SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-134
District Docket Nos. IIA-07-0024E and IIA-09-0004E
Docket No. DRB 10-047
District Docket No. XIV-08-0404E

IN THE MATTERS OF	:
JEFFREY SQUITIERI	:
AN ATTORNEY AT LAW	:

Decision

Argued: July 22, 2010

Decided: September 14, 2010

David Catuogno appeared on behalf of the District IIA Ethics Committee (DRB 10-134).
Lee A. Gronikowski appeared on behalf of the Office of Attorney Ethics (DRB 10-047).

Gregory J. Irwin appeared on behalf of respondent.

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

These two disciplinary matters have been consolidated for review. We find that, individually, respondent's conduct in DRB 10-134 would have warranted a reprimand and that his conduct in DRB 10-047 would have called for an admonition. We determine, however, that both matters should be consolidated for discipline

as well. In our view, a censure is the appropriate degree of sanction for the totality of respondent's actions.

Respondent was admitted to the New Jersey bar in 1994 and the New York bar in 1997. He practices law in both jurisdictions. He has no history of discipline.

I. DRB 10-134 (District Docket Nos. IIA-07-0024E and IIA-09-0004E

This matter was before us on a recommendation for a reprimand filed by the District IIA Ethics Committee ("DEC"). Two separate complaints charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4, presumably (b) (failure to keep a client reasonably informed about the status of the matter), and R. 1:20-3, presumably (g)(3) (duty to cooperate in a disciplinary investigation), more properly, RPC 8.1(b) (failure to comply with a reasonable request for information from a disciplinary authority).

The evidence in this matter consisted of stipulated facts and witness testimony. For the most part, respondent did not deny that he neglected his clients' personal injury and malpractice matters, but argued that his lack of attention to the matters was the result of an extremely contentious divorce and his alcoholism.

1. **The Kulesza Matters**

Respondent represented grievant Theodora Kulesza ("Kulesza") and her two daughters, Yasmine and Theodora C. Kulesza ("Theodora C."), in three separate matters. At the relevant time, Kulesza's daughters were minors.

A. The Yasmine Kulesza Matter

On July 23, 2002, Yasmine sustained injuries, when she slipped and fell at the Garden State Plaza ("Garden State"). Sometime thereafter, Kulesza retained respondent to represent her daughter and signed a contingency fee retainer agreement.

On July 19, 2004, respondent filed a complaint on Yasmine's behalf against the Garden State Plaza and various other defendants and provided Kulesza with a copy of it. The complaint sought damages for the defendants' negligence. On March 23, 2005, eight months after the complaint had been filed and one month after the complaint had been dismissed for failure to prosecute, respondent served it on defendant Garden State. Respondent claimed that he had trouble effectuating service because the insurance carrier was in California.

Respondent's file in this matter contained little documentation: only the retainer agreement, the complaint, a letter to an orthopedic doctor, an invoice for an MRI, and a

handwritten note from Kulesza. According to the stipulation, respondent did not file or prepare any pleadings or prepare or serve any discovery demands. There was no documentation in the file to establish that respondent had prosecuted Yasmine's case. It lacked responsive pleadings, correspondence with opposing counsel, discovery to or from either party, and correspondence to Kulesza about the status of Yasmine's case.

In early November 2005, respondent filed an unsuccessful motion to reinstate the complaint. Respondent never informed Kulesza that the complaint had been dismissed and that the motion to reinstate it had been denied. Also, he did not provide Kulesza with a copy of the motion.

B. The Theodora Kulesza Matter

On November 6, 2003, Kulesza was injured when she slipped and fell at a Pathmark store in Bergenfield, New Jersey. Two weeks later, she retained respondent on a contingency basis. She understood that he would file a lawsuit on her behalf, but did not know whether he ever did so because he failed to provide her with a copy of a complaint.

Two years later, on November 2, 2005, respondent filed a complaint on Kulesza's behalf, naming Pathmark Supermarkets, Inc. and others as defendants. Respondent claimed that he waited

so long because, Kulesza, who is a nurse, was a "bad client," in that she would not go for treatment. He tried to settle the case, but kept putting it off because she "didn't treat enough." He did not want to file a lawsuit for a "slip and fall . . . where there's no claim to make, I don't want to waste my time . . . prosecuting a claim, where the client didn't treat."

Respondent did not serve the complaint on any of the defendants or file or prepare pleadings or discovery demands. On an unspecified date, the court dismissed the complaint for failure to prosecute.

Kulesza recalled talking to respondent and, on an unspecified date, receiving a letter from him, informing her about upcoming depositions and asking her to call him to discuss the case. She had a few telephone conversations with respondent about the need for depositions and, much later, about negotiating a settlement. Respondent informed Kulesza that her case would probably be concluded "sometime in November." He advised her that the settlement would be less than $10,000, which she asserted was not enough to cover the costs of her required surgery.

Kulesza claimed that, although she tried to call respondent on numerous occasions (more than twenty times), he returned only a few of her calls. In all, she recalled having only three

telephone conversations with him. Respondent never notified her that her case had been dismissed.

Respondent's file did not contain any proof of service of the complaint, responsive pleadings, correspondence with the adversary, evidence that he had engaged in discovery, correspondence with Kulesza about the status of her matter, notes reflecting discussions with opposing counsel about scheduling depositions, settlement proposals, or any other communications. It contained only the complaint, the retainer agreement, an unserved summons, a notice of track assignment, and a November 2003 letter of representation to Pathmark.

C. The Yasmine and Theodora C. Kulesza Matters

Sometime in 2003, after respondent had been retained for the above two matters, Yasmine and Theodora C. suffered injuries in an automobile accident. Subsequently, Kulesza contacted respondent to represent her daughters. She recalled signing a retainer agreement for their case. She, therefore, believed that respondent had agreed to represent her daughters.

Respondent, however, denied that Kulesza had retained him for this accident, maintaining that the claim was for property damage, which, he made clear to Kulesza, he did not handle. In addition, he stated, the Kuleszas had only liability insurance

on the car, nothing for collision; there were no injuries involved.[1] That was the reason, respondent claimed, why he did not have a file or retainer agreement for the matter.

Kulesza testified, however, that her daughter had relayed information about the accident to respondent and that Kulesza herself had mailed information to him about it. Kulesza met with respondent about the case. She recalled that, at some point, presumably in 2007, respondent had told her that he could not find the file or the information that she had sent, which led her to believe that there was a problem with the case.

Respondent failed to keep Kulesza apprised of the status of the matter. Approximately four years after the accident, in the summer of 2007, Kulesza first learned that respondent had not prepared or filed a complaint on her daughters' behalf.

According to Kulesza, on June 27, 2007, shortly before she filed a grievance against respondent, he "changed the story, and said that he had never agreed to take the case." Kulesza did not contact another attorney to take over the representation because, she claimed, she "gave up on the system."

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[1] Respondent's testimony contradicts the stipulation, which specially states that Yasmine and Theodora C. suffered injuries from the accident.

Kulesza recalled that, over the course of respondent's representation in all of the matters, she received only a few letters from him and that most of their communications were limited to their few telephone conversations.

After Kulesza filed the grievance, respondent admitted to her that he had "dropped the ball" on her cases, conceded that he had committed malpractice, and told her that he intended to personally compensate her because he no longer carried malpractice insurance. There is no evidence in the record that he did so.

D. Failure to Cooperate with the DEC

According to the stipulation, after Kulesza filed the grievance, respondent failed to communicate with the DEC investigator, to timely reply to the investigator's requests for his files, and to produce complete files.

2. The Goldschlager Matter

On August 6, 2003, Phyllis Goldschlager sustained injuries while receiving chiropractic treatment for lower back and neck problems. The next day, still in pain, she went to an urgent care facility, where they failed to properly diagnose her problem. Subsequently, an MRI was performed on the wrong part of

her body, necessitating a second MRI. When that test failed to reveal a problem, the radiologist reviewing the MRI recommended a bone scan. However, that recommendation was never conveyed to Goldschlager.

Within a month or two of her injury, Goldschlager contacted respondent, who had been referred to her by her employer, respondent's brother-in-law. Goldschlager consulted with respondent via telephone. He informed her that, without proof of injury, she did not have a viable case for malpractice.

Goldschlager subsequently obtained a bone scan, which revealed that she had sustained a fractured left rib. When she relayed that information to respondent, he immediately faxed a retainer agreement to her. Goldschlager returned the signed retainer agreement. She understood that respondent would file a lawsuit on her behalf against the chiropractic center.

On August 5, 2005, two years after her injury, respondent filed a complaint against the chiropractic center and two individuals. The complaint was ultimately dismissed for lack of prosecution.

Respondent could not recall why he had waited so long to file the complaint. Goldschlager did not receive a copy of the complaint, or of any other pleadings, or written correspondence

in connection with her case. She never met with respondent in person and had very few telephone conversations with him.

On the occasions that Goldschlager spoke to respondent, he assured her that her case was proceeding properly. Unfamiliar with the legal process, Goldschlager did not ask respondent questions and assumed that he was looking out for her because he was related to her employer.

Approximately six months before Goldschlager demanded her file from respondent, she learned that he was having marital problems. As a result, there were also problems between respondent and Goldschlager's employer. She, therefore, offered to find another attorney, in order to let respondent "off the hook." Respondent declined, stating that "[o]ne thing has nothing to do with the other." However, he instructed Goldschlager not to call him from her work or to send him faxes from there. As a result, her husband, Paul, began communicating with respondent.

Paul spoke to respondent approximately four times. Because they received no documentation from respondent, the Goldschlagers did not know whether respondent had filed a lawsuit. Respondent never informed them that the case had been dismissed. Because the Goldschlagers were unfamiliar with the litigation process, they trusted respondent, when he gave them

excuses for the delay with the case. His excuses were that he was waiting for discovery, that he was "waiting for the other lawyers," and that he was waiting for a court date.

Eventually, after several months had passed, Paul left a message on respondent's answering machine, threatening to retain another attorney, if they did not hear from him. Respondent called the next day, not letting on that the case had been dismissed and agreeing to send Paul "papers."

Paul explained that they let the matter drag on as long as they did because respondent had told them that the case was worth $75,000 and because they did not believe that he would walk away from his $25,000 share of the recovery. Respondent, in turn, denied quoting them a value for the case. He opined that the case was worth only approximately $15,000 and added that it is bad practice to tell a client the value of their case because they will hold you to that amount. Respondent claimed that he typically advised his clients to wait for non-binding arbitration for a realistic value on the case.

On March 15, 2006, seven months after respondent filed the complaint, he served it on the defendants. As indicated earlier, however, the complaint had been dismissed for lack of prosecution (February 7, 2006). In March 2006, respondent filed a motion to reinstate the complaint, which was granted on May 6,

2006. Respondent never informed Goldschlager of the need to file the motion or provided her with a copy of it. Discovery was extended by sixty days.

On April 4, 2006, defendant's counsel served respondent with a notice to produce documents and also propounded interrogatories. Respondent never told Goldschlager that she was required to answer interrogatories and never forwarded the discovery demands to her. He also did not provide her with correspondence regarding the status of her case. When he spoke to the Goldshlagers, he informed them that "everything was moving along on schedule."

Respondent failed to file an affidavit of merit, never prepared or served the defendants with discovery requests, and failed to provide the defendants with an expert report within the allotted time. On July 28, 2008, the defendants moved to dismiss the complaint for failure to respond to discovery. Respondent did not provide Goldschlager with a copy of the motion nor advised her about it. On August 18, 2006, the court denied the motion, as prematurely filed.

On September 14, 2006, the defendants moved for summary judgment, based on the plaintiff's failure to timely file an affidavit of merit and to submit an expert's report to serve as the basis for a prima facie case for malpractice. Subsequently,

on October 18, 2006, respondent moved for an extension of the discovery period, which the court denied. On November 17, 2006, the court granted the defendants' motion for summary judgment, dismissing the complaint with prejudice.

Respondent explained that he had difficulty finding a chiropractor who would execute an affidavit of merit stating that Goldschlager's chiropractor had been negligent. He admitted that he "dropped the ball, at that time, and . . . didn't stay on top of it."

Respondent did not inform Goldschlager about the dismissal of the complaint until July 2008, one year and eight months later, and then only after the Goldschlagers demanded proof that he had taken any action in the matter and threatened to find another lawyer. Respondent then forwarded the file and a letter that, according to Goldschlager, stated that the case had been dismissed "due to the law office failure." He also suggested that Goldschlager find another attorney.

On July 24, 2008, Goldschlager filed a grievance against respondent.

Respondent's file in this matter lacked substantive correspondence with the defendants' counsel, discovery requests made by the plaintiff, responses to discovery requests served by

the defendants, and correspondence to Goldschlager about the status of her matter.

Respondent admitted that, in 2006, after his wife had taken their children to Florida with the intent to remain in that State, his mind was on getting his children back. He acknowledged that this circumstance did not excuse his behavior, but explained that, at that point in time, his practice was secondary to his children's return.

As in the Kulesza matters, respondent offered his contentious divorce and alcoholism as mitigation. To that end, he offered the testimony of his psychiatrist, Stanislav Vorel; Robert Perkin, a matrimonial attorney; his father, Generoso Squitieri; and his own testimony.

Vorel testified that, sometime after January 2008, respondent was referred to him by Dr. van Gorp, who performed psychological and cognitive tests on respondent. Respondent's drinking problems had started two years earlier. As the result of severe and chronic stressors in his life (marital, custody, and work-related problems), respondent tried to self-medicate by drinking heavily, six to eight drinks of vodka daily. Respondent experienced sleep difficulties, depression, feelings of hopelessness, difficulty concentrating, and low self-esteem. He had suffered with attention deficit disorder and hyperactivity

in his childhood. Vorel diagnosed respondent with alcohol dependency and a major depressive disorder, or a "substance-induced mood disorder," and ADHD.

According to Vorel, the battery of tests that van Gorp had conducted showed impairment in several areas: "cognitive and neuropsychological functioning, including attention span, short-term memory, working memory, as well as processing of visual information."

Respondent's current medications include Paxil, an antidepressant, Straterra augmented with Welbutrin for ADHD, and Seraquel for severe anxiety and sleep problems. In 2008, respondent completed an in-patient detoxification program. Afterwards, he engaged in an outpatient program, where he received intensive outpatient psychotherapy and group therapy. He also participated in Alcoholic Anonymous ("AA") meetings. In addition, initially, Vorel had weekly sessions with respondent to focus on his mood swings and drinking problems. Currently, their sessions are not as frequent.

Vorel's treatment consisted of "cognitive behavioral therapy" to address respondent's triggers for drinking and depression and alternative ways to cope with the triggers. During each visit with Vorel, respondent underwent a urine toxicology screening. Part of his recovery was dependent upon

his finding rewarding, sober behaviors to replace the problem behaviors. The treatment resulted in a quick change in respondent's condition: he maintained sobriety, his moods improved, he was much less depressed, and his cognitive abilities, attention span, and memory improved significantly.

Vorel opined that respondent's prognosis is excellent and that he is functional again. Respondent's short-term memory, working memory, and visual special processing, which were affected by his depression and drinking, substantially improved. Vorel added that, with respondent's continued treatment of his depression and improved cognitive symptoms, respondent is "up to resuming the responsibilities of his profession." According to Vorel, after a year of sobriety, respondent is considered to be a recovered alcoholic. Vorel recommended, however, that he practice under the supervision of a "mentor or proctor."

