Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-125
District Docket No. XIV-2022-0375E

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| In the Matter of | : |
| David A. Isola | : |
| An Attorney at Law | : |

Decision

Argued: July 20, 2023

Decided: November 27, 2023

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-14(a), following the Supreme Court of California's September 1, 2022 order requiring respondent to serve a one-year stayed suspension and a one-year term of probation,

conditioned on a thirty-day actual suspension. The OAE asserted that respondent violated the equivalents of New Jersey RPC 1.2(a) (failure to abide by the client's decisions concerning the scope and objectives of representation); RPC 1.4(b) (failure to communicate with a client); and RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation).

For the reasons set forth below, we determine to grant the motion for reciprocal discipline and conclude that an admonition is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 2013 and to the California bar in 1990. During the relevant period, he maintained a practice of law in Parsippany, New Jersey, and Lodi, California. He has no prior discipline in New Jersey.

Effective October 30, 2017, the Court declared respondent ineligible to practice law for his failure to comply with his continuing legal education requirements.

Effective June 27, 2022, the Court revoked respondent's license to practice law for failure to pay his annual assessment to the New Jersey Lawyers' Fund for Client Protection, as R. 1:28-2 requires, for seven consecutive years.[1]

We now turn to the facts of this matter.

For decades, Richard Greco and his brothers, Michael and Robert, co-owned commercial real estate in Fair Lawn, New Jersey (the Property), where they owned and operated a dry-cleaning business under the trade name Cameo Fabric Care Center Inc., also referred to as Cameo Cleaners. In 1983, the Grecos sold the dry cleaning business to Gregory Hahn and his family, who renamed it Cameo Dry Cleaners of Fair Lawn, Inc. For the next nineteen years, the Hahns operated Cameo Cleaners of Fair Lawn at the Property, pursuant to a lease agreement with the Grecos, who remained the fee owners of the real estate. In 2002, the Hahns sold their dry-cleaning business.

In June 2003, the New Jersey Department of Environmental Protection (the NJDEP) notified the Grecos of an environmental contamination caused by the discharge of dry cleaning solvent at the Property. Subsequently, in 2008 and 2009, the NJDEP sent additional correspondence to the Grecos regarding required remediation at the site.

[1] R. 1:28-2(c) provides that an Order of revocation does not preclude the Court from exercising jurisdiction over misconduct that pre-dated the Order.

In late 2009, in response to the NJDEP's communications, the Grecos searched for insurance coverage and discovered that the Hahn family had obtained two general liability insurance policies from Travelers Casualty and Surety Company (Travelers), with coverage from January 1985 to January 1986, and January 1986 to October 1986. The policies insured Cameo Cleaners of Fair Lawn and the three members of the Hahn family with $1 million in coverage.

Between July and October 2010, several letters were written to Traveler's regarding the Hahn's insurance policies. Although the letters to Traveler's were purportedly from Gregory, he denied ever having written or seen the letters. Instead, it appeared that the letters were written by Richard, with Gregory's consent, as the two had become friends.

Thereafter, on January 28, 2011, Richard retained Thomas deArth, the founder of the environmental consulting firm Genesis Engineering & Redevelopment (Genesis), to perform remediation at the Property. A form subsequently executed by deArth and Michael showed that the two expected to fund Genesis' work via the Hahn's insurance policies.

Around 2010 or 2011, deArth introduced Richard to respondent at a trade show. Respondent had practiced environmental law in California since 1990 and

had expanded his practice to New Jersey.[2] Since 2005, respondent had worked with deArth to provide environmental remediation services, at no cost, to clients with insurance coverage. Respondent handled the legal aspects of the work and Genesis handled the environmental aspects. When respondent met Richard at the trade show, Richard told him that "he had a relationship with the former tenant's son, Gregory, who had helped him obtain insurance policies" for the Property.

In May 2011, respondent, deArth, and Richard "arranged a meeting with Gregory" at a diner. At the meeting, respondent "presented information about the services he and Genesis could provide, including the possibility of a lawsuit to force Travelers to cover remediation." Respondent understood from this meeting that Gregory wanted respondent to represent his mother and Cameo Cleaners of Fair Lawn in their effort to discharge environmental liability. The State Bar Court of California, Review Department (the Review Department),[3] later found that Gregory had the authority to engage counsel for his mother and the family's business. Although Gregory later claimed that he did not retain

[2] Prior to his 2013 admission to the New Jersey bar, respondent employed a New Jersey attorney to staff his New Jersey location.

[3] This entity is the equivalent of the Disciplinary Review Board in California. See The State Bar Court of California Home Page, https://www.statebarcourt.ca.gov/ (last visited June 6, 2023).

respondent, deArth and Richard confirmed that he did. Respondent and Gregory, however, did not execute a retainer agreement.

Over the next six years, respondent worked on the Cameo Cleaners of Fair Lawn matter without communicating with any member of the Hahn family. Respondent's "initial strategy was to use a NJDEP claim to trigger coverage from Travelers." Accordingly, he instructed Genesis to "elicit a claim with the NJDEP on behalf of "Min-Ku" and Cameo Cleaners of Fairlawn. At the time, Gregory had led respondent, and others, to believe that Min-Ku Hahn was the name of his mother. In reality, Min-Ku was Gregory's legal name.

On July 18, 2011, respondent sent a letter to Diane Colechia, a representative of Travelers, stating that Min-Ku was tendering her defense and indemnity to Travelers based on insurance policies that she had purchased with her husband. On August 4, 2011, Colechia informed respondent that she "had no documentation of demands or claims made against Cameo Cleaners of Fair Lawn or Min-Ku."

On September 8, 2011, respondent replied to Colechia, stating that the NJDEP was "compelling Min-Ku (and others) to undertake an investigation and remediation of dry cleaning-related solvents at and emanating from . . . [the Property]." The NJDEP, however, had not asserted a claim against Min-Ku. Respondent later explained that, when he made this statement, he "believed

incorrectly that NJDEP was focused on Cameo Cleaners of Fairlawn, when in fact, it was targeting" the dry-cleaning service formerly operated by the Grecos. At the time, he claimed, he was not aware that the two names referred to different entities.

On February 3, 2012, after Travelers continued to deny its duty to defend, the Grecos filed a complaint in the New Jersey Superior Court against Min-Ku and Cameo Cleaners of Fairlawn, for the purpose of triggering insurance coverage. Respondent accepted service on Min-Ku's behalf, sent a copy of the complaint to Colechia, and filed an answer, all without any input from the Hahns.

On March 30, Genesis completed "a NJDEP receptor evaluation form which indicated that the person responsible for conducting the remediation was Min-Ku." On April 23, 2012, a Genesis employee asked that Min-Ku sign a Licensed Site Remediation Professional (LSRP) retention form, which notified the NJDEP that Genesis' work would be supervised by an LSRP. The form contained the following text above the signature line: "I certify under penalty of law that I have personally examined and am familiar with the information submitted herein, and that to the best of my knowledge, I believe that the submitted information is true, accurate and complete." On April 30, 2012, respondent signed the form as "counsel for" Min-Ku.

The Grecos filed an amended complaint. Respondent forwarded the amended complaint to Travelers and filed an answer with the court, again without consulting the Hahns.

On November 5, 2012, respondent sent Colechia a proposal for resolving the case, which included a settlement with the Grecos, a policy buyback agreement, and a task order from Genesis for evaluating the contamination site. Travelers refused to fund the evaluation, asserting that its insureds were not subject to an NJDEP order. However, on January 8, 2013, Colechia informed respondent that Travelers would contribute 6% toward "the fees for the defense-related work performed on behalf of its insureds," an amount significantly less than what respondent had expected.

On July 29, 2013, respondent filed a third-party complaint against Travelers, seeking to force Travelers to increase its contribution. He did not inform the Hahns that he had filed a third-party complaint in their name because, as he had informed Gregory at the outset of the representation, the Hahns were not financially responsible for the defense costs.

In September 2013, Travelers agreed to increase its share of defense costs to 36.84% in exchange for the dismissal of the third-party complaint. Without consultation with Gregory, respondent accepted Travelers' offer and dismissed the third-party complaint, without prejudice.

For reasons not evident from the record, the Grecos subsequently dismissed their lawsuit, without prejudice, and refiled it in 2016. Thereafter, respondent and the Grecos' counsel, Ryan Milun, Esq., commenced settlement negotiations. Respondent failed to consult with the Hahns regarding these settlement discussions.

On December 13, 2016, respondent proposed to Milun that Min-Ku assign the Travelers' insurance policies to the Grecos. Although Travelers objected to the assignment, respondent did not reveal the objection to either the Hahns or Milun because he believed Traveler's position was neither binding nor material. Respondent also did not transmit any of Milun's written proposals to the Hahns.

On January 30, 2017, Milun and respondent reached a tentative agreement, without the Hahns knowledge or consent, which provided that the Grecos could obtain up to $1.5 million from the Hahn's insurance coverage, with no personal liability from the Hahns. On March 17, 2017, Travelers reiterated to respondent that it did not consent to an assignment of its insurance policies, and by extension, did not agree with the terms respondent had reached with Milun.

Meanwhile, in January 2017, the Grecos filed a new lawsuit against the Hahns, alleging that Gregory, his mother, and his deceased father had breached a lease guarantee concerning the Property. Gregory retained Peter Kim, Esq., to

defend against this lawsuit. On March 22, 2017, Kim learned from Milun that the Grecos previously had filed another lawsuit against the Hahns and, further, that he was trying to finalize a settlement, but had been unable to locate Gregory's mother.

Subsequently, Kim relayed this information to Gregory, who seemed "surprised" to learn of the other lawsuit. However, neither Kim nor Gregory informed respondent that Gregory denied knowing him. Further, neither Kim nor Gregory instructed respondent to stop working on the matter or to cease the representation.

On March 27, 2017, respondent informed Kim that he was counsel for Min Ku-Hahn, Gregory's mother, in connection with the environmental contamination lawsuit. He informed Kim that the Grecos had reached a settlement agreement with Min Ku-Han that was "very advantageous" for the Hahns because they would receive a full release regarding the contamination, without having to pay any money out of pocket. Respondent requested Kim's assistance, however, in obtaining Min-Ku's signature, acknowledging he had never met her, and had not been able to reach Gregory. Respondent attached the settlement proposal to his e-mail to Kim; however, the version he sent erroneously stated that Travelers had not provided any comment, when in fact, it repeatedly had objected to the settlement.

On April 19, 2017, another insurance company, The Hartford (Hartford), informed Milun that it had insured the Hahn's business from 1983 to 1985. Respondent learned about the Hartford policies shortly after Milun was notified. Thereafter, respondent proposed that the Hahns assign the Hartford policies to the Grecos to resolve both lawsuits. The parties then agreed that the Hahns would enter into a consent judgment for $1.5 million, enforceable against only the proceeds under the Hartford and Travelers policies. At some point in April, respondent and Kim learned for the first time that Min-Ku was not Gregory's mother's name but was Gregory's legal name.

On May 1, 2017, Gregory approved the settlement. He then arranged for his mother to sign it and, on May 11, 2017, his mother, Chung Hee, executed it on behalf of herself and Cameo Cleaners of Fair Lawn. The settlement was not contingent on Travelers' consent, and respondent never informed Kim or Milun that Travelers had objected. Subsequently, Travelers paid respondent $26,085.69 toward his legal fees for defending the Hahns. In July 2017, the Grecos brought suit against Travelers and Hartford, seeking to compel them to pay the Hahn's share of costs. In August 2020, the Superior Court of New Jersey granted Travelers and Hartford summary judgment because the Hahns had settled without the insurance carriers' consent and without a determination of legal liability; the Hahns' settlement with the Grecos, however, remained

undisturbed.

On May 28, 2020, in California, the Office of Chief Trial Counsel of the State Bar (the OCTC) filed a notice of disciplinary charges against respondent and, on August 5, 2020, the OCTC amended its notice of disciplinary charges. The OCTC alleged that respondent committed extensive misconduct, encompassing twenty-six counts, including the following relevant counts:

> Count Twenty-One (Failure to Inform Client of Significant Developments): Respondent failed to keep the Hahns apprised of significant developments in their matter.
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> Count Twenty-Two (Failure to Communicate a Settlement Offer): Between January 2017 and March 2017, respondent learned of a written offer of settlement made to the Hahns but did not communicate the offer to them.
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> [ExC.][4]

Following ten days of testimony, on June 16, 2021, the State Bar Court of California, Hearing Department, issued an opinion finding respondent guilty of unethical conduct.

The parties cross-appealed and, on May 25, 2022, the Review Department dismissed all charges except Counts Twenty-One and Twenty-Two. Specifically, the Review Department concluded that Gregory had hired

[4] "Ex" refers to the exhibits to the OAE's May 17, 2023 brief to the Board.

respondent and that respondent acted within the scope of the authority Gregory had granted to him. The Review Department concluded that respondent's misrepresentations had been unintentional and, further, the fact that he signed the LSRP form as "counsel for" Min-Ku was not a misrepresentation because he genuinely believed it to be true. He never represented the Grecos, nor was he ever disloyal toward the Hahns. In fact, the Review Board noted, his representation resulted in a positive outcome for his clients.

Regarding the settlement of the third-party complaint, the Review Department concluded that Travelers' agreement to increase its share of attorney's fees was an interim agreement that could be further negotiated and finalized at a later date. Further, it determined that respondent's "actions show that he was furthering the Hahns' interests by trying to find the money to fund his representation."

Nonetheless, the Review Department found that respondent had committed unethical conduct by failing, repeatedly, to keep his clients reasonably informed of significant developments in the case, and by failing to inform his clients of the written settlement offers from the Grecos.

In view of compelling mitigation, including respondent's lack of prior discipline and his "extraordinary good character," the Review Department recommended that the Supreme Court of California impose a stayed one-year

suspension, with thirty days of actual suspension and one year of probation, among other conditions. On September 1, 2022, the Supreme Court of California adopted this recommendation. Respondent properly notified the OAE of his California discipline, as R. 1:20-14(a)(1) requires.

At oral argument and in its brief to us, the OAE argued that the conduct for which respondent was disciplined in California constituted violations of RPC 1.2(a), RPC 1.4(b), and RPC 1.4(c). Such conduct, the OAE asserted, does not merit a suspension in New Jersey. Rather, an attorney's failure to communicate with a client is typically met with an admonition. See In the Matter of Christopher G. Cappio, DRB 15-418 (March 24, 2016).

Likewise, attorneys who settle cases without consulting their clients typically are admonished or reprimanded. See In re Castiglia, 220 N.J. 580 (2015), and In the Matter of John S. Giava, DRB 01-455 (March 15, 2002). Overall, the OAE recommended a reprimand, in view of respondent's good character, the fact that he achieved a positive result for his client, and his lack of prior discipline.

Respondent did not submit a brief for our consideration.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this

state [. . .] is guilty of unethical conduct in another jurisdiction [. . .] shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined [. . .] shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

In California, as in New Jersey, the standard of proof in attorney disciplinary proceedings is clear and convincing evidence. In re Morse, 900 P.2d 1170, 1182 (Cal. 1995), as modified, (Nov. 16, 1995).

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
>
> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

> (E) the unethical conduct established warrants substantially different discipline.

In our view, subsection (E) applies in this matter, because respondent's unethical conduct established by this record warrants substantially different discipline in New Jersey. Pursuant to New Jersey disciplinary precedent, respondent's violations of the Rules of Professional Conduct do not warrant a term of suspension, as California imposed.

Turning to the charged violations, the record contains clear and convincing evidence that respondent violated RPC 1.2(a), which states, in relevant part:

> A lawyer shall abide by a client's decisions concerning the scope and objectives of representation . . . and as required by RPC 1.4 shall consult with the client about the means to pursue them . . . . A lawyer shall abide by a client's decision whether to settle a matter.

Respondent violated this Rule by failing to communicate the Grecos' settlement offers to the Hahns between January and March 2017. Respondent's failure in this regard deprived his clients of the opportunity make a meaningful determination whether to settle their matter.

Next, respondent violated RPC 1.4(b), which requires an attorney to keep their clients "reasonably informed about the status of a matter and promptly comply with reasonable requests for information," and RPC 1.4(c), which obligates an attorney to "explain a matter to the extent reasonably necessary to

permit the client to make informed decisions regarding the representation." Respondent violated both Rules by utterly failing to communicate with his clients, during the entirety of the six-year representation. He failed to provide them any explanation or information regarding the status of their matter, thereby depriving them of any ability to make informed decisions regarding the representation.

In sum, we determine to grant the motion for reciprocal discipline and find that respondent violated RPC 1.2(a); RPC 1.4(b); and RPC 1.4(c). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

An attorney's failure to abide by the client's decisions concerning the scope and objectives of the representation typically results in an admonition. See In the Matter of Peter M. Halden, DRB 19-382 (February 24, 2020) (the attorney settled a matter without the client's authorization and failed to set forth in writing the basis or rate of the legal fee), and In the Matter of John S. Giava, DRB 01-455 (March 15, 2002) (the attorney was hired to obtain a wage execution against a defaulting real estate purchaser, but instead entered into a settlement agreement with the buyer without the clients' consent).

Similarly, an attorney's failure to communicate with a client is met with an admonition, even when accompanied by other non-serious offenses. See, e.g.,

In the Matter of Sarah Ruth Barnwell, DRB 21-270 (June 20, 2022), so ordered, __ N.J. __ (2022) (the attorney undertook to represent a client in a child custody matter and, thereafter, ignored most of the client's communications; the attorney also failed to take any affirmative step to advance the client's matter and ultimately terminated the six-month representation without providing any explanation, invoice, or refund; violations of RPC 1.1(a) (gross neglect); RPC 1.2(a); RPC 1.3 (lack of diligence); RPC 1.4(b); and RPC 1.16(d) (failure to refund the unearned portion of the fee to client upon termination of representation); thirteen years at the bar without disciplinary history); 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 career 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).

Considering the above disciplinary precedent, respondent's course of misconduct, which persisted for six years, could be met with a reprimand. In crafting the appropriate discipline, however, we also consider mitigating and aggravating circumstances.

In aggravation, respondent's failure to communicate far exceeds typical RPC 1.4 violations, as he did not interact with his clients at all during the six-year representation.

In mitigation, respondent achieved a positive result for his clients, has no disciplinary record, is of good character, and properly reported his California discipline to the OAE.

In weighing the aggravation and mitigation in this case, we are guided by In re Babcock, 231 N.J. 8 (2017). There, the attorney "blatantly failed his client from the outset of the representation and, for years, ignored her requests for information while allowing her matter to languish and eventually be dismissed." In the Matter of Francis C. Babcock, Jr., DRB 16-323 (April 24, 2017) at 7. The attorney also failed to cooperate with disciplinary authorities and allowed the matter to proceed as a default. Id. at 6. On those facts, we recommended a reprimand, and the Court agreed. In re Babcock, 231 N.J. at 8.

Here, respondent failed to communicate with his clients for years but, unlike Babcock, he did not neglect his clients' matter or fail to cooperate with

disciplinary authorities. In fact, he successfully protected the interests of his clients and reported his discipline to the OAE. Accordingly, we view his misconduct as less serious than that of the attorney in Babcock, who was reprimanded.

On balance, consistent with New Jersey disciplinary precedent and considering the compelling mitigation, we determine that an admonition is the appropriate quantum of discipline necessary to protect the public and to preserve confidence in the bar.

Member Joseph voted to impose a reprimand.

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: */s/ Timothy M. Ellis*
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of David A. Isola
Docket No. DRB 23-125

Argued: July 20, 2023

Decided: November 27, 2023

Disposition: Admonition

| ***Members*** | Admonition | Reprimand | Absent |
|---|---|---|---|
| Gallipoli | X | | |
| Boyer | X | | |
| Campelo | X | | |
| Hoberman | | | X |
| Joseph | | X | |
| Menaker | X | | |
| Petrou | X | | |
| Rivera | X | | |
| Rodriguez | X | | |
| Total: | 7 | 1 | 1 |

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