondent's father received an initial cancer diagnosis, then required hospitalization, and subsequently passed away in September 2021. Respondent conceded that his father's diagnosis took a mental and emotional toll on him, and that, in the months following his father's death, he "was entirely unable to process anything in [his] day-to-day life."

Also in mitigation, when the DEC located respondent in April 2022 and requested his response to the grievance, respondent replied promptly, accepted responsibility for his failure to communicate with Spanos, and expressed contrition. He apologized to Spanos and disgorged the \$3,000 Spanos had paid for his services.

On balance, the mitigating and aggravating factors are in equipoise, and we determine that a reprimand is the appropriate quantum of discipline.

Because respondent already has refunded the fees that Spanos paid him, disgorgement is not required.

Member Rodriguez did not participate.

Member Joseph 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: /s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John A. Feloney, IV
Docket No. DRB 22-179

Decided: March 23, 2023

Disposition: Reprimand

<i>Members</i>	Reprimand	Did Not Participate	Absent
Gallipoli	X		
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph			X
Menaker	X		
Petrou	X		
Rivera	X		
Rodriquez		X	
Total:	7	1	1

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel