



termination of representation, failure to surrender papers and property to which the client is entitled and to refund unearned fee); RPC 3.2 (failure to expedite litigation); 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).

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

Respondent was admitted to the New Jersey bar in 2004, the New York bar in 2005, and the Wyoming bar in 2016. At the relevant times, he maintained an office for the practice of law in Casper, Wyoming. Respondent has no history of discipline in New Jersey.

Since June 4, 2018, respondent has been administratively ineligible to practice law in New Jersey for his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF).

Service of process was proper. On June 7, 2019, the OAE sent a copy of the formal ethics complaint, by regular and certified mail, to respondent's last known home and business addresses of record.<sup>1</sup> The letters sent to

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<sup>1</sup> New Jersey attorneys have an affirmative obligation to inform both the CPF and the OAE of changes to their home and primary law office addresses, either prior to such change or within thirty days thereafter. R. 1:20-1(c).

respondent's business address were returned to the OAE, marked "return to sender, unable to forward." On June 24, 2019, the OAE received a certified mail receipt, bearing an illegible signature, for the letter sent to respondent's home address. The regular mail was not returned to the OAE.

On July 3, 2019, the OAE sent a letter, by regular mail, to respondent's home address, informing him that, if he failed to file an answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the entire record would be certified to us for the imposition of discipline, and the complaint would be amended to include a charge of a willful violation of RPC 8.1(b). The letter was not returned to the OAE.

As of July 18, 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 OAE certified this matter to us as a default.

We now turn to the allegations of the complaint.

On February 16, 2016, respondent was conditionally admitted to practice law in the State of Wyoming. Pursuant to the conditional admission, respondent agreed to provide the Wyoming Board of Law Examiners with periodic progress reports, for thirty-six months, regarding "certain debt obligations."

On July 12, 2017, the Wyoming State Supreme Court (Wyoming Supreme Court) suspended respondent from the practice of law, based on his failure to comply with the terms of his conditional admission, in addition to allegations that he had converted property or funds, abandoned clients, engaged in conduct that posed an immediate threat to the effective administration of justice, and failed to produce requested documents. Board of Professional Responsibility v. Whitney, 398 P.3d 1285 (Wyo. 2017).

On July 27, 2017, the Wyoming State Bar's Office of Bar Counsel (Bar Counsel) filed a formal charge against respondent arising from his conduct in ten client matters.<sup>2</sup> On September 18, 2017, Bar Counsel filed a second formal charge, arising from similar conduct in eight additional client matters.<sup>3</sup>

On October 10, 2017, the Wyoming Supreme Court, on its own motion, terminated respondent's conditional admission to the Wyoming bar, following his failure to appear on an order to show cause why the court should not take such action. The next day, the Wyoming Board of Professional Responsibility

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<sup>2</sup> A "formal charge" appears to be equivalent to a formal ethics complaint. Six of the client matters identified in the formal charge are the subject of the OAE's ethics complaint.

<sup>3</sup> Respondent's representation of one of those clients, Lindsay Craig, also is the subject of the ethics complaint in this matter.

dismissed the formal charges against respondent, as he was no longer a member of the Wyoming bar.

On May 1, 2019, the Office of Enrollment and Discipline of the United States Patent and Trademark Office (USPTO) informed the OAE that an administrative law judge had ordered respondent excluded from the practice of law before the USPTO. The order was entered after respondent had defaulted in a USPTO disciplinary proceeding instituted against him, based on his conduct in three matters involving four clients.<sup>4</sup>

### **The Lindsay Craig Matter**

On November 8, 2016, Lindsay Craig retained respondent to resolve a title issue involving a 2005 Ford Excursion. Craig signed a retainer agreement and paid respondent \$310, representing an initial \$300 legal fee and a \$10 mailing fee. Pursuant to the terms of the agreement, respondent was to acquire from Benjamin Martinez the title and financing rights to the vehicle, either by sending him a letter and obtaining his agreement, or, if necessary, by instituting litigation against Martinez.

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<sup>4</sup> Pursuant to R. 1:20-14(d), the OAE elected to proceed with the matters referred by the USPTO by way of complaint rather than a motion for reciprocal discipline.

From November 8, 2016 until February 2017, respondent did not communicate with Craig, and, despite her requests, did not give her a copy of the letter that he was supposed to send to Martinez. In February 2017, Craig paid respondent an additional \$500 to pursue litigation against Martinez, as outlined in the retainer agreement. Respondent, however, performed no legal work in Craig's behalf.

Ultimately, respondent abandoned the Craig representation, without following the proper procedures for withdrawal, including notifying Craig of the termination. Moreover, respondent failed to refund to Craig the \$810 fee. Due to respondent's mishandling of the matter, Craig retained the services of another attorney.

Based on the above facts, the OAE charged respondent with having violated the following RPCs:

- a. RPC 1.1(a) and RPC 1.3, by failing to perform the legal services that he had agreed to provide;
- b. RPC 1.4(b), by failing to communicate with Craig, including providing her with a copy of the letter that he was supposed to send to Martinez and notifying her of his termination of the representation and, ultimately, by abandoning the representation without notice to Craig;
- c. RPC 1.5(a), by charging a fee for services that he did not provide;

- d. RPC 1.15(a), by failing to return the \$810 retainer payments and Craig's file;
- e. RPC 1.16(c), by unilaterally withdrawing from the Craig representation without following the proper procedures or notifying Craig;
- f. RPC 1.16(d), by terminating the representation without protecting Craig's interests or refunding the fee; and
- g. RPC 3.2, by failing to make reasonable efforts to expedite litigation consistent with Craig's interests and by failing to pursue litigation regarding the title of the car.

### **The Justine Russell Matter**

On January 29, 2017, Justine Russell retained respondent to oppose a petition to modify custody and child support. The deadline to file written opposition to the motion was nine days after the date of respondent's retention. Respondent also agreed to file a motion for temporary relief, a motion for a restraining order, and an order to show cause. Russell paid respondent a \$500 fee and provided him with the relevant documents to support the opposition. Respondent did not perform any of the legal services for which he was retained.

Russell contacted respondent three to four times per week, but he did not communicate with her. On the date of her last contact, which is not identified in

the complaint, respondent's paralegal, Jan Brooks, told Russell that respondent had "left the practice with the clients' monies."

The complaint alleged that respondent abandoned Russell and made no effort to protect her interests, by failing to file the opposition and by failing to ensure that Russell or superseding counsel were informed of the status of the matter. Respondent neither informed Russell that he would be terminating the representation, nor returned her \$500 fee or documents.

Based on the above facts, the OAE charged respondent with having violated the following RPCs:

- a. RPC 1.1(a), by failing to perform the legal services that he had agreed to provide and by failing to return Russell's documents;
- b. RPC 1.3, by failing to perform the legal services that he had agreed to provide and by failing to protect Russell's interests on termination of the representation;
- c. RPC 1.4(b), by failing to keep Russell reasonably informed about the status of the matter, including not returning her calls and ultimately abandoning the representation without notifying Russell;
- d. RPC 1.5(a), by charging a fee for services that he did not provide;
- e. RPC 1.15(a), by failing to return the unearned fee and Russell's file;



- f. RPC 1.16(c), by unilaterally withdrawing from the Russell representation;
- g. RPC 1.16(d), by terminating the representation without protecting Russell's interests in the litigation or refunding the fee; and
- h. RPC 3.2, by failing to make reasonable efforts to expedite litigation consistent with Russell's interest and by failing to pursue litigation regarding the family matters.

### **The Peggy Sue Morrison Matters**

On April 6, 2017, Peggy Sue Morrison retained respondent to represent her in two matters before the Wyoming Department of Workforce Services (Department). She paid a \$1,500 retainer to respondent, who represented her in a telephone hearing. According to the complaint, he was unprepared, did not know the applicable statutes, and dismissed witnesses who were ready to testify in Morrison's behalf. The Department dismissed Morrison's claim.

Although Morrison wanted to appeal the decision, respondent failed to return her calls to discuss the matter. Therefore, she terminated respondent's representation and appeared pro se at the appeal. Although Morrison had terminated the representation, the complaint alleged that respondent's inaction and failure to communicate with her constituted a de facto termination of the

representation. Approximately six months later, respondent refunded to Morrison \$500 of the \$1,500 retainer.

Based on the above facts, the OAE charged respondent with having violated the following RPCs:

- a. RPC 1.1(a) and RPC 1.3, by agreeing to represent Morrison in a matter that he was unprepared to handle and did not complete;
- b. RPC 1.4(b), by failing to keep Morrison reasonably informed about the status of a matter, failing to communicate with her, particularly in respect of the appeal, and by abandoning the representation without advising Morrison;
- c. RPC 1.5(a), by charging a fee for services that he did not complete;
- d. RPC 1.15(a), by failing to return the unearned fee;
- e. RPC 1.16(c), by withdrawing from the Morrison representation, de facto, without following the appropriate procedures;
- f. RPC 1.16(d), by terminating the representation without protecting Morrison's interests, such as by following through with the appeal or refunding the fee, which caused her to appear pro se in the matter;
- g. RPC 3.2, by failing to make reasonable efforts to expedite litigation consistent with Morrison's interest, such as by unilaterally terminating the representation, by failing to advise Morrison of the termination, and by failing to pursue and attend the appeal; and

- h. RPC 8.4(d), by abandoning the Morrison representation without completing the agreed upon litigation, and by being unprepared for the hearing and not pursuing an appeal.

### **The Heidi Roylance Matter**

On December 2, 2016, Heidi Roylance retained respondent to represent her in a bankruptcy matter.<sup>5</sup> She paid him \$840, representing a \$500 legal fee and \$340 for filing fees. Between December 2016 and May 2017, Roylance was served with collection papers and a notice of wage garnishment. She contacted respondent multiple times to notify him of these developments, provide documentation, and request guidance. Respondent told Roylance to ignore the collection papers, which would be stayed once the bankruptcy filings were completed. Respondent never filed the bankruptcy petition and, by May 9, 2017, had stopped communicating with Roylance. She subsequently learned that respondent had not filed any papers in her behalf.

On May 23, 2017, Roylance wrote to respondent, via e-mail. The content of the e-mail is not set forth in the complaint. The next day, Roylance terminated

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<sup>5</sup> The factual allegations in the ethics complaint/ are similar to the findings of fact set forth in the Initial Decision On Default Judgment issued by J. Jeremiah Mahoney, U.S.A.L.J., in In the Matter of Thomas J. Whitney, United States Patent and Trademark Office, Proceeding No. D201848 (March 14, 2019) (USPTO decision). The USPTO decision is attached to the ethics complaint as Exhibit 8.

respondent's representation, in writing. When she tried to hand-deliver the letter, she found respondent's office closed and locked. The certified letter she sent to him was returned. According to the complaint, although Roylance intended to terminate respondent's representation, he already had done so by failing to file the appropriate paperwork and failing to respond to her requests for information.

Roylance recovered the \$500 legal fee from respondent's malpractice insurance carrier, but not the \$340 in filing fees. Respondent never returned her file. Eventually, Roylance's wages were garnished. Therefore, she retained another attorney, who recovered the garnished amounts for her.

Based on the above facts, the OAE charged respondent with having violated the following RPCs:

- a. RPC 1.1(a) and RPC 1.3, by failing to perform the legal services that he had agreed to provide, including filing a bankruptcy petition;
- b. RPC 1.4(b), by failing to keep Roylance reasonably informed about the status of the matter, failing to communicate with her, and ultimately abandoning the representation without notifying Roylance;
- c. RPC 1.5(a), by charging a fee for services that he did not provide;
- d. RPC 1.15(a), by failing to return the unearned fee and Roylance's file;

- e. RPC 1.16(c), by unilaterally withdrawing from the Roylance representation without following the proper withdrawal procedure;
- f. RPC 1.16(d), by terminating the representation without protecting Roylance's interests, such as by not filing any papers related to the bankruptcy proceeding, which resulted in Roylance's wages being garnished without recourse, and by failing to return the filing fee; and
- g. RPC 3.2, by unilaterally terminating the representation without filing a bankruptcy petition.

### **The Olutola Akiode and Sina Adeniji Matter**

On April 14, 2017, Dr. Olutola Akiode and her husband, Sina Adeniji, retained respondent to defend them in a civil matter in Wyoming state court.<sup>6</sup> Akiode and Adeniji's answer to the complaint was due by April 25, 2017.

On April 26, 2017, a default was entered due to respondent's failure to file a timely answer. That same day, when Akiode asked respondent about the filing deadline, he replied that the deadline was at a later date, which was not accurate. The next day, respondent filed an untimely answer to the complaint. In light of the entry of the default and untimely answer, the court scheduled a hearing, for June 6, 2017, a motion for default judgment. Thereafter, a lien was recorded

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<sup>6</sup> The factual allegations in the ethics complaint are similar to the findings of fact set forth in the USPTO decision.

against Akiode and Adeniji's house. When asked about the default and lien, respondent replied that it was a clerical error, which he would correct. Again, this was not accurate.

On May 18, 2017, Akiode and Adeniji retained new counsel, because respondent had stopped communicating with them. According to the complaint, respondent de facto unilaterally withdrew from the representation.

Respondent neither returned the file to Akiode and Adeniji nor provided it to superseding counsel. After the Wyoming Bar commenced an ethics investigation, respondent returned the \$2,000 retainer to his former clients.

Based on the above facts, the OAE charged respondent with having violated the following RPCs:

- a. RPC 1.1(a), by abandoning the Akiode and Adeniji representation, and RPC 1.1(a) and RPC 1.3, by failing to timely file an answer to a civil complaint resulting in a default judgment;
- b. RPC 1.4(b), by lying to his clients regarding the status of the matter and, ultimately, ceasing communication with them;
- c. RPC 1.15(a), by failing to return the client file;
- d. RPC 1.16(c), by unilaterally withdrawing from the Akiode and Adeniji representation without following the proper procedures;

- e. RPC 1.16(d), by failing to protect Akiode's and Adeniji's interests, upon termination of the representation, by not defending the default or providing new counsel with the file;
- f. RPC 3.2, by filing an untimely answer to the complaint, allowing default to be entered, and unilaterally terminating the representation without providing new counsel with the file; and
- g. RPC 8.4(c), by misrepresenting to Akiode and Adeniji that the filing deadline had not lapsed and that the default was a clerical error.

### **The Debra Purdy Matter**

On March 25, 2017, Debra Purdy retained respondent to file an objection to her former husband's bankruptcy petition filed in the United States Bankruptcy Court for the District of New Jersey.<sup>7, 8</sup> Purdy paid a \$500 retainer to respondent and agreed to a \$75 hourly rate.

The bankruptcy representation was to include the filing of a creditor claim; defending a motion to dismiss a monetary judgment that Purdy had obtained against her former husband; ensuring that monies in her children's college funds

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<sup>7</sup> On August 8, 2017, Purdy filed a grievance against respondent in New Jersey, which was administratively dismissed on March 29, 2019, presumably because the matter was encompassed in the USPTO decision.

<sup>8</sup> The factual allegations in the ethics complaint are similar to the findings of fact set forth in the USPTO decision.

were not lost or disbursed during the bankruptcy; securing payment for medical insurance for one of the children; and collecting on prior judgments entered against her former husband. The confirmation hearing was scheduled for May 17, 2017, with prehearing filings due on May 11, 2017. Purdy provided numerous documents to respondent regarding her position.

Respondent neither entered an appearance nor filed any documents in the bankruptcy proceeding. Further, he failed to file or serve on his adversary an objection. Yet, on May 11, 2017, respondent provided Purdy with a copy of an objection that he allegedly had sent to that attorney.

At the May 17, 2017 confirmation hearing, Purdy provided a copy of the objection to her former husband's attorney, who informed her that he never received it from respondent, that it lacked documentary support, and that the trustee intended to recommend the bankruptcy plan. Purdy immediately sent an e-mail to respondent, but he failed to reply. That same day, Purdy called respondent's office seven times, but respondent returned none of her calls. Respondent told Brooks, his paralegal, that "we don't need difficult clients like her anyway. Just ignore her."

The ethics complaint alleged that respondent unilaterally terminated the representation of Purdy, without notice or explanation; neither earned nor



returned the \$500 fee; did not return Purdy's file, which contained her personal information; and did not adequately protect Purdy's interests in the bankruptcy matter. Because she was unable to afford another attorney, she remained unrepresented.

Based on the above facts, the OAE charged respondent with having violated the following RPCs:

- a. RPC 1.1(a) and RPC 1.3, by failing to perform the legal services that he had agreed to provide, more specifically, by failing to enter an appearance in the bankruptcy proceeding and filing the objection and other documents; and, further, he violated RPC 1.3, by failing to reply to Purdy's request for information;
- b. RPC 1.4(b), by failing to keep Purdy reasonably informed about the status of the matter, by ignoring her e-mails and phone calls, and, ultimately by abandoning the representation without notice to Purdy;
- c. RPC 1.5(a), by charging a fee for services that he did not provide;
- d. RPC 1.15(a), by failing to return the unearned fee and Purdy's file;
- e. RPC 1.16(c), by unilaterally withdrawing from the representation;
- f. RPC 1.16(d), by failing to protect Purdy's interests, upon termination of the representation, by not filing any documents in the bankruptcy proceeding and by failing to return the fee and the file;

- g. RPC 3.2, by failing to make reasonable efforts to expedite litigation consistent with Purdy's interest, specifically, by unilaterally terminating the representation and not filing an objection; and
- h. RPC 8.4(c), by misrepresenting to Purdy that he had filed the objection to the bankruptcy and served a copy upon her former husband's attorney.

### **The Catherine Mahoney Matter**

On May 2, 2017, respondent consulted with Catherine Mahoney at her home, in Gillette, Wyoming, regarding a potential case against the Gillette Police Department. After the meeting, Mahoney gave respondent a box of relevant documents containing personal identifiers of Mahoney and Gillette Police Department employees. Approximately two weeks later, Mahoney contacted respondent and was informed that he was still reviewing the items. Thereafter, Brooks told Mahoney that respondent had left the practice and taken files, including hers. Based on respondent's failure to return the box of documents to Mahoney, the complaint charged him with having violated RPC 1.15(a).

### **Failure to Cooperate with the OAE**

The final charge asserted against respondent is RPC 8.1(b), which arises from the Wyoming Board's August 7, 2017 referral to the OAE and the Purdy

grievance.<sup>9</sup> In respect of the referral, the OAE initially placed the matter on untriable status, pending the outcome of the Wyoming disciplinary proceeding. Thereafter, on August 16, 2017 and March 15 and May 7, 2018, the OAE asked respondent to explain, in writing, why he had not reported his Wyoming suspension to the OAE. The May 7, 2018 certified letter was returned “unclaimed” and “unable to forward.” Respondent ignored the other letters.

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We find that the facts recited in the complaint support most 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 in the complaint must be supported by sufficient facts for us to determine that unethical conduct has occurred.

The facts recited in the complaint clearly and convincingly establish that respondent violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b) in six client matters; RPC 1.16(d) in five client matters; RPC 8.4(c) in two client matters; RPC 1.15(a) in one client matter; RPC 3.2 in one client matter; and RPC 8.1(b). We determine

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<sup>9</sup> As noted, the Purdy grievance was dismissed and, therefore, we need not address the RPC 8.1(b) charge as it pertains to respondent’s conduct in that matter.

to dismiss the remaining charges that respondent violated RPC 1.5(a), RPC 1.16(c), and RPC 8.4(d).

In the Mahoney matter, respondent was charged with a single violation, RPC 1.15(a), which requires a lawyer who possesses a client's property to identify the property and appropriately safeguard it. Such property may include client documents and records. See, e.g., In the Matter of John E. Tiffany, DRB 10-346 (January 24, 2011) (the attorney lost a client's passport; in dismissing the matter on the grounds of de minimis non curat lex, we observed that, when the client gave the passport to the attorney, it was damaged and had expired; further, the client did not seek its return until eight years later and, thus, had not been harmed by the loss).

Here, Mahoney gave respondent a box of documents that were relevant to a potential case that she had against a local police department. The documents contained personal identifiers of the client and police department employees. When respondent left his law practice, he took the box with him and did not return it to Mahoney. Although the complaint does not allege that respondent lost the documents, his actions have resulted in Mahoney's loss of access to, and control over them, which, in our view, violates RPC 1.15(a).

In the six other client matters, the complaint charged respondent with having violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.5(a), RPC 1.15(a), RPC 1.16(c) and (d), and RPC 3.2.

In the Craig matter, between November 8, 2016 and approximately February 2017, respondent did nothing to resolve the title of the Ford Excursion, a violation of RPC 1.1(a) and RPC 1.3. Although respondent communicated with Craig at some point in February 2017, for the purpose of obtaining an additional \$500 fee to pursue litigation against Martinez, once respondent received the funds, she never heard from him again. He, thus, violated RPC 1.4(b).

In the Russell matter, the client retained respondent to file written opposition to a petition to modify custody and child support and to file a motion for a restraining order, among other things. He did nothing, a violation of RPC 1.1(a) and RPC 1.3. Further, respondent did not communicate with Russell, and he did not return her telephone calls, a violation of RPC 1.4(b).

In the Morrison matter, respondent agreed to represent the client in a Department hearing, but did nothing to prepare for the proceeding, a violation of RPC 1.1(a) and RPC 1.3. Further, he ignored her telephone calls, a violation of RPC 1.4(b).

In the Roylance matter, respondent agreed to represent his client in a bankruptcy proceeding but took no action in the matter. When Roylance was served with collection papers and a notice of wage garnishment, respondent told her to ignore them because the bankruptcy would stay those matters. Consequently, Roylance's wages were garnished. By his inaction, respondent violated RPC 1.1(a) and RPC 1.3. He also violated RPC 1.4(b), by failing to communicate with Roylance.

In the Akiode/Adeniji matter, respondent did not file an answer to the complaint, which resulted in the entry of default and a lien against his clients' home, a violation of RPC 1.1(a) and RPC 1.3. Sometime after these events took place, he also stopped communicating with them, a violation of RPC 1.4(b).

In the Purdy matter, respondent violated RPC 1.1(a) and RPC 1.3, by failing to file the objection to his client's former husband's bankruptcy petition, which resulted in the approval of his plan without consideration of the objection. Respondent ignored Purdy's attempts to communicate with him after she learned of the outcome, a violation of RPC 1.4(b).

RPC 3.2 requires an attorney to make reasonable efforts to expedite litigation consistent with the client's interests. If litigation is not pending, the Rule does not apply. See, e.g., In re Perdue, 240 N.J. 43 (2019); In the Matter of

M. Blake Perdue, DRB 18-319, DRB 18-320, and DRB 18-321 (March 29, 2019) (slip op. at 14); In the Matter of Esther Maria Alvarez, DRB 19-190 (September 20, 2019); In re Rochman, 202 N.J. 133 (2010); In the Matter of David S. Rochman, DRB 09-307 (April 20, 2010) (slip op. at 49); and In re DeSeno, 200 N.J. 201 (2009); In the Matter of Thomas DeSeno, DRB 08-367 (May 12, 2009) (slip op. at 21). Respondent violated RPC 3.2 in the Akiode/Adeniji matter by failing to file an answer to the complaint, thus preventing the matter from proceeding apace. Because respondent never instituted litigation in behalf of his other clients, he did not violate the Rule in those matters.

RPC 1.5(a), RPC 1.15(a), and RPC 1.16(d) govern an attorney's conduct in respect of his or her fees and the client's property, including funds. RPC 1.16(d) provides that, upon termination of representation, the attorney must surrender papers and property to which the client is entitled and refund any advance payment of fee that has not been earned or incurred. Respondent violated RPC 1.16(d) by doing no work in the Craig, Russell, Roylance, and Purdy matters but keeping their retainers and/or other fees. He also violated the Rule by failing to return the client files to Craig, Russell, Roylance, Akiode/Adeniji, and Purdy.

The allegations of the complaint lack clear and convincing evidence that respondent violated RPC 1.16(d) in the Morrison matter. Respondent refunded

\$500 of the \$1,500 fee. He earned at least some portion of the \$1,500 retainer because he did represent her, however poorly, at the hearing. Because there is no evidence in respect of the value of the work that respondent performed for Morrison, there is no basis for us to determine how much, if any, of the remaining \$1,000 he should have returned to her.

Client abandonment may result in a charged violation of RPC 1.16(d). See, e.g., In re Milara, 237 N.J. 431 (2019); In the Matter of Diego P. Milara, DRB 17-427 and DRB 18-170 (November 14, 2018) (slip op. at 16); In re Franklin, 236 N.J. 453 (2019); and In the Matter of Kirsten Elizabeth Franklin, DRB 18-097 (September 4, 2018) (slip op. at 26). Indeed, there is no greater failure to protect a client's interests than to abandon the client. Although the complaint purported to charge respondent with client abandonment, under RPC 1.4(b), in the Craig, Russell, Morrison, Roylance, and Purdy matters, we find that client abandonment was implicit in the RPC 1.16(d) charges.

Respondent certainly abandoned most of his clients. He took retainers from Craig, Russell, Roylance, Akiode and Adeniji, and Purdy, but did no work, and failed to communicate with them. Of note, respondent's paralegal told Russell that respondent had "left the practice with the clients' monies." She stated something similar to Mahoney. In the case of Roylance, when the client tried to



hand-deliver a letter to respondent, she found his office closed and locked. In our view, these facts establish, clearly and convincingly, that respondent abandoned the practice and, thus, most of his clients.<sup>10</sup> See In re Glasner, 195 N.J. 13 (2008) (finding that an attorney who takes retainers from clients and does nothing substantial to protect their claims has abandoned the clients even if the attorney did not close the office or become entirely unavailable to them). In the case of Morrison, we do not find client abandonment because the complaint does not allege that the scope of his representation included filing an appeal from the Department's decision.

RPC 1.5(a) prohibits an attorney from charging an unreasonable fee. Although respondent did little to no work in the above client matters, the fact that he may not have earned the fee does not render his fee unreasonable. Rather, his misconduct is captured by his failure to return the unearned portion of his fee, a violation of RPC 1.16(d). Because the complaint does not support a finding that respondent's fee was unreasonable, we dismiss the RPC 1.5(a) charges.

We also determine to dismiss the RPC 1.15(a) charges. The complaint charged respondent with having violated the Rule based on his failure to return

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<sup>10</sup> Although respondent returned \$500 to Morrison and \$2,000 to Akiode and Adeniji, the complaint contains no evidence that he renewed communication with them, continued to work on their cases, or re-opened his office.

either the clients' fees or files or both. As shown above, the more applicable Rule is RPC 1.16(d), which we found respondent to have violated in all but one matter.

The complaint also charged respondent with having violated RPC 1.16(c), which requires a lawyer to comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. This Rule governs matters involving ongoing representations, which may require notice or permission to avoid prejudice to the client when a lawyer seeks to terminate the representation late in the litigation. None of the client matters in this case involves the termination of a representation after the performance of substantial legal services. We, thus, dismiss the charge.

In the Akiode/Adeniji and Purdy matters, respondent violated RPC 8.4(c). In the first matter, he failed to file a timely answer to the complaint, which led to the entry of default. Thereafter, he misrepresented to one of the clients that the filing deadline had not yet expired. The default led to the placement of a lien on the clients' home. Respondent then misrepresented to the clients that the default and the lien were the result of a clerical error, which he promised to correct, but failed to do so.

In the Purdy matter, notwithstanding respondent's failure to enter an appearance in the client's former husband's bankruptcy proceeding and failure to

file an objection, he provided his client with a fabricated copy of an objection that he claimed to have sent to the former husband's attorney, a clear violation of RPC 8.4(c).

Finally, in the Morrison case, the complaint alleged that respondent violated RPC 8.4(d) in the following respects: by abandoning the representation; by representing his client at a hearing for which he was unprepared, which included a lack of knowledge of applicable statutes, and by dismissing witnesses who were ready to testify in Morrison's behalf; and by failing to file an appeal. We determine that respondent's failure to file an appeal did not violate RPC 8.4(d).

Conduct prejudicial to the administration of justice typically involves behavior that flouts court orders, taxes judicial resources, or otherwise affects the outcome of a proceeding. See, e.g., In re Colby, 232 N.J. 273 (2018) (attorney had agreed to represent his client in an estate matter while he was ineligible, but failed to enter an appearance or to file any responsive pleadings to a complaint seeking, among other things, removal of his client as the trustee of a decedent's trust; although the attorney appeared in the courthouse on the date of a scheduled order to show cause and spoke with his adversary in an attempt to settle the matter, he did not enter the courtroom or take any other action that required court

action or that affected the outcome of the proceeding on the order to show cause; in another matter, the attorney was retained to probate a will and settle an estate, but took no action in the matter and failed to file an answer to a competing claim for appointment as the estate administrator; once again, the attorney appeared in the courthouse to attempt to negotiate the matter with opposing counsel, who refused to entertain any discussion in light of the attorney's ineligible status; because there was no evidence that the attorney's actions affected the outcome of the proceedings, we dismissed the RPC 8.4(d) charge); In re Brent, 231 N.J. 131 (2017) (RPC 8.4(d) charge dismissed because the parties' stipulation contained no facts establishing how or whether the attorney's conduct affected or prejudiced the administration of justice); In re Cerza, 220 N.J. 215 (2015) (among other misconduct, attorney failed to comply with an order requiring him to produce subpoenaed documents in a bankruptcy matter, a violation of RPC 3.4(c) and RPC 8.4(d)); and 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, his failure to provide the court with advance notice of his conflicting calendar

prevented the judge from scheduling other cases for that date).

Here, the allegations of the complaint fall short of establishing, by clear and convincing evidence, that respondent violated RPC 8.4(d), by attending the Morrison hearing unprepared, lacking knowledge of applicable statutes, and failing to call certain witnesses to testify. The allegations of the complaint do not tie the dismissal of Morrison’s claim to these deficiencies in respondent’s performance. Further, respondent never agreed to file an appeal in Morrison’s behalf. Thus, we dismiss the RPC 8.4(d) charge.

The chart below summarizes the RPC charges and the violations we find in each client matter:

CLIENTS	<u>RPCs</u>									
	1.1(a)	1.3	1.4(b)	1.5(a)	1.15(a)	1.16(c)	1.16(d)	3.2	8.4(c)	8.4(d)
Craig	X	X	X				X		N/A	N/A
Russell	X	X	X				X		N/A	
Morrison	X	X	X						N/A	N/A
Roylance	X	X	X				X		N/A	N/A
Akiode/ Adeniji	X	X	X		N/A		X	X	X	N/A
Purdy	X	X	X				X		X	N/A
Mahoney	N/A	N/A	N/A	N/A	X	N/A	N/A	N/A	N/A	N/A

In addition to the above infractions, respondent violated RPC 8.1(b) in connection with the investigation of the Purdy grievance by ignoring the OAE’s

multiple requests that he explain, in writing, why he had not reported his Wyoming suspension to the OAE and by failing to provide a written reply to the Purdy grievance.

The sole issue left for us to determine is the appropriate quantum of discipline to impose for respondent's misconduct.

Abandonment of clients almost invariably results in a suspension, the duration of which depends on the circumstances of the abandonment, the presence of other misconduct, and the attorney's disciplinary history. See, e.g., In re Nwaka, 178 N.J. 483 (2004) (three-month suspension for attorney who was disbarred in New York for abandoning one client and failing to cooperate with New York ethics authorities, by neither filing an answer to the complaint nor complying with their requests for information about the disciplinary matter; prior three-month suspension); In re Hoffmann, 163 N.J. 4 (2000) (three-month suspension in a default matter; the attorney closed his office without notifying four clients; he also was guilty of gross neglect, lack of diligence, failure to communicate with clients, failure to protect clients' interests upon termination of representation, and failure to cooperate with disciplinary authorities; prior reprimand and a three-month suspension); In re Perdue, 240 N.J. 43 (2019) (in three consolidated default matters, six-month suspension imposed on attorney

who, in two of the matters, abandoned his clients; the attorney also exhibited gross neglect and lack of diligence, failed to communicate with the clients, failed to return the file to one of the clients, and made misrepresentations to the clients; in all three matters, the attorney failed to submit a written reply to the grievance); In re Bowman, 175 N.J. 108 (2003) (six-month suspension for abandonment of two clients, misrepresentations to disciplinary authorities, pattern of neglect, and misconduct in three client matters, including gross neglect, lack of diligence, failure to communicate with the 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 misrepresenting the status of a matter to a client; prior private reprimand); In re Milara, 237 N.J. 431 (2019) (in two default matters, one-year suspension imposed on attorney for the totality of his misconduct, which included the abandonment of two clients, one of whom suffered serious harm as a result; misrepresentations to the clients, failure to file an affidavit of compliance with R. 1:20-20 following a temporary suspension for failure to cooperate with the OAE and a second temporary suspension for failure to comply with a fee arbitration determination, and other conduct prejudicial to the administration of justice; at the time, a censure was

pending before the Court, which entered an Order confirming our decision); In re Rosenthal, 208 N.J. 485 (2012) (in seven default matters, one-year suspension imposed on attorney who exhibited gross neglect and a pattern of neglect in two matters; lacked diligence in four matters; failed to keep the client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in seven matters; failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in one matter; charged an unreasonable fee in three matters; failed to communicate in writing the basis or rate of his fee in one matter; failed to expedite litigation in one matter; failed to cooperate with disciplinary authorities in seven matters; engaged in dishonesty in two matters; and engaged in conduct prejudicial to the administration of justice in two matters; he also abandoned six of the seven clients; attorney had unblemished disciplinary history in his more than twenty years at the bar); In re Basner, 232 N.J. 164 (2018) (motion for reciprocal discipline; two-year suspension imposed on attorney who exhibited gross neglect in eight matters, engaged in a pattern of neglect, exhibited lack of diligence in ten matters, failed to keep the client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in seven matters; failed to explain a matter to the extent reasonably



necessary to permit the client to make informed decisions regarding the representation in eight matters; failed to comply with the recordkeeping requirements of R. 1:21-6; failed to withdraw from the representation of a client when the representation violated the RPCs or other law; upon termination of representation, failed to protect the interests of the client in three matters; asserted a frivolous claim in two matters; failed to expedite litigation in two matters; made a false statement of material fact or law to a tribunal in two matters; knowingly made a false statement of material fact to disciplinary authorities in four matters; engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in five matters; and engaged in conduct prejudicial to the administration of justice in four matters; in aggravation, we considered the widespread and persistent nature of the attorney's misconduct, which, among other things, resulted in two of his clients serving prison terms); In re Cataline, 223 N.J. 269 (2015) (default; two-year suspension imposed on attorney who exhibited gross neglect in three matters, failed to cooperate with the district ethics committee in all four matters, and ignored the client's request for the return of his original documents in one matter; in aggravation, the attorney engaged in a pattern of neglect and abandoned the four clients by closing her office without notice to the clients or attorney regulatory authorities, and by failing to maintain an office telephone; prior

reprimand); and In re Franklin, 236 N.J. 453 (2019) (retroactive three-year suspension imposed on attorney who abandoned an unknown number of clients and engaged in an improper fee-sharing arrangement with a company marketed as a service provider to handle and defend foreclosure and real estate mitigation against Florida mortgage lenders).

In egregious cases involving client abandonment, the Court will not hesitate to impose disbarment, particularly in matters in which the attorney fails to appear on the Court's Order to Show Cause. See, e.g., In re Byrne, 237 N.J. 441 (2019) (default in three matters; attorney, who failed to appear on the Court's Order to Show Cause, disbarred for abandoning three clients; he also failed to file an affidavit of compliance with R. 1:20-20 following his temporary suspension for failure to comply with a fee arbitration determination; prior reprimand and three-month suspension).

Here, respondent's conduct was similar to that of the attorney in Rosenthal, who received a one-year suspension. Respondent committed multiple acts of unethical conduct in seven matters involving eight clients, and failed to cooperate with disciplinary authorities in two matters. Rosenthal involved misconduct similar to respondent's, in seven matters. Further, both respondent and the

attorney in Rosenthal abandoned all but one client, and their disciplinary matters proceeded as defaults. They also had unblemished disciplinary histories.

There is, however, one striking difference between Rosenthal and this case. That attorney did not display a pattern of disrespect toward multiple disciplinary systems and authorities. Although he defaulted in seven matters, the complaints issued from the same district ethics committee and were served within an eight-month period. In this case, respondent defaulted in the State of Wyoming, where he had been served with ethics complaints involving the same matters now before us. He also defaulted in the USPTO disciplinary proceeding involving some of the same client matters involved in the Wyoming proceeding and the proceeding in this State.

We cannot countenance or abide respondent's demonstrated contempt for the disciplinary system at both the federal and state levels. We, therefore, determine that a two-year suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Member Joseph voted to impose a one-year suspension. Member Petrou voted to impose a three-year suspension. Vice-Chair Gallipoli and Member Rivera voted to recommend respondent's disbarment.

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: \_\_\_\_\_

*For:* Ellen A. Brodsky  
Chief Counsel

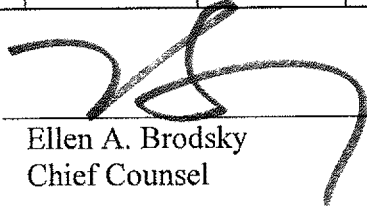
SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Thomas J. Whitney  
Docket No. DRB 19-296

Decided: May 12, 2020

Disposition: Two-Year Suspension

<i>Members</i>	Two-Year Suspension	1 Year- Suspension	Three-Year Suspension	Disbar	Recused	Did Not Participate
Clark	X					
Gallipoli				X		
Boyer	X					
Hoberman	X					
Joseph		X				
Petrou			X			
Rivera				X		
Singer	X					
Zmirich	X					
Total:	5	1	1	2	0	0

For:   
Ellen A. Brodsky  
Chief Counsel