Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-236
District Docket Nos. XIV-2019-0409E and
XIV-2019-0594E

In the Matter of	:
Douglas Andrew Grannan	:
An Attorney at Law	:

Decision

Argued: January 21, 2021

Decided: June 2, 2021

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a), following (1) a July 9, 2019 order by the Supreme Court of Pennsylvania suspending respondent for one-year-and-one-day; and (2) an October 18, 2019 order by the Supreme

Court of Pennsylvania disbarring respondent, on consent, following respondent's voluntary resignation from the bar.

The OAE asserted that respondent was found guilty of having violated the equivalents of New Jersey RPC 1.1(a) (seven instances) (gross neglect); RPC 1.3 (seven instances) (lack of diligence); RPC 1.4(b) (four instances) (failure to communicate with the client); RPC 1.4(c) (four instances) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions); RPC 1.5(b) (one instance) (failure to set forth in writing the basis or rate of the fee); RPC 1.16(d) (five instances) (upon termination of representation, failure to take steps to the extent reasonably practicable to protect a client's interests); RPC 7.3(b)(5) (one instance) (improper, unsolicited, direct contact with a prospective client); and RPC 8.4(d) (five instances) (conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to grant the OAE's motion and impose a two-year suspension, with conditions.

Respondent earned admission to the New Jersey and Pennsylvania bars in 1997. He has no prior discipline in New Jersey.

On December 5, 2016, the Pennsylvania Office of Disciplinary Counsel (ODC) charged respondent with multiple violations of the Pennsylvania Rules

of Professional Conduct. On January 25, 2017, respondent, through his attorney, filed an answer to the petition. The District I Hearing Committee (the Committee) conducted an eight-day disciplinary hearing, spanning from May 2017 to June 2018, and received testimony from nineteen witnesses. James C. Schwartzman, Esq. and Matthew C. Brunelli, Esq., of the firm Stevens & Lee, represented respondent throughout the hearings.

By report dated November 19, 2018, the Committee found that respondent had violated numerous Pennsylvania Rules of Professional Conduct and recommended that he be suspended for one-year-and-one-day.

Subsequently, a three-member panel of the Disciplinary Board of the Pennsylvania Supreme Court (the Disciplinary Board) held oral argument and issued a report dated April 3, 2019 (DBR), which the Supreme Court of Pennsylvania adopted in determining to suspend respondent. Effective August 8, 2019, respondent was reciprocally suspended before the Department of Homeland Security (DHS) and Board of Immigration Appeals (BIA) for one-year-and-one-day.

On October 18, 2019, the Supreme Court of Pennsylvania disbarred respondent, on consent, in connection with respondent's Verified Statement of Resignation.[1]

The facts underlying the instant motion are as follows.

The Otto R. Villatoro-Ochoa Matter

On March 19, 2014, respondent filed with the DHS an application for a stay of deportation or removal on behalf of his client, Otto R. Villatoro-Ochoa, a native of Guatemala who had illegally entered the United States and subsequently failed to comply with his voluntary departure date. On April 4, 2014, respondent filed a follow-up letter to the DHS regarding the application. In that letter, respondent referred to Villatoro-Ochoa, a male, both as "Mr. Morocho" and as "she."

On April 10, 2014, respondent filed an emergency request to stay Villatoro-Ochoa's removal. The cover page of the emergency request stated that the client was not detained, when, in fact, Villatoro-Ochoa had been detained since March 6, 2014. Respondent further asserted that Villatoro-Ochoa had no

[1] The OAE provided respondent's verified statement of resignation to us under seal, as Exhibit O. The OAE noted that, pursuant to the Pennsylvania Rules of Disciplinary Enforcement, the resignation statement shall not be publicly disclosed, but may be considered in a reciprocal disciplinary proceeding. P.R.D.E. 215(c).

criminal history; extraordinary family ties; two United States citizen children, including one with autism; a pregnant United States citizen wife dependent on his income; and a clear path to lawful permanent residence. He also alleged that Villatoro-Ochoa suffered from epilepsy. Earlier, in March 2014, Mrs. Villatoro-Ochoa had provided respondent with proof of her pregnancy, proof of Mr. Villatoro-Ochoa's seizure disorders, and a psychiatric evaluation of the autistic child. However, respondent failed to submit any of that evidence to the immigration court in support of the emergency application.

Despite having initially granted Villatoro-Ochoa a stay of removal and releasing him from custody, the immigration judge, by order dated May 7, 2014, found that respondent had failed to establish prima facie eligibility for Villatoro-Ochoa's emergency request. The judge further found that respondent failed to supply evidence that Villatoro-Ochoa's wife was pregnant; that Villatoro-Ochoa suffered from epilepsy; that he was the father of citizen children; and that he had an autistic child. Moreover, the judge found that respondent failed to file an affidavit with the court explaining why Villatoro-Ochoa had remained in the United States after he had voluntarily agreed to depart, failed to establish that Villatoro-Ochoa did not have a criminal record, and failed to provide evidence of Villatoro-Ochoa's marriage.

Consequently, by order dated May 7, 2014, the immigration judge vacated the April 10, 2014 stay, denied the emergent request, and ordered that the removal order remain in effect.

Respondent failed to provide Villatoro-Ochoa and his wife with a copy of his written fee agreement, copies of his correspondence to DHS, and copies of the pleadings filed with the immigration court. He further failed to inform the Villatoro-Ochoas that the immigration court denied the emergency request and failed to provide the Villatoro-Ochoas with a copy of the immigration court's decision denying the emergency request.

On May 30, 2014, Villatoro-Ochoa terminated respondent's representation and retained Gerardo Mejia, Esq. Respondent subsequently failed to provide his file to either the Villatoro-Ochoas or Mejia, despite their requests.

Respondent testified that, in March of 2014, he had visited Villatoro-Ochoa at the Elizabeth Detention Center twice, including on March 8, 2014, in order to execute a written fee agreement. In turn, the Villatoro-Ochoas testified that respondent had visited Mr. Villatoro-Ochoa only once, and not on March 8, 2014. The Deputy Warden of the Elizabeth Detention Center testified and confirmed, via official records, that respondent had visited Villatoro-Ochoa only once, on March 18, 2014.

The Joao Batista Ribeiro Matter

Joao Batista Ribeiro, a native of Brazil who was in the United States unlawfully, was subject to removal proceedings as the result of his October 21, 2011 arrest by immigration authorities. Before an immigration judge, Ribeiro, representing himself pro se, admitted the allegations of the notice to appear. However, the notice to appear and plea subsequently were vacated by the immigration judge because they had been conducted in Spanish, which was not Ribeiro's native language.

In June or July 2012, respondent met with Ribeiro and a Portuguese interpreter. After speaking for approximately ten to twenty minutes, Ribeiro paid respondent $700 cash to represent him. Respondent failed to provide Ribeiro with either a written fee agreement or a receipt for his payment.

On September 1, 2012, respondent again met with Ribeiro and agreed to represent him in his immigration matter by filing an application to stay Ribeiro's removal, for a fee of $1,500. Ribeiro paid respondent an additional $500 in cash.

Thereafter, on December 12, 2012, respondent filed on behalf of Ribeiro a generic motion to withdraw his prior plea. Because Ribeiro had admitted to being from Brazil and to not being a United States citizen, respondent was required to file the motion in order to, thereafter, file a motion to suppress.

Specifically, respondent alleged that Ribeiro's arrest had been in violation of Ribeiro's Fourth Amendment rights. Respondent's motion, however, failed to allege facts in support of the claim, and respondent failed to request that the proceedings be reopened because they had been in Spanish, despite Ribeiro's native language of Portuguese.

On February 4, 2013, the DHS opposed the motion, noting that respondent had offered no evidence in support of his claims, and had failed to even recount the facts that led to Ribeiro's arrest. By decision and order dated March 12, 2013, the immigration judge sua sponte vacated the earlier Spanish plea and admissions by Ribeiro, ordered the DHS to file its evidence of removability by March 25, 2013, and ordered respondent to file a motion to suppress by April 25, 2013, noting that respondent's failure to do so would be deemed a waiver of his claims. Ribeiro received the March 12, 2013 decision and order, but he was unable to understand it, and, thus, sent a copy to respondent, via facsimile.

Although respondent met with Ribeiro, he failed to explain the process and importance of the motion to suppress so that Ribeiro could make an informed decision about his case, failed to obtain facts regarding Ribeiro's arrest, and failed to draft a supporting affidavit for Ribeiro's execution.

Respondent testified that Ribeiro either failed to schedule appointments or failed to show up for scheduled appointments to prepare the affidavit, but failed to corroborate those claims with any records or evidence. In turn, Ribeiro testified that he never cancelled any scheduled appointments with respondent.

On May 2, 2013, the immigration judge filed an interlocutory order, finding that Ribeiro had failed to set forth the facts that led to his arrest and had failed to file a timely motion to suppress, and, therefore, had waived his right to challenge the circumstances surrounding his warrantless arrest.

During a June 26, 2013 pre-trial conference with the immigration judge, attended by respondent and Ribeiro, respondent failed to obtain Ribeiro's consent to concede removability; thereafter, conceded Ribeiro's removability as alleged in the notice to appear, without having obtained a copy of the notice or discussing its contents with Ribeiro; designated Brazil as Ribeiro's country of removal; requested only that Ribeiro have a continuance of more than four months to make arrangements to depart the United States; failed to discuss the continuance with Ribeiro; and failed to offer any reasons in support of his request that Ribeiro be granted a continuance of more than four months to depart.

As a result, the immigration judge issued an order finding removability based on the admissions to the notice to appear and respondent's concession of removability, denying the continuance for lack of good cause, and establishing a deadline of July 26, 2013 for an appeal to the BIA.

Respondent and Ribeiro then executed a fee agreement for $1,500 for continued representation. On July 22, 2013, respondent filed a notice of appeal with the BIA, but failed to file a brief in support of the appeal.

On November 7, 2013, respondent filed a motion for remand with the BIA, without an affidavit from Ribeiro, arguing that Ribeiro's arrest was in violation of the Fourth Amendment, and seeking remand to the immigration court to litigate a motion to suppress. The DHS opposed the motion, noting that respondent had failed to file a brief or to offer any evidence in support of the motion.

On several occasions, Ribeiro attempted to contact respondent regarding the status of his appeal. Respondent failed to speak with Ribeiro, failed to explain the immigration matter to him so that he could make informed decisions about his case, and failed to comply with his reasonable requests for information.

By order dated February 20, 2015, the BIA found that the immigration judge had not erred in denying the continuance, as good cause had not been demonstrated; upheld the finding of removability; noted that respondent failed to file the motion to suppress or to support the suggestion that Ribeiro had been subject to egregious misconduct; denied the motion to remand; and dismissed the appeal. After the decision and order were executed, respondent neither informed Ribeiro of the decision nor met with him to explain the decision so that Ribeiro could make informed decisions about his case.

After receiving the decision in the mail, Ribeiro took the decision to someone who could read English and translate it for him. Thereafter, he retained a new lawyer, Katelyn Hufe, Esq., who reviewed his case. On May 20, 2015, Ribeiro filed a motion to reopen his case due to ineffective assistance of counsel, which was initially denied by the BIA, but on reconsideration was remanded to the immigration judge for a de novo hearing.[2] The DHS did not oppose the motion and exercised prosecutorial discretion before the immigration judge to

[2] Testimony by Hufe revealed that, prior to the filing of the motion to reopen, Hufe's supervisor, W. John Vandenberg, Esq., contacted respondent and offered him the opportunity to provide a statement regarding his conduct as to why the motion to suppress was not filed. However, respondent failed to meet deadlines regarding the statement, testifying that it would have been prejudicial to Ribeiro's ability to reopen the case if he did so. On May 20, 2015, Hufe filed an ethics complaint against respondent for ineffective assistance in his handling of Ribeiro's matter.

administratively close Ribeiro's case. On May 17, 2016, the immigration judge dismissed the removal proceedings against Ribeiro.

The Marya Magdalena Matter

On August 29, 2012, Dr. John J. Del Gaiso, a certified pediatric dentist, performed dental surgery on a minor. He did not further examine the minor or communicate with the minor's mother, Marya Magdalena again, until May 8, 2013, when the minor visited his office for a routine dental examination.

On October 17, 2013, respondent met with Magdalena, and they entered into a contingent fee agreement for a cause of action arising from "[the minor's] visit to Dr. Del Gaiso's office in July of 2013 [sic]." On that date, respondent wrote a letter to Del Gaiso stating that he represented Magdalena in a dental malpractice suit, and that Magdalena would settle the suit for $25,000. When he received the letter, Del Gaiso called respondent's office to explain that the claim was erroneous. Respondent asked why Del Gaiso cared, stating "Don't [you] have malpractice insurance?"

Respondent suggested that Magdalena take the minor to respondent's wife, Dr. Kathleen Wu, to obtain a certificate of merit to support the dental malpractice action, but Magdalena did not appear for the scheduled appointments with Dr. Wu.

Further, respondent stated that he possessed photographs of the minor's mouth that "show the child during and immediately following the treatment," which were "quite graphic," and show the minor with "blood throughout his mouth and face from the laceration." However, respondent, during his testimony at the disciplinary hearing, stated that Magdalena took the minor to a health center the day after the surgery because Del Gaiso's office was closed, and left her phone, with the photos on it, at the health center. As such, respondent's statement that he had photographs was false.

On December 20, 2013, respondent filed a complaint on behalf of Magdalena and her minor child against Del Gaiso and Dentistry for Children, in the Court of Common Pleas of Philadelphia County, asserting dental malpractice, breach of contract, and breach of fiduciary duty. At the time he filed the complaint, respondent failed to include a statement from Magdalena, photographs, or a certificate of merit. Further, respondent was aware that the minor had not been examined by a pediatric dentist and had failed to investigate the factual basis for the allegations or dates of Del Gaiso's office closures.

On March 27, 2014, respondent attended a case management conference and afterward met with Del Gaiso's attorney, Jason Bialker, Esq. Respondent told Bialker that he had "graphic" photographs of the minor's mouth after the

treatment, that showed the minor "with blood throughout his mouth and face from the laceration." Respondent also agreed to drop the breach of contract and breach of fiduciary duty claims and to file an amended complaint with more specificity. Respondent admitted to Bialker that he knew he needed to file a certificate of merit to pursue the malpractice claim. Subsequently, respondent neither dismissed the breach of contract nor breach of fiduciary duty claims and, further, failed to file the required certificate of merit.

From April 2014 through September 2015, the litigation continued, including the filing of various dismissal and discovery motions. Respondent failed to reply to motions and failed to appear at hearings. On May 2, 2014, the court entered, in favor of Del Gaiso, a judgment of non pros on the malpractice claim, due to respondent's failure to file a certificate of merit. On September 30, 2015, the court entered an order granting Del Gaiso's motion for summary judgment as to the remaining claims and dismissed the complaint with prejudice.

The Jinfei Jiang Matter

Jinfei Jiang, a native of China who entered the United States without inspection, retained respondent to represent him. Respondent sought to have Jiang interviewed by an asylum officer, however, he failed to prepare Jiang for the interview or to have Jiang's documents translated, and further failed to have

a Chinese interpreter present at the interview. On February 13, 2014, the asylum officer advised Jiang that he had not met his burden of proof and referred his application to an immigration judge for removal proceedings.

The Court scheduled Jiang's hearing for April 30, 2014. Prior to the hearing, respondent filed evidence, including untranslated travel documents and untranslated letters from Jiang's family and a church friend. At the hearing, the immigration judge counseled respondent as to the appropriate types of evidence to be presented in asylum cases, and rescheduled the hearing to April 13, 2015.

Prior to the April 13, 2015 hearing, respondent failed to gather documents from Jiang in support of the asylum application. Although respondent subsequently had the prior letters of support translated, he failed to provide them as evidence in the immigration case.

On April 13, 2015, the day of the hearing, respondent met with Jiang in a conference room and told Jiang that he should not go to court, because he would not win. He did not inform Jiang that he had failed to gather any evidentiary documents. Jiang stated that he wanted to go forward with the asylum application.

At the hearing, the judge stated that the DHS agreed to defer prosecuting the case and, with Jiang's consent, administratively closed it. Jiang testified at

the disciplinary hearing that his immigration case was administratively closed because he needed to have his documents translated. Respondent claimed that the immigration judge and the DHS suspected that Jiang's application was fraudulent, and that the DHS threatened to send Jiang's documents for forensic examination if he would not administratively agree to close the case. The Disciplinary Board found respondent's position to be illogical, without evidentiary support, and false.

After the proceeding, respondent agreed to have Jiang's document translated within the week. Respondent failed to return any of Jiang's original documents to him after the April 13, 2015 hearing, including his Chinese identification card, which Jiang needed to send to his family in China due to a family emergency. Although Jiang was able to eventually retrieve the identification card, respondent did not return any other original documents to him.

Jiang terminated respondent's representation and retained Zhen H. Jin, Esq. to pursue his asylum matter. From October 2015 through February 2016, Jin repeatedly asked respondent for Jiang's file, but never received a complete copy of it. After an internet search to "find justice," Jiang filed an ethics complaint with the ODC.

The Eustaquio Juarez-Aparicio Matter

Eustaquio Juarez-Aparicio and his wife, Rebecca Lugo Gonzalez, are natives of Mexico who entered the United States, in 2003, without inspection. After retaining respondent, Juarez-Aparicio often tried to contact him, to no avail. As a result of not being able to contact respondent, Juarez-Aparicio felt that he "couldn't trust" respondent and decided to terminate the representation. Because respondent did not receive the $2,000 filing fee from the Juarez-Aparicios, he did not file their applications for adjustment of status.

Thereafter, Juarez-Aparicio attempted to obtain his file from respondent but was told that he had to come to respondent's office. When he arrived at the office, respondent's staff advised Juarez-Aparicio that he had to wait for respondent to return to the office to receive the file. However, when respondent returned, he refused to give Juarez-Aparicio any of his documents, and Juarez-Aparicio left "very upset."

Juarez-Aparicio retained Gary T. Jodha, Esq. to assist him in obtaining his documents and to represent him in the adjustment of status matter. Jodha made many attempts by letter, facsimile, and telephone to obtain the file from respondent, to no avail. Indeed, in a letter dated October 14, 2015, Jodha listed sixteen dates on which he had requested the file.

Respondent admitted that he made copies of Juarez-Aparicio's documents, including copies of Juarez-Aparicio's passport; marriage certificate; work authorization receipt; I-40 receipt; and birth documents, but had failed to provide them to Jodha. Respondent testified that he called Jodha after he received his first letter and told him to contact Juarez-Aparicio's prior lawyer. However, the Disciplinary Board found that testimony illogical and not credible.

The Ed Carlos Stipp Matter

Ed Carlos Stipp is a native of Brazil who entered the United States without inspection and unlawfully remained. On November 9, 2011, respondent filed on behalf of Stipp an application for cancellation of removal and adjustment of status for certain nonpermanent residents and, subsequently, attended a hearing in the matter before an immigration judge. At the hearing, respondent admitted that he had not discussed with Stipp the alternative of seeking voluntary departure. The judge reminded respondent to have Stipp fingerprinted for his application and warned that failure to do so would result in the application being deemed abandoned for failure to comply. The judge also scheduled Stipp's hearing for September 7, 2012.

Three days before the hearing, respondent requested a continuance, claiming that the matter incorrectly had been listed on his office's calendar, that the application was incomplete and he had not received statements from the Stipps, and because his office had relocated. The continuance was granted and rescheduled for July 30, 2013, over ten months later. Respondent testified that the causes for the continuance were not due to his neglect, but, rather, were due to a "series of oversights by his office during a move."

At the July 30, 2013 hearing, the immigration judge informed respondent that Stipp's fingerprints had expired and that, if the fingerprints were not updated, the application would be deemed abandoned. The immigration judge also told respondent that he should have included certain evidence of community service in Stipp's application for cancellation of removal. A continuance was granted until May 12, 2014.

Four days prior to the hearing, respondent sent a facsimile to the attorney for the DHS, seeking to enter letters, dated nine months earlier, regarding Stipp's community involvement, claiming that the case inadvertently had been overlooked by respondent's office, and requested that counsel review the matter for prosecutorial discretion. At the May 14, 2014 hearing, the judge agreed with the DHS's position that respondent had engaged in a pattern of delay, and

admonished respondent for failing to comply with the procedures for timely and proper submission of documents.

Respondent testified at the disciplinary hearing that there are "frequently" out-of-time submissions in all courts and that this was "one of those times."

On November 19, 2014, respondent filed six additional exhibits, including updated tax returns, medical and school records, and photographs. On February 11, 2015, at the next appearance before the immigration judge, the judge admonished respondent for failing to update Stipp's expired fingerprints and noted that respondent's November 2014 attempt to submit exhibits occurred after the record had been closed. The closed record allowed the court to request a visa number for Stipp, and, if the record were re-opened to allow the newly submitted evidence, Stipp would lose his visa number. Nonetheless, respondent made a motion to reopen the record and move the exhibits into evidence, which the judge, although "displeased," granted out of concern for Stipp's child and family.

Prior to filing the application for cancellation of removal, respondent failed to translate questions on the application for Stipp and failed to assist him with his answers to the questions. After filing the application, respondent failed to provide Stipp with a copy of the application and to review it with him prior

to the hearing. Respondent also failed to amend and update the application; failed to request that Stipp's ten-year physical presence witnesses write letters in Stipp's behalf; failed to ask witnesses referred from the Stipps to testify as to his character, and to the hardship his removal would have on his family; failed to explain to Stipp, prior to the hearing, that he had the burden of proof to show hardship so that Stipp could make an informed decision about his case; failed to advise Stipp of the need for witnesses; and failed to request that Stipp provide him with names and contact information for all witnesses.

At the hearing, respondent relied solely on the testimony of Stipp to explain what would happen if Stipp's son, who had Attention Deficit/Hyperactivity Disorder, was removed to Brazil. However, Stipp had left Brazil over ten years earlier and, thus, had no knowledge of the current educational system, had no personal experiences with any persons with a learning disability in Brazil, and had limited knowledge of his son's condition. Respondent further failed to advise Stipp that he would need a psycho-social report on the impact of his departure on his son.

At the disciplinary hearing, Mrs. Stipp testified that she would have been willing and available to testify at the immigration hearing to establish Stipp's ten-year physical presence, her son's health issues, and Stipp's moral character,

but respondent failed to ask her to testify. Respondent testified that Mrs. Stipp was not willing to testify due to her own status and her fear of being apprehended. However, the Disciplinary Board found that statement to be false.

Respondent failed to prepare Stipp for the hearing; failed to meet with him to discuss direct and cross-examination; failed to review with Stipp documents that he had introduced in Stipp's behalf; failed to review the facts of Stipp's criminal case and tax filings; and failed to prepare Stipp to testify about his son's condition.

At the hearing, the immigration judge stated that he was "shocked" by the absence of a record regarding Stipp's son's hardship were Stipp to be removed and continued the matter for respondent to address discrepancies in the record. Respondent failed to submit any additional evidence. As a result, on August 31, 2015, the immigration judge concluded that Stipp had failed to meet his burden of proof, denied Stipp's application for cancellation of removal, and ordered him to be deported to Brazil. The BIA affirmed the decision.

Thereafter, on June 28, 2016, Stipp's new counsel, Jay S. Marks, Esq., filed a motion to re-open based on respondent's ineffective assistance of counsel, and provided new evidence. On September 8, 2016, the BIA granted the motion and remanded the matter.

Mr. and Mrs. Stipp testified at the disciplinary hearing that respondent failed to explain what had happened after each immigration hearing. They stated that it was difficult to communicate with respondent, who would not return messages or e-mails, so to talk to him, they had to get in the car and drive three hours. Respondent met with them no more than five times during the five-year course of representation and, after the immigration hearing, told both Mr. and Mrs. Stipp that "everything was going to be fine."

In February 2016, due to the difficulties communicating with respondent, Stipp had retained Marks, who testified that Stipp did not have a clear understanding of his immigration case. Upon termination of respondent's representation and despite repeated requests from Marks, respondent failed to provide documents from Stipp's file to Marks, which forced Marks to obtain them from the Fourth Circuit Court of Appeals.

The Herman Salim and Ang Phing Matters

Herman Salim and Ang Phing, a married couple from Indonesia, are lawful permanent residents with limited fluency in the English language. At some time prior to November 26, 2013, after viewing respondent's advertisement placed in an Indonesian language newspaper, which claimed that

he handled "accident" matters, Salim and Phing retained respondent to take over representation of them in three personal injury matters.

On November 26, 2013, respondent met with Salim and Phing about their cases, in the presence of an interpreter. Salim and Phing told respondent that they wanted to "transfer" their three "accident" cases to him. Respondent asked questions about the accidents and agreed to handle the cases. The interpreter explained to the couple that settlement funds would be divided "40/60," however, respondent failed to provide written fee agreements setting forth the basis or rate of his fee for any of the three personal injury matters.

Respondent failed to inform Salim and Phing that he first wanted to investigate the facts of their cases and that he customarily did not handle personal injury matters. Respondent testified that he asked the couple about the accident cases because "that's what they wanted to talk about, and that's what we talked about." Respondent further failed to inform the couple that he planned to refer their cases to another lawyer.

However, respondent had Phing sign correspondence, addressed to her previous lawyer, giving respondent permission to talk to Phing about her accident cases, and requesting that her file be turned over to respondent. Likewise, on January 1, 2014, Salim signed a document stating that he had

"retained" respondent as his attorney "to perform all necessary legal and connected services related to" his accident. Salim and Phing reasonably believed that they had retained respondent to handle their personal injury cases, and both testified that, if respondent had told them he did not handle accident matters, they would have found a different lawyer. The Disciplinary Board found that respondent had entered into an attorney-client relationship with both Salim and Phing.

On January 16, 2014, Salim signed releases for respondent to obtain copies of his medical records. Salim testified that he believed respondent wanted the records to use in his accident case, although respondent testified that he requested the records for Salim's citizenship application. Respondent's testimony was found to be not credible, because when respondent sent facsimiles to a doctor and hospital for records, he noted that the records were needed for the accident. Further, respondent's legal assistant went to Phing's house to take pictures and informed Phing that the pictures were for the accident case.

On November 26 and December 6, 2013, respondent sent facsimiles to prior counsel requesting Salim's and Phing's files. Thereafter, respondent appeared at prior counsel's office and met with prior counsel and his law partner. Respondent told the attorneys that he would review the files and was "sure" that

he would enter an appearance. Nonetheless, despite subsequent requests by prior counsel's firm, respondent failed to enter an appearance. On February 5, 2014, prior counsel's firm wrote to respondent, noting that respondent had not yet entered his appearance on the matters, and that respondent should confirm, in writing, that respondent would protect prior counsel's costs on the matters, as well as agree to a one-third referral fee, or prior counsel would perfect liens in respect of the matters.

On March 11, 2014, prior counsel filed a motion to withdraw his appearance in the two pending cases, yet respondent failed to enter his appearance on the matters. Respondent failed to inform Salim and Phing of future scheduled dates in the matters, of orders and motions filed in the matters, and that the judge in one of the matters had signed an order permitting Salim and Phing to proceed pro se. On October 17, 2014, a judge dismissed the complaint in one of the matters for failure to comply with previous orders.

When Phing called respondent for information about the cases, she was told by respondent's staff that they had to wait. Salim and Phing were never told, in writing or verbally, that respondent was not representing them. In July 2016, respondent met with the couple about their personal injury cases and told

them that "the City of Philadelphia has no money." Respondent failed to inform the couple that their cases had been dismissed.

In August 2016, Salim and Phing were in Chinatown and saw a sign for a law office written in Chinese. They met with the lawyer and his wife, who both spoke Chinese, and were informed that their cases had been dismissed. The couple had not known that the cases were dismissed and asked the lawyer what to do. The lawyer advised them to contact the ODC regarding respondent's mishandling of their cases.

Thereafter, Salim and Phing filed an ethics complaint against respondent, and appeared at respondent's office to retrieve their files. Respondent told them he did not have the files and, during the disciplinary hearing, confirmed that he no longer had the files.

Further, neither Salim nor Phing gave respondent permission to refer their accident cases to another lawyer. Respondent, however, referred one of the three accident cases to Michael H. Gaier, Esq. After investigation, Gaier sent a letter to Phing stating that he would not be able to represent her in her case. Phing did not receive the letter, because she was in Indonesia at the time. Both Salim and Phing testified at the disciplinary hearing that they had never heard of an attorney named Gaier.

Moreover, after Phing retained respondent to handle her accident matters, there was a serious automobile accident involving the death of one, and the injury of several, Indonesian-speaking persons. Respondent asked Phing to find out where the injured people were hospitalized and to find out more about them. Phing was able to get information regarding the injured parties and accompanied respondent to the hospital to meet with them. Phing testified that they went to meet the injured persons to "get some more clients from the accident case." According to Phing, the interpreter at respondent's office paid Phing $100 for assisting respondent in the direct solicitation of the injured parties. Respondent also provided to Phing, Salim, and a family member three t-shirts with his firm's name, and brochures for the firm. Phing testified that respondent wanted her to wear the shirts to promote his business, and to give out the brochures to people. Phing further testified that she was "so scared" handing out the brochures, because people chased her away as she tried to hand them out, so instead, she placed the brochures under windshield wipers of parked cars. Phing referred at least two personal injury matters to respondent, and respondent, subsequently, offered to help Phing become a United States citizen for "free," because of her help.

The Findings of the Pennsylvania Disciplinary Board

The Disciplinary Board found that respondent's actions constituted misconduct, stating:

> During a span of two and one-half years, Respondent engaged in a course of misconduct in five immigration and two personal injury matters. His misconduct involved lack of competence, lack of diligence, failure to communicate, failure to return client files, and conduct prejudicial to the administration of justice. Respondent's poor communication strikes the Board as particularly troubling, as his clients' limited English placed them in a vulnerable position with regard to their understanding of the legal processes in which they were involved. Respondent's misconduct resulted in adverse consequences to his clients, as their rights were either jeopardized or lost due to Respondent's failure to present evidence or pursue arguments essential to the advancement of their matters. Some clients' files were never returned. Many clients retained new counsel in an attempt to remedy Respondent's wrongdoing. Respondent's conduct burdened the court system, which had to contend with his repeated incompetence[.]
>
> Respondent's attempt to defend himself by claiming that his clients failed to provide him with necessary documents or information is not credible. We accept the Committee's determination that the testimony of Respondent's clients was "significantly" more credible than his own. Respondent did not show genuine remorse for his misconduct, did not show appreciation for his wrongdoing by demonstrating measures to remediate his practice problems, and did not present character evidence.

[OAEb,Ex.L at p.94.][3]

The Disciplinary Board concluded that a one-year-and-one-day suspension should be imposed, emphasizing that respondent "is not fit to practice law." By order entered July 9, 2019, the Supreme Court of Pennsylvania adopted the Disciplinary Board's recommendation and imposed on respondent a one-year-and-one-day suspension.

Although respondent reported his Pennsylvania suspension to the OAE, as R. 1:20-14(a)(1) requires, the OAE asserted that he failed to notify the OAE of his subsequent Pennsylvania disbarment.

The OAE's Position

The OAE recommended a three- to six-month suspension, contending that, based on New Jersey disciplinary precedent, a shorter term of suspension than the one-year-and-one-day suspension imposed in Pennsylvania was warranted. The OAE focused on the most serious allegation of respondent's misconduct – his use of a runner, which the OAE contended violated New Jersey RPC 7.3(b)(5) – to argue that a three-month suspension to disbarment was the proper range of discipline. The OAE noted that Phing's success in obtaining clients was

[3] "OAEb" refers to the OAE's brief, dated August 18, 2020, in support of its motion for reciprocal discipline, and the exhibits attached thereto.

minimal, and that respondent's staff paid her only $100, and, thus, a shorter term of suspension for that misconduct would be appropriate. However, the OAE noted that respondent's use of the runner must be addressed in conjunction with his other misconduct in seven client matters.

The OAE asserted the following aggravating factors: respondent was "not particularly cooperative" with the OAE; respondent refused to permit the OAE to include his Verified Resignation Statement as part of the public record and failed to notify the OAE of his Pennsylvania disbarment; respondent's incompetence resulted in adverse consequences to vulnerable clients and the over-burdened immigration court system; and respondent failed to demonstrate genuine remorse or to remediate his practice, thereby remaining a threat to his clients and the public. The OAE did not proffer any mitigating factors.

The OAE, thus, recommended the imposition of a three to six-month suspension, with six months being most appropriate.

Respondent's Position

On October 22, 2020, respondent submitted a reply to the OAE's motion and, on November 12, 2020, submitted a supplemental reply. Respondent provided purported proof that he notified the OAE of his disbarment, including

an undated certified mail receipt and a copy of a purported October 12, 2019 cover letter to the OAE. He further stated that his refusal to permit the Verified Resignation Statement as part of the public record was because he wanted to move on past this matter and put it behind him, rather than dispute claims that he had already resolved. He contended that he would have agreed to provide the statement confidentially had he known that was an option. Respondent asserted that he did not pay Phing as a runner and doubted that anyone in his office had done so. He stated that he would never use a runner, and that he often met clients outside of his office, if they had health issues.

Regarding his visit to the hospital with Phing, respondent noted that he thought Phing knew the injured parties and that they wanted to meet with a lawyer. Finally, respondent asserted that his decision to fully litigate the disciplinary matter in Pennsylvania "was clearly a mistake" that has been interpreted against him as a lack of remorse.

In his supplemental reply, respondent attached a letter of support from Shereen Chen Gray, Esq., an immigration attorney. Gray noted that she had spoken to respondent about his approach to immigration cases and immigration officials, and that she considered him hardworking, dedicated, and knowledgeable. He also attached letters from Doctor Reverend Lemaire Alerte,

Pastor of the Haitian Evangelical Church of Jesus Christ of Jersey City, and Pastor Edson Pereira, from the Southern New Jersey Congregation of Igreja Evangelica Resgate New Jersey. The letters were supportive of respondent, relaying his pro bono immigration work with the congregations and pastors of the churches.

Respondent failed to set forth a legal argument or to counter the OAE's recommendation of discipline with one of his own.

During oral argument before us, respondent admitted that, in the past, he had accepted too many cases and had approached his professional and personal life with overly aggressive tactics. He argued that he did not solicit a runner and represented that he has neither a Pennsylvania nor a New Jersey law office, but stated that he would like to practice law in New Jersey in the future.

* * *

Following our 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 Pennsylvania, the standard of proof in attorney disciplinary matters is that the "[e]vidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof . . . is clear and satisfactory." Office of Disciplinary Counsel v. Kissel, 442 A. 2d 217 (Pa. 1982) (citing In re Berland, 328 A.2d 471 (Pa. 1974)). Moreover, "[t]he conduct may be proven solely by circumstantial evidence." Office of Disciplinary Counsel v. Grigsby, 425 A. 2d 730 (Pa. 1981) (citations omitted).

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.

Specifically, respondent committed ethics violations as follows.

Respondent utterly failed to provide competent representation in all seven client matters under scrutiny, in violation of RPC 1.1(a) and RPC 1.3. Moreover, in all the matters, the relevant courts cited respondent's inadequate representation in ruling against his clients, who were facing severe consequences.

In the Villatoro-Ochoa matter, respondent submitted a follow-up letter to the DHS with the incorrect name and gender of Villatoro-Ochoa, and wrongly stated that his client was not detained. He failed to attach relevant evidence in support of the emergency request filing, including evidence that he had received directly from the Villatoro-Ochoas: an affidavit signed by the couple explaining their marriage status, an affidavit from Villatoro-Ochoa as to why he failed to depart the country, and crucial medical records.

In the Ribeiro matter, respondent failed to explain to Ribeiro the motion to suppress, failed to obtain facts regarding Ribeiro's arrest, and failed to draft a supporting affidavit for Ribeiro's execution. He further conceded Ribeiro's removability without having discussed the notice to appear with Ribeiro, requested only a four-month continuance so that Ribeiro could make arrangements to depart, and failed to discuss the continuance with Ribeiro. Respondent also failed to request that the proceedings be reopened because they had occurred in Spanish, not Portuguese.

In the Magdalena matter, respondent failed to conduct any investigation prior to filing the dental malpractice claim and failed to secure the required certificate of merit for the case. Moreover, respondent failed to attend hearings and to reply to motions during the litigation.

In the Jiang matter, respondent failed to have Jiang's documents translated, failed to prepare him for the asylum interview, and failed to arrange for an interpreter for the asylum interview. Moreover, respondent failed to file a complete application for asylum, including relevant evidence, and failed to produce relevant witnesses at the hearing.

In the Juarez-Aparicio matter, respondent failed to do any work for Juarez-Aparicio and his wife, despite having been retained.

In the Stipp matter, respondent failed to competently and diligently follow the immigration court's procedures by filing motions and seeking continuances in an untimely manner. He also failed to timely submit evidence, documentation, and evaluations.

In the Salim/Phing matter, respondent's incompetence and lack of diligence resulted in the clients' personal injury matters being dismissed. Respondent also failed to enter his appearance in the personal injury matters after the clients' prior attorney withdrew from the case.

Moreover, respondent failed to adequately communicate in four matters (Ribeiro; Juarez-Aparicio; Stipp; and Salim/Phing), in violation of RPC 1.4(b) and RPC 1.4(c).

In the Ribeiro matter, respondent failed to speak to Ribeiro after the hearing to explain the matter to him so that he could make informed decisions about his case, failed to comply with Ribeiro's reasonable requests for information regarding his appeal, failed to contact Ribeiro to advise him of the BIA's decision, and failed to meet with Ribeiro to explain the BIA decision.

In the Juarez-Aparicio matter, respondent failed to return Juarez-Aparicio's telephone calls seeking information about his case, forcing Juarez-Aparicio to retain another attorney.

In the Stipp matter, respondent failed to explain to Stipp the procedures for the hearings, and the results of the hearings. He also failed to return calls and e-mails, and met with Stipp no more than five times over his five-year representation. Respondent further failed to keep the Stipps informed about the status of their case or to adequately explain matters so that they could make informed decisions about the case.

In the Salim/Phing matter, respondent failed to explain the scope of his representation to the couple to permit them to make informed decisions about their pending personal injury cases; failed to explain whether he would be entering an appearance on their behalf; failed to inform them of scheduled court hearings and motion filings; failed to inform them of judgments entered against them; and failed to inform them that he was referring Phing's case to an outside attorney.

Respondent further failed to communicate the basis or rate of his fee, in writing, in the Salim/Phing matter, in violation of RPC 1.5(b). In that matter, respondent's interpreter told the couple that the settlements from the accident cases would be divided "40/60," yet he failed to provide to his clients a written fee agreement for their personal injury matters.

Additionally, upon termination of representation, respondent failed to take steps to protect his client's interests in five matters (Villatoro-Ochoa; Jiang; Juarez-Aparicio; Stipp; and Salim/Phing), in violation of RPC 1.16(d). In each of these five matters, respondent failed to return the clients' files to them or their subsequently retained attorneys, despite requests that he do so.

Further, in the Salim/Phing matter, respondent had Phing solicit clients for him, in violation of RPC 7.3(b)(5), by having her investigate and provide information about accident victims; accompany him to the hospital; hand out brochures for his firm; and wear his firm's t-shirt. In return, respondent's office paid Phing and offered to handle her citizenship application at no cost.

Finally, respondent engaged in conduct prejudicial to the administration of justice in five matters (Villatoro-Ochoa; Ribeiro; Del Gaiso; Jiang; and Stipp), in violation of RPC 8.4(d). In all five matters, respondent's failure to provide competent and diligent representation resulted in unnecessary court delays and motion practice, taxing the immigration and state court systems.

In sum, we find that respondent committed extensive ethics violations, as follows. Respondent violated RPC 1.1(a) in seven matters (Villatoro-Ochoa; Ribeiro; Del Gaiso; Jiang; Juarez-Aparicio; Stipp; and Salim/Phing); RPC 1.3 in seven matters (Villatoro-Ochoa; Ribeiro; Del Gaiso; Jiang; Juarez-Aparicio;

Stipp; and Salim/Phing); RPC 1.4(b) and (c) in four matters (Ribeiro; Juarez-Aparicio; Stipp; and Salim/Phing); RPC 1.5(b) in one matter (Salim/Phing); RPC 1.16(d) in five matters (Villatoro-Ochoa; Jiang; Juarez-Aparicio; Stipp; and Salim/Phing); RPC 7.3(b)(5) in one matter (Salim/Phing); and RPC 8.4(d) in five matters (Villatoro-Ochoa; Ribeiro; Del Gaiso; Jiang; and Stipp).

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

Respondent's most serious misconduct is his use of a runner to solicit business. The appropriate measure of discipline in a runner case is determined on a case-by-case basis, and ranges from a three-month suspension to disbarment. See e.g., In re Gross, 186 N.J. 157 (2006) (suspended, three-month suspension imposed for the attorney's use of a paid runner; the attorney stipulated that, between 1998 and 2000, he paid $300 to the runner on at least fifty occasions; in mitigation, the attorney inherited a system that his father had established); In re Pease, 167 N.J. 597 (2001) (three-month suspension imposed on attorney who paid a runner for referring fifteen prospective clients to him and for loaning funds to one of those clients; in mitigation, the attorney had not been disciplined previously, he had performed a significant amount of community service, and the misconduct was limited to a four-month period, which took

place more than ten years prior to the ethics proceeding, when the attorney was relatively young and inexperienced); In re Walker, 234 N.J. 164 (2018) (one-year suspension imposed on an attorney who participated in a four-and-a-half-year fraudulent scheme and accepted at least fifty cases from runners; no prior discipline); In re Chilewich, 192 N.J. 221 (2007) and In re Sorkin, 192 N.J. 76 (2007) (companion motions for final discipline; one-year suspensions imposed on two personal injury attorneys who, along with a husband-and-wife runner team, were charged in a ninety-three-count indictment; the runners bribed New York hospital employees to divulge confidential patient information to them in exchange for a referral fee; over a five-year period, Chilewich accepted twenty referrals, while Sorkin accepted fifty such cases; the attorneys then filed false retainer reports with New York's Office of Court Administration in order to conceal their deeds, for which they pleaded guilty to one count each of offering a false instrument for filing, a first degree, Class E felony, in violation of § 175.35 of the Penal Law of the State of New York; neither attorney had prior discipline); In re Berglas, 190 N.J. 357 (2007) (motion for reciprocal discipline; the attorney received a one-year suspension for sharing legal fees with a nonlawyer and improperly paying third parties for referring legal cases to him; the conduct took place over three years and involved two hundred immigration

and personal injury matters); In re Birman, 185 N.J. 342 (2005) (motion for reciprocal discipline; attorney received a one-year suspension; he had agreed to compensate an existing employee for bringing new cases into the office, after she offered to solicit clients for him); In re Frankel, 20 N.J. 588 (1956) (two-year suspension imposed on attorney who paid a runner twenty-five percent of his net legal fee to solicit personal injury clients); In re Introcaso, 26 N.J. 353 (1958) (three-year suspension for attorney who used a runner to solicit clients in three criminal cases, improperly divided legal fees, and lacked candor in his testimony); In re Pajerowski, 156 N.J. 509 (1998) (disbarment for attorney who, for almost four years, used a runner to solicit personal injury clients, split fees with the runner, and compensated him for referrals in eight matters involving eleven clients; although the attorney claimed that the runner was his "office manager," in 1994, the attorney had compensated him at the rate of $3,500 per week ($182,000 a year) for the referrals); and In re Shaw, 88 N.J. 433 (1982) (disbarment for attorney who used a runner to solicit a client in a personal injury matter, "purchased" the client's cause of action for $30,000, and then settled the claim for $97,500; the runner forged the client's endorsement on the settlement check, depositing it in his own bank account, rather than the attorney's trust account; the attorney also represented a passenger in a lawsuit against the driver

of the same automobile and represented both the passenger and the driver in litigation filed against another driver).

Attorneys who mishandle multiple client matters generally receive suspensions of either six months or one year. See, e.g., In re Tunney, 181 N.J. 386 (2004) (six-month suspension for attorney who mishandled six matters, engaging in a combination of gross neglect, pattern of neglect, lack of diligence, failure to communicate, failure to promptly notify a client of receipt of funds, failure to properly terminate representation, knowingly disobeying an obligation under the rules of a tribunal, misrepresentation, and conduct prejudicial to the administration of justice; Tunney's depression considered in mitigation; prior reprimand); In re LaVergne, 168 N.J. 410 (2001) (six-month suspension for attorney who mishandled eight client matters; he was guilty of lack of diligence in six of them, failure to communicate with clients in five, gross neglect in four, and failure to turn over the file upon termination of the representation in three; in addition, in one of the matters, LaVergne failed to notify medical providers that the cases had been settled and failed to pay their bills; in one other matter, he misrepresented the status of the case to the client; LaVergne also was guilty of a pattern of neglect and recordkeeping violations); In re Suarez-Silverio, 226 N.J. 547 (2016) (one-year suspension for an attorney who, over thirteen years,

mishandled twenty-three client matters before the Third Circuit Court of Appeals, many of which ended by procedural termination; he also disobeyed court orders and made a misrepresentation to the court clerk, which escalated the otherwise appropriate six-month suspension; previous admonition and reprimand for similar conduct); and In re Brown, 167 N.J. 611 (2001) (one-year suspension for attorney who, as an associate in a law firm, mishandled twenty to thirty files by failing to conduct discovery, to file pleadings, motions and legal briefs, and to generally prepare for trials; he also misrepresented the status of cases to his supervisors and misrepresented his whereabouts, when questioned by his supervisors, to conceal the status of matters entrusted to him; the disciplinary matter proceeded as a default; prior reprimand).

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).

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 the Matter of Brian Joseph 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)).

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 and failed to expedite litigation in one client matter and engaged in ex parte communications with a judge; 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 an 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, the complaining witness, and two defendants; in addition, the attorney's failure to provide the court with advance notice of his conflicting calendar prevented the judge from scheduling other cases for that date; 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, the Pennsylvania record demonstrates that respondent engaged in a variety of violations of the Rules of Professional Conduct. Based on disciplinary precedent for his most egregious misconduct – the use of a runner – at least a

three-month suspension is warranted. For his neglect of seven client matters, the term of that suspension must be significantly increased.

In aggravation, respondent's misconduct caused serious harm to a vulnerable class of clientele who faced dire consequences — immigrants with a limited understanding of the English language and the United States' immigration court system, who were facing removal and deportation actions.

In mitigation, respondent presented character letters, and has no prior discipline in New Jersey.

Although a three-month suspension is the minimum appropriate quantum of discipline for respondent's violation of RPC 7.3(b)(5), that, in combination with the numerous instances of additional misconduct, warrants a lengthier term of suspension. Respondent has failed to recognize the gravity of his misconduct or the harm he inflicted on his clients, some of whom had limited English proficiency. He has failed to return client files, forcing some clients to live without their crucial documentation. His misconduct was so severe that some clients had to retain new counsel to correct it, so that they would not be removed from the country. Further, as the Pennsylvania Board found, respondent's misconduct unnecessarily burdened an already overwhelmed court system.

Finally, when facing disciplinary charges for his misconduct, respondent testified incredibly and illogically, and showed no remorse for his actions.

Based on the foregoing, we determine that a two-year suspension is required to protect the public and preserve confidence in the bar.

Moreover, we determine to require respondent, upon reinstatement, to (1) practice under the supervision of an OAE-approved proctor for at least two years, and until the OAE deems that a proctor is no longer necessary; (2) complete a continuing legal education course in immigration law; and (3) complete two ethics courses in addition to those required for continuing legal education credit.

Vice-Chair Gallipoli and Members Petrou and Rivera voted to recommend to the Court that respondent be disbarred.

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 Douglas Andrew Grannan
Docket No. DRB 20-236

Argued: January 21, 2021

Decided: June 2, 2021

Disposition: Two-year suspension, with conditions

Members	Two-year suspension, with conditions	Disbar
Clark	X	
Gallipoli		X
Boyer	X	
Hoberman	X	
Joseph	X	
Petrou		X
Rivera		X
Singer	X	
Zmirich	X	
Total:	6	3

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