SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-188
District Docket No. IV-2022-0026E

In the Matter of Jon Mitchell De Masi
An Attorney at Law

Decided
February 3, 2025

Certification of the Record

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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 certification of the record filed by the District IV Ethics Committee (the DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.3 (lacking diligence), RPC 1.4(b) (failing to communicate with the client), and RPC 8.1(b) (two instances – failing to cooperate with disciplinary authorities).[1]

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

Ethics History

Respondent earned admission to the New Jersey bar in 1991. During the relevant timeframe, he maintained a practice of law in Woodbury, New Jersey. He has prior discipline in New Jersey.

[1] Due to respondent's failure to file an answer to the formal ethics complaint, and on notice to him, the DEC amended the complaint to include the second RPC 8.1(b) charge.

De Masi I

On November 21, 2003, respondent was reprimanded, in a default matter, for having violated RPC 1.l(a) (engaging in gross neglect); RPC 1.3; RPC 1.4(a) (now RPC 1.4(b)) (failing to communicate with a client); and RPC 8.1(b). In re De Masi, 178 N.J. 72 (2003) (De Masi I). In that matter, respondent was retained to institute a name-change proceeding for a client but failed to take any action in furtherance of the representation. In the Matter of Jon Mitchell De Masi, DRB 03-167 (September 18, 2023) at 3. Further, when the client called to inquire about the status of her matter, respondent failed to return her telephone calls and, subsequently, failed to reply to the ethics grievance. In mitigation, he claimed to have suffered personal difficulties and stressors during the relevant period. Id. at 4-5. In determining that a reprimand was the appropriate quantum of discipline, we noted that, although the stress respondent endured may have contributed to the delay in his reply to the grievance, it was not an excuse for his misconduct. Id. at 6.

De Masi II

On March 28, 2006, respondent again was reprimanded in connection with three consolidated matters. In re De Masi, 186 N.J. 267 (2006). (De Masi II). In the first matter comprising De Masi II, respondent was charged with having

violated RPCs 1.1(a) and (b) (engaging in a pattern of neglect); RPC 1.3; RPC 1.4(b) and (c) (failing to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information); RPC 1.6(a) (failing to maintain confidential information); RPC 4.4(a) (engaging in conduct that has no substantial purpose other than to embarrass, delay, or burden a third person); and RPC 7.1(a)(2) (making a false or misleading communication about the lawyer or the lawyer's services). Based on the lack of clear and convincing evidence, we declined to sustain any of the charged violations. In the Matter of Jon Mitchell De Masi, DRB 05-323 (February 22, 2006) at 14-16.

In the second matter comprising De Masi II, respondent was retained to represent a client in a name change matter; however, he failed to return the client's telephone calls for six months and, ultimately, took no action in furtherance of the representation, in violation of RPC 1.1(a), RPC 1.3, and RPC 1.4(b). Id. at 7, 17. Respondent also failed to reply to the ethics grievance, in violation of RPC 8.1(b). Id. at 8, 18.

In the third matter comprising De Masi II, a client retained respondent in connection with a child custody matter and the sale of her home. Although the client paid respondent a $2,500 retainer, he failed to provide her with a written retainer agreement, in violation of RPC 1.5(b) (failing to set forth, in writing, the basis or rate of the legal fee). Id. at 9, 18. Respondent also failed to timely

file child support documentation, causing the client to lose approximately $1,700 in back child support payments, in violation of RPC 1.3. Id.

In determining that a reprimand was the appropriate quantum of discipline for the totality of respondent's misconduct, we considered, as mitigation, the stressors that respondent endured during the relevant period, including the illness and death of his mother, his marital problems, and his mental health conditions. Id. at 19. We also considered respondent's contrition and the numerous letters he provided attesting to his good character. Id. As a condition to the discipline, however, we required him to practice under the supervision of a proctor approved by the Office of Attorney Ethics for a period of two years. Id. at 21.

We now turn to the matter pending before us.

Service of Process

Service of process was proper. On May 30, 2024, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address of record. On June 3, 2024, the certified mail was returned signed, indicating delivery. The regular mail was not returned.

On July 23, 2024, the DEC sent a second letter, by regular mail, to respondent's office address of record. The letter informed respondent that,

unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b) by reason of his failure to answer. The regular mail was not returned to the DEC.

On or about July 31, 2024, respondent called the DEC investigator and indicated that he would be filing an answer to the complaint by the following Friday. However, he failed to do so.

As of August 9, 2024, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the DEC certified this matter to us as a default.

On September 30, 2024, Chief Counsel to the Board sent a letter to respondent, by certified and regular mail, to his office address of record, with an additional copy sent by electronic mail, informing him that this matter was scheduled before us on November 21, 2024, and that any motion to vacate the default (MVD) must be filed by October 21, 2024. The certified mail receipt was signed and returned to the Office of Board Counsel (OBC), indicating delivery on October 8, 2024. The regular mail was not returned to the OBC.

Moreover, on October 7, 2024, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on November 21,

2024. The notice informed respondent that, unless he filed a successful MVD by October 21, 2024, his prior failure to answer the complaint would remain deemed an admission of the allegations of the complaint.

Respondent did not file an MVD.

Facts

We now turn to the allegations of the complaint.

On May 21, 2022, Kellen McKinney-Gavidia retained respondent in connection with the adoption of her stepdaughter. Respondent charged a flat fee of $7,500, which McKinney-Gavidia paid, in full, over the span of several months.

On November 7, 2021, respondent informed McKinney-Gavidia that he prepared an initial draft of the adoption complaint and that he had sent a proposed "Consent to the Adoption" form to the birth mother, requesting her execution of that document.

Subsequently, respondent notified McKinney-Gavidia that he had spoken to the birth mother who, after initially appearing to agree with the adoption, now informed him that she would not sign the consent form. Consequently, respondent informed McKinney-Gavidia that the adoption likely would proceed as a contested matter and that he would need to revise the complaint.

Respondent, however, failed to revise the complaint or to file a complaint with the family court.

Subsequently, respondent asserted he could no longer locate the birth mother and would need to conduct a search for her. He failed, however, to undertake the statutorily required steps to search for the birth mother, as set forth in N.J.S.A. 9:3-45(c). Rather, he allowed McKinney-Gavidia to hire a private detective to attempt to locate the birth mother.

McKinney-Gavidia, having heard nothing further from respondent since late November 2021, sent him numerous e-mails requesting status updates. Respondent, however, failed to reply. Finally, on March 12, 2022, McKinney-Gavidia sent respondent a letter and demanded a full refund of the legal fee based upon his prolonged failure to effectuate the adoption. Respondent both failed to reply and failed to refund the fee.

McKinney-Gavidia then filed an ethics grievance against respondent and, on March 7, 2023, the DEC forwarded a copy of the grievance to respondent, directing him to submit a reply. Respondent, however, failed to reply. Consequently, on April 3, 2023, the DEC, sent him a second letter, via certified mail. The signed certified mail receipt was returned to the DEC, indicating delivery.

On April 24, 2023, respondent replied to the DEC. He acknowledged receipt of the DEC's second letter and suggested several dates to meet, at which time he would produce his entire client file. Respondent did not include the required written reply to the ethics grievance.

After numerous telephone calls and two follow-up letters, dated May 21 and July 12, 2023, respondent finally agreed to be interviewed by the DEC investigator, on August 24, 2023.

Meanwhile, on or about May 17, 2023, McKinney-Gavidia sent respondent a letter, by certified mail, entitled "Breach of Agreement," demanding the return of her $7,500, and cautioning that it should be paid within fifteen days. Respondent acknowledged receipt of the letter but, as of the date of the formal ethics complaint, had not refunded the $7,500.

In late May 2023, McKinney-Gavidia retained new counsel to pursue the adoption of her stepdaughter. Her new counsel was unable to use any of the materials prepared by respondent and, thus, had to draft everything anew. Additionally, on September 14 and October 4, 2023, new counsel sent letters to respondent requesting that McKinney-Gavidia's fee be returned to her.

On August 1, 2023, new counsel filed the complaint with the court and the adoption was finalized on October 6, 2023.

On August 24, 2023, respondent, during his DEC interview, conceded that he had "screwed up and did not have an excuse." When presented with the e-mails that McKinney-Gavidia had sent to him, respondent stated that he did not recall the e-mails but had no doubt they were received. Additionally, he acknowledged that he had not yet refunded the $7,500 legal fee but was willing to do so within the next thirty days. As of the date of the complaint, however, respondent had not refunded the fee to McKinney-Gavidia.

Based on the foregoing facts, the formal ethics complaint charged respondent with having violated RPC 1.3 and RPC 1.4(b) by failing to act with reasonable diligence and by failing to keep McKinney-Gavidia reasonably informed about the status of her matter. The complaint also alleged that respondent violated RPC 8.1(b) based on his failure to cooperate with the disciplinary investigation. Further, based on his failure to answer the complaint, the DEC amended the complaint to charge him with having committed a second violation of RPC 8.1(b).

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following our review of the record, we determine that the facts set forth in the formal ethics complaint support all the charges of unethical conduct.

Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Specifically, RPC 1.3 states that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." Here, the record establishes, by clear and convincing evidence, that respondent violated this Rule by accepting the representation and failing to take reasonable steps in furtherance of that representation. Specifically, McKinney-Gavidia retained respondent to pursue the adoption of her stepdaughter. Despite respondent's assurances to McKinney-Gavidia that he would revise and file the complaint once it became a contested adoption, he wholly failed to do so. Additionally, despite his claim that he could no longer locate the birth mother and had to search for her, respondent failed to perform the statutorily required search and, instead, left that burden to fall on McKinney-Gavidia. Ultimately, McKinney-Gavidia was forced to hire new counsel and incur additional expenses. Respondent, thus, lacked diligence, in violation of RPC 1.3.

Respondent also violated RPC 1.4(b), which requires an attorney to keep their client "reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Despite respondent's obligation to keep McKinney-Gavidia informed as to the status of the adoption

proceeding for which he was retained, he failed to respond to her reasonable requests for information. Specifically, McKinney-Gavidia sent respondent e-mails between November 2021 and March 2022 requesting updates regarding the status of her matter. Respondent, however, failed to reply. Further, on March 12, 2022, McKinney-Gavidia sent a letter to respondent and informed him that, based on his failure to accomplish the adoption and because of the time that has elapsed without any progress, she wanted her fee returned. Again, in May 2023, McKinney-Gavidia sent another letter to respondent seeking the return of the legal fee. Indeed, on at least three occasions, McKinney-Gavidia sent respondent e-mails, specifically seeking updates as to the status of her matter and seeking the return of the fee she had paid. Despite her repeated requests, he failed to reply. Consequently, McKinney-Gavidia was left without adequate information regarding her matter.

Last, respondent failed to cooperate with the DEC's investigation of the ethics grievance, despite its efforts, which spanned five months. Specifically, On March 7, 2023, the DEC informed respondent of the ethics grievance and requested a written reply. After not receiving a reply, the DEC sent a second letter, demanding a written explanation to the ethics grievance. Respondent, despite acknowledging receipt of the DEC's letters, failed to submit a reply. Further, for five months, the DEC repeatedly attempted to schedule respondent's

interview. Although respondent eventually appeared for his interview, on August 24, 2023, he failed to provide the required written reply to the ethics grievance. Thus, respondent violated RPC 8.1(b) by failing to fully cooperate with the disciplinary investigation. Respondent then violated RPC 8.1(b) a second time by failing to file a verified answer to the formal ethics complaint, despite proper notice, allowing this matter to proceed as a default.

In sum, we find that respondent violated RPC 1.3, RPC 1.4(b), and RPC 8.1(b) (two instances). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

Generally, an admonition is the appropriate quantum of discipline for lack of diligence and failure to communicate with a client. See In the Matter of Hayes R. Young, DRB 23-215 (November 22, 2023) (in a medical malpractice matter, the attorney filed the client's complaint without the required affidavit of merit; seven months later, the court dismissed the matter for lack of prosecution; during the span of several months, the attorney failed to reply to the client's numerous inquiries about the status of her case and failed to inform her that her lawsuit had been filed but, thereafter, dismissed; the attorney also failed to set forth to the client, in writing, the basis or rate of the legal fee; violations of RPC 1.3,

RPC 1.4(b), and RPC 1.5(b); in imposing only an admonition, we weighed, in mitigation, the attorney's lack of disciplinary history, admission of wrongdoing, contrition, and cooperation with disciplinary authorities, as well as attenuating circumstances related to the illness and death of his spouse), and In the Matter of Christopher J. LaMonica, DRB 20-275 (January 22, 2021) (the attorney promised to take action to remit his client's payment toward an owed inheritance tax; despite the attorney's assurances that he would act, he failed to remit the payment until two years later; in addition, the attorney failed to keep his client apprised of the status of her matter and failed to communicate with her for sixteen months; violations of RPC 1.3 and RPC 1.4(b); in imposing only an admonition, we weighed the attorney's unblemished disciplinary record).

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; violations of RPC 1.3 and RPC 1.4(b); prior 2015 admonition for similar misconduct, which give the attorney a heightened awareness of his obligations to diligently pursue client matters); 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 client matters, the attorney engaged in misrepresentations to her clients regarding the status of their cases; further, in connection with a third matrimonial client matter and a separate probate client matter, she failed to communicate with her clients; violations of RPC 1.3 (three instances), RPC 1.4(b) (three instances), RPC 5.3(b), RPC 8.1(b), and RPC 8.4(c) (three instances); 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; however, in mitigation, the attorney had no prior discipline in her nine-year career at the bar and expressed sincere remorse and contrition; additionally, the attorney, eventually, engaged a family law attorney to help her review and

advance her outstanding family law cases); In re Witherspoon, 249 N.J. 537 (2022) (censure for an attorney who, in a default matter, took little or no action to settle a client's brother's estate; the attorney also failed to reply to the client's repeated inquiries regarding the status of her matter, prompting the client to retain new counsel to protect her interests; the attorney also failed to cooperate with the disciplinary investigation; violations of RPC 1.3, RPC 1.4(b), and RPC 8.1(b) (two instances); although the attorney had no prior discipline in his thirty-three-year career at the bar, the attorney's failure to take any action in furtherance of the representation caused the client significant financial harm; in further aggravation, we considered the default status of the matter); In re Levasseur, __ N.J. __ (2022), 2022 N.J. LEXIS 457 (three-month suspension for an attorney, in a default matter, who failed to timely prosecute his client's lawsuit concerning an insurance dispute arising out of damage to her home caused by Superstorm Sandy; the attorney's failure to prosecute the litigation resulted in the dismissal of the client's claim and the likely loss of the client's potential avenues for relief; the attorney intentionally failed to advise his client of the dismissal of her matter and failed to attempt to reinstate the litigation; the attorney also repeatedly ignored the client's numerous requests for information regarding her matter; violations of RPC 1.3, RPC 1.4(b), and RPC 8.1(b) (two instances); in aggravation, the attorney had been reprimanded twice in 2020 for

similar misconduct and, thus, possessed a heightened awareness of his obligation to cooperate with disciplinary authorities; nevertheless, the attorney neither submitted a written reply to the grievance nor filed an answer to the complaint).

Here, respondent's misconduct is most analogous to that of the censured attorney in Witherspoon, who, in a default matter, ignored his client's requests for information and took little or no action to settle the client's matter, forcing the client to retain new counsel. Like the attorney in Witherspoon, respondent accepted the representation but failed to take any meaningful steps in furtherance of the matter. He then ignored his client's repeated requests for information and, subsequently, ignored the disciplinary investigator's efforts to obtain his written reply to the grievance. Unlike the attorney in Witherspoon, however, respondent does not enjoy the benefit of a lengthy unblemished career at the bar. Rather, as discussed below, respondent was reprimanded in both De Masi I and De Masi II.

Based on the foregoing disciplinary precedent, and Witherspoon in particular, we determine that the baseline discipline for respondent's misconduct is a censure. To craft the appropriate discipline in this case, however, we also consider mitigating and aggravating factors.

There is no mitigation to consider.

In aggravation, we accord considerable weight to respondent's disciplinary history, consisting of two reprimands in connection with De Masi I and De Masi II. His misconduct in both matters was nearly identical to the instant misconduct, thereby evidencing a failure to learn from his past mistakes and prior interactions with the disciplinary system.

Specifically, in De Masi I, respondent was retained to institute a name-change proceeding for a client but failed to take any action in furtherance of the representation. Additionally, he failed to communicate with the client. In determining that a reprimand was the appropriate quantum of discipline in that matter, we weighed, in aggravation, that he had allowed the matter to proceed as a default.

Three years later, in De Masi II, respondent failed to timely file child support documentation, in violation of RPC 1.3, causing his client to lose approximately $1,700 in back child support payments. In a second client matter comprising De Masi II, he failed to take any action in furtherance of a name change application for which he had been retained. He also failed to return the client's telephone calls for six months. In that matter, in determining that a reprimand was the appropriate quantum, we accorded significant mitigating weight to the illness and death of respondent's mother, his marital problems, and his mental health struggles.

Here, the misconduct occurred long after the stressors that contributed to respondent's earlier misconduct. In our view, the current matter clearly establishes that he has failed to learn from his prior encounters with the disciplinary system and, rather, has demonstrated a disregard for his obligations pursuant to the Rules of Professional Conduct. Consistently, the Court has signaled an inclination toward progressive discipline and the 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).

In further aggravation, respondent allowed this matter to proceed as a default. "[A] respondent'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). However, because we already factored respondent's default status into the baseline discipline of a censure, we do not accord this aggravating factor additional weight.

Conclusion

On balance, in view of compelling aggravating factors, including respondent's failure to learn from his prior interactions with the disciplinary

system, we determine that a three-month suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Member Campelo voted to impose a censure.

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 Catherine 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 Jon Mitchell De Masi
Docket No. DRB 24-188

Decided: February 3, 2025

Disposition: Three-month suspension

Members	Three-month suspension	Censure
Cuff	X	
Boyer	X	
Campelo		X
Hoberman	X	
Menaker	X	
Petrou	X	
Rodriguez	X	
Spencer	X	
Total:	8	1

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