SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 14-227
District Docket Nos. IIIB-2012-0034E,
IIIB-2012-0035E, and IIIB-2013-0008E

IN THE MATTER OF	:
VINCENT JOSEPH GAUGHAN	:
AN ATTORNEY AT LAW	:

Decision

Argued: October 16, 2014

Decided: February 3, 2015

Steven Alan Traub appeared on behalf of the District IIIB Ethics Committee.

Respondent appeared pro se.

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 (censure) filed by the District IIIB Ethics Committee (DEC). A seven-count complaint charged respondent with violations of RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter), RPC 1.5(b) (failure to set forth in writing the basis or rate of the fee), RPC 1.15(c)

(failure to segregate funds in dispute), and RPC 8.1(b) (failure to cooperate with an ethics investigation). We determine to impose an admonition, with conditions.

Respondent was admitted to the New Jersey bar in 1991. He has no prior discipline.

I. THE SCARPATI/MCDERMOTT MATTER – District Docket No. IIIB-2012-0034E

Laurie McDermott, the daughter of grievant Peter Scarpati, retained respondent to represent her in a child custody dispute with her former husband. Scarpati, McDermott, and her boyfriend met with respondent in the afternoon of September 18, 2012, regarding a court appearance scheduled for the next day. According to Scarpati, the former husband had refused to return McDermott's children to her, after a visitation, alleging that McDermott's boyfriend had abused them.

McDermott and respondent signed a fee agreement, providing for the payment of a "mandatory minimum initial attorney fee of $1,500.00," as follows: "$500.00 today, $500.00 in sixty days (11/19/12) and $500.00 upon conclusion of this matter." Scarpati recalled giving respondent a personal check for the initial $500, commenting, at the ethics hearing, that he "had very

little funds" at the time, after paying for lawyer fees in McDermott's divorce.

Scarpati also recalled telling respondent about his hunch that, if the former husband learned that McDermott had retained counsel, he would probably give up and withdraw his court action. Therefore, Scarpati claimed, he extracted a promise from respondent that, if the former husband withdrew the matter prior to the hearing the next day, respondent would simply return Scarpati's check.

As it turned out, the former husband did withdraw the court action before the hearing. Respondent then cashed the $500 check.

After Scarpati learned that respondent had cashed the check on September 20, 2012, he confronted respondent by telephone, upset that he had cashed the check before Scarpati had been able to put a "stop payment" on it.

Respondent recalled the events differently, claiming that he was entitled to the $500 under the terms of the fee agreement and an oral agreement with his client, McDermott. They agreed that he would cash that first check and hold future checks, if the matter did not go to a hearing. Respondent claimed that he had earned the $500 fee, having met with Scarpati, McDermott,

and her boyfriend, on September 18, 2012, the eve of the former husband's court date,

> for over an hour, or for about an hour, during which time frame I called the law clerk, I called the number for the ex, and I basically threatened to file a motion or file a response requesting counsel fees and costs because he was, you know, illegally withholding the children . . . .
>
> [T115-17 to 22.][1]

At the ethics hearing, respondent told the presenter that Scarpati's testimony was contrived:

> Q. He testifies that he handed you the check and said please do not cash this check.
>
> A. Okay. That's not what happened, but that's what he testified to.
>
> Q. You're saying that he did not say that?
>
> A. No, he did not say that. And frankly, okay, first he told me it was postdated [sic] which is wrong okay, then he told you that -- I forget the other contradiction he had in his testimony here. He said -- oh, he was sure, a hundred percent sure that the case was not going to be going forward the next day, but yet he comes into my office 2 o'clock in the afternoon the day before with his client, with his daughter, and signs a fee agreement with me contemplating adjourning the case and filing a response.

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[1] "T" refers to the transcript of the February 21, 2014 DEC hearing.

> Okay? That's completely contradictory evidence. I believe he made his response, I believe his credibility is shot, okay? What happened was he got ticked off at his daughter for the whole relationship with the ex, who he didn't approve of in the first place, and he stormed out of there after giving me the first check, okay? Now, he was well aware that the terms of the agreement called for $1,500, not $500. Nobody does a custody dispute for $500. It doesn't happen. That's insane, okay? My fee agreement was $1,500, the first installment was 500 [sic]. As I indicated in my cross examination [sic] with him, he wasn't on the hook for the additional thousand dollars, she was because she's the one who signed the fee agreement, she was the client. He just gave her the first $500, or gave me the first $500 on her behalf. I had discussions with her after he left the office, and again that night when the case was dismissed and I said I'll just cash the first check, okay? At that point, I had done over an hour's worth of work in my opinion, and I had been instrumental in getting the case dismissed, okay? Or not dismissed, withdrawn because the law clerk made phone calls to the ex-husband or husband, the father of the children to deal with my request for adjournment, okay?
>
> [T119-21 to T121-13.]

Scarpati recalled making numerous telephone calls to respondent, sending him an October 18, 2012 letter, and visiting his office, all in an effort to obtain the return of the $500 initial payment. Respondent did not comply with his requests for the return of the $500. Respondent testified as follows:

> When he contacted me and asked for his money back, I flat out said no, I did what I was supposed to do, and I thought, you know, from there, if he wanted the money, he would have to go to fee arbitration. I don't believe by not responding to each individual subsequent phone call demanding his money that I was committing any kind of ethical breach. I told him no, his daughter and I agreed that I would only cash the $500 check and not insist on the additional $1,000 required by the fee agreement . . .
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> [T166-18 to T167-3.]

A few months later, respondent and Scarpati settled their differences, after respondent agreed to accept, as payment in full, a $175 fee for one hour of his legal services. On March 8, 2013, respondent gave Scarpati a business account check for $325.

With regard to the charge that respondent failed to cooperate with the ethics investigation, he admitted that, although he had received three letters from the ethics investigator, dated November 9, 2012, November 27, 2012, and January 4, 2013, requesting his written reply to the grievance, he had not done so.

Hearing nothing from respondent, on February 22, 2013, the ethics investigator reached him by telephone. Respondent agreed to furnish a written reply by March 1, 2013, but never did so.

On March 7 and March 21, 2013, the investigator sent additional letters seeking respondent's written reply to the grievance, but respondent did not comply with those requests for information.

II. THE DEFELICE MATTER – District Docket No. IIIB-2012-0035E

On April 13, 2012, Simone DeFelice retained respondent to gain custody of her grandson, after the Division of Youth and Family Services (DYFS) removed him from her daughter's custody. The parties signed a fee agreement that day, calling for a mandatory initial payment of $1,750 for a "Title 9 DYFS litigation" and, thereafter, legal services at a rate of $175 per hour. DeFelice gave respondent a check for the $1,750, at their April 13, 2012 meeting.

Although DeFelice claimed that respondent performed no legal services on her behalf, respondent testified that the case went to a May 1, 2012 hearing, which he and DeFelice attended, although DeFelice remained in the foyer: "I went to court, I talked to the deputy attorney general, I talked to the law guardian."

Respondent was successful in gaining physical custody of the child for DeFelice. Although the daughter was allowed to

reside in DeFelice's home, she was forbidden from leaving the house with the child, for any reason. Respondent testified that he informed DeFelice, after the hearing, that his representation was complete.

According to respondent, on September 17, 2012, DeFelice contacted him to address a new problem:

> Q. All right. She indicates that she tried contacting you on numerous occasions, and you failed to respond.
>
> A. Past the point where I tell her -- where I tell any client that I'm not agreeing to what they want. . . . [M]onths went by after the initial custody transfer occurred, initial custody order was entered, and Ms. DeFelice let her daughter take the grandchild out on the street to do some errands in violation of the terms of the original court order. Ms. DeFelice explained to me in a phone conversation disparaging words [sic] that DYFS is taking too long . . . and she just let her daughter take the grandchild out. The grandchild and the daughter were spotted by a DYFS worker who knew what was going on . . . and caused the child to be taken.
>
> And Ms. DeFelice came in and wanted me to apply the initial retainer towards a second application. We did have a meeting . . . but at the meeting, she wanted to change her story about what happened . . . to indicate that she did not know that her daughter took the grandchild out. . . . And I wouldn't

> change things to go with her second story, so she went out and got a second attorney.
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> [T62-11 to T63-20.]

Respondent conceded that, although he had considered the May 2012 representation to have ended, he did not so inform De Felice in writing. According to respondent, he refused to undertake a new representation, DeFelice demanded the return of the entire fee, but he refused that request.

