B

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-082
District Docket Nos. XIV-05-206E,
I-03-27E, I-05-18E, I-05-19E, and
I-04-13E

IN THE MATTER OF	
BERNARD J. MCBRIDE, JR.	
AN ATTORNEY AT LAW	

Decision

Argued: June 15, 2006

Decided: August 31, 2006

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Teri S. Lodge appeared on behalf of respondent.

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

These matters came before us pursuant to R. 1:20-6(c)(1), which provides, in pertinent part: "A hearing shall be held

only if the pleadings raise genuine disputes of material fact, if the respondent's answer requests an opportunity to be heard in mitigation, or if the presenter requests to be heard in aggravation."

At the outset, we dispose of certain procedural aspects that, if left unresolved, might be deemed to preclude our review of these matters under R. 1:20-6(c)(1) because respondent denied certain factual allegations and asked for a mitigation hearing. However, some of his denials did not relate to the corresponding charges and others were later withdrawn, as was his request for a hearing on mitigation.

The first count of the complaint in the Alease Booker matter charged that respondent failed to communicate with the client and to notify her of the relocation of his office. In his answer, respondent denied that he had failed to keep Booker informed of the status of her case, explaining that "[t]he file [had been] sent to Alease Booker on February 7, 2005 by William Ziegler, Esq." Respondent's "denial," however, did not specifically address the substance of the charge. "Denials shall fairly meet the substance of the allegations denied." R. 4:5-3. Inasmuch as respondent's assertion was unresponsive to the specific allegations of the complaint, we do not consider it a

denial within the meaning of the rule. Hence, as to that count of the complaint, the parties properly invoked our review under R. 1:20-6(c)(1).

The second count of the same complaint (Booker) alleged that respondent's fee was excessive because he did not return the unearned portion of the retainer when the representation ended. Although respondent admitted most of the charges in that count, he denied that he had performed less than three hours' work, as alleged in the complaint. Notwithstanding respondent's denial, we see no jurisdictional or other procedural problem in going forward with our review pursuant to R. 1:20-6(c)(1). In the context of this case as a whole -- five formal ethics complaints alleging violations of ten different Rules of Professional Conduct -- respondent's denial that he did not earn the Booker fee is of little import to the outcome of this disciplinary case in the aggregate, both as to findings and as to discipline. Simply stated, in the face of respondent's admissions to all of the other numerous allegations made in the five complaints -- some of them serious -- his denial of a lesser charge will have no significant impact on the ultimate determination of the violations committed or the measure of discipline that they deserve. In this instance, we do not

perceive respondent's denial of work not performed as an impediment to proceeding with our review of this entire case under R. 1:20-6(c)(1).

We now turn to the details of these five disciplinary matters.

Respondent was admitted to the New Jersey bar in 1990. At the relevant times, he maintained a law office in Deptford, New Jersey.

In September 2004, the Supreme Court reprimanded respondent, in a default matter, for failure to communicate with clients and failure to cooperate with disciplinary authorities. In re McBride, Jr., 181 N.J. 299 (2004). A year later, respondent was transferred to disability inactive status, pursuant to R. 1:20-12. In re McBride, Jr., 185 N.J. 132 (2005). He remains in that status.

Collectively, the five complaints charge respondent with gross neglect, pattern of neglect, failure to communicate with clients, failure to charge a reasonable fee, failure to safeguard clients' and third parties' funds, failure to promptly disburse funds to which clients and third parties are entitled, recordkeeping violations, failure to return the unearned portion of a retainer, and failure to cooperate with disciplinary

authorities. For the reasons expressed below, we determine that a reprimand sufficiently addresses the totality of respondent's ethics transgressions.

DISTRICT DOCKET NO. XIV-2005-206E

THE MONTAGNINO MATTER (FIRST COUNT)

On November 18, 2002, respondent deposited into his attorney trust account a $85,000 Allstate Indemnity Company check, payable to respondent and Antonina and Philip Montagnino. The settlement statement that respondent prepared showed that $55,522.62 was due to the Montagninos.

On November 26, 2002, respondent transferred the Montagninos' funds ($55,522.62) from his attorney trust account to his attorney business account via a counter check. On that same date, respondent issued to Antonina Montagnino three business account checks, in the amounts of $9000, $9000, and $37,552.62. Respondent explained that he had transferred the funds from his trust account to his business account because he had run out of trust account checks to issue to the Montagninos.

On December 24, 2002, the business account check for $37,552.62 was returned for insufficient funds. To remedy the

overdraft, respondent began a course of transferring funds back and forth between his trust and business accounts.

Specifically, on December 27, 2002, respondent issued to himself a $37,752.62 check drawn on his attorney business account and deposited it into his trust account. On that same date, he issued a trust account check to Nina (Antonina) Montagnino, in the amount of $37,752.62.[1] On December 30, 2002, that check, too, was returned for insufficient funds.

On January 2, 2003, respondent issued a business account check for $37,752.62, payable to his trust account. Presumably, he deposited that check into his trust account because, on January 6, 2003, he issued a $37,752.62 trust account check to Fleet Bank. On that same day, Fleet issued an official check payable to A. Montagnino, in that same amount.

According to the complaint, respondent explained that he had initially transferred the funds from his attorney trust account to his attorney business account because he "was out of starter checks" for his trust account. He further explained that he had underestimated the ATM withdrawals from his business

---

[1] There is no explanation for the $200 discrepancy between the first business account check issued to Antonina and this new check.

account in November 2002. According to respondent, his underestimation and the Montagninos' failure to deposit the check until a month later caused an overdraft in the account.

In addition to the funds due to the Montagninos, respondent owed $1,371.07 to their former counsel. On February 20, 2003, he issued trust account check number 503, payable to his business account, in the amount of $1,371.07. He deposited the check in his business account the next day. Nevertheless, he never paid the funds to former counsel.

The first count of the complaint charged respondent with violations of RPC 1.15(a) (failure to safeguard client's and third parties' funds), RPC 1.15(b) (failure to promptly deliver funds to clients and third parties), and RPC 1.15(d) (improper recordkeeping). By letter to Office of Board Counsel dated April 5, 2006, the Office of Attorney Ethics (OAE) explained that respondent's conduct was characterized in the complaint as failure to safeguard funds, but "could have alternatively been characterized as negligent misappropriation. The same RPCs apply."

We find that respondent violated RPC 1.15(a) when he transferred from his attorney trust account to his attorney business account his clients' share of the settlement proceeds.

He explained that the transfer had been necessitated by the absence of trust account "starter checks," which had run out.

Notwithstanding this transfer, respondent continued to have a duty to preserve the funds, even if in his business account. Yet, he breached this duty when he issued to his clients two $37,552.62 checks that were dishonored because he had not kept those funds intact. Apparently, the overdraft was the result of a mistake — respondent's underestimation of his ATM withdrawals from the business account. Nevertheless, respondent's failure to safeguard the funds violated RPC 1.15(a).

Respondent also violated RPC 1.15(b). That rule requires a lawyer to promptly deliver funds that the client is entitled to receive. As a result of the bounced checks, respondent delayed paying his clients' settlement monies to them.

Respondent further violated RPC 1.15(a) and RPC 1.15(b) when he transferred from his trust account to his business account $1,171.07 owed to former counsel, and then never remitted those funds. In the absence of a charge that respondent failed to maintain those funds inviolate, we assume that the OAE is satisfied that they are still in respondent's account.

THE TAMBURRO MATTER (SECOND COUNT)

On July 29, 2002, respondent deposited into his attorney trust account a $26,000 State Farm Insurance Company check payable to his client, Stephanie Tamburro. "Immediately thereafter," according to the complaint, respondent issued to himself two checks, in the amounts of $7500 and $2500, in payment of his fee. The record does not explain why respondent took a $10,000 fee against a $26,000 recovery.

Almost four months later, on November 18, 2002, Tamburro faxed a letter to respondent, demanding her settlement proceeds. That same day, respondent issued trust account check number 1, payable to cash, in the amount of $18,500. The next day, he deposited the check into his business account.

Also on November 18, 2002, respondent issued two business account checks to Tamburro, in the amounts of $8800 and $8,007.71. The record does not explain why respondent paid Tamburro $807.71 more than the $16,000 that remained from the $26,000, after he took his fee.

The settlement statement that respondent prepared reflected $801.04 in costs due to Tamburro's former counsel. In October 2002, counsel sent respondent an invoice for these costs. According to the complaint, however, the funds had "not remained

intact" in either respondent's trust or business accounts. Moreover, as of March 9, 2004, respondent had not paid the law firm the monies owed. Nevertheless, the OAE was satisfied that respondent's failure to keep the funds inviolate was not a result of knowing misappropriation.

According to the second count of the complaint, respondent's conduct violated RPC 1.15(a) and RPC 1.15(b). We agree.

The record does not explain why respondent removed from his trust account the $16,800 in settlement monies due to his client and deposited them into his business account. Nevertheless, in making that transfer, respondent violated RPC 1.15(a) because he failed to maintain them in trust. Moreover, he violated RPC 1.15(b) when he waited until November 18, 2002 – almost four months later – to pay his client the settlement funds that she was owed.

Similarly, respondent violated RPC 1.15(a) when he transferred from his attorney trust account to his attorney business account the $801.04 in costs due to his client's prior counsel. He also violated RPC 1.15(b) when he failed to pay the $801.04 in costs owed to former counsel. Unlike in the Montagnino matter, the complaint expressly alleges that, here,

the funds due former counsel "have not remained intact" in either respondent's trust or business accounts. Here, again, the OAE has taken the position that respondent's conduct constituted failure to safeguard funds, as opposed to knowing misappropriation.

FAILURE TO COOPERATE WITH THE OAE (THIRD COUNT)

Respondent did not produce all of the required records at an OAE audit visit on June 12, 2003. A second audit visit, scheduled for January 29, 2004, was adjourned to February 23, 2004, at respondent's request.

Respondent neither appeared at the February 23, 2004 audit, nor informed the OAE that he would not attend. Moreover, when the auditor appeared at respondent's office on that date, the door had been locked and the phone had been disconnected.

Thereafter, the OAE directed respondent to appear at its office on March 8, 2004, with "all books and records required to be maintained in accordance with R. 1:21-6." Although respondent appeared on that date, he did not bring the required records. At that time, the OAE instructed him to submit additional documentation by June 30, 2004, and to pay over the funds due in the Montagnino and Tamburro matters. As of May 2,

2005, respondent had not provided the requested documentation, and had not paid "the above-referenced third parties."

According to the third count of the complaint, respondent violated RPC 8.1(b) and RPC 1.15(d).

We agree that he violated RPC 8.1(b), but not RPC 1.15(d).

RPC 8.1(b) requires a lawyer, "in connection with a disciplinary matter," to respond to a disciplinary authority's "lawful demand for information." Respondent violated RPC 8.1(b) when he failed to appear for the audit on February 23, 2004, which had been rescheduled for that date at his request; when, on March 8, 2004, he failed to produce the books and records required to be maintained in accordance with R. 1:21-6; and when he failed to comply with the OAE's instruction to submit additional documentation by June 30, 2004, as well as disburse the funds due in the Montagnino and Tamburro matters.

Because, however, there is no reference in the complaint that the OAE actually examined respondent's records, we cannot find that they were not kept in accordance with the rules. We, thus, find no violation of RPC 1.15(d).

DISTRICT DOCKET NO. I-03-027E (THE BASKERVILLE MATTER)

The two-count complaint charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), former RPC 1.4(a) (failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information), and former RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation).

On April 6, 2000, Jacqueline E. Baskerville retained respondent to represent her in a personal injury action arising out of a January 20, 2000 automobile accident. On January 14, 2002, respondent filed a complaint on Baskerville's behalf.

Thereafter, respondent conducted discovery and corresponded with opposing counsel. However, although Baskerville attempted to discuss her case with respondent on numerous occasions (presumably during this time), she succeeded only in speaking to his secretary.

On June 30, 2003, the defendant filed a motion for summary judgment on the ground that Baskerville had failed to meet the verbal threshold. Respondent did not oppose the motion. Moreover, he did not advise Baskerville that the motion had been

filed; he did not advise her of the import of such a motion; and he failed to obtain her consent not to oppose the motion. On August 8, 2003, the case was dismissed with prejudice.

Respondent neither notified Baskerville of the dismissal nor sent her a copy of the order. Baskerville did not learn of the dismissal until August 25, 2003, when she met with respondent. At that time, respondent provided her with a copy of the order, which had been altered by the removal of references to respondent's failure to oppose the motion. The complaint did not charge respondent with violations of RPC 8.4(c) (misrepresentation) in connection with the alteration of the order. [2]

---

[2] As to the charges of failure to communicate with the client and alteration of the order, respondent answered: "Denied. Respondent advised the client on August 25, 2003. Respondent has no recollection and denies altering the Order." Through his counsel's letter of April 26, 2006 to Office of Board Counsel, however, respondent admitted that he failed to communicate with Baskerville and amended his answer accordingly. As to the order, by letter dated March 6, 2006, respondent "agreed that if Jacqueline Baskerville were to testify at a hearing, she would testify that the Order attached to the Complaint as Exhibit B [the altered order] was provided to her by the Respondent. The Respondent's Answer may be amended accordingly." Because of the amendments to respondent's answer, we have R. 1:20-6(c)(1) jurisdiction over this count of the Baskerville matter.

The first count of the complaint alleged gross neglect. It also alleged that respondent's neglect in this matter, when coupled with the conduct displayed in the 2004 matter that led to his reprimand, formed a pattern of neglect.

The second count of the complaint alleged that respondent generally failed to communicate with Baskerville and specifically failed to inform her that the summary judgment motion had been filed and her case had been dismissed. In addition, this count charged that respondent's failure to discuss with his client the import of the motion and to obtain her consent not to oppose the motion violated RPC 1.4(b).

We find that respondent violated RPC 1.1(a) by failing to oppose the summary judgment motion, which caused the complaint to be dismissed, and by failing to take any steps to vacate the order of dismissal.

Our findings on the RPC 1.1(b) charge are discussed infra, in the O'Hara matter. Because at least three instances of neglect are required to form a pattern of neglect, we analyze that charge in the case in which respondent's third act of neglect occurred.

We find also that respondent violated RPC 1.4(a) by failing to inform Baskerville that the summary judgment motion had been

filed and, later, that her complaint had been dismissed. He further violated that rule by not being available to discuss Baskerville's case with her and by making no effort to reply to her attempts to communicate with him. He also violated RPC 1.4(b) when he failed to (1) advise Baskerville of the import of the summary judgment motion, (2) obtain her consent not to oppose the motion, and (3) discuss the option of vacating the order of dismissal and determine whether that was the course of action that his client wanted to pursue.

Finally, as we noted earlier, the complaint did not charge respondent with having violated RPC 8.4(c) as a result of the alteration of the summary judgment order that he eventually presented to Baskerville. Although we are troubled by the alteration of the order, due process considerations preclude us from making any findings in this regard because of the complaint's failure to charge respondent with violations of RPC 8.4(c), and the lack of clarity on whether respondent admitted responsibility for the alteration of the court order.

DISTRICT DOCKET NO. I-05-018E (THE DEMASI MATTER)

In December 1999, Anthony J. DeMasi retained respondent to represent him in a wrongful termination and age discrimination action against his former employer, Talcott Communications (Talcott). On April 24, 2000, respondent filed a complaint against Talcott.

On May 18, 2001, the court dismissed DeMasi's complaint for failure to answer interrogatories. Four months later, the court reinstated the complaint upon the condition that DeMasi provide responses to all discovery requests within forty-five days. On January 4, 2002, upon defense counsel's motion, the court dismissed the case again for failure to provide discovery.

According to the first count, respondent failed to (1) provide the required discovery, (2) inform DeMasi that the motion to dismiss had been filed, (3) advise DeMasi of the import of the motion, (4) obtain DeMasi's consent not to oppose the second motion to dismiss, (5) oppose the second motion, (6) notify DeMasi of the complaint's dismissal, and (7) provide DeMasi with a copy of the order dismissing the case. The complaint alleged that respondent violated RPC 1.1(a).

The first count also alleged that respondent's conduct in the 2004 reprimand matter, combined with his neglect here, constitutes a pattern of neglect (RPC 1.1(b)).

The second count alleged that respondent violated RPC 1.4(a) by generally failing to communicate with DeMasi and, in particular, failing to inform him of the motion and of the dismissal of the case. In addition, this count charged that respondent's failure to discuss with DeMasi the import of the motion and to obtain his consent not to oppose it violated RPC 1.4(b).

The third count charged respondent with having violated RPC 8.1(b) for failure to comply with the District I Ethics Committee's (DEC) requests for information about the DeMasi grievance.

The undisputed facts establish that respondent violated RPC 1.1(a), RPC 1.4(a), and RPC 8.1(b).

On two occasions, the court dismissed DeMasi's complaint because respondent had failed to provide discovery. Significantly, the second dismissal arose out of an unopposed

motion that sought that very relief. Accordingly, we find that respondent violated RPC 1.1(a).[3]

We find also that respondent violated RPC 1.4(a) and RPC 1.4(b) when he failed to (1) inform DeMasi that a motion to dismiss had been filed, (2) discuss the significance of the motion with his client, (3) obtain DeMasi's consent not to oppose the motion, and (4) inform DeMasi that the motion to dismiss had been granted.

Finally, respondent violated RPC 8.1(b) by failing to reply to the DEC's requests for information about the DeMasi grievance.

DISTRICT DOCKET NO. I-05-019E (THE BOOKER MATTER)

On September 29, 2003, Alease I. Booker retained respondent to represent her in connection with a dispute with the Hotel Employees and Restaurant Employees International Union Pension Plan (Local 54). The dispute involved Booker's retirement pension benefits. After Booker and respondent executed a fee agreement, Booker paid respondent $1000, against which he was to

---

[3] As in Baskerville, our findings on the pattern of neglect charge in the DeMasi complaint are discussed below, in the O'Hara matter.

bill her at a $200 hourly rate. Respondent also was to "render billings on a monthly basis." Any unused portion of the retainer would be "reimbursed."

Respondent investigated Booker's pension benefits claim and communicated with the pension fund supervisor and Booker. His last communication with Booker was in March 2004, when she visited his office and spoke to his secretary. Since that time, however, she had no further communication with respondent about the progress of her matter.

On April 1, 2004, Booker attempted to reach respondent by phone, but discovered that it had been disconnected. On that same date, Booker went to respondent's office, which was closed and had a "for rent" sign in the window. Two weeks later, respondent wrote to Booker and informed her where she could reach him, but, according to the complaint, the communication "came too late resulting in great distress to her." Moreover, by that time, Booker had already filed a grievance against respondent.

As of November 4, 2004, respondent had not informed Booker of the status of her pension claim.

The first count of the complaint alleged that respondent's general failure to communicate with Booker and, specifically,

his failure to promptly notify her of the relocation of his office violated RPC 1.4(a) and RPC 1.4(b).

The second count alleged that, pursuant to the fee agreement, respondent was to bill Booker on a monthly basis and, at the conclusion of the matter, was to return to her "any retainer funds not utilized." Yet, Booker never received a bill or an accounting of respondent's use of the retainer funds. Moreover, she never received any unused retainer funds from respondent, although, according to the complaint, his work on the file did not exceed two to three hours.

The second count charged that respondent violated RPC 1.5(a) (unreasonable fee) and RPC 1.16(d) (upon termination of representation, failure to return unearned fee), as a result of the limited work he did on the Booker matter, his failure to send her a bill or to otherwise account for his use of the retainer, and his failure to refund any unused portion of the retainer. Although respondent admitted most of the factual allegations, he denied that the time devoted to Booker's matter did not exceed three hours, as alleged in the complaint.

The third count charged respondent with having violated RPC 8.1(b) as a result of his failure to cooperate with the investigation of the Booker grievance.

The undisputed facts establish that respondent engaged in unethical conduct in this matter. Specifically, we find that he violated RPC 1.4(a) and RPC 8.1(b).

As to RPC 1.4(a), although the complaint expressly alleges that respondent communicated with Booker between the date of his retention (September 2003) and March 2004, shortly thereafter Booker learned that respondent's telephone had been disconnected. He did not inform Booker of his whereabouts until April 15, 2004. As of the date of the filing of the grievance, November 2004, respondent still had not informed Booker of the status of her claim.

In addition, respondent violated RPC 8.1(b) by failing to reply to the DEC's communications seeking information about the investigation of Booker's grievance.

On the other hand, the limited allegations of the complaint do not establish that respondent's poor communication with his client constituted a violation of RPC 1.4(b). It is not clear that respondent had gathered enough information for Booker to be in a position to make any decision, informed or otherwise, regarding the representation. We, therefore, dismiss the RPC 1.4(b) charge against respondent.

Similarly, we are unable to conclude that respondent violated either RPC 1.5(a) or RPC 1.16(d). RPC 1.5(a) requires a lawyer's fee to be reasonable and identifies a number of factors to be considered in determining reasonableness. Booker agreed to pay respondent $200 an hour against a $1000 retainer. In and of itself, that amount is not unreasonable. Moreover, the complaint does not allege, or give any reason for concluding, that the fee was unreasonable. Therefore, we dismiss the RPC 1.5(a) charge.

With respect to the RPC 1.16(d) charge, the complaint alleged that respondent failed to return any fees that had not been earned by the end of the representation. In turn, respondent seemingly disputed that there were unused portions of the retainer. Because the record was submitted to us on the pleadings, we are unable to reconcile these divergent statements. We, thus, refrain from making any findings on this issue.

As we noted previously, in the context of this particular case, where a multitude of infractions have been alleged and admitted, we do no violence to the jurisdictional limits of R. 1:20-6(c)(1) when, even in the face of a disputed charge, we decide to proceed with our review of these matters under R. 1:20-6(c)(1), that is, without the benefit of a hearing below.

The charge at issue -- failure to return a possible balance of a $1000 retainer -- is one of numerous other charges that were admitted, is of a less serious nature than other violations alleged and conceded, and will have no significant effect on the ultimate findings, conclusions, and assessment of discipline.

Moreover, not only is the retainer question capable of being resolved by fee arbitration, but we would not be advancing any interests in the swift and fair administration of the disciplinary system were we to remand the Booker matter to the DEC for a full hearing, segregated from the other four matters under review. We believe that consolidation affords a more balanced review of the overall unethical acts under scrutiny.

These same considerations as to jurisdiction apply with equal force to our decision to forego any findings on the RPC 1.16(d) charge.

DISTRICT DOCKET NO. I-04-013E (THE O'HARA MATTER)

The three-count complaint charged respondent with having violated RPC 1.1(a), RPC 1.1(b), former RPC 1.4(a), former RPC 1.4(b), and RPC 8.1(b).

On October 18, 2001, John M. O'Hara retained respondent to represent him in a case against his former employer, the New

Jersey State Police, for violations of the New Jersey Conscientious Employee Protection Act, N.J.S.A. 34:19-1 to -8 (CEPA), and O'Hara's federal constitutional rights. O'Hara also sought civil damages under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1964(c). According to the complaint, O'Hara gave respondent "voluminous materials relating to his case including investigative reports, notes, telephone records, journals, etc."

Between October 2001 and January 2004, O'Hara met with respondent ten to twelve times. However, on at least seventeen occasions, respondent either failed to appear for a scheduled meeting with O'Hara, or his office was closed. In addition, during the same period, O'Hara placed more than ninety telephone calls to respondent for the purpose of learning the status of his case, but succeeded in talking to him only nine or ten times. With respect to the other telephone calls, O'Hara either left a message or talked to respondent's secretary, "who continually assured O'Hara that his case was proceeding and that [respondent] would have the complaint drafted shortly."

During the same time period, O'Hara realized that the CEPA statute of limitations had expired. When an alarmed O'Hara brought this to respondent's attention, he assured O'Hara that

the expiration of the statute of limitations was "of no import" because the former employer's conduct was so egregious "that a filing in the Federal Court alleging civil rights violations and civil RICO was in order." Toward the end of 2003, respondent drafted a federal complaint with these claims, but the document was "replete with factual misstatements and other inaccuracies." O'Hara repeatedly made written corrections on the complaint and returned it to respondent, but the document was never revised to reflect the corrections.

In April 2004, respondent closed his Northfield office, disconnected the telephone, and moved the practice to his Deptford office. However, he never communicated this to O'Hara. After O'Hara learned that respondent's phone had been disconnected, he went to respondent's office and discovered that he had "relocated without notice."

O'Hara sent letters to respondent via certified and regular mail to his home, his Deptford office, and to the two municipal courts where respondent was the prosecutor. The letters sent via certified mail went unclaimed. Similarly, respondent did not answer the letters sent to him via regular mail.

Respondent never filed a complaint on behalf of O'Hara. After January 2004, he never communicated with O'Hara to inform him of the status of the case.

According to the first count, respondent violated RPC 1.1(a) by failing to obtain O'Hara's consent to permit the expiration of the CEPA statute of limitations prior to the filing of a complaint, failed to file a federal civil rights complaint on O'Hara's behalf, and attempted to deceive O'Hara by misrepresenting the progress of the matter. The complaint did not charge respondent with having violated RPC 8.4(c).

In addition, the first count alleged that respondent's conduct in the 2004 disciplinary matter, together with his neglect in this matter, constitutes a pattern of neglect, a violation of RPC 1.1(b).

The second count charged that respondent violated RPC 1.4(a) when he closed and relocated the Northfield office without having advised O'Hara. It also alleged that respondent violated RPC 1.4(b) when he generally failed to communicate with O'Hara, failed to reply to O'Hara's communications after he had relocated his office, failed to discuss the import of permitting the CEPA statute of limitations to expire, unilaterally decided

to allow the statute to expire, and failed to obtain O'Hara's consent to not filing the CEPA claim.

The last count of the complaint charged respondent with having violated RPC 8.1(b) as a result of his failure to comply with the DEC's requests for information about the O'Hara grievance.

We agree that respondent violated RPC 1.1(a) when, almost three years into his representation of O'Hara, he still had not filed a complaint. His neglect was compounded by the loss of the CEPA claim due to the expiration of the one-year statute of limitations. Moreover, at least some of O'Hara's federal claims might have suffered a similar fate. Although the ethics complaint does not identify the specific civil rights violations that the State Police may have committed when it terminated O'Hara's employment, typical civil rights claims are brought under 42 U.S.C. § 1981 and 42 U.S.C. § 1983. For purposes of these claims, New Jersey's two-year statute of limitations for personal injury actions applies. See, e.g., Goodman v. Lukens Steel Co., 482 U.S. 656, 661-62 (1987) (§ 1981 claims); Wilson v. Garcia, 471 U.S. 261, 266-68 (1985) (§ 1983 claims). Accordingly, the statute of limitations for these claims would have expired as well.

The statute of limitations period for civil RICO claims is four years. Agency Holding Corp. v. Malley-Duff & Assocs., Inc., 483 U.S. 143, 156 (1987). Because the record does not reveal when O'Hara's civil RICO claim arose, we cannot determine whether, by April 2004, the statute of limitations had expired. Nevertheless, respondent engaged in gross neglect when he failed to file any complaint during the three-year period that he allegedly represented O'Hara.

In addition, respondent violated RPC 1.4(a) when, after January 2004, he stopped communicating with O'Hara about the status of his case, relocated his practice without informing O'Hara, and did not reply to O'Hara's letters.

Furthermore, respondent violated RPC 1.4(b) when he did not discuss with O'Hara the viability of the CEPA claim prior to the expiration of the statute of limitations, did not advise him on the effect of the expiration of the statute upon any such claim, and allowed the statute to expire without discussing whether O'Hara wanted to pursue the claim and without obtaining his consent not to file the complaint.

We conclude also that respondent violated RPC 8.1(b) by failing to reply to the DEC's communications seeking information pertaining to the investigation of O'Hara's grievance.

We now turn our attention to the pattern of neglect charges. As mentioned earlier, respondent was charged with a pattern of neglect in the Baskerville, DeMasi, and O'Hara matters. The three complaints alleged that respondent's conduct in his 2004 disciplinary case, combined with the gross neglect exhibited in each of those three matters, amounted to a pattern of neglect.

We note, however, that, in the 2004 matter, the only proven charges were failure to communicate with clients and failure to cooperate with disciplinary authorities. There were no findings of gross neglect or even simple neglect. Accordingly, the charges of a pattern of neglect, as stated in the complaints, rest on an improper ground.

On the other hand, respondent's admitted gross neglect in the three relevant matters, Baskerville, DeMasi, and O'Hara, constitute a proper basis to a finding of a pattern of neglect. For a finding of a pattern of neglect at least three instances of neglect are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). We find, thus, that a violation of RPC 1.1(b) has been amply supported by respondent's admissions.

There remains the quantum of discipline to be imposed for respondent's violations of RPC 1.1(a), RPC 1.1(b), RPC 1.4(a), RPC 1.4(b), RPC 1.15(a), RPC 1.15(b), and RPC 8.1(b).

Generally, a reprimand is imposed for a combination of failure to communicate with clients, gross neglect, and pattern of neglect. See, e.g., In re Weiss, 173 N.J. 323 (2002) (reprimand for lack of diligence, gross neglect, and pattern of neglect); In re Balint, 170 N.J. 198 (2001) (reprimand where, in three client matters, the attorney engaged in lack of diligence, gross neglect, pattern of neglect, failure to communicate with clients, and failure to expedite litigation); and In re Bennett, 164 N.J. 340 (2000) (reprimand for lack of diligence, failure to communicate in a number of cases handled on behalf of an insurance company, gross neglect, and pattern of neglect).

In this case, respondent's conduct went beyond failure to communicate with clients, gross neglect, and a pattern of neglect. He also failed to preserve clients' and third parties' funds and to promptly disburse them in two matters, and failed to cooperate with the OAE audit and with the DEC investigation of three matters.

Violations of RPC 1.15(b) ordinarily result in an admonition. See, e.g., In the Matter of Douglas F. Ortelere, DRB

03-377 (February 11, 2004) (attorney admonished for failure to promptly deliver balance of settlement proceeds to client after her medical bills were paid) and In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (admonition imposed upon attorney who, for three-and-a-half years, held in his trust account $4800 earmarked for the payment of a client's outstanding hospital bill).

Admonitions result also for failure to cooperate with the investigation of a grievance. In the Matter of Kevin R. Shannon, DRB 04-512 (June 22, 2004) (admonition for attorney who did not promptly reply to the DEC investigator's requests for information about the grievance); In the Matter of Keith O. D. Moses, DRB 02-248 (October 23, 2002) (admonition for failure to reply to DEC's requests for information about two grievances); In the Matter of Jon Steiger, DRB 02-199 (July 22, 2002) (admonition for failure to reply to the district ethics committee's numerous communications regarding a grievance) and In the Matter of Grafton E. Beckles, II, DRB 01-395 (December 21, 2001) (admonition for attorney who did not cooperate with disciplinary authorities during the investigation and hearing of a grievance).

The number of violations and respondent's prior reprimand suggest that he should receive discipline more severe than a reprimand. However, in assessing the appropriate measure of discipline for the totality of respondent's conduct, we must consider the compelling evidence he offered in mitigation.[4]

Respondent's brief and appendix set forth several mitigating factors that, respondent claims, should result in the imposition of either "a reprimand or a suspension to terminate when and if Respondent is no longer disabled." We already are aware of many of these facts because they formed the basis of respondent's successful 2005 motion to vacate the defaults initially entered in the DeMasi and Booker matters.

According to respondent's affidavit, in May 1997, he was involved in a motor vehicle accident. He was diagnosed with

---

[4] Under R. 1:20-6(c)(1), "a hearing shall be held if . . . the respondent's answer requests an opportunity to be heard in mitigation . . . ." As we already noted, respondent initially asked for a hearing on mitigation, but later withdrew that request. When this matter was presented to us for review, respondent submitted extensive documentation in mitigation of his conduct. We see no obstacles in considering the offered mitigation. First, we interpret the language of the rule – "to be heard" – to mean a hearing before a trier-of-fact for the presentation of mitigating evidence, including expert testimony, which will then be subject to cross-examination. Respondent waived his right to a hearing, opting to present documentary evidence instead. Second, the OAE did not object to respondent's submission.

lumbar sprain and strain. During the year following the accident, respondent's pain escalated, requiring various medications, including Percocet.

By January 1998, the Percocet had affected respondent's intestines so severely that it caused them to tear, requiring a three-day hospitalization due to internal bleeding. Afterward, respondent continued to have "great pain," which had become a "constant factor" in his life. In addition, he had little or no use of his left arm. He continued taking Percocet and "other medications."

In August 1998, respondent underwent a cervical fusion and was incapacitated for two weeks. In November 1999, he herniated two discs, during a courtroom presentation.

Two years later (December 2001), the pain had become so severe that respondent had trouble getting in and out of his car, sleeping was nearly impossible, and practicing law had become "consistently difficult." Often, he slept little more than twenty hours over a five-day period. On some days, he could barely get out of bed because of the pain.

By this time, respondent was taking Percocet, Oxycontin, and Zanaflex. He also was using Lidoderm patches. The effects of the medication, however, were such that respondent was missing

court appearances, although he always notified the court that he would not appear.

Respondent also started having "trouble with client communication." He explained: "I was exhausted and in pain, with little energy left over for client communication. Unfortunately, I continued to practice law. At the time I thought that finishing up the work myself was the best way to serve my clients."

In December 2003, respondent's twice daily dose of 20 mg of Oxycontin was changed to 100 mg of Morphine twice a day. From January 2004 through February 2005, respondent vomited several times a day. He lost twenty-five pounds.

In May 2004, respondent closed his Northfield office, as he had fallen behind in rent and was not earning any fees. He worked at home on his "few remaining files" with the help of a secretary, to "wrap things up." He was "trying to close cases so that [his] clients would not be left without closure," while at the same time "still trying to represent" them.

That same month, respondent's wife left the marriage and took their now five- and four-year-old children with her. They live in Stone Harbor. Respondent has seen his children about

five times since then because he is physically incapable of making the one-hour drive there.

In July 2004, attorney William Ziegler called respondent to find out how he was. When respondent told Ziegler of his "troubles," Ziegler agreed to help respondent. In August 2004, Ziegler and attorney Mark Cimino became trustees of respondent's practice and assumed responsibility for all of his cases. Respondent cooperated fully with them.

In January 2005, respondent underwent spinal surgery. He was hospitalized for five days. He believes that he will have two more neck surgeries in the future.

In January 2005, respondent's father came to take care of him and observed that respondent was "extremely depressed." He called the New Jersey Lawyers Assistance Program. Respondent then met with representative William Kane, who arranged psychiatric treatment for respondent at Princeton House.

In December 2005, respondent was admitted to Underwood Memorial Hospital, after his estranged wife called the police and reported that he had threatened suicide. Respondent was released a week later. The discharge summary reflects, among others, the following diagnoses: Axis I – major depressive disorder, recurrent and severe without psychosis, and chronic

pain; Axis III – history of cervical and lumbar fusion due to history of cervical and lumbar disc disease; and Axis IV – stressors related to financial and marital issues.

As of April 7, 2006, respondent had been discharged from Princeton House and was receiving outpatient treatment at Kennedy Hospital, in Washington Township. He attends group therapy for three hours, three times a week. Upon the conclusion of his outpatient treatment, respondent will undergo individual therapy.

For pain, respondent continues to take Oxycontin, Percocet, and Zanaflex, as well as Lidoderm patches. He also takes Cymbalta for depression and chronic pain.

According to respondent's brief, he is divorced and now lives with his parents in Florida. At oral argument before us, counsel stated that respondent may not practice law again.

The conduct giving rise to the ethics complaints took place between December 1999 and April 2004. During this time, respondent was in the midst of his continuing health crises. In August 2004, respondent consented to the appointment of trustees to oversee and run his practice. Respondent's physical and mental disabilities ultimately led to his transfer to disability inactive status.

In light of respondent's overwhelming health problems; the fact that his conduct was mostly the result of nonfeasance, rather than malfeasance; the lack of venality on his part; and the steps that he ultimately took to protect his clients by having a trustee appointed and transferring to disability inactive status, we determine that a reprimand, a measure of discipline endorsed by the OAE, sufficiently addresses the extent of respondent's misconduct and the preservation of the public's confidence in the profession and in the legal system as a whole.

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

Disciplinary Review Board
William J. O'Shaughnessy
Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Bernard J. McBride, Jr.
Docket No. DRB 06-082

Argued: June 15, 2006

Decided: August 31, 2006

Disposition: Reprimand

Members	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
O'Shaughnessy		X			
Pashman		X			
Baugh		X			
Boylan		X			
Frost		X			
Lolla		X			
Pashman		X			
Stanton		X			
Wissinger		X			
Total:		9			

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel