SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-128
District Docket Nos. XIII-02-029E, XIII-02-037E, XIII-03-001E, XIII-03-002E, XIII-03-008E, XIII-03-009E, XIII-03-010E, XIII-03-011E, XIII-03-013E, XIII-03-014E, XIII-03-019E, and XIII-04-020E

IN THE MATTER OF

PHILLIP J. MORAN

AN ATTORNEY AT LAW

Corrected
Decision

Argued: July 20, 2006

Decided: September 27, 2006

David Trombadore appeared on behalf of the District XIII Ethics Committee.

Bernard Campbell appeared on behalf of respondent.

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

This matter came before us on a recommendation for discipline filed by Special Master Robert C. Shelton, Jr., J.S.C. (ret.). The eight-count amended complaint charged respondent with misconduct in seven client matters, including a

pattern of neglect. During the hearing before the special master, respondent admitted the factual allegations against him, as well as a number of the alleged ethics violations. The hearing centered on mitigating factors, that is, respondent's depression. For the reasons expressed below, we determine to impose a one-year suspension for respondent's ethics offences.

On a procedural note, the special master made a ruling in a matter involving client Robert A. Bell (XIII-03-019E), after the presenter filed a motion to dismiss the complaint. Respondent had represented Bell in an employment matter against the State of New Jersey. Bell sought the return of a $2,500 retainer, in light of respondent's receipt of $75,000 from the settlement, for costs and fees. In the presenter's view, the matter represented a fee dispute. He, therefore, filed a motion to dismiss the complaint, to which Bell objected. The special master then gave Bell the opportunity to present his argument opposing the motion. When Bell did not appear, the special master dismissed the complaint.

The record contains a number of complaints and answers. The "Amended Complaint" and respondent's "Amended Answer to Amended Complaint" are the pertinent documents. A review of the earlier complaints, however, reveals that a matter involving a client named James D. Pflaumer had been included in these

complaints (XIII-03-014E). For reasons not revealed in the record, that matter was not made part of the amended complaint. The presenter informed the Office of Board Counsel that, during the course of this proceeding, he learned that the substance of the Pflaumer grievance is the subject of pending litigation. Because it is not ripe for an ethics proceeding, the presenter did not include it in the amended complaint.

Respondent was admitted to the New Jersey bar in 1975. In 2002, he was admonished for mishandling a real estate transaction. Specifically, in early 1999, while representing the buyers, respondent failed to turn over funds to both the sellers and the buyers. He also demonstrated a lack of diligence by not timely paying charges due after the closing and failed to return his clients' telephone calls. In the Matter of Philip J. Moran, DRB 01-411 (February 11, 2002).

In October 2002, Office of Board Counsel received a default matter against respondent, alleging gross neglect of an employment discrimination claim and failure to comply with the client's requests for information about the status of her legal matter.

After the DEC certified the record to us a default pursuant to R. 1:20-4, respondent's counsel filed a motion seeking to have respondent transferred to disability inactive status

("DIS"), pursuant to R. 1:20-12, and requesting an extension of time to file a motion to vacate the default. Counsel alleged that respondent was suffering from severe depression and was unable to assist him in his defense. Counsel submitted a letter from respondent's treating psychologist, dated November 7, 2002, stating that respondent's condition was "very severe" and that he was not "psychologically or medically capable of attending to the matters at this point." The letter also stated that respondent was scheduled to be seen by a psychiatrist. We advised counsel that his motion required a more recent and more detailed medical report, adding that we "would be greatly assisted" by a report from the treating psychiatrist. We also advised counsel that, "[i]n the absence of more recent reports from Mr. Moran's treating psychiatrist, this matter must proceed as scheduled."

Thereafter, we adjourned our scheduled review of the matter to allow counsel time to obtain the requested information. Counsel then submitted a second letter from respondent's psychologist, dated January 30, 2003. The letter requested that we delay the review of this matter and opined that respondent was unable to assist counsel in his defense because he was "at serious risk of suicide."

Following a close review of the psychologist's letter and counsel's argument, we denied the motion. R. 1:20-12(e) states that a disciplinary proceeding will be deferred only when the Court finds that the respondent is unable to defend against the charges or complaint because of mental or physical incapacity. We were unable to conclude from the documents provided by counsel that respondent could not assist counsel in the defense of his disciplinary matter. The information received from respondent's psychologist was essentially a statement that respondent was very depressed, was suicidal, and could not assist in his own defense because of the stress that it would cause him. Although we asked for a report from respondent's treating psychiatrist, none was provided. We found, therefore, that respondent had not met his burden to show that he was unable to assist counsel and determined to proceed with the review of the matter as a default.

In 2003, we transmitted to the Court our decision to reprimand respondent for his misconduct in that matter. In the Matter of Philip J. Moran, DRB 02-382 (May 16, 2003). On counsel's petition for review of our decision, the Court vacated our decision and placed respondent on DIS on September 8, 2003, "pending a determination of respondent's capacity to participate

in his defense and to practice law." In re Moran, 177 N.J. 507 (2003).

On February 25, 2004, the Court vacated that Order, after considering an expert report submitted on respondent's behalf. In re Moran, 178 N.J. 513 (2004). The Court remanded the matter to the DEC to permit respondent to file an answer to the formal ethics complaint. That matter is pending below.

After February 25, 2004, respondent voluntarily refrained from resuming his practice of law.

Count One (Whitfield)-Docket No. XIII-02-029E

In October 1999, Selena Whitfield retained respondent in connection with a race discrimination suit. Respondent obtained a right-to-sue letter from the United States Equal Employment Opportunity Commission, but, according to the special master's findings, took no further action on Whitfield's behalf.

From 1999 through August 2002, Whitfield made numerous attempts to communicate with respondent. Respondent replied only twice, in August 2000 and October 2001. During the latter conversation respondent scheduled an appointment with Whitfield, which he then failed to keep. Thereafter, and until August 30, 2002, Whitfield made daily attempts to contact respondent, to no

avail. On that date, Whitfield sent respondent a letter asking him to call her. Respondent did not comply with her request.

The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) and RPC 1.4(b) (failure to communicate and failure to keep a client reasonably informed).

Respondent admitted that he violated RPC 1.4(a) and (b).[1]

Count Two (Gibbs) - District Docket No. XIII-03-008E, (Keenan) - District Docket No XIII-04-020E, (Pancavage) - District Docket No. XIII-03-009E, and (Palmer) - District Docket No. XIII-03-002E

In August 1999, Leslie Gibbs, Janet Keenan, Gerri Pancavage, Robert Palmer, and others retained respondent to represent them in connection with a dispute with their employer, Conrail, and their union, the Transportation Communications International Union ("TCU"). In July 2001, respondent filed a complaint in district court. In January 2002, respondent served defendant Conrail; he did not serve defendant TCU.

In early 2002, Conrail filed a motion to dismiss and/or for summary judgment, asserting, among other things, late service,

[1] We note that the numbered paragraphs in respondent's answer in this count do not correlate with the paragraphs in the complaint. His answer does not address the alleged violations of RPC 1.1(a) and RPC 1.3.

lack of subject matter jurisdiction, and preemption under the Railway Labor Act. Respondent did not reply to the motion. In April 2002, the court granted Conrail's motion and dismissed the claims. In its order, the court noted that Conrail had made numerous attempts to contact respondent about the motion. Respondent did not communicate with his clients or the court regarding the motion.

Moreover, during the course of the representation, respondent did not keep his clients advised about the status of their claim, and did not inform them that the complaint had been dismissed. In December 2002, the clients learned of the dismissal after calling the court clerk.

The complaint charged respondent with violating RPC 1.1(a), RPC 1.3, and RPC 1.4, presumably (a).

Respondent denied that he violated RPC 1.1(a) and RPC 1.3, but admitted that he violated RPC 1.4.

Count Three (Brown) - District Docket No. XIII-03-010E

In early 2000, Leonidas Brown retained respondent in connection with an employment matter against Norwest Financial Corporation. Although respondent filed suit on Brown's behalf in early 2000, thereafter the matter was dismissed for lack of prosecution. Brown learned of the dismissal from the court,

rather than from respondent. Furthermore, respondent did not reply to Brown's calls and letters, either while the lawsuit was pending or after its dismissal.

The complaint charged respondent with violating RPC 1.1(a), RPC 1.3, and RPC 1.4, presumably (a).

Respondent denied that violated RPC 1.1(a). He admitted his violation of RPC 1.3 and RPC 1.4.

Count Four (Iqbal) - District Docket No. XIII-03-011E

In November 2002, Mohammed Iqbal retained respondent in connection with a child support and visitation matter. Iqbal's wife was seeking support, and Iqbal was seeking visitation. Respondent did not perform any work on Iqbal's behalf regarding visitation, "and failed to make any appearance in the matter as Grievant's counsel."[2] Respondent also failed to reply to Iqbal's phone calls seeking information about his case.

The complaint charged respondent with violating RPC 1.1(a), RPC 1.3, and RPC 1.4, presumably (a).

Respondent denied violating RPC 1.1(a), but admitted that he violated RPC 1.3 and RPC 1.4.

---

[2] Although, at the hearing below, respondent admitted all the allegations against him, in his amended answer to the amended complaint, he denied that he had performed no work with regard to the visitation issue.

Count Five (Kunert) - District Docket No. XIII-02-037E

In 1999, Robert and Marianne Kunert retained respondent in connection with a civil rights action against the Township of Hamilton ("the township"), arising out of the conduct of the township's police department. In April 2001, respondent filed a complaint against the township in federal district court. In March 2002, the court dismissed the matter without prejudice for failure to serve the complaint. Respondent did not reinstate the federal action.

In April 2002, respondent filed suit against the township in Superior Court. The action was dismissed in November 2002, for failure to file a timely notice of claim under the New Jersey Tort Claims Act.

On numerous occasions during the course of respondent's representation of the Kunerts, they sought information from him about the status of their matter. Respondent did not timely inform them of filings, pending dismissals, or his intended termination of the representation.

In October 2002, shortly before the state action was dismissed, respondent's wife informed the Kunerts that respondent was ill and, therefore, unable to continue to represent them. The Kunerts attended the hearing, at which the state action was dismissed.

The complaint charged respondent with violating RPC 1.1(a), RPC 1.3, and RPC 1.4, presumably (a).

Respondent denied that he violated RPC 1.1(a). He admitted violating RPC 1.3 and RPC 1.4.

Count Six (Scianimanico) - District Docket No. XIII-03-001E

In 1999, Maureen Scianimanico retained respondent for representation in an employment discrimination matter. Respondent filed a complaint on her behalf in November 1999. Respondent and Scianimanico disagreed as to how the matter should be prosecuted. Respondent, however, did not file a motion to withdraw as counsel, and failed properly to terminate his representation.

In July 2000, the complaint was dismissed for lack of prosecution. Respondent did not reinstate the action.

The complaint charged respondent with violating RPC 1.3, which respondent admitted.

Count Seven (Schmidlin)-District Docket No. XIII-03-013E

In July 2002, Timothy Schmidlin retained respondent in connection with an appeal of an employment matter against the New Jersey State Police. Schmidlin gave respondent a $15,000 retainer. Although respondent filed a notice of appeal, he did

no further work in the matter, and did not reply to Schmidlin's numerous telephone calls, and at least two certified letters.[3] In addition, respondent failed to keep at least five appointments with Schmidlin.

Approximately one week before the deadline for filing the brief on the appeal, Schmidlin hired William Buckman to represent him. Schmidlin paid Buckman a $10,000 retainer.[4] Buckman obtained an extension of time for filing the brief, but was unable to obtain any records from respondent, despite his attempts to do so. For transcripts and her records, Buckman had to contact the attorney who represented Schmidlin at the trial.[5]

---

[3] At the hearing below, respondent admitted the allegations in the complaint. In his amended answer to the amended complaint, however, he denied having performed no further work on Schmidlin's behalf.

[4] The New Jersey Lawyers' Fund for Client Protection ("CPF") reimbursed Schmidlin for the $15,000 retainer he paid respondent. Respondent testified that he has discussed setting up a payment plan with the CPF, to reimburse it for the $15,000 paid to Schmidlin. The CPF report reveals that, as of May 2, 2006, respondent had repaid $600 out of the $15,000.

[5] The record contains an undated letter from the presenter to the special master, stating: "I also note that Mr. Schmidlin's underlying litigation is not yet resolved; he is awaiting the opinion of the ALJ on remand of his successful appeal. However, since Mr. Moran is not a party to that lawsuit, I do not see the pendency of that matter as a problem in moving forward with the present matter."

The complaint charged respondent with violating RPC 1.1(a), RPC 1.3, RPC 1.4, presumably (a), and RPC 1.5(a) (charging an unreasonable fee).

Respondent denied that he violated RPC 1.1(a), and admitted violations of RPC 1.3 and RPC 1.4. With regard to the charged violation of RPC 1.5(a), respondent admitted that Schmidlin was owed a portion of the fee, but denied having charged an unreasonable fee.

Count Eight

This count charged respondent with a pattern of neglect, a violation of RPC 1.1(b). Respondent admitted the charge.

The special master heard testimony from James Hutchins, M.D., who began treating respondent in November 2002, following a referral from Laura DeMarzo, a psychotherapist who had treated respondent. According to Dr. Hutchins, respondent told him that he had been suffering from depression for fifteen years, with the depression "waxing and waning over that period of time." Dr. Hutchins diagnosed respondent as suffering from a recurrent major depressive episode and dsythymia. Dr. Hutchins stopped treating respondent in October 2003, at which time respondent

had "significantly improved."[6] With regard to the effect of respondent's depression on his ability to practice law, respondent's counsel queried Dr. Hutchins:

> Q. Now, Doctor, I want you to assume that Mr. Moran was having major symptoms of depression, of his loss of interest in life, his difficulty in maintaining the responsibilities to practice, his feelings of hopelessness and helplessness, going back as far as late 1999 and certainly by January 2000, and that these feelings continued and as a result of – well, I shouldn't say it – and he avoided dealing with and talking with clients, he withdrew socially, he did not fulfill his commitment to people or to courts, he felt hopeless and at one point he said he felt that the world was dark and that he was in a well and looking out at a light that was fading, and that's the way he described his, his existence.
>
> Doctor, in your opinion did the major depression which you diagnosed and which Mr. Moran described to you, and assuming the facts I have given, affect adversely his ability to practice law from late 1999, 2000 up until the time that you saw him?
>
> A. Yes, it would.
>
> Q. And how would that affect his ability to practice, Doctor?
>
> A. Well, it would affect his ability to, in terms of being able to do the cognitive work that needs to be done in terms of practicing law, looking things up, comparing, thinking things through, it would certainly affect that, it would certainly affect his ability to be interested in and

[6] Respondent continued his treatment at a VA hospital.

do those things, as well, interact with people, and it also would affect his ability, given the nihilistic kind of feelings that he had expressed of it was hopeless, it was useless, none of it mattered, and he was neglecting his law practice as much as he was neglecting other things in his life.

. . . .

[Presenter] Okay. The question I have is whether or not you ever concluded that his depression would have affected his ability, for example, to appreciate, to understand that he had a deadline in a particular matter or that he was, in fact, being asked to or expected to represent a client in a particular matter. I'm not — if you understand the distinction I'm drawing, I'm not asking you whether or not he was able to follow up, but whether he was able to appreciate at least what was expected of him in his professional capacity despite the depression.

A. I believe that, yes, he was able to, to appreciate that he — you know, the responsibilities that he was not addressing. In fact, I believe he said that to me in that first evaluation.

Q. Okay. So if I understand what you have said in response to [respondent's counsel's] questions, that he was unable to act appropriately, in an appropriate professional way to those recognitions, at least in part, if not wholly, due to the depression that you diagnosed?

A. Yes. That's correct.

[2T13-14 to 2T21-14.][7]

Respondent testified that he began to suffer from depression in 1988 or 1989, and that he dealt with recurring episodes throughout his life. He stated that he would have a depressive period and that he would "work out of it in a couple weeks, a couple of months, fix whatever didn't get done during that period of time or whatever mistakes I made during that time and get back to normal pretty quickly and everything would be okay." In 1999 to 2000, however, he was "over [his] head in life."

In the fall of 2002, respondent voluntarily delivered boxes of files to other attorneys, and began treatment. When asked if he wanted to practice law again, respondent stated that he was unsure whether he wanted to pursue civil rights cases or work by himself again or "be in that position where there's nobody to tell me that I'm nuts, if I stray toward depression again . . . ."

In his written summation, the presenter sought to amend the amended complaint to conform to the evidence, under R. 4:9-2,

[7] 2T refers to the transcript of the hearing before the special master on November 30, 2005.

and requested that respondent be charged with violating RPC 1.16(d) (failure to protect the client's interests upon termination of the representation) in Kunert and Schmidlin. Respondent's counsel did not object. The presenter also asserted that respondent had violated RPC 1.4(b) and (c) in Scianimanico, but did not ask that the complaint be amended.[8] In his summation, the presenter made no mention of a violation of RPC 1.3 in Gibbs, although it was charged. He also made no mention of RPC 1.1(a) in any matter, which was also charged.

The presenter's position was that respondent should receive a two-year suspension; upon reinstatement, he should practice under the supervision of a proctor for a period of one year; and, prior to reinstatement, he should provide "a favorable mental health evaluation" and make restitution to the CPF for all funds paid to his clients.

The special master found that respondent violated RPC 1.3 in all matters, except Gibbs; RPC 1.4(b) and RPC 1.4(c) (more properly (a) and (b)) in all matters; RPC 1.5(a) in Schmidlin; and RPC 1.16(d) in Kunert and Schmidlin. In addition, he found

---

[8] Although RPC 1.4(b) and (c) were in effect when the presenter submitted his written summation, the rules in effect at the time of the misconduct control. Thus, the applicable subsections are RPC 1.4(a) and (b).

that respondent violated RPC 1.1(b). He made no reference to the charged violations of RPC 1.1(a).

In determining the appropriate measure of discipline, the special master pointed to a number of aggravating and mitigating factors, which he set out in his report:

> Aggravating Factors:
>
> 1. Prior discipline. Respondent was admonished in connection with Docket Nos. VII-1999-36E and VII-2000-17E (Bosch) for failure to deliver a mortgage payoff check in a timely fashion on behalf of the sellers of real estate.
>
> 2. Frequency of conduct. The above alleged conduct involved eleven grievants and seven different counts. The conduct was repeated during several different representations. In fact, Respondent admits a pattern of neglect in response to the Eighth Count of the Amended Complaint.
>
> 3. Duration of conduct. The alleged conduct occurred over a period of three years, from late 1999 through early 2003. Respondent should have moved even more expeditiously to seek professional assistance to address these problems.
>
> 4. Effect of conduct. The effect of respondent's conduct was substantial — several of his clients likely have lost the right to pursue claims because of the intervention of statutes of limitation.
>
> Mitigating Factors:
>
> 1. Length of career. Respondent was admitted to practice in New Jersey in 1975, has practiced from that time until 2002, and

had no ethical record of any kind until the 1999-2002 time period.

2. Medical condition. Respondent suffered from major recurrent depression at least from 1999, a condition which severely and adversely affected respondent's ability to function and to meet the demands of his practice from 1999 into 2003.

3. Response to treatment. Respondent sought professional assistance for his depression in the latter part of 2002, has been compliant with the recommendations of both Dr. Hutchins and Laura DeMarzo, Ph.D. from that time at least until well into 2005, and has responded well to treatment.

4. Admission of conduct. In his pleadings and his testimony, respondent admitted and acknowledged multiple occurrences of unethical conduct, as set forth above. At the hearing of this matter, respondent expressed deep remorse and regret for his conduct and for his failure to serve his clients appropriately. I find these expressions sincere.

5. Lack of malice. I find that respondent's conduct was not motivated by malice toward any of the grievants, and that he did not act dishonestly by accepting matters – that is, he did so with the intent to act on them conscientiously.

6. Discontinuation of practice. Mr. Moran has not practiced at least since he was placed on the disability inactive list on September 4, 2003, (which Order was vacated by an Order entered February 25, 2004), and until the present. I find that this was because he recognized his failings as an attorney as well as personally, and made a

> concerted and successful effort to overcome these failings.
> [SMR4-SMR5.][9]

The special master relied heavily on In re Barbour, 109 N.J. 143 (1988), in determining the appropriate quantum of discipline. In Barbour, the Court imposed a six-month suspension on an attorney who engaged in gross neglect and a pattern of neglect in three matters. The attorney also overreached two clients. The Court found, however, that at the time of these events, the attorney's professional capacity was seriously and detrimentally affected by a medical condition, which was itself exacerbated by alcoholism. The Court stated:

> We are satisfied that the gravamen of respondent's ethics breaches consists not of dishonesty, duplicity, greed, or venality; they do not touch upon the proper administration of justice. Respondent's failures consist of neglect, inattentiveness, unresponsiveness, noncooperation, and delay. They were occasioned by a lack of good judgment and a loss of will and initiative. Respondent's poor performance and breach of ethics in some measure were influenced by his serious medical illness exacerbated by his alcoholism. Even though he earlier professed to discount these mitigating factors as irrelevant, he now conscientiously urges our full and sympathetic consideration of them. The

[9] SMR refers to the special master's report, dated March 20, 2006. Although there are no page numbers in the report, they are being supplied in this decision for ease of reference.

> nature and extent of these conditions, however, do not excuse or exonerate respondent for serious and continuing ethics failures.
>
> . . . .
>
> The combination of these conditions will not exonerate respondent in this case. At the very least, respondent should have reached out for help and sought the assistance of outside counsel or referred these matters to another attorney. Nevertheless, in our judgment, his illness coupled with alcoholism in these circumstances blunts the blameworthiness of the misconduct.
>
> [Id. at 162-63.]

The special master recommended a two-year suspension, with reinstatement conditioned on proof of fitness to practice law, as attested by a licensed psychiatrist or psychologist; reimbursement of the CPF for the $15,000 paid to Schmidlin or arrangements for payment satisfactory to the CPF; and, upon reinstatement, one-year supervision by a proctor. The special master further recommended that the period of suspension be made retroactive to September 8, 2003, "the date from which [respondent] has definitely removed himself from the practice of law, and that upon compliance with the conditions for reinstatement, that [sic] he be reinstated forthwith."

Upon a de novo review of the record, we are satisfied that the conclusion of the special master that respondent was guilty

of unethical conduct is fully supported by clear and convincing evidence.

Respondent admitted the factual allegations of the complaint and a number of violations of the RPCs. His misconduct in these seven client matters was serious and widespread. His clients suffered from his failure to represent them properly.

As to the specific rules violated, we find that respondent violated RPC 1.1(b), as charged in count eight. We find also that respondent violated RPC 1.1(a), RPC 1.3, and RPC 1.4(a) in each matter in which they were charged, with the exception of Whitfield. A review of the allegations in that count shows that the facts set out in the complaint concerned respondent's failure to communicate with his client. Although, as noted above, the special master stated that respondent performed no work on Whitfield's behalf beyond obtaining the right-to-sue letter, those facts are not in the complaint; in addition, we cannot find that respondent admitted facts that would support a finding of neglect or lack of diligence. In the absence of testimony on the underlying matter, we refrain from making a finding of neglect or lack of diligence in Whitfield.

Similarly, the presenter discussed a potential violation of RPC 1.4(b) and (c), (more properly (a) and (b)) in Scianimanico,

but the complaint contains no such charges. Here, too, the facts that would support finding a violation of the rule are not set out in the complaint. Furthermore, they were not the subject of testimony below. We do not find, thus, that respondent violated RPC 1.4 in that matter.

Respondent was charged with violating RPC 1.5(a) in Schmidlin, for charging an excessive fee. There is no indication, however, that, when respondent undertook the representation, he intended the fee to be excessive. Rather, this appears more a violation of RPC 1.16(d) (failure to return an unearned fee). Indeed, as noted above, in his written summation, the presenter referred to RPC 1.16 in this context and sought to amend the complaint to conform to the evidence. Presumably, the special master granted the presenter's request, inasmuch as he made findings of violations of RPC 1.16(d). We, too, deem the complaint amended to conform to the proofs, and find that respondent violated RPC 1.16(d) in Schmidlin, by failing to refund any unused portion of the retainer.

The presenter also sought to amend the complaint to charge another violation of RPC 1.16(d), based on respondent's failure to properly withdraw from the representation. As stated earlier, respondent's wife advised the Kunerts that respondent was too ill to continue to represent them. We agree with the

presenter. Respondent's improper method of communicating to his clients that he no longer would be representing them further violated RPC 1.16(d).

The presenter did not charge respondent with violating RPC 1.16(d) in Scianimanico. The complaint, however, alleged sufficient facts to give respondent notice of such a charge and an opportunity to defend against it. We find that the facts set forth in the complaint, which respondent admitted, support a finding of a violation of RPC 1.16(d).

Misconduct on the scale presented in these matters usually results in a suspension. See, e.g., In re Yetman, 132 N.J. 157 (1993) (three-month suspension for, in a series of twelve matters, a combination of gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to comply with recordkeeping provisions, and misrepresentation; a mitigating factor was the attorney's alcoholism, which was found to be causally linked to his misconduct; the attorney had a prior private reprimand and a public reprimand); In re Bosies, 138 N.J. 169 (1994) (six-month suspension for, in four matters, a mix of gross neglect, pattern of neglect, lack of diligence, failure to communicate with a client, failure to abide by the scope of the representation, and misrepresentation); In re Aranguren, 165 N.J. 664 (2000) (six-month suspension for gross

neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to protect the interests of a client upon termination of the representation, failure to expedite litigation, misstatements of facts or failure to disclose facts in connection with a disciplinary matter, and misrepresentation in five matters; the attorney had a prior admonition); In re Tunney, 181 N.J. 386 (2004) (six-month suspension for, in six matters, displaying gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to promptly notify a client of the receipt of funds, failure to properly terminate representation, knowingly disobeying an obligation under the rules of a tribunal, misrepresentation, and conduct prejudicial to the administration of justice, specifically, failure to comply with court orders requiring him to turn over a client's file; the attorney's depression was considered in mitigation; prior reprimand; we had recommended a three-month suspension); In re Marum, 157 N.J. 625 (1999) (one-year suspension for combination of gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, and misrepresentation in eleven matters; we noted the attorney's inability to recognize his mistakes, misrepresentations to his clients and partners, and the length of time his misconduct spanned; in aggravation, we

considered the attorney's two prior admonitions; in mitigation, we considered that, although the attorney did not suffer from a debilitating psychiatric illness, he had a "perfectionist nature" and was unable to cope with escalating stress).[10]

In the above cases, each attorney was guilty of certain additional violations not present in the current matter, including, in each case, misrepresentation. The misrepresentations were often repeated and/or egregious. However, although respondent did not exhibit the range of misconduct of the above attorneys, there are aggravating factors present here. Despite his awareness that he was unable to properly represent his clients, respondent failed to withdraw from the representation, as required by RPC 1.16(a)(2). Once respondent recognized that his illness was preventing him from tending to his client matters, he should have stepped aside. Respondent's mental condition was materially impairing his ability to represent his clients. Yet, he failed to timely and properly protect his clients' interests.

---

[10] In four of these five matters, the attorneys had been previously disciplined. Respondent, too, has been previously disciplined. We note, however, that his misconduct took place in early 1999, the time period in which his depression apparently became severe.

As pointed out by the presenter and the special master, there was serious harm to respondent's clients. The record indicates that several clients lost the right to pursue their claims because of the expiration of the statute of limitations.

On the other hand, there is also substantial mitigation in this case. Respondent was diagnosed with severe depression, from which he appears to have largely recovered. His unethical conduct primarily consisted of failing to take action, such as returning telephone calls and filing necessary documents. He was not motivated by greed or venality. It appears that he was overwhelmed by simple tasks.

Nevertheless, respondent's conduct was serious and deserving of a period of suspension. The harm to his clients was extensive and could have easily been avoided. Respondent failed to withdraw from the representation when he should have, causing his clients to face the consequences of his inaction. We, thus, determine that a one-year suspension is appropriate discipline here.

The special master recommended that respondent's suspension be made retroactive to September 8, 2003, the date he was placed on DIS. Respondent's counsel, in turn, argued that respondent should receive credit for his voluntary suspension and that the time period should be considered sufficient discipline. Under

In re Farr, 115 N.J. 231 (1989), however, "the suspension must be imposed by order of the Court and not through the voluntary action of the respondent." Id. at 238. We, therefore, determine that respondent should receive credit only for the five months he was on DIS, and should serve a seven-month prospective suspension.

Prior to reinstatement, respondent is to provide a report by a mental health professional approved by the Office of Attorney Ethics, attesting to his fitness to practice law. In addition, respondent should practice under the supervision of a proctor, while he is easing back into the practice of law. We noted respondent's testimony that he does not wish to practice law in a solo setting. We, thus, determine that respondent should practice law only in a law firm setting or other supervised environment, and under the indefinite supervision of a proctor. As to the funds owed to the CPF, respondent and the CPF seem to have worked out a payment plan that is satisfactory to both parties. Thus, we decline to foray into that arena.

One more point warrants mention. Although respondent was not charged with practicing law while ineligible, we observed from the CPF report that respondent was ineligible to practice law for three days, from September 25, 2000 to September 28, 2000, a period when he was representing clients in the within

matters. Nevertheless, his infraction was de minimis - the brief time period involved indicates that this was an oversight that was quickly remedied.

Vice-Chair Pashman did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for costs incurred in connection with the prosecution of this matter.

Disciplinary Review Board
William O'Shaughnessy, Chair

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