SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-234
District Docket No. XII-2014-0032E

IN THE MATTER OF	
MARC D'ARIENZO	
AN ATTORNEY AT LAW	

Decision

Argued: October 15, 2015

Decided: April 29, 2016

Louis H. Miron appeared on behalf of the District XII Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for a censure filed by the District XII Ethics Committee (DEC). The two-count complaint charged respondent with having violated RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter or to comply with reasonable requests for information) and RPC 1.5(b) (failure to communicate the basis or rate of the fee

in writing). For the reasons expressed below, we determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1993. He maintains a law practice in Bradley Beach, New Jersey. He has an extensive ethics history.

In 1999, respondent was suspended for three months for making false statements to a tribunal (RPC 3.3(a)(1)) and for displaying conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)). In re D'Arienzo, 157 N.J. 32 (1999). Specifically, respondent twice misrepresented to a municipal court judge his reasons for failing to appear in a criminal matter. At the ethics hearing, the municipal court judge testified that respondent "had a history of either failing to appear on matters before her or of being late in those instances when he did appear." We found that, although ordinarily a reprimand would have been the appropriate degree of discipline, a suspension was in order because "respondent was brazen enough to lie to the same judge who had recently given him a very stern warning that his misconduct would not be tolerated. Respondent's misconduct was not a single, isolated event. Rather, his lies were almost seamless in their transition." Respondent was reinstated to the practice of law on June 14, 1999. In re D'Arienzo, 158 N.J. 448 (1999).

In 2001, respondent was admonished for recordkeeping violations. There, he did not use a trust account in connection with his practice and did not maintain any of the required receipts and disbursements journals or client ledger cards. In the Matter of Marc D'Arienzo, DRB 00-101 (June 28, 2001).

In 2004, respondent received another admonition for violating RPC 8.4(b) (committing a criminal act that reflects adversely on an attorney's honesty, trustworthiness, or fitness as a lawyer). Specifically, in December 2003, he was charged with possession of less than fifty grams of marijuana (N.J.S.A. 2C:35-10(a)(4)) and possession of drug paraphernalia, a water bong (N.J.S.A. 2C:36-2), for which he received a conditional discharge. In addition to other mitigation, we considered that respondent's conduct, unlike his prior two infractions, was not related to the practice of law. In the Matter of Marc D'Arienzo, DRB 04-151 (December 10, 2004).

In 2011, respondent received a censure for violating RPC 8.4(d) (conduct prejudicial to the administration of justice) by failing to provide a court with notice of his conflicting calendar. As a result, he failed to appear at a criminal trial and at a subsequent order to show cause stemming from his failure to appear at the trial. In re D'Arienzo, 207 N.J. 31 (2011).

In 2013, on a motion for discipline by consent, respondent was reprimanded for practicing law while ineligible. He failed to file

the IOLTA registration statement for 2011 and was placed on the list of ineligible attorneys from October 21, 2011 until March 27, 2012. He had entered his appearance in a Newark municipal court during his ineligibility. We noted that respondent's actions were inadvertent, that he was unaware of his ineligibility, and that, once he became aware of his ineligibility, he filed the IOLTA registration statement. We determined that respondent's ethics history warranted increasing the typical discipline for such a violation from an admonition to a reprimand. In re D'Arienzo, 214 N.J. 623 (2013).

In 2014, respondent was censured for again practicing law while ineligible. In re D'Arienzo, 217 N.J. 151 (2014). His cousin/part-time secretary was responsible for sending his annual assessment to the New Jersey Lawyers' Fund for Client Protection (Fund). When respondent discovered that she had failed to send in the payment, resulting in his ineligibility, he failed to take appropriate steps to ensure that the assessment was paid. Inasmuch as respondent previously had been ineligible on four occasions for similarly failing to pay the assessment, we determined that he should have been more vigilant about his obligations to the Fund.

We turn now to the facts of the instant matter. On July 31, 2013, grievant Tiffany Reyes met with respondent about a Middlesex County indictment returned against her for, among other things, child endangerment and possession of a controlled dangerous

substance. They initially met at the Perth Amboy Courthouse, for respondent's convenience. Their other meetings took place at the Middlesex County Courthouse, apparently, only for court appearances. They never met at respondent's office and Reyes did not know where it was located.

Respondent charged Reyes a flat $2,500 fee to be paid in installments. At the initial July 31, 2013 meeting, Maria Cruz, Reyes' mother, gave respondent a $500 check. According to both Reyes and Cruz, respondent did not provide them with a receipt for that installment or a writing setting forth the basis or rate of his fee. Cruz, therefore, prepared a document memorializing information about the installment payments made: the amounts paid, dates of payment, method of payment (cash or check), and where the payments were made (Perth Amboy or Middlesex County Courthouse). According to Cruz, she prepared the document to have proof of the cash payments because respondent did not provide them with receipts for any of the payments.

On April 11, 2014, Reyes' final court appearance, respondent signed Cruz' document as paid in full. When asked if the document was a receipt or an agreement, respondent replied, "It's an agreement -- well, it's a receipt that memorializes our agreement. . . . So if it's inartful with regard to the writing it basically [sic] I know it's a memorialization of our agreement."

Respondent claimed further that at his initial meeting with Reyes at the courthouse, he, too, had prepared a hand-written retainer agreement "of sorts," with the words "retainer agreement" on it. This document listed only the amount of his $2,500 flat fee and a payment plan, with no other information. He contended that he was "very, very careful writing out that agreement with regard to 1.5B [sic]." He handwrote the document because he was not in his office when he drafted it. He did not keep a copy of it. According to respondent, Reyes brought that document to court "every time" and they would cross out the amount then owed and insert the new amount owed. He claimed that the document has since disappeared. He was "lax" about keeping a copy of it.

The presenter pointed out that respondent's written replies to the investigator never mentioned such an agreement. Respondent replied, however, that he recalled that he had told DEC Investigator James Byrnes about it.[1]

Respondent had sent two letters to Byrnes. A June 24, 2014 letter referred to "a paid in full receipt," which respondent had signed that addressed the amount of his flat fee. In that letter, respondent denied that the amount of his fee was an issue.

[1] Presenter Louis Miron took over the case from Byrnes, who had retired from the DEC.

Respondent also submitted to Byrnes an undated handwritten note that stated:

> [W]ith regard to the fee agreement, what you have marked paid in full was a de facto and quite clear agreement between Ms. Reyes and myself. I presented that to her on the first day, indicated that it was a "flat fee" of $2500 regardless of court appearances and she brought that document on each occasion to court. We crossed off the amount she paid on each date she paid, with her making final payment on the last date.
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> [Ex.P-4.]

Respondent testified that he had asked Cruz to bring the original retainer agreement that he had given her, but she claimed that she did not have it and, nevertheless, wanted to use the document that she had prepared. He conceded that, although he had represented Reyes for a period of ten months and had the opportunity to send her a formal agreement, he never did so because there was no problem with their agreement and, therefore, he did not feel the need to do so. He asserted that Cruz' document was so detailed "because she had brought every time that long hand document that I had in court and I crossed it out what we were going forward with [sic]. I wasn't trying to cheat her."[2]

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[2] The presenter argued that, if respondent had created such a detailed agreement that Reyes brought with her each time she appeared, on which he initialed or checked off her payments,

(Footnote cont'd on next page)

On August 19, 2013, Reyes appeared with respondent for an arraignment before the Honorable Michael A. Toto, J.S.C. Prior to the commencement of the proceedings, the prosecutor presented respondent with the discovery package, which included the recording of the Grand Jury proceeding. Respondent waived the reading of the indictment and informed the judge that Reyes wanted to enter a not guilty plea. According to Reyes, respondent had directed her to plead not guilty.

Reyes remarked that, prior to the arraignment, she had asked respondent "plenty of times" for the "discovery" in her case as proof that they "were going to court." Reyes denied seeing any discovery relating to her case - no witness statements, no police report involving the charges against her, no grand jury transcripts. She wanted to see the materials because she did not know the status of her case.

Respondent asserted that Reyes was aware of the charges at the arraignment based on the prosecutor's reading of the police report, which was "[t]here's drugs [sic] all over a hotel room and she's there with a child, an infant." It was Reyes' belief that the co-defendants would be charged with having drugs in their pockets in a

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(Footnote cont'd)

there would have been no reason for Cruz to feel compelled to create her own document; it would have been redundant.

hotel room, but that she had nothing. She added that, if she had seen the "paperwork" in her case before the arraignment, she would have known what to expect. She was surprised about the charges against her.

At the arraignment, the judge recommended to Reyes that she apply for admission into the pretrial intervention (PTI) program, which she did, without respondent's assistance.

According to Reyes, she and respondent did not discuss what had transpired after the arraignment. Respondent simply told her to go to the back of the room. They had "[n]o words" because a police officer took her for fingerprinting and pictures.

Contrary to Reyes' version of events, respondent claimed that, after the arraignment, he reviewed the discovery package with Reyes. Because she was very upset, he gave it to her and did not keep a copy for his own records, as he was not near a copy machine. Thus, respondent contended, Reyes never had to request a copy of the discovery from him. Respondent maintained that his phone records showed that they spoke sixteen times and, he claimed, she never once mentioned discovery during those discussions.

Respondent remarked that, after the arraignment, Reyes and her mother were "ticked off." He added that it was beyond reason for her to state that she walked out of court after being

shocked and upset without discussing the matter with him. "[S]he knew what was going on [but] didn't want to know what was going on."

Respondent also asserted that, after

> we got PTI which to me was a homerun so we didn't have the need to go over the discovery again because we were granted PTI right after the arraignment. So as far as going forward with it again, there wasn't any need to review it again because we had gotten what our objective was which obviously [sic] the PTI.
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> [T169.][3]

Respondent asserted that he never obtained a copy of the discovery again until the ethics investigation, when he obtained it from the court and gave it to Investigator Byrnes. He later clarified that he had left it with Byrnes' secretary because Byrnes "was on vacation or something along those lines at the time I dropped it off at his office." The material consisted of the police report of only four or five pages. He could not recall when he dropped off the information. He conceded that Byrnes may have requested the information from him "once or twice." The presenter represented to the DEC that he had been told, presumably by Byrnes, that respondent had not produced any discovery in the matter and that Byrnes, therefore, would have

[3] T refers to the February 13, 2015 DEC hearing transcript.

to be called as a witness. Byrnes, however, did not testify at the DEC hearing. The presenter mentioned further that he, too, had requested discovery from respondent, but had not received it.[4]

Reyes appeared before Judge Toto approximately fourteen times. Respondent appeared with her only five times. He was never sanctioned for failing to appear. At each appearance, the court notified Reyes of her next court date. Because the case was Reyes' first involvement with the court system, she felt nervous being there without respondent and feared being sent to jail for a crime she had not committed. Reyes complained that, several times, she appeared at the courthouse and waited there most of the day, but respondent did not appear. She believed that respondent should have accompanied her to court.

Reyes claimed that, on the nine court dates that respondent failed to appear, he had not informed her verbally or in writing

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[4] At the DEC hearing, the presenter questioned respondent about his prior statement to the investigator that he had scanned the discovery into his computer, but had difficulty retrieving it. Respondent replied that he did not recall telling Byrnes that he had scanned that information. The presenter later submitted into evidence respondent's September 17, 2014 letter to Byrnes, stating "as far as the discovery package, I scanned same, but I'm having trouble retrieving it. I'm having someone look at my computer next week. I will have it to you by the 26th" (Ex.P-7). Respondent asserted that his letter referred to the discovery package that he had obtained from the prosecutor.

that he would not appear. On a number of those occasions, when the judge requested that she call respondent to ascertain his whereabouts, respondent would then contact the judge to alert him that he would not appear. The judge then relayed that information to Reyes. The length of time Reyes waited in court depended on the number of other defendants present. Reyes believed that she would have been released from court earlier if respondent had appeared. She complained that, on one occasion, March 3, 2014, she went to the courthouse when it was closed because respondent had failed to inform her about the closing.

Respondent tried to elicit testimony from Reyes that she had been required to wait in court because the judge had to resolve the matters with her co-defendants. Reyes, however, insisted that the judge would not release her until respondent called to inform the judge that he would not be appearing.

Reyes' case was resolved on April 11, 2014. She asserted that, although she appeared at 9:00 a.m., her matter was not heard until 1:30 because respondent was late. Her co-defendants' cases were resolved in the morning. Respondent never notified her that he would be late or would not appear.

Reyes obtained an April 2, 2014 document from the court summarizing the activity in her case. She annotated the sixteen-page exhibit with her typewritten comments listing the days that

respondent was either late or failed to appear. According to Reyes, on one occasion, respondent instructed her to bring a $250 installment payment for his fee and documentation to confirm that she was enrolled in college. Reyes complied, but respondent did not explain why they did not appear before the judge that day. Reyes' notation for that date stated:

> Marc called me and said the Judge wanted to see me on **October 25, 2013.** He told me to go to the court room and asks me out. I come out and he asked me if I had more money. I gave him more money he took it and walked into another court room. I suppose he was with another client on that day. It turns out that I did not have a court appearance on that day he just wanted more money.
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> [Ex.P2-8.]

In response, respondent first claimed that he had asked for the college enrollment information so that the prosecutor would not require her to appear. Later, he claimed that the information was to "separate her" from her co-defendants.

In reply to the investigator's inquiry of whether respondent had obtained a blanket waiver of appearance, respondent submitted two letters, dated December 2, 2013 and April 1, 2014, requesting a waiver of appearance for the following day, but informing the judge that Reyes would, nevertheless, appear. Reyes was not copied on the letters. At the DEC hearing, respondent stated:

> [I]t was an implied de facto waiver that I had -- or I should say implied waiver that as a result of when I was in court on the occasion before – I should say after she was granted PTI, I was told that . . . she would have to continue to appear in court until the co-defendants were resolved.
>
> I had called the Court. I had told the Court there was nothing more I could do with regard to the case other than hold her hand; that there was nothing substantively I can do. . . .
>
> I asked if I had to come in. . . .
>
> Was there an explicit waiver? There was not an explicit waiver where I got some document from the Court saying your appearance is waived.
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> [T186-15 to 187-11.]

Respondent also asserted that he called the court for each court date to request a waiver of his appearance, that the calls were reflected in his phone records, and that he was in contact with Reyes about the appearances. He stated, "on every one of those dates, there is a phone call made to her, I should say made by her to me where I answer or I would call her and I would continually tell her [sic] same thing." He claimed that Reyes knew "every single time" that he would not appear in court with her.

Respondent's January 30, 2014 letter to the presenter indicated that he was "hopeful" that the court clerk would issue

a letter showing that he was not required to appear in court on certain dates. He did not obtain such a letter, however. According to respondent, if he had not had "a waiver," he believed that the court would have issued an order to show cause for his failure to appear eight times. He claimed further that, although the court would not confirm, in writing, that he had been granted a waiver to appear, he had received a letter from the court verifying that no order to show cause had been filed against him. Respondent did not produce the court's letter at the DEC hearing stating, "I didn't feel as though I wanted to present it, so I didn't bring it." When the DEC hearing panel chair asked respondent to produce the letter, respondent replied that, although he could do so, he did not know whether it was discoverable information because it was his "specific request" to the court and, nevertheless, he did not think it was relevant.

As of the date of the DEC hearing, Reyes had successfully completed PTI and the charges against her were in the process of being dismissed. She was not challenging the result that respondent achieved in her case.

As a defense to the failure to communicate charge, respondent submitted his cellphone records to establish his

communications with Reyes.[5] Reyes conceded that it was her phone number that appeared on respondent's records, but pointed out that the records reflected either calls that she had placed to respondent or return calls from respondent and, in any event, their conversations were brief. According to Reyes, the substance of their communications consisted of her calling respondent to "come to court." During a few of those conversations, respondent told her that he did not need to be in court with her because there was nothing for him to do. He never informed her in advance that he would not appear.

To further establish the extent of their communications, respondent inquired:

> When I told you to apply the [sic] PTI and you did did you think you were accepted or did you think you were denied PTI after the second appearance when we went to court in September? What was your impression?

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[5] Respondent did not submit telephone records for each court date on which he failed to appear with Reyes. Reyes' records (Ex.P-2) and respondent's phone records (Ex.R-4) show that (1) on October 8, 2013, respondent failed to appear and Reyes placed two calls to him; (2) on November 18, 2013, respondent was late and Reyes placed four calls to respondent; respondent returned the call; (3) on January 27, 2014, respondent did not appear, Reyes called respondent seven times and respondent returned two calls; (4) on March 10, 2014, respondent did not appear, Reyes placed three calls, and respondent returned two calls; (5) on March 27, 2014, respondent did not appear, Reyes placed two calls; and (6) on April 2, 2014, respondent did not appear, and Reyes placed one call.

A: PTI told me that I have to wait for them to approve it or disapprove it.

Q: Okay. And were you approved by the prosecutor's office with regard to PTI as far as my communications to you?

A: Well, my communication from the courtroom --

Q: I didn't ask you that. Did I communicate to you that the prosecutor's office did not consent to PTI?

A: No.

Q: Okay. Did I communicate to you that PTI . . . had already consented to you being in PTI?

A: I've gotten a letter.

Q: So yes?

A: Myself.

. . . .

Q: Okay. So you didn't know what the prosecutor's office position was? Is that your testimony?

A: All I know is from --

Q: I didn't ask –

A: -- in the courtroom they said that they were waiting for the co-defendants.

. . . .

A: But from your voice no.

Q: . . . . so during our 16 communications here you're trying to tell this committee

that I didn't say exactly what the Court just said –

A: No.

[T102-10 to T103-24.]

Reyes conceded that respondent had told her that she would go to jail if she did not provide the authorities with information about her co-defendants. She did not understand: (1) that if she provided information to the prosecutor, it would benefit her position "tremendously" as respondent never told her; (2) how the process worked; and (3) why the prosecutor approved her admission into PTI because "respondent never sat down and talked to [her] about it." She reiterated that their sixteen telephone conversations were calls she had initiated at Judge Toto's request because respondent had not appeared in court and that their discussions were limited to respondent's failure to appear.

Respondent contended that he could not have kept Reyes "more informed about the status of the matter." He added that Reyes "just didn't like what [he] was saying" and did not "appreciate" that she had to keep going to court. Respondent opined that Reyes filed the grievance against him so that she could subsequently submit a claim to the Fund to obtain reimbursement for her legal fees.

The DEC found that Reyes' and Cruz' testimony was consistent with regard to the retainer agreement issue. The DEC found that, although respondent's letter to Byrnes indicated that he had created the document, in fact, it actually had been prepared by Cruz. Moreover, the DEC found, respondent's representation to Byrnes was inconsistent with his testimony at the DEC hearing – that he had prepared a handwritten agreement, which he had given Reyes. The DEC thus found that respondent's testimony regarding a written retainer agreement "was not credible" and that respondent had failed to provide Reyes with such a writing at any time during the course of his representation of her.

The DEC did not find, however, clear and convincing evidence that respondent failed to communicate with Reyes. The DEC pointed to the lack of correspondence, e-mails, text messages, or other evidence to indicate that Reyes had complained "at any time prior to the filing of her grievance that she was not adequately informed that Respondent would not be appearing." Moreover, respondent's telephone records showed "short conversations" at or around the time of the court appearances. The DEC noted that there was no evidence presented about the substance of the conversations and the parties presented divergent versions of those conversations.

The DEC remarked that the better practice would have been for respondent to send to Reyes written confirmation about whether he would appear in court. The DEC also found it significant that the court neither sanctioned nor "reprimanded" respondent for failing to appear.

Thus, the DEC found only that respondent failed to provide Reyes, who was a new client, with a writing setting forth the basis or rate of his fee. The DEC observed that R. 1:21-6(c)(1)(C) requires attorneys to maintain, for a seven-year period, "copies of all retainer and compensation agreements with clients" and that RPC 1.15(d) requires attorneys to comply with R. 1:21-6. The DEC, thus, concluded that respondent demonstrated a complete disregard for his obligation to comply with RPC 1.5(b) both by his inability to produce a copy of the retainer agreement and by his failure to ensure that he had a copy of such an agreement in his file at some point during his representation of Reyes.

The DEC determined that, had this been respondent's first brush with the ethics system, an admonition or a reprimand would have been appropriate. Because of his ethics history, however, the DEC determined that a censure was warranted.

Following a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent was guilty of

unethical conduct is fully supported by clear and convincing evidence.

The evidence not only clearly and convincingly establishes that respondent failed to provide Reyes with a writing setting forth the basis or rate of his fee, but also that he lied about it to the committee investigator and later testified about it falsely at the DEC hearing. As the DEC aptly pointed out, respondent's June 24, 2014 letter to Byrnes implied that the document that Cruz actually had prepared was a retainer agreement that he had prepared. However, at the DEC hearing, he testified about a hand-written retainer agreement that he had prepared at the courthouse during his initial meeting with Reyes. Respondent claimed that he had either lost or failed to maintain a copy of this agreement. His testimony simply lacks credibility. Respondent is, therefore, guilty of violating RPC 1.5(b).

We do not agree, however, with the DEC's conclusion that the evidence did not clearly and convincingly establish respondent's failure to communicate with Reyes. The complaint alleged that (1) respondent either failed to appear in court or was late on twelve of Reyes' fourteen appearances and that he failed to communicate to Reyes that he would not appear or would be late; (2) his failure to do so left Reyes "afraid, nervous,

and extremely worried;" and (3) although Reyes frequently asked respondent to provide her with the discovery in her matter, he failed to communicate with her about it in any meaningful way.

Initially, respondent testified that there was no need to discuss the discovery with Reyes because he had hit a "home run" when they obtained PTI. Yet, later, he claimed that he had discussed the discovery with Reyes immediately after the arraignment. He asserted further that he could not have explained the situation to Reyes any better and, nevertheless, she was aware of the charges against her once the prosecutor read a portion of the police report at the arraignment.

Reyes' testimony, which the DEC found credible in other respects, established that she was not aware of the specific charges pending against her, that respondent had not given her a copy of the discovery despite her repeated requests, and that she simply did not understand the entire process or the ramifications of cooperating with the prosecutor. Respondent's testimony that he provided Reyes with the discovery packet after the arraignment and that he discussed the proceedings with her afterwards is simply not believable. Rather, Reyes' testimony that, immediately after the arraignment, she was required to report for fingerprinting and photographing rings true.

Reyes' testimony with respect to respondent's lack of communication regarding his anticipated tardiness or his intention not to appear is also credible. Respondent himself testified that "on every one of those dates, there is a phone call made to her, I should say made by her to me where I answer or I would call her and I would continually tell her [sic] same thing." Respondent submitted only selective portions of his cellphone records, which showed multiple calls from Reyes and only a few return calls from him. Respondent's own words and records support a finding that he did not inform Reyes of his whereabouts until she called him at the judge's request.

The DEC had the opportunity to assess the witnesses credibility and found Reyes' testimony regarding the fee agreement more believable than respondent's. We, likewise, find Reyes' testimony with regard to the level of communication between herself and respondent credible.

Respondent's testimony throughout simply was not believable. His testimony was contradictory in a number of respects. For example, he testified falsely about the retainer agreement. His position changed from the time he submitted a written reply to the grievance to the time he testified at the DEC hearing. Respondent's testimony on another point was also inconsistent - he initially stated that he had written to the

investigator that he had scanned the discovery into his computer, but had trouble accessing it. The presenter submitted Exhibit P-7, which established that he had made the statement. Later, at the DEC hearing, he denied that he had done so. In addition, respondent changed his testimony regarding the reason he asked Reyes to bring proof of college enrollment with her to court. He first asserted that he requested the information to dispense with her scheduled appearances, but later claimed that it was to set her apart from her co-defendants. The totality of respondent's testimony thus, leads us to the conclusion that he simply is not believable.

In our view, respondent is guilty of violating both RPC 1.4(b) and RPC 1.5(b). Generally, failure to communicate with a client and to prepare a written fee agreement results in an admonition. See, e.g., In the Matter of Osualdo Gonzalez, DRB 14-042 (May 21, 2014) (admonition for attorney who failed to communicate to the client, in writing, the basis or rate of the fee and failed to communicate with the client, choosing instead to communicate only with prior counsel; at some point, the attorney caused his client's complaint to be withdrawn, based not on a request from the client, but on a statement from his prior lawyer that the client no longer wished to pursue the claim (RPC 1.2(a)); we considered that the attorney had had a

pristine record in twenty-seven years at the bar and several letters attesting to the attorney's good moral character); In the Matter of A. B. Steig a/k/a A. Brett Steig, DRB 13-127 (October 25, 2013) (admonition for attorney who failed to communicate the basis or rate of his fee, in writing, to the client in a landlord-tenant dispute; although the attorney had received an admonition in 2011 for negligent misappropriation of client funds, the conduct in the earlier matter was unrelated and, therefore, not an indication of the attorney's failure to learn from his prior mistakes); and In the Matter of Linda M. Smink, DRB 13-115 (October 23, 2013) (admonition for attorney who failed to communicate the basis or rate of the fee, in writing, and failed to communicate to the client's mother, who was his emissary with respect to the details of the appeal, that the time to file the notice of appeal had expired, and failed to retain hard copies of her client files at her office (RPC 1.15(d)); attorney had no prior discipline in her twenty-four years at the bar).

There was no dispute over the results respondent achieved in Reyes' matter. Had he simply admitted his wrongdoing, as seen from the above cases, the consequences of his conduct would not be serious. However, respondent has a history of being untruthful. In fact, we previously found that "[r]espondent's

misconduct was not a single, isolated event. Rather, his lies were almost seamless in their transition." In the Matter of Marc D'Arienzo, DRB 97-302 (June 29, 1998) (slip op. at 9). Clearly, respondent has not learned from his prior mistakes and has not accepted responsibility for his wrongdoing.

In addition to respondent's lack of candor, another aggravating factor is his extensive ethics history. This case represents his seventh time before us. Not only does he exhibit a propensity to violate the Rules of Professional Conduct, but also a failure to learn from prior mistakes.

Clearly, the aggravating factors present in this case, particularly respondent's failure to conform to the standards of the profession and to learn from prior mistakes, require increasing the typical discipline imposed in matters involving violations of RPC 1.4(b) and RPC 1.5(b). In re Kivler, 197 N.J. 255 (2009). For these reasons, we determine that respondent should be suspended for three months.

Further, we note that there are five ethics matters against respondent that are in the hearing stage. We direct that, to the extent possible, all of these matters be consolidated for consideration.

Vice-Chair Baugh and Members Hoberman and Singer 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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Marc Darienzo
Docket No. DRB 15-234

Argued: October 15, 2015

Decided: April 29, 2016

Disposition: Three-month suspension

Members	Disbar	Three-Month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh						X
Clark		X				
Gallipoli		X				
Hoberman						X
Rivera		X				
Singer						X
Zmirich		X				
Total:		5				3

Ellen A. Brodsky
Chief Counsel