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**OF THE**  
**SUPREME COURT OF NEW JERSEY**

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December 3, 2024

Heather Joy Baker, Clerk  
Supreme Court of New Jersey  
P.O. Box 970  
Trenton, New Jersey 08625-0962

Re: **In the Matter of Brian Michael Dratch**  
Docket No. DRB 24-199  
District Docket No. VC-2022-0008E

Dear Ms. Baker:

The Disciplinary Review Board (the Board) has reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems appropriate) filed by the District VC Ethics Committee (the DEC) in the above matter, pursuant to R. 1:20-10(b). Following a review of the record, the Board granted the motion and determined to impose a reprimand for respondent's violation of RPC 1.1(a) (engaging in gross neglect); RPC 1.3 (lacking diligence); RPC 1.4(b) (failing to communicate with a client); RPC 1.4(c) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); and RPC 1.16(d) (failing to protect a client's interests upon termination of the representation).

However, for the reasons set forth below, the Board determined to dismiss the charges that respondent violated RPC 1.15(a) (failing to safeguard client property), RPC 8.1(b) (failing to cooperate with disciplinary authorities), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

According to the stipulation, on March 8, 2016, Phillip Battease, an inmate incarcerated in a New York state prison, retained respondent to prosecute a medical malpractice lawsuit against the State of New York for purportedly failing to properly treat his medical conditions while incarcerated.

On June 28, 2016, respondent filed, in the New York State Court of Claims, a “claim” accusing the State of New York of engaging in medical negligence for failing to provide Battease appropriate pain relief medication. In August 2016, the State of New York answered Battease’s claim, denying any negligence. Three months later, in December 2016, respondent provided the State of New York a verified “bill of particulars” stating, among other things, that, without proper pain medication, Battease’s “constant and debilitating pain [would] be permanent.”

Meanwhile, for a two-year period, between June 2016 and June 2018, respondent altogether failed to notify Battease that he had filed his claim and failed to reply to Battease’s multiple letters requesting updates on the status of his case.<sup>1</sup> Consequently, in July 2018, Battease sent the Court of Claims a letter inquiring about the status of his case.

On July 28, 2018, upon receiving Battease’s letter from the Court of Claims, respondent informed Battease that he “was still handling” the case. Approximately ten months later, in April 2019, Battease sent respondent another letter requesting a status update, to which respondent advised Battease that he was “not certain that you have much of a case any longer.”

On July 22, 2019, the State of New York conducted Battease’s deposition, with respondent present. During his deposition, Battease alleged that the correctional facility failed to properly treat his “constant” pain.

Five months later, on December 17, 2019, the State of New York filed a motion for summary judgment seeking to dismiss Battease’s claim on the basis that he had received adequate medical treatment.

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<sup>1</sup> The stipulation does not set forth whether respondent had taken any action in furtherance of the matter between December 27, 2016, when he submitted the verified bill of particulars, and June 2018. However, the exhibits appended to the formal ethics complaint indicate that, sometime before February 2018, respondent had served discovery demands upon the State of New York.

On January 14, 2020, one day before the filing deadline to oppose the dispositive motion, respondent sent Battease a letter enclosing the motion and requesting that he “provide” his “thoughts.” Battease did not reply to respondent based on his mistaken view that courts were “shut down” due to the COVID-19 pandemic. Moreover, respondent made no further attempt to contact Battease in connection with the motion, despite knowing that Battease was “possibly moved to another facility.” Respondent declined to file any opposition to the motion because he had not received any reply from Battease and, following the July 2019 deposition, he concluded that Battease no longer had a valid claim.

On March 9, 2020, the Court of Claims granted the unopposed summary judgment motion and dismissed Battease’s claim. On April 15, 2020, six days after the deadline to appeal the dismissal of the claim, respondent sent Battease a letter enclosing the court’s dismissal order and stating that he did “not feel that there is a basis to appeal this decision.” Respondent, however, advised Battease that, if he “wish[ed] to appeal, you must file a notice of appeal within thirty days from the date of the decision. I wish you the best of luck in the future.”

Approximately seventeen months later, on December 6, 2021, Battease sent respondent a letter requesting an update on the status of his claim. On December 10, respondent replied to Battease, stating that he previously had notified him of the dismissal of his matter. On December 16, 2021, Battease sent respondent a reply letter asserting that he was unaware that his case had been dismissed and requesting a copy of his client file. Respondent failed to comply.

