SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-136
District Docket Nos. XIV-2014-0056E,
XIV-2014-0124E and XIV-2014-0130E

IN THE MATTER OF

JOHN J. O'HARA, III

AN ATTORNEY AT LAW

Decision

Decided: December 8, 2015

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

This matter was before us on a certification of the record, filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). Three docketed matters were combined into a seven-count formal ethics complaint.

The complaint charged respondent with the following violations, in various combinations: RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to fully inform a prospective client how, when, and where the client may communicate with the lawyer), RPC

1.4(b) (failure to keep a client reasonably informed about the status of a matter), RPC 1.4(c) (failure to explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation), RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 5.5(a)(1) (practicing law while suspended), RPC 8.1(b) (failure to cooperate with disciplinary authorities), RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

For the reasons detailed below, we recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 2005. During the relevant time periods in this matter, he maintained three different offices for the practice of law in New Jersey: (1) with the law firm of Margolis Edelstein, in Berkeley Heights, until approximately December 2012; (2) with his own law firm, out of his home in Denville, from approximately December 2012 until an unknown time; and (3) with the Law Offices of James C. DeZao, in Parsippany, from October 2013 through October 2014.

On September 4, 2014, respondent was temporarily suspended from the practice of law for failing to cooperate with disciplinary authorities in the investigation of this matter and to protect his existing clients and the public, as it appeared that he had abandoned his practice. The Court's suspension order required respondent to comply with R. 1:20-20. In re O'Hara, 219 N.J. 124 (2014). He apparently had not done so, prompting the OAE to file a formal complaint alleging respondent's failure to file his affidavit of compliance. Respondent did not file an answer to that complaint. Thus, the OAE has certified that record to us as a default as well. The matter is currently pending before us. Respondent remains suspended to date.

Service of process was proper in this matter. On March 2, 2015, the OAE sent the formal ethics complaint, by certified and regular mail, to respondent's last known office and home address in Denville, Morris County, on file with the New Jersey Lawyers' Fund for Client Protection. Both the certified and regular mail were returned marked "Moved Left No Address/Unable to Forward."

Accordingly, the OAE published two notices declaring that a formal ethics complaint had been filed against respondent. Specifically, on March 28, 2015, a disciplinary notice was published in the Daily Record, a newspaper circulated daily in Morris County. In addition, on March 30, 2015, a disciplinary

notice was published in the New Jersey Law Journal. The notices required respondent to contact the OAE immediately and to file a verified answer to the complaint within twenty-one days of the date of publication of the notice. Respondent did neither, and the OAE certified the record to us as a default.

Count One - District Docket No. XIV-2014-0056E,

The Herold Matter

Count one of the complaint charged respondent with violations of RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.4(c), RPC 3.4(c), and RPC 8.4(d).

In January 2009, Bergen-Essex Tax Appeal Service, LLC (BETAS), was founded by Jeffrey Herold (Jeffrey). He operated BETAS with his daughter, Doreen Herold (Doreen). On January 13, 2009, BETAS and respondent entered into an arrangement whereby respondent's then law firm, Margolis Edelstein (Margolis), would file tax appeals on behalf of future BETAS clients in the appropriate forums. The agreement additionally provided that Margolis and BETAS would enter into separate agreements with each client, setting forth their respective responsibilities. The agreement stated that "[t]ax appeals will not be filed when there is a conflict with a current firm client."

In a November 15, 2010 letter to Jeffrey, respondent memorialized additional provisions of their agreement: (1) respondent would personally handle all tax appeals that BETAS referred to Margolis; (2) Margolis and BETAS would evenly split 33.34% of the total tax savings achieved for each client, subject to modification on a case-by-case basis; and (3) in the event a client paid Margolis the entire 33.34% fee, Margolis would forward BETAS its portion of the fee.[1]

As to respondent's scope of responsibilities under the arrangement, the letter provided:

> "I will personally litigate all property tax appeals referred by [BETAS] for each client that is retained by [Margolis]. This includes, but is not limited to, litigating the appeals at the County Tax Board and the New Jersey Tax Court. As part of the litigation, I will prepare pleadings and discovery and I will make appearances as necessary. All analysis on the properties shall be done by [BETAS]."

When clients consulted BETAS about their property taxes, BETAS would conduct preliminary research to determine whether the clients had viable grounds for appeal. If so, BETAS would conduct additional research and analysis to determine the property's value. BETAS charged each client $300 for this service.

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[1] The complaint did not charge respondent with a violation of RPC 5.4(a) (fee splitting).

If BETAS concluded that the property taxes were inflated, it would provide the clients with three options: (1) file an appeal, on their own, using the research and analysis BETAS had conducted; (2) file an appeal, with an attorney of their choosing, using the research and analysis BETAS had conducted; or (3) file an appeal through BETAS and Margolis, specifically retaining respondent as their attorney to prosecute the tax appeal.

When clients chose the third option, BETAS would obtain their signatures on a retainer agreement that required the client to pay BETAS the $300 initial consultation fee, all filing fees necessary for the tax appeal, and if the tax appeal were successful, 33.34% of the client's total tax savings (which, as set forth above, would be split between BETAS and Margolis). BETAS then would send the client's information and a completed tax analysis to respondent so that he could file the tax appeal. Respondent then would enter into a separate retainer agreement for legal services, on behalf of Margolis, with each new client.

Occasionally, BETAS would bill the client directly for its portion of the 33.34% fee. In most cases, however, respondent invoiced the client for the entire 33.34% fee. At first, respondent copied BETAS on all such invoices sent to clients. He

eventually ceased this practice, without providing an explanation to BETAS. Respondent failed to forward BETAS its half of the fee in numerous cases in which he had successfully prosecuted tax appeals and had informed BETAS that he had collected the full 33.34% fee from the client.

On October 11, 2012, Jeffrey met with respondent and two Margolis partners at the Margolis Berkeley Heights offices to address the non-payment issue. During the meeting, respondent admitted that he had settled forty-one tax appeals to date and that BETAS was owed approximately $21,413.65, representing its share of the 33.34% fee.

After this meeting, respondent informed Doreen that Margolis had a conflict and could no longer represent clients against the Borough of Fair Lawn. Respondent recommended that BETAS refer Fair Lawn clients to attorney Michael Donnelly. Doreen requested copies of all correspondence from Margolis to Fair Lawn clients advising them of the conflict and any substitutions of counsel, but never received the documents from respondent. It was not until 2015 that Margolis sent Donnelly substitutions of attorney for Fair Lawn clients. As it turned out, filing deadlines had expired for some clients before respondent even informed Doreen of Margolis' conflict and, thus, BETAS had to refund the consultation fee paid by clients in

those matters. Additionally, BETAS eventually learned that the "conflict" stemmed from respondent's employment by Fair Lawn as its municipal tax attorney.

In a December 10, 2012 letter, respondent informed Jeffrey that he had left Margolis, had started his own firm, and had taken all of the BETAS client tax appeals with him. Respondent represented that he would continue to work on existing cases, but would not forward BETAS its fees until he received a bill from BETAS, accounting for services rendered. At the time respondent sent this letter, he shared approximately 479 clients with BETAS. In 2012 and 2013, an additional sixty-two BETAS clients retained respondent.

During conversations with Doreen, respondent reiterated that he had taken all BETAS client matters with him when he left Margolis, acknowledged that he owed BETAS more than $21,000 for its portion of fees for successful tax appeals during respondent's tenure at Margolis, and promised that he would forward BETAS' fees once he received payment from clients he had billed.

After BETAS pressured respondent for payment of its fees, respondent issued a $21,465.21 trust account check, dated August 6, 2013, to BETAS. The memorandum line read "Invoices."

Respondent left the check in BETAS' mailbox. On August 14, 2013, the check was returned for insufficient funds.

Doreen left respondent telephone messages regarding the bounced check, to no avail. On October 14, 2013, she filed a police report with the Hackensack Police Department. A detective subsequently informed respondent that he was a suspect in a criminal investigation regarding the bad check. On November 13, 2013, respondent left a $22,000 cashier's check in BETAS' mailbox. No letter or other communication from respondent accompanied the check.[2]

By this point, the relationship between BETAS and respondent had completely deteriorated. Many clients were calling BETAS requesting status updates on their tax appeals. Doreen discovered that respondent had provided her with false information regarding the posture of appeals. During a conversation, respondent told Doreen that his wife was having a difficult pregnancy and that he was stressed. He acknowledged, however, that his behavior was unprofessional. Subsequently, all communication from respondent ceased and BETAS was left to answer clients' questions regarding their tax appeals. Doreen was able to obtain some information about the appeals online and

[2] While not specifically addressed in the complaint, it appears that BETAS deposited the cashier's check without incident.

through Open Public Records Act requests. She discovered that many of the appeals had been dismissed with prejudice for "non-appearance (lack of prosecution)," after respondent had failed to appear for scheduled court dates.

Doreen suspected that the Borough of Teaneck had issued checks to respondent, in August 2013, for appeals he had settled. She knew of at least four appeals that had settled, but the clients had never received checks from respondent. When those clients had asked respondent for their checks, he had given them a variety of promises and excuses, including that the "checks are in the mail." One client, Karen Cohen, knew that her case had been settled successfully because her property taxes had been reduced. The Teaneck tax office informed Cohen that her tax refund check sent to respondent had never been cashed. Doreen provided the OAE with a spreadsheet listing BETAS clients who had retained respondent, along with the status of the case, as she could best determine.

Numerous Tax Court judges notified disciplinary authorities of their concerns about respondent's abandonment of tax appeal matters. Specifically, on June 18, 2014, the Honorable Kathi F. Fiamingo, J.T.C., a Tax Court judge for several Bergen County and Passaic County municipalities, informed Caroline Record, Secretary of the District XA and XB Ethics Committees, that a

tax appeal that respondent filed had been dismissed, without opposition by respondent, due to his failure to provide discovery. The copy of the dismissal order sent to respondent was returned marked "Return to Sender/Unclaimed/Unable to Forward." Because respondent had failed to appear at multiple scheduled court proceedings, resulting in at least one other dismissal, the judge believed that he was neglecting a number of matters in her court and felt compelled to notify Record, pursuant to Administrative Directive 5-05, which governs judicial reporting of attorney misconduct.

Likewise, several weeks later, on July 8, 2014, the Honorable Joseph Andresini, J.T.C., a Tax Court judge for several Bergen County municipalities, informed the OAE that respondent had unexcused absences from scheduled court dates and telephone conference calls. On July 9, 2014, the judge sent the OAE a list of respondent's approximately 250 open matters with the Tax Court, and stated that he would be notifying both respondent and each plaintiff of court dates for substitutions of counsel to be filed. Respondent failed to appear at these court dates. Approximately fifteen people responded to the judge's notices and appeared in court, some with substitute counsel. Most of the fifteen people informed the court that they had never had any contact with respondent. In November 2014,

notices of motions to dismiss were sent to the plaintiffs in respondent's remaining open Tax Court matters.

Although respondent was initially unresponsive to telephone calls from Judge Adresini's chambers, he eventually appeared in court. During his visit to the judge's chambers, Emery Mishky, a partner at Margolis with whom respondent previously worked, was present. When respondent saw Mishky, he attempted to avoid him. Respondent then fell to the floor and appeared to have a seizure. Mishky asked that someone call an ambulance, but respondent said he was fine. Respondent also refused Judge Adresini's efforts to call for medical help. Respondent then signed substitution of counsel forms for his clients who appeared in court.

Mishky had discovered that, when respondent left Margolis in 2012, he had taken his physical case files with him and erased the hard drive on his law firm computer. Margolis, left with little client information, had to re-create client files. Additionally, Margolis learned that some cases respondent had handled were never entered into the firm's electronic database.

Finally, on July 31, 2014, the Honorable Patrick DeAlmeida, P.J.T.C., informed the OAE, pursuant to Administrative Directive 5-05, that on April 1, 2014, respondent had filed twenty-five complaints with the clerk of the Tax Court. The complaints were

not accompanied by the required filing fee. Accordingly, the clerk of the court sent deficiency notices to respondent, by regular mail, at the Denville address respondent had listed on the complaints. The notices were returned to the clerk marked "Moved — Left No Forwarding Address — Unable to Forward." As a result, the Tax Court never docketed the complaints.

Judge DeAlmeida's letter further stated that, over the past several months, Tax Court notices, orders, and other correspondence to respondent had been routinely returned as undeliverable. Attempts to reach respondent by telephone had been unsuccessful, as his office telephone had been disconnected. Respondent had missed all scheduled court proceedings over a period of several months and his clients had been contacting the Tax Court requesting assistance in reaching him and inquiring as to the status of their tax appeals. Respondent's colleagues also had informed the Tax Court that they could not reach respondent. In conclusion, Judge Almeida stated that "it appears that [respondent] has abandoned his practice."

Count Two – District Docket No. XIV-2014-0124E,

The Freschi Matter

The second count of the complaint charged respondent with violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.4(c), RPC 3.4(c), and RPC 8.4(d).

In March 2012, Robert Freschi retained BETAS regarding a potential tax appeal for his residence in Hillsdale. On March 6, 2012, in reliance on its agreement with respondent, BETAS informed Freschi that respondent would be filing an appeal on his behalf. Freschi completed a required tax appeal form prior to the 2012 deadline. Thereafter, for more than a year, Freschi received no communication from respondent about the status of his appeal. Eventually, Freschi investigated the matter and discovered that, on August 23, 2012, his appeal had been dismissed after respondent failed to appear at a scheduled court proceeding.

