SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-103
District Docket No. IIB-2021-0003E

In the Matter of Edward Glen Johnson
An Attorney at Law

Argued
September 19, 2024

Decided
October 23, 2024

Daryl U. Fox appeared on behalf of the
District IIB Ethics Committee.

Scott B. Piekarsky appeared on behalf of respondent.

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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 IIB Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.3 (lacking diligence); 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(b) (two instances – failing to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information); RPC 1.5(b) (failing to set forth, in writing, the basis or rate of the legal fee); RPC 7.5(c) (utilizing an improper law firm name); and RPC 7.5(d) (including, in the law firm name, an individual without responsibility and liability for the firm's performance of legal services).

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

Ethics History

Respondent earned admission to the New Jersey bar in 1989 and to the Pennsylvania bar in 1988. During the relevant timeframe, he maintained a practice of law in Hackensack, New Jersey. He has prior discipline in New Jersey.

Johnson I

On August 4, 2009, respondent received an admonition for failing to safeguard closing proceeds in connection with a real estate transaction, in violation of RPC 1.15(a) (failing to safeguard client funds). In the Matter of Edward Glen Johnson, DRB 09-049 (Johnson I). Specifically, while representing two individuals in connection with the sale of a home, he allowed one of his clients to invest the entirety of the closing proceeds, including the portion belonging to the second client, without the second client's knowledge or permission. Id. at 1.

In imposing only an admonition, we weighed, in mitigation, respondent's lack of prior discipline and the fact that he was unaware that the second client had not given the first client permission to invest her funds. Ibid. Upon

discovering his misstep, respondent reimbursed the second client using his own funds. Ibid.

Johnson II

On December 6, 2018, the Court reprimanded respondent for negligently misappropriating client funds, in violation of RPC 1.15(a), and for failing to comply with the recordkeeping requirements of R. 1:21-6, in violation of RPC 1.15(d). In re Johnson, 236 N.J. 121 (2018) (Johnson II). Specifically, at various intervals between March 2011 and May 2015, respondent negligently misappropriated client funds, in connection with four client matters, in amounts ranging from $958.51 to $35,918.73. In the Matter of Edward Glen Johnson, DRB 18-041 (August 1, 2018) at 8, 19-20. Additionally, respondent failed to conduct monthly three-way reconciliations of his attorney trust account, as R. 1:21-6(c)(1)(H) requires, and failed to deposit earned legal fees in his attorney business account, as R. 1:21-6(a)(2) requires. Id. at 20. We determined that a reprimand was the appropriate quantum of discipline, given respondent's prior admonition in Johnson I and the lack of compelling mitigation. Id. at 24-25.

We now turn to the matter currently before us.

Facts

The facts of this matter are largely undisputed, although respondent denied having violated the charged Rules of Professional Conduct.

In or around February 2019, Derrick Griffin, Esq., a licensed New Jersey attorney, retained respondent, his longtime friend, to file an action to recover a $995 security deposit from a former landlord. Griffin's one-year tenancy with his landlord spanned January 2017 through January 2018.

During a February 2019 telephone conversation, Griffin agreed to pay respondent a $750 flat fee for the representation, $375 of which constituted respondent's retainer payment. However, respondent, who previously had not represented Griffin, failed to memorialize the fee agreement in writing. Moreover, during their February 2019 telephone conversation, respondent agreed to advise Griffin when he needed to appear for trial.

Griffin subsequently provided respondent a package of documents relating to his prior tenancy, including his lease agreement. Thereafter, in May 2019, respondent negotiated Griffin's $375 retainer fee check.[1]

On October 10, 2019, respondent, without having "conduct[ed] any

[1] The record before us is unclear whether Griffin paid respondent the remaining $375 toward his legal fee.

further conversations with [Griffin]," filed a lawsuit on Griffin's behalf, in the Superior Court of New Jersey, Special Civil Part, seeking to recover $1,990 from Griffin's former landlord, pursuant to N.J.S.A. 46:8-21.1.[2] The Superior Court, however, rejected respondent's submission because he had failed to file the lawsuit via e-Courts and to submit a "small claims summons" listing the landlord's address.

Four months later, in February 2020, respondent re-filed Griffin's lawsuit and accompanying summons, via eCourts, and the Superior Court scheduled a March 11, 2020 trial date for the matter. However, on February 21, 2020, approximately two weeks before the scheduled trial date, the Superior Court dismissed Griffin's lawsuit because the court was unable to serve the landlord at the address respondent had provided on the summons. In the notice dismissing Griffin's lawsuit, the Superior Court notified respondent that the matter was "subject to automatic restoration if service of the summons" on the landlord could be completed "within one year." Following the dismissal of the lawsuit, respondent failed to contact Griffin regarding the whereabouts of his former landlord or to make any effort to properly refile Griffin's lawsuit.

[2] Generally, pursuant to N.J.S.A. 46:8-21.1, a court "shall award . . . double the amount" of the security deposit, together with the "full costs of any action," to a tenant who prevails in a lawsuit to recover a security deposit.

In his June 21, 2021 submission to the DEC, respondent maintained that he initially had directed his secretary to contact Griffin upon the filing of his lawsuit. However, upon receiving the court's dismissal notice, respondent claimed that a "decision was made not to call [Griffin] until the [c]ourt set a firm date."

Meanwhile, between April and November 2019, Griffin made several attempts to contact respondent, via text message, regarding the status of his case. On January 6, 2020, following respondent's failure to reply, Griffin sent respondent a letter, via certified and regular mail, to his former office address, stating that respondent had failed to reply to his inquiries and requesting that respondent return his client file. On January 10, 2020, the certified mail was redirected to respondent's current office address, where the certified mail receipt was signed by "Johnson." Respondent, however, failed to reply to Griffin.

In his May 27, 2021 submission to the DEC, Griffin maintained that he had sent his January 6, 2020 letter to respondent's address listed in the "most current" edition of the New Jersey Lawyer's Diary. In respondent's June 21, 2021 submission to the DEC, he insinuated that his secretary had signed the certified mail receipt with the name "Johnson." Moreover, in his verified answer, although respondent admitted that he never replied to Griffin's

inquiries, he claimed he did not receive those messages. Respondent, however, conceded that, following their February 2019 conversation at the outset of the representation, he failed to update Griffin regarding the status of his lawsuit, including the fact it had been dismissed, twice, primarily because he had failed to follow proper filing procedures to ensure that Griffin's landlord could be served by the court.[3]

On December 3, 2020, Griffin filed an ethics grievance against respondent for failing to reply to his inquiries regarding the status of his matter. In his May 27, 2021 submission to the DEC, Griffin emphasized that respondent had failed to contact him "at any stage of the proceeding" and that, until he had reviewed respondent's reply to the grievance, he was unaware that his lawsuit had been dismissed. Griffin also underscored how respondent had taken "almost eight months" from the date of his retention "to file a routine" lawsuit, which delay, in Griffin's view, "arguably jeopardized service of process through [respondent's] slackness."

During the ethics hearing, Griffin declined to testify, under oath, because he no longer wished "to offer any testimony against my former good friend."

[3] During the presenter's opening statement to the hearing panel, she asserted that respondent's final conversation with Griffin concerning the representation occurred on March 18, 2019, when respondent informed Griffin, via telephone, that his lawsuit had not yet been filed but that he "would take care of it right away."

Griffin, however, made a statement that, although respondent had fallen "off course" and "ignored" his matter to his "detriment," he "felt sympathy" for respondent, his friend of "almost forty years." Griffin also noted that respondent could have communicated his mishandling of the matter to him "with just a phone call." Griffin requested that the hearing panel dismiss the formal ethics complaint or, at most, recommend the imposition of an admonition to "put the matter behind me."

On June 1, 2021, following his reply to Griffin's ethics grievance, respondent sent Griffin a letter enclosing his client file underlying the representation.

In his verified answer, respondent admitted the facts underlying his mishandling of Griffin's lawsuit but denied having received Griffin's messages requesting updates regarding the status of his matter. In his submissions to the DEC, respondent maintained that, had he received "either calls or correspondence from . . . Griffin, [he] would have" replied. Respondent also alleged that he never received Griffin's text messages "possibly due to [his] phone being turned off on Wednesdays and Thursdays [during] [c]ourt [h]earings." Respondent represented that his mobile telephone "has a tendency to drop message and calls when it is turned off." Respondent, however, argued

that Griffin "could have called" his office and spoken with his secretary. Although respondent conceded that he never informed Griffin of how, when, and where Griffin could communicate with him, respondent denied having violated RPC 1.4(a) and RPC 1.4(b) based on his view that Griffin, as his friend and as an attorney, knew where and how to contact him and "knew how to gather the necessary information."

Additionally, respondent denied having violated RPC 1.5(b) based on his assertion that Griffin had acknowledged, "in writing," his $750 flat legal fee by paying his $375 retainer fee. Finally, respondent denied having violated RPC 1.3 because, in his view, he successfully filed Griffin's lawsuit and was only unsuccessful in ensuring that the landlord could be summoned by the court.

Respondent urged, in mitigation, his cooperation with the DEC, his good reputation and character, and his remorse and contrition. Respondent also emphasized that, for the past seventeen years, he has served as a municipal prosecutor and, for the past eighteen years, he has represented patients in civil commitment proceedings in psychiatric hospitals. Further, respondent alleged that the "mistakes" he had made during the representation occurred while he was suffering from health issues. Finally, respondent apologized to Griffin for his actions.

The Ethics Proceeding

The Pre-Hearing Motion to Dismiss the Attorney Advertising RPCs

On August 31, 2023, prior to the commencement of the ethics hearing in this matter, the presenter filed with the hearing panel chair a motion to dismiss counts six and seven of the formal ethics complaint, pursuant to R. 1:20-5(d)(1). Those counts alleged that respondent had violated RPC 7.5(c) and RPC 7.5(d) by maintaining an improper law firm name – specifically, "Johnson & Johnson, Esqs." According to the formal ethics complaint, at some point during respondent's legal career, his sister, a lawyer sharing his surname, practiced law at his firm. In his verified answer, respondent conceded that, for the past ten years, his sister had not been associated with his firm in any capacity. Respondent, however, denied having violated RPC 7.5(c) and RPC 7.5(d) based on his claim that his sister had "retired from [his] firm's practice." See RPC 7.5(c) ("[a] law firm name shall not contain the name of any person not actively associated with the firm as an attorney, other than that of a person . . . who ha[s] ceased to be associated with the firm through death or retirement").

In the presenter's motion to dismiss, she urged the dismissal of counts six and seven of the formal ethics complaint, on jurisdictional grounds, based on her view that R. 1:19A-4 grants "exclusive jurisdiction of matters relating to

RPC 7.5 to the New Jersey Supreme Court Committee on Advertising." On September 26, 2023, the panel chair issued an order granting the presenter's motion and dismissing counts six and seven "for lack of jurisdiction."

The Parties' Post-Hearing Submissions

In his summation letters to the hearing panel, respondent urged the dismissal of the formal ethics complaint, noting Griffin's decision declining to provide testimony, under oath, during the ethics hearing. Respondent argued that, based on the absence of any witness testimony or a "verified" ethics complaint, there was insufficient "legally competent," "clear and convincing evidence" to find him guilty of unethical conduct.[4] Alternatively, if the hearing panel declined to dismiss the complaint, respondent argued that his conduct warranted no more than an admonition, considering his extensive mitigating factors and that his prior disciplinary matters involved unrelated misconduct.

In the presenter's summation brief, she argued that the exhibits admitted into evidence during the ethics hearing and respondent's "verified" admissions

[4] By contrast, during the ethics hearing, respondent, through counsel, stated that, following Griffin's decision declining to testify under oath, the hearing panel could "consider the matter based on the documents submitted."

to virtually all the facts underlying the complaint provided more than sufficient evidence to sustain the charges of unethical conduct.

Specifically, although respondent denied having violated RPC 1.5(b), the presenter argued that he had conceded, in his verified answer, that he failed to set forth, in writing, the basis of his legal fee to Griffin. Similarly, despite respondent's claim that he had not received Griffin's messages requesting updates on the status of his matter, the presenter argued that respondent admitted he made no attempt to independently communicate with Griffin regarding the developments of his case, in violation of RPC 1.4(b). Moreover, the presenter asserted that respondent violated RPC 1.4(a) by failing to advise Griffin regarding the means by which to communicate with him, causing Griffin to send respondent a letter, to his old office address, requesting updates on his case.

Finally, the presenter argued that respondent violated RPC 1.3 by taking nearly eight months to file a straightforward lawsuit, which the Superior Court rejected based on his failure to "follow proper filing procedure[s]." The presenter also emphasized that it took respondent an additional four months to refile the lawsuit, which the court again dismissed because he failed to provide a valid service address for Griffin's former landlord. After Griffin's lawsuit was dismissed a second time, respondent failed to attempt to refile the lawsuit and,

instead, returned Griffin's client file to him, in June 2021, more than two years after he had been retained.

The presenter did not offer a recommendation to the hearing panel concerning the appropriate quantum of discipline for respondent's conduct.

The Hearing Panel's Findings

As a threshold matter, the hearing panel rejected respondent's argument that he could not be found guilty of having committed unethical conduct based primarily on his admissions in his verified answer. The hearing panel emphasized that respondent filed a "verified" answer in which he "certified that his responses to the [c]omplaint were true." Accordingly, the hearing panel found no reason why it could not rely on respondent's "verified responses as evidence of wrongdoing."

The hearing panel determined that respondent violated RPC 1.3 by mishandling Griffin's lawsuit. Specifically, respondent failed to file Griffin's lawsuit against his landlord "within a reasonable period of time after [Griffin had] retained him." The hearing panel noted that respondent waited eight months to file the complaint before taking another several months to re-file the action after the Superior Court dismissed the original complaint for failing to adhere to

proper filing procedures. The hearing panel found that respondent, thereafter, made no attempt to communicate with Griffin upon discovering that the court had dismissed the complaint a second time because the landlord could not be properly summoned. The hearing panel stated that, by the time respondent returned Griffin's file to him, the one-year period in which he could have reinstated his complaint had expired.

Additionally, the hearing panel found that respondent violated RPC 1.5(b) by failing to set forth, in writing, the basis of his legal fee to Griffin. Regardless of whether Griffin understood the fee arrangement, the hearing panel noted that respondent "indisputably failed" to fulfill his obligation to communicate, in writing, the basis of his legal fee.

Further, the hearing panel found that respondent violated RPC 1.4(a) by failing to inform Griffin of the means by which to communicate with him. The hearing panel stated that Griffin appeared to have been unaware of respondent's current office address, given that he sent his January 6, 2020 letter to respondent's former address. However, even if Griffin had been aware of respondent's correct office address, the hearing panel found that respondent failed to fulfill his obligation to advise Griffin of how, when, and where to communicate with him.

Moreover, the hearing panel determined that respondent violated RPC 1.4(b) by failing to keep Griffin informed of the status of his matter. The hearing panel found that, regardless of Griffin's status as an attorney or whether respondent had, in fact, received Griffin's inquiries concerning his matter, respondent failed to apprise Griffin of developments in his case.

However, the hearing panel dismissed, for lack of clear and convincing evidence, the charge that respondent violated RPC 1.4(b) a second time by failing to promptly reply to Griffin's requests for information. Because the parties disputed whether respondent had, in fact, received Griffin's communications and, given the absence of any corroborating evidence, the hearing panel found no basis to sustain the second RPC 1.4(b) charge.

In recommending the imposition of a reprimand, the hearing panel weighed, in aggravation, respondent's disciplinary history, consisting of a prior admonition, in Johnson I, and a reprimand, in Johnson II. Although the hearing panel found that respondent had apologized for his wrongdoing and "testified to certain mitigating factors," including experiencing health issues at the time of his misconduct, it found that respondent "ha[d] failed to learn from his past mistakes." Consequently, although respondent's misconduct might "ordinarily support an admonition," the hearing panel found that enhanced discipline – in

the form of a reprimand – was appropriate based on respondent's disciplinary history.

The Parties' Positions Before the Board

At oral argument and in his written submission to us, respondent argued that Griffin, as a member of the bar, "was fully able to check on" the status of his case without the assistance of counsel. Respondent also underscored how he was suffering from serious medical issues during the timeframe of his misconduct. Additionally, he reiterated his view that, because Griffin declined to testify during the ethics hearing, and because the formal ethics complaint was not "verified," the record before us contained insufficient "legally competent" evidence to establish, by clear and convincing evidence, that he committed unethical conduct.

Alternatively, respondent urged the imposition of an admonition based on his remorse and contrition; his good reputation and character; his cooperation with disciplinary authorities; and his extensive service as a municipal prosecutor and as an advocate in civil commitment proceedings. He also noted how some of his conduct had occurred during the COVID-19 pandemic. Finally, he argued that the hearing panel improperly concluded that his disciplinary history

demonstrated that he had failed to learn from his past mistakes, asserting that his prior ethics matters involved unrelated misconduct.

The presenter, in her written submission and during oral argument, urged us to adopt the hearing panel's findings and recommendation to impose a reprimand. Additionally, based on respondent's admissions in his verified answer and the exhibits entered in evidence during the ethics hearing, the presenter argued that the record before us contained more than satisfactory legally competent evidence to establish that respondent committed the charged unethical conduct. The presenter also argued that, contrary to respondent's assertion, the majority of his misconduct did not occur during the COVID-19 pandemic. Moreover, the circumstances of the pandemic did not prevent respondent from fulfilling his obligations to communicate with Griffin and to diligently handle his matter.

In recommending the imposition of a reprimand, the presenter argued that respondent failed to learn from his past mistakes, in light of his prior discipline. In her view, respondent's misconduct, when examined against his prior ethics matters, demonstrated a continued "negligence in managing a law practice."

Analysis and Discipline

As a threshold matter, we determine that the panel chair incorrectly dismissed, for lack of jurisdiction, the RPC 7.5(c) and RPC 7.5(d) charges concerning respondent's law firm name. R. 1:19A-4(h) expressly permits a DEC to exercise jurisdiction over dual grievances related to advertising and other violations of the Rules of Professional Conduct. That Rule states, in relevant part:

> When the ethical issues presented in a grievance involve both aspects of advertising and other related communications within the jurisdiction of the Advertising Committee and also other ethical issues not ordinarily within its jurisdiction, the Advertising Committee shall take jurisdiction of the entire matter if the grievance is predominantly related to advertising and other related communications within its jurisdiction. In all other cases of dual grievances, the Advertising Committee may accept such grievances. If it accepts such grievances the Advertising Committee shall, to the extent necessary to conclude all aspects of the grievance, exercise all the jurisdiction and functions of a District Ethics Committee. Otherwise, the Advertising Committee may decline jurisdiction in writing and refer its entire file in the matter to the appropriate District Ethics Committee. A District Ethics Committee to whom a dual ethics grievance has been referred in accordance with this section shall take jurisdiction over the entire matter and proceed in accordance with Rule 1:20-3(g). To the extent necessary to conclude all aspects of the grievance so referred, a District Ethics Committee shall exercise all the jurisdiction and functions of the Advertising

Committee.

[R. 1:19A-4(h) (emphasis added).]

Where, as here, the allegations of misconduct primarily pertain to respondent's mishandling of Griffin's client matter, and not the name of his law firm, the DEC properly charged respondent with RPC 7.5(c) and RPC 7.5(d). The entire matter was not "predominantly related to advertising" and, thus, the hearing panel should have exercised the jurisdiction expressly afforded by R. 1:19A-4(h) to resolve all the allegations of misconduct. Nevertheless, because the RPC 7.5(c) and RPC 7.5(d) charges were dismissed, pre-hearing, pursuant to R. 1:20-5(d)(1), respondent did not have the opportunity to defend against those allegations during the ethics hearing. Consequently, we cannot, as a matter of fundamental fairness, independently impose any discipline based on those charges.

Additionally, as a second threshold issue, we determine that the hearing panel correctly rejected respondent's argument that there was insufficient legally competent evidence in the record to impose discipline in connection with his representation of Griffin. Although Griffin declined to testify during the ethics hearing, respondent admitted, in his verified answer, virtually all the facts alleged in the formal ethics complaint. Those verified admissions, coupled with

the documentary exhibits admitted into evidence, the parties' submissions to the hearing panel, and respondent's testimony during the ethics hearing, provide more than a sufficient basis for the imposition of discipline. Indeed, in disciplinary matters docketed before us pursuant to R. 1:20-6(c)(1), we impose discipline based solely on the pleadings where there are no genuine disputes of material fact. Pursuant to that Rule:

> A hearing shall be held only if the pleadings raise genuine disputes of material fact, if respondent's answer requests an opportunity to be heard in mitigation, or if the presenter requests to be heard in aggravation. In all other cases[,] the pleadings . . . shall be filed . . . directly with the Board for its consideration in determining the appropriate sanction to be imposed.

Based on well-settled disciplinary procedure, as conceded by respondent during the ethics hearing, where he acknowledged that the panel could "consider the matter based on the documents submitted," we find no impediment to our review of this matter based on this record.

Violations of the Rules of Professional Conduct

Turning to our de novo review of the record, we are satisfied that the hearing panel's finding that respondent committed unethical conduct is fully

supported by clear and convincing evidence. Each violation is separately addressed below.

RPC 1.5(b)

RPC 1.5(b) requires an attorney who has not regularly represented a client to set forth, in writing, the basis or rate of his legal fee. Here, as he conceded, respondent failed to memorialize, in writing, the basis or rate of his $750 flat legal fee to Griffin. Although Griffin may have understood the fee arrangement, respondent previously had not represented Griffin and, thus, had an independent obligation to communicate, in writing, the basis of his fee. Thus, respondent violated RPC 1.5(b).

RPC 1.3

RPC 1.3 requires an attorney to act with reasonable diligence and promptness in representing a client. Respondent violated this Rule by failing to diligently prosecute Griffin's claim. Specifically, following his retention in February 2019, respondent waited eight months, until October 2019, to file an otherwise simple lawsuit against Griffin's former landlord to recover his security deposit. The Superior Court, however, rejected the complaint because

he had failed to file his submission via e-Courts and, further, failed to submit a "small claims summons" listing the landlord's service address.

Following the Superior Court's rejection of his submission, respondent waited an additional four months, until February 2020, to re-file Griffin's lawsuit. Nevertheless, on February 21, 2020, the Superior Court dismissed the lawsuit because respondent failed to provide the landlord's correct service address. Thereafter, respondent failed to make any attempt to contact Griffin regarding the whereabouts of his former landlord in order to properly re-file his lawsuit within the one-year period in which his complaint could be automatically reinstated. Rather, respondent failed to take any action to restore his client's claim. Indeed, respondent did not return Griffin's client file to him until June 2021, after Griffin had filed the ethics grievance.

During the two-and-a-half-year representation, respondent altogether failed to file a conforming lawsuit to allow Griffin's claim to be decided on the merits.[5] By his conduct, respondent unquestionably lacked reasonable diligence and promptness in representing his client in an otherwise simple matter, which

[5] However, the statute of limitations on Griffin's contract dispute with his landlord did not appear to have expired until January 2024, approximately two-and-a-half years after respondent had returned Griffin's client file, in June 2021. See N.J.S.A. 2A:14-1 (establishing a six-year statute of limitations for lawsuits seeking "recovery upon a contractual claim or liability").

could have been decided on the merits had respondent simply communicated with Griffin regarding the whereabouts of his former landlord.

RPC 1.4(b)

RPC 1.4(b) requires a lawyer to keep a client reasonably informed about the status of the matter and to promptly comply with reasonable requests for information.

Respondent violated this Rule by failing to keep Griffin informed of significant developments of his case. As he stipulated, following his February 2019 telephone conversation with Griffin, at the outset of the representation, respondent altogether failed to keep him apprised of the status of the lawsuit, including the fact that it had been dismissed, twice, because of respondent's failure to follow proper filing procedures. Regardless of whether he received Griffin's messages requesting status updates, respondent had an independent obligation to keep his client informed of the developments of his case. Had he fulfilled that obligation, Griffin may have been able to provide his landlord's service address and allowed his claim to proceed.

However, we dismiss, for lack of clear and convincing evidence, the second RPC 1.4(b) charge, which was premised on respondent's failure to

promptly comply with Griffin's requests for information. As the hearing panel correctly determined, the parties disputed whether respondent had, in fact, received Griffin's text messages or his January 6, 2020 letter requesting updates on the status of his case. Moreover, nothing in the record refuted respondent's contention regarding his purported difficulties in receiving text messages on his mobile telephone. Similarly, there is no evidence to refute respondent's claim that he did not receive Griffin's January 6, 2020 letter that was mailed to his former office address, which correspondence, eventually, was redirected to his current office address and purportedly received by his secretary. Given the lack of any corroborating evidence to demonstrate whether respondent had, in fact, received but ignored his client's inquiries, we determine to adopt the hearing panel's conclusion and dismiss the second RPC 1.4(b) charge.

RPC 1.4(a)

RPC 1.4(a) requires a lawyer to "fully inform a prospective client of how, when, and where the client may communicate with the lawyer." It is well-settled that RPC 1.4(a) applies only to prospective clients and not "existing clients." See, e.g., In the Matter of Adam Luke Brent, DRB 19-372 and DRB 19-452 (August 3, 2020) (dismissing an RPC 1.4(a) charge concerning an attorney's

failure to communicate with an existing rather than a prospective client); In the Matter of William J. Munier, DRB 19-207 (January 15, 2020) (dismissing an RPC 1.4(a) charge based on the attorney's failure to inform his existing client of how, when, and where she could communicate with him; we also found that the attorney's failure to communicate with his client was adequately captured by the RPC 1.4(b) charge); In the Matter of Barry N. Frank, DRB 18-356 (June 19, 2019) (because the attorney failed to communicate with "an actual [and] not a prospective client," we dismissed the RPC 1.4(a) charge as inapplicable).

Here, although respondent admittedly failed to inform Griffin of how to communicate with him, his misconduct occurred while Griffin was an existing and not a prospective client. Because RPC 1.4(a) addresses only an attorney's failure to communicate with a prospective client, we dismiss the RPC 1.4(a) charge as inapplicable to this matter. However, as detailed below, for purposes of crafting the appropriate quantum of discipline, we consider, in aggravation, the fact that his failure to advise Griffin of the means by which to communicate with him resulted in significant frustration to his client who, on multiple occasions throughout the representation, unsuccessfully attempted to communicate with respondent, via various methods.

In sum, we find that respondent violated RPC 1.3, RPC 1.4(b), and RPC 1.5(b). We dismiss, for lack of clear and convincing evidence, the second charge that respondent violated RPC 1.4(b) by failing to promptly comply with Griffin's reasonable requests for information. We also dismiss the RPC 1.4(a) charge as inapplicable to this matter. The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

Absent serious aggravating factors, such as harm to the client, conduct involving lack of diligence and failure to communicate with a client ordinarily results in an admonition, even when accompanied by other non-serious ethics infractions, such as a violation of RPC 1.5(b). See, e.g., In the Matter of James E. Gelman, DRB 24-004 (February 20, 2024) (a pro bono program assigned the attorney, on a volunteer basis, to represent a veteran in connection with his service-related disability claim; for ten months, the attorney took very little action to advance his client's case; thereafter, the attorney took no further action on behalf of his client, incorrectly assuming that the pro bono program had replaced him as counsel due to his lack of experience; moreover, the attorney failed to advise his client that he was no longer pursuing his case; no prior

discipline in more than forty years at the bar); In the Matter of Hayes R. Young, DRB 23-215 (November 22, 2023) (the attorney filed a medical malpractice lawsuit on behalf of a client without having obtained the required affidavit of merit; seven months later, the Superior Court dismissed the lawsuit for lack of prosecution; the attorney, however, failed to notify his client that he had filed her lawsuit or that it had been dismissed due to his inaction; meanwhile, during the span of several months, the attorney failed to reply to several of his client's e-mail messages inquiring about the status of her case; the attorney also failed to set forth the basis of his legal fee in writing; significant mitigation including no prior discipline in thirty-eight years at the bar and extenuating circumstances related his wife's illness and death); In the Matter of Mark J. Molz, DRB 22-102 (September 26, 2022) (the attorney's 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; no prior discipline in more than thirty-five years at

the bar).

The quantum of discipline is enhanced, however, when additional aggravating factors are present. See, e.g., In re Lueddeke, __ N.J. __ (2022), 2022 N.J. LEXIS 460 (reprimand for an attorney who, eight months after agreeing to pursue a breach of contract claim on behalf of a client, filed a request with a court for a proof hearing; the court, however, rejected the attorney's request and notified him to file a motion for a proof hearing; the attorney failed to file the motion and, nearly five months later, the court dismissed the matter for lack of prosecution; the attorney failed to inform his client of the dismissal of his matter or to reply to his inquiries regarding the status of his case; more than a year later, the client independently discovered that his case had been dismissed, following which the attorney, at the client's behest, successfully reinstated the matter and secured a judgment on the client's behalf; prior 2015 admonition for similar misconduct, which gave the attorney a heightened awareness of his obligations to diligently pursue client matters); In re Abasolo, 235 N.J. 326 (2018) (reprimand for an attorney who grossly neglected and lacked diligence in a slip-and-fall case for two years after filing the complaint; after successfully restoring the matter to the active trial list, the attorney failed to pay the $300 filing fee, permitting the defendant's order of dismissal with

prejudice to stand; in addition, for four years, the attorney failed to keep the client reasonably informed about the status of the case; no prior discipline); In re Lenti, 250 N.J. 292 (2022) (censure for an attorney's combined misconduct encompassing five client matters and eleven RPC violations; in three of the client matters, the attorney failed to timely file necessary motions or pleadings in connection with matrimonial or child custody litigation; additionally, in connection with two of the matrimonial matters, the attorney engaged in misrepresentations to her clients regarding the status of their cases; further, in connection with a third matrimonial matter and a separate probate matter, she failed to communicate with her clients; in aggravation, the attorney's misconduct resulted in the unnecessary delay of at least two client matters and the dismissal – and potential extinguishment – of at least one client matter; in mitigation, the attorney had no prior discipline in her nine-year career at the bar and expressed sincere remorse; additionally, the attorney, eventually, engaged a family law attorney to help her advance her outstanding family law cases).

Here, throughout the approximately two-and-a-half-year representation, respondent failed to ensure that Griffin's lawsuit against his former landlord could be heard on the merits. Specifically, in October 2019, eight months after he was retained, respondent filed a procedurally defective lawsuit, on Griffin's

behalf, via regular mail rather than via eCourts, and without the required "small claims summons." In February 2020, four months after the Superior Court rejected his initial submission, respondent re-filed Griffin's lawsuit, via e-Courts. However, because the small claims summons failed to list the landlord's correct service address, the Superior Court dismissed the lawsuit, without prejudice. Thereafter, he failed to contact Griffin to attempt to obtain the landlord's correct address to allow the lawsuit to be reinstated and decided on the merits. By June 2021, following the filing of Griffin's ethics grievance, respondent returned Griffin's client file to him, at which point the one-year period in which Griffin's lawsuit could have been automatically restored had expired.

Respondent's lack of diligence was compounded by his prolonged failure to communicate with Griffin, who attempted, unsuccessfully, to send him multiple text messages and a certified letter concerning the status of his matter. Respondent maintained that he never received Griffin's inquiries and argued that Griffin, as his friend and a member of the bar, "knew how to gather the necessary information" and, further, could have contacted his office regarding the status of his case. Griffin's status as an attorney, however, does not excuse respondent's failure to keep his client reasonably informed about the status of

his matter, including the fact it had been dismissed, twice, on procedural grounds. Moreover, he failed to advise Griffin that contacting his office was the best method to reach him, considering his purported difficulties in receiving text messages. Indeed, it does not appear that Griffin was even aware of respondent's correct office address, given that, after his text messages went unanswered, he mailed his January 6, 2020 letter to respondent's former office address. Had respondent advised Griffin of the means by which to communicate with him, the frustration to Griffin could have been avoided.

Although respondent's misconduct did not permanently foreclose Griffin's ability to obtain relief from his former landlord, as occurred in Abasolo and Molz, respondent does not have the benefit of Abasolo's and Molz's otherwise unblemished careers at the bar, given his 2009 admonition in Johnson I and 2018 reprimand in Johnson II, albeit for unrelated forms of misconduct. Indeed, respondent's misconduct in this matter occurred on the heels of his reprimand in Johnson II, when he should have had a heightened appreciation of professional obligations. Further, unlike the attorney in Lueddeke, who eventually, at his client's behest, successfully reinstated the matter and secured a judgment on his client's behalf, respondent, ultimately, abandoned his representation of Griffin.

Conclusion

On balance, consistent with disciplinary precedent, and considering respondent's prolonged failure to communicate with Griffin, his decision to cease all work on behalf of his client, and the lack of any compelling mitigation, we determine that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

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. Mary Cathrine Cuff, P.J.A.D. (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 Edward Glen Johnson
Docket No. DRB 24-103

Argued: September 19, 2024

Decided: October 23, 2024

Disposition: Reprimand

Members	Reprimand	Absent
Cuff	X	
Boyer	X	
Campelo		X
Hoberman	X	
Menaker	X	
Petrou	X	
Rivera	X	
Rodriguez	X	
Spencer	X	
Total:	8	1

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