

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-011
District Docket No. IIIB-2022-0004E

In the Matter of Richard Donnell Robinson
An Attorney at Law

Argued
March 21, 2024

Decided
July 15, 2024

Stephen A. Addezio, II appeared on behalf of the
District IIIB 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 censure filed by the District IIIB Ethics Committee (the DEC). 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), and RPC 8.1(b) (failing to cooperate with disciplinary authorities).

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

Respondent earned admission to the New Jersey bar in 2004. At all relevant times, he maintained a practice of law in Mount Holly, New Jersey.

On March 21, 2023, the Court reprimanded respondent, in consolidated default matters, for his violation of RPC 1.1(a) (engaging in gross neglect); RPC 1.3; RPC 1.4(a) (failing to inform a prospective client of how, when, and where the client may communicate with the attorney); RPC 1.4(c) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions); and RPC 8.1(b). In re Robinson, 253 N.J. 328 (2023) (Robinson I).

In that matter, respondent mishandled two client matters between 2015 and 2020. In the Matter of Richard Donnell Robinson, DRB 22-062 (August 23, 2022) at 4-8. He also failed to cooperate with the 2020 disciplinary investigation into one of the matters and, ultimately, failed to file a verified answer to either of the formal ethics complaints. Id. at 2, 4-6, 13-14.

On January 23, 2024, in a second default matter, the Court reprimanded respondent for his violation of RPC 8.1(b) (two instances) by failing to cooperate with a DEC investigation and, subsequently, failing to file an answer to the complaint. In re Robinson, 256 N.J. 328 (2024) (Robinson II).

Facts

On or about May 14, 2020, A.O. met with respondent in the Deptford Mall parking lot and retained him to represent her in connection with an expungement matter. At that time, she paid respondent \$500 in cash and agreed to pay an additional \$500 once she received the order of expungement. Respondent provided A.O. with a text message receipt for the initial \$500 payment. He did not, however, provide A.O. with a written retainer agreement.¹

¹ Although respondent failed to provide A.O. with a written retainer agreement, as RPC 1.5(b) requires, he was not charged with having violated that Rule.

A.O. is a nurse and, at the time, told respondent that she needed the expungement completed as soon as possible because her criminal record was preventing her from applying for nursing positions in hospitals.² Despite his knowledge that A.O. needed the expungement completed promptly, respondent failed to file the expungement petition with the court until approximately eight months later, in January 2021. A.O. testified that she was not aware that the filing occurred eight months after she retained respondent because he initially told her he had filed the petition, but that “the date was being postponed.”³

A.O. testified that respondent initially communicated with her and told her there were court delays with her petition due to the pandemic. She called respondent numerous times and sent multiple text messages, attempting to secure a status update and find out why her matter had not been scheduled with the court. Eventually, respondent stopped replying to A.O.’s requests for updates and, as of April 2021, he ceased all communication with her.

The record does not reveal when A.O. attempted to obtain information related to her case. However, at some point, A.O. contacted the Superior Court

² During the ethics hearing, A.O. testified that her criminal record prohibited her from applying to certain hospital positions, and instead forced her to take lower paying positions.

³ The record indicated that respondent did not e-file the petition until April 15, 2021. It is unclear why there was an additional four-month delay with the electronic filing. Respondent was not charged with a violation of RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) for purportedly misrepresenting to A.O. that he had filed the expungement petition months earlier.

directly to find out if her matter had been scheduled. A.O. testified that she attempted to contact respondent to tell him she was unable to obtain any information from the court regarding her case because he remained the attorney of record; however, he failed to reply.

On March 31, 2022, the Superior Court granted the petition and entered an order of expungement.

On April 11, 2022, more than one year after respondent filed the expungement petition, A.O. went to the police station to obtain a copy of her criminal record. She was informed that there was no record of her prior criminal conviction, which meant that her criminal record successfully had been expunged. On April 15, 2022, A.O. notified respondent, via text message, that her record had been expunged, but she did not receive a reply to her text.

On May 2, 2022, respondent's paralegal forwarded the expungement order to A.O.; however, the mailing was addressed to A.O.'s former residence in Sicklerville, New Jersey, where she had not lived for eighteen years. At the time she met and retained respondent, A.O. still lived in Sicklerville, but at a different address. A.O. testified that, when she met respondent in the mall parking lot, she had given him her correct address, along with her e-mail address and telephone number. She further testified that she remained at that address until she moved, in October 2021, at which time she had her mail forwarded to her

new address. A.O.'s cellular telephone number and e-mail address did not change during the relevant period. A.O. testified that she did not receive the order of expungement until she received the copy attached to respondent's answer in this disciplinary matter.

On December 11, 2021, A.O. filed an ethics grievance against respondent. On February 11 and February 14, 2022, the DEC investigator forwarded the grievance to respondent, by certified and regular mail, to both his home and office addresses of record.⁴

The letters sent to respondent's office address were returned to the DEC investigator, marked "RETURN TO SENDER – NO MAIL RECEPTACLE – UNABLE TO FORWARD." The letter sent to respondent's home address by regular mail was returned, and the certified mail was returned marked "RETURN TO SENDER – NOT DELIVERABLE AS ADDRESSED – UNABLE TO FORWARD."⁵

On June 16, 2022, the DEC filed a formal ethics complaint, which it sent, by certified mail, to respondent's office address of record. On October 5, 2022,

⁴ The image of the letters in the record reflects a handwritten correction to the street number for respondent's office address printed on the envelope.

⁵ It is unclear from the record why the letter sent to respondent's home address, by regular mail, was returned because the record did not include an image of the envelope.

the Office of Attorney Ethics (the OAE) received respondent's verified answer.⁶ In his answer, respondent confirmed that both the home address and the handwritten correction to the office address were accurate, and stated he did not understand why the DEC mailings to both addresses were returned as undeliverable.

The hearing panel scheduled a case management conference for May 2, 2023 and sent notice to respondent's office address by regular mail. However, respondent failed to appear. The panel rescheduled the conference for May 23, 2023. The panel sent notice of the rescheduled conference in the same manner as the prior notice, but the regular mail was returned marked "UNDELIVERABLE." Again, respondent failed to appear. The panel conducted the conference in respondent's absence and issued a case management order, which included the dates for all submissions and the date of the ethics hearing. The panel forwarded the order, via certified and regular mail, to respondent's office address of record. The regular mail was not returned to the DEC, but the certified mail was returned marked "UNCLAIMED."

⁶ Respondent's verified answer was undated, and it is unclear from the record when he submitted it to the DEC. However, the OAE stamped it "received" on October 5, 2022.

At the July 19, 2023 ethics hearing, the hearing panel heard testimony from A.O. Respondent failed to appear.⁷

The Hearing Panel's Findings

The hearing panel found, by clear and convincing evidence, that respondent violated RPC 1.3 and RPC 1.4(b). Specifically, the panel determined that, given his eight-month delay in filing the petition for expungement, and his failure to monitor the status of the petition through the e-filing system, respondent failed to act with diligence in representing A.O. Further, the panel found that respondent failed to answer A.O.'s repeated requests for information and to keep her reasonably informed of the status of the petition.

The panel determined that the record lacked clear and convincing evidence that respondent violated RPC 8.1(b) in connection with his participation in the initial DEC investigation. However, the panel found that respondent violated RPC 8.1(b) by failing to appear for the ethics hearing, as R. 1:20-6(c)(2)(D) requires, despite proper notice.

The hearing panel did not consider any mitigating factors.

⁷ Pursuant to R. 1:20-7(1), a respondent's absence from a hearing shall not delay the orderly processing of the case, provided the respondent had been served.

In aggravation, the hearing panel considered respondent's prior discipline for similar misconduct. Although the panel acknowledged that the misconduct in the instant matter occurred contemporaneously with respondent's misconduct in the prior disciplinary matter, the panel found that he was establishing a pattern of misconduct, which suggested a lack of remorse. The panel further considered respondent's failure to cooperate with the disciplinary authorities only months after the Court reprimanded him for violating the same RPCs.

The panel also considered, in aggravation, the harm to the client. Specifically, the panel found that respondent knew time was of the essence for filing A.O.'s petition. The panel noted that, during the two years that elapsed from when she initially retained respondent to when the expungement was granted, A.O. was precluded from maximizing her employment opportunities during the pandemic.

Next, the panel found that respondent was aware of the ongoing disciplinary matter against him and the ongoing issues with his mail deliveries. The panel noted that respondent's only interaction with the disciplinary authorities was the submission of his verified answer. The panel determined that respondent made no further attempts to participate with the DEC or the OAE.

Last, the panel considered respondent's failure to execute a writing setting forth the basis of his fee arrangement with A.O., in violation of RPC 1.5(b). The

panel acknowledged that respondent had not been charged with violating this Rule and, thus, did not make a finding as to that violation. Rather, the panel considered it in aggravation.

In view of the aggravating factors, as well as respondent's prior reprimand in Robinson I for similar misconduct, the hearing panel recommended that a censure be imposed.

The Parties' Submissions to the Board

Neither party submitted a brief for our consideration.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Turning to our de novo review of the record, we are satisfied that the DEC's conclusion that respondent committed unethical conduct is fully supported by clear and convincing evidence. We did not, however, adopt all the DEC's findings.

RPC 1.3 requires a lawyer to "act with reasonable diligence and promptness in representing a client." The record clearly and convincingly demonstrates that respondent lacked reasonable diligence and failed to act with promptness in handling A.O.'s expungement petition, in violation of RPC 1.3.

Specifically, he delayed the initial filing for eight months, despite knowing that time was of the essence for his client. Respondent further exacerbated that delay by failing to monitor the status of the petition. As a result, he did not forward a copy of the expungement order to A.O. for more than a month after the petition was granted. Making matters worse, respondent forwarded the order to an address A.O. had not resided at for eighteen years, despite A.O. having provided him with her current address, telephone number, and e-mail address during their initial meeting.

Respondent failed to inform A.O. that there was a delay in the filing of her petition and, instead, led her to believe that the petition had been filed. Respondent subsequently ceased all communication with A.O. and ignored her repeated attempts to contact him, in violation of RPC 1.4(b).

We are in accord with the DEC's determination that, due to apparent issues with the mail delivery, it cannot be conclusively established that respondent received the grievance at either his home or office address. Therefore, we determine to dismiss the charge that respondent violated RPC 8.1(b) by failing to cooperate with the underlying DEC investigation.

However, we respectfully part ways with the DEC's determination that respondent violated RPC 8.1(b) by failing to appear at the ethics hearing. The formal ethics complaint did not charge respondent with RPC 8.1(b) under that

theory. Because respondent was never put on notice of such an allegation, nor afforded the opportunity to mount any defense to it, as due process so plainly requires, we cannot consider respondent's subsequent uncharged conduct to support a violation of any RPC charged in the complaint. See R. 1:20-4(b); In re Roberson, 210 N.J. 220 (2012). However, as detailed below, we do consider his additional conduct in aggravation. See In re Steiert, 201 N.J. 119 (2014) (evidence of unethical conduct contained in the record can be considered in aggravation, even though such unethical conduct was not charged in the formal ethics complaint); In re Spina, 121 N.J. 378, 385 (1990) (in aggravation, the Court considered the attorney's admitted misuse of other client funds for which he had not been charged).

In sum, we find that respondent violated RPC 1.3 and RPC 1.4(b). We determine to dismiss, for lack of clear and convincing evidence, the allegation that respondent violated RPC 8.1(b). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

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 return 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).

A censure may be appropriate in cases where an attorney's gross neglect, lack of diligence, and failure to communicate are accompanied by serious aggravating factors, such as the presence of additional, serious ethics infractions, an egregious disciplinary history, severe prejudice to the client, or a lack of contrition. See In re Jaffe, 230 N.J. 456 (2017) (censure for an attorney who, in consolidated client matters, violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.16(d); RPC 8.1(b); and RPC 8.4(c) and (d) (engaging in conduct prejudicial to the administration of justice); in the first client matter, the attorney failed to file an expungement petition for his client, despite his client's numerous attempts to obtain information regarding his case; following the client's termination of the representation, the attorney immediately filed with the court a deficient expungement petition, without his client's knowledge, that misrepresented to the court that he still represented his client; in the second client matter, the attorney failed to diligently defend his client in a criminal matter, ignored numerous requests for information regarding the case, and failed to provide his client or replacement counsel with the client file; in aggravation, the attorney failed to cooperate with disciplinary authorities in the first client matter, repeatedly engaged in dismissive treatment toward his clients, and previously

had been reprimanded twice – the first time for gross neglect, lack of diligence, failure to communicate, and failure to cooperate with disciplinary authorities, and the second time for lack of candor to the tribunal).

Here, respondent's misconduct did not implicate as many RPCs as the attorney's misconduct in Jaffe and did not involve misrepresentations to a court. Based upon the above precedent, and considering the timeline of respondent's disciplinary history, set forth in detail below, respondent's misconduct does not warrant a censure as the baseline discipline. Thus, we conclude that the baseline discipline for respondent's misconduct is a reprimand. However, to craft the appropriate discipline in this case, we must consider both mitigating and aggravating factors.

In our view, there are no mitigating factors to consider.

It is well-settled that harm to the client constitutes an aggravating factor. In the Matter of Brian Le Bon Calpin, DRB 13-152 (Oct. 23, 2013), so ordered 217 N.J. 617 (2014). Here, respondent's prolonged inaction in filing the expungement petition added an eight-month delay to an already delayed court process due to the pandemic, which only served to extend the time the client was precluded from applying for higher paying nursing positions. Absent the client's own efforts to determine the disposition of her petition, respondent's failure to

forward the order to the client's correct address would have caused additional delay in the client learning that the expungement had been granted.

In further aggravation, this matter represents respondent's third disciplinary matter before us in the past two years (comprising misconduct across four client matters). 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).

To that end, a review of respondent's disciplinary timeline is appropriate, particularly in view of its proximity to respondent's instant misconduct.

On March 21, 2023, in Robinson I, respondent was reprimanded, in consolidated default matters involving two clients, for his violations of RPC 1.1(a); RPC 1.3; RPC 1.4(a); RPC 1.4(c); and RPC 8.1(b). In the first client matter comprising Robinson I, respondent was retained in January 2015 to appeal an unfavorable determination in family court. Respondent, however, failed to appear at scheduled court hearings or to file the appeal for which he specifically had been retained. In the Matter of Richard Donnell Robinson, DRB 22-062 (August 23, 2022) at 10-11. On December 13, 2019, the client filed an ethics grievance against respondent; however, respondent failed to cooperate

with the 2020 disciplinary investigation and failed to file a verified answer to the formal ethics complaint, which was served on or about December 20, 2021. Id. at 13.

In the second client matter comprising Robinson I, respondent was retained in 2019 to represent a client in connection with both a bankruptcy matter and a municipal court matter. Id. at 6. Following the bankruptcy filing, respondent failed to appear at two separate creditors' meetings. Although he arranged for another attorney to appear at one of the meetings on his behalf, that attorney had no knowledge of the client's matter and, therefore, could not adequately respond to the trustee's questions. Id. at 6-7. Respondent failed to file documents required to complete the bankruptcy petition, forcing the client to file the documents herself. Thereafter, in the municipal court matter, respondent failed to appear for a court hearing without notifying the municipal court or the client of his unavailability. Id. at 7. At a subsequent hearing, respondent appeared but failed to present any defense on his client's behalf. Respondent also failed to explain to the client the alternatives to entering a guilty plea in municipal court and precluded the client from making informed decisions about the municipal court matter. He also failed to keep the client apprised of the status of her matters and failed to reply to reasonable requests for information. On or about May 29, 2020, that client filed an ethics grievance

against respondent; however, respondent failed to cooperate with the disciplinary investigation and failed to file a verified answer to the formal ethics complaint.

For the totality of respondent's misconduct across both client matters comprising Robinson I, we determined that a reprimand was the appropriate quantum of discipline.

Ten months later, on January 29, 2024, in Robinson II, the Court reprimanded respondent for his violation of RPC 8.1(b). In that matter, which also preceded as a default, respondent was retained by a client, in June 2020, to recoup money the client had paid to Chase Mortgage for flood insurance that the client was not obligated to maintain. Despite receiving authorization to speak to Chase on behalf of the client, respondent never contacted Chase regarding the client's matter. Whenever the client asked respondent about his case, respondent only replied with excuses. As of January 27, 2021, respondent had ceased all communication. Respondent then failed to cooperate with the DEC's 2022 investigation and failed to answer the complaint, which was served on or about September 28, 2022.

Although we determined to dismiss, due to insufficient evidence, the charges pursuant to RPC 1.3 or RPC 8.4(d), we concluded that the record clearly and convincingly demonstrated respondent's violation of RPC 8.1(b), based on

his failure to cooperate with the investigation and to file an answer to the complaint. In the Matter of Richard Donnell Robinson, DRB 23-032 (July 5, 2023) at 11-12.

In determining that a reprimand was the appropriate quantum of discipline, we considered, in aggravation, that respondent had allowed the matter to proceed as a default and, further, that he had heightened awareness of his obligation to cooperate with disciplinary authorities based on his prior default in Robinson I. We did not, however, apply principles of progressive discipline because the Court had not entered its Order in Robinson I until March 21, 2023 – more than six months after the DEC had filed the complaint underlying Robinson II.

Here, the misconduct occurred between May 2020 and May 2022 and the DEC filed its complaint on June 16, 2022. Thus, as in Robinson II, we are unable to apply principles of progressive discipline because the Court’s disciplinary Orders in Robinson I (March 21, 2023) and Robinson II (January 29, 2024) were not entered at the time the DEC filed its complaint.

However, because the underlying ethics investigations for Robinson I commenced in or around February 2020 and continued through December 2020, respondent had a heightened awareness of his obligation under the Rules of Professional Conduct to cooperate with the disciplinary authorities in

connection with the investigation in the instant matter, which commenced in early 2022. Further, the misconduct underpinning both client matters in Robinson I was similar to the misconduct in the instant matter and occurred between January 2015 and February 2020, a date range that precedes the instant misconduct. Thus, respondent was aware that his mishandling of client matters was under scrutiny at the time he accepted the representation in the instant matter and, subsequently, mishandled it.

Finally, although respondent was not charged with having violated RPC 8.4(c) by purportedly misrepresenting to his client that he had filed the expungement petition months earlier, we consider it in aggravation. Specifically, the client testified that respondent misrepresented that he had filed the expungement petition in or around May 2020 when, in fact, the record revealed that respondent did not file it until January 2021 and did not e-file it until April 15, 2021. The unexcused delay in filing the petition caused significant harm to the client by preventing her from applying for higher paying positions. We also consider, in aggravation, respondent's failure to appear at the ethics hearing, despite proper notice.

Conclusion

On balance, considering the presence of serious aggravating factors and the absence of any mitigating factors, we determine that a censure is the quantum of discipline necessary to protect the public and to preserve confidence in the bar.

Member Menaker voted to impose a reprimand.

Member Campelo 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 Richard Donnell Robinson
Docket No. DRB 24-011

Argued: March 21, 2024

Decided: July 15, 2024

Disposition: Censure

<i>Members</i>	Censure	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