In November 2013, in an attempt to speak with respondent, Freschi contacted Margolis and was told that respondent had left the firm and "had taken all of his files with him." Mishky told Freschi that there was no record of his name or his tax appeal in the firm's database. In December 2013, Freschi spoke with the Hillsdale tax assessor, who informed him that respondent never contacted the tax office regarding Freschi's appeal. The

assessor also told Freschi that respondent had failed to appear at other Hillsdale tax appeal proceedings. Freschi then attempted to contact respondent by telephone, on four occasions, but either received no response or was not able to leave a message because respondent's voice mailbox was full.

Count Three – District Docket No. XIV-2014-0130E,

The Glowacki Matter

The third count of the complaint charged respondent with violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.4(c), RPC 3.4(c), and RPC 8.4(d).

On March 30, 2012, Maria and Richard Glowacki retained BETAS regarding a potential tax appeal for their residence in Rutherford Borough. In April 2012, they paid BETAS a $300 consultation fee, with the impression that this fee covered both BETAS' research and respondent's legal services. After approximately twenty-one months, during which the Glowackis engaged in telephone and e-mail communication with respondent, their tax appeal remained incomplete. At some point, respondent stopped returning their telephone calls.

In December 2013, the Glowackis telephoned respondent. They were in the process of leaving a message and threatening to file an ethics grievance against him when respondent picked up the

telephone. He assured the Glowackis that they would hear from him within a week. Respondent subsequently confirmed, in writing, that he would speak with the tax assessor and provide an update no later than December 18, 2013.

In January 2014, Maria Glowacki sent respondent an e-mail documenting his prior communications and giving him a deadline of January 8, 2014 to provide an updated status for the tax appeal. Her e-mail cautioned that, if respondent did not reply, the Glowackis would file a grievance with the OAE and seek reimbursement of the $300 consultation fee paid to BETAS. Maria Glowacki also called respondent at a telephone number she discovered for his home, but respondent never returned those calls.

Both Maria Glowacki and an OAE investigator learned from the Rutherford Borough tax assessor's office that respondent had never contacted the tax office about the Glowacki tax appeal. The Glowacki tax appeal was never completed because respondent failed to appear at a scheduled court proceeding. Accordingly, BETAS refunded the $300 consultation fee to the Glowackis. They hired a new attorney who successfully appealed their taxes, in a matter of months, resulting in a $50,000 reduction for the 2014 tax year. The new attorney was not able to appeal the property taxes for 2012 and 2013, however, as those deadlines had expired

without the Glowackis' appeal being perfected. The Glowackis informed the OAE that a successful tax appeal for 2012 and 2013 would have benefitted them financially, and that they are unemployed senior citizens.

Count Four – Unauthorized Practice of Law

The fourth count of the complaint charged respondent with violations of RPC 3.4(c), RPC 5.5(a)(1), RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d).

In October 2013, respondent began working, on a per diem basis, for the Law Offices of James C. DeZao, P.A. Respondent had represented to DeZao that he was starting his own law firm and was seeking additional work. Respondent began working for DeZao part-time, and eventually was given additional hours and work. In January 2014, DeZao opened additional office space, which he allowed respondent to use. While working for DeZao, respondent attended depositions, drafted pleadings, argued motions, and had some client contact.

As set forth above, on September 4, 2014, the Court temporarily suspended respondent from the practice of law. Respondent did not inform DeZao that he had been suspended. In October 2014, DeZao learned of respondent's suspension and confronted him. Respondent claimed he was unaware of his

suspension and appeared shocked to hear that the OAE had been trying to contact him. Respondent, however, did not contact the OAE, even after DeZao informed him of that office's efforts to reach him. In response to the OAE's request, DeZao's office manager provided a list of all of the cases that respondent had worked on subsequent to his suspension. The list shows that, from September 4 through October 22, 2014, respondent worked on twenty-three legal matters, including depositions, oral arguments for motions, and trial calls.

Counts Five, Six, and Seven – Failure to Cooperate

Counts five, six, and seven of the complaint charged respondent with three separate violations of RPC 8.1(b).

On January 8, 2014, the Glowackis filed a grievance against respondent, alleging that he had neglected their property tax appeal and provided false information to them about its status. On March 28, 2014, the OAE sent a copy of the Glowacki grievance to respondent, via regular and certified mail, to his last known office/home address in Denville. The certified mail was returned marked "Unclaimed." The regular mail was returned stamped "Moved/Left No Address/Unable to Forward."

On February 7, 2014, Robert Freschi filed a grievance against respondent, alleging that he had neglected the Freschi

property tax appeal and failed to communicate. On March 26, 2014, the OAE sent a copy of the Freschi grievance to respondent, via regular and certified mail, to the Denville address. Again, the certified mail was returned marked "Unclaimed." The regular mail was returned stamped "Moved/Left No Address/Unable to Forward."

In early 2014, Jeffrey Herold also filed a grievance against respondent. On March 4, 2014, the District XB Ethics Committee (DEC) sent a copy of the Herold grievance to respondent, via regular mail, to the Denville address. Having discovered that the OAE had docketed the same grievance two weeks prior, the DEC notified respondent that it had administratively dismissed its matter. Accordingly, on March 7, 2014, the OAE sent a copy of the Herold grievance to respondent, via certified and regular mail, at his last known office/home address in Denville with the same result: the certified mail was returned marked "Unclaimed," and the regular mail was returned stamped "Moved/Left No Address/Unable to Forward." Respondent did not reply to the Herold grievance.

On March 28, 2014, the OAE sent another letter to respondent, via certified and regular mail, to the Denville address, requiring a written response to the Herold grievance by April 9, 2014. The certified mail was returned marked

"Unclaimed." The regular mail was returned stamped "Moved/Left No Address/Unable to Forward."

On April 17, 2014, in connection with the above grievances, the OAE sent a demand audit letter to respondent, via certified and regular mail, to the Denville address, requiring that he appear at the OAE offices on June 11, 2014. The certified mail was returned marked "Unclaimed." The regular mail was returned stamped "Moved/Left No Address/Unable to Forward." Respondent did not appear at the OAE offices for the demand audit.

On June 6, 2014, an OAE investigator called respondent's last known office telephone number. No one answered and there was no voicemail option. On that same date, and again on July 15, 2014, the investigator called respondent's last known home telephone number. A voicemail message stated "this is John," and allowed for a message to be left. On both dates, the investigator left a message, informing respondent that the OAE had been sending him correspondence and requesting that he call her at the OAE offices. Respondent never called the investigator.

On July 8, 2014, an OAE investigative assistant conducted research in an attempt to ascertain whether respondent had moved and, if so, if she could determine his new address. The search revealed no new address for respondent.

Due to respondent's failure to cooperate with disciplinary authorities, on August 14, 2014, the OAE moved for his temporary suspension. He did not respond to the OAE's petition and, as set forth above, was suspended by the Court on September 4, 2014.

The OAE made several additional efforts to contact respondent using telephone numbers previously associated with him, to no avail. In October 2014, a package for respondent was sent to DeZao's law office. The law office manager contacted respondent, who instructed her to forward the package to his home address in Denville (the same home address used by the OAE for its returned correspondence). To the office manager's knowledge, Federal Express delivered the package to the Denville address without incident.

Following a full review, we conclude that the facts recited in the complaint support most of the charges of unethical conduct set forth therein. Respondent's failure to file a verified answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f). Each charge, however, must include sufficient facts to support a finding of unethical conduct. We find that the facts recited in the complaint do not support the alleged violations of RPC 1.4(a) charged in counts one through three. That rule addresses

prospective clients and, thus, is inapplicable to the facts of the instant case. Additionally, the facts recited in count four of the complaint do not support the alleged violations of RPC 3.4(c), RPC 8.4(b), and RPC 8.4(c), as the requisite intent is not present, as more specifically discussed below.

In respect of count one of the complaint, in or around October 2012, respondent informed BETAS, for the very first time, that he would be unable to represent any of the Fair Lawn clients due to a conflict that had developed on his part. Doreen asked respondent to provide a copy of his correspondence to those clients advising of the conflict and offering a substitution of attorney. However, it was not until sometime in 2015 that respondent finally executed the substitutions. By that point, and in some instances even before respondent informed Doreen of the conflict, the filing deadlines had already passed, requiring BETAS to return to those clients their research fee. In the meantime, the Fair Lawn clients, who had no communication with respondent, were attempting to learn the status of their tax appeals from Doreen, instead of from their attorney.[3] Those

[3] Although the complaint alleges that respondent previously had given Doreen false information regarding the status of various tax appeals and that she was relaying that information to respondent's inquiring clients, respondent was not charged with a violation of RPC 8.4(c) in this respect and we, therefore, make no finding in that regard.

clients whose deadlines had passed, no doubt, were prejudiced by respondent's dereliction of his responsibilities.

During that period as well, respondent was taking no action on many of his other clients' tax appeals, causing at least three different judges to issue notices of dismissal in hundreds of tax appeals and to communicate with the OAE regarding respondent's apparent abandonment of his clients. Moreover, BETAS had become aware that in several of those cases, tax refunds had been issued to respondent, but he had failed to negotiate those checks and/or forward them or any portion thereof to his clients.[4]

Respondent's complete abandonment of his clients' tax appeals constituted gross neglect and lack of diligence, in violation of RPC 1.1(a) and RPC 1.3. In addition, the vast number of client matters respondent failed to prosecute and eventually abandoned clearly demonstrates a pattern of neglect, in violation of RPC 1.1(b). Furthermore, respondent violated RPC 1.4(b) and (c) by his failure to communicate with his clients regarding their appeals, leaving those clients no other option but to inquire with BETAS and the Tax Court regarding the status

[4] Respondent was not charged with a violation of RPC 1.15(b) based on his failure to promptly deliver those funds to his respective clients and we, therefore, make no finding in that regard.

of their matters. Finally, respondent violated both RPC 3.4(c) and RPC 8.4(d) by his failure to appear for scheduled court proceedings and phone conferences, leading to the dismissal of many of his clients' tax appeals, along with his failures to timely obey Tax Court notices ordering him to address his clients' tax appeals and substitutions of counsel.

In the Freschi matter (count two), respondent not only failed to have any communication with his client over a period of at least one year, but also he failed to appear at a scheduled court proceeding in the matter, resulting in the dismissal of his client's tax appeal. Respondent did not inform Freschi of the dismissal. Rather, Freschi learned of it himself by conducting his own investigation into the status of his appeal. When, after learning of the dismissal, Freschi attempted to telephone respondent on at least four occasions, he either received no return call from respondent or reached an automated message indicating that respondent's voice mailbox was full.

Respondent's complete abandonment of the Freschi matter constituted gross neglect and lack of diligence, in violation of RPC 1.1(a) and RPC 1.3. In addition, respondent violated RPC 1.4(b) and (c) by his failure to communicate with Freschi regarding his appeal and leaving him in the dark regarding the status and eventual dismissal of his matter. Finally, respondent

violated RPC 3.4(c) and RPC 8.4(d) by his failure to appear for scheduled court proceedings, leading to dismissal of Freschi's tax appeal, and his failure to timely obey Tax Court notices ordering him to address the substitution of counsel issue.

Respondent also was guilty of misconduct in the Glowacki matter (count three). Beginning in or about March 2012, Maria and Richard Glowacki attempted to communicate with respondent for almost two years to encourage completion of their tax appeal. During that period, they received limited, inconsistent, and misleading information in respect of their appeal. At some point, respondent ceased communication with the Glowackis. In spite of many additional attempts to speak with respondent, he finally returned one of their phone calls only after the Glowackis had left an earlier message threatening to file an ethics grievance. He never followed through on his promises to communicate more specific information to them.

Thereafter, as a result of additional investigation on her part, Maria Glowacki learned from the tax assessor that a settlement had never been reached and that respondent had not communicated with the tax assessor about their matter, as he previously had represented. The Glowackis then learned that their appeal had not been completed because respondent had not appeared at a scheduled court hearing. Ultimately, the

Glowackis retained other counsel, who successfully appealed their assessment, winning a $50,000 reduction for 2014. However, the attorney was not able to appeal the assessments for 2012 and 2013, as those filing deadlines had passed.

Respondent's complete abandonment of the Glowacki matter and his failure to preserve their appeals for 2012 and 2013 constituted gross neglect and lack of diligence, in violation of both RPC 1.1(a) and RPC 1.3. In addition, respondent violated RPC 1.4(b) and (c) by his failure to communicate with the Glowackis regarding their appeal, leaving them with no reliable information regarding the status of their matter. Finally, respondent violated both RPC 3.4(c) and RPC 8.4(d) by his failure to appear for scheduled court proceedings and his failure to timely obey Tax Court notices ordering him to address the issue of substitution of counsel.

In addition to his misconduct in the tax appeal matters, respondent was guilty of practicing law while suspended. As previously noted, in October 2013, respondent began working for the Law Offices of James C. DeZao, P.A., on a per diem basis. While working for DeZao, respondent attended depositions, drafted pleadings, argued motions, and had other client contact. On September 4, 2014, a month earlier, the Court had entered an order temporarily suspending respondent.

