SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 16-258 and 16-260
District Docket Nos. XIV-2013-0465E
and VA-2013-0010E

IN THE MATTER OF	
GERALD M. SALUTI, JR.	
AN ATTORNEY AT LAW	

Decision

Argued: November 17, 2016

Decided: March 6, 2017

William R. Tellado appeared on behalf of the District VA Ethics Committee in DRB 16-260.

Respondent did not appear for oral argument.

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

The above-referenced matters were before us on a certification of default, filed by the Office of Attorney Ethics (OAE) pursuant to R. 1:20-4(f), and on a recommendation for the imposition of a one-year suspension, filed by the District VA Ethics Committee (DEC). The two matters have been consolidated for the purpose of imposing a single form of discipline. In DRB 16-260 (presentment), the February 14, 2014 complaint charged

respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.2(a) (failure to abide by a client's decisions concerning the scope and objectives of the representation), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter), RPC 1.5(a) (charging an unreasonable fee), and RPC 1.5(b) (failure to provide a client with a writing stating the basis or rate of the fee). The DEC recommended that respondent be suspended for one-year.

In DRB 16-258 (default), the May 24, 2016 two-count complaint charged respondent with violations of RPC 1.15(b) (failure to promptly disburse funds and negligent misappropriation), RPC 1.15(d) (recordkeeping violations), RPC 3.3(a)(1) (lack of candor to a tribunal), RPC 5.3(a), (b), and (c) (failure to supervise a non-attorney employee), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and R. 1:21-1C(a)(3)(b) (failure to apply to the Clerk of the Court to form a limited liability corporation (LLC) or to obtain required malpractice insurance).[1]

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

---

[1] Although not recited in the complaint, respondent's violation of this Rule constitutes a violation of RPC 5.5(a) (unauthorized practice of law).

Respondent was admitted to the New Jersey bar in 1992. At the relevant time, he maintained a law office in Newark, New Jersey.

Respondent has an extensive ethics history. In 2007, he was admonished for his conduct spanning a two-year period. He had been retained in September 2003, for a criminal matter. Respondent's communications with his client broke down when his wife became seriously ill. In imposing only an admonition, we considered that respondent was beset by his wife's illness at the time, he made restitution to his client, and he had no disciplinary history. In the Matter of Gerald M. Saluti, Jr., DRB 07-117 (June 22, 2007).

In 2012, respondent was again admonished for his 2003 representation of a client in connection with a second post-conviction relief application and potential appeal of his conviction. He violated RPC 1.5(b) by failing to communicate the basis or rate of his fee to the client. Here, too, we considered that respondent had experienced personal problems at the time of his misconduct. In the Matter of Gerald M. Saluti, Jr., DRB 11-358 (January 20, 2012).

In 2013, respondent was reprimanded for failure to cooperate with an ethics investigation by failing to reply to three letters requesting a reply to the grievance, even after

having advised the investigator that a reply was forthcoming. It was not until after an ethics complaint was filed that respondent retained counsel, filed an answer, and participated at the hearing. We did not give great weight to his wife's health problems because they had not prevented him from practicing law or accepting cases. In re Saluti, 214 N.J. 6 (2013).

In 2014, respondent was suspended for three months, effective February 28, 2014. There, respondent failed to provide a client with a writing stating the basis or rate of his fee; failed to return an unearned fee; made misrepresentations; engaged in conduct prejudicial to the administration of justice; assisted or induced a client to withhold information from a court, thereby assisting his client to perpetrate a fraud on a tribunal; made false and misleading statements about the status of the client's case and about the services he would provide to the client; failed to cooperate with the DEC's investigation; and violated or attempted to violate the Rules of Professional Conduct. In re Saluti, 216 N.J. 549 (2014).

Although respondent was again before us in 2015 (DRB 15-120), he received no additional discipline for a single violation of failing to provide a client with a writing stating the basis or rate of the fee, because the violation had preceded

the imposition of discipline for two other RPC 1.5(b) transgressions and would not have increased the discipline previously imposed, had it been considered with respondent's prior matters. In re Saluti, 224 N.J. 549 (2016).

Respondent remained suspended when he received a one-year suspension, on July 22, 2016, effective May 29, 2014. In re Saluti, 225 N.J. 606 (2016). In that matter, respondent was found guilty of gross neglect; failure to abide by the client's instructions; lack of diligence; failure to keep a client reasonably informed about the status of a matter; failure to state in writing the basis or rate of a fee; conduct involving dishonesty, fraud, deceit, or misrepresentation; conduct prejudicial to the administration of justice; and stating or implying an ability to influence a government agency or official or achieve results by means that violate the RPCs or other law.

Finally, respondent was temporarily suspended, effective September 2, 2016, for failure to comply with a fee arbitration determination. In re Saluti, 226 N.J. 465 (2016). He remains suspended to date.

DRB 16-260 – District Docket No. VA-2013-0010E (Presentment)

Respondent initially was represented by counsel. After the panel chair scheduled a prehearing conference and counsel filed

a verified answer on respondent's behalf, he withdrew from the case, with respondent's consent. Respondent elected to proceed pro se and executed a substitution of attorney form, dated June 17, 2015. After respondent filed the substitution of attorney, the panel chair received no further communications from him. Respondent did not appear at the September 2015 prehearing conference, although notice of it had been sent to him on July 31, 2015, by certified mail.

By letter dated October 9, 2015, the panel chair scheduled a hearing on November 24, 2015. The letter recited that respondent had failed to appear at the prehearing conference and notified him that, if he failed to submit exhibits or designate witnesses, he would be precluded from offering proofs, exhibits, or witnesses at the hearing. Respondent received the letter. Due to an illness of a panel member, the hearing was rescheduled to February 17, 2016. The DEC sent respondent notice of the change by certified letter, dated January 28, 2016. That letter further precluded respondent from submitting proofs or calling witnesses at the hearing. Respondent neither appeared at the hearing nor requested an adjournment.

Grievant Naji Muhammad,[2] who was incarcerated at East Jersey State Prison at the time of the hearing, appeared via telephone. He had retained respondent for a criminal trial on charges of, among others, carjacking, burglary, possession of a weapon, and resisting arrest, pending in the Superior Court, Law Division, Union County. Muhammad paid respondent a $10,000 fee. Respondent did not provide Muhammad with a written statement of his fee. Following a trial that lasted "a few weeks," Muhammad was found guilty of all charges.

Afterwards, one of respondent's employees, referred to as "Quran," met with Muhammad to discuss a motion to set aside the verdict. Thereafter, respondent met with Muhammad at the prison on three or four occasions to discuss the filing of such a motion.

While Muhammad had been out on bail, he bought a car from respondent, a 2001 BMW 740, for $3,500. Respondent agreed to represent Muhammad on the motion to set aside the verdict in exchange for Muhammad's return of the car. Their agreement was confirmed in an April 2, 2012 letter from respondent's "practice administrator," Gabriel Iannacone. The letter stated that the fee for the motion to set aside the verdict was the "2001 BMW,

[2] The name is also spelled Mohammad in the record.

and for the direct appeal, $10,000.00." Muhammad returned the car to respondent later that month. Afterward, Muhammad had difficulty communicating with respondent, who failed to return his calls.

In May 2012, respondent filed a motion seeking a ninety-day extension to file a motion to set aside Muhammad's verdict. On May 22, 2012, the court granted respondent a ten-day extension. Although respondent told Muhammad that the court had granted the extension, Muhammad did not know whether respondent had filed the motion. Muhammad maintained that, in August 2012, he thought he was appearing for a hearing on the motion. As it turned out, instead, the court appearance was for his sentencing. He was sentenced to an extended term of thirty years' imprisonment.

Prior to their August 2012 court appearance, when Muhammad asked respondent for information about the status of the motion, respondent gave various accounts: he had not filed the motion; he made an oral motion in the judge's chambers; and the judge did not want to hear the motion.

By letter to respondent, dated December 10, 2012, Muhammad wrote:

> I've asked you on numerous occasions about the motion. On the day of sentencing I asked you about it and you told me that the judge said he don't [sic] want to hear it. Then when you came to visit me in the county jail I asked you again and you said the judge

> heard it in chambers. When filing such a motion you write a brief of your argument. I then should review it at some point in time and sign it for approval. We then must go in front of a judge with me present not in chambers. [H]e then must approve it or deny it not say he don't [sic] want to hear it. I did not receive the service in which I paid you for and I want my car back or the money that I paid for it since I bought it from you from the start. I paid 3500 for it so I want my money back or the car or Im [sic] to take you to court and go about it a different way. Write me back ASAP with a response.
>
> [Ex.P-14.]

Respondent did not reply to the letter, file the motion, or return the car or the cash equivalent to Muhammad.

Although Muhammad and respondent had discussed filing an appeal, respondent took no action in that regard. Eventually, a public defender filed an appeal on Muhammad's behalf and succeeded in obtaining a sentence reduction.

By letter dated April 22, 2016, the presenter cited respondent's disciplinary history and various cases in support of a six-month suspension. Respondent did not file a post-hearing submission.

The DEC found clear and convincing evidence that respondent was guilty of violating RPC 1.1(a), RPC 1.2(a), RPC 1.3, RPC 1.4(b) and RPC 1.5(a) and (b). The DEC pointed out that Muhammad's purchase of respondent's vehicle implicated RPC 1.8

(business transaction with a client), but that violation was not charged in the complaint.

Based on respondent's ethics history and the absence of mitigating factors, the DEC determined that a one-year suspension was warranted.

* * *

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

At the outset of Muhammad's representation, respondent failed to provide him with a writing stating the basis or rate of the fee for representation at the criminal trial, a violation of RPC 1.5(b).

After Muhammad was convicted on all charges, respondent suggested pursuing a motion to set aside the verdict, to which Muhammad agreed. As payment, respondent agreed to accept the BMW, which Muhammad previously had purchased from him. Although Muhammad returned the car, respondent obtained a ten-day extension to file a motion and then failed to pursue it. Respondent's failure to act constituted both gross neglect and lack of diligence.

Although the complaint also alleged that respondent charged an unreasonable fee, in violation of RPC 1.5(a), because he did

not provide services as agreed, that Rule is not applicable. Respondent's failure to perform the services as agreed does not render his fee unreasonable. Rather, such conduct constitutes the failure to return an unearned fee, a violation of RPC 1.16(d). The complaint, however, did not charge respondent with a violation of that RPC and we, therefore, can make no finding in that respect. However, because RPC 1.5(a) (unreasonable fee) is inapplicable, we dismiss that charge.

Respondent was also charged with a violation of RPC 1.2(a). This Rule, too, is inapplicable. It states:

> A lawyer shall abide by a client's decisions concerning the scope and objectives of representation . . . and as required by RPC 1.4 shall consult with the client about the means to pursue them. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. . . . In a criminal case, the lawyer shall consult with the client and, following consultation, shall abide by the client's decision on the plea to be entered, jury trial, and whether the client will testify.

RPC 1.2(a) is violated when an attorney acts contrary to the client's wishes, not simply when the attorney fails to act at all. Rather, RPC 1.1(a) and RPC 1.3 address such a failure. We, therefore, dismiss RPC 1.2(a).

The record establishes, by clear and convincing evidence, that respondent failed to communicate with Muhammad. He failed

to inform Muhammad that he had not filed the motion to set aside the verdict or that Muhammad was attending a sentencing hearing, rather than a hearing on the motion, and did not reply to Muhammad's letter or telephone calls, a violation of RPC 1.4(b).

Respondent also misrepresented the status of the motion to Muhammad, by asserting that the judge either did not want to hear the motion or heard it in chambers. The complaint, however, did not charge respondent with a violation of RPC 8.4(c). Similarly, respondent was not charged with a conflict of interest for selling a car to Muhammad during the pendency of the trial, a violation of RPC 1.8(a), or with a failure to protect Muhammad's interests when he unilaterally terminated the representation, a violation of RPC 1.16(d). We, therefore, make no findings in this respect. Thus, respondent is guilty of violating RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.5(b).

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, and the seriousness of the attorney's disciplinary history. See, e.g., In the Matter of Robert A. Ungvary, DRB 13-099 (September 30, 2013) (admonition for attorney who, in a civil rights action, permitted a complaint to be dismissed for

failure to comply with discovery and then failed to timely prosecute an appeal, resulting in the appeal's dismissal; the attorney also failed to inform the client of his decision not to pursue the appeal or of the appeal's dismissal); In the Matter of James E. Young, DRB 12-362 (March 28, 2013) (admonition imposed on attorney who failed to file any pleadings in a workers' compensation claim and failed to appear at court-ordered hearings, resulting in the petition's dismissal with prejudice for lack of prosecution; for the next five or six years, the attorney failed to advise the client of the dismissal and failed to reply to the client's repeated requests for information; the attorney later paid the client the amount he estimated the claim was worth ($8,500)); In re Calpin, 217 N.J. 617 (2014) (reprimand for attorney who failed to oppose a plaintiff's motion to strike his client's answer resulting in the entry of a final judgment against his client; the attorney never informed his client of the judgment; notwithstanding the presence of some mitigation in the attorney's favor, the attorney received a reprimand because of the significant harm to the client – the judgment); and In re Burstein, 214 N.J. 46 (2013) (reprimand for attorney guilty of lack of diligence, gross neglect, and failure to communicate with the client; although the attorney had no disciplinary record, the

significant economic harm to the client justified a reprimand). But, see, In re Rinaldo, 223 N.J. 287 (2015) (attorney censured for gross neglect, lack of diligence, and failure to communicate with the client; he failed to properly withdraw from the representation, which caused his client great harm and prevented the client from pursuing her claim).

In this case, respondent also failed to provide Muhammad with a retainer agreement. Such conduct typically results in an admonition, even if accompanied by other, non-serious ethics offenses. See, e.g., In the Matter of John L. Conroy, Jr., DRB 15-248 (October 16, 2015) (attorney agreed to draft a will, living will, and power of attorney, and to process a disability claim for a new client, but failed to provide the client with a writing setting forth the basis or rate of his fee; thereafter, the attorney was lax in keeping his client and the client's sister informed about the matter; the attorney also practiced law while administratively ineligible, based on his failure to comply with IOLTA registration requirements, and failed to reply to the ethics investigator's three requests for information; mitigation included the attorney's full cooperation with the investigation, his return of the client's fee, and his otherwise unblemished record in his forty years at the bar); In re Ibezim, Jr., DRB 15-161 (July 22, 2015) (attorney failed to provide the

client with a writing setting forth the basis or rate of the fee and failed to inform the client about critical events in the case); and In the Matter of Osualdo Gonzalez, DRB 14-042 (May 21, 2014) (attorney failed to state, in writing, the basis or rate of the fee, and failed to communicate with the client, communicating only with the client's prior counsel; the attorney withdrew the client's complaint based on a statement from prior counsel, not the client, that the client no longer wished to pursue the claim; we considered the attorney's clean record in his twenty-seven years at the bar, and letters attesting to the attorney's good moral character).

Although this matter is not before us as a default, respondent failed to participate in any of the DEC's proceedings after filing a substitution of attorney. R. 1:20-5(b)(1) provides that attendance at prehearing conferences is mandatory for all parties. Moreover, R. 1:20-5(b)(2) provides that the respondent (and the presenter) "shall" file a prehearing report. Significantly, R. 1:20-5(b)(5) provides that the hearing panel chair may suppress a respondent's answer as a sanction for failure to comply with a case management order, discovery obligations, or any other order. Finally, R. 1:20-6(c)(2)(D) provides that a respondent's appearance at all hearings is mandatory. We consider respondent's failure to submit a

mandatory prehearing report, attend the prehearing conferences, or appear at the ethics hearing, resulting in his preclusion from submitting any evidence, to be the functional equivalent of a default.

Typically, in default cases, the discipline is enhanced to reflect that the default or failure to cooperate with investigative authorities is an aggravating factor. In re Kivler, 193 N.J. 332, 342 (2008).

We will address our disciplinary recommendation below, after the discussion of the default matter.

DRB 16-258 (Docket No. XIV-2013-0465E) (Default)

Service of process was proper in this matter. On May 26, 2016, the OAE sent a copy of the complaint by regular and certified mail to respondent's last known home address. The regular mail was not returned. The certified mail receipt was returned, but contained an illegible signature.

Respondent did not file an answer within the required time. Therefore, on July 5, 2016, the OAE sent a letter to the same address, by regular and certified mail, notifying respondent that if he did not file an answer 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 regular mail was not returned. The certified mail receipt indicated delivery; however, the signature of the recipient is illegible.

As of the date of the certification of the record, July 18, 2016, respondent had not filed an answer to the complaint.

* * *

In December 2012, respondent negotiated with Richard M. Roberts, Esq. to form a law partnership. Roberts and Saluti, LLC (the firm) was formed in late-December 2012 or early January 2013. At the time, Gabriel Iannacone, a convicted felon, was employed as respondent's office manager/administrator. Iannacone had been convicted of aggravated assault, eluding arrest, deceptive business practices, writing bad checks, and several counts of theft by deception.

Prior to respondent's merger with Roberts, and despite Iannacone's criminal record, respondent abdicated control over his attorney accounts to Iannacone. At an OAE interview, respondent stated that Iannacone lived in a halfway house when respondent hired him, and that, although respondent knew that Iannacone had a criminal history, respondent believed it was limited to eluding police. Respondent had not conducted a check

of Iannacone's criminal history prior to or during the course of his employment.

After the firm was formed, respondent took no steps to supervise Iannacone's handling of the firm's financial affairs and gave Iannacone permission to sign checks issued by the firm. Following the merger, Iannacone managed the firm's trust and business accounts.

The Aarons Matter

In 2012, Ann and Cordell Aarons, Sr., retained Roberts for a wrongful death action involving their son, Cordell Aarons, Jr. Ann was appointed administratrix ad prosequendum and general administratrix of Cordell, Jr.'s estate. On January 15, 2013, the date scheduled for the trial, the parties reached a $100,000 settlement, the amount that had been deposited with the court. On January 24, 2013, Ann requested that the settlement funds remain on deposit with the court, but if the monies were to be released, that no distributions be made unless she specifically authorized them.

On February 4, 2013, the court released the settlement to the firm, which was deposited into the firm's trust account the following day. At the time, no other funds were on deposit in that trust account.

Respondent asserted that, on February 7, 2013, Iannacone made a cash withdrawal of $37,000 from the trust account and deposited those funds into the firm's operating business account. On February 18, 2013, a $15,000 firm trust account check, payable to the firm, was deposited into the firm's operating business account. Although the check purported to be signed by respondent, he maintained that he did not sign any of the firm's trust account checks. On March 4, 2013, a $5,000 cash withdrawal was made from the firm's trust account. The signature on the withdrawal slip, although illegible, resembled Iannacone's signature.

All of the above disbursements were made without Ann's knowledge or consent.

On February 23, 2013, Ann filed an order to show cause to stay the distribution of the settlement and to keep the funds intact pending her review. She was unaware that the aforementioned disbursements had been made.

On March 18, 2013, when respondent appeared before the judge on the order to show cause, he misrepresented that only the firm's one-third share of the settlement had been disbursed. If respondent's representation were true, the firm should have been holding $66,666.67 in the trust account. On March 18, 2013, however, the balance in the trust account was only $42,492.

The complaint alleged that respondent made misrepresentations to the court, thereby violating RPC 3.3(a)(1) and RPC 8.4(c).

Also on March 18, 2013, the court directed respondent to refrain from disbursing any additional funds from the settlement. Nevertheless, an additional $52,000 was withdrawn via cash withdrawals and checks payable to Iannacone, the firm, and to Peter Nwanonyiri, which caused an overdisbursement of the Aaronses' settlement funds by $9,534, and which invaded other client funds. Ann had not authorized any of the ten disbursements reflected in the complaint.

In mid-August 2013, respondent discovered that Iannacone had stolen money from the firm's account, resulting in the negative balance in the Aaronses' funds. As a result, the firm retained an accountant to perform a forensic accounting. The accountant determined that Iannacone had stolen approximately $121,300 from the firm's account, $47,000 of which was attributed to the Aarons settlement. The firm reported the defalcation of funds to the OAE.

As of the date of the complaint, the Aaronses had received neither an accounting nor any disbursements of their settlement funds, a violation of RPC 1.15(b).

Respondent admitted that he abdicated his responsibility to monitor his accounts and did not supervise Iannacone. Respondent only periodically checked the balances of the firm's accounts online and kept no records of the firm's finances, a violation of RPC 1.15(d). The complaint alleged further that respondent's non-supervision of Iannacone resulted in the unauthorized disbursement of the Aaronses' settlement funds, violations of RPC 1.15(b) (presumably, the complaint should have charged RPC 1.15(a) (failure to safeguard))[3] and RPC 5.3(a),(b), and (c).

The Tripodi and Burgas Matters

On July 2, 2013, the firm deposited $15,500 into the trust account for Rosa Tripodi's mortgage modification matter. On the same date, it deposited $3,500 from Henry and Jacqueline Burgas for the representation of Carlos Ortiz. On July 5, 2013, an $18,978.78 check was issued from the firm's trust account to Fien, Such, Kahn & Shepard, P.C., in connection with the Yavorski matter. Because there were no funds on deposit for Yavorski, the check invaded the Tripodi and Burgas funds. Respondent, therefore, breached his duty to safeguard client

[3] There appear to be several typographical errors in the ethics complaint relating to the cited subsections of RPC 1.15.

funds. The complaint mistakenly cited RPC 1.15(d), rather than RPC 1.15(a) in this respect.

The forensic accounting report submitted to the OAE indicated that Iannacone stole approximately $15,500 from Tripoli and $3,500 from Burgas. Citing RPC 1.15(b), rather than RPC 1.15(a), the complaint alleged that respondent's failure to supervise Iannacone caused the misappropriation of the Tripodi and Burgas funds.

Respondent did not provide these clients with either an accounting or reimbursement of their funds.

The Behre Matter

On July 31, 2013, a $20,500 settlement check was deposited into the firm's trust account on Cheryl Behre's behalf, in connection with her matrimonial matter. Behre's settlement was depleted when two checks were issued from the firm's trust account to Iannacone: $20,000 and $500, on August 1, and 5, 2013, respectively. Although the checks purportedly were signed in respondent's name, he denied having signed them. The complaint alleged that respondent failed to safeguard the funds by preventing Iannacone from writing the checks to himself. The complaint mistakenly charged respondent with a violation of RPC 1.15(b), rather than RPC 1.15(a).

According to the forensic accounting report, Iannacone stole $20,500 from Behre. Respondent neither provided Behre with an accounting of her funds nor reimbursed her missing funds. The complaint alleged that, due to respondent's systematic lack of supervision of Iannacone, Behre's funds were disbursed in violation of RPC 1.15(b), again, rather than RPC 1.15(a).

The Klein Matter

On August 7, 2013, $10,000 was deposited into the firm's trust account on Brenda Klein's behalf. Thereafter, on August 12, 2013, three checks were issued to Iannacone, which the OAE concluded depleted Klein's funds. Although the checks bore respondent's signature, respondent denied signing them.

As of the date of the complaint, neither an accounting nor any funds were given to Klein.

According to the complaint, respondent's systematic lack of supervision led to the disbursement of Klein's funds. Respondent violated his duty to safeguard funds, which the complaint cited as RPC 1.15(b), rather than (a).

Respondent informed the OAE that, in mid-August 2013, when Iannacone was on vacation, respondent discovered that Iannacone had stolen the firm's funds. He admitted that he had abdicated his responsibility to monitor the firm's attorney accounts, had

not supervised Iannacone "in any form," and had given Iannacone "signatory authority to sign his name to checks" issued by the firm.

The OAE's review of the firm's business and trust accounts uncovered approximately five different signatures on the firm's checks, purporting to be respondent's signature. Respondent maintained that only one of the signatures was his.

Respondent's failure to supervise Iannacone and the abdication of his recordkeeping responsibilities resulted in the unauthorized disbursement of the above-mentioned clients' funds. In this regard, respondent violated RPC 5.3(a), (b), and (c) and RPC 1.15(a) (failure to safeguard funds, mistakenly cited in the complaint as RPC 1.15(b)).

Count two alleged that, while a partner of the firm, respondent did not maintain malpractice insurance, even though the firm's letterhead held the firm out to be an LLC. Moreover, neither respondent nor the firm filed a certificate of formation of an LLC with the Clerk of the Court, as required by R. 1:21-1C(a)(3)(b).

* * *

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and

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

Respondent was not charged with knowing misappropriation of funds. Rather, the complaint alleged that he abdicated his recordkeeping responsibilities to Iannacone, a convicted felon, and that it was Iannacone who systematically misappropriated client funds.

RPC 5.3 states in relevant part that:

> (a) Every lawyer . . . authorized . . . to practice law in this jurisdiction shall adopt and maintain reasonable efforts to ensure that the conduct of nonlawyers retained or employed by the lawyer, law firm or organization is compatible with the professional obligations of the lawyer.
> (b) A lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer; and
> (c) A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if;
>
> . . . .
>
> (3) the lawyer has failed to make reasonable investigation of circumstances that would disclose past instances of conduct by the nonlawyer incompatible with the professional obligations of a

lawyer, which evidence a propensity for such conduct.

Respondent is guilty of violating this RPC, particularly RPC 5.3(c)(3). Respondent hired Iannacone, who was living in a halfway house at the time. Yet, respondent took no measures to investigate what crimes Iannacone had committed. Respondent's assertion in this regard, that he believed that Iannacone had been guilty only of eluding police, is suspect, particularly since respondent's forté is criminal law. Respondent, nevertheless, turned over the firm's accounts to Iannacone and even gave him authority to sign the firm's checks. Respondent's wholesale abdication of his attorney accounts was reckless and detrimentally impacted his clients by causing them significant financial losses, which respondent failed to replenish.

Respondent is also guilty of failure to safeguard client finds (RPC 1.15(a)), failure to promptly disburse funds to clients (RPC 1.15(b)), recordkeeping violations (RPC 1.15(d)), misrepresentation to a tribunal (RPC 3.3(a)(1) and RPC 8.4(c)), and unauthorized practice of law (RPC 5.5(a)) based on his violation of R. 1:21-1C(a)(3)(b)).

The only issue left for determination is the proper quantum of discipline for respondent's combination of violations.

Attorneys who fail to supervise their nonlawyer staff are typically admonished or reprimanded. See, e.g., In re Bardis, 210 N.J. 253 (2012) (admonition; attorney's failure to reconcile and review his attorney records permitted an individual who helped him with office matters to steal $142,000 from his trust account, causing a shortage of $94,000; mitigating factors were the attorney's deposit of personal funds to replenish the account, numerous other corrective actions, his acceptance of responsibility for his conduct, his deep remorse and humiliation for not having personally handled his own financial affairs, and lack of a disciplinary record); In re Mariconda, 195 N.J. 11 (2008) (admonition for attorney who delegated his recordkeeping responsibilities to his brother, a paralegal, who then forged the attorney's signature on trust account checks and stole $272,000 in client funds); In the Matter of Brian C. Freeman, DRB 04-257 (September 24, 2004) (attorney admonished for failing to supervise his paralegal, who also was his client's former wife; the paralegal forged a client's name on a retainer agreement, a release, and two settlement checks; the funds were never returned to the client; mitigating factors included the attorney's clean disciplinary record and the steps he took to prevent a reoccurrence); In re Deitch, 209 N.J. 423 (2012) (reprimand; as a result of attorney's failure to supervise his

paralegal-wife and poor recordkeeping practices, $14,000 in client or third-party funds were invaded; the paralegal-wife stole the funds by negotiating thirty-eight checks issued to herself by either forging the attorney's signature or using a signature stamp; no prior discipline); and In re Murray, 185 N.J. 340 (2005) (attorney reprimanded for failure to supervise non-attorney employees, which led to the unexplained misuse of client trust funds and to negligent misappropriation; the attorney also committed recordkeeping violations). But, see, In re Key, 220 N.J. 31 (2014) (censure imposed on attorney who failed to ensure that his nonlawyer employees recorded the time he spent on client matters, a violation of RPC 5.3; the attorney also violated RPC 3.1 when, while his appeal from an adverse fee arbitration award was pending, he filed an answer to his clients' civil complaint seeking to enforce the award and asserted a counterclaim for the purpose of relitigating the reasonableness of his fee; the attorney knew that the court was without jurisdiction while the fee appeal was pending and that he was barred from relitigating the fee arbitration panel's determination; further, after we dismissed his appeal from the fee award, he did not withdraw his counterclaim; the attorney also failed to record expenses and costs incurred on behalf of his clients, a violation of RPC 1.15(d); two prior admonitions

and a reprimand for recordkeeping violations) and In re Hecker, 167 N.J. 5 (2001) (three-month suspension for attorney whose clerk stole $15,000 from the attorney's trust account; thereafter, the clerk was sentenced to five-year's imprisonment for an unrelated criminal offense; when the clerk was released from prison, the attorney rehired him; the clerk, thereafter, stole $6,850 from an estate for which the attorney was acting as the administrator; the attorney was guilty of failing to supervise a nonlawyer employee, negligent misappropriation of client trust funds, failure to safeguard funds, recordkeeping violations, gross neglect, and lack of diligence).

Respondent also made a misrepresentation to the court when he stated that he had removed only his share of fees from the Aarons settlement. Lack of candor to a tribunal has resulted in discipline ranging from an admonition to a long-term suspension. See, e.g., In the Matter of George P. Helfrich, Jr., DRB 15-410 (February 24, 2016) (admonition imposed on attorney who failed to notify his client and witnesses of a pending trial date, a violation of RPC 1.4(b); thereafter, he appeared at two trial dates, but failed to inform the trial judge and his adversary that he had not informed his client or the witnesses of the trial date); In the Matter of Robert Moon, DRB 09-085 (July 7, 2009) (admonition for attorney whose client agreed, as part of a settlement, to pay two months'

past due rent; the client produced checks for the past due rent, but the payments were not made a part of the settlement terms presented to the court; the attorney was aware prior to completing the settlement that the client had placed stop-payments on the checks, but failed to immediately inform his adversary of the stop-payment orders); In the Matter of Robin K. Lord, DRB 01-250 (September 24, 2001) (admonition for attorney who failed to reveal her client's real name to a municipal court judge when her client appeared in court using an alias; unaware of the client's significant history of motor vehicle infractions, the court imposed a lesser sentence; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); In re Marraccini, 221 N.J. 487 (2015) (reprimand imposed on attorney, who had attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications that had been pre-signed by the manager, who then died; the attorney was unaware that the manager had died and, upon learning that information, withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); mitigation considered); In re Manns, 171 N.J. 145 (2002) (attorney reprimanded for misleading the court, in a certification in support of a motion to reinstate the complaint, about the date the attorney learned of the dismissal of the

complaint; the attorney also lacked diligence in the case, failed to expedite litigation, and failed to properly communicate with the client; prior reprimand); In re Whitmore, 117 N.J. 472 (1990) (reprimand imposed on a municipal prosecutor who failed to disclose to the court that a police officer, whose testimony was critical to the prosecution of a driving while intoxicated charge had intentionally left the courtroom before the case was called, resulting in the dismissal of the charge); In re Duke, 207 N.J. 37 (2011) (attorney received a censure for failure to disclose his New York disbarment on a form filed with the Board of Immigration Appeals; the attorney also failed to adequately communicate with the client and was guilty of recordkeeping deficiencies; prior reprimand; the attorney's contrition and efforts at rehabilitation justified only a censure); In re Hummel, 204 N.J. 32 (2010) (censure in a default matter for gross neglect, lack of diligence, failure to communicate with the client, and misrepresentation in a motion filed with the court; the attorney had no disciplinary record); In re Trustan, 202 N.J. 4 (2010) (three-month suspension for attorney who, among other things, submitted to the court a client's case information statement that falsely asserted that the client owned a home and drafted a false certification for the client, which was submitted to the court in a domestic violence trial); In re Perez, 193 N.J. 483 (2008) (on motion for

final discipline, three-month suspension for attorney guilty of false swearing; the attorney, then the Jersey City Chief Municipal Prosecutor, lied under oath at a domestic violence hearing that he had not asked the municipal prosecutor to request a bail increase for the person charged with assaulting him); In re D'Arienzo, 157 N.J. 32 (1999) (three-month suspension for attorney who made multiple misrepresentations to a judge about his tardiness for court appearances or failure to appear; mitigating factors considered); In re Forrest, 158 N.J. 428 (1999) (six-month suspension for attorney who failed to disclose the death of his client to the court, to his adversary, and to an arbitrator; the attorney's motive was to obtain a personal injury settlement); In re Moras, 220 N.J. 351 (2015) (default; one-year suspension imposed on attorney who exhibited gross neglect and a lack of diligence and failed to communicate with the client in one matter, misled a bankruptcy court in another matter by failing to disclose on his client's bankruptcy petition that she was to inherit property, and failed to cooperate with the ethics investigation in both matters; extensive disciplinary history consisting of two reprimands, a three-month suspension, and a six-month suspension); and In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a

conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve).

We determine that, in the Muhammad matter, respondent's conduct warrants at least a one-year suspension. After accepting payment (the return of his car) which was improper, he abandoned his client, took no further action on Muhammad's behalf, and failed to reimburse his unearned retainer. In addition, he abandoned the ethics process. After filing a substitution of attorney to appear pro se, he failed to participate in the ethics process or to appear at the DEC hearing.

The discipline for respondent's conduct in the default matter would warrant a censure for the failure to supervise charge alone. However, in that matter he is also guilty of making a misrepresentation to a tribunal. Respondent's discipline must be enhanced to reflect the default nature of the proceedings. In re Kivler, 193 N.J. 332, 342 (2008) ("a respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced").

In assessing the proper discipline to impose, we have factored in respondent's extensive ethics history. These current matters are his seventh and eighth ethics matters before us. His prior ethics matters resulted in: (1) a 2007 admonition; (2) a 2012 admonition; (3) a 2013 reprimand; (4) a 2014 three-month suspension; (5) no additional discipline in a 2016 matter; and (6) a 2016 one-year suspension. In 2016, respondent also failed to satisfy a fee arbitration award and was temporarily suspended. Respondent has not sought reinstatement from any of his suspensions.

Clearly, respondent has a propensity to violate the Rules of Professional Conduct and his violations are becoming progressively worse. He appears to believe that the ethics rules do not apply to him. Moreover, his failure to adhere to the ethics rules exhibits a failure to learn from prior mistakes, indicating to us that he may never conform his behavior to acceptable standards. Finally, his failure to participate in the ethics process suggests to us that he has abandoned his desire to continue practicing law. To protect the public from respondent's seemingly unsalvageable character, we recommend that he be disbarred.

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: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Gerald M. Saluti
Docket Nos. DRB 16-258 and 16-260

Decided: March 6, 2017

Disposition: Disbar

Members	Disbar	Recused	Did not participate
Frost	X		
Baugh			X
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8		1

Ellen A. Brodsky
Chief Counsel