Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-209
District Docket No. XIV-2019-0574E

In the Matter of	:
Richard C. Gordon	:
An Attorney at Law	:

Decision

Argued: January 21, 2021

Decided: April 1, 2021

Ashley L. Kolata-Guzik appeared on behalf of the Office of Attorney Ethics.

Ernest W. Schoellkopff 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 reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a), following a May 23, 2019 order issued by the Superior Court of Connecticut, Judicial District of Hartford, accepting respondent's knowing and voluntary waiver of the privilege of applying to the Connecticut Bar at any time in the

future, after he had received four reprimands within a five-year period. The OAE asserted that, in those four matters, respondent was found guilty of having violated the equivalents of New Jersey RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with the client); RPC 1.5(a) (unreasonable fee); RPC 5.5(a)(1) (practicing law while ineligible); RPC 8.1(b) (two instances – 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 grant the motion for reciprocal discipline and impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 2000 and to the District of Columbia bar in 2006.[1] At the relevant times, he purported to practice law with Gordon and Russell, a law firm in Bloomfield, Connecticut. Respondent does not currently maintain a law practice in New Jersey.

In 2011, we imposed an admonition on respondent for his violation of RPC 1.15(b) (failure to promptly notify a third person of the receipt of funds in which the third person has an interest). In the Matter of Richard C. Gordon, DRB 11-074 (June 30, 2011).

[1] Respondent has never been admitted to the Connecticut bar, but he was admitted to practice in the United States District Court for the District of Connecticut. Respondent also represented at least one client, pro hac vice, in a Connecticut state court action.

The First Reprimand

On December 17, 2014, the State of Connecticut Superior Court, Judicial District of Hartford (the Superior Court), imposed a reprimand on respondent for his violation of Connecticut RPC 1.5(a) (unreasonable fee) and RPC 5.5 (unauthorized practice of law), arising from his representation of Ruben Angeles Vargas, for a fee, when he was not licensed to practice law in that state and, thus, could not perform the legal services for which he was retained. The Superior Court ordered respondent to refund the client's $1,700 fee.[2] The Connecticut RPCs respondent violated are equivalent to New Jersey RPC 1.5(a) and RPC 5.5(a)(1).

At the time the Superior Court imposed the reprimand, respondent, acting pro hac vice, was representing a different client, Eunice Smith, in a Connecticut wrongful termination of employment action captioned AFCSME Council 4 Local 1565 v. State Dep't of Corrections (the Smith matter). In this regard, the December 17, 2014 order also provided that, upon conclusion of respondent's representation in the Smith matter, his pro hac vice status would be terminated. Further, the order provided that respondent had waived his right to apply for pro hac vice status in Connecticut "at any time in the future." Finally, the order

[2] The executed retainer agreement was dated June 11, 2013.

dismissed a second ethics grievance against respondent, captioned Bowler v. Gordon, which arose from an overdraft in respondent's attorney trust account.

The genesis of the December 17, 2014 order is unclear. The record contains an October 28, 2014 "amended application for interim suspension," filed by the Connecticut Office of Disciplinary Counsel (the ODC). The ODC sought respondent's interim suspension on the ground that he constituted a threat of irreparable harm to current and potential clients. Specifically, the ODC cited the pending grievances in the Vargas and Bowler matters.

In the amended application for interim suspension, the ODC also mentioned affidavits filed by respondent in two Connecticut state court matters in which he had been granted pro hac vice admission. In those affidavits, respondent stated that he had never been "'suspended, reprimanded, [or] placed in inactive service,'" and that he had neither resigned from any bar nor been disbarred. According to the ODC, the Connecticut Practice Book required the affidavit to disclose whether respondent had "'ever been reprimanded, suspended, placed on inactive status, disbarred *or otherwise disciplined,* or has ever resigned from the practice of law . . .'" (emphasis in original).[3] Respondent failed to disclose to Connecticut authorities that we had admonished him, in 2011.

[3] The Connecticut Practice Book appears to be similar to the New Jersey Court Rules.

Finally, respondent wrote at least one letter on letterhead which failed to reflect that he was not licensed to practice law in Connecticut, and then subsequently failed to provide proof that he had corrected the letterhead, as Connecticut disciplinary authorities had instructed him to do.

Accompanying the amended application for interim suspension were copies of the affidavits filed by respondent in connection with the pro hac vice applications and our 2011 letter of admonition, among other documents. Respondent and the ODC entered into an agreement to consolidate his Connecticut disciplinary matters.

Although it is not clear from the record, it appears that the Superior Court's December 17, 2014 decision may have been based on a document agreed upon by disciplinary counsel and respondent, in early November 2014, entitled "Proposed Disposition Pursuant to Practice Book §2-82."[4] The document referred to the application for interim suspension, the two pending ethics matters, and the Smith pro hac vice matter. In an accompanying affidavit, respondent stipulated to having violated RPC 1.5(a) and RPC 5.5(a) in the Vargas matter; agreed to refund the full $1,700 fee to the client; and consented

[4] Section (b) of § 2-82 permits the parties to "agree to a proposed disposition of the matter," place the agreement in writing, and submit the agreement, together with the complaint and the record, for approval by the court, "in all matters involving possible suspension or disbarment, or possible imposition of a period of probation or other sanctions beyond the authority of the Statewide Grievance Committee."

to the imposition of a reprimand. On conclusion of his representation in the Smith matter, respondent agreed to the deactivation of his pro hac vice "juris" number and waived his right to apply for pro hac vice admission in Connecticut "at any time in the future." He further agreed to dismissal of the Bowler grievance arising from the overdraft.

The Second Reprimand

On June 19, 2015, the Connecticut Statewide Grievance Committee (the Committee) imposed a reprimand on respondent for his failure to cooperate in a disciplinary proceeding arising from a former paramour's claim that, after she had ended their romantic relationship, he had refused to destroy some "salacious photographs" taken while they were together. He then "presented those photographs to her in a harassing way and in an attempt to renew their intimate relationship."

The former paramour filed a complaint with the police, who charged respondent with an unidentified crime. She also obtained a restraining order against him and filed the ethics grievance.[5] On December 1, 2014, the grievance was served on respondent, but he failed to submit a reply, failed to return the

[5] The decision does not identify the dates on which respondent's conduct took place. However, the grievance was filed on December 1, 2014.

investigator's telephone calls, and failed to participate in the disciplinary hearing.

The Committee charged and found that respondent had violated Connecticut RPC 8.1(2) (failure to cooperate with disciplinary authorities), which is equivalent to New Jersey RPC 8.1(b). The Committee dismissed the charged violation of RPC 8.4(2) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a law in other respects), which is equivalent to New Jersey RPC 8.4(b), leaving it to the criminal justice system to determine whether respondent had committed a crime.

In determining that a reprimand was appropriate discipline for respondent's ethics infraction, the Committee observed that his ability to practice law in Connecticut was "so limited by the [December 2014] order, that this matter does not warrant the attention of the court."

The Third Reprimand

On May 13, 2016, the Committee imposed a reprimand on respondent for his violation of Connecticut RPC 8.4(4) (conduct prejudicial to the administration of justice), arising from his failure to pay a court reporter's $548.56 bill. Connecticut RPC 8.4(4) corresponds to New Jersey RPC 8.4(d). On the morning of the hearing, the Committee denied respondent's request for

a continuance, which was based on a claim of illness, and the hearing proceeded without him.

The evidence established that, in February 2015, at respondent's request, the court reporter attended, and later transcribed, an individual's deposition. In March 2015, the reporter sent respondent a copy of the transcript and a $548.56 bill, which respondent did not pay. When the reporter followed up with him, in April 2015, respondent stated that he would pay her "as soon as [he] was able," which he anticipated to be within the next two weeks.

By the time the reporter filed a grievance against respondent, in July 2015, the bill remained outstanding. He finally paid the bill about a month later.

The Committee found that respondent violated Connecticut RPC 8.4(4) by failing to pay the court reporter's bill for five months, "without providing any specific information or documentation as to any purported financial hardship or other circumstances which might have explained such delay."

The Fourth Reprimand

On October 26, 2018, in connection with his representation of his client in the Smith matter, the Committee imposed a fourth reprimand on respondent for his violation of Connecticut RPC 1.3 (lack of diligence), RPC 1.4(a)(3) and (4) (failure to keep the client reasonably informed about the status of the matter and promptly comply with reasonable requests for information), and RPC 8.1(2).

Connecticut RPC 1.3 is equivalent to New Jersey RPC 1.3, and Connecticut RPC 1.4(a)(3) and (4) correspond to New Jersey RPC 1.4(b). As stated previously, Connecticut RPC 8.1(2) is equivalent to New Jersey RPC 8.1(b).

In October 2005, an arbitrator had determined that Smith's employer, the State Department of Corrections (the DOC), had terminated her employment for just cause. In November 2010, however, the Connecticut Supreme Court held that the arbitrator's just cause determination violated public policy. The Connecticut Supreme Court, thus, remanded the case to the Appellate Court to reverse the judgment upholding the award and instructed the Appellate Court to remand the case to the arbitrator for further proceedings.

In December 2010, Smith had replaced her union-assigned attorney with respondent. The retainer agreement entered into by respondent and Smith authorized him "'to facilitate disposition of [Smith's] claim, but no such action shall limit or prejudice [Smith's] right to approve or review a proposed settlement prior to resolution . . . .'" Further, the agreement provided "'that execution of a witnessed and acknowledged release shall be prima facie evidence of [Smith's] satisfaction with regard to any settlement recited therein.'"

From December 2010 to September 2011, when the Smith matter was finally remanded to the arbitrator, respondent and Smith exchanged e-mails

regarding the case. In November 2011, respondent was admitted pro hac vice to represent Smith. Almost three years later, on August 21, 2014, the arbitrator once again found that Smith's employment was terminated for just cause.[6]

On September 18, 2014, respondent filed a motion to vacate the arbitrator's decision. On June 25, 2015, the court denied Smith's employer's motion to dismiss. The court upheld the arbitrator's determination, which respondent appealed to the Appellate Court in October 2016.

On April 21, 2017, Richard Sponzo, the assistant attorney general (AAG) representing the DOC sent a letter to the judge handling the appeal, outlining a settlement offer, which included limited pension and health and dental benefits for Smith at age fifty-five, as well as a refund of any hazardous duty contributions she may have made. By e-mail dated May 10, 2017, respondent forwarded Sponzo's letter to Smith. On May 12, 2017, Smith replied to respondent's e-mail, asking for an explanation of what was meant by "limited pension and health benefits" and informing respondent that she further desired back pay, longevity, and payment of her attorneys' fees. Smith also requested that the settlement offer be confirmed in writing. In a subsequent e-mail to respondent, dated May 14, 2017, Smith repeated her statements and questions,

[6] According to the Committee's decision, in June 2012, the arbitrator requested briefs on the issue of whether a hearing was required before the arbitrator issued an award. The Committee noted that it had "no record" that respondent had filed a brief.

and requested additional relief (i.e., vacation, sick and personal days, and cost of living increases).

On May 19, 2017, the Appellate Court ordered that, unless respondent filed a brief by June 2, 2017, Smith's case would be dismissed. On May 20, 2017, Smith sent a third e-mail to respondent, again requesting an explanation of the DOC's settlement offer. Ten days later, she sent an e-mail directly to Robert Smith, who had substituted as local counsel, because respondent had not clarified the settlement offer.

Instead of filing a brief on June 2, 2017, respondent withdrew Smith's appeal. The next day, Smith sent respondent an e-mail asking whether he had filed the appellate brief. Later, Smith learned that respondent had withdrawn the appeal.

On June 9, 2017, Smith sent an e-mail to respondent, asking how the appeal could have been withdrawn, since she had not agreed to the settlement, and because "there was nothing in writing." Ten days later, she sent another e-mail to respondent, stating that he had not answered her calls, text messages, or e-mails, and asking why respondent had not filed a brief and why the appeal had been withdrawn.

On July 2, 2017, Smith sent another e-mail to respondent, asking about the settlement. Respondent replied that there was no "proposed settlement;"

informed Smith that "we" agreed to withdraw the appeal because the case was not winnable; and claimed that he had informed Smith that he could not settle the matter absent a withdrawal of the appeal. Smith replied, stating that, despite her repeated requests, respondent had never clarified the proposed settlement terms prior to withdrawing the appeal and, further, that she had never agreed to the settlement terms and had never signed a settlement statement.

On July 24, 2017, Smith sent respondent an e-mail, requesting an update on the proposed settlement. He did not reply and, thus, on September 27, 2017, Smith sent another e-mail to the AAG, informing him that respondent was not communicating with her, and requesting an update on the status of the proposed settlement.

On November 1, 2017, Smith sent another e-mail to Robert Smith, requesting information about the status of her case, as there had been no settlement despite the withdrawal of the appeal. Robert Smith forwarded Smith's e-mail to respondent.

On February 14, 2018, Smith filed a grievance against respondent with the Committee. On February 26, 2018, the Committee sent a copy of the grievance to respondent at his office and home addresses of record and directed him to file a written reply within thirty days. The items sent to both addresses were undeliverable and, thus, were returned to the Committee. Although

respondent did not file a written reply to the grievance because he claimed he did not receive it, he and Smith appeared and testified at the Committee's August 2, 2018 hearing.

Smith testified that she never agreed to the proposed settlement, because respondent never clarified the terms. She denied having discharged respondent as her attorney, stating that she did not know the status of her case or whether respondent was still representing her.

During respondent's testimony, he claimed that the arbitrator's delay in resolving Smith's case, following the Connecticut Supreme Court's remand, was due to injuries that the arbitrator had sustained in an automobile accident. Respondent asserted that he kept Smith informed throughout the case via e-mails, calls, and text messages.

Respondent maintained that he had explained the settlement offer to Smith and that she had agreed to accept the offer and to withdraw her appeal, though none of that was in writing. Although respondent believed that Smith had signed a settlement agreement, he was unable to find any drafts or a signed copy of the agreement in his file or e-mails. According to respondent, after the appeal had been withdrawn, he accompanied Smith to three meetings at the DOC to assist her in obtaining her benefits.

Respondent claimed that, in December 2017, Smith fired him and, thus, he was not aware of the status of her case. He acknowledged that he neither confirmed the termination of his representation nor provided Smith with her file.

In respect of respondent's failure to cooperate with the ethics investigation, respondent testified that his inaction was not willful. Rather, he asserted that he had sold his home in February 2017, and had failed to update his attorney registration with his new address.

Following the hearing, the Committee found, by clear and convincing evidence, that respondent failed to provide Smith with diligent representation, in violation of Connecticut RPC 1.3, by withdrawing Smith's appeal without her consent and prior to obtaining an executed settlement agreement between the parties, along with a release from Smith; by failing to abide by his fee agreement, which gave Smith the right to approve any proposed settlement prior to resolution of her case; by failing to assist Smith in obtaining retirement benefits; and by failing to establish that she had fired him in December 2017.

The Committee also found that respondent was not responsive to Smith, whom he failed to keep informed and whose e-mails he ignored. He, thus, violated Connecticut RPCs 1.4(a)(3) and (4).

Finally, the Committee found that respondent violated Connecticut RPC 8.1(2) and Practice Book § 2.32(a)(1) by failing to reply to the grievance. The

Committee rejected as good cause respondent's failure to comply with the attorney registration requirements and update his address.

The Committee imposed a reprimand for respondent's misconduct. However, as detailed above, in the five years preceding the filing of the grievance in the fourth disciplinary matter, respondent had received three reprimands. Thus, § 2-47(d)(1) of the Practice Book mandated the filing of a presentment.[7]

On March 1, 2019, the ODC filed a presentment, charging respondent with the same RPC violations found by the Committee in the fourth reprimand matter. On May 23, 2019, the Superior Court accepted respondent's knowing and voluntary waiver of the privilege of applying for admission to the Connecticut bar at any time in the future. In respondent's waiver, he admitted having violated Connecticut RPC 1.4 and RPC 8.1(2) in the fourth reprimand matter.

Respondent did not report to the OAE any of the reprimands or the waiver.

To conclude, in the four reprimand matters, the Connecticut disciplinary authorities found respondent guilty of having violated Connecticut RPCs

[7] § 2-47(d)(1) provides, in part, that the "sole issue" to be determined in such a presentment is "the appropriate action . . . as a result of the nature of the misconduct in the instant case and the cumulative discipline issued . . . within such five year period." The action could be dismissal or any of the following: reprimand, suspension, disbarment, "or such other discipline as the court deems appropriate."

equivalent to the following New Jersey RPCs: RPC 1.3, RPC 1.4(b), RPC 1.5(a), RPC 5.5(a)(1), RPC 8.1(b) (two instances), and RPC 8.4(d).

In its brief, the OAE argued that respondent's ethics infractions, individually, warrant no more than a reprimand. However, the OAE asserted, the following aggravating factors serve to enhance the reprimand to a censure or three-month suspension: (1) in the Smith matter, respondent withdrew Smith's appeal without her knowledge or consent; (2) in the Vargas matter, he harmed the client by overcharging him and failing to pursue the matter; (3) he failed to report to the OAE all four reprimands, as well as his waiver; (4) he previously received an admonition in New Jersey; and (5) he had failed to learn from his prior mistakes, as demonstrated by two reprimands in Connecticut for failure to cooperate with disciplinary authorities.

In his October 2, 2020 brief to us, respondent argued that discipline greater than a reprimand is disproportionate to the conduct in question, either individually or cumulatively. Indeed, he claimed that reprimands have been imposed in the face of "undeniably more serious misconduct." Further, respondent asserted that the OAE had failed to explain the particular harm inflicted on Vargas, other than the loss of the $1,700 fee, which he had returned. Finally, respondent maintained that his failure to report the Connecticut

discipline to New Jersey or the New Jersey discipline to Connecticut justifies no more than a reprimand.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

In Connecticut, the standard of proof in attorney disciplinary matters is clear and convincing evidence. Statewide Grievance Committee v. Friedland, 222 Conn. 131, 135 (1992).

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;

> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

Subsection (E) applies in this matter because the unethical conduct warrants substantially different discipline.

As the Connecticut Superior Court found, in the first reprimand matter, respondent violated RPC 5.5(a)(1) by undertaking the Vargas representation even though he was not licensed to practice law in Connecticut. See, e.g., In re Ehrlich, 235 N.J. 321 (2018) (attorney licensed to practice law in New Jersey, New York, Washington, D.C., and Florida, but who maintained an office for the practice of law in Florida, violated New Jersey RPC 5.5(a)(1) when he undertook the representation of clients who resided in Maryland, where he was not admitted to the bar). It, thus, follows that any fee charged for such unlawful services was per se unreasonable, a violation of RPC 1.5(a).

As the Committee found, in the second reprimand matter, respondent violated RPC 8.1(b) by failing to participate in the disciplinary process at any

level. Specifically, he failed to file a written reply to the grievance, failed to return the investigator's telephone calls, and failed to participate in the disciplinary hearing. Pursuant to New Jersey disciplinary Rules, he defaulted.

The facts underlying the third reprimand, however, do not support an ethics infraction in New Jersey. Conduct prejudicial to the administration of justice typically involves actions that flout court orders and tax judicial resources. See, e.g., In re Cerza, 220 N.J. 215 (2015) (attorney failed to comply with an order requiring him to produce subpoenaed documents in a bankruptcy matter, a violation of RPC 3.4(c) and RPC 8.4(d); he also exhibited a lack of diligence and failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b)) and In re D'Arienzo, 207 N.J. 31 (2011) (attorney failed to appear in municipal court for a scheduled criminal trial, and thereafter failed to appear at two orders to show cause stemming from his failure to appear at the trial; by scheduling more than one matter for the trial date, the attorney inconvenienced the court, the prosecutor, complaining witness, and two defendants; in addition, his failure to provide the court with advance notice of his conflicting calendar prevented the judge from scheduling other cases for that date). In short, respondent's five-month failure to pay a court reporter's bill did not tax judicial resources or otherwise undermine the integrity of the judicial

system. Thus, neither the charge nor the reprimand can form the basis for reciprocal discipline in New Jersey.

As the Committee found, in respect of the fourth reprimand, by withdrawing Smith's appeal without her consent and prior to obtaining an executed settlement agreement between the parties and a release from Smith, respondent abdicated the duties that an attorney owes a client. As the Committee found, respondent unilaterally decided to withdraw the appeal, claiming Smith's case was not winnable, and then claimed that he had informed Smith that he could not settle the matter absent a withdrawal of the appeal. Yet, he did nothing to ensure that his client understood and agreed with the settlement and withdrawal of the appeal.[8] According to Smith, she did not.

Similarly, respondent violated RPC 1.3 by intentionally ignoring the terms of his own fee agreement, which expressly provided Smith the sole authority to approve any proposed settlement of her case. His failure to follow his own procedure in settling Smith's case was the epitome of a lack of diligence.

Further, having unilaterally settled Smith's case, respondent did little to assist her in obtaining retirement benefits, beyond his claim of attending three meetings with her employer. Finally, respondent violated RPC 1.3 by failing to

[8] RPC 1.2(a) (failure to abide by a client's decision whether to settle a matter) would have been the more appropriate charge for respondent's actions.

establish that Smith had fired him in December 2017, a minimum undertaking required of any attorney whose representation of a client has ended, for any reason.

As the Committee found, respondent failed to communicate with Smith, a violation of New Jersey RPC 1.4(b). He failed to keep Smith informed, and he systematically ignored most of her attempts to communicate with him about the status of the matter.

Finally, the Committee found that respondent violated Connecticut RPC 8.1(2) and Connecticut Practice Book § 2.32(a)(1) by failing to reply to the grievance. This finding is sufficient to establish that respondent violated New Jersey RPC 8.1(b). In this state, attorneys are duty bound to cooperate in a disciplinary investigation and to reply in writing within ten days of receipt of a request for information. R. 1:20-3(g)(3).

In addition, the Committee was right to reject respondent's defense of his failure to reply to the grievance – that he had moved and had failed to comply with the attorney registration requirements and update his address. See In re Levasseur, 244 N.J. 410 (2020); In the Matter of Audwin Frederick Levasseur, DRB 19-442 (September 21, 2020) (slip op. at 5-6) (default; because the attorney failed to update his home address with the New Jersey Lawyers' Fund for Client Protection and the Office of Attorney Ethics, as required by R. 1:20-

1(c), the ethics complaint was sent to an incorrect address; the attorney's failure to keep his address current did not constitute a reasonable explanation for his failure to file an answer to the complaint).

In sum, we find that respondent violated the equivalent New Jersey RPC 1.3, RPC 1.4(b), RPC 1.5(a), RPC 5.5(a)(1), and RPC 8.1(b) (two instances). The sole issue left for determination is the proper quantum of discipline for respondent's violations.

There is no basis for us to deviate from the individual reprimands imposed by Connecticut in each of the three, discrete matters. For example, attorneys who practice law in jurisdictions where they are not licensed have received discipline ranging from an admonition to a suspension, depending on the occurrence of other ethics infractions, their disciplinary history, and the presence of aggravating and mitigating factors. See, e.g., In the Matter of Mateo J. Perez, DRB 13-009 (June 19, 2013) (admonition; although not admitted in New York, attorney represented a client there; attorney had represented several other clients in New York after having been admitted pro hac vice or having disclosed to the judges that he had not been admitted in New York; attorney, thus, believed that he could represent clients without admission; the clients were family and friends of the attorney and were not charged for the representation; mitigating factors included the absence of prior discipline and lack of personal

financial gain; violation of RPC 5.5(a)); In the Matter of Duane T. Phillips, DRB 09-402 (February 26, 2010) (admonition; attorney, who was not admitted in Nevada, represented a client who was obtaining a divorce in that state; in mitigation, the conduct involved only one client, the attorney had no ethics history, and a recurrence of the conduct was unlikely; violation of RPC 5.5(a)); In re Cellino, 217 N.J. 361 (2014) (reprimand for attorney who undertook the representation of a client in a divorce matter in Georgia, where he was not admitted to practice; the attorney's actions amounted to the unauthorized practice of law, a violation of RPC 5.5(a)(1); prior 2010 censure); In re Brown, 216 N.J. 341 (2013) (reprimand; after agreeing to represent a client before the Court of Appeals for Veterans Claims (CAVC), attorney failed to advance the appeal, failed to keep the client informed about the status of his matter, and failed to notify him that he had terminated the representation; moreover, because the attorney had not been admitted to practice before the CAVC, he engaged in the unauthorized practice of law; violation of RPC 1.3, RPC 1.4(b), RPC 1.16(d) and RPC 5.5(a); no prior discipline); In re Nadel, 227 N.J. 231 (2016) (censure for New Jersey attorney who had improperly established a systemic and continuous legal presence in Delaware, where he represented more than seventy-five Delaware residents in personal injury matters); In re Butler, 215 N.J. 302 (2013) (censure for attorney who, for more than two years, practiced with a law

firm in Tennessee, although not admitted there; pursuant to an "of counsel" agreement, the attorney was to become a member of the Tennessee bar and the law firm was to pay the costs of her admission; the attorney provided no explanation for her failure to follow through with the requirement that she gain admission to the Tennessee bar; the attorney was suspended for sixty days in Tennessee, where the disciplinary authorities determined that her misconduct stemmed from a "dishonest or selfish motive"); In re Kingsley, 204 N.J. 315 (2011) (attorney censured, based on discipline in the State of Delaware, for engaging in the unlawful practice of law by drafting estate planning documents for seventy-five clients of a public accountant's Delaware clients, many of whom he had never met, when he was not licensed to practice law in Delaware; the attorney also assisted the accountant in the unauthorized practice of law by preparing estate planning documents based solely on the accountant's notes and by failing to ensure that the documents complied with the clients' wishes; he continued to assist the accountant even after he learned that the Delaware Supreme Court had issued a cease and desist order in the accountant's own unauthorized practice of law proceeding); and In re Lawrence, 170 N.J. 598 (2002) (in a default matter, attorney received a three-month suspension for practicing in New York, where she was not admitted to the bar; the attorney also agreed to file a motion in New York to reduce her client's restitution payments

to the probation department, failed to keep the client reasonably informed about the status of the matter, exhibited a lack of diligence, charged an unreasonable fee, used misleading letterhead, and failed to cooperate with disciplinary authorities).

Charging an unreasonable fee ordinarily warrants an admonition, if it is limited to one incident. See, e.g., In the Matter of S. Michael Musa-Obregon, DRB 18-063 (April 25, 2018) (attorney violated RPC 1.5(a), by signing a retainer agreement, in a family court action, which provided that twenty-five percent of the fee was non-refundable); In the Matter of Raymond L. Hamlin, DRB 09-051 (June 11, 2009) (attorney attempted to collect a $50,000 fee in an unsuccessful contingent fee matter, pursuant to an agreement providing for payment of a $50,000 fee even without a recovery, a violation of RPC 1.5(a); the attorney also violated RPC 1.5(b), by failing to reduce to writing the terms of his fee agreement with the client); In re Weston-Rivera, 194 N.J. 511 (2008) (admonition imposed on attorney who, in eighteen cases, computed the contingent fee based on the gross sum recovered, and deducted charges from her client's share of the proceeds, a violation of RPC 1.5(a)); In the Matter of Angelo R. Bisceglie, Jr., DRB 98-129 (September 24, 1998) (attorney billed a Board of Education for work not authorized by that Board, although it was authorized by its president; the fee charged was unreasonable, but did not reach

the level of overreaching); and In the Matter of Robert S. Ellenport, DRB 96-386 (June 11, 1997) (attorney received $500 in excess of the contingent fee permitted by the Rules).

If the charge is so excessive as to evidence an intent to overreach the client, then the more severe discipline of a reprimand is required. See, e.g., In re Doria, 230 N.J. 47 (2017) (attorney refused to return any portion of a $35,000 retainer after the client terminated the representation; we upheld a fee arbitration determination awarding the client the return of $34,100 of the $35,000 retainer; we determined that the fee was so excessive as to evidence an intent to overreach; thereafter, the attorney promptly returned the $34,100 to the client) and In re Read, 170 N.J. 319 (2002) (attorney charged grossly excessive fees in two estate matters and presented inflated time records to justify the high fees; strong mitigating factors considered).

Respondent's representation of Vargas, for a short period of time, in a single matter, did not amount to the systemic practice engaged in by the attorneys who received censures in the above-detailed cases. Still, he was aware that he was not authorized to practice law in Connecticut, and he also charged an unreasonable fee. Thus, we find no reason to disturb the reprimand imposed by Connecticut for respondent's violation of RPC 1.5(a) and RPC 5.5(a)(1) in the first reprimand matter.

In respect of the default matter, which resulted in the second reprimand, when an attorney fails to cooperate with disciplinary authorities, and previously has been disciplined, but the attorney's ethics record is not serious, reprimands have been imposed. See, e.g., In re Larkins, 217 N.J. 20 (2014) (default; attorney did not reply to the ethics investigator's attempts to obtain information about the grievance and failed to file an answer to the formal ethics complaint; although we noted that a single violation of RPC 8.1(b), in a default matter, does not necessitate enhancement of the discipline from an admonition to a reprimand, a reprimand was imposed based on a prior admonition and, more significantly, a 2013 censure, also in a default matter, in which the attorney had failed to cooperate with an ethics investigation); In re Wood, 175 N.J. 586 (2003) (attorney failed to cooperate with disciplinary authorities; prior admonition for similar conduct); In re DeBosh, 174 N.J. 336 (2002) (failure to cooperate with disciplinary authorities; prior three-month suspension); and In re Williamson, 152 N.J. 489 (1998) (attorney failed to cooperate with disciplinary authorities; prior private reprimand for failure to carry out a contract of employment with a client in a matrimonial matter and failure to surrender the client's file to a new attorney).

As noted previously, pursuant to New Jersey disciplinary precedent, respondent's failure to pay a court reporter's bill for a five-month period did not violate New Jersey RPC 8.4(d). Thus, he cannot be disciplined for that conduct.

The Committee's imposition of the fourth reprimand is consistent with New Jersey precedent. Generally, an admonition is the appropriate form of discipline for lack of diligence and failure to communicate with the client. See, e.g., In the Matter of Kyle G. Schwartz, DRB 19-222 (September 20, 2019) (after the attorney agreed to represent the executrix of an estate to file tax returns and to assist in the sale of real estate, he neither communicated with the client nor completed the estate work; after the client threatened to file a grievance against the attorney, he apologized, promised to provide draft documents within days, but, once again, failed to communicate with her and failed to advance the representation; violations of RPC 1.3 and RPC 1.4(b)) and In the Matter of Christopher G. Cappio, DRB 15-418 (March 24, 2016) (after the client had retained the attorney to handle a bankruptcy matter, paid his fee, and signed the bankruptcy petition, the attorney failed to file the petition or to return his client's calls in a timely manner). A reprimand may be imposed when the lack of diligence is accompanied by failure to cooperate, a disciplinary history, or other aggravating factors. See, e.g., In re Shapiro, 220 N.J. 216 (2015) (reprimand for attorney who, after filing a motion in a matrimonial matter and receiving a cross-

motion from his adversary, failed to file an opposition to the cross-motion, a violation of RPC 1.3; the attorney also violated RPC 1.4(b) when he failed to inform the client about important aspects of the representation, including the cross-motion, despite the client's attempts to obtain information about his matter; prior admonition for failure to return a client file or to recommend to his superiors that the file be turned over to the client, and reprimand for gross neglect, lack of diligence, failure to communicate with the client, and failure to set forth, in writing, the rate or basis of his legal fee); In re Moses, 208 N.J. 361 (2011) (attorney violated RPC 1.3, RPC 1.4(b) and (c), and RPC 8.1(b); the attorney was late for two DEC hearings; did not attend a pre-hearing conference; did not comply with discovery deadlines; and otherwise exhibited a "cavalier attitude toward the disciplinary system;" previous admonition for failure to cooperate with disciplinary authorities); In re Wood, 175 N.J. 586 (2003) (attorney failed to cooperate with disciplinary authorities; prior admonition for similar conduct); In re Carmen, 201 N.J. 141 (2010) (reprimand for attorney who, for a period of two years, failed to communicate with the clients in a breach-of-contract action and failed to diligently pursue it; aggravating factors were the attorney's failure to withdraw from the representation when his physical condition materially impaired his ability to properly represent the clients and a prior private reprimand for conflict of interest); and In re Oxfeld,

184 N.J. 431 (2005) (reprimand by consent for lack of diligence and failure to communicate with the client in a pension plan matter; two prior admonitions).

In the Smith case, respondent did not simply fail to keep his client apprised of the status of her matter. In exchange for a settlement offer, he withdrew the appeal from the arbitrator's adverse determination, without obtaining Smith's consent. Thereafter, he failed to explain the employer's offer to Smith or to answer her questions about its terms. Although the Connecticut record is not clear in terms of whether Smith suffered demonstrable financial harm as the result of respondent's actions, it is clear that, at a minimum, respondent's behavior fell well short of his professional obligations. In addition, he failed to reply to the grievance. A reprimand is, thus, in order for respondent's violations in the Smith matter.

Based on the above analysis, we are left to consider the impact in New Jersey of three individual reprimands imposed on respondent by Connecticut disciplinary authorities, which he never reported to the OAE. We conclude that the cumulative effect of respondent's RPC violations warrants a term of suspension.

In aggravation, respondent has a 2011 admonition in this jurisdiction for his violation of RPC 1.15(b). Further, in seeking two pro hac vice admissions in Connecticut, respondent concealed the New Jersey admonition from the

tribunal, contrary to his obligation to disclose it. He did so by manipulating the language of the Practice Book rule in his affidavit. Instead of stating whether he had "ever been reprimanded, suspended, placed on inactive status, disbarred or otherwise disciplined, or ha[d] ever resigned from the practice of law," as required by the Practice Book, respondent stated that he had never been "suspended, reprimanded, placed in inactive service," and that he had neither resigned from any bar nor been disbarred. This was a clear violation of RPC 3.3(a)(1) (false statement of material fact or law to a tribunal). Although respondent was neither charged with nor found guilty of violating Connecticut's equivalent to this Rule, we may consider his repeated acts of dishonesty in aggravation of his misconduct. Together, his prior discipline and his nefarious manipulation of the Practice Book language in his affidavit are sufficient to increase the discipline to a term of suspension.

Additional aggravating factors are serious enough to cement a three-month suspension. Respondent repeatedly ignored the Connecticut disciplinary authorities' rightful attempts to seek information from him and refused to fully participate in the disciplinary process. Specifically, after having been disciplined in 2015 for his failure to participate in any respect in the investigation and adjudication of the grievance underlying the second reprimand, respondent failed to file a written reply to the grievance sent to him,

nearly two years later, in the disciplinary hearing leading to the fourth reprimand. Finally, respondent failed to report any of the reprimands and the waiver to the OAE. There is no mitigation to consider.

Based on the foregoing, and according significant weight to the aggravating factors, we determine that a three-month suspension is warranted.

Member Petrou voted for a one-year suspension. Member Singer voted for a censure.

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/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Richard C. Gordon
Docket No. DRB 20-209

Argued: January 21, 2021

Decided: April 1, 2021

Disposition: Three-Month Suspension

Members	Three-Month Suspension	One-Year Suspension	Censure	Recused	Did Not Participate
Clark	X				
Gallipoli	X				
Boyer	X				
Hoberman	X				
Joseph	X				
Petrou		X			
Rivera	X				
Singer			X		
Zmirich	X				
Total:	7	1	1	0	0

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel