SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 12-042
and DRB 12-052
District Docket Nos. XII-2011-0012E
and VB-2011-0008E

IN THE MATTERS OF

MARVIN S. DAVIDSON

AN ATTORNEY AT LAW

Decision

Argued: May 17, 2012

Decided: August 10, 2012

James J. McDonald appeared on behalf of the District VB Ethics Committee.

Respondent waived appearance for oral argument.

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

These two matters were consolidated for the purpose of imposing a single discipline for the aggregate of respondent's infractions. The District XII Ethics Committee (DEC-XII) recommended an admonition for respondent, who twice appeared in court while on the IOLTA list of ineligible attorneys. The District VB Ethics Committee (DEC-VB) recommended a one-year suspension for respondent's failure to promptly turn over funds

to his client and failure to cooperate with the ethics investigation. The DEC-VB's recommendation took into account respondent's significant disciplinary history.

For respondent's conduct in these two matters we determine that a consecutive one-year suspension is appropriate discipline, to start running at the expiration of respondent's prior suspension, September 7, 2011.

Respondent was admitted to the New Jersey bar in 1969. At the relevant times, he maintained a law office in Orange, New Jersey.

Respondent has an extensive ethics record. In 1995, he was suspended for three months for improperly witnessing and acknowledging documents, preparing a power of attorney containing false representations, and advancing funds to a client in connection with litigation. In re Davidson, 139 N.J. 232 (1995). He was reinstated on July 28, 1995. In re Davidson, 141 N.J. 232 (1995).

In 2005, respondent was reprimanded for recordkeeping violations and negligent misappropriation of more than $28,000 in client funds. In re Davidson, 182 N.J. 587 (2005).

On May 20, 2009, respondent was temporarily suspended for failure to satisfy a fee arbitration determination and to pay a sanction to the Disciplinary Oversight Committee. In re

Davidson, 199 N.J. 37 (2009). He was reinstated on July 7, 2009. In re Davidson, 199 N.J. 574 (2009).

In 2010, respondent was suspended for six months for misconduct in four client matters. There, he was found guilty of gross neglect and lack of diligence for failure to take any action to prevent the dismissal of a case and failure to have the case reinstated; failure to abide by a client's decision to release escrow funds; failure to properly communicate with a client; failure to provide a client with a contingency fee agreement; failure to promptly deliver funds to a third person; failure to notify a client that he had received a settlement in one matter and, in another matter, disbursement of escrow funds to his client that were earmarked for the satisfaction of tax liens; failure to segregate a settlement until the resolution of a dispute over its distribution; misrepresentation about the receipt of a settlement; numerous recordkeeping improprieties; and failure to cooperate with the ethics investigation. We found that respondent's resort to self-help remedies, rather than the legal process, demonstrated that he was either unfamiliar with the Rules of Professional Conduct or ignored the rules to suit his own needs.

The Court ordered that, prior to reinstatement, respondent complete ten hours of professional responsibility courses and

that he submit proof of completion of such courses to the Office of Attorney Ethics (OAE); that he practice under the supervision of an OAE-approved proctor, until the OAE deemed him capable of practicing without such supervision; that he submit to the OAE monthly reconciliations of his attorney accounts on a quarterly basis, prepared by an OAE-approved accountant, until further order of the Court; and that he return funds to a client.

Also in 2010 and effective March 7, 2011, respondent received another six-month suspension, in a default matter. The suspension was to run consecutively to his prior six-month suspension. In that matter, respondent displayed gross neglect, lack of diligence, and failure to expedite litigation in a personal injury case by permitting the complaint to be twice dismissed, failing to engage in discovery, and failing to have the case reinstated. He also failed to keep the client reasonably informed about the status of the matter and failed to cooperate with disciplinary authorities. In re Davidson, 204 N.J. 175 (2010).

Respondent remains suspended to date.

DRB 12-042 (DISTRICT DOCKET NO. XII-2011-0012E)

This matter was before us on a recommendation for an admonition. Each of the two counts of the complaint charged

respondent with violating RPC 1.15(d) (failure to comply with the recordkeeping rules (R. 1:21-6) and RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority) for his non-compliance with "the Court's mandatory IOLTA [Income on Non-Interest Bearing Lawyers' Trust Accounts] Program" and appearing in court while on the IOLTA ineligible list.[1]

According to the hearing panel report, at the DEC-XII hearing, respondent admitted the allegations of the complaint. As the only witness, he testified solely as to mitigation.

The complaint charged - - and respondent admitted - - that he made two court appearances, on September 30, 2009, one in a Superior Court matter and the other in a municipal court matter, while on the IOLTA Fund's list of ineligible attorneys.

R. 1:21-6(a)(1) requires every attorney who practices in this state to maintain, in a financial institution in New Jersey, "a trust account or accounts, separate from any business and personal accounts and from any fiduciary accounts that the

[1] R. 1:21-6(i) states that an attorney who fails to comply with the rule relating to the maintenance, availability and preservation of accounts and records or who fails to produce or to respond completely to questions regarding such required records "shall be deemed to be in violation of RPC 1.15(d) and RPC 8.1(b)." Practicing while ineligible, however, is typically deemed a violation of RPC 5.5(a).

attorney may maintain [in any fiduciary capacity] into which trust account or accounts funds entrusted to the attorney's care shall be deposited." One or more of the trust accounts shall be the IOLTA account or accounts required by R. 1:28A (R. 1:21-6(a)(2).

R. 1:28A-2(d) requires annual registration of the IOLTA accounts with the IOLTA Fund in the manner prescribed by the IOLTA Fund Trustees. It further provides that the Trustees

> shall annually report the names of all attorneys failing to comply with the provisions of rule to the Supreme Court for inclusion on a list of attorneys deemed ineligible to practice law in New Jersey by Court Order. An attorney's name will be removed without further Court Order, on submission to the Trustees of the prescribed forms.

Respondent testified that, at that time, he was unaware that he had not completed the annual registration of his IOLTA account. He explained that, as soon as he became aware of it, he submitted the required forms and paid his annual registration fee. Respondent complied with the IOLTA registration requirement on December 11, 2009. He admitted that he should have known about his failure to submit the required forms, that he had probably received the official notification, and that the notification was probably on his desk. He claimed that, at the time, he was going through a difficult divorce and was having

secretarial problems. According to the hearing panel report, respondent had been ineligible to practice law for approximately ten months, at the time of his two court appearances on September 30, 2009.

Based on respondent's admissions, the DEC-XII found him guilty of violating RPC 1.15(d) (failure to comply with R. 1:21-6) and RPC 8.1(b) (failure to respond and meet the demands of the mandatory IOLTA program).

Because respondent's claim that he was unaware of his ineligibility was not rebutted by the presenter and because he promptly complied with the IOLTA requirements, once he discovered his ineligibility, the DEC-XII determined that his inaction seemed "to qualify as minor unethical conduct." The DEC-XII determined, however, that respondent's ethics history made him ineligible for diversion (R. 1:20-3(i)(2)). The DEC-XII concluded that an admonition was appropriate discipline because respondent's two court appearances, while he was ineligible to practice, appeared to have been the result of his "negligent and careless disorganization exacerbated by the stress of a difficult divorce." The DEC-XII recommended that respondent complete a course on New Jersey attorney trust account and IOLTA accounting requirements and practices.

DRB 12-052 (DISTRICT DOCKET NO. VB-2011-008E)

This matter was before us on a recommendation for a one-year suspension filed by the DEC-VB. The three-count complaint charged respondent with violating RPC 1.15(b) (upon receiving funds in which a client has an interest, a lawyer shall promptly deliver the funds that the client is entitled to receive), RPC 1.15(d) (recordkeeping improprieties), and RPC 8.1(b) (failure to reply to lawful demand for information from a disciplinary authority).

During a pre-hearing conference, the presenter conceded that he could not prove, by clear and convincing evidence, the charged violations set forth in the third count of the complaint (RPC 8.1(b) and RPC 1.15(d), for respondent's failure to provide the presenter with the disbursement statement in the Clyburn personal injury case). The presenter and respondent, therefore, agreed to proceed only on counts one and two. They entered into a stipulation of facts, amended by respondent's November 30, 2011 letter to the presenter. Respondent testified at the DEC hearing and presented two character witnesses.

Grievant Sabrina Clyburn did not appear at the DEC hearing. Although she cooperated with the investigator/presenter (hereinafter presenter) during the course of the DEC-VB investigation, after she moved to Georgia and respondent

ultimately disbursed her portion of her personal injury settlement, she stopped cooperating with the presenter. At the DEC hearing, the presenter, therefore, relied on documentary evidence.

Clyburn was respondent's secretary, at the time of the relevant events. She had been represented by the law firm of Shapiro & Berezin, P.C. (the Shapiro firm), as the plaintiff in a personal injury case (a 2001 motor vehicle accident) venued in Essex County Superior Court. When a dispute arose regarding attorneys' fees, respondent entered a limited appearance in the case. He did not file a substitution of attorney.

Respondent initially denied that he had represented Clyburn, but eventually conceded that he had acted as her lawyer in the dispute over the fees.

Count one charged respondent with failure to promptly turn over settlement funds to Clyburn. Sometime in 2005, the parties reached a settlement in the amount of $8,000. Apparently, a dispute arose over the amount of the Shapiro firm's fees in the matter, because on July 22, 2005, on a motion filed by that firm to determine the amount of attorney's fees and costs, the court awarded the Shapiro firm $2,700 for "all litigation expenses," to be paid from the $8,000 settlement proceeds. The court also awarded respondent $286.66 in legal fees for representing

Clyburn in connection with the Shapiro firm's motion and ordered that the balance of the proceeds $5,013.34, be allocated to Clyburn.

On November 15, 2005, counsel for the defendant sent to respondent an $8,000 check from the insurance company, payable to respondent and Clyburn. Counsel requested that respondent forward to the Shapiro firm the funds to satisfy its fee.

Although respondent disbursed the appropriate amounts to the Shapiro firm and himself, he did not forward Clyburn's share of the settlement until much later. He claimed that he had kept Clyburn's share of the settlement proceeds because he suspected her of having improperly taken office computers for herself. Respondent believed that he would be held responsible for the payment of the computers and wanted to offset any potential liability on his part.

At the DEC-VB hearing, respondent explained that, prior to receiving the settlement check in Clyburn's personal injury case, Clyburn had ordered computers from Dell for his office. According to respondent, he expected two computers, but Dell had sent him letters and bills for five computers. He claimed that he had only received one bill from Dell, even though he had written to them three or four times. He assumed that Dell had sent five computers to his office and that Clyburn had taken the

other three for herself. By that time, his relationship with her had soured. He stated that he "probably fired her."

As indicated above, because respondent believed that he would be held responsible for the payment of the other three computers, he withheld Clyburn's portion of the settlement until the resolution of any claims by Dell against him or until the statute of limitations on a claim by Dell had expired. He claimed that he had written to Dell offering to "join them in criminal prosecution" of his former secretary. He complained to Dell that Clyburn had made unauthorized purchases of $5,000 worth of computers. He believed that he had sent letters to Dell, before and after he had received Clyburn's settlement.[2] He claimed that he had never heard back from Dell.

Respondent never reported the theft to the police, however. He never accused Clyburn directly, but asserted that he had "told her by sending a copy of the letter to Dell Computer to her." He never told Clyburn that he planned to hold her proceeds until the expiration of the statute of limitations on a potential claim.

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[2] The exhibits establish that one letter is dated October 4, 2005. It refers to several earlier letters (Ex.P-1). A second letter is dated March 2, 2006 (Ex.R-1). Respondent received the settlement in November 2005.

It was not until March 3, 2011 that respondent sent a letter to Clyburn, purportedly transmitting her portion of the settlement ($5,013.34). He did not enclose the check, however. Later, on April 6, 2011, he sent a letter to Clyburn's Georgia attorney, enclosing a $5,013.34 check and stating:

> I'm assuming that Dell Computers has written this matter off as I have not heard from them. If I should hear from them I will seek reimbursement of any funds that they force me to pay.
>
> You may see something sinister in the delay and the forwarding of these funds. I thought the funds went out March 3, 2011. I am still suspended from the practice of law and do not have a regular book keeper or even a part time book keeper. I also do not have a regular secretary. I do not go to the office most of the time. I only go only two or three weeks only to [sic] check my mail. In any event I have enclosed the check.
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> [Ex.C to Ex.J-1.][3]

Respondent held Clyburn's settlement funds from November 2005 to April 6, 2011, a period of almost five and one-half years.

At the DEC hearing, respondent also asserted that he thought that he had been a victim of a crime; that his office was not in the best neighborhood; and that he did the right

[3] Exhibit J-1 is the stipulation of facts, amended by respondent's November 30, 2011 letter to the DEC presenter.

thing by holding Clyburn's money and not disbursing it, when he thought he would be sued by Dell. He did not know why Dell had not sued him. He speculated that there was a problem in their collection department.

According to respondent, he had intended to give Clyburn her share of the proceeds, which he kept in his trust account, but he had not heard from her until "approximately a year ago" (December 29, 2010), through her Georgia attorney. Prior thereto, the New Jersey Lawyers' Fund for Client Protection (the Fund) had contacted him about a claim filed by Clyburn. However, it was not until after Clyburn filed a grievance against him, that he decided to give her the funds, even though the statute of limitations on the Dell claim had not yet expired.

Respondent testified that the dispute with Dell existed at the time he appeared in Clyburn's attorney fee matter, on July 22, 2005. According to respondent, he informed the judge about the situation and the judge "suggested" that he pay the money into court. Respondent added, "I didn't think about that . . . but that's not the design of my practice." Respondent thought that he would save Clyburn money by not depositing the funds with the court. He stated: "My practice was designed to do as little as possible that would cost the client extra money and I thought I would save that by not doing it." He did not ask the

judge to include a provision in the order to permit him to hold Clyburn's funds until the problem with Dell was resolved.

As to count two, charging respondent with failure to cooperate with the DEC investigation, the presenter offered Exhibit D to the stipulation, his April 19, 2011 letter to respondent, requesting a copy of the Clyburn file. The presenter had specifically requested that respondent produce the retainer agreement applicable to the motor vehicle accident, the pleadings filed with the court, the release, the settlement statement, and respondent's trust account ledger card showing disbursements and funds on hand. The presenter received no reply until the November 17, 2011 pre-hearing conference at the DEC level.

It was not until the DEC hearing that respondent produced a copy of his trust account ledger card in the Clyburn matter. The card contained four entries: 11/21/05 $8000 deposit; 11/25/05 [with a question mark appearing near the date] $286.66 fee to MSD (fee as per court ord.); 11/30/05 $2,700 "legal fee as per ct order" to the Shapiro firm; and 3/3/11 $5013.34 "balance" to Clyburn.

At the DEC hearing, on December 1, 2011, respondent stated that, because he was suspended, he did not have an address for a law office, but maintained a "business address," other than his

residential address: 90 South Main Street, Orange, New Jersey 07050.[4] He did not state the purpose for his business address.

In mitigation, respondent presented two character witnesses. The first was Wilbur Ross, respondent's client since 2003. Ross testified that respondent always told him the truth, that respondent is a good person, and that he believed that respondent was ready to practice law again. Ross added that respondent has been "more cognizant of the things he does when dealing with clients." He stated that respondent "has a better picture of handling his business." He remarked that respondent is a very decent person and a good father and that he was going through a divorce at the time of his transgressions. Ross believed that, when experiencing something of that nature, "you make mistakes in your mind, you don't know what's really going on." He asked the DEC to be lenient with respondent and to let respondent return to work because he needed him.

Harvey Balance, a pastor and personal friend of respondent, has known him for eighteen or twenty years. Balance found respondent to be a good lawyer; a great, honest, and noble person; and very ethical. He appreciated the way respondent worked with his "people," in Newark.

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[4] This was the same address listed as his law firm address prior to his suspension.

In his own behalf, respondent stated that one of the reasons he got divorced was "supposedly" because he was not making enough money. He added, "If I was holding money in the escrow account in the matter [now] before you, I could have just given myself a fee, satisfied my wife and then filed suit. I wish I had done that instead of just disbursing the money to my client." He added that there were many things he could have done in the alternative and that

> lawyers shouldn't be so frightened of the practice of law that they are afraid with everything with the trust account. I wasn't taking the money, I knew I was going to give it back to her but I dare say that the public panel member assuming she's in business or whatever and knows that she had a way of protecting herself from a lawsuit and she would have taken it but that's neither here nor there and basically that's it.
>
> [T61-10 to 19.][5]

Respondent asked that, if any additional suspension is imposed, it run concurrently with his last suspension. He has not applied for reinstatement because, he stated, he does not have the funds "for a transcript."

According to the presenter, he did not find respondent's conduct to be evil, but keeping Clyburn's money in his trust

[5] T refers to the transcript of the December 1, 2011 DEC hearing.

account for a potential claim did not comport with the Rules of Professional Conduct. The presenter pointed out that respondent withheld Clyburn's money for five years and did not disburse it until shortly after Clyburn filed a grievance against him. The presenter argued that holding the funds for that length of time was "palpably unreasonable" and a violation of RPC 1.15. The presenter noted that respondent could have pursued several other avenues but, instead, chose to do nothing, which is his typical pattern, the easiest course of action.

The DEC-VB found that there was an employer-employee relationship, as well as an attorney-client relationship, between respondent and Clyburn, for a limited purpose. Based on this dual relationship and respondent's dispute with Clyburn, the DEC noted the possibility of a conflict of interest, but added that the issue was not properly before it.

The DEC-VB found, unequivocally, that the delay between respondent's receipt of the funds, on November 15, 2005, and the distribution of the funds to Clyburn, on April 6, 2011, constituted a failure to promptly deliver funds to her (RPC 1.15(b)). The DEC-VB rejected respondent's defense that he did not promptly release the funds because of his potential liability to Dell. It found his justification "hollow." The DEC noted that, although respondent claimed that he was holding the

money until the civil statute of limitations (six years) ran, after the Fund's investigation and Clyburn's filing of the grievance, "he changed his mind and sent the check to his former client."

The DEC-VB also found that respondent's client ledger card was inaccurate about the date of respondent's disbursement to Clyburn. The DEC-VB was not persuaded by respondent's argument that he did not want to take action that would cost his client money. It pointed out that the ethics rules do not authorize attorneys to utilize shortcuts to save clients' money, when the shortcuts might be unethical. In the DEC-VB's view, respondent's argument lacked logic because he could not charge a client to file an application with the court to keep the money. Similarly, the DEC-VB did not find respondent's divorce to be a factor relevant to his conduct.

The DEC-VB found that respondent's "self-help" measure was not an appropriate remedy, reasoning that he could have contacted the police, filed a complaint with the prosecutor's office, or sought a court order.

The DEC-VB was concerned that, when the Fund launched an investigation into Clyburn's claim, and even after respondent received a letter from his client's Georgia attorney, he did not reply immediately, but waited four or five months after the

attorney's letter. "Respondent's conduct evidenced a lack of precision and attention to detail" with respect to his trust account, which the DEC-VB found troubling.

The DEC-VB also found clear and convincing evidence that respondent violated RPC 8.1(b), because he did not provide a copy of his file to the presenter. Moreover, it was not until "long after the filing of the Complaint," during the pre-hearing conference, that respondent turned over information to the presenter. Even then, he did not produce his trust account ledger card to the presenter until the day of the ethics hearing.

In assessing the appropriate degree of discipline, the DEC gave little weight to respondent's character witnesses, because one of the witnesses could not attest to respondent's reputation for truthfulness in the community and because the other witness testified about his own case, a context in which he thought that respondent was a good lawyer. In light of respondent's ethics history, the DEC-VB determined that a one-year suspension was appropriate and that, upon reinstatement, he should practice under the supervision of a proctor for a one-year period.

Following a de novo review of the records in DRB 12-042 and DRB 12-052, we determine that the evidence clearly and

convincingly establishes that respondent's conduct was unethical.

In DRB 12-042, respondent practiced law while on the IOLTA list of ineligible attorneys. There is no proof that he was aware of his ineligibility at the time. Practicing law while ineligible, without more, is generally met with an admonition if the attorney is either unaware of the ineligibility or advances compelling mitigating factors. See, e.g., In the Matter of Robert B. Blackman, DRB 10-137 (June 18, 2010) (attorney practiced law while ineligible for failure to file the annual IOLTA registration statement for three years; in mitigation, the attorney was unaware of his ineligibility; prior reprimand nineteen years before); In the Matter of Matthew George Connolly, DRB 08-419 (March 31, 2009) (attorney ineligible to practice law rendered legal services; the attorney's conduct was unintentional); In the Matter of William C. Brummel, DRB 06-031 (March 21, 2006) (attorney practiced law during a four-month period of ineligibility; the attorney was unaware of his ineligible status); and In the Matter of Richard J. Cohen, DRB 04-209 (July 16, 2004) (attorney practiced law during nineteen-month ineligibility; the attorney did not know that he was ineligible).

A reprimand is usually imposed when the attorney has an extensive ethics history, has been disciplined for conduct of the same sort, has also committed other ethics improprieties, or is aware of the ineligibility and practices law nevertheless. See, e.g., In re Feinerman, 202 N.J. 48 (2010) (attorney practiced law while ineligible, negligently misappropriated funds, committed recordkeeping violations, and made misrepresentations on real estate closing documents; mitigation included that the misrepresentations were more a series of omissions, rather than intentional acts, that the attorney was unaware of his ineligibility, and that he had no history of discipline); In re Austin, 198 N.J. 599 (2009) (during a one-year period of ineligibility, attorney made three court appearances on behalf of an attorney-friend who was not admitted in New Jersey; the attorney knew that he was ineligible; also, the attorney did not keep a trust and a business account in New Jersey and misrepresented, on his annual registration form, that he did so; several mitigating factors considered, including the attorney's unblemished disciplinary record); In re Kaniper, 192 N.J. 40 (2007) (attorney practiced law during two periods of ineligibility; although her employer gave her a check for the annual attorney assessment, she negotiated it instead of mailing it to the Fund; later, her personal check to the Fund was

returned for insufficient funds; the attorney's excuses that she had not received the Fund's letters about her ineligibility were deemed improbable and viewed as an aggravating factor); and In re Armorer, 153 N.J. 358 (1998) (attorney practiced law while ineligible, exhibited gross neglect, and failed to communicate with the client in one matter; the attorney also failed to maintain a bona fide office).

Here, an admonition would not be appropriate discipline for respondent's practicing while ineligible because of his extensive ethics history. Moreover, he is guilty of additional misconduct. In DRB 12-052, he failed to turn over Clyburn's settlement proceeds for almost five and one-half years. This delay was unreasonable, unjustified, and clearly a violation of RPC 1.15(b). He also failed to cooperate with the DEC's investigation (RPC 8.1(b)). He failed to turn over any documentation to the presenter until the pre-hearing conference and did not produce his client ledger card until the day of the DEC hearing, thereby violating RPC 8.1(b).

Standing alone, neither violation in DRB 12-052 warrants significant discipline. Ordinarily, failure to promptly deliver funds to clients or third persons will lead to an admonition. See, e.g., In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004) (attorney failed to promptly deliver balance

of settlement proceeds to client after her medical bills were paid); In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (for three-and-a-half years, attorney held in his trust account $4800 earmarked for the payment of a client's outstanding hospital bill); and In the Matter of Craig A. Altman, DRB 99-133 (June 17, 1999) (attorney did not promptly pay a doctor's bill despite having signed a "letter of protection").

Even when the RPC 1.15(b) violation is accompanied by other, non-serious infractions, an admonition may still result. See, e.g., In the Matter of David J. Percely, DRB 08-008 (June 9, 2008) (for three years attorney did not remit to client the balance of settlement funds to which the client was entitled; the attorney also lacked diligence in the client's representation, failed to cooperate with the investigation of the grievance, and wrote a trust account check to "cash;" significant mitigation presented, including the attorney's unblemished twenty years at the bar) and In the Matter of Anthony Giampapa, DRB 07-178 (November 15, 2007) (attorney did not promptly disburse to a client the balance of a loan that was refinanced; in addition, the attorney did not adequately communicate with the client and did not promptly return the client's file).

As to respondent's violation of RPC 1.15(b), we view his withholding of Clyburn's funds more harshly than the attorneys' conduct in the above-cited cases. This is not the first time that respondent has been disciplined for improprieties with client or escrow funds. In his first six-month suspension case, he failed to promptly deliver funds to a third person, failed to notify a client that he had received a settlement, disbursed funds to a client that were earmarked for taxes, and failed to segregate settlement funds until the dispute over its distribution was resolved. In re Davidson, supra, 202 N.J. 530. Clearly, respondent has not learned from his prior mistakes and continues to disregard his ethics and professional obligations.

As to respondent's failure to cooperate with disciplinary authorities, an admonition is usually imposed for that violaton, if the attorney does not have an ethics history. See, e.g., In the Matter of Douglas Joseph Del Tufo, DRB No. 11-241 (October 28, 2011); In the Matter of James M. Docherty, DRB No. 11-029 (April 29, 2011); and In the Matter of Kevin H. Main, DRB 10-046 (April 30, 2010).

Here, however, respondent has a significant ethics history. The discipline imposed in matters where attorneys are guilty of failure to cooperate with ethics authorities, have ethics histories, are guilty of other ethics improprieties, or other

aggravating factors are present (such as the attorneys have defaulted in their ethics matters) turns on the gravity of the combination of factors present. See, e.g., In re De Seno, 205 N.J. 91 (2011) (reprimand for attorney who failed to cooperate with ethics authorities and made a misrepresentation to a hearing panel about the date he filed a complaint; prior reprimand); In re Smith, 206 N.J. 137 (2011) (censure for misconduct in two matters; the attorney was guilty of failure to cooperate with ethics authorities, gross neglect, lack of diligence, failure to expedite litigation, and practice of law while ineligible for failure to pay the annual assessment; prior admonition); In re Misci, 205 N.J. 90 (2011) (three-month suspension in a default matter for failing to cooperate with ethics authorities, engaging in gross neglect and lack of diligence, failing to communicate with the client, charging an unreasonable fee, and failing to provide the client with a writing setting forth the basis or rate of the fee; prior reprimand); In re Delgado-Shafer, 208 N.J. 376 (2011) (one-year suspension for attorney guilty of failing to cooperate with ethics authorities, engaging in gross neglect and lack of diligence, failing to expedite litigation, knowingly disobeying an obligation under the rules of a tribunal, engaging in conduct prejudicial to the administration of justice, and violating the

Rules of Professional Conduct through the acts of another; prior two-year suspension); and In re Giamanco, 205 N.J. 84 (2009) (three-year suspension in a default matter for failure to cooperate with disciplinary authorities, gross neglect, lack of diligence, and failure to communicate with the client; significant ethics history included a reprimand, a censure, a three-month suspension in a default, a one-year suspension in two default matters, a six-month suspension, and another one-year suspension in a default matter).

Respondent's ethics violations (practicing while ineligible, failing to promptly disburse funds, failing to cooperate with disciplinary authorities) standing alone would warrant no more than a reprimand. However, he has a serious ethics history: a 1995 three-month suspension, a 2005 reprimand, and two six-month suspensions in 2010, from which he has not yet been reinstated. As noted above, respondent was guilty of similar misconduct vis-á-vis funds in In re Davidson, supra, 202 N.J. 530. There, not only did he fail to turn over funds to a third person, but he also improperly handled funds entrusted to him by failing to abide by a client's decision to release escrow funds, failed to notify a client he had received a settlement, and disbursed escrow funds to his client, rather than satisfy a tax lien. That respondent did not turn over the proceeds to

Clyburn until April 2011 or deposit her settlement with the court, when advised to do so, underscores the fact that he has not learned from his prior mistakes. By the time he turned over Clyburn's settlement proceeds (April 2011), he had already been suspended in In re Davidson, supra, 202 N.J. 530. (four matters; one of the grievances had been filed in 2006, the other three were filed in 2008). Respondent was fully aware that his cavalier treatment of funds entrusted to him was improper. We, therefore, determine that progressive discipline is warranted.

Additional aggravating factors here are that respondent continues to resort to self-help measures and that his conduct toward Clyburn was less than forthcoming. Specifically, when he received the $8,000 check on her behalf, in November 2005, the alleged Dell Computer problem already existed. Indeed, by letter dated October 2005, respondent complained to Dell that Clyburn had made an unauthorized purchase of $5,000 worth of computers. He told the DEC that he had withheld the $5,000 settlement from Clyburn to offset a potential liability that he might have for the payment of the computers. Therefore, when he received the $8,000 check on behalf of Clyburn, he had no intentions of turning over her share of the settlement to her but, rather, to withhold it until the resolution of the Dell issue. In this regard, his conduct toward Clyburn was deceitful.

Based on the totality of these factors and the principle of progressive discipline, we determine that an additional one-year suspension is warranted. The suspension is to run consecutively to respondent's last six-month suspension, imposed on March 7, 2011.

We also determine that, upon reinstatement, respondent is to practice under the supervision of an OAE-approved proctor, until the OAE deems him capable of practicing without such supervision.

Member Clark 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 Marvin S. Davidson
Docket Nos. DRB 12-042 and 12-052

Argued: May 17, 2012

Decided: August 10, 2012

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				
Gallipoli		X				
Yamner		X				
Wissinger		X				
Zmirich		X				
Total:		8				1

Julianne K. DeCore
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Chief Counsel