DISCIPLINARY REVIEW BOARD

OF THE

SUPREME COURT OF NEW JERSEY

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June 24, 2025

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

Re: **In the Matter of Hikmat Abboud Sabeh**
Docket No. DRB 25-087
District Docket Nos. VC-2022-0006E and VC-2022-0009E

Dear Ms. Baker:

The Disciplinary Review Board (the Board) has reviewed the motion for discipline by consent (censure 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 that a censure is the appropriate quantum of discipline 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 about the representation); RPC 1.5(b) (failing to set forth, in writing, the basis or rate of the legal fee); RPC 1.5(c) (failing to memorialize a contingent fee in writing and failing to provide a written accounting of how a retainer was applied); RPC 3.2 (failing to expedite litigation); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). However, for the reasons set forth below, the Board determined to dismiss the charge that he violated RPC 1.2(a) (failing to abide by the client's decisions concerning the scope and objectives of representation), and the second alleged violations of RPC 3.2 and RPC 8.4(d).

The stipulated facts are as follows. In February 2021, Concetta Polise retained respondent to represent her in connection with a dispute with her homeowner's association (the HOA). Polise executed a retainer agreement, which included the following irregularities: (1) respondent would charge a "flat-fee" for his services, however the flat-fee was not specified; (2) the representation was not a flat-fee arrangement, rather it was a contingency fee arrangement with respondent being entitled to "33% of all recovery;" (3) Polise would be responsible for "costs of investigation, out-of-pocket costs, and court expenses if any recovery is made," but she also would be responsible for "Miscellaneous Expenses: filing fees, or government fees" without condition; and (4) Polise was restricted from "speak[ing] to others or consult[ing] other lawyers during the case."

On March 5, 2021, respondent filed a complaint against the HOA. On April 16, 2021, the HOA filed an answer, which included a demand for a statement of damages and other documents referenced in the complaint. On April 27, 2021, the HOA served formal demands for documents and interrogatories. Respondent, however, failed to answer the discovery demands, despite Polise having provided documents and information to him, and he also failed to propound reciprocal discovery requests on the HOA.

Respondent's client file failed to include any correspondence with Polise, between April and August 2021, concerning the discovery demands or any other action items. In late August 2021, Polise contacted him, by both text message and e-mail, requesting updates. He replied that she had to wait for a trial date and that there was nothing he could do until the matter was before the court.

In September 2021, respondent informed Polise of a purported emergency conference with the court and indicated that he would ask the court to prioritize the mediation and trial date. However, the court records did not reflect that any conferences occurred in the Polise matter. On September 29, 2021, rather than prioritizing a trial date, respondent requested a one-cycle adjournment.

On September 29, 2021, the HOA consented to the adjournment request but asked the court to set the trial date for November 22, 2021, to allow the HOA time to file a motion for summary judgment. Respondent did not oppose the HOA's request.

On October 5, 2021, the HOA filed the summary judgment motion asserting that Polise failed to (1) establish a prima facie case of negligence; (2) produce any discovery; (3) identify any witnesses or experts; or (4) specify her alleged injuries. Respondent both failed to notify Polise of the HOA's motion and to oppose that application.

On November 4, 2021, the court granted the HOA's unopposed motion for summary judgment, with prejudice. On November 11, 2021, respondent provided Polise with a copy of the order granting the motion, falsely stated that the court entered the order sua sponte, and claimed, "well you know, the Judge gets a lot of cases and sometimes the Judge will just do that to clear his cases. That's what judges do."

Subsequently, Polise indicated that she might file an ethics grievance against respondent. In reply, he threatened to reserve his right to "file a civil claim in the event your grievance complaint (sic) is rejected or denied." On March 23, 2022, Polise filed an ethics grievance against respondent and posted negative reviews concerning him on Google and Yelp.

In late summer and fall 2022, Polise received two separate notices from collection agencies seeking payment, on respondent's behalf, for allegedly unpaid legal fees under a "fictive hourly fee arrangement."

In a second client matter, on August 23, 2020, David Miller retained respondent in connection with litigation against the New Jersey State Police (the NJSP) concerning his November 14, 2019 arrest. Respondent indicated that it was necessary to file a notice of claim under the New Jersey Tort Claims Act (the TCA) prior to filing a lawsuit. However, he failed to inform Miller that the ninety-day period for filing the notice already had expired and, thus, it was necessary to seek permission from the Superior Court to file a late notice.

On September 25, 2020 respondent filed a notice of claim, despite failing to seek permission from the court to file a late notice. On November 11, 2020, he notified Miller that they needed to wait for the court to accept the notice. However, he failed to inform Miller that the one-year grace period to file a late notice of claim under N.J.S.A. 59:8-9 was set to expire on November 14, 2020.

In early January 2021, respondent informed Miller that he had not heard back concerning the notice of claim and he intended to move forward with filing the lawsuit. Although respondent prepared a complaint on behalf of Miller, he failed to file it.

On February 2, 2021, Miller inquired about the next steps, and respondent misrepresented to him that the court was reviewing the complaint, which he claimed should take approximately seven to ten days.

On May 11, 2021, after Miller sought an update on the status of his case, respondent admitted that he failed to file the complaint and asserted that he could not file it because he did not have the names of the police officers involved. He further indicated that he had prepared the complaint but the documents that Miller provided did not include the officers' names. Despite the apparent importance of the police officers' names, respondent failed to immediately take steps to obtain the names.

On July 7, 2021, almost a year into the representation, respondent submitted an Open Public Records Act (OPRA) request to the NJSP by e-mail. However, he did not receive a reply to his OPRA request.

In early September 2021, respondent informed Miller that he intended to close his file if he did not get the officers' names soon. Miller contacted the NJSP and learned that it does not accept OPRA requests sent by e-mail, and that all requests must be sent either via certified mail or submitted through the NJSP website. As a result, Miller submitted his own OPRA request to the NJSP.

On October 20, 2021, the NJSP provided Miller with a copy of the incident report, which included the name of one of the police officers. Miller provided the officer's name to respondent, and they discussed ways to obtain the officer's home address. As of November 2021, respondent had failed to locate the address.

Miller pressed respondent to explain why he could not file the complaint without the police officer's address. In reply, respondent terminated the attorney-client relationship, asserting:

> I received your text message and I understand your frustration; however, the predicament you're in is not my doing. When I took your case, you advised that you had the officers' full name and contact information your reports. This was not the case. I've been working tirelessly to get this information.
>
> [S¶¶59-60].[1]

[1] "S" refers to the stipulation of discipline by consent, dated January 28, 2025.

Shortly thereafter, Miller submitted a negative online review of respondent. In reply, respondent accused Miller of making "false and libelous" statements and threatened to "escalate this to outside counsel for litigation."

On or around, June 29, 2022, Miller informed respondent that he intended to file an ethics complaint. In reply, respondent stated the following:

> Your complaint is frivolous and will only strengthen our action against you.
>
> We will be moving forward with a collections lawsuit and Slander lawsuit against you.
>
> You will be served at your home address which you have provided to this office.
>
> This office will no longer engage with your repeated harassment and threats to me or my staff. As such, your correspondence will be forwarded to local and state authorities for documentation which will be public record for housing, employment, and personal use.
>
> [S¶64].

Based on the above facts, the Board determined that respondent violated RPC 1.1(a) and RPC 1.3 in the Miller matter by failing to seek permission from the court to file a late notice, to take immediate action to obtain the names and addresses of the police officers involved, and to file the complaint. He also violated RPC 1.3 in the Polise matter by failing to identify any witnesses or experts or specify any alleged injuries in the complaint; to produce or propound discovery; to oppose the motion for summary judgment; and to promptly pursue a trial date. Similarly, in the Polise matter, respondent violated RPC 3.2 by failing to take any action to prosecute the case following the filing of the complaint.

However, the record does not establish that respondent violated RPC 3.2 in connection with the Miller matter by failing to obtain the information necessary to file the complaint, as the DEC alleged. The Board and Court consistently have held that RPC 3.2 is inapplicable to circumstances where there is no active litigation to expedite. See In the Matter of M. Blake Perdue, DRB 18-319, 18-320, and 18- 321 (March 29, 2019) (dismissing the RPC 3.2 charge for failing to expedite litigation because the attorney never initiated any litigation in the first place), and In the Matter of Diane Marie Acciavatti, DRB 19-321 (March 31, 2020) (noting that RPC 3.2 is typically reserved for litigation-specific ethics violations, such as failing to comply with case management orders or specific court deadlines). Respondent failed to file a complaint in the Miller matter, and thus, there was no active litigation to expedite. His misconduct in the Miller matter is appropriately addressed via the RPC 1.1(a) and RPC 1.3 charges.

