SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-041
District Docket Nos. IIB-2010-0032E;
IIB-2011-0011E; and IIB-2011-0015E

IN THE MATTER OF	:
VICTOR F. AZAR	:
AN ATTORNEY AT LAW	:

Decision

Argued: June 20, 2013

Decided: August 7, 2013

Jennifer M. Blum appeared on behalf of the District IIB Ethics Committee.

Raymond F. Flood appeared on behalf of respondent.

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

This matter was before us on a recommendation for a reprimand, filed by the District IIB Ethics Committee (DEC). The three-count complaint charged respondent with having violated RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client), RPC 1.5(a) (charging an unreasonable fee), and RPC 1.16(d) (failure to protect a client's interests upon termination of the

representation). For the reasons expressed below, we agree with the DEC's recommendation for discipline.

Respondent was admitted to the New Jersey bar in 1978. He maintains a law office in Hackensack, New Jersey. He has no history of discipline.

After working for three and one-half years for the law firm of Albert & Pescatore, respondent opened his own law office, in 1983, and has practiced as a solo practitioner since that time. He engages in the general practice of law -- divorce and commercial litigation cases, estate matters, and real estate closings. At any given time, he has between seventy and 100 active files.

COUNT ONE - DISTRICT DOCKET NO. IIB-2010-0032E - (THE KEIFFENHEIM MATTER)

Respondent had been the attorney for Carl and Nancy Keiffenheim's son-in-law for nineteen or twenty years, with whom he had developed a social relationship. As a result of that relationship, respondent came to know the Keiffenheims. They had retained him in connection with the sale of their Hackensack house, several years before this matter arose. They paid respondent $850 for that closing. Carl testified that the earlier closing was "smooth as silk."

In early 2010, Nancy held a power of attorney for Kathryn LeBlanc and later became the executrix of her estate. Nancy was one of only two beneficiaries. Because LeBlanc was ill, her house in Hackensack had to be sold to pay for her nursing home expenses. Problems with the seventy-five year old house included an oil tank on the property, electrical issues, and asbestos contamination. The Keiffenheims retained respondent to handle the sale of LeBlanc's house and to "take care" of her estate. Respondent did not provide the Keiffenheims with a writing setting forth the basis or rate of his fee.

After a sale contract was signed, the buyers requested an $8,000 concession towards closing costs, with a corresponding increase in the sale price to $272,000. Respondent testified that this enabled the buyers to obtain a larger mortgage by increasing the "loan to value ratio." Nancy approved the change. Respondent explained to the Keiffenheims that the estate would still receive the agreed upon selling price, but that the buyers needed the modification "to get more money and be able to consummate the deal."[1]

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[1] Respondent was not charged with any wrongdoing in this regard. It is not clear that the mortgage company was misled about the true purchase price. The buyer's attorney indicated in a letter to respondent that the "mortgage lender . . . advises that my clients qualify for the above changes," which included the

(Footnote cont'd on next page)

Respondent testified that he had used the higher sale price of $272,000 to calculate Nancy's executor's commission, "which means more money in her pocket, less money in [the other beneficiary's] pocket."

After the closing, respondent provided the Keiffenheims with an estimate that the estate tax would be $40,800, based on gross, not net figures. Ultimately, the tax was only slightly more than $15,000.

LeBlanc died on April 8, 2010. Respondent suggested that he accompany the Keiffenheims to the Bergen County Surrogate's Office to expedite the process of the will probate. Indeed, on April 9, 2010, he appeared with them at the surrogate's office. Letters Testamentary were issued to Nancy, approximately ten days after LeBlanc's death.

The closing on LeBlanc's house took place on April 20, 2010. There were no problems at the closing. Respondent had successfully negotiated a credit for the problems with the house

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(Footnote cont'd)

$8,000 concession and increased purchase price. The buyer's attorney, not respondent, was the proponent of the adjustment. But see A.C.P.E Opinion 710, 186 N.J.L.J. 1198 (December 25, 2006) (misrepresentation in closing documents intended to increase the amount of a mortgage loan violates the RPCs; although the originating lender has the opportunity to verify a discrepancy between the figures in the contract of sale and the figures on a loan application, such opportunity may not be available to investors in the secondary mortgage market).

from $5,000 to $2,000. He claimed that he had reviewed with the Keiffenheims every line on the HUD-1 that related to the sellers.

Carl testified that they were satisfied with respondent's services at the closing, but they continued to have questions about the disbursements and the estate tax. They wanted to "understand where every dollar was going in connection with the sale of the house."

At the closing, respondent provided the Keiffenheims with a handwritten sheet, showing them how the estate would be divided between Nancy and the other beneficiary, the net proceeds, estate taxes, respondent's fee, other expenses relating to the sale of the house, and the division of the balance.

Carl did not inquire about respondent's fee until they were at the surrogate's office. As noted above, respondent had not provided the Keiffenheims with a retainer agreement or confirmed their conversation about the fee, in writing.[2] Carl was not aware of the amount of respondent's hourly rate. When respondent quoted a fee of $2,500, Carl "accepted it" because he knew that "there was a little more work to be done than simply closing on

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[2] Respondent was not charged with violating RPC 1.5(b) (when a lawyer has not regularly represented a client, the basis or rate of the fee shall be communicated in writing). Respondent had not "regularly" represented these clients.

our house." He understood that the amount covered respondent's fees for the completion of the work on the estate and for the real estate closing. Respondent's fee was paid at the time the estate funds were distributed.

According to respondent, he brought his bill to the closing and explained to the Keiffenheims that he had spent a lot more time on the "file" than he had anticipated. At the DEC hearing, he stated that he was not going to charge them his hourly rate of $350 because he did not think it would be fair. In the prior closing, he had charged them a flat fee of only $850, whereas, here, he charged them $2,500.

Respondent conceded that he did not originally tell the Keiffenheims that he would charge that amount and did not tell them anything about his fee because, he stated, "I think they already knew, having been represented by me previously." He claimed that they did not object to the bill, when he explained that it did not reflect the number of hours he had spent and that he thought it was a "fair compromise."

Respondent testified that he was not going to charge for the preparation of the estate tax return because "it's a simple return" that does not take much time to prepare. By letter dated May 28, 2010, eight days after the closing, respondent informed

Nancy that the final estate tax return "should be completed by next week."

Nancy was anxious to have the tax return completed, in order to obtain the release of the funds held in escrow from the closing. Therefore, on June 5, 2010, she faxed to respondent a request for an explanation of some figures relating to the closing. However, six months later, respondent still had not yet prepared the return. He explained that he was receiving repeated telephone calls from the Keiffenheims, questioning the disbursements from the closing, "growing nastier and nastier, and quite frankly I didn't need that . . . especially after having explained to them repeatedly what those figures were." He was offended by their requests for information. He complained that they were "pestering" him, questioning his competence, questioning the numbers that he used; therefore, he "fired them."

Respondent claimed that he terminated the representation, after receiving Nancy's June 5, 2010 fax. He left the Keiffenheims a voice-mail message suggesting that, because they were not happy with his representation, it would be best for them to hire another attorney.[3] Respondent claimed that the call

[3] The record does not reveal the exact date of the call.

must have been made to the Keiffenheims' land line, because there was no record of it on Keiffenheims' Verizon cell phone bill print-out.

Despite purportedly terminating the representation, respondent did not send the Keiffenheims their file and did not follow up on that message because, he claimed, he had had enough of their file and their "nasty messages." He admitted that he should have sent them a letter and that it was a mistake not to do so. Carl testified that he never received any communications from respondent about ending the representation.

Notwithstanding respondent's purported termination of the representation, by letter dated July 12, 2010, Nancy wrote him a letter stating that, after he received his fee, he completely ignored all of her telephone calls and faxes; that, six weeks earlier, he had informed her that the estate taxes would be completed by the next week; and that she had been unable to contact him since that time. After receiving that letter, respondent did not contact Nancy to reiterate that he was no longer her attorney.

According to Carl, after the closing, respondent stopped communicating with him as well. He and Nancy thought that there might have been some errors in the calculations for the closing. He left numerous voicemail messages for respondent about the

estate, "every couple of days," but respondent did not return his calls.

At one point, Carl left a message threatening that, if respondent did not contact him, he would "take it to the next level," that is, file a grievance against him. Respondent still did not contact Carl, prompting the filing of this ethics grievance.

On November 5, 2010, Carl met with a DEC member, who advised him to retain another attorney to file the estate tax return. Carl did so and also retained a "CPA." The new attorney sent two letters to respondent. The first, dated November 11, 2010, discharged respondent, requested the entire file, and attached Nancy's authorization in that regard. The second, dated November 24, 2010, reminded respondent of his "ethical obligations" to turn over the file, when requested by a client and cautioned respondent that, if he did not receive it within five days, he would seek appropriate remedies through the courts.

On an unknown date, respondent forwarded the file to the new attorney. In December 2010, the new attorney timely filed the inheritance tax return. As noted earlier, the actual tax liability was only $15,063.99.

The first count of the complaint charged respondent with having violated RPC 1.4(b) for failing to keep his client reasonably informed and failing to promptly comply with his reasonable requests for information; RPC 1.16(d) for improperly terminating the attorney-client relationship and not taking steps to ensure that the client's interests were protected; and RPC 1.1(b) exhibiting a pattern of neglect when this and other matters are combined.

COUNT TWO - DISTRICT DOCKET NO. IIB-2011-0011E (THE SANTOS MATTER)

Grievant Carlos Santos did not appear at the DEC hearing. At the time of the hearing he may have been deported.

On a date not clear from the record, respondent met with Carlos' wife, Katiane DeFreitas-Santos, about an injury their five-year old son had sustained, when he fell from a second-story window. Respondent's notes from his initial meeting indicated, among other things, that the child did not "presently have any subjective complaints about his leg," but on occasion complained of headaches. That meeting was respondent's only contact with Katiane.

By letter of June 19, 2003 to Suzana Silva, the registered owner of the property, respondent asked that she forward the

letter to her insurance company and have it contact him immediately. If he did not hear from either of them within seven days, he would have "no alternative but to institute suit without further notice."

On July 18, 2003, respondent met with Carlos and entered into a contingency fee agreement with him. According to respondent, they had very little communication, because of a language barrier. They met only once, when Santos' pastor acted as an interpreter.

On July 29, 2003, the insurer's claims adjuster requested that respondent submit "medical specials and other documentation," including photographs of the injuries to support the case. On August 10, 2004, respondent filed a complaint in the matter. He claimed that he was waiting to receive information from Carlos on the child's injuries and that he did not "have a complete grasp of what the medical specials were until several months after [they] initially met." The medical bills arrived "in spurts," in July and September 2003.

In an undated letter, but sometime after August 2004, Carlos complained that he had called respondent and left messages, to no avail. He requested a copy of the complaint. Respondent claimed that, because of Carlos' limited English, someone else must have written the letter for him. Respondent

called the document "hearsay." According to respondent, the accusation in Carlos letter was simply not true. He was adamant that Carlos never left a single message for him and never called -- the communication was nonexistent. He added that Carlos could not have left a message that he would have been able to understand.

On January 21, 2005, the insurer's attorney requested that respondent provide proof of personal service of the complaint. Upon receipt of that proof, the defendant would file an answer. The attorney added, "Please do not enter default since we are prepared to file our Answer. Also, please advise if default has been entered so we may forward a consent order vacating the same to you."

Respondent contended that the insurer requested a copy of the summons and complaint, which he provided. Subsequently, however, the insurer wanted him to make personal service on the landlord, which the sheriff was unable to accomplish. Respondent admitted that there were other avenues he could have pursued to have served the insurer. He explained, however, that, when he received a letter from the insurer's attorney, he mistakenly believed that service had been accepted by the insurer.

On February 19, 2005, the case was dismissed without prejudice for lack of prosecution. The court notice stated that

a formal notice of motion was required to restore the case to active trial status. According to respondent, because, after the dismissal, his communications with Carlos were almost nonexistent, he was unsure if Carlos still wanted to pursue the case. He added that there was no urgency to restore the case because "the child was an infant when he was injured" and the statute of limitations would not start "to roll until he attain[ed] the age of 18." He added that, often it is better to put off litigating a matter, in case "latent problems" surface. He was confident that the matter could have easily been restored.

According to respondent, he thought that Carlos was not interested in pursuing the matter, because he heard nothing further from him. He admitted, however, that he did not try to call Carlos, did not send him a letter indicating that the case was about to be dismissed, did not send him copies of the letters from the insurance company, and did nothing, after the case was dismissed. He did nothing to ascertain Carlos' intentions about pursuing the case. He admitted that he "definitely should have done much more" and should have been more diligent, but that the harm could have easily been remedied.

The presenter's only witness in this matter, Pasquale F. Giannetta, Esq., stated that his office had been assisting Carlos in connection with some "immigration work." He dealt with Carlos through an interpreter. Carlos informed Giannetta that respondent was representing him in a personal injury matter relating to his son's injury. Even though Giannetta was not taking over the case, he agreed to call respondent's office for a status report. His intent was to help Carlos, tell him where the case stood and, after reviewing the file, decide whether to take it over. Without the file, he could not make that determination.

Giannetta could not recall how many times he had called respondent, but he remembered leaving him at least one message. Respondent did not return the call. Thereafter, by letter dated June 12, 2008, Giannetta informed respondent that Carlos had retained his office in connection with his son's "accident case." He asked respondent to forward "the entire contents" of the file. He enclosed Carlos' authorization for its release.

Giannetta never received the file. He could not evaluate the claim without it. He believed that he referred Carlos to another attorney. He never spoke with respondent.

Respondent testified that, within a week of receiving Giannetta's request, he made a copy of the file and, by regular

mail, sent the copy to Giannetta, under cover letter dated June 18, 2008. He kept the original documents for himself, though including photographs and medical bills, even though he acknowledged that he would ordinarily forward the original file. He stated that, after he sent Giannetta the file, he never received another letter or telephone call from Giannetta, nothing to indicate that Giannetta had not received it.

Giannetta, in turn, testified that he did not see respondent's cover letter until the presenter sent him a copy. He was certain that he had never received the file.

This count charged respondent with having violated RPC 1.3, for failing to pursue other alternatives to serve a complaint, RPC 1.4(b) for failing to keep his client reasonably informed about the status of the matter and failing to comply with his reasonable requests for information, RPC 1.16(d) for failing to turn over the client's file, and RPC 1.1(b) for his pattern of neglect in this and the other matters.

COUNT THREE – DISTRICT DOCKET NO. IIB-2011-0015E (THE ANDERSON MATTER)

Previously, respondent had satisfactorily represented Michelle Anderson in other matters. She, therefore, retained him

for this civil matter, which she believed involved fraud by a car dealership.

Prior to meeting with the Andersons, respondent had a lengthy telephone conversation with Michelle and believed that the Andersons had a meritorious claim for fraud against Paramus Dodge. He scheduled a meeting with the Andersons on June 1, 2010, at which time they entered into a contingency fee agreement. However, respondent did not provide them with a written retainer agreement. The Andersons paid a $2,500 retainer to respondent, who informed them that his hourly rate of $350 per hour would be billed against the retainer.

During their meeting, which respondent claimed lasted more than two hours, the Andersons gave him the documentation involving the purchase of a truck. Michelle's husband, Leophore (Leo), who had good credit, had agreed to co-sign an installment purchase agreement with Paramus Dodge, on behalf of his friend, Jason Barnes. Leo believed that he was guaranteeing the obligation and that Barnes would be the owner. As it turned out, the documents that had been prepared by the dealership named Leo as the owner of the truck, rather than as a "cosignatory," and the bills went directly to him, rather than to Barnes.

Michelle claimed that Leo signed the purchase documents "under duress," because the dealership brought the documents to

his place of business. She believed that the dealership tricked her husband into signing the documents. Respondent disagreed that there was duress or trickery involved, stating that the papers had been brought to Leo as an accommodation. Respondent's theory of the case, however, was that Leo had been defrauded by being listed as the owner and obligor. When the Andersons discovered that Leo was the sole obligor, they had Barnes return the truck to them. Thereafter, it sat in their driveway, uninsured.

Following the Andersons' meeting with respondent, Michelle understood that respondent would "follow-up" directly with the dealership, by sending it a letter. Respondent told them that he did not anticipate receiving a reply right away; he would follow up a week later and would likely have to file suit against the dealership. The Andersons left respondent's office believing that they had a legitimate claim.

According to respondent, the Andersons allegedly told him about a document that bore the names of Leo and Barnes "as cosigners." Respondent informed them that he needed a copy of it. He thought that such a document, if it existed, would help support a claim of "fraud, fraudulent misrepresentation, maybe consumer fraud." Respondent ultimately conceded that "such a document doesn't exist, apparently."

Respondent claimed that, based on the information he had, he prepared a letter to the dealership, stating that he believed that his clients had been defrauded. At the DEC hearing, he stated that he was "shocked" to discover that he could not locate a copy of this letter anywhere, but knew that he had sent it. He explained that he would have prepared the letter, printed it out, put it in the envelope, made a copy of it, stuck it in the file, and then deleted the letter from his computer. He added that he does not save every document that he prepares.

When Michelle telephoned respondent, two weeks after their meeting, he told her that he had written to the dealership. She asked for a copy of the letter. He replied that he expected to hear back from the dealership in the next few days and would let her know what happened, but never sent her a copy of the letter.

Respondent asserted that he never received a reply to the letter from the dealership, did not send a "follow up letter," and did nothing more in the matter. He stated that, "[a]t some point I'm going to determine that they're [the dealership] not going to respond. . . . They're just going to ignore my letter and I'm going to have to put together a complaint and file a complaint. Certainly that will get their attention."

Approximately two weeks after their telephone conversation, Michelle tried to contact respondent again and left him a voice

mail message. He did not return her call. Thereafter, she called him regularly, at intervals of approximately one or two weeks, but reached only his voice mail.

Respondent denied that Michelle called him that frequently. He testified that Michelle left a "couple messages for me and I spoke to her." He could only recall speaking to her once, after sending the letter, but not after that.

At the end of July or August 2010, Michelle became frustrated with respondent's failure to reply and asked Leo to call him, believing that respondent might prefer to speak to Leo. Leo's efforts were also in vain. Michelle's only telephone conversation with respondent occurred after she retained him, in June 2010.

Respondent claimed that he did not recall receiving the Andersons' messages or he would have replied to them. He did not consider Michelle a difficult client and he liked her personally. He added, "I have nothing to hide from this person." He did not feel it was unreasonable to have had only one conversation with her between June 2010, when he was retained, and October 2010, when his representation was terminated.

On October 12, 2010, Michelle sent a certified letter to respondent, terminating his services. She noted that he did not provide her and Leo with a retainer agreement or with any

services. She requested a full refund of the retainer, within ten days, or they would file an ethics grievance against respondent. Respondent did not reply to that letter.

Respondent claimed that he was surprised by Michelle's letter. He resented its tone and Michelle's accusation of an ethics violation. He asserted that he had spent time with the Andersons, had reviewed documents, and had prepared the letter to the dealership. He admitted not having replied to Michelle's letter, stating that, if the Andersons had a dispute about the retainer, they should have filed for fee arbitration.

Michelle filed the grievance against respondent in February 2011, but did not receive a full refund of the retainer until May 2012. Respondent acknowledged that he did not "react as well as [he] should have," after receiving Michelle's letter. He conceded that he should have prepared a bill and deducted the amount of his services from the $2,500 retainer.

The Andersons had made only a few payments on the truck, which, ultimately, was repossessed. The bank, thereafter, filed a "claim" against the Andersons for the "deficiency." They settled with the bank for approximately $12,000. They never permitted Barnes to use the truck, which sat in their driveway for ten months, until it was repossessed.

Respondent explained that, during the relevant times, he did not have regular staff working for him. He had voicemail and checked his messages daily, even several times a day. He had a digital system in place that did not limit the number of messages that could be left. He testified that he usually returned client calls at the end of the day.

The complaint charged respondent with having violated RPC 1.1(b), RPC 1.3, RPC 1.4(b), RPC 1.5(a), and RPC 1.16(d).

As mitigation, respondent claimed that he had suffered from health problems at the time, but had not raised it previously because he is a private person. He remarked that his health issues may have affected his work performance. He was not in his law office as much.

According to respondent, his health problems started in 2009, when he was taken to the emergency room for a series of tests. The doctors found nothing wrong. One doctor suggested that he might be suffering from anxiety. After three more hospitalizations and additional testing, "[t]hey said . . . we're gonna' go in through your leg and see if there's blockage." According to respondent, three "veins" were "ninety-eight percent" blocked. They inserted three stents and prescribed medication, which took some time to adjust.

In mitigation, respondent also provided the testimony of two character witnesses, their character letters, and five other character letters.

One of the witnesses, Donald Onorato, had known respondent for nineteen years. Onorato referred clients to him. He described respondent as an aggressive advocate and volunteered that he would hire respondent to represent him, if needed. As to respondent's reputation in the community, Onorato stated that respondent has an "impeccable reputation" and is a terrific attorney. He was surprised that respondent had grievances filed against him.

Joel Albert was impressed with respondent, when respondent was a law clerk. Albert offered respondent a position with his own firm, where he practiced for three or four years. He thought that respondent was a good attorney and referred matters to him. In the community, respondent had a reputation as a tough, good, strong, excellent litigator, and a fair individual.

The character letters from the other attorneys who had known respondent for twenty-to-thirty years described respondent as well-respected, knowledgeable, diligent, aggressive, vigilant, of strong character, zealous, a tough adversary, an excellent practitioner, honorable, forthright, respectful, conscientious, displaying selfless dedication to the practice of

law, a lawyer of integrity and honesty, of high moral and ethical standards, a passionate advocate who takes reasonable positions, an individual with faith in his convictions, and someone with a strong sense of what is just and right.

In the Keiffenheim matter, the DEC found that if, in fact, respondent terminated the representation, after receiving the Keiffenheim's June 5, 2010 fax, which was a simple request for information, Nancy's July 15, 2010 fax should have alerted him that the Keiffenheims believed that he continued to represent them and that they had not received his telephone message. Yet, respondent never confirmed the termination of the relationship, in writing, and did not take any steps to ensure that his client's interests were protected. The DEC also found that the telephone log that the Keiffenheims had submitted was convincing evidence of the numerous attempts that they had made to contact respondent, with few responses from him, before the closing, and no responses, after the closing.

As to the Santos matter, the DEC did not find believable respondent's repeated claim that he was operating under the mistaken belief that service had been accomplished. The DEC noted that the letter from the defendant's counsel made it clear that service had not been accomplished.

Also, respondent's file in the Santos matter included several original documents, such as photographs and medical bills, which, the DEC found, presumably, would have accompanied the file, had it been sent to Carlos' new attorney, Giannetta.

The DEC found that respondent's claim that the complaint would be subject to easy restoration, once service of process was accomplished, was legally accurate, but irrelevant to the issue of whether respondent had fulfilled his ethics obligations to his client. The DEC found that respondent lacked diligence (no attempts to serve the defendant and failure to take any action in response to the notice to dismiss) and failed to communicate with his client (failure to notify Carlos of either the pending dismissal or the actual dismissal of his case). Because Carlos did not testify, the DEC did not rely on the handwritten note, complaining about respondent's failure to reply to inquiries, and found no violation of RPC 1.4(b) in this regard.

In addition, the DEC did not find a violation of RPC 1.16(d) (failure to turn over the file), inasmuch as respondent produced a letter that he had written shortly after Giannetta had requested the file. The DEC found that Giannetta's recollection of events was somewhat "hazy," because he did not ultimately represent Carlos. Although the DEC remarked that

respondent did not "pursue an application for substituted service," it, nevertheless, did not find clear and convincing evidence of an RPC 1.16(d) violation.

As to the Anderson matter, the DEC found that Anderson's testimony that she called respondent on a regular basis to no avail was "especially credible," given the consequences of respondent's failure to act, namely, continued monthly payments for the truck. The DEC found that respondent violated RPC 1.4(b).

The DEC also found that, other than respondent's assertion that he had sent a letter to the dealership, there was no evidence that he had taken any action on the Andersons' behalf. In fact, "all evidence points to the contrary." The Andersons never received a copy of the letter to the dealership and respondent did not retain a copy of it. Because the Andersons were being billed monthly, as the primary obligors, the matter required respondent's prompt attention. The DEC rejected respondent's contention that the passage of three months, under the circumstances of this case, was reasonable. The DEC, therefore, found a violation of RPC 1.3.

On the other hand, the DEC did not find that respondent charged an unreasonable fee (RPC 1.5(a)) for his services

because, ultimately, he returned the fee, albeit almost two years later.

Finally, the DEC did not find a pattern of neglect in these matters, reasoning that "this is more a matter of three grievances being filed at once, rather than a pattern of neglect."

In assessing discipline, the DEC noted respondent's lack of sincere contrition, despite his admission that there were things that he could have and should have done differently and that he had made mistakes. The DEC noted that respondent's tone was somewhat adversarial and, on occasion, defensive, finding him easily offended. For example, he considered Nancy's inquiries to be "an affront to his professionalism." The DEC, likewise, did not find respondent's health issues to be a significant mitigating factor, because he did not link his health problems to his activities on behalf of these clients.

The DEC found no aggravating factors. The mitigating factors included respondent's cooperation with the ethics process, his first brush with the disciplinary system, and his acknowledgement that he violated several RPCs. The DEC, thus, recommended a reprimand.

Following a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent was guilty of

unethical conduct is fully supported by clear and convincing evidence. We are unable to agree, however, with the DEC's conclusion that respondent did not engage in a pattern of neglect (RPC 1.1(b)). In each matter, respondent neglected, if not grossly neglected, his clients' interests. In Keiffenheim, he failed to file the estate tax return, despite his May 28, 2010 assurances that he would do so within the next week. The Keiffenheims, therefore, had to retain new counsel and an accountant to prepare the return. In his own words, respondent testified that it was "a simple return," which did not take much time to prepare and that he did not plan to charge them for it. Yet, he never completed that simple task. In the Santos matter, the matter was dismissed and respondent failed to have it restored. In Anderson, respondent could present no evidence that he had taken any action on his clients' behalf, despite accepting a $2,500 retainer.

Although a single instance of ordinary negligence does not constitute an ethics violation, when an attorney repeatedly demonstrates incompetence, that attorney violates RPC 1.1(b). See, e.g., In re Rohan, 184 N.J 287 (2005) (three-month suspension for, among other improprieties, a pattern of simple neglect).

Respondent also engaged in a pattern of failing to communicate with his clients. The DEC found "especially credible" Michelle Anderson's testimony about her repeated, yet unsuccessful, efforts to communicate with respondent. Likewise, Carl Keiffenheim provided documentary evidence to support his claim that respondent failed to reply to his numerous telephone calls and Nancy's faxes. Respondent also admittedly failed to communicate with Carlos Santos. He did not inform him about the status of the case, about its pending dismissal, or about the dismissal without prejudice. He admitted that he did not try to call Carlos, did not send him any letters, and did not send him copies of letters from the insurer, all in violation of RPC 1.4(b).

We also find that respondent violated RPC 1.16(d) in all three matters. In Keiffenheim, respondent could not provide any proof that he had left a message on the clients' answering machine, terminating the representation. Moreover, Nancy's and Carl's efforts to contact respondent, after he purportedly left that message, support their understanding that he continued to represent them. Respondent never sent a letter confirming the termination and never moved to be relieved as their counsel. Clearly, he failed to protect the clients' interests, when he unilaterally terminated the representation.

In Santos, respondent introduced a letter purporting to transmit Carlos' file to his new attorney, Giannetta. Giannetta was adamant that he never received it. He testified that the first time he recalled seeing respondent's transmittal letter was when the presenter sent him a copy of it. That Giannetta never received the file, that respondent had the original documents in his possession, and that he never filed a substitution of attorney form in the matter make it more likely than not that he never turned over the file to Giannetta. Moreover, respondent's testimony throughout the proceedings lacked a ring of truthfulness. For example, he denied that his clients had repeatedly tried to contact him, claimed that he deleted a letter from his computer in an active file, and retained original documents for a file he purportedly sent to new counsel. The totality of these factors makes his testimony unworthy of belief. We, therefore, find that he did not turn over the Santos file, a violation of RPC 1.16(d).

As to the Anderson matter, the DEC determined that, other than the initial "conference" with the Andersons, it was "not aware of any services provided by the Respondent." Because it took respondent almost two years, from the date of the Andersons' request to return the unearned retainer (more than one year after Michelle filed the grievance and two months after

the ethics complaint was filed), we find respondent guilty of having violated RPC 1.16(d) in this matter as well, for his failure to refund the portion of the unearned retainer for more than a year, after the Andersons filed a grievance against him.

Finally, we dismiss the charged violation of RPC 1.5(a) in the Anderson matter, because there was no proof presented that, had respondent performed the services for which he had been retained, the amount of his retainer was unreasonable.

The DEC underscored respondent's demeanor during the DEC hearing, namely, that he was somewhat adversarial, occasionally defensive, and easily offended. Moreover, the DEC did not find that respondent was sincerely contrite.

We noted that respondent testified that he would not have ignored Michelle Anderson's calls because she was a likable person and not a difficult client. We also noted that who respondent considered to be "difficult clients" would not receive the same courtesy. He ignored the Kieffenheims because they were "pestering" him and he found that their letters were offensive. He ignored Carlos because of a language barrier. He, therefore, had no contact with Carlos after their initial meeting. We find that respondent's cavalier and dismissive attitude towards these clients was particularly troubling.

As to respondent's professed mitigation, there was no documentary proof of his medical problems, much less a nexus between them and his conduct in these three matters. Although his character witnesses praised him as a zealous proponent for his clients, he did not zealously represent these three clients. On the other hand, respondent's lack of a disciplinary record is a mitigating factor.

The only issue left for determination is the proper quantum of discipline for respondent's pattern of ethics violations: RPC 1.1(b), RPC 1.3, RPC 1.4(b), and RPC 1.16(d).

Attorneys who have displayed conduct akin to respondent's, which included a pattern of neglect, have been reprimanded. 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 Gellene, 203 N.J. 443 (2010) (attorney guilty of gross neglect, pattern of neglect, and lack of diligence; the attorney failed to timely file three appellate briefs, failed to communicate with his client in two of the matters and failed to appear on the return

date of an order to show cause without notifying the court that he would not appear, which was considered conduct prejudicial to the administration of justice; aggravating factors included his ethics history: two private reprimands and an admonition; mitigating factors considered were his financial problems, depression, and serious personal problems); In re Weiss, 173 N.J. 323 (2002) (lack of diligence, gross neglect, and pattern of neglect); 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); and In re Bennett, 164 N.J. 340 (2000) (lack of diligence, failure to communicate in a number of cases handled on behalf of an insurance company, gross neglect, and pattern of neglect).

Here, we see no reason to deviate from the usual form of discipline (reprimand) for respondent's pattern of neglect, lack of diligence, and failure to communicate with clients, even if we consider the additional violation of RPC 1.16(d). We find that, balancing the aggravating factor of lack of contrition with respondent's thirty-five years at the bar without prior incidents, a reprimand is adequate discipline for his ethics offenses.

Member Gallipoli voted for a censure. Member Doremus did not participate.

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

Disciplinary Review Board
Bonnie Frost, Chair

By: Isabel Frank
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Victor F. Azar
Docket No. DRB 13-041

Argued: June 20, 2013

Decided: August 7, 2013

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Censure	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Doremus						X
Gallipoli				X		
Yamner			X			
Zmirich			X			
Total:			5	1		1

Isabel Frank
Julianne K. DeCore
by Chief Counsel