SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket Nos. DRB 23-239 and 23-240
District Docket Nos. XI-2023-0004E
and XI-2023-0005E

In the Matters of Nabil Nadim Kassem
An Attorney at Law

Decided
March 28, 2024

Certification of the Record

Table of Contents

Introduction

These matters were before us on certifications of the record filed by the District XI Ethics Committee (the DEC), pursuant to R. 1:20-4(f), and were consolidated for our review.

The respective formal ethics complaints addressed respondent's conduct in connection with the same civil litigation. In the matter docketed as DRB 23-239 (the Dollar matter), the 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 comply with reasonable requests for information); and RPC 8.1(b) (two instances – failing to cooperate with disciplinary authorities).[1]

In the matter docketed as DRB 23-240 (the Jones matter), the complaint charged respondent with having violated RPC 1.3; RPC 1.4(b); and RPC 8.1(b) (two instances); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

[1] Due to respondent's failure to file answers to the formal ethics complaints underlying DRB 23-239 and DRB 23-240, and on notice to respondent, the DEC amended both complaints to include a second RPC 8.1(b) charge.

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

Respondent earned admission to the New Jersey bar in 1994 and to the New York bar in 1995. At all relevant times, he maintained a practice of law in Clifton, New Jersey.

Respondent has an extensive disciplinary history. On March 18, 2008, the Court censured him for his violation of RPC 8.4(b) (committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects), following his conviction for possession of cocaine, a controlled dangerous substance (CDS), and his successful completion of a pretrial intervention program. In re Kassem, 194 N.J. 182 (2008) (Kassem I).

On December 9, 2021, the Court suspended respondent for three months, retroactive to February 7, 2020, for another violation of RPC 8.4(b), following his conviction for possession of heroin, another CDS. In re Kassem, 249 N.J. 97 (2021) (Kassem II). As a condition precedent to his reinstatement, the Court required respondent to provide proof of fitness to practice law.

On March 13, 2023, the Court temporarily suspended respondent from the practice of law for his failure to cooperate with the Office of Attorney Ethics (the OAE) in an unrelated matter. In re Kassem, __ N.J. __ (2023).

On June 13, 2023, the Court reprimanded respondent, in consolidated default matters, for his violation of RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 8.1(b) (four instances); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). In re Kassem, 254 N.J. 307 (2023) (Kassem III). Specifically, following his three-month suspension in Kassem II, respondent failed to file the R. 1:20-20 affidavit required of all suspended attorneys and, further, committed recordkeeping infractions.

To date, respondent remains suspended from the practice of law pursuant to both his temporary and disciplinary suspensions.

Moreover, effective February 7, 2020, the Court declared respondent administratively ineligible to practice law in New Jersey for failing to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection.

Effective September 13, 2022, the Court again declared respondent administratively ineligible to practice law in New Jersey for failing to file the Interest on Lawyers Trust Accounts registration statement.

Respondent remains administratively ineligible, on both bases, to date.

Service of Process

Service of process was proper in both matters.

On May 3, 2023, the DEC sent copies of the formal ethics complaints, under separate cover letters, by certified and regular mail, to respondent's home address of record.[2] According to the United States Postal Service (the USPS) tracking system, the certified mail was delivered to an individual at respondent's home address on May 12, 2023. The return receipt card and the regular mail were not returned to the DEC.

Respondent failed to file the required answers by the May 24, 2023 deadline and failed to request an extension of time to do so. Consequently, on September 27, 2023, the DEC sent two additional letters to respondent's home address, by certified and regular mail, informing him that, unless he filed verified answers to the complaints within five days of the date of the letter, the allegations of the complaints would be deemed admitted, the records would be certified to us for the imposition of discipline, and the complaints would be deemed amended to charge a willful violation of RPC 8.1(b) by reason of his failure to answer. According to the USPS tracking system, the carrier attempted to deliver the certified mail to respondent's home address on September 30,

[2] Due to his suspended status, the DEC served respondent at his confidential home address of record.

2023, but delivery was refused. The regular mail was returned to the DEC marked "REFUSED."

Regarding both matters, as of October 4, 2023, respondent had not filed answers to the complaints, and the time within which he was required to do so had expired. Accordingly, the DEC certified both matters to us as defaults.

On November 27, 2023, Chief Counsel to the Board sent a letter to respondent's home address, by certified and regular mail, with another copy sent by electronic mail, informing him that these matters were scheduled before us on January 18, 2024 and that any motion to vacate the defaults must be filed by December 18, 2023. The certified mail was returned to the Office of Board Counsel (the OBC) as unclaimed. The letter sent via regular mail was not returned to the OBC, and delivery to respondent's e-mail address was completed.

Moreover, on December 4, 2023, the OBC published a notice in the New Jersey Law Journal, stating that we would review these matters on January 18, 2024. The notice informed respondent that, unless he filed a motion to vacate the defaults by December 18, 2023, his prior failure to answer the complaints would remain deemed an admission of the allegations of the complaints.

Respondent failed to file a motion to vacate the defaults.

Facts

We now turn to the allegations of the complaints.

As noted previously, the formal ethics complaints relate to the same civil action. On May 8, 2017, respondent filed a personal injury complaint in the Superior Court of New Jersey, Law Division, Passaic County, on behalf of Corey Dollar and Khadija Jones, in connection with an automobile accident. On November 1, 2018, the personal injury action proceeded to arbitration, at which time Dollar and Jones were awarded $45,000 and $15,000 in damages, respectively. On February 8, 2019, the parties stipulated to the dismissal of the civil action.

Following the arbitration, however, respondent failed to coordinate the payment of the arbitration awards to Dollar and Jones. Moreover, he failed to respond to their requests for information and, in fact, ceased all communication.

Further, in the Jones matter, respondent prepared a Settlement Closing Statement in connection with the litigation, which specified that an outstanding bill, incurred by Jones, would be paid from the settlement proceeds. The Settlement Closing Statement indicated that the bill would be paid by check number 6872, leading Jones to believe that bill was, or would be, satisfied. However, respondent never paid the bill.

In March 2021, more than two years after the arbitration and the dismissal of their civil action, Dollar and Jones were forced to retain new counsel to obtain the arbitration awards owed to them. Moreover, Dollar and Jones both alleged that respondent failed to produce their files despite repeated requests from them, as well as requests from their new counsel. As a result of respondent's failure to act or respond to their inquiries, Dollar and Jones were deprived of their awards until late 2021 or early 2022, more than three years after the arbitration.

On July 19, 2021, Dollar and Jones filed separate ethics grievances against respondent. On January 7, 2022, the DEC investigator sent a letter to respondent directing that he provide a written reply to the grievances. Respondent failed to reply to the DEC's request for information.

Subsequently, on February 9, 2022, the DEC investigator sent a second letter to respondent, again seeking his reply to the grievances. On February 21, 2022, respondent sent a facsimile to the investigator, acknowledging that he had received both letters sent to his office address, but claiming that the letters did not include any explanation of his alleged violations. He provided the investigator with a residential address and asked that all future correspondence be sent there.

On March 11, 2022, the DEC investigator forwarded both grievances to respondent, at the residential address he provided, and directed that he submit a written reply no later than March 25, 2022. Respondent failed to reply.

Based on the above facts, the formal ethics complaints alleged that respondent violated RPC 1.3 (two instances) by failing to take any affirmative steps to secure his clients' arbitration awards; RPC 1.4(b) (two instances) by failing to communicate with Dollar and Jones regarding the status of their case or to respond to reasonable requests for information; and RPC 8.1(b) (four instances) by failing to comply with the ethics investigator's requests for information or to submit a written reply to the grievances and, further, by failing to file a verified answer to the formal ethics complaints. Additionally, in the Jones matter, the complaint alleged respondent violated RPC 8.4(c) by misrepresenting to Jones that an outstanding bill had been satisfied on her behalf when, in fact, it remained unpaid.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following our review of the record, we find that the facts set forth in the complaints support all but one of the charged RPC violations by clear and convincing evidence. Respondent's failure to file an answer to the complaints 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, each charge in the complaint must be supported by sufficient facts to determine that unethical conduct has occurred. See In re Pena, 164 N.J. 222 (2000) (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 ethical violations found were established by clear and convincing evidence"); see also R. 1:20-4(b) (entitled "Contents of Complaint" and requiring, among other notice pleading requirements, that a complaint "shall set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct"). We will, therefore, decline to find a violation of a Rule of Professional Conduct where the facts within the certified record do not constitute clear and convincing evidence that the respondent violated a specific Rule. See, e.g., In the Matter of Philip J. Morin, III, DRB 21-020 (September 9, 2021) at 26-27 (declining to find a charged RPC 3.3(a)(4) violation based upon insufficient evidence in the record), so ordered, 250 N.J. 184 (2022); In the Matter of Christopher West Hyde, DRB 16-385 (June 1, 2017) at 7 (declining to find a charged RPC 1.5(b) violation due to the absence of factual support in the record), so ordered, 231 N.J. 195 (2017); In the Matter of Brian R. Decker, DRB 16-331 (May 12, 2017) at 5 (declining to find a charged

RPC 8.4(d) violation due to the absence of factual support in the record), so ordered, 231 N.J. 132 (2017).

Here, we conclude that the facts recited in the complaints support the allegations that respondent violated RPC 1.3 (two instances); RPC 1.4(b) (two instances); and RPC 8.1(b) (four instances). We determine, however, that the evidence does not clearly and convincingly support the charged violation of RPC 8.4(c).

Specifically, respondent violated RPC 1.3, which requires a lawyer to "act with reasonable diligence and promptness in representing a client," by altogether failing to take any action to secure payment of the damages awarded to Dollar and Jones in connection with the arbitration proceedings. Respondent's inaction deprived both of his clients of their damage awards for approximately three years. Respondent further exacerbated that delay by failing to turn over the clients' files, despite repeated requests from the clients and their new counsel.

Making matters worse, respondent also ceased all communication with his clients and ignored their repeated attempts to contact him. Respondent, thus, violated RPC 1.4(b), which requires a lawyer to "keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

RPC 8.1(b) requires an attorney to "respond to a lawful demand for information from . . . [a] disciplinary authority." Respondent violated this Rule by wholly failing to cooperate with both DEC investigations and, subsequently, failing to file verified answers to the complaints.

By contrast, we determine that there is insufficient evidence in the record to support the allegation that respondent violated RPC 8.4(c), which prohibits an attorney from engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation." A violation of RPC 8.4(c) requires intent. See In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011). Here, respondent was charged with having violated this Rule by purportedly making a misrepresentation to Jones, through a Settlement Closing Statement he prepared, by noting that an outstanding bill would be paid from the settlement proceeds and, further, by specifically identifying a check number. The complaint alleged that respondent, by virtue of this notation, had misrepresented that the bill was satisfied when, in fact, it was never paid.

In our view, however, the factual record in this case fails to establish that respondent possessed the requisite intent to deceive, specifically, by intentionally misrepresenting or falsely stating to Jones that he paid the outstanding bill when, in fact, he had not. Indeed, the record lacks no evidence that respondent was the closing agent responsible for remitting checks for the

payment of bills incurred during the litigation; nor did the complaint specify whether the check, identified only by check number on the settlement statement, was to be drawn on respondent's bank account. It was also unclear, on the record before us, whether the funds earmarked to pay the outstanding bill were, in fact, deducted from the settlement proceeds. In the absence of such evidence, the RPC 8.4(c) charge cannot be supported.

In sum, we find that respondent violated RPC 1.3 (two instances); RPC 1.4(b) (two instances); and RPC 8.1(b) (four instances). However, for the reasons set forth above, we determine to dismiss the charge that respondent violated RPC 8.4(c).

Quantum of Discipline

Conduct involving gross neglect (not charged here), lack of diligence, and failure to communicate with clients ordinarily results in an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, the presence of additional violations, and the attorney's disciplinary history. See In the Matter of Mark A. Molz, DRB 22-102 (September 26, 2022) (admonition for an attorney whose failure to file a personal injury complaint allowed the applicable statute of limitations for his clients' cause of action to expire; approximately twenty months after the clients

had approved the proposed complaint for filing, the attorney failed to reply to the clients' e-mail, which outlined the clients' unsuccessful efforts, spanning three months, to obtain an update on their case; the record lacked any proof that the attorney had advised his clients that he had failed to file their lawsuit prior to the expiration of the statute of limitations; in mitigation, the attorney had an otherwise unblemished thirty-five year career), and In re Burro, 235 N.J. 413 (2018) (reprimand for an attorney who grossly neglected 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, in violation of RPC 1.1(a) and RPC 1.3; the attorney also failed to keep the client reasonably informed about events in the case (RPC 1.4(b)); to turn over the client file upon termination of the representation (RPC 1.16(d)); and to cooperate with the ethics investigation (RPC 8.1(b)); in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand (now, an admonition); in mitigation, the attorney expressed remorse and had suffered a stroke that forced him to cease practicing law).

Based on the foregoing disciplinary precedent, respondent's mishandling of his clients' matters, standing alone, could be met with a reprimand. Respondent, however, committed additional misconduct by failing to cooperate

with the disciplinary authorities.

When an attorney fails to cooperate with disciplinary authorities, and previously has been disciplined, a reprimand or a censure has been imposed. See In re Moses, 227 N.J. 628 (2017) (censure for an attorney who, despite numerous extensions of time, failed to provide a reply to the ethics grievances or produce his client files; the underlying RPC 1.3 and RPC 1.4(b) charges were dismissed; however, we found that a reprimand was warranted due to the attorney's failure to learn from prior discipline, and his continued failure to cooperate; the attorney's extensive ethics history, including a prior admonition, two reprimands, a censure, and a three-month suspension, necessitated enhancement of the discipline from a reprimand to a censure; in mitigation, we considered the attorney's medical issues, his divorce, and the recent loss of his son), and In re Larkins, 217 N.J. 20 (2014) (reprimand, in a default matter, for an attorney who failed to reply to the ethics investigator's attempts to obtain information about the grievance and failed to file an answer to the formal ethics complaint; although we noted that a single violation of RPC 8.1(b), in a default matter, does not necessitate enhancement of the discipline from an admonition to a reprimand, a reprimand was imposed based on a prior admonition and, more significantly, a 2013 censure, also in a default matter, in which the attorney had failed to cooperate with an ethics investigation).

Our decision in Moses is instructive. In Moses, the attorney was charged with violations of RPC 1.3 and RPC 1.4(b), as well as RPC 8.1(b) due to his failure to cooperate with disciplinary authorities. The facts of that case warranted a dismissal of the RPC 1.3 and RPC 1.4(b) charges. Nevertheless, we proceeded with imposing discipline based solely on the attorney's continued failure to cooperate with disciplinary authorities. We considered, in mitigation, respondent's recent loss of his son, his medical issues, and his divorce. We noted that, despite being given numerous extensions of time to reply due to the personal issues he was facing, the attorney still failed to cooperate with disciplinary authorities. In aggravation, we emphasized that the attorney's disciplinary history clearly demonstrated his failure to learn from his prior, similar mistakes and, further, that it was the third disciplinary proceeding with which he failed to cooperate. We determined, on that basis alone, that an admonition was insufficient to address the otherwise minor misconduct. We further enhanced the discipline based on the attorney's extensive disciplinary history, which included a prior admonition, two reprimands, a censure, and a three-month suspension. Given the attorney's failure to learn from prior mistakes and his significant disciplinary history, we determined that a censure was the appropriate quantum of discipline.

Here, like the attorney in Moses, respondent has an extensive disciplinary history, including a reprimand, a censure, and a three-month suspension. Unlike the attorney in Moses, however, where the additional charges of unethical conduct were dismissed, there is clear and convincing evidence that respondent violated RPC 1.3 and RPC 1.4(b). Thus, like the attorney in Moses, respondent's misconduct could be met with a censure.

Accordingly, based on the foregoing disciplinary precedent and Moses in particular, we determine that the baseline level of discipline for his misconduct is a censure. To craft the appropriate discipline, however, we also consider mitigating and aggravating factors, and whether progressive discipline is warranted.

There is no mitigation to consider.

It is well-settled that harm to the client constitutes an aggravating factor. In re Calpin, 217 N.J. 617 (2014). Here, respondent's prolonged inaction caused a three-year delay in the clients' receipt of their respective arbitration awards. Further, respondent's inaction forced the clients to retain new counsel.

Moreover, respondent failed to file answers to the formal ethics complaints and allowed both matters to proceed as defaults. An attorney'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).

We would be remiss if we did not emphasize that this matter represents respondent's fourth disciplinary matter before us, and his second consolidated default matter in the same year. Consequently, an enhancement from a censure to a term of suspension is warranted. The Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such scenarios, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system).

An attorney's cooperation with the disciplinary system (and discipline for failing to do so) serves as the cornerstone for the public's confidence that it will be protected from nefarious attorneys. Respondent has exhibited disdain for disciplinary authorities through his established pattern of failing to cooperate. Despite his prior discipline, respondent refused to reform his conduct in any attempt to avoid additional disciplinary actions. It is unmistakable that respondent believes his conduct need not conform with RPC 8.1(b). See In re Brown, 248 N.J. 476 (2021) (we observed that the attorney's obstinate refusal to participate, in any way, in the disciplinary process across five client matters was "the clearest of indications that she has no desire to practice law in New

Jersey;" we recommended the attorney's disbarment based, in part, on her utter lack of regard for the disciplinary system with which she was duty-bound to cooperate but rebuffed at every turn).

To that end, a review of respondent's disciplinary timeline is appropriate considering the overlap in the timing and the nature of the misconduct.

In March 2008, the Court censured respondent, in Kassem I, for his violation of RPC 8.4(b), following his conviction for possession of cocaine. The OAE and respondent consented to a censure, despite a three-month suspension generally being the appropriate measure of discipline for an attorney's possession of a CDS. See, e.g., In re McKeon, 185 N.J. 247 (2005) (possession of cocaine); In re Holland, 194 N.J. 165 (2008) (possession of cocaine); In re Sarmiento, 194 N.J. 164 (2008) (possession of ecstasy); In re Musto, 152 N.J. 165 (1997) (possession of cocaine and heroin). When deciding to consent to the lesser discipline, the OAE considered the presence of significant mitigating factors including: respondent, at the time, had no prior discipline; he reported the incident to the OAE, as R. 1:20-13(a)(1) requires, and fully cooperated with disciplinary authorities; he successfully completed pre-trial intervention; and he engaged in rehabilitation efforts, including attending more than 475 meetings of Lawyers Concerned for Lawyers (LCL) and other groups, assuming leadership roles in the LCL, speaking to law students to warn against the dangers of drug

use, mentoring a law student, and completing the Lawyers Assistance Program counseling plan.

Despite his rehabilitation efforts following his discipline in Kassem I, respondent reported to the OAE, in December 2019, that he had been arrested in Kings County, New York for possession of heroin. The Court, however, did not enter its disciplinary Order in Kassem II until December 9, 2021, at which time the Court suspended respondent for three months, retroactive to February 7, 2020. The Court imposed the condition that respondent provide proof of fitness to practice law prior to his reinstatement.

The discipline imposed in both Kassem I and Kassem II pre-dated respondent's acknowledged receipt of the DEC's initial contact letters in the instant matter; yet he ignored the multiple requests from the DEC for his written reply to the grievances. Even the filing of the formal ethics complaints failed to secure respondent's compliance.

At the same time the DEC attempted to contact respondent regarding the instant matter, the OAE also attempted to contact him in connection with the recordkeeping violations identified in Kassem III which, like the instant matter, proceeded as a consolidated default matter. Thus, considering the timeline of his repeated involvement with the disciplinary system and, specifically, the timing of his misconduct across the DEC's investigation in the instant matter, and the

OAE's investigation in Kassem III, respondent clearly had a heightened awareness of his obligations under the Rules of Professional Conduct to cooperate with the disciplinary authorities attempting to address is conduct.

Conclusion

On balance, given respondent's alarming pattern of refusing to cooperate with the disciplinary process despite his heightened awareness that he must do so, in combination with his disciplinary history, we determine that a three-month suspension is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Chair Gallipoli and Member Menaker voted to impose a one-year suspension.

Members Joseph and Petrou voted to impose a six-month suspension.

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 Matters of Nabil Nadim Kassem
Docket Nos. DRB 23-239 and 23-240

Decided: January 18, 2024

Disposition: Three-month suspension

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

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