Supreme Court of New Jersey
Disciplinary Review Board
Docket Nos. DRB 20-199 and 20-235
District Docket Nos. IV-2018-0025E and
IV-2019-0051E

In the Matters of Christopher Michael Manganello An Attorney at Law	:

Decision

Argued: November 19, 2020

Decided: April 6, 2021

Victoria S. Rand appeared on behalf of the District IV Ethics Committee.

Christopher Michael Manganello appeared pro se.

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

These matters were consolidated for our review and the imposition of discipline. DRB 20-199 was before us on a recommendation for a censure filed by the District IV Ethics Committee (DEC). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (gross neglect); RPC 1.3

(lack of diligence); RPC 1.5(a) (unreasonable fee); RPC 1.5(b) (failure to set forth in writing the basis or rate of the legal fee); RPC 1.6(f) (failure to make reasonable efforts to prevent the inadvertent or unauthorized disclosure of information relating to a client); and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

DRB 20-235 was before us on a certification of the record filed by the DEC, pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.1(a); RPC 1.3; RPC 1.4(b) (failure to communicate with the client); RPC 1.5(a); RPC 1.16(d) (failure to protect a client's interests upon termination of representation); RPC 8.1(b) (two instances);[1] RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

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

Respondent was admitted to the New Jersey bar in 1998. At the relevant times, he maintained an office for the practice of law in Pitman, New Jersey.

[1] Due to respondent's failure to file an answer to the formal ethics complaint, the DEC amended the complaint to include a second RPC 8.1(b) charge.

On May 19, 2017, respondent was censured for his violations of RPC 1.3; RPC 1.4(c) (failure to explain the matter to allow the client to make informed decisions about the representation); RPC 1.5(b); RPC 1.16(d); and RPC 8.4(c). In re Manganello, 229 N.J. 116 (2017).

Recently, we determined to impose a consolidated six-month suspension on respondent, in two default matters, DRB 20-108 and DRB 20-109. That decision is pending with the Court.

DRB 20-199 – District Docket No. IV-2018-0025E - Presentment

In 2014, respondent represented Christine Belh (Belh) in a family court matter. In September 2016, Belh again retained respondent to represent her in a custody action against her former husband, Robert Belh. Belh asked respondent to pursue ending the supervision component of her visitation with her two children and regaining primary custody of them. According to Belh, she and respondent entered into an initial, $2,000 fee agreement; respondent claimed that he charged Belh only $1,500 as an the initial retainer. In any event, respondent admitted that he had not prepared a written fee agreement for the 2016 representation, as R. 5:3-5(a) requires in all family court matters.

By letter dated September 8, 2016, respondent acknowledged receipt of Belh's $1,500 retainer and confirmed that his hourly rate was $250. On February 1, 2017, Belh paid respondent an additional $4,000 flat fee for the custody trial.

Respondent admittedly provided no invoices to Belh during the course of the representation, as R. 5:3-5(a)(5) also requires.

During a June 13, 2017 conference in Belh's matter, the Honorable Timothy W. Chell, J.S.C., Chancery Division, Family Part, Gloucester County, advised respondent that it might be advantageous to file a motion to vacate supervised visitation. Respondent, under the impression that the trial would continue for a number of days over the next months, advised Belh that the motion would be helpful, and that it was his opinion that Judge Chell would expeditiously grant the motion. On or about June 13, 2017, respondent requested from Belh an additional $1,500 to file the motion to terminate the supervision requirement of her parenting time.

Belh told respondent that she did not have the additional money for the motion fee, and a series of text messages followed between them. The text messages, entered into evidence at the hearing, demonstrated that respondent pressured Belh into trying to find the money for his motion fee by creating the impression that the motion was necessary to avoid the "swamped" courts, where her lengthy trial would not occur for a month or more. Respondent suggested Belh ask her father, the grievant, Robert J. Long, for the money for the motion, even going as far as asking whether her father loved her and noting that he "cannot believe [Long] leaves you hanging like this when he can solve this entire

problem simply by cutting a check[.] Unreal. I really do feel horribly for u [sic][.]" Belh replied that her father did love her, but that he "knows nothing about this right now."

Belh testified that she felt pressured, and that respondent was "pushy" about filing the motion, given that the trial date was nearing. Respondent conceded that he was "fairly heavy handed" in the text messages.

On July 17, 2017, after Belh requested that he do so, Long paid the $1,500 fee to respondent. Respondent gave Belh and Long the impression that the motion would be filed before the next trial date of July 28, 2017, possibly on July 22 or 23.

Despite accepting the additional $1,500 fee for the motion, respondent failed to file it. On July 28, 2017, the parties were in court, where the trial unexpectedly was completed in one day. The court granted respondent's request to submit written closing arguments. On August 9, 2017, Belh asked respondent, via text message, to "void the supervision thing," because it was not worth $1,500 to her or her father. Respondent admitted in his testimony that he did not inform Belh that the unfiled motion would be moot at that point.

On August 16, 2017, the court issued an order terminating supervised visitation. Respondent, however, refused to return the $1,500 fee to Long or Belh. Respondent claimed that he immediately had started working on the

motion after receipt of the $1,500 on July 17, but had not finished it before the end of the trial on July 28; that he considered the $1,500 to be a flat fee; and that he orally informed Belh that the motion fee was a flat fee. Respondent testified that he wished he had filed the motion, so that he could demonstrate that he had started it, and claimed he had spent about three to four hours working on it.

Belh learned of the court's decision from her daughter and called respondent for a copy of it. She testified that she received the paperwork from her former husband, and sent it to respondent, who was visiting his father in Florida. After Belh filed a fee arbitration request, the fee arbitration committee awarded Belh a refund of $1,500, which respondent paid.

For four months following the trial, Belh asked respondent for a copy of her file, which he finally delivered on December 24, 2017. Respondent claimed that he had called Belh and left a message; left the tightly sealed envelope containing the file, with her name on it, on her porch; and then left another message for Belh. Belh testified that she retrieved the package within thirty minutes of respondent's call.

Long filed the grievance against respondent in March 2018. Between April and December 2018, respondent corresponded with the assigned ethics investigator and provided medical documentation that confirmed that he had been medically incapable of timely responding to the grievance. The DEC Chair

granted respondent an extension until January 7, 2019 to reply to the grievance; however, the complaint already had been filed by that date, charging respondent with a violation of RPC 8.1(b). In her closing statement, the presenter acknowledged that RPC 8.1(b) had not been violated.

The DEC observed that respondent had accepted a fee to file a motion that he then failed to file. The panel, however, found no clear and convincing evidence of a violation of RPC 1.1(a), reasoning that the failure to file the motion had no effect on the outcome of the case, and that there was no "unseemly delay" between respondent's "engagement" to file the motion and the conclusion of the case.

Likewise, the DEC found that the failure to file the motion did not constitute a lack of diligence, in violation of RPC 1.3, because the time between respondent's receipt of the motion fee and the end of the trial was only two weeks, and the time between his receipt of the motion fee and the court's decision was only one month.

However, the panel found that respondent violated RPC 1.5(a). Noting that he charged $1,500 for the motion to terminate supervised visitation, the DEC calculated that, at respondent's reduced rate of $250 per hour, the amount would account for six hours of work. The DEC remarked that the fee arbitration

committee had awarded Belh a full refund.[2] The DEC found that respondent violated RPC 1.5(a) because his legal services in connection with the motion were limited to jotting down notes; the motion issue became moot within a month of the payment of the motion fee; Belh and Long were confused about the difference between a flat fee and an hourly fee; and respondent had failed to prepare a written fee agreement.

The panel further found that respondent violated RPC 1.5(b). Rule 5:3-5(a) requires that all family court legal fees be set forth in a written agreement with a copy provided to the client. The DEC found that, although a violation of a Court Rule is not always the basis for a violation of an RPC, in this matter, the client clearly was confused about the difference between a flat fee and an hourly fee, and she believed that she was entitled to a return of the $1,500 earmarked for the motion. The DEC observed that both the family court Rule and RPC 1.5(b) had the purpose of reducing confusion between the parties by requiring written communications concerning the fee.

In respect of RPC 1.6(f), the DEC observed that respondent left messages for Belh before and after leaving the box with her file on the porch; that the box

[2] Although the panel asserted that the fee arbitration committee had "found" that respondent violated RPC 1.5(a), fee arbitration committees have no jurisdiction to make such findings. Rather, the committees may refer suspected cases of fee overreaching or other unethical conduct for ethics investigations. R. 1:20A-4. In any event, in this case, the fee arbitration committee declined to refer the matter for an ethics investigation.

was sealed; and that Belh had retrieved it within thirty minutes. Therefore, the DEC found that respondent had not acted unreasonably, and that he had not violated the Rule.

Although the complaint did not charge respondent with having violated RPC 1.16(d), and the presenter's summation brief did not refer to that Rule, the panel analyzed whether respondent violated RPC 1.16(d) and concluded that he had not.

Finally, the DEC found no violation of RPC 8.1(b), because respondent had received an extension of time in which to file his reply to the grievance. Because there was a miscommunication and the complaint was filed before the deadline for respondent's reply to the grievance, the panel concluded that, consistent with the presenter's statements, RPC 8.1(b) had been charged in error.

The DEC, thus, found that respondent violated RPC 1.5(a) and RPC 1.5(b). The DEC recommended dismissal of the RPC 1.1(a); RPC 1.3; RPC 1.6(f); and RPC 8.1(b) charges.

As to the proper quantum of discipline to be imposed, the DEC found the following aggravating factors: respondent's prior disciplinary history, including a prior violation of RPC 1.5(b); his excessive pressure, via text messages, to induce Belh to pay $1,500 for the motion; and his failure to return the motion fee once the motion was moot, resulting in the need for Belh to file for fee

arbitration. As to mitigating factors, the DEC found that Long had not been harmed by respondent's misconduct, and that respondent initially discussed the fees with Belh.

The DEC observed that the mitigating factors outweighed the aggravating factors; that, generally, an admonition or reprimand would be the appropriate discipline; but because respondent had a prior violation of RPC 1.5(b), a censure was warranted.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

In particular, we find that respondent violated RPC 1.5(a) and RPC 1.5(b). Respondent pressured Belh into paying the additional $1,500 fee for him to file the motion. Because he failed to perform the work, he should have returned the motion fee to Belh. Instead, he retained the $1,500, despite his failure to file the motion. Belh was forced to pursue fee arbitration to reclaim her funds. Thus, respondent violated RPC 1.5(a). This is not a simple failure to return the unearned portion of a retainer in violation of RPC 1.16(d). Rather, respondent coerced Belh and Long into paying his fee; respondent knew, shortly after accepting the motion fee, that the motion no longer was necessary as a result of the court's order terminating the supervision requirement of Belh's visitation;

and respondent failed to file the motion. Under these circumstances, we find that respondent's fee in this regard was unreasonable.

Further, by failing to provide Belh with a written fee agreement and periodic invoices, respondent violated both R. 5:3-5 and RPC 1.5(b). It is clear from the record that Belh was confused about the basis and rate of respondent's fee, and respondent did not dispute his failure to send periodic bills to his client.

As to RPC 1.1(a) and RPC 1.3, we find that respondent violated these Rules by advising Belh that it would be advantageous to file the motion for unsupervised visitation; promising he would promptly file the motion; accepting an additional, $1,500 fee to do so; and failing to file the motion.

By contrast, we find that the presenter did not establish a RPC 1.6(f) violation by clear and convincing evidence. The Rule requires that a lawyer make "reasonable efforts" to prevent the unauthorized disclosure of information regarding representation of a client. In this case, the parties agree that Belh requested a copy of her file. Respondent called Belh before and after he dropped off the file, which Belh retrieved within a half an hour. Respondent's efforts were reasonable, in light of Belh's urgency to retrieve the file, his attempts to call her, and the limited time the file remained unattended.

In similar circumstances, we recently dismissed a charge that an attorney violated RPC 1.16(d) (failure to protect a client's interests upon termination of

the representation) after he left his former client's file on her front porch. In In the Matter of Dennis Aloysius Durkin, DRB 19-254 (June 3, 2020), the attorney arranged for the delivery of the client's file, and notified her of the impending delivery, but, according to the attorney's agent, the client did not answer the door after he rang the doorbell. Id. at 13-14. According to the agent, he left the file, in several boxes, on the client's front porch, drove to a nearby parking lot, and observed someone exit the client's home and retrieve the file a few minutes later. Id. at 14. The Court agreed with the dismissal of the RPC 1.16(d) charge. In re Durkin, 243 N.J. 542 (2020).

Here, although the complaint charged respondent with having violated RPC 1.6(f), rather than RPC 1.16(d), as in Durkin, the same result should apply and we, thus, dismiss the RPC 1.6(f) charge.

Finally, we agree with the DEC's recommendation that the charge asserting a violation of RPC 8.1(b) should be dismissed. The record demonstrates, and the presenter agreed, that respondent had obtained an extension to reply to the grievance due to a medical condition and, thus, the complaint erroneously alleged this charge.

DRB 20-235 – District Docket No. IV-2019-0051E - Conboy Default and Related Motion Practice

Unlike the Behl matter, in which respondent participated, the Conboy matter comes before us as a certification of the record, in which service was proper. Particularly, on April 14, 2020, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address. The letter sent by certified mail was returned marked "unclaimed;" the regular mail was not returned.

In a June 18, 2020 e-mail to the DEC, respondent represented that he was preparing an answer to the complaint.

On July 23, 2020, because respondent failed to file an answer to the complaint, the DEC sent a letter, by regular mail, to his office address, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The regular mail was not returned.

As of August 13, 2020, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the DEC certified this matter to us as a default.

On June 17, 2018, the grievant, Susan Conboy, retained respondent to assist her in a mortgage modification and to defend a Notice of Sheriff Sale of her home, returnable on July 18, 2018. Respondent told Conboy that he would "take a look at it," that he already had a case against the same bank for "predatory lending," and that he had been in contact with the bank's lawyers. Conboy paid respondent a $4,000 flat fee to handle her case and respondent agreed to call her monthly.

Conboy paid the $4,000 fee in increments and, in September, paid a $250 filing fee, at respondent's request, for a lawsuit he promised to file against the bank in her behalf.

In October 2018, Conboy received a foreclosure notice. In November 2018, respondent falsely represented to Conboy that he had filed the lawsuit and was in discussions with the bank.

Between December 2018 and February 2019, respondent assured Conboy that she would not lose her home; however, shortly after their last February communication, Conboy received an eviction notice. Respondent told Conboy to ignore the notice, claiming it was part of the process and assured her that he would take care of it. Six weeks later, Conboy received another notice from the sheriff's office. Again, respondent advised her to disregard it.

On April 9, 2019, respondent represented to Conboy that had almost reached an agreement with the bank, and that the bank would extend the eviction date. The next day, however, the sheriff appeared at Conboy's home to evict her and her family. The sheriff suggested that Conboy go to the courthouse and explain to a judge what happened.

As Conboy was travelling to the courthouse, respondent called her and instructed her not to proceed. He suggested that she get a cup of coffee while he rectified the situation. Two days later, respondent sent Conboy a certification for her signature; the record does not reveal the purpose of the certification or whether Conboy signed it.

Subsequently, Conboy called the court clerk and learned that respondent had filed a pleading to stay the eviction, but had not filed a lawsuit against the bank in her behalf.

According to the complaint, on April 12, 2019, an order to show cause that respondent had filed was denied. Conboy had not received notice of the hearing. Presumably, these references in the complaint are to the petition for a stay of the eviction proceeding.

Further, respondent specifically had instructed Conboy to neither remove her possessions from the home nor to turn off the utilities. After the denial of the order to show cause, Conboy lost her home and her family's belongings were

removed and stored in their garage. The loss of the home was devastating to Conboy and her family, because they were required to locate new housing; were separated; were without their possessions; and many of their items and valuables were stolen from the garage.

Thereafter, respondent stopped communicating with Conboy and refused to return her file. Conboy hired another attorney to retrieve it.

The DEC presenter sent the grievance to respondent by letters dated November 8 and December 10, 2019. The signed receipts for both letters were returned to the presenter. Thereafter, because respondent represented to the presenter that he had not received the complete grievance with the attachments, the presenter forwarded additional copies of the complete documents to respondent and imposed a new deadline of February 7, 2020 for him to reply. Although respondent sent e-mails to the presenter during the following six weeks promising to submit a reply "that day," he failed to reply to the grievance.

Based on the above facts, the complaint charged respondent with having violated RPC 1.1(a) by failing to file a complaint to contest the foreclosure, as Conboy had retained him to do, and by failing to act promptly in connection with the eviction, which resulted in the loss of Conboy's home and possessions. The complaint further charged respondent with having violated RPC 1.3 by failing to file the suit for which he had been hired and by failing to negotiate

with the bank. Additionally, the complaint charged respondent with having violated RPC 1.4(b) by failing to provide Conboy with accurate information about the status of her matter, by falsely claiming that he had filed a lawsuit, and by giving his client advice that was contrary to her interests. Moreover, the complaint charged respondent with having violated RPC 1.5(a) by charging a $6,750 fee that included a filing fee for a lawsuit that he never instituted.[3] The complaint further charged respondent with having violated RPC 1.16(d) by failing to promptly return Conboy's file.

The complaint charged respondent with having twice violated RPC 8.1(b) by failing to reply to the grievance, despite his admitted receipt of it and his promises that he would do so, and by failing to file an answer to the subsequent formal ethics complaint.

Further, the complaint charged respondent with having violated RPC 8.4(c) by repeatedly misrepresenting to Conboy the status of her case and that he had filed a lawsuit and was negotiating with the bank's lawyers. Finally, the complaint charged respondent with having violated RPC 8.4(d), because his misrepresentations to Conboy placed her home and family in jeopardy.

[3] Although the general allegations of the complaint state that Conboy paid a $4,000 flat fee, and a $250 filing fee, the complaint also asserts that respondent charged Conboy $6,750. Pursuant to an exhibit attached to the presenter's opposition to respondent's motion to vacate default, discussed below, respondent repaid Conboy $6,750 pursuant to a fee arbitration settlement agreement.

On October 2, 2020, the Office of Board Counsel transmitted a letter scheduling this matter for consideration on November 19, 2020 and offering respondent the opportunity to file a motion to vacate his default on or before October 27, 2020. On November 4, 2020, at 6:09 p.m. after having received a one-week extension to November 3, 2020, respondent filed a motion to vacate the default, which we denied on November 25, 2020, for the reasons explained below.

In order to prevail upon a motion to vacate a default, a respondent must meet a two-pronged test by offering both: (1) a reasonable explanation for the failure to answer the ethics complaint; and (2) a meritorious defense to the underlying charges. In this case, respondent has not offered a reasonable explanation for his failure to answer the ethics complaint. First, he admitted that, on April 14, 2020, he received the complaint, and that the answer was due on May 10, 2020. Respondent, who claims to be immunocompromised, was in the process of moving from his office space to his home, due to the Covid-19 pandemic. He stated that, during the move, he did not have the same control of his files that he usually maintained.[4]

[4] Respondent's November 3, 2020 explanation for his default in this matter is substantially the same as his July 7, 2020 explanation for his defaults, months earlier, in DRB 20-108 and DRB 20-109, which explanation we also rejected.

Respondent, however, failed to address the fact that, on June 18, 2020, he sent an e-mail to the DEC Secretary, stating that he expected to file the answer to the complaint "next week." On four occasions, from June 18 to September 2, 2020, respondent claimed that he had attempted, but failed, to contact the DEC to obtain an extension to file his answer. Respondent further claimed that he did not receive the DEC's five-day letter, which is not required by Court Rule, but is provided as a courtesy. On September 2, 2020, respondent admittedly received the Office of Attorney Ethics's transmittal checklist, which included the five-day letter that the DEC sent on July 23, 2020. Although the DEC originally mailed that letter to an erroneous address, respondent received it on September 2, 2020.

On September 3, 2020, respondent asked the Secretary to accept respondent's answer, but the Secretary indicated that he could not because the matter had already been certified. Moreover, on October 2, 2020, the Office of Board Counsel informed respondent that, if he wished to file a motion to vacate default, he must do so by October 27, 2020. As stated above, respondent filed the motion after business hours more than twenty-four hours after the extended due date. His explanation for failing to file the motion by the extended deadline was that November 3, 2020, was a state holiday; yet, because he submitted the motion via e-mail, the fact that November 3, 2020 was a state holiday is wholly

irrelevant.

The presenter filed a letter in opposition to the motion to vacate default, in which she reviewed in detail the service history, extensions of due dates at respondent's request, respondent's repeated promises to reply to the grievance, and his late request for an extension of time in which to file his answer.

Even if we had assumed, for the sake of argument, that respondent was delayed in receiving the DEC's five-day letter, and that he had earlier in the year faced challenges in relocating his law practice from his office to his home, the first prong of the two-part test was not satisfied. To begin, on April 14, 2014, the DEC mailed the ethics complaint to respondent, which he admittedly received. Pursuant to R. 1:20-4(e), and allowing time for mailing, his answer was due on May 10, 2020. Respondent, however, did not even attempt to contact the Secretary for an extension until June 18, 2020, when he represented, via e-mail, that he would file his answer the next week. Thus, the DEC properly served the complaint. At no point did respondent receive from the Secretary an affirmative extension of time in which to file his answer. Accordingly, we conclude that respondent's explanation for his failure to file a conforming answer is not reasonable, and that he has not satisfied the first prong of the test.

Respondent also failed the second prong by presenting no meritorious defenses to the Conboy charges. In his motion, respondent denied most of

Conboy's allegations merely by asserting contradictory statements. For example, respondent stated that Conboy had retained him to prevent the sheriff's sale, but not to file litigation to contest the foreclosure; however, he admitted that he accepted a prepaid filing fee when litigation with Conboy was discussed. In turn, the presenter argued in opposition that it "strains credibility" that respondent would accept a filing fee simply in case he might file a complaint, observing that a client would expect a complaint to be filed after a demand for a fee from her attorney.

Respondent further admitted that he returned Conboy's file on May 15, 2019, "to her attorney," which supports the allegation in the complaint that Conboy was forced to hire an attorney to retrieve her file. Respondent claimed that he was not legally required to return her fee, but nonetheless did. However, the presenter provided us with a copy of an October 2, 2020 letter from the Office of Attorney Ethics (OAE) informing respondent that the OAE would file a motion for his temporary suspension if he did not comply with the fee arbitration Stipulation of Settlement and return $6,750 to Conboy by October 12, 2020. According to the presenter, respondent complied on October 13, 2020. Therefore, respondent's claim that he was not "legally required" to refund Conboy's fee is inaccurate. R. 1:20A-3(b)("the attorney . . . shall have 30 days from receipt to comply with the determination of the Fee Committee"); R.

1:20A-3(e) (providing for both civil enforcement and the motion for temporary suspension).

Respondent also asserted that, on March 11, 2020, he replied, in writing and telephonically, to the investigator regarding the disciplinary action. Respondent, however, failed to attach to the certification any copy of his asserted March 11, 2020 reply. In turn, the presenter denied that respondent had replied to the grievance.

In short, respondent's asserted defenses in the motion to vacate default did not qualify as meritorious within the meaning of the second prong. Accordingly, we denied respondent's motion to vacate the default.

In evaluating the merits of the certified record in the Conboy matter, we find that the facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file a verified answer to the complaint is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. See R. 1:20-4(f)(1). Particularly, we conclude that the Conboy record supports the allegations that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.16(d); RPC 8.1(b) (two instances); and RPC 8.4(c). We dismiss the RPC 1.5(a) and RPC 8.4(d) charges, however.

Specifically, respondent committed gross neglect and lacked diligence,

in violation of RPC 1.1(a) and RPC 1.3, by accepting a fee to assist Conboy with modifying her mortgage in light of a pending sheriff's sale; representing that he would file a lawsuit, which he failed to file; and failing to negotiate with the bank in Conboy's behalf. Respondent failed to communicate with Conboy, in violation of RPC 1.4(b), by failing to keep her informed of the status of her case. Respondent acted in violation of RPC 1.16(d) by failing to return Conboy's file, forcing her to hire another attorney to obtain it. Respondent continually misrepresented the status of the case by falsely claiming that he had filed a lawsuit and was negotiating with the bank's lawyers, in violation of RPC 8.4(c). Finally, respondent twice violated RPC 8.1(b) by failing to reply to the ethics grievance and by failing to file an answer to the complaint.

We draw the opposite conclusion with regard to the charge that respondent violated RPC 1.5(a) by accepting a $6,750 fee from Conboy. The complaint does not analyze the fees under the eight factors of RPC 1.5(a). We, therefore, cannot determine, on this record, that, had respondent performed the work for which he had been retained, the fee charged would have been unreasonable. Rather, respondent failed to return the unearned portion of the fee, until required to do so via fee arbitration and the threat of a temporary suspension, well after the ethics complaint was filed. Such conduct would support a second violation of RPC 1.16(d) (failure to return the unearned portion

of a retainer), but cannot support the RPC 1.5(a) charge, which we dismiss.

Further, although respondent took a significant fee from the client and then largely abandoned her matter, we determine to dismiss the RPC 8.4(d) charge. That violation typically is found when the record demonstrates that an attorney's misconduct caused a waste of judicial resources, which is not the case here. Respondent's misconduct is appropriately addressed by the other charged RPCs.

Quantum of Discipline for These Consolidated Matters

In sum, in the Belh matter (DRB 20-199), we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.5(a); and RPC 1.5(b). We dismiss the charges that respondent further violated RPC 1.6(f) and RPC 8.1(b). In the Conboy matter (DRB 20-235), we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.16(d); RPC 8.1(b) (two instances); and RPC 8.4(c). We dismiss the charges that respondent further violated RPC 1.5(a) and RPC 8.4(d). The sole issue left for determination is the appropriate quantum of discipline for respondent's misconduct in both the presentment and default matters.

Generally, a reprimand is imposed for lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities, even if this conduct is accompanied by other ethics infractions, such as gross neglect. See, e.g., In re Cataline, 219 N.J. 429 (2014) (reprimand for

attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with requests for information from the district ethics committee investigator); In re Rak, 203 N.J. 381 (2010) (reprimand for attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of a grievance); In re Van de Castle, 180 N.J. 117 (2004) (reprimand for attorney who grossly neglected an estate matter, failed to communicate with the client, and failed to cooperate with disciplinary authorities); and In re Goodman, 165 N.J. 567 (2000) (reprimand for attorney who failed to cooperate with disciplinary authorities and grossly neglected a personal injury case for seven years by failing to file a complaint or to otherwise prosecute the client's claim; the attorney also failed to keep the client apprised of the status of the matter; prior private reprimand).

The discipline for fee overreaching has ranged from a reprimand to disbarment. See, e.g., In re Read, 170 N.J. 319 (2002) (reprimand for charging grossly excessive fees in two estate matters and presenting inflated records to justify them; strong mitigating factors considered); In re Hinnant, 121 N.J. 395 (1990) (reprimand for attorney who attempted to collect a $21,000 fee in a real estate transaction, including a commission on the purchase price; conflict of interest also found); In re Verni, 172 N.J. 315 (2002) (three-month suspension

for charging excessive fees in three matters and knowingly making false statements to disciplinary authorities; the attorney made a divorce case appear more complicated than it was in order to justify a higher fee and charged a fee for the preparation of a document he never prepared; the fee arbitration committee reduced his $8,700 fee by almost half for padding his time); In re Thompson, 135 N.J. 125 (1994) (three-month suspension for charging $2,250 to file two identical motions necessitated by the attorney's own neglect and to file a pre-trial motion, which she never prepared; misrepresentations considered in aggravation, and illness considered in mitigation); and In re Wolk, 82 N.J. 326 (1980) (disbarment for gross and intentional exaggeration of services rendered on behalf of an eight-year-old paralyzed boy and for enticing a recently-widowed client to invest in a building owned by the attorney, without properly safeguarding her rights).

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).

Reprimands have been imposed on attorneys who, in addition to violating RPC 1.5(b), have defaulted, have a disciplinary history, or have committed other acts of misconduct. See, e.g., In re Yannon, 220 N.J. 581 (2015) (attorney failed to memorialize the basis or rate of his fee in two real estate transactions, a violation of RPC 1.5(b); discipline enhanced from an admonition based on the attorney's prior one-year suspension); In re Gazdzinski, 220 N.J. 218 (2015) (attorney failed to prepare a written fee agreement in a matrimonial matter; the attorney also failed to comply with the district ethics committee investigator's repeated requests for the file, violations of RPC 1.5(b) and RPC 8.1(b), and violated RPC 8.4(d) by entering into an agreement with the client to dismiss the ethics grievance against him, in exchange for a resolution of the fee arbitration between them); and In re Kardash, 210 N.J. 116 (2012) (in a default matter, the attorney failed to prepare a written fee agreement in a matrimonial case).

Generally, admonitions have been imposed on attorneys who have failed to turn over their clients' files to new counsel, even when additional ethics violations, such as failure to cooperate, gross neglect, lack of diligence, and failure to communicate with a client, are found. See, e.g., In the Matter of Gary A. Kraemer, DRB 14-085 (June 24, 2014) (attorney failed to file his appearance for several months in two litigation matters and, in one of the matters, he also failed to take prompt action to compel an independent medical examination of the plaintiff; violations of RPC 1.3; in addition, throughout the representation, the attorney repeatedly failed to reply to his client's – and his prior counsel's – numerous requests for information about the two matters; violations of RPC 1.4(b); finally, several months after final judgment was entered against his client, the attorney failed to turn over the file to appellate counsel, a violation of RPC 1.16(d); we considered his unblemished record of thirty-five years at the bar); In the Matter of Robert A. Ungvary, DRB 10-004 (March 31, 2010) (attorney lacked diligence in the representation of his clients in two matters and failed to promptly deliver to their new counsel portions of their file); In re Muhlbaier, DRB 08-165 (October 1, 2008) (upon termination of representation, attorney ignored, over a period of months, several requests of client's new counsel to turn over his files); and In the Matter of Anthony J. Giampapa, DRB

07-178 (November 15, 2007) (upon termination of representation, attorney failed to turn over his former client's file to new counsel, despite his many requests; attorney also violated RPC 1.4(b) and RPC 1.15(b)).

Finally, misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand still may be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney made a misrepresentation by silence to his client, by failing to inform her, despite ample opportunity to do so, that her complaint had been dismissed, a violation of RPC 8.4(c); the complaint was dismissed because the attorney had failed to serve interrogatory answers and ignored court orders compelling service of the answers, violations of RPC 1.1(a), RPC 1.3, and RPC 3.2; the attorney also violated RPC 1.4(b) by his complete failure to reply to his client's requests for information or to otherwise communicate with her; the attorney never informed his client that a motion to compel discovery had been filed, that the court had entered an order granting the motion, or that the court had dismissed her complaint for failure to serve the interrogatory answers and to comply with the court's order, violations of RPC 1.4(c)); In re Ruffolo, 220 N.J. 353 (2015) (knowing that the complaint had been dismissed, the attorney assured the client that his matter was proceeding apace, and that he should expect a monetary

award in the near future; both statements were false, in violation of RPC 8.4(c); the attorney also exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, not working on it after filing the initial claim, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter, violations of RPC 1.1(a) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates); and In re Falkenstein, 220 N.J. 110 (2014) (attorney led the client to believe that he had filed an appeal and concocted false stories to support his lies, a violation of RPC 8.4(c); he did so to conceal his failure to comply with his client's request that he seek post-judgment relief, violations of RPC 1.1(a) and RPC 1.3; because he did not believe the appeal had merit, the attorney's failure to withdraw from the case was a violation of RPC 1.16(b)(4); the attorney also practiced law while ineligible, although not knowingly, a violation of RPC 5.5(a)).

Standing alone, respondent's utter failure to advance his clients' interests and the significant, demonstrable harm it caused Conboy, warrants at least a three-month suspension. In light of his additional, diverse misconduct, a lengthier term of suspension is required. To craft the appropriate discipline in this case, we also must consider both mitigating and aggravating factors. There is no mitigation to consider.

We must weigh, in aggravation, respondent's failure to learn from his past mistakes. The Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such situations, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system). Specifically, in 2017, the Court censured respondent for similar misconduct, including lack of diligence, failure to communicate, and misrepresentation. In re Manganello, 229 N.J. 116 (2017).

Moreover, respondent has not learned from his past contacts with the disciplinary system, nor used those prior experiences as a foundation for reform. See In re Zeitler, 182 N.J. 389, 398 (2005) ("[d]espite having received numerous opportunities to reform himself, respondent has continued to display his disregard, indeed contempt, for our disciplinary rules and our ethics system").

Moreover, this pair of cases is part of respondent's broader pattern of client neglect, followed by a disregard of the disciplinary system when it attempts to address his original misconduct. We are mindful that respondent defaulted under Docket Nos. 20-108 and 20-109 on complaints filed in two different client matters between January and March of 2020. The default in this matter spanned the filing of the complaint in April 2020 through the certification of the record in August of 2020. Having already experienced certifications of

the record in those prior defaults, respondent should have had a heightened awareness of his need to answer the Conboy complaint. See In re Furino, 210 N.J. 124 (2012) (three-month suspension imposed, in a default matter, on an attorney who ignored a letter from the DEC and failed to submit a written reply to a grievance; in aggravation, we considered that, at the time he received the grievance, he was "well aware that his inaction vis-à-vis the DEC in two prior disciplinary matters was under scrutiny," yet, "he continued to evade and avoid the system;" prior reprimand and three-month suspension).

In further aggravation, we consider the default status of the Conboy matter itself. "[A] respondent's default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted).

Due to these significant aggravating factors, a one-year suspension, consecutive to the six-month suspension imposed in DRB 20-108 and DRB-109, is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Vice-Chair Gallipoli and Members Joseph and Zmirich voted for a two-year suspension, consecutive to the six-month suspension imposed in DRB 20-108 and DRB-109.

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: 
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of Christopher Michael Manganello
Docket Nos. DRB 20-199 and 20-235

Argued: November 19, 2020 (20-199)

Decided: April 6, 2021

Disposition: One-Year Suspension

Members	One-Year Suspension*	Two-Year Suspension*	Recused	Did Not Participate
Clark	X			
Gallipoli		X		
Boyer	X			
Hoberman	X			
Joseph		X		
Petrou	X			
Rivera	X			
Singer	X			
Zmirich		X		
Total:	6	3	0	0

Johanna Barba Jones
Chief Counsel

* Consecutive to the suspension imposed on Docket Nos. DRB 20-108 and DRB 20-109.