SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-326
District Docket No. XIV-2016-0727E

IN THE MATTER OF	:
JEFFREY L. PERLMAN	:
AN ATTORNEY AT LAW	:

Decision

Argued: January 18, 2018

Decided: March 2, 2018

Eugene Racz appeared on behalf of the Office of Attorney Ethics.

Howard Kanowitz appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), following respondent's November 4, 2016 suspension, for eighteen months in Pennsylvania, for his violation of the Pennsylvania equivalents of New Jersey RPC 1.1(a) (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with the client) and (c) (failure to explain the matter

to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); RPC 1.15(a) (failure to safeguard, negligent misappropriation, and commingling); RPC 1.15(b) (failure to promptly notify and deliver funds or property to client or third party); RPC 1.16(d) (failure to protect client's interests upon termination of representation); RPC 3.2 (failure to expedite litigation); RPC 4.1 (presumably (a)(1), false statement of material fact or law to a third person); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The OAE seeks an eighteen-month suspension. Respondent urges a suspension retroactive to his suspension in Pennsylvania. For the reasons stated below, we determine to impose a one-year prospective suspension.

Respondent was admitted to the Pennsylvania bar in 1983 and the New Jersey bar in 1984. He has no history of discipline in New Jersey. He has been administratively ineligible to practice law in New Jersey since September 12, 2016 for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (the Fund).

On September 19, 2016, respondent entered into a Joint Petition in Support of Discipline on Consent (Joint Petition) with

the Pennsylvania Office of Disciplinary Counsel (ODC). The petition included eleven charges of misconduct characterized as "involving a pattern of neglect and lack of communication with some mishandling of fiduciary funds." On October 5, 2016, respondent was temporarily suspended in Pennsylvania. On November 4, 2016, the Supreme Court of Pennsylvania granted the petition and ordered respondent suspended for eighteen months, retroactive to the date of his temporary suspension.

The underlying misconduct, as set forth in the joint petition, was as follows.

CHARGE I: THE JENNY JEAN-LOUIS MATTER

Jenny Jean-Louis retained respondent in October 2012, after she was injured in a November 2010 car accident. On October 17, 2012, respondent filed a complaint on behalf of Jean-Louis. On January 16, 2014, he settled the matter for $10,000. Respondent failed to inform Jean-Louis that he had accepted the settlement offer on her behalf, failed to forward the previously drafted release of claims to her, and failed to request that she execute and return that release.

On February 10, 2014, Peter A. Dorn, counsel for defendant, inquired of respondent regarding the release, to no avail. Hence, on March 6, 2014, Dorn filed a motion to enforce the settlement.

Respondent failed to reply to that motion. On April 4, 2014, the court issued an order to show cause, returnable on April 29, 2014. Respondent did not reply. Subsequently, on May 1, 2014, Dorn filed a second motion to enforce the settlement. The same day, the court issued another order to show cause, returnable on May 27, 2014. Respondent, again, failed to reply. On May 27, 2014, the court granted the second motion to enforce the settlement and dismissed the first motion as moot. One month later, on July 10, 2014, Dorn filed a motion for sanctions.

Soon thereafter, in an August 12, 2014 letter, Frank N. DiMeo, Esq., informed respondent that Jean-Louis had retained his firm, and requested respondent's client file. On September 9, 2014, DiMeo again sent the same letter. Respondent did not reply to either letter.

Meanwhile, on September 3, 2014, the court set a return date of September 30, 2014, for an order to show cause as to why Dorn's motion for sanctions should not be granted. On September 30, 2014, respondent appeared for the order to show cause. Outside of the courtroom, he met with DiMeo's law partner, James D. Rosen, Dorn, and Jean-Louis. During the conversation, Jean-Louis accepted the $10,000 settlement offer, provided she would receive between $5,000 and $6,000 from the proceeds; she executed a full release of her claims formalizing the settlement; and respondent agreed

to satisfy any outstanding medical bills through either first party benefits or his own personal funds, with no contribution from Jean-Louis. Dorn withdrew the motion for sanctions.

On October 6, 2014, Dorn sent to respondent a $10,000 settlement check and a draft Order to Settle, Discontinue and End. Dorn requested that respondent execute and return the order. On October 13, 2014, Rosen wrote to respondent, asserting that he had received a copy of Dorn's letter, and that he expected respondent to forward to him a check for no less than $5,500, payable to Jean-Louis.

In a telephone conversation in early November 2014, respondent told Rosen that he had not yet deposited the $10,000 settlement check into his escrow account. Soon thereafter, on November 12, 2014, Rosen sent respondent a follow-up letter, memorializing their conversation. The letter also noted that, notwithstanding respondent's receipt of the settlement check more than one month previously, Jean-Louis still had not received her portion of the proceeds. Rosen cautioned respondent that, if he failed to forward at least $5,500 to Jean-Louis within one week, Rosen would report respondent to "the Bar Association." Respondent failed to forward any portion of the settlement proceeds to Jean-Louis.

On December 3, 2014, Dorn filed a motion to enforce the settlement. On January 26, 2015, the court ordered Jean-Louis' civil matter marked "settled, discontinued, and ended," and noted that, although the defendant had received the executed release and had sent the $10,000 settlement check, respondent had failed to sign the order to settle, discontinue, and end. Almost six months later, in June 2015, respondent mailed a $6,000 check to Jean-Louis, which represented her share of the proceeds.

Respondent stipulated that his conduct in representing Jean-Louis violated the Pennsylvania equivalent of RPC 1.3, RPC 1.4(b), RPC 1.15(b), and RPC 8.4(d).

CHARGE II: MISHANDLING OF FIDUCIARY FUNDS

Failure to Pay Third Parties

On December 2, 2014, respondent deposited a $12,500 settlement check into his IOLTA account in connection with a personal injury matter involving his client, Valerie Farmer. According to a hand-written distribution sheet respondent prepared for Valerie Farmer, he withheld $1,400 from the settlement proceeds to pay a third party identified as "Cover Bridge." Respondent, however, failed to pay $1,400 to Cover Bridge.

On December 29, 2014, respondent deposited an $18,000 settlement check into his IOLTA account in connection with a

personal injury matter involving his client, Yolanda Willis. According to a hand-written distribution sheet he prepared for Willis, respondent withheld $800 from the settlement proceeds to pay a medical bill that Willis owed to "Dr. Weinerman." Yet, respondent failed to pay $800 to Dr. Weinerman.

On January 16, 2015, respondent deposited a $10,800 settlement check into his IOLTA account in connection with a personal injury matter involving his client, Stephanie Scannapieco. According to a hand-written distribution sheet he prepared for Scannapieco, respondent withheld $1,500 from the settlement proceeds to pay an outstanding medical bill. The medical provider was not identified on the distribution sheet. Nevertheless, respondent failed to pay $1,500 to any medical provider on behalf of Scannapieco.

On March 4, 2015, respondent deposited a $13,500 settlement check into his IOLTA account in connection with a personal injury matter involving his client, Mariana Kandeh. According to a hand-written distribution sheet he prepared for Kandeh, respondent withheld $160 from the settlement proceeds to pay a medical bill. The medical provider was not identified on the distribution sheet. Respondent failed to pay $160 to any medical provider on behalf of Kandeh.

On March 19, 2015, respondent deposited a $4,850 settlement check into his IOLTA account in connection with a personal injury matter involving his client, Jasmine Farmer. According to a hand-written distribution sheet that he prepared for Jasmine Farmer, respondent withheld $825 from the settlement proceeds to pay Cover Bridge. Respondent failed to pay $825 to Cover Bridge.

Failure to Make Full Distribution of Client Funds

On December 8, 2014, respondent deposited a $25,000 settlement check into his IOLTA account in connection with a personal injury matter involving his client, Kameron Fowlkes. Respondent distributed the settlement proceeds as follows:

a. $12,240.52 to Fowlkes as her share of the settlement proceeds;
b. $10,000 to himself for his fees; and
c. $509.48 to himself as reimbursement of costs.

Respondent distributed $22,750 of the $25,000 settlement proceeds, but failed to distribute the remaining balance of $2,250 to Fowlkes.

Commingling of Personal Funds with Fiduciary Funds

On December 30, 2014, respondent deposited a check for $2,000 into his IOLTA account. That check was drawn on personal funds from his operating account. At the time he deposited the check, respondent maintained fiduciary funds on behalf of his client

Willis, in his IOLTA account. Hence, respondent commingled personal funds with fiduciary funds in his IOLTA account.

Respondent stipulated that the aforementioned conduct violated the Pennsylvania equivalent of RPC 1.15(a) and RPC 1.15(b).[1]

CHARGE III: THE DERRICK J. JAMES MATTER

On March 5, 2013, respondent filed a complaint on behalf of Derrick James, who had retained him in connection with injuries sustained during a 2011 accident. On October 29, 2013, respondent filed a "praecipe" to defer James' civil case because James was incarcerated.[2] On November 7, 2013, the court placed the James civil case on deferred status.

Two years later, on December 1, 2015, the court issued a "1901 Docket Inactivity Notice." The notice was issued pursuant to Pa.R.J.A. 1901, which provides that a matter that has been inactive for an unreasonable period shall be terminated upon motion of the court. The notice granted respondent, on behalf of James, thirty days to seek a hearing on the proposed termination of the matter.

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[1] According to the OAE's brief in support of its motion, RPC 1.15(b) is equivalent to New Jersey RPC 1.15(b).

[2] A praecipe is a writ demanding action or, in this instance, explaining inaction.

By letter dated December 4, 2015, Pennsylvania Disciplinary Counsel Richard Hernandez informed Samuel C. Stretton, respondent's counsel, that the court had issued the inactivity notice. He asked Stretton to urge respondent to act promptly to ensure that James' civil case was not terminated. Although Stretton informed respondent of the notice, respondent failed to take any action.

On February 1, 2016, the court administratively closed James' civil case due to inactivity of more than twenty-four months. Respondent failed to notify James that his matter had been administratively closed.

Respondent stipulated that the aforementioned conduct violated the Pennsylvania equivalents of RPC 1.3 and RPC 1.4(b) and (c).

CHARGE IV: THE TERRANCE L. TAYLOR MATTER

On May 4, 2009, Terrence Taylor was a passenger on a Southeastern Pennsylvania Transportation Authority (SEPTA) bus that was struck by an automobile. Taylor later retained respondent to represent him in obtaining compensation for the injuries he sustained in the accident.

On April 21, 2011, respondent filed a complaint on behalf of Taylor. Fifteen months later, at a July 23, 2012 arbitration

hearing, Taylor was awarded $3,500. No appeal was taken from that award. Sometime thereafter, respondent received a $3,500 settlement check from SEPTA, but misplaced it. Respondent failed to notify Taylor not only that he had received the check, but also that he had misplaced it. Thereafter, respondent failed to act promptly to obtain a replacement settlement check.

During the course of 2015, Taylor and his friend, Laverne Burgess, called respondent to inquire about the delay in Taylor's receipt of settlement proceeds. At some point, respondent informed Taylor and Burgess that he was waiting to receive a settlement check. In October 2015, respondent received a replacement settlement check from SEPTA. On November 24, 2015, he provided Taylor with a $2,100 check drawn on his IOLTA account, representing Taylor's share of the settlement proceeds.

Respondent stipulated that the aforementioned conduct violated the Pennsylvania equivalents of RPC 1.3 and RPC 1.4(b) and (c).

CHARGE V: THE ALHAJI I. ABRAHAM MATTER

Alhaji I. Abraham retained respondent to represent him in obtaining compensation for injuries he sustained in an accident occurring at a Quick Stop convenience store, on November 1, 2010. On May 9, 2013, respondent filed a complaint on behalf of Abraham.

Almost one year later, on March 21, 2014, an arbitration hearing resulted in an award of $9,000 to Abraham.

Ten days later, on March 31, 2014, John F. Lewis, defense counsel in the Abraham lawsuit, informed respondent by letter that the defendants would not appeal the arbitration award. Lewis enclosed a general release of all claims for Abraham's execution. Lewis represented that, upon receipt of the closing papers and the Order to Satisfy the Award of Arbitrators, he would forward the settlement funds to respondent. On May 13, 2014, respondent filed the order.

Two months later, on July 14, 2014, Lewis faxed a letter to respondent, noting that he had yet to receive a signed release. In an August 11, 2014 letter, Lewis reminded respondent of the outstanding issues and previous communications. Further, he cautioned respondent that, unless he sent the executed release within the next ten days, Lewis would file a motion to enforce the settlement, with a request for counsel fees and costs. Soon thereafter, respondent forwarded the executed release to Lewis.

On September 2, 2014, Lewis sent a $9,000 check to respondent, representing the Abraham settlement proceeds. Because respondent failed to negotiate the check, it became void after nine months. Thereafter, respondent failed to promptly act to obtain a replacement check.

On multiple occasions, from September 2014 through June 2015, Abraham called respondent to ascertain when he could expect to receive his share of the settlement proceeds. On those few occasions that Abraham successfully reached him, respondent claimed that he needed thirty more days to address the delay in distribution of the settlement proceeds. In early July 2015, Abraham filed a disciplinary complaint.

On July 10, 2015, Pennsylvania Disciplinary Counsel Hernandez informed Stretton, respondent's counsel, of the Abraham complaint. The next day, respondent told Abraham that he was aware of the complaint filed against him, and scheduled an appointment for July 16, 2015. On that date, Abraham met with respondent and signed the release, which respondent sent to Lewis, along with a request for a settlement check.

By letter dated July 29, 2015, Lewis reminded respondent that he had sent him the settlement check on September 2, 2014. Lewis enclosed copies of the check and the cover letter, and asked respondent to confirm receipt of his letter. During August and September 2015, Abraham called respondent for an update on the settlement proceeds. Respondent replied that he would contact Abraham upon receipt of the settlement check. At the time respondent entered into the Joint Petition with the ODC, Abraham had yet to receive his share of the settlement proceeds.

Respondent stipulated that the aforementioned conduct violated the Pennsylvania equivalents of RPC 1.3 and RPC 1.4(a) and (c).

CHARGE VI: THE CAROLYN PUGH MATTER

On October 4, 2013, Carolyn Pugh was injured while a passenger on a SEPTA bus. On October 7, 2013, she retained respondent to represent her for any claims she had arising from the accident, and signed a written fee agreement. Almost two years later, Pugh telephoned respondent to inquire about the status of her case. Because respondent failed to file a lawsuit on behalf of Pugh, the statute of limitations expired, on October 4, 2015. Respondent failed to inform Pugh that he had not filed a lawsuit or that the statute of limitations had expired. Thereafter, respondent failed to return any of Pugh's messages.

Respondent stipulated that the aforementioned conduct violated the Pennsylvania equivalents of RPC 1.3 and RPC 1.4(b) and (c).

CHARGE VII: THE FREDERICK HAYES MATTER

Fredrick Hayes retained respondent shortly after he was involved in an April 14, 2012 automobile accident. In the spring of 2014, Hayes communicated with respondent to inquire about the

status of his case. Respondent promised to contact Hayes if he received any information.

On April 1, 2014, respondent commenced a lawsuit on behalf of Hayes by filing a Praecipe to Issue Writ of Summons in the Philadelphia Court of Common Pleas. Then, on November 26, 2014, respondent filed a complaint.

On January 6, 2015, Atarah J. Hornezes, defense counsel in the Hayes matter, sent a letter to respondent, enclosing a copy of her entry of appearance; an answer to the complaint; interrogatories; and a request for production of documents. She requested that respondent reply "according to the Rules of Civil Procedure." Respondent failed to reply.

In a February 10, 2015 letter, Hornezes' paralegal reminded respondent that the interrogatories and request for production of documents had been sent to respondent on January 6, 2015; asserted that her office had yet to receive a response to the discovery requests; and warned respondent that, if Hornezes did not receive Hayes' responses to the discovery requests within ten days of receipt of the letter, she would file a motion to compel. Respondent failed to inform Hayes of the discovery deadline and failed to respond to the discovery requests.

On March 13, 2015, Hornezes filed a motion to compel. Respondent was served with the motion but failed to notify Hayes

of it. On March 30, 2015, the court granted the motion to compel and ordered respondent to comply with discovery demands within twenty days of the date of the order. Respondent failed to inform Hayes of the order.

The Hayes matter was scheduled for an arbitration hearing on May 14, 2015. Respondent failed to notify Hayes of the date, time, or location of the arbitration hearing. On May 11, 2015, respondent sought a continuance of the arbitration hearing, misrepresenting that Hayes was not available because he was attending a funeral outside of Philadelphia. On May 11, 2015, the application was granted and the arbitration hearing was rescheduled to June 30, 2015. Again, respondent failed to notify Hayes of the date, time, and location of the arbitration hearing. On June 24, 2015, however, the defendant filed an application for continuance, which was granted. Consequently, the June 30, 2015 arbitration hearing was rescheduled to August 11, 2015. Yet again, respondent failed to notify Hayes.

On August 11, 2015, respondent filed a praecipe to defer the arbitration case, misrepresenting that Hayes was "incarcerated in prison in the Philadelphia Prison System and will not be available for the scheduled Arbitration Hearing on August 11, 2015." Respondent attached a signed verification, dated August 10, 2015, in which he averred that the "statements made in the foregoing

Praecipe to Defer Arbitration Case from Active Arbitration List to Deferral Status are true and correct to the best of [his] knowledge, information and belief," and stated that he understood that "false statements herein are subject to the penalties of 18 Pa.C.S. § 4904, relating to unsworn falsification to authorities." Counsel for the defendant did not oppose the praecipe. Contrary to respondent's statements, Hayes never had been incarcerated. Based on respondent's filing, however, the Hayes lawsuit was placed on deferred status. Respondent failed to inform Hayes of the updated status.

Via an October 23, 2015 letter, Hayes terminated the representation; informed respondent that he had retained new counsel, Andrew B. Shaw; and requested respondent to forward his file to Shaw. On October 27, 2015, Shaw followed up with another letter, stating that, despite his attempt to arrange for the orderly transfer of Hayes' file, respondent had yet to reply to previous letters. Shaw enclosed an "Entry/Withdrawal of Appearance" and requested that respondent sign and return it to him, along with Hayes' file, by November 20, 2015. Shaw cautioned respondent that, if he did not comply with the requests, Shaw intended to enter his appearance in Hayes' lawsuit, to file a motion with the court to remove respondent as Hayes' counsel, and

to allow Hayes to file a disciplinary complaint against respondent. Respondent failed to transfer Hayes' file to Shaw.

Respondent stipulated that the aforementioned conduct violated the Pennsylvania equivalents of RPC 1.3, RPC 1.4(b) and (c), RPC 1.16(d), RPC 3.2, RPC 4.1(a)(1), RPC 8.4(c), and RPC 8.4(d).

CHARGE VIII: THE SHEILA MUHAMMED MATTER

On March 30, 2012, Sheila Muhammed was involved in an automobile accident. Shortly thereafter, she retained respondent to represent her for any claims she had arising from the accident. Marcia Harrison-Kirby and George Kirby also retained respondent to represent them for any claims they had arising from the same accident. Muhammed signed a written fee agreement providing that respondent's contingent fee would be forty percent of any award or settlement that respondent obtained on her behalf.

On March 18, 2014, respondent commenced a lawsuit on behalf of Muhammed, Harrison-Kirby, and Kirby, by filing a Praecipe to Issue Writ of Summons. On August 27, 2014, he filed a complaint in that matter. At an April 29, 2015 arbitration hearing, the panel awarded Muhammed $12,000, and awarded Harrison-Kirby $15,000. On May 26, 2015, Earl Robert Uehling, counsel for defendants, filed an appeal from the arbitration awards.

Prior to July 1, 2015, at Uehling's direction, Rx Professional Services, Inc. (Rx), contacted respondent to arrange an independent medical examination (IME) for Muhammed. Respondent failed to inform Muhammed of the request for an IME. On July 1, 2015, Rx notified respondent by fax that Muhammed had been scheduled to attend an IME, with Dr. Vanett, on July 28, 2015. Respondent failed to notify Muhammed of this appointment.

On July 2, 2015, Uehling filed a motion to compel IMEs for both Muhammed and Harrison-Kirby.[3] Respondent neither informed Muhammed of the motion nor replied to it.[4] On July 23, 2015, the court issued an order directing Muhammed and Harrison-Kirby to submit to an IME with Dr. Vanett on July 28, 2015, and on July 30, 2015, respectively. The court also warned that the failure to comply with its order could result in the imposition of sanctions, including preclusion of any or all of Muhammed and Harrison-Kirby's testimony and evidence at the arbitration hearing and/or the trial. Respondent failed to notify Muhammed of the order or to provide her with a copy of it.

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[3] The record contains no information to explain why Uehling filed this motion only one day after the appointment was made, and twenty-six days before the date for which it was scheduled.

[4] The record is silent in respect of whether respondent notified Harrison-Kirby of any further events in her case, until it was settled.

On July 31, 2015, Rx faxed a letter to respondent, notifying him that Muhammed was rescheduled to attend an IME on August 25, 2015. Still, respondent failed to notify Muhammed. On August 5, 2015, and again on August 6, 2015, Uehling filed a motion for sanctions. Respondent failed to inform Muhammed of the motions or to file a response on her behalf.

On August 20, 2015, the court granted the motion, and directed Muhammed and Harrison-Kirby to appear for an IME on August 25, 2015 and on September 8, 2015, respectively. The court again warned that failure to comply could result in the preclusion of any or all testimony and evidence at arbitration and/or trial. Respondent again failed to inform Muhammed that the court ordered her to attend the IME or to provide her a copy of the court's order.

Muhammed did not appear for her IME. Thus, on August 28, 2015, Uehling filed a motion to preclude Muhammed from testifying or offering other evidence at trial about her injuries and medical treatment because she had failed to attend an IME. Respondent did not oppose the motion, which the court granted on September 21, 2015. However, in a second order, also dated September 21, 2015, the court vacated the order granting preclusion and directed Muhammed to appear for an IME on October 6, 2015. The order also imposed a $1,000 sanction for attorney fees and costs against Muhammed, to be paid from any recovery that respondent obtained

on her behalf. Respondent failed to inform Muhammed about the sanction. On October 6, 2015, Muhammed appeared for the IME.

The Muhammed matter was scheduled for trial on March 21, 2016. On March 16, 2016, respondent filed a stipulation providing that, pursuant to Pa.R.Civ. P. 1311.1, Muhammed, Harrison-Kirby, and Kirby had elected to cap the maximum amount of damages recoverable at $25,000 each.

On March 21, 2016, prior to the start of the trial, respondent informed Muhammed that he believed she might lose at trial, based on a motion in limine that Uehling had filed on March 2, 2016. Respondent also told her that Uehling had offered $8,000 to settle her claims. When Muhammed replied that she wanted to address the court because she was dissatisfied with respondent's representation, he replied that she could not do so.

Nonetheless, in response to Muhammed's stated displeasure with him, respondent offered to waive his legal fee and to pay her $3,000, increasing her settlement to $11,000. Muhammed informed respondent that she still required treatment for her injuries arising from the accident. In response, he assured her that he would ask Dr. Angelo Karakasis to resume treating her. Muhammed accepted the $8,000 settlement offer, with the understanding that respondent would pay her $3,000 from his own funds, waive his legal fee, and contact Dr. Karakasis to request that he resume

treating her. Respondent memorialized the agreement, in a hand-written, one-page document dated March 21, 2016. Muhammed signed the agreement, as did her son, as a witness.

Also on March 21, 2016, respondent and Muhammed went to Uehling's office, where Muhammed signed a General Release in Full of all Claims, in exchange for $8,000. Prior to the March 21, 2016 trial date, Harrison-Kirby had settled her claims for $3,000. On April 15, 2016, Uehling sent two checks to respondent issued by State Farm Insurance Company, one for $8,000, payable to respondent and Muhammed, and the second for $3,000, payable to respondent, Harrison-Kirby, and Kirby.[5]

In an April 25, 2016 fax to respondent, Uehling complained that he had yet to receive Harrison-Kirby's signed release and asked respondent to forward it immediately to him, since respondent had received the $3,000 settlement check. Although Uehling called respondent several times after sending this letter, respondent failed to return his calls, and neither replied to his letter nor sent a signed release.

Respondent failed to contact Muhammed or to obtain her endorsement of the $8,000 settlement check. He further failed to distribute the proceeds from the settlement; to provide Muhammed

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[5] The record contains no further information about Kirby's claim. Presumably, it was derivative of Harrison-Kirby's claim.

with a $3,000 personal check, in accordance with their agreement; or to ask Dr. Karakasis to resume treating Muhammed for the injuries she had sustained in the accident. From April 2016 through at least May 6, 2016, Muhammed telephoned respondent to inquire about the distribution of the $8,000 settlement proceeds and the $3,000 he owed her personally. Respondent returned none of her phone calls.

On April 29, 2016, however, Muhammed used her daughter's cellphone to call respondent. He answered that call and represented to Muhammed that he was not in the office due to the flu, that he would be in the office the following week, and that she could retrieve her funds. On multiple occasions over the next several weeks, Muhammed visited respondent's office, but he was never there.

On May 13, 2016, Uehling filed a motion to enforce the settlement agreement by compelling respondent and Harrison-Kirby to forward a signed release to conclude the matter.[6]

Respondent stipulated that the aforementioned conduct violated the Pennsylvania equivalents of RPC 1.3, RPC 1.4(b) and (c), RPC 1.15(b), RPC 8.4(c), and RPC 8.4(d).

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[6] The record lacks any information regarding the outcome of that motion.

CHARGE IX: THE JUDITH SPILLER MATTER

On April 24, 2010, Judith Spiller was injured while a passenger on a SEPTA bus that was involved in a motor vehicle collision. Thereafter, she retained respondent, by way of contingent fee agreement, to represent her for any claims she had arising from the accident. Two years after the accident, on April 12, 2012, respondent filed a complaint on her behalf.

Prior to July 25, 2013, respondent entered into an agreement with John M. Palm, counsel for defendants, Enterprise Rent-a-Car, EAN Trust, and ELRAC, LLC, to settle Spiller's claims against those defendants for $7,500. On July 25, 2013, Palm filed a "Praecipe to Settle, Discontinue, and End as to defendants Enterprise Rent-a-Car, EAN Trust, and ELRAC, LLC." Respondent did not inform Spiller about the filing of the Praecipe. Although respondent returned Spiller's signed release to Palm, and received a $7,500 settlement check, he did not disburse Spiller's share of the proceeds and did not tell her when she could expect to receive her share.

After several continuances, an arbitration hearing was scheduled for November 4, 2013, in the Spiller lawsuit involving the remaining defendants. On October 31, 2013, respondent notified the Arbitration Center that the Spiller lawsuit had settled, after

which it was marked "discontinued." Respondent did not tell Spiller that the matter was discontinued.

When respondent agreed to settle the case for $7,500, Medicare held a lien for $7,820.31, for payments made to Spiller's medical providers for treatment she received as a result of the April 24, 2010 accident. Prior to settling the matter, respondent had neither investigated whether Medicare had such a lien nor informed Medicare that he was representing Spiller. Additionally, respondent failed to confirm that the Medicare payments were related to Spiller's injuries resulting from the accident, or to negotiate a redirection in Medicare's lien.

By letter dated September 8, 2014, the Centers for Medicare & Medicaid Services (CMS) notified Spiller that she owed the Medicare program $7,820.31 for payments related to the April 24, 2010 accident. CMS further explained that it had the right to collect this debt through offset of any payments she received from a federal agency, such as Social Security retirement benefits. Spiller faxed the letter to respondent.

On December 24, 2014, Spiller received a letter from the Department of the Treasury (Treasury), informing her that, commencing February 2015, up to fifteen percent of her Social Security retirement benefits would be garnished to satisfy the

Medicare debt. Spiller provided respondent with a copy of the letter.

In a letter dated February 25, 2015, Treasury notified Spiller that, commencing February 2015, $234.60 from her monthly Social Security retirement benefits would be garnished to repay her Medicare debt. Spiller provided respondent with a copy of this letter.

On March 9, 2015, respondent provided Spiller with a $235 check to compensate her for the shortfall in her monthly Social Security retirement benefits. Between October 2013 and March 2015, Spiller had periodically contacted respondent to inquire about the status of her matter and the Medicare lien. Respondent had assured Spiller that all was well with both. He failed, however, to resolve the Medicare lien. Sometime after Spiller received the $235 check from respondent, she learned that her matter had been discontinued.

By letter dated March 19, 2015, Brad Cooper, Esquire, informed respondent that he had met with Spiller regarding her April 24, 2010 accident, and requested respondent's client file for her case, including medical records and liens, so that he could assist her with the reduction of her Social Security retirement benefits. Respondent did not reply to Cooper.

In letters dated April 2, 2015, and May 12, 2015, Cooper informed respondent that he had met with Spiller on March 30,

2015, and had reviewed case documents that respondent had forwarded to her. Cooper asked for a "full, complete and unredacted copy of [respondent's] file"; asserted that Spiller was unaware that respondent had settled her matter in October 2013; and suggested that respondent forward the letter to his malpractice insurance carrier. In another letter, dated August 26, 2015, Cooper summarized respondent's failure to provide the file and asked respondent to forward the letter to his attorney. Respondent did not reply to any of Cooper's letters.

On September 9, 2015, Cooper sued respondent for legal malpractice on behalf of Spiller by filing a Praecipe to Issue Writ of Summons. On September 11, 2015, respondent was served with the Writ of Summons.

On September 18, 2015, Cooper sent respondent a deposition notice directed to the custodian of records for respondent's law office so that he could obtain information to prepare a complaint in the legal malpractice lawsuit. The deposition was scheduled for September 29, 2015, at Cooper's law office. Cooper listed eleven categories of documents that the custodian of records was to produce at the deposition. Respondent, as the custodian of records for his law office, failed to appear for the deposition or to provide Cooper with copies of the requested documents.

By letter dated September 30, 2015, Cooper informed respondent that the records custodian had failed to appear for the deposition and asked respondent to contact Cooper's office within five days to reschedule the deposition. Cooper also requested that respondent provide the name of his malpractice carrier and asserted that, if respondent did not contact his office, he would file a motion to compel. Respondent failed to reply.

On October 14, 2015, Cooper filed a motion to compel. Respondent failed to reply. Hence, on November 13, 2015, the court granted the motion and directed that respondent's custodian of records "shall appear for a deposition and produce the requested documents, for the purpose of preparing a complaint," at Cooper's law office, within ten days of the date of the order.

On December 9, 2015, Cooper sent respondent a notice of deposition of respondent's custodian of records on December 16, 2015, at Cooper's law office, and requested the production of documents at the deposition. Respondent failed to appear for the deposition or to provide Cooper with any of the requested documents.

During a telephone conversation, on January 19, 2016, respondent informed Cooper that he had malpractice insurance, but that he needed additional time to comply with the court's November 13, 2015 order. He also conveyed to Cooper that he wanted to "work

this file out." In a January 27, 2016 letter, Cooper memorialized the telephone conversation and again asked for respondent's malpractice insurance carrier information. Cooper also noted that he was allowing respondent an additional five days to produce Spiller's file and expressed a willingness to resolve the malpractice matter. He invited respondent to make a settlement offer. Respondent did not reply.

On February 18, 2016, Cooper notified respondent that he intended to report him to the "Disciplinary Board" for having violated a court order and having failed to respond to a pleading. He also requested that respondent inform him of any illness that would excuse respondent's conduct. Respondent did not reply to the letter.

Several days later, on February 26, 2016, Cooper sent respondent a draft motion for default. On March 9, 2016, Cooper filed that motion in the malpractice lawsuit, resulting in entry of a default judgment against respondent. A damages hearing was scheduled for May 11, 2016.

On May 2, 2016, Cooper sent respondent a notice of trial attachment, informing him that the malpractice trial was scheduled for May 11, 2016. Cooper asked respondent to "bring with you the complete un-redacted" files for both the malpractice lawsuit and the Spiller lawsuit. Two days later, on May 4, 2016, Cooper sent

a follow-up letter to respondent, enclosing a notice to attend, and directing respondent to appear on May 11, 2016, to testify. The letter further directed respondent to bring with him "the complete unredacted" files for the malpractice lawsuit and the Spiller lawsuit.

Respondent failed to appear for trial on May 11, 2016, and failed to produce any of the requested documents. Cooper presented evidence to the court on the issue of Spiller's damages. Finally, on May 18, 2016, the court awarded Spiller $100,000 in compensatory damages and $50,000 in punitive damages.

Respondent stipulated that the aforementioned conduct violated the Pennsylvania equivalents of RPC 1.1(a), RPC 1.3, RPC 1.4(b) and (c), RPC 1.15(b), RPC 1.16(d), RPC 8.4(c), and RPC 8.4(d).

CHARGE X: THE JOHNNIE C. MEBANE, JR. MATTER

On September 18, 2012, Johnnie C. Mebane, Jr., was injured by falling bricks that struck him while he was standing outside a building. On September 24, 2012, Mebane entered into a written fee agreement with respondent to represent him for any claims he had arising from the incident.

Respondent failed to commence a lawsuit on Mebane's behalf before the statute of limitations expired. He further failed to

inform Mebane that he had not filed a complaint or that the statute of limitations had expired.

Respondent stipulated that the aforementioned conduct violated the Pennsylvania equivalent of RPC 1.3 and RPC 1.4(b) and (c).

CHARGE XI: THE SHONA FOOKS MATTER

Shona Fooks retained respondent to represent her for injuries she sustained in a September 2011 slip and fall accident. On September 12, 2013, respondent filed a lawsuit on behalf of Fooks. The matter was scheduled for an arbitration hearing on June 3, 2014. Respondent received notice of the hearing but failed to advise Fooks of the date, time, and location of the hearing. Neither respondent, Fooks, nor the defendants appeared for the arbitration hearing.

On February 26, 2016, the court sent respondent notice that the arbitration hearing was rescheduled for March 29, 2016, due to an administrative error. Once again, respondent failed to notify Fooks regarding the details of the hearing and neither she nor respondent appeared at the hearing. On March 29, 2016, however, counsel for defendants appeared and consented to removal of the matter to the Philadelphia Court of Common Pleas. Also on March 29, 2016, the court entered a judgment of non pros against Fooks

and sent notice of the judgment to respondent. Respondent took no action on behalf of Fooks in response to the judgment and failed to notify Fooks of its entry.

Respondent stipulated that the aforementioned conduct violated the Pennsylvania equivalents of RPC 1.3 and RPC 1.4(b) and (c).

MITIGATION

In mitigation, the ODC submitted a letter, dated June 23, 2016, from licensed psychologist Dr. William Shapiro, who represented that he had been treating respondent since August 2013. Dr. Shapiro diagnosed respondent with "Major Depression, Generalized Anxiety Disorder, and Persistent Complex Bereavement Disorder with underlying Dependent personality features." These conditions were triggered by the 2013 death of respondent's mother.

The ODC submitted that respondent has established a causal connection between his misconduct and his mental conditions to constitute mitigation. Further, respondent agreed to a temporary suspension, as shown by his willingness to enter into the Joint Petition; admitted engaging in misconduct and violating the charged Rules of Professional Conduct; cooperated with the ODC; and consented to receiving a suspension of eighteen months.

Further, respondent showed remorse for his misconduct and has no record of discipline.

THE OAE'S POSITION

The OAE urged us to impose an eighteen-month prospective suspension on respondent, the identical discipline imposed by Pennsylvania for his misconduct in that jurisdiction, which equated to violations of New Jersey's RPC 1.1(a) and (b); RPC 1.3; RPC 1.4(b) and (c); RPC 1.15(a) and (b); RPC 1.16(d); RPC 3.2; RPC 4.1; and RPC 8.4(c) and (d).

The OAE argued that respondent had engaged in an outrageous and prolonged pattern of neglect, accepting personal injury cases and then grossly mismanaging them. In one matter, Spiller, respondent's gross neglect resulted in financial harm to his client. In addition to his neglectful conduct, the OAE argues, respondent admittedly engaged in other serious misconduct, including misrepresentation.

The OAE further asserted that respondent mishandled fiduciary funds "in a manner equivalent to negligent misappropriation in this jurisdiction." Here, the OAE recited the numerous instances in which respondent withheld client funds to pay third parties, but then failed to do so, as well as those numerous instances in which respondent delayed, for prolonged periods of time,

disbursement of funds due to his clients. However, in its brief in support of its motion, the OAE specifically acknowledged that respondent made no admissions of unauthorized use of the subject funds and, further, that no evidence was produced to indicate otherwise. Rather, the OAE noted, "it remains unclear if those funds simply sat, untouched, in respondent's escrow/trust account." Thus, the basis for the OAE's characterization of respondent's mishandling of fiduciary funds also remains unclear.

Finally, the OAE recognized, in mitigation, the report of respondent's treating physician to substantiate his claim of emotional trauma.

* * * *

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

Subsection (E) applies in this matter because the unethical conduct warrants substantially different discipline.

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

Respondent is guilty of violations of RPC 1.1(a) and (b); RPC 1.3, RPC 1.4(b) and (c), RPC 1.15(a) and (b), RPC 1.16(d), RPC 3.2, RPC 4.1(a)(1), and RPC 8.4(c) and (d). More specifically, respondent stipulated that he committed gross neglect in one client matter (Spiller); lack of diligence in ten matters (Jean-Louis, James, Taylor, Abraham, Pugh, Hayes, Muhammed, Spiller, Mebane, and Fooks); a failure to communicate with the client and a failure

to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in ten matters (Jean-Louis, James, Taylor, Abraham, Pugh, Hayes, Muhammed, Spiller, Mebane, and Fooks); commingling in one matter (Willis); a failure to promptly notify and deliver funds or property to a client or third party in nine matters (Jean-Louis, Valerie and Jasmine Farmer, Willis, Scannapieco, Kandeh, Fowlkes, Muhammed, Spiller); failure to protect client's interests upon termination of representation in two matters (Hayes and Spiller); a failure to expedite litigation in one matter (Hayes); making a false statement of material fact or law to a third person in one matter (Hayes); conduct involving dishonesty, fraud, deceit or misrepresentation in three matters (Hayes, Muhammed, and Spiller); and conduct prejudicial to the administration of justice in four matters (Jean-Louis, Hayes, Muhammed, and Spiller).

We decline to find, as the OAE has urged, that respondent engaged in negligent misappropriation. Indeed, the OAE acknowledged that the record contained no evidence of respondent's invasion of client funds. To the contrary, client funds most often sat in his trust account due to his failure to disburse promptly. In other instances, respondent lost the settlement checks or simply never deposited them.

Further, although respondent clearly made misrepresentations

in the Hayes and Spiller matters, respondent's alleged misrepresentation in the Muhammed matter (that he would ask Dr. Karakasis to resume her treatment) falls short of supportable. Although respondent certainly made that promise, without a clear showing of intent, to the contrary, we presume that, at the time of the promise, respondent intended to follow through. Therefore, we do not find respondent guilty of a violation of RPC 8.4(c) in the Muhammed matter, despite his stipulation thereto.

Attorneys who mishandle multiple client matters generally receive suspensions of either six months or one year. See, e.g., In re LaVergne, 168 N.J. 410 (2001) (six-month suspension for attorney who mishandled eight client matters; the attorney exhibited lack of diligence in six of them, failure to communicate with clients in five, gross neglect in four, and failure to turn over the file upon termination of the representation in three; in addition, in one of the matters the attorney failed to notify medical providers that the cases had been settled and failed to pay their bills; in one other matter, the attorney misrepresented the status of the case to the client; the attorney was also guilty of a pattern of neglect and recordkeeping violations); In re Lester, 148 N.J. 86 (1997) (six-month suspension for attorney who displayed lack of diligence, gross neglect, pattern of neglect, and failure to communicate in six matters, failed to cooperate

with the investigation of the grievances, and allowed the disciplinary matter to proceed as a default; in one of the matters, the attorney misrepresented, in a letter to his adversary, that the adversary's secretary had consented to extend the time to file the answer; the attorney had received a reprimand in 1990 for gross neglect in two matters -- at which time the Court noted the attorney's recalcitrant and cavalier attitude toward the district ethics committee -- and another reprimand in 1996 for failure to communicate, failure to supervise office staff, and failure to release a file to a client); In re Pollan, 143 N.J. 305 (1996) (attorney suspended for six months for misconduct in seven matters, including gross neglect, pattern of neglect, failure to communicate with clients, failure to deliver a client's file, misrepresentation, recordkeeping improprieties, and failure to cooperate with ethics authorities; clinical depression alleged); In re Suarez-Silverio, 226 N.J. 547 (2016) (one-year suspension for an attorney who, over thirteen years, mishandled twenty-three client matters before the Third Circuit Court of Appeals, many of which ended by procedural termination; the attorney also disobeyed court orders and made a misrepresentation to the court clerk, which escalated the otherwise appropriate six-month suspension; previous admonition and reprimand for similar conduct); In re Brown, 167 N.J. 611 (2001) (one-year suspension for attorney who,

as an associate in a law firm, mishandled twenty to thirty files by failing to conduct discovery, to file pleadings, motions and legal briefs, and to generally prepare for trials; the attorney also misrepresented the status of cases to his supervisors and misrepresented his whereabouts, when questioned by his supervisors, to conceal the status of matters entrusted to him; the disciplinary matter proceeded as a default; the attorney had a prior reprimand); and In re Marum, 157 N.J. 625 (1999) (attorney suspended for one year for serious misconduct in eleven matters, including lack of diligence, gross neglect, failure to communicate with clients, failure to explain the matter to clients in detail to allow them to make informed decisions about the representation, misrepresentation to clients and to his law partners, which included entering a fictitious trial date on the firm's trial diary, and pattern of neglect; the attorney also lied to three clients that their matters had been settled and paid the "settlements" with his own funds; the attorney's misconduct spanned a period of eleven years; in aggravation, the attorney had two prior admonitions, failed to recognize his mistakes, and blamed clients and courts therefor).

In a matter that involved significant mitigation, including alcoholism, a three-month suspension was imposed, despite a large number of mishandled client matters. See In re Tarter, 216 N.J. 425

(2014) (three-month suspension for attorney who was guilty of misconduct in eighteen matters; specifically, he was guilty of lack of diligence and a pattern of neglect in fifteen cases, gross neglect in one, and failure to withdraw from or to decline representation and failure to properly terminate the representation in all eighteen matters; mitigating factors included respondent's claim of alcoholism, the relatively short period within which most of his misconduct took place - three months, and his previous unblemished eight-year career). But see, In re Burns, 181 N.J. 315 (2004) (three-year suspension in a default matter for an attorney guilty of misconduct in seven client matters, as well as an additional matter involving a dispute with his former law firm; specifically, he was guilty of gross neglect, a pattern of neglect, failure to abide by the client's decisions, lack of diligence, failure to communicate, failure to promptly deliver funds to clients, failure to protect a client's interest upon termination of the representation, frivolous claims, failure to expedite litigation, fairness to opposing party and counsel, failure to cooperate, misrepresentations, and conduct prejudicial to the administration of justice; we recommended a three-month suspension, upon petition for review by the OAE, the Court imposed a three-year suspension and required respondent to provide proof of his attendance at Alcoholics Anonymous meetings; no history of discipline).

Based on the foregoing, typically, a six-month suspension is imposed when an attorney has mishandled six to eight client matters over a shorter period of time – up to five years – even when other infractions, such as misrepresentation, are involved. A one-year suspension is imposed in cases involving more numerous client matters. Often, however, those matters include many other offenses, a pattern of misrepresentations, a history of discipline, and longer periods of offensive behavior – up to thirteen years.

In the instant matter, respondent mishandled ten client matters; failed to promptly pay third parties in an additional five client matters; failed to disburse a balance of client funds in one matter; commingled personal funds with client funds in his trust account in one matter; and made significant misrepresentations in two matters, including to the court, over a period of about three years.

In aggravation, respondent caused significant harm to his clients, economically and otherwise. In mitigation, respondent submitted, and the ODC accepted, documents supporting respondent's mental health struggles, which were triggered by his mother's death in 2013. This date coincides generally with the time period the misconduct began; hence, the ODC noted that respondent was able to draw a connection between his mental state and his

misconduct. That mitigation, coupled with respondent's willingness to stipulate to his conduct and his otherwise unblemished career of over thirty years at the bar, militates against any further escalation of that discipline. It does not, however, justify a downward departure. Although respondent's depression may explain his neglect in multiple client matters, it cannot mitigate his misrepresentations, especially in the Hayes matter.

Based on the foregoing, we determine to impose a one-year prospective suspension and to require respondent to provide proof of fitness prior to reinstatement.

Member Gallipoli voted for a two-year suspension, as well as proof of fitness prior to reinstatement. Chair Frost and Member Zmirich did not participate.

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
Edna Y. Baugh, Vice-Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jeffrey L. Perlman
Docket No. DRB 17-326

Argued: January 18, 2018

Decided: March 2, 2018

Disposition: One-year Suspension

Members	One-year Suspension	Two-year Suspension	Did not participate
Frost			X
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich			X
Total:	6	1	2

Ellen A. Brodsky
Chief Counsel