As of the date of the DEC hearing, respondent had not had an office visit with Vorel for four months. However, they had telephone sessions at least once every two weeks. If respondent experienced cravings or stress, he either contacted Vorel or attended AA meetings. According to Vorel, respondent had a lot at stake and was very motivated to maintain his sobriety.

Robert Perkin testified that he was respondent's matrimonial attorney in June 2006. He stated that, in 2005,

respondent's ex-wife, Beth, took their children to Florida for a vacation. While there, she notified respondent that she was not returning. Respondent then filed suit to compel her to return with their children. Perkin claimed that the judge presiding over the matter lost control of the parties and that the case was very difficult and adversarial.

Over the course of his representation, Perkin saw respondent go from being a confident, competent, personable lawyer, who was able to practice law on a regular basis, to becoming "a basket case . . . . He couldn't focus . . . couldn't remember what had to be done, his . . . personality was erratic. . . . [H]e would have high highs, low lows and quick changes in between." It became very difficult for Perkin to deal with him. Perkin believed that the divorce action pushed respondent "off the precipice." Everything, other than the divorce, became "almost non-existent." Perkin did not think that respondent had the ability to concentrate on anything else. Toward the end of Perkin's involvement in respondent's divorce case, he saw that respondent was not functioning.

According to Perkin, respondent's was one of the worse divorce cases that he had ever experienced. At an unspecified point, respondent discharged Perkin to hire another attorney, who respondent believed would fare better with the judge.

Generoso Squitieri, respondent's father and also an attorney, testified that, as a result of the divorce, he saw his son deteriorate; he became an alcoholic. He went from "an intelligent, young attorney to a bumbling idiot . . . he wasn't paying attention to his practice, he was focusing on only trying to get his children back." He had never before seen his son in that state.

In 2008 or 2009, Generoso took his son to a rehabilitation program, which helped him return to the way he was. According to Generoso, respondent is on his way back — "he is working and is at the top of his game." Respondent does not have an office, but works either out of his home or from Generoso's office.

For his part, respondent claimed that his problems began "brewing" with his wife in either the summer or December of 2004 and "came to a head in December [2005]." In the fall of 2004, he started drinking consistently. In December 2005, Beth confronted him about taking the children to Florida to enroll one of their children in a private school for learning disabilities. She stated that they could all return as a family, the next May. After they left, respondent initially tried to save his marriage. He flew down to Florida every Thursday and returned Sunday night.

At some point, while the rest of his family was in Florida, respondent intercepted an email that Beth had written to her psychiatrist, stating that she had no intention of returning and that she was separating from respondent. Eventually, Beth told respondent that she no longer loved him and wanted a divorce.

Once respondent learned that Beth planned to stay in Florida, he realized that he had to act quickly to file a "relocation" proceeding, seeking to have his children returned to the area. He had to act swiftly because there was a six-month presumption of jurisdiction. Once he instituted the proceedings, the relationship with his wife became "very acrimonious."

With his family in Florida, respondent was alone, when he returned from work, and became very depressed. After working twelve hours a day, when he returned to an empty apartment, he tried to numb himself at night. He testified:

> [O]ne drink becomes two drinks, and then, it becomes a real bad cycle . . . . I was drinking every day and night, at least seven, eight drinks, I mean big drinks . . . I was numb . . . I didn't know at times what was going on. . . . [I]t got to the point where I had to let my office staff go. . . . [I]n retrospect, now, the smartest thing I could have done was to have closed my practice, join up with my dad or another firm, and just had some people on me . . . . I was drinking a lot, and you lose focus . . . . [W]hen I woke up in the morning, I felt terrible, I did not want to drink . . . you want to get help, you know, you have a problem, but then, nighttime comes, and I

> was depressed. I was evicted from my apartment . . . my car was repossessed, my money was frozen.
>
> [1T126-13 to 128-14.][2]

Respondent could not recall much of what went on in his practice, while he was drinking heavily. He admitted that his memory back then "was shot," that he was drinking a lot, and that he was hungover most of the day.

Respondent could not remember the number of cases that he was handling in 2006, but stated that it was "higher" that year. Many of his clients left him and retained other attorneys. He was, nevertheless, able to settle some cases. He speculated that it was probably the litigation cases that suffered.

Eventually, respondent's father and brother had him admitted into a residential rehabilitation treatment program. Afterwards, he continued with intensive out-patient treatment and daily attended a twelve-step program -- ninety meetings in ninety days. He has been seeing Drs. Vorel and von Gorp[3] on a regular basis since January 2008. Because the nighttime was lonely and depressing, he changed his routine to avoid being in

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[2] 1T refers to the transcript of the November 10, 2009 DEC hearing.

[3] The name was spelled phonetically in the transcript as Van Goren.

his apartment. He tried to attend AA meetings at least every other day and started working out in the evenings.

According to respondent, he never intended to mislead his clients. At first, it was hard for him to accept his problem, but the best thing he did was "to acknowledge that [he is] an alcoholic."

According to respondent, when he returned from "rehab," he was amazed by the destruction he had caused himself and his practice. He then immediately sent the letter to Goldschlager and advised her to retain another attorney. He could not recall whether he had earlier misled the Goldschlagers about the status of the matter or whether he had disclosed to his clients that their cases had been dismissed. He recalled informing Kulesza that he had "dropped the ball" on her two cases. He also recalled that, when she mentioned the property damage case, he told her that she had never retained him to handle it.

Presently, respondent concentrates on personal injury cases. He is practicing in New Jersey from his father's office and in New York from his New York apartment. He does not have malpractice insurance. He let his policy lapse in 2006 because he was unable to pay the premium.

Respondent's mother is his current legal secretary. Together they developed a "tickler" system and they confer every

couple of weeks to make sure that deadlines are not missed. Now, all telephone calls and mail go through respondent. Previously, a secretary would file the mail without his seeing it. He admitted that he had not trained that secretary very well and that he should have been "more on top" of things.

The DEC found clear and convincing evidence that respondent failed to keep Kulesza and Goldschlager informed about the status of their matters, thereby violating RPC 1.4(b), and that he failed to initiate, serve, or prosecute the Kuleszas' and Goldschlager's claims, thereby violating RPC 1.1(a) and RPC 1.3.

The DEC found no evidence to support the allegation that respondent failed to cooperate with the DEC investigation. Although the files that respondent produced to the investigator were sparse, there was "no evidence to demonstrate that the files were produced in anything other than their actual state."

In assessing discipline, the DEC considered that respondent sought substance abuse and psychological counseling and that he was undergoing personal issues and family matters at the time that the matters arose.

The DEC determined that a reprimand was adequate discipline, subject to the following conditions: (1) that respondent practice under the supervision of a proctor approved by the Office of Attorney Ethics ("OAE"); (2) that he abstain

from substance abuse, engage in quarterly drug-testing, and attend appropriate support groups for not less than one year; (3) that he undergo mental health treatment or counseling for not less than one year and provide proof of fitness to practice law, as attested by a mental health professional approved by the OAE; (4) that he maintain malpractice insurance for not less than twelve months, as a prerequisite to engaging in the private practice of law; and (5) that he complete legal education courses in law office management and ethics.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent was guilty of unethical conduct was fully supported by clear and convincing evidence.

The DEC properly determined that the record lacked clear and convincing evidence that respondent failed to cooperate with the DEC investigation. Respondent turned his files over to the DEC investigator. Because respondent did little or no work on his clients' matters, their files contained little documentation. Furthermore, the investigator/presenter offered no evidence of respondent's failure to speak to him or to timely produce the requested information. We, therefore, dismiss the charged violation of R. 1:20-3, more properly, RPC 8.1(b).

Both complaints charged respondent with violating RPC 1.1(a), RPC 1.3, and RPC 1.4(b) in each of the four separate

matters. Clearly, in the Kulesza matter, respondent failed to inform her that a complaint had been filed on her behalf and that it had been dismissed. In addition, although she tried to telephone respondent over twenty times, she recalled speaking to him only three times.

Similarly, in Yasmine's case, respondent never informed Kulesza that the complaint had been dismissed, that he had filed a motion to reinstate the complaint, and that the motion had been denied.

Finally, as to the 2003 car accident, Kulesza understood that respondent was representing her daughters in that matter. Although respondent testified that he did not agree to represent them because the case involved only property damage, he had earlier stipulated that the daughters had suffered injuries and that Kulesza had contacted him "to engage him to represent her daughters." Respondent testified that his recollection during that time was hampered by his alcoholism. Therefore, he may not have recalled that he had either agreed to represent Kulesza's daughters or that he had led Kulesza to believe that he would do so. Nevertheless, Kulesza reasonably believed that respondent had agreed to represent her daughters. It was not until the summer of 2007, four years after the accident, that Kulesza

learned that respondent had not prepared or filed a complaint in the matter.

In short, respondent failed to keep Kulesza informed about the status of the three matters, engaged in gross neglect, and lacked diligence in all of the three matters.

As to the Goldschlager matter, respondent never met with her in person nor kept her informed about the status of her case. Because he never provided Goldschlager with any documentation, she did not know whether he had even filed a complaint on her behalf. He never informed her that her complaint had been dismissed, that he had served the defendants after the case had been dismissed, that he had filed a motion to reinstate the complaint, that the motion had been granted, that the defendants had made discovery requests that he had failed to satisfy, and that her case had been ultimately dismissed with prejudice. Thus, respondent also failed to keep Goldschlager informed about the status of her case (RPC 1.4(b)) and also displayed gross neglect and lack of diligence in handling the case, violations of RPC 1.1(a) and RPC 1.3, respectively.

The only issue left for determination is the proper quantum of discipline, which we will address below.

II. DRB 10-047 (District Docket No. XIV-08-0404E) – The Kozak Matter

This matter was before us on a disciplinary stipulation between the OAE and respondent. According to the stipulation, respondent engaged in conduct violating RPC 1.15(a) (failure to safeguard trust funds) and RPC 1.15(b) (failure to promptly deliver funds to a third person).[4] The OAE recommended that we impose either a reprimand or a censure.

Grievant Felix Kozak, a New York attorney, represented Keith Brennan in a personal injury claim arising from an October 14, 2003 automobile accident in Brooklyn, New York. Brennan discharged Kozak and, in March 2004, retained respondent.

On September 17, 2004, respondent settled the matter for $25,000. He forwarded a release to the insurance carrier on that date and deposited the funds into his "New York account."

By letter dated October 1, 2004, respondent informed Kozak that Kozak would get $850 "from the top" for fees and an additional twenty-five percent of the net attorney's fees from the case. As New York attorneys representing a client in a New York personal injury action, neither attorney was subject to the

[4] By letter dated April 30, 2010, the OAE withdrew the RPC 8.4(c) stipulated violation (conduct involving dishonesty, fraud, deceit or misrepresentation) for lack of sufficient factual support in the stipulation.

fee-sharing rules governing New Jersey certified civil trial attorney.

In 2004, the personal injury settlement was "processed" through respondent's New York trust account. Respondent did not maintain Kozak's share of the settlement funds intact in that account.

By letter dated June 19, 2007, more than two and one-half years after the Brennan case was settled, respondent sent Kozak two checks, each in the amount of $1,466.67. One check was dated June 22, 2007 (check no. 431) and the other June 29, 2007 (check no. 432). The checks were drawn on respondent's personal account at the Bank of New Jersey. The check dated June 29, 2007 was returned for insufficient funds.

By letter dated July 24, 2007, Kozak complained to respondent about the "bounced check" and "at least" three other of respondent's checks that had also bounced in the last few years. He demanded that, within two weeks, respondent send him a certified or bank check to replace the bounced check. Otherwise, he would notify the "Bar Association" of respondent's "irresponsible and unethical financial practices." Kozak further complained that respondent kept ignoring his demands for "sharing legal fees" in three other matters. Despite respondent's assurances to Kozak that he would replenish the

bounced checks, as of the date of the stipulation, February 2, 2010, he had not done so.

According to the stipulation, respondent's conduct constituted violations of RPC 1.15(a) (failure to safeguard trust funds), and RPC 1.15(b) (failure to pay over funds to a third person entitled to such funds).

By letter-brief to us, dated March 16, 2010, respondent's counsel argued that respondent should receive no discipline and that the matter should be dismissed. According to counsel, respondent and Kozak had, in the past, shared fees on multiple occasions and, in several instances, had disagreed on the allocation of the fees. Counsel stated that the clients "had left Kozak and hired [respondent] to pursue their personal injury claims."

Counsel argued that, in many instances, there was not a definite agreement over the allocation of the legal fees, and that, therefore, RPC 1.15(a) did not apply. Counsel explained that, in light of the multiple matters between Kozak and respondent, respondent must have forgotten that there was a specific agreement relating to the allocation of fees in the Brennan case.

Counsel pointed out that, ordinarily, the failure to promptly deliver funds to clients or third persons results in

the imposition of an admonition, even when accompanied by other non-serious ethics infractions. Also, counsel claimed that this case is distinguishable from In re Chasan, 154 N.J. 8 (1998), a three-month suspension case cited by the OAE, because Chasan had an ethics history and made misrepresentations to the court and opposing counsel. According to counsel, after Kozak filed the grievance, respondent did not immediately make the payment because counsel had so advised him. Respondent has since paid Kozak for the bounced check.

Following a full review of the stipulation, we are satisfied that the facts contained therein amply support a finding that respondent was guilty of unethical conduct.

The facts alleged in the stipulation establish that Brennan discharged Kozak and then retained respondent. Respondent's October 1, 2004 letter to Kozak verified Kozak's entitlement to $850 "off the top" and twenty-five percent of the net attorney's fees. The stipulation did not indicate a dispute over the division of the fee. Kozak, therefore, had a reasonable expectation that he would receive the fee promptly after the September 2004 settlement, given respondent's October 1, 2004 letter, informing him of his entitlement to it. Respondent had a duty to promptly pay the fee to Kozak, a duty that he breached, when he initially failed to pay over Kozak's portion of the fee

for three years and then again after the check bounced, in July 2007, when he failed to replenish it for another three years. His conduct in this regard violated RPC 1.15(b). After the check bounced, Kozak put respondent on notice that he had two weeks to comply with their agreement, before he would file ethics charges. Kozak waited three months to file the grievance, which was more than enough time for respondent to make good on the bounced check.

Counsel argued that respondent had forgotten about the agreement for the division of the fees. That is not a valid defense or a justification for not complying with RPC 1.15(b). Counsel also claimed that, after Kozak filed the grievance, respondent did not replace the bad check, based on counsel's advice. The filing of the grievance, however, did not excuse respondent from paying Kozak funds that were clearly due. The filing of a grievance might release (or preclude) an attorney from continuing to provide legal representation to a client who complained about the quality of the services. That was not the case here.

As to the stipulated violation of RPC 1.15(a) (failure to safeguard trust funds), to date, the Court has not imposed a duty on attorneys to keep shared fees in a trust account. We previously stated, in In the Matter of Terry Shapiro, DRB 93-363

(May 27, 1994) (slip op. at 69), that a reading of the relevant rule, as well as of the Annotated Model Rules of Professional Conduct authored by the Center for Professional Responsibility of the American Bar Association, did not persuade us that RPC 1.15(a) regulates the division of attorneys' fees. Thus, we do not find that respondent violated RPC 1.15(a). But see In the Matter of Michael Etkin, DRB 08-051 (May 28, 2008) (where we found that an attorney who received a fee in trust had the duty to safeguard it for the proper disbursement to the entitled parties; in that case, the attorney had no personal interest in the fee).

Altogether, thus, respondent was guilty of gross neglect (RPC 1.1(a)), lack of diligence (RPC 1.3), and failure to communicate with clients (RPC 1.4(b)) in four matters, as well as failure to promptly deliver funds to a third party (RPC 1.15(b)) in one matter.

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, and the seriousness of the attorney's disciplinary history. See, e.g., In re Russell, 201 N.J. 409 (2009) (admonition for attorney whose failure to file answers to

divorce complaints against her client caused a default judgment to be entered against him; the attorney also failed to explain to the client the consequences flowing from her failure to file answers on his behalf); In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008) (admonition imposed on attorney whose inaction in a personal injury action caused the dismissal of the client's complaint; the attorney took no steps to have it reinstated; also, the attorney failed to communicate with the client about the status of the case); In re Dargay, 188 N.J. 273 (2006) (admonition for attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; prior admonition for similar conduct); In the Matter of Anthony R. Atwell, DRB 05-023 (February 22, 2005) (admonition for attorney who did not disclose to the client that the file had been lost and canceled several appointments with the client for allegedly being unavailable or in court when, in fact, the reason for the cancellations was his inability to find the file; the attorney then took more than two years to attempt to reconstruct the lost file); In the Matter of Ben Zander, DRB 04-133 (May 24, 2004) (admonition for attorney whose inaction caused a trademark application to be deemed abandoned on two occasions; the attorney also failed to comply with the client's requests for information about the case); In re Uffelman, 200 N.J. 260 (2009)

(reprimand for attorney guilty of gross neglect, lack of diligence, and failure to communicate with a client; although the attorney had no disciplinary record, the reprimand was premised on the extensive harm caused to the client, who was forced to shut down his business for three months because of the attorney's failure to represent the client's interests diligently and responsibly); In re Aranguren, 172 N.J. 236 (2002) (reprimand for attorney who failed to act with diligence in a bankruptcy matter, failed to communicate with the client, and failed to memorialize the basis of the fee; prior admonition and six-month suspension); In re Zeitler, 165 N.J. 503 (2000) (reprimand for attorney guilty of lack of diligence and failure to communicate with clients; extensive ethics history); In re Gordon, 139 N.J. 606 (1995) (reprimand for lack of diligence and failure to communicate with the clients in two matters; in one of the matters, the attorney also failed to return the file to the client; prior reprimand); and In re Wildstein, 138 N.J. 48 (1994) (reprimand for misconduct in three matters, including gross neglect, lack of diligence, and failure to communicate with clients).

None of the above cases involved four client matters. The Wildstein case, which led to a reprimand, comes closest (three client matters). However, we must also consider that respondent

has no ethics history and that his ethics problems corresponded with his marital problems and alcoholism. His heavy drinking started toward the end of 2004, in the midst of the Kulesza and Goldschlager matters. Although respondent filed complaints in three of the four matters, he failed to follow through on them. The record allows the conclusion that his drinking affected his ability to properly represent his clients. Since his father and brother admitted him into an alcohol treatment facility, he has made great strides towards sobriety and has acknowledged his misconduct and his inability to recall much of what transpired with his practice, while he was drinking heavily. Under the totality of these circumstances, a reprimand would be sufficient discipline for the above four matters.

In addition to the above violations, however, respondent was also guilty of violating RPC 1.15(b). In recommending either a reprimand or a censure, the OAE compared this case to In re Chasan, supra, 154 N.J. 8 (three-month suspension), where more egregious circumstances were present. In Chasan, a fee dispute arose between Chasan and a firm with which he was formerly employed. After the firm discharged Chasan, he continued to represent a client of the firm. The firm filed an attorney's lien on the proceeds of any future settlement or judgment in that case. During court proceedings, Chasan represented that all

outstanding liens would be satisfied from the settlement proceeds and that he would file a motion with the court for the apportionment of fees between himself and his former firm. Chasan confirmed these representations in a letter to the defendant's attorney. In his certification accompanying the motion, Chasan claimed that he had attempted to resolve the issue of the apportionment of fees and that he continued to maintain the fees in his trust account. Because Chasan failed to serve his former firm with a copy of the motion, the court denied his motion.

Notwithstanding Chasan's representations to the contrary to all interested parties and to the court, he disbursed the entire fee to himself, without informing his former firm. He, nevertheless, continued to negotiate with the firm over the fee distribution, without success. At the firm's request, a conference was scheduled with the court to resolve the outstanding fee dispute, at which time the court directed Chasan to deposit the entire fee with the clerk of the court, within twenty-four hours. Instead, Chasan's office notified the judge that the matter had been settled. Afterward, Chasan told the firm that the majority of the fee would be forwarded to it in two installments. Chasan forwarded the first check, which the firm considered an attempt to alter their agreement, because the

firm believed it was in an incorrect amount; the year of the check was omitted; and it was payable to an individual, rather than the firm. Therefore, the firm did not negotiate the check. Instead, it requested a replacement check, which Chasan failed to forward.

When the court learned that a settlement over the fees had not been achieved, it issued an order to show cause sua sponte to finally resolve the matter. At the hearing, Chasan admitted that "he did not have $12,000 with him at that time," but he attempted to skirt the issue concerning its whereabouts.

When the OAE conducted an audit of Chasan's records, it also discovered numerous recordkeeping deficiencies. Chasan was found guilty of making misrepresentations to the court and others, violations of RPC 3.3(a)(1) and RPC 8.4(c), respectively; failing to retain the fees in a separate account, pending the final resolution of the fee dispute, RPC 1.15 (no subsection cited (failure to safeguard funds of third persons); and recordkeeping improprieties (RPC 1.15(d) and R. 1:21-6).

In In re Holland, 164 N.J. 246 (2000), a reprimand was imposed on an attorney who, with co-counsel, took over a personal injury case from an attorney who filed an attorney's lien against the recovery. When a conflict arose between co-counsel, Holland continued to represent the client. After

Holland settled the case, a dispute arose over the division of the remaining legal fee. After a number of motions, the court ordered her to disburse fees to the original attorney, but to escrow the remaining legal fee pending resolution of the dispute over the fee. In violation of the order, Holland resorted to "self-help" by taking the disputed fee. She was found guilty of violating RPC 1.15(c) (failure to keep separately property that is in dispute until the dispute is resolved), RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 8.4(d) (conduct prejudicial to the administration of justice) for knowingly violating a court order, and RPC 1.15(d) and R. 1:21-6 (recordkeeping violations). In imposing a reprimand, we considered Holland's admission of wrongdoing, her contrition, her inexperience at the time of the conduct, and her lack of an ethics history.

Clearly, respondent's conduct in DRB 10-047 was not as serious as either of these cases. He was guilty only of failing to promptly turn over fees to another attorney. Ordinarily, the failure to promptly deliver funds to clients or third persons will lead to an admonition. See, e.g., In the Matter of Craig A. Altman, DRB 99-133 (June 17, 1999) (attorney did not promptly pay a doctor's bill despite having signed a "letter of protection").

Even when a violation of RPC 1.15(b) is accompanied by other, non-serious infractions, an admonition may still result. See, e.g., In the Matter of David J. Percely, DRB 08-008 (June 9, 2008) (for three years attorney did not remit to the client the balance of settlement funds to which the client was entitled, a violation of RPC 1.15(b); the attorney also lacked diligence in the client's representation, failed to cooperate with the investigation of the grievance, and wrote a trust account check to "cash," violations of RPC 1.3, RPC 8.1(b), and R. 1:21-6(c)(1)(A); significant mitigation presented, including the attorney's unblemished twenty years at the bar); In the Matter of Anthony Giampapa, DRB 07-178 (November 15, 2007) (attorney did not promptly disburse to a client the balance of a loan that was refinanced; in addition, the attorney did not adequately communicate with the client and did not promptly return the client's file; violations of RPC 1.15(b), RPC 1.4(b), and RPC 1.16(d)); In the Matter of Walter A. Laufenberg, DRB 07-042 (March 26, 2007) (following a real estate closing, attorney did not promptly make the required payments to the mortgage broker and the title insurance company; only after the mortgage broker sued the attorney and his client did the attorney compensate everyone involved; violations of RPC 1.15(b) and RPC 1.1(a)); In the Matter of Gordon Allen Washington, DRB 05-307

(January 26, 2006) (for a seven-month period attorney did not disburse the balance of escrow funds to which a party to a real estate transaction was entitled; the attorney also lacked diligence in addressing the problem once it was brought to his attention); In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (for three-and-a-half years, attorney held in his trust account $4,800 earmarked for the payment of a client's outstanding hospital bill; the attorney also practiced law while ineligible and violated the recordkeeping rules); In the Matter of Steven S. Neder, DRB 99-081 (May 27, 1999) (admonition by consent for attorney who did not transmit to a wife funds that a husband, the attorney's client, had given him for that purpose and who took his fee from funds that the husband gave him to pay the wife's legal fees; the attorney violated RPC 1.15(b) and (c)); and In the Matter of Cornelius W. Daniel, III, DRB 96-394 (January 16, 1997) (for a period of four years attorney failed to satisfy client's medical bills and an unrelated judgment against the client despite having escrowed funds for that purpose; the attorney also failed to adequately communicate with the client).

In the above cases, attorneys who, like respondent, failed to turn over funds to third persons (medical providers) for significant periods received admonitions: Lustig (for three and

one-half years) and Daniel (four years). Thus, an admonition would be sufficient discipline for this violation, particularly because respondent's marital and alcohol problems may have affected his handling of the fee division.

Although a reprimand would be appropriate discipline for DRB 10-134 and an admonition would be adequate in DRB 10-047, we determine that the better practice is to view respondent's overall conduct in a consolidated fashion and to impose only one form of discipline for both matters -- a censure.

We also determine to require respondent to (1) provide proof of fitness to practice law, as attested by a mental health professional approved by the OAE; (2) practice under the supervision of an OAE-approved proctor until further order of the Court; and (3) continue with treatment for his addiction, until discharged.

Member Clark did not participate.

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

Disciplinary Review Board
Louis Pashman, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Jeffrey P. Squitieri
Docket Nos. DRB 10-047 and 10-134

Argued: July 22, 2010

Decided: September 14, 2010

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark						X
Doremus			X			
Stanton			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			8			1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel