SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-095
District Docket Nos. VIII-2011-0041E, VIII-2011-0042E, VIII-2011-0048E and VIII-2012-0015E

IN THE MATTER OF	:
MITCHEL TARTER	:
AN ATTORNEY AT LAW	:

Decision

Argued: September 19, 2013

Decided: October 31, 2013

Ellen Schwartz appeared on behalf of the District VIII Ethics Committee.

Respondent did not appear for oral argument, despite proper notice.[1]

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

This matter was before us on a recommendation for discipline (a one-year suspension) filed by the District VIII

[1] Respondent was notified of the hearing by publication in the New Jersey Law Journal and in The Jersey Journal.

Ethics Committee (DEC). The four-count amended complaint charged respondent with violating RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.16(a)(2) (a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client), and RPC 1.16(d) (failure to protect a client's interests on termination of the representation) in all four counts.[2] In addition, the amended complaint charged respondent with violating RPC 1.1(a) (gross neglect) in count two only.

We determine to impose a three-month suspension.

Respondent filed an answer and an amended answer, admitting the allegations against him, with the exception of one paragraph in count four, as discussed below in the recitation of the facts in that count. In his answer and amended answer, respondent requested a hearing on mitigation. Respondent, however, did not appear for the DEC hearing, without providing prior notice of his non-appearance to either the presenter or the panel. His

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[2] The original complaint was amended to add a fourth count.

appearance was required pursuant to R. 1:20-6(c)(2)(D). Respondent's failure to be present inconvenienced the DEC and prevented the panel and, therefore, us, from getting a complete picture of these matters. Respondent's failure to appear for the hearing appears to be part and parcel of his medical condition, as discussed below, rather than disrespect. We have not considered it as an aggravating factor.

The presenter asked the panel to consider the mitigating factors that respondent set forth in his amended answer.

Respondent was admitted to the New Jersey bar in 2003. He was temporarily suspended, effective May 1, 2013, for failure to comply with a fee arbitration determination.

The following facts gave rise to this matter.

Count One (The Ventrice Matter VIII-2011-0041E)

In June 2011, Donald Ventrice met with respondent regarding representation in a civil litigation matter. In an email dated June 14, 2011, respondent stated that he looked forward to beginning work immediately on receipt of the "signed agreement and first installment," presumably referring to the retainer agreement and partial payment of his legal fees. According to the fee agreement, Ventrice was to pay respondent $6,500 in

three installments at specific times. On June 16, 2011, Ventrice gave respondent supporting documentation for his lawsuit and a check for $1,625 to begin preparing the complaint.

In a June 23, 2011 letter to Ventrice, respondent confirmed that he would complete a draft of the complaint by the following week. Notwithstanding this representation, respondent did not draft the complaint. Following a series of emails between Ventrice and respondent about the status of the complaint, respondent asserted that the complaint would be finalized on July 12, 2011. On July 19, 2011, Ventrice inquired about the complaint, having not received it. Respondent advised him that the complaint would be finalized by the following day. On July 24, 2011, respondent indicated that the complaint would be sent to Ventrice the following day. The next day, Ventrice informed respondent that he had not received it.

On July 26, 2011, respondent told Ventrice that he would send the complaint within twenty-four hours. On the following day, however, respondent sent an email to Ventrice stating "based on my research . . . I do not think there exists a viable claim against the Defendants. . . . I will be refunding your initial payment towards the fee." Based on the language of the

email, respondent appeared to be terminating his representation of Ventrice.

A series of emails between respondent and Ventrice followed, regarding a refund of the fee and the return of Ventrice's documents. Specifically, on August 8, 2011, Ventrice complained that, although more than a month had lapsed since respondent promised to return his initial payment and his documents, they had not been returned. Respondent replied that he would "resend" everything, which Ventrice should receive by the end of the following week. Respondent asked Ventrice to stop calling and emailing him. On August 14, 2011, Ventrice told respondent that he would continue to contact him until he received his funds. On August 17, 2011, Ventrice again inquired about the return of his money and documents.

The following day, Ventrice sent to respondent another email requesting his money. On the same date, respondent represented, in an email to Ventrice, that he had returned both the money and the documents and threatened to file a criminal complaint against Ventrice if he did not stop emailing and calling him. On August 19, 2011, Ventrice replied that he still had not received his refund or his documents. In a September 16, 2011 email, respondent stated

> In light of everything, your harassing emails, your bizarre behavior and your absurd threats - I decided to apply your funds towards services rendered as per the Fee Agreement. I was going to waive this Fee, because at the end of the date [sic] I decided not to file the case, however - in light of everything, I feel I cannot provide you with such a courtesy.
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> [ACCt1¶8g.][3]

In respondent's December 2011 reply to the grievance in this matter, he conceded that he had failed to handle Ventrice's matter and explained that it was caused, in large part, by "his struggle with active alcoholism."

The amended complaint charged respondent with violating RPC 1.3, RPC 1.16(a)(2), and RPC 1.16(d).

Count Two (The Bacon Matter VIII-2011-0042E)

In early 2011, the law firm of Thomas B. Bacon, PA, (Bacon), retained respondent as a contract attorney to handle five ADA cases in United States District Court for the District of New Jersey. He was advanced $5,600 in February 2011. Bacon subsequently retained respondent to handle thirteen cases in

[3] AC refers to the amended complaint.

Florida on a pro hac vice basis.[4] As part of the fee agreement in those matters, respondent was advanced an additional $13,000, for a total of $18,600. Respondent was expected to begin work on the cases immediately.

After several months passed, Bacon expressed concern (presumably to respondent) about the status of respondent's cases. A series of emails exchanged suggested that respondent had not filed the Florida lawsuits, sent "erroneous documents" to a client, and never sent "opening documents" to other clients.[5] Eventually, Bacon removed respondent as counsel on the matters, which were reassigned.

Of the five New Jersey cases, three were settled and paid. As to the remaining cases, respondent failed to timely file "pertinent documents." In one of the New Jersey cases, the defendant filed a motion to dismiss the matter for lack of standing, and, despite several "requests and demands" from

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[4] We have jurisdiction over respondent's conduct in the Florida matters pursuant to RPC 8.5(a), which states, in pertinent part: "A lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction regardless of where the lawyer's conduct occurs."

[5] The "erroneous documents" are not discussed further in the record.

Bacon, respondent missed the deadline to oppose the motion. Respondent told Bacon that he had obtained an extension of time, however, Bacon later discovered that the extension had expired two weeks earlier. The ethics complaint stated that "[had] the defendant's motion to dismiss been granted, the plaintiff, whom they represented, would have been found to lack standing and the right of the plaintiff to bring cases in New Jersey or other Northern states would have been lost."

Bacon removed respondent from the New Jersey cases due to his negligence. Respondent informed Bacon that "he had become ill" and agreed to the removal. He also told Bacon that he did not have malpractice insurance and that Bacon's firm would be responsible for his misconduct.

Bacon demanded the return of the money advanced to respondent. As of the date of the complaint, May 28, 2012, respondent had not returned the funds.[6]

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[6] In September 2011, Bacon sent to respondent an accounting, indicating that respondent owed $15,349. In reply, respondent pointed out a discrepancy and requested a $65 adjustment, which Bacon allowed. As noted, respondent has not made the payment.

In an email to Bacon in November 2011, respondent stated, "As I had mentioned, I'm an alcoholic and my life became unmanageable this Summer. I took your money - and did not do anywhere near all the work you hired me for. For many of the cases, I did no work at all. I was dishonest and extremely selfish. . . ." According to the complaint, respondent conceded that he had failed to handle the matters that Bacon had entrusted to him and explained in "his response" (presumably, respondent's December 2011 reply to the grievance) that this was caused in large part by his struggle with "active alcoholism."

The amended complaint charged respondent with violating RPC 1.1(a), RPC 1.3, RPC 1.16(a)(2), and RPC 1.16(d).

Count Three (The Driscoll Matter VIII-2011-0048E)

In September 2011, Paola Driscoll retained respondent to represent her in a divorce proceeding. Driscoll paid respondent $1,200. Respondent did not submit any documents to the court in Driscoll's behalf. On September 27, 2011, respondent sent Driscoll an email, stating in pertinent part, "I have bad news. I'm dissolving my firm. I am having serious personal issues,

and I have to move out of state to deal with them.[7] I will not be working as a lawyer for at least a year. I will refund you your 1,200." Respondent and Driscoll exchanged several emails on that date, in which respondent continued to indicate, "I will send you the money as soon as I have it." As of the date of the complaint, respondent had not returned Driscoll's funds.

In respondent's December 2011 letter to the investigator, he conceded that, despite his efforts, he "was unable to complete the work due to [his] alcoholism reaching its peak" during the period August 2011 to September 2011. Respondent admitted that he had failed to handle Driscoll's matter in large part due to his "struggle with active alcoholism."

The amended complaint charged respondent with violating RPC 1.3, RPC 1.16(a)(2), and RPC 1.16(d).

Count Four (The Posada Matter VIII-2012-0015E)

In 2011, Eduardo Posada retained respondent to represent him in a collection matter and in a divorce proceeding, paying

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[7] In October 2011, respondent moved to a sober-living community in California.

him $600 for each matter.[8] The amended complaint alleged that respondent provided no legal representation to Posada in either matter and did not return Posada's money. In respondent's amended answer, he admitted that, although he had filed a special civil part complaint for Posada in the collection matter, he was unable to proceed with the case due to his alcoholism.

On September 27, 2011, respondent sent to Posada an email stating, in pertinent part:

> I have bad news. I'm dissolving my firm. I am having serious personal issues, and I have to move out of state to deal with them. I will not be working as a lawyer for at least a year. I will refund you your 1,150 for the two cases.[9] I just need your address. Sorry for the inconvenience.
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> [ACCt4¶5.]

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[8] The date of the retention is unclear. The complaint alleged that respondent was retained "in or around 2011." During the DEC hearing, the presenter asserted that Posada retained respondent "in or around September of 2011." In respondent's amended answer, he implied that he had been retained before April 2011.

[9] The record does not explain the $50 difference between the $1,200 Posada had paid and the $1,150 that respondent offered to return.

On the same day, Posada provided respondent with his address, by email. On September 28, 2011, respondent replied by email stating, in pertinent part:

> As both of you may or may not know, I have had a drinking problem for the past several years. . .[10] Unfortunately, I have had a hard time over the past 6 months and things have gotten to the point where I need to go get help for this disease. This was the reason for my emails to you yesterday. I realize I owe you money for your cases - and I promise, as soon as I can - I will pay you back. At this time, I have no money, and will be living off of support from other people. But once I get back on my feet, I will pay you both back.
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> [ACCt4¶7.]

The amended complaint charged respondent with violating RPC 1.3, RPC 1.16(a)(2), and RPC 1.16(d).

The amended complaint charged respondent with violating RPC 1.1(b) in each matter when they were considered in concert.

In respondent's answer and amended answer, he set forth a number of "Additional Facts/Mitigating Factors for Consideration." He noted the lack of grievances filed against him for the first eight years of his practice and the favorable

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[10] The record does not identify the other recipient of the email.

results that he had obtained for his clients. He also asserted that, in April 2011, he "became ill with the medical condition referenced in the Complaint" (alcoholism), from which he suffered until October 2, 2011, and pointed out that the allegations against him arose during that period.[11] He stated that he has been "symptom free" since that date, and he has recovered from his condition. He also pointed to his cooperation with disciplinary authorities, adding that he "has returned to New Jersey to make full reparation/amends, both ethically and financially, with respect to the allegations in the Complaint."

The presenter argued at the DEC hearing that the harm to the grievants should not be mitigated by the fact that respondent is now "recovered." In aggravation, the presenter noted that respondent's misconduct was part of a pattern encompassing four grievants. In addition, the presenter asserted that respondent had a responsibility to withdraw if he

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[11] Respondent stated in his amended answer that, because the amended complaint charged negligent, rather than intentional conduct, he did not raise his medical condition as an affirmative defense. He merely raised it as one of several mitigating factors.

knew his medical condition impaired his ability to practice law, noting that he had withdrawn in some of the matters, but not in Bacon, where his conduct, in the presenter's view, constituted gross negligence. The presenter also pointed out that respondent made no efforts to repay the grievants and make them whole.

In light of respondent's stipulation to the allegations against him, the DEC concluded that he violated the RPCs as set forth in the amended complaint, specifically, RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.16(a)(2) and RPC 1.16(d).

The DEC recounted the mitigating factors that respondent set forth, but pointed out that no evidence was presented at the hearing of any efforts by respondent to repay the money owed. The DEC also noted "the absence of any verification of the alleged 'mitigation'."

The DEC recommended that respondent be suspended from practice for one year. The DEC further recommended that, prior to reinstatement, respondent should provide proof that he remained "in recovery" during the period of his suspension. On reinstatement, he should practice under the supervision of a proctor for at least six months.

Following a de novo review of the record, we are satisfied that the record provides clear and convincing evidence that respondent is guilty of most of the charged violations.

Respondent conceded that he violated RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.16(a)(2), and RPC 1.16(d). The facts set forth in the amended complaint, however, do not provide a sufficient basis for us to find respondent guilty of violating each of the charged RPCs. Specifically, as to the alleged violation of RPC 1.3, in the Ventrice matter, respondent represented Ventrice for fewer than two months. Without some indication that emergent action was necessary in the underlying matter, we cannot find clear and convincing evidence that respondent lacked diligence in such a brief time. The same is true in the Driscoll matter, where respondent represented his client for less than one month. In the Posada matter, the record reveals only that respondent was retained in 2011 and that he terminated the representation in September of that year. Without more specific information about when respondent was retained, and whether emergent action was required, the record does not provide clear and convincing evidence that he violated RPC 1.3. Moreover, respondent filed a complaint in Posada's behalf in the collection matter. Whether further action was

required by respondent prior to his withdrawal from the case cannot be ascertained from the record.

In contrast, in the Bacon matter, respondent was retained in early 2011 for the New Jersey cases, and sometime thereafter for the Florida cases. "Several months passed" before Bacon removed respondent from the cases, which he had failed to move forward. We, thus, find that respondent violated RPC 1.3 in the Bacon matter.

As to RPC 1.1(a), although the record supports a finding that respondent was grossly negligent in Bacon, we must clarify the basis for the charge. The amended complaint charged respondent with violating RPC 1.1(a) based on his "failure to timely meet deadlines and his failure to file opposition papers on a particular matter assigned to him by Thomas Bacon." During the DEC hearing, the presenter addressed this charge, noting the potential harm to respondent's client, who could have lost standing as a plaintiff in the future. The following exchange took place between the presenter and a panel member during the hearing:

> [Panel Member]: . . . you are alleging gross negligence on the Bacon files because of the pattern of conduct over the course of several files, the volume of work that was

> not handled or was improperly handled? Is that the basis of gross negligence?
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> [Presenter]: That is a portion of the basis, but the rest of the basis for the gross negligence is the outcome to that particular party that Mr. Tarter was representing. With regard to that case, unlike the other cases, Mr. Tarter's failure to file an opposition paper could have potentially left that plaintiff with an inability to be able to file and to have standing in future cases.
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> So, the harm to that plaintiff -- Mr. Tarter's inability to provide diligent representation to insure that, you know, no matter what happened in that case, his client would at least have the benefit of being able to file in the future, in future cases, he did not do. So, that is what I was considering.
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> [T22-2 to T22-22.][12]

The presenter argued that the potential harm to the plaintiff in the underlying matter is a basis for the charged violation of RPC 1.1(a). The harm to the client, however, goes to the quantum of discipline imposed for a violation. It is not a basis for the charge. Indeed, here, there appears to be only potential harm, rather than actual harm, because Bacon

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[12] T refers to the transcript of the September 11, 2011 DEC hearing.

reassigned the cases to another attorney. The basis for the gross neglect charge cannot be the plaintiff's potential loss of standing in future lawsuits, but rather, as stated in the amended complaint, respondent's failure to file an opposition to the defendant's motion to dismiss. The record provides clear and convincing evidence that respondent violated RPC 1.1(a) on that basis.[13]

As to the quantum of discipline, respondent is guilty of misconduct in eighteen matters - one each for clients Ventrice, Posada, and Driscoll, and fifteen for Bacon. Specifically, he is guilty of lack of diligence and a pattern of neglect in fifteen cases (Bacon), gross neglect in one (Bacon), and failure to withdraw from or to decline representation and failure to properly terminate representation in all eighteen matters.

Attorneys who mishandle multiple client matters generally receive suspensions of either six months or one year. See, e.g., In re LaVergne, 168 N.J. 410 (2001) (six-month suspension for attorney who mishandled eight client matters; the attorney

[13] Likely, respondent could have been charged with gross neglect in connection with all of the Florida matters where it appears he took no action for the client. The amended complaint, however, sets out the charge in connection with only the one matter discussed.

exhibited lack of diligence in six of them, failed to communicate with clients in five, exhibited gross neglect in four and failed to turn over the file on termination of the representation in three; in addition, in one of the matters the attorney failed to notify medical providers that the cases had been settled and failed to pay their bills; in one other matter, the attorney misrepresented the status of the case to the client; the attorney was also guilty of a pattern of neglect and recordkeeping violations); In re Lester, 148 N.J. 86 (1997) (six-month suspension for attorney who displayed lack of diligence, gross neglect, pattern of neglect, and failure to communicate 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 two prior reprimands, in one of them, the Court noted the attorney's recalcitrant and cavalier attitude toward the district ethics committee); In re Pollan, 143 N.J. 305 (1996) (attorney suspended for six months for misconduct in seven matters, including gross neglect, pattern of neglect, failure to communicate with clients, failure

to deliver a client's file, misrepresentation, recordkeeping improprieties, and failure to cooperate with ethics authorities; although clinical depression alleged, it was not considered a mitigating factor); In re Chamish, 128 N.J. 110 (1992) (six-month suspension imposed for misconduct in six matters, including failure to communicate with clients and lack of diligence; in one of the matters, the attorney represented both driver and passenger in a motor vehicle case and then filed suit on behalf of the driver through the unauthorized use of another attorney's name and forgery of the attorney's signature on the complaint); In re Martin, 118 N.J. 239 (1990) (attorney suspended for six months for engaging in a pattern of neglect in seven matters, for a period of five years, by routinely failing to conduct discovery and to apprise clients of the status of their cases; in two matters, the attorney entered into settlement agreements without the clients' consent and, in one matter, advanced funds to a client; more seriously, during a meeting with a client, the attorney put a gun and a box of bullets on his desk in a menacing way, thereby frightening the client); In re Brown, 167 N.J. 611 (2001) (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 disciplinary matter proceeded as a default; prior reprimand); In re Marum, 157 N.J. 625 (1999) (attorney suspended for one year 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); In re Lawnick, 162 N.J. 113 (1999) (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 to

cooperate with the investigation of the ethics grievances; the matter proceeded on a default basis; on the same date that the attorney was suspended for six months, the Court suspended him for three months for lack of diligence, failure to communicate with the client, failure to surrender documents and failure to cooperate with disciplinary authorities; that disciplinary matter also proceeded as a default); 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; in a subsequent matter, In re Herron, 144 N.J. 158 (1996), the Court suspended the attorney for one year, retroactive to the starting date of the first one-year suspension, for misconduct in two matters, including gross neglect, lack of diligence, failure to communicate with clients and failure to cooperate with disciplinary authorities; the attorney's conduct in that subsequent matter occurred after he was on notice that his conduct in the prior seven matters was under scrutiny by ethics authorities). But see In re Bowman, 179 N.J. 367 (2004) (three-

month suspension imposed for an attorney who, in six separate matters, engaged in gross neglect, misrepresentation to clients, settling one matter without a client's authorization and forging a client's signature; the Court took into consideration that, during the applicable time, the attorney was an alcoholic and was materially impaired in his ability to represent clients).

In all of these cases, more serious and/or more numerous violations are present than in the case at bar. In many, the attorneys failed to cooperate with disciplinary authorities, made misrepresentations or had been previously disciplined. Here, respondent's misconduct is similar to that of the attorney in In re Pollan, supra, 143 N.J. 305, in which a six-month suspension was imposed where the attorney was guilty of misconduct in seven matters, including gross neglect, pattern of neglect, failure to communicate with clients, failure to deliver a client's file, misrepresentation, recordkeeping improprieties, and failure to cooperate with ethics authorities.

Although respondent's violations are less serious than Pollan's, respondent is guilty of misconduct in more client matters than Pollan. The number of cases involved - fifteen - "balances" against the numerous additional, more serious violations in Pollan.

We consider mitigating factors here that were not present in Pollan. Pollan alleged that he suffered from clinical depression. However, as noted previously, his condition was not considered a mitigating factor. Respondent contends that he suffers from alcoholism. Although respondent has presented no evidence of his alcoholism, by finding that he violated RPC 1.16(a), we are, logically, accepting his representations about his condition. Although respondent's medical/psychological difficulties are not an excuse for his misconduct, such difficulties, if proven to be causally connected to his actions, have been considered in the past as mitigation. In In re Templeton, 99 N.J. 365 (1985), the Court held

> In all disciplinary cases, we have felt constrained as a matter of fairness to the public, to the charged attorney, and to the justice system, to search diligently for some credible reason other than professional and personal immorality that could serve to explain, and perhaps extenuate, egregious misconduct. We have always permitted a charged attorney to show, if at all possible, that the root of transgressions is not intractable dishonesty, venality, immorality, or incompetence. We generally acknowledge the possibility that the determinative cause of wrongdoing might be some mental, emotional, or psychological state or medical condition that is not obvious and, if present, could be corrected through treatment.
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> [Id. at 373-374.]

Respondent's misconduct occurred within a roughly nine-month period; most of it took place in a three-month period. It is probable that, when respondent began his representation of these clients, his practice was already suffering from the effects of his alcoholism.[14] For the prior eight years, his career had been unblemished. Based on mitigating factors, discipline less than a six-month suspension is appropriate.

In re Bowman, supra, 179 N.J. 367, is instructive. A three-month suspension was imposed where far fewer cases than in the present case were at issue, but the ethics violations committed were more serious. Bowman, too, suffered from alcoholism, which impaired his ability to represent his clients. We, thus, determine that the three-month suspension imposed in Bowman is also appropriate here.

As to conditions, respondent promised to repay the fees/retainers that he had received from Ventrice, Bacon,

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[14] There is no clear and convincing evidence in the record that this is a case where respondent accepted retainers from clients knowing that he had no intention of completing the work for them. See In re Spagnoli, 115 N.J. 504 (1989) (attorney disbarred where, in fourteen cases, he accepted retainers from clients to perform legal services and failed to do so, made misrepresentations to clients and refused to reply to most client's requests for information).

Driscoll, and Posada.[15] He failed to do so. In the past, we have directed attorneys to repay unearned retainers. See, e.g., In re Kivler, 189 N.J. 192 (2007) (where we found that the attorney failed to perform any legal services on behalf of a matrimonial client from whom he had collected a $2,500 retainer and determined that the attorney should return the entire retainer to the client); In re Breingan, 158 N.J. 25 (1999) (client paid Breingan a $200 retainer to defend him in municipal court against traffic charges; Breingan misrepresented to the client that he had contacted the municipal court on the client's behalf; we determined that Breingan should be suspended for three months and that his reinstatement should be conditioned on his return of the $200 to the client); and In re Robinson, 157 N.J. 631 (1999) (attorney had been paid an $800 fee for representation in a matter in which the client had formerly acted pro se; attorney did not file any papers with the court, despite her representation to the client that she had done so; Robinson was required to refund the $800 to the client, prior to

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[15] Although the record does not have a direct statement from respondent stating that he will repay Bacon, in light of his email to Bacon requesting a $65 credit, we can assume respondent's intention was to repay him.

applying for restoration of her license to practice law). We, therefore, direct that respondent refund the unearned fees as a condition to his reinstatement.

In addition, we determine that, prior to reinstatement, respondent must submit to the Office of Attorney Ethics (OAE) proof of his fitness to practice law, as attested by a mental health professional approved by the OAE.

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 C. Frost, Chair

By: Ellen A. Brodsky
for Isabel Frank
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Mitchel Tarter
Docket No. DRB 13-095

Argued: September 19, 2013

Decided: October 31, 2013

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Gallipoli		X				
Yamner		X				
Zmirich		X				
Total:		7				

per Isabel Frank
Acting Chief Counsel