Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-032
District Docket No. IIIB-2022-0010E

In the Matter of Richard Donnell Robinson An Attorney at Law	:

Decision

Decided: July 5, 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 IIIB 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 8.1(b) two instances – failure to cooperate with disciplinary

authorities); and RPC 8.4(d) (conduct prejudicial to the administration of justice).[1]

Respondent filed a motion to vacate the default (MVD), which we denied on April 24, 2023. 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. He maintains a practice of law in Mount Holly, New Jersey.

Effective January 6, 2020, the Court temporarily suspended respondent for his failure to comply with a fee arbitration award. In re Robinson, 240 N.J. 215 (2019). Effective January 22, 2020, the Court reinstated respondent after he satisfied the award. In re Robinson, 240 N.J. 476 (2020).

On March 21, 2023, the Court reprimanded respondent for having violated RPC 1.1(a) (gross neglect); RPC 1.3; RPC 1.4(a) (failure to inform a prospective client of how, when, and where the client may communicate with the attorney); RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions); and RPC 8.1(b). In re Robinson, 253 N.J. 328 (2023) (Robinson I). In that case, respondent mishandled two client matters, between 2015 and 2020. In the Matter of Richard Donnell Robinson,

[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 second RPC 8.1(b) charge and the RPC 8.4(d) charge.

DRB 22-062 (August 23, 2022) at 4-8. He also failed to cooperate with the DEC's 2020 investigation into one of the matters and, ultimately, failed to file an answer to the complaint. Id. at 2, 4-6, 13-14.

Turning to the instant matter, service of process was proper.

On August 15, 2022, the DEC attempted to send a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record. However, the DEC inserted an incorrect street suffix in the destination address field and, although the certified mail receipt shows a delivery date of August 19, 2022, the United States Postal Service tracking system indicated that the mailing was delivered to an incorrect town and zip code. The regular mail was not returned to the DEC.

On September 28, 2022, the DEC sent the complaint, by certified and regular mail, to respondent's correct home address of record.[2] In the letter enclosing the complaint, the DEC informed respondent that, unless he filed a verified answer within five days of the date of receipt 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).

[2] During the investigation, the DEC was not successful in reaching respondent at his office address. A letter sent to that address was returned to the DEC.

Although the certified mail receipt was returned to the DEC, it bears an illegible signature and does not indicate a date of delivery. The regular mail was not returned.

As of November 10, 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.

On March 2, 2023, Acting Chief Counsel to the Board sent a letter to respondent's home address of record, by certified and regular mail, with another copy by electronic mail, informing him that the matter was scheduled before us on April 20, 2023, and that any MVD must be filed with us by March 20, 2023. The certified mail receipt was returned to the Office of Board Counsel (the OBC) indicating a delivery date of March 8, 2023 and bearing an illegible signature. The letter sent by regular mail was not returned to the OBC, and delivery to respondent's e-mail address was complete, with delivery notification received from the destination server.

Moreover, on March 13, 2023, the OBC published a notice in the New Jersey Law Journal, stating that we would review this matter on April 20, 2023. The notice informed respondent that, unless he filed a successful MVD by March 20, 2023, his failure to answer would remain deemed an admission of the allegations of the complaint.

On March 23, 2023, the Office of Attorney Ethics (the OAE) received respondent's MVD, which was dated March 19, 2023 and supported by a certification, a brief, and two exhibits, including a proposed answer. On April 5, 2023, the OAE forwarded the MVD to the OBC and the DEC. As noted above, on April 24, 2024, following our review of respondent's MVD, we issued a letter denying that motion.

We now turn to the allegations of the complaint.

On June 9, 2020, the grievant, Robert S. Montgomery, retained respondent to seek a refund from Chase Mortgage for the monies he had spent over the years for flood insurance when that flood insurance was not necessary. Respondent visited Montgomery's house twice, once to obtain paperwork related to Montgomery's matter, and again to pick up a retainer check in the amount of $2,000.

According to Montgomery, he and respondent communicated via text message for about five months. However, the last he heard from respondent was on January 27, 2021. Whenever Montgomery asked respondent about his case, respondent only replied with excuses. Further, as of December 2021, Montgomery had not received anything from respondent or Chase Mortgage, in writing, by telephone, or by text.

The record does not reveal the date when Montgomery filed the ethics

grievance. However, on March 29, 2022, the DEC investigator sent letters to respondent's office and home addresses of record, seeking his participation in the investigation. The letter to respondent's office address was sent by certified mail, the letter to his home address by regular mail. On April 4, 2022, the certified mail was returned to the DEC, unopened. The regular mail was not returned. Respondent failed to participate in the investigation.

On April 26, 2022, a representative of Chase Mortgage informed Montgomery that they had authorization to talk to respondent beginning on or about July 14, 2020; however, respondent never called to speak to them about Montgomery's flood insurance payment issue or anything else.

As previously mentioned, on March 23, 2023, the OAE received respondent's MVD and, on April 5, 2023, the OAE forwarded the MVD to the OBC and the DEC. The DEC did not file opposition to the MVD, but also did not consent to the MVD. To succeed on a motion to vacate a default, a respondent must (1) offer a reasonable explanation for the failure to answer the ethics complaint, and (2) assert a meritorious defense to the underlying charges. Generally, if only one of the prongs is satisfied, the motion is denied. In this matter, we determined that respondent failed to satisfy either prong.

As to the first prong, respondent did not offer a reasonable explanation for his failure to file an answer to the formal ethics complaint. In his certification

in support of the MVD, respondent contended that his office had been closed due to construction and that, as a result, some carriers failed to deliver mail, even though there was a slot for mail on his door. He further stated that he was working from a different location, but had not changed his address of record, because the new location was temporary. However, he admitted that he received the complaint at his home. He claimed that it was his practice to bring legal mail to the office for his staff to sort and file and that, in this instance, his staff mistakenly filed "this case" and "subsequent correspondence" in the folder for a closed matter. He further claimed that he "was out on medical leave for an extended period in the beginning of the year" and subsequently could no longer pay his staff. Consequently, he started handling the mail himself and "began to receive correspondence regarding this case." Because no complaint was attached to the subsequent correspondence, he had to conduct a "thorough search" before finding the "original correspondence." Other than the reference to his illness at the beginning of the year, respondent included no dates in his certification.

In our view, the above explanation is inadequate in several respects. First, the construction at respondent's office is irrelevant, as the DEC never attempted to serve the complaint at his office.

Second, as an attorney, respondent was responsible for supervising his employees. See In the Matter of Joseph Ricigliano, Jr., DRB 19-038 (August 13,

2019) at 3-4 (rejecting the attorney's attempt to shift responsibility to his secretary; the attorney claimed that he had failed to reply to a grievance because his secretary neglected to send his reply; we rejected this claim because, among other things, the attorney had a duty to supervise his secretary), so ordered, 240 N.J. 265 (2020). Where service of process is proper, attorneys generally cannot rely on the shortcomings of others to explain their failure to answer the complaint, especially when the person allegedly at fault did not submit a certification in support of the attorney's MVD. See In the Matter of Albert L. Lancellotti, DRB 20-248 (June 10, 2021) at 4-5 (rejecting the attorney's claim that his family failed to mail the answer to the complaint, because the attorney had not explained why he did not mail the complaint himself), so ordered, 249 N.J. 425 (2020), and In the Matter of Nelson Gonzalez, DRB 16-140 (November 23, 2016) at 5 (rejecting the attorney's claim that his secretary had diverted his mail, in part, because the attorney did not present a certification from the secretary), so ordered, 230 N.J. 55 (2017). Here, respondent was not unfamiliar with the disciplinary system. Given his prior contacts, he had a heightened awareness of his duty to answer the complaint and should have monitored and reacted to his mail accordingly.

Third, respondent's MVD was untimely filed. Although it was dated March 19, 2023, the OAE did not receive it until March 23, 2023, three days

after the due date, and we did not receive it until April 5, 2023, more than two weeks after its due date. Respondent's motion did not explain when he realized a complaint had been filed against him, or why he failed to comply with the OBC's March 2, 2023 letter, which explicitly stated that any MVD had to be filed with us by March 20, 2023. This letter was sent to respondent by e-mail and would not have been affected by any problem respondent experienced with postal mail. Thus, respondent failed to satisfy the first prong of the MVD analysis.

Regarding the second prong, respondent failed to assert a defense to all underlying charges. The DEC charged respondent with having violated RPC 1.3 and RPC 8.1(b). Respondent's MVD included a letter he had sent to Montgomery, in which he detailed the work he had performed in Montgomery's case as well as his conclusion that the case lacked merit and could not be pursued any further. Respondent asserted that, in his view, "[t]he grievance was filed not because [r]espondent did not perform the services, but rather because the [g]rievant did not like the results." Respondent's contention, along with the letter he sent to Montgomery, may constitute a meritorious defense to the charge that he lacked diligence in violation of RPC 1.3.

However, respondent asserted no defense to the charge that he failed to cooperate with the DEC, in violation of RPC 8.1(b). In reply to the DEC's

allegation that he failed to answer correspondence requesting his cooperation, respondent did not claim that he had not received the correspondence. Rather, he stated that he lacked knowledge as to the veracity of the DEC's allegation and proceeded to provide an explanation as to why he failed to answer the complaint and "subsequent correspondence." This explanation misses the mark, as respondent's alleged failure to cooperate pre-dated the complaint. Accordingly, because respondent provided no meritorious defense as to the RPC 8.1(b) charge, he failed to satisfy the second prong of the test. See In the Matter of Barry J. Beran, DRB 19-339 (May 13, 2020) at 5-6 (holding that the attorney failed to satisfy the second prong of the MVD test because the attorney offered no meritorious defense to one of the four charges levelled against him), so ordered, 244 N.J. 231 (2020). Accordingly, we determined to deny respondent's MVD.

Moving to our review of the record, we find that the facts recited in the complaint support some of the allegations that respondent committed unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations of the complaint 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.

