SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 12-123, DRB 12-373, and DRB 12-374
District Docket Nos. VIII-2010-0044E, VIII-2010-0050E, VIII-2010-0052, VIII-2011-0003E, and VIII-2011-0028E

IN THE MATTERS OF	:
MICHAEL D. HALBFISH	:
AN ATTORNEY AT LAW	:

Decision

Argued: May 16, 2013

Decided: June 11, 2013

Peter J. Hendricks appeared on behalf of the District VIII Ethics Committee.

Respondent appeared pro se.

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

These matters were before us based on recommendations for discipline filed by the District VIII Ethics Committee (DEC). They were consolidated for our review. The matters under DRB

12-123 were originally calendared for our July 2012 session, but were removed and placed on inactive status, pending receipt of the other two cases. The allegations in each of the matters are similar. We set out the facts and allegations of each complaint separately. We also set out the DEC's recommendations for discipline in the recitation of each case.

We determine to impose a six-month suspension for the sum of respondent's misconduct in all matters.

Respondent was admitted to the New Jersey bar in 1997. In 2010, he was censured for misconduct in two matters. In re Halbfish, 203 N.J. 441 (2010). Specifically, in one matter, respondent was found guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to withdraw from the representation. In the other matter, respondent was found guilty of negligent misappropriation and recordkeeping violations. The Court's order directed respondent to provide the Office of Attorney Ethics (OAE) with previously requested information and to submit to the OAE, for a period of two years, quarterly reconciliations of his trust account, prepared by a certified public accountant. Respondent's ethics history, prepared by the OAE, does not reveal if he complied with those conditions.

In 2011, respondent received a second censure for misconduct in three matters. In re Halbfish, 205 N.J. 105 (2011). There, respondent was found guilty of failing to adequately communicate with the client in all three matters, gross neglect and lack of diligence in one of the matters, and failure to promptly turn over client property and misrepresentation in one of the matters.

DRB 12-123

Count One (The Paulsson Matter: District Docket No. VIII-2010-0052E)[1]

In early 2006, Martin Paulsson retained respondent to represent him in a consumer fraud action in connection with his purchase of an automobile. Paulsson paid respondent $1,500.

Respondent is an experienced practitioner in the field of consumer law. He drafted a complaint in Paulsson's matter and gave it to his then-partner, John A. Tunney, to file.[2] Respondent explained during the DEC hearing that Tunney was learning the field of consumer law, a growing aspect of their

[1] The grievant's name is also spelled Paulson in the record.

[2] The partnership ended in September 2010.

law firm's practice. Respondent was designated as the trial counsel and anticipated that he would prepare the briefs and handle the trial. Respondent understood from Tunney that he had filed the complaint and "that Mr. Paulsson had been taken care of." Respondent's check of the firm's computer indicated that Tunney had worked on the case.

When respondent asked Tunney about the file, Tunney indicated that it was either misplaced or not in his possession. Respondent conceded that "there were things not happening" that he would have anticipated in the case, such as a reply from the defendant.

In fact, Tunney did not file the complaint. It was not until 2010, when respondent learned that Paulsson had filed an ethics grievance against him, that he first learned of the problems with the status of the case.

Although early in the course of the representation, Paulsson was able to speak with respondent, thereafter, he made numerous attempts to contact him, to no avail. He received no correspondence from respondent.

By letter, in October 2010, respondent returned Paulsson's retainer. Respondent testified that, during a conversation with Paulsson, he told Paulsson that he still had a viable claim and

he would continue working on the case, even though he had refunded the retainer to Paulsson. The cover letter that accompanied respondent's refund check did not contain that information. Paulsson was not interested in having respondent continue the representation, however.[3] Paulsson wanted his file returned, but, according to respondent, Tunney had "absconded" with it.

Paulsson testified that respondent called him to confirm his receipt of the refund check. He also testified that, during their conversation, respondent had expressed his hope that Paulsson had been made whole and that he would not testify against him before the DEC.[4] Respondent denied having made that statement.[5]

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[3] Paulsson did not pursue his claim through another attorney because "somebody" told him that, by the time his retainer was refunded, it was too late for him to do so.

[4] Paulsson stated that his recollection of the conversation was "kind of vague."

[5] The complaint did not charge respondent with a violation of RPC 8.4(d) (conduct prejudicial to the administration of justice) for this alleged statement.

The complaint charged respondent with violating RPC 1.1(a) and (b), RPC 1.3, and RPC 1.4(b).[6]

Count Two (The Cuevas Matter: District Docket No VIII-2010-0044E).

In July 2002, Roberto Cuevas retained Tunney to pursue a personal injury matter on his behalf against the Township of Woodbridge and the Middlesex County Parks Department for injuries he sustained on June 21, 2002.[7] Tunney was not yet respondent's law partner. In May 2004, the firm of Tunney & Halbfish ("the firm") filed a complaint on Cuevas' behalf. Tunney signed the complaint and was designated as trial counsel.

In October 2004, Tunney was suspended from the practice of law for six months. In re Tunney, 181 N.J. 386 (2004). Respondent assumed Cuevas' representation during Tunney's suspension. Cuevas testified that, during a call to the firm to check on the status of his case, the firm's office manager

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[6] RPC 1.4(b) is incorrectly cited as RPC 1.14(b) in each of the three matters under DRB 12-123, as well as in the matters under DRB 12-373 and DRB 12-374. RPC 1.4(b) is clearly intended, from the language of the complaint.

[7] Tunney had previously represented Cuevas.

advised him that Tunney had been suspended and that respondent was representing him. The record does not state when that call took place. Respondent did not recall being designated trial counsel, when Tunney was suspended. Therefore, Tunney remained trial counsel of record.[8]

Respondent, however, worked on the case. In March 2005, he signed a stipulation extending the time for the Township of Woodbridge to answer the complaint. Cuevas answered interrogatories. By letter dated March 30, 2005, addressed to respondent, defense counsel acknowledged receipt of the answers and requested more specific answers, answers to previously forwarded supplemental interrogatories, and respondent's reply to a request for the production of documents. In April 2005, respondent filed a motion to restore the complaint after it had been dismissed for lack of prosecution as to the Township of Woodbridge.[9] His motion was granted. In August 2005, counsel

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[8] Respondent testified that the trial would have occurred after Tunney's six-month suspension had ended and after he had returned to the office.

[9] Respondent testified that it is not his signature on the document. He surmised that his office manager may have signed it, although she was not authorized to do so.

for defendant Township of Woodbridge sent respondent a motion to dismiss Cuevas' complaint for failure to answer supplemental interrogatories. The case was dismissed without prejudice, in September 2005. Notice of the dismissal was sent to Tunney's attention. No opposition was filed.

Tunney was restored to the practice of law by order dated December 7, 2005. According to respondent, Tunney resumed Cuevas' representation.

At some point, respondent represented Cuevas at a deposition.[10] In February 2006, the court granted a motion to dismiss the complaint with prejudice against the Township of Woodbridge. The motion was unopposed. In March 2007, defendant County of Middlesex filed a notice of motion for summary judgment. The notice was addressed to respondent.

Respondent did not recall receiving the notice. He pointed out that Tunney had resumed responsibility for Cuevas' file, by that time. In evidence is an April 2007 letter from defense counsel seeking to carry the motion for one cycle. Tunney was copied on the letter, which was faxed to both respondent and

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[10] Respondent did not recall why he handled the deposition in Tunney's place.

Tunney. Summary judgment was granted as to the County of Middlesex, in May 2007. The motion was unopposed. According to respondent, it was not until Cuevas filed his grievance against him that he learned that the case had been dismissed. Respondent was uncertain if his copy of the Cuevas file was complete because of Tunney's actions. According to respondent, in some instances, Tunney removed documents from files and in other instances he placed documents in "other files." His multiple requests to Tunney for files have been to no avail.

During the course of the representation, Cuevas made many unsuccessful attempts to learn about the status of his case. His final meeting with respondent was during his deposition. He was not notified of the dismissals.

On an undisclosed date, Cuevas traveled to respondent's office for information about his case and learned from respondent's office manager, who checked the status for him, that it had been dismissed. He added that he tried to retrieve his file for two years.

The complaint charged respondent with violating RPC 1.1(a) and (b), RPC 1.3, and RPC 1.4(b).

Count Three (The Pal Matter: District Docket No. VIII-2010-0050E)

On an undisclosed date, Dharan Pal retained respondent to represent him in a workers' compensation matter against a gas station where he had been employed.[11] Pal had suffered serious injuries in March 2002.[12] Although there was a language barrier between respondent and Pal, they were able to communicate through the attorney who had referred Pal to respondent, through third parties, and through copies of documents that were explained by Pal's translator.

According to respondent, the case presented challenges in that the ownership of the gas station was difficult to establish and as Pal testified, he was paid in cash. Nevertheless, he filed a workers' compensation claim in March 2004. He was able to secure temporary disability payments and payments of "a substantial portion" of Pal's medical bills. Pal testified that he met with respondent monthly.

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[11] Pal testified through an interpreter.

[12] According to respondent, another attorney was handling Pal's personal injury claim.

By letters dated August 1 and August 25, 2006, respondent's office advised Pal to attend medical examinations. Tunney signed the letters.[13] The defendants scheduled medical examinations for Pal. Respondent did not send letters to Pal advising him to attend the examinations or, according to Pal, advise him of their importance to his claim. In turn, respondent stated that his staff had notified Pal, by phone, of the requirement that he attend the examinations. Pal did not do so.

Pal's failure to attend the examinations resulted in a defense motion to dismiss his claim. Respondent did not tell Pal about the motion, but appeared on Pal's behalf. The defendants agreed to reschedule the exams. Again, respondent did not notify Pal, in writing, to attend the exams. Therefore, Pal did not attend them, resulting in a second motion to dismiss. Respondent did not oppose the second motion.

By fax dated March 12, 2008, the day before the oral argument on the motion, respondent requested an adjournment due to a conflict in his schedule. However, the court dismissed the

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[13] It is unclear if Pal recalled receipt of only the earlier letter or of both.

case, on March 13, 2008, due to Pal's failure to appear for the medical exams. Respondent testified that he did not receive the notice of dismissal, did not receive a rescheduling notice, and was unaware of the dismissal. He took no further action on the case.

Sometime after February 2009, Pal came to respondent's office, requesting information about his case. Respondent contacted the Division of Workers' Compensation, learned that the case had to be restored, and had told Pal complete an affidavit to that end.[14] Respondent testified that he had told Pal about the dismissal and had discussed having the petition restored. Pal returned later that day to meet with respondent, who was unavailable.

There was a "breakdown" in the attorney/client relationship at that time. Respondent did not attempt to restore Pal's case. Indeed, shortly after that meeting with respondent, Pal

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[14] When respondent was questioned by the presenter and reviewed the affidavit again, he testified that he was not certain that he had prepared it. Pal could not identify the signature. The affidavit was undated. Because respondent did not move the affidavit into evidence, the DEC did not consider it.

consulted with another attorney and filed the ethics grievance against respondent.[15]

Pal testified that, during the course of the representation, he had made numerous attempts to communicate with respondent by phone, to no avail. He claimed that, as of the date of the DEC hearing, he did not know the status of his case. He stated, however, that at some point, respondent had given him a letter saying that the case had been dismissed.

Scott Telson, Esq., with whom Pal had consulted, sent a letter to respondent, on April 22, 2010, requesting Pal's file. Telson referenced an affidavit that Pal had signed, stating that the case had been dismissed and inquired if respondent had filed a motion to reinstate the claim. On April 27, 2010, Telson sent a second letter to respondent, complaining that respondent had failed to return multiple phone calls and again referencing Pal's affidavit. Telson again asked to see Pal's file to ascertain if the case had been reinstated or if respondent had

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[15] Although respondent's recollection was that the meeting took place sometime after February of 2009, in light of respondent's belief that, shortly after that meeting, Pal consulted with another attorney, it is more likely that the meeting took place in 2010.

filed a motion to do so. Respondent testified that he turned over the file, but that Telson had declined to take the case.

Two New Jersey attorneys testified about respondent's good character, zealous advocacy for his clients, and the quality of his work.

The complaint charged respondent with violating RPC 1.1(a) and (b), RPC 1.3, and RPC 1.4(b).

In Paulsson, the DEC found that respondent accepted a retainer from Paulsson in 2006, "allegedly" drafted a complaint designating himself as trial counsel, and did no further work on the file until he returned Paulsson's retainer, in 2010. The DEC found that no credible evidence had been offered that Tunney had full responsibility for the Paulsson matter or that Tunney had prevented respondent from reviewing the file or monitoring the case. The DEC noted that, even if Tunney had "absconded with the file," respondent could have checked the case status on the court's website and ascertained what had been done in the case or learned that the complaint had not been filed. Indeed, respondent admitted that it was his responsibility to monitor the case. Had respondent exercised proper diligence, he would have discovered that work was required on the file.

Moreover, respondent failed to maintain contact with Paulsson, to return his calls, and when he returned the retainer, to advise Paulsson of the statute of limitations or to state that the representation had ended. In the DEC's view, respondent's failure to "effectively monitor" the case for approximately four years demonstrated gross neglect. Finally, the DEC found credible Paulsson's testimony that respondent had asked him not to testify at the DEC hearing.

The DEC found that respondent violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b) in Paulsson.

As to Cuevas, the DEC noted that respondent had taken over the case in 2005, while Tunney was suspended. He received a demand for more specific answers to interrogatories and for answers to supplemental interrogatories. He failed to contact Cuevas for answers to the supplemental interrogatories. He also failed to reply to the defendant's motion to dismiss the complaint for failure to answer the supplemental interrogatories and failed to tell Cuevas of the pending motion. In 2006, the court entered an order dismissing with prejudice Cuevas' complaint as to one defendant, as a result of the failure to answer supplemental interrogatories. No opposition to the motion was filed. A summary judgment motion addressed to

respondent was granted, dismissing Cuevas' case as to the second defendant. In 2010, when Cuevas filed his grievance against respondent, respondent learned that the case had been dismissed as to both defendants.

The DEC found that respondent violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b) in Cuevas.

As to Pal, the DEC found that, initially, respondent pursued the matter for his client by investigating ownership of the gas station, preparing a workers' compensation petition, and securing payment of Pal's medical bills and temporary disability benefits. However, after scheduling medical examinations for Pal, respondent failed to communicate with him and to "diligently notify" him of medical examinations scheduled by the defense, as well as at least one motion to dismiss the case. The DEC remarked that respondent had means of communicating with Pal, despite the language barrier between them, but had failed to utilize those methods to contact and communicate with Pal.

Furthermore, respondent knew of a scheduled oral argument on a motion to dismiss Pal's petition. He requested an adjournment of the motion, but failed to confirm that the adjournment had been granted. He failed to follow up with his request for a new date. In fact, the DEC found that respondent

failed to follow up on the case until Pal came to his office, in 2010, and confronted him.[16]

The DEC found that respondent violated RPC 1.1(a), RPC 1.3 and RPC 1.4(b) in Pal.

The DEC also found that respondent violated RPC 1.1(b) in each matter.

In determining the appropriate measure of discipline, the DEC considered respondent's disciplinary history, which consists of two censures.[17] The DEC considered the mitigating factors presented in respondent's answer, but noted that they did not relate to the allegations against him.[18] The DEC did observe, however, that respondent has achieved "some notable accomplishments" in consumer law. Although the DEC acknowledged the testimony offered from respondent's character witnesses, it

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[16] The DEC again noted the severity of Pal's injuries.

[17] The DEC mistakenly stated that "three dockets" were involved in respondent's 2010 censure. In fact, only two matters were at issue, one of which did not involve a client but, rather, a recordkeeping issue.

[18] Respondent pointed to his work on behalf of consumers and to his problems stemming from his relationship with Tunney. In arguing against a suspension, respondent noted the lack of other representation available to his clients, due to their lack of resources and his expertise.

noted that they had offered no testimony on the matters at issue, providing, instead, examples of respondent's competence in handling complex cases.

In aggravation, the DEC considered that, in Cuevas, respondent sought to defend himself by pointing a finger at Tunney, but offering no documentation to support his assertions. The DEC found that the evidence was clear and convincing that respondent had neglected the matter in 2005, when Tunney was suspended, and during the following years, when their partnership continued.

In Pal, too, respondent blamed his client for the dismissal of the case, in that Pal had taken the case to another attorney before it could have been reinstated. However, the DEC noted that the matter had been neglected for a substantial period of time and had already been dismissed with prejudice, when Pal had consulted another attorney.

The DEC also considered, in aggravation, that both Cuevas and Pal had suffered serious injuries and had been left without compensation.

In addition, the DEC found credible Paulsson's testimony that respondent had asked him not to testify against him in the ethics proceeding. Finally, the DEC noted that respondent had

failed to indicate that he had taken affirmative steps to organize and monitor his cases or to restructure his office to avoid future problems and that there was no recognition, on his part, that better organization could have prevented the problems that had arisen in these three cases.[19]

The DEC initially considered a six-month suspension, followed by a one-year proctorship, given respondent's lack of recognition that he had any responsibility for the dismissal of the Cuevas and Pal matters, and his lack of affirmative defenses. However, when the record was supplemented by respondent's disciplinary history and by the written closing statements of the presenter and respondent's counsel, the DEC concluded that a one-year suspension was appropriate, in light of case law supporting that form of discipline. The DEC recommended that, on reinstatement, respondent be supervised by

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[19] It is unclear if the DEC considered, as aggravating factors, respondent's request that Paulsson not testify and his lack of office organization.

a proctor for one year.[20] In its hearing panel report, the DEC commented that

> [r]espondent needs to receive mentoring on how to manage multiple priorities and deadlines by utilizing diary systems and task managers. He needs to learn to regularly review his cases on a systematic basis. He needs to understand and appreciate that his obligations are his responsibility whether or not he has delegated any portion of those responsibilities to a staff member or a partner, and that he must have in place proper procedures and systems in order to meet his obligations to his clients in order to avoid further such violations of the New Jersey Rules of Professional Conduct.
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> [HPR123¶IV49.]

DRB 12-373

In late 2006, Wayne Schmitt and Patricia Clancy-Schmitt retained respondent to file a lawsuit, as a result of problems with an automobile they had purchased.[21] The primary driver of the car was their son, Gregory Schmitt. In December 2006, the

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[20] The panel report states that respondent's one-year suspension should "be followed by a one year month [sic] period of supervision." Presumably the DEC meant a one-year proctorship.

[21] Wayne Schmitt did not testify before the DEC.

Schmitts paid respondent a $3,000 retainer.[22] Clancy-Schmitt recalled having three meetings with respondent.

Respondent suggested to the Schmitts that they have an expert, Terry Shaw, examine the car. In February 2007, the Schmitts paid Shaw $800 for the inspection report. Although respondent testified that he recalled seeing a letter in the Schmitts' file forwarding Shaw's report to them, Clancy-Schmitt testified that they received a copy of Shaw's report directly from Shaw, after she requested it from him. She never received correspondence from respondent.

Both Gregory Schmitt and Clancy-Schmitt testified about their numerous calls to respondent, seeking information about their case, but rarely receiving a call back. Respondent then told them to tell his secretary that it was "an emergency." When they spoke, respondent advised the Schmitts that he was working on their case.[23] Respondent confirmed that he told

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[22] Whether respondent provided his clients with a retainer agreement was the subject of extensive testimony at the DEC hearing. See discussion infra, at 24-25.

[23] There are no allegations of misrepresentation by respondent in any of these matters.

clients to say their call was an emergency, so he could prioritize return calls.

According to respondent, he wanted Tunney, an experienced attorney, to develop further expertise in the field of consumer law and, to that end, had him working on the Schmitts' case. Respondent testified that he told the Schmitts that Tunney would be working on their case. He provided Tunney with a sample complaint and interrogatories to use as a template. Tunney showed respondent a complaint in the Schmitt matter and indicated that it had been filed. Respondent stated that he passed that information to the Schmitts. He did not see a filed complaint.

Tunney also advised respondent that he met with the Schmitts and respondent believed that there were phone calls from the Schmitts to Tunney. Respondent recalled seeing, in the file, correspondence from Tunney to the Schmitts. It was not until respondent received a fee arbitration notice involving the

Schmitts that he learned of any problems in the case.[24] Respondent testified that he "thought that [he] could trust [his] partner's representations."

Clancy-Schmitt testified that she never spoke with, met or received correspondence from Tunney. Gregory Schmitt testified similarly that he never met Tunney and that respondent never stated that Tunney would be working on their matter.

In February 2009, during the time that respondent was representing the Schmitts, he relocated his office from 245 Main Street to 208 Main Street, in Woodbridge, New Jersey. It was respondent's understanding that Tunney had sent a letter to their clients when they moved, advising of their new address. Respondent noted that the two offices were across the street, only a few doors from each other, and that a sign showed that the firm was located there. In addition, the office phone number did not change as a result of the move.[25]

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[24] At some point, respondent notified the OAE of difficulties with Tunney. He learned that Tunney had been putting, in the files, documents that led respondent to believe mistakenly that work was being done for clients.

[25] Respondent relocated his office again, in September 2010, when he dissolved his partnership with Tunney. Respondent stated that, as of the day of the ethics hearing, calls to his 245/208

(footnote cont'd on next page)

The Schmitts testified that they had not received any notice from respondent that he had relocated his office. Clancy-Schmitt testified that she went to the 245 Main Street office location, and, when there was no answer at the door, she walked to the building next door, and inquired about respondent. She then was directed to the new location, where she knocked on the door, but no one answered. She then called the phone number on respondent's business card she found in a waiting area, left a message, but received no reply. Respondent's original phone number was out of service. The Schmitts never spoke to respondent, after he relocated his office.

Respondent did not produce the Schmitt file because, he stated, Tunney had taken files from the firm and, despite respondent's repeated requests, had refused to turn them over. When respondent ended his partnership with Tunney, respondent took with him all the files that he could locate, excluding the Schmitts' file, which was in Tunney's possession.

(footnote cont'd)

Main Street phone number were being forwarded to his current office number.

During the first day of the DEC hearing, Gregory Schmitt testified that he had never seen or signed a retainer agreement with respondent. Respondent, in turn, testified that either Wayne Schmitt or Gregory Schmitt had signed a retainer agreement. Thereafter, at the second DEC hearing date, respondent offered into evidence a retainer agreement signed by both Schmitts. Respondent explained that he had discovered that a storage unit, previously rented by Tunney, was up for auction. In November 2011, Elizabeth Kawa, respondent's legal assistant, purchased the contents of the unit on his behalf, which included office furniture and files in an extreme state of disarray.[26] On April 9, 2012, nine days before the second DEC hearing date, while going through the storage unit, Kawa and respondent discovered a retainer agreement signed by Wayne and Gregory Schmitt. They found no other documents from the Schmitt case.

Gregory Schmitt testified that the signature on the document respondent presented was not his and that Wayne Schmitt's signature, although "close to it," was not how he recalled it looking. Clancy-Schmitt testified that she had

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[26] As of the date of the DEC hearing, respondent was still going through the boxes in the storage unit.

never seen that document and that, as to the signatures, they might have belonged to her son and to her husband, but she was uncertain.

Respondent ultimately returned the Schmitts' $3,000 retainer in February 2011.

Respondent offered the testimony of three attorneys, as character witnesses. They addressed respondent's skill, his concern for consumers, and the quality of his work, as well as the fact that he is held in high esteem by members of the bar.

The complaint charged respondent with violating RPC 1.1(a) and (b), RPC 1.3, RPC 1.4(b), and RPC 1.5(b).

At the conclusion of the hearing, the presenter asked the DEC to dismiss the charged violation of RPC 1.5(b), in light of the testimony and document presented about the retainer agreement.

The DEC found that respondent violated RPC 1.1(a) and (b), RPC 1.3, and RPC 1.4(b).

The DEC stated, in its report:

> What is troublesome for the Panel was the testimony from the Respondent regarding Mr. Tunney's prior suspension from the practice of law, and therefore, the apparent need to monitor the files that Mr. Tunney was handling. No evidence was presented to establish that Mr. Tunney was entrusted with

> handling the case, or that he had any involvement with it. The Respondent offered some testimony that he provided Mr. Tunney with a sample complaint, however, there were no documents, no correspondence, no court proceedings, and no meetings to which either party could testify between the Complainants and Mr. Tunney. The Respondent testified that there were no documents available because Mr. Tunney in essence fled the firm with client files. The Panel believes this may have occurred, but finds troublesome the facts that Mr. Tunney had already exhibited questionable behavior in his practice of law resulting in his suspension; that the Respondent entrusted him with a matter that was brought to Respondent because of his expertise in Consumer Fraud; and Respondent's testimony that he at some point looked at the file but did not realize a complaint was never filed or that the Complainants had not received any communication.
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> [HPR373¶6.][27]

As to respondent's relocation of his office, the DEC noted that it was undisputed that respondent moved the office across the street and "several doors down." Respondent testified that notices were sent to clients, but failed to produce a copy of any notice sent to the Schmitts or evidence of any communication from him or Tunney that the office had moved and/or the phone number had changed. Although the new office was in close

[27] HPR373 refers to the hearing panel report in DRB 12-373.

proximity to the old one and, respondent contended, easy to find, "the responsibility does not rest upon the client to find the attorney, but upon the attorney to notify the client of any changes in location."

With regard to the retainer agreement, the DEC found credible Gregory Schmitt's testimony that it was not his signature on the document. Although noting that the presenter had withdrawn the allegation regarding the lack of retainer agreement, the DEC found it "suspect that an executed retainer was discovered during the hearing process, not provided to the Presenter before being presented to the Hearing Panel and that the signature for Gregory Schmitt does not match it." Although no testimony was offered by a handwriting expert, the DEC noted the difference in the signature contained in the ethics grievance and in the "purported" retainer agreement and used that as part of its determination regarding the credibility of the witnesses.[28] Although the presenter withdrew the charged violation of RPC 1.5(b), the DEC found the Schmitts credible and

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[28] At the conclusion of the second hearing, the hearing panel chair stated that she was "disappointed and frustrated" that the retainer, which had been discovered "almost two-weeks ago," had not been shared with the presenter.

concluded that respondent did not provide them with a retainer agreement.

As to RPC 1.1(a), the DEC found that respondent failed to perform any services, after accepting a retainer. There was an approximately three-year period during which the Schmitts had tried to communicate with respondent, without success. The DEC found clear and convincing evidence that, during that period, respondent took no action in the matter.

Similarly, the DEC found that respondent violated RPC 1.3, again noting that, although he had accepted a retainer, he could not establish that any legal services had been performed for three years. Respondent entrusted Tunney, who had previously been suspended, to handle a case in an area of law in which respondent considered himself an expert.

As to RPC 1.4(b), the DEC found clear and convincing evidence that respondent had failed to communicate with the Schmitts "over an extensive period of time after the initial meetings." It was undisputed that respondent had met with the Schmitts, accepted a $3,000 retainer, and directed Shaw to perform an inspection for which he had been paid. It was disputed whether the Schmitts had communicated with Tunney. The DEC found the testimony of the Schmitts credible.

The DEC also found the Schmitts credible as to the frequency of their attempts to communicate with respondent and his lack of replies. The DEC discounted respondent's testimony that he thought that Tunney was overseeing the file, which could not be located. Also, there was no attempt to notify the Schmitts that the law office had been relocated and/or the phone number had changed. The DEC, thus, found a violation of RPC 1.4(b).

With regard to RPC 1.1(b), the DEC found a pattern of neglect in respondent's handling of the Schmitts' matter, pointing to the lack of work performed and lack of communication, over a three-year period. The DEC noted that respondent had exhibited similar behavior in other matters, for which he had been disciplined, and concluded that his behavior constituted a pattern. The DEC added that, where there is a pattern of neglect, a suspension is the appropriate "punishment."

As to the character witnesses that testified on respondent's behalf, the DEC found that, although respondent may be well-versed in consumer law, that fact did not negate the allegations against him. The testimony offered by Frances Tomes, Esq., a character witness, indicated that respondent

spent many hours, during the time in question, working on a class action suit. The DEC was concerned whether respondent had time to devote to the Schmitts.

As an aside, the DEC noted that respondent's former counsel was "significantly" late to each of the scheduled hearings, including an hour late for the final hearing date. The DEC found that disrespectful to those volunteering their time. In addition, counsel had forwarded a certification from a witness, after the hearing had been completed. The DEC considered the document inappropriate and did not review it or consider it part of the record.[29]

The DEC recommended a suspension of unspecified duration.

Docket No. DRB 12-374

In February 2008, Mariela Zapata retained respondent to pursue a claim arising from her purchase of a school bus from

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[29] We surmise that the document to which the DEC referred is a document that respondent sought to have admitted into evidence before us. In light of the presenter's acquiescence, during oral argument, we admitted the document into the record.

Arcola Sales and Service Corp. (Arcola).[30] The retainer agreement called for an initial payment of $1,000. Zapata testified, however, that respondent had asked for $2,250, which she had paid. The record contains Zapata's check ledger for two checks totaling $1,250. Zapata claimed that she gave respondent $1,000 cash, although she could not locate her receipt. Their initial meeting was Zapata's only meeting with respondent.[31]

In June 2008, respondent filed a complaint on Zapata's behalf. Thereafter, in October 2008, he filed a request to enter default against the defendants, for their failure to answer the complaint. In June 2009, respondent sent a letter to the court, requesting that a proof hearing be scheduled. The letter stated that default had been entered against Arcola, in December 2008.

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[30] As of the date of the DEC hearing, respondent was again representing Zapata in her matter against Arcola. The OAE instructed the hearing panel to proceed with the hearing, pursuant to R. 1:20-3(f).

[31] Here, the record is somewhat muddled, because Zapata testified that, the day after she hired respondent, she returned to his office, apparently to pay him, and he gave her a copy of the complaint. However, the complaint was not filed until June 2008, four months later. It seems unlikely that respondent had drafted the complaint by the day after he had been retained and then waited four months to file it.

Zapata testified that she called respondent every one-to-two-months and that, during their conversations, he assured her that he was working on her case. He never called her or sent her any letters. She testified that a settlement offer from Arcola was never communicated to her. Respondent testified to the contrary -- that he had advised Zapata of an offer, which she had rejected.

On September 17, 2009, respondent called Zapata to advise her that there would be a hearing, on September 18, 2009, and to meet him at the courthouse. Zapata testified that she received the call between 8:30 p.m. and 9:30 p.m. Respondent, for his part, testified that he made the call earlier than Zapata recalled and that she had been previously informed of the hearing, by letter and phone.[32] He did not produce a letter to Zapata about the hearing or a letter from the court scheduling it, but he recalled some communication with the court that led him to believe that the hearing had been scheduled.

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[32] Although the DEC appeared to find that the September 17th call was the first notice that Zapata had of the hearing, her testimony was "[respondent] called me to set up the time that we would meet in the court the following day," which seems to indicate that she knew previously about the hearing. Zapata testified through a translator and nuances may have been lost.

On September 18, 2009, Zapata reported to court and found out that there was no hearing scheduled in her case. Respondent did not appear.

Respondent testified that, on September 17, 2009, his car had broken down. He had the car taken to a repair shop that opened at 6:00 a.m. His cell phone had "died" and he had been unable to call Zapata, until shortly after noon, to apologize. He advised her that he "planned to restore the matter and that we would bring the matter back." He offered a cell phone log to confirm his call. He testified that he also called the courthouse, looking for Zapata. The record contains a fax from respondent to the court, sent on September 18, 2009, explaining what had occurred and asking that the proof hearing be rescheduled.

Respondent offered into evidence a copy of an email to Tunney, as proof that he had asked Tunney to appear on his behalf on the hearing date. The email stated: "Jack, I do not have transportation to get to Zapata's hearing." The email was sent at 5:00 a.m., on September 18, 2009. Respondent provided no evidence that Tunney had replied to this email and had confirmed that he would attend the hearing in respondent's place. According to respondent, he had talked to Tunney later that

morning and Tunney had assured him that he would get to the court as quickly as he could. In fact, Tunney did not appear.

Respondent stated that his car problems lasted for three to five weeks, which "sidetracked" him, and that Tunney was handling "matters that involved travel," while respondent worked mainly from his home. Respondent had learned from Tunney that the matter "had been taken care of." Thus, because of Tunney's representations and because he did not hear from Zapata, he thought that Tunney had resolved the case. Zapata never spoke to Tunney.

By way of explanation for the length of time that passed between the October 2008 request for the entry of default and the June 2009 request for a proof hearing, respondent testified that he was having problems with his mail delivery and that he may have been waiting to receive the default notice from the court, which never came. Exhibit A to respondent's answer is a series of documents attesting to the problems with the firm's mail delivery. In addition, respondent testified that Tunney had wiped out his electronic calendaring system and that the license for his case management program had expired. Thus, he could provide no proofs about his office's organization in any systematic way.

Although the record is unclear, it appears that Zapata had no communication with respondent, after the September hearing date, except for one phone call, after she learned, through her own investigation, that her case had been dismissed in June 2009. In response to her call, respondent advised her that he was working on the case. Respondent testified that he had problems with his mail delivery and had not received the dismissal notice.

The complaint charged respondent with violating RPC 1.1(a) and (b), RPC 1.3, and RPC 1.4 (b).

The DEC concluded that respondent had violated each of the charged RPCs. As to RPC 1.4(b), the DEC found that, the communication between respondent and Zapata, from February 2008 to September 17, 2009, when he told her about the hearing date, was "not meaningful:" Zapata was not given any details about the work that was being conducted, she was not advised of a settlement offer, and she was not advised that a default had been entered. The DEC found that Zapata testified, "very credibly," that respondent said he was working on the case, when she called him, and that she was essentially given the "run around," every time she spoke to respondent, until she was told about the September 18, 2009 hearing. Thereafter, there was no

communication between them until after the grievance was filed. The DEC did not find credible respondent's testimony that there had been written communications to Zapata.[33]

As to RPC 1.3 and RPC 1.1 (a), the DEC found clear and convincing evidence that respondent did not handle Zapata's matter in a manner that showed either diligence or competence. The timeline for his handling of the matter, from February 2008, when he was retained, to September 2009, the date of the "allegedly scheduled proof hearing," showed that he lacked diligence in filing a complaint, in moving for the entry of a default, in requesting a proof hearing, and in following up to have the proof hearing scheduled, "if it ever was scheduled." Moreover, he failed to follow up on the matter, after finding out that it had been dismissed without prejudice.

The DEC found not credible respondent's testimony about Tunney's destroying his calendars, the expiration of the license for his case management program, or why he could provide no proof "that he had any tools in place to organize his files." The DEC concluded that respondent's lack of diligence

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[33] The DEC stated, "The fact that [respondent] could not produce those written communications certainly influenced us."

demonstrated that either there was no system in place or that respondent had not properly utilized it.

The DEC also found not credible respondent's contention that it was Tunney who had failed to follow up on the case, from September 2009 to July 2011, as well as respondent's contention that he thought that Tunney had resolved the matter. The DEC noted respondent's testimony that he had dissolved his partnership with Tunney in September 2010. Furthermore, Tunney was temporarily suspended from the practice of law in February 2011. Given that Tunney had been the subject of multiple prior disciplines, the DEC found incredible respondent's testimony that it was inconceivable to him that Tunney might have ignored Zapata's case. Respondent had the responsibility to monitor the case since he was the designated trial attorney and he was the attorney to whom the matter had been specifically referred.

The DEC found a pattern of gross neglect, a violation of RPC 1.1(b). Respondent did not handle the matter diligently, from February 2008 to September 2009, and thereafter took no actions, from September 2009 to July 2011, when the grievance was filed. The DEC considered respondent's disciplinary history and found that a pattern of gross neglect was shown not only

during the course of respondent's handling of Zapata's matter but also in six other matters that led to two prior censures.[34]

The DEC considered the mitigating factors that respondent presented. He offered some evidence that he had problems with his mail service. However, in the DEC's view, "had Respondent had such tools in place as a case list, a calendaring system, or a case management program, any problems with the mail would have been irrelevant; he would have known what actions needed to take place in this matter and when." The DEC rejected respondent's defense that the post office had caused problems in this case.

The DEC noted that respondent did not accept responsibility for his failures in handling Zapata's claim. "[Respondent] had a lot of explanations for what went wrong and his explanation was that it was not his fault, it was the fault of the post office and his former partner, and his cell phone died and his car broke down."

The DEC added that

> [l]ay member Bernard Gross observed that he was able to follow the plaintiff's testimony in Spanish without the aid of the

[34] As previously noted, five matters were at issue in respondent's prior discipline cases.

> interpreter. He felt that Ms. Zapata convincingly conveyed the frightening experience of arriving at the courthouse with limited language skills, unable to find her attorney or anyone who had any record of her case.[35] This experience followed a pattern of being ignored by her attorney and that pattern continued even after the attorney found out that his client's case had been dismissed. Mr. Gross found that the Grievant's testimony had an emotional content that illustrated her justifiable frustration and anger.
>
> 51. Lay member Bernard Gross further observed that Mr. Halbfish produced not one iota of credible evidence to support his defenses, he stated that Respondent was totally unable to back up his assertions with records or files. He found his excuses to be infantile and laughable. Mr. Gross stated that he was in complete and total support of there being significant sanctions based on Mr. Halbfish's misbehavior.
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> [HPR374¶50-HPR374¶51.][36]

In light of its findings, of respondent's prior disciplinary history, of the lack of affirmative defenses, and relevant case law, the DEC recommended that respondent be suspended for a period of one year. The DEC also recommended

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[35] Zapata testified at the DEC hearing through an interpreter.

[36] HPR374 refers to the hearing panel report in DRB 12-374.

that, following reinstatement, he be supervised by a proctor for one year.

Respondent submitted a brief to us, in which he expressed his remorse, claimed that he has "been severely impacted by," and had to take responsibility for Tunney's misconduct. He argued that the DEC did not fully consider the effect of Tunney's misconduct on respondent's practice. He also noted that he had reimbursed the Schmitts before the filing of their grievance, and pointed out that he is again representing Zapata. Respondent stated that he works for Legal Services of New Jersey and argued that his clients will be harmed, if he is suspended.

Respondent also submitted a brief, prepared by his former counsel in DRB 12-123, when the matter was originally scheduled for our review. Counsel pointed to respondent's reputation and expertise in consumer law, Tunney's malfeasance, and problems with respondent's mail delivery. Counsel noted the harm to clients, if respondent cannot assist them, respondent's good character, and the lack of personal gain from his actions.

Following a de novo review of the record, we find that the conclusion of the DEC that respondent was guilty of unethical conduct was fully supported by clear and convincing evidence. The DEC found respondent guilty of each of the charged

violations in each of the five matters at bar. Those findings are well supported by the record.

As to Paulsson, over four years after respondent was retained, no complaint had been filed in the case. Paulsson received no letters from respondent and was unable to communicate with him by phone. Even accepting respondent's contention that he had assigned the case to Tunney in order to teach him consumer law, the fact remains that Paulsson was his client and his responsibility. He should have followed up on the matter. If he was unable to review Tunney's file, he should have checked with the court to assure himself that the case was proceeding properly. Instead, he did nothing. We find, thus, that respondent violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b), in Paulsson.

In Cuevas, respondent represented the client while Tunney was suspended. He contended that Tunney had resumed the representation, when Tunney was reinstated to practice. Even assuming that to be true, respondent was responsible for Cuevas' case, from October 2004 to December 2005. During that time, he allowed the case to be dismissed without prejudice for failure to provide answers to supplemental interrogatories. There is no explanation apparent for why respondent allowed that action to

be taken. Moreover, even though the case was dismissed with prejudice as to one defendant and summary judgment granted as to the other, when Tunney was restored to practice, respondent had some responsibility to see that it was handled properly, once he became involved. In addition, the only information Cuevas received about his case apparently came from respondent's office manager. Respondent was, thus, guilty of violating RPC 1.1(a), RPC 1.3, and RPC 1.4(b) in Cuevas.

In Pal, respondent requested an adjournment of a motion hearing and failed to follow up. The case was dismissed. His argument that he did not receive a scheduling order and was unaware of the dismissal is of no moment. Obviously, doing nothing in the case was not an acceptable option. Due to respondent's inaction, his client, who was seriously injured, was unable to pursue his workers' compensation claim. Moreover, Pal testified that he made numerous attempts to communicate with respondent, to no avail. He was unaware of the status of his case. Respondent, thus, violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b) in Pal.

In the Schmitt matter, too, respondent testified that he wanted Tunney to develop his expertise in consumer law and had him work on the Schmitts' case. Here, too, respondent contended

that Tunney had misled him about the case and about his communication with the clients.

However, these were respondent's clients, not Tunney's. In addition, they clearly had the same problems communicating with respondent that the other grievants claimed.[37] Although respondent questioned the Schmitts' credibility with regard to specific aspects of their testimony before the DEC, the problem, again, is that the "buck stopped" with respondent. He made no efforts to advance the Schmitts' claim. Respondent, therefore, violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b) in Schmitt.[38]

Finally, in Zapata, setting aside the mystery of the hearing date in a case that had been dismissed three months earlier, respondent again claimed that he believed Tunney had "taken care of" Zapata's case. Respondent took no steps to confirm that information, however. In addition, he did not

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[37]Parenthetically, the grievant in the matter under DRB 12-374, Zapata, testified that she was not notified that respondent's firm had relocated. Pal testified similarly.

[38] As to the question of whether respondent provided the Schmitts with a retainer agreement, the DEC, although noting that the presenter had withdrawn the alleged violation of RPC 1.5(b), found Gregory Schmitt credible on this issue. Because the alleged violation was withdrawn, we make no finding on this score.

communicate with his client. He, thus, violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b) in Zapata.

Moreover, respondent's conduct in the five cases formed a pattern of neglect. Only three instances of neglect are required to form a pattern, for purposes of RPC 1.1(b). In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16).

Over and over in these matters, we heard of Tunney and of his malfeasance. Respondent laid responsibility for the improprieties at his former partner's feet, blaming Tunney for misrepresenting to him the work that he had done on these cases and his communications with the clients. That may well have happened. However, in four of the five cases, these grievants were respondent's clients. The ultimate responsibility for the handling of their cases was his. In the fifth case, Cuevas, respondent assumed the representation when Tunney was suspended. Respondent should not have walked away, when Tunney was reinstated. Indeed, respondent handled the deposition in the case after Tunney's restoration to practice. At best, the responsibility was shared. Particularly, knowing Tunney's prior disciplinary history and his proclivity toward neglecting client matters, respondent should have been more pro-active and

verified the truth of what Tunney was telling him. Respondent's contention that he should have been able to trust his law partner was misplaced, in light of his partner's past misdeeds. Had respondent made simple calls to the court to follow up on what Tunney claimed to have done, respondent would not be facing disciplinary charges. Even before us, respondent did not seem to understand that, in the end, he was responsible. Rather, the finger pointing continued. As we stated in a prior matter involving respondent, his client "was entitled to respondent's best efforts on his behalf." In the Matter of Michael J. Halbfish, DRB 09-323 and DRB 09-324 (February 17, 2010) (slip op. at 20). Here, too, respondent failed to provide the representation to which his clients were entitled.

Respondent also blamed the problems in the cases on difficulties with his mail delivery. He submitted documentation attesting to problems with his mail delivery service. Nevertheless, despite those known difficulties, he took no initiative to ascertain the status of his clients' cases, to their detriment.

When an attorney displays a pattern of neglect, a reprimand ordinarily ensues. See, e.g., In re Tyler, 204 N.J. 629 (2011) (consent to reprimand; in six bankruptcy matters the attorney

was guilty of gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients; in one matter the attorney communicated with a client represented by counsel; mitigation included the attorney's lack of a disciplinary history and her health and mental problems at the time of her misconduct); In re Balint, 170 N.J. 198 (2001) (in three matters, attorney engaged in lack of diligence, gross neglect, pattern of neglect, failure to communicate with clients, and failure to expedite litigation); In re Bennett, 164 N.J. 340 (2000) (gross neglect and failure to communicate in a number of cases handled on behalf of an insurance company); and In re Wildstein, 138 N.J. 48 (1994) (misconduct in three matters, including gross neglect, lack of diligence, and failure to communicate with clients).

Generally, in those matters where suspensions were imposed there are more cases at issue and/or a greater number of additional violations are present. See, e.g., In re LaVergne, 168 N.J. 410 (2001) (six-month suspension for attorney who mishandled eight client matters including lack of diligence (six matters), failure to communicate (five matters), gross neglect (four matters), failure to turn over the file on termination of the representation (three matters), failure to notify third

parties of the receipt of property or funds (one matter), and misrepresentation (one matter); the attorney was also guilty of a pattern of neglect, recordkeeping violations, and conduct prejudicial to the administration of justice, specifically failure to comply with a court order to turn over a client's file); In re Aranguren, 165 N.J. 664 (2000) (six-month suspension for attorney who, in representing three clients in five personal injury matters, engaged in gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to expedite litigation, failure to turn over client files in three matters, failure to cooperate with disciplinary authorities, and misrepresentations in three matters, including one in a certification to a trial court; prior admonition); In re Lester, 148 N.J. 86 (1997) (six-month suspension for attorney who displayed a lack of diligence, gross neglect, and a pattern of neglect, failed to communicate with clients in six matters, failed to cooperate with the investigation of the grievances, and allowed the disciplinary matter to proceed as a default; in one of the matters, the attorney misrepresented, in a letter to his adversary, that the adversary's secretary had consented to extend the time to file the answer; the attorney had received a reprimand in 1990 and

another reprimand in 1996); In re Bosies, 138 N.J. 169 (1994) (six-month suspension imposed on attorney who, in various combinations of four matters, engaged in gross neglect and a pattern of neglect, lacked diligence, failed to communicate with the client, and engaged in unspecified conduct prejudicial to the administration of justice; attorney also engaged in dishonesty in one matter by undertaking an elaborate scheme to avoid deposing a witness); In re Moran, 188 N.J. 483 (2006) (one-year suspension for misconduct in eleven matters, including multiple instances of gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to withdraw from representation when physically or mentally impaired, failure to take reasonable steps on termination of representation to protect client's interests, and failure to reimburse unearned portion of retainer; the attorney was suffering from severe depression); In re Brown, 167 N.J. 611 (2001) (in a default matter, one-year suspension for attorney who, as an associate in a law firm, mishandled twenty to thirty files by failing to conduct discovery, to file pleadings, motions and legal briefs, and to generally prepare for trials; the attorney also misrepresented the status of cases to his supervisors and misrepresented his whereabouts, when questioned

by his supervisors, to conceal the status of matters entrusted to him; the attorney had been reprimanded before); In re Lawnick, 162 N.J. 113 (1999) (in a default matter, one-year suspension for attorney who agreed to represent clients in six matters and took no action, despite having accepted retainers in five of them; the attorney also failed to communicate with the clients and failed to cooperate with the investigation of the ethics grievances); In re Marum, 157 N.J. 625 (1999) (one-year suspension for serious misconduct in eleven matters, including lack of diligence, gross neglect, failure to communicate with clients, failure to explain the matter to clients in detail to allow them to make informed decisions about the representation, misrepresentation to clients and to his law partners, which included entering a fictitious trial date on the firm's trial diary, and pattern of neglect; the attorney also lied to three clients that their matters had been settled and paid the "settlements" with his own funds; the attorney's misconduct spanned a period of eleven years; in aggravation, the attorney had two prior admonitions, failed to recognize his mistakes, and blamed clients and courts therefor); and In re Herron, 140 N.J. 229 (1995) (one-year suspension for attorney who engaged in unethical conduct in seven matters; the attorney either grossly

neglected them or failed to act with diligence, failed to keep the clients informed of the progress of their matters and, in two cases, misrepresented their status to the clients; the attorney also failed to cooperate with disciplinary authorities by failing to reply to inquiries during the ethics investigation).

The hearing panel in the matters under DRB 12-123 recommended a one-year suspension, as did the hearing panel in DRB 12-374. The hearing panel in DRB 12-373 recommended a suspension of "unspecified duration." We find that a one-year suspension is not justified by relevant case law. Those matters where a one-year suspension was imposed involved more cases (Herron - seven; Marum and Moran - eleven; Brown - twenty to thirty) or proceeded on a default basis (Lawnick and Brown). Some involved acts of dishonesty or misrepresentation (Brown, Marum, and Herron).

In determining the appropriate measure of discipline for respondent, In re Lester, supra, 148 N.J. 86 (six-month suspension) is a good starting point. There, the attorney was guilty of gross neglect, a pattern of neglect, lack of diligence, and failure to communicate with clients in six matters, as well as additional violations not present in this

case. Lester had two prior reprimands and allowed the matter to proceed as a default.[39]

Lester engaged in misconduct in one more case than respondent and had two prior reprimands, as opposed to respondent's two prior censures. Arguably, respondent's more serious disciplinary history "balances" the additional violations in Lester, bringing the two cases on par. Thus, a six-month suspension seems to be the proper discipline for the totality of respondent's conduct. We so vote. In addition, upon reinstatement, respondent should be required to practice under the supervision of a proctor approved by the OAE, for a period of two years.

Members Gallipoli, Yamner, and Doremus would impose a one-year suspension, but agree with the majority as to the two-year proctorship.

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[39] It does not appear from the Lester decision that the discipline was upgraded due to the default nature of the case.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie Frost, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Michael D. Halbfish
Docket Nos. DRB 12-123, DRB 12-373 and DRB 12-374

Argued: May 16, 2013

Decided: June 11, 2013

Disposition: Six-month suspension

Members	One-year Suspension	Six-month Suspension	Reprimand	Disqualified	Did not participate
Frost		X			
Baugh		X			
Clark		X			
Doremus	X				
Gallipoli	X				
Yamner	X				
Zmirich		X			
Total:	3	4			

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel