

Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-031
District Docket No. XIV-2020-0381E

In the Matter of
Joseph J. Ashton, III
An Attorney at Law

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Decision

Argued: September 23, 2021

Decided: October 28, 2021

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

Respondent did not appear, despite proper notice.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-14(a), following a July 27, 2020 order, issued by the Supreme Court of Pennsylvania, suspending respondent for two years. The OAE asserted that, in the Pennsylvania matter,

respondent was found guilty of having violated the equivalents of New Jersey RPC 1.1(a) (three instances – gross neglect); RPC 1.3 (three instances – lack of diligence); RPC 1.4(b) (three instances – failure to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information); RPC 1.4(c) (three instances – failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions); RPC 1.16(d) (three instances – upon termination of representation, failure to take steps to the extent reasonably practicable to protect a client’s interests); and RPC 3.2 (one instance – failure to expedite litigation).

For the reasons set forth below, we determine to grant the motion for reciprocal discipline and impose a two-year suspension – the identical discipline imposed in Pennsylvania – with a condition.

Respondent earned admission to the New Jersey and Pennsylvania bars in 2010. He has no prior discipline in New Jersey. At all relevant times, he maintained a law practice in Philadelphia, Pennsylvania, and Marlton, New Jersey.

Since July 22, 2019, respondent has been administratively ineligible to practice law in New Jersey for failure to pay his annual assessment to the Lawyers’ Fund for Client Protection.

Subsequently, on November 16, 2020, respondent became administratively ineligible to practice law in New Jersey for failure to comply with continuing legal education requirements.

Most recently, on January 4, 2021, respondent became administratively ineligible to practice law in New Jersey for failure to comply with the Interest on Lawyers Trust Accounts requirements.

On March 29, 2019, the Pennsylvania Office of Disciplinary Counsel (the ODC) filed a petition instituting formal disciplinary charges against respondent. Respondent failed to file an answer to the petition. On August 26, 2019, respondent appeared for a pre-hearing conference before the District I Hearing Committee (the Committee), and was directed to advise, in writing, by August 30, 2019, of any good cause for his failure to timely answer the petition for discipline. Respondent failed to file a reply.

On October 1, 2019, the Committee held a hearing and respondent failed to appear. On January 21, 2020, the Committee filed a report, concluding that respondent had violated the Pennsylvania Rules of Professional Conduct as charged, and recommended to the Disciplinary Board of the Supreme Court of Pennsylvania (the PAB) that he be suspended for one year and one day. On May 20, 2020, the PAB issued a Report and Recommendation, which included findings of fact and conclusions of law, and found that respondent had violated

the charged rules. The PAB recommended to the Supreme Court of Pennsylvania that respondent be suspended for two years. On July 27, 2020, the Supreme Court of Pennsylvania adopted the Report and Recommendation of the PAB, and suspended respondent for two years.

Respondent failed to notify the OAE of his Pennsylvania suspension, as R. 1:20-14(a)(1) requires.

The following facts, concerning three client matters, are taken from the PAB's May 20, 2020 Report and Recommendation, Section 2, Findings of Facts.

The Leone/Maurer Matter

Lisa Leone and Jennifer Maurer, through their attorney, Lee M. Shlamowitz, Esq., filed a lawsuit in the Court of Common Pleas, Montgomery County, captioned Leone and Maurer v. Daniel Schempp, et al., commencing a legal dispute with the builder of a house they had purchased, as well as the realtor and the home inspection company involved in the transaction. Shlamowitz referred the case to respondent, who, on March 4, 2016, entered his appearance on behalf of the plaintiffs.

On December 2, 2016, certain defendants filed preliminary objections to the plaintiffs' second amended complaint, plus a motion to preclude the plaintiffs from filing further amended complaints. Although he was served with

the filed documents, respondent submitted neither an answer to the preliminary objections nor a response to the motion.

However, on December 22, 2016, respondent filed a third amended complaint. On January 6, 2017, defendants filed preliminary objections to that pleading.

In a January 20, 2017 order, the court granted defendants' motion prohibiting plaintiffs from filing any further amended complaints, and directed the plaintiffs to respond, within twenty days, to defendants' preliminary objections to the second amended complaint. Although the court served respondent with the January 20, 2017 order, he failed to inform his clients of the order and failed to reply.

In a June 30, 2017 order, the court sustained defendants' preliminary objections to the third amended complaint, and dismissed the complaint. Almost one year later, in a March 28, 2018 order, with defendants' preliminary objections to the second amended complaint still outstanding, the court sustained defendants' preliminary objections to the second amended complaint, in part, and dismissed the remaining objections as moot. Although served with the March 28, 2018 order, respondent failed to inform his clients of the order.

During this several-month period, respondent failed to communicate with his clients or to respond to their inquiries concerning the case. After

“experiencing a prolonged period of complete neglect and abandonment by [r]espondent,” Leone and Maurer retained new counsel, Vincent M. Vangrossi, Esq., who, on June 18, 2018, entered his appearance in the matter on behalf of the plaintiffs. Through Vangrossi, Leone and Maurer learned that a defendant in their case had been dismissed due to respondent’s failure to reply to preliminary objections, and that the defense motion to preclude plaintiffs from filing additional amended complaints had been granted due to respondent’s failure to file any reply to defendants’ motion.

Further, Vangrossi sent respondent three letters, via facsimile and regular mail, the latter correspondence addressed to respondent’s law office, dated June 18 and July 9, 2018, and April 29, 2019, wherein he notified respondent of his representation of Leone and Maurer and of respondent’s discharge, requested that respondent formally withdraw his appearance, and requested that respondent send the clients’ file. Respondent failed to reply to any of the letters. Vangrossi also attempted to contact respondent by telephone and left messages requesting the clients’ file. Respondent failed to return the telephone calls, failed to withdraw his appearance, and failed to produce the clients’ file to Vangrossi.

On May 7, 2019, Vangrossi sent respondent a notice and subpoena to take respondent’s deposition on May 31, 2019. On May 29, 2019, Vangrossi sent the notice and subpoena to respondent’s e-mail address listed on respondent’s

website, and also notified him by telephone message. Respondent failed to appear for the deposition and failed to contact Vangrossi with an explanation or to reschedule.

On June 11, 2019, Vangrossi filed a motion seeking to compel respondent to produce Leone and Maurer's client file. Although his reply to the motion was due on July 15, 2019, respondent failed to file any reply.

In a July 17, 2019 order, the court granted the motion to compel and ordered respondent to produce the file to Vangrossi within twenty days. In a July 19, 2019 letter, Vangrossi notified respondent of the order and mailed a copy of the order to respondent's registered home address. Respondent failed to reply or to comply with the order.

Respondent's failure to produce the file, which contained copies of e-mail messages, text messages, and photographs, some of which were unable to be reproduced, prejudiced the plaintiffs' case. Additionally, as of the date of the PAB's Report and Recommendation, respondent had failed to withdraw from Leone and Maurer's case.

On September 4, 2018, the ODC sent respondent a DB-7 Request for Statement of Respondent's Position, by certified mail, to respondent's office address of record.¹ The certified mail receipt was returned to the ODC marked

¹ In Pennsylvania, a DB-7 warns an attorney of a possible violation of the RPCs and requires

“not at address.” On September 19, 2018, an ODC investigator attempted personal service at respondent’s office address of record, and was told by a receptionist that respondent was no longer at the office, that respondent had been gone more than a month, and that he had no information about how or where to locate respondent.

Therefore, on September 20, 2018, the ODC sent copies of the DB-7 to respondent’s home address of record, and to an additional address in New Jersey. The return receipt from respondent’s registered home address was returned unsigned, and the return receipt from the alternate New Jersey residence was returned, signed by “Joseph J. Ashton.”

Respondent failed to reply to the DB-7 or to communicate with the ODC in any way regarding the matter.

The Guenther Matter

In 2012, Lizette Guenther retained respondent to represent her in a personal injury case involving a July 15, 2012 motor vehicle accident in Philadelphia, whereby her twenty-year-old son was killed, and another son was injured.

an explanation of the violations alleged. It is, thus, akin to a New Jersey request to reply to an ethics grievance.

On July 13, 2015, respondent commenced a civil action in the Court of Common Pleas, Philadelphia County, captioned as Guenther, et al. v. Tierra Colombiana, Inc., et al. On November 22, 2017, respondent filed a motion to file, under seal, a petition for leave to settle a wrongful death and survival action, on behalf of Guenther, individually and as administrator of her son's estate. On January 12, 2018, the court granted the motion. However, respondent failed to file the petition, as permitted by the order.

Indeed, after receiving the favorable ruling on behalf of Guenther, respondent failed to initiate any further contact with her, despite Guenther's numerous attempts to contact him by telephone. During August and September 2018, Guenther placed three to four telephone calls daily to respondent's office phone number, and left many messages requesting a reply. Respondent failed to answer or return any of Guenther's telephone calls.

In August 2018, Guenther personally visited respondent's office and attempted to meet with him. Respondent's secretary told her that respondent was not there at the time, and the secretary sent a text message to respondent to inform him of Guenther's presence. Respondent received the message, but failed to reply.

In September 2018, Guenther again visited respondent's office and attempted to meet with him. At that time, however, she was informed that

respondent no longer rented space at the office and had not provided his contact information.

Because respondent had moved from the office and had failed to inform Guenther of his new address, Guenther retained new counsel, Kevin Weinstein, Esq. On October 24, 2018, Weinstein entered his appearance in Guenther's matter.

Guenther informed Weinstein that she had filed a disciplinary complaint against respondent. Further, she advised Weinstein that she was distressed; not working; had no money; had lost most of her possessions in a fire; and was hoping to obtain funds from the civil case settlement to get her life back in order. The amount of the settlement was \$495,000.

Weinstein attempted to locate and communicate with respondent, to no avail. He sent letters to respondent's home and office addresses of record, as well as a former Philadelphia address, and filed Freedom of Information Act requests pertaining to respondent's addresses, past and present. Weinstein ascertained that respondent and his wife still owned the residence that was his home address of record and, on December 31, 2018, attempted to send a certified letter there, as well as to respondent's office address of record. The certified mail to the home address was returned to Weinstein, and the certified mail to the office address was returned as undeliverable.

Despite being unsuccessful in his attempts to locate respondent, Weinstein, with the help of defense counsel in Guenther's civil matter, was able to reconstruct as much of the file as possible in order to file the petition to have the settlement approved, as per the court's January 28, 2018 order. On March 7, 2019, Weinstein filed the petition and was able to have the case settled and approved; partial distribution was made to Guenther, with full distribution pending. Weinstein mailed copies of the March 7, 2019 petition to respondent, by certified and regular mail, to both respondent's home and office addresses of record, however, respondent failed to reply to the letters and filed no objection to the petition or proposed allocation of funds.

On November 2, 2018, the ODC sent respondent a DB-7, at his alternate New Jersey address. The return receipt was returned and signed "Joseph Ashton." Nonetheless, respondent failed to reply to the DB-7.

The Jose Figueroa Matter

In 2016, Kenneth M. Kitay, Esq. referred his client, Jose Figueroa, to respondent for representation in a personal injury action involving injuries sustained by Figueroa in a motor vehicle accident. Respondent accepted the referral and signed a retainer agreement with Figueroa.

On May 2, 2016, respondent filed a complaint on behalf of Figueroa and his wife in the Court of Common Pleas, Philadelphia County, docketed as Figueroa-Menendez, et al. v. Jenkins, et al. On July 22, 2016, defendants filed preliminary objections, and on August 11, 2016, respondent filed an amended complaint on behalf of the plaintiffs. On August 17, 2016, the court deemed the preliminary objections moot, and, on August 31, 2016, defendants filed preliminary objections to the amended complaint.

On September 22, 2016, respondent filed opposition to the preliminary objections. The next day, the court issued a Rule to Show Cause as to why the preliminary objections concerning venue should not be granted.

By order dated November 16, 2016, the court granted defendants' preliminary objections regarding venue and transferred the matter to the Court of Common Pleas, Berks County. Over a year later, on January 12, 2018, a praecipe to reinstate the complaint was filed in the Berks County, Court of Common Pleas.

Thereafter, on January 22, 2018, defendants filed motions for judgment of non-prosecution and served them upon respondent, but respondent failed to reply to the motions. On July 17, 2018, the court, in part, (1) issued a Rule to Show Cause why defendants' motions should not be granted; (2) ordered respondent, as plaintiffs' counsel, to file an answer within thirty days of the date

of the order; and (3) scheduled an evidentiary hearing and argument, for October 1, 2018, to address defendants' motions. Respondent was served with the July 17, 2018 order, but failed to file an answer or to appear at the October hearing.

Therefore, in an October 1, 2018 order, the court granted defendants' motions for judgment non-prosecution and dismissed the complaint, with prejudice. The court noted, in a handwritten addition to the order, that respondent failed to appear. Although he was served with the October 1, 2018 order, respondent failed to notify Figueroa about the order.

Moreover, Figueroa attempted to communicate with respondent on multiple occasions, via telephone, but respondent failed to return his calls. On October 17, 2018, Figueroa visited Kitay's office to report that respondent had failed to communicate with him and to inquire about the status of his case. Kitay checked the Berks County docket and discovered the October 1, 2018 order. Kitay also attempted to communicate with respondent through telephone calls, text messages, and e-mail messages regarding respondent's failure to litigate Figueroa's case, but respondent failed to reply to Kitay.

Kitay attempted to contact respondent through respondent's brother, also an attorney, but respondent's brother was unable to help. Kitay, an administrative law attorney, had a long-standing relationship with respondent, beginning in 2011, and would refer personal injury cases to him. However,

through the years respondent had become less and less responsive to Kitay's attempts to communicate with him and, by 2017, Kitay ceased referring cases to respondent, due to respondent's lack of communication with him and the referred clients.

On December 10, 2018, the ODC sent a DB-7 to respondent's home address of record and the alternate New Jersey address. The return receipt from the home address was returned unsigned, and the return receipt from the alternate New Jersey address was returned, signed by "Joseph J. Ashton." Respondent failed to reply to the DB-7.

Additional Misconduct

Respondent's disciplinary hearing was scheduled for October 1, 2019. Despite receiving notice of the hearing, respondent failed to appear. Therefore, respondent failed to accept responsibility for his misconduct, and demonstrated no remorse.

Additionally, at the time of the Pennsylvania ethics hearing, a matter concerning another client of respondent, Concepcion Ortiz, had not resulted in formal disciplinary charges. However, the ODC asked that Concepcion's son, Nelson Ortiz, be permitted to testify on behalf of his father, to establish that

respondent's conduct was part of a pattern and could be considered an aggravating factor.

Nelson Ortiz testified that, on January 28, 2016, Concepcion was involved in an accident in a Wendy's parking lot, where he fell and broke his hip and right arm. Kitay referred Concepcion to respondent. In 2016, Nelson spoke to respondent on the telephone and received a fee agreement, however, Concepcion received no other documentation from respondent. Additionally, soon after the initial communication, respondent ceased returning Concepcion's telephone calls. Nelson testified that another family attorney, as well as Legal Aid, attempted, unsuccessfully, to contact respondent.

The Pennsylvania Discipline

The PAB found that respondent's misconduct violated the following Pennsylvania Rules of Professional Conduct: RPC 1.1 (a lawyer shall provide competent representation to a client); RPC 1.3 (a lawyer shall act with reasonable diligence and promptness in representing a client); RPC 1.4(a)(3) (a lawyer shall keep client reasonably informed about the status of a matter); RPC 1.4(a)(4) (a lawyer shall promptly comply with reasonable requests for information); RPC 1.4(b) (a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the

representation); RPC 1.16(d) (upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest); and RPC 3.2 (a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client).

The PAB noted respondent's serious misconduct in abandoning his clients in three matters, and refusing to participate in the disciplinary process. The PAB found:

Respondent's conduct in all three client matters evidenced a troubling pattern of noncommunication and neglect that had a profound and adverse effect on his clients, as Respondent inexplicably abandoned his clients and took no steps to protect their interests. Respondent's neglect included failing to file critical pleadings, failing to inform his clients of court orders essential to their matters, and failing to take action to comply with court orders. Each of the clients was forced to retain successor counsel, who spent time and resources in a fruitless effort to contact Respondent and retrieve the clients' files.

[Ex.E§3,p21.]²

The PAB accorded no mitigating weight to respondent's lack of prior discipline, finding that he had practiced for only a short period of time before "shirking" his professional responsibilities. Further, the PAB found, in

² "Ex.E" refers to Exhibit E of the OAE's February 5, 2021 brief in support of the motion for reciprocal discipline.

aggravation, that respondent refused to participate in the disciplinary process and, therefore, provided no explanation for his misconduct, accepted no responsibility, and exhibited no remorse for his “shoddy” treatment of his clients.

In analyzing Pennsylvania disciplinary precedent, the PAB stated that it was “not satisfied that a one year and one day suspension is adequate under these particular circumstances,” and noted that respondent “repeatedly demonstrated a lack of fitness to practice law.” The PAB, thus, imposed a two-year suspension.

The OAE’s Position

In its brief in support of the motion for reciprocal discipline, the OAE argued that respondent’s unethical conduct warranted a lesser suspension term in New Jersey than was imposed in Pennsylvania, based on New Jersey disciplinary precedent. The OAE relied on the cases, outlined below, to conclude that, based on New Jersey disciplinary precedent, respondent’s misconduct warranted only a three-month suspension.

The OAE acknowledged, in mitigation, that respondent has no prior disciplinary history in New Jersey. However, the OAE suggested that little weight should be given to this fact, considering that respondent mainly practiced in Pennsylvania.

In aggravation, the OAE noted that respondent failed to notify the OAE of his Pennsylvania discipline, as R. 1:20-14(a)(1) requires, and failed to respond to the OAE's correspondence concerning his matter. Further, respondent failed to participate in the Pennsylvania disciplinary proceeding by failing to file an answer and failing to appear for the hearing. Finally, the OAE noted that respondent had not exhibited remorse or offered an explanation for his apparent abandonment of his practice of law and, since 2019, had been administratively ineligible to practice law in New Jersey.

Pending his hearing date before us, respondent failed to communicate with the Office of Board Counsel or to submit a brief for our consideration.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

In Pennsylvania, the standard of proof in attorney disciplinary matters is that the "[e]vidence is sufficient to prove unprofessional conduct if a

preponderance of the evidence establishes the conduct and the proof . . . is clear and satisfactory.” Office of Disciplinary Counsel v. Kissel, 442 A. 2d 217 (Pa. 1982) (citing In re Berland, 328 A.2d 471 (Pa. 1974)). Moreover, “[t]he conduct may be proven solely by circumstantial evidence.” Office of Disciplinary Counsel v. Grigsby, 425 A. 2d 730 (Pa. 1981) (citations omitted).

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

Here, considering respondent’s egregious abandonment of multiple clients, who suffered demonstrable harm, we grant the OAE’s motion for

reciprocal discipline and impose the identical discipline imposed in Pennsylvania – a two-year suspension.

Specifically, in the Leone/Maurer matter, respondent failed to reply to defendants' preliminary objections and motions, resulting in a defendant being dismissed from the case. In the Guenther matter, although obtaining leave from the court to file a petition to settle the matter of Guenther's son's estate, respondent failed to file the petition, thus delaying Guenther's receipt of \$495,000 in crucial settlement funds. Finally, in the Figueroa matter, respondent filed an amended complaint and an answer to preliminary objections; however, he failed to reply to the court's order to show cause as to venue and failed to reply to defendants' motions. Respondent also failed to appear for the hearing on the order to show cause, resulting in an unfavorable ruling to his client. Via the aforementioned misconduct, respondent violated RPC 1.1(a) and RPC 1.3 in all three client matters.

In all three client matters, respondent abandoned his clients and failed to reply to their reasonable requests for information concerning their ongoing matters. In the Leone/Maurer matter, respondent failed to inform his clients of the court's March 28, 2018 order, and failed to reply to their requests for information that spanned the course of several months, eventually forcing them to hire Vangrossi. In the Guenther matter, the client attempted to contact

respondent by telephone on numerous occasions, even attempting telephone calls three to four times daily during August and September 2018. Guenther resorted to appearing at respondent's office on two occasions. On the second occasion, Guenther learned that respondent had moved from the office and had failed to inform her of his new contact information, the epitome of client abandonment. Additionally, respondent failed to return her telephone calls or to acknowledge her office visits. Finally, in the Figueroa matter, the client made multiple telephone calls and attempted to communicate with respondent for many months, requiring him to follow-up with Kitay, the referring attorney, regarding respondent's whereabouts. Respondent failed to reply to Figueroa's attempts to contact him. In all three matters, the clients were unable to make informed decisions about their cases, and unable to reach respondent. The above misconduct in the Leone/Maurer, Guenther, and Figueroa matters violated RPC 1.4(b) and RPC 1.4(c).

In each of the three matters, the clients were forced to terminate respondent's representation and to enlist the assistance of other attorneys to retrieve their files and advance their matters. Despite numerous requests, respondent failed to produce the clients' files to their new attorneys. In the Leone/Maurer matter, the clients retained Vangrossi to represent them after respondent's abandonment. Vangrossi informed respondent that he had entered

an appearance on the case, and requested the clients' file on numerous occasions, to no avail. Likewise, in the Guenther matter, the client retained Weinstein to advance the receipt of her settlement funds. Weinstein attempted to find respondent in order to procure the client's file, to no avail, forcing him to piece together as much of the file as possible to obtain the settlement. Finally, in the Figueroa matter, after respondent abandoned the client, which resulted in the dismissal of his complaint, the client was forced to return to the referring attorney's office for help in gathering information about his case. The above misconduct constituted three violations of RPC 1.16(d), because respondent, upon being replaced as counsel, failed to protect his clients' interests and failed to surrender papers and property to which his clients, and their new attorneys, were entitled.

Moreover, in the Figueroa matter, respondent's inaction and, thus, his failure to expedite litigation in the interests of his client, resulted in Figueroa's complaint being dismissed, with prejudice. The judge who entered the order went so far as to enter a handwritten note on the order that the failure of respondent to appear for the motion hearing was a contributing factor in the dismissal. Respondent's failure to expedite litigation in the Figueroa matter constituted a violation of RPC 3.2.

In sum, we find that respondent violated RPC 1.1(a) (three instances – the Leone/Maurer, Guenther and Figueroa matters); RPC 1.3 (three instances – the Leone/Maurer, Guenther, and Figueroa matters); RPC 1.4(b) (three instances – the Leone/Maurer, Guenther, and Figueroa matters); RPC 1.4(c) (three instances – the Leone/Maurer, Guenther, and Figueroa matters); RPC 1.16(d) (three instances – the Leone/Maurer, Guenther, and Figueroa matters); and RPC 3.2 (one instance – the Figueroa matter). The sole issue left for determination is the proper quantum of discipline for respondent’s violations.

Abandonment of clients almost invariably results in a suspension, the duration of which depends on the circumstances of the abandonment, the presence of other misconduct, and the attorney’s disciplinary history. See, e.g., In re Nwaka, 178 N.J. 483 (2004) (three-month suspension for attorney who was disbarred in New York for abandoning one client and failing to cooperate with New York ethics authorities; prior three-month suspension); In re Hoffmann, 163 N.J. 4 (2000) (three-month suspension in a default matter; the attorney closed his office without notifying four clients; he also was guilty of gross neglect, lack of diligence, failure to communicate with clients, failure to protect clients’ interests upon termination of representation, and failure to cooperate with disciplinary authorities; prior reprimand and a three-month suspension); In re Perdue, 240 N.J. 43 (2019) (in three consolidated default matters, six-month

suspension imposed on attorney who, in two of the matters, abandoned his clients; the attorney also exhibited gross neglect and lack of diligence, failed to communicate with the clients, failed to return the file to one of the clients, and made misrepresentations to the clients; in all three matters, the attorney failed to submit a written reply to the grievance); In re Bowman, 175 N.J. 108 (2003) (six-month suspension for abandonment of two clients, misrepresentations to disciplinary authorities, pattern of neglect, and misconduct in three client matters, including gross neglect; lack of diligence; failure to communicate with the clients; failure to explain a matter to the extent reasonably necessary to permit the client to make an informed decision about the representation; failure to provide a written fee agreement; failure to protect a client's interests upon termination of representation; and misrepresenting the status of a matter to a client; prior private reprimand); In re Milara, 237 N.J. 431 (2019) (in two default matters, one-year suspension imposed on attorney for the totality of his misconduct, which included the abandonment of two clients, one of whom suffered serious harm as a result; misrepresentations to the clients, failure to file an affidavit of compliance with R. 1:20-20 following a temporary suspension for failure to cooperate with the OAE and a second temporary suspension for failure to comply with a fee arbitration determination, and other conduct prejudicial to the administration of justice; at the time, a censure was pending

before the Court, which entered an Order confirming our decision); In re Rosenthal, 208 N.J. 485 (2012) (in seven default matters, one-year suspension imposed on attorney who exhibited gross neglect and a pattern of neglect in two matters; lacked diligence in four matters; failed to keep the client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in seven matters; failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in one matter; charged an unreasonable fee in three matters; failed to communicate in writing the basis or rate of his fee in one matter; failed to expedite litigation in one matter; failed to cooperate with disciplinary authorities in seven matters; engaged in dishonesty in two matters; and engaged in conduct prejudicial to the administration of justice in two matters; he also abandoned six of the seven clients; attorney had unblemished disciplinary history in his more than twenty years at the bar); In re Basner, 232 N.J. 164 (2018) (motion for reciprocal discipline; two-year suspension imposed on attorney who exhibited gross neglect in eight matters, engaged in a pattern of neglect, exhibited lack of diligence in ten matters, failed to keep the client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in seven matters; failed to explain a matter to the extent reasonably necessary to permit the client to make informed

decisions regarding the representation in eight matters; failed to comply with the recordkeeping requirements of R. 1:21-6; failed to withdraw from the representation of a client when the representation violated the RPCs or other law; upon termination of representation, failed to protect the interests of the client in three matters; asserted a frivolous claim in two matters; failed to expedite litigation in two matters; made a false statement of material fact or law to a tribunal in two matters; knowingly made a false statement of material fact to disciplinary authorities in four matters; engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in five matters; and engaged in conduct prejudicial to the administration of justice in four matters; in aggravation, we considered the widespread and persistent nature of the attorney's misconduct, which, among other things, resulted in two of his clients serving prison terms); In re Cataline, 223 N.J. 269 (2015) (default; two-year suspension imposed on attorney who exhibited gross neglect in three matters, failed to cooperate with the district ethics committee in all four matters, and ignored the client's request for the return of his original documents in one matter; in aggravation, the attorney engaged in a pattern of neglect and abandoned the four clients by closing her office without notice to the clients or attorney regulatory authorities, and by failing to maintain an office telephone; prior reprimand); and In re Franklin, 236 N.J. 453 (2019) (retroactive three-year

suspension imposed on attorney who abandoned an unknown number of clients and engaged in an improper fee-sharing arrangement with a company marketed as a service provider to handle and defend foreclosure and real estate mitigation against Florida mortgage lenders).

In egregious cases involving client abandonment, the Court will not hesitate to impose disbarment, particularly in matters in which the attorney fails to appear in response to the Court's Order to Show Cause. See In re Byrne, 237 N.J. 441 (2019) (default in three matters; attorney, who failed to appear on the Court's Order to Show Cause, was disbarred for abandoning three clients; he also failed to file an affidavit of compliance with R. 1:20-20 following his temporary suspension for failure to comply with a fee arbitration determination; prior reprimand and three-month suspension).

In its brief in support of the motion, the OAE focused on the abandonment of client cases cited above to support the position that a suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar, and to recommend that a three-month suspension would be reasonable in respondent's case. The OAE asserted that respondent's conduct, although serious, involved only three client matters, versus Basner (eight), and Rosenthal (seven), as detailed above. The OAE noted that respondent's abandonment of Guenther resulted in severe economic harm to a vulnerable client.

However, at oral argument, the OAE noted that, at the time the motion for reciprocal discipline was filed, there was no indication whether respondent would participate in the New Jersey disciplinary process. Considering that respondent chose not to participate, the OAE asserted that discipline greater than that requested in its motion brief would be justified.

We determine that, based on New Jersey disciplinary precedent, a term of suspension is warranted. Indeed, in the Purdue and Bowman cases, cited above, the attorneys received six-month suspensions, respectively, for abandoning two clients, combined with exhibiting gross negligence; lack of diligence; failure to communicate; and failure to protect the clients' interests after termination. In Milara, the attorney received a one-year suspension for abandoning two clients, however, that attorney also had failed to file a R. 1:20-20 affidavit of compliance following a temporary suspension, and had a censure pending. Based on this disciplinary precedent, we determine to impose a term of suspension of more than one year.

In crafting the appropriate discipline, however, we also must consider aggravating and mitigating factors.

As to mitigation, the OAE acknowledged that respondent has no disciplinary history in New Jersey but noted that respondent practiced law exclusively in Pennsylvania. We adopt that rationale and determine that, despite

respondent's lack of disciplinary history, little weight should be accorded that factor in imposing discipline.

As to aggravation, respondent's abandonment of his clients caused them significant, demonstrable harm. In further aggravation, as the OAE noted, respondent failed to report his Pennsylvania discipline to the OAE and has failed to respond to the instant motion. Further, respondent is ineligible to practice in New Jersey for his failure to satisfy the routine obligations required of attorneys in this jurisdiction.

Considering the presumption set forth in R. 1:20-14(a)(4), we see no reason to disturb the two-year suspension determination made by Pennsylvania, which engaged in a firsthand review of respondent's misconduct and the severe and direct consequences to his clients. We further determine that respondent also should be prohibited from pro hac vice admission before any New Jersey court or tribunal until further Order of the Court.

Chair Gallipoli voted to recommend to the Court that respondent be disbarred, based on respondent's abandonment of multiple clients and the resulting harm.

Member Joseph voted to impose a one-year suspension.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Joseph J. Ashton, III
Docket No. DRB 21-031

Argued: September 23, 2021

Decided: October 28, 2021

Disposition: Two-year suspension

<i>Members</i>	Two-year suspension	Disbar	One-year suspension
Gallipoli		X	
Singer	X		
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph			X
Menaker	X		
Petrou	X		
Rivera	X		
Total:	7	1	1

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