Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-296
District Docket Nos. XIV-2018-0514E; XIV-2018-0515E; VIII-2018- 0903E; and VIII-2018-0904E

In the Matter of

John Charles Allen

An Attorney at Law

Decision

Argued: April 15, 2021

Decided: July 8, 2021

HoeChin Kim 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 recommendation for a censure filed by the District VIII Ethics Committee (DEC). The formal ethics complaint charged respondent with having violated RPC 1.15(d) (failure to comply with the

recordkeeping provisions of R. 1:21-6); RPC 3.3(a)(1) (two instances – false statement of material fact to a tribunal); RPC 5.5(a)(1) (unauthorized practice of law – failure to maintain professional liability insurance); RPC 8.1(a) (two instances – false statement of material fact in a disciplinary matter); RPC 8.1(b) (two instances – failure to cooperate with disciplinary authorities); and RPC 8.4(c) (two instances – conduct involving dishonesty, fraud, deceit or misrepresentation).

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

Respondent was admitted to the New Jersey bar in 1995. In May 2005, he received an admonition for gross neglect and failure to communicate with his client in a foreclosure matter. In the Matter of John Charles Allen, DRB 05-087 (May 23, 2005).

On May 6, 2015, respondent received a censure for gross neglect; lack of diligence; failure to keep a client informed about the status of a matter; and conduct prejudicial to the administration of justice. In re Allen, 221 N.J. 298 (2015). We determined that respondent provided legal services to his client only after the client filed an ethics grievance against him. Also, when respondent finally worked on the client's matter, he satisfied a lien other than the lien he had been hired to resolve. He failed to reply to any correspondence from his

client for over a year and failed to keep his client reasonably informed about the status of the matter. Respondent also improperly sought to persuade his client to withdraw the grievance in exchange for either a refund of his fees or continued work on the matter without additional fees. In the Matter of John Charles Allen, DRB 14-226 (January 22, 2015) (slip op. at 13-14).

In 2018 and 2019, the Court temporarily suspended respondent for his failure to comply with fee arbitration awards in two matters unrelated to those before us. In re Allen, 235 N.J. 363 (2018); In re Allen, 237 N.J. 435 (2019). In both matters, the Court reinstated Allen after he satisfied the conditions of the suspension Orders. In re Allen, 236 N.J. 90 (2018); In re Allen, 237 N.J. 586 (2019). On July 6, 2021, and July 7, 2021, the Court temporarily suspended respondent for his failure to comply with two additional fee arbitration matters. In re Allen, __ N.J. __ (July 6, 2021); In re Allen, __ N.J. __ (July 6, 2021).

Turning to the present case, this matter previously was before us as a certification of the record (DRB 18-199). On September 21, 2018, we granted respondent's motion to vacate the default and remanded the matter to the Office of Attorney Ethics (the OAE). On January 6 and 14, 2020, the DEC hearing panel held the disciplinary hearing and, on August 6, 2020, issued a report.

During the relevant period, respondent maintained his attorney trust account (ATA) and attorney business account (ABA) at Santander Bank. On

August 12, 2016, the Office of Board Counsel (the OBC), wrote to the OAE, advising of possible misrepresentations made to the OAE and to us in two matters which were the subject of motions for temporary suspension filed by the OAE for respondent's failure to comply with fee arbitration committee determinations. These two matters are the subject of the instant case, involving clients I.B.D. and C.M.

The I.B.D. Matter

Respondent represented I.B.D. in an appeal of an administrative law determination. Ultimately, I.B.D. filed for fee arbitration against respondent. On June 9, 2015, the fee arbitration committee ordered respondent to refund $4,680.52 to I.B.D.

By letter dated September 15, 2015, the OAE directed respondent to provide the OAE with proof, by September 28, 2015, that he had complied with the fee arbitration determination. He failed to comply. On December 23, 2015, I.B.D. filed a complaint against respondent in the Superior Court of New Jersey, Middlesex County, Special Civil Part, seeking satisfaction of the fee award. On January 4, 2016, the trial court sent respondent a summons, via certified mail, which included I.B.D.'s Newark, New Jersey address. The certified mail the court sent to respondent was returned unclaimed.

On January 6, 2016, the OAE filed a motion with us for respondent's temporary suspension, citing his failure to comply with the June 9, 2015 fee arbitration determination. We scheduled the motion for January 28, 2016. By letter dated January 13, 2016, respondent claimed to the OAE that he "in fact paid to [I.B.D.] the ENTIRE AMOUNT of the Fee Arbitration award" and requested that the OAE dismiss its motion. In support of his claim, respondent enclosed a copy of a January 12, 2016 letter to I.B.D., sent to her Newark address, by certified mail, purportedly enclosing ABA check #60107 for $4,680.52 to her "in full payment and full satisfaction." Notably, the check was dated January 13, 2016, the day after the accompanying January 12, 2016 letter that respondent presented.

The OAE's review of respondent's financial records revealed that, on January 12, 2016, respondent transferred $1,500 into his ABA, increasing the account balance to $4,598.36. On January 13, 2016, however, respondent's ABA balance was only $4,085.42. Accordingly, when respondent issued check #60107 on January 13, 2016, and sent the January 13, 2016 letter to the OAE, representing that he had paid to I.B.D. the "entire amount," he did not have sufficient funds in his ABA to cover the check. Respondent also did not have a formal overdraft agreement with Santander Bank for his ABA. In January 2016,

after check #60107 was issued, respondent's ABA had sufficient funds to cover the check on only three days, from January 27 through January 29, 2016.

At some point, respondent provided to the OAE a tracking number for the certified mail he claimed to have sent to I.B.D. on January 12, 2016. The tracking number revealed that the certified mail was returned to respondent, on February 25, 2016, after it was unclaimed "and the max hold time expired." Respondent then failed to provide the OAE with the original, unopened certified letter, despite numerous requests that he do so.

In a January 25, 2016 letter to Chief Counsel, which copied I.B.D., the OAE sought to withdraw its motion for temporary suspension, citing respondent's representation that he had "satisfied the arbitration determination." The OAE's letter enclosed respondent's January 13, 2016 letter. On February 1, 2016, I.B.D. informed the OAE that the last contact she had with respondent was at the June 9, 2015 fee arbitration hearing, and that respondent had not satisfied her fee award.

During the disciplinary hearing, respondent, appearing pro se, testified that the check he sent to I.B.D. in January 2016 was never cashed; therefore, on or about April 1, 2016, during a hearing in the Superior Court matter, he wrote a new check and handed it to her. He testified that he had originally mailed the

letter and check by certified and regular mail, and further claimed that, although I.B.D. never picked it up, the certified mail was never returned to him.

Regarding the charge that he had issued the January 2016 check knowing that there were insufficient funds in his ABA to cover it, respondent admitted that he did not have overdraft protection. However, he explained that, prior to 2016, Santander Bank was Sovereign Bank. Respondent claimed that, when respondent was a client at Sovereign, he had an agreement with the bank "and things were worked out with the – the accounts and one of the aspects was, is that checks would clear if there were any issues of it being put in – in the negative. At that point at Sovereign Bank the branch manager had discretion." Respondent conceded that, when Santander took over, things may have changed, but that he was not aware of a change until "all of this happened," and claimed that "routinely [his] checks would be cleared."

Respondent contradictorily testified that, when the bank changed to Santander, the branch manager had the authority to clear checks, and because he was a long-time customer, she could make sure his account cleared. Respondent further testified that he would routinely deposit money to bring up his balance, and that the bank "worked with [him]." Therefore, respondent asserted his impression that his check to I.B.D. would clear. He stated:

> So the long and short of it is, is when that check [to I.B.D.] was – when it was originally written it was – my

> understanding is that the funds were there to cover it, but once it went out, and I realized that $1,503 debit came out [from another matter], I spoke with [the bank manager] at the bank and it was clear that it was going to be cashed. I also kept mindful of it by tracking it on the Post Office website so I knew when it was picked up by – by [I.B.D.].
>
> And as it turned out, at least into March of 2016, she didn't pick it up. It certainly was mailed …[] so I'm not – certainly not proud of the fact that, you know, my finances took a downturn, but it was consistent with the problems with my health at that point.
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> [2T33.][1]

Respondent added that he was "certain" that, had I.B.D. received and negotiated the check, she would have received the funds. I.B.D. did not testify at the disciplinary hearing.

The C.M. Matter

Respondent represented C.M. in an employment and bankruptcy matter. Eventually, C.M. filed for fee arbitration and, on October 15, 2015, a fee arbitration hearing was held. The fee arbitration panel ordered respondent to refund $8,105 to C.M.

By letter dated December 2, 2015, the OAE directed respondent to provide proof, by December 16, 2015, that he had complied with the fee arbitration

[1] "2T" refers to the January 14, 2020 hearing transcript.

determination. He failed to do so. On March 22, 2016, the OAE filed with us a motion for respondent's temporary suspension for his failure to comply with the October 15, 2015 fee arbitration determination. That motion was scheduled to be heard on April 21, 2016. On April 19, 2016, respondent contacted C.M. in an attempt to reach a settlement for the balance he owed. Respondent maintained that he and C.M. had a telephone call, in which he offered her $2,500 to settle the matter, and she countered with $4,000. Respondent contended that he accepted C.M.'s counteroffer verbally, and then wrote a letter memorializing the agreement and sent it to her.

Two days later, on April 21, 2016, we heard oral argument on the OAE's motion for respondent's temporary suspension. During the oral argument, respondent claimed that C.M. had agreed to accept $4,000, in two installments, in full satisfaction of the fee arbitration determination. Respondent could neither provide us with a schedule for the two payments nor produce a written agreement. Later that afternoon, C.M. contacted the OAE for a status update following the oral argument. She unequivocally denied having entered into a written or oral settlement agreement with respondent.

In an April 27, 2016 letter to Chief Counsel, respondent represented that he and C.M. had a verbal agreement[2] to settle the matter for $4,000. He

[2] Although there is an opportunity for settlement before a fee arbitration hearing utilizing a

maintained that C.M. asked him to call her back the next morning "to work out the timing of the payments totaling $4,000." Respondent claimed, however, that he had been unable to reach C.M. and her voice mailbox was full. Respondent stated that "the factual recitation provided to [the OAE] by [C.M] is grossly inaccurate. She did not state that she would not compromise, she agreed to compromise for the $4,000.00 amount." He further explained to Chief Counsel that "[his] calls were in respect to [C.M.'s] request that I call her the next morning to simple [sic] work out the payment arrangements for the agreed upon amount of $4,000.00."

On May 9, 2016, respondent sent C.M. a check for $8,105, in full satisfaction of the fee arbitration determination. On August 12, 2016, the OBC sent its letter requesting the investigation of respondent's possible misrepresentations to the OAE and to us in connection with the I.B.D. and C.M. matters.

On January 6, 2020, C.M. testified at the disciplinary hearing. She stated that, following the fee arbitration determination, respondent attempted to negotiate a reduction of the fee arbitration award. Throughout her testimony, C.M. stated that she was having financial difficulties as a result of losing her

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signed stipulation of settlement, pursuant to R. 1:20A-3(e), that Rule provides no mechanism for a settlement of a fee matter after a District Fee Arbitration Committee has entered a fee arbitration determination.

job; never agreed to accept a reduced award; never signed an agreement to that effect; and never intended to accept less than what she had been awarded by the fee arbitration committee.

On cross-examination, despite respondent's efforts, C.M. refused to concede that she had agreed to a reduced award. C.M. testified that she received an April 21, 2016 letter from respondent, enclosing an agreement to settle the matter for an amount less than that of the fee arbitration award. She claimed that, when she received the letter, she "briefly" read it and threw it away. C.M. testified that she did, eventually, receive from respondent the full amount of the award.

C.M. testified that she never "fully" agreed to anything other than full payment. When the OAE on redirect asked what she meant by "fully agreed," C.M. testified:

> Meaning that when he tried to call me to persuade me to do this, it was not my intent—I was listening to him and I was trying to get off the phone. I may have been listening to what he was saying, but I never said yes, I will do this.
>
> So he probably attempted to keep calling me back to get an answer from me, which I never gave him, because I did not want to, nor did I want to talk to him because I—you know, I just felt like the whole situation was shady, that he shouldn't even have been contacting me after that, that he should have just made payment to me.

[T61.][3]

Additionally, when asked if she and respondent settled on a reduction of the award, C.M. stated, “No. I never officially agreed to anything. I was just trying to get off the phone. And then that’s why he continued to call me back, to see if I would agree. Otherwise why would he keep calling me for the entire day . . . from a private number.”

Respondent testified at the disciplinary hearing that he spoke to C.M. on April 19, 2016, and that C.M. was “agreeable to accept a lesser amount if [he] was able to pay it to her immediately.” Respondent stated that, despite a typo in his April 27, 2016 letter to Chief Counsel, his letter reflected his “interpretation” that C.M. agreed to accept an amount of “at least $4,000” during a telephone call. Respondent testified that C.M. asked him to call her in the morning because she was “having a problem with [her] eye,” and they had to “work out the timing of the payments.” Respondent attempted to call C.M. but could not get in touch with her; therefore, he drafted an agreement and mailed it to C.M., based on his claimed understanding of their conversation. Upon questioning by the DEC hearing panel, respondent conceded that he did not have a signed agreement from C.M. agreeing to a lesser award amount.

[3] “T” refers to the January 6, 2020 hearing transcript.

Additional Matters

On October 18, 2016, the OAE sent respondent a letter scheduling a demand interview at its offices on November 18, 2016. The letter instructed respondent to produce, among other financial records, his check registers and the unopened January 12, 2016 letter that he claimed he had sent to I.B.D. by certified mail. Although respondent was required, by Court Rule, to keep that unopened letter for seven years, he represented that he was unable to locate it. Over the next year, due to medical issues, respondent obtained multiple adjournments of the demand interview and multiple extensions to produce the requested documents.[4]

In a January 3, 2017 letter to respondent, the OAE confirmed that the demand interview had been rescheduled for February 21, 2017 and reminded respondent to produce all requested documentation.

By letter dated February 2, 2017, the OAE reminded respondent of the demand interview scheduled for February 21, 2017, and again instructed him to provide, by February 14, 2017, all check registers for 2015 and 2016; monthly

[4] According to the medical documentation provided by respondent, he suffers from vascular disease, described by his medical doctors as a "complex medical condition" that required numerous interventions at the end of 2016 and throughout 2017. Doctors' notes revealed that respondent was unable to work through most of 2017 due to various procedures. The notes demonstrated that the procedures caused respondent great pain and difficulty standing and sitting upright.

three-way reconciliations for his ATA from December 1, 2015 through December 31, 2016; receipts and disbursements journals for his ATA and ABA, from December 1, 2015 through December 31, 2016; and the unopened, January 12, 2016 certified mail letter to I.B.D. Respondent failed to provide the requested documents by February 14, 2017.

On February 21, 2017, respondent appeared at the OAE's offices for the demand interview but failed to produce the requested records. During the interview, respondent promised to provide, within two weeks, the unopened January 12, 2016 certified mail letter to I.B.D. He also represented that he would obtain assistance in retrieving the requested records and reviewing the client files.

Subsequently, on February 22, 2017, the OAE renewed its instruction that respondent provide the previously requested records, as well as additional information, by March 8, 2017. On March 8, 2017, respondent sent a letter to the OAE, by facsimile, seeking yet another extension, for three weeks, to provide the requested documents; in that letter, respondent cited a surgery scheduled for March 13, 2017. The OAE granted the extension, conditioned on respondent's providing a doctor's note, by March 22, 2017, confirming that respondent was physically unable to provide the requested information by the

March 8, 2017 deadline. Respondent failed to provide all the requested documents or the doctor's note.

One month later, on April 23, 2017, respondent sent a letter to the OAE, stating that, due to his physical condition, he still was unable to review the closed client files. Although he enclosed reconciliations for his ABA and his ATA, the provided reconciliations did not comport with R. 1:21-6(c)(1)(H).

By letter dated April 25, 2017, the OAE reminded respondent that an extension would be granted only if he provided a doctor's note indicating that he was physically unable to provide the requested documents. The OAE's letter also notified respondent that he had failed to provide five categories of document which it had repeatedly requested in writing. The letter cautioned respondent that, unless he produced the requested outstanding documents, including the doctor's note, by May 5, 2017, the OAE would file a complaint charging him with failure to cooperate, in violation of RPC 8.1(b), and, possibly, a motion seeking his immediate temporary suspension, pursuant to R. l:20-3(g). As of April 25, 2017, respondent had provided only some of the items requested – receipts and disbursements journals for 2015 and 2016, and proof that the checks to I.B.D. and C.M. had been negotiated.[5]

[5] The record contains copies of the checks which were negotiated by I.B.D. and C.M. The executed check to I.B.D., dated April 6, 2016, does not match the original check respondent claimed to have sent to I.B.D., dated January 12, 2016.

On May 5, 2017, respondent sent the OAE two doctor's notes, the first dated March 16, 2017, stating that he had undergone a procedure on March 13, 2017, and would be out of work through at least mid-May 2017, and another dated May 5, 2017, stating that respondent was having extreme difficulty, and would be out of work for at least an additional week. In reply, the OAE instructed respondent to provide a list of all the specific dates he was unable to work, from October 18, 2016 to May 15, 2017, due to his medical issues, and to provide all outstanding documents by May 23, 2017. Respondent neither replied nor provided the requested information.

On September 22, 2017, the OAE filed a motion for respondent's temporary suspension from the practice of law due to his lack of cooperation. On December 6, 2017, the Court denied the OAE's motion and required respondent to provide all the requested documents within sixty days. That same date, the OAE sent a copy of the Court's Order to respondent.

As of the date of the filing of the complaint, respondent had failed to provide the following documents to the OAE and, thus, had not provided evidence that he maintained these records:

> a) monthly three-way reconciliations for his ATA from December 1, 2015 through December 31, 2016, which were first requested on February 2, 2017; and

> b) the original, unopened certified letter, dated January 12, 2016, to [I.B.D.], which was first requested on October 18, 2016.
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> [C¶85;A¶85].[6]

On May 11, 2017, the Clerk of the Court notified the OAE that respondent did not have a valid certificate of insurance on file with the Court. The OAE also discovered that, from 2012 to 2017, respondent had operated his law practice as the Law Offices of John Charles Allen, LLC, despite the fact that he failed to maintain the professional liability insurance required by R. 1:21-1B(a)(4). On July 23, 2014 and February 27, 2015, the Clerk's office sent respondent notices, by certified and regular mail, attempting to obtain those certificates. Although respondent received both letters, he failed to reply.

In his answer to the formal ethics complaint, respondent admitted that he had violated RPC 1.15(d) and RPC 5.5(a)(1). Respondent further admitted that he violated RPC 8.1(b) (one instance) by failing to produce the unopened certified letter that he claimed he had sent to I.B.D. and other financial records requested by the OAE.

At the outset of the hearing on January 6, 2020, the OAE withdrew[7] four charges. First, it withdrew the RPC 3.3(a)(1) charge associated with I.B.D.

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[6] "C" refers to the undated complaint filed by the OAE.

[7] We view this action as a R. 1:20-5(d)(3)(B) motion to dismiss the four charges. That Rule provides that a presenter may move to dismiss a complaint in whole or in part when "as a

charged in paragraph 46(a) of the complaint on the ground that the OAE is not a tribunal within the meaning of RPC 1.0(n).[8]

Second, the OAE withdrew the RPC 8.1(a) charge associated with I.B.D. and charged in paragraph 46(c) of the complaint. That charge alleged that "[r]espondent misrepresented to the OAE that he had satisfied the fee arbitration award in full in the [I.B.D.] matter when in fact he did not have the funds to honor the check[.]" The presenter withdrew that charge on the ground that "the representation was made during the enforcement of a fee arbitration award such that it was not a disciplinary matter at that time[.]"[9]

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result of newly discovered or newly disclosed evidence, one or more counts of the complaint cannot be proven by clear and convincing evidence. Such motion shall be supported by the presenter's certification of the facts supporting the motion and any relevant exhibits and shall be decided by the trier of fact." No newly discovered evidence was explicitly discussed here.

[8] We agree that the OAE is not a "body acting in an adjudicative capacity" within the meaning of that Rule.

[9] We recognize the Director's authority to dispose of charges which cannot be proven by clear and convincing evidence, but do not understand the exercise of authority in this case. R. 1:20-2 (vesting the Director with the authority to "dispose of, by investigation or dismissal, all matters involving alleged unethical conduct"); see also R. 1:20-3(h) (providing for dismissal where there is no reasonable prospect of proving unethical conduct or incapacity by clear and convincing evidence"). Unlike R. 1:20A-3 fee arbitration hearings, R. 1:20-15(k) enforcement proceedings are by their very nature disciplinary. See also In re Saluti, 207 N.J. 509 (2011) (in which the Court held that "Saluti's discipline" for failure to pay a fee arbitration award was exempt from the automatic stay provision of the federal bankruptcy law). Consistent with that Rule, exhibit four to the complaint shows that the OAE had instituted a disciplinary matter under its Docket Number XIV-2015-0553E at the time respondent transmitted his January 12, 2016 and January 13, 2016 letters representing that I.B.D. had been paid in full. The dismissal of this charge removes it from our consideration on de novo review.

Third, the OAE withdrew the RPC 8.1(a) charge described in paragraph 46(d) of the complaint, which alleged that respondent "mispresented to the DRB and the OAE that he had a settlement agreement with C.M." This was the very same investigative referral which Chief Counsel made to the Director on August 12, 2016. The presenter withdrew this charge on the basis that "because RPC 8.1(a) references an admission or a disciplinary matter, and the statement was made during a fee arbitration matter, not a disciplinary matter[.]"[10]

Fourth, the OAE withdrew one of the two RPC 8.1(b) charges embodied in paragraph 91(d) of the complaint. That paragraph charged respondent with "failure to respond to the notices sent by the Office of the Clerk of the Supreme Court of New Jersey on July 23, 2014 and February 27, 2015." The presenter withdrew this charge on the ground that the letters from the Clerk were not sent "in connection with a bar admission application or in connection with a disciplinary matter" as required by the introductory language of RPC 8.1. The two-day hearing proceeded upon the remaining charges.

The hearing concluded on January 14, 2020. The presenter's oral summation included a review of the proofs that respondent had violated RPC

[10] As with the I.B.D. charge discussed above, the misrepresentation charged in paragraph 46(d) concerning the payment to C.M. occurred on April 21, 2016 in the course of a R. 1:20-15(k) enforcement proceeding opened under the OAE's investigative docket no. XIV-2016-0078E. As with the other RPC 8.1(a) charge, the OAE's dismissal of this charge removes it from our consideration on de novo review.

8.1(b) by refusing to produce his three-way reconciliations and information concerning the dates on which he was unable to practice law. The presenter explained that she had proven two out of the three theories of respondent's violation of RPC 8.1(b) in paragraph 91 of the complaint. She argued that the OAE had presented clear and convincing evidence "except for the submission of the certified mail," and indicated that that particular theory of the violation charged in paragraph 91(c) was "withdrawn."

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On August 6, 2020, the DEC hearing panel issued its report, in which it found that respondent admitted his violations of RPC 1.15(d) and RPC 5.5(a)(1).

Regarding the charges that respondent violated RPC 3.3(a)(1) and RPC 8.4(c) in the C.M. matter, the panel remarked that C.M.'s testimony and respondent's testimony "differed markedly." The panel noted C.M.'s use of the word "fully" before "agreed," and her testimony that she never "officially" agreed to anything other than full payment. Based on the testimony and demeanor of respondent and C.M., and weighing the conflicting testimony, the panel was unable to find that the OAE had shown, by clear and convincing evidence, that respondent violated these Rules.

Regarding the I.B.D. matter, the panel found that respondent had violated RPC 8.4(c). The panel found that respondent had been aware of, or indifferent

to, the insufficient funds in his ABA to cover the settlement check, in violation of RPC 8.4(c). Noting that respondent had testified regarding a longstanding, informal overdraft agreement with the bank, the panel nonetheless found that respondent "had no right to rely upon the informal unwritten agreement to which he testified." In paragraph 12g of its decision, the panel expressed a belief that the RPC 8.1(b) charge had been withdrawn and referred exclusively to respondent's failure to produce the envelope. It made no findings concerning respondent's clear failures to produce the three-way reconciliations and list of dates on which respondent claimed to be medically incapable of practicing law.

In determining the proper discipline to impose for respondent's misconduct, the panel weighed, in aggravation, his disciplinary history. In mitigation, the panel noted that respondent did not misapply trust funds; that his violations stemmed from financial difficulties; and that he suffered from prolonged and severe medical problems. The panel determined that a reprimand was the minimum discipline appropriate for respondent's misconduct, however, considering his ethics history, it found that he was "on the cusp of suspension." Nevertheless, the panel commented that "the hardships that suspension would visit upon Respondent are magnified many fold (sic) by his medical condition." Based on the foregoing, the panel recommended a censure with the condition

that respondent be required to attend continuing legal education classes in bookkeeping, attorney accounting, or a similar topic.

In a February 24, 2021 letter to Chief Counsel, the OAE enclosed its January 27, 2020 letter to the DEC hearing panel, in which it argued that respondent had violated RPC 1.15(d); RPC 5.5(a)(1); RPC 8.4(c); RPC 3.3(a)(1); RPC 8.1(b); and RPC 8.4(c) (two instances). Even though the OAE did not agree with the entirety of the DEC's findings, it considered the hearing panel's recommendation of a censure to be appropriate and asked us to impose that level of discipline.

* * *

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

First, the record supports the DEC's finding that respondent violated RPC 1.15(d) and RPC 5.5(a)(1).

The OAE proved that it received only some of the financial records it directed that respondent produce. After reviewing those partial records, the OAE determined that respondent had failed to maintain monthly, three-way reconciliations of his ATA. Respondent's failure to do so violated RPC 1.15(d), as he conceded to the DEC, and again to us during the April 15, 2021 oral

argument. Additionally, from 2012 to 2017, respondent failed to maintain the professional liability insurance he was required to carry, pursuant to R. 1:21B(a)(4), and, thus, engaged in the unauthorized practice of law, in violation of RPC 5.5(a)(1). Again, he admitted this during oral argument before us.

Moreover, respondent's failure to produce the documents requested by the OAE, including reconstructed three-way reconciliations and a list of days he was unable to work due to medical issues, violated RPC 8.1(b).[11]

Regarding the I.B.D. matter, we find that respondent violated RPC 8.4(c). The record reflects that, despite respondent's issuance of the January 13, 2016 check to I.B.D., he did not have sufficient funds in his ABA to satisfy that check and I.B.D. never negotiated that check. Eventually, respondent provided her an April 6, 2016 check, in full satisfaction of the fee arbitration determination. However, respondent engaged in dishonest conduct when, in January 2016, he sent the check to I.B.D. from an account with insufficient funds, in an effort designed to avoid temporary suspension.

Finally, we conclude that respondent violated RPC 3.3(a)(1) and RPC 8.4(c) in connection with his misrepresentations to us and to the OAE

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[11] The record clearly reflects the presenter's intention to "withdraw" only one theory of RPC 8.1(b) (failure to produce the envelope) charged in paragraph 91(c) of the complaint. The two other theories under which respondent violated that Rule (failure to produce reconstructed three-way reconciliations and a list of days he was unable to work due to medical issues) fall within the scope of our de novo review. R. 1:20-15(e)(3).

concerning the <u>C.M.</u> matter. The hearing panel found that the OAE had not proven the charges by clear and convincing evidence. However, our review of the record leads us to the opposite conclusion.

On April 21, 2016, in connection with an enforcement proceeding related to C.M., respondent represented to us that he and C.M. agreed to settle the $8,105 fee arbitration determination for $4,000, to be paid by respondent in two installments. Later that afternoon, C.M. contacted the OAE for a status update following the oral argument. During that conversation, she unequivocally denied having entered into any written or oral settlement agreement with respondent. On May 9, 2016, respondent sent C.M. a check for $8,105, in full satisfaction of the fee arbitration determination.

No signed settlement agreement and no clear verbal agreement existed. C.M.'s testimony that she was unwilling to settle for any amount less than that awarded her was steadfast and consistent. Her testimony that respondent continued to call her, even after he alleged that she had agreed to accept $4,000, demonstrated that respondent himself was not certain that C.M. intended to settle. In his April 27, 2016 letter to Chief Counsel, respondent admitted that he and C.M. had not agreed to the terms of the purported settlement. Thus, even if respondent thought C.M.'s communication was unclear, he presented the settlement as fact to us in order to avoid a temporary suspension.

Respondent's remarks at his April 15, 2021 oral argument made the likelihood of the supposed settlement even more remote. In response to our questions respondent conceded that, in the event that C.M. had agreed to settle the case, he would have been obligated to seek outside counsel to review any agreement, pursuant to the mandates of RPC 1.8(a) (conflict of interest – improper business transaction with a client). When confronted with the fact that he had effectively admitted that no settlement existed, respondent said:

> Well that's why I sent her the written agreement, she certainly could have taken the written agreement to an independent attorney. But I asked -- the principal terms of the agreement or amount. I mean she was well aware that she had an award for more than that. And she was -- by the simple word, yes, she was willing to accept that which is what I reported to the Board. I didn't say that the settlement had been consummated and had been resolved.
>
> [Transcript, April 15, 2021, pp. 23-24.]

Thus, respondent's 2021 remarks further support our conclusion that respondent knew in 2016 that he had not procured a settlement with C.M., when he falsely represented the opposite to us. Respondent certainly violated RPC 8.4(c).

In sum, we find that respondent violated RPC 1.15(d); RPC 3.3(a)(1) (one instance); RPC 5.5(a)(1); RPC 8.1(b) (one instance); and RPC 8.4(c) (two instances). The only remaining issue is the appropriate quantum of discipline to impose for respondent's infractions.

Recordkeeping irregularities ordinarily are met with an admonition, as long as they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014); and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014).

Respondent practiced law as the Law Offices of John Charles Allen, LLC, without the requisite malpractice insurance. Standing alone, this conduct typically is met with an admonition. In re Lindner, 239 N.J. 528 (2019) (default; for a three-year period, attorney practiced law as a limited liability corporation without maintaining professional liability insurance) and In the Matter of F. Gerald Fitzpatrick, DRB 99-046 (April 21, 1999) (for a six-year period, attorney practiced law in a professional corporation without maintaining liability insurance).

Generally, in matters involving misrepresentations to ethics authorities, the discipline ranges from a reprimand to a term of suspension, depending on the gravity of the offense, the presence of other unethical conduct, and aggravating or mitigating factors. See, e.g., In re DeSeno, 205 N.J. 91 (2011) (reprimand for attorney who misrepresented to the district ethics committee the filing date of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the

investigation of the grievance; prior reprimand); In re Otlowski, 220 N.J. 217 (2015) (censure for attorney who made misrepresentations to the OAE and to the client's lender by claiming that funds belonging to the lender, which had been deposited into the attorney's trust account, were frozen by a court order; to the contrary, they had been disbursed to various parties); In re Freeman, 235 N.J. 90 (2018) (three-month suspension for pool attorney with the Office of the Public Defender (OPD); the attorney failed to communicate with his client about an upcoming hearing on a petition for post-conviction relief; the attorney appeared at the hearing without the client, took actions that were contrary to the client's wishes, and made misrepresentations to the court and the OPD; those statements would later negatively impact the client's ability to pursue an appeal; during the ethics investigation, the attorney lied to the DEC investigator, and later to the hearing panel; violations of RPC 1.2(a), RPC 1.4(b), RPC 3.3(a), RPC 4.1(a), RPC 8.1(a), and RPC 8.4(c) found); In re Silberberg, 144 N.J. 215 (1996) (two-year suspension imposed on attorney who, in a real estate closing, allowed the buyer to sign the name of the co-borrower; the attorney then witnessed and notarized the "signature" of the co-borrower; the attorney stipulated that he knew at the time that the co-borrower was deceased; after the filing of the ethics grievance against him, the attorney falsely stated that the co-borrower had attended the closing; on another occasion, the attorney sent a false

seven-page certification to the district ethics committee in order to cover up his improprieties); and In re Penn, 172 N.J. 38 (2002) (three-year suspension for attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, to placate the client, the attorney lied that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible).

Here, respondent's misrepresentations were particularly egregious because they were made during his appearance before us, an arm of the Supreme Court, and were clearly designed to avoid his temporary suspension.

Generally, the discipline imposed on an attorney who makes misrepresentations to a court or exhibits a lack of candor to a tribunal, or both, ranges from a reprimand to a long-term suspension. See, e.g., In re Marraccini, 221 N.J. 487 (2015) (reprimand imposed on attorney who attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications that had been pre-signed by the manager, who had since died; the attorney was unaware that the manager had died and, upon learning that information, withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); in mitigation, we found that the attorney's actions were motivated by a misguided attempt at efficiency, rather than by

dishonesty or personal gain); In re Monahan, 201 N.J. 2 (2010) (attorney censured for submitting two certifications to a federal district court in support of a motion to extend the time within which to file an appeal; the attorney misrepresented that, when the appeal was due to be filed, he was seriously ill and confined to his home on bed rest and, therefore, either unable to work or unable to prepare and file the appeal, a violation of RPC 3.3(a)(1); the attorney also practiced law while ineligible); In re Trustan, 202 N.J. 4 (2010) (three-month suspension for attorney who, among other things, submitted to the court a client's case information statement that falsely asserted that the client owned a home, and drafted a false certification for the client, which was submitted to the court in a domestic violence trial; violations of RPC 3.3(a)(1) and (4); other violations included RPC 1.8(a) and (e), RPC 1.9(c), and RPC 8.4(a), (c), and (d)); In re Forrest, 158 N.J. 428 (1999) (six-month suspension imposed on attorney who, in connection with a personal injury action involving injured spouses, failed to disclose the death of one of his clients to the court, to his adversary, and to an arbitrator, and advised the surviving spouse not to voluntarily reveal the death; violations of RPC 3.3(a)(5), RPC 3.4(a), and RPC 8.4(c); the attorney's motive was to obtain a personal injury settlement); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney

would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve; violations of RPC 3.3(a)(1) and (2), RPC 3.5(b), and RPC 8.4(c) and (d); two prior private reprimands [now admonitions]); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who had been involved in an automobile accident and then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing; violations of RPC 3.3(a)(4), RPC 3.4(f), and RPC 8.4(b)-(d)).

The discipline can range widely, even if the misrepresentation to the court is not made under oath. See, e.g., In the Matter of Jean S. Lidon, DRB 11-254 (October 27, 2011) (admonition imposed on attorney who failed to disclose to the court and to the adversary in her own matrimonial matter that she had redacted a letter produced during discovery, a violation of RPC 3.4(a)); In re Johnson, 102 N.J. 504 (1986) (three-month suspension for attorney's misrepresentation to a judge that his associate was ill so that the attorney could get an adjournment); and In re Forrest, 158 N.J. 428 (1999) (six-month

suspension imposed on attorney who, in connection with a personal injury action involving injured spouses, failed to disclose the death of one of his clients to the court, to his adversary, and to an arbitrator, and advised the surviving spouse not to voluntarily reveal the death; the attorney's motive was to obtain a personal injury settlement).

Arguably, respondent's misrepresentations are most similar to those of the attorney in Johnson, who lied about the health of an associate to get an adjournment. Here, respondent both sent a check that he knew may not be honored and lied about a fee award settlement with a client to avoid a temporary suspension. In other words, both respondent and Johnson lied to a tribunal for purely selfish reasons – to buy themselves more time. Respondent did so twice.

Consequently, the baseline level of discipline for respondent's violations is in the range of a censure to a short-term suspension. However, to craft the appropriate discipline in this case, we must consider both aggravating and mitigating factors.

In aggravation, respondent has been previously disciplined, in 2005 and 2015, for dissimilar conduct. However, 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).

In mitigation, respondent suffers from severe medical issues that contributed, in some measure, to his inability to cooperate with the OAE's investigation. Given respondent's extensive misconduct, especially his dishonesty, we accord this mitigation minimal weight.

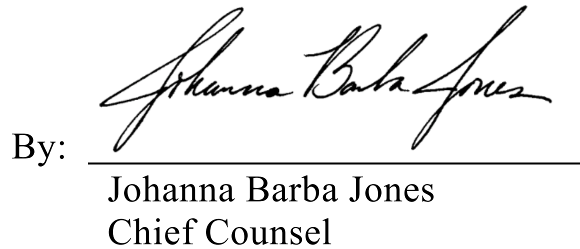
On balance, for his significant, dishonest misconduct toward clients and disciplinary authorities, we determine to impose a three-month suspension. Additionally, prior to reinstatement, we require respondent to attend a continuing legal education course on recordkeeping, and to provide three-way reconciliations to the OAE, on a quarterly basis, for a period of two years commencing upon the entry of the order of final discipline in this matter.

Member Joseph was recused.

Member Campelo was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair



By: ____________________________
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John Charles Allen
Docket No. DRB 20-296

Argued: April 15, 2021

Decided: July 8, 2021

Disposition: Three-month suspension, with conditions

Members	Three-month suspension	Recused	Absent
Gallipoli	X		
Singer	X		
Boyer	X		
Campelo			X
Hoberman	X		
Joseph		X	
Menaker	X		
Petrou	X		
Rivera	X		
Total:	7	1	1

Johanna Barba Jones
Chief Counsel