SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 17-427 and DRB 18-170
District Docket Nos. VI-2015-0027E;
VI-2016-0005E; XIV-2016-0253E; and
XIV-2017-0415E

In The Matter Of	
Diego P. Milara	
An Attorney At Law	

Decision

Decided: November 14, 2018

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

These matters were before us by way of default: DRB 17-427 at our March 2018 session, and DRB 18-170 at our July 2018 session. We have consolidated both matters for disposition.

DRB 17-427 was filed by the District VI Ethics Committee (DEC), pursuant to R. 1:20-4(f). The complaint charged respondent with violations of

RPC 1.1(a) (gross neglect) (two counts); RPC 1.3 (lack of diligence) (two counts); RPC 1.4 (presumably (b)) (failure to communicate with the client) (two counts); RPC 1.16(d) (failure to protect a client's interests on termination of the representation) (one count), RPC 8.1(b) (failure to respond to a lawful demand for information by disciplinary authorities) (two counts); and RPC 8.4(a) (violate or attempt to violate the Rules of Professional Conduct) (two counts).

DRB 18-170 was filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). The complaint charged respondent with violations of RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 8.1(b) and RPC 8.4(d) (conduct prejudicial to the administration of justice) for failure to comply with the requirements of R. 1:20-20 governing suspended attorneys; RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and a second count of RPC 8.4(d).

For the reasons set forth below, based on totality of respondent's conduct in both matters, we determined to impose a one-year prospective suspension.

Respondent was admitted to the New Jersey bar in 1991 and the New York bar in 1993. He has been ineligible to practice law in New Jersey since September 24, 2012, for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (the Fund). Respondent was temporarily

suspended, effective January 22, 2015, for failure to cooperate with the OAE. In re Milara, 220 N.J. 341 (2015). He was temporarily suspended again, effective June 12, 2017, for failure to comply with a fee arbitration determination. In re Milara, 229 N.J. 262 (2017). He remains suspended to date.

Finally, on October 4, 2018, respondent was censured for violating RPC 1.3, RPC 5.5(a)(1) (unauthorized practice of law), RPC 8.1(b), and RPC 8.4(c). In re Milara, ___ N.J. ___ (2018). In that matter, respondent failed to serve an order on parties in accordance with a court order, practiced law while ineligible, failed to maintain his client's file, failed to cooperate with disciplinary authorities, and made several misrepresentations to the client. In the Matter of Diego P. Milara, DRB 17-274 (January 22, 2018).

We now turn to the facts of each matter.

DRB 17-427 (District Docket Nos. VI-2015-0027E and VI-2016-0005E)

Service of process was proper. On June 13, 2017, the DEC sent a copy of the amended complaint to respondent, in accordance with R. 1:20-4(d) and R. 1:20-7(h), by both regular and certified mail, return receipt requested, at his Newark mailing address. The Court had used that address to serve the May 12, 2017 Order suspending respondent, effective June 12, 2017. The certified mail

was returned marked "Return to Sender – Unclaimed – Unable to Forward." The regular mail envelope was not returned.

On August 29, 2017, the DEC sent a second letter to respondent, at the same address, by regular and certified mail, return receipt requested, informing him that, if he failed to file 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 entire record would be certified directly to us for the imposition of discipline, and the complaint would be deemed amended to include a violation of RPC 8.1(b). The certified mail envelope was returned marked "Return to Sender – Not Deliverable as Addressed – Unable to Forward". The regular mail was not returned.

The time within which respondent may answer has expired. As of October 20, 2017, the date of the certification of the record, no answer had been filed by or on behalf of respondent.

ALLEGATIONS OF THE COMPLAINT

COUNT ONE (The Zubizarreto Matter)

In January 2014, grievant Dania Zubizarreto and her husband, Pedro, retained respondent, for a $2,000 fee, to negotiate a mortgage modification with

Bank of America. Zubizarreto initially paid respondent $1,000. Respondent sent a letter of representation to Bank of America regarding the mortgage modification, on January 8, 2014. Soon thereafter, however, he ceased communication with Zubizarreto.

