Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-050
District Docket Nos. VII-2016-0019E;
VII-2017-0007E; VII-2017-0012E; and
VII-2018-0001E

In the Matter of	:
Scott Joseph Capriglione	:
An Attorney at Law	:

Decision

Argued: October 15, 2020

Decided: February 3, 2021

Dorothy E. Bolinsky appeared on behalf of the District VII Ethics Committee.

Marc D. Garfinkle 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 recommendation for a one-year suspension filed by the District VII Ethics Committee (DEC). Four formal ethics complaints charged respondent with a variety of RPC violations. In the matters docketed as

VII-2016-0019E and VII-2017-0012E, the complaint charged respondent with having violated 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); RPC 1.16(d) (on termination of the representation, failure to surrender the client's papers and property); RPC 3.2 (failure to expedite litigation); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

In the matter docketed as VII-2017-0007E, the complaint charged respondent with having violated RPC 8.4(d) (conduct prejudicial to the administration of justice).

Finally, in the matter docketed as VII-2018-0001E, the complaint charged respondent with having violated RPC 1.1(a) and (b); RPC 1.3; RPC 1.4(b); RPC 1.16(d); RPC 3.2; RPC 3.3(a)(1) (false statement of material fact or law to a tribunal); and RPC 3.3(a)(4) (offering evidence that the lawyer knows to be false).

For the reasons set forth below, we determine to impose a one-year suspension, with conditions.

Respondent was admitted to the New Jersey bar in 1988, to the Pennsylvania bar in 1984, and to the District of Columbia bar in 1986. At the relevant times, he maintained an office for the practice of law in Ewing, New Jersey.

Docket No. VII-2016-0019E (The Lablon Reeves Matter)

In this matter, respondent admitted having violated RPC 1.1(a) and (b); RPC 1.3; RPC 1.4(b); RPC 1.16(d); RPC 3.2; and RPC 8.4(c). In support of the violations, the parties entered into a stipulation of facts, dated March 1, 2019.

In July 2015, grievant Lablon Reeves, with whom respondent had a pre-existing attorney-client relationship, retained him to file a post-judgment motion to enforce litigant's rights in a divorce and custody matter. Thereafter, Reeves followed up with respondent on several occasions to determine the status of the motion. On those occasions, either respondent or his assistant, Douglas Hollinger, told Reeves that "the court was slow for various reasons."

Respondent consistently claimed that, in the summer of 2015, he had filed a motion in the Superior Court of New Jersey, Chancery Division, Family Part, Mercer County, which was pending before the Honorable Thomas M. Brown, J.S.C. Yet, respondent was unable to produce proof that he had filed the motion, which he maintained had remained pending, because he could not serve the defendant.

On March 9, 2017, respondent produced a copy of a July 14, 2015 letter to the Family Division, purporting to enclose an original and two copies of the motion, the filing fee, and self-addressed, stamped envelopes. Respondent also produced a time-stamped copy of the motion, but the stamp was placed on the

back of the document, with no return date. A copy of the document was not included in the record.

According to respondent, the motion was returnable on October 2, 2015, before Judge Brown. However, respondent alleged that, by letter dated September 18, 2015, he asked Judge Brown to adjourn the motion to October 30, 2015, because respondent had been unable to serve the defendant. Respondent told the DEC investigator that, on an unidentified date, Judge Brown's chambers canceled the October 30, 2015 return date for a reason that he could not recall. Respondent claimed that Judge Brown's chambers did not inform him of a new return date and, consequently, the motion "fell through the cracks."

The court had no record of respondent's July 14, 2015 transmittal letter; the motion with a September 4, 2015 "filed" stamp on the back; the assignment of the motion to Judge Brown; or the September 18, 2015 adjournment letter to the judge. Judge Brown, who had no recollection of the case, stated that it was "highly unlikely" that his chambers would postpone a motion without rescheduling it.

On March 16, 2016, Reeves and a witness met with respondent at his office where she "begg[ed] for an update regarding her matter." At the time, Reeves already had confirmed with the court that respondent had not filed any

pleadings in her matter. Reeves secretly video-recorded the conversation. At the meeting, respondent repeatedly assured Reeves that he had filed the motion; that it was pending; and that he was awaiting a new return date. Respondent asked Reeves to return to his office in two days for an update.

On March 18, 2016, two days after meeting with Reeves, respondent filed a motion to enforce litigant's rights, which bore a "filed" stamp of that date and a handwritten return date of April 22, 2016. The motion was assigned to the Honorable Catherine M. Fitzpatrick, P.J.F.P.

Respondent's records reflected that he attempted to serve the motion on the defendant, via certified mail, but the letter was returned to respondent's office marked "unclaimed." Respondent told the DEC investigator that this was the second time that he had filed the motion, albeit with an updated case information statement (CIS). He produced both CIS documents. The later CIS was dated March 31, 2016, which post-dated the March 18 motion.

Although respondent did not maintain contemporaneous time records, he claimed to have entered notes in his Lawyers Diary and Manual. The investigator asked to review respondent's Lawyers Diary, to no avail. Further, although the investigator asked respondent to produce the canceled checks for the filing fees paid in 2015 and 2016, he provided only the 2016 check. Likewise, respondent could produce the envelope only for the 2016 unclaimed

certified mail, explaining that the 2015 envelope was "probably just thrown away."

On April 22, 2016, Judge Fitzpatrick entered an order granting the requested relief, except for counsel fees, and directing Reeves to provide certain documents within thirty days. Reeves provided the documents to respondent on a timely basis.

On July 26, 2016, Reeves, who had been unable to communicate with respondent, called Judge Fitzpatrick's chambers to inquire about the status of the matter. According to chambers, the court had not received the information it had required. Thus, on July 26, 2016, the court entered an order denying the requested relief, which had been dependent on the provision of the additional information.

Respondent produced to the investigator a copy of a May 12, 2016 letter to Judge Fitzpatrick, purportedly enclosing the required documents. Yet, one of the enclosures – a letter from the State Division of Temporary Disability Insurance – was dated May 17, 2016. When asked about the discrepancy, respondent replied that he had "pre-drafted" the letter, while he awaited the State's letter.

The court had no record of receiving respondent's May 12, 2016 letter. Respondent claimed that the court must have lost the letter.

At some point prior to August 31, 2016, Reeves asked respondent for a copy of her file. He failed to comply with that request. Thereafter, Reeves' new attorney, Azzmeiah R. Vázquez, made several requests for the file, to no avail. On August 31, 2016, Vázquez sent a letter to respondent, summarizing her attempts to communicate with him and stating that "[t]ime is of the essence." According to Vázquez, the unavailability of the file adversely impacted the amount of money that Reeves was able to recover in the underlying matter.

At the disciplinary hearing, Reeves testified regarding the impact that respondent's misconduct had on her. When Reeves retained respondent, she was unemployed and, thus, "was really depending on him to be able to fight for [her] to get income so [she could] have some child support for [her] kid." She felt humiliated by having paid respondent for work that he never performed, and she claimed to have become depressed.

Vázquez was able to obtain child support for Reeves, albeit for substantially less than the amount Reeves claimed she could have received. Respondent has not refunded her retainer.

Docket No. VII-2017-0012E (The Kirby Jones Matter)

The allegations and the charges in the Kirby Jones complaint are identical to those in the Reeves complaint. The only difference is the docket number and

the date that the complaint was signed. Respondent agreed to cure the defective complaint, however, and a stipulation of facts, which was specific to the Jones matter, was read into the record. He, thus, admitted having violated RPC 1.1(a) and (b); RPC 1.3; RPC 1.4(b); RPC 1.16(d); RPC 3.2; and RPC 8.4(c).

In August 2015, grievant Kirby Jones retained respondent to represent him in a motion for reduction or elimination of child support, and paid him a $1,000 retainer. A few years earlier, respondent had represented Jones in his divorce.

Jones believed that the child, with whom he had no relationship, had reached the age of eighteen, and was no longer enrolled in school, thereby entitling Jones to a reduction in, or termination of, child support. Respondent assured Jones that he would promptly file the motion and that Jones had a strong likelihood of success.

Jones asserted that respondent never sent him, and Jones never signed, any court papers. After four months, Jones called respondent, on multiple occasions, seeking an update. Jones did not receive satisfactory replies to his inquiries and, thus, went to respondent's office on at least six occasions. Upon each inquiry, either respondent or his staff told Jones that the "courts are backed up," the "judges are busy," and that respondent was awaiting a court date.

On March 16, 2016, Jones and Reeves (the grievant in the VII-2016-0019E matter) met with respondent at his office, seeking updates regarding their

matters. Respondent repeatedly assured them that their legal papers had been filed and that he was awaiting hearing dates.

Respondent failed to file the motion in Jones's case. At some point, the county probation division deemed the child emancipated and terminated Jones's child support obligation, as a matter of law. Nevertheless, Jones suffered financial harm because he was "unlikely to pursue a refund of child support paid years ago or to gather proper evidence that it should not have been paid." Moreover, Jones said "he no longer trusts lawyers."

Docket No. VII-2018-0001E (The Angela Gerald Matter)

The formal ethics complaint in this matter charged respondent with having violated RPC 1.1(a) and (b); RPC 1.3; RPC 1.4(b); RPC 1.16(d); RPC 3.2; and RPC 3.3(a)(1) and (4). A stipulation of facts was read into the record.

In 1997, grievant Angela Gerald married Sean R. Snead, a Pennsylvania sheriff's officer, who had a pension. They had two children, one of whom was disabled. During their marriage, the Sneads resided in a residence that was titled in Sean's name only. The Sneads had other, unidentified marital assets.

On October 17, 2001, Sean filed for divorce in Pennsylvania. No further action took place, and the case was dormant. Fifteen years later, on December

20, 2016, Angela retained respondent to represent her in the proceeding. She paid him a $3,500 retainer.

During a December 20, 2016 meeting, Angela told respondent that she wanted a property settlement agreement (to include one-half of Sean's pension), child support, and alimony. Respondent said that he would start working on the matter right away.

In February 2017, respondent filed a notice of appearance. On March 29, 2017, Sean's attorney filed an affidavit of consent, which was served on respondent, who was required to file a response within twenty days.

On November 7, 2017, counsel for Sean filed an "Affidavit Under [Section] 3302(d) of the [Pennsylvania] Divorce Code," which set forth the grounds underlying the claim. On December 1, 2017, Sean's attorney mailed to respondent a notice of intention to request a final decree in divorce.

On January 4, 2018, counsel for Sean filed a praecipe to transmit the record for entry of a divorce decree. On January 16, 2018, the Court of Common Pleas of Bucks County entered a divorce decree.

Respondent had prepared for Angela an answer and counterclaim and a set of interrogatories. Although Angela signed the answer, respondent never filed it.

After Angela retained respondent, she had difficulty communicating with him. She estimated that she had contacted him approximately thirty times, by phone, e-mail, and in person, without a satisfactory response. At one point, Sean told Angela that his attorney had been unable to contact respondent and, thus, suggested that Angela ask respondent to call Sean's attorney; otherwise, they would "push through" the divorce.

In November 2017, Angela contacted respondent and "begged for his attention." Respondent stated that he would "make some time for this." Angela then scheduled two in-person meetings with respondent at his office, but he did not appear for them. On both occasions, Hollinger told Angela that respondent was "stuck in court." On many occasions, when Angela tried to talk to respondent, Hollinger claimed that respondent was unavailable, for various reasons.

On January 25, 2018, Angela's friend conducted internet research and confirmed that a divorce decree had been entered on January 16, 2018. Until then, Angela was unaware of the divorce and, thus, was "shocked." She obtained from the Bucks County Prothonotary a printout of the docket entries in the divorce case, which showed that, other than the notice of appearance, respondent had failed to file anything with the court, including the answer that Angela had signed.

By letter dated January 30, 2018, Angela expressed her concerns to respondent and requested additional information. Respondent failed to reply to the letter.

On February 21, 2018, respondent filed a petition to open the January 16, 2018 judgment of divorce.[1] In the petition, respondent asserted that he had filed an answer and counterclaim, in addition to a motion to compel discovery from Sean. Accordingly, respondent claimed that the judgment was entered "in error and in undue time." Respondent's statements were in complete opposition to his admission in this ethics proceeding that, other than the notice of appearance, he had not filed any papers in the divorce case prior to the entry of judgment.

Counsel for Sean filed an answer to the petition and requested its dismissal. Angela obtained a copy of the answer from Sean, because respondent failed to provide her with one. On April 12, 2018, the court entered an order to show cause, with a May 14, 2018 return date.

Meanwhile, Angela sought fee arbitration, and a hearing was scheduled for May 15, 2018. On May 11, 2018, four days before the hearing, respondent informed Angela that he would continue to represent her in the divorce matter, if she would agree to a fifty percent refund of the retainer. Ultimately,

[1] Angela learned of the petition on April 17, 2018, when Sean informed her.

respondent agreed to refund the entire $3,500 retainer, but withdrew as Angela's counsel, despite the pending petition.

On July 31, 2018, the DEC investigator contacted the Bucks County Prothonotary and learned that the petition to open the judgment would be held in abeyance until one of the parties sought further relief, such as a hearing. Angela, who was no longer represented by respondent, did not understand that, in order to finalize the petition, further action was required on her part.

Angela consulted with some Pennsylvania family law attorneys, who informed her that the divorce could not be re-opened so that she could seek relief, such as a property settlement. Thus, she had lost her right to pursue a property settlement or financial contributions from Sean.

At the disciplinary hearing, Angela testified that, although respondent had returned her retainer, she was unable to locate an attorney who could re-open the divorce judgment. She expressed empathy for respondent's claimed depression, but stated that "it's very stressful, emotional and financially [sic] for me because I received nothing after 21 years of marriage. No alimony. No support."

Docket No. VII-2017-0007E (The Hugh Callahan Matter)

The formal ethics complaint charged respondent with having violated RPC 8.4(d) by offering to return a retainer in exchange for the withdrawal of an ethics grievance. In his answer to the complaint, respondent admitted the allegations.

On July 27, 2016, grievant Hugh Callahan retained respondent to file a motion for reimbursement of child support overpayments. Callahan paid respondent a $2,000 fixed fee for the representation.

In a September 7, 2016 e-mail, respondent sent Callahan a draft motion to audit and recalculate support, along with a draft certification. Respondent asked Callahan to review the documents and inform respondent whether he wanted the documents filed. Callahan replied, asking whether the documents were required to be sent to counsel for the child's mother and stating that "some minor things need[ed] to be changed." Respondent answered that he could send it to the attorney and asked Callahan to let him know what needed to be changed.

On September 19, 2016, Callahan sent respondent an e-mail inquiring whether he had received the changes that Callahan had sent to him via mail and informing respondent that Lisa M. Radell, Esq. represented the child's mother. Callahan also asked respondent when the court would hear the motion and whether Callahan should attend. Respondent failed to reply to the e-mail.

On September 29, 2016, Callahan sent respondent an e-mail requesting a full refund of the retainer; observing that respondent had not filed the motion and cautioning respondent that if he failed to return the retainer, Callahan would file a grievance against him. Callahan concluded the e-mail by stating "[d]o not attempt to cover this by filing anything without my consent after this e-mail." Respondent neither replied to the e-mail nor returned Callahan's retainer.

In February 2017, Callahan filed a grievance against respondent, alleging that he had accepted a $2,000 retainer but failed to perform any work on his matter. On an unidentified date, Callahan and respondent communicated by telephone and e-mail about the "possibility of entering into an agreement whereby Callahan would withdraw the grievance in exchange for Capriglione returning the retainer or a portion thereof."

Between June 22 and August 1, 2017, Callahan and respondent exchanged numerous e-mails in which they discussed the potential settlement of the grievance. In a June 22, 2017 e-mail, Callahan stated that, upon receipt of a refund of the retainer, he would dismiss the grievance.

On July 26, 2017, Callahan sent another e-mail to respondent offering to withdraw the grievance in exchange for a $1,500 refund. On July 31, 2017, respondent sent a reply, which stated, in part:

> [t]he e-mail is not sufficient. We are settling the matter therefore I need to send you a release which stipulates,

> the amount and a timeframe to return the funds. Because you have already filed a complaint, we must go about it in this order. Please let me know if you are willing to sign a release, so you can mail it back to me. The sooner I receive the signed release, I can then forward you a certified check.
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> [C¶11;A¶5.][2]

Callahan replied that he was amenable to signing the release, after he received the refund. The complaint contains no allegations regarding the outcome of the settlement negotiations.

In mitigation, respondent conceded that his behavior with the clients in these matters was "[n]ot typical." According to respondent, throughout 2016 and 2017, he suffered from depression, reflex sympathetic dystrophy (RSD), and "other personal matters," which caused him to "lose everything."[3] Respondent developed RSD as the result of cancer, which he appears to have had when he was thirty years old. The condition caused him to be in a wheelchair for six months. Although a doctor told him that he would never walk again, respondent

[2] "C" refers to the undated formal ethics complaint. "A" refers to respondent's January 22, 2018 answer.

[3] Reflex sympathetic dystrophy syndrome is the name for what is now known as complex regional pain syndrome. health.ny.gov/diseases/chronic/reflex_sympathetic. The condition is characterized by "severe burning pain, most often affecting one of the extremities. . . . There are often pathological changes in bone and skin, excessive sweating, tissue swelling and extreme sensitivity to touch. . . ." Ibid.

rehabilitated himself and now is able to walk. Meditation "and different things" help the RSD. Through counseling, his depression is "totally under control."

In addition to respondent's health issues, in 2016, several post-judgment issues arose in connection with his 2012 divorce, after twenty-nine years of marriage, which required "many, many" trial days. Near the end of 2016, respondent's brother and two other family members died. These events sent him into a "total down spin." He explained:

> It affected the practice totally because when you're in a down spin of depression especially with major events like that, number one, if you're not realizing it you're not realizing the triggers you're not dealing with them. You don't take action. And that's what I wasn't doing at that time period.
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> [T42-20 to T43-1.][4]

When asked why he continued to practice law after things began to spiral, respondent replied that he lacked awareness that he was being overtaken by it. He had not realized that he was "in such bad shape in terms of mental [sic] at that time." At some point, respondent contacted the New Jersey Lawyers Assistance Program (NJLAP). For four or five months, respondent met with a counselor one to two times per week. He also attended other programs.

[4] "T" refers to the May 20, 2019 transcript of proceedings.

In addition, respondent "got [his] doctors on board, [his] treating doctors with [his] Prozac and . . . medication." In other words, respondent "just dealt with things that had to be dealt with the correct way in terms of controlling issues."

Prior to respondent's illness, he maintained 200 to 300 files at any given time. At the time of the ethics hearing, he had approximately 100 files.

Respondent has since corrected office management issues, including the replacement of Hollinger with "a very experienced legal secretary," whom he has employed for more than a year. Hollinger, who was the son of respondent's best friend, was not trained as a paralegal, but had a college degree and "a lot of training," and, thus, functioned as more than a secretary. Hollinger had been in respondent's employ for ten years.

During 2016 to 2017, respondent directed Hollinger in the preparation of documents and reviewed his work. However, respondent subsequently learned that Hollinger had been "keeping things" from him out of concern about respondent's "state." Unfortunately, Hollinger "just wasn't handling things properly." For example, respondent would sign a document, but, unbeknownst to him, Hollinger would not mail it. Hollinger also did not give respondent all of his messages, although he acknowledged that, even when Hollinger gave him

messages, he did not always reply, given his downward spiral. Yet, respondent also testified that, at that point, he relied on Hollinger more than he should have.

As to his office procedures, for the purpose of tracking dates, respondent created a "triple cake work system" among the computer, "the book," and his personal calendar. He speaks to his clients, which he described as a "really very big" deal, as he had isolated during his depressive episode.

Presently, respondent answers the telephone, and, if he is not in the office, the call is directed to a "recorder." He returns every call, and is "on top of the cases" because he knows "what's going on." He reviews his files weekly on his own and monthly with his secretary. He continued:

> My clients are copied on all paperwork, cc'd which I used to do prior to my problems arising. I conduct monthly review of new areas, review the law and I personally review and send responses to all my e-mails. I have my email on everything. My clients email me day and night. And I respond to them within 24 hours myself. No third party. So I know what's going on. I'm on top of everything. I have a grasp of everything. And lastly, I met a very special woman, Michelle. She's in the courtroom. She's my fiancé now. She used to work in legal offices. She's really helped me address my problems and turn my life around where I know what I'm doing and I know the worth that I can offer people.
>
> I'm not saying that I'm happy about this. But this occurred for a reason because of my condition when it occurred. And really it brought light to a situation that needed addressing. And I offer, you know, my condolences to the clients that were hurt in the process, but it brought forth something that had to be dealt with.

> And through New Jersey Lawyers Assistance Program with my counselor I've learned the ways to do that. I have a help plan which I follow readings which I do. And I'm also on-line monthly with different groups, depression groups at least once a month, one group sometimes twice a month. And that's really [sic] I'm in control of the office and know what's going on. Nothing goes through the office I don't know about and nothing goes out that I do not know about. Nothing.
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> [T44-15 to T45-19.]

The hearing panel admitted into evidence a number of reports issued in respondent's behalf. In an April 16, 2019 letter, Ramon Ortiz, NJLAP Senior Attorney Counselor, confirmed that respondent had participated in the NJLAP from January 21, 2018 to April 11, 2019 and that he had completed his "Helping Plan." The "Helping Plan" was attached to the letter and set forth certain actions that respondent was to undertake, including educational counseling sessions and medication management. Although the letter did not identify a diagnosis or prognosis, Ortiz identified the services provided to respondent and acknowledged that he had been treated for depression by a Philadelphia doctor. The letter also stated that respondent's progress in the NJLAP "has been consistent and remarkable."

Nigahus Karabulut, M.D., issued a report, dated January 18, 2018, stating that respondent suffered from RSD for which he was under the doctor's care, and depression for which he was being treated with Prozac. In addition, Karen

McGeehan, M.D., who also treated respondent, issued two reports, dated November 14, 2018 and April 10, 2019, mirroring Dr. Karabulut's report. According to Dr. McGeehan, respondent's depression was well-controlled, and he was involved in on-line support groups for both conditions.

The DEC noted that, at the hearing, respondent did not dispute any fact offered in support of his alleged unethical conduct. According to the DEC, in the Reeves, Jones, and Gerald matters, the clear and convincing evidence supported respondent's violation of RPC 1.1(a), RPC 1.3, and RPC 3.2.

Specifically, in the Reeves matter, respondent failed to take any action to advance his client's case until more than a year after Reeves had retained him. Although respondent eventually filed a document with the court, seeking relief in Reeves' behalf, he failed to submit follow up documentation. In the Jones matter, because respondent failed to act at all, his client paid child support beyond the time required by law. Finally, in the Gerald matter, after respondent filed a notice of appearance, he took no action, leaving his client with no property settlement, child support, or alimony.

In the DEC's view, respondent engaged in a pattern of neglect "not only within each individual claim, but also across all claims," a violation of RPC 1.1(b).

The DEC also found that the record contained clear and convincing evidence that respondent violated RPC 1.4(b) in all three matters, by regularly failing to reply to his clients' efforts to contact him; by failing to keep all three clients apprised of the status of their matters; and by failing to comply with their reasonable requests for information.

The DEC determined that respondent violated RPC 8.4(c) in the Reeves and Jones matters. He repeatedly lied to Reeves about the filing date of the motion, even producing a document that had not been filed with the court. He also misrepresented that a return date had been scheduled for the unfiled motion. According to the panel, Reeves "was misled at every turn in the litigation, all due to the dishonesty of Respondent."

As for Jones, respondent misrepresented that he had "taken action" regarding the child support obligation. Yet, the clear and convincing evidence established that respondent never filed anything.

According to the DEC, respondent violated RPC 1.16(d) in the Reeves matter by failing to turn over the client's file to her new attorney, despite phone calls and letters requesting it.

In the Gerald matter, the DEC determined that the record lacked clear and convincing evidence that respondent violated RPC 3.3(a)(1). According to the hearing panel, although respondent made many errors in representing Angela,

neither the complaint nor the stipulated facts disclosed that he knowingly made a false statement to the court in her case.

Finally, although the complaint in Callahan charged that respondent violated RPC 8.4(d), based solely on his attempt to persuade his client to withdraw the ethics grievance in exchange for the return of the retainer, the DEC found that respondent violated RPC 8.4(d) by failing to act timely in Callahan's behalf.

In aggravation, the DEC cited respondent's lack of contrition and remorse; his acceptance of retainer fees without providing legal services; and his misrepresentations to his clients that he had filed documents in court. The panel explained:

> [w]hile respondent explained the reason for his dilatory conduct, he did not express any remorse for the harm that he caused to the Grievants by his conduct. His testimony addressed the medical conditions that caused his conduct, but he did not address the repercussions and losses that his conduct caused. Respondent additionally accepted fees from each of the Grievants for legal services that he did not perform. When he was challenged by one Grievant on his unethical conduct, he withdrew his services, leaving a client without an attorney in a pending legal proceeding. Respondent's acceptance of fees, and subsequent failure to act on his client's behalf was proven with clear and convincing evidence and is an aggravating factor. Finally, Respondent regularly misled his clients with regards to the existence of Court filings, and the timing of their filings. This pattern of dishonesty with regards to Court filings was demonstrated by undisputed clear and

> convincing evidence and is a significant aggravating factor.
>
> [HPR13.][5]

The DEC found no mitigating factors sufficient to overcome the aggravating factors. Thus, for the totality of respondent's unethical conduct, and the resulting harm to his clients, the DEC recommended a one-year suspension.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

As a preliminary matter, the ethics complaint in the Jones matter (VII-2017-0012E) was clearly defective, because it was identical to the Reeves complaint, except for the docket number and the date. However, respondent, who was represented by counsel, voluntarily waived and cured that defect by entering into a stipulation of facts regarding his misconduct in that matter. We, thus, determine to consider respondent's misconduct in the Jones matter, despite the initial, defective pleading.

As the DEC found, the clear and convincing evidence supports the finding that respondent violated RPC 1.1(a) and (b), RPC 1.3, and RPC 1.4(b) in the Reeves, Jones, and Gerald matters. He exhibited gross neglect and demonstrated

[5] "HPR" refers to the undated hearing panel report, which apparently was transmitted to the Office of Attorney Ethics on November 27, 2019.

a lack of diligence in multiple respects. First, in Reeves, respondent failed to file the post-judgment motion until more than six months after he was retained to do so. After the court entered an order requiring the production of certain documents, respondent failed to submit them, despite having received the documents from Reeves, which adversely affected the amount that her subsequent counsel was able to recover for her.

Next, in the Jones matter, despite having received his legal fee, respondent failed to act at all, resulting in his client's payment of child support beyond the period required by law.

Respondent's conduct in the Gerald matter was even more egregious. He revived a dormant divorce matter by entering his appearance and, although he prepared an answer and counterclaim, which Angela signed, he never filed it. He also failed to serve interrogatories on Sean's lawyer. Despite repeated filings by Sean's lawyer, respondent did nothing. Accordingly, the court entered a divorce, without any property settlement, alimony, or child support determination.

Moreover, we find that, by his gross neglect and lack of diligence in the above three cases, respondent engaged in a pattern of neglect, in violation of RPC 1.1(b).

In all three client matters, Reeves, Jones, and Gerald had extraordinary difficulty communicating with respondent. He did not initiate communication with them, and their attempts to reach him often were unsuccessful. He, thus, violated RPC 1.4(b) in those matters.

Respondent violated RPC 1.16(d) in the Reeves and Gerald matters. That Rule provides that, on termination of representation, a lawyer must "take steps to the extent reasonably practicable to protect a client's interests." These steps include surrendering papers and property to which the client is entitled, usually, a copy of the file.

In Reeves, respondent violated RPC 1.16(d) by ignoring his client's and her subsequent counsel's multiple requests for a copy of the file.

The Gerald ethics complaint charged respondent with having further violated RPC 1.16(d) by failing to explain to her, at the time he unilaterally withdrew from the representation, that "further action was needed to obtain a ruling on the Petition," which he also had failed to provide to her. Respondent's unilateral decision to cease representing Gerald, and his failure to take any steps to protect his client's interests, violated RPC 1.16(d).

In the Jones matter, however, the record lacks clear and convincing evidence of a violation of that Rule.

RPC 3.2 requires an attorney to "make reasonable efforts to expedite litigation consistent with the interests of the client." In Reeves, respondent failed to transmit to the court the documents it required in order to grant further relief to his client. His lack of action constituted failure to expedite litigation, in violation of RPC 3.2.

In Jones, respondent failed to initiate court proceedings and, thus, cannot be said to have failed to expedite litigation. Based on disciplinary precedent, his utter inaction is adequately addressed by the RPC 1.1 and RPC 1.3 charges.

In the Gerald matter, respondent failed to file a response to Sean's affidavit of consent, despite multiple opportunities to do so. His lack of action constituted failure to expedite litigation, in violation of RPC 3.2.

Respondent violated RPC 8.4(c) in both the Reeves and Jones matters. In the Reeves matter, he misrepresented to his client that he had filed the motion in July 2015, fabricated a document stamped "filed," and told an "elaborate set of lies" that he had concocted for the purpose of explaining to both the client and the DEC investigator his delay and mishandling of the motion.

In Jones, respondent misrepresented that he had "taken action" regarding his client's child support obligation.

In the Gerald matter, the complaint charged respondent with having violated RPC 3.3(a)(1), which prohibits a lawyer from knowingly making a false

statement of material fact or law to a tribunal. The complaint also charged respondent with having violated RPC 3.3(a)(4), which prohibits an attorney from offering evidence that the attorney knows to be false. The DEC's finding that neither the complaint nor the stipulated facts disclosed "a knowingly false statement made . . . to the Court regarding Grievant's case" was in error.

The complaint alleged that respondent violated RPC 3.3(a)(1) and (4) by filing a petition to re-open the judgment, in February 2018, on the ground that he and Angela had "just learned" that a divorce judgment had been entered. Respondent also stated that he had filed an answer and counterclaim, served interrogatories on Sean, and filed a motion to compel discovery. Thus, he asserted, the divorce decree had been entered prematurely. These claims to the court were demonstrably false. Thus, respondent violated RPC 3.3(a)(1) and (4).

Finally, the complaint in Callahan charged respondent with having violated RPC 8.4(d), based on his attempt to persuade Callahan to withdraw the grievance in exchange for the return of his retainer. This conduct violated RPC 8.4(d), as a matter of law. See In re Allen, 221 N.J. 298 (2015) (attorney requested his client to withdraw the grievance in exchange for a refund of the retainer) and A.C.P.E. Opinion 721, 204 N.J.L.J. 928 (June 27, 2011) (determining that the negotiation of an ethics grievance constituted a per se violation of RPC 8.4(d)). As mentioned above, although the DEC correctly

determined that respondent violated RPC 8.4(d), its reasoning, that respondent failed to act timely in Callahan's behalf, was erroneous.

In sum, in the Reeves, Jones, and Gerald matters, we find that respondent violated RPC 1.1(a); RPC 1.1(b); RPC 1.3; and RPC 1.4(b). In the Reeves and Gerald matters, we find that respondent violated RPC 3.2. Further, we find that respondent violated RPC 1.16(d) in the Reeves and Gerald matters, but dismiss that charge in the Jones matter. We find that respondent violated RPC 8.4(c) in the Reeves and Jones matters, and RPC 3.3(a)(1) and (4) in the Gerald matter. In the Callahan matter, we find that respondent violated RPC 8.4(d).

The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

The most serious violations are those involving respondent's blatant dishonesty. 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, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney made a misrepresentation by silence to his client, failing to inform her, despite ample opportunity to do so, that her complaint had been dismissed, a violation of RPC 8.4(c); the complaint was dismissed because the attorney had failed to serve interrogatory answers and ignored court orders compelling service of the answers, violations

of RPC 1.1(a), RPC 1.3, and RPC 3.2; the attorney also violated RPC 1.4(b) by his complete failure to reply to his client's requests for information or to otherwise communicate with her; the attorney never informed his client that a motion to compel discovery had been filed, that the court had entered an order granting the motion, or that the court had dismissed her complaint for failure to serve the interrogatory answers and to comply with the court's order, violations of RPC 1.4(c)); In re Ruffolo, 220 N.J. 353 (2015) (knowing that the complaint had been dismissed, the attorney assured the client that his matter was proceeding apace, and that he should expect a monetary award in the near future; both statements were false, in violation of RPC 8.4(c); the attorney also exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, not working on it after filing the initial claim, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter, violations of RPC 1.1(a) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates); and In re Falkenstein, 220 N.J. 110 (2014) (attorney led the client to believe that he had filed an appeal and concocted false stories to support his lies, a violation of RPC 8.4(c); he did so to conceal his failure to comply with his client's request that he seek post-judgment relief, violations of RPC 1.1(a) and RPC 1.3; because he did not believe the appeal had merit, the attorney's failure to withdraw from the

case was a violation of RPC 1.16(b)(4); the attorney also practiced law while ineligible, although not knowingly, a violation of RPC 5.5(a)).

Generally, the discipline imposed on an attorney who makes misrepresentations to a court or exhibits a lack of candor to a tribunal, or both, ranges from a reprimand to a long-term suspension. See, e.g., In re Marraccini, 221 N.J. 487 (2015) (reprimand imposed on attorney who attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications that had been pre-signed by the manager, who had since died; the attorney was unaware that the manager had died and, upon learning that information, withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); in mitigation, we found that the attorney's actions were motivated by a misguided attempt at efficiency, rather than by dishonesty or personal gain); In re Schiff, 217 N.J. 524 (2014) (reprimand for attorney who filed inaccurate certifications of proof in connection with default judgments; specifically, at the attorney's direction, his staff prepared signed, certifications of proof in anticipation of defaults, but left them undated; thereafter, when staff applied for default judgments, at the attorney's direction, they completed the certifications, added factual information, and stamped the date; although the attorney made sure that all credits and debits reflected in the certification were accurate, the signatory did not certify to the changes, after

signing, a practice of which the attorney was aware and directed; the attorney was found guilty of lack of candor to a tribunal and failure to supervise nonlawyer employees, in addition to RPC 8.4(a) and RPC 8.4(c)); In re Duke, 207 N.J. 37 (2011) (attorney received a censure for failure to disclose his New York disbarment on a form filed with the Board of Immigration Appeals, a violation of RPC 3.3(a)(5); the attorney also failed to adequately communicate with the client and was guilty of recordkeeping deficiencies; prior reprimand; the attorney's contrition and efforts at rehabilitation justified only a censure); In re Monahan, 201 N.J. 2 (2010) (attorney censured for submitting two certifications to a federal district court in support of a motion to extend the time within which to file an appeal; the attorney misrepresented that, when the appeal was due to be filed, he was seriously ill and confined to his home on bed rest and, therefore, either unable to work or unable to prepare and file the appeal, a violation of RPC 3.3(a)(1); the attorney also practiced law while ineligible); In re Trustan, 202 N.J. 4 (2010) (three-month suspension for attorney who, among other things, submitted to the court a client's case information statement that falsely asserted that the client owned a home, and drafted a false certification for the client, which was submitted to the court in a domestic violence trial; violations of RPC 3.3(a)(1) and (4); other violations included RPC 1.8(a) and (e), RPC 1.9(c), and RPC 8.4(a), (c), and (d)); In re Perez, 193 N.J. 483 (2008)

(on motion for final discipline, three-month suspension for attorney guilty of false swearing; the attorney, then the Jersey City Chief Municipal Prosecutor, lied under oath at a domestic violence hearing that he had not asked the municipal prosecutor to request a bail increase for the person charged with assaulting him; violations of N.J.S.A. 2C:28-2a and RPC 8.4(b)); In re Forrest, 158 N.J. 428 (1999) (six-month suspension imposed on attorney who, in connection with a personal injury action involving injured spouses, failed to disclose the death of one of his clients to the court, to his adversary, and to an arbitrator, and advised the surviving spouse not to voluntarily reveal the death; violation of RPC 3.3(a)(5), RPC 3.4(a), and RPC 8.4(c); the attorney's motive was to obtain a personal injury settlement); In re Telson, 138 N.J. 47 (1994) (after an attorney concealed a judge's docket entry dismissing his client's divorce complaint, the attorney obtained a divorce judgment from another judge without disclosing that the first judge had denied the request; the attorney then denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was afraid; the attorney was suspended for six months; violation of RPC 3.3(a)(1) and (5) and RPC 8.4(c) and (d)); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order

dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve; violation of RPC 3.3(a)(1) and (2), RPC 3.5(b), and RPC 8.4(c) and (d); two prior private reprimands [now admonitions]); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who had been involved in an automobile accident and then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing; violations of RPC 3.3(a)(4), RPC 3.4(f), and RPC 8.4(b)-(d)).

Based on New Jersey disciplinary precedent, at least a three-month suspension is warranted for respondent's various misrepresentations in the petition to open the judgment in the Gerald matter. Specifically, he asserted that he had filed an answer and counterclaim, as well as a motion to compel discovery, due to Sean's failure to answer the interrogatories. In Trustan, the attorney, who did not have a disciplinary history, received a three-month suspension for, among other things, submitting to the court a client's case information statement falsely asserting that the client owned a home, and drafted a false certification for the client, which was submitted to the court in a domestic

violence trial. She also violated RPC 1.8(a) and (e), RPC 1.9(c), and RPC 8.4(a), (c), and (d)).

Moreover, there is additional misconduct to consider. Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, the presence of additional violations, and the seriousness of the attorney's disciplinary history. See, e.g., In the Matter of Esther Maria Alvarez, DRB 19-190 (September 20, 2019) (admonition for attorney who was retained to obtain a divorce for her client, but for the next nine months, failed to take any steps to pursue the matter, and failed to reply to all but one of the client's requests for information about the status of her case, violations of RPC 1.1(a) and RPC 1.4(b); in another matter, the attorney agreed to seek a default judgment, but waited more than a year-and-a-half to file the necessary papers with the court; although the attorney obtained a default judgment, the court later vacated it due to the passage of time, which precluded a determination of the timing of the damage to the property, violations of RPC 1.1(a) and RPC 1.3) and In re Burro, 235 N.J. 413 (2018) (reprimand for attorney who grossly neglected and lacked diligence in an estate matter for ten years and failed to file New Jersey Inheritance Tax returns, resulting in $40,000 in accrued interest and a

lien on property belonging to the executrix, in violation of RPC 1.1(a) and RPC 1.3; the attorney also failed to keep the client reasonably informed about events in the case (RPC 1.4(b)); to return the client file upon termination of the representation RPC 1.16(d)); and to cooperate with the ethics investigation (RPC 8.1(b)); in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand; in mitigation, the attorney expressed remorse and had suffered a stroke that forced him to cease practicing law).

Where an attorney engages in a pattern of neglect, a reprimand ordinarily ensues. See, e.g., In re Gellene, 203 N.J. 443 (2010) (attorney guilty of gross neglect, pattern of neglect, and lack of diligence for failing to timely file three appellate briefs); In re Weiss, 173 N.J. 323 (2002) (attorney engaged in gross neglect, pattern of neglect, and lack of diligence); In re Balint, 170 N.J. 198 (2001) (in three client matters, attorney engaged in gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, and failure to expedite litigation); and In re Bennett, 164 N.J. 340 (2000) (attorney guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate in a number of cases handled on behalf of an insurance company).

Finally, when an attorney attempts to influence a client to withdraw a grievance, discipline ranging from an admonition to a censure is typically imposed. See, e.g., In the Matter of R. Tyler Tomlinson, DRB 01-284

(November 2, 2001) (admonition for attorney who improperly conditioned the resolution of a collection case on the dismissal of an ethics grievance filed by the client's parents); In re Mella, 153 N.J. 35 (1998) (reprimand imposed after the attorney communicated with the grievant in an attempt to have the grievance dismissed in exchange for a fee refund; the attorney also was guilty of lack of diligence and failure to communicate with clients); In re Allen, 221 N.J. 298 (2015) (censure; the attorney also exhibited gross neglect and lack of diligence, and failed to communicate with the client, violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b); in aggravation, we noted the attorney's lack of contrition and remorse and a prior admonition); and In re Pocaro, 214 N.J. 46 (2013) (censure for attorney who attempted to negotiate the withdrawal of a grievance in exchange for his agreement to refrain from filing a defamation suit against his former client; significant ethics history: a one-year suspension and a censure). Here, respondent's attempt to persuade Callahan, standing alone, would warrant an admonition.

Two mitigating factors stand out: respondent's unblemished disciplinary record of eighteen years at the time of the misconduct, and his co-occurring mental health and personal problems. However, as the DEC noted, he showed little contrition and remorse, merely expressing his condolences to those he had harmed.

In aggravation, respondent's misconduct caused substantial economic harm to Reeves, Jones, and Gerald. As the result of respondent's failure to submit Reeves' financial information to the court, she was not able to obtain the maximum child supported allowable by law.

Jones unnecessarily continued to pay child support beyond the period of time required by law.

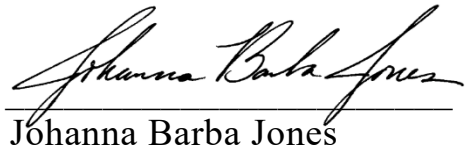
Gerald suffered a worse fate. She received no property settlement, no alimony, and no child support for a disabled child, and she was barred from opening the judgment.

For the totality of respondent's misconduct, including the multiple lies and the significant, demonstrable harm suffered by his clients, we determine to impose a one-year suspension. In addition, we require that, prior to respondent's reinstatement, he submit proof of fitness to practice, as attested by a qualified mental health professional approved by the Office of Attorney Ethics. Finally, we direct that respondent immediately disgorge his fee in the Jones matter.

Vice-Chair Gallipoli voted to impose a two-year suspension, with the same conditions.

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
Bruce W. Clark, Chair

By: 
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Scott Joseph Capriglione
Docket No. DRB 20-050

Argued: October 15, 2020

Decided: February 3, 2021

Disposition: One-Year Suspension

Members	One-Year Suspension	Two-Year Suspension	Recused	Did Not Participate
Clark	X			
Gallipoli		X		
Boyer	X			
Hoberman	X			
Joseph	X			
Petrou	X			
Rivera	X			
Singer	X			
Zmirich	X			
Total:	8	1	0	0

Johanna Barba Jones
Chief Counsel