SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 11-194 and 11-240
District Docket Nos. VII-2011-004E, XIV-2011-322E, and XIV-2011-323E

IN THE MATTERS OF

KEVIN JOSEPH CARLIN

AN ATTORNEY AT LAW

Decision

Decided: December 6, 2011

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

These matters came before us on certifications of default filed by the District VII Ethics Committee (DEC) (DRB 11-194) and the Office of Attorney Ethics (OAE) (DRB 11-240), pursuant to R. 1:20-4(f). They have been consolidated for review and for the imposition of a single form of discipline.

In the DEC matter, the five-count complaint charged respondent with misconduct in one client matter, including gross neglect (RPC 1.1(a)), pattern of neglect (RPC 1.1(b)), lack of diligence (RPC 1.3)), failure to communicate with the client (RPC 1.4(b)), failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation (RPC 1.4(c)), failure to charge a reasonable fee (RPC 1.5(a)(4)), and failure to cooperate with disciplinary authorities (RPC 8.1(b)).

In the OAE matter, the three-count complaint charged respondent with gross neglect, lack of diligence, failure to communicate with the client, failure to provide the client with a written retainer agreement (RPC 1.5(b)) (in two client matters), failure to safeguard funds (RPC 1.15(a)), recordkeeping violations (RPC 1.15(d)), knowingly and willfully making false statements of material fact in connection with a disciplinary matter (RPC 8.1(a)), failure to cooperate with disciplinary authorities, and conduct involving dishonesty, fraud, deceit and misrepresentation (RPC 8.4(c)) (in two matters).

For the reasons set forth below, we determine to impose a one-year consecutive suspension for the totality of respondent's

conduct and to continue to require him to be monitored by a proctor, upon reinstatement, a condition previously imposed by the Court.

Respondent has been disciplined before. In 2003, he was reprimanded for gross neglect, lack of diligence, failure to communicate with his client, failure to promptly deliver funds to a third party, failure to obey an obligation under the rules of a tribunal, use of letterhead that contained a false or misleading communication about him, conduct prejudicial to the administration of justice, and recordkeeping violations. His misconduct encompassed three client matters. In re Carlin, 176 N.J. 266 (2003). Specifically, among other things, respondent wrongfully delayed turning over settlement funds to a client for four years; wrongfully delayed returning a deposit in a landlord-tenant dispute for more than two years, after the entry of a court order compelling him to do so, and then did so only after the entry of another court order; and failed to pay a client's medical bill from the proceeds of a settlement.

In 2006, respondent was censured for lack of diligence, failure to communicate with the client, failure to promptly deliver funds to a third party, recordkeeping violations, and conduct involving dishonesty, fraud, deceit or

misrepresentation. In re Carlin, 188 N.J. 250 (2006). In that matter, respondent mishandled his duties as the trustee of an education trust established for Jessica and Nicole Miller. Among respondent's derelictions was his failure to remit $1210 to one of the beneficiaries, after she had reached the age of twenty-one. In fact, even after we directed respondent to turn over the funds within sixty days, it became necessary for the Supreme Court to order him to release the monies to the beneficiary.

On March 12, 2009, respondent received a three-month suspension for failure to promptly deliver funds to his client, failure to refund the unearned portion of the fee on termination of the representation, and violation or attempted violation of the RPCs. In re Carlin, 197 N.J. 501 (2009). In that matter, respondent represented the executrix of an estate. Although the representation was terminated in July 2004, respondent did not refund a portion of an unearned retainer until December 2006. The remainder was not returned until May 2008. Moreover, he returned the money to someone other than the executrix of the estate.

Two conditions were imposed on respondent at the time of his 2009 suspension. First, prior to reinstatement, he was

required to submit proof of his fitness to practice law, as attested to by a mental health professional approved by the OAE. Second, he was ordered to practice under the supervision of a proctor, approved by the OAE, for a period of two years, upon reinstatement.

Respondent was reinstated to the practice of law on June 30, 2009. In re Carlin, 199 N.J. 455 (2009). He was ordered to continue practicing under the supervision of a proctor for two years and until further order of the Court.

On May 6, 2011, the Court ordered respondent to submit to the OAE all outstanding proctorship reports within sixty days. On July 19, 2011, the Court temporarily suspended him for his failure to provide to the OAE "all outstanding proctorship reports." In re Carlin, 207 N.J. 61 (2011). He remains suspended.

THE DEC MATTER (ISRAEL CARABALLO) (DRB 11-194; District Docket No. VII-2001-004E)

Service of process was proper in this matter. On April 28, 2011, the DEC sent a copy of the formal ethics complaint to respondent's office address, 143 Whitehorse Avenue, Hamilton Township, New Jersey 08610, by regular and certified mail,

return receipt requested. On May 2, 2011, an individual named Aline Prutley signed for the certified letter. Respondent did not file an answer.

On May 24, 2011, the DEC sent a letter to respondent at the same address, by regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the DEC could seek his temporary suspension and certify the record directly to us for the imposition of sanction. The certified mail receipt bears an illegible signature.

As of June 7, 2011, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default, pursuant to R. 1:20-4(f).

According to the five-count complaint, Israel Caraballo retained respondent, in June 2006, to represent him in a "failure to promote" case, based on Caraballo's national origin, military status, and whistle-blowing activity. Caraballo sought the filing of a complaint under the New Jersey Law Against Discrimination, N.J.S.A. 10:5-1 to -42; the Uniformed Services Employment and Reemployment Rights Act, 38 U.S.C. § 4301 to § 4335; and the Conscientious Employee Protection Act, N.J.S.A. 34:19-1 to -8.

Caraballo paid a $3000 retainer to respondent, but did not recall signing "a formal retainer agreement." In total, Caraballo paid respondent more than $23,000 in legal fees.

Sometime in 2007, respondent filed a complaint on Caraballo's behalf in the United States District Court for the District of New Jersey. In November 2008, Caraballo's deposition took place. A year later, the case was dismissed on an unopposed summary judgment motion. Respondent never informed Caraballo of this action.

Beginning in November 2009, Caraballo repeatedly asked respondent about the status of his case and requested meetings with him. Respondent rarely returned Caraballo's calls and never updated him on the status of the matter, including its dismissal. After one year of "back and forth," Caraballo gave up and filed a grievance against respondent on November 30, 2010.

On December 2, 2010, the DEC secretary sent the grievance to respondent and requested a written reply within ten days. Respondent did not comply with the secretary's request. On December 17, 2010, the DEC secretary sent another request, giving respondent another ten-day deadline, which he also ignored. In addition, respondent failed to return the ethics

investigator's telephone calls on January 20, February 7, March 3, and March 23, 2011.

The complaint charged respondent with having violated RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(b), RPC 1.4(c), RPC 1.5(a)(4), and RPC 8.1(b).

The facts recited in the complaint support some 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).

Respondent's gross neglect and lack of diligence in the handling of Caraballo's case violated RPC 1.1(a) and RPC 1.3. Respondent did not oppose the motion for summary judgment filed by his adversary, which resulted in the dismissal of the complaint. Thereafter, he took no steps to have the case reinstated.

As to the RPC 1.1(b) charge, a pattern of neglect requires neglect in at least three matters. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12). Despite respondent's lengthy disciplinary history, he has been found guilty of gross neglect in only one prior matter. Moreover, as shown below, he did not grossly neglect any other matter now

before us. Thus, we determine to dismiss the pattern of neglect charge.

Respondent also violated RPC 1.4(b) when he failed to inform his client of the status of the matter, particularly that his complaint had been dismissed, when he failed to return Caraballo's telephone calls, and when he repeatedly put Caraballo off by making excuses and false promises, when Caraballo tried to reach him by email.

Respondent violated RPC 1.4(c), when he failed to inform Caraballo that a motion for summary judgment had been filed and to discuss with him whether the motion should be opposed and, if so, on what grounds. Respondent violated this rule again, when he failed to discuss with Caraballo whether an attempt should be made to vacate the order of dismissal.

RPC 1.5(a) requires a lawyer's fee to be reasonable. That rule identifies several factors to be considered in making the determination of whether a fee is reasonable. Among the factors is subparagraph (4), that is, "the amount involved and the results obtained."

Here, the complaint was filed sometime in 2007 and was dismissed in September 2009. A lot of activity could have gone on with the lawsuit, during that two-year period. According to the

ethics complaint, however, not much happened between the filing of the civil action in federal court and the dismissal of Caraballo's complaint. Although discovery was conducted, including Caraballo's November 2008 deposition, according to the order of dismissal, respondent did not take any depositions.

Based on the allegations of the complaint, it appears that respondent did not do much of anything with respect to the Caraballo matter. It certainly seems that he did not do enough work to justify a $23,000 bill. Nevertheless, a determination as to whether a fee is unreasonable does not rest alone on subparagraph (4) of RPC 1.5(a). Seven other factors must be taken into consideration, such as "the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly." In the absence of any allegations that would shed light on all of the factors to be considered when making the determination of whether a fee is reasonable, we cannot find that respondent violated RPC 1.5(a).

Finally, respondent violated RPC 8.1(b), when he failed to file a reply to the grievance and ignored the DEC's letters and telephone calls.

In summary, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.4(c), and RPC 8.1(b) in the Caraballo matter.

THE OAE MATTER (DRB 11-240; XIV-2011-322E and XIV-2011-323E)

Service of process was proper in this matter. On January 7, 2011, the OAE sent a copy of the formal ethics complaint to respondent's office address, 143 Whitehorse Avenue, Hamilton Township, New Jersey 08610, and to his home address, 60 Breza Way, Allentown, New Jersey 08501, by regular and certified mail, return receipt requested.

On February 9, 2011, respondent signed for the certified letter sent to his home address. On the same date, Aline Prutley signed for the certified letter sent to his office address.

As of March 7, 2011, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

This default matter was first scheduled to be reviewed at our June 16, 2011 session. By letter dated June 16, 2011, submitted to us on the morning of our session, the OAE, for the first time, urged us to disbar respondent. Having received a copy of the OAE's letter on that same date, June 16, 2001, respondent asked us, by letter dated June 17, 2011, for an opportunity to defend himself. We then determined to vacate the default, to remand the matter to the OAE, and to direct

respondent to file a verified answer by no later than July 5, 2011. The letter cautioned respondent that failure to abide by that deadline would cause the OAE to re-certify the matter to us as a default. Indeed, on July 7, 2011, the OAE did just that, as a result of respondent's failure to file an answer by July 5, 2011.

First Count (The Friedman Matter – XIV-2011-322E)

The first count of the OAE complaint alleged that, in August 2010, Tina Friedman, the grievant, engaged respondent to prepare and execute several powers of attorney (POAs) and to obtain a property manager for three rental properties owned by her son, Marcus, who was in prison and, therefore, could not care for the properties.

Respondent agreed to undertake the representation for a $1200 fee. However, he did not memorialize the fee arrangement, even though he had not regularly represented Friedman.

On September 2, 2009, respondent met with Marcus at the prison, where he executed the POAs. Afterward, respondent arranged for the hiring of the property managers. He also provided additional services to Friedman "by acting as a conduit for the exchange of information between the property managers

and Friedman." Once again, respondent did not set forth, in writing, the basis or rate for his services.

On November 19, 2009, respondent took Friedman to TD Bank, in Hamilton Township, and opened two checking accounts for the management of the rental properties. Respondent directed Friedman to sign six checks, in blank, from these accounts. Two of the checks were handwritten by respondent and were made payable to the grievant as reimbursement to her for expenses related to the rental properties.

Four of the checks were to be used by the property managers for repairs and utility bills. Nevertheless, in Friedman's presence, respondent took two of those four checks and made them payable to himself, each in the amount of $500, for a total of $1000. Respondent then deposited the checks into his attorney business account, as payment for his legal fees for services that he had already rendered to Friedman. The two remaining checks were to be used to pay the utility bills for the properties.

On the evening of November 19, 2009, respondent sent an email to the property managers and to Friedman's daughter, Marcella, notifying them of the banking transactions identified above, including the two $500 checks for legal fees. A few

weeks later, on December 3, 2009, mistakenly cited in the complaint as 2010, respondent took the two remaining checks and made them payable to himself, each in the amount of $250, noting on the memo line that the payments were for his fee. Respondent did this without Friedman's knowledge or authorization.

Friedman did not learn of what respondent had done until she received the bank statement for December 2009. She raised the issue with respondent, who, on January 4, 2010, immediately reimbursed Friedman for $500, representing the two $250 checks that he had issued to himself on December 3, 2009.

The complaint did not charge respondent with knowing misappropriation of the last two $250 payments to himself. The complaint suggested that respondent's last disbursements to himself might have been attributable to his "poor recordkeeping practices."

The complaint charged respondent with having violated RPC 1.5(b), RPC 1.15(a), and RPC 1.15(d).

The facts recited in the first count of the complaint support some 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).

Although respondent's violation of RPC 1.5(b) and RPC 1.15(d) have been established, the allegations are insufficient to support a violation of RPC 1.15(a). Because respondent had not previously represented Friedman, respondent violated RPC 1.5(b), which requires a lawyer under such circumstances to communicate to the client, in writing, the basis or rate of the fee before or within a reasonable time after commencing the representation. Respondent failed to communicate his fee, in writing, at the time that he first undertook the representation and, again, when he agreed to provide "ancillary, extra services" in connection with the management of the properties.

Respondent also violated RPC 1.15(d) for his failure to maintain trust and business account receipts and disbursement journals, running trust and business account checkbook balances, and descriptive trust and business account deposit information, all contrary to the requirements of R. 1:21-6(c)(1)(A) and (G).

It is not clear from the allegations of the complaint, however, whether respondent violated RPC 1.15(a) (negligent misappropriation), when he issued the first two $500 checks to himself. Respondent charged $1200 for the initial undertaking,

that is, to prepare the POAs and to hire property managers. He was paid only $1000. Thus, he was still owed $200. In addition, respondent undertook additional work for Friedman. The complaint does not identify the fee or the hourly rate that respondent intended to charge Friedman for this extra work.

With respect to the two $250 checks that respondent later wrote to himself, the complaint alleges that he wrote "fee" on the memo line. However, it is not clear from the allegations whether the term "fee" applied to the $200 owed or the additional work that respondent performed for Friedman. Moreover, the fact that respondent reimbursed Friedman the full $500, when she confronted him about the payments, further complicates the issue, as it would seem that respondent should have reimbursed her only $300, inasmuch as he was still owed $200. In any event, the allegations are too vague to determine whether respondent actually invaded client funds.

To conclude, the allegations of the complaint sustain the RPC 1.5(b) and RPC 1.15(d) charges, but not the charged violation of RPC 1.15(a).

Second Count (The Dolly Matter); District Docket No. XIV-2010-306E

In 2006, grievant Brian Dolly unwittingly entered into a fraudulent refinancing mortgage rescue scheme, which ultimately resulted in the foreclosure of his home and his eviction from the property, in February 2010.

In February 2008, respondent learned about Dolly's involvement in the scheme and offered to help him prevent a foreclosure action. Even though respondent had not regularly represented Dolly, he undertook this representation without providing Dolly with a writing setting forth the rate or basis for his fee.

On September 18, 2008, respondent presented an offer of settlement to the foreclosing lender, Deutsche Bank National Trust Company. There is no evidence that Deutsche Bank made a counter-offer or that respondent took any further action, including following up with Deutsche Bank on the offer of settlement.

Sometime in 2009, at respondent's direction, Dolly deposited directly into respondent's business account two cash payments, in the amounts of $600 and $500. The payments were for legal fees. Dolly made the payments with the expectation

that respondent would take appropriate legal action to protect his property.

According to Dolly, respondent obtained two postponements of the eviction, the second of which took place in October 2009. On February 9, 2010, Dolly received a final notice of eviction and met with respondent in his office. At that time, respondent presented Dolly with a retainer agreement, providing that he would represent Dolly in connection with a lawsuit for eviction and that he would negotiate the reacquisition of Dolly's property. Dolly gave $1500 to respondent at that time.

Also on February 9, 2010, respondent sent an email to counsel for the lender, requesting the lender to withdraw the eviction and to discuss a settlement. Nevertheless, Dolly was evicted on February 21, 2010.

After the filing of the grievance, respondent contacted Dolly and his niece multiple times, via email and telephone. Respondent never explained what actions he had taken to recover the property. Instead, his communications focused on the grievance and how it could be "resolved."

On June 18, 2010, a meeting took place among respondent, Dolly, Dolly's niece, and Dolly's friend, attorney Robert B. Bourne. Respondent had arranged the meeting. During the

meeting, respondent asked Dolly to withdraw the grievance and, in exchange, offered to provide him with five months of free legal services. However, once the five months had expired, respondent wanted $500-$1000 per month from Dolly, "depending on the services rendered." Dolly refused to pay respondent any additional monies until after he performed the services for which he had been hired.

At the conclusion of the meeting, respondent represented to Dolly that he would take the necessary action to recover the property. However, after making that representation, respondent failed to communicate with Dolly or his niece about the status of Dolly's property and about any steps taken with respect to the property and/or the foreclosure. Unbeknownst to Dolly, the property was sold on August 12, 2010.

The complaint charged respondent with having violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.5(b), and RPC 8.4(c).

The facts recited in the second count of the complaint support some 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).

The allegations support the conclusion that respondent violated RPC 1.3, RPC 1.4(b), and RPC 1.5(b), but not RPC 1.1(a) and RPC 8.4(c).

As in the Friedman matter, because respondent had not previously represented Dolly, he violated RPC 1.5(b), when he failed to communicate his fee to Dolly, in writing, at the time that he was hired to represent Dolly in the eviction matter.

In addition, respondent lacked diligence in his handling of the foreclosure/eviction matter on behalf of Dolly. First, although he made an offer of settlement to Deutsche Bank, in September 2008, he took no further action, even in the face of no response from Deutsche Bank to the offer. Second, after the second postponement of eviction, in October 2009, he took no further steps. Dolly received a final notice of eviction on February 9, 2010, and was evicted twelve days later. Respondent's inaction violated RPC 1.3.

Respondent also violated RPC 1.4(b), which requires an attorney to "keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." At the June 2010 meeting, respondent told Dolly that he would take the necessary action to recover the property. However, between the date of the meeting and the date of the

ethics complaint, February 7, 2011, respondent failed to communicate with Dolly about the status of the property and the actions that he was taking to recover it for his client.

With respect to the RPC 1.1(a) charge, nothing in the complaint suggests that respondent grossly neglected the case. Although he certainly lacked diligence in his handling of the matter, there is no indication that his client was evicted from the property as a direct result of his action or inaction. Eviction may have been a foregone conclusion in the view of Deutsche Bank and it is possible that the best that respondent could have done for his client, under those circumstances, was to obtain the two postponements.

Similarly, nothing in the complaint supports the conclusion that respondent violated RPC 8.4(c). That rule prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit and misrepresentation. Although respondent represented to Dolly that he would take a number of actions, some of which he did and some of which he did not do, none of the allegations suggest that respondent's representations were untrue at the time that he made them.

In summary, respondent violated RPC 1.3, RPC 1.4(b), and RPC 1.5(b) in his representation of Dolly. He did not violate RPC 1.1(a) or RPC 8.4(c).

Third Count (OAE Disciplinary Matter)

On June 22, 2010, the Dolly grievance was transferred to the OAE and assigned to Deputy Ethics Counsel Lee A. Gronikowski and disciplinary investigator M. Scott Fitz-Patrick. On June 28, 2010, Gronikowski wrote a letter to respondent and Dolly, notifying them that the OAE would be investigating the grievance.

On July 14, 2010, respondent sent an email to Fitz-Patrick, explaining that his reply to the grievance was being transcribed. On July 26, Gronikowski wrote to respondent, informed him that his reply to the grievance was overdue, but provided him a one-week extension within which to submit the reply.

On August 3, 2010, respondent telephoned the OAE and reported that he was sick. He promised that he would forward the reply as soon as possible. On August 9, 2010, Gronikowski notified respondent that he was to appear for a demand interview, at a date not specified in the complaint. On August

19, 2010, respondent wrote to Gronikowski, stating that he would not be able to appear for the interview due to health and child-care issues. He requested that the interview be re-scheduled.

On August 25, 2010, Gronikowski wrote to respondent, granted his request, and re-scheduled the interview for September 8, 2010. The next day, respondent called Fitz-Patrick and told him that he would have his reply to the grievance at the OAE's office "next week."

On September 7, 2010, Fitz-Patrick called respondent and confirmed that he would be at his office, the following day, for the interview. The next day, however, respondent called Fitz-Patrick and canceled the interview because he was allegedly in a hospital emergency room. On that same date, September 8, 2010, Gronikowski directed respondent to provide him with the identity of the hospital where he was treated and a medical release.

On September 16, 2010, respondent sent documentation to the OAE, supporting the claim that he was treated in a hospital emergency room on September 8, 2010. On October 4, 2010, respondent called Fitz-Patrick and stated that he would submit his reply to the grievance "tomorrow," after it was reviewed by "R.V., Esq."

On October 19, 2010, Fitz-Patrick called R.V., who told him that he was not representing respondent but, rather, had reviewed the reply and had returned it to respondent. On the very next day, respondent informed Fitz-Patrick that R.V. was now representing him and that he, respondent, would get his reply to the grievance to the OAE by October 25, 2010.

On October 25, 2010, respondent emailed Fitz-Patrick and informed him that he would not be able to deliver his reply to the grievance that day "due to alleged 'threats on his life'." In a letter written that day, Gronikowski informed respondent that the investigation would proceed without his input.

On October 28, 2010, respondent stated that he would work on his reply to the grievance "before the close of business tomorrow" and that he would contact Gronikowski by 3:00 p.m. "with status." The next day, respondent told Fitz-Patrick that his reply would be delivered to the OAE on November 1, 2010.

On November 4, 2010, respondent emailed Gronikowski and stated that he was still working on his reply to the grievance. Attached to the email was a letter explaining the alleged threat on his life, which purportedly prevented him from replying to the grievance before.

On December 7, 2010, R.V. called the OAE and stated that he no longer represented respondent and that he would send a letter confirming this development. The next day, respondent emailed Gronikowski and confirmed R.V.'s statement. He also requested an interview with the OAE, which Gronikowski scheduled for December 17, 2010.

On December 17, 2010, respondent emailed the OAE and canceled the appointment because his new attorney was unavailable. On January 3, 2011, respondent informed Gronikowski that he would meet with him later that week and that the new lawyer was not representing him anymore. Respondent did not show up.

On January 10, 2011, respondent called Fitz-Patrick and stated that his computer had broken and, that, therefore, he could not access the reply to the grievance. On January 19, 2011, he called Fitz-Patrick and said that he would fax a letter to the OAE that day to explain that he was "closing down [his]

law practice'." On January 28, 2011 respondent told Fitz-Patrick "that he never sent the above letter."[1]

As of the date of the formal ethics complaint, February 7, 2011, respondent still had not provided the OAE with a reply to the Dolly grievance, despite, according to the complaint, "repeatedly misrepresenting" that he would do so.

The complaint charged respondent with having violated RPC 8.1(a), RPC 8.1(b), and RPC 8.4(c).

The facts recited in the third count of the complaint support some 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).

RPC 8.1(a) prohibits a lawyer, in connection with a disciplinary matter, from knowingly making a false statement of material fact. RPC 8.1(b) prohibits a lawyer, in connection with a disciplinary matter, from knowingly failing to respond to

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[1] It is not clear as to which letter the paragraph refers.

a lawful demand for information from a disciplinary authority. RPC 8.4(c) prohibits a lawyer from making misrepresentations.

In this case, on July 14, 2010, respondent informed the OAE that his reply to the Dolly grievance was "being transcribed." On six different occasions, between July 14 and October 29, 2010, respondent told the OAE that he would be sending his reply to the grievance. He never did.

Between August 9, 2010 and January 3, 2011, respondent canceled or failed to appear for an interview with the OAE on four occasions. Although respondent had an excuse for three of the four non-appearances, he was able to document only one of them, the hospitalization on September 8, 2010.

Although respondent repeatedly put off submitting his written reply to the grievance and repeatedly canceled interviews with the OAE, it is not entirely clear that he was thumbing his nose at the OAE. Rather, his behavior appears consistent with what has been well-established over the years in his other disciplinary matters, that is, serious mental health issues that prevent him from attending to matters that require his attention. However, because this is a default, we may consider only what we find in the four corners of the complaint.

Ultimately, respondent failed to cooperate with the OAE, a violation of RPC 8.1(b). If his failure to comply with his obligations to submit a reply to the grievance and to appear for an interview were the result of some kind of disorder, then respondent should have been upfront with the OAE and informed either Gronikowski or Fitz-Patrick of his difficulty. In the absence of doing that, his conduct must be deemed a knowing failure to cooperate with the OAE.

On the other hand, the allegations do not support a determination that respondent knowingly made false statements and misrepresentations to the OAE. Often, respondent had an excuse for why he could not submit the reply or appear for the interview. It could be — and probably was — that he always intended to comply with these obligations but that, for whatever reason, he did not. There is nothing in the complaint that suggests that, at the time the representations were made, they were knowingly false.

To conclude, we find that respondent violated RPC 8.1(b) but not RPC 8.1(a) or RPC 8.4(c).

There remains for determination the appropriate quantum of discipline to be imposed for respondent's gross neglect in one client matter, lack of diligence and failure to communicate with

the client in two client matters, failure to memorialize the basis or rate for his fee in two client matters, recordkeeping violations in one matter, and failure to cooperate with disciplinary authorities in two matters.

Admonitions are typically imposed for gross neglect, lack of diligence, and failure to communicate with the client. See, e.g., In the Matter of Ronald M. Thompson, DRB 10-148 (June 23, 2010) (attorney violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b) when his inaction led to the dismissal of his minor client's complaint and the denial of his motion to restore; when the client turned eighteen, the attorney did not file a new lawsuit and the statute of limitations expired two years later; he also failed to keep the client's parents informed of the status of the matter, including that the case had been dismissed and that another lawsuit could be filed upon the child's eighteenth birthday); In the Matter of Daniel G. Larkins, DRB 09-155 (October 8, 2009) (attorney's gross neglect and lack of diligence resulted in the dismissal of his client's personal injury complaint and his failure to seek its reinstatement; the attorney also lost touch with his client and failed to turn over the file to his client because it was "lost for a time;" mitigating factors included personal problems at the time of the

representation and the attorney's lack of disciplinary history since his 1983 admission to the bar); and In the Matter of Peggy M. O'Dowd, DRB 09-027 (June 3, 2009) (attorney did not adequately communicate with the client in three client matters; in one matter, she did not complete the administration of the estate, in violation of RPC 1.3; in a real estate matter, she failed to timely pay the condominium management company, to timely file certain documents, and to provide copies of such documents to the client, in violation of RPC 1.1(a) and RPC 1.3; in mitigation, we considered her personal circumstances at the time of the misconduct, the fact that she ultimately completed the work for which she had been retained, the lack of permanent harm to her clients, and her recognition that she had to close her law practice and seek help from another law firm).

Ordinarily, admonitions, too, are imposed for failure to cooperate with disciplinary authorities. See, e.g., In the Matter of Marvin Blakely, DRB Docket No. 10-325 (January 28, 2011) (after his ex-wife filed a grievance against him, attorney ignored numerous letters from the district ethics committee seeking information about the matter; the attorney's lack of cooperation forced ethics authorities to obtain information from other sources including the probation department, the ex-wife's

former lawyer, and the attorney's mortgage company); In the Matter of Robert W. Laveson, DRB 08-436 (March 27, 2009) (attorney failed to reply to all of the DEC investigator's questions during the investigation into whether the attorney had practiced while ineligible; although the DEC concluded that the attorney had not committed that infraction, he nevertheless failed to cooperate with the DEC; mitigating factors included personal and professional problems faced by the attorney at the time of the investigation and his claim that he had not received all of the investigator's letters and, therefore, did not know that additional information was required of him); In the Matter of Kevin R. Shannon, DRB 04-152 (June 22, 2004) (attorney did not promptly reply to the DEC investigator's requests for information about the grievance); In the Matter of Keith O. D. Moses, DRB 02-248 (October 23, 2002) (attorney failed to reply to DEC's requests for information about two grievances); and In the Matter of Jon J. Steiger, DRB 02-199 (July 22, 2002) (attorney did not reply to the district ethics committee's numerous communications regarding a grievance).

Conduct involving a violation of RPC 1.5(b), even when accompanied by other, non-serious ethics offenses, typically results in an admonition. See, e.g., In the Matter of Joel C.

Seltzer, DRB 09-009 (June 11, 2009) (attorney failed to memorialize the rate or basis of his fee and, in another client matter, failed to promptly deliver funds to a third party); In the Matter of Alfred V. Gellene, DRB 09-068 (June 9, 2009) (in a criminal appeal, the attorney failed to furnish the client with a writing that set forth the basis or rate of his fee; the attorney also lacked diligence in the matter); In the Matter of David W. Boyer, DRB 07-032 (March 28, 2007) (in an estate matter, the attorney failed to provide client with a writing setting forth the basis or rate of his fee); and In the Matter of Carl C. Belgrave, DRB 05-258 (November 9, 2005) (attorney was retained to represent the buyer in a real estate transaction, and failed to state in writing the basis of his fee, resulting in confusion about whether a $400 fee was for the real estate closing or for a prior matrimonial matter for which the attorney had provided services without payment; recordkeeping violations also found).

An admonition is also the usual form of discipline for recordkeeping violations. See, e.g., In the Matter of Marc D'Arienzo, DRB 00-101 (June 29, 2001) (failure to use trust account and to maintain required receipts and disbursements journals, as well as client ledger cards).

Thus, all of the violations committed by respondent in the matters before us, standing alone, warrant nothing more than an admonition. Given the multitude of infractions, however, a reprimand is the minimum measure of discipline that would be imposed on respondent, but for the aggravating factors present in this case, namely, respondent's ethics history and the fact that this is a default.

In default matters, the otherwise applicable measure of discipline is enhanced. 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").

In addition, respondent's disciplinary history, which already includes a reprimand, a censure, and a three-month suspension, justifies elevating the discipline to a suspension. Respondent appears not to have learned from past mistakes, inasmuch as he continues to lack diligence in his handling of client matters, continues to fail in his duty to communicate with his clients, and continues to violate the recordkeeping rules. Alongside respondent's failure to learn from past mistakes, lies a disturbing pattern of disregard for the ethics

system in general. In the 2006 matter, respondent ignored our order directing him to turn over funds that were due to the beneficiaries of a trust. He gave the monies to the beneficiaries only after the Supreme Court had ordered him to do so.

Now, respondent proved himself either unwilling or unable to comply with Supreme Court directives. In May of this year, the Court ordered him to submit to the OAE all outstanding proctorship reports within sixty days. He did not. As a result, the Court temporarily suspended him in July. He remains temporarily suspended and, obviously, not compliant with the Supreme Court's orders.

Moreover, respondent, who was given the benefit of our voluntary decision to vacate the default in the OAE matter (DRB 11-240), so that he could file an answer to the complaint, failed to do so, thereby "double defaulting" in that matter. Obviously, then respondent has difficulty not only meeting his obligations to his clients but also to the entire disciplinary system, including the Supreme Court.

In view of all of the foregoing, we believe that a one-year consecutive suspension is warranted in this case.

Finally, inasmuch as the proctorship requirement was never vacated, we determine that, upon reinstatement, respondent should continue to practice under the supervision of a proctor, until further order of the Court.

Members Stanton and Yamner 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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Kevin J. Carlin
Docket Nos. DRB 11-194 and DRB 11-240

Decided: December 6, 2011

Disposition: One-year consecutive suspension

Members	Disbar	One-year consecutive Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Stanton						X
Wissinger		X				
Yamner						X
Zmirich		X				
Total:		7				2

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel