

informed about the status of a matter and to promptly comply with reasonable requests for information); RPC 1.5(a) (unreasonable fee); RPC 1.16(d) (failure to protect a client's interests upon termination of representation and to refund the unearned portion of the fee); RPC 8.1(b) (failure to cooperate with disciplinary authorities); and RPC 8.4(d) (conduct prejudicial to the administration of justice).¹

For the reasons set forth below, we determine to impose an eighteen-month suspension, with conditions, consecutive to the one-year suspension ordered by the Court on May 7, 2020. In re Calpin, 242 N.J. 75 (2020).

Respondent earned admission to the New Jersey bar in 2001 and to the Hawaii bar in 2000. At the relevant time, he maintained a law practice in Medford, New Jersey. He has a significant disciplinary history.

On June 19, 2014, following a motion for discipline by consent, respondent was reprimanded for his violations of RPC 1.1(a) (gross neglect); RPC 1.3; and RPC 1.4(b). In re Calpin, 217 N.J. 617 (2014). In that matter, respondent was retained by a client and promptly filed an answer and counterclaim on the client's behalf. Thereafter, however, respondent failed to respond to discovery requests, which resulted in the court striking his client's

¹ Due to respondent's failure to file an answer to the formal ethics complaint, the DEC amended the complaint to include the RPC 8.1(b) and RPC 8.4(d) charges.

answer, dismissing the counterclaim, and entering final judgment of default against the client. Respondent failed to notify his client of the adverse rulings, ultimately resulting in a writ of execution being entered against his client.

On January 24, 2017, respondent received an admonition for his violation of RPC 1.3. In the Matter of Brian LeBon Calpin, DRB 16-287 (January 24, 2017). In that case, respondent agreed to represent a client for a flat fee. Three months later, the client stopped making monthly payments on the fee and ceased communicating with respondent. Respondent's adversary filed a motion to dismiss his client's pleadings and respondent failed to file opposition to the motion. Respondent also failed to appear for the scheduled trial because he inadvertently failed to calendar the date.

Due to respondent's adversary's failure to provide a complete explanation of respondent's failure to appear to the court, despite having spoken to respondent on the telephone just prior, the court granted the adversary's motion. Despite learning of the miscommunication, respondent took no action on his client's case. We considered, in aggravation, respondent's prior discipline for an RPC 1.3 violation and found that respondent should have had a heightened awareness that his lack of diligence would not be tolerated.

As noted above, on May 7, 2020, in a default matter, respondent received a one-year suspension for his violations of RPC 1.1(a); RPC 1.1(b) (pattern of

neglect); RPC 1.3; RPC 1.4(b); RPC 1.9(c) (use of information relating to the representation of a former client to the disadvantage of the client, except when the Rules of Court would permit, or the information is generally known); RPC 1.15(b) (failure to promptly deliver client funds or property); RPC 1.16(d); RPC 8.1(b); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation). In the Matter of Brian Le Bon Calpin, DRB 19-172 (December 17, 2019); In re Calpin, 242 N.J. 75 (2020).

In that case, respondent performed little or no work on three matters and failed to communicate with his clients. Additionally, respondent failed to return the unearned portion of the fees to each client. Respondent also lied to disciplinary authorities regarding his return of the unearned retainer fees. Finally, after a client posted a negative online review of respondent's law practice, respondent retaliated by posting his own negative review of his client's business, disclosing information not generally known to the public.

Effective January 20, 2020, the Court temporarily suspended respondent for his failure to comply with a fee arbitration determination in the Diaz-Hernandez matter underlying this case. In re Calpin, 240 N.J. 216 (2019).

Effective July 27, 2020, respondent was temporarily suspended, a second time, for his failure to comply with a second fee arbitration determination. In re Calpin, 242 N.J. 528 (2020).

To date, respondent remains suspended pursuant to both temporary suspensions and the one-year disciplinary suspension issued in May 2020.

Service of process was proper. On January 21, 2021, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home and office addresses of record. The certified mail sent to both addresses went unclaimed and was returned to the DEC. The regular mail was not returned.

On March 3, 2021, the DEC sent letters to respondent, by certified and regular mail, to his home and office addresses of record, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of discipline, and the complaint would be amended to include willful violations of RPC 8.1(b) and RPC 8.4(d). The certified mail to both addresses was returned as unclaimed and the regular mail was not returned.

As of March 31, 2021, respondent had not filed an answer to the complaint and the time within which he was required to do so had expired. Accordingly, the DEC certified this matter to us as a default.

On May 24, 2021, the Office of Board Counsel published a disciplinary notice in the New Jersey Law Journal, stating that a formal ethics complaint had been filed against respondent, that respondent had defaulted, and that we would

review the matter on July 15, 2021. The notice informed respondent that he had until June 9, 2021 to file a motion to vacate the default (MVD). Respondent failed to file an MVD.

We now turn to the allegations of the complaint.

The Diaz-Hernandez Matter

On October 14, 2017, Welmer Diaz-Hernandez retained respondent to represent him in a post-judgment matrimonial matter. Diaz-Hernandez paid respondent a \$3,000 retainer toward the representation.

On October 17, 2017, Diaz-Hernandez sent an e-mail to respondent inquiring whether respondent had heard from opposing counsel. Seven days later, Diaz-Hernandez sent another e-mail to respondent seeking an update on his matter. Respondent told Diaz-Hernandez that he had spoken with opposing counsel, who had agreed that the matrimonial settlement agreement needed to be modified. Respondent also informed Diaz-Hernandez that he would address the necessary changes with counsel.

Thereafter, Diaz-Hernandez repeatedly attempted to contact respondent. However, respondent failed to communicate with Diaz-Hernandez and failed to revise the matrimonial settlement agreement.

In January 2018, Diaz-Hernandez retained new counsel, who attempted to contact respondent to terminate the representation and to request a return of Diaz-Hernandez's retainer. Respondent did not reply to the request, did not refund Diaz-Hernandez's retainer, and did not provide a statement of services explaining how he used the retainer.

As noted above, effective January 20, 2020, the Court temporarily suspended respondent for his failure to comply with a fee arbitration determination in Diaz-Hernandez's favor. In re Calpin, 240 N.J. 216 (2020).

The Kristy Homan Matter

On February 18, 2018, Kristy Homan retained respondent to represent her in seeking visitation with her granddaughter. Homan and respondent entered into a fee agreement whereby Homan would pay respondent a \$750 flat fee for a negotiated settlement, an additional \$250 if the case required a motion to be filed, and an additional \$4,000 if a trial was scheduled. The fee agreement provided that, if respondent withdrew as Homan's counsel "for any lawful reason," or if Homan sought the assistance of other counsel, she agreed that respondent "shall receive, has earned and shall retain all sums paid." Homan paid respondent \$750 toward the representation.

In September 2018, Homan contacted respondent seeking an update on her matter because she had not heard from him since February 18, 2018. She left a voicemail message for respondent but did not receive a return telephone call.

On December 11, 2018, Homan again contacted respondent seeking an update on her matter. She left another voicemail message for respondent but did not receive a return telephone call. The next day, Homan contacted respondent again. However, she received a message that respondent's telephone had been disconnected. Consequently, she was unable to leave a voicemail message for respondent.

Homan ultimately hired different counsel to pursue her visitation case. Homan did not receive a refund of the \$750 fee she paid to respondent.

We find that the facts recited in the complaint support the majority of the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. See R. 1:20-4(f)(1). Notwithstanding that Rule, each charge in the complaint must be supported by sufficient facts for us to determine that unethical conduct has occurred.

Specifically, respondent twice violated RPC 1.3 by not pursuing the Diaz-Hernandez or Homan matters for which he had been retained and paid. He also

failed to communicate with his clients regarding their cases, despite the clients' inquiries, and, from the scant record before us, appears to have performed little to no work on either matter, requiring both Diaz-Hernandez and Homan to retain new counsel to pursue their matters.

Respondent, thus, twice violated RPC 1.4(b) by failing to communicate with both Diaz-Hernandez and Homan and failing to keep them informed about the status of their cases, despite their numerous requests. By virtue of respondent's utter failure to communicate with Diaz-Hernandez and Homan, he failed to explain their matters sufficiently to allow them to make informed decisions regarding the representation.

However, we find that the RPC 1.4(a) charge cannot be sustained. That Rule applies only to "prospective client[s]." Ibid. Diaz-Hernandez and Homan were existing clients and there is no evidence in the record before us that respondent failed to inform his clients of how, when, and where they could communicate with respondent. Rather, he simply failed to return their communications during their existing attorney-client relationship.

The complaint charged respondent with a violation of RPC 1.5(a) only in the Homan matter. In prior cases, we declined to find an RPC 1.5(a) violation where, as here, the record lacks clear and convincing proof of unreasonableness as established through the eight-factor balancing test of that Rule. Our

disinclination has been particularly firm in default cases, where those factors are neither pled nor analyzed.

Although we determine to dismiss the RPC 1.5(a) charge, that does not mean that respondent's handling of the fee was appropriate. In the Homan matter, respondent failed to return the unearned portion of his fee, in violation of RPC 1.16(d). See, e.g., In re Ehrlich, 235 N.J. 321 (2018); In re Sarsano, 238 N.J. 77 (2019); cf. In the Matter of Anthony J. LaRusso, DRB 18-373 (July 15, 2019) at 23 (“[a]lthough the complaint does not contain enough information for us to determine whether respondent's total fee was reasonable, we consider his \$1,000 fee for the preparation of deeds performed by another attorney to be a per se violation of [RPC 1.5(a)], in addition to RPC 8.4(c)"); In re LaRusso, 240 N.J. 40 (2019). However, the DEC did not specifically allege that respondent violated RPC 1.16(d) in the Homan matter, and thus, we are precluded from making such a finding. See R. 1:20-4(b) (requiring that a disciplinary complaint specify the ethics rules alleged to have been violated). We may, however, consider respondent's conduct in the Homan matter in aggravation.

Conversely, we determine that respondent violated RPC 1.16(d) in the Diaz-Hernandez matter. The record clearly demonstrates that respondent failed to return the unearned portion of her retainer. Respondent also failed to provide Diaz-Hernandez with any statements or invoices supporting his fee, as R. 5:3-

5(a)(5), governing family court representation, requires. Indeed, a fee arbitration award was entered on Diaz-Hernandez's behalf and respondent still failed to return the unearned portion of the fee within thirty days. R. 1:20A-3(e). As a result of OAE's related enforcement action, on December 20, 2019, the Court ordered respondent to pay the fee arbitration award to Diaz-Hernandez, an Order respondent ignored. Consequently, effective January 20, 2020, the Court temporarily suspended respondent until he complies with its Order, which he has yet to demonstrate.

Finally, by way of amendment, the OAE charged respondent with violating RPC 8.1(b) and RPC 8.4(d) by failing to file an answer to the complaint. We have no difficulty discerning that respondent's failure to answer the complaint constituted a failure to respond to a lawful demand for information from a disciplinary authority, in violation of RPC 8.1(b).

We are likewise satisfied that respondent's non-participation in the disciplinary process by failing to file an answer when he was obligated to do so constituted "conduct that is prejudicial to the administration of justice," in violation of RPC 8.4(d).

In sum, we find that respondent violated RPC 1.3 (two instances); RPC 1.4(b) (two instances); RPC 1.16(d); RPC 8.1(b); and RPC 8.4(d). We dismiss the RPC 1.4(a) and RPC 1.5(a) charges as unsupported by the record. The sole

issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Generally, an admonition is the appropriate form of discipline for lack of diligence and failure to communicate with the client. See, e.g., In the Matter of Christopher G. Cappio, DRB 15-418 (March 24, 2016) (after the client had retained the attorney to handle a bankruptcy matter, paid his fee, and signed the bankruptcy petition, the attorney failed to file the petition or to return his client's calls in a timely manner); In the Matter of Charles M. Damian, DRB 15-107 (May 27, 2015) (attorney filed a defective foreclosure complaint and failed to correct the deficiencies, despite notice from the court that the complaint would be dismissed if they were not cured; after the complaint was dismissed, he took no action to vacate the dismissal, a violation of RPC 1.3; the attorney also failed to tell the clients that he had never amended the original complaint or filed a new one, that their complaint had been dismissed, and that it had not been reinstated, a violation of RPC 1.4(b); in mitigation, the attorney had no other discipline in thirty-five years at the bar; staffing problems in his office negatively affected the handling of the foreclosure case; he was battling a serious illness during this time; and other family-related issues consumed his time and contributed to his inattention to the matter); and In the Matter of Stephen A. Traylor, DRB 13-166 (April 22, 2014) (attorney was retained to

represent a Venezuelan native in pending deportation proceedings instituted after he had overstayed his visa; although the attorney and his client had appeared before the immigration court on three separate occasions, the attorney failed to file a Petition for Alien Relative Form until several days after his client was ordered deported; the appeal from that order was denied, which the attorney did not disclose to the client, but the petition was granted months later; violations of RPC 1.3 and RPC 1.4(b)).

Likewise, an admonition is the appropriate sanction for an attorney's failure to promptly refund the unearned portion of a fee. See, e.g., In re Gourvitz, 200 N.J. 261 (2009); In the Matter of Larissa A. Pelc, DRB 05-165 (July 28, 2005); and In the Matter of Stephen D. Landfield, DRB 03-137 (July 3, 2003). But see, In re Wise, 240 N.J. 239 (2019) (three-month suspension for an attorney who ceased work in two separate matters after the clients had paid a retainer fee; the attorney failed to return the unearned portion of the fee; the attorney also failed to communicate with the clients; we found in aggravation that the attorney had previously received an admonition and three reprimands).

When an attorney fails to cooperate with disciplinary authorities, and previously has been disciplined, but the attorney's ethics record is not serious, reprimands have been imposed. See, e.g., In re Larkins, 217 N.J. 20 (2014) (default; attorney did not reply to the ethics investigator's attempts to obtain

information about the grievance and failed to file an answer to the formal ethics complaint; although we noted that a single violation of RPC 8.1(b), in a default matter, does not necessitate enhancement of the discipline from an admonition to a reprimand, a reprimand was imposed based on a prior admonition and, more significantly, a 2013 censure, also in a default matter, in which the attorney had failed to cooperate with an ethics investigation); In re Wood, 175 N.J. 586 (2003) (attorney failed to cooperate with disciplinary authorities; prior admonition for similar conduct); In re DeBosh, 174 N.J. 336 (2002) (failure to cooperate with disciplinary authorities; prior three-month suspension); and In re Williamson, 152 N.J. 489 (1998) (attorney failed to cooperate with disciplinary authorities; prior private reprimand for failure to carry out a contract of employment with a client in a matrimonial matter and failure to surrender the client's file to a new attorney).

We applied the above precedent to a recent default matter featuring the same misconduct (plus gross neglect, in violation of RPC 1.1(a)) and a less significant disciplinary history, and determined to impose a three-month suspension. In the Matter of Glenn M. Diehl, DRB 21-014 (August 19, 2021) (slip op. at 12). In that case, the attorney failed to diligently complete the representation of clients in a single client matter, unilaterally ceased all communication with the clients, and failed to provide the clients' file to their

new counsel, despite repeated requests. Id. at 7-8. In aggravation, we considered that the matter constituted the attorney's second consecutive default and that the attorney previously had been reprimanded, in connection with his first default, for failure to cooperate with disciplinary authorities. Id. at 2, 11-12.

Here, comparing respondent's misconduct to the facts of Diehl, which also considered the default status of the matter as an aggravating factor, we determine that at least a three-month term of suspension is warranted in this case. Unlike Diehl, respondent's misconduct harmed two clients, and respondent's ethics history is objectively more egregious.

In further aggravation, 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). This is respondent's fourth time before us and his second consecutive default, for many of the same RPC violations for which he has already been disciplined:

<u>RPC</u> Violation	6/19/2014 Reprimand	1/24/2017 Admonition	5/7/2020 One-Year Suspension	Instant Matter
1.1(a)	X		X	
1.1(b)			X	
1.3	X	X	X	X
1.4(b)	X		X	X
1.9(c)			X	
1.15(b)			X	
1.16(d)			X	X
8.1(b)			X	X
8.4(d)				X

Here, as in each of the three times respondent previously was before us, respondent has been found to lack diligence. Moreover, this is the third time respondent has been before us for his failure to communicate with his clients.

Moreover, respondent has demonstrated a troubling tendency to agree to represent a client, perform no work on the matter, and then refuse to return to the client the unearned portion of the fee. Here, both Diaz-Hernandez and Homan paid respondent retainer fees and received little or no work on their matters. This conduct is nearly identical to the misconduct we addressed in 2019 when, in two matters, respondent accepted fees and provided no legal services in return. We, therefore, weigh in aggravation respondent's failure to conform his conduct to ethical standards despite the opportunity to learn from his past errors afforded by those prior matters. In re Zeitler, 182 N.J. 389, 398 (2005) (“[d]espite having received numerous opportunities to reform himself,

respondent has continued to display his disregard, indeed contempt, for our disciplinary rules and our ethics system”).

Additionally, the Court already has ordered respondent to comply with the fee arbitration award in the Diaz-Hernandez matter, as well as a second, unrelated fee arbitration matter. However, respondent has ignored the Court’s Orders. Thus, it is abundantly clear that respondent has a disturbing pattern of disregarding the Court, ignoring the ethics process, and failing to learn from his past mistakes. We, thus, conclude that he poses a serious risk to the public.

Normally, disgorgement of a fee is ordered when the record is clear that an attorney accepted a fee and performed no work on a matter. Here, the complaint does not explicitly state the amount of work respondent performed in the Homan matter and Homan has not sought relief through fee arbitration. However, as pled, the complaint suggests that respondent performed no work on the matter, which ultimately forced Homan to hire new counsel to pursue grandparent visitation. We, thus, determine that there is a sufficient basis to order the disgorgement of the fee in the Homan matter.

There is no mitigation for us to consider.


Accordingly, we determine to impose an eighteen-month suspension, to be served consecutive to the one-year suspension previously imposed in DRB 19-172, in order to protect the public and preserve confidence in the bar. As a

condition precedent to his reinstatement, respondent is required to disgorge the fee in the Homan matter and to provide proof of same to the Office of Attorney Ethics (the OAE). Additionally, we determine that, upon reinstatement, respondent is to practice law under the supervision of a practicing attorney approved by the OAE for a period of two years and until further Order of the Court.

Chair Gallipoli and Members Petrou and Rivera voted to disbar respondent. Member Joseph voted to impose a three-month consecutive suspension, with the same conditions.

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 Brian LeBon Calpin
Docket No. DRB 21-082

Decided: September 27, 2021

Disposition: Eighteen-Month Suspension

<i>Members</i>	Eighteen-Month Suspension	Disbar	Three-Month Suspension
Gallipoli		X	
Singer	X		
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph			X
Menaker	X		
Petrou		X	
Rivera		X	
Total:	5	3	1



Johanna Barba Jones
Chief Counsel