SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-224
District Docket No. VI-2019-0014E

In the Matter of David K. Chin
An Attorney at Law

Argued
January 18, 2024

Decided
March 14, 2024

Sarabraj S. Thapar appeared on behalf of the
District VI Ethics Committee.

Respondent waived appearance for oral argument.

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Introduction

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

This matter was before us on a recommendation for a reprimand filed by the District VI Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (engaging in gross neglect); RPC 1.3 (lacking diligence); RPC 1.4(b) (failing to communicate with a client); RPC 1.16(c) (failing to comply with applicable law requiring notice to or permission of a tribunal when terminating a representation); and RPC 1.16(d) (failing to protect a client's interest upon termination of the representation).

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. At the relevant times, he maintained a practice of law in Jersey City, New Jersey. He has no prior discipline.

Facts

On September 12, 2016, respondent agreed to represent Allan Young as the plaintiff in two civil matters. The first matter involved a dispute between

Young and his neighbor (the Veras matter). The second matter involved a dispute between Young and a contractor (the Grant matter).

Respondent and Young entered into a retainer agreement, whereby Young agreed to pay him a flat fee of $5,500 toward his representation in both matters.

In October 2016, respondent filed a complaint in each case. In the months that followed, he and Young frequently communicated, by e-mail messages and telephone calls, regarding the status of both matters.

On January 12, 2017, the defendant in the Grant matter filed an answer to the complaint and a counterclaim against Young.

On April 17, 2017, the trial court referred the Grant matter for mediation. Accordingly, on May 24, 2017, respondent informed Young that mediation had been scheduled for June 28, 2017 and that Young would need to attend. Respondent also arranged to meet with Young to prepare for the session.

On June 5, 2017, the Veras matter concluded with the entry of a default judgment in Young's favor. Soon after, respondent asked Young to pay him $500 toward the outstanding balance of the $5,500 legal fee.[1] Young, however, refused, stating that he instead would pay the remaining balance, in full, after respondent completed his work on the Grant matter.

[1] According to Young, he had paid $4,500 by this time and, thus, the outstanding balance was $1,000. During the subsequent investigation and hearing, respondent stated that he could not confirm how much Young had paid by that point in the representation.

According to respondent, on the morning of June 28, 2017, he received a telephone call from a court employee who informed him that that afternoon's mediation session in the Grant matter had been adjourned. That same date, he sent an e-mail to Young, informing him of the adjournment. Young replied, requesting information about whether the mediation would be rescheduled and, more generally, about the status of the Grant matter.

At the ethics hearing, respondent stated that he could not recall whether he answered Young's June 28, 2017 e-mail. He conceded that he had not completed a mediation statement in preparation for that day's session.

Unbeknownst to respondent, the June 28 mediation session actually took place. Young attended, as did Milton Bouhoutsos, Esq., the attorney for the defendant. However, mediation did not resolve the matter.

On July 10, 2017, Young sent respondent a request, by e-mail, to contact him about both the Grant and the Veras matters. Respondent testified that he subsequently called Young, and they discussed the cases. In contrast, Young later reported to the DEC that, after he received respondent's June 28 e-mail regarding the purported cancellation of the mediation, he did not hear from respondent again until July 18, 2017.

On July 17, 2017, Young sent an e-mail to respondent, asking to meet with him. Respondent testified that he could not recall whether he contacted Young on that date.

On July 18, 2017, respondent answered a telephone call from Young. During the ensuing conversation, respondent informed Young that he would no longer represent him. Moreover, he stated that he already had filed paperwork with the court to withdraw from the representation. Later that same date, Young memorialized the telephone conversation in an e-mail to respondent.

At the subsequent ethics proceeding, respondent testified that, by July 18, 2017, he had filed with the trial court the following documents, drafts of which were entered into evidence: "NOTICE TO WITHDRAW AS COUNSEL;" "CERTIFICATION OF DAVID K CHIN IN SUPPORT OF NOTICE TO WITHDRAW AS COUNSEL;" and "CERTIFICATION OF MAILING."

The document captioned "NOTICE TO WITHDRAW" stated, in relevant part:

> **Please** Take notice that the undersigned, Withdrawing attorney for Plaintiff, Allan Young, will apply to the above named court, at the Superior Court, Hudson County, New Jersey, on Friday, _____, 2017 at 9 o'clock a.m. or as soon thereafter as counsel may be heard for an Order for David K Chin, Esq. to be relieved as Counsel for Plaintiff. Please take further notice that the undersigned shall rely upon the certification of David K Chin, Esq. in support of this motion.

> PLEASE TAKE FURTHER NOTICE that this motion is filed with the court pursuant to NJ Rule and that unless an objection by any of the parties hereto is received at least eight (8) days prior to the return date indicated herein, or unless otherwise directed by the court, the movant shall submit the within application for decision by the court upon the papers and without the necessity of oral argument.
>
> [REx.10.][2]

In his supporting certification, respondent stated, in relevant part: "I have delivered this Motion in this action by Certified Mail to Defendants' Attorney;" "I have developed serious health issues that would prevent me from representing Plaintiff effectively in this matter;" and "I have delivered this Notice in this action by Certified Mail to Plaintiff." However, in his accompanying certification of mailing, he stated that "the original Notice, Certification and all supporting papers have been filed directly with the Hudson County Motions Clerk" and "a copy of the Notice of Motion, Certification and all supporting papers have been served upon all counsel and individuals indicated in the Notice."

At the ethics hearing, respondent testified that the primary reason for his withdrawal from the representation was Young's non-payment of legal fees, and that he had informed Young that this was the reason. He also testified that he

[2] "REx." refers to respondent's exhibits that were admitted during the ethics hearing.

was having health issues when he sent the aforementioned documents to the court; however, he could not recall whether he mentioned those issues to Young.

Respondent further testified that he sent the withdrawal documents, by regular mail, to both the court and opposing counsel. He admitted that he never sent the documents to Young.

Further, the documents that respondent entered into evidence were unsigned drafts, retrieved from his computer. Respondent testified that he had not retained copies of the final, signed versions.

Moreover, only one document was dated: the unsigned supporting certification, which was dated July 25, 2017. Respondent testified that he drafted the documents "maybe [a] couple weeks after Mr. Young refused to pay me." At the time, he did not know when he would file them, because he was still hoping that "maybe Mr. Young would come to his senses . . . and pay me;" consequently, for purposes of the draft document, he entered a late-July date. He stated, however, that he actually mailed the documents to the court before his July 18, 2017 telephone conversation with Young, during which he told Young he already had filed the paperwork to withdraw from the representation.

Following the July 18, 2017 telephone conversation, Young asked respondent to refund to him $3,125 of the $4,500 legal fee Young purportedly had paid toward the representation. Respondent testified that, in late July, he

spoke to Young about the fee. Ultimately, he and Young never resolved the fee dispute. Young paid nothing more toward the flat fee, and respondent did not disgorge any portion of the fee already paid by Young.

After Young learned that respondent would no longer represent him, he chose to proceed pro se.

Respondent failed to send Young the file in the Grant matter but testified that he would have if Young had requested it. He later lost the file due to a flood.

After respondent mailed the notice and certifications described above, he continued to receive notifications, through eCourts, regarding the Grant matter. He neither read the notices nor forwarded them to Young. Moreover, he did not contact the trial court to clarify why he was still receiving eCourts notices.

On December 1, 2017, the defendant, through counsel, filed a motion for summary judgment in the Grant matter. On December 20, 2017, the trial court scheduled oral argument on the motion for January 5, 2018. Respondent, believing that he had terminated the representation, disregarded the eCourts notifications regarding the motion.

In late December 2017, the hard copy of the summary judgment motion that Bouhoutsos had served on respondent was returned to him, unclaimed. Consequently, on or about December 29, 2017, Bouhoutsos called respondent to advise him of the pendency of the motion. Respondent told Bouhoutsos that he

no longer represented Young and had filed with the court a notice to terminate the representation.

Despite receiving Bouhoutsos's call, respondent failed to contact the court to clarify why the court's information did not reflect that Young either had retained other counsel or was proceeding pro se. Thereafter, according to the eCourts docket for the Grant matter, respondent remained Young's attorney of record.

On December 29, 2017, Bouhoutsos notified the court, in writing, that he was concerned, based upon his recent communication with respondent, who claimed he no longer represented Young, that Young might not know about the pending motion for summary judgment and upcoming oral argument.

On January 5, 2018, the court granted the motion for summary judgment, which was unopposed, and entered judgment in the amount of $15,000 against Young on the counterclaim.

The Ethics Proceeding

Respondent's Motion to Dismiss

On May 12, 2022, respondent filed a motion to dismiss the complaint, asserting that the complaint failed to set forth facts sufficient to establish, by clear and convincing evidence, that he had violated the Rules of Professional Conduct. On May 31, 2022, after the hearing had concluded, the presenter opposed the motion, asserting that the complaint was legally sufficient and, further, that the evidence clearly and convincingly established that respondent had committed the charged RPC violations.

The DEC hearing panel, in connection with its final determination of the matter, denied respondent's motion to dismiss the complaint.

The Ethics Hearing

During the May 23, 2022 ethics hearing, the DEC panel heard testimony from respondent and Bouhoutsos. Young did not testify.

Respondent testified as to his understanding that, prior to the scheduling of a trial date in a civil matter, the attorney-client relationship could be terminated by "communication with . . . the client, . . . which I did, and also serving paper notices to the parties involved; in this case that's the opposing counsel and . . . the court." Thus, in his view, his representation of Young was

terminated once he had mailed the above-described documents to the court and opposing counsel, and also had received Young's July 18, 2017 e-mail, memorializing Young's understanding that respondent would no longer be representing him. Moreover, respondent believed that, by mailing the documents to the court, he automatically would be withdrawn as counsel, without needing to file a substitution of attorney.

Respondent testified that he and Young probably communicated for the last time in late July 2017. He further asserted that, about six months later, another attorney – acting on Young's behalf – sent him a complaint regarding his withdrawal from the Grant matter. He stated, however, that, before he responded to the complaint, he received a letter stating that the other attorney had withdrawn from representing Young. He then lost the correspondence due to flooding in his storage area.

Respondent admitted that he never received confirmation that the trial court had received his withdrawal documents. Moreover, he acknowledged that he never signed a substitution of attorney in connection with the Grant matter.

Bouhoutsos testified that he contacted respondent, in December 2017, after the hard copy of his motion for summary judgment was returned as unclaimed. By then, because Young had attended the mediation without counsel, Bouhoutsos suspected that respondent had withdrawn from the representation.

However, as of December 2017, eCourts did not reflect that respondent had withdrawn, nor did Bouhoutsos recall receiving documentation of respondent's withdrawal. He testified that he sent the court his December 29, 2017 e-mail, memorializing his conversation with respondent, "out of an abundance of caution" and to address any potential procedural defect.

The Parties' Written Summations

In his post-hearing summation, respondent argued, through counsel, that he had provided Young with competent, diligent representation prior to the termination of the attorney-client relationship. He pointed out that he successfully represented Young in the Veras matter and asserted that he would have done the same in the Grant matter, had Young paid the $500 fee that purportedly came due in June 2017. In addition, he emphasized that, for more than five months before the summary judgment motion in Grant was heard or the $15,000 judgment was entered, Young had known that respondent no longer represented him. Respondent also asserted that, by January 2018, when the summary judgment motion was heard, the court and defense counsel also were aware that his representation had ended.

Citing Waite v. Doe, 204 N.J. Super. 632, 636 (App. Div. 1985), respondent argued that the mailing of his "notice to withdraw" to the court gave

rise to a presumption that the court received the document, and that this presumption had not been rebutted. In addition, respondent asserted that he had complied with the requirements to withdraw from representation, pursuant to R. 1:11-2(a)(1), by mailing his notice to withdraw to the court, notifying Young, and informing opposing counsel. He urged that, because the court did not schedule a trial date until after he withdrew, he was not required to file a motion to withdraw.

Further, he asserted that he had no subsequent obligation to contact the court to confirm that his withdrawal documents had been received or to keep Young apprised about developments in the Grant matter. Moreover, relying on In re Kasdan, 115 N.J. 472 (1989), he urged that, even if he had been obligated to take these steps, his failure to do so constituted "an isolated and minor attorney omission," not gross neglect. He also asserted that no evidence contradicted his testimony that the court informed him that the June 2017 mediation had been cancelled and that, even if he was mistaken regarding the mediation, it was "an honest (one-time) mistake that evinced no intentional deceit."

As for his communication with Young, respondent highlighted evidence that he had replied promptly to e-mails and had many telephone calls with Young while representing him. He argued that, after July 2017, when he

terminated the attorney-client relationship, RPC 1.4(b) no longer applied, because Young no longer was his client.

Further, citing In re Schwartz, 99 N.J. 510, 519 (1985), respondent asserted that he had reasonably protected Young's interests "prior to terminating representation by affording [Young] an opportunity to retain new counsel after providing notice of his intent to withdraw" and the grounds for his withdrawal. Relying on Jacobs v. Pendel, 98 N.J. Super. 252, 255 (App. Div. 1967), he also argued that, after Young refused to pay the $500 that he requested upon completion of the Veras matter, he had "justifiable cause" to withdraw. Moreover, on July 18, 2017, Young had confirmed, in writing, that he understood that respondent no longer was his attorney.

Respondent reiterated that he believed Young had retained new counsel because he later received correspondence from an attorney, acting on Young's behalf, "threatening to sue [r]espondent." In addition, among other points, he noted that Young's case was not dismissed for lack of prosecution.

In conclusion, respondent urged the DEC to dismiss all charges.

In turn, the presenter argued that respondent failed to satisfy the R. 1.11-2(a)(1) requirements because he (1) admittedly neither signed a substitution of attorney from a superseding attorney nor filed a substitution of attorney stating that Young would appear pro se; (2) similarly acknowledged that he never filed

a motion to withdraw as counsel; and (3) never received a court order relieving him as counsel.[3] Moreover, the presenter asserted that his "mailing of the notice of substitution of counsel is not believable by the clear and convincing evidence, and either way would not have been sufficient if the court had received same." Because respondent had provided no documentation of actually moving to withdraw, according to the presenter, his statement that everyone was aware of his withdrawal was incorrect; rather, he only made known his intent to withdraw, without, in fact, withdrawing.

Further, the presenter urged that, even if the DEC believed that respondent had mailed[4] his notice to the court, he never informed the court whether there would be substituting counsel or Young would move forward pro se, as R. 1.11-2(a)(1) requires. Finally, the presenter asserted that respondent never received Young's consent to the termination of his representation, and that his December 2017 telephone conversation with Bouhoutsos did not constitute proper notice of the termination.

[3] The presenter also argued that, pursuant to Jacobs, 98 N.J. Super.at 255, an attorney must not only give proper notice but also obtain leave of court to withdraw from a case. However, R. 1:11-2 now permits counsel to withdraw without leave of court under enumerated circumstances, with the client's consent and provided that other specified conditions are met.

[4] In July 2017, the Hudson County vicinage (where Grant was docketed) still accepted paper filings by attorneys in civil matters. It was two months later, in September 2017, that the vicinage began requiring electronic filing. Notice to the Bar, Hudson Vicinage – Mandatory eCourts and Non-Acceptance of Paper Filings – eCourts Civil, DC (Special Civil), and Foreclosure (July 28, 2017).

Next, the presenter asserted that respondent failed to protect Young's interests upon termination of the representation by not properly advising Young of his intent to withdraw (even if he did advise him of same); failing to continue the representation until Young either retained new counsel or agreed to proceed pro se; failing to forward to Young the notice of the pending summary judgment motion; and, upon becoming aware of that motion, failing to request an adjournment of the motion so that Young could either retain another attorney or respond to the motion pro se. The presenter argued that respondent's inaction, following his improper and unilateral attempt to terminate the representation, resulted in the $15,000 judgment against Young and the dismissal of Young's affirmative claims.

The presenter further argued that, starting on June 28, 2017, respondent was grossly negligent, lacked diligence, and failed to communicate with Young. He asserted that respondent "[i]nitially . . . was grossly negligent in failing to properly withdraw as counsel," and continued to exhibit gross negligence by failing to inform Young about the motion for summary judgment, failed to call the court to inquire as to why he was still receiving court notices and remained attorney of record, and failed to turn over the file so that Young could at least attempt to oppose the motion. In addition, he stopped working on the Grant matter after June 2017, failed to prepare a mediation statement, and falsely

advised the client not to attend the mediation. Finally, the presenter urged that respondent's successful representation of Young in the Veras matter, as well as his work on the Grant matter before June 28, 2017, did not defeat the charged RPC violations, which stemmed from respondent's handling of the Grant matter on and after that date.

The DEC Findings

The DEC found, by clear and convincing evidence, that respondent violated RPC 1.3; RPC 1.4(b); RPC 1.16(c); and RPC 1.16(d). The DEC determined, however, that the presenter had not proven, by clear and convincing evidence, that respondent violated RPC 1.1(a).

Specifically, the DEC determined that respondent failed to properly terminate his representation of Young in compliance with R. 1:11-2. First, the DEC highlighted that respondent stated he had already filed documentation to withdraw as counsel when he spoke to Young by telephone on July 18, 2017. Thus, the DEC concluded that "it appears [Young] did not provide consent to the withdrawal as counsel prior to the alleged filing."

Noting that respondent had not produced a signed or stamped copy of the documents that he purportedly filed with the court, the DEC further determined that, even if he had properly filed the draft documents that he introduced into

evidence, they failed to comply with the requirements of R. 1:11-2(a) for a substitution of attorney. Specifically, the documents neither designated superseding counsel nor stated that Young was pro se. Moreover, although one document was titled "Notice to Withdraw as Counsel," its body appeared to be a notice of motion, wherein respondent sought a court order that would relieve him as counsel. However, the court never entered such an order. The DEC also found no evidence that respondent provided a copy of the withdrawal documents to the mediator, as required by R. 1:11-2(a).

Thus, the DEC concluded that "[a]ll proofs confirm that, despite his belief to the contrary, respondent did not properly terminate his relationship with [Young]. Instead, he remained counsel of record for [Young]." Further, although he continued to receive communications from the trial court regarding Young's matter, he failed to contact the court to confirm that his notice to withdraw had been filed, inquire whether the court had granted his request to be relieved as counsel, or clarify why he was still receiving court notices. In addition, rather than reviewing and forwarding the court's notices to Young, he chose to ignore them after he had mailed his notice to withdraw.

In mitigation, the DEC noted that respondent was a long-time member of the bar with no prior discipline. In aggravation, the DEC weighed the fact that a $15,000 judgment had been entered against Young in the Grant matter.

Balancing the nature of respondent's violations, as well as mitigating and aggravating factors, the DEC recommended a reprimand for his misconduct.

The Parties' Positions Before the Board

At oral argument before us, the DEC again urged the imposition of a reprimand for respondent's misconduct, as recommended by the hearing panel. The DEC reiterated its arguments that respondent unilaterally decided to terminate the representation, without the client's consent; that he never effectuated his withdrawal; that he wrongfully ignored the eCourts notices that he continued to receive, did not follow up with the court, and failed to apprise respondent of the notices; and, most egregiously, did not alert Young to the filing of the motion for summary judgement, even after opposing counsel alerted him that he was still listed as attorney of record in the matter. The DEC further argued that respondent's inaction in the latter regard resulted in the trial court's order granting the defendant's motion for summary judgment, unopposed, and resulting in the dismissal of Young's claims and the entry of a $15,000 judgment against him on the counterclaim.

Respondent waived oral argument but stated he did not agree with the DEC's conclusions or recommendations. He did not file a brief for our consideration.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a de novo review of the record, we find that the DEC's determination that respondent violated RPC 1.4(b), RPC 1.16(c), and RPC 1.16(d) is supported by clear and convincing evidence. However, we respectfully part company with the DEC's determination that respondent also violated RPC 1.3. Finally, we determine, in accord with the DEC, that there is insufficient evidence to establish that respondent violated RPC 1.1(a).

RPC 1.4(b) provides that an attorney "shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Here, the evidence clearly and convincingly demonstrates that respondent failed to keep Young reasonably informed about the status of the Grant matter, including when he ceased work on the matter and, further, mailed documents to the court, purportedly effectuating his withdrawal, before informing Young that he was terminating the representation. Young's three July 2017 e-mail messages to respondent expressed Young's belief that respondent continued to represent him, until the two spoke by telephone on July 18. Furthermore, it was Young – not respondent – who initiated the conversation wherein Young learned that respondent purportedly had effectuated his

withdrawal by mailing documents to the court. Thus, respondent failed to keep Young timely apprised of the status of his representation in the Grant matter.

RPC 1.16(c) requires, in relevant part, that "[a] lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation." Here, the applicable Court Rule provides that:

> prior to the fixing of a trial date in a civil action, an attorney may withdraw upon the client's consent provided a substitution of attorney is filed naming the substituted attorney or indicating that the client will appear pro se. If the client will appear pro se, the withdrawing attorney shall file a substitution.
>
> [R. 1:11-2(a)(1).]

Respondent failed to file the required substitution of attorney. Even crediting his testimony that he prepared and mailed to the court and opposing counsel signed and dated versions of the draft documents admitted into evidence during the disciplinary hearing, none of those documents was a substitution of attorney; none "nam[ed] the substituted attorney;" and none "indicat[ed] that the client will appear pro se," as R. 1:11-2(a) requires. In addition, whereas R. 1:11-2(a) permits an attorney's withdrawal "upon the client's consent," here, respondent sent the paperwork to the court without obtaining Young's consent. Young's after-the-fact acquiescence, upon being told by respondent that he already had filed the paperwork to withdraw, did not constitute the "consent" required by R. 1:11-2(a).

Although respondent testified that he sought to withdrawal from the representation, in part, based upon Young's failure to pay an outstanding $500 payment toward the $5,500 legal fee, their e-mail exchanges on this topic contained no statement by Young approving termination of the attorney-client relationship. A fee dispute may be grounds for a court to grant an attorney's request to be relieved as counsel, depending on the timing of the request and other factors. See Pendel, 98 N.J. Super. at 255. Here, however, respondent did not reference the fee dispute in his withdrawal documents. Even more significantly, the trial court never entered an order granting respondent's request to be relieved as counsel.

Based on the above facts, respondent failed to comply with R. 1:11-2(a), in clear violation of RPC 1.16(c).

Moreover, respondent failed to protect Young's interests upon termination of the representation, as RPC 1.16(d) requires, in multiple respects. By his own admission, he sought to effectuate termination of the representation without first alerting Young. Indeed, it was only when Young called him that he then informed Young he already had filed documents to effectuate the termination.

Further, respondent admittedly failed to serve the withdrawal documents on Young, thus depriving Young of notice and opportunity to oppose respondent's request for a court order that would relieve him as counsel.

Moreover, he apparently misrepresented to the court either that he had "delivered this Notice . . . by Certified Mail to Plaintiff" or had "served [it] by regular mail upon all . . . individuals indicated in the Notice," as he set forth in his draft supporting certification and certificate of mailing, respectively. In the alternative, he failed to include required certifications with his notice to the court.

Respondent also failed to provide Young with the case file. Even if Young did not request the file, respondent had a duty to surrender it upon terminating the representation.

Most significantly, respondent failed to protect Young's interests by taking no steps to address the fact that he remained Young's attorney of record in the Grant matter and, thus, continued to receive the eCourts notices. Exemplifying his utter disregard for his duties upon termination of the representation, he took no steps whatsoever to alert Young to the December 2017 motion for summary judgment and the January 5, 2018 oral argument on the motion – even after opposing counsel contacted him precisely because he remained attorney of record. See Strauss v. Fost, 209 N.J. Super. 490, 497-98 (App. Div. 1986) (legal malpractice matter; after an attorney's representation was terminated by the client, the attorney failed to withdraw from the representation; subsequently, the attorney received notice of a motion to dismiss the former client's claim but

failed to take any action, and the client's claim was dismissed with prejudice; the Appellate Division, citing RPC 1.16(d), found that the attorney's "decision to do nothing was palpably incorrect" and that he should have notified the former client of the motion, given that there was "no indication" that the client had been served personally with the motion or had otherwise retained new counsel "with respect to [the] motion").

We determine, however, that respondent did not violate RPC 1.1(a) and RPC 1.3, as the complaint alleged. These charges stemmed from respondent's acts and omissions on and after June 28, 2017, when mediation took place and, specifically, alleged that respondent failed to prepare a mediation statement and, further, provided Young with incorrect information when he informed him that the June 28 mediation session had been cancelled. However, respondent's sworn testimony that he received a call, informing him that the mediation was cancelled or adjourned, was uncontroverted. Thus, we lack clear and convincing evidence that respondent acted in a grossly negligent manner when he informed Young that the session would not take place that day. Similarly, because there is no evidence that he was required to prepare a mediation statement, the record falls short of establishing that his failure to do so constituted unethical conduct.

Further, respondent did not violate RPC 1.1(a) and RPC 1.3, as the complaint alleged, based on his failure to effectuate his withdrawal from the

representation and his subsequent inaction on Young's behalf after he purportedly withdrew. Respondent's misconduct in this respect is more precisely and fully addressed by the charged violations of RPC 1.16(c) and (d), governing the requirements for properly terminating a client's representation and the duties owed to a client upon termination.

In sum, we find that respondent violated RPC 1.4(b); RPC 1.16(c); and RPC 1.16(d). We determine to dismiss the charges that he violated RPC 1.1(a) and RPC 1.3. The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

Attorneys who fail to adequately communicate with their clients, in conjunction with other, less serious misconduct, are admonished. See In the Matter of Kourtney Anna Borchers, DRB 21-237 (February 22, 2022) (the attorney violated RPC 1.4(b) by repeatedly failing, for weeks, to reply to a client's reasonable requests for information; the attorney also violated RPC 1.3; prior admonition).

However, a reprimand may result, depending on the presence of other misconduct and aggravating factors. See In re Clayman, __ N.J. __ (2022), 2022 N.J. LEXIS 1168 (in a consent matter, the attorney failed to inform his client of

the postponement of a meeting with the bankruptcy trustee and, thereafter, that immediate action on the client's part had been necessary to reschedule the meeting; the attorney also failed to explain to his client the possible ramifications of inaction related to the required debt payment in advance of the first confirmation hearing with the bankruptcy trustee; violations of RPC 1.4(b) and RPC 1.4(c) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation); prior censure), and In re Levasseur, 244 N.J. 410 (2020) (in a default matter, the attorney failed to return a client's multiple telephone, e-mail, and text messages; he also ignored the DEC's request that he submit a written reply to the grievance; violations of RPC 1.4(b) and RPC 8.1(b) (failing to cooperate with disciplinary authorities); prior reprimand).

The few disciplinary cases that have addressed violations of RPC 1.16(c) involved attorneys who improperly terminated representation on the eve of trial or midway through proceedings. See In re Kern, 135 N.J. 463 (1994) (reprimand for an attorney who, after twenty-six days of a medical license hearing before the Office of Administrative Law (OAL), moved to be relieved as counsel on the basis that his client had failed to pay fees and costs then due, in the amount of approximately $85,000; the judge denied the attorney's motion; when the attorney's several vigorous attempts to be relieved as counsel proved

unsuccessful, he refused to appear – in derogation of the judge's order – when the hearing resumed; in mitigation, the attorney had an unblemished disciplinary record, found himself in the difficult position of being forced "to continue to represent individuals who engaged in a pattern of threats against him," and sincerely believed that "it was ethically impermissible for him to continue the representation"), and In re Saavedra, 162 N.J. 108 (1999) (three-month suspension for an attorney who unilaterally withdrew from representing a minor in a delinquency matter, for which a trial date had been set; the attorney also violated RPC 1.1(a), RPC 1.3, and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice); prior private reprimand (now an admonition), reprimand, and three-month suspension).

Here, the Grant matter had not yet been scheduled for trial when respondent improperly terminated the representation. Thus, in our view, respondent's improper withdrawal was less disruptive than the attorneys' misconduct in Kern and Saavedra. However, unlike respondent, the reprimanded attorney in Kern presented significant mitigating factors. Considered in full, Kern suggests that an admonition or reprimand is the appropriate quantum of discipline for respondent's violation of RPC 1.16(c).

Attorneys who violate RPC 1.16(d), even when accompanied by other, non-serious ethics infractions, receive admonitions. See In the Matter of Karim

K. Arzadi, DRB 23-169 (October 26, 2023) (the attorney, whose representation was terminated by the client, thereafter failed to file either a substitution of counsel or a motion to be relieved as counsel; during the next several months, while the attorney remained counsel of record, the client, who sought to proceed pro se, was unable to pursue settlement negotiations with the opposing party, and the client's lawsuit ultimately was dismissed for failure to prosecute; violations of RPC 1.16(a)(3) (failing to withdraw from the representation despite being discharged by the client) and RPC 1.16(d)), and In the Matter of Gary S. Lewis, DRB 21-247 (February 18, 2022) (the attorney failed to notify his clients of the sale of his law practice to another attorney, thereby depriving his clients of the opportunity to retain other counsel and to retrieve their property and files; violations of RPC 1.16(d) and RPC 1.17(c) (improperly selling a law practice); among other mitigating factors, we weighed that the attorney's sale of his law practice may have resulted from his spouse's emergent medical situation; he cooperated with disciplinary authorities by stipulating to the facts underlying his misconduct; and, in his forty-six years at the bar, he had one prior admonition, twelve years earlier, for unrelated misconduct).

Based on the above disciplinary precedent, the baseline quantum of discipline for respondent's misconduct is an admonition or reprimand. To craft

the appropriate discipline in this case, however, we also consider aggravating and mitigating factors.

In aggravation, while respondent remained attorney of record, Young's affirmative claims were dismissed when the court granted the motion for summary judgment, which was unopposed. As respondent pointed out, he had told Young, five months earlier, that he was withdrawing from the Grant matter; however, the more salient fact is that, by failing to withdraw properly and disregarding subsequent court notices and filings that continued to be sent to him (and not to Young), he deprived Young of timely notice of the motion that disposed of Young's claims.[5]

In mitigation, this is respondent's first brush with the disciplinary system in his nineteen years at the bar.

Conclusion

On balance, we determine that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

[5] The trial court decided the counterclaim, resulting in a $15,000 judgment against Young, on the same date that the court granted the motion for summary judgment. However, the record before us does not contain information about the counterclaim, its merits, or proceedings specifically addressing this aspect of Young's case.

Chair Gallipoli and Member Campelo voted to impose a censure.

Member Rivera 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 K. Chin
Docket No. DRB 23-224

Argued: January 18, 2024

Decided: March 14, 2024

Disposition: Reprimand

Members	Reprimand	Censure	Absent
Gallipoli		X	
Boyer	X		
Campelo		X	
Hoberman	X		
Joseph	X		
Menaker	X		
Petrou	X		
Rivera			X
Rodriquez	X		
Total:	6	2	1

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