With respect to respondent's failure to communicate, the record amply supports the finding that he violated RPC 1.4(b) and RPC 1.4(c). Specifically, although respondent appeared to be in regular contact with both clients, he made numerous misrepresentations concerning the status of their matters. Further, he failed to provide Polise with a copy of the motion for summary judgment or otherwise alert her to its filing. Moreover, he deprived Miller of the opportunity to make an informed decision regarding the representation by failing to inform him that the ninety-day period for filing a notice of claim had expired and that it would be necessary to seek permission from the court to file a late notice.

Additionally, respondent provided Polise with a fee agreement that failed to specify the amount of the fee or clarify what additional expenses and costs Polise would be required to pay and further included conflicting language that indicated that he would be entitled to a contingency fee from which costs would be paid. The imprecision of the fee agreement left open several questions concerning the terms of the representation and Polise's financial responsibility. Thus, there is clear and convincing evidence that respondent did, in fact, violate RPC 1.5(b) and (c).

Further, respondent admittedly violated RPC 8.4(c) through his multiple misrepresentations to his clients, including alleging that the court had dismissed Polise's matter sua sponte, when he knew that the court dismissed that matter following an unopposed summary judgment motion, and stating to Miller that the court was reviewing the complaint, despite knowing that he never filed the complaint.

Finally, the DEC alleged that respondent violated RPC 8.4(d) by threatening retaliation against Polise and Miller for posting negative reviews online and stating their intentions to file ethics grievances against respondent. Here, although his threat of a libel lawsuit following Miller posting a negative online review certainly was unprofessional, the Board determined that this conduct did not rise to the level of being prejudicial to the administration of justice, considering that no judicial resources were wasted by respondent's conduct in response to the negative online review.

By contrast, respondent's retaliatory threats to pursue litigation against Polise and Miller, following their separate statements that they intended to file ethics grievances against him, clearly violated RPC 8.4(d), as the threats were intended to thwart the filing of those grievances. Although A.C.P.E. Opinion 721, 204 N.J.L.J 928 (June 27, 2011), prohibits an attorney from conditioning a settlement on the withdrawal of an ethics grievance, the principles of the opinion apply to the instant matter. Specifically, the opinion states that:

> [a]ttorney discipline is not a private cause of action or private remedy for misconduct that can be negotiated between an attorney and the aggrieved party. The discipline process furthers public, not private interests . . . . Accordingly, an attorney may not seek or agree, as a condition of settlement of an underlying dispute, that the client not file an ethics grievance with regard to conduct of the attorney in the matter or withdraw a grievance already filed. Such an agreement is prejudicial to the administration of justice and, accordingly, violates [RPC] 8.4(d).

Respondent specifically tied the threat of a retaliatory lawsuit against Polise to the potential ethics grievance, stating that he would "file a civil claim in the event [Polise's] grievance complaint [was] rejected or denied." He further tied his threat to pursue a collections and slander lawsuit against Miller to that potential ethics grievance by stating that Miller's "complaint [was] frivolous and [would] only strengthen our action against you." Undoubtedly, by making such threats, he was seeking to hinder the disciplinary process by deterring the clients from filing the ethics grievances, in violation of RPC 8.4(d).

However, the Board determined to dismiss the RPC 1.2(a) charges stemming from respondent's failure to provide discovery responses in the Polise matter and his failure keep either client accurately informed about the status of their cases. There is no evidence in the record that he specifically failed to abide by Polise's or Miller's decisions concerning the scope and objectives of the representation. Failure to perform legal services, without more, does not rise to the level of a violation of RPC 1.2(a). See In the Matter of Stephen Paul Hildebrand, DRB 22-208 (May 1, 2023) (dismissing the RPC 1.2(a) charge in the absence of clear and convincing evidence that the respondent disregarded or unilaterally determined the means of pursuing a client's objectives). His misconduct in this respect is more precisely addressed by the charged violations of RPC 1.1(a); RPC 1.3; and RPC 1.4(b).

Absent serious aggravating factors, such as harm to the client, conduct involving gross neglect, lack of diligence, and failure to communicate ordinarily results in an admonition, even when accompanied by other non-serious ethics infractions. See 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).

The quantum of discipline is enhanced, however, when additional aggravating factors are present. See 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), and 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 separate probate client 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 and contrition; additionally, the attorney eventually engaged a family law attorney to help her review and advance her outstanding family law cases).

Conduct involving the failure to memorialize the basis or rate of a fee, as RPC 1.5(b) requires, typically results in an admonition. See In the Matter of John J. Pisano, DRB 21-217 (January 24, 2022) (the attorney failed to set forth in writing the basis or rate of the legal fee and concurrently represented a driver and a passenger in an automobile accident matter, prior to when liability had been established).

Standing alone, misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand still may be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See In re Rudnick, __ N.J. __ (2022), 2022 N.J. LEXIS 258 (the attorney allowed his client's lawsuit to be dismissed for his failure to respond to interrogatories; thereafter, the attorney failed to attempt to reinstate his client's matter; the attorney also failed to reply to his client's inquiries regarding the case and misrepresented to his client that the entire case had been dismissed for reasons other than the attorney's failure to respond to interrogatories; the attorney's misconduct occurred during a one-year timeframe; in mitigation, the attorney had no prior discipline, accepted responsibility for his misconduct, and fully refunded the client's fee, on his own accord).

Attorneys who have attempted to coerce a grievant to withdraw an ethics grievance have been met with a range of discipline, from admonition to censure. See, e.g., In the Matter of Ralph Alexander Gonzalez, DRB 12-283 (November 16, 2012) (admonition imposed on attorney who, in a civil suit that he had instituted against his client seeking payment of his legal fee, entered into a settlement agreement that required her to withdraw "any ethics complaint she may have filed" against him; prior reprimand); In re Welch, 208 N.J. 377 (2011) (reprimand imposed on attorney who improperly released escrow funds in a matrimonial matter, a violation of RPC 1.15(a) (negligently misappropriating client funds), and attempted to shield himself from an ethics grievance by including a provision in the parties' property settlement agreement whereby the wife "waive[d] and forever relinquishe[d]" any ethics grievance against the attorney or his firm as the result of the improper release of the escrowed funds; mitigation included the attorney's unblemished career of thirty-eight years, his quick admission of wrongdoing, his expression of remorse, and his statement that he took this matrimonial matter more personally than other cases); In re Allen, 221 N.J. 298 (2015) (censure imposed on attorney who offered to refund the client's retainer in exchange for the withdrawal of his grievance, a violation of RPC 8.4(d); attorney also engaged in gross neglect, lack of diligence, and failure to communicate in respect of the client matter; prior admonition for failure to communicate with a client; sanction enhanced for "monumental lack of contrition" and calculated dishonesty toward disciplinary authorities).

Based upon the above precedent, and when considering the extent of respondent's mishandling of the two client matters, in addition to his blatant misrepresentations to the clients, the Board concluded that the baseline discipline for the totality of respondent's misconduct is a reprimand. To craft the appropriate discipline, the Board also considered mitigating and aggravating factors.

In mitigation, respondent has no formal discipline in his ten-year career. He admitted his wrongdoing and entered into the present disciplinary stipulation, thereby accepting responsibility for his misconduct and conserving disciplinary resources. Moreover, he also was an inexperienced attorney who had been practicing law for no more than four years at the time of the misconduct in the Miller matter.

The Board weighed significantly, in aggravation, the demonstrable harm respondent caused to Polise. 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, by failing to immediately inform Polise of the motion for summary judgment and the risk of her complaint being dismissed, as well as his failure to oppose the motion, respondent hindered Polise's ability to retain new counsel and extinguished any chance she had of avoiding a dismissal with prejudice. Moreover, respondent's failure to diligently process Miller's case resulted in the expiration of the one-year grace period to file a late notice of claim.

The Board weighed, in further aggravation, respondent's retaliatory threats to pursue litigation against Polise and Miller following their statements that they intended to file ethics grievances against respondent, which demonstrate his lack of restraint and judgment.

On balance, the Board determined that a censure is the appropriate quantum of discipline to protect the public and preserve confidence in the bar.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated March 27, 2025.

2. Stipulation of discipline by consent, dated February 4, 2025.

3. Affidavit of consent, dated March 5, 202

4. Ethics history, dated June 24, 2025.

Very truly yours,

/s/ Timothy M. Ellis

Timothy M. Ellis
Chief Counsel

TME/akg
Enclosures

c: (w/o enclosures)
Hon. Mary Catherine Cuff, P.J.A.D. (Ret.), Chair
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