

counts – failure to cooperate with disciplinary authorities);¹ and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

On May 10, 2021, respondent filed a motion to vacate the default in this matter (MVD), which we denied on June 21, 2021. For the reasons set forth below, we now determine to impose a six-month suspension, with conditions.

Respondent earned admission to the New Jersey and Pennsylvania bars in 1999. At the relevant times, he maintained a law practice in Philadelphia, Pennsylvania.

On August 5, 2020, in connection with a motion for discipline by consent, the Court censured respondent for gross neglect; lack of diligence; failure to communicate with a client; failure to expedite litigation (RPC 3.2); knowingly disobeying an obligation under the rules of a tribunal (RPC 3.4(c)); and conduct prejudicial to the administration of justice (RPC 8.4(d)). In re Vaccaro, 243 N.J. 286 (2020). In that case, respondent represented a married couple in three matters, one of which was a personal injury claim. Respondent failed to communicate with his clients. Nearly two years after he was retained,

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

respondent filed the complaint. Respondent subsequently failed to file any opposition to the defendant's motion to dismiss for failure to comply with discovery. The trial court ultimately sanctioned respondent \$250 for his repeated failures to attend hearings and to comply with the court's orders.

On March 24, 2021, in connection with a motion for reciprocal discipline, the Court reprimanded respondent for lack of diligence; making a false statement of material fact or law to a tribunal (RPC 3.3(a)(1)); and conduct involving dishonesty, fraud, deceit, or misrepresentation. In re Vaccaro, 245 N.J. 492 (2021). In the case underlying that matter, respondent failed to cooperate with Pennsylvania disciplinary authorities' investigation of his misconduct in a juvenile delinquency matter for which he had been retained. Respondent failed to reply to requests from the juvenile's immigration attorney, withheld information from her unless his demands were met, and lied to the juvenile delinquency judge.

In this matter, service of process was proper. On January 21, 2021, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address of record, in Philadelphia, Pennsylvania. The certified mail receipt was returned with an illegible signature and the regular mail was not returned.

On February 26, 2021, the OAE sent a letter to respondent, by regular mail and e-mail, at the Philadelphia address and respondent's e-mail address of record, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the complaint would be amended to include a willful violation of RPC 8.1(b), the allegations of the complaint would be deemed admitted, and the record would be certified directly to us for the imposition of discipline. The regular mail was not returned and the e-mail was not returned as undeliverable.

As of March 23, 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 OAE certified this matter to us as a default.

We now turn to the allegations of the complaint.

The Mazariegos Matter

On January 22, 2020, the OAE received a referral from H. Benjamin Sharlin, Esq. regarding respondent's handling of a personal injury matter. Sharlin informed the OAE that he recently had been contacted by Yolanda Mazariegos and her daughter Lesbia Soc regarding respondent's work on their case. Soc assisted her mother in communicating with respondent because

Mazariegos spoke limited English. Sharlin represented to the OAE that respondent did not provide discovery in the personal injury case, did not communicate with his client, and lied to the client regarding the dismissal of the case. On February 14, 2020, the OAE docketed the matter for investigation.

Yolanda and her husband Jacinto Mazariegos had retained respondent to represent them in a personal injury matter arising from a January 2, 2015 motor vehicle accident.² On March 24, 2017, John W. Harding, Esq., the attorney for the defendants in the personal injury lawsuit, sent respondent a letter acknowledging receipt of the answers to his interrogatories, and informing respondent that several answers were incomplete, non-specific, or non-responsive. Harding requested that respondent provide more specific answers to twelve questions. Respondent failed to inform Yolanda Mazariegos (Mazariegos)³ or Soc of Harding's request. Respondent also did not reply to Harding's letter.

On March 29, 2017, Harding sent respondent another letter, this time

² A review of the New Jersey eCourts system indicates that the complaint was filed on December 21, 2016.

³ Although the marital couple retained respondent, chiefly Yolanda Mazariegos interacted with respondent.

requesting that he have Mazariegos sign an authorization to release records to his office. Respondent neither provided the letter to Mazariegos nor replied to Harding.

On May 19, 2017, Harding sent respondent a third letter requesting more specific answers to his interrogatory questions and an executed authorization from Mazariegos. Harding warned that, if respondent failed to provide the requested discovery within ten days, Harding would file a motion to compel discovery. Respondent failed to advise Mazariegos or Soc of Harding's requests.

On June 2, 2017, Harding filed a motion to compel discovery. Respondent neither informed Mazariegos or Soc that the motion had been filed, nor replied to the motion. Subsequently, on June 23, 2017, the Honorable Kay Walcott-Henderson, J.S.C., signed an order directing Mazariegos to provide an executed authorization and more specific answers to interrogatories within ten days.

Respondent failed to advise Mazariegos or Soc about the June 23, 2017, order and failed to comply with the order's directives. Thereafter, on July 19, 2017, Harding filed a motion to compel a medical evaluation of Mazariegos, citing her failure to appear for a previously scheduled examination. Respondent failed to inform Mazariegos or Soc about either the scheduled medical evaluation or the motion to compel a medical evaluation. Respondent also failed

to reply to Harding's motion.

Consequently, on August 17, 2017, Harding filed a motion to dismiss Mazariegos' complaint for failure to provide discovery. Again, respondent neither informed Mazariegos or Soc of the motion nor filed a reply. On September 15, 2017, Judge Walcott-Henderson granted Harding's motion and dismissed Mazariegos' complaint, without prejudice. Respondent failed to advise Mazariegos or Soc that the complaint had been dismissed, without prejudice.

On November 17, 2017, Harding filed a motion to dismiss the complaint, with prejudice. Respondent again failed to inform Mazariegos or Soc that Harding had filed the motion and failed to file a reply to the motion. Consequently, on January 2, 2018, Judge Walcott-Henderson granted the motion and signed an order dismissing the case, with prejudice. Respondent failed to inform Mazariegos or Soc that the complaint had been dismissed, with prejudice.

Seven months later, on July 17, 2018, Soc sent a text-message to respondent inquiring as to the status of Mazariegos' case and emphasizing that her mother wanted to settle as soon as possible. Respondent represented to Soc that he was working on the case as fast as he could and that it would be resolved within a few months.

From January 3 through March 20, 2019, Soc attempted to communicate with respondent, who either failed to reply or stated that he would speak with her later, but failed to do so. On March 20, 2019, Soc informed respondent that her mother was worried about his lack of communication. Respondent promised to call Mazariegos at 8:00 p.m. that night. Respondent did not call Mazariegos, however, on March 26, 2019, he asked Soc to visit him in his office. Soc told respondent that speaking by telephone would work best for her, due to her work schedule, and respondent agreed to speak with Soc on March 27, 2019, at 11:30 a.m. Respondent, however, did not follow through on his commitment to telephone Soc.

Thereafter, from April 26 through November 22, 2019, Soc continued to contact respondent in an effort to obtain information about her mother's case. Respondent either failed to reply to Soc or told her he would contact her later, but failed to do so. On November 22, 2019, Soc sent a text message to respondent and informed him that her mother was distressed by the uncertainty of the case and respondent's lack of communication. Respondent advised Soc that he was very busy and would call her mother that night, but never did.

Later, in December 2019, Soc contacted her mother's car insurance

company, Allstate Insurance Company (Allstate), for an update regarding the lawsuit. Allstate directed Soc to contact the defendant's insurance carrier, New Jersey Manufacturers Insurance Group (NJM). When Soc called NJM regarding the case, she was advised that the lawsuit had been dismissed approximately two years earlier. In January 2020, Soc sent an e-mail to respondent terminating him as her mother's attorney and requesting that he provide Mazariegos with her file. Respondent failed to reply to the e-mail and failed to provide Mazariegos with her file.

Respondent's Recordkeeping Violations

On March 11, 2020, the OAE sent a letter to respondent, via certified and regular mail, directing him to produce certain financial records and an executed attorney bank account disclosure form. The letter also provided respondent with a copy of the Mazariegos grievance. Despite proper service, respondent did not provide the requested documents. Consequently, the OAE sent respondent a second letter, via e-mail and regular mail, directing him to provide the requested documents no later than April 20, 2020.

On April 20, 2020, respondent sent a letter in reply, stating that he had enclosed a compact disc (CD) that contained the requested recordkeeping

documents. However, respondent failed to enclose a CD with the letter. Also in the letter, respondent represented to the OAE that he first learned the Mazariegos case had been dismissed after receiving the OAE's letter. Respondent claimed that Harding had never served him with a copy of the filed motions or the orders resulting therefrom. Respondent further claimed that he was "patiently waiting for the Court to schedule the parties for an Arbitration Hearing, which evidently never came."

By letter dated May 13, 2020, the OAE informed respondent that he had failed to include the referenced CD with his letter and requested that he provide it no later than May 28, 2020. The OAE also called respondent on May 26, 2020 to request the outstanding recordkeeping documents. Respondent nevertheless failed to provide the recordkeeping documents to the OAE.

After the OAE sent respondent another letter concerning the outstanding documents, the OAE received from respondent a letter containing the attorney bank account disclosure form and a CD containing recordkeeping documents. Thereafter, the OAE scheduled respondent for a September 24, 2020 demand audit. Respondent appeared as scheduled. The ensuing analysis of respondent's financial records revealed the following recordkeeping deficiencies: failure to maintain a business receipts or disbursements journal; failure to maintain three-

way reconciliations; failure to maintain deposit slips; electronic transfers made from the attorney trust account (ATA) without proper authorization; and failure to maintain checks or deposit slips.

On September 29, 2020, following the demand audit, the OAE sent respondent a letter, via e-mail, facsimile, and regular mail, outlining the recordkeeping deficiencies, providing him an opportunity to offer a more detailed written response, and directing him to provide financial records and corrective actions no later than October 12, 2020. Respondent confirmed receipt of the letter the same day.

On October 13, 2020, respondent sent an e-mail to the OAE claiming that he was completing his response and that it would be delivered that day by e-mail, with hard copy to follow. Respondent thereafter failed to provide the OAE with either a response or the requested documents

As stated previously, on May 10, 2021, respondent filed an MVD in this matter. In order to successfully vacate a default, a respondent must meet a two-pronged test by offering both a reasonable explanation for the failure to answer the ethics complaint and asserting meritorious defenses to the underlying charges. Generally, if only one of the prongs is satisfied, the motion is denied.

As to the first prong, respondent claimed he did not file a timely answer to the ethics complaint because he “was avoiding this unpleasant and embarrassing matter.” In respect of prong two, respondent asserted that he had “no defenses to the charges; and hope[d] that the admissions contained in the proposed Answer will mitigate [his] circumstances.”

By letter dated May 10, 2021, the OAE opposed respondent’s motion to vacate the default, asserting that respondent’s failure to file a timely answer resulted in the unnecessary expenditure of additional resources to address the default.

Following our review of the MVD, we determined that respondent offered neither a reasonable explanation for his failure to file an answer to the ethics complaint nor asserted a meritorious defense to the underlying charges. Respondent’s argument that he failed to cooperate with the OAE to avoid the embarrassment and unpleasantness of a disciplinary action misses the mark. Respondent has been on notice, since March 2020, that the Mazariegos investigation was pending. Despite being publicly disciplined twice in the intervening months, respondent bizarrely chose to commit additional ethics violations by failing to cooperate with the OAE’s investigation and by failing to file an answer to the formal ethics complaint. Respondent’s sorely misguided

effort to avoid “embarrassment and unpleasantness” does not pass muster as a reasonable explanation for his failure to file an answer to the formal ethics complaint.

Regarding the second prong, respondent has wholly admitted his wrongdoing. Admitting one’s misconduct is clearly not a meritorious defense to the underlying charges. Moreover, in his proposed verified answer, respondent has offered no explanation as to why he neglected his client’s case for nearly three years.

As unpleasant as an ethics action may be, attorneys must be responsive to the disciplinary system. Here, respondent knew that he acted unethically, but withheld his admission until forced to respond to us. If respondent had submitted a timely answer to the OAE’s formal ethics complaint, admitting, as he now has, to the misconduct, he could have spared himself the aggravating impact of a default being entered against him.

Accordingly, we determined to deny respondent’s MVD and entered a letter decision to that effect on June 21, 2021.

Following our review of the underlying charges of misconduct, we find that the facts recited in the complaint support all 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).

Specifically, respondent violated RPC 1.1(a) and RPC 1.3 by failing to respond to multiple discovery requests in the Mazariegos case and by failing to respond to two separate motions to dismiss. As a result of respondent's utter and inexcusable inaction, the trial court dismissed his client's case, with prejudice.

Furthermore, because of respondent's violations of RPC 1.4(b), Mazariegos was not even aware that her case had been dismissed until her daughter, Soc, contacted NJM – the defendants' insurer – to inquire as to the status of the case. Respondent failed to provide Mazariegos any information regarding her case. Instead, whenever Soc contacted respondent for information, respondent either told her he was busy or would call her back later. However, respondent never followed through on his promises, and left Mazariegos in the dark for nearly three years.

Worse still, respondent violated RPC 8.4(c) when, in response to Soc's request for a status update on the case, he lied and told her he was working on it and that it should be resolved in a few months. He made that statement despite knowing, at that time, that the case had been dismissed, with prejudice, seven months prior. Thereafter, instead of being honest with Soc and telling her that

Mazariegos' case had been dismissed due to his own misconduct, he led her to believe the case was still pending and that he had been working on it. It was not until Soc contacted NJM that she learned that the case had been closed for nearly two years.

Additionally, although not charged, respondent lied to the OAE when he claimed that he first learned that the Mazariegos matter had been dismissed when he received the grievance. In his proposed verified answer, he admitted that he knew his misconduct had resulted in the dismissal of Mazariegos' case.

Additionally, respondent violated RPC 1.15(d) by failing to maintain proper financial records, as R. 1:21-6 requires. Specifically, respondent failed to maintain a business receipts or disbursements journal; failed to maintain three-way reconciliations; failed to maintain deposit slips; conducted electronic transfers from the ATA without proper authorization; and failed to maintain checks or deposit slips, all in violation of RPC 1.15(d).

Finally, respondent twice violated RPC 8.1(b) by failing to comply with the OAE's demands for production of financial records and by failing to file an answer to the complaint.

In sum, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.15(d); RPC 8.1(b) (two instances); and RPC 8.4(c). The sole issue

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

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).

Generally, in default matters, a reprimand is imposed for lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities, even if this conduct is accompanied by other ethics infractions, such as gross neglect. See, e.g., In re Cataline, 219 N.J. 429 (2014) (reprimand for attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with requests for information from the district ethics committee investigator); In re Rak, 203 N.J. 381 (2010) (reprimand for attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of a grievance); In re Van de Castle, 180 N.J. 117 (2004) (reprimand for attorney who grossly neglected an estate matter, failed to communicate with the client, and failed to cooperate with disciplinary authorities); and In re Goodman, 165 N.J. 567

(2000) (reprimand for attorney who failed to cooperate with disciplinary authorities and grossly neglected a personal injury case for seven years by failing to file a complaint or to otherwise prosecute the client's claim; the attorney also failed to keep the client apprised of the status of the matter; prior private reprimand).

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

court's order, violations of RPC 1.4(c)); In re Ruffolo, 220 N.J. 353 (2015) (knowing that the complaint had been dismissed, the attorney assured the client that his matter was proceeding apace, and that he should expect a monetary award in the near future; both statements were false, in violation of RPC 8.4(c); the attorney also exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, not working on it after filing the initial claim, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter, violations of RPC 1.1(a) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates); and In re Falkenstein, 220 N.J. 110 (2014) (attorney led the client to believe that he had filed an appeal and concocted false stories to support his lies, a violation of RPC 8.4(c); he did so to conceal his failure to comply with his client's request that he seek post-judgment relief, violations of RPC 1.1(a) and RPC 1.3; because he did not believe the appeal had merit, the attorney's failure to withdraw from the case was a violation of RPC 1.16(b)(4); the attorney also practiced law while ineligible, although not knowingly, a violation of RPC 5.5(a)).

Based on the above precedent, we determine that a censure is the baseline sanction for the totality of respondent's misconduct. In setting that baseline, we note, in particular, the duration of respondent's negligence and deception. For

nearly three years, respondent led Soc and Mazariegos to believe the case was proceeding and that he was working on it, even though he failed to respond to any court filings, and it already had been dismissed with prejudice. Furthermore, when Soc finally found out the case had been dismissed – not from respondent, but from NJM – she requested that respondent return her file, which he failed to do.

Recently, the Court suspended an attorney for six months for similar misconduct. See, In the Matter of Saul Gary Gruber, DRB 21-029 (July 20, 2021). In that case, an attorney, whose professional and personal issues severely compromised his ability to practice law, mishandled multiple client matters. Importantly, in that matter, the attorney cooperated with the OAE's investigation.

Although Gruber had received a prior censure for the same misconduct, we considered that the misconduct in the two matters occurred at the same time. See In re Gruber, 238 N.J. 149 (2019) (Gruber I). In Gruber I, we determined that a three-month suspension would have been warranted for the attorney's misconduct, but that significant mitigating factors in the case justified the imposition of a censure.

Here, unlike in Gruber, respondent does not benefit from any mitigating factors. Additionally, despite his contemporaneous involvement with the ethics system, respondent allowed this matter to proceed to us via a default. Prior to that, respondent failed to cooperate with the OAE's investigation, and when he did communicate with the OAE, he lied.

However, to craft the appropriate discipline, we also consider aggravating and mitigating factors. “[A] respondent’s default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced.” In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted).

Additionally, 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 the third time that respondent has been before us for lack of diligence. It is also the second time respondent is before us for dishonesty, gross neglect, and failure to communicate with a client. Although respondent’s misconduct in the underlying matter occurred at the same time as the misconduct which led to his previous discipline in 2020 and 2021, he has demonstrated an


inability to learn from past mistakes – this is his second time before us, in less than a year, for failing to cooperate with disciplinary authorities, this time in a default matter. Respondent also persisted on his course of misrepresentation and dishonesty during the OAE’s investigation.

We, thus, determine that a six-month suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar. Additionally, we impose the conditions that (1) within ninety days of the Court’s Order in this matter, respondent complete six hours of courses in ethics and law office management, in addition to any continuing legal education requirements, and (2) upon reinstatement, respondent 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 voted to recommend to the Court that respondent be disbarred. Member Rivera 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 Joseph Vaccaro
Docket No. DRB 21-070

Decided: October 1, 2021

Disposition: Six-Month Suspension

<i>Members</i>	Six-Month Suspension	Disbar	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