Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-053
District Docket No. VII-20220-0011E

In the Matter of	:
Nickolas C. Mourtos	:
An Attorney at Law	:

Decision

Decided: August 3, 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 VII Ethics Committee (the DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.7(a)(2) (engaging in a conflict of interest); RPC 1.16(a)(1) and (2) (failing to withdraw from a representation when required to do so); RPC 8.1(b) (failing to cooperate

with disciplinary authorities);[1] and RPC 8.4(d) (two instances – engaging in conduct prejudicial to the administration of justice).

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

Respondent earned admission to the New Jersey bar in 2009. At the relevant time, he practiced law as an associate with Weinberger Divorce & Family Law Group, in Mount Laurel Township, New Jersey. Currently, he practices law as an associate with South Jersey Divorce Solutions, in Merchantville, New Jersey. He has no prior discipline in New Jersey.

Service was proper. On April 11, 2022, the DEC sent a copy of the complaint to respondent, by regular and certified mail, to what the DEC believed to be respondent's business address. By letter dated April 16, 2022, the DEC received correspondence and a return of the complaint from respondent's prior law firm, indicating that respondent had been terminated on February 25, 2022.

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

On May 15, 2022, the DEC wrote to respondent at his home address,[2] by certified mail, enclosing the complaint and advising him of his requirement of filing a verified answer. This letter was delivered on May 18, 2022. Respondent failed to file an answer or seek an extension of time to do so.

On July 26, 2022, the DEC sent a second letter to respondent, by regular and certified mail, informing him that, unless he filed a verified 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 a willful violation of RPC 8.1(b) and RPC 8.4(d). The return receipt, dated July 30, 2022, was received by the DEC. Respondent failed to file an answer to the complaint. Accordingly, the DEC certified this matter to us as a default.

On March 9, 2023, Acting Chief Counsel to the Board sent a letter to respondent, by certified and regular mail, with another copy sent by electronic mail, to his e-mail address of record, informing him that the matter was scheduled before us on April 20, 2023, and that any motion to vacate the default must be filed by March 27, 2023. The certified mail was returned to the Office of Board Counsel (the OBC) as "Vacant. Unable to Forward." The letter sent via regular mail was not returned to the OBC, and delivery to respondent's e-mail

[2] Respondent's home address was provided to the DEC by the investigator/presenter.

address was completed.

Moreover, on March 13, 2023, the OBC published a Notice to the Bar in the New Jersey Law Journal, stating that we would review the matter on April 20, 2023. The notice informed respondent that, unless he filed a motion to vacate the default by March 27, 2023, his failure to answer would remain 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.

The misconduct alleged in the complaint occurred between 2018 and 2019, while respondent was employed as an associate at Weinberger Divorce & Family Law Group (Weinberger), in Mount Laurel Township, New Jersey. Respondent had commenced employment at Weinberger in 2015. Ibid.

In 2018, a client, B.L.,[3] (the Client) sought legal representation and advice from the Weinberger firm concerning her marriage to her husband (the Grievant). The firm assigned the Client's case to respondent.

In the summer of 2018, respondent initiated divorce proceedings on behalf of the Client, in the Superior Court of New Jersey. Thereafter, on or around July

[3] The parties' names have been sanitized for privacy and confidentiality purposes.

4, 2018, the Client relocated herself and her two minor children from the marital home to an apartment in Burlington County, New Jersey.

A couple of months later, in September 2018, respondent commenced a personal and sexual relationship with the Client while representing her in her divorce. Weinberger's employment policy forbade sexual relationships with clients and respondent was aware of this policy during the period of his employment.

Respondent and the Client communicated regarding their personal and sexual relationship via a shared Google Docs document (the Document), which was obtained during the investigation of respondent's misconduct.[4] Respondent confirmed, during the investigation of this matter, that the Document was used to communicate because it was safer than texts and e-mails, which could be seen by his wife or discovered by his employer. The Document contains more than one hundred pages of direct communication between the Client and respondent.

Respondent further confirmed that the Document is authentic, that it was a method of communication used by himself and the Client, and that it contains communications between himself and the Client. The Document includes personal and sexually charged exchanges between the Client and respondent. In

[4] Google Docs is a cloud-based document management program, via which a person can draft and edit a document over the internet in collaboration with another person or persons.

the Document, respondent and the Client acknowledge and admit that they were involved in a personal and sexual relationship for a period of more than a year, while respondent was representing the Client in her divorce proceedings. Respondent's communications also confirm that his personal and sexual relationship with the Client was kept secret from his employer, his wife, and the Client's family. Respondent admitted in the Document that he believed his personal and sexual relationship with the Client was unethical and could lead to his disbarment if it were made public. Nevertheless, respondent continued with the relationship while simultaneously representing the Client in her divorce proceedings.

