

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-389
District Docket No. XIV-2013-0705E

IN THE MATTER OF
MICHAEL Z. MANDALE
AN ATTORNEY AT LAW

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Decision

Argued: March 17, 2016

Decided: August 16, 2016

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Craig M. Robinson appeared on behalf of respondent.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), following Pennsylvania's disbarment of respondent for his violation of the Pennsylvania equivalent of New Jersey RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with the client); RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed

decisions regarding the representation); RPC 1.5(b) (failure to communicate in writing the rate or basis of the fee); 1.15(a) (commingling); RPC 1.15(b) (failure to promptly disburse client funds); RPC 1.15(c) (failure to safeguard disputed funds); RPC 1.16(d) (failure to protect the client's interests upon termination of the representation); RPC 5.5(a)(1) (unauthorized practice of law); RPC 7.1(a) (false or misleading communications about the lawyer or the lawyer's services); RPC 7.5(a) (use of a firm name, letterhead, or other professional designation that violates RPC 7.1); RPC 8.4(a) (knowingly violating the Rules of Professional Conduct); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice). The OAE seeks a suspension of six months to one year. We determine to impose a one-year prospective suspension.

Respondent was admitted to the Pennsylvania and New Jersey bars in 2005 and 2006, respectively. At all times relevant, he maintained an office for the practice of law in Philadelphia, Pennsylvania. He has no history of discipline, but has been administratively ineligible since September 2012.

On March 5, 2012, the Pennsylvania Office of Disciplinary Counsel (ODC) filed a formal ethics complaint against respondent, which he failed to answer. Although a hearing

committee conducted a prehearing conference on July 20, 2012, respondent failed to appear. On August 15, 2012, a disciplinary hearing was conducted. Disciplinary counsel and the hearing committee waited thirty minutes, but again, respondent did not appear.

On March 8, 2013, the Disciplinary Board for the Supreme Court of Pennsylvania (PaDB) issued an opinion unanimously recommending respondent's disbarment.¹ On June 19, 2013, the Supreme Court of Pennsylvania accepted that recommendation and ordered respondent's disbarment. On December 20, 2013, the United States Tax Court also disbarred respondent. Respondent self-reported his discipline to New Jersey disciplinary authorities.

Respondent's discipline was based on the following conduct:

THE ODC MATTER

On December 14, 2009, respondent executed the Attorney's Annual Fee Form for 2009-2010 and identified Commerce Bank (later TD North) as a financial institution in which he held funds for clients or third persons. On that form, respondent

¹ In Pennsylvania, a disbarred attorney is eligible to apply for reinstatement after five years. Pa.R.D.E. 218(b).

also verified that he was familiar with and in compliance with Pa. RPC 1.15 and misrepresented that he was "IOLTA exempt."

From September 1, 2010 through November 30, 2010, respondent deposited a total of \$21,945 into his attorney trust account. During that same period, he commingled personal and client funds in the trust account and made the following distributions to or for his own benefit:

- On September 13, 2010, an e-transfer debit for \$2,500;
- On September 27, 2010, an e-transfer debit for \$700;
- On October 13, 2010, an "electronic web payment" to U.S. Bank, N.A.;
- On October 21, 2010, check number 114 for \$3,145.28 payable to 230 South Broad, LP;
- On October 26, 2010, a debit for \$2,500;
- On October 26, 2010, check number 116 for \$400 payable to Mr. and Mrs. Richard Krekstein, which was executed by Angelica Mandale;
- On November 2, 2010, an e-transfer debit for \$485.86;
- On November 18, 2010, check number 115 for \$36.42 payable to the City of Philadelphia.

When respondent issued check number 115 for \$36.42, the balance in his attorney trust account was \$0, which resulted in an overdraft. The Executive Director of the Pennsylvania Lawyers Fund for Client Security (the Director) notified respondent of the overdraft.

On November 18, 2010, during the course of communicating with the Director, respondent was placed on administrative suspension, effective December 18, 2010, based on his failure to file his annual registration statement and pay the annual

license fee. During that suspension, respondent communicated with the Director using attorney letterhead. Thereafter, respondent failed to file a verified statement with the PaDB Secretary in compliance with Pa R.D.E 217(e) (equivalent to New Jersey R. 1:20-20). Respondent also failed to remove a wall plaque identifying him as a member of "Mandale Kaufman A Professional Law Corporation," continued to use his attorney letterhead, and failed to discontinue a voicemail salutation identifying him as a member of "Mandale Kaufman A Professional Law Corporation," following his administrative suspension.

THE SALERNI MATTER

On July 13, 2010, Robert J. Salerni contacted respondent for the purpose of representation in an audit by the Internal Revenue Service (IRS). On July 27, 2010, Salerni paid respondent a \$2,000 retainer fee. Respondent cashed Salerni's check, rather than depositing it into his attorney trust account.²

² Pa RPC 1.15(i) requires a lawyer to deposit into a trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.

On February 14, 2011, Salerni notified respondent, presumably in a telephone message, that the IRS had concluded its audit and asked respondent to refund his fee. On March 1, 2011, Salerni wrote to respondent and asked whether he had received the message from February 14, 2011. Salerni also terminated respondent's services, and again, requested a full refund of the retainer. Despite having received the March 1, 2011 letter on March 3, 2011, respondent neither replied to Salerni nor refunded any portion of the retainer.

Further, respondent did not notify Salerni that he had been administratively suspended, effective December 18, 2010.

THE WEISSMAN MATTER

On March 10, 2011, Marc Weissman retained respondent to represent himself and his wife, Michele Weissman, in an appeal from an audit assessment by the IRS. Although respondent had not previously represented the Weissmans, he failed to inform them, in writing, of the basis or rate of his fee. On May 11, 2011, respondent cashed the Weissmans' \$2,500 check representing his retainer, instead of depositing it into his attorney trust account.

Between May 1 and August 22, 2011, the Weissmans made numerous but unsuccessful attempts to contact respondent.

Despite assuring the Weissmans that he would immediately file an appeal on their behalf and contact the IRS, respondent failed to take any action. Further, notwithstanding the Weissmans' repeated requests, respondent failed to return the unearned retainer.

Respondent failed to inform the Weissmans that he was administratively suspended from the practice of law in Pennsylvania.

THE BRINT MATTER

On March 4, 2011, Richard and Maritza Brint met with respondent at his Broad Street office in Philadelphia, and provided him with a check for \$750. The Brints wanted respondent to assist them with establishing an installment agreement with the IRS for federal income tax liabilities their business had incurred in tax year 2010. On February 28, 2011, Maritza Brint signed an "Engagement of Legal Services," on "Mandale Kaufmann" letterhead.

Also on March 4, 2011, respondent cashed the Brints' check, instead of depositing it into his attorney trust account. On March 11, 2011, respondent sent the Brints an e-mail requesting an additional \$900 as "invoice for legal services." The e-mail also stated that, pending receipt of payment, respondent would

call the IRS the following Monday to finalize what he had discussed with the Brints.

On March 23, 2011, the Brints issued a \$900 check to respondent, who cashed it but did not deposit it into his attorney trust account. Between March 24, 2011 and September 19, 2011, the Brints unsuccessfully tried to contact respondent numerous times. Despite assuring the Brints that he would immediately negotiate an installment agreement with the IRS, respondent failed to contact the IRS on their behalf. Further, despite repeated requests, respondent failed to return the unearned fee to the Brints.

Respondent never informed the Brints that he was administratively suspended from the practice of law in Pennsylvania.

THE ROBERTS MATTER

On August 25, 2011, Anthony C. Roberts consulted respondent at his Walnut Street office about an IRS matter. Respondent had previously represented Roberts before the IRS. At the meeting, respondent told Roberts that he required a \$1,500 retainer, which Roberts paid via three separate money orders. By e-mail dated September 23, 2011, Roberts asked respondent to forward a power of attorney for him to sign and to intervene with the IRS

by September 26, 2011. Roberts also told respondent that his payroll department was going to garnish all but \$368 from his paycheck.

By e-mail dated September 26, 2011, Roberts reminded respondent about the garnishment and outlined the steps that he had taken to "fend off" the garnishment. On October 7, 2011, Roberts informed respondent, by way of fax, that he had executed the power of attorney, and again requested that respondent contact his employer to stop the wage garnishment. On October 15, 2011, Roberts sent respondent a letter indicating that he had left multiple messages for respondent and again asking respondent to intercede on the garnishment issue. Despite accepting a retainer from Roberts, respondent failed to provide any legal services and failed to return the fee to Roberts. Roberts eventually negotiated his own installment agreement with the IRS.

Respondent never informed Roberts that he was administratively suspended from the practice of law in Pennsylvania.

THE SUMMER MATTER

On July 27, 2011, Stephen D. Summer, Leanne Slawnyk, and Joanne McVey met with respondent regarding possible

representation of Summer and his wife, Deborah, and FHG Companies, LLC, in connection with personal and fiduciary tax problems before the IRS and the Pennsylvania Department of Revenue. On August 1, 2011, Summer signed an engagement letter with respondent, dated July 28, 2011, on behalf of himself, his wife, and FHG. Pursuant to the letter, respondent agreed to negotiate with the IRS for an abatement of penalties and interest charged to the Summers and/or FHG from prior tax years, obtain an installment agreement with the IRS, and represent the Summers and/or FHG in any audit by the Pennsylvania Department of Revenue.

On August 1, 2011, Summer provided respondent with a retainer check for \$5,000. On August 3, 2011, respondent cashed the check, instead of depositing it into his attorney trust account.

Also on August 3, 2011, respondent notified David Spock of the Pennsylvania Department of Revenue that the Summers and FHG had retained him, and asked Spock to reschedule the audit. Thereafter, respondent failed to communicate with Spock. Beginning in September 2011, the Summers and FHG, through Slawnyk and McVey, made numerous unsuccessful attempts to determine the status of respondent's representation. From

September 29 through December 13, 2011, the Summers and FHG repeatedly asked respondent to submit a billing statement.

Specifically, in an e-mail dated October 6, 2011, Slawnyk told respondent that, although the Summers and FHG were not yet terminating their relationship with him, he must cease all work on the matter and provide them with "the packet" that respondent claimed he had prepared for submission to the IRS two weeks earlier. The e-mail also stated that a decision would be made on how to proceed after the packet was received and reviewed. Although respondent had offered some excuses for his failure to communicate with the Summers and FHG, it was clear that, from October 18 through December 13, 2011, respondent did not communicate with his clients.

As a result of respondent's failure to communicate, the Summers and FHG retained new counsel, for an additional fee of \$2,500, to represent them in the Pennsylvania Department of Revenue audit and in the IRS matter. Further, by respondent's conduct, they incurred additional penalties and interest. Respondent has failed to return any unearned fees to his clients.

Respondent also failed to inform the Summers that he was administratively suspended from the practice of law in Pennsylvania.

PENNSYLVANIA DISCIPLINARY BOARD FINDINGS

The PaDB concluded that respondent violated RPC 1.3 (Weissman, Brint, Roberts, and Summer matters); RPC 1.4(b) (Weissman, Brint, Roberts, and Summer matters); RPC 1.4(c) (Weissman and Summer matters); RPC 1.5(b) (Weissman matter); RPC 1.15(a) (ODC, Salerni, Weissman, Brint, and Summer matters); RPC 1.15(b) (Salerni, Weissman, and Brint matters); RPC 1.15(c) (Salerni, Weissman, Brint, and Summer matters); RPC 1.16(d) (Salerni, Weissman, and Brint matters); RPC 5.5(a)(1) (Weissman, Brint, Roberts, and Summer matters); RPC 7.1(a) (ODC, Weissman, Brint, and Summer matters); RPC 7.5(a) (ODC, Weissman, Brint, and Summer matters); RPC 8.4(a) (generally), RPC 8.4(c) (ODC, Weissman, Brint, Roberts, and Summer matters); RPC 8.4(d) (ODC and Weissman matters); and the Pennsylvania equivalent of R. 1:20-20 (ODC matter).

The PaDB determined disbarment to be the appropriate discipline for respondent's pattern of client neglect and misappropriation of client funds.³ The PaDB explained that,

³ The PaDB did not specifically find respondent guilty of RPC 1.1(a) or (b); however, it referred to his pattern of neglect. Moreover, in New Jersey, an attorney's failure to return an unearned retainer does not constitute (footnote cont'd on next page)

"[r]espondent's wholesale lack of interest in his license and apparent disregard for the disciplinary system, as exemplified in particular by his failure to appear at the disciplinary hearing, calls into question his fitness to practice law." It concluded that respondent "engaged in a course of deceptive conduct with respect to his clients, prospective clients, and Petitioner," "defied" a Supreme Court Order by continuing to practice following his administrative suspension, failed to "remove his name from signage and letterhead thus leading unsuspecting clients to believe he was eligible to practice law," and "allowed cases to languish" but never returned unearned fees, "thereby misappropriating the funds." Finally, the PaDB found that respondent showed no acceptance of responsibility or remorse and that his conduct "embod[ied] the antithesis of what the public expects and deserves."

Respondent's only mitigation is his previously unblemished record. However, the PaDB did not consider this factor to be

(footnote cont'd)

misappropriation, but rather a violation of RPC 1.16(d). Although it is possible that the overdraft in respondent's trust account resulted in a misappropriation, there is insufficient information in the record on which to base such a determination.

compelling, noting that respondent had been administratively suspended within five years of his admission to practice.

At the hearing before us, respondent, through his counsel accepted responsibility for his actions. He added that, while not intentional, his conduct was negligent, but that all parties have been reimbursed. Respondent requested that we impose discipline no greater than a six-month suspension and that it be retroactive to the date of his Pennsylvania discipline, making him eligible to apply for reinstatement immediately. Respondent stated that he has not practiced law in New Jersey since May of 2013. Currently, he owns a drug and alcohol rehabilitation facility and is in the process of opening a second location.

* * *

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline.

Pursuant to R. 1:20-14(a)(5), another jurisdiction's finding of misconduct shall establish conclusively the facts on which it rests for purposes of disciplinary proceedings in this state. Therefore, we adopt the findings of the PaDB and find that respondent has violated the New Jersey RPCs.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides:

The Board shall recommend the imposition of the identical action or discipline unless

the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). Paragraph E applies, however. In New Jersey, respondent's misconduct would merit discipline less severe than the disbarment imposed in Pennsylvania.

Despite being administratively suspended by the Pennsylvania Supreme Court, effective December 18, 2010, respondent continued to hold himself out as an attorney eligible to practice in Pennsylvania. He used his firm letterhead that still contained his name, failed to remove signage with his name at his office, and failed to remove his name from the voicemail salutation on his firm's telephone. Even worse, respondent continued to represent five clients in tax matters during his

time of ineligibility. He continued to practice law and engage new clients for an entire year, despite being ineligible to do so.

The record shows that respondent failed to complete the matters for which he had been retained, or even to initiate contact with the taxing authorities. He failed to exercise diligence; failed to provide the respective clients with the status of their matters with the IRS; failed to promptly provide a response to reasonable requests for information; failed to provide a client with a written fee agreement; failed to maintain client funds separate and apart from his own; improperly deposited his own funds into his attorney trust account; and failed to return unearned fees to his clients.

Further, respondent engaged in the unauthorized practice of law in multiple matters. He engaged new clients during his period of ineligibility, contacted the Pennsylvania Department of Revenue on behalf of a client in one matter, and failed to notify his existing clients that he was administratively suspended. Thus, respondent misrepresented his ability to engage in the practice of law and failed to abide by the Pennsylvania Supreme Court's order of suspension, which was prejudicial to the administration of justice. Moreover, he failed to cooperate with the PaDB at every step in its process.

In summary, respondent was guilty of violating RPC 1.3 (in four matters); RPC 1.4(b) (in four matters); RPC 1.4(c) (in two matters); RPC 1.5(b) (in one matter); RPC 1.15(a) (in five matters); RPC 1.15(b) (in three matters); RPC 1.15(c) (in four matters); RPC 1.16(d) (in three matters); RPC 5.5(a)(1) (in four matters); RPC 7.1(a) (in four matters); RPC 7.5(a) (in four matters); RPC 8.4(a) (in six matters), RPC 8.4(c) (in five matters); RPC 8.4(d) (in two matters); and the Pennsylvania equivalent of R. 1:20-20 (in one matter).

For his egregious behavior across several client matters, respondent is deserving of significant discipline. Attorneys who mishandle multiple client matters generally receive suspensions of either six months or one year. See, e.g., In re LaVergne, 168 N.J. 410 (2001) (six-month suspension for attorney who mishandled eight client matters; the attorney exhibited lack of diligence in six of them, failure to communicate with clients in five, gross neglect in four, and failure to turn over the file upon termination of the representation in three; in addition, in one of the matters, the attorney failed to notify medical providers that the cases had been settled and failed to pay their bills; in one other matter, the attorney misrepresented the status of the case to the client; the attorney was also guilty of a pattern of neglect and recordkeeping violations); In

re Pollan, 143 N.J. 305 (1996) (attorney suspended for six months for misconduct in seven matters, including gross neglect, pattern of neglect, failure to communicate with clients, failure to deliver a client's file, misrepresentation, recordkeeping improprieties, and failure to cooperate with ethics authorities; clinical depression alleged); In re Brown, 167 N.J. 611 (2001) (one-year suspension for attorney who, as an associate in a law firm, mishandled twenty to thirty files by failing to conduct discovery, to file pleadings, motions and legal briefs, and to generally prepare for trials; the attorney also misrepresented the status of cases to his supervisors and misrepresented his whereabouts, when questioned by his supervisors, to conceal the status of matters entrusted to him; the disciplinary matter proceeded as a default; the attorney had a prior reprimand); and In re Marum, 157 N.J. 625 (1999) (attorney suspended for one year for serious misconduct in eleven matters, including lack of diligence, gross neglect, failure to communicate with clients, failure to explain the matter to clients in detail to allow them to make informed decisions about the representation, misrepresentation to clients and to his law partners, which included entering a fictitious trial date on the firm's trial diary, and pattern of neglect; the attorney also lied to three clients that their matters had been settled and paid the

"settlements" with his own funds; the attorney's misconduct spanned a period of eleven years; in aggravation, the attorney had two prior admonitions, failed to recognize his mistakes and blamed clients and courts for his misconduct).

Thus, the baseline discipline for respondent's mishandling of five client matters, without more, is a six-month suspension. However, respondent committed additional violations. He commingled personal and client funds in his attorney trust account, improperly disbursed funds from that account causing an overdraft, failed to memorialize in writing the rate or basis of his fee when he engaged a client he had not previously represented, and ignored requests to refund unearned portions of retainer fees. Moreover, most of these violations occurred while he was ineligible to practice law.

The discipline for each of these violations, alone, or accompanied by other non-serious infractions, ranges from an admonition to a reprimand. See, e.g., In the Matter of Richard Mario DeLuca, DRB 14-402 (March 9, 2015) (admonition for attorney who commingled personal funds in his attorney trust account and committed recordkeeping violations); In the Matter of Myron D. Milch, DRB 11-110 (July 27, 2011) (admonition for attorney who failed to memorialize the basis or rate of the fee in writing, lacked diligence, and failed to communicate with his

client); In the Matter of Larissa A. Pelc, DRB 05-165 (July 28, 2005) (admonition imposed for one-year delay in returning unearned portions of a retainer fee); and In re Moskowitz, 215 N.J. 636 (2013) (reprimand imposed on attorney who practiced law knowing that he was ineligible to do so). Taken in their totality, however, respondent's additional misconduct warrants enhancement of the baseline discipline.

Further, the PaDB put significant weight on respondent's apparent lack of interest in his law license, based on his disregard for the disciplinary system. Specifically, his failure to appear at the disciplinary hearing was determined to be an aggravating factor. Hence, the PaDB recommended respondent's disbarment to protect the public.

Relying on the PaDB's assessment, we, too, find respondent's failure to appear at the hearing an aggravating factor. In addition, respondent's misconduct harmed his clients. Specifically, they suffered an inordinate delay in the resolution of their tax matters, lost their retainer fees, incurred additional fees to retain subsequent counsel, or paid additional interest and penalties to the IRS, all in further aggravation.

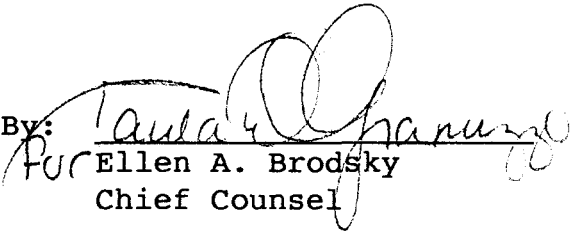
There is mitigation to consider as well. During oral argument before us, respondent explained that he has reimbursed his former clients and expressed remorse for his conduct. Further, he has a

previously unblemished record and self-reported his discipline to New Jersey disciplinary authorities. In addition, respondent appeared in person before us to express his remorse, which suggested to us that he is interested in maintaining his license to practice law and may be able to do so in accordance with the standards of our profession. Hence, under the totality of the circumstances, we determine that a one-year prospective suspension is the appropriate discipline for respondent's misconduct.

Members Gallipoli and Zmirich would have imposed a two-year prospective suspension. Vice-Chair Baugh 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: 
For Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael Z. Mandale
Docket No. DRB 15-389

Argued: March 17, 2016

Decided: August 16, 2016

Disposition: One-Year Suspension

Members	Two-Year Suspension	One-Year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh						X
Boyer		X				
Clark		X				
Gallipoli	X					
Hoberman		X				
Rivera		X				
Singer		X				
Zmirich	X					
Total:	2	6				1

Ellen A. Brodsky
for Ellen A. Brodsky
Chief Counsel