Supreme Court of New Jersey
Disciplinary Review Board
Docket Nos. DRB 20-289
and DRB 20-336
District Docket Nos. XI-2018-0021E
and XI-2019-0006E

In the Matters of	:
Alfred V. Gellene	:
An Attorney at Law	:

Decision

Argued: April 15, 2021

Decided: July 21, 2021

David L. Pine (DRB 20-289) and John D. Pogorelec, Jr. (DRB 20-336) appeared on behalf of the XI District Ethics Committee.

Respondent appeared pro se.

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

These matters were before us on recommendations for the imposition of a three-month suspension (DRB 20-289) and a reprimand (DRB 20-336), both filed by the District XI Ethics Committee (the DEC).

The formal ethics complaint in DRB 20-289 charged respondent with having violated RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information); and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

The formal ethics complaint in DRB 20-336 charged respondent with having violated RPC 1.1(a); RPC 1.1(b) (pattern of neglect); RPC 1.3; RPC 1.4(b); and RPC 8.1(b).

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

Respondent gained admission to the New Jersey bar in 1979 and to the New York bar in 1980. He maintains a law practice in Paterson, New Jersey.

In 1990, respondent received a private reprimand (now, an admonition) for gross neglect, pattern of neglect, and lack of diligence in four matters involving two clients. In the first matter, he was retained to defend a civil action brought against his client and the client's several corporations. Respondent failed to provide answers to interrogatories, resulting in the answer being stricken and the entry of a default judgment.

Respondent also failed to inform the client whether he would pursue a collection matter for him, and failed to incorporate the client's new company. In another matter involving a different client, respondent failed for ten months to file a complaint for a name change despite repeated requests by the client, which went unanswered. In the Matter of Alfred V. Gellene, DRB 89-046 (January 5, 1990).

In 1991, respondent received a second private reprimand. In that matter, he was retained to pursue several matters for a client. In the first, a fire loss claim, respondent failed to supply answers to interrogatories, resulting in the dismissal of the complaint. He also failed to inform the client of the dismissal and failed to seek to reinstate the complaint. In the Matter of Alfred V. Gellene, DRB 91-095 (May 31, 1991).

In 2009, respondent was admonished for violating RPC 1.3 and RPC 1.5(b) (failure to provide client with a writing setting forth the basis or rate of the fee) in connection with a client's criminal appeal. Particularly, respondent failed to have his client's case transferred to him from the public defender, who had represented the client at trial. In imposing only an admonition, we considered respondent's compelling mitigating circumstances. In the Matter of Alfred V. Gellene, DRB 09-068 (June 9, 2009).

In 2010, respondent received a reprimand for violations of RPC 1.1(a); RPC 1.1(b); RPC 1.3; RPC 1.4(b); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice). In that matter, respondent failed to timely file three appellate briefs; failed to communicate with his client in two separate matters; failed to appear on the return date of an order to show cause; and failed to notify the court that he would not appear. The Court also ordered respondent to provide proof of fitness to practice law, as attested to by a mental health professional, and continue to receive and provide reports of his mental health treatment to the Office of Attorney Ethics (the OAE). In re Gellene, 203 N.J. 443 (2010).

We now turn to the allegations of the two instant matters.

The Bekdas Matter (DRB 20-289)

On June 28, 2017, the grievant, Neil Bekdas, hired respondent to defend him in an action for the collection of attorneys' fees instituted by Bekdas's former attorney in Superior Court of New Jersey, Civil Part, Bergen County, and docketed as Cooke & Santomauro PC v. Bekdas Realty LLC. Respondent agreed to represent Bekdas for a flat fee of

$10,000 and required an initial retainer of $5,300 to undertake representation.[1]

On July 13, 2017, respondent filed an answer to the complaint on behalf of Bekdas and paid the required $250 filing fee. The court set December 10, 2017 as the discovery end date. On October 5, 2017, plaintiff's counsel, Cynthia D. Santomauro, Esq., filed a notice of motion to suppress the defenses, because Bekdas had not replied to plaintiff's discovery requests. On October 27, 2017, the Honorable James J. DeLuca, J.S.C., signed an order compelling production of that discovery and directed Bekdas to provide plaintiff with certified responses by November 8, 2017.

Respondent failed to comply with the court's order and, on November 9, 2017, Santomauro moved to strike Bekdas's answer. Thereafter, on December 6, 2017, Judge DeLuca ordered that Bekdas's answer, affirmative defenses, and counterclaims be stricken, without prejudice, for failure to comply with the court's previous order compelling discovery. Respondent failed to move to reinstate the complaint and, on

[1] It is unclear from the record whether respondent represented Bekdas both personally and as the principal of Bekdas Realty, LLC.

February 12, 2018, Santomauro filed a motion to strike Bekdas's answer with prejudice. Judge DeLuca scheduled the motion for March 2, 2018.

After their initial meeting, Bekdas tried to contact respondent twenty to thirty times, but respondent failed to communicate with Bekdas again until the March 2, 2018 motion return date. Respondent admitted that, during the representation, he failed to adequately communicate with Bekdas regarding the progression of the litigation.

Respondent, Bekdas, and Santomauro appeared at the March 2, 2018 motion hearing. Judge DeLuca's order on the motion indicated that respondent had failed to provide Bekdas with required notice, as New Jersey Court Rules 4:23-5(a)(1) and (2) require.[2] The order further

[2] N.J. Court Rule 4:23-5(a)(1) states, in relevant part:

> [u]pon being served with the order of dismissal or suppression without prejudice, counsel for the delinquent party shall forthwith serve a copy of the order on the client by regular and certified mail, return receipt requested, accompanied by a notice in the form prescribed by Appendix II-A of these rules, specifically explaining the consequences of failure to comply with the discovery obligation and to file and serve a timely motion to restore.

N.J. Court Rule 4:23-5(a)(2) states, in relevant part:

> [t]he attorney for the delinquent party shall, not later than 7 days prior to the return date of the motion, file and serve an affidavit reciting that the client was previously served as required by subparagraph (a)(1) and has been served with an additional notification, in the form prescribed by Appendix II-B, of the pendency of the motion to dismiss or suppress with prejudice. In lieu thereof, the attorney for the delinquent party may certify that despite diligent inquiry, which shall be detailed in the affidavit, the client's whereabouts have not been able to be determined and such service on the client was therefore not made.

directed that (1) respondent provide Bekdas said notices, and provide the court with proof thereof by March 7, 2018, and (2) by March 16, 2018, respondent and Bekdas were to appear in court in connection with Santomauro's motion.

A few days after the motion hearing, Bekdas spoke to respondent by telephone and informed him that he would bring the necessary paperwork to respondent's law office. About a week later, Bekdas appeared at respondent's office, but respondent told him he could not discuss the case because he did not have Bekdas's file on hand.

On March 7, 2018, respondent filed a certification with the court that included, as an exhibit, a March 6, 2018 letter from respondent to Bekdas, sent by express mail. The letter informed Bekdas that all previous orders were enclosed, and directed Bekdas to contact him to discuss the documents. Bekdas attempted to contact respondent by telephone on numerous occasions between March 6 and March 16, 2018, the date they were due back in court, to no avail.

On March 16, 2018, Judge DeLuca heard the motion to strike the answer. Although Bekdas and Santomauro appeared for the motion, respondent failed to appear and failed to inform Bekdas that he would not appear. Judge DeLuca denied Santomauro's motion to strike; however,

the judge ordered that, by March 30, 2018, Bekdas was to provide complete answers to the plaintiff's discovery demands. The judge informed the parties that, should Bekdas fail to comply with the order, Santomauro could submit a certification of non-compliance, along with an order to strike the answer with prejudice.

Thereafter, on March 27, 2018, respondent delivered 1,348 pages of material to Santomauro's law office. Respondent did not meet with Bekdas to review any of the documents. On March 28, 2018, Santomauro filed a letter with the court detailing the discovery received in her office the day prior, and referred to the discovery as a "document dump" that was neither responsive nor compliant with the Court Rules or the trial court's March 16, 2018 order.

The next day, March 29, 2018, respondent filed with the court a notice of motion to restore the answer. In that filing, he indicated that he had served 1,348 pages on Santomauro, that he paid the required fee for restoration of pleadings, and that the documents were responsive to plaintiff's demands. Santomauro opposed the motion to restore and, on April 27, 2018, Judge DeLuca denied respondent's motion. The court's April 27, 2018 order included a rider indicating that the documents submitted by respondent were not organized and were produced in a

"helter-skelter fashion," which justified the denial of the motion to restore. The rider directed that the plaintiff, by May 15, 2018, produce and identify the documents pertinent to each discovery request. Notwithstanding the language of the rider, respondent failed to thereafter move to reinstate the answer and failed to produce and identify the responsive documents, as the court had directed.

On May 16, 2018, Santomauro filed a letter with the court regarding Bekdas's non-compliance and renewed the plaintiff's motion to strike the answer with prejudice. On May 25, 2018, Judge DeLuca granted the motion, and entered a default against Bekdas.

After the Superior Court entered final judgment of default, plaintiffs submitted a writ of execution and, on July 23, 2018, recorded a $57,193.85 warrant to satisfy judgment against Bekdas. Bekdas ultimately settled with the plaintiff, for $47,500.

On July 25, 2018, two days after the warrant to satisfy judgment was recorded, Bekdas filed an ethics grievance against respondent. On December 26, 2018, the DEC investigator forwarded the grievance to respondent and required a reply no later than January 11, 2019. Respondent contacted the DEC investigator by telephone and requested an extension to reply. The DEC granted an extension until January 18,

2019, as memorialized in its January 15, 2019 letter. On January 22, 2019, respondent replied to the grievance.

On February 7, 2019, the DEC investigator sent a letter to respondent to set up a meeting to review respondent's client file and documentation in support of his reply to the grievance. However, respondent neither met with the DEC investigator nor provided his client file. As a result, the DEC investigator developed facts regarding Bekdas's matter from the electronic e-courts record docketed in Bergen County.

On July 9, 2019, the DEC served the formal ethics complaint on respondent. Respondent failed to file an answer to the complaint until October 1, 2019, after the DEC sent a second notice letter to him, on September 27, 2019.

In his answer, Respondent admitted that he violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b) in the Bekdas matter. However, respondent denied that he had violated RPC 8.1(b).

On December 18, 2019, the DEC and respondent entered into a stipulation of facts.

On February 26, 2020, the DEC conducted a disciplinary hearing, during which the stipulation of facts was read into the record. Respondent also testified in mitigation, explaining that he admitted all ethics charges

and that he was "not here to contest anything." Rather, respondent testified that he suffered from depression and mental illness, and met with a psychiatrist every thirty to ninety days to obtain prescriptions. Respondent noted that he had been treated for depression for "many years," and that there were times when his depression was "so intense that even the simplest task seems impossible." Further, he admitted:

> . . . I struggle hard with this and, you know – and, again, I'm not trying to make it an excuse because the bottom line is that I have to be able to perform my duties. If I can't perform my duties, then I, you know, shouldn't be taking cases, I guess, you know. And it does happen sometimes that I can't perform my duties.
>
> You know, there – I try to develop different strategies for dealing with the depression, you know – you know, try to recognize it when it's happening, try to do something to try to pull myself out. But it's not always successful.
>
> [T33.][3]

Respondent went on to testify that "perhaps it was his obligation to step aside," but that he had financial and family obligations, and "necessity breeds necessity and you just keep – you just plod on and you hope for the best."

[3] "T" refers to the February 26, 2020 disciplinary hearing transcript.

Moreover, respondent testified that he was not interested in contesting the instant matter:

> . . . when this [matter] gets sent down to Trenton, they will review my prior matters. And in it, was a very long recitation of my problems with depression, of the mental illness issues. I don't want to repeat them here. And I don't mean that as an affront to this tribunal at all. But the last time I did something like that, all my personal information got put on the internet. An attorney in another case took the decision, introduced it against me in a Federal District Court in San Diego. And I just didn't want – and it had information about my marriage, my son, all kinds of personal information on the internet. So I don't want to get back into that….
>
> [T30-T31.]

At the end of the hearing, the presenter suggested that respondent "file some paperwork so that [the paperwork] could then go down to Trenton with the decision," and respondent stated he would obtain a letter from his psychiatrist.

Although respondent filed no letter from a psychiatrist in Bekdas, such a letter was entered into evidence in the companion case (Martinez, below). Specifically, Shankar Srinivasan, M.D., the Chief Medical Officer of the Immediate Care Psychiatric Center, indicated that respondent had been under the Center's care since October 2003; that he was being treated

for Major Depression (Recurrent) and Adult Attention Deficit Hyperactivity Disorder; that he was compliant with treatment; and that he had made steady progress over the years. Dr. Srinivasan further noted that respondent was "psychiatrically stable and doing well," and indicated that respondent's medications included Risperdal; Wellbutrin; Lamictal; and Ritalin.

On September 8, 2020, the DEC hearing panel issued its report. The panel noted that respondent admitted to violating RPC 1.1(a), and found clear and convincing evidence of the violation due to respondent's failure to timely reply to discovery demands and court orders, which resulted in the default judgment entered against Bekdas. The panel again noted that respondent admitted to violating RPC 1.3 and RPC 1.4(b), and that clear and convincing evidence supported the admissions, because respondent failed to communicate with Bekdas about the status of the litigation, failed to timely reply to requests for discovery and court orders, and failed to reply to Bekdas's reasonable requests for information concerning the status of his case.

Moreover, the panel found that respondent failed to cooperate with the DEC investigation, in violation of RPC 8.1(b), by failing to provide

his client's file and failing to schedule and appear for an in-person interview.

As to the quantum of discipline to impose, the panel reasoned that an admonition would be the usual discipline, and also weighed aggravating and mitigating factors. As to mitigating factors, the panel considered respondent's depression, his respectful attitude, and his expression of remorse. As to aggravating factors, the panel found that respondent had a significant ethics history, that the prior disciplinary matters included similar conduct, and remarked on the principle of progressive discipline. More importantly, the panel considered the significant harm to Bekdas that respondent caused by his misconduct.

Based on the foregoing, the panel recommended that respondent be suspended for a period of three-months for his misconduct in the Bekdas matter.

The Martinez Matter (DRB 20-336)

In June 2016, the grievant, Zoraida Martinez, retained respondent to file a motion to attempt to mediate and settle issues arising out of her prior divorce settlement. Respondent filed the motion and the parties were ordered to attend mediation. On June 7, 2017, the Honorable Edward V.

Torack, J.S.C. (Ret.), conducted the mediation, but the parties were unable to settle. Respondent assured Martinez that he would re-file a notice of motion, but he failed do so.

Respondent attempted to settle outstanding issues, but the opposition filed a notice of motion against Martinez for violation of litigant's rights. Respondent neither opposed the motion nor advised his client that it had been filed. As a result, on February 16, 2018, the Honorable Rudolph A. Filko, P.J.S.C., entered an order and found that Martinez was in violation of litigant's rights; directed Martinez, within thirty days, "to process and obtain a Qualified Domestic Relations Order and/or tax free rollover of the parties' 401Ks equalizing the same;" noted that Martinez would be penalized $100 per day for every day over thirty days that she failed to do so; and ordered Martinez to pay the opposition's counsel fees, in the amount of $1,687.50.

Respondent failed to inform Martinez of Judge Filko's February 16, 2018 order.

In compliance with Judge Filko's order, on April 5, 2018, respondent paid $800 toward the counsel fees to the opposition's attorneys, the law firm of Verp & Leddy, and indicated in the cover letter

enclosing the check that he would send the balance before the end of the month. However, he paid no additional funds.

On March 6, 2018, Martinez spoke to respondent by telephone and requested copies of documents. In May 2018, Martinez met personally with respondent. Although respondent provided certain documents to Martinez, he failed, during either conversation, to notify Martinez of Judge Filko's February 16, 2018 order and failed to provide her with a copy of the order.

On July 12, 2018, Martinez met with respondent and expressed her "dissatisfaction" with his representation, directed him not to file anything further on her behalf, and terminated the representation. During that meeting, respondent again failed to mention the February 16, 2018 order.

Martinez maintained that she was not informed of the February 16, 2018 order until six months later, on August 20, 2018.[4] The record does not reflect whether Martinez was harmed financially based on the February 16, 2018 order or penalized with the $100 per day assessment, although it does appear that, at some point, Martinez secured a new attorney.

[4] The record demonstrates that respondent's last communication with Martinez occurred in July 2018. Neither the stipulation nor the hearing transcript clearly explain how Martinez came to receive the order on August 20, 2018.

Ultimately, Martinez filed a grievance against respondent. On October 30, 2019, the DEC served a formal complaint upon respondent, and charged him with having violated RPC 1.1(a); RPC 1.1(b); RPC 1.3; RPC 1.4(b); and RPC 8.1(b).

On March 4, 2020, the DEC and respondent entered into a stipulation of facts concerning this matter. On October 30, 2020, the hearing panel moved the stipulation of facts into evidence at the disciplinary hearing.

At the October 30, 2020 disciplinary hearing, respondent admitted the allegations of the complaint and testified regarding his history of depression and mental illness. He stated that he "didn't mean Ms. Martinez any harm," but that he "just kind of collapsed." The panel chair asked respondent whether he could assure the panel that he was able to practice competently and represent his clients diligently, to which respondent replied:

> Yeah. You know, yes, I can, you know. I'm practicing now. I have – I have my own office here in Totowa and I'm handling things and doing things, meeting all my deadlines, getting things done professionally and competently. So, you know – I usually do, you know. I've been practicing law for 40 years. You know, I've handled many, many, many, many complex, you know, involved matters, you know, handled them

> well, you know. You know, I like to consider myself a successful trial lawyer . . . .
>
> So, you know, I am meeting my obligations. And I – and I religiously – I take my medication, you know. I don't fool around with that. I see my psychiatrist regularly, you know, and discuss things with him. And…you have to train yourself. You know, you can train yourself to recognize the signs of depression and the signs of being overwhelmed and to, you know, realize that you're not perceiving things accurately, all right. And you need to step back and take an inventory and, you know, take a deep breath, if you will, you know, and then, you know, put your head down and proceed, you know.
>
> [2T22-2T23.][5]

Respondent testified that he envisioned being on medication for the rest of his life and that he would stay in treatment. The panel entered into evidence the aforementioned letter from Dr. Srinivasan.

The DEC panel issued its decision both orally, on October 20, 2020, after the hearing, and in a written hearing panel report dated November 17, 2020. The panel found that respondent violated RPC 1.1(a) and RPC 1.1(b) by not keeping Martinez adequately informed of her legal matter. Further, the panel found that respondent violated RPC 1.3 by failing to file a motion after the unsuccessful mediation, and by failing to reply to

[5] "2T" refers to the October 30, 2020 disciplinary hearing transcript.

the opposition's motion which resulted in the February 16, 2018 order adversely affecting Martinez. As to RPC 1.4(b), the panel found that respondent violated this Rule by withholding the February 18 motion and resulting order from Martinez until August 20, 2018.

However, the panel dismissed the charge that respondent violated RPC 8.1(b). The panel determined that, "after initial reluctance," respondent fully cooperated with the investigation, filed an answer admitting the allegations, and entered into the stipulation of facts.

On November 5, 2020, the presenter sent the panel a letter indicating that, at minimum, respondent should be censured for his unethical conduct, with the condition that he provide to the OAE proof of fitness to practice law.

The panel considered mitigating and aggravating factors. As to mitigation, the panel noted that respondent was sincere, contrite, and apologetic; that he recognized the need for continued psychiatric treatment and medication; and that he would take precautionary measures to be cognizant of his depression. The panel further found that respondent took full responsibility for his actions and was cooperative with the investigation after his initial reluctance.

As to aggravation, the panel considered respondent's disciplinary history for misconduct "strikingly similar" to the misconduct in the instant matter, but noted that the prior misconduct occurred more than ten years prior to the matter under scrutiny.

Based on the foregoing, the panel recommended the imposition of a reprimand for respondent's actions in Martinez, with the condition that respondent "continue his prescribed medications and necessary treatment."

These matters were scheduled to be heard by us simultaneously. Neither respondent nor the presenter submitted additional briefs or documentation for our consideration in connection with these presentments. During oral argument, the presenters urged us to adopt the findings and quantum of discipline recommended by the panels below. For his part, respondent emphasized his compliance with his medication, indicated that he does not have the revenue to hire an associate to support his practice, and himself argued in favor of a short term of suspension.

Following a de novo review of the records, we are satisfied that the records in both matters clearly and convincingly support the DEC's findings that respondent committed misconduct.

Specifically, in the Bekdas matter, respondent committed gross neglect, in violation of RPC 1.1(a), by failing to timely and appropriately reply to discovery requests and court orders, which resulted in Bekdas's answer being stricken, with prejudice, and a default judgment being entered against him. Respondent further failed to act with diligence, in violation of RPC 1.3, and failed to communicate, in violation of RPC 1.4(b), by failing to reply to discovery demands and court orders, by failing to communicate with Bekdas to keep him informed of the status of the case, and by failing to reply to Bekdas's reasonable requests for information.[6] Finally, respondent violated RPC 8.1(b) by failing to cooperate with disciplinary authorities by neither scheduling an in-person meeting nor producing his client file to disciplinary authorities.

In the Martinez matter, respondent violated RPC 1.1(a) by failing to file the appropriate motions on behalf of Martinez and by failing to appear for, and to act on, the notice of motion and subsequent order from the February 16, 2018 motion return date. Respondent's gross neglect resulted in the entry of an adverse order against Martinez. Moreover, respondent

[6] Respondent was not charged with having violated RPC 3.4(d), but the facts in the record would have supported such a charge ("A lawyer shall not: (d) in pretrial procedure make frivolous discovery requests or fail to make reasonably diligent efforts to comply with legally proper discovery requests by an opposing party").

lacked diligence, in violation of RPC 1.3, by failing to file the correct motions and failing to appear for the motion return date to adequately represent Martinez. Finally, respondent failed to communicate with Martinez, in violation of RPC 1.4(b), by withholding the February 16, 2018 motion return date, and the resulting order, despite having met or spoken with Martinez on numerous occasions beforehand.

In the Martinez matter, the presenter failed to prove, by clear and convincing evidence, that respondent violated RPC 1.1(b) and RPC 8.1(b), and we determine to dismiss those charges.

Regarding RPC 1.1(b), for us to find a pattern of neglect, at least three instances of neglect, in three distinct client matters, are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). Here, the allegations of neglect deal exclusively with Martinez. These instances, in a single client matter, are insufficient to support a finding that respondent engaged in a pattern of neglect.

Regarding RPC 8.1(b), the record reflects that the complaint was served upon respondent on October 30, 2019. Respondent filed his first answer on December 16, 2019, and his amended answer on September 20, 2020. Although the first answer was delayed by a few weeks, there is nothing in the record to evidence the DEC's service of the answer, nor any

follow up communication that may have occurred. Further, as the hearing panel remarked, despite his initial reluctance, respondent thereafter cooperated with the investigation and entered into the stipulation, admitting the allegations of the complaint. Thus, in the Martinez matter, we determine to agree with the hearing panel and dismiss the charge of a violation of RPC 8.1(b).

In sum, we find that respondent violated RPC 1.1(a) (two instances); RPC 1.3 (two instances); RPC 1.4(b) (two instances); and RPC 8.1(b) (one instance – the Bekdas matter). We dismiss the charges that respondent violated RPC 1.1(b) and RPC 8.1(b) (one instance – the Martinez matter). The sole issue remaining for determination is the appropriate quantum of discipline for respondent's misconduct.

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, the presence of additional violations, and the attorney's disciplinary history. See, e.g., In the Matter of Esther Maria Alvarez, DRB 19-190 (September 20, 2019) (admonition for attorney who was retained to obtain a divorce for her client but, for the next nine months, failed to take any steps to pursue the matter, and failed

to reply to all but one of the client's requests for information about the status of her case, violations of RPC 1.1(a) and RPC 1.4(b); in another matter, the attorney agreed to seek a default judgment, but waited more than eighteen months to file the necessary papers with the court; although the attorney obtained a default judgment, the court later vacated it due to the passage of time, which precluded a determination on the merits; violations of RPC 1.1(a) and RPC 1.3); In the Matter of Michael J. Pocchio, DRB 18-192 (October 1, 2018) (admonition for attorney who filed a divorce complaint and permitted it to be dismissed for failure to prosecute the action; he also failed to seek reinstatement of the complaint, and failed to communicate with the client; violations of RPC 1.1(a); RPC 1.3; RPC 1.4(b); and RPC 3.2); In re Burro, 235 N.J. 413 (2018) (reprimand for attorney who grossly neglected and lacked diligence in an estate matter for ten years and failed to file New Jersey Inheritance Tax returns, resulting in the accrual of $40,000 in interest and the imposition of a lien on property belonging to the executrix, in violation of RPC 1.1(a) and RPC 1.3; the attorney also failed to keep the client reasonably informed about events in the case (RPC 1.4(b)); to return the client file upon termination of the representation (RPC 1.16(d)); and to cooperate with the ethics investigation (RPC 8.1(b)); in aggravation, we considered

the significant harm to the client and the attorney's prior private reprimand; in mitigation, the attorney expressed remorse and had suffered a stroke that forced him to cease practicing law); and In re Abasolo, 235 N.J. 326 (2018) (reprimand for attorney who grossly neglected and lacked diligence in a personal injury case for two years after filing the complaint; after successfully restoring the matter to the active trial list, the attorney failed to pay a $300 filing fee, permitting the defendants' order of dismissal with prejudice to stand, in violation of RPC 1.1(a) and RPC 1.3; in addition, for four years, the attorney failed to keep the client reasonably informed about the status of the case, in violation of RPC 1.4(b)).

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).

Here, the DEC recommended a three-month suspension for the Bekdas matter, and a reprimand for the Martinez matter. Based on the case law cited above, the baseline level of discipline for the totality of respondent's violations is at least a censure. However, to craft the appropriate discipline in this case, we must consider both aggravating and mitigating factors.

In aggravation, respondent has previously been disciplined for similar misconduct. 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). It is noteworthy that the most recent of respondent's four prior disciplinary matters occurred more than ten years before the facts of the matters currently before us. However, as the hearing panel in the Martinez matter pointed out, respondent's prior misconduct was "strikingly similar" to his conduct here. Thus, mindful of the protective purpose of the disciplinary system, we elect to weigh his disciplinary history in aggravation.

We also weigh in aggravation the injury to Bekdas, who settled his matter for a significant sum of money at least partially due to respondent's misconduct and inaction and the resulting default judgment.

In mitigation, respondent was cooperative and entered into stipulations on both of these matters, admitting the charges. Moreover, respondent suffers from mental health issues that contributed, in some measure, to his misconduct. Although taking into consideration the psychiatrist's letter that respondent is "psychiatrically stable and doing well," and respondent's own representations that he has been compliant with his treatment, it is concerning that, in the Bekdas matter, respondent described "plodding on," and in the Martinez matter, he stated that he had mentally "collapsed." The hearing panels were sympathetic to respondent's mental health conditions and noted his candor. However,

respondent's ethics history and testimony underscore his awareness of the impacts of his mental health upon his adequate and ethical representation of clients. We therefore give this factor only slight weight because, despite that awareness, he continues to commit the same misconduct and endanger additional clients.

On balance, for his misconduct toward his clients, Bekdas and Martinez, as well as toward disciplinary authorities, and in light of his ethics history, we determine to impose a three-month suspension. Additionally, prior to reinstatement, we require respondent to (1) attend psychological counseling in addition to continuing to comply with his prescribed regimen of medication and provide the OAE with proof of same, and (2) provide to the OAE proof of fitness to practice law, as attested to by a mental health professional approved by the OAE.

Further, after his reinstatement, respondent is directed to provide to the OAE quarterly reports documenting his continued psychological treatment and counseling, for a period of two years.

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 Matters of Alfred V. Gellene
Docket No. DRB 20-289, DRB 20-336

Argued: April 15, 2021

Decided: July 21, 2021

Disposition: Three-month suspension with conditions

Members	Three-month suspension	Absent
Gallipoli	X	
Singer	X	
Boyer	X	
Campelo		X
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Total:	8	1

Johanna Barba Jones
Chief Counsel