Here, we conclude that the facts recited in the DEC's complaint support the allegations that respondent violated RPC 8.1(b) in two respects. We determine, however, that the evidence does not clearly and convincingly support violations of RPC 1.3 or RPC 8.4(d) and, thus, we dismiss those charges.

Specifically, the record clearly and convincingly demonstrates that respondent violated RPC 8.1(b), which requires an attorney to "respond to a lawful demand for information from . . . [a] disciplinary authority," in two respects. First, he failed to cooperate with the DEC's underlying investigation. Next, he failed to file an answer to the formal complaint and allowed this matter to proceed as a default.

We determine, however, that there is insufficient evidence to establish respondent's violation of RPC 1.3, which requires an attorney to "act with reasonable diligence and promptness in representing a client." The scant allegations set forth in the complaint do not permit us to find, by clear and convincing evidence, that respondent's handling of Montgomery's matter was dilatory or lacked diligence. As a preliminary matter, the allegations are, in some respects, inconsistent. For instance, the complaint alleged that Montgomery "last heard from [r]espondent on January 27, 2021." However, the complaint also alleged that "as of December 2021, [Montgomery] never received anything from the [r]espondent or Chase Mortgage; nothing in writing, by telephone or

by text." These two allegations appear contradictory, as one suggests that respondent last communicated with his client in January 2021, and the other, that he last communicated with his client eleven months later, in December 2021. On this record, we are unable to resolve the inconsistency.

The remaining allegation that respondent did not contact the bank regarding Montgomery's flood insurance payment is solely based upon a statement from a representative of Chase Mortgage. However, the context of Chase Mortgage representative's statement is entirely absent from the record and, as such, is subject to interpretation. Thus, on this record, we are unable to conclude that respondent lacked diligence in his handling of his client's legal matter and, therefore, determine to dismiss this charge.

We also 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 the formal ethics complaint and cooperate with the 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."). We consistently have dismissed RPC 8.4(d) allegations that are based solely upon an attorney's failure to file an answer to the complaint. See In the Matter of John Anthony Feloney, IV, DRB 22-179 (March 23, 2023) at 9-10.

In sum, we find that respondent violated RPC 8.1(b) (two instances) and dismiss the charged violations of RPC 1.3 and RPC 8.4(d). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney has a limited or no ethics history. See In the Matter of Giovanni DePierro, DRB 21-190 (January 24, 2022) (the attorney failed to respond to letters from the investigator in the underlying ethics investigation in violation of RPC 8.1(b); the attorney also violated RPC 1.4(b) (failure to communicate with a client), RPC 1.5(c) (failure to set forth in writing the basis or rate of the attorney's fee in a contingent fee case – two instances), and RPC 1.16(d) (failure to protect the client's interests upon termination of the representation)), and In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (the attorney failed to reply to repeated requests for information from

the district ethics committee investigator regarding his representation of a client in three criminal defense matters, in violation of RPC 8.1(b)).

In crafting the appropriate discipline, however, we also consider mitigating and aggravating circumstances.

There is no mitigation to consider. Because respondent's failure to cooperate in this case post-dates his conduct in Robinson I, another default matter for which the Court recently reprimanded him, there is no basis for considering the imposition of no additional discipline.

In aggravation, respondent allowed this matter to proceed as a default. "[A] respondent's default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted). Given his prior default, respondent had a heightened awareness of his obligation to cooperate with disciplinary authorities. See In the Matter of Neal E. Brunson, DRB 22-015 and DRB 22-075 (August 3, 2022) at 28, so ordered, 253 N.J. 327 (2023); In the Matter of William M. Witherspoon, DRB 22-022 (July 25, 2022) at 12, so ordered, __ NJ __ (2023), 2023 N.J. LEXIS 392. However, the principle of progressive discipline is not applicable, as the Court did not enter its Order in Robinson I until March 21, 2023 – more than six months after the DEC filed its complaint

underlying this matter. In the Matter of William M. Witherspoon, DRB 22-022, at 12 (stating that the principle of progressive discipline was not applicable because the attorney "had no prior final discipline at the time of the instant misconduct" and the Court did not enter its order in the attorney's prior disciplinary matter until "one month after the OAE had filed its complaint in this matter.").

On balance, we determine that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar. See In the Matter of Kevin Clark Cromer, DRB 21-151 (December 13, 2021) at 2, 9-10 (imposing reprimand, in default matter, on the attorney, who violated RPC 8.1(b), by failing to cooperate with investigation and refusing to answer complaint, even though the attorney committed no other offense and had had a fifteen-year unblemished career), so ordered, 2022 N.J. LEXIS 740 (September 7, 2022)).

Members Petrou and Rivera were 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 Richard D. Robinson
Docket No. DRB 23-032

Decided: July 5, 2023

Disposition: Reprimand

Members	Reprimand	Absent
Gallipoli	X	
Boyer	X	
Campelo	X	
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou		X
Rivera		X
Rodriguez	X	
Total:	7	2

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