Respondent claimed that he did not withdraw from representing the Client because he felt that no one else in the firm could do a better job. According to the DEC, there were other family law practitioners at Weinberger – which is a boutique matrimonial and family law firm – who could have undertaken Client's representation. However, respondent never considered referring the matter to another attorney.

Respondent's billing rate was $275 per hour. Respondent knew that the Client's resources were limited, and that she would have difficulty retaining other counsel, so, often, he did not bill the Client for his legal services rendered, or he intentionally under-billed the Client by recording less time than he actually

spent on legal tasks. Respondent believed that the Client trusted him to do a better job than any other attorney.

Nine years prior to the Client's divorce proceeding, she had sustained a brain injury in a car accident. During respondent's representation of the Client, she sought and received psychological counseling and was taking prescription medication for depression. At all material times, respondent was aware of the Client's psychological and mental issues and her struggle with depression. In fact, in the Document, the Client expressed to respondent her psychological struggles connected to her personal and sexual relationship with him. Specifically, the Client struggled with the fact that respondent was married; the emotional fallout from her failed marriage; the parameters of respondent's personal and sexual relationship with the Client; the secrecy of the relationship; the impact the relationship would have on respondent if the relationship became public; and the fact that the Client knew that respondent had engaged in prior extramarital affairs.

In September 2019, respondent was terminated from Weinberger, which led to the termination of the professional relationship between respondent and the Client. Communications from the Client to respondent after his termination indicated that the Client was emotionally struggling and that she had felt

incapable of terminating her personal relationship with respondent without impacting their professional relationship.

In one communication to respondent, the Client wrote: "THIS isn't feeling so good for me right now. I need some time to sort things out for myself. I can't articulate it yet. The joy/pain ratio with THIS is tipping too much in the yucky direction." In another communication, the Client wrote to respondent: "Now that you are not my lawyer, I realized today I have an option available to me that wasn't there before. When ending an affair, a No Contact policy is recommended. That was not possible in our previous [professional] situation. It is now. And it has given me something to think about. Maybe the universe is telling me something?"

In January 2020, the Client withdrew from her family, including her children. At that time, and at the request of the Client's family, the Grievant moved into the Client's apartment to care for their children, while she sought help.

On May 18, 2020, the Client committed suicide in a hotel. Subsequently, the Document was found in the electronic devices among the Client's belongings.

Following a review of the record, we determine that respondent violated RPC 1.7(a)(2), RPC 1.16(a)(1), and RPC 8.1(b). Respondent's failure to file a

conforming 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 find that there is insufficient evidence to sustain the RPC 1.16(a)(2) and RPC 8.4(d) charges.

RPC 1.7(a)(2) prohibits a lawyer from representing a client if the representation involves a concurrent conflict of interest. Under the Rule, a concurrent conflict of interest exists if:

> (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

Here, respondent engaged in a concurrent conflict of interest, in violation of RPC 1.7(a)(2), by creating a "significant risk" that his representation of the Client would be materially limited by his own personal interests. Respondent sought out both a personal and sexual relationship with the Client, while representing her in a divorce proceeding. Respondent was aware that his actions were unethical at the time and, further, knew that he was in violation of Weinberger's employment policy. This knowledge was evidenced by respondent's affirmative efforts to keep the relationship secret. Indeed,

respondent suggested that all communications be kept on the Document because it was "safer" than texts or e-mails, where the communication could be seen by others. Consequently, respondent violated RPC 1.7(a)(2).

RPC 1.16(a)(1) and (2) provide that "a lawyer . . . where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or other law; [or] (2) the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client."

In In re Liebowitz, 104 N.J. 175 (1985), the Court held that, although an attorney's sexual relationship with a client is not per se unethical, the relative positions of the parties must be scrutinized to ascertain whether the relationship was prohibited. In that case, a court-appointed attorney attempted to have a sexual relationship with an assigned client. Observing the attorney's superior role, the Court stated that "[a]n assigned client could reasonably infer that a failure to accede to Respondent's desires would adversely impact on her legal representation." Id. at 180. The Court further opined that "[t]he gravamen of the offense is the opportunistic misconduct toward [the attorney's] pro bono client." Id. at 180.

Here, respondent admittedly was aware that his conduct with Client was improper and unethical. The Client was extremely vulnerable during the

representation and respondent was acutely aware of her mental health struggles and prior brain injury. Despite that knowledge, respondent chose to continue his sexual relationship with the Client and failed to withdraw from the representation. Thus, respondent violated RPC 1.16(a)(1). In the complaint, the DEC also cites subsection (2) of the Rule, which pertains to the lawyer's physical or mental condition that impairs the lawyer's ability to represent the client. We determine that there is no evidence in the record to support a finding that the respondent was physically or mentally impaired and, thus, dismiss it.

Additionally, respondent failed to file a verified answer in this matter. On May 15, 2021 and July 26, 2022, the DEC wrote to respondent, serving him with the complaint and directing him to reply. Respondent then failed to file an answer. Respondent's failure to file a verified answer to the complaint constitutes his knowing failure to respond to the lawful demands for information from a disciplinary authority, in violation of RPC 8.1(b).

Lastly, the DEC charged respondent with twice violating RPC 8.4(d). That Rule provides that it is misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice." The DEC alleged that respondent violated this Rule because he continued an extended intimate relationship with his client, and by manipulating the billing rate, he put the Client in a position where she was beholden to him – both professionally and personally. Although

these facts are true, we determined that it does not rise to the level of being prejudicial to the administration of justice, as the record does not support this charge by clear and convincing evidence, considering that no judicial resources were wasted by respondent's misconduct.

The remaining instance of RPC 8.4(d) 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."). Accordingly, we determine to dismiss both RPC 8.4(d) charges.

In sum, we find that respondent violated RPC 1.7(a)(2), RPC 1.16(a)(1), and RPC 8.1(b). We determine to dismiss the remaining charges that he violated RPC 1.16(a)(2) and RPC 8.4(d).

An attorney's violation of RPC 1.7(a)(2) by entering into improper personal relationships with a client typically results in a reprimand. See, e.g., In re Carroll, 232 N.J. 111 (2018) (a public defender violated RPC 1.7(a)(2) by engaging in a sexual relationship with an appointed client; the attorney also violated RPC 8.4(d)); In re Resnick, 219 N.J. 620 (2014)[5] (the attorney engaged in a sexual relationship with a client, whom he initially had represented pro bono; the attorney also violated RPC 1.16(d) (failure to protect a client's interests on termination of the representation), RPC 3.5(b), and RPC 8.4(a) (violate or attempt to violate the RPCs)); In re Warren, 214 N.J. 1 (2013) (the attorney engaged in a sexual relationship with an appointed client in municipal court; the attorney also violated RPC 8.4(d)).

Respondent's case is most synonymous with the Carroll case, as the attorneys in both cases not only engaged in a sexual relationship with their client and had no prior discipline.

Considering the foregoing precedent, we determine that respondent's misconduct in this matter warrants the baseline discipline of a reprimand. In crafting the appropriate discipline, we also consider aggravating and mitigating factors.

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[5] Notably, in In the Matter of Michael L. Resnick, DRB 13-413 (June 17, 2014) at 34, we recommended the imposition of a censure. The Court disagreed and imposed a reprimand.

In mitigation, respondent has no prior discipline in his fourteen years at the bar.

In aggravation, we consider the default status of this matter. "[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). Accordingly, at least a censure is warranted.

We consider, however, that respondent's misconduct included additional aggravation. We respectfully conclude that, although the Client's ultimate suicide is tragic, there is no evidence in the record establishing a direct nexus between her death and respondent's misconduct. However, the Client's mental health struggles and brain injury predated the representation and improper sexual relationship. In our view, the record clearly establishes that respondent was acutely aware that the Client was emotionally vulnerable, which respondent used to his advantage in manipulating both the Client and his law firm. Specifically, respondent told the Client that no one else in the firm could do a better job than him, knowing that there were other family law practitioners available, and knowing that the Client believed and trusted him. Additionally, knowing that the Client's financial resources were limited, he intentionally

under billed the Client for his services, manipulating the law firm's business records.

On balance, we determine that the aggravation is so compelling as to require the enhancement of the discipline beyond a censure to a three-month suspension.

Chair Gallipoli and Members Joseph and Campelo voted for a six-month suspension.

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 Nickolas C. Mourtos
Docket No. DRB 23-053

Decided: August 3, 2023

Disposition: Three-Month Suspension

Members	Three-Month Suspension	Six-Month Suspension	Absent
Gallipoli		X	
Boyer	X		
Campelo		X	
Hoberman	X		
Joseph		X	
Menaker	X		
Petrou			X
Rivera			X
Rodriguez	X		
Total:	4	3	2

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