SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-087
District Docket Nos. XIV-2010-0665E; XIV-2011-0022E; XIV-2011-0023E; XIV-2010-0352E; XIV-2011-0377E; XIV-2011-0410E; XIV-2011-0411E; XIV-2011-0500E; XIV-2011-0502E; XIV-2011-0503E; XIV-2011-0504E; and XIV-2011-0505E

IN THE MATTER OF	:
EUGENE M. LA VERGNE	:
AN ATTORNEY AT LAW	:

Decision

Decided: September 5, 2012

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

This matter was before us on a certification of default filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-4(f). A seven-count complaint charged respondent with knowing misappropriation in one matter, violations of RPC 1.15(a), RPC 8.4(b) (more properly, RPC 8.4(c)), In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985).

In several other matters, respondent was charged with gross neglect (RPC 1.1(a)); failure to surrender client files upon termination of the representation (RPC 1.16(d)); lack of diligence (RPC 1.3); charging excessive fees (RPC 1.5(a)); lack of candor to a tribunal (RPC 3.3(a)(1)); respect for the rights of third persons (RPC 4.4(a)); the practice of law while suspended (RPC 5.5(a)); false or misleading communications concerning a lawyer's services (RPC 7.1(a)(1)(2)); false statement to disciplinary authorities (RPC 8.1(a)); failure to cooperate with disciplinary authorities (RPC 8.1(b)); conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)); and conduct prejudicial to the administration of justice (RPC 8.4(d)).

We recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1990. On June 19, 2001, he was reprimanded after a criminal conviction for theft by failure to make required disposition of property. Specifically, he failed to pay $700 for a car purchase and resold the vehicle, claiming that payment had been contingent on the sale of another vehicle. In re La Vergne, 168 N.J. 409 (2001).

On July 16, 2001, respondent was suspended for six months for gross neglect, lack of diligence, failure to communicate with the client, failure to return the client's file upon termination of the representation, failure to safekeep property, and misrepresentation. In re La Vergne, 168 N.J. 410 (2001).

On February 21, 2006, respondent received a reprimand for failure to turn over a file to his client after the legal representation was terminated and for improperly cashing checks for legal services, instead of depositing them into his business account, as required by the rules. In re La Vergne, 186 N.J. 74 (2006).

On July 14, 2011, respondent was censured for failure to turn over a client file upon termination of the representation, failure to cooperate with an ethics investigation, and failure to appear at the ethics hearing. The discipline was enhanced from an admonition to a censure (one enhancement for prior discipline and a second for failure to learn from prior mistakes). In re La Vergne, 207 N.J. 28 (2011).

Respondent has been temporarily suspended from the practice of law, since January 27, 2011, for failure to cooperate with the OAE's investigation of the allegations in this matter. In re La Vergne, 205 N.J. 1 (2011).

Service of process was proper in this matter. According to the OAE certification of service, on December 20, 2011, a copy of the complaint was sent to respondent's last known address, 543 Cedar Avenue, West Long Branch, New Jersey 07764. The mail was sent by both certified mail, return receipt requested, and by regular mail. The certified mail was returned, marked "unclaimed." The regular mail envelope was not returned.

The West Long Branch address above belongs to respondent's parents. It was provided to the OAE as respondent's current address by respondent's ex-wife and by the Monmouth County Sheriff's Office in Freehold. Respondent had given that address, when jailed in Monmouth County, in 2012.

On January 13, 2012, the complaint was personally served on respondent at the Monmouth County Correctional Institution (MCCI). Respondent did not file an answer.

On February 3, 2012, MCCI advised the OAE that respondent had been released, on bond, on January 16, 2012.

On February 16, 2012, the OAE sent respondent a "five-day letter," advising him that, unless he filed an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted and the record would be certified directly to us for the imposition of

sanction. The letter was sent to respondent at his parents' West Long Branch address, by both certified mail, return receipt requested, and by regular mail.

The United States Postal Service (USPS) attempted service on February 18, 2012, leaving a notice for respondent of the delivery attempt. The OAE received a USPS "Track & Confirm" page for the attempted delivery. The certified mail was never claimed. The regular mail envelope was not returned.

As of the date of the complaint, respondent had not filed an answer.

The Fowler Estate Matter – District Docket No. XIV-2010-0665E

Count one of the complaint alleged knowing misappropriation of trust funds.

On August 22, 2008, Connie Minck was appointed administratrix and trustee of the James J. Fowler estate. Fowler passed away in 2003. Minck retained respondent to represent the Fowler estate, after terminating the representation of a prior attorney, Richard Greenhalgh. Respondent did not memorialize the fee arrangement for the estate matter.[1]

---

[1] Respondent was not charged with a violation of RPC 1.5(b).

The main estate asset was a marina, located in Avon-by-the-Sea (Avon). On July 6, 2009, the court granted the estate approval to sell the marina to Avon for $800,000. A court order of even date required respondent to hold $400,000 of the sale proceeds in his attorney trust account, pending the determination of a former executrix' commission claim, as well as Greenhalgh's claim for legal fees. The order further directed that no funds could be disbursed "without another order from the court."

The closing took place on July 7, 2009. Avon wired $805,000 to the settlement agent, Land Title Services Agency (LTSA), for the purchase price and costs.

LTSA made disbursements of $297,619.77 (plus a $187.09 deduction to adjust for city taxes) to numerous parties, in addition to issuing check no. 7607 to respondent, in the amount of $502,193.14, on July 7, 2009. The $500,000 represented the net proceeds of sale. LTSA also issued a separate check for $25,000, representing respondent's attorney fee.

The next day, respondent deposited both checks into his trust account at TD Bank, which, at the time, had a balance of $5.74. With those two deposits, the trust account balance rose to $527,198.88, of which $25,000 was respondent's fee.

On July 9, 2009, respondent disbursed trust account check no. 1070 for $600, payable to Gregory Carr, for clean-up work that Carr had performed at the marina. On July 15, 2009, respondent wired Minck $71,393.14, representing the balance of the closing funds, after the $400,000 that had to be kept in escrow. After these disbursements, respondent held $430,200 for the estate in his trust account, which had a balance of $447,930.74.

On August 28, 2009, the court reduced the escrow amount to $200,000. On September 4, 2009, respondent wired $200,000 to the Fowler estate bank account. After wiring those funds, the balance in respondent's trust account dipped to $202,271.31, when respondent became out of trust. At the time, he was required to hold $229,800 on behalf of the estate alone.[2] Therefore, his trust account had a shortage of $27,528.69.

Although respondent made no further disbursements on behalf of the estate, on September 14, 2009, the trust account balance

---

[2] Although the record is not clear in this regard, the difference between the $230,200 amount cited as held on account of the estate, as of July 2009, and the $229,800 cited as of September 2009 might be explained by a $400 trust account check (no. 1074) to Charles Bazaz, dated July 27, 2009.

fell to $197,321.31, when it should have been at least $229,800. That left a shortage of $32,478.69 for the Fowler estate.

In addition, between July 2009 and May 2010, respondent made numerous cash withdrawals from the trust account. It is not entirely clear if all of the listed transactions, totaling $144,217.50, invaded the Fowler estate funds, because new receipts of $54,076, unrelated to the Fowler estate, were placed in the trust account between August 2009 and May 2010.

Nevertheless, on May 7, 2010, the trust account balance was only $107,346.54, when respondent was still obligated to have $229,800 on account of the Fowler estate.

On May 13, 2010, the court ordered the estate to pay Greenhalgh's attorney fees, in the amount of $89,932, to reimburse $11,130.80 for a loan to the estate, to pay $10,473.14 in costs, and to pay the prior executrix' commission of $17,000. These disbursements totaled $128,535.94. Despite that court order and Greenhalgh's attorney's two letters seeking payment, respondent failed to disburse any funds.

Counsel for Greenhalgh then filed a motion to compel the turnover of trust account funds. On September 3, 2010, the court again ordered respondent to pay the above sums, as well as counsel fees for Greenhalgh's motions and court appearances,

which now totaled $132,968.94. At the time, respondent's trust account had dwindled to just $95,546.54. Respondent did not comply with the September 3, 2010 court order.

Thereafter, on October 6, 2010, counsel for Greenhalgh filed an order to show cause and obtained an order preventing respondent from disbursing any funds from his attorney trust account. The order also required TD Bank to turn over all funds in respondent's trust account to Greenhalgh's attorney. TD Bank turned over the balance in the trust account, which was $91,555.79, minus a $125 levy fee, for the net amount of $91,430.79. Those disbursements left a zero balance in the trust account as of October 31, 2010.

Respondent's certification in the order-to-show-cause proceeding stated that he had "done a tremendous amount of work for Connie Minck", that he had "formal signed retainers," and that he had obtained Minck's "specific written authorization" to be paid and to pay estate expenses from the funds that he was holding.

Minck denied having authorized respondent to disburse estate funds to himself. Moreover, she denied having retained him to perform legal services on an hourly basis. Rather, she

said, he had been retained on a contingency basis to sue Greenhalgh for malpractice.

On August 18, 2011, pursuant to an order to show cause, the OAE obtained a court order finding respondent in contempt for failure to turn over, to that office, among other things, the Fowler estate files, client ledgers, fee agreements, and time records. As of the filing of the ethics complaint, respondent had "refused to produce these documents to the [OAE]."

According to the complaint, respondent also falsely advised the OAE that Susan Fagan-Limpert, his bankruptcy counsel, had taken possession of his attorney bank records, as well as the requested Fowler documents. As detailed in count four, below, Fagan-Limpert denied those accusations.

II. The Fowler Estate Malpractice Matter

Count two of the complaint charged respondent with gross neglect and lack of diligence.

On July 21, 2009, respondent filed a malpractice complaint against Greenhalgh in Monmouth County Superior Court. The estate had retained him on a contingent fee basis to file the action. On February 5, 2010, the complaint was dismissed for failure to file an affidavit of merit.

III. The Prasad Matter — District Docket No. XIV-2011-0022E

Count three charged respondent with lack of diligence, charging an unreasonable fee, failure to cooperate with an ethics investigation, conduct involving dishonesty, fraud, deceit or misrepresentation, and lack of respect for the rights of third persons (RPC 4.4(c)).

In September 2010, Neal Prasad retained respondent to represent him in a Monmouth County litigation captioned Berkowitz v. Jersey Shore Landscaping. Prior to respondent's retention, Prasad had acted pro se.

On September 15, 2010, Prasad gave respondent his entire file and agreed to pay him $10,000 to file any necessary motions and to go to trial, if necessary.

On September 20, 2010, Prasad paid respondent $2,000. Respondent made a court appearance on Prasad's behalf. Later that week, Prasad gave respondent an additional $1,000.

On September 27, 2010, respondent requested another $2,000, before pre-trial motions were due, on October 1, 2010. Prasad refused, telling respondent that the $3,000 he had already provided should have been ample payment for that work. Without Prasad's approval, respondent then contacted Prasad's parents to ask them for the additional funds.

On October 11, 2010, when Prasad asked respondent if he had filed the motions, respondent told him that he would perform no legal services until he received the additional $2,000.

Thereafter, respondent called Prasad's wife. Apparently, after speaking with her, respondent sent a paralegal (presumably to the Prasad home) posing as a Monmouth County police officer, in an attempt to obtain the additional funds from the Prasads.

When those efforts failed, respondent told Prasad that, if Prasad did not come up with the additional $2,000, he would file a pre-signed substitution of attorney that he had procured from Prasad, early in the case, which action would return Prasad to that of a pro se litigant. Prasad, however, refused to pay respondent the additional monies. He wrote to the judge, seeking time to obtain new counsel. The judge then referred the matter to ethics authorities.

After docketing the judge's referral, the OAE sent respondent two requests for information about it, dated April 29 and May 23, 2011. Respondent never replied to those requests for information.

IV. Respondent's False Statements to the OAE and Failure to Cooperate with Ethics Authorities

Count four charged respondent with knowingly making a false statement in a disciplinary matter, failing to cooperate with ethics authorities, and engaging in conduct prejudicial to the administration of justice.

Before respondent's January 27, 2011 temporary suspension, the OAE repeatedly requested him to produce client files, retainer agreements, client ledger cards, trust account bank statements, financial documents, and time records for the following clients: the Fowler estate, Schuren, DeAngelis, and Murphy. The complaint did not list the Prasad matter.

R. 1:20-20, dealing with suspended attorneys, required respondent to return client files to the clients. Likewise, RPC 8.1(b) required him to reply to the OAE's demands for information. Respondent did neither. Rather, he represented to the OAE, on one occasion, that the requested information had been left in the trunk of his recently repossessed automobile. On at least two other occasions, respondent told the OAE that the requested files and "attorney financial documents" were being held by his bankruptcy attorney, Fagan-Limpert.

In a December 17, 2010 letter to the OAE, Fagan-Limpert denied ever having held respondent's client files, ledger cards, or other materials related to his clients. The only financial information that she obtained related to respondent's earnings and was used in the preparation of his bankruptcy schedules.

As previously stated in count one, after respondent ignored the OAE's subpoena and the Supreme Court's temporary suspension order of January 27, 2011, the OAE obtained an order holding him in contempt for failure to turn over files and attorney records to the OAE.

Additionally, on August 18, 2011, the Middlesex County assignment judge issued a contempt order against respondent for his failure to provide, as he had promised the judge he would, all of the requested documents to the OAE.

V. The False Affidavits to the Middlesex County Superior Court

Count five charged respondent with lack of candor to a tribunal, conduct involving dishonesty, deceit, fraud or misrepresentation, and conduct prejudicial to the administration of justice.

On June 13, 2011, in the contempt proceeding, respondent prepared two affidavits of service that he submitted to the

Middlesex County Superior Court. The affidavits, one from respondent and the other from his employee, Charles Bazaz, claimed that a summons and complaint had been served in an adversary proceeding in respondent's own Chapter 13 bankruptcy matter. However, the affidavits were signed and dated June 13, 2011, two days before the service of process date, June 15, 2011. Respondent also submitted those inaccurate affidavits in his bankruptcy matter, in support of a request to enter default.

According to the ethics complaint, respondent changed his office and residential addresses on multiple occasions, deliberately refused to provide proper addresses where the Court, ethics authorities, and clients could reach him, and "filled" his cellular phone mailbox, in order to render telephonic communications with him more difficult.

Respondent ultimately failed to appear at the August 2011 contempt hearing, which prompted the August 18, 2011 contempt order against him (see counts one and four, above).

In a Monmouth matter, Murphy, III v. La Vergne, respondent failed to appear at an October 15, 2010 contempt hearing, and failed to comply with the court's order requiring him to produce files belonging to John Murphy, a former client.

VI. Respondent's Failure to Return Client Files Upon Termination of the Representations

Count six charged respondent with failure to return client files upon termination of the representation (RPC 1.16(d)).

Several clients, including Sally Schuren, John Murphy, the Fowler estate, and Guiseppe DeAngelis, terminated respondent's representation. Some of the clients did so before respondent's January 27, 2011 temporary suspension. Others did so afterward. All of them, however, requested the return of their files. Respondent failed to comply with those clients' requests, subsequent requests from the OAE for the files, and, ultimately, the Court's January 27, 2011 temporary suspension order.

VII. Practicing Law While Suspended

Count seven charged respondent with practicing law while suspended, false or misleading communications regarding a lawyer's services, and conduct prejudicial to the administration of justice.

As of January 27, 2011, the date that the Court temporarily suspended respondent from the practice of law,

> Rule 1:20-20 require[d] that Respondent not practice law in any form, and shall not appear as an attorney before any court, justice, judge, board, commission, division or other public

> authority or agency; shall not procure any retainers; and shall promptly notify all clients in pending matters of his suspension; and promptly deliver their files to those clients or their new attorneys.
>
> [7C¶79.][3]

The rule also required respondent to submit to the OAE Director a detailed affidavit of compliance with its provisions, copies of the correspondence sent to clients and others pursuant to the rule, and a current address and telephone number where he could be reached. Respondent failed to do so. He also failed to notify the following clients of his suspension: Sally Schuren, Lorraine Fitzpatrick, and Dawn and Samuel Cooper.

On January 31, 2011, respondent called the Ocean County Superior Court and left a message requesting an adjournment of a hearing in State v. Izzo, scheduled for that morning, because he was unable to appear. Respondent did not disclose his suspension to the assignment judge and to opposing counsel.

On February 3, 2011, respondent called the Ocean County Superior Court on behalf of client Izzo and spoke with "Team Leader" Bernadette Moynihan. Without informing Moynihan that he was a suspended attorney, respondent requested an adjournment of

---

[3] "7C" refers to count seven of the ethics complaint.

Izzo's February 4, 2011 sentencing hearing. After consulting with the judge assigned to the case, Moynihan advised respondent that the judge would not grant his request and that she was not permitted to speak with respondent any further, due to his recent suspension. Respondent told Moynihan that "he was the only one who should be handling the sentencing," that he had "met with Izzo and reviewed the presentencing report, and that the only thing the attorney had to do was to appear in court."

On February 15, 2011, respondent made an appearance for client Anthony Masters at a pre-hearing teleconference in a Financial Industry Regulatory Authority (FINRA) proceeding. He did not inform his adversary, Dominick Evangelista, who appeared for Merrill Lynch, that he had been suspended. During that conference call, respondent discussed the case and scheduled discovery.

On March 7, 2011, two months after respondent's temporary suspension, Michael Mazzone "retained" him to handle a criminal matter. Respondent prepared a written fee agreement and accepted $2,000 toward a $5,000 fee for legal services. On March 17, April 6, and May 4, 2011, respondent accepted Mazzone's additional payments toward his total fee. Respondent did not tell Mazzone that he was suspended from the practice of law.

Instead, he advised Mazzone on how to proceed regarding pre-trial intervention.

Thereafter, respondent failed to appear at June 16 and June 23, 2011 court hearings for Mazzone, telling him that he "had a heart attack."

Clients Samuel and Dawn Cooper met with respondent, in April 2011, at his Eatontown law office. The Coopers asked respondent why he had not contacted them, as they had written to him but had received no reply. Respondent did not disclose his suspension to them. He promised the Coopers that he would prepare a new complaint in furtherance of their claim.

The facts recited in the complaint support 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).

In the Fowler estate matter, respondent was retained to replace a prior attorney, whose services were terminated by the estate. Respondent presided over the sale of the main estate asset, a marina that was sold for $800,000. In connection with the sale, respondent received from the settlement agent, LTSA,

proceeds totaling $502,193.14, exclusive of his $25,000 legal fee.

After having made several proper disbursements, including $71,393.14 to Minck, $600 to Carr, and $200,000 to the Fowler estate bank account, respondent should have been holding $229,800 in his trust account for the estate. His entire trust account balance was, however, just $202,271.31 on September 4, 2009.

After the last proper disbursement from the trust account, made on September 4, 2009, respondent continued to disburse funds, but the disbursements were to himself. By September 14, 2009, the trust account balance had fallen to $197,321.31, a shortage of $32,478.69 for the Fowler estate alone. Due to "multiple cash withdrawals made by respondent," between July 2009 and May 2010, that balance dwindled to just $107,346.54.

Ultimately, Greenhalgh, the former estate attorney, obtained a court order requiring TD Bank to turn over to the estate what remained of the estate funds in respondent's trust account — just $91,430.79 — a sum insufficient to cover the $132,968.94 owed to Greenhalgh and to the former executrix. The bank turnover of those funds left a zero balance in the trust

account. All the while, respondent had been required to hold $229,800 on behalf of the Fowler estate.

Without the authorization of the estate, over the course of almost a year (July 2009 to May 2010), respondent knowingly misappropriated the Fowler estate's funds, about $138,369.21 ($229,800 minus $91,430.79 = $138,369.21), using them for purposes other than for the estate, including for numerous cash disbursements to himself. For all of it, we find respondent guilty of knowing misappropriation of trust funds, a violation of RPC 1.15(a) and RPC 8.4(c), and the principles of In re Wilson, supra, 81 N.J. 451, and In re Hollendonner, supra, 102 N.J. 21.

Count two of the complaint dealt with respondent's legal malpractice complaint against Greenhalgh, filed on July 21, 2009 in Monmouth County Superior Court, and dismissed shortly thereafter for failure to file an affidavit of merit. Respondent never took remedial steps to rectify that situation, a violation of RPC 1.1(a) and RPC 1.3.

In the Prasad matter (count three), respondent took a $3,000 fee from Prasad and failed to file motions on his client's behalf, thereby violating RPC 1.3. The appalling use of his paralegal to pose as a law enforcement officer to "shake

down" Prasad for additional fees constituted a violation of RPC 8.4(c). His similar "shake down" of Prasad's wife and parents, who were innocent third persons, violated RPC 4.4(a).

Count four addressed respondent's lies to the OAE. Respondent represented, alternately, that he had left his files in the trunk of his car, which was then repossessed, and on at least two other occasions, that the files and his books and records were with his bankruptcy attorney, who later vehemently denied having any of those documents. In this regard, respondent knowingly made a false statement to the OAE, a violation of RPC 8.1(a).

The OAE ultimately obtained a contempt order against respondent for his failure to cooperate in the turnover of the requested files and bookkeeping records. For his refusal to cooperate with ethics authorities in all of these matters, respondent violated RPC 8.1(b).

With regard to count five, in a contempt proceeding, respondent prepared two affidavits of service, one for himself and the other for an employee. The affidavits falsely claimed that respondent and Bazaz served a summons and complaint on Monmouth County Assignment Judge Lawrence Lawson, on June 15, 2011. The affidavits, however, are dated two days before the

service allegedly took place, on June 13, 2011. Respondent submitted the false affidavits in a Middlesex County matter and in his bankruptcy matter. The affidavits constituted false statements to two tribunals, violations of RPC 3.3(a)(1) and RPC 8.4(c).

Respondent also failed to appear at an August 2011 order to show cause as to why he should not be held in contempt in Middlesex County, whereupon the court issued a contempt order against him. As previously stated, a few months later, respondent failed to appear at a similar contempt hearing, in Monmouth County. He then disregarded the orders in both matters. Respondent's actions constituted conduct prejudicial to the administration of justice, a violation of RPC 8.4(d).

With respect to count six, respondent failed to turn over files upon the termination of his representation of the following clients: Sally Schuren, John Murphy, the Fowler estate, and Giuseppe DeAngelis. Client requests, OAE requests, contempt orders, and a Supreme Court order for his temporary suspension failed to move respondent to provide his former clients with their files, violations of RPC 1.16(d).

Finally, count seven involved respondent's brazen practice of law, after his January 27, 2011 temporary suspension, as well as other serious actions that violated R. 1:20-20.

Initially, he failed to file an affidavit of compliance with R. 1:20-20 and to notify clients of his suspension. Then, just four days into his suspension, on January 31, 2011, he called the Ocean County Superior Court and left a message requesting an adjournment in State v. Izzo, scheduled for that morning. He claimed that he was unable to appear. He did not advise the assignment judge or opposing counsel of his suspension.

In February 2011, respondent called the Ocean County Superior Court to request an adjournment on behalf of client Izzo. When told that his adjournment request would be denied because he was suspended, respondent challenged that answer, claiming that only he should be allowed to handle the sentencing and that he had both met with his client and reviewed the pre-sentence report.

On February 15, 2011, respondent made an appearance for a third client, Anthony Masters, at a pre-hearing teleconference in a FINRA proceeding. He did not tell his adversary that he was

suspended. During that conference call, respondent discussed the case and scheduled discovery.

On March 7, 2011, respondent accepted $2,000 toward a $5,000 fee for a new client matter, Mazzone. Respondent did not tell Mazzone that he was suspended from the practice of law and advised him not to accept a pre-trial intervention. To make matters worse, respondent then failed to appear at June 16 and 23, 2011 court hearings for Mazzone, telling the client that he had suffered a heart attack.

In a fifth matter, in April 2011, the Coopers met with respondent at his law office, upset that he had not replied to their written requests for information about their case. Respondent promised to prepare a new complaint in furtherance of their case. Here, too, he neglected to tell them that he could not do so because of his suspension.

Thus, in five matters, respondent continued to represent clients while suspended. In the boldest of them, Mazzone, he accepted a new client and advance fees. His actions violated RPC 5.5(a), RPC 7.1(a), and RPC 8.4(d).

Setting aside for a moment the knowing misappropriation in count one, and looking only at respondent's other misconduct in these matters, it is obvious to us that he would still deserve a

very lengthy suspension or disbarment. He neglected clients, tried to "shake down" a client and that client's relatives for fees, had an employee impersonate a police officer to obtain legal fees, filed false affidavits in state and federal court, ignored the OAE, failed to appear at court hearings to deal with contempt charges, ignored Superior Court contempt orders, ignored a Supreme Court order for his temporary suspension, disregarded the compliance requirements of R. 1:20-20, and practiced law while suspended.

For the most serious of that misconduct, practicing law while suspended, the level of discipline has ranged from a lengthy suspension to disbarment. Specifically, where, as here, the attorney has prior discipline and/or other serious infractions, a three-year suspension or disbarment has been imposed. See, e.g., In re Marra, 183 N.J. 260 (2005) (three-year suspension for practicing law in three matters while suspended; the attorney also filed a false affidavit with the Court; prior private reprimand, two three-month suspensions, a six-month suspension, and a one-year suspension (for practicing while suspended)); In re Cubberley, 178 N.J. 101 (2003) (three-year suspension for accepting fees from a client after having been suspended, misrepresenting to the client about his status,

failing to notify the client or the courts of his suspension and to file the compliance affidavit of R. 1:20-20(a), and failing to cooperate with the OAE investigation; prior admonition, two reprimands, a three-month suspension, and two six-month suspensions); In re Walsh, Jr., 202 N.J. 134 (2010) (in a default matter, attorney disbarred for practicing law while suspended by attending a case conference, negotiating a consent order on behalf of five clients, and making a court appearance on behalf of seven clients; the attorney was also guilty of gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities during the investigation and processing of the grievances; the attorney failed to appear on an order to show cause before the Court; prior reprimand, censure, three-month suspension, and six-month suspension); In re Olitsky, 174 N.J. 352 (2002) (disbarment for attorney who agreed to represent clients in bankruptcy cases after he was suspended, did not advise them that he was suspended from practice, charged clients for the prohibited representation, signed another attorney's name on the petitions without that attorney's consent and then filed the petitions with the bankruptcy court; in another matter, the attorney agreed to represent a client in a mortgage foreclosure

after he was suspended, accepted a fee, and took no action on the client's behalf; the attorney also made misrepresentations to the court and was convicted of stalking a woman with whom he had had a romantic relationship and engaging in the unauthorized practice of law; prior private reprimand, admonition, two three-month suspensions, and two six-month suspensions); and In re Costanzo, 128 N.J. 108 (1992) (attorney disbarred for practicing law while serving a temporary suspension for failure to pay administrative costs incurred in a prior disciplinary matter and for misconduct involving numerous matters, including gross neglect, lack of diligence, failure to keep clients reasonably informed and to explain matters in order to permit them to make informed decisions about their cases, pattern of neglect, and failure to designate hourly rate or basis for fee in writing; prior private reprimand and reprimand).

In our view, even without the knowing misappropriation charge, disbarment is appropriate here, given the extent of respondent's misconduct, his significant prior discipline, and what is now obvious, a complete disdain for courts and the disciplinary system, the last straw of which is his having allowed these matters to proceed to us as a default.

There is, however, respondent's knowing misappropriation in the Fowler estate matter. He is guilty of the unauthorized taking of about $138,369 in trust account funds belonging to the Fowler estate, much of it he disbursed to himself as cash and used for purposes unrelated to the estate. Under the principles of In re Wilson, supra, 81 N.J. 451, and In re Hollendonner, supra, 102 N.J. 21, respondent must be disbarred. We so recommend to the Court.

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 Matter of Eugene M. La Vergne
Docket No. DRB 12-087

Argued: June 21, 2012

Decided: September 5, 2012

Disposition: Disbar

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman	X					
Frost	X					
Baugh	X					
Clark	X					
Doremus	X					
Gallipoli	X					
Wissinger	X					
Yamner	X					
Zmirich	X					
Total:	9					

Julianne K. DeCore
Chief Counsel