Eventually, Zubizarreto contacted respondent's law partner, Eric Marmolejo, but he had no information regarding the mortgage modification or respondent's whereabouts, was unable to find her client file, and asserted that he was unable to help her. About one year later, in February 2015, the Zubizarretos' home went into foreclosure. According to the complaint, respondent's failure to file the appropriate papers with the bank and the "abandonment" of his clients resulted in the foreclosure action on their home. Zubizarreto hired another firm that successfully completed the mortgage modification.

On five occasions during the investigation, the DEC sent correspondence to respondent, requesting a written reply to the grievance, as well as any supporting documentation. Respondent replied to none of them.

COUNT TWO (The Tsapisnos Matter)

In 2012, Nicholas Tsapisnos retained respondent to file a bankruptcy petition for a $1,600 flat fee. On numerous occasions, respondent informed

Tsapisnos that the creditors' meeting associated with his petition had been cancelled and rescheduled. Tsapisnos eventually learned that respondent had never filed the bankruptcy petition on his behalf. Tsapisnos retained new counsel, for an additional $1,800 fee, to file a bankruptcy petition and ultimately received a discharge.

On two occasions during the course of the investigation, the DEC sent correspondence to respondent, requesting a written response to the grievance, along with any supporting documentation. Respondent did not reply to either request.

DRB 18-170 (District Docket No. XIV-2016-0253E and XIV-2017-0415E)

Service of process was proper. On January 29, 2018, the OAE sent respondent a copy of the complaint to his home address, in accordance with R. 1:20-7(h), by regular and certified mail. On March 27, 2018, the certified mail was returned marked "Unclaimed." The regular mail was not returned.

On February 23, 2018, the OAE sent a second letter to respondent, at the same address, by regular and certified mail, return receipt requested, informing him that, if he failed to file 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 entire record would be certified directly to us for the imposition of discipline, and the complaint would be deemed amended to include a violation of RPC 8.1(b). On March 23, 2018, the certified mail was returned marked "Unclaimed." The regular mail was not returned.

On April 2, 2018, notice of the filing of the complaint was published in the New Jersey Law Journal, and on March 30, 2018, in the NJ Advance, a newspaper serving the geographic area encompassing respondent's last known addresses.

The time within which respondent may answer has expired. As of May 10, 2018, the date of the certification of the record, no answer had been filed by or on behalf of respondent.

ALLEGATIONS OF THE COMPLAINT

COUNT ONE (The Marques Matter)

In June 2008, Manuel P. Marques (now deceased) and Albertina C. Marques, along with their daughter Maria Antunes (Maria), met with respondent's partner, Marmolejo, to discuss the fraudulent activities of their other daughter, Helena Marques. The Marqueses discovered that Helena had forged their signatures in two fraudulent transactions: (1) a mortgage for the

purchase of property in Belleville, New Jersey (the Belleville Property) and (2) as a co-signer on a student loan with Sallie Mae.

Marmolejo and the Marqueses discussed the ramifications of these and other fraudulent transactions, including any consequences of a default on either debt. Marmolejo reported to Sallie Mae that the student loan co-signer agreement had been forged. Sallie Mae provided Marmolejo and the Marqueses with forms and instructions for completing an affidavit of theft. Marmolejo explained to the Marqueses that, as part of the reporting process, they were required to report the matter to law enforcement and to send the report to Sallie Mae with the affidavit of theft.

Due to the fraudulent mortgage on the Belleville Property, the Marqueses wanted to ensure that their residence located in Hillside, New Jersey, (the Hillside Property) would be protected from any potential defaults on the Belleville Property loan. During Marmolejo's meeting with the Marqueses, they discussed the possibility of a deed transfer for the Hillside Property to Maria, or of a family trust with beneficiaries. On June 18, 2008, Marmolejo prepared a deed transferring the Hillside Property to Maria, as well as an affidavit of consideration for one dollar, and submitted the documents to the Clerk of Union

County. On June 27, 2008, Marmolejo filed and recorded the deed with Union County.

At some point in 2009, Maria lost her job and experienced financial difficulties. In September 2009, because she feared that her residence in Livingston, New Jersey, would go into foreclosure, Maria and the Marqueses decided to transfer the Hillside Property (still the Marqueses' residence) to a family trust – the Manuel P. and Albertina C. Marques Family Trust. The property would be held by the Manuel P. and Albertina C. Marques Trust LLC (Marques Trust). On September 23, 2009, Marmolejo prepared the trust and deed documents transferring the Hillside Property from Maria to the Marques Trust.

About two years later, in 2011, Maria consulted respondent about pursuing a petition for bankruptcy. On March 4, 2011, respondent filed a Chapter 7 bankruptcy petition on behalf of Maria. The transfer of the Marqueses' Hillside Property from Maria to the Marques Trust was listed in paragraph 10 of the bankruptcy petition's Statement of the Debtors' Financial Affairs. Maria's bankruptcy petition also disclosed her status as both a trustee and beneficiary of the Marques Trust. The disclosure appeared in Schedule B - Personal Property, line #19 (equitable or future interest, life estates, and rights or powers

exercisable for the benefit of the debtor other than those listed in schedule A - Real Property). Further, line #19 stated that the current value of Maria's interest in the Marques Trust was $0 because the Marqueses had a life estate in the property.

Nancy Issacson, Maria's Chapter 7 trustee, retained Thomas A. Waldman, Esq. (Waldman) of the Greenbaum, Rowe, Smith and Davis law firm to evaluate the Marques Trust. After Waldman's evaluation of the Marques Trust and the transfer, Issacson approved and granted Maria's Chapter 7 discharge.

The Marqueses also consulted respondent, and in August 2012, retained him to represent them in the filing of their own bankruptcy petition. On September 4, 2012, respondent filed the Marqueses' Chapter 7 bankruptcy petition. In paragraph 10 of the Statement of the Debtors' Financial Affairs, respondent disclosed the transfer of the Hillside Property and the Marqueses' beneficial interest in that property through the Marques Trust. He did not, however, disclose that the Marqueses were trustees and beneficiaries of the Marques Trust in Schedule B - Personal Property, line #19, as he had in Maria's petition. According to Schedule B of the Marqueses' petition, the total value of the Marqueses' personal property was $5,863. Respondent failed to disclose on

the bankruptcy schedules the Marqueses' ownership interest in the Marques Trust.

On November 16, 2012, the Marqueses and respondent met with "Trustee Meisel." At that meeting, respondent disclosed the Marques Trust, the property transfer, and the circumstances under which the Marques Trust had been established. Hence, on August 29, 2014,[1] the trustee filed an amended complaint against the Marqueses individually, the Marques Family Trust, the Manuel P. and Albertina C. Marques Trust LLC, Marmolejo & Milara, PC, and Marmolejo and respondent individually. The complaint objected to the debtors' discharge under 11 U.S.C. § 727, sought to void fraudulent transfers, and requested other relief. Respondent did not inform the Marqueses of the filing of the complaint against them.

Maria and the Marqueses independently received notice of the August 29, 2014 complaint, and attempted to contact respondent, to no avail. Respondent failed to file an answer to the complaint or to take any action to defend his clients or himself. On November 17, 2014, a default judgment was entered against respondent and the other defendants. The Marqueses were unaware of the entry

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[1] The record fails to explain this delay of almost two years.

of the default judgment. Respondent did not keep the Marqueses or his partner, Marmolejo, apprised of the status of the complaint against them.

Effective January 22, 2015, the Court temporarily suspended respondent from the practice of law. Although, on January 29, 2015, respondent told Marmolejo that he had been temporarily suspended and that a default judgment had been entered against Marmolejo and the Marqueses in bankruptcy court, he failed to so inform his clients. Eventually, Marmolejo discovered that respondent had intentionally diverted notices of the complaint from him. Respondent's abandonment of the Marqueses' bankruptcy action required them to retain subsequent counsel.

In February 2015, Marmolejo severed his association with respondent. Marmolejo contacted Trustee Meisel's counsel about the bankruptcy litigation. On February 3, 2015, Marmolejo submitted a malpractice claim to his insurance carrier. Several months later, on July 6, 2015, respondent, Marmolejo, and the Marqueses signed a $125,000 agreement settling the complaint filed by the trustee against them. By order dated March 29, 2016, the November 17, 2014 default judgment was vacated and the matter was settled with payment of $125,000 to the trustee. On July 6, 2015, the Honorable John K. Sherwood,

U.S.B.J., issued an order approving the settlement agreement. On July 31, 2015, the Marques' Chapter 7 bankruptcy was discharged.

COUNT TWO (Failure to Cooperate with Disciplinary Authorities)

On August 15, 2016, the OAE informed respondent, by regular and certified mail, of the docketing of the grievance in the Marques matter, and requested a response. The mail was returned stamped "unable to forward." On October 3, 2016, the OAE sent respondent a follow-up letter, by regular and certified mail, requesting a reply to the grievance, and, again, the mail was returned.

By letter dated November 14, 2016, sent to respondent by certified and regular mail, the OAE scheduled a demand interview on November 30, 2016, and enclosed copies of the August 15 and October 3, 2016 letters. The November 14, 2016 letter cautioned respondent that his failure to appear at the demand interview or to otherwise cooperate could result in the filing of a complaint charging him with a violation of RPC 8.1(b). The OAE sent the letter to respondent's last known addresses. The certified mail was returned, but the regular mail was not. Respondent neither requested an adjournment of the demand interview nor appeared.

COUNT THREE (Failure to Comply with R. 1:20-20)

Respondent has not applied to be reinstated to the practice of law following his January 22, 2015 temporary suspension, and, therefore, remains suspended. Pursuant to the Court's Order, he was required to comply with R. 1:20-20, which requires a suspended attorney to:

> within 30 days after the date of the order of suspension (regardless of the effective date thereof) file with the Director the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order.

Respondent did not file such an affidavit and, therefore, willfully violated the Court's Order and failed to take the steps required of all suspended or disbarred attorneys, including notifying clients and adversaries of the suspension, and providing clients with their files.

In DRB 17-427, the complaint alleges sufficient facts to support some, but not all, of the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-

4(f)(1). Notwithstanding that Rule, each charge in an ethics complaint must be supported by sufficient facts for us to determine that unethical conduct occurred.

Respondent grossly neglected, and lacked diligence in, both the Zubizarreto and Tsapisnos matters. In respect of the Zubizarreto matter, he sent a letter notifying Bank of America that he had been retained to assist with a mortgage modification, but did no work thereafter. In the Tsapisnos matter, despite respondent's claim that he filed a bankruptcy petition, the record contains no evidence that he provided any services. Respondent's conduct in this regard violated both RPC 1.1(a) and RPC 1.3.

Respondent ceased communications with Zubizarreto shortly after accepting the representation. She was unable to reach him, even after contacting his law partner. This conduct violated RPC 1.4(b).

Although the complaint also charged respondent with failing to communicate with Tsapisnos, the record lacks any support for this allegation. The complaint alleges that respondent's misrepresentations to Tsapisnos regarding his creditors' meetings amounted to a failure to communicate. Such misconduct violates RPC 8.4(c), which was not charged, but cannot serve as the foundation for a failure-to-communicate violation. Therefore, we determined to dismiss this allegation in connection with Count Two of the complaint.

Arguably, respondent's most egregious misconduct was his utter abandonment of Zubizarreto, forcing her to hire another attorney about one year after retaining respondent. She learned from respondent's law partner that he was unaware of respondent's whereabouts, had no client file for her, and could not assist her. Because even his law partner was unaware of respondent's location, it is clear that respondent abandoned his client, in violation of RPC 1.16(d).[2]

Additionally, in both matters, respondent failed to reply to multiple requests for information from the DEC. Respondent continued to ignore the inquiries even after the DEC cautioned him that his failure to respond would result in an amendment to the complaint charging a violation of RPC 8.1(b). Respondent's conduct in this regard violated RPC 8.1(b).

Finally, respondent's misconduct is most accurately captured by the above Rules such that we determined to dismiss the charged violation of RPC 8.4(a).

The complaint in this matter suggests two additional potential violations. Specifically, respondent's offer of services in connection with a mortgage

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[2] During respondent's prior matter before us, at our October 2017 session, counsel for respondent, too, admitted that he had been unable to locate respondent for some time.

modification was regulated by the Federal Trade Commission's (FTC) Mortgage Assistance Relief Services Rule (MARS), 16 C.F.R § 322 (2011). The FTC's rule on advanced fees at section 322.5 prohibits mortgage relief companies from collecting any fees until they have provided consumers with a written offer from their lender, along with a written document from the lender describing the changes to the mortgage that would result if the consumer accepts the offer, and the consumer decides the offer is acceptable.

Based on the complaint, it appears that respondent collected prohibited advanced fees from Zubizarreto, which is inconsistent with the MARS rule, and a violation of both RPC 1.15(a) and RPC 8.4(c). However, because these additional violations were not charged in the complaint, we did not consider them.

Moreover, as noted above, we previously recommended a censure for respondent for similar conduct – practicing while ineligible[3] and making misrepresentations. The conduct in that matter occurred during the same time period as the conduct in the instant matter.

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[3] Although respondent clearly practiced in these matters during the period of time that he was ineligible to do so and/or suspended, the complaint did not charge him with a violation of RPC 5.5(a) for that misconduct.

In addition, because respondent's violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b) occurred during that same time period, we determined that further discipline for those violations is unnecessary. Thus, we determined that respondent should receive additional discipline only for his violations of RPC 1.16(d) and RPC 8.1(b), discussed more fully below.

The complaint in DRB 18-170 also alleges sufficient facts to support some of the charges of unethical conduct.

Respondent lacked diligence in the filing of the Marqueses' bankruptcy petition by failing to disclose their status as trustees and their beneficial interest in the property held in trust. However, although this conduct might constitute malpractice – indeed, respondent participated in and agreed to a $125,000 settlement of the matter – it does not rise to the level of a violation of RPC 1.1(a), and we, therefore, dismiss that charge. Respondent's lack of diligence in preparing the petition, however, violated RPC 1.3.

The complaint also charged respondent with gross neglect for failing to file an answer to the complaint and allowing a default judgment to be entered. Typically, such conduct would constitute a violation of RPC 1.1(a). Here, however, respondent was a named defendant in the matter. Respondent's unethical conduct, therefore, was not based on his failure to file an answer;

rather, it was his failure to inform his clients of the conflict of interest and to advise them to seek independent counsel. However, the complaint did not charge respondent with a violation of RPC 1.7 (conflict of interest). Therefore, we determined to dismiss the RPC 1.1(a) charge as inapplicable.

In addition, respondent failed to communicate with the Marqueses, informing them of neither the filing of the complaint nor the entry of default judgment. Rather, they learned of these events on their own. Hence, in this regard, respondent failed to communicate with his clients, a violation of RPC 1.4(b). Although he also failed to protect his clients' interest upon termination of the representation by abandoning their bankruptcy petition, the complaint did not charge respondent with a violation of RPC 1.16(d).

By withholding notice of the complaint against his clients, respondent also violated RPC 8.4(c). Specifically, respondent made a misrepresentation by silence by keeping the information to himself. He made a similar misrepresentation by silence to Marmolejo, his law partner, and then diverted notices regarding the complaint and subsequent default, in an effort to conceal the matter from his partner.

Additionally, by allowing the complaint to go unanswered, concealing its filing, and preventing others from filing responsive pleadings, respondent

wasted judicial resources. His failures resulted in the entry of a default judgment; the negotiation of a settlement; and the entry of orders vacating the default and approving the settlement. The resulting increase in the workload of the trustee and the courts over an additional two-year period violated RPC 8.4(d).

Finally, respondent violated RPC 8.1(b) and RPC 8.4(d) by failing to comply with the mandates of R. 1:20-20, as ordered by the Court. Specifically, respondent failed to take the steps required of all suspended or disbarred attorneys, including notifying clients and adversaries of his temporary suspension and providing clients with their files. He further violated RPC 8.1(b) by ignoring the OAE's requests for information during the course of its investigation of these matters.

In sum, in DRB 18-170, we determined that respondent violated RPC 1.3, RPC 1.4(b), RPC 8.1(b), RPC 8.4(c), and RPC 8.4(d). We dismissed the alleged violation of RPC 1.1(a). In DRB 17-427, although we found respondent guilty of violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 8.1(b), we determined to impose additional discipline in that matter only for respondent's violations of RPC 1.16(d) and RPC 8.1(b).

We now consider the appropriate quantum of discipline for respondent's misconduct.

The abandonment of a client is a serious offense that ordinarily merits a term of suspension. See, e.g., In re Nwaka, 178 N.J. 483 (2004) (three-month suspension on a motion for reciprocal discipline; the attorney was disbarred in New York for abandoning one client and failing to cooperate with New York ethics authorities; prior three-month suspension); In re Jennings, 147 N.J. 276 (1997) (three-month suspension for attorney who abandoned one client and failed to cooperate with ethics authorities; no disciplinary history); In re Bowman, 175 N.J. 108 (2003) (six-month suspension for attorney who abandoned two clients, made misrepresentations to disciplinary authorities, and engaged in a pattern of neglect and other acts of misconduct in three client matters, including gross neglect, lack of diligence, failure to communicate with clients, failure to explain a matter to the extent reasonably necessary to permit the client to make an informed decision about the representation, failure to provide a written fee agreement, failure to protect a client's interests upon termination of representation, and misrepresentation of the status of a matter to a client; prior private reprimand); In re Misci, 206 N.J. 11 (2011) (one-year suspension in a default for an attorney who showed a callous indifference to the

interests of his client; without any warning, the client was left without his documents and without counsel; the attorney's disciplinary history included a reprimand and a three-month suspension); and In re Mintz, 126 N.J. 484 (1992) (two-year suspension for attorney who abandoned four clients and was found guilty of a pattern of neglect, failure to maintain a bona fide office, and failure to cooperate with ethics authorities).

More severe discipline has been imposed in other cases involving more extensive abandonment, accompanied by a disregard for the disciplinary process. For example, the Court has disbarred attorneys guilty of abandonment of clients in combination with lack of diligence, lack of communication, and failure to cooperate with disciplinary authorities. See In re O'Hara, 224 N.J. 255 (2016) and In re Kantor, 180 N.J. 226 (2004).

Here, as in Jennings, respondent abandoned one client and failed to cooperate with disciplinary authorities. Jennings had no history of discipline, whereas respondent has a potential censure pending before the Court. However, even absent the potential censure, in our view, respondent still should receive a three-month suspension, based on the aggravating factor of his default. See, In re Kivler, 193 N.J. 332, 342 (2008) ("a respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor,

which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced").

As noted, in DRB 17-427, respondent was guilty of infractions similar to those committed in his first matter before us, in October 2017. Most of that misconduct (violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b)), requires no further discipline because it occurred during the same period as the misconduct in the matter before us in October 2017. The same is true in DRB 18-170. Respondent seems to have experienced some type of shift in his life in 2012, when his attention to his professional obligations began to falter. Nonetheless, no further discipline would be necessary for the same violations here, but for two considerations.

First, in DRB 18-170, respondent caused serious harm to his clients. His misconduct delayed their bankruptcy petition for over two years and resulted in a $125,000 settlement for which the Marqueses were at least partially responsible - a serious aggravating factor.

Second, although the DEC charged respondent with abandoning his client in DRB 17-427, the OAE did not charge respondent with a violation of RPC 1.16(d) in DRB 18-170. Yet, there is evidence that, as in the previous case, respondent abandoned the Marqueses. Similarly, respondent was practicing

while ineligible when he met with the trustee in November 2012, a violation of RPC 5.5(a)(1), also not charged in the complaint.

In DRB 18-170, however, an additional violation warrants consideration. Specifically, respondent failed to comply with the requirements of R. 1:20-20 after he was temporarily suspended. The threshold measure of discipline to be imposed for an attorney's failure to file a R. 1:20-20(b)(15) affidavit is a reprimand. In re Girdler, 179 N.J. 227 (2004); In the Matter of Richard B. Girdler, DRB 03-278 (November 20, 2003) (slip op. at 6). The actual discipline imposed may be different, however, if the record demonstrates mitigating or aggravating circumstances. Ibid. Examples of aggravating factors include the attorney's failure to answer the complaint, the extent of the disciplinary history, and the attorney's failure to follow through on his or her promise to the OAE that the affidavit would be forthcoming. Ibid.

Censures were imposed in In re Kinnard, 220 N.J. 488 (2015) (default; attorney failed to file the affidavit after the Court had temporarily suspended him for his failure to pay the disciplinary costs associated with a 2008 admonition; in addition to the attorney's disciplinary history and the default, he also ignored the OAE's request that he file the affidavit) and In re Goodwin, 220 N.J. 487 (2015) (default; attorney failed to file the affidavit after the Court had

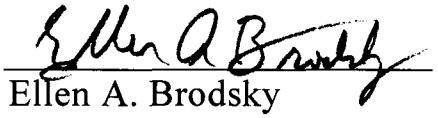
temporarily suspended him for his failure to pay the disciplinary costs associated with a 2010 reprimand; violations of RPC 8.1(b) and RPC 8.4(d); in addition to the attorney's disciplinary history and the default, he also had ignored the OAE's request that he file the affidavit).

Based on respondent's misconduct in DRB 17-427 and the applicable case law addressed above, we would otherwise recommend a three-month suspension. The additional client-related violations and aggravating factors in DRB 18-170, however, warrant an enhancement to a six-month suspension. Finally, based on the additional violations of R. 1:20-20, RPC 8.1(b) and RPC 8.4(c), we determine that a further enhancement to a one-year suspension is warranted.

Former Vice-Chair Baugh did not participate in 17-427. Member Boyer did not participate in either 17-427 or 18-170. Member Joseph abstained from participation in 18-170. Member Gallipoli voted to disbar and has filed a separate dissent.

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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Diego P. Milara
Docket No. DRB 17-427

Decided: November 14, 2018

Disposition: One-Year Suspension

Members	One-Year Suspension	Disbar	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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Diego P. Milara
Docket No. DRB 18-170

Decided: November 14, 2018

Disposition: One-Year Suspension

Members	One-Year Suspension	Disbar	Abstained	Did Not Participate
Frost	X			
Clark	X			
Boyer				X
Gallipoli		X		
Hoberman	X			
Joseph			X	
Rivera	X			
Singer	X			
Zmirich	X			
Total:	6	1	1	1

Ellen A. Brodsky
Chief Counsel