Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-433
District Docket Nos. VIII-2017-0032E;
VIII-2017-0036E; and VIII-2017-0041E

In the Matter of	:
Curtis J. Romanowski	:
An Attorney at Law	:

Decision

Argued: May 21, 2020

Decided: September 18, 2020

Angela F. Pastor and Risa A. Kleiner appeared on behalf of the District VIII Ethics Committee.

David B. Rubin 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 one-year suspension filed by the District VIII Ethics Committee (DEC). The formal ethics complaint

charged respondent with violating RPC 1.3 (lack of diligence) (two client matters); RPC 1.4(a) (failure to inform a prospective client how, when, and where the client may communicate with the lawyer) (one client matter); RPC 1.4(b) (failure to communicate with a client) (two client matters); RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation) (one client matter); RPC 1.5(b) (failure to set forth in writing the rate or basis of the legal fee) (two client matters); RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer) (one client matter); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (one client matter).

For the reasons set forth below, we determine to impose an admonition, with conditions.

Respondent earned admission to the New Jersey bar in 1991 and to the Ohio bar in 1980. He has no prior discipline in New Jersey. During the relevant time frame, respondent maintained an office for the practice of law in Metuchen, New Jersey.

The formal ethics complaint alleged that, between November 2015 and April 2017, respondent committed misconduct in three client matters.

In respect of the charges against him, respondent implicated the Jacob standard, asserting the affirmative defense that any misconduct he committed "was attributable in whole or in part to [his] diminished capacity" during the relevant timeframe.[1] Specifically, respondent claimed to be the victim of a September 1, 2016 physical assault that left him with significant head trauma and resultant hallucinations and delusions. Respondent proffered that, prior to the assault, his mental state had been deteriorating, and that, following the assault, he repeatedly was hospitalized, culminating in his involuntary commitment, in November 2016, in a medical facility. He provided details regarding his asserted beliefs that he should be appointed to the Supreme Court of the United States, that he was best friends with Warren Buffett, and that he was the richest man in the world.

On November 1, 2016, as a result of respondent's severe psychiatric struggles, the Middlesex County Assignment Judge at that time appointed Robert Goldstein, Esq. as temporary attorney-trustee to assume control of respondent's practice. A few months thereafter, respondent and his wife filed for bankruptcy.

By way of background, in 1994, after ending his service as a Navy Judge Advocate General, respondent opened his New Jersey law office, limiting his

[1] In re Jacob, 95 N.J. 132 (1984).

practice to family law. He claimed that he has been recognized as a "blue ribbon" Early Settlement Panel (ESP) member, as a mediator, and as a matrimonial litigator; that he has the most family court trial experience in New Jersey; that he is the only person that the New Jersey Law Journal has featured as a regular author; and that he co-wrote a treatise on child custody issues that the Court has cited in its decisions.

On July 25, 2016, respondent learned from his then associate, Alison Sutak, Esq., that his accountant had embezzled more than $354,000 from his law firm's attorney business account, and that the Internal Revenue Service had frozen his bank accounts. His accountant had been entrusted with law firm funds with which to satisfy payroll taxes and regular taxes, but had not paid the requisite taxes since 2012, because he had been stealing the money. Respondent claimed that the accountant ultimately was indicted and prosecuted for his theft from respondent and other accounting clients. By the end of August 2016, Sutak had left respondent's firm, and respondent terminated his long-time practice manager, Denise Eckerson, for insubordination.

According to respondent, on September 1, 2016, police officers assaulted him, and he suffered a closed-head injury. Specifically, respondent claimed that, because his wife has diabetes, he believed she was acting irrationally, although he now recognizes that he was the delusional party at the time, and he called

9-1-1 to request an ambulance. He claimed that, when police arrived at his house, they severely beat him, requiring his hospitalization. On November 30, 2016, respondent drafted a tort claim notice based on the alleged police assault. He testified that he never sued the police department, however, because no personal injury lawyer would agree to represent him, despite his requests.

According to respondent, following the alleged assault, he began acting very bizarrely, telling people that he was best friends with Warren Buffet, had become the richest man in the world, and planned to buy homes in Rumson, New Jersey for his friends. He claimed that he had created a handout in support of his anticipated appointment to the Supreme Court of the United States and told his wife he should run for president.

On November 7, 2016, respondent was involuntarily committed to a medical facility for four days. In retrospect, respondent believes that the toxic combination of medications that had been prescribed to him had caused, at least in part, his delusional behavior. He claimed that, although he was purporting to practice law while Goldstein's trusteeship was in place, he was experiencing hallucinations and had "good days and bad days." He was not restricted from practicing law, despite Goldstein's appointment.

At the ethics hearing, the DEC panel rejected respondent's attempts to submit into evidence his medical records, sustaining the presenters' objection

that the records were hearsay, and further rejecting respondent's argument that he could authenticate the records in order to satisfy the business-records exception to the hearsay rule.

Respondent summarized his mental state, as of the date of the ethics hearing:

> I've seen four different neurologists, I've seen three different psychiatrists, I am successfully medicated right now and, you know, I can, you know, hold my -- hold my own with any lawyer in our matrimonial bar; anyone.
>
> [3T81.][2]

Respondent further testified that he had resumed practicing law and had leased new office space.

The Acquaviva Matter

The facts in this case are heavily disputed. The following is the version of events according to the grievant, Michael Acquaviva. On May 3, 2016, he and respondent executed a retainer agreement, and the next day, he paid respondent a $6,000 fee toward the representation. Acquaviva previously had filed, pro se, a complaint for divorce. Respondent failed to provide Acquaviva with either a

[2] "3T" refers to the transcript of the January 4, 2019 ethics hearing.

fully-executed copy of the retainer agreement or regular invoices, although the agreement required invoices to be rendered no less than every ninety days.

Following the commencement of the representation, Acquaviva made numerous attempts to contact respondent, by various means, without success, until August 18, 2016, a week prior to a scheduled ESP proceeding. Moreover, Acquaviva claimed that respondent was not adequately prepared for the ESP proceeding and, thereafter, respondent's lack of communication persisted, except for a brief telephone conversation between the parties, on December 1, 2016.

Acquaviva asserted that respondent then refused to meet with him regarding a scheduled February 13, 2017 mediation session, instead instructing Acquaviva to put his concerns in writing; respondent subsequently was unprepared for the mediation. The final divorce hearing was scheduled for February 21, 2017, but respondent failed to comply with Acquaviva's wife's discovery requests, requiring Acquaviva to do so himself. Respondent failed to appear for the hearing, despite multiple exchanges between respondent and adverse counsel regarding the hearing date. The family court judge offered to postpone the hearing, but, instead, Acquaviva chose to negotiate the final details of his divorce pro se, directly with his wife's counsel. Respondent later claimed that he had erroneously calendared the hearing for the wrong year and asserted

that he had saved Acquaviva the legal fee that his court appearance would have required. Respondent, however, sent Acquaviva a final bill, for $899, and the charges on the final bill were inaccurate and deceptive, claiming a balance owed.

In a letter sent after his February 2017 final divorce hearing, Acquaviva complained that respondent had acted unprofessionally and unethically, and requested the return of his retainer. Respondent denied that he had done anything wrong and refused to return the retainer. Acquaviva filed a request for fee arbitration, but his request was dismissed, because respondent had filed for bankruptcy and discharged any debt he owed to Acquaviva.[3]

In his answer to the complaint and during his testimony, respondent refuted Acquaviva's contentions, offering the following version of events. From the commencement of the representation forward, Acquaviva communicated with respondent's practice manager to prepare for the ESP, and respondent not only was prepared for the ESP, but also "prevailed on every significant point in contention," placing Acquaviva in a position of substantial leverage in the divorce proceeding. Respondent rarely, if ever, physically met with his clients, conducting most consultation and preparation by telephone.

[3] Although fee arbitration proceedings are confidential pursuant to R.1:20A-5, we deem that respondent waived confidentiality at the DEC hearing.

Respondent's psychiatric issues directly affected his representation of Acquaviva. Respondent emphasized that, by November 2016, a trustee had been appointed to his practice; that respondent "cannot admit or deny whether [Acquaviva] attempted to reach respondent on multiple occasions;" and that he had no idea, when he had attended the February 2017 mediation session, that Acquaviva had any concerns about the representation.

Respondent attended neither an October court conference nor the February 21, 2017 final divorce hearing, despite proper notice of both, but the divorce was uncontested and proceeded successfully and uneventfully, and he did not bill Acquaviva for reviewing the terms of the divorce.

Respondent, thus, denied that he had committed any misconduct in Acquaviva's matter.

The Jensen Matter

The facts also are in dispute in this matter. According to the grievant, Corina Jensen, on March 18, 2016, she corresponded, via e-mail, with respondent's then associate, Sutak, prior to retaining respondent's firm. Respondent was copied on the e-mails between Jensen and Sutak. On March 28, 2016, respondent's firm provided Jensen with a proposed retainer agreement, and she paid respondent a $6,000 fee toward the representation. Neither party

was able to produce a signed retainer agreement, but Jensen testified that she had signed it, and received a copy of it both electronically and by mail. The agreement provided for billings no less than every ninety days. Despite that provision, respondent provided Jensen no invoices except an April 19, 2016 invoice that reflected that her file had been opened.

On April 8, 2016, Sutak sent the draft complaint to Jensen for her review, via e-mail, and purportedly copied respondent. Jensen instructed Sutak to delay filing the complaint. Subsequently, in July 2016, Sutak informed Jensen, via e-mail, that she was departing respondent's firm for another matrimonial firm in Middlesex County, and wanted to continue representing Jensen, but told Jensen that she had the right to continue the representation through respondent's firm. On August 8, 2016, Jensen replied that she wished to remain a client of respondent's firm and informed respondent's firm that she wished to proceed with filing for divorce. On August 16, 2016, respondent's secretary informed Jensen, via e-mail, with respondent copied, that respondent would be handling her case, and would promptly contact her.

From August through December 2016, despite Jensen's multiple attempts to contact respondent, through various means, they had no communication. Although she went to respondent's office twice, during normal business hours, it was closed.

After Jensen reached out to the local bar association for guidance, she learned that respondent was "temporarily out of practice" due to health issues and, thus, was directed to Goldstein. On December 2, 2016, she contacted Goldstein to request the return of her $6,000 fee, because no work had been performed on her case for more than four months. She provided Goldstein with a copy of her retainer agreement and the single invoice she had received from the law firm. Goldstein, however, informed her that her name was not on a list of clients that respondent had provided and, thus, he was unable to assist her or return her funds. Jensen never received the return of the balance of the $6,000 retainer she had paid respondent, but, when respondent declared bankruptcy, she received a letter regarding her status as a creditor.

In August 2017, after Jensen had filed her June 2017 ethics grievance against respondent, he sent her multiple e-mails, asking her to withdraw the grievance.[4] In those e-mails, respondent blamed Sutak for Jensen's plight, claiming that Sutak had left his employ without properly closing or transitioning her active client matters; informed Jensen, in detail, of the health issues he had been facing; discussed his bankruptcy; and asked Jensen to forgive him.

[4] The complaint did not charge respondent with having violated RPC 8.4(d) in respect of this conduct.

Respondent claimed that he had been unaware that Jensen had been a client of his law firm until she filed a grievance against him. Respondent blamed Sutak for not adequately debriefing him regarding her open client matters prior to leaving his firm, claiming that she misrepresented that she had concluded all her matters, and blamed Sutak for not filing a copy of Jensen's retainer agreement, per firm practices.

In respect of Jensen's allegations regarding a lack of communication, respondent asserted that, after August 31, 2016, his law office was virtually closed. He denied having received mail or telephone calls from Jensen, despite having arranged for the forwarding of all firm mail to his home address, and all firm calls to his mobile phone. Respondent asked Jensen to withdraw her grievance, but only after Sutak had informed him that, from April through August 2016, Jensen had instructed Sutak to delay any action regarding Jensen's divorce.

Eckerson, respondent's practice manager from 2001 through August 2016, testified that Sutak had prepared the retainer agreement provided to Jensen, but that respondent was listed as her primary attorney. Eckerson asserted that respondent knew that Jensen had retained the firm, based on conversations during weekly firm meetings regarding client matters and based on a March 18, 2016 e-mail reply from respondent to Sutak and Eckerson, in which he reacted

positively to Jensen's new client matter. Respondent denied any recollection of that e-mail exchange.

Eckerson further claimed that, when Sutak left the firm, Eckerson and respondent discussed respondent's assumption of all Sutak's open matters. Eckerson testified that, in August 2016, respondent terminated her employment, via e-mail, and that, thereafter, he had attempted to contact her a couple of hundred times and had repeatedly accused her of stealing client funds. According to Eckerson, in July 2016, respondent and his firm learned that respondent's long-time accountant had been embezzling funds from the firm. In September 2016, Eckerson began working at the same law firm that had hired Sutak.

The Rothenberg Matter

The facts of this matter also are disputed. According to the grievant, Mark Rothenberg, on November 12, 2015, he retained respondent to file a motion to reduce his alimony obligation. Rothenberg paid respondent a $6,000 retainer, pursuant to an executed fee agreement.

The parties agreed that respondent would not file the motion until Rothenberg's 2015 tax returns were filed, which occurred on August 26, 2016. Beginning on September 1, 2016, Rothenberg made unsuccessful attempts to

contact respondent, including via e-mail, regarding the filing of the motion, and, on November 2, 2016, provided his filed tax returns to respondent's office. Yet, respondent took no action in respect of the representation, and the two never met again.

Consequently, via a November 14, 2016 e-mail to respondent, Rothenberg terminated the representation and demanded the return of the $6,000 retainer. Two days later, respondent asked Rothenberg to reconsider the termination of their attorney-client relationship, but agreed to refund the unused portion of the retainer with the next billing cycle, on December 15, 2016. Rothenberg promptly replied and again demanded a refund. On December 28, 2016, having not received his funds, Rothenberg again demanded a refund.

By letter dated January 28, 2017, the District VIII Fee Arbitration Committee (the Committee) informed respondent that Rothenberg had filed a request for fee arbitration. Two days later, respondent sent Rothenberg a check for $1,000. On February 13, 2017, respondent proposed that Rothenberg dismiss his request for fee arbitration in exchange for a payment plan to refund the retainer. Respondent filed a bankruptcy petition on April 25, 2017; as a result, on May 8, 2017, the Committee administratively dismissed Rothenberg's fee arbitration request. Rothenberg never received the balance of his retainer.

In his answer to the ethics complaint, respondent admitted that he had failed to take any action in Rothenberg's case, but emphasized that, at that time, he was experiencing the health and financial issues permeating this case.

The Temporary Attorney-Trustee Appointment

As previously noted, on November 1, 2016, Goldstein, an attorney admitted in New Jersey in 1975, was appointed as temporary attorney-trustee of respondent's practice, pursuant to R. 1:20-19(a)(2), due to respondent's physical disability. Prior to his appointment as trustee, Goldstein knew respondent to have an "excellent reputation . . . as a matrimonial or family law practitioner" who had tried many cases. Indeed, in his role with the Middlesex County bar, Goldstein had recruited respondent to present an evidence seminar to family law attorneys. Goldstein was aware that respondent had co-authored a well-known New Jersey treatise on child custody and support.

Although Goldstein had no knowledge of the ethics allegations against respondent, he had dealt directly with the grievants underlying this matter in their attempts to recoup their retainers. Goldstein opined that it would have been out of character, based on his knowledge of respondent's reputation, for respondent to fail to communicate with clients, to miss court appearances, or to fail to refund unearned retainers.

In early September 2016, respondent contacted Goldstein, claiming that police officers had assaulted him, he had suffered head trauma, and he was hospitalized. Goldstein attempted to assist respondent, providing him the names of doctors, neurologists, and personal injury attorneys. According to Goldstein, during their conversations in September and October 2016, respondent often was not making sense and was not lucid. Goldstein confirmed that respondent had been writing letters in an effort to be appointed to the Supreme Court of the United States. Therefore, in early October 2016, Goldstein suggested calling the Middlesex County Assignment Judge regarding the trusteeship, and respondent agreed. The order appointing Goldstein as trustee, however, did not expressly limit respondent's ability to continue the practice of law. In fact, while Goldstein served as trustee, through June 2017, respondent intermittently practiced law, with Goldstein's knowledge and complicity.

As trustee, Goldstein notified respondent's adversaries in active cases that he had assumed control of respondent's practice and attempted to understand and assume the finances of the firm, including via communications with the Office of Attorney Ethics (OAE). Goldstein contacted multiple vicinages to compile a picture of respondent's practice and active cases.

In mid-November 2016, Goldstein met with respondent, at respondent's office, along with a team of volunteer attorneys culled from the local family law

bar, to sort out respondent's law firm and files. Respondent struggled to put together a list of active client matters, and had no employees to assist him. According to respondent, the Jensen client matter, implicated in this case, was not on that client list. Thereafter, in November 2016, Goldstein learned that respondent had been involuntarily committed to a medical facility.

Goldstein told many of respondent's active clients that, although he could provide their files to them, he had no funds available with which to refund their unearned retainers. He testified that respondent claimed that his accountant had embezzled massive sums of money from his law firm and had been prosecuted in Monmouth County, but had paid no restitution for the theft. Goldstein did not perform a financial accounting of respondent's firm, because there was no money in his attorney business or trust accounts. Goldstein assumed that respondent had used all retainer fees in dispute in this case to pay his bills and personal living expenses, but he also considered the possibility that respondent's accountant had embezzled the retainer fees. While serving as attorney-trustee of respondent's firm, Goldstein collected approximately $20,000 in accounts receivable. After he was paid approximately $10,000 for his services as trustee, he deposited the remaining $10,000 with the Superior Court Trust Fund.

On July 10, 2017, Goldstein was relieved as temporary attorney-trustee, and respondent was authorized to resume control of his law firm. Goldstein was

aware that respondent and his wife had filed a Chapter 13 bankruptcy petition; indeed, Goldstein had referred respondent to his bankruptcy counsel, Edward Hanratty.

On April 26, 2017, Hanratty filed respondent's Chapter 13 bankruptcy petition, and was aware, at that time, that respondent's former clients claimed entitlements to unused portions of retainers. Hanratty contended that those client claims were considered unsecured debts under the Bankruptcy Code and, thus, were not protected unless the client/creditor filed a claim in the bankruptcy proceeding. He further claimed that, if respondent had refunded his clients the unearned portions of their retainers, prior to or contemporaneously with the bankruptcy filing, his actions would have been viewed as improper preferences and would have been unraveled by the bankruptcy trustee.

On September 26, 2017, Hanratty sent a copy of respondent's bankruptcy petition, via e-mail, to Rothenberg. In Hanratty's view, if Rothenberg sought to be recognized as a creditor in the bankruptcy proceeding, Rothenberg was required to take the necessary steps to achieve that goal. Hanratty added that, once a creditor – even a law firm client, such as Rothenberg – is on notice of the bankruptcy, the client is bound by the bankruptcy discharge, whether or not the client filed a claim. Hanratty opined that a notice of dismissal of a fee arbitration request, due to a lawyer's bankruptcy filing, would serve as sufficient notice to

the client of the need to seek recognition as a creditor of the attorney. Hanratty further opined that, if an attorney placed an unearned retainer in an attorney business account, rather than an attorney trust account, the client associated with that unearned retainer was, by law, an unsecured creditor, and received no preferential treatment under the bankruptcy code simply because the debt was for unearned legal fees.

Respondent testified that his accountant's embezzlement caused respondent's bankruptcy. He could not make the mortgage payments on his home, and his mortgage company would not modify his mortgage, because his accountant had filed false, forged tax returns in respondent's behalf. He did not pursue a Chapter 7 bankruptcy because he would have lost his house.

Respondent claimed that, in respect of the fee arbitration requests that his clients had filed against him, he contacted the Chair of the District VIII Fee Arbitration Committee, who informed him that, in light of respondent's bankruptcy proceeding, he did not need to respond to the clients' requests. Moreover, respondent confirmed that Hanratty had advised him that, if he paid those clients their unearned retainers, bankruptcy law would view such payments as fraud, and that he relied on Hanratty's advice.

Respondent claimed that he was "horrified" by the affect that his bankruptcy had on the grievants, and empathized with them, having lost

"probably close to a million dollars" in fees owed to him through clients' bankruptcies. He emphasized that he had paid Rothenberg $1,000 toward the unearned retainer and had attempted to negotiate a payment plan for the rest of the money owed. He admitted that, prior to filing for bankruptcy, he had intended to return Rothenberg's entire $6,000 retainer.

Respondent's Character Witnesses

Peter Paras, Esq. has been an attorney since 1976 and has known respondent for twenty-five to thirty years. Paras, a member of the Executive Committee of the State Bar Family Law Section for twelve years, described respondent as a lawyer with "top level" character, reputation, and skill, which was known throughout the family law bar. According to Paras, in 2016, respondent's friends and colleagues became very concerned for his wellbeing, when respondent began to act bizarrely, including asserting a claim that the police had severely injured him. Paras concluded that, based on his relationship with respondent, it would have been very unusual for respondent to fail to communicate with clients, to miss court appearances, or to fail to refund to clients unearned portions of retainers.

Peter Ventrice, Esq. has been an attorney since 1991 and has known respondent for approximately twenty-five years. Ventrice is an active member

of the Middlesex County family law bar and serves as an ESP panelist and on the Assignment Judge's law committee. Ventrice described respondent as having an encyclopedia-like knowledge of family law and recalled having consulted respondent with his most difficult issues. Ventrice recounted that, in 2016, respondent began to act "worn down," and told him that his accountant had embezzled "just about all of his money." Ventrice also stated that, during the same timeframe, respondent was not making sense when he spoke, and was talking about calling the Federal Bureau of Investigation and getting nominated to the Supreme Court of the United States. Like Paras, Ventrice concluded that, based on his close personal relationship with respondent, it would have been very unusual for respondent to fail to communicate with clients, to miss court appearances, or to fail to refund to clients unearned portions of retainers.

Finally, Cary Cheifetz, Esq., the Chair of the State Bar Family Law Section, President of the New Jersey Chapter of the American Academy of Matrimonial Lawyers, and a diplomat in the American College of Family Trial Lawyers, described respondent as an expert in family law. Cheifetz held respondent in the highest regard and consulted respondent in difficult matters, especially regarding child custody. Cheifetz recalled that, in 2016, respondent began to act bizarrely, sending Cheifetz fifteen to twenty text and voicemail messages per day that "made no sense," including delusions of being appointed

to the Supreme Court of the United States. Cheifetz reached out to Goldstein and learned that respondent's accountant had embezzled a lot of his money. Cheifetz confirmed respondent's allegation that the police had beaten him, resulting in his hospitalization. When respondent was having these issues, respondent was the last person with whom Cheifetz wanted to interact, because he thought respondent "was nuts."

* * *

In respondent's post-hearing submission to the DEC, he asserted that his "perfect storm of financial and mental health calamities rendered him mentally incapacitated," and, thus, exonerated him from the charges, pursuant to the Jacob standard. Respondent expressed remorse for Acquaviva, Jensen, and Rothenberg, but requested the dismissal of all charges.

In his March 2, 2020 brief to us, respondent reiterated his position that he had committed no misconduct. He requested leniency, in light of the facts presented regarding his mental health during the relevant time period.

The DEC found clear and convincing evidence that respondent violated most of the charged ethics violations. Specifically, in the Acquaviva matter, the DEC determined that respondent violated RPC 1.3 when he missed two court hearings; failed to assist his client in providing financial documents to his adversary; failed to prepare his client for ESP or mediation; and failed to address

Acquaviva's questions regarding child support calculation. The DEC further determined that respondent failed to communicate with Acquaviva, by failing to notify the client of the October 13, 2016 court appearance; failing to adequately prepare the client for economic mediation; and failing to inform Acquaviva that he would not be appearing at the February 21, 2017 final hearing, in violation of RPC 1.4(b) and (c).

In the Jensen matter, the DEC determined that respondent had agreed to represent Jensen, yet, failed to perform any work to advance her divorce, in violation of RPC 1.3. Moreover, the DEC found that respondent had failed to adequately inform Jensen how to communicate with him, in violation of RPC 1.4(a), and then failed to communicate with the client, despite her repeated efforts to do so, in violation of RPC 1.4(b).

The DEC dismissed the allegations that respondent violated RPC 1.5(b) in the Acquaviva and Jensen matters, reasoning that the clients had signed retainer agreements which set forth the basis or rate of the legal fee, and that respondent's failure to provide them with fully-executed copies of their retainer agreements did not constitute a violation of the Rule.

In the Rothenberg matter, the DEC determined that respondent violated RPC 8.4(c) by promising to refund the client's retainer by the next business cycle, but then filing a bankruptcy petition. The DEC concluded that the

presenters had failed to meet their burden in respect of the RPC 8.4(b) charge, because they did not cite any criminal act or statute that respondent had purportedly violated.

In determining that respondent was guilty of unethical conduct, the DEC rejected respondent's asserted defense and his proffered mitigation that he was suffering from mental health issues during the relevant time period. In so determining, the DEC cited the Jacob standard, and concluded that respondent had failed to satisfy the test. Rather, the DEC concluded that, following his retention by the three grievants, respondent "in essence disappeared, without explanation," and that respondent should have planned in advance for such a contingency.

Following a de novo review of the record, we find that respondent is guilty of a single violation of RPC 1.5(b), in the Acquaviva matter. We determine to dismiss the remaining charged RPC violations.

Specifically, the record contains clear and convincing evidence that respondent failed to provide Acquaviva with a fully-executed copy of the retainer agreement and failed to furnish him with billing invoices at regular intervals, both of which R. 5:3-5 requires in civil family actions.

Despite the case presented by respondent, including the detailed, alarming testimony regarding his mental health issues during the relevant timeframe,

which the presenters did not credibly refute, the DEC wholly rejected respondent's defense and request for mitigation, in respect of his mental health during the relevant time period, in singular reliance on the Jacob standard.

In In re Jacob, 95 N.J. 132, 137, the Court held that, to successfully defend ethics charges based on a mental health condition, a respondent must prove a "loss of competency, comprehension or will of a magnitude that could excuse egregious misconduct that was clearly knowing, volitional, and purposeful." Stated differently, to exculpate attorney misconduct, the evidence must show that a respondent was "out of touch with reality or unable to appreciate the ethical quality of his acts." In re Bock, 128 N.J. 270, 273 (1992); In re Trueger, 140 N.J. 103, 116-117 (1995).

The Court most recently addressed the Jacob standard in In re Cozzarelli, 225 N.J. 16, 21 (2016), a case where an attorney attempted to defeat a charge of knowing misappropriation of client and escrow funds. The Court restated the Jacob standard as follows:

> The Jacob standard may not be a model of clarity, but the point to Jacob is that it expressed the Court's willingness to consider defenses that would negate the mental state to act purposely. A mental illness that impairs the mind and deprives the attorney of the ability to act purposely or knowingly, or to appreciate the nature and quality of the act he was doing, or to distinguish between right and wrong, will serve as a defense to attorney misconduct. The aforesaid defenses are ones that can and should be considered in

> connection with excusing wrongful conduct by an attorney, or when mitigation of the disciplinary penalty is appropriate to consider under our disciplinary jurisprudence addressing the quantum of punishment.
>
> [In re Cozzarelli, 225 N.J. at 31-32.]

In this case, however, given the unrefuted facts governing the relevant timeframe, the DEC's sole reliance on the Jacob standard was misplaced. In light of the lack of expert testimony in this case, we are unable to consider whether respondent satisfied the Jacob standard. Nevertheless, we can conclude, based on the unrefuted facts set forth in the record, especially the testimony of respondent, Goldstein, Paras, Ventrice, and Cheifetz, as corroborated by the Assignment Judge's November 1, 2016 decision to appoint a temporary attorney-trustee to assume control of respondent's practice, that respondent cannot be held responsible for his conduct from the date of that appointment, until July 10, 2017, when the trusteeship was dissolved. To the contrary, Goldstein was appointed as attorney-trustee because the Assignment Judge had determined that respondent was a risk to his clients and was incapable of practicing law.

R. 1:20-19(a)(2) states, in relevant part

> When, in the opinion of the Assignment Judge, an attorney **is otherwise unable to carry on the attorney's practice temporarily so that clients' matters are at risk**, the Assignment Judge, or designee, in the vicinage in which the attorney

> maintained a practice may, on proper proof of the fact and on the application of any interested party, appoint a temporary attorney-trustee for a period of up to six months following the same conditions and procedures set forth in subparagraph (a)(1) of this Rule. The purposes of the temporary attorney-trustee shall be to preserve, in so far as practical, the practice of the attorney and all attorney-client relationships pending a report to the Assignment Judge at 150 days after appointment **as to the attorney's condition and ability to resume the practice**. The Assignment Judge may then either dissolve the temporary attorney-trusteeship or convert it to a regular attorney-trusteeship as if created under subparagraph (a)(1) of this Rule. (emphasis added.)

Respondent's alleged misconduct in respect of the Acquaviva, Jensen, and Rothenberg matters, except for the RPC 1.5(b) violation in the Acquaviva matter detailed above, occurred during the period of the temporary trusteeship. We view November 1, 2016, the date of the commencement of the trusteeship, as a clear line of demarcation regarding respondent's alleged misconduct in these matters and his culpability for the same.

Clearly, pursuant to R. 1:20-19, respondent should have been restrained from the practice of law from November 1, 2016 forward, until he affirmatively proved his ability to resume his practice. Goldstein cannot be blamed for this failure to employ the safeguards of the Rule, as the record contains no evidence of any meaningful training or guidance in respect of the duties associated with serving as a temporary attorney-trustee. Rather, as we have seen in other, recent

cases, the failing was inherent in the appointment and management of the temporary trusteeship.

Regardless of blame, it is clear from the record that respondent's clients suffered great harm in connection with his mental illness. Their $18,000 in combined retainers were either stolen, spent, or discharged in bankruptcy, without their legal needs having been met. They were not advised, as they should have been, that respondent was required to cease the practice of law during the pendency of the trusteeship and, thus, they were left in limbo regarding whether respondent represented them. Indeed, respondent continued to practice law, intermittently, throughout the trusteeship, with his "good and bad days," despite the appointment of the attorney-trustee and his involuntary commitment and intermittent hospitalizations. These circumstances should not have been allowed to occur and represents a shortcoming of our attorney-trustee system, rather than intentional misconduct on respondent's part.

Simply stated, the record supports the conclusion that respondent's behavior toward these clients during this period was clearly attributable to his mental illness. The failure of the court and the attorney-trustee to restrain him from the practice of law does not render his conduct during the trusteeship unethical.

In sum, respondent violated RPC 1.5(b) in one client matter. We dismiss the remaining allegations against him. The sole issue left for determination is the appropriate quantum of discipline for respondent's misconduct.

Conduct involving the failure to memorialize the basis or rate of a fee, as RPC 1.5(b) requires, typically results in an admonition, even if accompanied by other, non-serious ethics offenses. See, e.g., In the Matter of Peter M. Halden, DRB 19-382 (February 24, 2020) (attorney failed to set forth in writing the basis or rate of the legal fee, and failed to abide by the client's decisions concerning the scope of the representation; no prior discipline); In the Matter of Kenyatta K. Stewart, DRB 19-228 (October 22, 2019) (attorney failed to set forth in writing the basis or rate of the legal fee, and engaged in a concurrent conflict of interest; no prior discipline); and In the Matter of Alan Monte Kamel, DRB 19-086 (May 30, 2019) (attorney failed to provide the client with a writing setting forth the basis or rate of his fee in a collection action, failed to communicate with the client, and failed to communicate the method by which a contingent fee would be determined; no prior discipline).

Moreover, in crafting the appropriate quantum of discipline, we consider the effect of aggravating and mitigating factors. Respondent's case presents no aggravating factors, as the harm to the clients, in this case, although extremely significant and unfortunate, is not attributable to him. In respect of mitigation,

we accord significant weight to respondent's prior unblemished disciplinary history, since his 1991 admission to the bar. We also consider his good reputation, as attested by the three attorneys who testified at the ethics hearing. Moreover, considering the serious medical issues respondent faced during the timeframe of his misconduct, we can reasonably conclude that his behavior was aberrational.

Despite that mitigation, we determine that, given the totality of the circumstances presented in this matter, an admonition is necessary to protect the public and preserve confidence in the bar. As additional protections, due to the nature of respondent's admitted mental illness, we require respondent, within sixty days of the date of the Court's order in this matter, to provide to the OAE (1) proof of psychiatric treatment, and (2) proof of fitness to practice law, as attested by a qualified mental health professional approved by the OAE.

Member Singer was recused.

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: **/s/ Ellen A. Brodsky**
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Curtis J. Romanowski
Docket No. DRB 19-433

Argued: May 21, 2020

Decided: September 18, 2020

Disposition: Admonition

Members	Admonition	Recused	Did Not Participate
Clark	X		
Gallipoli	X		
Boyer	X		
Hoberman	X		
Joseph	X		
Petrou	X		
Rivera	X		
Singer		X	
Zmirich	X		
Total:	8	1	0

/s/ Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel