

RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to inform a prospective client how, when, and where the client may communicate with the attorney), RPC 1.4(b) (failure to keep the client reasonably informed about the status of the matter and to comply with reasonable requests for information), RPC 1.5(a) (unreasonable fee), RPC 1.16(d) (failure to protect the client's interests upon termination of the representation), RPC 8.1(b) (failure to cooperate with an ethics investigation), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). In DRB 18-112, a one-count complaint charged respondent with violations of RPC 8.1(b) and RPC 8.4(d) (conduct prejudicial to the administration of justice), based on his failure to comply with the requirements of R. 1:20-20, governing suspended attorneys. In DRB 18-127, an eleven-count complaint charged respondent with violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.5(a), RPC 1.16(d), RPC 8.1(b), RPC 8.4(c), and RPC 8.4(d).

We determine to impose a two-year suspension for the totality of respondent's conduct in these three matters.

Respondent was admitted to the New Jersey bar in 1991. On September 6, 2006, he received a reprimand for engaging in a conflict of interest by representing both the driver and passenger in filing claims against each other,

and for failing to set forth in writing the rate or basis of his legal fee in nine personal injury matters. In re Byrne, 188 N.J. 249 (2006).

On December 2, 2016, respondent was temporarily suspended for failure to comply with a fee arbitration determination. In re Byrne, 227 N.J. 189 (2016). He remains suspended to date.

On February 1, 2018, we transmitted to the Supreme Court our decision in a default matter in which we determined to impose a three-month suspension for misconduct in a bankruptcy matter. Specifically, we found respondent guilty of gross neglect, lack of diligence, failure to communicate with the client, failure to return an unearned retainer and the client file upon termination of the representation, failure to cooperate with ethics authorities, and conduct involving dishonesty, fraud, deceit or misrepresentation. In the Matter of James Peter Byrne, DRB 17-286 (February 1, 2018). That matter is pending with the Court, with oral argument scheduled for September 26, 2018.

I. DRB 18-020 – District Docket No. VI-2017-0007E
(The Joseph Matter)

Service of Process

Service of process was proper in this matter. On November 13, 2017, the DEC sent a copy of the complaint by certified and regular mail to respondent's home address in Washington State. The certified mail green card was returned

marked "Return to Sender, Not Deliverable As Addressed, Unable to Forward."
The regular mail was not returned.

On December 19, 2017, the DEC sent a second letter to respondent, to the same home address, also by regular and certified mail, informing him that if he did not answer the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted; that, pursuant to R. 1:20-4(f) and R. 1:20-6(c)(1), the record in the matter would be certified directly to us for imposition of sanction; and that the complaint would be amended to include a charge of a violation of RPC 8.1(b).

The certified mail envelope was returned marked "Return to Sender, Unclaimed, Unable to Forward," with the handwritten notation "Not at Address." The regular mail was not returned.

The time within which respondent may answer the complaint has expired. As of January 16, 2018, the date of the certification of the record, respondent had not filed an answer.

Allegations of the Complaint

In 2013, Walter John Joseph retained respondent to file a bankruptcy petition. Joseph signed a written fee agreement and paid respondent's \$1,500 retainer.

Joseph met with respondent several times during the representation to submit documents in support of his bankruptcy. However, in the summer of 2016, respondent ceased communicating with Joseph, despite his client's numerous attempts to contact him.

The complaint alleged that, by being unavailable to Joseph after February 2014,¹ failing to tell Joseph how and where he could be contacted, and failing to reply to his client's numerous requests for information about the case, respondent violated RPC 1.4(a) and RPC 1.4(b), respectively.

Respondent never filed Joseph's bankruptcy petition. Joseph learned from respondent's "Facebook" page that he had closed his law office and moved to Washington State to "play jazz."

According to the complaint, by failing to file the bankruptcy petition for which Joseph had retained him, respondent grossly neglected and lacked diligence in the matter, violations of RPC 1.1(a) and RPC 1.3, respectively.

During the representation, respondent was declared ineligible to practice law for failure to comply with the requirements of the New Jersey Lawyers' Fund for Client Protection (CPF), Continuing Legal Education (CLE), and Interest on Lawyer Trust Accounts (IOLTA) programs as follows: (1) CPF from

¹ This date is likely in error, given that respondent ceased communicating with Joseph in summer 2016, per the complaint.

September 26, 2011 to October 27, 2011, and August 24, 2015 to present; (2) CLE from November 17, 2014 to present; and (3) IOLTA from November 4, 2013 to July 30, 2014, and from October 27, 2015 to present.

According to the complaint, because respondent was ineligible to practice law, he "effectively terminated his representation of [Joseph]." Likewise, respondent failed to inform Joseph of his ineligibility.

Thereafter, respondent failed to return the unearned retainer, as well as Joseph's personal bills and other case documents entrusted to him.

The complaint charged that, because respondent failed to prepare or file the bankruptcy petition for which he had been retained, the \$1,500 fee was unreasonable. Therefore, his failure to return it constituted a violation of RPC 1.5(a).

Moreover, according to the complaint, by failing to take steps to protect Joseph's claims, to give him reasonable notice that respondent no longer represented him, and to return Joseph's documents upon the termination of the representation, respondent violated RPC 1.16(d).

Respondent failed to reply to written communications from the OAE requesting updated contact information; to file changes of address for his home and office locations, as R. 1:20-1(c) and R. 1:21-1(a) require; and to notify the CPF of his new billing address, as R. 1:20-1(c) requires.

By letters dated March 22 and May 19, 2017, the DEC sent respondent a copy of the grievance, to the same Washington State address, by certified and regular mail, presumably requesting his written reply to the grievance. Although the certified mail was returned as undeliverable, the regular mail was not returned. Nevertheless, respondent failed to contact the investigator, who, therefore, did not interview respondent for the investigation.

The complaint alleged that respondent's failure to comply with the OAE's and DEC's repeated requests for information violated RPC 8.1(b).

After accepting \$1,500 from Joseph to initiate his bankruptcy action, respondent thereafter failed to: (1) file a bankruptcy petition; (2) provide Joseph with billing statements indicating what, if any, legal services were provided; (3) return the unearned retainer and client documents entrusted to him; (4) keep Joseph reasonably informed about the status of his case and comply with his reasonable requests for information; and (5) take steps reasonably necessary to protect Joseph's interests upon termination of the representation. The complaint alleged that respondent's conduct in these respects violated RPC 8.4(c).

II. DRB 18-112 – District Docket No. XIV-2017-0165E
(The Compliance Matter)

Service of Process

Service of process was proper in this matter. On December 15, 2017, the OAE sent a copy of the complaint by certified and regular mail to respondent's home address in Washington State. The certified mail was returned marked "Unclaimed." The regular mail was not returned.

On February 14, 2018, the OAE sent a second letter to respondent, to the same home address, also by regular and certified mail, informing him that, if he did not answer the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted; that, pursuant to R. 1:20-4(f) and R. 1:20-6(c)(1), the record in the matter would be certified directly to us for imposition of sanction; and that the complaint would be amended to include a charge of a violation of RPC 8.1(b).

The certified mail envelope was not returned. According to the United States Postal Service (USPS) tracking system, the letter was being returned as "Unclaimed." The certification of the record is silent about the results of the regular mail.

The time within which respondent may answer the complaint has expired. As of March 28, 2018, the date of the certification of the record, respondent had not filed an answer.

Allegations of the Complaint

The Court's temporary suspension Order, effective December 2, 2016, required respondent's compliance with R. 1:20-20. Among its provisions, the Rule requires an attorney to, "within 30 days after the date of the order of suspension (regardless of the effective date thereof) file with the Director the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order." Respondent failed to do so.

On May 30, 2017, the OAE sent respondent a letter, by certified and regular mail, to his last known office address in North Bergen, and to his billing address in West New York, and to his home address then listed in the attorney registration system. The letter informed respondent of his obligation to file the R. 1:20-20 affidavit, and requested his reply by June 13, 2017.

The letters sent by regular and certified mail to the home address were returned to the OAE marked "Forward Time Exp." Both envelopes had USPS labels affixed to them with a new home address for respondent in Washington State. The regular and certified mail sent to respondent's North Bergen office address was returned to the OAE marked "Not Deliverable as Addressed."

The certified mail return receipt for the letter sent to respondent's West New York billing address was returned indicating delivery on June 9, 2017,

having been signed by "Camila Escobar." Yet, the certified letter to that address was subsequently returned to the OAE marked "Not Deliverable As Addressed." The regular mail envelope was returned with the same notation. The letter sent by certified mail to the additional office address was returned to the OAE marked "Unclaimed," with a hand-written notation on the envelope stating "as per receptionist moved 6 yrs ago." The regular mail envelope was returned marked "Insufficient Address," and bore the handwritten notation, "MOVED as per receptionist moved 6 yrs ago."

On June 6, 2017, the OAE sent respondent a letter, by certified and regular mail, directed to the new Washington State home address provided by the USPS, again informing him of his obligation to file the R. 1:20-20 compliance affidavit, and requesting his reply by June 20, 2017.

On November 28, 2017, the OAE sent respondent another letter, by certified and regular mail, to the Washington State address, once again informing him of his compliance obligation and requesting his reply by December 12, 2017.

On December 5, 2017, the USPS returned the June 6, 2017 certified mail envelope marked "Unclaimed." The regular mail was not returned.

The certified mail return receipt for the November 28, 2017 mailing was returned, indicating delivery on December 4, 2017, having been signed by respondent. The regular mail was not returned.

As of December 14, 2017, the date of the complaint, respondent had neither replied to the OAE's requests for a reply nor filed the required compliance affidavit.

III. DRB 18-127 - District Docket No. VI-2017-0010E
(The Flores Matter)

Service of Process

By letter dated February 15, 2018, the DEC sent respondent a copy of the complaint, in accordance with R. 1:20-4(d) and R. 1:20-7(h), to his home address in Washington State.

The certified mail was returned, marked "Return to Sender, Unclaimed, Unable to Forward." The regular mail was not returned.

On March 23, 2018, the DEC sent a second letter to respondent, to the same home address, also by regular and certified mail, informing him that, if he did not answer the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted; that, pursuant to R. 1:20-4(f) and R. 1:20-6(c)(1), the record in the matter would be certified directly

to us for imposition of sanction; and that the complaint would be amended to include a charge of a violation of RPC 8.1(b).

The certified mail was returned, marked "Return to Sender, Not Deliverable as Addressed, Unable to Forward." The regular mail was not returned.

As of April 12, 2018, the date of the certification of the record, respondent had not filed an answer.

Allegations of the Complaint

In December 2014, Jose A. Flores² retained respondent to file a bankruptcy petition. Flores signed a written fee agreement and paid respondent's \$1,410 retainer.

Flores met with respondent once during the representation, to submit documents in support of his bankruptcy. However, after June 1, 2016, respondent ceased communicating with Flores, despite Flores' numerous attempts to contact him.

Respondent never filed Flores' bankruptcy petition.

² Although the complaint refers to Flores only as "Grievant," his name appears in other portions of the record.

According to the complaint, by failing to file the bankruptcy petition for which Flores had retained him, respondent grossly neglected and lacked diligence in the matter, violations of RPC 1.1(a) and RPC 1.3, respectively.

The complaint further alleged that, by being unavailable to Flores after February 2014,³ failing to tell Flores how and where he could be contacted, and failing to reply to his client's numerous requests for information about the case, respondent violated RPC 1.4(a) and RPC 1.4(b), respectively.

During the representation, respondent was declared ineligible to practice law for failure to comply with the requirements of the CPF, CLE, and IOLTA programs, as follows: (1) CPF from September 26, 2011 to October 27, 2011, and August 24, 2015 to present; (2) CLE from November 17, 2014 to present; and (3) IOLTA from November 4, 2013 to July 30, 2014, and from October 27, 2015 to present.

According to the complaint, because respondent was ineligible to practice law, he "effectively terminated his representation of [Flores]." Likewise, respondent failed to inform Flores of his ineligibility.

Thereafter, respondent failed to return the unearned retainer, as well as Flores' personal bills and other documents entrusted to him.

³ This date is likely in error, given that respondent ceased communicating with Flores on June 1, 2016, as alleged in paragraph four of the complaint.

The complaint charged that, because respondent failed to prepare or file the bankruptcy petition for which he had been retained, the \$1,410 fee was unreasonable. Therefore, his failure to return it constituted a violation of RPC 1.5(a).

Moreover, according to the complaint, by failing to take steps to protect Flores' claims, to give him reasonable notice that respondent no longer represented him, and to return Flores' documents upon the termination of the representation, respondent violated RPC 1.16(d).

Respondent failed to: (1) reply to written communications from the OAE requesting updated contact information; (2) file changes of address for his home and office locations, as R. 1:20(c) and R. 1:21(a) require; and (3) notify the CPF about his new address, as R. 1:20-1(c) requires.

By letter dated May 19, 2017, the DEC sent respondent a copy of the grievance, to the Washington State address, by certified and regular mail, presumably requesting his written reply to it. Although the certified mail was returned as undeliverable, the regular mail was not. Nevertheless, respondent failed to contact the investigator. Consequently, the investigator was not able to interview respondent for the investigation.

The complaint alleged that respondent's failure to comply with the OAE and DEC's repeated requests for information violated RPC 8.1(b).

After accepting \$1,410 from Flores to initiate his bankruptcy action, respondent thereafter failed to: (1) file a bankruptcy petition; (2) provide Flores with billing statements indicating what, if any, legal services were provided; (3) return the unearned retainer and client documents entrusted to him; (4) keep Flores reasonably informed about the status of his case and comply with his reasonable requests for information; and (5) take steps reasonably necessary to protect Flores' interests upon termination of the representation. The complaint alleged that respondent's conduct in these respects violated RPC 8.4(c).

Finally, the complaint charged that respondent's failure "to respond in any way to this investigation after [respondent] was made aware of the grievance filed against him," constituted conduct prejudicial to the administration of justice, a violation of RPC 8.4(d).

* * *

The facts recited in the complaints support some, but not all, of 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). Nevertheless, each charge must contain sufficient facts to support a finding of unethical conduct.

In the Joseph matter, respondent was retained in 2013 to file a bankruptcy petition. Over the next four years, respondent took no action on his client's behalf, and never prepared or filed a bankruptcy petition for him. Respondent, therefore, grossly neglected and lacked diligence in the case, violations of RPC 1.1(a) and RPC 1.3, respectively.

From 2013 to the summer of 2016, respondent and Joseph met with each other and were apparently in communication about the matter. Therefore, respondent ceased all communications with his client, despite Joseph's numerous requests for information about his case. Finally, Joseph learned, when viewing respondent's "Facebook" page, that respondent had closed his law practice and moved to Washington State to "play jazz." Respondent's failure to communicate with his client and to respond to his reasonable requests for information violated RPC 1.4(b). However, we dismiss, as inapplicable, the alleged violation of RPC 1.4(a), as that Rule addresses an attorney's obligation to inform a prospective client of how, when, and where the client may communicate with the attorney. Here, Joseph was an actual, not a prospective, client, with whom respondent met and communicated, apparently well into 2016.

Respondent performed no legal services on Joseph's behalf, which required him to return the \$1,500 legal fee as entirely unearned. He also failed

to return Joseph's original bills — important documents without which any future bankruptcy filing would be made more difficult. In both instances, respondent violated RPC 1.16(d).

We dismiss, however, the allegation that respondent violated RPC 1.5(a). The complaint contains no factual allegations to sustain a finding that the amount of the fee was unreasonable for the proposed work, had respondent actually performed the services for which he was retained. Rather, respondent apparently performed no legal services, and failed to return the fee, conduct already addressed by RPC 1.16(d).

Respondent's failure to reply to the DEC's requests for information about the case, and to permit the matter to proceed to us as a default, constitutes a violation of RPC 8.1(b). However, to the extent that the complaint also charged respondent with having failed to comply with OAE and CPF requirements that he update his contact information, such failures do not constitute failure to reply to reasonable requests for information in a disciplinary proceeding. Therefore, we dismiss that aspect of the RPC 8.1(b) charge as inapplicable.

The complaint alleged that respondent violated RPC 8.4(c) by accepting \$1,500 from Joseph and then failing to perform any services in his behalf and failing to take any measures to protect his interests or to return his property on termination of the representation. However, the complaint contained no facts

alleging a misrepresentation or any dishonest, fraudulent, or deceitful conduct by respondent in respect of those acts, which already have been addressed by other findings, above. Therefore, we dismiss the RPC 8.4(c) charge.

In summary, in the Joseph matter, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 8.1(b).

In the compliance matter, effective December 2, 2016, respondent was temporarily suspended from the practice of law for failure to comply with a determination of the District VI Fee Arbitration Committee. He has remained suspended ever since.

Rule 1:20-20 requires a suspended attorney to file an affidavit with the OAE, within thirty days of the suspension, showing how the attorney has complied with each of the provisions of the Rule.

The OAE made several attempts to spur respondent into action, but he never contacted that office or filed the required affidavit, in violation of RPC 8.1(b) and RPC 8.4(d).

In the Flores matter, respondent's conduct mirrored his actions in the Joseph matter. Flores retained respondent in December 2014 to file a bankruptcy petition, for which he paid respondent a \$1,410 retainer. Over the next two years, respondent took no action on Flores' behalf, never preparing or filing a

bankruptcy petition for him. Respondent, therefore, grossly neglected and lacked diligence in the case, violations of RPC 1.1(a) and RPC 1.3, respectively.

Respondent and Flores apparently were in communication with each other until June 1, 2016, when respondent ceased all communications with his client, despite Flores' numerous requests for information about his case. Respondent's conduct in this respect violated RPC 1.4(b). However, we dismiss, as inapplicable, the alleged violation of RPC 1.4(a), for the same reasons expressed in connection with the Joseph matter, above.

Additionally, respondent performed no legal services on Flores' behalf, which required him to return the entire \$1,410 legal fee as unearned. He also failed to return Flores' original bills — important documents without which any future bankruptcy filing would be made more difficult. In both instances, respondent violated RPC 1.16(d).

We dismiss the alleged violation of RPC 1.5(a). The complaint contains no factual allegations to sustain a finding that the amount of the fee was unreasonable for the proposed work, had respondent actually performed the services for which he was retained. Rather, respondent apparently performed no legal services, and failed to return the fee, conduct already addressed by RPC 1.16(d).

Respondent's failure to reply to the DEC's requests for information about the case, and to permit the matter to proceed to us as a default, constitutes a violation of RPC 8.1(b). To the extent that the complaint also charged respondent with having failed to comply with OAE and CPF requirements that he update his contact information, such failures do not constitute failure to reply to reasonable requests for information in a disciplinary proceeding. Therefore, we dismiss that aspect of the RPC 8.1(b) charge as inapplicable.

The complaint alleged that respondent violated RPC 8.4(c) by accepting \$1,410 from Flores and then failing to perform any services in his behalf and failing to take any measures to protect his interests or to return his property on termination of the representation. The complaint, however, does not contain facts alleging a misrepresentation or any dishonest, fraudulent, or deceitful conduct by respondent in respect of those acts, which already have been addressed by other findings, above. Therefore, we dismiss the RPC 8.4(c) charge.

The complaint also charged a violation of RPC 8.4(d) for respondent's failure "to respond in any way to this investigation." However, respondent's failure to cooperate already has been addressed by the RPC 8.1(b) finding above. Moreover, no facts were alleged to establish that the administration of justice

was compromised by respondent's conduct or that judicial resources were impacted. Thus, we dismiss the RPC 8.4(d) charge.

In summary, in the compliance matter (18-112) respondent failed to file the required R. 1:20-20 affidavit, a violation of RPC 8.1(b) and RPC 8.4(d). In the Joseph matter (18-020) and the Flores matter (18-127), respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 8.1(b). Thus, the only issue remaining is the appropriate discipline for respondent's misconduct.

The threshold measure of discipline to be imposed for a suspended attorney's failure to comply with R. 1:20-20 is a reprimand. In re Girdler, 179 N.J. 227 (2004). The actual discipline imposed may be different, however, if the record demonstrates mitigating or aggravating circumstances. In the Matter of Richard B. Girdler, DRB 03-278 (November 20, 2003) (slip op. at 6). Examples of aggravating factors include the attorney's failure to reply to the OAE's specific request that the affidavit be filed, the attorney's failure to answer the complaint, and the extent of the attorney's disciplinary history. Ibid.

Since Girdler, the discipline imposed on attorneys in default cases who have failed to comply with R. 1:20-20, despite the OAE's requests to do so, and whose disciplinary history consisted of a temporary suspension or other discipline short of a fixed suspension, has been a censure. See, e.g., In re Zielyk, 226 N.J. 472 (2016) (censure for attorney who failed to file a R. 1:20-20 affidavit

following his temporary suspension, even after the OAE had requested that he do so, and then failed to file an answer to the complaint; prior admonition and censure); In re Kinnard, 220 N.J. 488 (2015) (attorney failed to file affidavit after the Court temporarily suspended him for his failure to pay the disciplinary costs associated with a 2008 admonition; in addition to the aggravating factors of the attorney's disciplinary history and the default, he also ignored the OAE's request that he file the affidavit); In re Goodwin, 220 N.J. 487 (2015) (attorney failed to file affidavit after the Court temporarily suspended him for his failure to pay the disciplinary costs associated with a 2010 reprimand; he also ignored the OAE's request that he file the affidavit); In re Boyman, 217 N.J. 360 (2014) (attorney did not file the R. 1:20-20 affidavit after his temporary suspension for failure to pay administrative costs associated with his 2010 censure); and In re Gahles, 205 N.J. 471 (2011) (attorney did not file the required affidavit following a temporary suspension for failure to comply with a fee arbitration determination; prior reprimand and admonition).

Generally, in default matters, a reprimand is imposed for gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities. See, e.g., In re Babcock, 231 N.J. 8 (2017) (attorney guilty of gross neglect, lack of diligence, failure to communicate with the client and failure to cooperate with an ethics investigation in respect of a

client's claims arising out of an automobile accident); In re Cataline, 219 N.J. 429 (2014) (attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with requests for information from the district ethics committee investigator); and In re Rak, 203 N.J. 381 (2010) (attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of a grievance).

Censures have been imposed when aggravating factors beyond the default are present. See, e.g., In re Romaniello, 216 N.J. 248 (2007) (censure for attorney who grossly neglected and lacked diligence in his handling of a disability claim, failed to communicate with the client, failed to promptly disburse property belonging to a third party, failed to maintain a bona fide office, and failed to cooperate with disciplinary authorities; aggravating factors were the attorney's abandonment of his client after he had been designated the client's representative, his inability to account for a disability payment into his business account, and the administrative revocation of his law license for nonpayment of the annual attorney assessment to the CPF for seven years).

Short-term suspensions have been imposed on attorneys who default in matters involving either multiple client matters or prior discipline, or both. See, e.g., In re Manzi, 208 N.J. 342 (2011) (three-month suspension imposed on

attorney found guilty of gross neglect and dishonesty in one of two client matters, plus lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities in both matters; previous censure in 2010 for similar misconduct in another default); In re Avery, 194 N.J. 183 (2008) (three-month suspension in two default matters, where the attorney grossly neglected four estate matters and was guilty of lack of diligence, failure to produce a court-ordered accounting, failure to communicate with clients, and failure to cooperate with disciplinary authorities; no ethics history); In re Davidson, 204 N.J. 175 (2010) (six-month suspension in one client matter; the attorney filed a complaint on his client's behalf but failed to prosecute the case; the attorney's infractions included gross neglect, lack of diligence, failure to expedite litigation, failure to communicate with the client, and failure to cooperate with ethics authorities; prior three-month suspension, reprimand, and six-month suspension); and In re Tunney, 185 N.J. 398 (2005) (six-month suspension for misconduct in three client matters, including gross neglect, lack of diligence, failure to communicate with clients, and failure to withdraw from the representation when the attorney's physical or mental condition materially impaired his ability to represent clients; prior reprimand and six-month suspension).

Long-term suspensions have been imposed on attorneys in default matters involving a combination of numerous client matters, abandonment of clients, or significant prior discipline. See, e.g. In re Rosenthal, 208 N.J. 485 (2012) (one-year suspension for attorney who, in seven default matters, violated RPC 1.1(a) and RPC 1.1(b) in two matters, RPC 1.3 in four matters, RPC 1.4(b) in seven matters, RPC 1.4(c) in one matter, RPC 1.5(a) in three matters, RPC 1.5(b) in one matter, RPC 3.2 in one matter, RPC 8.1(b) in seven matters, RPC 8.4(c) in two matters, and RPC 8.4(d) in two matters; he also abandoned six of the seven clients; no prior discipline in twenty years at the bar); 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); In re Rosenthal, 118 N.J. 454 (1990) (one-year suspension imposed on attorney who exhibited gross neglect, failed to pursue lawful objectives of clients and failed to carry out contracts of employment in three matters, failed to communicate with his clients in two of the matters, failed to refund a retainer in one of the matters, displayed a pattern of neglect, and failed to cooperate with ethics authorities); 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).

In egregious abandonment cases, the Court has disbarred attorneys found guilty of gross neglect, pattern of neglect, lack of diligence, lack of communication, and failure to cooperate with disciplinary authorities. In In re Kantor, 180 N.J. 226 (2004), the attorney abandoned his law practice and at least ten clients, some of whom were left with no cause of action, as the attorney either failed to file complaints within the applicable statute of limitations or allowed complaints to be dismissed based on his inaction. In disbaring Kantor, the Court noted that he was an attorney

who abandoned his clients without so much as a warning, leaving their matters in jeopardy; who declined to answer the allegations in the resulting ethics complaint, which charged him with, among other things, gross neglect; who offered no explanation for his conduct or evidence in mitigation of discipline to [the Board]; and who defied this Court's order to appear and show cause why he should not be disbarred for derelictions.

[Id. at 227.]

Observing that Kantor had prior discipline that included his failure to cooperate in an ethics investigation, the Court ruled that there was "nothing in the record to suggest that he [was] salvageable as an attorney." Id. at 232. See also, In re Golden, 156 N.J. 365 (1998) (attorney who abandoned his practice and at least seven active client matters was disbarred; attorney did not reply to

the ethics complaint, did not offer mitigation, and failed to appear in response to the Court's Order to Show Cause); In re Holman, 156 N.J. 371 (1998) (attorney disbarred based on serious misconduct that arose from his abandonment of his practice and fifteen clients, from whom he had accepted fees without providing services); and In re Clark, 134 N.J. 522 (1993) (attorney disbarred for abandoning his practice and various clients and for conduct consisting of gross neglect, pattern of neglect, lack of diligence, lack of communication, conduct prejudicial to the administration of justice, and failure to cooperate with disciplinary authorities).

Here, when respondent's gross neglect in DRB 18-020 (Joseph), DRB 18-127 (Flores), and DRB 17-286 (Spath), the matter recently transmitted to the Court, are viewed together, a pattern of abandonment becomes apparent. In all three client matters, respondent took an advance fee to file a bankruptcy petition for the client, failed to file the petition, ceased all communications with the client in mid-2016, and then vanished with the unearned fees, apparently to play jazz in Washington State.

Respondent's abandonment of his three bankruptcy clients is similar to Mintz, above, where the attorney was suspended for two years after abandoning four clients. Respondent's misconduct, however, is somewhat less egregious

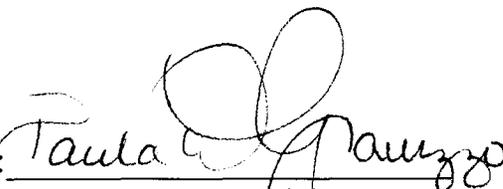
than the disbarred attorney in Kantor, who defaulted and subsequently failed to appear on the Court's Order to show cause for his disbarment.

Respondent also failed to file the R. 1:20-20 affidavit required of suspended attorneys, which would warrant a censure on its own. He has thumbed his nose at the attorney discipline system in these, his second, third, and fourth consecutive default matters in just a few months. Based on the totality of respondent's misconduct, therefore, we determine to impose a two-year suspension.

Members Boyer, Hoberman, and Joseph 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

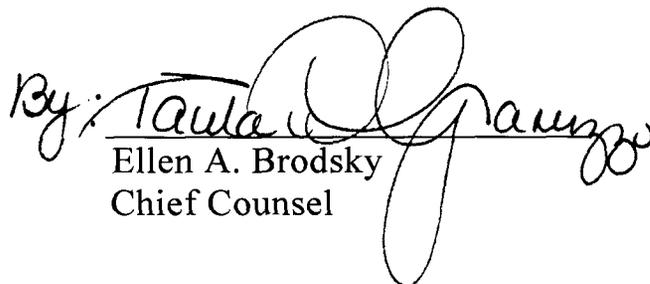
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of James Peter Byrne
Docket Nos. DRB 18-020, 18-112, and 18-127

Decided: September 17, 2018

Disposition: Two-Year Suspension

<i>Members</i>	Two-Year Suspension	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer			X
Gallipoli	X		
Hoberman			X
Joseph			X
Rivera	X		
Singer	X		
Zmirich	X		
Total:	6	0	3

By: 
Ellen A. Brodsky
Chief Counsel