

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-456
District Docket No. XIV-2017-0531E

In the Matter of
Christopher Roy Higgins
An Attorney at Law

Decision

Argued: April 16, 2020

Decided: November 19, 2020

Ryan J. Moriarty waived appearance for oral argument in behalf of the Office of Attorney Ethics.¹

Anthony B. Vignuolo waived appearance in behalf of respondent.

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

¹ Due to the COVID-19 pandemic, the Board approved the waiver of appearances in certain cases, if both parties agreed that oral argument was not necessary.

This matter was before us on a disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent. Respondent admitted having violated RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.5(b) (failure to set forth in writing the basis or rate of the fee); RPC 1.15(a) (commingling); RPC 1.15(d) and R. 1:21-6 (recordkeeping); RPC 1.16(c) (failure to comply with applicable law requiring notice to or permission of a tribunal when terminating a representation); RPC 1.16(d) (failure to protect the client's interests upon termination of the representation and to refund the unearned portion of the fee); RPC 3.2 (failure to expedite litigation); RPC 3.4(c) (disobey an obligation under the rules of a tribunal); RPC 8.1(b) (failure to cooperate with disciplinary authorities); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

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

Respondent was admitted to the New Jersey bar in 2012.

On September 21, 2018, respondent was temporarily suspended for failure to cooperate with the ethics investigation underlying this matter. In re Higgins, 235 N.J. 214 (2018). On May 10, 2019, he was restored to the practice of law. In re Higgins, 237 N.J. 585 (2019).

Three default matters are pending with the Court. Specifically, on November 29, 2018, we voted to impose a reprimand for respondent's violations of RPC 1.4(b) (failure to communicate) and RPC 8.1(b). In the Matter of Christopher Roy Higgins, DRB 18-195 (November 29, 2018).

On March 21, 2019, we voted to impose a censure, again for respondent's violations of RPC 1.4(b) and RPC 8.1(b). In that case, not only did he fail to provide a written reply to the grievance, he also refused to meet with the DEC investigator, stating that he had "no time" for ethics investigations. In the Matter of Christopher Roy Higgins, DRB 18-326 (March 21, 2019).

Finally, on August 13, 2019, we voted to impose a three-month suspension for respondent's lack of diligence, his refusal to meet with the disciplinary investigator, and his misrepresentations to the client that he had sent mortgage modification documents to a mortgage company, violations of RPC 1.3, RPC 8.1(b), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), respectively. We enhanced the discipline for respondent's demonstrated failure to learn from his prior mistakes. In the Matter of Christopher Roy Higgins, DRB 19-040 (August 13, 2019).

At all relevant times, respondent's law office address of record was P.O. Box 124, Parlin, Middlesex County, New Jersey 08816.

Respondent and the OAE entered into a November 27, 2019 disciplinary stipulation, which sets forth the following facts in support of respondent's admitted ethics violations.

Recordkeeping Infractions and Related Misconduct

During the relevant time period, respondent maintained an attorney business account (ABA) and an attorney trust account (ATA) at TD Bank. The ABA was open from December 8, 2014 to June 7, 2016. Also on December 8, 2014, respondent opened his ATA, which TD Bank closed, on November 7, 2017, due to a sustained negative balance.

On September 18, 2017, the OAE received notice from TD Bank that, on September 5, 2017, respondent's ATA was overdrawn by \$131.60. On November 3, 2017, the OAE subpoenaed respondent's ATA and ABA records from TD Bank. Those records revealed that respondent actively practiced law from August 1, 2016 through November 7, 2017, the date the bank closed his ATA. During that time, respondent used his ATA as both his trust and business accounts, and deposited earned fees in his ATA. Consequently, the OAE scheduled a demand audit interview.

The March 1, 2018 audit interview revealed the following recordkeeping deficiencies: (a) no trust account maintained after November 7, 2017 [R. 1:21-

6(a)(1)]; (b) no business account maintained after June 20, 2016 [R. 1:21-6(a)(1)]; (c) no trust receipts journal [R. 1:21-6(c)(1)(A)]; (d) no trust disbursements journal [R. 1:21-6(c)(1)(A)]; (e) no individual client ledger cards [R. 1:21-6(c)(1)(B)]; (f) no monthly ATA three-way reconciliations [R. 1:21-6(c)(1)(H)]; (g) attorney funds for bank charges exceeded \$250 [RPC 1.15(a)]; (h) attorney personal funds commingled in ATA [RPC 1.15(a)]; (i) improper imaged-processed trust checks [R. 1:21-6(b)]; (j) no business receipts journal [R. 1:21-6(c)(1)(A)]; (k) no business disbursements journal [R. 1:21-6(b)(1)(A)]; (l) earned legal fees not deposited in business account [R. 1:21-6(a)(2)]; (m) business account records not maintained for seven years [R. 1:21-6(c)(1)]; and (n) improper imaged-processed business account checks [R. 1:21-6(b)].

By letter dated October 1, 2018, while respondent was temporarily suspended, he informed the OAE that he was preparing client ledgers for the OAE's review, and attached copies of his ATA bank records. Respondent sent that letter on Stabile Law Firm, LLC letterhead, later admitting that it had been an error to use that letterhead. He explained that using the letterhead was the most convenient way for him to provide information to the OAE. He asserted that he intended neither to engage in the practice of law nor to violate the terms of his suspension.

On October 1, 2018, respondent retained Anthony B. Vignuolo, Esq. to represent him in this ethics matter. By letter dated October 5, 2018, the OAE informed Vignuolo that respondent's October 1, 2018 letter violated R. 1:20-20(b)(4). On November 7, 2018, the OAE sent Vignuolo a second letter, via certified and regular mail, reaffirming the contents of its earlier letter and requesting a written reply.

On December 3, 2018, Vignuolo provided respondent's client ledgers to the OAE. Shortly thereafter, the OAE requested additional documents and respondent's written reply to the grievance. On January 22, 2019, Vignuolo informed the OAE that he no longer represented respondent.

In an undated letter that the OAE received on February 1, 2019, respondent apologized for his lack of cooperation and explained that, following a recent divorce, his former spouse had taken possession of their marital home, where he had maintained his attorney records. Respondent admitted that he had not yet completed the three-way ATA reconciliations or created other records that the OAE had requested.

Respondent further admitted having commingled earned legal fees in his ATA and having used Stabile Law Firm letterhead during his temporary suspension. However, he claimed to have used the letterhead to ensure that his mail, if undeliverable, would be returned to a safe address because, at that time,

his home address was not secure. Respondent also informed the OAE that he had retained an accountant to help him comply with R. 1:21-6 and with the OAE's requests for information.

On March 29, 2019, respondent reengaged Vignuolo's legal services. On June 11, 2019, respondent and his accountant appeared for a demand audit interview, respondent having waived his right to have Vignuolo present. According to the stipulation, respondent was cooperative, provided requested documents, and explained his prior failures to cooperate with the OAE. By letter dated June 12, 2019, the OAE asked Vignuolo for updated financial documents, which respondent timely provided, on June 24, 2019. From those documents, the OAE concluded that respondent had rectified his recordkeeping deficiencies and was compliant with RPC 1:21-6.

Respondent stipulated that he commingled earned legal fees with client funds in his ATA, a violation of RPC 1.15(a); failed to comply with the recordkeeping requirements of R. 1:21-6, a violation of RPC 1.15(d); and sent a letter to the OAE on law firm letterhead while he was temporarily suspended, which prejudiced the administration of justice, a violation of RPC 8.4(d).

The Russell Matter

On April 18, 2018, the Honorable Jose L. Linares, Chief Judge of the United States District Court for the District of New Jersey (DNJ), referred respondent to the OAE after finding him in civil contempt for neglect of a client's case and failure to abide by court orders, in litigation captioned as Russell v. City of Hammonton, et al. Respondent represented plaintiff Russell in that matter. On October 13, 2017, Magistrate Judge Karen M. Williams scheduled a status conference for October 26, 2017. Although Russell appeared for the status conference, respondent failed to do so.

On November 9, 2017, Russell submitted a letter to the court, requesting court-appointed counsel, due to respondent's lack of performance. On December 11, 2017, the only remaining defendant in the litigation filed a motion for summary judgment. Respondent failed to oppose that motion.

Thereafter, Magistrate Judge Williams scheduled a March 12, 2018 hearing to address respondent's representation of Russell, his failure to comply with the court's order, and Russell's request for court-appointed counsel. Respondent failed to appear for that hearing. The next day, the DNJ ordered respondent to show cause, within fifteen days, why he should not be held in contempt for his failure to appear for the March 12, 2018 hearing. Respondent

failed to reply to that order and, on April 6, 2018, the DNJ held respondent in civil contempt for failure to abide by that court's orders.

In respondent's undated reply to the grievance, he admitted that he entered an appearance in the case, and that he failed to provide Russell with a writing setting forth the basis or rate of his fee, although he had no previous attorney-client relationship with Russell. Russell did not pay respondent for the representation.

Respondent also admitted having participated in two telephone conferences with the court in Russell's behalf and having missed a court date. Finally, in his grievance reply, respondent asserted that, based on Russell's lack of cooperation, respondent should have filed a motion to be relieved as counsel, but failed to do so.

Respondent stipulated that, by entering his appearance in Russell's matter and thereafter failing to respond to motions, failing to appear for scheduled hearings, and failing to withdraw from the representation when the attorney-client relationship deteriorated, he grossly neglected and lacked diligence in the matter, violations of RPC 1.1(a) and RPC 1.3, respectively. Respondent also stipulated that his inaction constituted failure to expedite litigation, a violation of RPC 3.2.

Respondent further stipulated that he failed to set forth to Russell, in writing, the basis or rate of his fee, a violation of RPC 1.5(b); failed to file a motion in the DNJ to be relieved as counsel for Russell, a violation of RPC 1.16(c); and failed to protect Russell's interests in the case upon his de facto termination of the representation, a violation of RPC 1.16(d). Finally, respondent admitted that his failure to appear in court when ordered to do so and to provide a written response to the court's show cause order, which resulted in civil contempt proceedings, constituted a failure to obey an obligation of a tribunal, in violation of RPC 3.4(c), and conduct prejudicial to the administration of justice, in violation of RPC 8.4(d).

Failure to Cooperate with Disciplinary Authorities

Respondent's failure to cooperate with the investigation into these matters began with the OAE's September 20, 2017 grievance letter to him and continued, intermittently, until February 1, 2019, as follows.

On September 20, 2017, the OAE sent a letter to respondent's office address, requesting his written explanation for the cause of his ATA overdraft. The letter, sent by regular mail, was returned marked "return to sender, unable to forward." On October 20, 2017, the OAE sent a second letter, by certified and regular mail, to respondent's home address, again requesting his reply. The

certified mail was returned marked "unclaimed, unable to forward." The regular mail was not returned. Respondent did not reply.

On November 2 and 8, 2017, the OAE left voicemail messages for respondent, requesting that he contact the OAE, but respondent failed to do so. Therefore, on November 9, 2017, the OAE sent respondent a letter, by certified and regular mail, to his office address, scheduling his appearance for a November 27, 2017 demand audit interview. The certified mail was returned unclaimed. The regular mail was not returned.

On November 27, 2017, the OAE left a voicemail message informing respondent that he was required to appear for a demand audit interview that afternoon, but respondent neither appeared for the interview nor contacted the OAE.

Using a search service, the OAE located and called a telephone number associated with respondent. Respondent's mother answered, informed the OAE that respondent resided with her, and offered to relay to respondent the OAE's message. That same day, respondent called the OAE, complained that the OAE had contacted his mother, and asked the OAE to refrain from contacting him through his mother's telephone or address. Rather, he asked the OAE to send correspondence to his post office box address in Parlin, New Jersey.

On December 14, 2017, at respondent's request, the OAE sent copies of all prior correspondence, by certified and regular mail, to respondent's post office box address, and requested, by January 5, 2018, an explanation for the ATA overdraft. Respondent signed for the certified mail on December 21, 2017, but failed to reply.

On February 14, 2018, the OAE told respondent that a motion for his temporary suspension may be forthcoming for his repeated failure to cooperate with its investigation. Respondent promised to cooperate and to attend a future demand audit interview. Based on those representations, the OAE did not immediately move for his temporary suspension. On that same date, the OAE sent respondent a letter scheduling a March 1, 2018 demand audit interview.

Respondent appeared for the demand audit interview, but did not produce the requested financial records. He acknowledged his duty to cooperate with investigators and, later, informed the OAE that he had not produced the records, because he could not obtain them from the former marital home, where his former spouse lived.

On March 13, 2018, the OAE sent a follow up letter to respondent with a renewed request for his written explanation for the overdraft and for copies of his ATA records from September 1, 2016 to March 2018, no later than April 13, 2018. Respondent, however, provided none of the requested documents.

On April 24, 2018, the OAE provided respondent with a new deadline of May 2, 2018 to produce the requested information, cautioning that, if he failed to comply, the OAE would submit a motion for his temporary suspension. During an April 26, 2018, telephone conversation, the OAE asked respondent why he had not yet produced the documents requested in the OAE's March 13, 2018 letter. Respondent had no explanation and stated that he must look for the OAE letter.

On May 22, 2018, the OAE sent respondent a letter, by certified and regular mail, seeking, by June 5, 2018, a written reply to the referral from Chief Judge Linares. The certified mail was returned unclaimed. The regular mail was not returned. Respondent failed to timely reply. As previously stated, on September 21, 2018, the Court temporarily suspended respondent for failure to cooperate with the OAE in this matter.

On January 11, 2019, the OAE sent Vignuolo a letter requesting respondent's written reply to the grievance, no later than January 25, 2019. On January 16, 2019, Vignuolo informed the OAE that he no longer represented respondent, but that he had advised respondent to immediately reply to the grievance.

On January 18, 2019, the OAE sent respondent a letter, by certified and regular mail, requesting a written reply to the grievance by February 1, 2019.

As stated previously, on February 1, 2019, the OAE received respondent's undated reply to the overdraft grievance and to the referral from Chief Judge Linares. Thus, respondent submitted a reply to Chief Judge Linares's referral nine months after the OAE first requested it.

Respondent stipulated that, by failing to reply to the grievance, he violated RPC 8.1(b).

* * *

The OAE recommended a reprimand or censure, or such lesser discipline as we deem appropriate. In aggravation, the parties cited respondent's pattern of misconduct, as evidenced by the three matters currently pending with the Court. In mitigation, the parties focused on the timing of the misconduct in this matter and in the three default matters currently pending the Court's review. All the misconduct, including respondent's repeated failures to cooperate, took place from August 2016 through October 2018, when he finally began to cooperate with investigators, and initiated compliance with the recordkeeping Rules. That time period also coincided with the dissolution of respondent's marriage and his quest for custody of the couple's young child, while respondent maintained a solo practice. According to the stipulation, "the recommended discipline should be viewed contemporaneously with Respondent's previously decided decisions

and would not require an enhanced level of discipline, as it would otherwise, under the theory of progressive discipline.”

Following a review of the record, we are satisfied that the facts contained in the stipulation clearly and convincingly support the finding that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.5(b); RPC 1.15(a); RPC 1.15(d) and R. 1:21-6; RPC 1.16(c); RPC 1.16(d); RPC 3.2; RPC 3.4(c); RPC 8.1(b); and RPC 8.4(d).

In the recordkeeping matter, between August 1, 2016 and November 7, 2017, respondent improperly deposited earned legal fees in his ATA. RPC 1.15(a) requires that funds belonging to the attorney be kept separate from client and escrow funds held in the ATA. By commingling personal and trust account funds, respondent violated RPC 1.15(a). Moreover, the OAE’s thorough review of respondent’s financial records revealed fourteen recordkeeping violations, for which respondent conceded having violated RPC 1.15(d) and R. 1:21-6.

In an October 1, 2018 effort to comply with the OAE’s requests for information about his ATA records, while temporarily suspended, respondent sent the OAE a letter on Stabile Law Firm, LLC letterhead, the firm where he had been practicing as an associate attorney. Respondent stipulated that it was improper for him to have done so, as R. 1:20-20(b)(4) states, in relevant part, that an “attorney who is suspended . . . shall not use any stationery . . . suggesting

that the attorney . . . has . . . a law office . . . or that the attorney is entitled to practice law.” Respondent stipulated that, by sending correspondence to the OAE on law firm letterhead, he violated R. 1:20-20 and thereby prejudiced the administration of justice, a violation of RPC 8.4(d).

In In the Matter of Ousmane Al-Misri, DRB 14-097 (October 3, 2014), however, we dismissed, as de minimis, a charge that an attorney violated RPC 5.5(a)(1) under similar circumstances. In that case, the attorney, while ineligible to practice law, used letterhead identifying him as a lawyer, while corresponding with the Court. We determined that no member of the public had been misled by the attorney’s use of his letterhead. Id. at 10. The Court agreed. In re Al-Misri, 220 N.J. 352 (2015). Similarly, here, the OAE was not misled by respondent’s use of attorney letterhead. We, therefore, dismiss that RPC 8.4(d) charge.

In the Russell matter, in April 2017, respondent entered a notice of appearance with the DNJ as the plaintiff’s attorney. A few months later, he failed to appear at a status conference before the magistrate judge, although his client attended the conference. In November 2017, Russell sent a letter to the court, complaining that respondent was not effectively representing him and seeking the appointment of pro bono counsel. On December 1, 2017, the only remaining

defendant in the case filed a motion to dismiss the complaint. Respondent failed to file opposition.

Respondent then failed to appear at a March 12, 2018 hearing scheduled to address his inaction in the case, his failure to comply with that court's order, and Russell's request for pro bono counsel. Thereafter, on April 6, 2018, because he failed to reply to the court's March 13, 2018 show cause order why he should not be held in civil contempt, respondent was held in contempt. His total failure to prosecute his client's claim constituted gross neglect, lack of diligence, and failure to expedite litigation, violations of RPC 1.1(a), RPC 1.3, and RPC 3.2, respectively.

Respondent also violated RPC 1.5(b) by failing to set forth in writing the basis or rate of his fee for Russell, a first-time client.

In respect of RPC 1.16(c), Rule 74(a) of the Uniform Rules of Civil Procedure states as follows:

(a) Notice of withdrawal. An attorney may withdraw from the case by filing with the court and serving on all parties a notice of withdrawal. The notice of withdrawal shall include the address of the attorney's client and a statement that no motion is pending, and no hearing or trial has been set. If a motion is pending or a hearing or trial has been set, an attorney may not withdraw except upon motion and order of the court. The motion to withdraw shall describe the nature of any pending motion and the date and purpose of any scheduled hearing or trial.

Russell and the remaining defendant had motions pending when respondent ceased working on the case. Therefore, Rule 74(a) required him to file a motion to be relieved as counsel. Respondent simply walked away from the case, a de facto termination of the representation, and a violation of RPC 1.16(c). In similar fashion, respondent failed to protect his client's interests upon termination of the representation, including giving Russell reasonable notice and allowing time for the employment of other counsel, a violation of RPC 1.16(d).

In addition, respondent's failure to comply with the DNJ's court orders in the Russell matter resulted in the issuance of a contempt order and constituted a violation of RPC 3.4(c). He also prejudiced the administration of justice by unnecessarily burdening the court with a show cause matter and a finding of civil contempt. Undoubtedly, respondent's actions violated RPC 8.4(d).

Finally, the stipulation went to great lengths to detail the OAE's many efforts to compel respondent's cooperation in the early stages of this matter. In essence, from September 20, 2017, when the OAE first sent a request for information about an overdraft in his ATA, until his temporary suspension on September 21, 2018, respondent failed to comply with the OAE's numerous requests for information and written responses to the matters under investigation. Ultimately, respondent filed a February 2019 reply to the grievance, retained Vignuolo, came into R. 1:21-6 compliance, and entered into

a disciplinary stipulation. Nevertheless, for a lengthy period of time, he violated RPC 8.1(b).

In sum, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.5(b); RPC 1.15(a); RPC 1.15(d) and R. 1:21-6; RPC 1.16(c); RPC 1.16(d); RPC 3.2; RPC 3.4(c); RPC 8.1(b); and RPC 8.4(d). As previously stated, we dismiss the additional RPC 8.4(d) charge related to the use of attorney letterhead. The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, the presence of additional violations, and the seriousness of the attorney's disciplinary history. See, e.g., In the Matter of Esther Maria Alvarez, DRB 19-190 (September 20, 2019) (admonition for attorney who was retained to obtain a divorce for her client, but for the next nine months, failed to take any steps to pursue the matter, and failed to reply to all but one of the client's requests for information about the status of her case, violations of RPC 1.1(a) and RPC 1.4(b); in another matter, the attorney agreed to seek a default judgment, but waited more than a year-and-a-half to file the necessary papers with the court; although the attorney obtained a default

judgment, the court later vacated it due to the passage of time, which precluded a determination of the timing of the damage to the property, violations of RPC 1.1(a) and RPC 1.3); In the Matter of Michael J. Pocchio, DRB 18-192 (October 1, 2018) (admonition for attorney who filed a divorce complaint and permitted it to be dismissed for failure to prosecute the action; he also failed to seek reinstatement of the complaint, and failed to communicate with the client; violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 3.2); In re Burro, 235 N.J. 413 (2018) (reprimand for attorney who grossly neglected and lacked diligence in an estate matter for ten years and failed to file New Jersey Inheritance Tax returns, resulting in the accrual of interest of \$40,000 and the imposition of a lien on property belonging to the executrix, in violation of RPC 1.1(a) and RPC 1.3; the attorney also failed to keep the client reasonably informed about events in the case (RPC 1.4(b)); to return the client file upon termination of the representation (RPC 1.16(d)); or to cooperate with the ethics investigation (RPC 8.1(b)); in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand; in mitigation, the attorney suffered a stroke that forced him to cease practicing law and expressed his remorse); and In re Abasolo, 235 N.J. 326 (2018) (reprimand for attorney who grossly neglected and lacked diligence in a slip-and-fall case for two years after filing the complaint; after successfully restoring the matter to the active

trial list, the attorney failed to pay a \$300 filing fee, permitting the defendants' order of dismissal with prejudice to stand, in violation of RPC 1.1(a) and RPC 1.3; in addition, for four years, the attorney failed to keep the client reasonably informed about the status of the case, in violation of RPC 1.4(b)).

Ordinarily, commingling of an attorney's personal funds with trust account funds will be met with an admonition. See, e.g., In the Matter of Richard P. Rinaldo, DRB 18-189 (October 1, 2018) (commingling of personal loan proceeds in the attorney trust account, in violation of RPC 1.15(a); recordkeeping violations also found; the commingling did not impact client funds in the trust account); In the Matter of Richard Mario DeLuca, DRB 14-402 (March 9, 2015) (the attorney had a trust account shortage of \$1,801.67; because the attorney maintained more than \$10,000 of earned legal fees in his trust account, no client or escrow funds were invaded; the attorney was guilty of commingling personal and trust funds and failing to comply with recordkeeping requirements); and In the Matter of Dan A. Druz, DRB 10-404 (March 3, 2011) (an OAE audit revealed that, during a two-year period, the attorney had commingled personal and client funds in his trust account, in violation of RPC 1.15(a), by routinely using the account for business and personal transactions; recordkeeping deficiencies also found, violations of RPC 1.15(d) and R. 1:21-6).

The discipline imposed for violations of RPC 1.16(c) has ranged from a reprimand to a suspension, depending on the gravity of the offenses, the presence of other ethics violations, and aggravating and mitigating factors, such as prior discipline and harm to the client. See, e.g., In re Boyd, 235 N.J. 369 (2018) (reprimand imposed on attorney who unilaterally terminated the representation of a divorce client in an attempt to obtain additional fees for the representation, in violation of RPC 1.16(c); the attorney also lacked diligence and failed to communicate in writing the rate or basis of the fee by failing to comply with R. 5:3-5(a); in mitigation, the attorney had no prior discipline in twenty-two years at the bar); In re Leite, 233 N.J. 460 (2018) (reprimand imposed on attorney who unilaterally terminated the representation of clients for whom he had filed a civil action against a mortgage lender in a loan modification case; the attorney failed to seek leave of court to terminate the representation, a violation of RPC 1.16(c), failed to file a substitution of attorney, and failed to notify opposing counsel of his withdrawal from the representation; violations of RPC 1.4(b), RPC 1.4(c), and RPC 1.16(d) also found; in mitigation, the attorney had no prior discipline, was inexperienced in matters of litigation, and fully cooperated with disciplinary authorities by stipulating to his wrongdoing and consenting to discipline); In re Kern, 135 N.J. 463 (1994) (reprimand imposed on attorney who, after representing a physician for twenty-six days of hearing

before the Office of Administrative Law (OAL), filed a motion to withdraw, which the judge denied, characterizing the matter as a fee dispute; the attorney's subsequent applications to the OAL acting director, the Appellate Division, and the Supreme Court were unsuccessful; the attorney then filed a lawsuit in the Law Division, which was dismissed for lack of jurisdiction and renewed his motion to withdraw before the OAL judge, which was denied; the attorney refused to appear at the OAL hearing, in violation of RPC 1.16(c); in mitigation, we considered the fact that the attorney had no prior discipline in eighteen years at the bar and had been required to continue representing clients who had engaged in a pattern of threats against him, rendering effective representation extremely difficult); and In re Saavedra, 162 N.J. 108 (1999) (three-month suspension imposed on attorney who unilaterally terminated the representation of a juvenile in respect of a delinquency complaint; the attorney left the courthouse without notifying the judge, after the juvenile's family failed to pay his fee and the judge rescheduled the matter; when the juvenile appeared before the same judge in a different matter, another attorney entered an appearance in Saavedra's place and informed the court that Saavedra no longer represented the juvenile in the first matter; having already set a trial date, the judge in the original matter directed the second attorney to inform Saavedra that he must file a motion to be relieved as counsel; later that same day, the judge informed

Saavedra that, with time short, such a motion would likely not be granted; Saavedra failed thereafter to appear at the rescheduled date or to file a motion to be relieved as counsel; the day after the rescheduled trial date passed, he filed a withdrawal motion, which the judge denied and ordered Saavedra's appearance for the rescheduled trial; once again, Saavedra failed to appear; significant prior discipline of a three-month suspension, public reprimand, and private reprimand).

Conduct prejudicial to the administration of justice comes in a variety of forms, and the discipline imposed for the misconduct typically results in discipline ranging from a reprimand to a suspension, depending on other factors present, including the existence of other violations, the attorney's ethics history, whether the matter proceeded as a default, the harm to others, and mitigating or aggravating factors. See, e.g., In re Ali, 231 N.J. 165 (2017) (reprimand for attorney who disobeyed court orders by failing to appear when ordered to do so and by failing to file a substitution of attorney, violations of RPC 3.4(c) and RPC 8.4(d); he also lacked diligence (RPC 1.3) and failed to expedite litigation (RPC 3.2) in one client matter and engaged in ex parte communications with a judge, a violation of RPC 3.5(b); in mitigation, we considered his inexperience, unblemished disciplinary history, and the fact that his conduct was limited to a single client matter); In re D'Arienzo, 207 N.J. 31 (2011) (censure for attorney

who failed to appear in municipal court for a scheduled criminal trial, and thereafter failed to appear at two orders to show cause stemming from his failure to appear at the trial; by scheduling more than one matter for the trial date, the attorney inconvenienced the court, the prosecutor, complaining witness, and two defendants; prior three-month suspension and two admonitions plus failure to learn from similar mistakes justified a censure); In re DeClemente, 201 N.J. 4 (2010) (three-month suspension for an attorney who arranged three loans to a judge in connection with his own business, failed either to disclose to opposing counsel his financial relationship with the judge or to ask the judge to recuse himself, made multiple misrepresentations to the client, engaged in an improper business transaction with the client, and engaged in a conflict of interest); In re Block, 201 N.J. 159 (2010) (six-month suspension where the attorney violated a court order that he had drafted by failing to transport his client from prison to a drug treatment facility, instead he left the client at a church while he made a court appearance in an unrelated case; the client fled and encountered more problems while on the run; the attorney also failed to file an affidavit in compliance with R. 1:20-20, failed to cooperate with disciplinary authorities, failed to provide clients with writings setting forth the basis or rate of the fees, lacked diligence, engaged in gross neglect, and failed to turn over a client's file; prior reprimand and one-year suspension); and In re Bentivegna, 185 N.J. 244

(2005) (motion for reciprocal discipline; two-year suspension for an attorney who was guilty of making misrepresentations to an adversary, negotiating a settlement without authority, filing bankruptcy petitions without authority to do so and without notifying her clients, signing clients' names to documents, making misrepresentations in pleadings filed with the court, violating a bankruptcy rule prohibiting the payment of fees before paying filing fees; the attorney was guilty of conduct prejudicial to the administration of justice, gross neglect, failure to abide by the client's decision concerning the objectives of the representation, failure to communicate with clients, excessive fee, false statement of material fact to a tribunal, and misrepresentations).

Here, in aggravation, the parties cited respondent's overall pattern of misconduct, as evidenced by the three matters currently pending with the Court. In mitigation, the parties noted that the misconduct in this matter and in the three default matters currently pending with the Court occurred during a discrete period of time – approximately August 2016 through February 2019 – when respondent finally cooperated with the OAE and began to bring his recordkeeping into compliance. In further mitigation, the parties urged that, during that more than two-year period, respondent was involved in a divorce in which he sought to retain custody of the couple's child, and was trying to operate a solo law practice.

As seen above, a reprimand is the baseline sanction for respondent's unilateral termination of the Russell representation. Standing alone, a reprimand would also be the minimum sanction for respondent's disobeying court orders and conduct prejudicial to the administration of justice in the Russell matter. In that case, respondent flagrantly ignored the trial court's order requiring his appearance for a status conference and then for a show cause order for contempt. In this regard, respondent's actions were similar to those of the attorney in D'Arienzo (censure), who failed to appear in court for a scheduled criminal trial, and at two subsequent orders to show cause for his failure to appear at the trial. D'Arienzo had a prior three-month suspension and two admonitions, and failed to learn from prior mistakes.

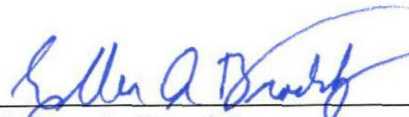
The parties also urged us to conclude that all the misconduct in this matter and the three default matters currently with the Court occurred during a discrete point in time. However, August 2016 through February 2019 was a lengthy period of time – more than two years – during which respondent engaged in what the parties concede was a pattern of misconduct, including an active refusal to cooperate with disciplinary authorities in one disciplinary matter after another, including this one.

We credit respondent for his ultimate cooperation with the OAE and for stipulating to all his misconduct in this matter. Nevertheless, for his persistent

pattern of misconduct, we conclude that a three-month suspension, consecutive to any suspension imposed in the matters currently with the Court, is the sanction required to protect the public and preserve confidence in the bar.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bruce W. Clark, Chair

By: 
Ellen A. Brodsky
Chief Counsel

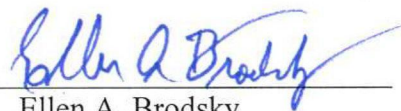
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Christopher Roy Higgins
Docket No. DRB 19-456

Decided: November 19, 2020

Disposition: Three-Month Suspension

<i>Members</i>	Three-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:	9	0	0



Ellen A. Brodsky
Chief Counsel