In October 2014, DeZao learned of respondent's suspension and confronted him. Respondent claimed no knowledge of his suspension and appeared shocked to hear that the OAE had been trying to contact him. That notwithstanding, respondent made no attempt to communicate with the OAE thereafter. DeZao's office manager provided the OAE with a list of all of the cases that respondent had worked on subsequent to his suspension. The list shows that between September 4 and October 22, 2014, respondent performed legal work in twenty-three matters, including depositions, oral arguments for motions, and trial calls.

Respondent's practice of law while suspended violated both RPC 5.5(a)(1) and RPC 8.4(d). However, we find insufficient evidence to conclude that respondent violated RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). RPC 3.4(c) requires knowing disobedience of an obligation. N.J.S.A. 2C:21-22, which underlies the charged violation of RPC 8.4(b), requires knowing engagement in the unauthorized practice of law. RPC 8.4(c) also requires mens rea not established by the facts set forth in the complaint. Simply stated, there is no clear and

convincing evidence that respondent had the requisite intent necessary to sustain the charged violations of those RPCs and we, therefore, determined to dismiss those charges.

Finally, respondent is guilty of multiple failures to cooperate, as alleged in counts five, six, and seven of the complaint. Not only did he ignore numerous communications and requests for information from the OAE during the course of its investigation of the various grievances filed against him, which necessitated the filing of a motion for his temporary suspension, but also he did not file an answer to the complaint as required by R. 1:20-4(e).

The evidence clearly establishes that the OAE was addressing its communications, both written and telephonic, to respondent's home address. On at least two occasions, an OAE investigator was able to leave a voice-mail message for respondent at his home telephone number, informing him that the OAE had been sending him correspondence and requesting that he return her call, to no avail. Moreover, when the DeZao office manager received a package for respondent and sought instructions from him for delivery, he instructed her to forward the package to his home address – the very same address to which the OAE had been directing its communications. Finally, a national look-up, performed by an OAE investigative assistant,

continued to show respondent's Denville address as his home address – again, the very same address to which the OAE had been directing its communications.[5]

We can reach only one conclusion – that respondent simply did not care to comply with his obligation to cooperate. Indeed, his indifference extended even to the Court when he did not respond to the OAE's motion for his temporary suspension. We, therefore, find that respondent is guilty of multiple violations of RPC 8.1(b).

In sum, respondent is guilty of violations of RPC 1.1(a) and (b); RPC 1.3; RPC 1.4(b) and (c); RPC 3.4(c); RPC 5.5(a); RPC 8.1(b); and RPC 8.4(d). The only remaining issue is the appropriate quantum of discipline to be imposed for respondent's wide-ranging and serious misconduct. The level of discipline for practicing law while suspended ranges from a lengthy suspension to disbarment, depending on the presence of other misconduct, the attorney's disciplinary history, and aggravating or

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[5] Moreover, assuming, arguendo, that this address was no longer valid, respondent failed to inform the Lawyers' Fund for Client Protection and the OAE of any change in his home and/or primary law office address "either prior to such change or within thirty days thereafter," as required by R. 1:20-1(c). Respondent's failure to alert those agencies, as required by Court rule, supports our finding that he failed to cooperate with disciplinary authorities. To find otherwise would allow an attorney to avoid service of process in disciplinary matters without consequence.

mitigating factors. See, e.g., In re Brady, 220 N.J. 212 (2014) (one-year, retroactive suspension; after a Superior Court judge appointed a trustee for the attorney's law practice, the attorney consented to the entry of an order restraining him from practicing law; he then represented a client in two separate municipal court matters; a few months later, the Court temporarily suspended the attorney in an unrelated matter; aware that the Court had suspended him, the attorney thereafter represented a third client, on three occasions, before a municipal court; the attorney also failed to comply with the requirements of R. 1:20-20, governing suspended attorneys; considerable mitigation included the attorney's diagnosis with a catastrophic illness, followed by a failed marriage, failed business, collapse of his personal life, and eventual homelessness); In re Bowman, 187 N.J. 84 (2006) (one-year suspension for attorney who, during a period of suspension, maintained a law office where he met with clients, represented clients in court, and acted as Planning Board solicitor for two municipalities; prior three-month suspension; extremely compelling circumstances considered in mitigation); In re Marra, 170 N.J. 411 (2002) (Marra I) (one-year suspension for practicing law in two cases while suspended and substantial recordkeeping violations, despite having previously been the

subject of a random audit; on the same day that the attorney received the one-year suspension, he received a six-month suspension and a three-month suspension for separate violations, having previously received a private reprimand, a reprimand, and a three-month suspension); In re Lisa, 158 N.J. 5 (1999) (one-year suspension for attorney who appeared before a New York court during his New Jersey suspension; in imposing only a one-year suspension, the Court considered a serious childhood incident that made the attorney anxious about offending other people or refusing their requests; out of fear of offending a close friend, he agreed to assist as "second chair" in the New York criminal proceeding; there was no venality or personal gain involved; the attorney did not charge his friend for the representation; prior admonition and three-month suspension); In re Hollis, 154 N.J. 12 (1998) (one-year suspension for attorney who, in a default matter, continued to represent a client during the attorney's period of suspension; the attorney had been suspended for three years on two occasions; no reasons given for only a one-year suspension); In re Macchiaverna, 218 N.J. 166 (2014) (two-year suspension, on a certified record, for attorney who, less than two weeks after receiving the Court's temporary suspension order, represented a client in a municipal zoning board matter; in aggravation, the attorney knew, at the time,

that a complaint had been filed in another matter, charging him with practicing while suspended; that complaint addressed his failure to pay the administrative costs in connection with an earlier disciplinary matter; prior reprimand and censure); In re Wheeler, 140 N.J. 321 (1995) (Wheeler I) (two-year suspension imposed on attorney who practiced law while serving a temporary suspension for failure to refund a client's fee; the attorney also made multiple misrepresentations to clients, displayed gross neglect and pattern of neglect, engaged in negligent misappropriation and a conflict of interest, and failed to cooperate with disciplinary authorities); In re Marra, 183 N.J. 260 (2005) (Marra II) (three-year suspension for attorney found guilty of practicing law in three matters while suspended; the attorney also filed a R. 1:20-20 affidavit that falsely stated that he had refrained from practicing law during a prior suspension; the attorney had received a private reprimand, a reprimand, two three-month suspensions, a six-month suspension, and a one-year suspension also for practicing law while suspended); In re Cubberley, 178 N.J. 101 (2003) (three-year suspension for attorney who solicited and continued to accept fees from a client after he had been suspended, misrepresented to the client that his disciplinary problems would be resolved within one month, failed to notify the client or the courts of

his suspension, failed to file the Rule 1:20-20 affidavit, and failed to reply to the OAE's requests for information; the attorney had an egregious disciplinary history: an admonition, two reprimands, a three-month suspension, and two six-month suspensions); In re Wheeler, 163 N.J. 64 (2000) (Wheeler II) (attorney received a three-year suspension for handling three matters without compensation, with the knowledge that he was suspended, holding himself out as an attorney, and failing to comply with Administrative Guideline No. 23 (now R. 1:20-20) relating to suspended attorneys; prior one-year suspension on a motion for reciprocal discipline and, on that same date, two-year consecutive suspension for practicing while suspended); In re Kasdan, 132 N.J. 99 (1993) (three-year suspension for attorney who continued to practice law after being suspended and after the Court expressly denied her request for a stay of her suspension; she also failed to inform her clients, her adversary, and the courts of her suspension, deliberately continued to practice law, misrepresented her status as an attorney to adversaries and to courts where she appeared, failed to keep complete trust records, and failed to inform her adversary of the whereabouts and amount of escrow funds; prior three-month suspension); In re Beltre, 130 N.J. 437 (1992) (three-year suspension for attorney who appeared in court after

having been suspended, misrepresented his status to the judge, failed to carry out his responsibilities as an escrow agent, lied to us about maintaining a bona fide office, and failed to cooperate with an ethics investigation, prior three-month suspension); In re Walsh, Jr., 202 N.J. 134 (2010) (attorney disbarred on a certified record for practicing law while suspended by attending a case conference in which he negotiated a consent order on behalf of five clients and making a court appearance on behalf of seven clients; the attorney was also guilty of gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities during the investigation and processing of the grievances; the attorney failed to appear on an order to show cause before the Court; extensive disciplinary history: reprimand, censure, three-month suspension, and six-month suspension); In re Olitsky, 174 N.J. 352 (2002) (disbarment for attorney who agreed to represent four clients in bankruptcy cases after he was suspended, did not advise them that he was suspended from practice, charged clients for the prohibited representation, signed another attorney's name on the petitions without that attorney's consent and then filed the petitions with the bankruptcy court; in another matter, the attorney agreed to represent a client in a mortgage foreclosure after he

was suspended, accepted a fee, and took no action on the client's behalf; in yet another matter, he continued to represent a client in a criminal matter; he also made misrepresentations to a court and was convicted of stalking a woman with whom he had had a romantic relationship; prior private reprimand, admonition, two three-month suspensions, and two six-month suspensions); In re Costanzo, 128 N.J. 108 (1992) (attorney disbarred for practicing law while serving a temporary suspension for failure to pay administrative costs incurred in a prior disciplinary matter and for misconduct involving numerous matters, including gross neglect, lack of diligence, failure to keep clients reasonably informed and to explain matters in order to permit them to make informed decisions about cases, pattern of neglect, and failure to designate hourly rate or basis for fee in writing; prior private reprimand and reprimand); and In re Goldstein, 97 N.J. 545 (1984) (attorney disbarred for misconduct in eleven matters and for practicing law while temporarily suspended by the Court and in violation of an agreement with the us that he limit his practice to criminal matters).

Here, respondent's conduct was also prejudicial to the administration of justice, in violation of RPC 8.4(d), and was egregious. In addition to practicing law while suspended,

respondent failed to attend scheduled court proceedings, failed to participate in scheduled telephone conference calls with the court, and failed to be accessible to the court, leading three judges to contact disciplinary authorities about his behavior and to issue hundreds of notices to dismiss. His conduct also violated RPC 3.4(c). Such conduct typically results in either a reprimand or a censure, depending on the presence of other circumstances, such as the existence of other violations, the attorney's ethics history, whether the matter proceeded as a default, the harm to others, and mitigating or aggravating factors. See, e.g., In re Cerza, 220 N.J. 215 (2015) (reprimand imposed on attorney who failed to obey a bankruptcy court's order compelling him to comply with a subpoena, which resulted in a default judgment against him; violations of RPC 3.4(c) and RPC 8.4(d); the attorney also violated RPC 1.15(b) in a related real estate transaction when he disbursed a $100 survey refund to the wrong party, failed to refund the difference between the estimated recording costs and the actual recording costs, and failed to disburse the mortgage pay-off overpayment, which had been returned to him and held in his trust account for more than five years after the closing; prior admonition for recordkeeping violations and failure to promptly satisfy tax liens in connection with two client matters, even though he had escrowed

funds for that purpose); In re Gellene, 203 N.J. 443 (2010) (reprimand for attorney found guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal, for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney was also guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors considered were the attorney's financial problems, his battle with depression, and significant family problems; his ethics history included two private reprimands and an admonition); In re Geller, 177 N.J. 505 (2003) (reprimand for attorney who failed to comply with court orders (at times defiantly) and the disciplinary special master's direction not to contact a judge; the attorney also filed baseless motions accusing judges of bias against him, failed to expedite litigation and to treat with courtesy judges, his adversary, the opposing party, an unrelated litigant, and a court-appointed custody evaluator, used means intended to delay, embarrass or burden third parties, made serious charges against two judges without any reasonable basis, made unprofessional and demeaning remarks toward the other party and opposing counsel, and made a discriminatory remark about a judge; in mitigation, we

considered that the attorney's conduct occurred in the course of his own child custody case; no prior disciplinary history); In re Kersey, 170 N.J. 409 (2002) (reprimand imposed on attorney as reciprocal discipline; attorney failed to comply with orders of a Vermont family court in his own divorce matter); In re Holland, 164 N.J. 246 (2000) (reprimand for attorney who took a fee, despite being required, by court order, to hold it in trust); In re Milstead, 162 N.J. 96 (1999) (reprimand imposed on who attorney disbursed escrow funds to his client, in violation of a court order); In re Skripek, 156 N.J. 399 (1998) (reprimand for attorney held in contempt for failing to pay court-ordered spousal support and for failing to appear at the hearing); In re Hartmann, 142 N.J. 587 (1995) (attorney reprimanded for intentionally and repeatedly ignoring four court orders to pay opposing counsel a fee, resulting in a warrant for the attorney's arrest; the attorney also displayed discourteous and abusive conduct toward a judge with intent to intimidate her; no prior disciplinary history); and In re Haft, 98 N.J. 1 (1984) (reprimand where attorney failed to file a brief for a death row client, after the court held him in contempt three times for failing to do so).

Censures have been imposed in other cases: In re D'Arienzo, 207 N.J. 31 (2011) (attorney failed to appear in municipal court

for a scheduled criminal trial, and thereafter failed to appear at two orders to show cause stemming from his failure to appear at the trial; by scheduling more than one matter for the trial date, the attorney inconvenienced the court, the prosecutor, complaining witness, and two defendants; in addition, the failure to provide the court with advance notice of his conflicting calendar prevented the judge from scheduling other cases for that date; prior three-month suspension and two admonitions plus failure to learn from similar mistakes justified a censure); and In re LeBlanc, 188 N.J. 480 (2006) (attorney's misconduct in three client matters included conduct prejudicial to the administration of justice for failure to appear at a fee arbitration hearing, failure to abide by a court order for failure to produce information and other ethics violations; mitigation included, among other things, the attorney's recognition and stipulation of his wrongdoing, his belief that his paralegal had handled post-closing steps, and a lack of intent to disregard his obligation to cooperate with ethics authorities; no prior disciplinary history).

Suspensions have been imposed where the attorneys either had significant ethics histories or were guilty of violating a number of other ethics rules, or both. See, e.g., In re DeClemente, 201 N.J. 4 (2010) (three-month suspension for

attorney who arranged three loans to a judge in connection with his own business, failed to disclose to opposing counsel his financial relationship with the judge and failed to ask the judge to recuse himself, made multiple misrepresentations to the client, engaged in an improper business transaction with the client, and engaged in a conflict of interest; no prior disciplinary history); In re Block, 201 N.J. 159 (2010) (six-month suspension where attorney violated a court order that he had drafted by failing to transport his client from prison to a drug treatment facility, instead leaving the client at a church while he made a court appearance in an unrelated case; the client fled and encountered more problems while on the run; the attorney also failed to file an affidavit in compliance with R. 1:20-20; failed to cooperate with disciplinary authorities; failed to provide clients with writings setting forth the basis or rate of the fees; lacked diligence, engaged in gross neglect, and failed to turn over a client's file; prior reprimand and one-year suspension); and In re Bentivegna, 185 N.J. 244 (2004) (motion for reciprocal discipline; two-year suspension for attorney who was guilty of making misrepresentations to an adversary, negotiating a settlement without authority, filing bankruptcy petitions without authority to do so and without notifying her clients, signing clients' names to documents,

making misrepresentations in pleadings filed with the court, violating a bankruptcy rule prohibiting the payment of fees before paying filing fees; the attorney was guilty of conduct prejudicial to the administration of justice, gross neglect, failure to abide by the client's decision concerning the objectives of the representation, failure to communicate with clients, excessive fee, false statement of material fact to a tribunal, and misrepresentations; no prior disciplinary history).

Respondent is also guilty of extreme gross neglect, three instances of lack of diligence, and three instances of failure to communicate with clients (three violations each of RPC 1.4(b) and (c), in three separate client matters). These specific RPC violations are only a representative sample, given respondent's complete abandonment of approximately 280 clients in this matter. Conduct consisting of neglect, lack of diligence, and failure to communicate ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, and the seriousness of the attorney's disciplinary history. See, e.g., In the Matter of Clifford Gregory Stewart, DRB 14-014 (April 22, 2014) (admonition; attorney who was not licensed to practice law in Washington, D.C. filed an employment

discrimination case in the United States District Court for the District of Columbia and obtained local counsel to assist him in handling the matter; after the defendant filed a motion to dismiss the complaint, however, the attorney failed to provide local counsel with a written opposition to the motion until after the deadline for doing so had expired, resulting in the granting of the motion as unopposed; violations of RPC 1.1(a) and RPC 1.3; in addition, the attorney failed to keep his client informed about various filing deadlines and about the difficulty he was having with meeting them, particularly with the deadlines for filing an objection to the motion to dismiss the complaint, violations of RPC 1.4(b) and RPC 1.4(c); we considered the attorney's exemplary, unblemished career of twenty-eight years at the time of the incident); In the Matter of Robert A. Ungvary, DRB 13-099 (September 30, 2013) (admonition; due to the attorney's failure to comply with discovery, his client's civil rights complaint was dismissed; the attorney's motion to vacate the default was denied and a subsequent appeal was dismissed for his failure to timely prosecute it; the attorney neither informed the client of the dismissal of the appeal nor discussed with him his decision not to pursue it; violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.4(c); although the attorney had been admonished previously, we noted that his

conduct in the present matter predated the conduct in the prior matter and that the client and his family had continued to use the attorney's legal services, despite his shortcomings in the civil rights matter); In re Burstein, 214 N.J. 46 (2013) (reprimand for attorney guilty of lack of diligence, gross neglect, and failure to communicate with the client; although the attorney had no disciplinary record, the significant economic harm to the client justified a reprimand); and In re Kurts, 206 N.J. 558 (2011) (attorney reprimanded for mishandling two client matters; in one matter, he failed to complete the administration of an estate, causing penalties to be assessed against it; in the other, he was retained to obtain a reduction in child support payments but at some point ceased working on the case and closed his office; the client, who was unemployed, was forced to attend the hearing pro se, at which time he obtained a favorable result; in both matters, the attorney was found guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to memorialize the basis or rate of his fee; mental illness considered in mitigation; no prior discipline).

In addition, however, respondent is guilty of a pattern of neglect. To find 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). Respondent's misconduct clearly exceeds this threshold.

When an attorney is guilty of a pattern of neglect, a reprimand ordinarily ensues. See, e.g., In re Weiss, 173 N.J. 323 (2002) (lack of diligence, gross neglect, and pattern of neglect); In re Balint, 170 N.J. 198 (2001) (in three matters, 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) (lack of diligence, failure to communicate in a number of cases handled on behalf of an insurance company, gross neglect, and pattern of neglect).

Respondent is also guilty of violations of RPC 8.1(b) in three separate matters. Failure to cooperate with a disciplinary investigation may result in an admonition if the attorney does not have an ethics history (even when accompanied by other, less serious, infractions). See, e.g., In the Matter of Jeffrey M. Adams, DRB 14-243 (November 25, 2014) (attorney failed to cooperate with the district ethics committee's attempts to obtain information from him about his representation of a client in connection with the sale of a house, a violation of RPC 8.1(b)); In the Matter of Richard D. Koppenaal, DRB 13-164 (October 21, 2013) (the attorney admittedly failed to cooperate

with the district ethics committee's attempts to obtain information about his representation of a client in an expungement matter, a violation of RPC 8.1(b); the attorney had had no other final discipline since his 1983 admission to the New Jersey bar); In the Matter of Raymond Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written, formal reply to the grievance and a copy of the filed pleadings in the underlying case, despite repeated assurances that he would do so, a violation of RPC 8.1(b); we took into consideration that the attorney's failure to cooperate was confined to the period during the investigation and that, thereafter, he appeared at the ethics hearing and participated fully during the disciplinary process); In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (attorney failed to comply with disciplinary investigator's request for information about the grievance; attorney also violated RPC 1.1(a) and RPC 1.4(b)).

Usually, however, when combined with other violations, a failure to cooperate results in elevated discipline. See, e.g., In re Picker, 218 N.J. 388 (2014) (reprimand; an OAE demand audit, prompted by a $240 overdraft in the attorney's trust account, uncovered the attorney's use of her trust account for the payment of personal expenses, though no trust funds were in the account at the time; violation of RPC 1.15(a); in addition,

the attorney failed to comply with the OAE's request for documents in connection with the overdraft and failed to appear at the audit; violations of RPC 8.1(b); the attorney explained that health problems had prevented her from attending the audit and that she had not submitted the records to the OAE because they were in storage at the time; although the attorney had a prior three-month suspension and was temporarily suspended at the time of the decision in this matter, we noted that the conduct underlying those matters was unrelated to the conduct at hand); In re Macias, 121 N.J. 243 (1990) (reprimand for failure to cooperate with the OAE; the attorney ignored six letters and numerous phone calls from the OAE requesting a certified explanation on how he had corrected thirteen recordkeeping deficiencies noted during a random audit; the attorney also failed to file an answer to the complaint).

By far, respondent's most serious infraction is his abandonment of hundreds of clients. The abandonment of a client is a serious offense that ordinarily merits discipline ranging between a term of suspension and disbarment. See, e.g., In re Nwaka, 178 N.J. 483 (2004) (three-month suspension on a motion for reciprocal discipline; the attorney was disbarred in New York for abandoning one client and failing to cooperate with New York ethics authorities by not filing an answer to the complaint

and not complying with their requests for information about the disciplinary matter; prior three-month suspension); In re Jennings, 147 N.J. 276 (1997) (three-month suspension for attorney who abandoned one client and failed to cooperate with ethics authorities; no disciplinary history); In re Bowman, 175 N.J. 108 (2003) (six-month suspension for attorney who abandoned two clients, made misrepresentations to disciplinary authorities, engaged in a pattern of neglect and other acts of misconduct in three client matters, including gross neglect, lack of diligence, failure to communicate with clients, failure to explain a matter to the extent reasonably necessary to permit the client to make an informed decision about the representation, failure to provide a written fee agreement, failure to protect a client's interests upon termination of representation, and misrepresentation of the status of a matter to a client; prior private reprimand); In re Misci, 206 N.J. 11 (2011) (one-year suspension in a default for an attorney who showed a callous indifference to the interests of his client; without any warning, the client was left without his documents and without counsel; the attorney's disciplinary history included a reprimand and a three-month suspension); and In re Mintz, 126 N.J. 484 (1992) (two-year suspension for attorney who abandoned four clients and was found guilty of a pattern of

neglect, failure to maintain a bona fide office, and failure to cooperate with ethics authorities).

More severe discipline has been imposed in other cases involving more extensive abandonment, accompanied by a disregard for the disciplinary process. For example, the Court disbarred an attorney guilty of gross neglect, pattern of neglect, lack of diligence, lack of communication, and failure to cooperate with disciplinary authorities. In re Kantor, 180 N.J. 226 (2004). There, without prior notice, the attorney abandoned his practice and at least ten clients, some of whom were left with no cause of action because the attorney either failed to file complaints within the applicable statute of limitations or because he allowed complaints to be dismissed based on his inaction. Moreover, the attorney failed to cooperate with the OAE's investigation, failed to file an answer to the formal complaint, resulting in its certification to us for the imposition of discipline, and failed to appear in response to the Court's Order to Show Cause.

In determining to disbar the attorney, the Court noted that "[he had] shown an utter disregard for the disciplinary process as evidenced by his decision not to cooperate with the ethics investigation, to answer the complaint, to submit mitigation evidence to the DRB, or to respond to [the] Court's Order to

Show Cause." Id. at 232. Noting that the attorney had been the subject of prior discipline and had once before failed to cooperate in an ethics investigation, the Court found "nothing in the record to suggest that he [was] salvageable as an attorney." Ibid. See also, In re Golden, 156 N.J. 365 (1998) (attorney who abandoned his practice and at least seven active client matters was disbarred; attorney did not respond to the ethics complaint, did not offer mitigation, and failed to appear in response to the Court's Order to Show Cause); In re Holman, 156 N.J. 371 (1998) (attorney disbarred based on serious misconduct that arose from his abandonment of his practice and fifteen clients, from whom he had accepted fees without providing services); and In re Clark, 134 N.J. 522 (1993) (attorney disbarred for abandoning his practice and various clients and for conduct consisting of gross neglect, pattern of neglect, lack of diligence, lack of communication, conduct prejudicial to the administration of justice, and failure to cooperate with disciplinary authorities).

The totality of respondent's misconduct is of a scope, breadth, and variety rarely encountered. His disappearing act in these matters constituted gross neglect, lack of diligence, failure to communicate with his clients, knowing disobedience of court rules and obligations, and conduct prejudicial to the

administration of justice, all egregious both in quantity and quality. Respondent abandoned hundreds of clients, causing them irreparable harm. Moreover, he engaged in the practice of law after the Court had temporarily suspended him, a measure taken to protect his existing clients and the public. Although, as discussed above, the record lacks the evidence required to find that respondent knowingly practiced law while suspended, the record is also devoid of the facts necessary to conclusively determine that respondent's practice while suspended was not knowing. Finally, respondent failed to cooperate with the OAE in its investigation of all three client grievances comprising this matter.

Like Kantor, respondent continued his pattern of not participating in the disciplinary process and did not submit a verified answer to the ethics complaint, causing the OAE to certify the matter to us as a default for the imposition of discipline. Here too, respondent made no attempt to move to vacate the default to offer any excuse or mitigation for his serious misconduct. Accordingly, the default status of this matter must be considered as an aggravating factor. "A respondent's default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be

appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008).

The only mitigation is respondent's lack of prior discipline. Although we have given respondent's clean disciplinary history due consideration, this factor is insufficient to deter us from the inevitable conclusion that we must reach given the facts of this case – that respondent is not salvageable as an attorney.

"The purpose of the disciplinary review process is to protect the public from unfit lawyers and to promote public confidence in our legal system." In re Gallo, 178 N.J. 115, 122 (2003). For reasons unknown, respondent completely abandoned a practice, leaving at least 280 clients, who were relying on him, to fend for themselves. Those clients suffered irreparable harm, as evidenced in the Freschi and Glowacki matters. Tax Court notices, orders, and other correspondence to respondent were routinely returned as undeliverable. Attempts to reach respondent by telephone were unsuccessful, as his office telephone had been disconnected. Respondent missed all scheduled court proceedings over a course of several months, causing several judges to communicate with the OAE and at least one judge to conclude that respondent had abandoned his practice. We cannot, in good conscience, give him further opportunity to

wreak havoc on other unsuspecting potential clients. To protect the public and preserve confidence in New Jersey's legal system, respondent, who has provided no reason to believe that he can be redeemed, must be disbarred. We so recommend.

Member Clark did not participate.

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

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John J. O'Hara, III
Docket No. DRB 15-136

Decided: December 8, 2015

Disposition: Disbar

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

Ellen A. Brodsky
Chief Counsel