Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-172
District Docket Nos. IIIB-2018-0011E;
IIIB-2018-0012E; IIIB-2018-0014E;
and IIIB-2018-0031E

In the Matter of

Brian LeBon Calpin

An Attorney at Law

Decision

Decided: December 17, 2019

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

This matter was before us on a certification of the record filed by the District IIIB Ethics Committee (DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (gross neglect); RPC 1.1(b) (pattern of neglect); 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 lawyer); RPC 1.4(b) (failure to keep the client reasonably informed and to reply to reasonable requests for information); RPC 1.15(b) (failure to promptly deliver client funds or property); RPC 1.9(c) (a lawyer shall not use information relating to the representation of a former client to the disadvantage of the former client, except when the Rules would permit or the information is generally known); RPC 1.16(d) (failure to return client property upon termination of the representation); RPC 8.1(b) (failure to cooperate with disciplinary authorities);[1] RPC 8.4(a) (attempt to violate the Rules of Professional Conduct); RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons set forth below, we determine to impose a one-year suspension.

Respondent was admitted to the New Jersey bar in 2001 and to the Hawaii bar in 2000. During the relevant timeframe, he maintained a law practice in Medford, New Jersey. On June 19, 2014, he received a reprimand for gross neglect, lack of diligence, and failure to communicate with a client. In re Calpin, 217 N.J. 617 (2014). On January 24, 2017, respondent received

[1] Due to respondent's failure to file an answer to the formal ethics complaint, the complaint was amended to include the RPC 8.1(b) charge.

an admonition for lack of diligence. In the Matter of Brian LeBon Calpin, DRB 16-287 (January 24, 2017). Since June 22, 2019, respondent has been ineligible to practice law for failure to pay his annual assessment to the New Jersey Lawyers' Fund for Client Protection and for his failure to comply with the Interest on Lawyers Trust Accounts program.

On April 22, 2019, we recommended that respondent be temporarily suspended for failure to pay a fee arbitration award. That matter is pending with the Court.

Service of process was proper. On January 14, 2019, the DEC sent a copy of the formal ethics complaint, by regular and certified mail, to respondent's office address of record. The certified mail was returned marked "Unclaimed." The regular mail was not returned.

On February 13, 2019, the DEC sent a letter to respondent, by certified and regular mail, at the office address, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The certified mail was returned marked "Unclaimed." The regular mail was not returned.

As of March 6, 2019, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the DEC certified this matter to us as a default.

We now turn to the allegations of the complaint.

The VonFischer Matter – District Docket No. IIIB-2018-0011E

In late June 2017, Brian Kisielnicki retained respondent to file a motion enjoining his wife, Amanda Kisielnicki, from dissipating marital assets. In late July 2017, Brian's father, Ronald Kisielnicki, informed respondent that Brian had passed away. Thereafter, on July 21, 2017, Ronald and Sandra Lee VonFischer met with respondent concerning a significant sum of money that Amanda owed them. Respondent previously had represented VonFischer, but the complaint is silent about VonFischer's relationship to the Kisielnickis, beyond that of a creditor. In support of their allegation against Amanda, Ronald and VonFischer provided respondent with a large volume of financial documents, and the title to an automobile.

On July 25, 2017, Ronald and VonFischer retained respondent to collect the debt from Amanda. They signed a written fee agreement calling for $1,500 due immediately, which they paid, and an additional $1,500 due on August 11, 2017. In the weeks that followed, VonFischer scheduled an appointment to meet

with respondent, but he failed to appear at the agreed time. VonFischer repeatedly called respondent and traveled to his office, but he failed to return those calls and was not present at his office.

By letter dated September 11, 2017, VonFischer terminated the representation for respondent's failure to provide any legal services, to return phone calls, or to appear at their scheduled meeting. She also requested the return of the $1,500 fee and the financial documents that she had given him. Respondent neither filed a lawsuit to collect the debt nor returned the $1,500 fee.

In reply to the ethics grievance, respondent produced twenty-three pages of financial documents that VonFischer had given him. VonFischer and respondent agreed, however, that, at the inception of the representation, she had provided him with many more financial documents. Respondent asserted that, because he did not scan all of the documents from VonFischer, he did not have electronic copies of many of them. He claimed, however, that, on September 14, 2017, he had returned the originals of the unscanned documents to VonFischer, by regular mail. He had no proof, however, that VonFischer had received them. VonFischer denied receiving respondent's letter or the documents. According to the complaint, respondent returned neither all of the financial documents nor the automobile title to Ronald and VonFischer.

The complaint alleged that, by failing to use a mailing method with a tracking capability, failing to secure the delivery of the financial documents, and failing to ascertain that VonFischer had received them, respondent grossly neglected the matter, a violation of RPC 1.1(a).

The complaint further alleged that respondent's failure to call or e-mail VonFischer when he returned the property; his purported return of sensitive financial documents, including the title to an automobile, without any tracking system in place; and his failure to confirm VonFischer's receipt of the property, constituted a lack of communication, in violation of RPC 1.4(a) and (b).

Next, the complaint alleged that respondent failed to safekeep property, based on his failure to promptly return property to which VonFischer was entitled, a violation of RPC 1.15, presumably (b).

Finally, the complaint alleged that respondent violated RPC 1.16(d) by failing to surrender VonFischer's papers and property upon termination of the representation.

The Booker Matter – District Docket No. IIIB-2018-0012E

On August 17, 2016, Samuel L. Booker retained respondent to file a motion to terminate his alimony obligation. Respondent charged Booker $1,000 for the representation and filed the motion, which was heard by the Honorable

Angelo J. DiCamillo, J.T.C., on December 2, 2016. Judge DiCamillo denied the motion to terminate Booker's alimony, but reduced the amount of the payments. On January 16, 2017, Booker again retained respondent and paid him $500 to file a second motion seeking termination of alimony.

Respondent claimed to have instructed his client, in January 2017, to call in "about a week," to sign the motion papers. Booker denied that assertion. Thereafter, between January and July 2017, Booker repeatedly called respondent and sent him text messages requesting an update. Although respondent replied to some text messages between January and October 2017, he never told Booker that he had failed to file the second motion to terminate alimony.

On September 14, 2017, Booker was present in the Camden County courthouse for unrelated reasons, and happened upon respondent, who promised to call him the following day about his case. Respondent did not do so. Moreover, respondent never filed a second motion to terminate Booker's alimony obligation, an alleged violation of RPC 1.1(a). According to the complaint, respondent's failure to file the motion and to communicate to Booker the status of the case, constituted a lack of diligence and a pattern of neglect, in violation of RPC 1.3 and RPC 1.1(b), respectively.

Finally, the complaint alleged that respondent's failure to reply to Booker's many requests for status updates, to inform Booker that he had not filed a second motion, to return phone calls, and to provide truthful status updates in text messages, constituted failure to keep Booker reasonably informed about the status of the matter and to promptly comply with reasonable requests for information, a violation of RPC 1.4(b).

The Brown Matter – District Docket No. IIIB-2018-0014E

On September 6, 2017, Arthur Brown retained respondent to represent him in a divorce. The written fee agreement called for a $700 flat fee for an uncontested divorce, for which Brown gave respondent a $1,000 personal check, presumably for the fee as well as related expenses. Respondent claimed to have drafted a property settlement agreement for Brown's review, after which he sent it to Brown's wife, Ms. Borden-Hightower (no first name set forth in the record), under cover letter dated October 15, 2017. Borden-Hightower did not reply.

Thereafter, respondent failed to press Borden-Hightower for the executed agreement or to take other action. From October 2017 through February 2018, Brown repeatedly called respondent for a status update. From October 2017 until the December 12, 2018 filing of the ethics complaint, respondent failed to

contact Brown. Respondent did not perform any other legal services on behalf of Brown.

On March 1, 2018, David M. Lipshutz, Esq., sent respondent a letter informing him that Brown had terminated respondent's representation and retained Lipshutz for the divorce action. Because Brown believed that respondent had never filed a complaint in his behalf, Lipshutz asked respondent to clarify that issue. Neither Brown nor Lipshutz received a reply from respondent.

In his July 18, 2018 written reply to the ethics grievance, respondent claimed to have sent Brown a $1,000 refund of the fee under cover letter dated March 5, 2018. In support of that claim, respondent provided the ethics investigator with a copy of the letter, addressed to Brown, which purported to attach a $1,000 refund check. However, that letter neither references a check number, nor contains an indication that any type of mail tracking, such as certified mail, return receipt requested, or overnight delivery service was used. The March 5, 2018 letter is not in the record. Brown informed the ethics investigator that he received neither the purported March 5, 2018 letter, nor a refund of the $1,000 fee. Accordingly, the investigator requested that respondent provide proof that he mailed the check to Brown and that Brown had negotiated it. On November 20, 2018, respondent replied:

> I reviewed my bank records to[o] regarding the refund to Mr. Brown. I saw no evidence that the refund check was presented to a bank. I don't know if it was misdelivered by the postal service or if Mr. Brown failed to present same. However, my records clearly show that I mailed the check on or about 3/5/18. To remedy the refund issue, I would be more than happy to issue another check to Mr. Brown.
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> [C¶78.] [2]

Respondent provided no evidence that he had sent the March 5, 2018 letter to Brown or documentation showing Brown's receipt of the check that respondent claimed to have included with that letter. Respondent admitted that the $1,000 check was never negotiated. Furthermore, respondent provided no evidence that, after sending the March 5, 2018 letter, he contacted Brown to ensure that his client had received the refund.

According to the complaint, respondent knowingly provided the ethics investigator with false information by misrepresenting, in his July 18, 2018 letter, that he had sent Brown a March 5, 2018 letter enclosing a $1,000 refund of the legal fee, when he had apparently not sent that letter.

The complaint alleged gross neglect, pattern of neglect, and lack of diligence for respondent's failure to follow up with Borden-Hightower about the

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[2] "C" refers to the December 11, 2018 formal ethics complaint.

property settlement agreement, failure to file a divorce complaint, and failure to communicate with Brown, from October 2017 to December 11, 2018, about the status of the matter, in violation of RPC 1.1(a) and (b) and RPC 1.3.

The complaint further alleged that respondent failed to communicate with the client by his failure to return Brown's telephone calls from October 2017 onward, failure to keep Brown informed about the status of his case between October 2017 and March 2018, and failure to reply to Lipshutz in respect of the status of the matter, in violation of RPC 1.4(a) and (b).

Finally, the complaint alleged that respondent misrepresented to the ethics investigator that he sent a March 5, 2018 letter and refund check to Brown, knowing that he had not done so and that Brown never negotiated the check, which "demonstrate a violation of the Rules of Professional Conduct or an attempt to so violate, demonstrate dishonesty, fraud, deceit or misrepresentation, and conduct prejudicial to the administration of justice constituting a violation of RPC 8.4(a), (b) & (c)." The complaint did not allege that the letter and check were themselves false documents.

The Carroll Matter – District Docket No. IIIB-2018-0031E

In early 2016, Angela Carroll retained respondent to represent her in a child custody matter. Carroll's relationship with a partner resulted in the birth

of two children, whom the partner adopted. In 2015, the relationship between Carroll and her partner ended.

Without authority to do so, Carroll removed the children from New Jersey to Virginia, after which she was arrested and extradited to New Jersey. She was charged with interference of custody, in violation of N.J.S.A. 2C:13-4. The children were placed with the former partner. Carroll pleaded guilty and received a term of probation with a "no contact" order concerning the children. The former partner then initiated a family court matter and was granted full custody of the children, with no parenting time for Carroll.

Before respondent's involvement, Carroll filed a pro se motion seeking custody and parenting time with the children, which was denied on January 29, 2016, pending an investigation by the Division of Child Protection and Permanency. Shortly thereafter, Carroll retained respondent. On a date not provided in the complaint, respondent filed an application seeking parental visitation for Carroll, resulting in an order granting her supervised visitation. Respondent told ethics authorities that the judge had ordered Carroll's visitation with her children to continue to be supervised until her successful completion of her term of probation.

While on probation, Carroll was convicted of shoplifting and of driving while under the influence of drugs or alcohol (DUI); she was also charged with

theft of funds belonging to her former partner. These events had an impact on the child custody and parenting issues. Respondent did not represent Carroll in any of the criminal matters. Following a plenary hearing concerning the custody and visitation issues, Carroll, still represented by respondent, and her former partner arrived at a settlement under which Carroll would receive unsupervised non-overnight parenting time, with the consent order to be revisited in one year.

In early summer 2017, Carroll retained another attorney to revisit the parenting issue. Respondent alleged that, thereafter, Carroll posted poor reviews of his legal services on websites, thereby "disparaging him severely." Respondent admitted that, in turn, on June 24, 2018, he posted the following review of Carroll's massage business on the website Yelp:

> Well, Angee is a convicted felon for fleeing the state with children. A wonderful parent. Additionally, she has been convicted of shoplifting from a supermarket. Hide your wallets well during a massage. Oops, almost forgot about the DWI conviction. Well, maybe a couple of beers during the massage would be nice.
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> [C¶¶113-114.]

Six days later, on June 30, 2018, Carroll posted a message on "Google" complaining about respondent's representation. The ethics complaint contained respondent's explanation of his actions:

> As to the Yelp rating about [Carroll's] massage therapy business, I admit to same. I was very upset by [her]

> Yelp rating of my practice. This rating was made more than a year and a half after the conclusion of my representation. My disclosures, i.e. her arrests, were public information and I did not violate attorney client privilege. My position was that what was good for the goose was good for the gander. I do concede that I do not believe that the rating was my finest moment. However, it was not unethical. That posting has subsequently been taken down.
>
> [C¶115.]

The complaint alleged that respondent disparaged Carroll by sarcastically calling her a wonderful parent, thereby insinuating that she was not, and that his

> flippant, disrespectful, and unprofessional comments about Grievant Carroll's prior DUI, and Shoplifting, combined further with Respondent's insinuations that Grievant Carroll would steal a wallet during a massage, were all done in an effort to disparage and negatively impact Grievant Carroll and her massage business, advanced no legitimate purpose, and demonstrated Respondent's use of information relating to the representation to the disadvantage of a client when the information was not generally known, constituting a violation of RPC 1.9(c) (Duties to Former Clients).
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> [C¶117.]

Citing the same language above, the complaint alleged that respondent's actions demonstrated "a violation or attempt to violate the R.P.C.'s, reflect adversely on Respondent's fitness as a lawyer, and demonstrated deceit and misrepresentation," in violation of RPC 8.4(a), (b), and (c).

We find that the facts in the complaint support some of the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Notwithstanding that Rule, each charge must be supported by sufficient facts for us to determine that unethical conduct has occurred.

In the VonFischer matter, respondent was retained to file an action to collect a debt. After entering into a July 25, 2017 fee agreement with VonFischer and Ronald, respondent accepted $1,500 toward his $3,000 fee. VonFischer also provided numerous financial documents pertaining to the debt, and the title to an automobile.

In August 2017, VonFischer made repeated attempts to contact respondent by telephone about the status of the case, but he did not return her calls. She made trips to his office, but he was never there. On the one occasion that she was able to arrange an appointment with respondent to discuss the case, he failed to appear for the meeting. Respondent never filed an action in his client's behalf. By letter dated September 11, 2017, VonFischer terminated the representation and demanded the return of all the financial documents and the $1,500 legal fee.

Respondent produced to ethics authorities twenty-three pages of the financial documents given to him during the representation, only a small fraction of the documents that VonFischer had provided to him. Respondent told authorities that he sent VonFischer a September 14, 2017 letter, enclosing the original documents, by regular mail. Importantly, he had not made copies of those documents in case something happened to them in the mail. VonFischer never received the documents. Although he claimed the documents must have been lost in transit, respondent had no way to track the mailing or to furnish his clients with copies of those important documents.

Respondent's failure to advance his clients' matter, despite VonFischer's repeated attempts to spur him to action, and his careless treatment of important documents at the end of the representation amounted to gross neglect, a violation of RPC 1.1(a).

In respect of RPC 1.15(b), VonFischer never received the financial documents and automobile title. Respondent had chosen perhaps the least secure method available to send those important documents – regular mail. As a result, he had no way to track his mailing or to ensure its safe and prompt delivery to the client. Respondent's careless action in this regard constituted a failure to safeguard client property, in violation of RPC 1.15(b).

Respondent ignored VonFischer's numerous telephone calls and was not present whenever she traveled to his office seeking information about the representation. As a result, she and Ronald did not know the status of their case. Respondent's failure to keep his clients adequately informed and to reply to their reasonable requests for information violated RPC 1.4(b).

Although the complaint also charged a violation of RPC 1.4(a), we dismiss that charge as inapplicable to the facts of this case, because VonFischer and Ronald were clients, not prospective clients.

Finally, because respondent failed to take any action to prosecute his clients' claims, the entire $1,500 payment on his fee was unearned. Despite VonFischer's demand for the return of those funds upon termination of the representation, respondent failed to do so, a violation of RPC 1.16(d).

The complaint charged an additional violation of RPC 1.16(d) for respondent's failure to return the financial documents and automobile title. Respondent apparently attempted to do so. Moreover, that misconduct has been addressed by the RPC 1.15(b) finding, above. Therefore, we dismiss this additional charge.

In the Booker matter, on August 17, 2016, respondent was retained to file a motion terminating his client's alimony obligation, for which he was paid a $1,000 fee. Although respondent's motion was denied, the judge reduced

Booker's alimony payments.

Thereafter, on January 16, 2017, Booker paid respondent $500 to file a second motion, again seeking termination of his alimony obligation. Respondent claimed to have told Booker that he should call in about a week to visit his office to sign the motion papers. Thereafter, between January and October 2017, Booker called and sent respondent text messages requesting an update. In respondent's brief replies, he never told his client the status of the second motion.

On September 14, 2017, Booker encountered respondent at the courthouse and asked about the case. Although respondent promised to call Booker the next day, he never did so. Moreover, respondent never filed the second motion for which he had been retained.

By failing to prepare and file the second motion to terminate Booker's alimony obligation, respondent grossly neglected and lacked diligence in the matter, violations of RPC 1.1(a) and RPC 1.3, respectively.

Respondent did not keep Booker reasonably informed about the case, failing to reply to repeated calls from the client or to notify him of the important fact that respondent had not prepared or filed the second motion for which he had been retained. Respondent's failure to communicate with his client violated RPC 1.4(b). Although respondent's failure to inform Booker that he had not

filed the second motion could support a misrepresentation by silence, because the complaint did not allege a violation of RPC 8.4(c), we do not find a violation of that Rule.

In the Brown matter, in September 2017, respondent told ethics authorities that he prepared a property settlement agreement and sent it to Brown's wife, Borden-Hightower, but he never received a reply. Thereafter, respondent wholly failed to contact Borden-Hightower seeking the return of the completed, signed agreement.

From October 2017 until March 2018, when Brown terminated the representation in favor of attorney Lipshutz, respondent took no further action to obtain the divorce for which he had been paid. By failing to take the necessary action to further his client's claims, with or without the cooperation of his client's wife, respondent was guilty of gross neglect, a pattern of neglect, and lack of diligence, violations of RPC 1.1(a) and (b) and RPC 1.3, respectively.

In respect of a pattern of neglect, when respondent's gross neglect of the Brown matter is considered with his gross neglect in the VonFischer and Booker matters, a pattern of neglect emerges, a violation of RPC 1.1(b).

Respondent also failed to return Brown's repeated telephone calls from October 2017 until he terminated the representation in March 2018, thereby

failing to reply to the client's reasonable requests for information, a violation of RPC 1.4(b).

As in the VonFischer matter, the complaint also charged a violation of RPC 1.4(a), but we dismiss that charge as inapplicable to the facts of this case.

In a July 18, 2018 reply to the ethics grievance, respondent asserted that he had refunded Brown's $1,000 fee under cover letter dated March 5, 2018. Yet, Brown received neither a March 5, 2018 letter from respondent nor a refund check for the $1,000 fee. Importantly, in his July 18, 2018 reply to the grievance, respondent did not include a check number for the check that he claimed to have sent Brown, leaving investigators with no way to trace it. Likewise, respondent provided no information to assist the investigator in tracking the whereabouts of the letter. In the face of (1) Brown's denial that he received a letter returning the legal fee and (2) respondent's failure to heed the DEC's requests that he provide proof of his claim, we conclude that respondent misrepresented having returned the fee, a violation of RPC 8.4(c).

In respect of the charges that respondent violated RPC 8.4(a) by violating or attempting to violate the RPCs, this charge is duplicative of the numerous Rules of Professional Conduct that we found respondent to have violated. Therefore, we dismiss the RPC 8.4(a) charges.

Likewise, in respect of the RPC 8.4(b) charge, the complaint is devoid of facts that implicate respondent in specific criminal conduct. Consequently, we dismiss that charge for lack of clear and convincing evidence.

In the Carroll matter, respondent was retained to assist Carroll in her quest to obtain parental visitation with her two minor children. Prior to respondent's involvement, she had absconded to another state with them. Once back in New Jersey, Carroll pleaded guilty to interference of custody, and received probation.

While Carroll was on probation, respondent filed an application seeking visitation for Carroll, who then was convicted of DUI and shoplifting, criminal convictions that affected her parenting and custody matter. After a plenary hearing, respondent was able to arrange a settlement between Carroll and her former partner for Carroll's unsupervised, non-overnight parenting time – seemingly, a good result.

Over a year later, in summer 2017, Carroll posted poor reviews of respondent's legal services. In retaliation, respondent posted a review of Carroll's massage business, revealing that she was a convicted felon for fleeing the state with children, facetiously referring to her as "a wonderful parent," and further commenting that she had been convicted of shoplifting and DUI. He cautioned her clientele to "hide your wallets" during a massage, suggesting that

she would steal from them, and that the DUI might lead to "a few beers during the massage."

Respondent explained to ethics investigators that he had been upset by Carroll's Yelp rating of his law practice and pointed out that her arrests and convictions were public information.

RPC 1.9 states that

> (c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:
> (1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become **generally known** [emphasis added].

According to the complaint, respondent denied that his conduct rose to the level of an ethics infraction.

The complaint correctly alleged that respondent's unprofessional comments were intended to disparage his former client – to use the information to the disadvantage of his client by portraying her as a poor parent and a thief with an alcohol problem. Respondent made the statements because, he claimed, "what is good for the goose is good for the gander."

The information in respondent's statements related to the former representation, inasmuch as her crimes were considered by the court in

determining Carroll's fitness as a parent. The remaining question is whether that information had become generally known, thereby shielding respondent from a violation of RPC 1.9(c)(1).

There are few New Jersey disciplinary cases involving RPC 1.9(c)(1), and none define "generally known information." In In re Dochney, 201 N.J. 3 (2010), an attorney was reprimanded for violating RPC 1.9(c)(1) in the context of, as here, a visitation issue involving a minor child. In that matter, the attorney used information gleaned from the representation of a former client in a municipal court matter. His law firm had subpoenaed records from police departments, health care providers, pharmacies, and employers. He used that information to the former client's disadvantage and detriment in an unrelated custody matter for a new client, his own stepson, thereby preventing the former client from having unencumbered contact with the child, who was her nephew. Finding a violation of RPC 1.9(c)(1), we concluded that such information does not "fall within the exception to the rule of information that has become generally known." In the Matter of Joseph J. Dochney, Docket No. DRB 09-153 (November 10, 2009) (slip op. at 10-11).

In In the Matter of Richard L. Seltzer, Docket No. DRB 13-315 (January 28, 2014), the attorney, after having served as an assistant township attorney from 1993 to 2002 and, later, acting township attorney from 2002 to 2005,

assisted a former co-worker's attorney in the co-worker's wrongful discharge action against the township, by sharing information that he had acquired in his role as the township attorney. Although that information was not confidential, it was not generally known to the public. Seltzer was found to have violated RPC 1.9(c)(1) and (2). Id. (slip op. at 1).

The United States District Court for the District of New Jersey (USDNJ) had occasion to visit RPC 1.9(c)(1) and the definition of "generally known information." See Pallon v. Roggio, Civ. A. Nos. 04-3625(JAP), 06-1068(FLW), 2006 WL 2466854 (D. N.J. August 23, 2006), wherein the USDNJ considered a motion by defendants to disqualify a law firm from representing persons and entities involved in a series of business and real estate matters, where that law firm used information obtained from a prior attorney/client relationship, to the former client's detriment, in violation of several conflict Rules, including RPC 1.9(c)(1). The court opined that "Rule 1.9(c) is broader than the protection afforded by the duty of confidentiality and is not limited to confidential information (citation omitted)." Moreover, the court concluded that the term generally known "does not only mean that the information is of public record." Rather, it also must be "within the basic understanding and knowledge of the public" (citation omitted). Id. at 14.

The American Bar Association recently published Formal Opinion 479, titled "The 'Generally Known' Exception to Former-Client Confidentiality" (December 15, 2017), which discussed the "generally known" exception to RPC 1.9(c)(1) as follows:

> Commentators have essentially endorsed this understanding of generally known by analogizing to an original comment in New York's version of Rule 1.6(a) governing the protection of a client's confidential information. The original comment distinguished "generally known" from "publicly available." Commentators find this construct "a good and valid guide" to when information is generally known for Rule 1.9(c)(1) purposes:
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> > [T]he phrase "generally known" means much more than publicly available or accessible. It means that the information has already received widespread publicity.
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> [Opinion 479 at 3.]

In this case, the complaint alleged that the information respondent divulged about Carroll's convictions of interference of custody, shoplifting, and DUI, although publicly available, was not generally known. Respondent provided no evidence to the contrary. Based on the above guidance, we conclude that the information disclosed by respondent was not generally known and, thus, find a violation of RPC 1.9(c)(1).

For the same reasons discussed in respect of the Brown matter, above, we dismiss the RPC 8.4(a) and (b) charges.

Regarding the charge that respondent's conduct involved "deceit and misrepresentation," in violation of RPC 8.4(c), respondent's conduct was admittedly vindictive, but the complaint does not specify facts that would support a finding of deceit or misrepresentation. Therefore, we dismiss this charge for lack of clear and convincing evidence.

Finally, in light of respondent's default in this matter, we find a violation of RPC 8.1(b).

In sum, respondent violated the following Rules of Professional Conduct: in VonFischer, RPC 1.1(a), RPC 1.4(b), RPC 1.15(b) and RPC 1.16(d); in Booker, RPC 1.1(a) and (b), RPC 1.3, and RPC 1.4(b); in Brown, RPC 1.1(a) and (b), RPC 1.3, RPC 1.4(b), and RPC 8.4(c); and in Carroll, RPC 1.9(c)(1). In light of his default, he additionally violated RPC 8.1(b). We determine to dismiss the additional charges that respondent violated RPC 1.4(a); RPC 1.16(d); RPC 8.4(a); RPC 8.4(b); and RPC 8.4(c). The sole issue left for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

A reprimand or censure is typically imposed for a false statement or misrepresentation to disciplinary authorities, so long as the lie is not

compounded by the fabrication of documents to conceal the misconduct. See, e.g., In re DeSeno, 205 N.J. 91 (2011) (reprimand for attorney who misrepresented to the district ethics committee the filing date of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand); In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who lied to the Office of Attorney Ethics (OAE) during an ethics investigation of the attorney's fabrication of an arbitration award to mislead his partner, and of the attorney's failure to consult with a client before permitting two matters to be dismissed); In re Otlowski, 220 N.J. 217 (2015) (censure for attorney who misrepresented to an individual lender of his client and to the OAE that funds belonging to the lender and his co-lenders, which had been deposited into the attorney's trust account, were frozen by a court order when, to the contrary, they had been disbursed to various parties, and who also made misrepresentations on an application for professional liability insurance; violations of RPC 8.1(a) and RPC 8.4(c); mitigating factors included the passage of time, the absence of a disciplinary history in the attorney's lengthy career, and his public service and charitable activities); and In re Schroll, 213 N.J. 391 (2013) (censure for attorney who misrepresented to a district ethics committee secretary that the personal injury matter in which he was representing the plaintiff was pending,

when he knew that the complaint had been dismissed over a year earlier; for the next three years, the attorney continued to mislead the committee secretary that the case was still active; in addition, the attorney misrepresented to the client's former lawyer that he had obtained a judgment of default against the defendants; the attorney also was guilty of gross neglect, lack of diligence, and failure to reply to the client's numerous attempts to obtain information about her case; no prior discipline).

Where an attorney engages in a pattern of neglect, a reprimand ordinarily ensues. See, e.g., In re Gellene, 203 N.J. 443 (2010) (attorney guilty of gross neglect, pattern of neglect, and lack of diligence for failing to timely file three appellate briefs); In re Weiss, 173 N.J. 323 (2002) (attorney engaged in gross neglect, pattern of neglect, and lack of diligence); In re Balint, 170 N.J. 198 (2001) (in three client matters, attorney engaged in gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, and failure to expedite litigation); and In re Bennett, 164 N.J. 340 (2000) (attorney guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate in a number of cases handled on behalf of an insurance company).

In isolation, cases involving an attorney's failure to promptly deliver funds to clients or third persons, in violation of RPC 1.15(b), usually result in the imposition of an admonition or reprimand, depending on the circumstances.

See, e.g., In the Matter of Jeffrey S. Lender, 11-368 (January 30, 2012) and In the Matter of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-453 (March 19, 2012).

Generally, admonitions have been imposed on attorneys who have failed to turn over their clients' files to new counsel, even when additional ethics violations, such as failure to cooperate, gross neglect, lack of diligence, and failure to communicate with a client, are found. See, e.g., In the Matter of Gary A. Kraemer, DRB 14-085 (June 24, 2014) (attorney failed to file his appearance for several months in two litigation matters and, in one of the matters, he also failed to take prompt action to compel an independent medical examination of the plaintiff; violations of RPC 1.3; in addition, throughout the representation, the attorney repeatedly failed to reply to his client's – and his prior counsel's – numerous requests for information about the two matters; violations of RPC 1.4(b); finally, several months after final judgment was entered against his client, the attorney failed to turn over the file to appellate counsel, a violation of RPC 1.16(d); we considered his unblemished record of thirty-five years at the bar); In the Matter of Robert A. Ungvary, DRB 10-004 (March 31, 2010) (attorney lacked diligence in the representation of his clients in two matters and failed to promptly deliver to their new counsel portions of their file); In re Muhlbaier, DRB 08-165 (October 1, 2008) (upon termination of representation,

attorney ignored, over a period of months, several requests of client's new counsel to turn over his files); and In the Matter of Anthony J. Giampapa, DRB 07-178 (November 15, 2007) (upon termination of representation, attorney failed to turn over his former client's file to new counsel, despite his many requests; attorney also violated RPC 1.4(b) and RPC 1.15(b)).

Standing alone, a reprimand is warranted for respondent's misrepresentations and his pattern of neglect. In aggravation, respondent's cutting remarks about former client Carroll were particularly repugnant and had no purpose other than to be hurtful – behavior unbecoming an attorney. In further aggravation, in the VonFischer ($1,500), Booker ($1,000), and Brown ($500) matters, respondent accepted legal fees but performed little or no legal services for the clients, misconduct that borders on abandonment. Given that additional misconduct, a censure would be the minimum sanction for respondent's misconduct.

There is also, however, the default nature of the proceedings to consider. "A respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008). Given that enhancement, the increase of discipline to a short period of suspension is warranted.

In crafting the appropriate quantum of discipline, however, we must also weigh, in aggravation, respondent's failure to learn from his past mistakes. The Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such situations, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system). Respondent has prior discipline for similar ethics infractions, evidencing his failure to learn from past mistakes: a June 19, 2014 reprimand for gross neglect, lack of diligence, and failure to communicate with a client, and a January 24, 2017 admonition for lack of diligence in a client matter.

Moreover, we were particularly disturbed by respondent's use of social media in the Carroll matter to disparage a former client more than a year after the termination of the representation. For the presence of these significant, aggravating factors, we determine that a one-year suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Chair Clark and Member Boyer voted for a six-month suspension. Member Petrou 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
Bruce W. Clark, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Brian LeBon Calpin
Docket No. DRB 19-172

Decided: December 17, 2019

Disposition: One-Year Suspension

Members	One-Year Suspension	Six-Month Suspension	Recused	Did Not Participate
Clark		X		
Gallipoli	X			
Boyer		X		
Hoberman	X			
Joseph	X			
Petrou				X
Rivera	X			
Singer	X			
Zmirich	X			
Total:	6	2	0	1

Ellen A. Brodsky
Chief Counsel