Supreme Court of New Jersey
Disciplinary Review Board
Docket Nos. DRB 21-260 and 21-264
District Docket Nos. VIII-2020-0035E
and XIV-2020-0192E

In the Matters of	:
John Charles Allen	:
An Attorney at Law	:

Decided: May 26, 2022

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

These matters were before us on two certifications of the record filed by the Office of Attorney Ethics (the OAE) and the District VIII Ethics Committee (the DEC), pursuant to R. 1:20-4(f), which were consolidated for our review.

The formal ethics complaint in DRB 21-260 (grievant Dorothy Schultz) charged respondent with having violated RPC 1.1(a) (committing gross neglect); RPC 1.2(a) (failing to abide by the client's decisions); RPC 1.3 (engaging in lack of diligence); RPC 1.4(b) (failing to keep a client reasonably

informed about the status of a matter and to comply with reasonable requests for information); RPC 1.7(a)(2) (engaging in a conflict of interest); RPC 1.16(a)(2) (failing to withdraw from representation if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client); RPC 1.16(a)(3) (failing to withdraw from representation despite being discharged by the client); RPC 1.16(d) (failing to take reasonable steps to protect the client's interests upon termination of representation); RPC 3.2 (failing to expedite litigation); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 5.5(a)(1) (practicing law while suspended); RPC 8.1(a) (knowingly making a false statement of material fact in a disciplinary matter); RPC 8.1(b) (failing to cooperate with ethics authorities) (two instances);[1] RPC 8.4(b) (committing a criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness as a lawyer – practicing law while suspended (N.J.S.A. 2C:21-22(b)(1))); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation) (three instances); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

The formal ethics complaint in DRB 21-264 (grievant Jeanette Lopez) charged respondent with having violated RPC 1.3; RPC 1.5(a) (charging an

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

unreasonable fee); RPC 1.16(a)(3) (failing to withdraw from representation despite being discharged by the client); RPC 1.16(d); RPC 8.1(b) (two instances);[2] and RPC 8.4(c).

On February 16, 2022, respondent submitted a motion to vacate the default (MVD) in the Lopez matter, which we denied on February 22, 2022.

For the reasons set forth below, we determine to reiterate our previous recommendation to the Court – made on December 6, 2021, in connection with DRB 21-126 – that respondent be disbarred. We also impose a condition.

Respondent earned admission to the New Jersey bar in 1995.

In May 2005, respondent received an admonition for committing gross neglect and failing to communicate with his client in connection with a foreclosure matter. In the Matter of John Charles Allen, DRB 05-087 (May 23, 2005).

On May 6, 2015, respondent received a censure for committing gross neglect and lack of diligence; failing to communicate with the client; and engaging in conduct prejudicial to the administration of justice. In re Allen, 221 N.J. 298 (2015). In that case, we determined that respondent provided legal services to his client only after the client filed an ethics grievance against him.

[2] Due to respondent's failure to file an answer to the ethics complaint, the DEC amended the complaint to include a second RPC 8.1(b) charge.

Also, when respondent finally performed work on the client's matter, he satisfied a lien other than the lien he had been retained to resolve. He failed to reply to any correspondence from his client for over a year and failed to keep his client reasonably informed about the status of the matter. Respondent also improperly sought to persuade his client to withdraw the grievance in exchange for a refund of his fees or continued work on the matter without additional fees. In the Matter of John Charles Allen, DRB 14-226 (January 22, 2015) (slip op. at 13-14).

In 2018 and 2019, the Court temporarily suspended respondent for failing to comply with fee arbitration awards in two client matters unrelated to those before us. In re Allen, 235 N.J. 363 (2018), and In re Allen, 237 N.J. 435 (2019). In both matters, the Court reinstated respondent within a month, after he satisfied the awards. In re Allen, 236 N.J. 90 (2018), and In re Allen, 237 N.J. 586 (2019).

In April 2021, we heard oral argument in In the Matter of John Charles Allen, DRB 20-296 (July 8, 2021), a presentment matter, in which the formal ethics complaint charged respondent with having violated RPC 1.15(d) (failing to comply with the recordkeeping provisions of R. 1:21-6); RPC 3.3(a)(1) (two instances – making a false statement of material fact to a tribunal); RPC 5.5(a)(1) (engaging in the unauthorized practice of law – failing to maintain

professional liability insurance); RPC 8.1(a) (two instances); RPC 8.1(b) (two instances); and RPC 8.4(c) (two instances). We determined to suspend respondent for three months, with the conditions that, prior to reinstatement, he complete a recordkeeping course, and that, after reinstatement, he be subject to quarterly recordkeeping monitoring by the OAE for a period of two years. On March 11, 2022, the Court ordered respondent's three-month suspension, effective March 8, 2022. In re Allen, 2022 N.J. LEXIS 245 (2022).

In May 2021, we considered In the Matter of John Charles Allen, DRB 21-028 (July 21, 2021), a default matter, in which the formal ethics complaint charged respondent with having violated RPC 1.15(d) and RPC 8.1(b) (two instances). In that matter, respondent received a $4,850 fee from the client but failed to keep a copy of the retainer agreement, thereby violating the recordkeeping requirements of R. 1:21-6 and limiting the OAE's ability to investigate the client's grievance. Respondent filed a motion to vacate the default. We denied that motion and imposed a one-year suspension, consecutive to the three-month suspension imposed in DRB 20-296, with the requirement that respondent practice under the supervision of a proctor for a period of no less than one year upon reinstatement. On March 11, 2022, the Court ordered a three-month suspension, consecutive to the three-month suspension ordered in

DRB 20-296, effective June 11, 2022. In re Allen, 2022 N.J. LEXIS 244 (March 11, 2022).

Effective July 6, 2021, the Court temporarily suspended respondent for his failure to comply with two fee arbitration matters. In the Matter of John Charles Allen, DRB 21-107 (May 27, 2021); In re Allen, __ N.J. __ (2021); In the Matter of John Charles Allen, DRB 21-078 (May 27, 2021); In re Allen, __ N.J. __ (2021). In a December 1, 2021 letter, the Court acknowledged confirmation that, on November 24, 2021, respondent satisfied his obligation under the fee arbitration determination in DRB 21-107. The Court noted that respondent must file with the Court a petition for reinstatement to practice again; however, he would remain suspended because additional fee arbitration obligations remained outstanding.

In September 2021, we considered In the Matter of John Charles Allen, DRB 21-126 (December 6, 2021), a second consecutive default matter, in which the formal ethics complaint charged respondent with having violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.16(d); and RPC 8.1(b) (two instances). In that matter, respondent received a $3,250 fee from the client but subsequently abandoned the client by failing to have documents translated, failing to file or serve the client's divorce complaint, and failing to otherwise perform legal work for the client or communicate with the client. Upon termination of the

representation, respondent failed to refund the unearned portion of the fee. Further, respondent failed to respond to disciplinary authorities and to provide information requested by the DEC. In a decision transmitted to the Court on December 6, 2021, we recommended respondent's disbarment, citing his disciplinary history and demonstrated lack of regard for the disciplinary system.

On December 10, 2021, the Court ordered respondent to show cause as to why he should not be disbarred or otherwise disciplined. On April 8, 2022, following argument in that matter, the Court ordered respondent's indeterminate suspension for a minimum of five years. In re Allen, ___ N.J. ___ (2022).

On January 25, 2022, we determined to again temporarily suspend respondent for his failure to comply with two additional fee arbitration matters. In the Matter of John Charles Allen, DRB 21-242 (January 25, 2022); In re Allen, __ N.J. __ (2022); and In the Matter of John Charles Allen, DRB 21-243 (January 25, 2022); In re Allen, __ N.J. __ (2022). On February 25, 2022, respondent was temporarily suspended, effective March 28, 2022 for both matters.

Respondent remains temporarily suspended to date.

Service of process was proper in both matters.

Regarding DRB 21-260, on September 10, 2021, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home

address of record. On September 20, 2021, the certified mail receipt was returned, unsigned, and United States Postal Service (the USPS) tracking indicated delivery on September 15, 2021. The regular mail was not returned.

On October 7, 2021, the OAE sent a letter to respondent's home address, e-mail address, and two facsimile numbers, indicating that the matter had been reassigned at the OAE and reminding him that his answer was due on October 8, 2021. One facsimile attempt failed, however, the OAE received an e-mail delivery receipt and one facsimile delivery receipt, and the regular mail was not returned.

On October 21, 2021, the OAE sent letters, by regular mail, to respondent's office address, as well as to respondent's e-mail address and two facsimile numbers, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The OAE received an e-mail delivery receipt and one facsimile delivery receipt, and the regular mail was not returned.

In reply to the OAE's October 21, 2021 letter, respondent sent an e-mail to the OAE, requesting a copy of the complaint and an additional five days to answer. On October 22, 2021, the OAE replied to respondent's e-mail, attaching

the complaint and exhibits and granting respondent five days, from October 21, 2021 to file his verified answer.

As of November 4, 2021, respondent had not filed an answer to the complaint, and the time within which he was required to answer had expired. Accordingly, the OAE certified this matter to us as a default.

Regarding DRB 21-264, service of process also was proper. On June 4, 2021, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address of record. The certified mail was unclaimed, and the regular mail was not returned.

On August 30, 2021, the DEC sent letters, by certified and regular mail, to respondent's office address, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). USPS tracking indicated that the certified mail was delivered to an individual at the office address on September 1, 2021, and the regular mail was not returned.

The DEC confirmed with the OAE Statewide Ethics Coordinator that respondent's address was the proper address for service of the grievance and the ethics complaint.

As of December 1, 2021, respondent had not filed an answer to the complaint, and the time within which he was required to answer had expired. Accordingly, the DEC certified this matter to us as a default.

On December 20, 2021, the Office of Board Counsel (the OBC) published a notice in the New Jersey Law Journal, stating that we would consider these matters on February 17, 2022. The notice informed respondent that, unless he filed successful motions to vacate the defaults by January 11, 2022, his failure to answer would remain deemed an admission of the allegations of the complaints. As noted above, after consideration, we determined to deny respondent's untimely February 16, 2022 motion to vacate the default in the Lopez matter.

We now turn to the allegations of the complaints.

The Schultz Matter (DRB 21-260)

Count One

On November 25, 2018, Schultz retained respondent to represent her in a wrongful termination/fraudulent employment lawsuit against her former employer, Ki Yim. On December 12, 2018, respondent filed a complaint against Yim on Schultz's behalf.

Thereafter, on February 21, 2019, counsel for Yim, Lowell S. Miller, Esq., sent respondent a discovery request, via certified mail. The certified mail was returned as unclaimed. On April 1, 2019, Miller sent a second copy of the discovery request to respondent. The letter was not returned. Respondent failed to reply to the discovery request within the time provided by R. 4:18-1(b)(2).

In May 2019, respondent sent Schultz the February 2019 discovery requests from Miller. Following receipt of the requests, Schultz attempted to contact respondent, to no avail. On June 5, 2019, Miller sent respondent a letter, by facsimile, regular mail, and e-mail, advising him that responses to the discovery requests were overdue. In that letter, Miller further informed respondent that, if Miller did not receive the discovery responses, he would file a motion to dismiss Schultz's complaint.

On June 25, 2019, after attempting to contact respondent by telephone and leaving a voicemail, Miller filed a motion to dismiss Schultz's complaint for failure to provide discovery. Respondent, who received notification of the motion to dismiss via eCourts, failed to inform Schultz of the adverse motion.

On July 11, 2019, the day before the motion to dismiss was returnable, respondent sent a letter to the court requesting an adjournment. In the letter, he represented that Schultz was forwarding her handwritten responses to the discovery requests that same date and requested a two- to four-week

adjournment of the motion. The court granted the adjournment and rescheduled the matter for July 26, 2019.

On July 19, 2019, Schultz returned to respondent the completed discovery requests. In a letter dated July 25, but filed July 26, 2019, the return date of the motion to dismiss, respondent sent a letter to the court representing that he had provided Schultz's answers to the discovery requests to Miller. Respondent did not file formal opposition to the motion. The court adjourned the motion to August 2, 2019 and indicated that it would be decided on the papers.

At some point in July 2019, respondent requested an additional $2,000 fee from Schultz, purportedly for deposition preparation. However, at that point in the litigation, there were no depositions scheduled or pending. On August 20, 2019, Schultz paid respondent the additional $2,000. After receiving the additional $2,000, respondent did not contact Schultz regarding deposition preparation.

On August 5, 2019, Miller requested that the motion to dismiss the complaint be adjourned to August 30, 2019, informing the trial court that he had received discovery responses from respondent by e-mail, but was unable to open them; that motion was granted. In an August 29, 2019 letter, filed August 30, 2019, respondent requested another adjournment of the motion. However, on August 30, 2019, the court granted Miller's motion and dismissed the complaint,

without prejudice, for failure to provide discovery. Respondent failed to inform Schultz that the matter had been dismissed, without prejudice, despite having received the notification via eCourts.

On October 24, 28, and 30, 2019, Schultz sent respondent text messages regarding her case. Respondent indicated that he was attending to personal health matters which impacted his ability to respond to her. Schultz responded that she was concerned that respondent's health matters would make him unable to follow through with her case. On October 30, 2019, respondent replied to Schultz, saying "[w]e are ok in your matter." Again, respondent failed to inform Schultz that her complaint had been dismissed, without prejudice.

On November 18, 2019, Schultz sent a text message to respondent requesting an update on her case, expressing concern about the progress of her matter, and requesting a telephone conference. Respondent failed to reply to her message.

On December 9, 2019, Schultz sent another text message to respondent, advising him that, due to his medical issues, she likely would seek new counsel. Respondent failed to reply to her message. Two days later, on December 11, 2019, Schultz sent respondent a text message requesting a copy of her file and documents if he was unable to follow through with her case. Respondent, again, failed to reply to her message.

On December 13, 2019, Miller filed a motion to dismiss Schultz's complaint, with prejudice, for failure to provide discovery. In his motion, Miller indicated that, despite repeated requests, respondent had failed to provide the discovery via an accessible medium. The court scheduled the motion for January 10, 2020. Respondent failed to inform Schultz about the motion, despite having received notice via eCourts.

On December 20, 2019, Schultz sent a text message to respondent seeking an update on her case. On four occasions in January 2020, Schultz sent text messages to respondent indicating dates and times she was available for a telephone call. However, despite the information concerning her availability, respondent called her at times when she was unavailable, working, or otherwise unable to speak to him.

By letter dated January 9, but filed January 10, 2020, the day the motion to dismiss was returnable, respondent requested a two-week adjournment, indicating that discovery was contemporaneously being provided to Miller. Respondent further indicated that Schultz would be certifying additional responses which would be forwarded to Miller. The court adjourned the motion to February 14, 2020.

On January 24, 2020, respondent sent Schultz a text message indicating that she needed to complete and return interrogatory questions sent to her via e-

mail. Respondent again failed to inform Schultz of the pending motion to dismiss her lawsuit. Schultz did not receive the interrogatory questions from respondent and, on January 25, 2020, informed him of such by text message.

The next day, January 26, 2020, respondent replied to Schultz's text message and advised her that he would re-send the questions. Subsequently, Schultz replied that she had not received them. Respondent failed to reply to her text message.

On January 29, 2020, Miller withdrew the motion to dismiss, with prejudice, after reviewing respondent's January 10, 2020 discovery response.

On February 18, 2020, Schultz sent respondent a text message advising him that she still had not received the interrogatory questions. Respondent failed to reply to her message. On February 20, 21, and 24, 2020, Schultz sent additional text messages again advising that she had not received the questions.

On February 24, 2020, respondent replied, asking Schultz to provide times when she would be available the next day to discuss the matter. Schultz did so and respondent failed to reply. On February 27, 2020, Schultz sent respondent a text message expressing her frustration with his lack of communication. Respondent replied that day, advising Schultz that he was confident in her case and that there would be a successful outcome.

Three months later, on June 1, 2020, respondent filed a motion to vacate the dismissal of the complaint, without prejudice, and to reinstate the complaint. Respondent failed to advise Schultz that he filed the motion to reinstate the case. On June 17, 2020, the court granted the motion to reinstate the complaint. Respondent failed to advise Schultz that the matter had been reinstated.

On June 26, 2020, Miller sent respondent a facsimile scheduling Schultz's deposition for August 5, 2020. Respondent failed to inform Schultz of the deposition schedule. At respondent's request, the deposition was rescheduled to August 26, 2020. Again, respondent failed to inform Schultz of such and, thereafter, canceled the deposition.

On September 9, 2020, Miller sent respondent a letter, by facsimile and e-mail, offering to settle the matter for $5,000. Respondent failed to inform Schultz of the settlement offer.

Two days later, on September 11, 2020, Miller filed a motion to compel Schultz's deposition. The court scheduled the motion for October 16, 2020. Respondent failed to reply to the motion and failed to inform Schultz that the motion was filed, despite having received notice via eCourts. On October 19, 2020, the court granted the motion to compel Schultz's deposition, directing that Schultz be deposed within thirty days of the order. Respondent again failed to inform Schultz of the court's order, despite having received notice via eCourts.

On October 20, 2020, Miller sent respondent the court's October 19, 2020 order, by facsimile, e-mail, and regular mail, and scheduled Schultz's deposition for November 4, 2020. Respondent failed to inform Schultz of the deposition date, and then canceled it.

Therefore, on November 19, 2020, Miller filed a renewed motion to dismiss Schultz's complaint, citing her failure to attend the deposition. Respondent neither replied to the motion nor advised Schultz of the motion. On December 18, 2020, the court granted Miller's motion and dismissed the case, without prejudice, for Schultz's failure to appear at the deposition. Respondent failed to inform Schultz of the dismissal.

On February 19, 2021, Miller filed a motion to dismiss the complaint, with prejudice, for Schultz's failure to attend the deposition, representing that respondent had not contacted him to arrange the deposition. Respondent neither filed a reply to the motion nor informed Schultz of the motion, despite having received notice of the motion via eCourts.

Thereafter, on March 12, 2021, the court wrote to respondent and Miller, directing respondent to appear before the court, on March 19, 2021, "with copies

of affidavit(s) of client notification required by R. 4:23-5(a)(2)."[3] Respondent failed to appear before the court and failed to file the required affidavit.

However, on March 16, 2021, Schultz filed a pro se certification in opposition to Miller's motion to dismiss. Schultz informed the court that she was unaware of the depositions, had filed an ethics grievance and a fee arbitration request against respondent, and had terminated respondent's services, effective April 2020. She further indicated that she only became aware of the motion to dismiss when she attempted to contact Miller, after respondent failed to reply to her attempts to communicate with him.

On March 19, 2021, the court denied Miller's motion to dismiss with prejudice, deemed Schultz pro se, and ordered respondent to immediately file a notice to be relieved as counsel and a substitution of attorney. On April 12, 2021, the court signed a case management order submitted by Miller and Schultz, again directing respondent to provide a signed substitution of attorney to Schultz within five days of the order. Respondent failed to do so.

Based on the foregoing facts, the OAE charged respondent with having violated RPC 1.1(a); RPC 1.2(a); RPC 1.3; RPC 1.4(b); RPC 1.16(a)(2); RPC 3.2; RPC 3.4(c); RPC 8.4(c); and RPC 8.4(d).

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[3] That Rule requires an attorney to advise a client of a pending motion to dismiss, with prejudice, filed due to failure to comply with a demand for discovery.

Count Two

Effective November 19, 2018, the Court temporarily suspended respondent for his failure to comply with a fee arbitration award. Six days later, on November 25, 2018, respondent met with Schultz to discuss her case and agreed to represent her in the lawsuit against Yim. Schultz paid respondent an initial $500 retainer fee, which respondent accepted, despite being suspended. Respondent failed to disclose to Schultz that he was suspended.

On November 27, 2018, Schultz paid respondent an additional $2,200, which respondent accepted, despite being suspended.

On November 30, 2018, respondent filed a motion to be reinstated following his payment of the $2,650 fee arbitration award, on November 28, 2018, wherein he acknowledged that he had been temporarily suspended as of November 19, 2018. The fee arbitration matter was unrelated to Schultz's matter.

Based on the foregoing facts, the OAE charged respondent with having violated RPC 5.5(a)(1), RPC 8.4(b), and RPC 8.4(c).

Count Three

On March 9, 2020, Schultz filed an ethics grievance against respondent and filed for fee arbitration. On March 24, 2020, the fee arbitration committee

sent respondent a letter advising him of the fee arbitration request and directing him to reply by April 14, 2020 or be barred from the arbitration process. Despite receiving notice of the fee arbitration request by Schultz, respondent failed to seek withdrawal from representation, and continued to represent Schultz.

On April 22, 2020, Schultz sent respondent an e-mail terminating respondent's representation. The e-mail was not returned as undeliverable; nevertheless, respondent continued to represent Schultz without her knowledge or consent. Respondent failed to seek to be relieved as counsel for Schultz, despite her termination of his representation.

On May 8, 2020, the OAE sent respondent, via e-mail, Schultz's ethics grievance, and requested a copy of the file, retainer agreement, and accounting of the retainer, by May 22, 2020. On May 13, 2020, the OAE sent the May 8, 2020 correspondence to respondent via facsimile. The e-mails were not returned as undeliverable, and the facsimile was confirmed as delivered.

Furthermore, on March 19, 2021, following the denial of the motion to dismiss with prejudice, the court ordered respondent to immediately file a notice to be relieved as counsel and a substitution of attorney. On April 12, 2021, the court signed a case management order directing respondent to file a substitution of attorney within five days of the date of the order. Respondent failed to do so.

Based on the foregoing facts, the OAE charged respondent with having violated RPC 1.7(a)(2), RPC 1.16(a)(3), and RPC 1.16(d).

Count Four

On November 9, 2020, the fee arbitration committee conducted a hearing in Schultz's fee arbitration matter. During the hearing, respondent testified that he had sent a substitution of attorney form to Schultz sometime between March and May 2020, but that Schultz never signed and returned the form. Respondent further testified that, on September 9, 2020, he received the $5,000 settlement offer from Miller and transmitted it to Schultz the next day, but that Schultz never responded to the offer.

Respondent further testified that he was not aware that he was ever suspended. As noted, however, on November 30, 2018, respondent had filed a motion for reinstatement wherein he acknowledged his temporary suspension as of November 19, 2018.

Following the hearing, the fee arbitration committee asked respondent to provide all fee agreements or letters of representation between himself and Schultz; the transmittal from respondent to Schultz of the $5,000 settlement offer; the transmittal from respondent to Schultz of the motion to reinstate and

all connected documents; and the transmittal from respondent to Schultz of the substitution of attorney form.

In reply, respondent provided a copy of an unexecuted retainer agreement; an intake form completed when respondent consulted with Schultz; a June 1, 2020 letter addressed to Schultz with a copy of respondent's motion to reinstate the complaint; a September 10, 2020 letter addressed to Schultz with a copy of the $5,000 settlement offer; and an August 14, 2020 letter addressed to Schultz with the substitution of attorney form.

Schultz disputed ever reviewing or receiving the documents submitted by respondent.

On January 11, 2020, the fee arbitration committee issued a decision, indicating that the matter raised a substantial question as to respondent's honesty, trustworthiness, or fitness as a lawyer, and questioning the veracity of the supporting documents provided by respondent, based on a lack of signature and a typographical error that appeared in all three letters. The panel remarked that, despite having been notified via eCourts, respondent omitted additional motions filed by Miller.

Based on the foregoing, the OAE charged respondent with having violated RPC 8.1(a) and RPC 8.4(c).

Count Five

On May 8, 2020, the OAE sent to respondent, via his two e-mail addresses of record, Schultz's ethics grievance, and requested a response by May 22, 2020. On June 19, 2020, the OAE again sent the grievance, noted respondent's failure to file a reply, and extended respondent's time to reply to June 22, 2020. On June 26, 2020, the OAE again extended the due date for respondent's reply, to July 6, 2020.

On July 9, 2020, respondent sent the OAE an e-mail containing a consultation form with Schultz, his fee arbitration response, and an initial written response to the grievance, dated May 27, 2020. Respondent indicated that he would provide a supplemental response "later today or tomorrow." Respondent, however, failed to do so.

On September 25, 2020, the OAE sent respondent an e-mail, scheduling him for a demand interview on October 21, 2020. On September 28, 2020, the OAE sent respondent a follow-up letter, by regular mail and facsimile. Despite confirmation of delivery, respondent failed to appear for the demand interview.

The OAE rescheduled the demand interview for November 10, 2020, informing respondent of the date by certified and regular mail, facsimile, and e-mail. The day prior to the scheduled interview, respondent sent an e-mail to the OAE indicating that he would be unavailable to attend due to a medical

appointment. That same date, the OAE requested from respondent dates that he would be available. Despite confirmation of delivery, respondent failed to reply to the OAE's letter.

On December 9, 2020, the OAE wrote to respondent again, detailing his failure to comply. The OAE included a copy of an e-mail from Schultz containing allegations of respondent's misrepresentations at the fee arbitration matter and directed a response to the allegation by December 23, 2020. Despite confirmation of delivery, respondent failed to reply by the due date.

On January 19, 2021, the OAE again wrote to respondent seeking his response to the allegations raised in the fee arbitration determination. Despite confirmation of delivery, respondent again failed to reply.

Based on the foregoing facts, the OAE charged respondent with having violated RPC 8.1(b).

The Lopez Matter (DRB 21-264)

On April 10, 2020, the grievant, Jeanette Lopez, met with respondent, at his office, to discuss a wrongful termination case against her former employer. From April 10 through July 7, 2020, Lopez paid respondent a total of $5,500, via installments, toward the drafting of a complaint and legal representation. Following her full payment of respondent's fee, from July through December

2020, a period of more than four months, Lopez contacted respondent regarding the status of her case at least eighteen times, via telephone calls and text messages, even going so far as to visit his office on September 1, 2020 to provide him with documents he had requested on August 21, 2020.

Furthermore, during that period, on eight occasions, Lopez requested a refund of the legal fee and sought to terminate representation.

Despite Lopez's numerous requests for the complaint to be drafted and/or termination of services and a refund of the retainer fee, respondent either ignored Lopez's requests, or made empty promises to her that he was working on the complaint, assuring her that she would have it "today;" "by tomorrow morning;" "shortly;" or "by the end of the day." In October 2020, respondent purportedly sent Lopez an e-mail with a draft of a complaint. When Lopez realized she had not received the e-mail, respondent sent a text message to Lopez containing an incorrect e-mail address for her. Despite respondent's assurances that he had sent the e-mail, including sending Lopez a screen shot of an e-mail that he claimed contained the draft complaint, Lopez received nothing from him.

On November 18, 2020, Lopez filed an ethics grievance against respondent, including her copies of her receipts for payment of the retainer fee and copies of text messages.

On November 24, 2020, the DEC assigned an investigator to Lopez's grievance, and requested respondent's reply to the grievance within ten days.

On December 11, 2020, respondent acknowledged to Lopez in an e-mail message that he had not completed the draft complaint and claimed he would have it to her "the next day."

On December 16, 2020, eleven days after the due date of his response to the grievance, respondent requested that the DEC re-send the grievance.

From December 2020 to the filing of the complaint, in April 2021, respondent did not comply with the DEC's efforts to obtain his response to the grievance. Respondent informed the DEC that he was having two surgeries and had significant health issues. Although respondent offered to provide a doctor's note to substantiate his medical claims and proposed to speak to the DEC by telephone, he did neither.

On January 6, 2021, respondent provided a short narrative to the grievance to the DEC and promised a more extensive narrative by the end of the day, however, no such narrative was received.

Due to Lopez's filing for fee arbitration, the matter was postponed until March 2021, when the DEC gave respondent another chance to participate in the investigation by offering him seven additional days to reply to the grievance. Respondent failed to reply and, on April 13, 2021, the DEC sent him an e-mail

advising that, due to his lack of cooperation, the formal ethics complaint would be filed.

Based on the foregoing facts, the DEC charged respondent with having violated RPC 1.3 for failing to perform work on the Lopez matter over the course of five months; RPC 1.5(a) for charging an unreasonable fee and not performing work, and because, even had he performed the work, the $5,500 retainer was unjustified; RPC 1.16(a)(3) for failing to withdraw from representation of a client when he was discharged; RPC 1.16(d), for failing to refund any advance payment of his fee that was unearned; RPC 8.1(b) for failing to respond to the grievance despite the DEC's efforts and for failing to file an answer to the complaint; and RPC 8.4(c) for misrepresenting to Lopez his progress on her matter in order to avoid having to refund the retainer fee, and for making misrepresentations to the DEC despite his December 11, 2020 e-mail to Lopez in which he admitted that he had not provided a draft complaint.

On January 25, 2022, we voted to temporarily suspend respondent for failure to comply with a fee arbitration determination, entered on August 17, 2021, awarding Lopez $4,000. In the Matter of John Charles Allen, DRB 21-242 (January 25, 2022). On February 25, 2022, the Court temporarily suspended respondent, effective March 28, 2022. In re Allen, ___ N.J. ___ (2022).

Respondent's Motion to Vacate the Default

As previously noted, on February 16, 2022, 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 (1) a reasonable explanation for the failure to answer the ethics complaint, and (2) meritorious defenses to the underlying charges.

As noted above, respondent filed an MVD only as to the Lopez matter. As to the first prong, respondent provided an unsigned certification, dated August 22, 2018, in support of his motion to vacate the default and to permit him to file an answer. Respondent's certification, with the exception of the first five paragraphs, is identical to the certification respondent submitted to vacate the default in In the Matter of John Charles Allen, DRB 18-199 (September 21, 2018). Respondent claimed that he had prepared an answer to the ethics complaint in the Lopez matter and argued that his failure to file a timely answer was due to the "dire effects" of his multiple medical conditions. Respondent provided no medical documentation to support his assertions. Moreover, as noted, paragraphs six through twenty-nine of his certification consisted of information, largely surrounding his health, that had been before us more than three years ago. Thus, respondent failed to offer a reasonable explanation for his failure to file an answer to the ethics complaint.

Assuming, arguendo, that we had determined that respondent satisfied the first prong of the test, we would still deny his MVD because he has not offered a meritorious defense to all the charges in the complaint. In the answer that respondent prepared, he contested the allegations of the ethics complaint, but provided no supporting evidence. For example, respondent refers to an "EXHIBIT A," which purportedly was the civil complaint he prepared for Lopez. Respondent also referenced an "EXHIBIT B," which he claimed was an e-mail in which he sent Lopez a copy of the complaint. Respondent did not provide us with either exhibit.

Respondent asserted that Lopez terminated his services after he provided her with a copy of the complaint, but the record reflects that Lopez terminated respondent's services by letter dated October 25, 2020. By letter dated November 24, 2020, the DEC informed respondent that Lopez had filed an ethics grievance against him. Thereafter, on December 11, 2020, respondent sent Lopez an e-mail informing her he had "been working until now to finalize [her] complaint," but that he planned to finish drafting the complaint on December 12, 2020. Thus, respondent's failure to provide us with any evidence to consider regarding the timing of the completion of Lopez's civil complaint reflects the lack of meritorious defense. Moreover, respondent already had an opportunity, on August 5, 2021, to demonstrate before the fee

arbitration committee that he had performed legal work on her matter and he failed to do so.

Furthermore, respondent claimed that he was "extremely limited" by his medical issues and did not recall failing to cooperate with the DEC. Respondent attributed his impairments to the pain medication he was prescribed and his efforts to address his medical diagnoses. Again, respondent did not provide us with any documentation to substantiate his assertions. Ultimately, respondent requested that we dismiss the complaint in consideration of his medical condition.

Because respondent failed to assert a meritorious defense to the charges against him, he has not satisfied his burden under the second prong of the motion to vacate default test. Accordingly, we determined to deny respondent's MVD and entered a letter decision to that effect on February 22, 2022.

Moving to our review of the record of the underlying charges of misconduct in both the Schultz and Lopez matters, we find that the facts recited in each complaint support all the charges of unethical conduct. Respondent's failure to file answers to the complaints is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Notwithstanding that Rule, each charge in the

complaint must be supported by sufficient facts for us to determine that unethical conduct has occurred.

The Schultz Matter (DRB 21-260)

In the Schultz matter, respondent agreed to represent the client in an employment lawsuit and accepted a fee but, following his filing of a civil action, he repeatedly missed discovery and deposition deadlines, in violation of court orders and Court Rules, resulting in motions to dismiss the client's complaint, including with prejudice. Despite representing the client for more than two years, and receiving multiple adjournments from the trial court, respondent failed to advance the client's matter. Ultimately, the client learned of the dismissal of her complaint from the defendant's counsel, terminated the representation, and proceeded pro se. Respondent's prolonged inaction clearly constituted gross neglect and lack of diligence, in violation of RPC 1.1(a) and RPC 1.3.

Next, during the course of the representation, respondent failed to inform Schultz of a $5,000 settlement offer made by defense counsel, in violation of RPC 1.2(a). In that same vein, throughout his representation of Schultz, respondent failed to promptly reply to her reasonable inquiries about her case and failed to keep her informed about the status of her matter, including his

repeated failures to inform Schultz about the dismissal of her complaint and various, adverse motions filed by defense counsel. Indeed, respondent told Schultz that her case was "okay" after it had been dismissed with prejudice, without her knowledge. Respondent's repeated failure to return Schultz's messages and to keep her informed of the status of the case violated RPC 1.4(b).

Despite Schultz's December 2019 requests to respondent that he terminate the representation because of his medical issues and his inability to represent her, respondent continued to represent Schultz, albeit poorly. Respondent also failed to provide Schultz with a copy of her file, despite her request that he do so. Because, in his words, his medical circumstances materially impacted his ability to represent Schultz, respondent should have withdrawn from the representation, yet failed to do so. He, thus, violated RPC 1.16(a)(2).

By systematically failing to timely respond to defense counsel's discovery and deposition requests, respondent caused numerous discovery motions to be filed, thereby unnecessarily impeding the course of the litigation, in violation of RPC 3.2. Further, by failing to appear before the court on March 19, 2021, as ordered, with the required client affidavit, and by failing to provide the substitution of attorney within five days of the April 12, 2021 court order,

as ordered, respondent knowingly disobeyed the rules of a tribunal, in violation of RPC 3.4(c) and RPC 8.4(d).

Moreover, due to respondent's failure to reply to numerous discovery requests, defense counsel was required to file numerous motions to enforce the Court Rules and the trial court's orders, resulting in the court having to expend unnecessary time to address respondent's failures. This wholly avoidable motion practice was prejudicial to the administration of justice and, consequently, respondent again violated RPC 8.4(d).

Next, by failing to inform Schultz of the status of her case, including the dismissal and reinstatement of her case, and for requesting additional funds from Schultz for a deposition that was not scheduled, respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of RPC 8.4(c). Similarly, respondent was temporarily suspended from November 19, 2018, and met with Schultz on November 25, 2018 to discuss her case. On that date, respondent accepted a $500 retainer from Schultz and failed to inform her that he had been suspended. Two days later, respondent accepted another $2,200 from Schultz, despite being suspended. Respondent filed a motion for reinstatement on November 30, 2018, after paying a $2,650 fee arbitration award. In connection with his reinstatement, respondent acknowledged that he was temporarily suspended as of November 19, 2018. Therefore, in our view,

the record is clear that respondent knowingly practiced law while suspended, in violation of RPC 5.5(a)(1). Further, by practicing law during his period of suspension, respondent committed a criminal act, in violation of N.J.S.A. 2C:21-22 and RPC 8.4(b). See In re Abramowitz, 240 N.J. 204 (2019); In the Matter of Arnold M. Abramowitz, DRB 18-420 (August 28, 2019). See also In re Gallo, 178 N.J. 115, 121 (2003) (the scope of disciplinary review is not restricted, even though the attorney was neither charged with nor convicted of a crime), and In re McEnroe, 172 N.J. 324 (2002) (attorney found to have violated RPC 8.4(b), despite not having been charged with or found guilty of a criminal offense). Finally, by failing to disclose to Schultz that he had been suspended, and by accepting a legal fee, respondent engaged in dishonest conduct, in violation of RPC 8.4(c) (the second violation of RPC 8.4(c) in the Schultz matter).

RPC 1.7(a)(2) states, in relevant part, that "a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if . . . there is a significant risk that the representation . . . will be materially limited by . . . a personal interest of the lawyer." In the Schultz matter, respondent engaged in a conflict of interest by continuing to represent Schultz, despite her filing of the ethics grievance and the fee arbitration request, and despite her termination of the representation. His

failure to withdraw from the representation further violated RPC 1.16(a)(3). Moreover, despite Schultz's request for a copy of her file, respondent failed to produce the file or to take steps to protect her interests upon termination. Rather, he took no steps and ignored the trial court's orders that he withdraw from the representation. Even after he was formally relieved as counsel by the court, respondent failed to make any efforts to protect Schultz's interests. He, thus, clearly violated RPC 1.16(d).

Additionally, respondent made a false statement of material fact to a disciplinary officer, in violation of RPC 8.1(a), and engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of RPC 8.4(c), by claiming, to the fee arbitration committee, that he had sent documents to Schultz that he had not sent, and that he was unaware that he was suspended when he consulted Schultz, despite having filed a petition for reinstatement acknowledging the suspension.

The Lopez Matter (DRB 21-264)

In the Lopez matter, respondent wholly failed to perform work on the client's case for five months, despite accepting a significant fee, and despite Lopez's repeated requests that he perform the legal work. His conduct constituted a lack of diligence, in violation of RPC 1.3. It further constituted

gross neglect, but RPC 1.1(a) was not charged and, therefore, we make no such finding.

Moreover, Lopez discharged respondent from the representation on eight occasions, but respondent refused to act upon Lopez's request to end his representation. Consequently, Lopez was forced to file an ethics grievance due to respondent's unresponsiveness to her demand for a refund, despite never having done any legal work on her behalf. Thus, respondent's misconduct constituted a violation of RPC 1.16(a)(3). He also violated RPC 1.16(d) by failing to refund the unearned portion of his fee and by failing to acknowledge the termination of representation and return the file to Lopez.

Respondent's fee of $5,500, for which he performed no work, was per se unreasonable. Therefore, respondent violated RPC 1.5(a), and we determine that respondent should be required to disgorge the entire fee.

Further, respondent engaged in dishonest conduct, in violation of RPC 8.4(c), by making multiple misrepresentations to Lopez regarding the progress of her matter when she requested termination of his representation, presumably, in order to avoid having to refund the legal fee.

Finally, in both the Schultz and Lopez matters, respondent knowingly failed to respond to lawful demands for information from disciplinary authorities, in violation of RPC 8.1(b), in two independent respects in each

matter: first, he failed to provide the information requested by the OAE and DEC, and second, he failed to respond the disciplinary complaints and allowed these matters to proceed by default.

In sum, we find that respondent violated RPC 1.1(a) (the Schultz matter); RPC 1.2(a) (the Schultz matter); RPC 1.3 (two instances – the Schultz matter and the Lopez matter); RPC 1.4(b) (the Schultz matter); RPC 1.5(a) (the Lopez matter); RPC 1.7(a)(2) (the Schultz matter); RPC 1.16(a)(2) (the Schultz matter); RPC 1.16(a)(3) (two instances – the Schultz matter and the Lopez matter); RPC 1.16(d) (two instances – the Schultz matter and the Lopez matter); RPC 3.2 (the Schultz matter); RPC 3.4(c) (the Schultz matter); RPC 5.5(a) (the Schultz matter); RPC 8.1(a) (the Schultz matter); RPC 8.1(b) (four instances – the Schultz matter (two instances) and the Lopez matter (two instances)); RPC 8.4(b) (the Schultz matter); RPC 8.4(c) (four instances – the Schultz matter (two instances) and the Lopez matter (two instances)); and RPC 8.4(d) (the Schultz matter).

The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

As discussed above, in September 2021, we considered In the Matter of John Charles Allen, DRB 21-126, another default matter, in which the formal ethics complaint charged respondent with having violated RPC 1.1(a); RPC 1.3;

RPC 1.4(b); RPC 1.16(d); and RPC 8.1(b) (two instances). In that matter, respondent received a $3,250 fee from the client but subsequently failed to have documents translated, failed to file or serve the client's divorce complaint, and failed to otherwise perform legal work for the client or communicate with the client. Upon termination, respondent failed to refund the unearned portion of the fee. Further, respondent failed to respond to disciplinary authorities and to provide information requested by the DEC. We recommended to the Court that respondent be disbarred, citing his disciplinary history and demonstrated lack of regard for the disciplinary system. Effective April 8, 2022, the Court imposed on respondent an indeterminate suspension which prohibits respondent from seeking reinstatement to practice law for a minimum of five years. In re Allen, ___ N.J. ___ (2022).

Respondent's misconduct in these matters both pre- and post-date the nearly identical misconduct in DRB 21-126. The instant matters are simply more of the same – the only difference is that respondent has victimized two more clients.

There is no mitigation to consider.

However, once again, we accord significant weight to multiple, profound aggravating factors. First, we must weigh respondent's substantial disciplinary history and its similarity to the instant default matter.

Consistently, the Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such cases, 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).

By defaulting in these two, independent matters, respondent has once again refused to acknowledge and account for his wrongdoing, let alone express remorse for his gross exploitation of his clients' trust in him. "[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). Notably, this is respondent's third consecutive default matter.

It is clear that respondent has not learned from his past contacts with the disciplinary system, nor has he used those prior experiences as a foundation for reform. See In re Zeitler, 182 N.J. 389, 398 (2005) ("[d]espite having received numerous opportunities to reform himself, respondent has continued to display his disregard, indeed contempt, for our disciplinary rules and our ethics system"). Respondent's ethics history reveals a pattern of temporary suspensions in numerous cases involving non-compliance with fee arbitration

determinations and reinstatements, and corresponding misrepresentations, to us, regarding the status of the payment of those amounts to the client.

Respondent has a demonstrated penchant for breaching his duties to his clients, making misrepresentations, and failing to cooperate with disciplinary authorities. His behavior exhibits disdain toward both his clients and New Jersey's disciplinary system.

At this point in his disciplinary history, respondent's modus operandi is clear – he accepts new client matters, accepts legal fees, and fails to provide adequate, or any, legal services. In In re Spagnoli, 115 N.J. 504 (1989), the attorney accepted retainers from fourteen clients over a three-year period without any intention of performing services for them. He lied to the clients, assuring them that their cases were proceeding. After neglecting their cases to the point that judgments had been entered against his clients, the attorney ignored their efforts to contact him by telephone. To explain his prior failure to appear in court, he lied to a judge. Afterward, the attorney failed to cooperate in the disciplinary process.

The Court adopted our findings and recommendation that the attorney be disbarred:

> Respondent's repetitive, unscrupulous acts reveal not only a callous disregard for his responsibilities toward his clients and disdain for the entire legal system, but a deficiency in his character . . . The Board concludes that

> the record shows that respondent's conduct is incapable of mitigation. A lesser sanction than disbarment will not adequately protect the public from this attorney, who has amply demonstrated that his 'professional good character and fitness have been permanently and irretrievably lost.' In re Templeton, 99 N.J. 365, 376 (1985).
>
> [Id. at 517-18.]

In In re Moore, 143 N.J. 415 (1996), the attorney accepted retainers in two matters and failed to take any action on behalf of his clients. Although he agreed to refund one of the retainers and was ordered to do so after a fee arbitration proceeding, he retained the funds and then disappeared. The attorney did not cooperate with the disciplinary investigation. In recommending disbarment, we remarked as follows:

> It is unquestionable that this respondent holds no appreciation for his responsibilities as an attorney. He has repeatedly sported a callous indifference to his clients' welfare, the judicial system and the disciplinary process . . . . The Board can draw no other conclusion but that this respondent is not capable of conforming his conduct to the high standards expected of the legal profession.
>
> [In the Matter of John A. Moore, DRB 95-163 and DRB 95-239 (December 4, 1995).]

Similarly, in In re Cohen, 120 N.J. 304 (1990), the attorney, after accepting representation in a matter, failed to file the complaint until after the statute of limitations had expired. He compounded his misconduct by altering

the filing date on the complaint to mislead the court and opposing counsel that he had timely filed the complaint. The attorney misrepresented the status of the matter to the client, giving assurances that the case was proceeding. The Court disbarred the attorney, observing that "[w]e are unable to conclude that respondent will improve his conduct." Id. at 308. See also In re Vincenti, 152 N.J. 253 (1998) (attorney disbarred for his repeated abuses of the judicial process resulting in harm to his clients, adversaries, court personnel and the entire judicial system).

Like the attorney in Spagnoli, respondent has engaged in a pattern of accepting legal fees from clients and failing to provide the promised services. To be sure, between November 25, 2018 and November 27, 2018, while respondent was temporarily suspended from the practice of law, he met with Schultz and accepted a total fee payment of $2,700. The following day, on November 28, 2018, respondent paid a $2,650 fee arbitration award and petitioned for reinstatement on November 30, 2018.

At this point, given respondent's extensive experience with New Jersey's attorney discipline system, he clearly knows better. Yet, he has made no effort to curb his misconduct.

Worse, not only has respondent failed to take steps to mitigate his misconduct or to correct his practices, his pattern of misconduct has continued,

despite temporary suspensions and the continuous line of grievances and fee arbitration awards in favor of his clients. The fact, alone, that respondent accepted legal fees from Schultz during his temporary suspension, and then failed to produce any legal work for her, is egregious. That, in addition to his misrepresentations to the court and opposing counsel that he had complied (out of time) with discovery requests, when he later admitted that he had not, is fraudulent and damaging to the bar's reputation. Moreover, Lopez attempted to end respondent's representation of her on eight occasions, and he continued to misrepresent to her that he was working on her matter, refusing to withdraw as her attorney.

Therefore, we again recommend to the Court that, in order to protect the public from respondent's pernicious practices, respondent be disbarred.

Additionally, we impose the condition that respondent disgorge the entire fee in the Lopez matter.

Member Joseph was recused.

Member Hoberman 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: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matters of John Charles Allen
Docket Nos. DRB 21-260 and 21-264

Decided: May 26, 2022

Disposition: Disbar

Members	Disbar	Recused	Absent
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