

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-034
District Docket No. XII-2022-0003E

In the Matter of
Michael Martin Mc Donnell
An Attorney at Law

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Decision

Decided: July 6, 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 XII Ethics Committee (the DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated 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

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

Respondent earned admission to the New Jersey Bar in 1995. He maintains a practice of law in Elizabeth, New Jersey, and has no disciplinary history.

Effective July 19, 2021, the Court declared respondent ineligible to practice law for failing to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (the CPF).

Effective October 18, 2021, the Court declared respondent ineligible to practice law for failing to comply with New Jersey continuing legal education (CLE) requirements.

Respondent has not cured these CPF or CLE deficiencies and remains ineligible, on both bases, to date.

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

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.

respondent's home address of record.² The certified mail receipt was returned to the DEC unsigned, with a stamped date of January 3, 2023. The regular mail was not returned.

On January 27, 2023, the DEC again sent the complaint, by certified and regular mail, to respondent's home address of record. 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). The certified mail receipt was returned to the DEC unsigned, with a stamped date of January 30, 2023. The regular mail was not returned.

As of February 3, 2023, 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

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.

on April 20, 2023, and that any motion to vacate must be filed by March 20, 2023.

According to the United States Postal Service tracking printout, on March 8, 2023, the certified mail sent to respondent's home address was delivered. The letter sent by regular mail was not returned to the Office of Board Counsel (the OBC). However, the e-mail was returned as undeliverable.

Finally, 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 motion to vacate the default by March 20, 2023, 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.

On December 9, 2021, Jorge Armando Molina Luna filed a grievance against respondent, alleging that respondent had mishandled his immigration matter and ignored his communications. On January 28, 2022, the DEC notified both Molina Luna and respondent that the grievance had been docketed and that an investigator would be in touch to "obtain additional information." Thereafter, the DEC made multiple attempts to contact Molina Luna, but was never able to

reach him.³

On February 9, 2022, the DEC sent a letter, by certified and regular mail, to respondent's office address of record, enclosing the grievance and requesting that respondent provide a written reply within ten days. The certified mail was returned to the DEC as undeliverable. The record does not indicate whether the regular mail was returned.⁴

On March 23, 2022, the Office of Attorney Ethics (the OAE) advised the DEC that respondent was to be contacted at his home address, due to his ineligible status. Thereafter, on April 4, 2022, the DEC sent the grievance, by certified and regular mail, to respondent's home address of record, and requested that respondent provide a written reply within ten days. The certified mail receipt was returned to the DEC unsigned, with a stamped date of April 16, 2022. The record does not indicate whether the regular mail was returned.

Having received no answer from respondent, on June 5, 2022, the DEC once again sent the grievance, by certified and regular mail, to respondent's

³ Molina Luna mentioned in his grievance that a deportation order had been issued against him. It is unknown if this order was executed or was related to the loss of contact.

⁴ New Jersey attorneys have an affirmative obligation to inform both the CPF and the OAE of changes to their home and primary law office addresses, "either prior to such change or within thirty days thereafter." R. 1:20-1(c). Respondent's official Court records continue to reflect the home address used by the DEC and, subsequently, by the OBC.

home address of record, and requested that respondent provide a written reply within ten days. The certified mail receipt was returned to the DEC unsigned, with a stamped date of June 8, 2022. The record does not indicate whether the regular mail was returned.

“[T]hroughout the months of July and August of 2022,” the DEC repeatedly attempted to reach respondent by telephone. However, respondent neither answered the telephone nor returned the DEC’s multiple voicemail messages.

On September 12, 2022, the DEC sent “one final letter,” by certified and regular mail, to respondent’s home address of record, “implor[ing]” respondent to provide his position on the grievance or an explanation “as to why [he] c[ould not] respond.” The certified mail receipt was returned to the DEC unsigned, with a stamped date of September 15, 2022. The record does not indicate whether the regular mail was returned.

Respondent failed to respond or to provide any information.

Following our review of the record, we determine that the facts recited in the complaint support most 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.

RPC 8.1(b) requires an attorney to “respond to a lawful demand for information from . . . [a] disciplinary authority.” Respondent violated this RPC twice – first by failing to participate in the DEC’s investigation, and again by failing to answer the complaint. He steadfastly ignored all communications, despite the DEC’s dogged efforts to reach him.

RPC 8.4(d) forbids attorneys from “engaging in conduct that is prejudicial to the administration of justice.” The DEC charged respondent with violating this RPC by failing to answer the complaint. However, we determine to dismiss this charge, because respondent’s failure to answer the complaint is adequately addressed by RPC 8.1(b). See In the Matter of John Anthony Feloney, IV, DRB 22-179 (March 23, 2023) at 9-10 (citing In re Ashley, 122 N.J. 52, 55 n.2 (1991) (after the attorney 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.”).

In sum, we find that respondent violated RPC 8.1(b) (two instances) and dismiss the charged violation of RPC 8.4(d).

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) (failing 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.

The sole mitigating factor in this case is respondent’s lack of a disciplinary history in nearly thirty years at the bar, to which we assign compelling weight.

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).

It is well-settled that harm to the client also constitutes an aggravating factor. In the Matter of John Anthony Feloney, IV, DRB 22-179, at 13; see also In re Burro, 235 N.J. 413 (2018) (the client experienced significant harm due to the 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; violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b), RPC 1.16(d) (failure to return the client file upon termination of the representation), and RPC 8.1(b); baseline discipline of admonition enhanced to reprimand in part due to significant harm caused to the client).

However, no harm to Molina Luna can be conclusively established on this scant record. Although Molina Luna alleged that a deportation order had been issued against him, the record contains no corroborative evidence for this order. Nor does it explain the circumstances under which the order allegedly was issued. As such, we cannot conclude that respondent caused harm to Molina Luna, and respondent’s default remains the sole aggravating factor.

On this record, we determine that the aggravation and mitigation in this case are squarely in equipoise and, thus, an admonition remains the sufficient

quantum of discipline to protect the public and preserve confidence in the bar.

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

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Disposition: Admonition

<i>Members</i>	Admonition	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