Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-362
District Docket Nos. XIV-2015-0235E; XIV-2015-0236E; XIV-2015-0237E; XIV-2015-0239E; XIV-2015-0277E; XIV-2015-0278E; XIV-2015-0331E; XIV-2015-0332E; XIV-2015-0333E; XIV-2015-0334E; XIV-2015-0335E; XIV-2015-0336E; XIV-2015-0337E; and XIV-2015-0547E

In the Matter of

Philip Francis Drinkwater, III

An Attorney at Law

Decision

Argued: February 20, 2020

Decided: June 30, 2020

Steven J. Zweig appeared on behalf of the Office of Attorney Ethics.

Robert M. Perry appeared on behalf of respondent.

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

This matter was before us on a recommendation for a three-year suspension filed by a special master. The formal ethics complaint alleged that, in fourteen client matters, respondent violated RPC 1.1(a) (gross neglect) (twelve counts); RPC 1.1(b) (pattern of neglect) (one count); RPC 1.3 (lack of diligence) (twelve counts); RPC 1.4(b) (failure to communicate with the client) (fourteen counts); RPC 1.5(a) (unreasonable fee) (one count); RPC 1.16(d) (upon termination of representation, failure to take steps to the extent reasonably practicable to protect a client's interests, and failure to refund the unearned portion of the retainer) (fourteen counts); RPC 3.3(a)(1), (4), and (5) (false statement of material fact or law to a tribunal, offer evidence the lawyer knows is false, and failure to disclose to a tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal) (one count each); RPC 5.3(a) (failure to supervise non-attorney staff) (three counts); RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer) (one count); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (one count); and RPC 8.4(d) (conduct prejudicial to the administration of justice) (one count).

For the reasons set forth below, we determine to impose a six-month suspension.

Respondent was admitted to the New Jersey bar in 1992 and to the Pennsylvania bar in 1991. At the relevant times, he maintained law offices in Pitman and Pennsauken, New Jersey.

The Court declared respondent ineligible to practice law for his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection, for the periods from September 24, 2001 to October 2, 2001; September 15, 2003 to September 25, 2003; September 28, 2009 to December 14, 2009; and September 27, 2010 to October 22, 2010.

Effective July 1, 2015, the Court restrained respondent from practicing law and transferred him to disability inactive status, pursuant to R. 1:20-12. In re Drinkwater, 222 N.J. 1 (2015). Additionally, effective April 14, 2017, the Court temporarily suspended respondent from the practice of law for his failure to comply with a fee arbitration determination. In re Drinkwater, 228 N.J. 460 (2017).

To date, respondent remains on disability inactive status and remains suspended.

Respondent and the Office of Attorney Ethics (OAE) entered into a stipulation, dated January 22, 2019, which sets forth the following facts.

By letter dated November 3, 2014, respondent notified the Honorable Georgia M. Curio, A.J.S.C., Gloucester County, that he had been diagnosed with

depression and severe anxiety and that, as a result, he had decided to immediately close his practice. He requested to be transferred to disability inactive status. From November 5 through November 13, 2014, respondent was hospitalized for psychiatric issues.

On November 18, 2014, Hagner & Zohlman, LLC, was appointed trustee for respondent's law practice, pursuant to R. 1:20-19, which provides that the "purposes of the appointment shall be (1) to inventory active files and make reasonable efforts to distribute them to clients, (2) to take possession of the attorney trust and business accounts, (3) to make reasonable efforts to distribute identified trust funds to clients or other parties (other than the attorney), and (4) after obtaining an order of the court, to dispose of any remaining funds and assets as directed by the court." About seven months later, on July 1, 2015, the Court transferred respondent to disability inactive status. On December 1, 2015, an amended order designated Thomas J. Hagner, Esq. as a signatory on two of respondent's bank accounts. One was listed as his attorney trust account, and the other, presumably, was his attorney business account.

The Katie Brown Matter XIV-2015-0235E

In May 2014, Katie Brown retained respondent to file a Chapter 7 bankruptcy petition in her behalf, contingent on her payment of $2,335 to

respondent, consisting of a $2,000 flat fee, and a $335 court filing fee. By September 24, 2014, Brown had paid the entire amount, and, on October 3, 2014, she signed the bankruptcy documents. One month later, respondent notified Judge Curio of his mental health issues. Respondent never filed the bankruptcy petition.

Respondent stipulated that he failed to give Brown reasonable notice that he had closed his practice or that he no longer represented her; failed to return her papers; failed to refund the unearned portion of the fee; and that he violated RPC 1.4(b) and RPC 1.16(d).

The Linda D'Orio Matter XIV-2015-0236E

In November 2013, Linda D'Orio retained respondent to file a Chapter 13 bankruptcy petition in her behalf. Respondent filed the petition and, in June 2014, successfully filed a motion to convert the case from Chapter 13 to Chapter 7.

In July 2014, D'Orio asked respondent to reaffirm her car note with Nissan Motors Acceptance Corporation (NMAC). Respondent informed D'Orio that such legal services would require an additional $350 fee, which she paid. On July 26, 2014, D'Orio signed the reaffirmation agreement, which respondent mailed to NMAC. NMAC requested additional information, but respondent

neither informed D'Orio of the request nor provided NMAC with the additional information, which was required to process and finalize D'Orio's reaffirmation agreement.

In August 2014, the meeting of creditors was scheduled for D'Orio's bankruptcy, but respondent did not inform her of it until the day of the meeting, and she was unable to attend on such short notice. D'Orio's debts were discharged, including the car note to NMAC, despite her interest in reaffirming that debt. Respondent's gross neglect of the NMAC reaffirmation negatively affected D'Orio's credit rating with NMAC.

Respondent stipulated to having violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b).

The Frederick Layser Matter XIV-2015-0237E

In March 2014, Frederick Layser retained respondent to oppose a wage garnishment action. Respondent successfully prevented the wage garnishment, but advised Layser that the result would be temporary, because the garnishment had been in connection with an alimony obligation, and his former wife likely would request a hearing to resume the garnishment. Respondent counseled Layser that, to achieve permanent debt relief, he should file for bankruptcy protection.

On June 5, 2014, Layser retained respondent to file a Chapter 7 bankruptcy petition for a flat fee of $2,000, plus a filing fee of $335, which Layser paid in cash that date. Although respondent told Layser that he would file the petition immediately, he failed to do so. When Layser called respondent to inquire about the petition, respondent replied that he needed Layser's divorce decree and child support statement to complete the petition. After Layser faxed those documents, respondent's office confirmed their receipt.

Thereafter, Layser called respondent multiple times, but respondent neither replied nor filed the bankruptcy petition. After respondent decided to close his practice, his secretary informed Layser that respondent was "seriously ill and had decided to retire from the practice of law."

Respondent stipulated that he had not provided Layser with reasonable notice that he closed his practice or that he terminated the representation. He further stipulated that he had not refunded the unearned portion of the fee. Layser filed a fee arbitration request, resulting in a $3,135 award to him. Although the retainer agreement specified "a minimum of $2,335" in fees, Layser stated that he had paid $3,135 to respondent, who did not appear at the April 24, 2015 fee arbitration hearing. Respondent also stipulated that he did not

return Layser's papers. According to the OAE investigator, the OAE obtained all client files at issue from the attorney-trustee or his designee.

Respondent stipulated to having violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.16(d).

The Thomas Moffa Matter XIV-2015-0239E

On May 9, 2011, Thomas Moffa retained respondent to represent him in connection with a mortgage loan modification and a foreclosure matter, for an initial fee of $2,000, and a $200 hourly rate. Although Moffa paid the $2,000, respondent never notified Moffa's mortgage company that he had been retained.

On July 5, 2011, Moffa learned that his mortgage had been assigned to Bank of America (BOA) and that he could obtain a "Validation of Debt." Respondent advised him to take no action until he received a notice of intent to foreclose. On March 4, 2012, Moffa received that notice, which he promptly forwarded to respondent.

Respondent advised Moffa to communicate directly with BOA to obtain the loan modification, and neither assisted him nor took any action on Moffa's behalf. Moffa attempted to obtain the modification, but was deemed ineligible for any of the plans that BOA offered. Respondent then advised Moffa to wait

until he was served with a foreclosure notice, at which point, respondent represented, he would negotiate with the bank.

On June 15, 2013, Moffa was served with a summons and complaint for foreclosure. When he hand-delivered those documents, respondent informed Moffa that he required an additional $3,200 to request foreclosure mediation and to resolve all the issues with the bank. On June 18, 2013, Moffa paid the additional $3,200, but respondent failed to request mediation within the requisite sixty-day deadline after service of the summons and complaint.

On February 27, 2014, Moffa received notice from the Administrative Office of the Courts that the request for foreclosure mediation was denied as untimely. When Moffa informed respondent of the notice, respondent claimed that his assistant had failed to file the request for mediation. Respondent advised Moffa that bankruptcy was now the best option for him to retain his home, and offered to file the bankruptcy petition for $3,500, plus court fees. Moffa refused to pay the additional fees, because he already had paid respondent $5,200 for legal services which respondent had not performed. Respondent agreed to waive his fee, but required Moffa to pay the $310 filing fee, which Moffa advanced on June 30, 2014.

Respondent failed to file the bankruptcy petition. He stipulated that he failed to give Moffa reasonable notice that he had closed his practice or that he

no longer represented him; failed to return his papers; failed to refund the unearned portion of the fee; and that he violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.5(a), RPC 1.16(d), and RPC 5.3(a).

The Richard and Angela DiFalco Matter XIV-2015-0277E

The most serious charges in the ethics complaint, including forgery, relate to the DiFalco matter. In April 2012, Richard and Angela DiFalco retained respondent to obtain a mortgage loan modification and paid him a $3,000 fee. Richard testified that he signed a retainer agreement.

The DiFalcos previously had attempted, on their own, to obtain a mortgage modification from BOA, but were denied. Angela testified that she supplied the documents, including tax returns and paystubs, that respondent had requested, and, after the first meeting with respondent, her communications were with Anthony Musitano, respondent's paralegal. Musitano worked for respondent from May 2008 to February 2014.

On September 19, 2012, more than ninety days after the DiFalcos had provided all required documents to respondent, he forwarded the loan modification package to BOA. Respondent testified that the ninety-day period had no significance. He also claimed that he had strategically waited until September to forward the package, because Richard had been unemployed, and

BOA would evaluate whether the DiFalcos had the ability to pay the loan. Angela contacted BOA, who confirmed its receipt of the package.

By letter dated September 26, 2012, BOA informed the DiFalcos that, as of October 16, 2012, their loan would be transferred to a new servicer, Nationstar Mortgage, LLC, (Nationstar). Nevertheless, Richard claimed that, in November 2012, a Nationstar representative informed him that Nationstar had not received any documents from BOA and was not aware that respondent represented the DiFalcos. Angela immediately called respondent's office and either she or Richard faxed the letter to respondent. Richard testified that he had informed Musitano that the loan had been transferred to Nationstar. Respondent denied having any direct knowledge of the transfer letter, but stated that either Musitano or Richard ultimately informed him of that development.

On October 9, 2012, respondent sent BOA a letter of continuing representation, along with certain forms and documents for the loan modification. On October 24, 2012, respondent's office sent the DiFalcos' tax return information to BOA. Respondent testified that the handwriting on both telefax transmittal sheets was Musitano's. On October 31, 2012, respondent sent to BOA the DiFalcos' most recent pay stubs and bank statements. That same date, BOA either mailed or faxed to respondent's office an acknowledgement of

its receipt of his correspondence regarding the DiFalco loan, and informed him that the loan had been transferred to Nationstar.

Respondent could not explain why his office sent the above-referenced letters and documents to BOA when the DiFalcos previously had notified him of the loan transfer to Nationstar. He also could not explain why his office had not subsequently sent the information to Nationstar.

In November 2012, Richard learned from a Nationstar representative that respondent had never contacted Nationstar; that Nationstar wanted to retain the mortgage; and that Nationstar required certain information to do so. Richard contacted respondent's office a few days later, because he thought respondent would work with Nationstar. He testified that he had lost "all faith" in respondent's office and that, to prevent falling further back on his mortgage, he preferred to handle the matter himself, rather than rely on respondent.

In November or December 2012, Richard received a letter from Nationstar requesting the documents required for the loan modification. The DiFalcos decided to submit the information to Nationstar themselves, rather than send the letter to respondent, and obtained the loan modification on their own.

In late May 2013, Richard went to respondent's office to discuss obtaining a refund of the retainer, because respondent failed to contact Nationstar, although the DiFalcos had informed him that it was the new servicer. According

to respondent, Richard approached him in a loud, angry, and aggressive manner, after hours, claiming that he had obtained the loan modification without respondent's assistance, complaining that respondent did nothing on the file, and demanding his money back. Respondent testified that he was scared during the exchange.

In turn, Richard testified that the meeting occurred at 4:00 p.m., that there was no conflict or hostility, and that no voices were raised. According to Richard, respondent stated that he wanted to hear from Richard only in writing, in effect asking him to leave the office. About four months later, in September 2013, Richard sent respondent a letter requesting the return of the $3,000 "for services never rendered." Richard testified that he delayed sending the letter because he was unsure whether he should retain another lawyer to help him pursue a refund of the retainer.

By letter dated October 4, 2013, respondent denied the DiFalcos' refund request, asserting that he had submitted a complete loan modification package to BOA; that the DiFalcos had been instructed to contact respondent immediately upon receiving any letters about the modification, but failed to do so; and that the loan modification ultimately was granted. Respondent testified that, at the time that he wrote the letter, he believed that the loan modification application had been submitted to BOA, rather than Nationstar, and that he had

no direct knowledge that they secured the modification, obtaining that information from Musitano's handwritten notation in the file, dated September 20, 2013. Respondent enclosed a Fee Arbitration Request Form with his letter.

On December 6, 2013, respondent sent the DiFalcos an invoice, acknowledging receipt of $1,500 of the $3,000 fee, and requesting payment of the $1,500 balance. Because Richard had paid the entire $3,000 fee, he did not send additional funds to respondent, who did not contact the DiFalcos further regarding the invoice.

On March 24, 2014, the DiFalcos requested fee arbitration, asserting that there was no written fee agreement and that they received a fee agreement only after requesting a refund from respondent. Richard testified that Angela had completed and signed his name on the fee arbitration form and that the statements in it were true. Earlier in his testimony, however, Richard had admitted signing a retainer agreement and confirmed that his signature was affixed to page two of that agreement.

Richard explained that respondent had given him only the second page of the fee agreement, but that he did not question it, because he was given a few other documents at the same time. He claimed that he first saw the entire retainer agreement as an attachment to respondent's answer to the formal ethics complaint. Richard admitted that he had read the second page, which stated that

the client is responsible for legal fees, costs, and expenses, and that he knew he was signing a fee agreement. He denied that the second page provided that the document was an agreement; rather, it was a document giving "permission that I'm getting represented from [respondent]." Richard acknowledged that he had read and understood the paragraph providing that he "must fully cooperate with The Law Firm and provide all information relevant to the issues involved in this matter," but he independently decided not to forward the information from Nationstar because, by that time, he had lost all faith in respondent.

Angela testified that the first time she saw the entire fee agreement was October 2013, when respondent replied to the DiFalcos' request for a refund. Yet, five months later, when she completed the fee arbitration form, she claimed that there was no fee agreement, asserting she had never seen it. She pointed out that, although Richard had signed the fee agreement, she had not. She claimed that she and Richard discussed the fee arbitration form, she completed it, and she signed Richard's name on the form, because only he had signed the fee agreement.

The formal ethics complaint alleged that respondent forged Richard's signature on a September 18, 2013 letter from respondent to Nationstar, which purported to authorize respondent to represent the DiFalcos in the loan modification. Specifically, on May 19, 2014, respondent submitted the letter to

the fee arbitration committee as an attachment to his reply to the fee arbitration request, in which he asserted:

> [o]n or about September 18, 2013 Mr. DiFalco executed an authorization for our office to engage in communications with Nationstar on his behalf to confirm his eligibility for a loan modification. (See attached authorization dated September 18, 2013). Accordingly Angela DiFalco's representation that we had failed to communicate with Mr. DiFalco is demonstrably false and incorrect. On the same date of September 18, 2013, my office transmitted the letter of authorization to Nationstar
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> [S¶97.][1]

Richard testified that he did not believe that respondent had forged his signature on the September 18, 2013 letter; that the signature represents Angela's rendition of his signature; and that he does "not know where the signature came from." Angela acknowledged that the signature resembled her handwriting, but denied that she had signed the September 18, 2013 letter, and stated that she, too, had no idea where the signature on the letter came from. Richard further testified that Angela might have signed documents in connection with the loan modification matter, but that he had not authorized her to sign his name on the letter.

[1] "S" refers to the January 22, 2019 stipulation of facts.

Although Richard denied that Angela commonly signed documents in his behalf, he admitted that she had signed his name on the fee arbitration form, the request for transcript of tax return form, and the request for mortgage assistance form. Angela corroborated that she had permission to sign her husband's name on those documents. Richard further admitted that his wife had signed his name to paychecks, and "just different documents or paperwork that she needed to sign my name." Richard denied having authorized respondent to seek information from Nationstar, especially on September 18, 2013. Indeed, Richard testified that, at the May 2013 meeting, he had terminated respondent's representation.

In turn, respondent denied having forged Richard's signature, having directed anyone else to forge his signature, or having pasted the signature from another document. Additionally, he claimed no direct knowledge that Richard had come to his office to sign the document, denied any part in preparing the authorization himself, and could not explain why Richard would have signed the authorization after he had secured the loan modification from Nationstar.

Respondent testified that he recognized Musitano's handwriting in respect of the date on the September 18, 2013 letter, but did not recognize Richard's signature. He speculated that Musitano might have forged the document, but could not explain what advantage Musitano would have achieved as a result.

Musitano testified that his handwriting appeared on the facsimile cover sheet, and that it would have been his practice to send the document, although he did not recall doing so. He denied having written the date on the September 18, 2013 letter, or having signed the letter, and could not identify the handwriting on it. He asserted that the letter did not resemble the letters he usually drafted, identifying specific differences in formatting. Musitano denied that he forged Richard's signature, or that respondent had directed him to do so. He could not explain why the September 18, 2013 authorization letter would be prepared after the client had obtained a loan modification.

Musitano left respondent's employment on "not particularly good terms." Respondent testified that Musitano left his employment because respondent could not provide health insurance, due to the cost. Respondent maintained that the health insurance issue, coupled with Musitano's failure to honor his promise to remain in respondent's employ until he found another paralegal, led to the parties' falling out.

Respondent denied that the DiFalcos had directly told him that Nationstar was the new servicer. He believed that the DiFalcos had communications with Musitano, and that BOA transferred the loan modification package to Nationstar, in the ordinary course of business. Respondent claimed to have prepared all the necessary documents for the loan modification application,

including forms, bank statements, pay advices, a hardship letter, tax returns, and a budget proposal. He explained that a loan modification could take up to one year to complete. He denied having a motive to forge the letter, because he actually performed significant work on the file, which he believed justified his fee.

In reply to the fee arbitration request, respondent further asserted that the September 18, 2013 letter was transmitted to Nationstar, and that Nationstar had the DiFalcos' financial information from the previous package sent to BOA. Respondent contended that the DiFalcos purposefully excluded him from communications with Nationstar, and executed the modification without him, in breach of the retainer agreement. He claimed that the DiFalcos' demand for a refund was not made in good faith; that they received the loan modification "at least in large part to my firm's representation of their interests;" and that they excluded him from the line of communication and then used his work product to secure the modification.

The fee arbitration committee awarded the full $3,000 retainer to the DiFalcos. Respondent did not appear at the January 30, 2015 fee arbitration hearing.

Respondent stipulated to having violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b), but denied the RPC 3.3(a)(1), RPC 3.3(a)(4), RPC 3.3(a)(5), RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d) allegations.

The Steven and Doris Tyler Matter XIV-2015-0278E

On June 24, 2013, Steven and Doris Tyler retained respondent to file a Chapter 7 bankruptcy petition in their behalf, for a flat fee of $2,000, plus court fees. On June 24 and June 25, 2013, the Tylers paid respondent $400 and $1,900, respectively. Respondent then failed to communicate with them for more than a year. On October 13, 2014, respondent and the Tylers met to sign paperwork and to discuss the case.

Respondent failed to file the Tylers' bankruptcy petition. He stipulated that he failed to provide the Tylers with reasonable notice of his decision to close his practice or to terminate the representation; failed to return their papers; failed to refund the unearned portion of the fee; and violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.16(d).

The Richard and Mary Wilson Matter XIV-2015-0331E

On January 8, 2014, Richard and Mary Wilson retained respondent to file a Chapter 7 bankruptcy petition in their behalf, for a flat fee of $2,000, plus court fees of $306. On January 8, 2014, the Wilsons paid respondent $2,300.

Respondent failed to file the bankruptcy petition. He stipulated that he failed to provide the Wilsons with reasonable notice of his decision to close his practice or to terminate the representation; failed to return their papers; failed to refund the unearned portion of the fee; and violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.16(d).

The Carlos and Jamie Pizarro Matter XIV-2015-0332E

On June 23, 2014, Carlos and Jamie Pizarro retained respondent to file a Chapter 13 bankruptcy petition in their behalf, for a fee of $1,885, which they fully paid by August 14, 2014. On October 3, 2014, the Pizarros signed the bankruptcy petition, which respondent failed to file. Carlos Pizzaro filed a fee arbitration request, resulting in a $1,885 award to him. Respondent did not appear at the November 18, 2015 fee arbitration hearing.

Respondent stipulated that he failed to provide the Pizarros with reasonable notice of his decision to close his practice or to terminate the

representation; failed to return their papers; failed to refund the unearned portion of the fee; and violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.16(d).

The Donna Casey Matter XIV-2015-0333E

On May 14, 2014, Donna Casey retained respondent to file a Chapter 7 bankruptcy petition in her behalf, for a flat fee of $2,000, plus court fees of $335, with the understanding that the petition would not be filed until the entire fee was paid. By August 2014, Casey had paid the entire $2,335. Respondent failed to file the bankruptcy petition.

Respondent stipulated that he failed to provide Casey with reasonable notice of his decision to close his practice or to terminate the representation; failed to return her papers; failed to refund the unearned portion of the fee; and violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.16(d).

The Amanda Schramm Matter XIV-2015-0334E

In February 2014, Amanda Schramm retained respondent to file a Chapter 7 bankruptcy petition in her behalf, for a flat fee of $2,000, plus court fees of $306. She understood that the petition would not be filed until respondent received the entire fee, which she paid by March 2014. In July 2014, she signed the bankruptcy petition, and in early September 2014, respondent sent Schramm

another petition, which she signed and returned. Respondent failed to file the bankruptcy petition.

Respondent stipulated that he failed to provide Schramm with reasonable notice of his decision to close his practice or to terminate the representation; failed to return her papers; failed to refund the unearned portion of the fee; and violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.16(d).

The Steven and Kelly Reynolds Matter XIV-2015-0335E

In September 2014, Steven and Kelly Reynolds retained respondent to file a Chapter 13 bankruptcy petition in their behalf, for a flat fee of $2,000, plus court fees of $306, and agreed that the petition would not be filed until respondent received his entire fee, which they fully paid in installments. Respondent failed to file the bankruptcy petition. On November 5, 2014, respondent admitted himself to a psychiatric hospital. Although respondent's staff knew that he had decided to close his practice, they deposited the Reynoldses' last $1,000 check into respondent's attorney business account.

Respondent stipulated that he failed to provide the Reynoldses with reasonable notice of his decision to close his practice or to terminate the representation; failed to return their papers; failed to refund the unearned portion

of the fee; and violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 5.3(a).

The Christa Funk Matter XIV-2015-0336E

On August 28, 2013, Christa Funk retained respondent to file a Chapter 7 bankruptcy petition in her behalf, for a flat fee of $2,000, plus court fees of $306, which she paid in full that day. Although respondent drafted the petition, he required more information to complete it. He notified Funk of the additional documents needed, which she quickly provided. Respondent did not communicate with Funk for an unspecified, but extended, period.

Eventually, Funk called respondent's office, scheduled a meeting, and was told to bring updated documents to the meeting, which she did. Respondent's receptionist informed Funk that she would contact her in two weeks to schedule another appointment, but never did. After waiting for months for a return call, Funk called respondent's office and was told to forward updated documents, after which another appointment would be scheduled. Respondent failed to file the bankruptcy petition.

Respondent stipulated that he failed to provide Funk with reasonable notice of his decision to close his practice or to terminate the representation;

failed to return her papers; failed to refund the unearned portion of the fee; and violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 5.3(a).

The Scott and Stephanie Shanklin Matter XIV-2015-0337E

In 2014, Scott and Stephanie Shanklin retained respondent to file a bankruptcy petition in their behalf, for a flat rate of $2,000, plus court fees of $335. By October 30, 2014, the Shanklins had paid respondent the entire $2,335. Respondent failed to file the bankruptcy petition.

Respondent stipulated that he failed to provide the Shanklins with reasonable notice of his decision to close his practice or to terminate the representation; failed to return their papers; failed to refund the unearned portion of the fee; and violated RPC 1.4(b) and RPC 1.16(d).

The Peter Vandenberg Matter XIV-2015-0547E

On August 14, 2012, Peter Vandenberg retained respondent to file a Chapter 13 bankruptcy petition in his behalf, for a reduced fee of $1,300, which he paid in full on or about that same date.

Respondent stipulated that he failed to file the bankruptcy petition, allegedly because Vandenberg did not provide all the required information. Respondent further stipulated that he failed to provide Vandenberg with

reasonable notice of his decision to close his practice or to terminate the representation; failed to return his papers; failed to refund the unearned portion of the fee; and violated RPC 1.1(a), RPC 1.3, and RPC 1.16(d).

Pattern of Neglect

In addition, respondent stipulated that he exhibited a pattern of neglect in his handling of legal matters, as he abandoned Brown, D'Orio, Layser, Moffa, the DiFalcos, the Tylers, the Wilsons, the Pizarros, Casey, Schramm, the Reynoldses, Funk, the Shanklins, and Vandenberg, stopped communicating with them, and did not provide them with his contact information. Respondent admitted that he stopped work on their files before he was suspended and failed to arrange for another attorney to assume the representation or reply to their phone calls.

Respondent's Asserted Mitigation

In 2011, respondent's practice was in decline, and his home went into foreclosure. In 2013, he opened a second office in Pennsauken, with the intention of expanding his business, but was largely unsuccessful.

Respondent has a significant medical history and had been taking opiates from 2001 to October 2013. In June 2014, he reported to his general practitioner

that he was experiencing stress, pressure, despondency, and sadness, because his performance as an attorney was suffering. His doctor prescribed the antidepressant Celexa. One side effect of Celexa, of which respondent was unaware, is an increase in anxiety and depression. As a result, respondent was having difficulty functioning on a normal basis. He began to take naps in the afternoon, take days off, and arrive at the office late or leave early. This behavior continued until August 2014, when he returned to his doctor, who "really wasn't able to do anything for me."

In September 2014, respondent consulted Bill Kane, the Director of the New Jersey Lawyers Assistance Program, who provided resource information and referred respondent to two other attorneys for counseling. Kane and the other attorneys encouraged respondent to "carry on, to stick it out, and then hopefully things would turn around." At this time, respondent's symptoms were worsening, but with the encouragement of Kane and the two other attorneys, he continued to practice law.

In September 2014, respondent suffered a panic attack, and extreme anxiety, for which he went to the emergency room at Kennedy Hospital in Stratford. Respondent testified that, at that time, he was experiencing severe mental health issues, and that, although he could function cognitively, he "was a mess" emotionally.

In October 2014, respondent met with Dr. Jonathan Cole, a psychiatrist at Cherry Hill Psychiatric Associates. By this time, respondent's daughter was driving him to and from work, and drove him to the appointment with Dr. Cole, because he did not trust himself to drive. Respondent's daughter left school and her job in Utah to return home in order to help respondent. He was "curled up on the carpet at nighttime," was not sleeping, had "the sweats," and was experiencing side effects due to the medication. Dr. Cole prescribed additional doses of Celexa, which again, caused side effects. Respondent was suffering from panic attacks and suicidal ideations.

In an April 21, 2015 letter, Dr. Cole recounted that he diagnosed respondent with severe major depression and generalized anxiety. In October 2014, respondent began receiving psychotherapy and psychopharmacology. His symptoms impaired his ability to function at home and in the workplace. Dr. Cole opined that respondent lacked the capacity to be fully employed and his illness "was not intentionally planned." Respondent explained this to mean that his breakdown was the result of a genuine medical condition and not a plan to defraud clients.

In a June 6, 2016 letter, Dr. Joseph Scott, a psychiatrist at Rowan Medicine, diagnosed respondent with bipolar disorder and generalized anxiety disorder. During the time that he was suicidal, his ability to focus, concentrate,

and function normally was severely impaired. Dr. Scott's treatment included medication management and supportive psychotherapy. At times, respondent presented as visibly distraught and anxious regarding the allegations of fraud and malpractice. In Dr. Scott's expert opinion, respondent was unable to work in a meaningful way at the time he was suicidal, and the November 2014 hospitalization "likely saved his life." Respondent testified that, as a result of his bipolar disorder, he would experience times of overactivity and then underactivity, after the initial diagnoses of major depression and generalized anxiety. As of June 2016, respondent was "doing well from a psychological and psychiatric standpoint."

Respondent provided medical records from University Physicians of Rowan, Department of Psychiatry, from October 2014 to November 2015. His diagnoses were major depressive disorder, recurrent episodes, severe, without mention of psychotic behavior and generalized anxiety disorder.

After consulting with Dr. Cole and Kane, respondent believed it was impossible for him to continue functioning as an attorney. Therefore, on November 3, 2014, he submitted the letter to Judge Curio, explaining his mental health issues and requesting to be placed on disability inactive status, pursuant to R. 1:20-12. Respondent has not practiced law since November 3, 2014. He believed that he was obligated to inform the courts that he was having an

emotional, physical, and mental health crisis. He copied all the judges in the counties where he had practiced, so that his circumstances would not adversely impact his clients. In addition, at that time, he was serving as trustee, a volunteer position, for another attorney and had recently concluded that attorney's practice.

Respondent asked his wife to contact Kane, who then contacted Judge Curio. Respondent testified, "[a]nd I was assured while I was in the Hampton Psychiatric Unit, that everything was proceeding according to rule. That my clients would be informed, that they were aware of my situation . . ."

In October 2014, respondent discovered that one of his employees had been "skimming money" from his business account, in the amount of approximately $5,000 or $6,000. The theft was discovered during an audit. At that time, respondent had a series of cases that were ready to be filed, but he could not file them due to the firm's financial circumstances. Respondent's wife liquidated her 401(k) account to provide money for the filing fees, but due to his emotional state, he did not file the cases. This contributed to his emotional distress, which precipitated his request to be admitted to the hospital. He believed that "the moment I stepped over the threshold of the Hampton Behavioral Center for psychiatric treatment, that my career as I knew it was over."

While respondent was in Hampton Psychiatric Unit, from November 5, through November 13, 2014, Robert Shoemaker was appointed as trustee of his practice. Once respondent entered the hospital, he felt relieved, and believed that, even though his practice was over, his clients would be assisted. His doctors substituted Prozac for Celexa, which helped to alleviate respondent's anxiety, and the side effects from the Celexa disappeared. For unexplained reasons, confusion existed as to the proper vicinage concerning the appointment of respondent's trustee, and two weeks after Shoemaker had initially been appointed as trustee, the Honorable Deborah Silverman Katz, A.J.S.C., Camden County, replaced Shoemaker by appointing Hagner as trustee. When respondent was notified of Hagner's appointment, he recognized that all Shoemaker's efforts to locate other attorneys to represent respondent's clients were ended, and, thus, his clients were left "hanging in the breeze."

Respondent testified that, when Hagner was appointed, he informed respondent's clients that respondent had retired, had abandoned the practice, and had taken their money with him. Respondent denied having abandoned his practice, but stated that he had a "nervous breakdown," and "[m]y only remaining concern and hope was that my clients would be properly transitioned to other counsel, and that hope was defeated and crushed because this transition did not take place as it should have." He admitted that he was financially ruined.

Moreover, undisclosed criminal charges were filed against respondent, resulting in his entry into the Pre-Trial Intervention program.[2] A concurrent order for restitution was entered in that matter, which respondent presently is paying at a rate of $200 per month.

On July 1, 2015, six months after a trustee was appointed, the Court entered the Order transferring respondent to disability inactive status, effective immediately.

THE SPECIAL MASTER'S FINDINGS

At the outset of his report, the special master noted that respondent had admitted most of the allegations against him. The only dispute pertained to the allegations that respondent violated RPC 8.4 (b), (c), and (d) in connection with the DiFalco matter, specifically, in respect of the legitimacy of Richard's purported signature on respondent's September 18, 2013 authorization letter to Nationstar. The special master analyzed the issue under the assumption that one of four people had to have signed that document. After eliminating the DiFalcos and Musitano as the possible signatories, the special master concluded that only respondent had the motive and the opportunity to forge the signature.

[2] The record does not provide any additional information regarding the criminal charges.

The special master noted that, although the OAE had not presented evidence from a forensic document examiner, the signature was obviously not Richard's, but was "virtually identical to the examples of (signatures with his consent) provided of the manner in which Ms. DiFalco signs her husband's signature." He found that the signature was not Richard's, because to suggest that he would have signed his wife's version of his signature rather than his own would "border on ludicrous." The special master then considered Angela as the signer, as the signature looked similar to her renditions of Richard's signature. The special master rejected Angela as the signer, however, because the letter was dated in September 2013, after the DiFalcos already had secured their mortgage modification, and had requested a refund of their retainer. For the same reason, the special master found that Richard would have no reason to sign such an authorization at that time.

The special master considered Musitano as a possible signer. At the hearing, Musitano denied forging or fabricating the signature on the letter. He further testified that the handwritten date on the letter was not the form in which he typically writes a date, but acknowledged that the handwritten date on the telefax transmittal page was his. The special master concluded that the numbers on both documents "are very similar."

Musitano testified that he had no recollection about discussions with respondent and the letter. Musitano further acknowledged his handwriting on the note discovered in the file, which established that he was aware that the DiFalcos had signed documents with Nationstar on March 26, 2013 and the loan application was completed in May 2013. The special master concluded that, although Musitano had the opportunity to forge the document, he had no motive to do so, as he was a salaried employee and had no obligation to the DiFalcos or exposure due to respondent's failure to provide services.

The special master determined that the circumstantial evidence supported respondent as the perpetrator of the forgery, because he had received the DiFalcos' fee, but admittedly failed to provide the requisite legal services. The special master found that the purpose of the forgery and letter was to suggest that respondent was providing ongoing legal services to the DiFalcos as of September 2013. The special master also noted that respondent did not mention the September 18, 2013 letter in his response to the DiFalcos' letter requesting a refund. The December 6, 2013 invoice submitted to the DiFalcos for an additional $1,500 further supported the notion that respondent was attempting to justify his unearned fee.[3] As a result, the special master found, by clear and

[3] According to the invoice, the DiFalcos had paid $1,500 of the $3,000 fee, but they had paid the entire $3,000 in May 2012.

convincing evidence, that respondent forged Richard's signature on the September 18, 2013 letter, by copying Angela's version of Richard's signature.

In addition, the special master found that respondent had submitted the forged letter with his reply to the ethics committee, suggesting that he was still performing legal services as of September 2013, which is inconsistent with the proofs and illustrated his "desperate attempt" to avoid refunding all or most of his fee. The special master noted that respondent exacerbated his conduct during his testimony at the hearing, when he "dramatically denied forging the signature of Mr. DiFalco, even in the face of overwhelming evidence to the contrary."

Accordingly, the special master determined that respondent violated both RPC 8.4(c) and RPC 8.4(d) by submitting the forged document to the fee arbitration committee, and continually denying the forgery, under oath, at the disciplinary hearing.

The special master found that respondent violated RPC 8.4(b) by violating N.J.S.A. 2C:21-1(a)(2) and (3), which provides in pertinent part:

> a. Forgery. A person is guilty of forgery if, with purpose to defraud or injure anyone . .
>
> (1) Makes, completes, executes, authenticates, issues or transfers any writing so that it purports to be the act of another who did not authorize that act . . .
>
> (2) Utters any writing which he knows to be forged in a manner specified in paragraph (1) or (2).

The purpose of the forgery must be to defraud or injure an individual, but it is not necessary to prove the victim was actually defrauded, or that the victim was even aware of the fraud or injury. Consequently, the special master found that respondent violated RPC 8.4(b) and N.J.S.A. 2C:21-1(a)(2) and (3), when he forged the signature, in order to justify his work product and retain the $3,000 fee that he had not earned.

Further, the special master found that respondent's conduct following the date of the DiFalcos' filing of the fee arbitration form supported the violations of RPC 3.3(a)(1), (4), and (5). Respondent proffered the forged letter in his reply to the fee arbitration committee, denied the allegations of the forgery in his answer to the formal ethics complaint, and denied the forgery under oath during the ethics hearing. The special master noted, "[e]ven as the orchestra was playing on the Titanic in the background, respondent continued his misconduct to the very end." Therefore, the special master found that respondent's actions regarding the forged document established that he knowingly made a false statement of material fact to the committee and to the special master, in violation of RPC 3.3(a)(1), knowingly offered false evidence in violation of RPC 3.3(a)(4), and knowingly failed to disclose a material fact which misled the tribunal, in violation of RPC 3.3(a)(5).

After acknowledging respondent's proffered mitigation, and having found that all the RPC violations alleged in the complaint had been proven by clear and convincing evidence, the special master determined that respondent's misconduct was egregious, and warranted a three-year suspension.

* * *

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence. We are unable to agree with the special master, however, that respondent was guilty of forgery or of the charged RPC violations connected with that alleged misconduct.

RPC 1.1(a) and RPC 1.3

Respondent committed gross neglect and lacked diligence in numerous client matters. Specifically, in the D'Orio matter, he failed to inform his client that NMAC required additional information to reaffirm her car note, failed to provide NMAC with that information, and failed to promptly inform D'Orio of the meeting of creditors, instead contacting her the day of the meeting, in August 2014, at which time she was unable to attend. As a result, the NMAC car note was discharged in bankruptcy, against D'Orio's wishes, negatively affecting her credit with NMAC.

In the Moffa matter, respondent failed to timely file the request for foreclosure mediation in response to the foreclosure complaint, and failed to file the bankruptcy petition.

In the Tyler matter, respondent met with the Tylers to sign the bankruptcy petition paperwork on October 13, 2014, more than a year after they had paid the entire retainer, in July 2013. He then failed to file their bankruptcy petition.

In the Layser, Wilson, Pizarro, Casey, Schramm, and Funk matters, respondent failed to file their bankruptcy petitions.

In the DiFalco matter, the facts do not support violations of RPC 1.1(a) and RPC 1.3, because, as respondent testified, the processing of a loan modification could take up to a year, and he submitted their application in September 2012. The DiFalcos did not dispute this contention. At their May 2013 meeting, Richard represented to respondent that the loan modification had been approved. He testified that he fired respondent at that meeting. Even if respondent believed that he still represented the DiFalcos as of the date of the September 18, 2013 letter, the loan modification already had been approved, the representation was concluded over a year before the trustee was appointed, and no other attorney was needed to assume the representation. Thus, the record does not establish the RPC 1.1(a) and RPC 1.3 violations in the DiFalco matter.

In the Reynolds matter, the retainer agreement provided that respondent would not file the bankruptcy petition until the entire fee had been paid. The last payment from the Reynoldses was mailed on November 12, 2014, and deposited in respondent's attorney business account on November 18, 2014, after respondent had applied for the attorney-trustee. By that time, however, the attorney-trustee maintained control over respondent's files, and, consequently, the record does not support the RPC 1.1(a) and RPC 1.3 violations in the Reynolds matter.

In the Vandenberg matter, respondent stipulated that he did not file the bankruptcy petition, because Vandenberg allegedly did not provide respondent with all the requested information. Therefore, the record does not establish the RPC 1.1(a) and RPC 1.3 violations in the Vandenberg matter.

We, thus, find that respondent violated RPC 1.1(a) and RPC 1.3 in the D'Orio, Layser, Moffa, Tyler, Wilson, Pizarro, Casey, Schramm, and Funk matters. The facts in the DiFalco, Reynolds, and Vandenberg matters lack sufficient evidence to support the RPC 1.1(a) and RPC 1.3 charges.

RPC 1.1(b)

The facts in the record support the finding that respondent violated RPC 1.1(b). At least three instances of neglect, in three distinct client matters, are

required for us to find a pattern of neglect. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). Respondent committed gross neglect in nine of the fourteen client matters herein.

RPC 1.4(b)

The facts in the record support the finding that respondent violated RPC 1.4(b) in several client matters. He did so in the D'Orio matter by failing to communicate with D'Orio regarding the car note reaffirmation and the date of the creditors meeting. Respondent violated RPC 1.4(b) in the Layser matter by failing to reply to Layser's telephone calls, and in the Tyler matter, by failing to communicate with the Tylers for a period of over one year.

In the Brown, Moffa, Wilson, Pizarro, Casey, Schramm, Reynolds, Funk, Shanklin, and Vandenberg matters, respondent admittedly did not provide the client with reasonable notice of his decision to close his practice and discontinue the representation.

Effective July 1, 2015, the Court transferred respondent to disability inactive status. Pursuant to R. 1:20-20(b)(11), attorneys transferred to disability inactive status must notify all clients in pending matters of the attorney's inability to act as an attorney due to their disability inactive status. Also, R. 1:20-20(b)(6) provides that an attorney who is suspended or transferred to

disability inactive status shall not solicit or acquire any legal business or retainers.

Here, however, respondent was not transferred to disability inactive status until July 1, 2015. Pursuant to R. 1:20-19(a)(1), an attorney-trustee was appointed in November 2014, after respondent submitted a letter requesting a transfer to disability inactive status.[4] This rule is silent as to the obligation of the attorney or the attorney-trustee to notify clients of the appointment. The November 18, 2014 order appointing Hagner & Zohlman, LLC, as attorney-trustee also is silent as to the notification obligations, except that it authorizes the attorney-trustee "to make an inventory of the active files of the attorney, to take possession of the attorney's practices and to marshal the assets of the law practice, to protect the interests of the clients and to protect the interests of [respondent] himself." Under these circumstances, it is unclear whether respondent was obligated to notify his clients or whether Hagner & Zohlman, LLC, was so obligated, based on the attorney-trustee appointment order entered before respondent's transfer to disability inactive status.

[4] As previously stated, an earlier Superior Court of Gloucester County order, not included in the record, appointed the original attorney-trustee, Mark B. Shoemaker, Esq. The November 18, 2014 order appointing Hagner & Zohlman, LLC, referenced the Gloucester County order, which, presumably, was dated sometime between November 3, 2014 and November 18, 2014.

Nothing in the record established whether Hagner & Zohlman, LLC, sent letters to respondent's clients notifying them of the appointment. Further, respondent had no control over whether Hagner & Zohlman, LLC actually sent the letters. Without a clear definition of respondent's obligations, the record lacks clear and convincing evidence to establish that he failed to provide his clients with reasonable notice of his decision to close his practice and discontinue the representation. Accordingly, for lack of clear and convincing evidence, we determine to dismiss the RPC 1.4(b) charges based solely on respondent's failure to provide his clients with reasonable notice of his decision to close his practice and discontinue the representation, in the Brown, Moffa, Wilson, Pizarro, Casey, Schramm, Reynolds, Funk, Shanklin, and Vandenberg matters.

Finally, in the DiFalco matter, the facts underlying the RPC 1.4(b) charge are that respondent stopped communicating with the DiFalcos, did not inform them how he could be contacted, and did not arrange for another attorney to reply to their phone calls. We find that these facts do not support the charge, because it was the DiFalcos who ceased communicating with respondent when they began to directly communicate with Nationstar, even though the retainer agreement obligated them to inform respondent of those communications. In addition, it is undisputed that respondent replied to the DiFalcos' inquiries about

the status of their case. Thus, we dismiss the RPC 1.4(b) charge in the DiFalco matter.

Therefore, we find that respondent violated RPC 1.4(b) in the D'Orio, Layser, and Tyler matters. We dismiss the RPC 1.4(b) charge in the Brown, Moffa, Wilson, Pizarro, Casey, Schramm, Reynolds, Funk, Shanklin, Vandenberg, and DiFalco matters.

RPC 1.5(a)

The facts contained in the record clearly and convincingly support the finding that respondent violated RPC 1.5(a) in the Moffa matter by charging the client $2,000 initially for a mortgage modification and foreclosure defense, and then requesting an additional $3,200 for the same service, all of which Moffa paid. Respondent then requested an additional $3,500 to file a bankruptcy petition, to which Moffa objected, because he already had paid $5,200 for services that were not performed. Respondent agreed to waive the bankruptcy fee, and Moffa paid the $310 filing fee. In total, Moffa paid respondent $5,510 for a bankruptcy petition that respondent failed to file. By charging Moffa three separate fees, but providing no services, respondent charged an unreasonable fee, in violation of RPC 1.5(a).

RPC 1.16(d)

The record does not establish the RPC 1.16(d) charge in any of the twelve client matters. The alleged violations in the Brown, Layser, Moffa, Tyler, Wilson, Pizarro, Casey, Schramm, Reynolds, Funk, Shanklin, and Vandenberg matters concern respondent's obligations to return the clients' property, and to refund the unearned portion of the retainer.

In our view, after November 2014, when respondent requested a transfer to disability inactive status, and an attorney-trustee was appointed, respondent was no longer obligated to return his clients' papers and property to them, pursuant to R. 1:20-19(b)(1). Rather, that obligation transferred to Hagner & Zohlman, LLC, as of the date of the order. In contrast, R. 1:20-20(b)(10) provides that the former attorney shall promptly deliver the file to a new attorney, if selected by the client, or to the client if no attorney is selected. Respondent was not transferred to disability inactive status until July 1, 2015, and remained governed by R. 1:20-19(b)(1) until that time. Therefore, we dismiss the RPC 1.16(b) charges solely relating to respondent's failure to return the clients' papers and property.

Moreover, on November 18, 2014, Hagner and Zohlman, LLC, assumed possession of respondent's attorney trust and business accounts as both R. 1:20-19(b)(2) and the court order provide. The amended order, dated December 1,

2015, designated Thomas J. Hagner, Esq. as a signatory on two of respondent's bank accounts. The Court Order, dated July 1, 2015, transferring respondent's status to disability inactive, required all current funds or funds deposited thereafter in any New Jersey financial institution maintained by respondent to be transferred to the Clerk of the Superior Court, to be deposited in the Superior Court Trust Fund. Because respondent relinquished control over his bank accounts, he was unable to refund any unearned portion of his clients' retainers. Thus, we determine to dismiss the RPC 1.16(d) charges concerning respondent's failure to refund the unearned portion of the retainer fee.

Based on the foregoing, we find that the record lacks sufficient evidence to support the RPC 1.16(d) charges in the Brown, Layser, Moffa, Tyler, Wilson, Pizarro, Casey, Schramm, Reynolds, Funk, Shanklin, and Vandenberg matters.

RPC 5.3(a)

The facts contained in the record clearly and convincingly establish the RPC 5.3(a) charge in the Moffa and Funk matters. The record lacks sufficient evidence to establish the RPC 5.3(a) charge in the Reynolds matter, however.

Respondent violated RPC 5.3(a) in the Moffa matter by failing to ensure that his assistant timely filed the request for foreclosure mediation. Also, in the Funk matter, respondent violated RPC 5.3(a) by failing to supervise his

employee when that employee told Funk that she would call her in two weeks to schedule an appointment, and never returned the call. After waiting for months, Funk called respondent's office and was told to forward updated documents, after which another appointment would be scheduled. Then, respondent decided to close his practice.

In the Reynolds matter, respondent is accused of failing to supervise his employee who deposited the clients' $1,000 check into his attorney business account on November 18, 2014. Respondent relinquished control over his attorney financial accounts at the time the attorney-trustee was appointed, in early November 2014, however, and he could not have supervised the employee who deposited the Reynoldses' check. At that point, the trustee had assumed control over respondent's attorney bank accounts.

Therefore, we find that respondent violated RPC 5.3(a) in the Moffa and Funk matters, but determine to dismiss that charge in the Reynolds matter.

RPC 3.3(a)(1), RPC 3.3(a)(4), RPC 3.3(a)(5), RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d)

The record contains insufficient evidence to support the RPC 3.3(a)(1), RPC 3.3(a)(4), RPC 3.3(a)(5), RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d) charges.

The facts regarding these allegations concern respondent's alleged forgery of Richard DiFalco's signature on the September 18, 2013 letter, and his offering

the letter as an attachment in response to the fee arbitration request. No handwriting expert was produced. The DiFalcos, Musitano, and respondent denied, under oath, having signed that letter. No one disputed that the signature resembled Angela's rendition of her husband's signature. Further, it was clear that the handwritten date on the letter strongly resembled Musitano's signature. Musitano testified that it was his handwriting on the accompanying telefax cover sheet, and that, although he did not have a direct recollection of the DiFalco matter or the letter, he would normally fax such documents. Respondent testified that he had no direct recollection of the letter, but discovered it when he prepared his reply to the fee arbitration request.

In addition, the DiFalcos falsely indicated on the fee arbitration request form that respondent had not provided them with a retainer agreement, and admittedly failed to provide respondent with information from Nationstar during their application for a loan modification, in violation of the retainer agreement. Further, Richard denied that his wife signed documents on his behalf, but then contradicted himself by testifying to multiple instances in which she had signed documents for him.

The special master concluded that, because respondent sought to prove to the fee arbitration committee that he had been providing ongoing legal services to the DiFalcos, he forged Richard's signature, submitted the forged document

in reply to the fee arbitration request, and then perjured himself by testifying that he had not forged the document.

The OAE submitted a summation brief to the special master in which it asserted that it may rely on circumstantial evidence, such as the DiFalcos' statements that the signature was a forgery; respondent blamed Musitano for the forgery; respondent had a financial motive and was under financial pressure; the letter at issue differs from other letters for the same purpose; Musitano testified that it was common for respondent to give him pre-signed documents; the letter was entirely unnecessary; respondent does not refer to the letter in his October 5, 2013 response to the DiFalcos' request for a refund; respondent never contacted Nationstar to direct it to disregard the letter after learning that the DiFalcos already secured the modification; he lied to the fee arbitration committee when he said that he continued to represent the DiFalcos after September 18, 2013 (although he was not speaking to them); he lied when he told the committee that his meeting with Richard occurred after the September 18, 2013 letter; he did not confirm whether the DiFalcos actually obtained a loan modification; he said he was satisfied that they had obtained a loan modification as of October 4, 2013, based on their representation; Musitano described respondent as a "hands on" boss so he would have knowledge of the letter; Musitano could not think of a reason that either Richard would sign the

authorization or that Musitano would fax the authorization when the modification already had been obtained; and the only explanation that "fits these facts" is that respondent forged the letter.

The OAE argued that, once respondent received the DiFalcos' letter requesting a refund, it became important to him to confirm that they secured the loan modification so that he could argue that they excluded him from the communications and used his work product to obtain the modification. Further, when the special master asked respondent whether the authorization would have permitted him to inquire about the loan modification, respondent replied, "[p]erhaps that's the reason that the letter was sent, for that purpose." According to the OAE, respondent forged the document so that he would receive confirmation of the loan modification from Nationstar. The OAE concluded that Musitano's handwritten notes on September 20, 2013 showed that he learned from Nationstar that the loan modification had been secured, and details pertaining therein, and that respondent knew the letter was forged when he submitted it to the committee.

The special master identified each possible suspect for the forgery, and by process of elimination, concluded that respondent was guilty, and that his motive was to justify his fee. The OAE similarly argued that respondent's motive was to confirm with Nationstar that the DiFalcos had secured the modification. The

DiFalcos, Musitano, and respondent denied forging the document, however, and it was clear that Musitano had written the date on the document, and that the forged signature actually was Angela's rendition of her husband's signature. In addition, the DiFalcos' testimony is replete with inconsistencies and admissions of their own practices regarding Angela signing her husband's name to important documents, their conscious decision to excise respondent from their interaction with Nationstar, and their purposeful misrepresentation to the fee arbitration committee that there was no retainer agreement with respondent. Based on the above facts, particularly the contradictory testimony, the special master may have had a strong, understandable suspicion that respondent had forged the document; however, strong suspicion does not satisfy the standard of proof of clear and convincing evidence. We determine that the record lacks sufficient evidence that respondent forged the September 18, 2013 letter. Accordingly, we dismiss the alleged RPC 3.3(a)(1), RPC 3.3(a)(4), RPC 3.3(a)(5), RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d) violations.

In sum, we find that respondent violated RPC 1.1(a) in nine matters (D'Orio, Layser, Moffa, Tyler, Wilson, Pizarro, Casey, Schramm, and Funk); RPC 1.1(b) for his pattern of neglect; RPC 1.3 in nine matters (D'Orio, Layser, Moffa, Tyler, Wilson, Pizarro, Casey, Schramm, and Funk); RPC 1.4(b) in three matters (D'Orio, Layser, and Tyler); RPC 1.5(a) in one matter (Moffa); and RPC

5.3(a) in two matters (Moffa and Funk). The record contains insufficient evidence to support three counts of RPC 1.1(a) (DiFalco, Reynolds, and Vandenberg); three counts of RPC 1.3 (DiFalco, Reynolds, and Vandenberg); eleven counts of RPC 1.4(b) (Brown, Moffa, DiFalco, Wilson, Pizarro, Casey, Schramm, Reynolds, Funk, Shanklin, and Vandenberg); twelve counts of RPC 1.16(d) (Brown, Layser, Moffa, Tyler, Wilson, Pizarro, Casey, Schramm, Reynolds, Funk, Shanklin, and Vandenberg); one count of RPC 3.3(a)(1), (4), and (5) (DiFalco); one count of RPC 5.3(a) (Reynolds), and one count of RPC 8.4(b), (c), and (d) (DiFalco).

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

Although the OAE recommended, in its summation brief, a suspension of six months or one year, in its January 22, 2020 letter, the OAE, relying on its summation brief and the special master's decision, increased the requested quantum of discipline to a three-year suspension. On January 22, 2020, respondent submitted a letter brief in which he argued that the special master's recommendation of a three-year suspension is "overly punitive in nature," given respondent's substantial mitigation, and the five-year passage of time since the conduct in the DiFalco matter occurred. Respondent asserted that a lesser sanction is warranted.

Attorneys who mishandle multiple client matters generally receive suspensions ranging from three months to one year. See, e.g., In re Pinnock, 236 N.J. 96 (2018) (three-month suspension for attorney who was found guilty of misconduct in ten client matters: gross neglect, lack of diligence, and failure to communicate with the client in nine matters; and pattern of neglect and conduct involving dishonesty, fraud, deceit, or misrepresentation in four matters; in aggravation, he caused significant harm to his clients; in mitigation, the attorney suffered from serious physical and mental health issues; prior reprimand); In re Tarter, 216 N.J. 425 (2014) (three-month suspension for attorney who was found guilty of misconduct in eighteen matters: lack of diligence and a pattern of neglect in fifteen of those matters; gross neglect in one matter; and failure to withdraw from the representation and to properly terminate the representation in all eighteen matters; in mitigation, the attorney had no prior discipline and was battling alcoholism at the time of the misconduct); In re Tunney, 185 N.J. 398 (2005) (six-month suspension for misconduct in three client matters; the violations included 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; in mitigation, the attorney suffered from serious depression; prior reprimand and six-month suspension); In re Pollan, 143 N.J. 305 (1996) (attorney suspended

for six months for misconduct in seven matters, including gross neglect, pattern of neglect, failure to communicate with clients, failure to deliver a client's file, misrepresentation, recordkeeping improprieties, and failure to cooperate with ethics authorities; clinical depression alleged); In re Perlman, ___ N.J. ___, 224 A.2d 784 (2020) (one-year retroactive suspension for attorney who was found guilty of misconduct in seven matters: lack of diligence in six matters; failure to communicate with the client and failure to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in five matters; failure to withdraw from the representation when continued representation would violate the RPCs and failure to comply with applicable law requiring notice to or permission of the tribunal when terminating a representation in one matter; conduct involving dishonesty, fraud, deceit or misrepresentation in one matter; engaging in conduct prejudicial to the administration of justice in one matter; and failure to notify clients of his suspension in three matters; in mitigation, the attorney suffered from serious mental health issues, and had a prior one-year suspension for misconduct in ten matters that occurred during the same time period as the above-described misconduct; in aggravation, he caused significant harm to his clients); In re Suarez-Silverio, 226 N.J. 547 (2016) (one-year suspension for an attorney who, over thirteen years, mishandled twenty-three client matters before the Third

Circuit Court of Appeals, many of which ended by procedural termination; the attorney also disobeyed court orders and made a misrepresentation to the court clerk, which escalated the otherwise appropriate six-month suspension; previous admonition and reprimand for similar conduct); and In re Rosenthal, 208 N.J. 485 (2012) (in seven default matters, one-year suspension imposed on attorney for gross neglect in two matters; pattern of neglect; lack of diligence in four matters; failure to keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information in seven matters; failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in one matter; charging an unreasonable fee in three matters; failure to communicate in writing the basis or rate of the fee in one matter; failure to expedite litigation in one matter; failure to cooperate with disciplinary authorities in seven matters; conduct involving dishonesty, fraud, deceit, or misrepresentation in two matters; and conduct prejudicial to the administration of justice in two matters; he also abandoned six of the seven clients; the attorney had an unblemished disciplinary history in his more than twenty years at the bar).

Attorneys who fail to supervise their nonlawyer staff typically receive an admonition or a reprimand, depending on the presence of other ethics infractions, prior discipline, or aggravating and mitigating factors. See, e.g., In

re Bardis, 210 N.J. 253 (2012) (admonition for attorney who failed to reconcile and review his attorney records, thereby enabling an individual who helped him with office matters to steal $142,000 from his trust account, causing a shortage of $94,000; mitigating factors were the attorney's deposit of personal funds to replenish the account, numerous other corrective actions, his acceptance of responsibility for his conduct, his deep remorse and humiliation for not having personally handled his own financial affairs, and lack of a disciplinary record); In re Mariconda, 195 N.J. 11 (2008) (admonition for attorney who delegated his recordkeeping responsibilities to his brother, a paralegal, who then forged the attorney's signature on trust account checks and stole $272,000 in client funds); In re Deitch, 209 N.J. 423 (2012) (reprimand for attorney who failed to supervise his paralegal-wife, who stole client or third-party funds via thirty-eight checks payable to her, by either forging the attorney's signature or using a signature stamp; no prior discipline); and In re Murray, 185 N.J. 340 (2005) (reprimand for attorney who failed to supervise nonlawyer employees, which led to an unexplained misuse of client trust funds and to negligent misappropriation; the attorney also failed to maintain books and records that would have revealed the mysterious scheme; she also failed to perform quarterly reconciliations of her trust account and, for a time, failed to maintain an active trust account; prior admonition for similar deficiencies).

In addition, charging an unreasonable fee ordinarily warrants an admonition, if it is limited to one incident. See, e.g., In the Matter of Raymond H. Hamlin, DRB 09-051 (June 11, 2009); In the Matter of Angelo R. Bisceglie, Jr., DRB 98-129 (September 24, 1998); and In the Matter of Robert S. Ellenport, DRB 96-386 (June 11, 1997).

In the instant matter, respondent was guilty of misconduct in nine client matters. Specifically, he was guilty of gross neglect and lack of diligence in nine matters, lack of communication in three matters, unreasonable fee in one matter, failure to supervise an employee in two matters, and a pattern of neglect. Respondent's misconduct most resembles those of the attorneys who received three-month and six-month suspensions for similar misconduct, and proffered significant mitigation, including alcoholism and depression. For example, in Pinnock, the attorney received a three-month suspension for misconduct in ten matters; in Tarter, the attorney received a three-month suspension for misconduct in eighteen matters; and in Tunney, the attorney received a six-month suspension for misconduct in three matters. The attorneys in Pollan (six-month suspension for misconduct in seven matters), and Rosenthal (one-year suspension for misconduct in seven matters, all defaults) were guilty of more serious misconduct in multiple client matters, including failure to cooperate with ethics authorities and conduct involving dishonesty, fraud, deceit, or

misrepresentation. The attorney in Perlman received a one-year retroactive suspension for similar misconduct in seven matters, but, in that case, the misconduct occurred during the same time period as previous misconduct in ten other matters, which resulted in a one-year suspension, for a total of seventeen client matters. The ethics infractions in Perlman also included conduct involving dishonesty, fraud, deceit, or misrepresentation, and conduct prejudicial to the administration of justice, elements not present here.

Also, we must consider the aggravating factors. Respondent's misconduct extended to matters involving nine clients, all of whom paid him fees, over a period of four years. In mitigation, respondent suffered significant mental health issues, although the first time he sought medical attention for these issues was in June 2014, and eleven of the fourteen client matters at issue began before that time. Further, respondent has no ethics history; cooperated with the OAE; entered into the stipulation for all of the matters, except the forgery alleged in the DiFalco matter; served as a volunteer trustee to wind down a practice for an attorney who had died; expressed remorse; applied for his own trustee when he realized he could no longer function as an attorney; and is no longer practicing law. Moreover, there is little likelihood of recurrence of any misconduct.

On balance, in light of the multiple client matters at issue and respondent's significant mitigation, we determine to impose a six-month suspension.

Vice-Chair Gallipoli and Members Joseph and 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: _____
Barry R. Petersen, Jr.
Deputy Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Phillip Francis Drinkwater, III
Docket No. DRB 19-362

Argued: February 20, 2020

Decided: June 30, 2020

Disposition: Six-Month Suspension

Members	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	0	3

Barry R. Petersen, Jr.
Deputy Chief Counsel