

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. 23-175
District Docket Nos. I-2022-0005E
and I-2022-0006E

In the Matter of Harry Furman
An Attorney at Law

Decided
February 5, 2024

Corrected Decision

Certification of the Record

Table of Contents

Introduction..... 1

Service of Process 2

Facts..... 4

Motion to Vacate the Default..... 6

Analysis and Discipline 9

 Violations of the Rules of Professional Conduct 9

 Quantum of Discipline..... 12

Conclusion 16

Introduction

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 I Ethics Committee (the DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.3 (lacking diligence); RPC 1.4(b) (failing to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information); RPC 8.1(b) (failing to cooperate with disciplinary authorities); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).¹

On September 18, 2023, respondent filed a motion to vacate the default (MVD), dated September 15, 2023, which we denied on October 20, 2023. For the reasons set forth below, we determine that an admonition is the proper quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 1985. He maintains a practice of law in Vineland, New Jersey.

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.

Service of Process

Service of process was proper.

On February 22, 2023, the DEC sent a copy of the formal ethics complaint to respondent, by certified and regular mail, at his office address of record. The certified mail receipt was returned to the DEC bearing the signature of “P. Serad” and reflecting a delivery date of February 24, 2023. The regular mail was not returned to the DEC. On April 13, 2023, respondent contacted the DEC presenter, confirmed that he had received the complaint, and stated that he intended to seek additional time to file his answer. Respondent, however, failed to request an extension to file his answer.

On May 18, 2023, the DEC sent a letter to respondent, by certified and regular mail, at his office address of record, informing him that, unless he filed a verified answer within ten 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 certified mail receipt was returned to the DEC bearing an illegible signature and no delivery date. The regular mail was not returned to the DEC.

As of June 29, 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 August 28, 2023, Acting Chief Counsel to the Board sent a letter to respondent at his office address of record, by certified and regular mail, with an additional copy sent by e-mail, informing him that the matter was scheduled before us on October 19, 2023, and that any MVD must be filed by September 18, 2023. On August 29, 2023, respondent acknowledged receipt of the e-mail. According to the United States Postal Service tracking system, on June 2, 2023, the certified mail was delivered. The regular mail was not returned to the Office of Board Counsel (the OBC).

Moreover, on September 4, 2023, the OBC published a notice in the New Jersey Law Journal, stating that we would review this matter on October 19, 2023. The notice informed respondent that, unless he filed a successful MVD by September 18, 2023, his prior failure to answer the complaint would remain deemed an admission of the allegations of the complaint.

On September 18, 2023, respondent filed an MVD. As noted above, on October 20, 2023, following our review of respondent's MVD, we issued a letter denying that motion.

Facts

We now turn to the allegations of the complaint.

Respondent was designated to serve as both the attorney and executor for the Estate of Alice Levi (the Levi Estate) pursuant to the terms of Levi's Last Will and Testament (the Will). Levi died on September 17, 2018. Steve Rich and Lynn Ann Levi, who resided in California, were beneficiaries of the Levi Estate (the Beneficiaries).

According to the complaint, respondent "failed to communicate with [the Beneficiaries] in a diligent and timely manner in relation to his duties as executor." Specifically, the complaint alleged that respondent "failed to keep [the Beneficiaries] reasonably informed as to the status of the case" and had failed to provide the Beneficiaries with his contact information, despite his May 18, 2017 promise, during a video conference, to do so. Moreover, the complaint alleged that respondent failed to timely reply to the Beneficiaries' "requests for an accounting of the estate and additional estate documentation" and, further, that respondent had "acknowledged failing to keep [the Beneficiaries] informed as to the status of the proceeding."

Respondent also failed to timely file the estate's tax returns, resulting in the imposition of "late fees, interest, and penalties." The DEC further asserted,

in its complaint, that respondent “acknowledged” his failure to timely reply to the request for documentation made by “the [New Jersey] Department of Treasury” and, ultimately, had failed to provide the requested documents. The complaint also alleged that, “by [r]espondent’s own admission aspects of his representation of the Estate could have, and should have been handled in a more prompt and diligent manner.”

Ultimately, the Beneficiaries were forced to retain the services of another attorney to represent the Levi Estate and to file the required estate tax returns.

On October 18, 2021, the Beneficiaries, through their new counsel, filed an order to show cause with the Superior Court of New Jersey, Cumberland County, Chancery Division, Probate Part, seeking to remove respondent as the executor of the Levi Estate and to compel him to transfer the estate’s funds to the Beneficiaries’ new attorney. The Superior Court ultimately “entered an [o]rder requiring [r]espondent to resign as [e]xecutor effective November 18, 2021,” and appointing Rich as the administrator C.T.A.² The Superior Court also directed respondent to transfer the Levi Estate funds to the Beneficiaries’ new attorney’s trust account and to cooperate with that attorney regarding the

² C.T.A. stands for “cum testamento annexo,” which means “with the will annexed.” An administrator C.T.A. is appointed where the named executor is unavailable or unfit to serve.

transfer of duties.

Based on the above facts, the DEC asserted that respondent violated RPC 1.3 and RPC 1.4(b). Further, the DEC alleged that, by failing to file a verified answer to the complaint, respondent failed to cooperate with disciplinary authorities, in violation of RPC 8.1(b), and engaged in conduct prejudicial to the administration of justice, in violation of RPC 8.4(d).

Respondent's Motion to Vacate the Default

As noted above, on September 18, 2023, respondent filed an MVD in this matter, supported by his certification and a proposed answer to the complaint. The DEC did not file an opposition brief. In order to successfully vacate a default, a respondent must meet a two-pronged test – offering both a reasonable explanation for the failure to answer the ethics complaint and asserting meritorious defenses to the underlying charges. Here, we determined that respondent failed to satisfy either prong.

Specifically, as to the first prong, respondent failed to offer a reasonable explanation for his failure to file an answer to the complaint. Importantly, respondent does not deny having received the complaint or the DEC's May 18, 2023 letter. Instead, he contends that, over the years, he has won the respect of clients and colleagues by serving those he represented with dedication, and that

with such a history, it has been embarrassing and “all the more difficult to face what happened” in this “aberrant” situation. Respondent further stated that he “can point to certain medical issues” he experienced “as a result of a fall in [c]ourt” that had a profound impact on his health.” He did not, however, explain the timing or nature of the medical issues or, importantly, why it prevented him from filing an answer to the complaint or seeking an extension to do so.

Respondent’s broad assertion that medical issues and an injury, occurring on unspecified dates, prevented him from filing his answer to the complaint, however, falls short of satisfying prong one. Respondent, in his certification, describes an unfortunate injury, but failed to provide any explanation how this event, or any related medical issues, affected his ability to file an answer. Further, respondent did not provide us with any documentation to substantiate his assertions. Moreover, if respondent’s medical condition prevented him from answering the DEC’s complaint, respondent should have notified the DEC, which he does not claim to have done.

Because respondent failed to demonstrate how the events he cited affected his ability to answer the complaint prior to the deadline, his MVD failed the first prong of the analysis.

Regarding the second prong, respondent failed to assert a meritorious defense to the underlying charges. The DEC's complaint charged respondent with violations of RPC 1.3 and RPC 1.4(b) for his mishandling of the estate matter. In his proposed answer, respondent "neither admitted nor denied" each charged violation. He acknowledged, however, that he "was not as diligent as he should have been;" that he "did not communicate as fully as possible with [the beneficiaries];" and that he failed to "meet the deadline as to the estate tax return."

Respondent claimed, however, that, despite his above admissions, he had spent "many hours" on the Levi Estate matter; that "the matter was certainly not ignored by [him];" that, although he admittedly failed to meet the estate tax return deadline, he had made "a preliminary advance payment to the State, reducing any such fines;" and, lastly, that he had waived his legal fees. Further, he did not oppose the order to show cause seeking to replace him as executor and attorney for the Levi Estate, and he cooperated with replacement counsel.

In short, respondent asserted no meritorious defense to the charged RPCs. In fact, respondent candidly admitted to having lacked diligence by failing to timely file the estate's tax returns. Other than claiming to have spent "many hours" on the matter, respondent offered no meritorious defense for his admitted

failure to timely file the estate tax return. Likewise, respondent admitted that he had failed to respond to all of the beneficiaries' communications and that he "could have communicated in a better manner than occurred here."

Therefore, respondent failed to assert a meritorious defense to the allegations set forth in the complaint and, thus, failed to satisfy the second prong of the analysis. Accordingly, we determined to deny respondent's MVD.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Moving to our review of the record, we find that the facts recited in the complaint support most, but not all, 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, we must determine whether each charge of the complaint is supported by sufficient facts to determine that unethical conduct has occurred. See In re Pena, 164 N.J. 222 (2000) (describing the Court's "obligation in an attorney disciplinary proceeding is to conduct an independent review of the record, R. 1:20-16(c), and determine whether the ethic[s]

violations found by us have been established by clear and convincing evidence”). We will, therefore, decline to find a violation of a Rule of Professional Conduct where the admitted facts within the certified record do not constitute clear and convincing evidence that the Rule was violated.

Here, we conclude that the facts recited in the DEC’s complaint support the allegations that respondent violated RPC 1.3, RPC 1.4(b), and RPC 8.1(b). We determine, however, that the evidence does not clearly and convincingly support a violation of RPC 8.4(d).

Specifically, the record clearly and convincingly demonstrates that respondent lacked diligence, in violation of RPC 1.3, in his handling of the Levi Estate matter. Respondent failed to timely file the estate tax returns, causing the estate to incur late fees, interest, and penalties. Further, he ignored a specific request, made by the Department of Treasury, for documentation related to the estate. Indeed, as a result of respondent’s inaction, the estate’s beneficiaries were forced to retain new counsel and file an order to show cause to remove respondent as attorney and executor for the estate.

Next, respondent failed to communicate with the estate’s beneficiaries, in violation of RPC 1.4(b), by admittedly not replying to their reasonable requests for information, despite their efforts. Further, respondent failed to timely reply

to the beneficiaries' requests for an estate accounting and, in fact, acknowledged that he failed to keep the beneficiaries informed as to the status of the matter. Thus, we conclude that the record clearly and convincingly establishes respondent's violation of RPC 1.4(b).³

The record also contains clear and convincing evidence that respondent violated RPC 8.1(b), which requires an attorney to respond to a lawful demand for information from a disciplinary authority. Specifically, he failed to file an answer to the formal ethics complaint and allowed the matter to proceed as a default. R. 1:20-4(f).

We determine, however, to dismiss the charge that respondent violated RPC 8.4(d), which 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 has not been found to be per se grounds

³ Consistently, we have found a violation of RPC 1.4(b) based upon an attorney's failure to communicate with beneficiaries of an estate. See, e.g., In re Cook, 233 N.J. 328 (2018) (the attorney, who was the executor for the estate, violated RPC 1.4(b) by failing to communicate with the estate's sole beneficiary, despite her dogged efforts; the attorney also failed to reply to requests for information by the beneficiary's attorney); In re Ludwig, 233 N.J. 99 (2018) (the attorney, who served as the executor for the estate, violated RPC 1.4(b) by failing to communicate with two of the estate's beneficiaries or keep them informed about the status of the matter, despite their repeated requests for information); In re Matter of David Leonard Roeber, DRB 12-057 (April 24, 2012) (the attorney, who represented the administratrix of the estate, violated RPC 1.4(b) by failing to reply to inquiries about the status of the estate from the attorney representing the estate's sole beneficiary).

for an RPC 8.4(d) violation. See In re Ashley, 122 N.J. 52, 55 n.2 (1991) (after the attorney failed to answer a 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 1.3, RPC 1.4(b), and RPC 8.1(b). We determine to dismiss the charge pursuant to RPC 8.4(d). The sole issue left for our determination is the appropriate quantum of discipline for respondent’s misconduct.

Quantum of Discipline

The discipline imposed on attorneys who lack diligence and fail to communicate in their handling of estate matters has ranged from an admonition to a censure, even when the misconduct is accompanied by additional, less serious misconduct. See, e.g., In the Matter of Andrey V. Zielyk, DRB 13-023 (June 26, 2013) (admonition; the attorney lacked diligence by failing to reply to a tax auditor’s request for information, thereby delaying the finalization of the

estate's tax returns; the attorney also failed to keep the estate beneficiaries adequately informed, for a period of fifteen months, about the status of the estate; and failed to set forth in writing the basis or rate of his fee; violations RPC 1.3; RPC 1.4(b) and RPC 1.5(b); no prior discipline in twenty-seven-year career); In the Matter of Joseph C. Lane, DRB 07-245 (November 21, 2007) (admonition; the attorney lacked diligence in an estate matter; he failed to timely address a 2006 letter from a tax auditor, failed to ensure that the auditor timely received required information, failed to promptly turn over the estate's file and funds to the estate's new attorney, and failed to communicate with the client, in violation of RPC 1.3 and RPC 1.4(b); no prior discipline); In re Burro, 235 N.J. 413 (2018) (reprimand; the attorney grossly neglected (RPC 1.1a)) and lacked diligence in an estate matter for ten years and failed to file New Jersey Inheritance Tax returns, resulting in the accrual of \$40,000 in interest and the imposition of a lien on property belonging to the executrix; the attorney also failed to keep the client (the estate's executrix) reasonably informed about events in the case; to return the client file upon termination of the representation (RPC 1.16(d)); and to cooperate with the ethics investigation; in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand; in mitigation, the attorney expressed remorse and had suffered a

stroke that forced him to cease practicing law); In re Ludwig, 233 N.J. 99 (2018) (reprimand; the attorney lacked diligence by failing to finalize an estate matter for eight years following the decedent's death; the attorney failed to distribute more than \$75,000 owed to the estate's beneficiaries, obtain a discharge of a judgment that had been improperly filed against the estate, liquidate estate assets, file any of the required 2008 estate tax returns, promptly provide an interim accounting, or file the final accounting; the attorney also ignored the beneficiaries' requests for information and delayed taking action on the estate; further, the attorney failed to fully cooperate with the OAE's investigation; violations of RPC 1.3, RPC 1.4(b), and RPC 8.1(b); no prior discipline in thirty-eight years at the bar); In re Trella, ___ N.J. ___ (2023) (censure; the attorney, despite his expertise in estate matters, stipulated that he had failed to timely administer two estate matters by not promptly paying inheritance taxes (RPC 1.1(a), RPC 1.3; and RPC 1.15(b)); the attorney also negligently misappropriated estate funds that should have been held in escrow (RPC 1.15(a)) and, in both estate matters, charged excessive fees (RPC 1.5(a)); in a third client matter, the attorney engaged in a conflict of interest by loaning funds to his client, and also made misrepresentations to the OAE with respect to the loan (RPC 1.8(a), RPC 8.1(a), and RPC 8.4(c)); in imposing a censure, we concluded

that the attorney's unblemished fifty-year-career was insufficient mitigation to warrant a downward departure from the baseline discipline of a censure given the totality of the misconduct, spanning three client matters; we also weighed, in aggravation, the harm to the clients caused by the attorney's delay; we also considered, in aggravation, respondent's admission that he rarely entered into written fee agreements with his clients).

We view respondent's mishandling of the Levi Estate matter as most similar to that of the attorney in Zielyk, who we admonished. Like respondent, the attorney in Zielyk had needlessly delayed the finalization of the estate's tax returns and failed to communicate with the beneficiaries in a single estate matter. Further, like respondent, the attorney in Zielyk had no prior discipline in his lengthy career spanning nearly three decades, a factor we accorded significant weight in determining to impose only an admonition.

Respondent's misconduct also is less serious than that committed by the attorneys in Burro and Ludwig, who were reprimanded for their prolonged mishandling of estate matters, spanning ten and eight years, respectively, facts not present here. Further, unlike the attorney in Burro whose misconduct resulted in the accrual of \$40,000 in interest and the imposition of a lien on

property belonging to the executrix of the estate, respondent's misconduct did not result in quantifiable harm to the estate or its beneficiaries.

Accordingly, based on applicable precedent, and Zielyk, Burro, and Ludwig, in particular, we conclude that the baseline discipline for respondent's misconduct is an admonition. To craft the appropriate discipline, we also consider aggravating and mitigating factors.

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).

In mitigation, this is respondent's first brush with the disciplinary system in his thirty-eight years at the bar, a consideration that we consistently have allocated significant weight. In re Convoy, 166 N.J. 298, 303 (2001).

Conclusion

Although respondent allowed this matter to proceed as a default, a fact that ordinarily would justify enhancing the baseline discipline to a reprimand, we conclude that respondent's otherwise unblemished career of nearly four decades at the bar operates to place the mitigating and aggravating factors in

equipoise. Thus, on balance, we determine that an admonition is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Chair Gallipoli voted to impose a reprimand.

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 Harry Furman
Docket No. DRB 23-175

Decided: February 5, 2024

Disposition: Admonition

<i>Members</i>	Admonition	Reprimand
Gallipoli		X
Boyer	X	
Campelo	X	
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Rodriguez	X	
Total:	8	1

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel