SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-341
District Docket No. XIV-2015-0570E

IN THE MATTER OF

CHRISTOPHER J. BASNER

AN ATTORNEY AT LAW

Decision

Argued: February 16, 2017

Decided: May 26, 2017

Reid Adler appeared on behalf of the Office of Attorney Ethics.

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 motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), following an order from the Supreme Court of Pennsylvania suspending respondent for five years, effective December 17, 2015. Respondent was found guilty of violating the equivalents of New Jersey RPC 1.1(a) (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with a client); RPC 1.4(c) (failure to explain a

matter to a client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); RPC 1.5(b) (failure to set forth in writing the basis or rate of a fee); RPC 1.15(b) (failure to promptly notify clients of receipt of funds and to promptly disburse those funds); RPC 1.15(d) (failure to comply with recordkeeping rules); RPC 1.16(a)(1) (failure to withdraw when the representation will result in a violation of the RPCs); RPC 1.16(d) (upon termination of the representation, failure to take steps reasonably practicable to protect a client's interests); RPC 3.1 (asserting an issue with no basis in law or fact); RPC 3.2 (failure to expedite litigation); RPC 3.3(a)(1) (false statement of material fact or law to a tribunal); RPC 8.1(b) (failure to cooperate with disciplinary authorities); 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 recommended a one-year or two-year suspension, but expressed no position on whether it should be retroactive or prospective. Respondent requested that he "be placed under the supervision of the Disciplinary Review Board in a fashion of

probation for one to two years," as an alternative to a term of suspension.

For the reasons set forth below, we determine to impose a two-year prospective suspension, with conditions.

Respondent earned admission to the New Jersey bar in 2008 and to the Pennsylvania bar in 2007. He has no history of discipline in either jurisdiction.

The Disciplinary Board of the Supreme Court of Pennsylvania issued a report, dated October 16, 2015 (DBR), which the Supreme Court of Pennsylvania incorporated by reference into its order suspending respondent. In their briefs to us, neither respondent nor the OAE disputed the findings of fact set forth in the DBR. For purposes of brevity and clarity, we quote portions of the findings of fact and conclusions of law set forth in the DBR.

The Duke Psoras Matter

In March 2010, Duke Psoras retained respondent to represent him in defense of a child pornography case brought by the Juniata County District Attorney's Office. Specifically, Psoras was charged with possessing 397 images of child pornography on one or more computers. Cory Snook, the District Attorney for Juniata County, prosecuted the case against Psoras,

which was scheduled for jury selection on January 24, 2011, and trial on February 15, 2011.

In the nine months preceding the scheduled trial date, respondent failed to timely file routine pretrial motions. Rather, on January 19, 2011, five days before the scheduled jury selection date, he filed a Motion to Compel Discovery (of a DVD) and a Petition for Habeas Corpus, motions that are customarily filed within thirty days of the Omnibus Pretrial - a hearing held, pursuant to Pennsylvania procedure, soon after a defendant's arraignment.

As part of routine discovery practice, Snook had sent respondent a letter informing him that, although his office would not disseminate child pornography, the evidence could be readily examined at the office of the District Attorney. Despite this written discovery notice, six days prior to jury selection, respondent e-mailed Snook, asking "[w]ho do I contact to review the [child pornography] images?" On January 24, 2011, the day of jury selection, respondent and Psoras viewed the images.

On January 24, 2011, just prior to jury selection, the Commonwealth offered respondent a plea agreement whereby Psoras would receive a time-served sentence of nine months' incarceration. Respondent rejected that plea offer. According to

Psoras, respondent never presented that plea offer to him, and, consequently, he never directed respondent to reject the offer; rather, respondent insisted that he should not accept any plea because he was innocent and "they would beat the charges."

The child pornography charges against Psoras had been initiated by his wife, Linda Barnett, who was the prosecution's chief witness at trial. Barnett had a history of psychiatric issues, and had previously falsely accused others of child pornography and child abuse crimes. Had Barnett's testimony (or the computers she provided to law enforcement) been excluded, the Commonwealth's case against Psoras would have been severely compromised. Evidence in the case also included consensual telephone recordings between Psoras and Barnett, wherein they discussed child pornography and other extremely prejudicial subjects, including accusations that Barnett had made against her former husband, and the mysterious disappearance of Psoras' prior wife, who had also accused him of child abuse.

In connection with the criminal prosecution of Psoras, Barnett was placed in protective custody. Although her whereabouts were known to law enforcement, and respondent could have arranged to interview her, he made no effort to do so, or to arrange a psychiatric examination of her. Respondent likewise

failed to retain a forensic computer expert to assist the defense; failed to file motions to issue out-of-state subpoenas for witnesses and documents Psoras had requested; and failed to speak to witnesses whose information Psoras had provided to him well before trial.

Eight days before the trial was scheduled to commence, respondent filed a Motion for Trial Continuance, because he had not issued subpoenas for out-of-state witnesses and had spoken to only one defense witness. Respondent never determined whether any of the other witnesses whom Psoras had identified would have provided information relevant to the defense of his client. The Motion for Trial Continuance and the Petition for Habeas Corpus filed by respondent were denied a week before the scheduled trial.

On February 7 and 9, 2011, about one week before trial, respondent issued unenforceable trial subpoenas, despite knowing the proper procedure for obtaining testimony and documents from out-of-state witnesses. One of those subpoenas was sent to the United States Department of Education, which refused to honor it. Ultimately, the only defense witnesses whom respondent called during trial were Psoras and one of his brothers. Psoras had expected that all of the witnesses he had identified would

be called at trial, because respondent had billed him for work associated with those witnesses, and had not told him that they would not be called.

The most recent child pornography image in evidence against Psoras had been accessed in August 2008. The timing of the viewing of this image was crucial to the prosecution's case, as the other images had been downloaded or viewed "many years" before Psoras had access to the computers in evidence. Psoras, thus, may have had an alibi defense, depending on the time of day that the final image had been accessed. Normally, the date and time an image is downloaded or viewed is recorded by a computer. During trial, however, the Commonwealth's expert was unable to explain why the computer in evidence had not recorded the time that the final image was accessed in August 2008. Respondent failed to explore this discrepancy on cross-examination. He also squandered the opportunity to present an alibi defense - that Psoras had been working at a flower shop in Baltimore, Maryland at the time that the final image was downloaded or viewed - because he had failed to provide the Commonwealth with the required prior written notice of that defense. As mentioned previously, respondent also had failed to

retain a forensic computer expert to investigate this line of defense.

Respondent made other serious errors at trial. First, he attempted to introduce the alibi defense during Psoras' testimony, despite his failure to provide the required prior written notice to the Commonwealth. This error resulted in the need for multiple conferences, sidebars, and stoppages of the trial. Respondent admitted to the trial court that he was unaware of the Pennsylvania rule requiring advance notice of an alibi defense. On many occasions during the trial, the court suggested that respondent read the applicable court rules. Ultimately, the court precluded any mention of Psoras' alibi defense theory, due to respondent's failure to satisfy the notice requirement.

Despite the court's preclusion order, respondent attempted to introduce into evidence a delivery receipt from the flower shop where Psoras worked, arguing that it was still relevant evidence. In an attempt to resolve this evidentiary issue, the trial court instructed respondent and Snook to work out a joint stipulation regarding the receipt, to be offered into evidence on the second day of trial. Respondent, however, failed to

discuss such a stipulation with Snook before the second day of trial commenced.

On the second day of trial, respondent was late, claiming "he had a last minute idea and a problem with his printer." He admitted to the court that he had failed to discuss the stipulation with the Commonwealth, as directed. The court, thus, recessed the trial so that a stipulation could be crafted, which ultimately stated that, on the date that the final image was viewed, in August 2008, respondent had spent time both "at home and at work." At the conclusion of the trial, the jury found Psoras guilty on all 397 counts. The Lewistown Sentinel newspaper reported both Psoras' conviction and respondent's failure to timely provide his notice of alibi.

After the verdict, via letter dated September 12, 2011, Psoras discharged respondent, calling him "incompetent," and accusing him of making misrepresentations, failing to communicate, and being unprepared for trial. Psoras also demanded that respondent cease contacting him for payment of legal fees for trial work and potential appellate work, and that respondent turn over his file, an accounting, time records, and all invoices. Despite receipt of Psoras' letter, respondent

offered to continue representing him on appeal, blaming his secretary for incorrectly identifying an appeal deadline.

On January 17, 2012, Psoras filed a pro se post-conviction relief petition, claiming ineffective assistance of counsel, and requesting a new trial. In support of his petition, Psoras cited respondent's failure to subpoena defense witnesses, misrepresentations made regarding the anticipated appearance of witnesses for trial, and respondent's introduction of nearly all of the recorded telephone conversations between Barnett and Psoras, which contained conversations that were very prejudicial to Psoras.

The Commonwealth stipulated to Psoras' claim of ineffective assistance, citing respondent's failure to provide notice of an alibi defense; his decision to play most of the consensual recordings (until the court stopped him; the Commonwealth had taken precautions with this evidence for fear that it was so prejudicial that it would cause a mistrial); and the numerous "in-chambers" discussions that the court was compelled to hold with respondent, during the trial, regarding his representation of Psoras. The Commonwealth "did not want to re-try the case."

On August 21, 2012, the trial court granted respondent's petition for post-conviction relief, noting that Psoras'

petition "spoke for itself;" respondent had made so many errors at trial; the Commonwealth had stipulated to ineffective assistance of defense counsel; and a new plea agreement had already been negotiated between the Commonwealth and Psoras, whereby a maximum sentence of forty months' incarceration (Psoras already had credit for twenty-two months) would be imposed.

As set forth above, if Psoras had accepted the plea offer the Commonwealth had extended on the date of jury selection, which he claimed respondent never presented to him, he would have received a time-served sentence of only nine months' incarceration. Given the jury's verdict, however, Psoras was exposed to a sentence of five to fifteen years' incarceration, and lifetime Megan's Law reporting requirements.

On September 23, 2014, during the Pennsylvania disciplinary hearing underlying this matter, respondent exhibited no recognition of his deficient representation of Psoras regarding the failure to provide prior notice of the alibi defense. Rather, he argued the alibi notice issue was moot, because "there was no true alibi" defense. Respondent blamed Psoras for the scope of the consensual recordings offered into evidence, and "assumed" financial limitations were the reasons that Psoras

did not want to hire a forensic computer expert; he claimed he had solicited an expert on a "listserv" and had spoken to a potential expert at one point. During the disciplinary hearing, Psoras testified that his mother, who had paid most of respondent's legal fees, had been willing to pay for a forensic computer expert.

The Barry Lee Rhodes Matters

Lancaster County Case

In 2001, the Lancaster County District Attorney charged Barry Lee Rhodes with molesting his two grandnieces. Those charges were withdrawn after an April 20, 2001 preliminary hearing, when the Commonwealth's key witness, a ten-year-old victim, "was so traumatized by Rhodes's presence in the courtroom . . . [she] became nearly 'catatonic,' could not stop crying and 'froze' while trying to speak." The other victim was mentally challenged and, thus, was not competent to testify.

On June 18, 2010, more than nine years later, the Commonwealth re-filed the criminal charges against Rhodes. This decision was made based on a 2010 interview of Rhodes and the key witness' ability to testify at that time. Respondent represented Rhodes in the re-filed case, until MaryJean Glick, a

Senior Public Defender, was appointed to represent Rhodes in a petition for post-conviction relief, based on ineffective assistance of counsel. During Rhodes' underlying trial, respondent had "filed several improper pretrial motions," including a Motion to Dismiss the Charges and a Motion for Failure to Conduct a Speedy Trial. In those motions, respondent misrepresented the reasons that the Commonwealth had dismissed the charges in 2001, claiming that the victim had been unable to "adequately remember the events," and asserting that the ten-year passage of time could not be excused because the victim "suddenly" recalled what had happened.

Six days before trial was to commence, in July 2011, respondent filed three late motions: a Motion for Failure to Conduct a Speedy Trial, a Motion for Pre-trial Conference, and a Motion to Compel Discovery. These motions should have been filed within thirty days of Rhodes' arraignment. The Motion to Compel Discovery sought the personnel file of State Trooper Gerow, who had interviewed witnesses in 2001. Respondent asserted that, although he had been notified that the prosecutor would not call those witnesses to testify at trial, the Commonwealth was required to provide him with their addresses. Moreover,

respondent had made no independent effort to locate those witnesses. The trial court denied all three belated motions.

During the trial, respondent accused District Attorney Daniel Dye, trial counsel in the Rhodes case, of prosecutorial misconduct, claiming that the Commonwealth had failed to turn over evidence, and arguing that Dye should be required to give respondent his file "on the spot." That oral discovery motion was also denied.

The jury found Rhodes guilty. Given the nature of the convictions, the court scheduled sentencing ninety days later, so that Rhodes could undergo mandatory evaluation by the Sexual Offenders Assessment Board. During this ninety-day window, respondent should have retained a defense expert to evaluate Rhodes and provide testimony at Rhodes' simultaneous Megan's Law hearing and sentencing. Two days before the scheduled sentencing, respondent filed an untimely Motion for Funds to Pay a Psychological Expert to assist the defense. In addition, he improperly "served" the motion on the Commonwealth at midnight on the day before the hearing on the motion.

On Rhodes' scheduled sentencing date, the trial court "chastised" respondent "for not bothering to [review] the Rhodes case until the week before sentencing," and for filing a "flurry

of motions" that cited outdated cases in respect of the Megan's Law component of Rhodes's case. As to the Motion for Funds, the court questioned Rhodes and discovered that he owned a number of assets, and had paid $15,000 to respondent for his defense; accordingly, the court denied respondent's "frivolous" and "meritless" motion. Respondent had undertaken no investigation of Rhodes's financial status prior to filing the Motion for Funds, and had relied solely on Rhodes's representations to him.

Rhodes was sentenced to twenty-one to forty years' incarceration. After sentencing, respondent filed a Notice of Appeal and Statement in behalf of Rhodes, but failed to timely submit the required record and brief in support of the appeal. Consequently, Rhodes' appeal was dismissed. Respondent waited ten days before requesting reconsideration and permission to submit the record and a brief. In October 2012, Rhodes' sentence was affirmed in a written decision by the Superior Court, wherein the court stated that respondent had provided incorrect facts, misunderstood the application of speedy trial law to Rhodes's case, and misunderstood, in his appellate submissions, the nature of exculpatory material in accordance with Brady v. Maryland, 373 U.S. 83 (1963).

On October 24, 2013, Rhodes filed a pro se petition for post-conviction relief, asserting indigence, and requested the appointment of counsel to assist him. After Rhodes' request was granted, Senior Public Defender MaryJean Glick began to represent him. In October and November 2013, Glick sent three letters to respondent, requesting a copy of Rhodes's file and a refund of any surplus legal fees owed to him. Respondent failed to reply to Glick's letters. Glick also attempted to telephone respondent in December 2013, but he did not answer, and his voice mailbox was full.

On December 6, 2013, Glick filed a Motion to Compel respondent to produce Rhodes's file; on December 9, 2013, the trial court ordered respondent to provide his file to Glick within ten days. Respondent did not produce Rhodes's file until March 3, 2014, almost three months later. By that time, the Pennsylvania Office of Disciplinary Counsel (PODC) had sent respondent a "DB-7 letter," which warns an attorney of a possible violation of the RPCs, and requires an explanation of the possible violations alleged. Respondent provided no explanation for his failure to respond to Glick or for his delay in complying with the court's order.

After receiving respondent's Rhodes file, Glick described it as a "jumbled mess." Respondent had combined Rhodes's Lancaster County case with his Mifflin County case (addressed below); Glick and her staff had to separate and organize the case files in order to ascertain the contents of respondent's Lancaster County file for Rhodes. Because respondent's file contained no trial transcripts, it became clear that he had filed Rhodes's appeal without the court record. Glick promptly obtained the trial transcripts for her representation of Rhodes.

Glick determined that Rhodes's speedy trial rights had not been violated; that no Brady violation had occurred; and that respondent's claim that the prosecution had intimidated a witness was not only meritless, but also that, even if it had been true, he had waived the right to assert such a claim by failing to preserve the issue for appeal.

Mifflin County Case

At the same time as the Lancaster County case proceeded, respondent also defended Rhodes against allegations of aggravated indecent assault and related charges upon a minor female, filed by the Mifflin County District Attorney. The respective trial courts for Rhodes's matters coordinated their

dockets, determining that the Lancaster County case would be tried to conclusion prior to commencement of the Mifflin County trial. During the pendency of both cases, respondent struggled to coordinate his required court appearances on behalf of Rhodes, often requesting last-minute continuances or permission to appear by telephone in one county, due to a required appearance in the other county.

Jury selection in the Mifflin County case occurred on July 2, 2012, and trial was scheduled to commence on July 17, 2012, at 8:30 a.m. On that date, respondent failed to appear for the trial. Instead, he contacted the District Attorney's office, claiming that he had a flat tire near the Harrisburg exchange of the Pennsylvania Turnpike,[1] that he needed to rent a car, and that he would arrive in court in approximately two hours. The trial was temporarily recessed to accommodate respondent. At 11:19 a.m., when respondent had still not arrived, the trial court excused the jury and informed them that the trial would be rescheduled at the discretion of the Commonwealth.

That day, respondent made no attempt to contact the trial court again until 12:45 p.m., and arrived at the courthouse at

[1] Lewistown is the Mifflin County seat; Harrisburg is located approximately 58 miles southeast of Lewistown.

2:00 p.m., expecting to begin the trial. The judge met with respondent, and asked the court administrator to join the meeting and take notes. The court informed respondent that the jury had been dismissed following his failure to appear, and recommended that, when the trial was rescheduled, respondent make arrangements to stay in the local area, since he lived approximately three hours away. After the trial was postponed, the Lewistown Sentinel published an article entitled, "Lawyer Fails to Show Up at Trial. Judge: Basner earning a reputation in area for 'this sort of behavior.'" During the ethics hearing in Pennsylvania, respondent stated that "he still cannot understand why the [trial court] had a problem with him being late for trial."

Following respondent's failure to appear for trial, the Commonwealth was required to prompt respondent to file a Continuance Motion in order to have the trial relisted. Jury selection was then scheduled to occur on September 4, 2012. A week prior to jury selection, the trial court directed the court administrator to send an e-mail to respondent, cautioning him to arrive promptly for jury selection. On September 4, 2012, Rhodes entered a guilty plea to multiple sex offenses. Despite knowing that Rhodes would once again undergo a mandatory evaluation by

the Sexual Offenders Assessment Board prior to sentencing, respondent failed to inform the court that he no longer represented Rhodes. Rather, respondent so notified the court when he filed a last-minute Motion for Continuance, finally disclosing that he no longer represented Rhodes.

The Robert Miller Matter

Angela Diliso sought an experienced criminal law attorney to represent her fiancé, Robert Miller, in his violation of parole matter. The couple did not understand why Miller's maximum sentence date had been extended from May 19, 2012 to June 25, 2013. In July 2011, during the only telephone conversation that he had with respondent, Miller explained his understanding of his parole date, and informed respondent that he had filed a pro se appeal, due to the emergent nature of the issue. Miller also told him that Diliso lived in Ohio and would mail Miller's paperwork to him. Respondent misled Miller, claiming that he could amend Miller's pro se appeal, and that the parole board had made a calculation error. Respondent further told Miller that he was "very confident" that he could rectify Miller's parole date.

On August 3, 2011, respondent provided a fee agreement to Robert Eggleston, Miller's friend, who gave respondent a $1,000 check toward Miller's representation. Respondent cashed that check. Between August 4, 2011 and January 24, 2012, Diliso repeatedly wrote to respondent about Miller's case, and provided documents that respondent had requested in connection with Miller's matter. Diliso also notified respondent that, on August 3, 2011, Miller's pro se petition had been denied, as untimely, and requested a copy of the petition respondent had filed on Miller's behalf. Respondent repeatedly failed to reply to Diliso's letters, texts, and e-mails. At some point, Eggleston went to respondent's Newport, Pennsylvania office "in an attempt to 'catch' him."

Respondent's deadline to file an appeal from the denial of Miller's pro se petition was September 2, 2011. He did not timely file an appeal. Instead, on September 6, 2011, he filed a new Petition for Review. The Commonwealth Court rejected respondent's filing because he had missed the September 2, 2011 deadline.

In January 2012, Diliso and Miller discovered on their own that respondent had not filed an appeal with the Parole Board, and that the Commonwealth Court had rejected respondent's tardy

Petition for Review. The couple asked respondent to refund his legal fee. As it turned out, respondent had not even attempted to file the Petition for Review until the September 2, 2011 deadline; on that date, he asked a part-time employee to use a pre-signed verification to file the petition, but the employee was unavailable. Respondent had considered no other method to timely file Miller's petition. Thus, it was filed four days late and rejected.

Ultimately, Miller reported respondent's conduct to the Perry County Fee Dispute Committee and the Pennsylvania Lawyers Fund for Client Security (PCPF), and hired another attorney to represent him. When Miller finally received, from the PCPF, a copy of the petition that respondent had filed on his behalf, he discovered that it was "sloppily done." Miller's new attorney then refunded his fee to Miller, explaining that the deadline to appeal the maximum sentence had lapsed, even before Miller had retained respondent. Respondent neither informed Miller that any appeal was time-barred, nor that the petition respondent filed on September 6, 2011 had been rejected. Respondent did not refund Miller's $1,000 fee until January 2013.

The Donald A. Lynch, Sr., Matter

On September 10, 2012, in Mifflin County, Pennsylvania, Donald A. Lynch, Sr., was arrested and charged with burglary, criminal trespass, criminal mischief, and public drunkenness. Lynch was on parole supervision at the time of his arrest for these charges. Mifflin County District Attorney David Molek prosecuted Lynch. While represented by a public defender, Lynch waived his preliminary hearing time limits, the Commonwealth dismissed the burglary charge against him, and a preliminary hearing was scheduled for October 19, 2012. Lynch's parole officer informed him that he faced, at minimum, a mandatory six-month sentence for violating his parole.

Lynch contacted respondent after receiving a solicitation letter from him, dated September 11, 2012, offering a $100 consultation. After the consultation, Lynch decided to retain respondent, and entered into an oral fee agreement requiring the payment of an additional $700. Lynch believed this amount to comprise the entire fee for respondent's representation in the case. In exchange for the fee, respondent promised to take photographs of the alleged crime scene and to negotiate a plea deal with the District Attorney by the preliminary hearing date.

Respondent did not inform Lynch that the preliminary hearing judge did not have the authority to accept a guilty plea.

On October 11, 2012, respondent wrote to District Attorney Molek, informing him that he represented Lynch, demanding discovery, and requesting that the preliminary hearing be postponed. The hearing was rescheduled for October 25, 2012. Lynch expected that, at the preliminary hearing, he would enter into a negotiated plea deal, pay restitution, and begin his six-month violation of parole sentence.

On the date of the rescheduled preliminary hearing, respondent arrived more than one hour late, prompting the court to discuss the topic of professionalism with him. Before his arrival, respondent had not discussed any plea agreement with District Attorney Molek. Although Molek extended a plea offer that date, respondent and Lynch neither accepted nor rejected it. Molek shared with respondent pictures taken by the police, but respondent did not show any reciprocal discovery to Molek.

The preliminary hearing judge then scheduled Lynch's matter for formal arraignment on November 20, 2012. At no time, on that day or thereafter, did respondent inform the court or Molek that he would no longer be representing Lynch. Rather, according to Lynch, respondent stated that he would see Lynch on November 20,

2012. Lynch "was very upset with [r]espondent, felt taken advantage of, and felt that [r]espondent's lateness reflected poorly on his case." Respondent did not return Lynch's telephone calls, and had no communication with him after October 25, 2012.

On November 20, 2012, respondent failed to appear for Lynch's formal arraignment. The court attempted to contact respondent, "and eventually learned that [he no longer] represented Mr. Lynch." The court was "not surprised" that respondent failed to appear, "based on [his] reputation in Mifflin County and the surrounding counties." Lynch then hired a new attorney, who negotiated a plea agreement with Molek. During the pendency of his matter, Lynch was unable to post bail and, thus, was incarcerated from September 10, 2012 until February 19, 2013, the date he was ultimately sentenced in his case. District Attorney Molek "felt the situation was unfair," because Lynch "would have been released from the county jail on November 20, 2012, had [r]espondent appeared for the formal arraignment."

The Rose Witmer Matter

From June 2011 through January 2012, respondent represented Rose Witmer in connection with her child custody case and custody and support contempt hearings. Witmer had not graduated

from high school, had difficulty reading, was unemployed and on public assistance, and lived with her mother, Carol Ann Gearheart. She relied heavily on Gearhart to interact with respondent. Witmer and a family member described a late-night meeting with respondent at his Newport office, during which they noticed that the office had only a table and two chairs; "there were no files, file cabinets, or law books." Respondent led Witmer to believe that her custody matter was an "open and shut case."

On June 7, 2011, Gearhart paid respondent a $1,000 retainer to file a Petition to Modify Custody and associated documents in connection with Witmer's children, who lived with their father. Respondent negotiated the $1,000 check on June 8, 2011, before doing any work on Witmer's matter. On June 15, 2011, respondent sent a letter to Witmer, memorializing the representation, setting his hourly rate at $175, and stating that he would file the Petition to Modify Custody and a Petition for a Home Study and Mental Health Evaluation for the children's father "soon." Respondent produced "no other writing for the custody matter and no written fee agreement for the support matter."

On July 19, 2011, respondent requested an additional $1,000 from Gearhart for the preparation of the Petition for Mental

Health Evaluation. On July 25, 2011, he negotiated Gearhart's second check. Despite an exchange of e-mails with both Witmer and Gearhart, respondent could not explain what service he had performed in the custody matter.

As of December 26, 2011, respondent had not filed the Petition for Mental Health Evaluation. On that date, respondent sent Witmer an e-mail, stating that he was ill, and requesting that they speak the next day. Later that date, at about 7:00 p.m., respondent informed Witmer and Gearhart, for the first time, that Witmer was scheduled for a contempt hearing the next day. Given respondent's late notice to her, Witmer did not attend the hearing. Respondent had previously received notice of the contempt hearing directly from the court. Moreover, three days prior to informing his client of the scheduled hearing, he had requested a continuance from opposing counsel. On the date of the hearing, respondent faxed a letter to opposing counsel, claiming that he was ill and could not attend court. Because respondent had not filed a motion for continuance, as required, the contempt hearing proceeded without respondent or Witmer.

Respondent had promised Witmer that he would meet her at the courthouse on January 18, 2012, for a second contempt hearing. After Witmer arrived and waited for respondent, court

personnel informed her that respondent had sent a letter to the court, claiming he had the "stomach flu," and could not appear. Once again, respondent had not filed the required motion for continuance. Consequently, the court held the contempt hearing, and Witmer argued her case pro se.

In court, Witmer complained that "she was very upset" with respondent; that he had not informed her of, or provided a copy of, a stipulation that he had entered into on her behalf, whereby she was required to pay $50 per month toward legal fees and sanctions; that she had not learned of the stipulation until opposing counsel had mentioned it; and that she was unaware that respondent had previously sought a continuance of that date's contempt hearing before claiming illness. That same date, after appearing pro se at the hearing, Witmer terminated respondent's services and requested an accounting of all work performed and a refund of legal fees.

On March 15, 2012, almost two months after Witmer terminated the representation, respondent "misled the court" when he filed a Petition for Mental Health Evaluation on her behalf. He filed the petition eight months after being paid $2,000 to perform the work. The next day, the court denied the petition, without prejudice, because respondent had failed to

use the "correct procedure"; specifically, respondent had failed to contemporaneously file a Petition to Modify Custody and a Mental Health Petition. During the ethics hearing, respondent recalled that Witmer was upset with him on January 18, 2012, but did "not recall being terminated." He never refunded any portion of the legal fee paid in Witmer's behalf.

The Lisa Boreman Matter

Lisa Boreman, who was legally blind and could not hear well, retained respondent to represent her in a divorce action, including a request for alimony. When she retained respondent via telephone, Boreman informed him that she had difficulty seeing and hearing, provided her current address, and answered his questions. Respondent agreed to file Boreman's divorce action upon receipt of half of his $750 fee. Boreman subsequently met respondent at the courthouse and gave him a signed blank check; respondent promised to send divorce papers to her "in a few days."

Respondent failed to send the divorce papers for months, despite having received telephone calls from Boreman and her parents requesting them. On one occasion, respondent promised

Boreman's father that he would call Boreman the same day. Although Boreman stayed home all day, he never called her.

Eventually, Boreman contacted the Perry County Fee Dispute Committee and the Disciplinary Board regarding respondent's conduct. On the date of the fee dispute hearing, respondent informed the committee that he would not be attending, claiming that he had mailed a refund to Boreman. Boreman had traveled to the location of the fee hearing using a transportation service for the blind; her parents had made a donation to the service to secure her transportation.

On December 19, 2011, respondent sent a letter to Boreman, blaming her for the delay in filing for the divorce, claiming that she had neither responded to a prior letter nor paid a $160 filing fee. Respondent also sent that letter to the PODC. In a January 20, 2012 letter, the PODC informed respondent that Boreman had not received the December 19, 2011 letter because he had sent it to the wrong address. The PODC provided respondent with Boreman's correct address.

On January 18 and 19, 2012, respondent provided a draft divorce complaint and incomplete Petition for Alimony to Boreman, both containing blanks for her to complete; "respondent never thought to telephone [Boreman], but instead sent fill-in-

the-blank documents to a legally blind woman." Boreman could have provided all information needed to complete the documents over the telephone.

On January 20, 2012, the PODC again wrote respondent, informing him that Boreman no longer wanted him to represent her, and that the PODC required a full refund and accounting of Boreman's matter, by January 31, 2012. On March 20, 2012, respondent sent Boreman a $750 check, after he deposited $750 in cash into his attorney trust account. Respondent sent the check with a letter that "falsely [stated] that she did not provide the filing fee and he had done 'substantial work' on her file." During the ethics hearing, respondent blamed Boreman for the delay, claiming that she had not given him her correct address; failed to cross out her old address on the retainer check; and failed to inform respondent that she was blind.

The Adam Hockenbroch Matter

On or about May 3, 2010, Adam Hockenbroch retained respondent to represent him in an uncontested divorce. During their initial meeting, in respondent's Newport office, Hockenbroch paid $50 toward respondent's fee. Respondent memorialized the payment on a business card. On November 15,

2010, Hockenbroch entered into an oral agreement with respondent for his legal services for the divorce, and paid him $800, which payment respondent memorialized on the Notice to Defend cover sheet.

On November 19, 2010, respondent filed a one-count divorce complaint on behalf of Hockenbroch; served Hockenbroch's spouse with the complaint on January 12, 2011; and filed an affidavit of service on January 19, 2011. On numerous subsequent dates, Hockenbroch communicated with respondent and requested the final divorce papers. On May 8, 2012, respondent asked Hockenbroch to confirm his e-mail address for the final papers; despite Hockenbroch's reply, respondent never sent his client the final papers.

On December 9, 2012, respondent asked Hockenbroch if he wished to move forward with the divorce and whether custody was at issue. Respondent also informed Hockenbroch that he could not "locate [his] file because his secretary had quit." From May 2010 through January 4, 2013, when Hockenbroch finally terminated the representation, "[r]espondent routinely ignored text messages, voicemail messages, and emails from Mr. Hockenbroch asking for status updates, copies of documents, and requests to finalize the uncontested divorce." In the e-mail

terminating the representation, Hockenbroch requested a full refund by January 11, 2013. Respondent neither replied to that e-mail nor refunded his fee.

Ultimately, Hockenbroch retained a new attorney, at a cost of $295. On January 22, 2013, six days after the "final filing," a divorce decree was issued. Without further explanation, in March and June of 2013, respondent issued refunds to Hockenbroch totaling $390. Respondent never submitted a response to the PODC's DB-7 letter warning him of a possible violation of the RPCs and requiring him to submit an explanation of the possible violations alleged.

The Robert Warner Matter

On May 9, 2011, Robert Warner retained respondent, on a contingent fee basis, to pursue claims of wrongful termination and internet defamation. Respondent communicated with Warner's former employer, Penn Greenies, LLC, throughout 2011. He kept Warner informed about the ongoing dialogue, until April 2012, when he became non-responsive toward Warner. Warner "resorted" to calling respondent and, on the one occasion he was able to speak with respondent, was informed that his settlement demand was "too high."

Warner filed a disciplinary complaint against respondent, but believed that respondent was still actively working on his matter. However, "[r]espondent had stopped working on [Warner's] matter even before [receiving] the DB-7 because he was 'too busy' with other cases." Warner was under the impression, based on the express language of his fee agreement with respondent, that the attorney-client relationship could be terminated only in writing. Respondent did not terminate the relationship with Warner in writing until June 27, 2013. He never responded to the DB-7, despite requesting, and receiving, an extension to do so.

The Barbara Seiders Matter

On May 10, 2010, Barbara and John Seiders retained respondent to prepare their wills. Respondent verbally quoted a fee of $275 for the preparation of both wills plus durable powers of attorney. That same date, the Seiderses paid respondent via a $275 check, which he deposited into his business account. He told them their documents would be ready in one week.

Despite his knowledge that John Seiders had Stage 4 liver cancer and that his life expectancy was uncertain, respondent did not prepare the documents in 2010. Although the Seiderses

called him many times, he never responded to their communications. Consequently, in January 2011, they contacted the PODC and filed a disciplinary complaint. On January 13, 2011, after learning of the complaint, respondent asked the Seiderses to make an appointment, which they did. They expected to execute their documents when they arrived at respondent's office; instead, because respondent did not have the information he had gathered at their initial consultation, they had to begin the process anew.

On February 9, 2011, the Seiderses went to respondent's office to execute the documents before a notary public. John Seiders died in November of 2011. Despite Barbara Seiders' requests that respondent provide her with her husband's original will, respondent failed to do so. On March 15, 2012, he finally provided the estate attorney with the original will, after receiving repeated oral and written requests from that attorney's law firm.

Additional Misconduct by Respondent

On October 13, 2010, two judges from Pennsylvania's 41st Judicial District (comprising Perry and Juniata Counties) held a contempt hearing in two of respondent's matters. The hearing was

intended to address respondent's lack of professionalism and "overall poor practice," dating back to 2008. Specifically, the courts addressed respondent's propensity for failing to appear for scheduled court hearings and his numerous improper requests for last-minute continuances in the District. Respondent routinely requested continuances without discussing those requests with his own clients or opposing counsel. "Respondent did not understand that he could not simply fail to appear for court without a continuance being granted merely because he had a scheduling conflict." On multiple occasions, respondent failed to appear for jury selection; in one case, the court appointed new defense counsel for respondent's client, stating that "'[r]espondent had fled the Commonwealth' and delayed jury selection for months."

In 2014, President Judge Kathy Morrow, whose docket carried at least 100 of respondent's matters, was concerned about:

> Respondent's skills, lack of understanding of the rules and the law, inability to understand the impact his actions had upon his clients, his negative impact on the legal system, the negative media attention, his questionable veracity about not receiving notices from the court . . . his disregard of court procedures, and his misconduct in 2014.
>
> [DBR36.]

Despite "sanctions, bench warrants, and Rules to Show Cause" issued by District Courts, respondent's conduct did not improve. Due to extreme difficulty communicating with him, "Court Administrators in Central Pennsylvania [had] resorted to exchanging Respondent's contact information" in order to attempt to maintain communication with him. As to the ethics hearing underlying this matter, respondent was "not prepared," and was late for the November 19, 2014 hearing date.

The Supreme Court of Pennsylvania described respondent as "cavalier" and "indifferent" as to the disciplinary proceedings, noting that he "showed no remorse for the harm he brought upon his clients" and "failed to offer adequate explanation for his misconduct." In his answer to the Petition for Discipline filed by the PODC, respondent "admitted some factual allegations, but no rule violations." Richard Silverstein, respondent's therapist, testified that he had been treating respondent for depression since March 2014, but offered "no opinion about [r]espondent's depression causing or contributing to [his] misconduct."

The Supreme Court of Pennsylvania determined that respondent was guilty of violating the equivalents of the New Jersey RPCs cited above. The Court found that respondent's

violations "depict a pattern of misconduct beginning in March 2010 and continuing through 2014 . . . with multiple instances to sustain" each violation. The Court described respondent's misconduct as "an extreme example of client neglect and incompetence by an attorney . . . [including] shoddy work product, lack of preparation and lack of professionalism."

The Supreme Court of Pennsylvania found no mitigating factors and cited the following aggravating factors:

> The sheer number of charges and victims, Respondent's failure to take corrective action to comply with the Rules, his failure to refund fees to his client, Ms. Witmer, his failure to appreciate his conduct and show remorse, and his failure to consider the impact of his conduct upon his victims.
>
> [DBR45.]

The Supreme Court of Pennsylvania agreed with the recommendation of the PODC and imposed a five-year suspension on respondent, who had requested the imposition of a five-year period of probation.

In his brief to us, respondent's sole focus was his request for substantially different discipline than that imposed by Pennsylvania. In fact, the only two disciplinary case law citations included in his brief were in support of that request. Respondent made no effort to explain his misconduct or to

apologize for its harmful effects. Rather, he simply requested probation as the form of discipline to be imposed.

* * *

Following a review of the full 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 we rest for purposes of disciplinary proceedings. Therefore, we adopt the Supreme Court of Pennsylvania's disciplinary findings and determine that respondent's conduct violated the following New Jersey rules: RPC 1.1 (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with a client); RPC 1.4(c) (failure to explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); RPC 1.5(b) (failure to set forth in writing the basis or rate of a fee); RPC 1.15(d) (failure to comply with recordkeeping rules); RPC 1.16(a)(1) (failure to withdraw when the representation will result in a violation of the RPCs); RPC 1.16(d) (upon termination of the representation, failure to take steps reasonably practicable to protect a client's interests);

RPC 3.1 (asserting an issue with no basis in law or fact); RPC 3.2 (failure to expedite litigation); RPC 3.3(a)(1) (false statement of material fact or law to a tribunal); RPC 8.1(b) (failure to cooperate with disciplinary authorities); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

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

> 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; or
>
> (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). With respect to subparagraph (E), however, a review of New Jersey case law reveals that attorneys guilty of misconduct similar to, or even more serious than, that committed by respondent have received terms of suspension shorter than five years.

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

Respondent's misconduct was both serious and pervasive. Respondent's representation of Psoras was wholly incompetent. He failed to familiarize himself with the applicable court rules, to interview the Commonwealth's key witness or the witnesses provided by Psoras, to provide notice of an alibi defense, to properly subpoena witnesses and evidence, and to retain a forensic expert to assist the defense. He presented evidence at

the trial that was severely prejudicial to his client, prompting the court to stop him in order to avoid a mistrial. Such blatant failures to adequately represent Psoras violated both RPC 1.1(a) and RPC 1.3. Moreover, his failure to present the Commonwealth's plea offer to Psoras, which resulted in severe harm to Psoras (more than one year of additional incarceration), violated RPC 1.4(c). Finally, his conduct during the trial, including his late arrivals, failure to negotiate the stipulation of facts as directed by the court, and attempts to introduce the alibi evidence, despite the exclusion determination, violated RPC 8.4(d).

In the Rhodes matters, respondent filed multiple improper and late motions, made no effort to locate potential defense witnesses, and failed to retain a defense expert for sentencing. As in the Psoras matter, respondent's representation of Rhodes was totally inept, a violation of RPC 1.1(a), and lacked diligence, a violation of RPC 1.3. When Senior Public Defender Glick assumed Rhodes' representation, respondent failed, without explanation, to provide his former client's file to her, a violation of RPC 1.16(d). He filed a Motion for Funds without any attempt to verify his client's financial circumstances, a violation of RPC 3.1. Then, during the Pennsylvania disciplinary

proceedings, respondent provided no explanation for his failure to provide Rhodes' file to Glick or to comply with the court order, a violation of RPC 8.1(b). Respondent misrepresented, in pleadings, the reasons the Commonwealth had previously dismissed the charges, a violation of both RPC 3.3(a)(1) and RPC 8.4(c). Respondent's misconduct, thus, constituted multiple instances of conduct prejudicial to the administration of justice, in violation of RPC 8.4(d).

In the Miller matter, respondent failed to file the appeal by the deadline relating to Miller's pro se petition, instead filing his own late petition, which was denied, violations of both RPC 1.1(a) and RPC 1.3. Further, for a period of at least five months, respondent failed to reply to his client's numerous requests for information and documents, violations of both RPC 1.4(b) and RPC 1.4(c). Respondent cashed the check for his fee, without first depositing it in his business account, a violation of RPC 1.15(d). His agreement to represent Miller, despite the expiration of the deadline to appeal the maximum sentence date prior to Miller's retention of respondent, violated both RPC 1.16(a) and RPC 8.4(c). Finally, respondent's statement to Miller that he could rectify Miller's parole date also violated RPC 8.4(c).

Respondent's conduct in the Lynch matter was incompetent from the very inception of the representation. He failed to complete the most basic services he had agreed to provide, failing even to appear at his client's formal arraignment, without informing him, the Commonwealth, or the court that he would not be present. In addition, although respondent had promised Lynch that he would negotiate a plea deal with the Commonwealth by the preliminary hearing date, he did not inform Lynch that the preliminary hearing judge did not have the authority to accept a guilty plea. Respondent further ignored all of his client's attempts to communicate with him, prompting Lynch to retain new counsel. Ultimately, Lynch's new counsel was able to negotiate a plea in his behalf (apparently for time already served). According to the prosecutor, however, as a result of respondent's failure to attend the arraignment, Lynch spent nine additional months in jail. Finally, respondent failed to set forth in writing the basis or rate of his fee, despite never having before represented Lynch. Thus, respondent is guilty of violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b) and (c), RPC 1.5(b), RPC 3.2, and RPC 8.4(c) and (d).

Respondent's representation of Witmer, too, was wholly incompetent. Respondent repeatedly prejudiced Witmer's case,

both by failing to appear at required court appearances and failing to inform her of those required court appearances. Moreover, respondent failed to reply to Witmer's attempts to discuss her matters. Respondent's conduct in this respect violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b) and (c). He neither provided an accounting nor returned excess legal fees, in violation of RPC 1.16(d). In addition, two months after Witmer terminated the representation, respondent misled the court when he filed a Petition for Mental Health Evaluation on her behalf, a violation of RPC 3.3(a)(1) and RPC 8.4(c). Finally, respondent repeatedly failed to appear in court without having filed proper procedures, a violation of RPC 8.4(d).

In Boreman, respondent again displayed an utter lack of any understanding of his obligations. He undertook the representation of a legally blind woman with hearing difficulties, and then proceeded to do nothing to advance her cause, despite having been paid a fee and despite multiple calls from his client and her parents. Rather, when respondent was finally backed into a corner by Boreman's complaint to disciplinary and fee authorities, he blamed her for the delays in advancing her case, falsely stating that she had not paid the filing fees and had not responded to earlier letters.

Respondent, however, had been attempting to communicate with her at a wrong address, further evidence of his shoddiness. Moreover, respondent did not even attend the fee hearing that Boreman had traveled to at her parents' expense, instead claiming that he had already mailed her a fee refund and, later, misrepresenting to the PODC that he had performed a substantial amount of work on her case.

Respondent's complete neglect of Boreman's matter, along with his repeated failures to complete even the most basic tasks associated with the representation, violated both RPC 1.1(a) and RPC 1.3. His failure to communicate with Boreman violated RPC 1.4(b) and (c). His failure to set forth in writing the basis or rate of the fee violated RPC 1.5(b). His failure to reply to the PODC's requests violated RPC 8.1(b). Finally, his misrepresentation to the PODC (that he had completed substantial work on Boreman's matter) violated RPC 8.4(c).

In Hockenbroch, the client retained respondent to represent him in an uncontested divorce. Respondent did not memorialize their fee agreement. Although respondent filed and served a one-count divorce complaint, he never completed the matter. For more than two-and-a-half years, he "routinely ignored" all of Hockenbroch's attempts to communicate. In his e-mail terminating

the representation, Hockenbroch requested a full refund by January 11, 2013. Respondent neither replied to that e-mail nor refunded his fee.

Ultimately, Hockenbroch retained a new attorney and, within a matter of weeks, a divorce decree was issued. Without further explanation, respondent refunded about half of his fee to Hockenbroch. Respondent then failed to reply to a letter from the PODC, in respect of potential ethics violations.

Respondent's complete neglect of Hockenbroch's matter, culminating in his failure to obtain a divorce decree, the purpose for which he had been retained, violated both RPC 1.1(a) and RPC 1.3. Once the divorce action was instituted, his repeated failures to advance Hockenbroch's interests additionally violated RPC 3.2. His persistent failure to communicate with his client violated RPC 1.4(b) and (c), and his failure to set forth in writing the basis or rate of the fee violated RPC 1.5(b). Finally, respondent's failure to reply to Hockenbroch's demand for the return of the fee and the PODC's requests for information violated both RPC 1.16(d) and RPC 8.1(b).

In Warner, a wrongful termination and internet defamation case, respondent initially communicated with Warner's former

employer, and kept Warner informed about the ongoing dialogue. In April 2012, however, he became non-responsive toward his client.

Warner filed a disciplinary complaint against respondent, but believed that respondent was still actively working on his matter. To the contrary, however, respondent had ceased performing any services for Warner because he was "too busy" with other cases, and had failed to terminate the relationship with Warner in writing until June 27, 2013. Moreover, respondent never replied to the Pennsylvania disciplinary authorities, despite having received an extension to answer.

Respondent never made any attempt to advance Warner's interests, a violation of RPC 1.3, and completely ceased communicating with him, in violation of RPC 1.4(b) and (c). Finally, despite requesting an extension, respondent never answered the DB-7 letter served by the PODC, a violation of RPC 8.1(b).

In Seiders, respondent promised to prepare wills and durable powers of attorney within one week of his retention. Yet, despite his knowledge that John Seiders had Stage 4 liver cancer and that his life expectancy was uncertain, respondent failed to prepare the documents in 2010. Moreover, he failed to

return their calls. Consequently, in January 2011, they contacted the PODC and filed a disciplinary complaint. After learning of the complaint, respondent convinced the Seiderses to make an appointment. Instead of executing their documents when they arrived at respondent's office, as they expected, they were required to begin anew because respondent did not have the information he previously had gathered at their initial consultation.

After John Seiders died, respondent failed to comply with Barbara Seiders' requests that respondent provide her with her husband's original will. He finally provided the estate attorney with the original will, after receiving repeated oral and written requests from the law firm.

Respondent's lack of diligence in this matter violated RPC 1.3. Additionally, respondent's failures to communicate with his clients and to comply with counsel's requests violated RPC 1.4(b) and (c).

In addition to his misconduct in the above individual client matters, respondent had developed a reputation in Pennsylvania's 41st Judicial District for a lack of professionalism and "overall poor practice," such that two judges held contempt hearings to address his propensity for

failing to appear for scheduled court hearings and for requesting continuances without discussing those requests with his own clients or opposing counsel. "Respondent did not understand that he could not simply fail to appear for court without a continuance being granted merely because he had a scheduling conflict." On multiple occasions, respondent failed to appear for jury selection; in one case, the court appointed new defense counsel for respondent's client, stating that "'[r]espondent had fled the Commonwealth' and delayed jury selection for months." Even in the ethics hearing underlying this matter, respondent was "not prepared," and was late for the November 19, 2014 hearing date.

The Supreme Court of Pennsylvania described respondent as "cavalier" and "indifferent" to the disciplinary proceedings, observing that he "showed no remorse for the harm he brought upon his clients" and "failed to offer adequate explanation for his misconduct." That Court determined that respondent's violations "depict a pattern of misconduct beginning in March 2010 and continuing through 2014." The Court described respondent's misconduct as "an extreme example of client neglect and incompetence by an attorney . . . [including] shoddy work product, lack of preparation and lack of professionalism."

In summary, thus, respondent violated RPC 1.1(a) in eight matters; RPC 1.1(b) by engaging in a pattern of neglect; RPC 1.3 in ten matters; RPC 1.4(b) in seven matters; RPC 1.4(c) in eight matters; RPC 1.15(d) in one matter; RPC 1.16(a)(1) in one matter; RPC 1.16(d) in three matters; RPC 3.1 in two matters; RPC 3.2 in two matters; RPC 3.3(a)(1) in two matters; RPC 8.1(b) in four matters; RPC 8.4(c) in five matters; and RPC 8.4(d) in four matters. There is no basis in the record for a finding of a violation of RPC 1.15(b).

We now address the appropriate quantum of discipline for the above violations. When an attorney is guilty of a pattern of neglect, a reprimand ordinarily ensues. See, e.g., In re Weiss, 173 N.J. 323 (2002) (lack of diligence, gross neglect, and pattern of neglect); In re Balint, 170 N.J. 198 (2001) (in three matters, attorney engaged in lack of diligence, gross neglect, pattern of neglect, failure to communicate with clients, and failure to expedite litigation); and In re Bennett, 164 N.J. 340 (2000) (lack of diligence, failure to communicate in a number of cases handled on behalf of an insurance company, gross neglect, and pattern of neglect).

As described by the Disciplinary Board of the Supreme Court of Pennsylvania, respondent engaged in a long-term, egregious

course of conduct prejudicial to the administration of justice, in violation of RPC 8.4(d). Violations of RPC 8.4(d) come in a variety of forms, and the discipline imposed typically results in either a reprimand or a censure, depending on the presence of circumstances such as the existence of other violations, the attorney's ethics history, whether the matter proceeded as a default, the harm to others, and mitigating or aggravating factors. See, e.g., In re Gellene, 203 N.J. 443 (2010) (reprimand for attorney found guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal, for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney was also guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors included the attorney's financial problems, his battle with depression, and significant family problems; his ethics history included two private reprimands and an admonition); In re Geller, 177 N.J. 505 (2003) (reprimand for attorney who failed to comply with court orders (at times defiantly) and the disciplinary special master's direction not to contact a judge; the attorney also filed baseless motions

accusing judges of bias against him, failed to expedite litigation and to treat with courtesy judges, his adversary, the opposing party, an unrelated litigant, and a court-appointed custody evaluator, used means intended to delay, embarrass or burden third parties, made serious charges against two judges without any reasonable basis, made unprofessional and demeaning remarks toward the other party and opposing counsel, and made a discriminatory remark about a judge; in mitigation, the attorney's conduct occurred in the course of his own child custody case; no prior discipline); and In re Hartmann, 142 N.J. 587 (1995) (attorney reprimanded for intentionally and repeatedly ignoring four court orders to pay opposing counsel a fee, resulting in a warrant for the attorney's arrest; the attorney also displayed discourteous and abusive conduct toward a judge with intent to intimidate her; no prior discipline).

Censures were imposed in the following cases: In re D'Arienzo, 207 N.J. 31 (2011) (attorney failed to appear in municipal court for a scheduled criminal trial, and thereafter failed to appear at two orders to show cause stemming from his failure to appear at the trial; by scheduling more than one matter for the trial date, the attorney inconvenienced the court, the prosecutor, complaining witness, and two defendants;

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

Suspensions were imposed where attorneys either had significant ethics histories or were guilty of violating a number of ethics rules, or both. See, e.g., In re DeClemente, 201 N.J. 4 (2010) (three-month suspension for attorney who arranged three loans to a judge in connection with his own business, failed to disclose to opposing counsel his financial relationship with the judge and failed to ask the judge to recuse himself, made multiple misrepresentations to the client,

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

administration of justice, gross neglect, failure to abide by the client's decision concerning the objectives of the representation, failure to communicate with clients, excessive fee, false statement of material fact to a tribunal, and misrepresentations; no prior discipline).

In addition to violating RPC 8.4(d), respondent violated RPC 3.3(a)(1) both by his blatant misrepresentations and his alarming omissions during his practice within the 41st Judicial District in Pennsylvania. 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 Lawrence J. McGivney, DRB 01-060 (March 18, 2002) (admonition for attorney who improperly signed the name of his superior, an Assistant Prosecutor, to an affidavit in support of an emergent wiretap application moments before its review by the court, knowing that the court might be misled by his action; in mitigation, we considered that the superior had authorized the application, that the attorney was motivated by the pressure of the moment, and that he brought his impropriety to the court's attention one day after it occurred; no prior discipline); 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; no prior discipline); In re Lewis, 138 N.J. 33 (1994) (admonition for attorney who attempted to deceive a court by introducing into evidence a document falsely showing that a heating problem in an apartment of which the attorney was the owner/landlord had been corrected prior to the issuance of a summons; in mitigation, the court was not actually deceived because it discovered the impropriety before rendering a decision, and no one was harmed as a result of the attorney's actions; no prior discipline); 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 DWI charge had intentionally left the courtroom before the case was called, resulting in the dismissal of the charge); In re Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failure to disclose to a court his representation of a client in a prior lawsuit, when that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim; two

prior private reprimands); In re Shafir, 92 N.J. 138 (1983) (an assistant prosecutor who forged his supervisor's name on internal plea disposition forms and misrepresented information to another assistant prosecutor to consummate a plea agreement received a reprimand); In re Stuart, 192 N.J. 441 (2007) (three-month suspension for assistant district attorney in New York who, during the prosecution of a homicide case, misrepresented to the court that he did not know the whereabouts of a witness; in fact, the attorney had made contact with the witness four days earlier; compelling mitigation justified only a three-month suspension; no prior discipline); In re Hasbrouck, 186 N.J. 72 (2006) (attorney suspended for three months for, among other serious improprieties, failing to disclose to a judge his difficulties in following the judge's exact instructions about the deposit of a $600,000 check in an escrow account for the benefit of the parties to a matrimonial action; instead of opening an escrow account, the attorney placed the check under his desk blotter, where it remained for eight months; no prior discipline); In re Evans, 181 N.J. 334 (2004) (three-month suspension for attorney who, while general counsel for Holt Cargo Systems, a defendant in a lawsuit about spoilage brought by Ocean Spray Cranberries, knowingly withheld critical information from Ocean Spray and

from Holt Cargo's outside counsel with regard to a prior cover up and fabrication of records by Holt in order to avoid liability in the lawsuit; no prior discipline); In re Forrest, 158 N.J. 428 (1999) (attorney who failed to disclose the death of his client to the court, to his adversary, and to an arbitrator was suspended for six months; the attorney's motive was to obtain a personal injury settlement; prior private reprimand); In re Marshall, 165 N.J. 27 (2000) (one-year suspension for attorney who deceived his adversary and the court in a litigated matter by failing to reveal a material fact during litigation, serving false answers to interrogatories, and permitting his client to produce misleading documents to his adversary, while maintaining his silence; the attorney backdated a stock transfer document and put an incorrect date in his notarization of the transfer agreement, knowing that the timing of the transfer could have a material effect on the case; no prior discipline); 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; two prior private reprimands); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who was involved in an automobile accident and then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing; no prior discipline).

Moreover, the record exhibits that respondent wholly abandoned multiple clients, without explanation or remorse. The abandonment of a client is a serious offense that ordinarily merits either a term of suspension or disbarment. See, e.g., In re Nwaka, 178 N.J. 483 (2004) (three-month suspension on a motion for reciprocal discipline; the attorney was disbarred in New York for abandoning one client and failing to cooperate with New York ethics authorities by not filing an answer to the complaint and not complying with their requests for information about the disciplinary matter; prior three-month suspension); In re Jennings, 147 N.J. 276 (1997) (three-month suspension for attorney who abandoned one client and failed to cooperate with ethics authorities; no disciplinary history); In re Bowman, 175 N.J. 108 (2003) (six-month suspension for attorney who abandoned

two clients, made misrepresentations to disciplinary authorities, engaged in a pattern of neglect and other acts of misconduct in three client matters, including gross neglect, lack of diligence, failure to communicate with clients, failure to explain a matter to the extent reasonably necessary to permit the client to make an informed decision about the representation, failure to provide a written fee agreement, failure to protect a client's interests upon termination of representation, and misrepresentation of the status of a matter to a client; prior private reprimand); In re Misci, 206 N.J. 11 (2011) (one-year suspension in a default for an attorney who showed a callous indifference to the interests of his client; without any warning, the client was left without his documents and without counsel; the attorney's disciplinary history included a reprimand and a three-month suspension); and In re Mintz, 126 N.J. 484 (1992) (two-year suspension for attorney who abandoned four clients and was found guilty of a pattern of neglect, failure to maintain a bona fide office, and failure to cooperate with ethics authorities).

More severe discipline has been imposed in other cases involving more extensive abandonment, accompanied by a disregard for the Court and the disciplinary process. For example, the

Court disbarred an attorney guilty of gross neglect, pattern of neglect, lack of diligence, lack of communication, and failure to cooperate with disciplinary authorities. In re Kantor, 180 N.J. 226 (2004).

Respondent's conduct is inexcusable, and deserving of a lengthy suspension. His misconduct is very similar to, but much more prolific than, that of the attorney in Bentivegna, who was suspended for two years: respondent consistently made misrepresentations to his adversaries, to courts, and to his own clients; negotiated on behalf of his clients without authority; filed court documents without authority to do – including after having been fired - and without notifying his clients; made misrepresentations in pleadings filed with the court; and persistently violated court rules. Additionally, as in Bentivegna, respondent is guilty of conduct prejudicial to the administration of justice, gross neglect, a pattern of neglect, and failure to communicate with clients.

Moreover, like the attorney in Mintz, who was suspended for two years, respondent abandoned clients, engaged in a pattern of neglect, and consistently failed to cooperate with ethics authorities. The only mitigation to consider is respondent's lack

of prior discipline.[2] In aggravation, respondent's misconduct was so widespread and persistent that it could not be curbed, despite the extensive efforts of the judges of Pennsylvania's 41st Judicial District. Counseling, public reprimands, bench warrants, and orders to show cause were not enough to cause respondent to conform his conduct. Respondent's behavior caused significant harm – both financial and emotional – to his clients. He also displayed an extreme lack of sensitivity to his clients. He did not recognize that two of them – Psoras and Lynch – served months in jail because he failed to properly represent them. He blamed his blind client for the failure to advance her case based on a letter he had sent to her at an outdated address. He neglected preparing a will for a client suffering from terminal cancer. Alarmingly, respondent continued to show no remorse for his conduct, appearing, in his submission to us, to blame it all on his diagnosis of depression. At oral argument, respondent finally took responsibility and expressed remorse for his misconduct – a self-realization, in our view, that was far too belated and not fully appreciated.

On balance, we determine that a two-year prospective suspension is the appropriate quantum of discipline in this matter.

[2] Respondent maintained that he suffered from depression, which was diagnosed in 2014. He offered no medical documentation relating his misconduct to his depression.

Given respondent's singular reliance on his mental health diagnosis to explain his misconduct, and the lack of objective information regarding his diagnosis contained in the record, we recommend, as additional protective measures, two conditions on respondent's return to the practice of law in New Jersey: (1) prior to his reinstatement, he must provide proof of fitness to practice law; and (2) on reinstatement, he must provide quarterly reports documenting his continued psychological counseling.

Member Rivera voted to impose a one-year suspension with the same conditions. Vice-Chair Baugh voted to impose a three-year suspension with the same conditions. Members Gallipoli and Hoberman did not participate.

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

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Christopher J. Basner
Docket No. DRB 16-341

Argued: February 16, 2017

Decided: May 26, 2017

Disposition: Two-year prospective suspension

Members	Two-year Prospective Suspension	One-year Suspension	Three-year Suspension	Did not participate
Frost	X			
Baugh			X	
Boyer	X			
Clark	X			
Gallipoli				X
Hoberman				X
Rivera		X		
Singer	X			
Zmirich	X			
Total:	5	1	1	2

Ellen A. Brodsky
Chief Counsel