Based on the foregoing facts, the parties stipulated that respondent violated RPC 1.1(a) and RPC 1.3 by failing to provide Battease a reasonable opportunity to oppose the State of New York’s summary judgment motion or to appeal the determination dismissing his claim. Rather than promptly provide Battease with a copy of the motion, respondent waited until the day before the filing deadline to send his incarcerated client the motion, via regular mail. Although Battease did not reply to the letter based on his misimpression that New York courts were “shut down” during the COVID-19 pandemic, respondent stipulated that he knew that his client was “possibly moved to another [correctional] facility.” Rather than request an adjournment to ensure that Battease had received his belated correspondence concerning the motion, respondent simply allowed the motion to remain unopposed, resulting in the March 9, 2020 dismissal of Battease’s claim. Thereafter, respondent failed to

advise Battease of the dismissal of his claim until April 15, 2020, six days after the filing deadline to appeal had elapsed.

Similarly, respondent violated RPC 1.16(d) by failing to protect Battease's interests upon termination of the representation. Specifically, in his April 15, 2020 letter to Battease, respondent terminated the representation, informed him of his right to appeal within thirty days of the determination of the Court of Claims, and advised him that, in his view, such an appeal was unlikely to succeed. Regardless of respondent's views of the strength of his client's claim, Battease maintained that he had a meritorious claim against the State of New York. Rather than protect his client's ability to appeal the dismissal of his claim on the merits, respondent belatedly advised Battease that his claim had been dismissed nearly a week after the filing deadline to appeal had elapsed.

Thereafter, in December 2021, Battease sent respondent letters requesting an update on the status of his claim, purportedly unaware that his case had been dismissed. Following respondent's correspondence advising him of the outcome his case, Battease requested that respondent provide him his client file. Respondent, however, failed to comply, compounding his failure to protect his client's interests upon the termination of the representation.

Additionally, respondent violated RPC 1.4(b) by not only failing to reply to many of Battease's inquiries concerning the status of his matter, but also by failing to keep Battease reasonably and timely informed of the significant developments of his case. Specifically, between June 2016 and June 2018, respondent altogether failed to notify Battease that he had filed his medical malpractice claim. Moreover, during that timeframe, respondent failed to reply to Battease's multiple letters requesting updates on the status of his case, forcing Battease, by July 2018, to contact the Court of Claims for information. Additionally, respondent failed to timely apprise Battease of the summary judgment motion and resulting order dismissing his claim, conduct which deprived Battease of the opportunity to defend his claim on the merits.

Similarly, respondent violated RPC 1.4(c) by failing to adequately communicate with Battease to the extent reasonably necessary to have allowed him to make informed decisions regarding the representation. He not only failed, for two years, to notify Battease that he had instituted litigation on his behalf, but also failed to adequately explain the nature and timing of the summary judgment motion to his incarcerated client. Specifically, his January 14, 2020

letter to Battease – sent on the eve of the deadline to file any opposition to the motion – failed to adequately explain the implications of the motion, or the truncated timeframe by which to reply, to have allowed him to make an informed decision concerning whether to oppose the application or to promptly request an adjournment.

Moreover, respondent failed to advise Battease that, at the time he sent his April 15, 2020 letter enclosing the March 9, 2020 order dismissing his claim, the thirty-day period by which to file an appeal had expired. The Board found that respondent's conduct, in the totality, deprived Battease of the opportunity to make informed decisions concerning the representation.

The Board, however, determined to dismiss the remaining charges of unethical conduct.

Specifically, the record before the Board did not set forth the theory underlying the RPC 8.4(d) charge. Given the lack of clear and convincing evidence that respondent's actions resulted in a waste of judicial resources, and because his misconduct is more appropriately encapsulated by the stipulated Rules discussed above, the Board determined to dismiss the RPC 8.4(d) charge.

Additionally, regarding the charge that respondent violated RPC 8.1(b) by failing to adequately cooperate with the DEC's investigation, the Board observed that respondent replied to each of the DEC's inquiries in a relatively prompt manner. Although respondent could not provide two original letters that he had sent to Battease, as the DEC had requested, respondent otherwise provided the DEC, on at least two occasions, all or substantial portions of Battease's client file. Moreover, respondent appeared to have attempted, in good faith, to answer the DEC's inquiries concerning his views of Battease's claim. Consequently, considering respondent's apparent good faith efforts to cooperate with the investigation, the Board determined to dismiss the RPC 8.1(b) charge.

Finally, although not expressly set forth in the stipulation, the RPC 1.15(a) charge appears to have been premised on respondent's purported failure to preserve original client correspondence. RPC 1.15(a), however, does not apply to client documents. See In the Matter of Russell T. Kivler, DRB 08-155 (October 21, 2008) (dismissing an RPC 1.15(a) charge as inapplicable when the attorney either lost or refused to return his client's documents; the Board determined that RPC 1.16(d) more appropriately encompassed the attorney's

misconduct). Here, because respondent appropriately cooperated with the DEC by providing copies of relevant documents pertaining to Battease's matter, and given that RPC 1.15(a) does not govern the preservation of client documents, the Board determined to dismiss the RPC 1.15(a) charge.

In determining the appropriate quantum of discipline, the Board found that respondent's misconduct was closely analogous to that of the reprimanded attorney in In re Grimes, \_\_\_ N.J. \_\_\_ 2022 N.J. LEXIS 1165 (2022), who mishandled his client's civil rights claim that, in the attorney's view, lacked merit. In the Matter of Raymond Andrew Grimes, DRB 21-299 (April 10, 2022) at 4, 25.

In that matter, the client retained Grimes in connection with his potential civil rights violations stemming from a June 2016 encounter with law enforcement. Id. at 18. The client alleged that, during the police encounter, he sustained injuries that aggravated his pre-existing back injury. Id. at 2. In September 2016, Grimes filed a tort claims notice on behalf of the client. Id. at 6. For the next two years, however, Grimes failed to take any affirmative action to advance his client's claims. Id. at 18.

Thereafter, in June 2018, Grimes filed a pro se complaint on the client's behalf. Id. at 9. However, in January 2019, the court dismissed the complaint for lack of prosecution. Id. at 12. Five months later, in June 2019, following an inquiry by the DEC, Grimes filed a successful motion to reinstate the case and to withdraw as counsel. Id. at 12-13. Several months later, however, the court dismissed the case a second time for lack of prosecution. Id. at 13.

Although Grimes contended that his client's claims lacked merit and that it was never his intention to pursue his case, the client reasonably believed that Grimes was acting as his counsel, addressing any perceived weaknesses in his case, and investigating his claims. Id. at 18-19. Indeed, Grimes repeatedly took actions that reaffirmed his role as counsel, including filing the tort claim notice and instituting the litigation. Ibid. However, concurrent with those actions, Grimes wholly failed to advance his client's case. Ibid.

In determining that a reprimand was the appropriate quantum of discipline, the Board weighed, in mitigation, Grimes's lack of prior discipline in more than thirty years at the bar. Id. at 23. The Board also considered that

Grimes's misconduct appeared to have been motivated by noble intentions in that he had attempted to preserve his client's claims. Id. at 23-24.

However, in aggravation, the Board found that Grimes's misconduct caused substantial harm to his client, who was unable to obtain replacement counsel. Id. at 24. Additionally, the Board emphasized that, despite multiple opportunities, Grimes failed to either advance the litigation or properly withdraw as counsel. Id. at 25. Moreover, the Board observed that, although it was "impossible to know the merits of [the client's] civil rights claim," Grimes's misconduct deprived his client of "his day in court." Ibid.

Here, despite his concerns regarding the strength of his client's case, respondent – like Grimes – knowingly undertook his representation of Battease, repeatedly took actions that reaffirmed his role as counsel, and, concurrent with those actions, wholly failed to protect his client's case. Indeed, for a two-year period, between June 2016 and June 2018, during the discovery phase of the litigation, respondent failed to reply to Battease's multiple inquiries concerning the status of his matter and failed to notify him that he had filed his claim in the first place, forcing Battease to contact the court for information. Thereafter, by at least August 2019, respondent independently concluded that Battease's claim lacked merit. However, based on his "indecisiveness," respondent failed to either attempt to properly withdraw as counsel or to diligently continue the representation. Rather, he belatedly notified Battease of the summary judgment motion and the resulting order dismissing his claim, depriving Battease of the opportunity to pursue his matter which he deemed meritorious.

In mitigation, like Grimes, respondent has had no prior discipline in his twenty-four-year career at the bar. Additionally, respondent, ultimately, stipulated to his misconduct and, thus, conserved disciplinary resources.

On balance, weighing the significant harm respondent caused Battease against his otherwise unblemished career at the bar, and consistent with disciplinary precedent set forth in Grimes, the Board determined that a reprimand is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Enclosed are the following documents:

1. Formal ethics complaint, dated August 1, 2023, with exhibits A through V.
2. Verified answer, dated November 16, 2023, with exhibits R-1 and R-2.
3. Letter by respondent to the DEC, dated July 3, 2024.
4. Notice of motion for discipline by consent, dated July 15, 2024.
5. Stipulation of discipline by consent, dated July 22, 2024.
6. Affidavit of consent, dated July 24, 2024.
7. Ethics history, dated December 3, 2024.

Very truly yours,

*/s/ Timothy M. Ellis*

Timothy M. Ellis  
Chief Counsel

TME/akg  
Enclosures

c: See attached list.



(w/o enclosures)

Hon. Mary Catherine Cuff, P.J.A.D. (Ret.), Chair

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