SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 15-174 and 15-276
District Docket Nos. XIV-2014-0198E;
XIV-2014-0212E; XIV-2014-0226E;
XIV-2014-0264E; XIV-2014-0319E;
XIV-2014-0320E; XIV-2014-0328E;
XIV-2014-0463E; XIV-2015-0127E;
and XIV-2015-0128E

IN THE MATTER OF	:
HERBERT JONI TAN	:
AN ATTORNEY AT LAW	:

Decision

Decided: February 19, 2016

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

These matters were before us on two certifications of default filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). By letter dated August 28, 2015, respondent submitted a certification, which we treated as a motion to vacate the defaults. For the reasons detailed below, we deny respondent's motion and recommend his disbarment.

Respondent was admitted to the New Jersey bar in 1998.

In 2006, respondent received a reprimand for knowingly making a false statement of fact in connection with a bar admission

application. Specifically, respondent falsely stated on his bar application that he had earned a bachelor's degree, when he was one course shy of that degree. In determining that a reprimand was sufficient discipline, we considered respondent's compelling mitigating circumstances including that he and his fiancée experienced health problems at the time, that he had twice attempted to rectify the problem with his degree (although he failed to follow through for fear of discovery), that his misrepresentations were the result of poor judgment and inexperience, and that the offense had occurred more than eight years earlier. In re Tan, 188 N.J. 389 (2006).

In 2010, respondent received another reprimand for misconduct in two client matters. There, he failed to fully cooperate with ethics authorities in both matters and, in one of them, lacked diligence and failed to explain the matter to the extent reasonably necessary to permit the client to make informed decisions about the representation. As a result, the client did not understand the scope of the representation or the consequences of her choice on how to proceed in the matter. In re Tan, 202 N.J. 3 (2010).

In 2011, respondent was censured for gross neglect and lack of diligence in a workers' compensation matter, failure to abide by the client's decisions concerning the scope and objectives of the

representation, failure to keep the client reasonably informed about the status of the case or to comply with the client's reasonable requests for information, failure to explain a matter to the extent reasonably necessary to enable the client to make informed decisions about the representation, and misrepresentation to the client. In re Tan, 208 N.J. 362 (2011). The Court ordered respondent to practice under the supervision of a proctor for a two-year period.

On November 20, 2013, respondent was temporarily suspended for failure to submit to the OAE the name of a proctor, as required by the Court's November 3, 2011 order. In re Tan, 216 N.J. 296 (2013). He remains suspended to date.

On March 14, 2014, respondent was reprimanded for failure to keep a client reasonably informed about the status of a matter and to promptly comply with the client's requests for information. In re Tan, 217 N.J. 149 (2014).

Recently, in 2015, respondent was suspended for one year, effective March 12, 2015, for multiple, serious ethics infractions. In re Tan, 220 N.J. 587 (2015).[1] Because a portion of the matter now before us stems from that suspension case, a detailed

[1] On May 29, 2014, respondent was temporarily suspended also by the United States District Court, District of New Jersey and, on July 31, 2014, by the United States Court of Appeals, Third Circuit.

recitation of those facts is warranted. In that matter, respondent failed to maintain for seven years a copy of the retainer agreement for his client, Joy Pachowicz, as required by R. 1:21-6(c)(1)(C), thereby violating the recordkeeping rules. Although he intended to represent Pachowicz from the outset, respondent designated her as pro se on the civil complaint he filed in her behalf, thereby engaging in deceitful conduct, violating both RPC 8.4(a) and RPC 8.4(c).

Respondent also engaged in multiple conflicts of interest. First, during the course of their attorney-client relationship, he retained Pachowicz to create blogs for him and to promote his website, without setting forth a rate of pay. Her lack of experience prevented her from knowing what constituted a fair rate and, based on their professional relationship, she trusted respondent to treat her fairly. Ultimately, respondent paid Pachowicz nothing. Respondent failed to advise her to consult with independent counsel in this regard.

In a second transaction, respondent created a payroll company with Pachowicz. We found that Pachowicz was unsophisticated and lacked the capacity to understand the terms of their business arrangement. Moreover, respondent entered into the transaction knowing that Pachowicz had been abused by her former employer, was easily influenced and dominated, and trusted respondent

unconditionally. Respondent failed to ensure that Pachowicz understood the terms of their transaction such that her consent to the terms was informed, thereby violating RPC 1.4(c) and RPC 1.8(a). Any attempts respondent made to comply with the requirements of RPC 1.8(a) were to protect himself rather than to inform Pachowicz of the essential terms of the transaction and the consequences of his representation of her interests in the transaction.

In a third conflict of interest, respondent represented Pachowicz and another client in the same matter when their interests were clearly adverse. Because Pachowicz was a co-plaintiff with the other client, she had to forego a harassment claim (sexual or other forms) against the co-plaintiff. She did not know or understand that she had a cause of action for harassment because respondent never discussed it with her.

Rather than terminate the dual representation, respondent coerced and intimidated Pachowicz into going forward with the case by threatening to withdraw from it if she did not go along with the dual representation.

In imposing a one-year suspension, we found that respondent was a "serial ethics offender" who showed an "appalling indifference toward his clients" and the rules of the profession and refused to learn from his prior ethics problems. We found

further that respondent (1) displayed a pattern of failure to explain to clients the circumstances of the representation to permit them to make informed decisions in their matters; (2) engaged in a pattern of misrepresentations; (3) failed to accept responsibility for his offenses; (4) disregarded the welfare of his clients; and (5) failed to cooperate with ethics authorities.

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The six-count amended complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failing to keep a client reasonably informed about the status of the matter or to comply with reasonable requests for information from a client), RPC 1.15(d) (recordkeeping violations), RPC 1.16(d) (failing to protect a client's interests upon termination of the representation), RPC 3.1 (filing a frivolous claim), RPC 3.2 (failing to expedite litigation), RPC 7.1(a) (making false or misleading communications about the lawyer or the lawyer's services), RPC 8.1(b) (failing to respond to a lawful demand for information from a disciplinary authority), RPC 8.4(a) (knowingly inducing another to violate the Rule of Professional Conduct), RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC

8.4(d) (engaging in conduct prejudicial to the administration of justice).

Service of process was proper in this matter. On March 25, 2015 (after respondent's temporary and one-year suspensions), the OAE sent a copy of the complaint, by regular and certified mail, to respondent's home address. The certified mail receipt appears to have been signed by respondent. The regular mail was not returned. Respondent did not file an answer to the ethics complaint.

On May 7, 2015, the OAE sent a letter (five-day letter), by regular and certified mail, to the same address. The letter informed respondent that, if he did not file an answer to the ethics complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to include a willful violation of RPC 8.1(b). The certified mail receipt, which was signed on May 12, 2015, contains an illegible signature. The regular mail was not returned.

As of the date of the certification of the record, May 19, 2015, respondent had not filed an answer to the ethics complaint.

I. Count One – The Davis Matter (XIV-2014-0198E)

On December 2, 2007, Jimmy Davis retained respondent for an employment discrimination matter against the Postmaster General and others. Respondent filed three complaints on Davis' behalf, all of which were dismissed.

On December 31, 2010, respondent filed the first complaint in the U.S. District Court listing "Michael" Davis as the plaintiff, instead of Jimmy Davis. Nevertheless, the first paragraph of the complaint referred to "Jimmy Davis" as the plaintiff.

Respondent failed to serve the complaint on the defendants. Thereafter, on May 2, 2011, the clerk issued a Notice of Call For Dismissal, requiring respondent to provide proof of service before May 12, 2011. Respondent failed to do so. Therefore, on May 13, 2011, the case was dismissed without prejudice.

On January 13, 2012, respondent filed a motion and certification to restore the case to the active calendar and to amend the complaint to allege additional violations against the defendants.

On January 25, 2012, the court denied the motion, without prejudice, and ordered the plaintiff to provide notice of proper service of the "original" complaint or to demonstrate good cause for failing to do so within sixty days of the order.

On March 5, 2012, respondent filed an affidavit of service reflecting that, on February 14, 2012, service was made on the Postmaster General. However, service was effected beyond the 120-days mandated by F.R.C.P. 4(m). Pursuant to the court's prior January 2012 order, the plaintiff's failure to effect proper service resulted in the matter being summarily dismissed. Respondent did not inform Davis about the dismissal.

On July 8, 2012, respondent filed a second complaint on Davis' behalf. Again, respondent failed to serve the complaint on the defendants. On November 19, 2012, after the matter had been pending for more than 120 days, the court issued a Notice of Call for Dismissal, warning that the matter would be dismissed on November 29, 2012, unless respondent filed an affidavit or appeared on the return date to show cause why the case should not be dismissed for lack of prosecution. Respondent failed to file an affidavit or to appear, which resulted in the November 29, 2012 dismissal of the matter without prejudice.

According to Davis' grievance, on March 21, 2013, the court notified him that the case (under the first docket number) had been closed. Respondent told Davis that "it was a typographical error and that he would file a motion to re-open" it. Thereafter, on April 22, 2013, the court informed Davis that respondent had not filed any papers to reopen his case. Davis, therefore, asked

respondent to send him a complete copy of his file. Respondent failed to reply to Davis' request.

On July 29, 2013, respondent filed a third complaint on Davis' behalf. On September 12, 2013, he filed an affidavit of service of the complaint. On January 7, 2014, the clerk, again, issued a Notice of Call for Dismissal for lack of prosecution, noting that there had been no proceeding in the matter for more than 120 days, thus requiring respondent to file an affidavit of good cause. Respondent did not do so and, on January 31, 2014, for the third time, the court dismissed the matter without prejudice.

According to Davis, after respondent moved his law office to Fort Lee, New Jersey, in 2013, they had no further personal contact. After Davis filed the grievance in March 2014, he heard nothing further from respondent and never received his file.

The complaint charged respondent with violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 3.2. The complaint also charged a violation of RPC 8.4(d) for respondent's wasting of judicial resources by filing three complaints that were all dismissed.

The complaint further alleged that respondent's conduct violated RPC 7.1(a) (making false or misleading communications about his services, namely his ability to practice law in New Jersey); and RPC 8.4(d) and R. 1:20-20(a) (using letterhead

associating himself with other New Jersey attorneys after his suspension). These charges stemmed from respondent's use of his firm's letterhead, after his temporary suspension (November 20, 2013) when replying to the OAE's requests for information on July 7, 2014, August 3, 2014, and December 10, 2014. The letterhead listed the addresses for respondent's law offices in Manhattan and Valley Cottage, New York, and Fort Lee, New Jersey.

The charges relating to respondent's failure to cooperate with ethics authorities (RPC 8.1(b) and R. 1:20-3(g)(3)), are discussed below at section VII.

II. Count Two – Failure to Comply with R. 1:20-20

The Court's November 20, 2013 order temporarily suspending respondent directed him to comply with the requirements of R. 1:20-20, within thirty days of the order (by December 20, 2013), and to file an affidavit of compliance with the OAE Director within that timeframe. Respondent failed to file the affidavit. Therefore, by letter dated July 3, 2014, sent by regular and certified mail to respondent's home and former law office addresses, the OAE asked respondent to file the affidavit by July 17, 2014. The letter specified that the OAE sought the following information: (1) the names of respondent's clients at the time of his suspension; (2) when and how the clients were notified about his suspension; and

(3) whether he delivered the client files to the clients or their attorneys. The letter further informed respondent that his failure to comply with the requirements of R. 1:20-20 may constitute a contempt of court and could result in further disciplinary charges.

By letter dated July 7, 2014, respondent acknowledged receipt of that letter, stated that he was out of town on vacation until the following week, and requested an extension until July 22, 2014. The OAE granted respondent an extension, to July 28, 2014, to submit written responses in seven pending matters and to submit the required affidavit.

In an August 3, 2014 fax to the OAE, described more fully below, respondent asserted that he was unable to reply due to his health condition and attached a letter from his treating psychiatrist, also detailed below. Respondent also failed to attend a December 11, 2014 demand audit/interview.

As of the date of the complaint, respondent had not submitted the affidavit of compliance. The complaint, thus, charged respondent with having violated RPC 8.1(b) and R. 1:20-3(g)(3) (failure to cooperate) and RPC 8.4(d) and R. 1:20-20(b)(15) (conduct prejudicial to the administration of justice) for failing to comply with the requirements imposed on suspended attorneys.

III. Count Three – The Chin Matter

In June 2013, Maria Quinones Chin retained respondent to file a Chapter 7 bankruptcy petition on her behalf. Although she never personally met with him, she paid respondent a $1,500 fee. On July 23, 2013, Chin signed "the face sheet" and reviewed some schedules in connection with the petition.

On August 13, 2013, without Chin's knowledge, a petition with attached schedules A through J was filed, listing Chin as a pro se petitioner. Chin learned that she had been listed as pro se only after she received a letter from Honda (presumably a creditor) denying her access to her account because of her bankruptcy case. When Chin questioned respondent about Honda's letter, respondent assured her that he represented her in the bankruptcy.

On August 14, 2013, the court sent Chin a notice of missing documents, which informed her that, unless she submitted the missing information within fourteen days, her case would be dismissed on August 27, 2013. Because the missing information was not submitted, on September 10, 2013, the court dismissed Chin's case.

On September 20, 2013, respondent filed a motion to reinstate/re-file the bankruptcy petition, relying on an attached certification of retired attorney Richard Rosen. Rosen purportedly was "substituting in for respondent." Rosen certified that Chin

never received the court's deficiency notices. Although Rosen's name appeared on the documents, respondent's electronic court filing (ECF) identification and password were used to effect the electronic filing. Respondent was, therefore, listed as Chin's attorney of record.

According to Chin, respondent's/Rosen's statement that she had not received the court's notices was false. She received them, but respondent led her to believe that he would handle the matter.

The court issued a notice for a hearing on the motion to reinstate the case. Service was effected on respondent via his ECF e-mail address. The court denied the motion to reinstate the case, serving respondent via his ECF e-mail address.

Respondent notified Chin that the court required that she re-file the case. After Chin's "numerous calls, e-mails, and text messages," respondent informed her that he had provided her with "a belated Christmas gift by re-filing" her bankruptcy case. On January 7, 2014, he filed a second petition. Respondent signed the petition as the attorney of record and an "unknown individual" signed Chin's name on it, without her knowledge. Chin was not familiar with the procedures to re-file a case and had relied on respondent's expertise in doing so.

On January 8, 2014, the court issued a notice of missing documents, requiring respondent to file the missing information

with the court on or before January 21, 2014, noting that failure to do so would result in dismissal. Respondent was served with the notice via his ECF e-mail address. Although, on January 21, 2014, respondent filed various documents, he failed to file the attorney disclosure statement, list of creditors, and statement of financial affairs. As a result, on January 27, 2014, the court dismissed the second petition.

Subsequently, Chin retained Virginia Fortunato, Esq. (the grievant in this matter), who informed her that, on January 21, 2014, respondent had filed a third petition. The petition was the same as the second petition he had previously filed and was filed while that second petition was still pending. Neither petition had been signed by Chin. On January 22, 2014, the court issued a notice of missing documents, requiring the petitioner to file the documents by February 4, 2014. On that same date, the court noted that the petition was duplicative and directed respondent to file a motion to withdraw the petition. He failed to do so, even after having been given an extension. The court, thus, dismissed the matter and closed Chin's third case.

Based on respondent's multiple filings, Fortunato filed a fourth petition and a motion seeking to apply the automatic stay to Chin's creditors, to void respondent's prior petitions based on his "unethical and fraudulent behavior," and to impose sanctions

against respondent. On May 30, 2014, the court granted the requested relief and, on August 8, 2014, based on Fortunato's efforts, granted Chin's discharge. The court's August 19, 2014 supplemental order (1) declared that two of the petitions filed by respondent were "null and void and without force and effect as filed without [Chin's] knowledge or authorization; (2) imposed a $2,700 sanction against respondent for attorney's fees and costs of the motion, and (3) suspended respondent's ECF/PACER[2] privileges pending restoration of his license to practice law.

On April 30, 2014, Fortunato filed a grievance against respondent attaching to it the motion she filed seeking relief from the bankruptcy court.

The complaint charged respondent with violating RPC 1.1(a) and RPC 1.3 for neglecting Chin's bankruptcy cases; RPC 1.4(b) for failing to keep Chin informed about the status of her matter or to promptly comply with her requests for information; RPC 3.1 for filing a third bankruptcy petition when there was no basis for doing so as it was duplicative of the second petition; RPC 8.4(c) and RPC 8.4(d) for (1) signing his name as the attorney of record knowing that Chin had not signed the petition and then filing the document with the court and (2) filing the Rosen certification with

[2] PACER is the acronym for public access to court electronic records.

the court that contained false statements; and an additional instance of RPC 8.4(d) for wasting judicial resources by filing three petitions that were dismissed by the court.

IV. Count Four – Trust Account Overdrafts

By letter dated May 16, 2014, TD Bank notified the OAE that there was an overdraft in respondent's attorney trust account. Specifically, on May 8, 2014, respondent's issuance of an $850 check resulted in a -$438.44 shortage.

By letter dated June 5, 2014, the OAE requested that respondent provide a written explanation for the overdraft and submit copies of his bank records by June 20, 2014. Respondent did not reply within the prescribed time.

By letter dated June 19, 2014, TD Bank notified the OAE about a second overdraft in respondent's trust account in the amount of -$473.44. The OAE's June 24, 2014 letter seeking an explanation for the new overdraft and bank records was mistakenly sent to respondent's office address after he had been suspended.

Before the OAE remedied the mistake, respondent sent the July 7, 2014 fax requesting an extension to July 22, 2014 to reply. On July 15, 2014, the OAE granted the extension to July 28, 2014, to give respondent an opportunity to reply to the grievances and to explain both overdrafts. In the interim, by letter dated July 14,

2014, received by the OAE on July 17, 2014, TD Bank notified the OAE about a third overdraft. Respondent's issuance of another $850 check resulted in a -$408.44 balance in his trust account. The $35 overdraft fee increased the overdraft to -$443.44. The OAE did not send that overdraft notice to respondent, "pending his responses on the prior requests."

Respondent neither provided an explanation for the overdrafts nor submitted his bank records. Instead, as previously noted, he faxed a letter to the OAE that referred to his health issues and treatment by a psychiatrist. Respondent did not appear at the subsequently scheduled OAE demand audit/interview and, as of the date of the amended ethics complaint, failed to explain the overdrafts in his trust account or provide the requested bank records.

The complaint charged respondent with violating RPC 1.15(d) and R. 1:21-6(i), RPC 8.1(b), and R. 1:20-3(g)(3) for failing to reply to a lawful demand for information from a disciplinary authority and failing to produce the requested accounting records, and RPC 8.4(d) and R. 1:20-20(b)(5) for continuing to use his attorney bank accounts more than thirty days after his suspension from the practice of law.

V. Count Five – The Parikh Matter

In March 2013, Jiten Parikh retained respondent for a wrongful termination action. Although respondent took the case on a contingency fee basis, Parikh agreed to pay respondent a $1,000 non-refundable retainer and $250 for court costs.

In May 2013, respondent filed a complaint in Superior Court, Hudson County. On November 28, 2013, the complaint was dismissed without prejudice for lack of prosecution. Thereafter, respondent did not reply to Parikh's calls and e-mails requesting information about the status of his case.

Parikh did not learn about respondent's suspension until he received respondent's March 24, 2014 letter, written on respondent's letterhead, listing his two office locations in New York, as well as his Fort Lee, New Jersey office address. Respondent's letter informed Parikh that he had been suspended because he was unable to find a suitable proctor to supervise him. The letter advised Parikh to find "alternative counsel," because respondent did not believe that he would "ever be able to produce" a suitable proctor.

In July 2014, Parikh filed for fee arbitration. Respondent did not participate in the proceedings. On November 24, 2014, the fee arbitration committee awarded Parikh a $1,000 refund, which respondent did not pay.

The complaint charged respondent with violations of RPC 1.1(a) for grossly neglecting Parikh's matter; RPC 1.1(b) for exhibiting a pattern of neglect in his handling of legal matters generally; RPC 1.3 for failing to act with reasonable diligence and promptness in representing Parikh; RPC 1.4(b) for failing to keep Parikh reasonably informed about the status of his matter and to promptly comply with his reasonable requests for information; RPC 3.2 for failing to make reasonable efforts to expedite Parikh's litigation; and RPC 7.1(a) for making false or misleading communications about the lawyer or his services, because of his inability to practice law in New Jersey.

VI. Count Six — The Rosen Matter

On a form dated April 17, 2014 (after respondent's November 2013 temporary suspension), Richard Rosen submitted an attorney registration form to the New Jersey Lawyers' Fund for Client Protection (Fund). The submission listed his law office as "Herbert Tan, LLC, 1 Bridge Plaza North, Suite 275, Fort Lee, New Jersey 07024," included a $212 check payable to the Fund from the account of "Herbert J. Tan, LLC, Attorney at Law," and listed a Newark, New Jersey address.

The Fund held Rosen's application because respondent's suspension precluded him from associating with any New Jersey

attorneys or using an attorney bank account. On April 25, 2014, the Fund informed the OAE that respondent tried to pay retired attorney Rosen's reinstatement fee, by using "an attorney account check."

On April 25, 2014, when Rosen called the Fund about the status of his application to "come out of retirement," he was informed that his application had been held because of respondent's suspension and that Rosen would have to submit his own funds if he wanted to return to active status. After conferring with respondent, Rosen notified the Fund that he did not want to return to active status.

The complaint charged respondent with violations of RPC 8.4(a), RPC 8.4(c), and R. 1:20-20(a) for knowingly inducing Rosen to violate the RPCs by issuing a check to have Rosen return to active status in order to join his law practice, even though respondent was suspended at the time; and RPC 8.4(d) and R. 1:20-20(b) for continuing to use "an attorney account" after his suspension.

This count also charged respondent with a violation of RPC 8.1(b) because he failed to reply to the OAE's July 15, 2014 letter requesting a written explanation about the Fund's referral.

VII. Failure to Cooperate with the OAE's Investigation

In connection with the Davis, Chin, and Parikh matters, by letters dated June 9 and 20, 2014, the OAE requested written replies to the grievances. The letters were inadvertently addressed to respondent's law office after his November 20, 2013 temporary suspension. Nevertheless, respondent replied by way of a July 7, 2014 fax, which addressed all matters pending against him at the time. Respondent's fax stated that "he was out of town on vacation," requested a brief extension to reply, and informed the OAE that he would provide a response no later than July 22, 2014. Notwithstanding respondent's temporary suspension, the letter was written on his letterhead that listed his law offices in Manhattan and Valley Cottage, New York, and Fort Lee, New Jersey.

By letter dated July 15, 2014, sent via regular and certified mail to respondent's former New Jersey law office, and his New York residence, the OAE attached copies of the Davis, Fortunato, and Parikh grievances and gave respondent until July 28, 2014 to submit a reply to them. The certified mail receipts to both addresses were returned indicating delivery. The regular mail was not returned. Respondent did not provide a written reply. Instead, he sent a fax, received by the OAE on August 4, 2014, asserting that, because of a diagnosis of Lyme Disease and severe depression, he was unable to properly reply, and that he was under the care of psychiatrist Dr.

Scott Wiener in Pomona, New York, who would forward a letter stating that he was currently under his care. The OAE received no such letter from Dr. Weiner.

By letter dated November 19, 2014, the OAE informed respondent that it had not received a letter from his psychiatrist and scheduled a December 11, 2014 demand audit. On December 1, 2014, the OAE sent respondent additional copies of the grievances and requested that he bring the corresponding files to the OAE audit/interview.

In a December 10, 2014 fax, received by the OAE after office hours, respondent stated that he could not appear for the audit, claiming that the several medications he was taking for his depression caused him to experience "lapses in memory, excessive sleep during daytime hours, and general nausea throughout the day." The letter added "I would **respectfully request** that your office allow me time to treat with Dr. Wiener regarding my condition." Attached to the fax was a copy of Wiener's letter, which stated simply "This letter is being written on behalf of Herbert Tan to confirm that they [sic] are under my psychiatric for treatment" [sic] for major depressive disorder, with an "onset" date of March 24, 2014.

By letter dated December 11, 2014, the OAE informed respondent that the investigation against him would be concluded "even in the

face of no cooperation from him" and that his continuing use of letterhead and association with retired or active New Jersey attorneys was improper and another violation of the RPCs. As of the date of the complaint, March 24, 2015, respondent had neither replied to the grievances nor provided the requested files.

The complaint, thus, charged respondent with having violated RPC 8.1(b) and R. 1:20-3(g)(3) for failing to cooperate with the investigations.

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The three-count complaint in this matter charged respondent with violating RPC 1.2(d) (counseling a client to engage in conduct that the lawyer knows is fraudulent); RPC 1.4(b) (failure to keep the client reasonably informed about the status of the matter or to comply with reasonable requests for information); RPC 1.5(c) and R. 1:21-7 (failure to advise the client that the fee may be based on the reasonable value of his services and failure to account for the application of his non-refundable retainer to any contingent fee award); RPC 5.5(a)(1) (unauthorized practice of law); RPC 8.1(b) and R. 1:20-3(g)(3) (failure to reply to a lawful demand for information from a disciplinary authority); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) and R. 1:20-20(b)(10) (conduct prejudicial to the

administration of justice by failing to comply with the Court's order of suspension).

Service of process was proper in this matter. On June 4, 2015, the OAE sent a copy of the complaint, by regular and certified mail, to respondent's home address. The certified mail receipt appears to have been signed by respondent. The regular mail was not returned. Respondent did not file an answer to the ethics complaint.

On July 2, 2015, the OAE sent a five-day letter, by regular and certified mail to respondent's home address. The tracking update from the United States Postal Service (USPS) showed that on July 7, 2015, a notice of the certified mail had been left at his home. As of the date of the certification of the record, July 28, 2015, neither the certified nor regular mail had been returned. Respondent did not file an answer to the ethics complaint.

As noted previously, respondent was temporarily suspended effective November 20, 2013, and subsequently suspended for one year effective March 12, 2015.

I. Count One - The Hussein Matter – Docket No. XIV-2014-0463E

On April 4, 2013, Adel Hussein retained and agreed to pay respondent $650 in installments to file an appellate brief in his labor matter. Hussein's documentation, attached to his grievance,

showed that respondent continued to practice law after his November 20, 2013 temporary suspension. Specifically, Hussein's December 3, 2013 e-mail to respondent inquired about the balance due on the fee owed. Respondent's December 4, 2013 e-mail indicated that he had received Hussein's payment and "would forward a draft of the brief by Friday." Respondent's December 6, 2013 e-mail requested more information from Hussein. During his suspension, respondent prepared a brief and appendix that did not list him as the attorney of record, but rather listed Hussein's name as a pro se appellant. In addition, respondent improperly backdated the brief he prepared to January 12, 2013.

Thereafter, respondent did not reply to Hussein's telephone calls or e-mails, presumably requesting information about the status of his case. Hussein then contacted the Appellate Division Court Clerk and learned that respondent had not filed anything on his behalf resulting in the dismissal of his appeal.

Hussein then filed a grievance, which, on December 1, 2014, the OAE sent by United Parcel Service to respondent's home address. The grievance related to respondent's failure to file the appellate brief as well as practicing law while ineligible. The OAE's letter instructed respondent to reply to the grievance, to attend the OAE's December 11, 2014 demand interview, and to bring the file in Hussein's matter, which had been consolidated with the seven other

matters pending against him. The letter was confirmed delivered on December 3, 2014.

As previously noted, respondent sent a fax to the OAE, which was received after hours on the day before the audit. The fax stated that respondent would not appear because of his medical condition (depression) and requested time to receive treatment. The letter added that, if the OAE did not accommodate his request, he would seek the Court's intervention. Appended to the fax was Weiner's December 9, 2014 letter stating that respondent was under his care.

The OAE's subsequent December 11, 2014 letter, sent via fax, notified respondent that the eight pending investigations would be concluded, even without his cooperation, and requested that respondent provide the OAE with copies of any papers filed with the Court. Respondent did not reply.

By letter dated March 24, 2015, the OAE sent additional documents to respondent (by regular and certified mail) and requested "a fully documented written response to [the] grievance," together with a copy of Hussein's file by April 8, 2015. Although respondent received the letter, he failed to reply.

Based on the foregoing, the complaint charged respondent with violations of RPC 1.4(b) for his failure to respond to his client's reasonable requests for information; RPC 5.5(a)(1) and R. 1:20-

20(b)(1) (practicing law after his suspension); RPC 8.1(b) and R. 1:20-3(g)(3); RPC 8.4(c) (preparing a brief for his client as a pro se party); and RPC 8.4(d) and R. 1:20-20(b)(10) (failing to comply with the Court's order of suspension to promptly notify Hussein that he had been suspended and to advise him to seek another lawyer).

II. Count Two - The Pachowicz Matter – Docket No. XIV-2015-0127E

In connection with DRB 14-103, relating to respondent's client Joy Pachowicz, the Court's March 12, 2015 order instructed the OAE Director to "take whatever action he deems appropriate on the matter of respondent's request that his client submit 'fake' online reviews for respondent's legal service."

Pachowicz had testified at respondent's July 31, 2013 ethics hearing that he had asked her to "make fake reviews on him to make him look better on AVVO. He would tell me -- like I was a John or I was somebody else; and I would pretend that I was one of his clients and say that I was happy with his services." She further testified that, at respondent's direction, she had pretended to be other clients saying "something nice about him" so that his ratings would improve, because they were low. Pachowicz complied with respondent's requests because he was her lawyer, she felt sorry for

him, and she believed that he would not ask her to do anything wrong.

The hearing panel found Pachowicz' testimony credible but did not make any findings with regard to her testimony because the ethics complaint had not included any allegations relating to respondent's request that Pachowicz post "fake reviews" on the internet about respondent's skills.

By letter dated February 28, 2015, sent to respondent's home address by regular and certified mail, the OAE provided respondent with a copy of the hearing panel report in DRB 14-103 and requested an explanation, by April 24, 2015, about his arrangement with Pachowicz for posting the fake reviews. On April 11, 2015, the certified mail receipt was signed by Christina Tan. The regular mail was not returned. Respondent did not reply within the allotted time.

By letter dated May 11, 2015, sent by regular and certified mail to the same address, the OAE resent the packet and requested a reply by May 18, 2015. The USPS database showed that, on May 15, 2015, notice of the certified mail had been left, but the certified mail remained unclaimed. The regular mail was not returned. As of the date of the complaint, June 2, 2015, respondent had not communicated with the OAE about the Pachowicz grievance.

This count charged respondent with having violated RPC 1.2(d) and RPC 8.4(c) for counseling his client to engage in conduct that he knew was fraudulent (creating false online reviews of his legal services); and RPC 8.1(b) and R. 1:20-3(g)(3) for his failure to respond to the OAE's demand for information.

III. Count Three - The Richardson Matter — Docket No. XIV-2015-0128E

On July 20, 2010, Bennett Richardson retained respondent for representation in an employment matter. The retainer agreement called for a $6,500 nonrefundable retainer together with a one-third contingent fee award of any net recovery. Richardson paid respondent $2,285 toward the retainer.

Respondent prepared a complaint on Richardson's behalf without listing his name as Richardson's attorney, thereby giving the appearance that Richardson was pro se. Thereafter, respondent prepared a substitution of attorney form, dated February 28, 2011 and filed March 4, 2011, naming himself as the substituting attorney. Richardson had not understood that he previously had been listed as appearing pro se.

At some point not mentioned in the complaint, but prior to October 2011, Richardson moved to South Carolina. "In or about October 2011," respondent called Richardson to advise him that he had to appear that very day for a deposition to be held in New Jersey.

Having received no prior notice of the deposition and living hundreds of miles away, Richardson was not able to attend. Thereafter, respondent did not provide Richardson with any further information about his lawsuit.

By order dated September 28, 2012, the court dismissed Richardson's complaint, with prejudice, for his "failure to appear at his deposition . . . and . . . for failure to make discovery." Respondent never informed Richardson of either the pending dismissal or of the ultimate dismissal.

In March 2013, Richardson filed a demand for fee arbitration, seeking a refund of the $2,285 he had paid to respondent. Although respondent's office submitted the $50 attorney filing fee, it did not file a written response. Thereafter, despite proper notice, respondent failed to appear at the April 17, 2014 fee arbitration hearing. Based on Richardson's and his sister's telephone testimony, the committee awarded Richardson a full refund and referred the matter to the ethics authorities, based on the conclusion that respondent had charged an excessive fee and that his honesty, trustworthiness or fitness as a lawyer were questionable.

On April 8, 2015, the OAE forwarded a copy of the fee arbitration determination to respondent's home address by regular and certified mail. The OAE's letter instructed respondent to pay the refund to Richardson and requested that he (1) provide a written

explanation to the fee arbitration panel's ethics referral; (2) forward Richardson's file; (3) submit Richardson's client ledger card; (4) submit a copy of the refund check to Richardson; (5) explain why Richardson's complaint was filed as if Richardson were appearing pro se; and (6) explain why he had not informed Richardson about the dismissal of his complaint.

The certified mail was returned as unclaimed. The regular mail was not returned. Respondent neither satisfied the fee arbitration award nor replied to the OAE's letter.

By letter dated May 11, 2015, sent by regular and certified mail to respondent's home address, the OAE provided respondent with another copy of the April 8, 2015 mailing and requested a reply by May 18, 2015. The USPS database showed that the certified mail was unclaimed. The regular mail was not returned.

As of the date of the June 2, 2015 ethics complaint, respondent failed to reply to or communicate with the OAE.

The complaint charged respondent with having violated RPC 1.4(b) (failure to keep his client reasonably informed about the status of his matter); RPC 1.5(c) and R. 1:21-7 (for failing to inform Richardson of his right to compensate him for the "reasonable value of his services" and failing to account for "how the non-refundable retainer . . . and costs and expenses would be applied to a contingency fee award"), RPC 8.1(b) and R. 1:20-3(g)(3), RPC 8.4(c)

(preparing and filing a complaint listing his client as a pro se party) and RPC 8.4(d) and R. 1:20A-2(a) (failing to comply with the fee arbitration award).

* * *

By letter to us dated August 28, 2015, respondent filed a certification "in opposition to the [OAE's] proposed request for discipline." In support of his request, he pointed to his December 10, 2014 letter to the OAE seeking an accommodation for his severe depression, "allowing me to treat with my physician, Dr. Scott Weiner." Respondent accused the OAE of disregarding the request, which resulted in the matters proceeding as defaults.

Respondent asserted further that his condition had prevented him from properly explaining the matters for nine months and further, that "[t]o this day," he has not been able to fully read the complaints filed against him. Respondent asserted further that he deals with thoughts of suicide on a daily basis and described those thoughts in his certification. Respondent certified that Dr. Weiner prescribed medication for his depression, but that solution was "hit or miss."

Respondent requested that we examine the proctorship process because, since 2012, he has submitted the name of "nearly" six candidates to act as his proctor, but that each name was either

rejected or the candidates "backed out," fearful of participating in "the process involving the OAE."

Respondent contended that he is forced to suffer a permanent suspension because he is not employed, and cannot effectively defend himself by hiring counsel "due to the fact that the OAE, who requested for the suspension [sic] is the ultimate determiner in who they approve as my proctor." In addition, he does not have the means to hire counsel. He accused the OAE of bringing on his "condition," and maintained that he is not willfully ignoring their requests but rather trying to maintain "any semblance of sanity" he has left.

Respondent requested that we permit him to continue his treatment for depression "and since it is my position that my medical condition was brought on by the proctorship process, appoint a proctor once I am cleared by my physician." In the alternative, respondent requested that we permit him to retire, "due to [his] medical condition" with the understanding that he never reapply to practice in this state.

To succeed on a motion to vacate a default an attorney must (1) specify why the attorney failed to file an answer and (2) provide specific and meritorious defenses to the charges.

Although respondent's submission was not specifically a motion to vacate the defaults, we have determined to treat it as such. Respondent blamed his failure to file an answer on his depression,

constant thoughts of suicide, and the OAE's failure to give him time to treat with Dr. Weiner. However, he provided nothing to substantiate those claims. The December 9, 2014 letter from Dr. Weiner, previously submitted to the OAE, simply confirmed that respondent was under his "psychiatric [sic] for treatment of the following diagnosis: Code 296.22 MAJ DPRSV DISORDERS Onset 03/24/2014." It would appear that respondent's depression occurred after the date of his temporary suspension or that he did not become aware of it until after the OAE began its investigation of these matters.

Respondent has failed to satisfy either of the two prongs required to vacate a default. His medical condition was uncorroborated and, nevertheless, he did not provide a satisfactory explanation for his failure to file answers to the complaints, and he still has failed to provide any specific or meritorious defenses to the charges.

For these reasons, we deny respondent's motion to vacate the defaults and determine to impose discipline based on the records in these matters.

* * *

The facts recited in the complaints support the charges of unethical conduct. Respondent's failure to file answers to the complaints is deemed an admission that the allegations of the

complaints are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

We find that, once again, respondent is guilty of multiple, serious ethics breaches. As to DRB 15-174, in the Davis matter, he filed three complaints, all of which were dismissed for lack of prosecution; failed to communicate with his client; and failed to provide the client with his file. Respondent also failed to cooperate with the OAE's investigation in this and the other matters that are the subject of this decision. When respondent did communicate with the OAE, after his suspension, he used his firm's letterhead that listed his New Jersey office. Respondent is, therefore, guilty of violating RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.16(d), RPC 3.2, RPC 8.1(b), and RPC 8.4(d).

In the Chin bankruptcy matter, respondent is guilty of engaging in gross neglect and lack of diligence in connection with the three bankruptcy petitions he filed, which were dismissed; failing to keep Chin informed about the status of her matter or to promptly comply with her requests for information; filing a meritless claim by submitting a duplicate third petition, while the second petition was still pending; engaging in conduct involving dishonesty and deceit and engaging in conduct prejudicial to the administration of justice by filing the petitions, knowing that Chin had not signed the documents, and by filing Rosen's certification, knowing that it

contained a false statement; and failing to cooperate with the OAE's investigation.

In Parikh, the client's wrongful termination case was dismissed for lack of prosecution, violations of RPC 1.1(a), RPC 1.3, and RPC 3.2. Respondent is also guilty of a pattern of neglect (RPC 1.1(b)) for his conduct in this and the other matters and failure to communicate with the client (RPC 1.4(b)). Respondent is further guilty of violating RPC 7.1(a) in this matter, for making false communications about his ability to practice law. Respondent also failed to cooperate with the OAE's investigation in this matter (RPC 8.1(b)).

Count four established that respondent failed to reply to the OAE's requests for information concerning shortages in his trust account and that he continued to use his attorney accounts more than thirty days after his suspension, violations of RPC 1.15(d) and R. 1:21-6(i); RPC 8.1(b) and R. 1:20-3(g)(3); and 8.4(d) and R. 1:20-20(b)(5).[3]

[3] R. 1:21-6 states specifically that any attorney who fails to comply with the requirements "in respect of the maintenance, availability and preservation of accounts and records or who fails to produce or to respond completely to questions regarding such records as required shall be deemed to be in violation of RPC 1.15(d) and RPC 8.1(b)." Similarly, R. 1:20-20(c) provides that failure to fully and timely comply with the obligations set forth therein shall constitute violations of RPC 8.1(b) and RPC 8.4(d).

Count six established that respondent was guilty of violating RPC 8.4(a), RPC 8.4(c), RPC 8.4(d), and R. 1:20-20(a) and (b) by knowingly inducing Rosen, a retired attorney, to violate the RPCs by trying to form an association with Rosen after respondent's suspension and by issuing an attorney account check to the Fund, to try to return Rosen to active status. Respondent also violated RPC 8.1(b) by failing to reply to the OAE's requests for information relating to this matter.

Respondent failed to submit the required affidavit of compliance pursuant to R. 1:20-20, requiring, among other things, that he notify his clients of his suspension, notify the OAE of the names of his clients at the time of his suspension, and the names of the individuals to whom he delivered his client files. As noted earlier, respondent's failure to submit the affidavit is a violation of RPC 8.1(b) and RPC 8.4(d).

As to DRB 15-276, in the Hussein matter, respondent, while under suspension, continued to practice law. He consulted with the client, accepted installment fee payments, prepared an appellate brief listing Hussein as a pro se appellant, failed to take steps to have the brief filed, resulting in the case's dismissal, failed to communicate or inform Hussein of the dismissal, and then failed to reply to the grievance in the matter. Respondent was not charged with neglect or failure to expedite litigation in this matter. He is,

nevertheless, guilty of the charged RPCs: RPC 1.4(b); RPC 5.5(a)(1) and R. 1:20-20(b)(1) (practicing law while suspended); RPC 8.1(b); (failure to cooperate in a disciplinary investigation); RPC 8.4(c) (preparing a brief but listing the client as pro se); and RPC 8.4(d) and R. 1:20-20(b)(10) (failing to comply with the Court's order to advise Hussein of his suspension and to seek other counsel).

In Pachowicz, respondent counseled his client to create false online reviews of his services, violations of RPC 1.2(d) and RPC 8.4(c), and failed to reply to the OAE's requests for information in the matter, thereby violating RPC 8.1(b).

In the Richardson matter, respondent charged his client an unreasonable fee not only by requiring a $6,500 nonrefundable retainer but also charging him a one-third contingent fee (RPC 1.5(c)); failed to keep Richardson apprised of the developments in his case (an upcoming deposition and the dismissal of his case) (RPC 1.4(b)); prepared and filed a complaint on Richardson's behalf as if Richardson were a pro se plaintiff (RPC 8.4(c)); failed to comply with the fee arbitration award (RPC 8.4(d) and R. 1:20A-2(a)); and failed to reply to the OAE's requests for information about the matter (RPC 8.1(b)).

In connection with respondent's written communications with the OAE, because he used his firm stationery listing his New Jersey law office, he is guilty of violating RPC 8.4(d) and R. 1:20-20(a).

In sum, in the combined matters, respondent is guilty of violating RPC 1.1(a) and 1.3 in three matters, RPC 1.1(b) in those matters, 1.2(d) in one matter, RPC 1.4(b) in five matters; RPC 1.5(c) in one matter, RPC 1.15(d) in one matter, RPC 1.16(d) in one matter, RPC 3.1 in one matter, RPC 3.2 in one matter, RPC 5.5(a) in one matter, RPC 7.1(a) in one matter, RPC 8.1(b) in all of the matters, 8.4(c) in five matters, and RPC 8.4(d) in six matters.

Suffice it to say that, over the years, respondent's conduct has escalated and demonstrates his true lack of a moral compass. While respondent proffered his depression as an excuse for failing to cooperate with the OAE, the onset of his depression, after his temporary suspension, does not explain or excuse why he engaged in the unethical conduct in the first place. Even if respondent were suffering from depression, it may explain but not excuse his neglect of client matters, but it does not explain or excuse his multiple acts of dishonesty, such as filing a forged document, filing documents pro se to hide the fact that he continued to practice law while suspended, inducing a retired attorney to associate with him after his suspension, inducing a client to file false reviews about the quality of his services, and using his trust account after his suspension.

Respondent's conduct, overall, suggests a character that is unsalvageable. As we found in respondent's prior matter, he is a

"serial ethics offender" who demonstrates an "appalling indifference toward his clients" and the rules of the profession, and has refused to learn from his prior ethics problems. Thus, the only issue left for determination is whether the combination of respondent's ethics offenses, the default nature of these proceedings, respondent's egregious ethics history, the doctrine of progressive discipline, and the absence of mitigating factors warrant his disbarment.

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 mitigating factors. See, e.g., In re Brady, 220 N.J. 212 (2015) (one-year retroactive suspension imposed on attorney who, after a Superior Court judge had restrained him from practicing law, represented two clients in municipal court, and appeared in a municipal court on behalf of a third client, after the Supreme Court had temporarily suspended him; the attorney also failed to file the required R. 1:20-20 affidavit following the temporary suspension; significant mitigating factors, including the attorney's diagnosis of a catastrophic illness and other circumstances that led to the dissolution of his marriage, the loss of his business, and the ultimate collapse of his personal life, including becoming homeless, and, in at least one of the instances of his practicing while suspended, his desperate need to provide some financial support for

himself; prior three-month suspension); 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 mitigation circumstances considered); 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, consideration was given to 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 Wheeler, 140 N.J. 321 (1995) (two-year suspension for attorney who practiced law while serving a temporary suspension for failure to refund a fee to a client; the attorney also made multiple misrepresentations to clients, displayed gross neglect and pattern of neglect, engaged in negligent misappropriation, and in a conflict of interest situation, and failed to cooperate with disciplinary

authorities);[4] In re Marra, 183 N.J. 260 (2005) (three-year suspension for attorney found guilty of practicing law in three matters while suspended; the attorney also filed a false affidavit with the Court stating 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 affidavit of compliance required by Rule 1:20-20(a), 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) (attorney received a three-year suspension for handling three matters without compensation, with the knowledge that he was suspended, holding

[4] In that same order, the Court imposed a retroactive one-year suspension on the attorney, on a motion for reciprocal discipline, for his retention of unearned retainers, lack of diligence, failure to communicate with clients, and misrepresentations.

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 advise 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 and negotiating 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; the attorney failed to appear on an order to show cause before the Court; extensive disciplinary history: reprimanded in 2006, censured in 2007, and suspended twice in 2008); 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, the attorney continued to represent a client in a criminal matter after his suspension; the attorney 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 us that he limit his practice to criminal matters).

Based on the totality of the factors present here, including respondent's seeming inability to tell the truth, his disregard for his obligation to cooperate with the attorney disciplinary system and, indeed, to comply with the Court's orders, his brazen and outrageous conduct, and the principle of progressive discipline, respondent's misconduct is on par with those attorneys who were disbarred. We believe that respondent is not capable of conforming his conduct to expected standards and, therefore, recommend his disbarment.

Member Clark voted to impose a three-year consecutive suspension.

Vice-Chair Baugh and Members Singer and Hoberman 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 Matters of Herbert J. Tan
Docket Nos. DRB 15-174 and DRB 15-276

Decided: February 19, 2016

Disposition: Disbar

Members	Disbar	Three-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost	X					
Baugh						X
Clark		X				
Gallipoli	X					
Hoberman						X
Rivera	X					
Singer						X
Zmirich	X					
Total:	4	1				3

Ellen A. Brodsky
Chief Counsel