SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-341
District Docket Nos. XIV-02-022E
and XIV-03-676E

IN THE MATTER OF	
VIJAY M. GOKHALE	
AN ATTORNEY AT LAW	

Decision

Argued: February 16, 2006

Decided: March 23, 2006

John McGill III appeared on behalf of the Office of Attorney Ethics.

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 (two-year suspension) filed by the District VC Ethics Committee

("DEC"). The complaint charged respondent with violating RPC 1.3 (lack of diligence) and RPC 1.15(b) (failure to promptly pay funds to third parties) (count one); RPC 8.1(b) and R. 1:20-3(g)(3) (failure to cooperate with disciplinary authorities) (count two); RPC 8.1(b) and R. 1:20-3(g)(3) (count three); RPC 1.15(b) and R. 1:21-6(d) (more properly RPC 1.15(d)) (recordkeeping violations) (count four); RPC 1.1(a) (gross neglect) and RPC 1.16(a)(1) (failure to withdraw from representation) (count five); RPC 8.1(b) and abandonment of a legal practice, in violation of In re Golden, 156 N.J. 365 (1998) (count six); RPC 8.4(b) (criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (count seven); and RPC 3.4(c) (disobedience of an obligation under the rules of a tribunal) and RPC 8.4(d) (conduct prejudicial to the administration of justice) (count eight).

Respondent was admitted to the New Jersey bar in 1983. He received a reprimand in 2001 for practicing law while ineligible and for recordkeeping violations. In re Gokhale, 170 N.J. 3 (2001). On September 16, 2003, he was temporarily suspended for failure to cooperate with the Office of Attorney Ethics ("OAE")

in the investigation of the misconduct in the matter now before us. In re Gokhale, 177 N.J. 521 (2003).

On November 20, 2003, the Honorable Robert A. Longhi, J.S.C., entered an order, pursuant to R. 1:20-19, granting the petition of the secretary of the District VIII Ethics Committee to appoint John Jorgensen as trustee to protect the interests of respondent's clients.

On August 8, 2000, respondent represented Kishor and Lekha Kulkarni in the purchase of real property in Edison. Although respondent was the settlement agent, he did not report to the title insurance agency that the closing had occurred. Respondent failed to send the deed and mortgage for recording and to submit the closing documents to the title insurance agency and to the mortgage company. He also failed to disburse funds to third parties for payment of the title insurance, recording fees, the realty transfer tax, and the survey. In his amended answer to the complaint, respondent admitted that he "failed to disburse funds diligently," contending that distributing the funds when he did not know to whom they belonged would have been a more serious violation.

A representative of the title insurance company made numerous attempts to contact respondent about the closing.

Respondent ignored those attempts. As a result, the title insurance company paid another attorney to obtain and record a replacement deed and to complete other post-closing tasks. Jorgensen, the trustee, released to the title insurance company the funds held in respondent's trust account for that purpose.

On May 11, 2001, the title insurance company representative filed a grievance. Between October 12, 2001 and November 8, 2001, the DEC investigator sent three letters to respondent and left a telephone message on his answering machine. Respondent never contacted the investigator.

Because respondent failed to cooperate with the DEC, on January 21, 2002, the DEC transferred the grievance to the OAE for investigation and a demand audit of respondent's books and records. Although respondent appeared at the scheduled demand audit on February 26, 2002, he did not produce requested bank records or his complete file in the Kulkarni real estate transaction. At the demand audit, respondent asserted that, because he had misplaced the deed after the Kulkarni real estate closing, he had not disbursed all of the funds.

Respondent represented that he would provide to the OAE a written reply to the grievance and all of the requested documents. Although respondent submitted a reply to the grievance

on April 3, 2002, he did not produce the requested documents. In May and August 2002, respondent provided updates to the OAE about his efforts to obtain the requested records. In February 2003, the OAE assigned this matter to another investigator, Denise Gamble. Throughout June and July 2003, Gamble and respondent discussed the matter, with respondent promising to fax the outstanding records on July 28, 2003. He failed to do so.

On August 12, 2003, the OAE sent a letter, by certified and regular mail, to respondent's home and office addresses, requesting the documents and threatening to move for his immediate temporary suspension if he did not reply within five days. Although the OAE received the certified mail return receipts indicating delivery to respondent's home and office on August 15 and August 16, 2003, respectively, respondent did not contact the OAE.

On August 26, 2003, the OAE filed a motion seeking respondent's immediate temporary suspension for failure to cooperate with its investigation. Respondent did not oppose the motion. As mentioned above, on September 16, 2003, the Supreme Court issued an order temporarily suspending respondent for his failure to cooperate in the ethics investigation.

On January 15, 2004, the OAE notified respondent that a continuation of the demand audit would take place on February 9, 2004. Respondent failed to appear at the demand audit and to produce the requested documents. In his amended answer, respondent asserted that he called the OAE on February 9, 2004, the date of the demand audit, indicated that he was ill, and asked for and obtained an adjournment. Gamble denied that respondent had called the OAE or that he had said that he was ill. She testified that she called respondent on February 9, 2004, that he admitted receiving the January 15, 2004 letter, and that, when she asked him why he had not appeared, he replied that he had "messed up."

Gamble and respondent rescheduled the demand audit for February 17, 2004. Although respondent appeared on that date, he again failed to produce the required documents.

At the February 17, 2004 demand audit, respondent signed a letter in which he agreed to provide the requested documents and information by March 3, 2004. Because respondent failed to comply with that agreement, on March 17, 2004, the OAE issued a subpoena duces tecum for the production of the documents by March 31, 2004. In his amended answer to the formal ethics complaint, respondent admitted that he failed to comply with the subpoena

and that he never produced the requested documents, asserting that he did not have them.

Gamble testified that, with the exception of the Kulkarni deed, respondent had not informed the OAE that he did not have the requested documents. Rather, respondent told Gamble that some of the client files were in storage.

In turn, respondent testified that he unintentionally misled the OAE by stating in his answer that he did not have possession of the requested documents. According to respondent, he could not retrieve the documents from storage because they were in such disarray that he felt overwhelmed by the task. Respondent admitted that he never advised the OAE of his inability to retrieve his documents, speculating that he had remained hopeful that he would be able to obtain and produce them.

Following its investigation of respondent's records, the OAE determined that, from December 1, 1999 to the date of the complaint, respondent maintained inactive balances on behalf of six clients. The balances totaled $7,815.46 and ranged from $16.94 to $5,000. In his amended answer to the complaint, respondent admitted the allegations, asserting that he could not disburse the funds without first identifying their owners and

the reasons that he held the funds. Similarly, he testified that, because of the disarray of his records, he did not, and still does not, know to whom the funds belong and that, under the circumstances, he cannot disburse them.

As of October 18, 2005, the date of the disciplinary hearing, the funds remained in respondent's trust account and had not been distributed to the respective owners. At oral argument before us, respondent stated that he could not disburse the funds until he reviewed his records. According to respondent, he had more than 100 boxes of files in storage. He admitted that he reviewed only one box of materials per week, acknowledging that, at that rate, he would require more than two years to review all of his files.

According to Gamble, at the February 17, 2004 demand audit, respondent asserted that he had not contested the OAE's motion for his temporary suspension because he had not received it in time. The OAE's motion was mailed to respondent on August 26, 2003, and received at his office address on August 29, 2003, and at his residence on September 3, 2003.

Respondent testified that, in January 2002, he relocated to Texas and that, although his mail was received at the address he had designated to the OAE, he personally did not receive the

letters until much later. Gamble stated that, when she pointed out to respondent, at the demand audit, that the OAE had the certified mail receipts showing delivery of the notice of motion well before the hearing date, he admitted that, although he had been informed that the letters had been received, he had not picked up his mail for a few weeks.

During this period surrounding respondent's temporary suspension, he represented Drumil and Mira Yagnik, the sellers in a real estate transaction. On September 13, 2003, respondent deposited in his trust account $18,500 that he had received as escrow agent for the Yagnik transaction. At that time, the OAE had filed and served the motion for his temporary suspension. The complaint charged that respondent should not have accepted and deposited the escrow funds when he knew that the OAE was seeking his temporary suspension.

In turn, respondent denied knowledge that the OAE had filed a motion for his temporary suspension until he received the order of suspension. He also testified that he believed that the date that his reply to the motion was due was the same as the date of his suspension. Respondent asserted that he received the September 16, 2003 order of suspension on September 17, 2003. Thus, he claimed that he received the escrow funds on September 13, 2003, and upon

learning of his suspension several days later, was prohibited from releasing the monies.

On November 20, 2003, Judge Longhi appointed Jorgensen as trustee. R. 1:20-19 provides:

> If an attorney has been suspended or disbarred or transferred to disability-inactive status and has not complied with R. 1:20-20 (future activities of disciplined or disability-inactive attorneys), or has abandoned the law practice, or cannot be located, or has died, and no partner, shareholder, executor, administrator or other *responsible* party capable of conducting the respondent's affairs as stated hereinafter is known to exist, the Assignment Judge, or designee, in the vicinage in which the attorney maintained a practice may, on proper proof of the fact and on the application of any interested party, appoint one or more members of the bar of the vicinage where the law practice is situate as attorney-trustee.
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> The purposes of the appointment shall be (1) to inventory active files and make reasonable efforts to distribute them to clients, (2) to take possession of the attorney trust and business accounts, (3) to make reasonable efforts to distribute identified trust funds to clients or other parties (other than the attorney), and (4) after obtaining an order of the court, to dispose of any remaining funds and assets as directed by the court.

Jorgensen met with respondent on January 7, 2004, at which time respondent agreed to cooperate with him to protect his client's interests. Respondent indicated to Jorgensen that he maintained no active files in New Jersey and was practicing in New York. Despite respondent's representation, he failed to cooperate with Jorgensen in his efforts to protect respondent's clients and failed to reply to his requests for information. Jorgensen took the necessary steps to obtain the release of the escrow funds that respondent had maintained in connection with the Yagnik matter.

For his part, respondent denied that he was able to assist Jorgensen in the disbursement of funds, claiming that he still did not know to whom they belonged, with the exception of the Yagnik and the Kulkarni funds. He admitted that, although he might have the necessary information, he could not gather it because his files are in disarray. Respondent had almost 2000 files in storage, eight of which were active. He asserted that he had difficulty obtaining his documents because he resided in New York and the storage facility, which was in New Jersey, had limited hours of operation.

During the investigation, the OAE repeatedly requested either copies of respondent's federal and state income tax

returns for the years 1997 through 2001, or an explanation for failure to file them. According to Gamble, at the February 17, 2004 demand audit, respondent admitted that he had not produced tax records because he had not filed income tax returns during the relevant period. When Gamble reminded respondent that the OAE had asked him for a copy of the tax returns or an explanation for his failure to produce them, respondent could not give a reason for not notifying the OAE that he had not filed the income tax returns.

As noted previously, respondent received a reprimand in 2001. Although the Supreme Court order does not mention the failure to file income tax returns,[1] we made such a finding:

> Count three charged respondent with "willfully" failing to file income tax returns for the years 1995 and 1996, in violation of RPC 8.4(b) and 8.4(c). Respondent admitted that he failed to file the tax returns, but expressed his intention to rectify the problem. He denied that his failure to file the returns was "willful." He explained that he had requested an extension to file the returns, at which time he had paid estimated taxes.
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> [In the Matter of Vijay Gokhale, Docket No. 00-077 (DRB February 6, 2001) (slip op. at 6).]

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[1] The Court order refers only to violations of RPC 1.15(d) and RPC 5.5(a), and not RPC 8.4(b) or (c).

Finding that respondent's failure to file income tax returns was not willful, we determined that a reprimand was the appropriate level of discipline. Id. at 13.

The complaint in this matter charged that respondent's failure to file income tax returns, after he had received a reprimand for the same conduct, was willful and represented continuing unethical conduct.

Respondent contended, in his amended answer, that he believed that he was not required to file income tax returns because his expenses exceeded his income. At the hearing below, however, respondent acknowledged that he had provided no evidence to support this defense.

The September 16, 2003 order temporarily suspending respondent directed him to comply with R. 1:20-20, the rule governing suspended attorneys. On October 16, 2003, respondent submitted an affidavit, purportedly in compliance with that rule. Although the affidavit recited that a copy of the writings sent pursuant to the rule was annexed, there were no attachments. Respondent never provided the OAE with copies of letters to clients, as required by R. 1:20-20. On November 18, 2003, the OAE

directed respondent to submit an affidavit in compliance with the rule. Respondent did not submit another affidavit.

On January 13, 2004, an OAE investigator visited respondent's last known office address and observed that the building directory contained a listing for respondent's law office, contrary to R. 1:20-20(b)(4). That rule forbids a suspended or disbarred attorney from using a sign suggesting that the attorney maintains a law office or is entitled to practice law. At the February 17, 2004 demand audit, respondent signed a letter prepared by the OAE in which he agreed to remove the office listing from the directory. On March 17, 2004, the investigator asked respondent to immediately notify the OAE, in writing, whether he had removed his listing from the directory. Respondent did not reply to the OAE's request. He indicated, in his April 12, 2005 answer to the formal ethics complaint, that the landlord had removed the directory listing in March 2004.

For his part, respondent testified that he had not received the November 18, 2003 letter from the OAE asking him for an affidavit in compliance with R. 1:20-20. He asserted that, at the time of his suspension, he had two clients whom he orally notified of the suspension. Although he claimed that he gave

written notice of his suspension to New York bar authorities, he could not locate a copy of the letter.

In mitigation, respondent testified about a series of personal problems that affected his ability to fulfill his responsibilities as an attorney. In early 2001, respondent planned to relocate to California and stayed there for one or two months. He returned to New Jersey and, in January 2002, relocated to Texas, when his brother moved there from California. In June 2003, his brother was arrested and incarcerated in California. Respondent has been acting as liaison between his brother and his brother's attorney in California.

Respondent is diabetic and, in April and May of 2002, had his medication adjusted because it was no longer effective.

Respondent's eighty-year old mother broke her hip in 2004, dislocated a disk in her back, is partially paralyzed, and has been hospitalized intermittently. Respondent has another brother, who is homeless and cannot be reached.

The OAE urged the DEC to recommend respondent's suspension, requesting that he be required to practice under the supervision of a proctor for two years, to take the skills and methods course, and to cooperate with the OAE and the trustee to resolve the six inactive client balances remaining in his trust account.

At the disciplinary hearing, respondent agreed that, as a condition of his reinstatement, he should be required to cooperate with the trustee and with the OAE in identifying and disbursing the client funds in his trust account. He denied that a proctor would be necessary.

The DEC found respondent guilty of all of the violations charged in the complaint. In addition, the DEC found that respondent's testimony about his receipt of the OAE's motion for temporary suspension and the Court order temporarily suspending him was "at best muddled and at worse lacking credibility."

The DEC recommended a two-year suspension, to take effect on the date of the hearing, October 18, 2005. The DEC further recommended that, when respondent files a petition for reinstatement, his cooperation with the OAE in resolving the client funds be evaluated. Finally, the DEC recommended that, before respondent is reinstated, he be required to demonstrate proof of successful completion of the skills and methods course and that, upon reinstatement, he be required to practice under the supervision of a proctor for one year.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical

is supported by clear and convincing evidence. Indeed, respondent admitted most of the allegations of the complaint.

Respondent admitted that, in the Kulkarni matter, he "failed to disburse funds diligently." He did not dispute the allegations that he failed to perform critical post-closing tasks, such as recording the deed and mortgage, and submitting payment for title insurance and other fees. Respondent, thus, violated RPC 1.3 and RPC 1.15(b).

With respect to the charge of failure to cooperate with the DEC investigator, respondent did not dispute the investigator's testimony that he did not reply to her three letters or her telephone message. Respondent's conduct in this regard violated RPC 8.1(b).

Respondent's failure to cooperate with the DEC led to the transfer of the investigation of the complaint to the OAE. Unfortunately, respondent's cooperation with disciplinary authorities did not improve. From February 26, 2002 to and including October 18, 2005, the date of the disciplinary hearing, respondent failed to produce documents that the OAE requested. Even respondent's September 16, 2003 temporary suspension did not serve as an incentive for him to cooperate with the OAE's document requests. Although respondent asserted,

in his amended answer, that he did not have the documents in his possession, at the hearing, respondent explained that he had the documents in storage, but, because they were in disarray, he was unable to retrieve them. Instead of either retrieving the documents or informing the OAE that he could not obtain them, respondent ignored the document requests.

Moreover, respondent failed to appear at the demand audit scheduled for February 9, 2004. Although he claimed that he contacted the OAE and obtained a postponement due to his illness, Denise Gamble, the OAE investigator, asserted unequivocally that she had initiated the communication with respondent, that he had never indicated that he was ill, and that he had admitted to "messing up," when she asked him why he had not appeared. Respondent's failure to cooperate resulted in the issuance of a subpoena duces tecum, with which he did not comply.

We find, thus, that respondent's continuing failure to provide documents and to cooperate with the OAE violated RPC 8.1(b).

Respondent also violated RPC 1.15(b) and (d) by maintaining in his trust account inactive balances on behalf of six clients. He admitted, in his amended answer to the complaint, that the funds remained in his trust account, asserting that he could not

disburse them until he knew the identity of the owners and the amounts owed to each of them. These funds have been in respondent's trust account since December 1, 1999. As a result of respondent's poor recordkeeping, six clients have been deprived of their funds for more than six years.

We were troubled by respondent's apparent inertia with respect to accounting for the funds in his trust account. By reviewing only one box of records per week, when he admittedly has more than 100 boxes, respondent has demonstrated that identifying the owners of the funds in his custody is not important to him.

In the Yagnik matter, on September 16, 2003, respondent deposited in his trust account a real estate deposit of $18,500. Three days later, he was temporarily suspended. About one month earlier, on August 12, 2003, the OAE had warned respondent that it would file a motion for his temporary suspension if he did not produce requested documents. That letter was delivered to respondent's home and office addresses on August 15 and August 16, 2003, respectively. On August 26, 2003, the OAE filed the motion, copies of which were delivered to respondent's home and office addresses on August 29 and September 3, 2003, respectively. Respondent informed the OAE investigator that,

although he knew that the letters had been delivered, he had not picked up his mail for a few weeks.

Respondent either knew, or should have known, that the OAE had filed a motion with the Court seeking his temporary suspension. Respondent knew that he did not oppose the motion. Respondent knew, or should have known, that his license to practice law was virtually certain to be suspended. Yet, he accepted representation in the Yagnik matter, placed the real estate deposit in his trust account, and was suspended three days later. Respondent then failed to cooperate with the trustee appointed to protect the interests of his clients. As a result, the trustee arranged for the release of the escrow funds.

Respondent's acceptance of the representation when he knew, or should have known, of his imminent suspension violated RPC 1.16(a)(1).

When contacted by the trustee, respondent represented that he had no active files in New Jersey and was practicing in New York. He failed to reply to the trustee's requests for information. Respondent's failure to cooperate with the trustee constituted yet another – his third – violation of RPC 8.1(b). He also violated RPC 1.1(a), in that, by failing to help the trustee identify the owners of the trust funds in his

possession, respondent grossly neglected his clients' interests. Although the complaint also charged that respondent abandoned his legal practice, no evidence was presented indicating that clients could not reach respondent, or other similar evidence of abandonment. We, therefore, dismiss the abandonment charge.

One of respondent's most serious violations involved his failure to file income tax returns. Respondent admitted that he did not file federal or state income tax returns for the years 1999 through 2001. After continually failing to produce copies of the tax returns, respondent conceded that he had not filed them. Although respondent claimed, in his amended answer, that he believed that he was not required to file income tax returns, he produced no proof in support of this defense. We, therefore, find respondent guilty of failure to file federal and state income tax returns for the years 1999 through 2001, violations of RPC 8.4(b) and (c). We find that such conduct was willful.

26 U.S.C. §7203 provides, in relevant part:

> Any person required under this title to pay any estimated tax or tax, or required by this title or by regulations made under authority thereof to make a return, keep any records, or supply any information who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to

other penalties provided by law, be guilty of a misdemeanor. (Emphasis added).

Willfulness has been described as not requiring any motive, other than a voluntary, intentional violation of a known legal duty. See United States v. Rothbart, 723 F.2d 752 (10th Cir.1983); United States v. Francisco, 614 F.2d 617 (8th Cir.1980), cert. denied 446 U.S. 922 (1980); and Haner v. United States, 315 F.2d 792 (5th Cir.1963).

Here, although respondent claimed that, because his expenses exceeded his income, he believed that he was not required to file the returns, he produced no evidence to support his position. In In the Matter of Vijay Gokhale, Docket No. 00-077 (DRB February 6, 2001), we determined that respondent failed to file income tax returns for the years 1995 and 1996. We did not find willfulness, however, because respondent requested filing extensions and paid estimated taxes. In this matter, however, respondent neither requested extensions to file tax returns nor paid estimated taxes.

In In re Garcia, 119 N.J. 86, 87 (1990), the Court made it clear that, even in the absence of a criminal conviction for the attorney's failure to file income tax returns, the same discipline, i.e., a period of suspension, would be imposed if

the proofs established that the omission was due to a "willful" failure to file the returns:

> We disagree with respondent's underlying premise -- that her action did not constitute willful failure to file federal income tax returns -- but we refrain from imposing the discipline recommended [a six-month suspension] because we have not heretofore made it clear that a finding of willful failure to file income tax returns would merit the same discipline absent a criminal conviction.

Because Garcia was a case of first impression, in that it did not involve a criminal conviction, the attorney received only a reprimand.

In a post-Garcia case, In re Vecchione, 159 N.J. 507 (1999), the attorney willfully failed to file federal income tax returns for a period of twelve years. As in Garcia, Vecchione was not criminally prosecuted under 26 U.S.C. §7203. The Court still imposed a six-month suspension, based on the fact that the attorney had consistently committed a series of defaults that continued for a period of more than ten years, in spite of the attorney's knowledge that he was required to file his tax returns. Our decision indicated that, if not for compelling mitigating factors, a one-year suspension would have been warranted. In the Matter of Andrew P. Vecchione, Docket No. 98-

386 (DRB April 12, 1999) (slip op. at 11-12). Similarly, in In re McEnroe, 172 N.J. 324 (2002), the Court imposed a three-month suspension on an attorney who, although not criminally charged, failed to pay federal and state income tax returns for the years 1988 through 1994.

Finally, respondent failed to comply with R. 1:20-20. He did not notify his clients in writing of his suspension. Respondent's alleged oral notification did not comply with the requirements of the rule. In addition, although respondent testified that he notified New York disciplinary authorities, in writing, of his suspension, the affidavit that he submitted to the OAE had no such notices attached, as required by the rule. Moreover, respondent's failure to remove his listing from the office building directory where his law office was located also violated R. 1:20-20.

Respondent's failure to comply with the requirements of R. 1:20-20 violated RPC 8.1(b) and RPC 8.4(d). Although the failure to follow the requirements of the rule might amount to a violation of RPC 3.4(c) (disobedience of an obligation under the rules of a tribunal), the Court has indicated that the appropriate rules are RPC 8.1(b) and RPC 8.4(d). See In re

Girdler, 179 N.J. 227 (2004). Accordingly, we dismiss the charged violation of RPC 3.4(c).

In sum, we find that respondent exhibited a lack of diligence and failed to disburse funds in the Kulkarni matter, failed to cooperate with the DEC, failed to cooperate with the OAE, failed to promptly disburse funds, failed to follow recordkeeping requirements, engaged in gross neglect, failed to decline representation, failed to cooperate with the trustee, failed to file income tax returns, and failed to comply with the requirements of R. 1:20-20.

Other disciplinary cases involving the willful failure to file income tax returns have resulted in the imposition of suspensions. See In re Hall, 117 N.J. 675 (1989) (on motion for final discipline, one-year suspension imposed for attorney's failure to file federal income tax returns for four years; attorney pled guilty to having failed to file one income tax return); In re Fahy, 85 N.J. 698 (1981) (one-year suspension for attorney who, although charged with failing to pay income tax returns for four years, pled guilty to one count of failure to file an income tax return); In re Silverman, 143 N.J. 134 (1996) (six-month suspension; compelling mitigating circumstances considered); In re Willis, 114 N.J. 42 (1989) (six-month

suspension; attorney was recovering from addiction to alcohol); In re Hughes, 69 N.J. 116 (1976) (six-month suspension; mitigating circumstances included attorney's series of debilitating heart attacks).

But see In re Williams, 172 N.J. 325 (2002) (reprimand for recordkeeping violations and failure to file income tax returns; the attorney owed no taxes and incurred no penalties).

As to R. 1:20-20 violations, a reprimand is the presumptive discipline. That discipline is adjusted, depending upon the attorney's ethics history and whether the matter proceeded by way of default. In In re Girdler, supra, 179 N.J. 227 (2004), a default matter, the Court imposed a three-month suspension for violations of R. 1:20-20, where the attorney's ethics history included a private reprimand, a public reprimand, and a three-month suspension in another default matter. The Court imposed a one-year suspension in another default matter, In re Mandle, 180 N.J. 158 (2004); the attorney had received three reprimands, a temporary suspension for failure to comply with an order requiring that he practice under a proctor's supervision, and two three-month suspensions. In three of the matters, the attorney had failed to cooperate with disciplinary authorities.

The attorney in In re King, 181 N.J. 349 (2004), also received a one-year suspension, based on the default nature of the case and the attorney's extensive ethics history, including a reprimand, a temporary suspension for failure to return an unearned retainer, a three-month suspension in a default matter, and a one-year suspension; the attorney had remained suspended since 1998, the date of her temporary suspension. In In re Raines, 181 N.J. 537 (2004), a non-default matter, the Court imposed a three-month suspension where the attorney's ethics history included a private reprimand, a three-month suspension in a non-default case, a six-month suspension, and a temporary suspension for failure to comply with a previous Court Order. Finally, in In re McClure, 182 N.J. 312 (2005), the Court imposed a one-year suspension in a default matter, where the attorney's disciplinary history included a 1999 admonition and two separate six-month suspensions.

But see In re Moore, 181 N.J. 335 (2004) (reprimand imposed for failure to file R. 1:20-20 affidavit in a default matter; prior one-year suspension).

Here, respondent's ethics history is limited to a reprimand and the temporary suspension for failure to

cooperate with the OAE in the investigation of the within matter. His ethics history is not as extensive as those of the attorneys in Girdler, Mandle, King, Raines, and McClure. In addition, unlike those cases, this matter did not reach us as a default. Thus, in the absence of other RPC infractions, we would find a reprimand to be appropriate for respondent's R. 1:20-20 violation alone.

As to respondent's failure to disburse funds and failure to comply with recordkeeping rules, attorneys guilty of those infractions generally receive admonitions or reprimands. See In the Matter of A. Thomas Palamara, Docket No. 95-112 (DRB November 29, 1995) (admonition for failure to maintain business and trust account records and to distribute estate funds held in attorney's trust account); In re Breig, 157 N.J. 630 (1999) (reprimand where attorney failed to promptly remit funds received on behalf of a client and failed to comply with recordkeeping rules); and In re Goldston, 140 N.J. 272 (1995) (reprimand for lack of diligence, failure to safeguard client funds and recordkeeping violations). Here, respondent's recordkeeping violations constitute continuing misconduct; he was reprimanded for similar infractions in 2001.

Respondent also failed to decline representation when he knew or should have known that his license to practice law was about to be suspended.

Respondent's willful failure to file income tax returns in and of itself merits a substantial term of suspension. In re Hall, supra, 117 N.J. 675; In re Fahy, supra, 85 N.J. 698. In our view, for the totality of respondent's misconduct, a suspension in the range of one year to two years is appropriate.

Respondent does not appear to be venal. He presents a picture of an attorney who is overwhelmed by, and unable to meet the demands of, a solo law practice. In addition, he advanced mitigating factors, including his own illness and serious family problems that distracted him from his law practice. Furthermore, respondent has been suspended since September 16, 2003. These mitigating factors favor a suspension in the lower portion of the range.

We, thus, determine that a one-year suspension is the appropriate quantum of discipline. We further determine that he may not apply for reinstatement until he satisfies the deficiencies for which he was temporarily suspended in September 2003. At a minimum, respondent must demonstrate that he has complied with the OAE's request for records and that, with the

OAE's approval, he has accounted for and properly disbursed the client funds in his trust account. In addition, before reinstatement, respondent must provide proof of successful completion of the skills and methods course offered by the Institute for Continuing Legal Education. Upon reinstatement, respondent must practice law under the supervision of a proctor for two years. Member Lolla did not participate.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Vijay M. Gokhale
Docket No. DRB 05-341

Argued: February 16, 2006

Decided: March 23, 2006

Disposition: One-year suspension

Members	One-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley	X				
O'Shaughnessy	X				
Boylan	X				
Holmes	X				
Lolla					X
Neuwirth	X				
Pashman	X				
Stanton	X				
Wissinger	X				
Total:	8				1

Julianne K. DeCore
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Chief Counsel