At the ethics hearing, respondent was asked whether, at his September 17, 2012 meeting with DeFelice, he had advised her to pursue fee arbitration. He replied:

> In my fee agreements, I always mention fee arbitration. In paragraph four of my fee agreement dated April 13, 2012, it says, "You are advised you are entitled to fee arbitration in the event that you disagree with any bill." I tell people that at every meeting that I have when I do fee agreement, it's, you know, one of the things I do, I don't know if everybody does it, but I don't feel I have an obligation to keep telling people over and over and over again go file fee arbitration.
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> [T67-17 to T68-1.]

Respondent acknowledged that, on September 20, 2012, three days after their meeting, DeFelice had sent him an e-mail, requesting information and asking him to review a letter that she had drafted, and that, on September 25, 2012, he had

replied, "I have been sick for the last two days. I will call you tomorrow afternoon to review your certification. Sorry for the inconvenience." Respondent never replied to that e-mail. He also did not recall having seen an October 6, 2012 certified letter from DeFelice, which was apparently returned to her as "unclaimed."

DeFelice sought the return of the entire fee through fee arbitration, but respondent elected not to participate, claiming that it was financially not worth pursuing. On February 21, 2013, without any input from respondent, the district fee arbitration committee awarded DeFelice the entire fee of $1,750, which respondent returned, on July 12, 2013.

As to respondent's alleged failure to cooperate with the ethics investigation, respondent admitted that he had failed to comply with two letters from the ethics investigator, requesting information about the grievance. At the DEC hearing, respondent explained that, when he received the fee arbitration determination, it contained "a box checked by the decision . . . that I had not done anything unethical;" he paid DeFelice the amount required, thinking "that was the end of it."

III. THE FOWLER MATTER – District Docket No. IIIB-2013-0008E

On September 16, 2009, Julia Fowler retained respondent to represent her in three DYFS matters involving all four of her children. At the time, DYFS was placing the eldest three for adoption. One legal matter involved a "Title 9" litigation already underway, formerly handled by another attorney. The second matter dealt with an administrative determination of Fowler's "SUBSTANTIATED abuse/neglect" of her four-month old son, Christian. The court had recently concluded that Fowler had smoked marijuana and taken two 10 mg Percocet tablets per day, in the weeks prior to Christian's birth. The judge found that Fowler had ". . . no income. She suffers from an active and untreated drug addiction. She has serious and untreated mental health issues. She has no stable housing." Just four days prior to giving birth, Fowler had denied her pregnancy.

The third case involved Fowler's desire to overturn a prior order terminating her parental rights to her three oldest children.

Fowler paid respondent $6,000, in the form of two checks for $3,000, provided by a family friend, Jane Sanderson. The initial $3,000 was to be used to fund the two matters involving Christian.

Under questioning by the presenter, respondent testified as follows:

> Her child was taken pretty much at birth because of her drug abuse during the pregnancy and at the time of the delivery, and she retained me for the Title 9 hearing, both the abuse and neglect portion, and the disposition portion. There was a second contemplated action in the fee agreement where if we won the first agreement -- if we won the first Title 9 case, she had lost a previous Title 9 case, Title 30 case associated with it, and we would attempt to possibly reverse that case if we won this case because the logic was similar.
>
> Q. In her grievance, Ms. Fowler alleges that you didn't notify her of court dates and you refused to return any calls that she made.
>
> A. Okay. That is completely and utterly false. Ms. Fowler, as determined by the judge in the case at the hearing, and in the complaint and the entire proceeding, had serious psychological and drug related problems. She appeared for one hearing out of all the hearings that we went to. If you --
>
> Q. So you're saying it's not true?
>
> A. Totally not true.
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> [T78-8 to T79-6.]

Respondent recalled that Fowler had missed a total of three trial dates in the matter and that she would occasionally call his office for updates, which he was unable to provide her by letter because she was homeless and had no permanent address. The permanent address that Fowler had given respondent, at the

inception of the representation, was that of her mother, with whom, respondent claimed, Fowler did not get along.[2] On her 2013 ethics grievance, Fowler used the same address given to respondent at the inception of the 2009 representation. Respondent admitted that he did not send Fowler court notices or correspondence at that address, even though Fowler had given it to him for that purpose. Rather, he had concluded that nothing sent to Fowler at her mother's address "would get to her."

As to the allegation that respondent failed to return Fowler's telephone calls, he testified that he had received "three to five" telephone calls from Fowler, over the course of the representation, and that she was aware of court dates:

> During the time frame that I represented her up until August 4, 2010, whenever she would get ahold of me from whatever number she was at, we would discuss the current status of the case. We would discuss the fact that she needed to comply with [DYFS] services. She was in court as I indicated at the one hearing which, you know, by definition, she'd know what the next court appearance is, and she would know the status of the case as of that time. I just -- this was a person who -- I don't want to be negative to

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[2] The address appears on the September 16, 2009 attorney fee agreement.

> the fact that she didn't cooperate because she had reasons, psychological and drug addiction-wise, why she just couldn't handle the case. But I believe that I contacted or responded whenever she contacted me and tried to get her directed to the [DYFS] services.
>
> [T89-13 to T90-3.]

After the August 4, 2010 conclusion of the representation involving Christian, Fowler retained a public defender for the remaining litigation regarding her three other children. According to respondent, Fowler had no further contact with him.

As to the $3,000 that remained from Sanderson's $6,000 outlay of funds, respondent testified that Sanderson had always told him to never give the funds to Fowler or to apply them "to anything new until [Fowler] got her act together." According to respondent, the funds remained in his trust account because, later, Sanderson "fell off the radar."

The complaint also alleged that Fowler had sought the return of the unearned portion of the fee, that is, the remaining $3,000, to fund litigation later handled by the public defender. Respondent denied, however, that Fowler had ever asked him for those funds. Rather, a "June Waddington" had sent him a handwritten letter, attaching a "questionable" September 27, 2013 durable power-of-attorney for Sanderson.

According to respondent, he has held the $3,000 intact in his trust account since August 2010 and has repeatedly excused his willingness to disburse the funds to the proper party. The DEC advised respondent that it was his responsibility to ascertain the proper recipient of the refund.

Respondent admitted having received the investigator's written requests for information about the grievance, dated February 25, March 19, and April 24, 2013, and having failed to reply to them.

At the DEC hearing, respondent sought to further explain his failure to reply to the grievances in these matters. He stated as follows:

> I agree in hindsight that I didn't properly respond to the investigation. I have pled ignorance and mitigating circumstances. . . . What I had was a misconceived notion from prior contact with the committee that these kind of things had to go to arbitration, fee arbitration before they can proceed in the ethical realm. I now understand that, that was incorrect, even though one of the letters stipulated to was [sic] the letter to Ms. DeFelice indicating that her matter had been put on hold pending the result of the fee arbitration. Substantively, I still maintain I did nothing wrong in each of the three underlying cases. However, as

I said, I did fail to properly respond, through ignorance, to the investigation.

[T22-18 to T23-9.]

In the Scarpati/McDermott matter, the DEC found a sole violation of RPC 8.1(b) for respondent's failure to cooperate with the ethics investigation. It dismissed the RPC 1.4(b), RPC 1.5(b), and RPC 1.15(c) charges for lack of clear and convincing evidence.

In the DeFelice matter, the DEC found a violation of RPC 1.4(b) for respondent's failure to communicate with his client, when she sent him a September 20, 2012 e-mail and called him several times. The DEC noted respondent's September 25, 2012 e-mail reply, in which he informed DeFelice that he had been ill and told her that he would call her the next day to review her certification. Respondent never did so. The DEC also found a violation of RPC 8.1(b) for respondent's failure to comply with the investigator's requests for information about the grievance.

In the Fowler matter, the DEC found a violation of RPC 1.4(b) for respondent's admitted failure to send court notices and correspondence to the last known address that he had on file, that is, Fowler's mother's address. Instead, respondent had relied on Fowler, apparently a drug-addicted street person

at the time, to contact him. The DEC dismissed the RPC 1.5(b) charge, concluding that respondent had accurately set forth the rate or basis of his fee in the fee agreement.[3] The DEC also found a violation of RPC 8.1(b) for respondent's failure to comply with the investigator's requests for information about the grievance.

Although the complaint contained no RPC 1.16(d) charge for respondent's failure to return the unearned portion of his fee, the DEC invoked that rule, for the first time, in the hearing panel report. The DEC concluded that respondent had violated the rule in all three matters.

The DEC recommended the imposition of a censure, with conditions: the return of the $3,000 "second retainer" in Fowler; submission to the OAE of quarterly reconciliations of respondent's trust account for two years, as well as proof that the $3,000 always remained intact; and a proctorship for an

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[3] At the DEC hearing, the presenter withdrew the RPC 1.5(b) charge. The complaint in the Fowler matter charged two different violations of RPC 1.5(b): failure to properly memorialize the fee agreement, a violation that falls under RPC 1.5(b), and failure to refund the unearned portion of the retainer, a violation that does not fall under RPC 1.5(b), but, rather, under RPC 1.16(d).

unspecified duration of time. The DEC did not support its recommendation with case law.

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence. We are unable to agree, however, with all of the DEC's findings.

In the Scarpati/McDermott matter, the complaint charged respondent with having "violated RPC 1.5(b) . . . by failing to memorialize accurately the terms of his fee agreement with Mr. Scarpati and Ms. McDermott and violated RPC 1.15(c) by failing to keep separate the $500 as to which a dispute had arisen." Not only does RPC 1.5(b) not contain the word "accurately" but it has little to do with the gravamen of the charge against respondent, as it unfolded at the hearing, that is, his failure to return $500 to Scarpati.

On the one hand, Scarpati testified that respondent had agreed to return his $500 check, the first installment on McDermott's matter, if her former husband withdrew his action, prior to the hearing scheduled for the next day. On the other hand, respondent denied that contention, pointing to his oral agreement with his client, McDermott, that he would only cash her father's $500 check and not charge her additional fees.

Because the parties' testimony is at odds – and in the absence of McDermott's testimony – the charge that respondent acted unethically, when he did not return the $500 to Scarpati, cannot be sustained.

Respondent also recounted the legal services that he performed to earn that fee. As indicated previously, he was retained to assert a counterclaim, in the hope that McDermott's former husband would withdraw his court action. By anyone's account, that strategy was successful, from which McDermott benefitted. To that end, respondent and McDermott executed a written fee agreement, under which respondent was to receive $1,500, in three installments. There was no provision in the agreement that respondent would work essentially for free, if his initial efforts, on the day he was retained, resulted in a favorable outcome, that is, the husband's abandonment of his action. In fact, respondent achieved that objective in record time and could hardly have been faulted, had he retained the $500 installment for his successful efforts. Instead, he accommodated Scarpati, settling a few months later for one hour's worth of his attorney time, or $175.

For all of these reasons, we dismiss the RPC 1.5(b) charge. We also dismiss the RPC 1.4(b) charge. Because Scarpati was not the client, respondent was not obligated to keep him apprised of the events in the case.

In the DeFelice matter, respondent could have been more accommodating to his client, after the initial matter was concluded. Nevertheless, we do not consider his September 25, 2012 email, in which he indicated that he would call DeFelice the following day, to amount to clear and convincing evidence that he was again acting as her attorney in a new matter. We, thus, dismiss the charge that respondent violated RPC 1.4(b).

In the Fowler matter, too, we found the evidence of failure to communicate lacking. Respondent testified that Fowler was a drug-addicted drifter, who would contact him for updates about her case. While it is true that Fowler used her mother's address on the fee agreement and, four years later, on the ethics grievance, she did not testify at the DEC hearing or otherwise refute respondent's testimony that he kept her informed through her contacts with him. For these reasons, we dismiss the RPC 1.4(b) charge.

With regard to the DEC's finding that respondent violated RPC 1.16(d) in all three matters, not only did the complaint not

charge him with violations of that rule, but there is a lack of clear and convincing evidence that he was obligated to return unearned fees in at least the Scarpati and DeFelice matters. Therefore, we make no findings of RPC 1.16(d) in the three matters. As seen below, however, we consider respondent's failure to return the $3,000 in the Fowler matter as an aggravating factor.

As to the charge that respondent violated RPC 8.1(b) by failing to cooperate with ethics authorities in the investigation of these matters, respondent admittedly received a total of ten written requests for information about these three grievances, to which he admittedly did not timely reply. Respondent claimed ignorance of the requirement that he cooperate with ethics authorities. He claimed to have relied on an understanding, drawn from his experience in prior fee arbitration matters, that a check-off box on the fee arbitration form, indicating that a matter had not been referred for an ethics investigation, exonerated him of any ethics improprieties. In fact, section "F" of the fee arbitration poses two questions, each followed by check-off boxes marked "[] Yes [] No": the first questions whether the fee charged was so excessive as to evidence an intent to overreach; the second

questions whether the case involved conduct that raised a substantial question as to the attorney's honesty, trustworthiness or fitness as a lawyer. Generally, if either of those boxes is checked "Yes," an explanation is required and the matter is referred to the Office of Attorney Ethics. A "No" as to the second question, however, does not conclusively mean that there was no unethical conduct involved. Whether there has been unethical conduct or not must be decided by district ethics committees, not by fee arbitration committees. A "No" on the fee arbitration determination form does not prevent an ethics committee from investigating and prosecuting attorneys for unethical conduct during the client's representation.

If respondent truly questioned his need to cooperate with the DEC, he should have reviewed letters from the ethics investigator more carefully, the more urgent of which cited R. 1:20-3(g)(3), RPC 1.6(d)(2), and In re Gavel, 22 N.J. 248, 263 (1956), which state that cooperation is required by law. And, if he still thought that no action was required on his part, he should have communicated with the investigator to confirm his understanding. Finally, only DeFelice filed for fee arbitration, a circumstance that renders respondent's argument inapplicable to the other two matters.

We, thus, find that respondent violated RPC 8.1(b) in all three matters.

There are two aggravating factors here. Respondent failed to turn over $3,000 of Sanderson's funds, after his termination of the representation in Fowler. When he received a copy of Sanderson's September 27, 2013 durable power-of-attorney and request for the return of the funds from June Waddington – in other words, a purported new directive from Sanderson – he took no action, claiming a belief that the document was of questionable authenticity. The document bears the acknowledgement of Jane Molt, a New Jersey attorney who witnessed Sanderson's signature. Respondent should have contacted Molt to ascertain the authenticity of the document and return the $3,000, if warranted. We consider his failure to act in this regard as an aggravating factor.

Additionally, respondent used a non-refundable retainer in the Scarpati/McDermott matter. Notwithstanding that he earned at least a portion of the $500 paid by Scarpati, the entire $1,500 fee was characterized in the fee agreement as nonrefundable. As noted by the DEC, R. 5:3-5(b) prohibits non-refundable fees in civil family actions.

In mitigation, respondent has no prior discipline in twenty-three years at the bar.

In summary, the only violations clearly and convincingly proven were respondent's failure to cooperate with ethics investigations in Scarpati/McDermott, DeFelice and Fowler, contrary to RPC 8.1(b).

Generally, failure to cooperate with an ethics investigation results in an admonition, if the attorney does not have an ethics history. See, e.g., In the Matter of Richard D. Koppenaal, DRB 13-164 (October 21, 2013) (failure to cooperate with an ethics committee's attempts to obtain information about the attorney's representation of a client; remaining charges were dismissed); In the Matter of Lora M. Privetera, DRB 11-414 (February 21, 2012) (attorney submitted an inadequate reply to an ethics grievance; thereafter, she failed to cooperate in the ethics investigation until finally retaining ethics counsel to assist her); In the Matter of Douglas Joseph Del Tufo, DRB 11-241 (October 28, 2011) (attorney did not reply to the DEC's investigation of the grievance and did not communicate with the client); In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (attorney failed to comply with ethics investigator's request for information about the grievance; the attorney also

violated RPC 1.1(a) and RPC 1.4(b)); In the Matter of Marvin Blakely, DRB 10-325 (January 28, 2011) (after his ex-wife filed a grievance against him, attorney ignored numerous letters from the district ethics committee seeking information about the matter; the attorney's lack of cooperation forced ethics authorities to obtain information from other sources, including the probation department, the ex-wife's former lawyer, and the attorney's mortgage company); In re Ventura, 183 N.J. 226 (2005) (attorney did not comply with ethics investigator's repeated requests for a reply to the grievance; default case); and In the Matter of Kevin R. Shannon, DRB 04-152 (June 22, 2004) (attorney did not promptly reply to the district ethics committee's investigator's requests for information about the grievance).

Because this is respondent's first brush with ethics authorities in twenty-three years at the bar, we determine that an admonition sufficiently addresses his misconduct. We also require him, within thirty days of the Court order, to turn over the $3,000 escrow in the Fowler matter, either to the appropriate party, or to the Superior Court Trust Fund.

Member Zmirich voted for an admonition, but would have included RPC 1.4(b) findings in the DeFelice and Fowler matters.

Member Gallipoli voted for a reprimand. Member Singer recused herself.

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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Vincent J. Gaughan
Docket No. DRB 14-227

Argued: October 16, 2014

Decided: February 3, 2015

Disposition: Admonition

Members	Disbar	Reprimand	Admonition	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Gallipoli		X				
Hoberman			X			
Rivera			X			
Singer					X	
Yamner			X			
Zmirich			X			
Total:		1	7		1	

Ellen A. Brodsky
Chief Counsel