Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-006
District Docket No. XIV-2019-0659E

In the Matter of	:
Barry J. Beran	:
An Attorney at Law	:

Decision

Argued: March 17, 2022

Decided: July 5, 2022

Timothy J. McNamara appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us on a recommendation for an indeterminate suspension filed by the District I Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (gross neglect);

RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with client); and RPC 1.15(b) (failure to safeguard property).

For the reasons set forth below, we determine to reiterate to the Court our recent recommendations that respondent be disbarred. In the Matter of Barry J. Beran, DRB 20-212 (May 5, 2021), and In the Matter of Barry J. Beran, DRB 20-351 (June 14, 2021).

Respondent earned admission to the New Jersey bar in 1981 and to the Pennsylvania bar in 1980. During the relevant timeframe, he maintained a law office in Cherry Hill, New Jersey.

Respondent has a significant disciplinary history. In 2004, he received a reprimand for his failure to comply with the recordkeeping requirements of R. 1:21-6 (RPC 1.15(d)), and the improper advance of loans to personal injury clients (RPC 1.8(e)). In re Beran, 181 N.J. 535 (2004) (Beran I).

In 2009, respondent received an admonition for failure to advise a client, for whom he was unable to negotiate credit card payoffs, of possible avenues available and of consequences that could result from the actions the client proposed (RPC 1.4(c)). Respondent also failed to communicate with the client or to provide her with a writing setting forth the basis or rate of his fee (RPC 1.4(b) and RPC 1.5(b)). In the Matter of Barry J. Beran, DRB 09-245 (November 25, 2009) (Beran II).

In 2016, respondent was censured for the improper advance of personal funds to three clients; negligent misappropriation of client funds (RPC 1.15(a)); failure to promptly disburse client funds (RPC 1.15(b)); and recordkeeping violations. In re Beran, 224 N.J. 388 (2016) (Beran III).

In 2017, the Court again censured respondent for lack of diligence (RPC 1.3) and failure to communicate with a client in a personal injury matter. The client did not receive her settlement funds until six years after she had signed a release. Although only one client was involved, we considered, in aggravation, respondent's ethics history and his failure to learn from prior mistakes. In re Beran, 230 N.J. 61 (2017) (Beran IV).

In 2018, the Court suspended respondent for three months. In re Beran, 231 N.J. 565 (2018) (Beran V). In that matter, respondent overdrew his attorney trust account by inadvertently disbursing more funds from the account, as legal fees, than were on deposit. When he discovered the error, he immediately replenished the funds. At the time of the overdraft, no client funds were on deposit. The ensuing Office of Attorney Ethics (OAE) audit revealed several recordkeeping violations. Respondent also had negligently misappropriated trust funds, improperly commingled funds, and violated the recordkeeping Rules. The Court further ordered respondent to submit monthly reconciliations of his attorney accounts to the OAE, on a quarterly basis, for a two-year period.

On July 30, 2018, the Court reinstated respondent. In re Beran, 234 N.J. 264 (2018).

Effective April 10, 2020, in a default matter (DRB 19-092), the Court again suspended respondent, this time for six months, for his lack of diligence; failure to communicate with clients; and failure to cooperate with disciplinary authorities (RPC 8.1(b)). In two matters, respondent failed to communicate with his clients and took no significant action to advance their bankruptcy matters. In a third case, respondent failed to reply to a client seeking modification of child support, alimony, and health insurance obligations. In connection with the disciplinary matter, respondent submitted to us a motion to vacate default (MVD), claiming that he had performed a significant amount of work on behalf of the three clients, but had failed to submit an answer to the formal ethics complaint because he was so upset and distraught over receiving the complaint that he could not respond in a coherent manner. We denied the MVD, determining that respondent was familiar with the disciplinary process, because it was his sixth matter before us, and because respondent had replied to two of the three grievances before he ceased cooperating. In aggravation, we considered that the case involved three clients who were in dire financial straits; that respondent had a significant disciplinary history; and that he defaulted. In re Beran, 241 N.J. 255 (2020) (Beran VI).

Effective September 23, 2020, in a second default matter (DRB 19-339), the Court suspended respondent for three years for his lack of diligence; failure to communicate with a client; failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the litigation; and failure to cooperate with disciplinary authorities. In one matter, respondent failed to communicate with his client and took no significant action in his bankruptcy matter. Respondent submitted to us an MVD, claiming that he had performed a significant amount of work on behalf of this client's case, but failed to respond to the formal ethics complaint, because he "experienced significant personal, emotional and financial issues." Respondent did not elaborate on the nature of those various issues but acknowledged that they "should not have prevent[ed] [him] from having filed a timely Answer." We denied the MVD, determining that respondent was familiar with the disciplinary process, because this was his seventh matter before us. In aggravation, we again considered that the case involved a client who was in dire financial straits, that respondent had a significant disciplinary history, and that he again defaulted. In re Beran, 244 N.J. 231 (2020) (Beran VII).

Thereafter, on May 5, 2021, in connection with respondent's third consecutive default matter (DRB 20-212), we recommended to the Court that respondent be disbarred for lack of diligence; failure to communicate with his

client; unauthorized practice of law (RPC 5.5(a)); and failure to cooperate with disciplinary authorities. In that matter, respondent failed to do legal work on a client's bankruptcy matter, practiced while ineligible, and failed to communicate with the client. Respondent submitted to us another MVD, claiming that he failed to reply to the formal ethics complaint because he "experienced significant personal, emotional and financial issues." Respondent further claimed that, because of COVID-19, he closed his office on March 1, 2020 and did not have secretarial staff. We denied the motion, determining that respondent was familiar with the disciplinary process, because this was his eighth matter before us and his third default. In aggravation, we noted respondent's deplorable disciplinary history, his failure to learn from prior mistakes, and the principle of progressive discipline. We emphasized that respondent had committed identical misconduct in Beran VI and Beran VII, resulting in his six-month and three-year suspensions, respectively. We, thus, determined to recommend his disbarment to protect the public and preserve confidence in the bar. The Court, however, imposed a three-year suspension, consecutive to the three-year suspension ordered in DRB 19-339, and, thus, effective September 24, 2023. In re Beran, 248 N.J. 450 (2021) (Beran VIII).

Finally, on June 14, 2021, following a disciplinary hearing (DRB 20-351), we again recommended to the Court that respondent be disbarred for his

negligent misappropriation of client funds; recordkeeping violations; and failure to cooperate with disciplinary authorities. In that matter, respondent failed to properly disburse and account for client settlements that he had deposited in his attorney trust account (ATA) and, as a result, haphazardly disbursed legal fees to himself, thereby invading clients' trust funds. Repeatedly, in seven client matters, respondent failed to account for his disbursements and legal fees, which resulted in incorrect disbursements to clients and overpayment of his legal fees. Further, respondent failed to adhere to the recordkeeping requirements of R. 1:21-6 and failed to adequately reply to the OAE's requests for documentation. Again, we determined to recommend his disbarment to protect the public and preserve confidence in the bar. The Court, however, imposed a three-year suspension, concurrent to the previously imposed three-year suspension in DRB Beran VIII, to be effective September 24, 2023. In re Beran, 248 N.J. 449 (2021) (Beran IX).

Effective April 10, 2020, the Court declared respondent administratively ineligible to practice law for nonpayment of the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection.

The facts underpinning this matter are largely undisputed, although respondent denied having violated the Rules of Professional Conduct.

Kenneth MacAdams, the grievant, retained respondent to represent him in a personal injury action for severe injuries he sustained as a passenger in a June 26, 2011 motor vehicle accident. On October 18, 2011, shortly after the accident, respondent settled MacAdams's claim against the driver responsible for the accident for $50,000, the full limit of the driver's insurance policy.

On October 30, 2011, respondent deposited the $50,000 settlement check in his ATA. Respondent subsequently issued a check, payable to MacAdams, in the amount of $33,334, representing two-thirds of the total settlement. Respondent paid himself $16,666 in legal fees, or one-third of the total settlement. Respondent waived any costs.

Respondent also pursued, on MacAdams's behalf, an underinsured motorist coverage claim against his automobile liability insurance carrier, GEICO Indemnity Company (GEICO). On November 7, 2012, after negotiations failed, respondent filed a complaint against GEICO for underinsured motorist coverage.[1] In March 2015, respondent settled the claim with GEICO for $49,000.

[1] MacAdams v. GEICO Indemnity Co., Docket No. CAM-L-4764-12 (Law Division).

On May 20, 2016, more than one year after the settlement was reached, GEICO issued the $49,000 settlement check, payable to the Superior Court of New Jersey.[2]

GEICO deposited the settlement proceeds with the Superior Court, rather than issuing a check payable to respondent and MacAdams, as the result of a lien placed on the settlement funds by Clifford Van Syoc, Esq. (Van Syoc).[3] Specifically, Van Syoc had represented respondent's former clients, Robert and

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[2] The facts that led GEICO to disburse the settlement proceeds to the Superior Court were disputed, and also contradicted by respondent's own testimony. Respondent admitted to the OAE that he had requested that GEICO include him, MacAdams, and Clifford Van Syoc, Esq. (a lienholder) as payees on the settlement check. Respondent subsequently denied this, testifying at the hearing that GEICO mailed him a check, payable to all three, which he rejected and instead insisted that GEICO issue a check payable to only to respondent and MacAdams. Respondent later retracted that testimony and admitted that GEICO had never issued a check payable to all three payees. Respondent claimed that GEICO refused to issue two checks and, ultimately, deposited the funds with the Superior Court. At oral argument before us, respondent admitted that he had asked GEICO to make the check payable to himself, MacAdams, and Van Syoc.

[3] Although not included as part of the record or publicly available on eCourts, it would appear that GEICO deposited the settlement funds with the Superior Court by court order, in response to GEICO's motion to enforce the settlement. Specifically, on March 8, 2019 and February 13, 2020, respondent certified in support of his motions to turnover funds, that:

> On or about March 4, 2016, upon a Motion to Enforce Settlement filed . . . by Defendant GEICO Indemnity Company, an Order was entered requiring certain settlement funds pertaining to a settlement agreement between the parties respecting a claim for underinsured motorist benefits for bodily injuries sustained by Plaintiff, which claim had previously been settled between the parties for the sum of $49,000.00, which sum was deposited with the Court in accordance with the Order to Enforce entered March 4, 2016. (emphasis added).

Ada Williams, in a legal malpractice action against respondent arising from his mishandling of the Williams's personal injury matter. Respondent reached a settlement in the Williams's legal malpractice action and, on June 1, 2011, final judgment was entered against respondent, in the amount of $275,000.[4] Shortly thereafter, on November 18, 2011, respondent entered a consent order, signed by the Honorable M. Patricia Richmond, J.S.C., assigning a lien in the amount of $15,000 in the MacAdams v. GEICO action, even though a complaint had not yet been filed, as partial payment toward the outstanding debt owed to the Williams.[5] On November 22, 2011, Van Syoc notified GEICO of the lien and provided GEICO with a copy of the consent order. Van Syoc copied respondent on this correspondence.[6]

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[4] Williams v. Beran & Beran, et al., BUR-L-3098-07, Final Judgment (June 1, 2011). Sebastian B. Ionno, II, Esq., a former colleague of Van Syoc, testified at the ethics hearing. Ionno testified that, when respondent failed to make payments pursuant to the legal malpractice judgment, the Van Syoc firm filed a motion to enforce litigants rights which enabled the firm to obtain financial information regarding respondent and his law firm, including legal fees that respondent was expected to earn. In response, the parties executed the consent order permitting the $15,000 lien in the MacAdams matter. According to Ionno, respondent failed to make any payments toward the Williams's legal malpractice settlement.

[5] The record included some of the underlying settlement documents in the Williams v. Beran & Beran litigation. The record did not, however, include the June 1, 2011 final judgment or the November 18, 2011 consent order. Both of these documents were found on eCourts, as part of GEICO's responses to respondent's motions for the turnover of funds in the MacAdams v. GEICO litigation, which are discussed in detail below.

[6] Van Syoc's November 22, 2011 letter to GEICO was attached as an exhibit to GEICO's responses to respondent's motions for the turnover of funds in MacAdams v. GEICO. It was not included as part of the record.

Respondent admitted that he had agreed to pay $15,000 of his legal fees in the MacAdams settlement to Van Syoc. Respondent testified, however, that he was unaware of the lien and that it was never memorialized in any court filing, despite having signed the November 18, 2011 consent order. Further, respondent testified that he was unaware of how GEICO came to learn of the lien, despite having been copied on Van Syoc's November 22, 2011 letter to GEICO notifying the insurer of the lien.

It is undisputed that MacAdams owed no money to the Van Syoc law firm.

On March 8, 2019, nearly three years after GEICO deposited the settlement funds with the Superior Court, respondent filed a motion to release the funds held by the court. Respondent served Thomas J. Murphy, Jr., Esq., counsel for GEICO, with a copy of the motion. As part of his motion, respondent submitted a proposed order that provided funds to be paid as follows:

> the funds currently held on deposit with the Superior Court of New Jersey in this matter be provided, together with accrued interest, to the following payees: Kenneth MacAdams, Barry J. Beran, Esquire and Clifford Van Syoc, Chartered.
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> [ExP4.][7]

[7] "ExP" refers to the presenter's exhibits which were admitted into evidence during the July 20, 2021 hearing.
"T" refers to the July 20, 2021 hearing transcript.

On March 14, 2019, the Superior Court notified respondent that the matter would be decided without oral argument. On April 4, 2019, GEICO stated it had no objection to the release of the funds but informed the Superior Court of the lien and provided a copy of the consent order signed by respondent authorizing the lien.[8] In its letter, GEICO requested that the Superior Court "take the appropriate action to ensure that the payment to Robert Williams and Ada Williams and their attorney is completed pursuant to the [consent order]."

On April 11, 2019, the Honorable Michael J. Kassel, J.S.C., denied respondent's motion. Although Judge Kassel's order states that the denial was based upon "reasons set forth on the record," there is no record of a hearing having been held on April 11, 2019; further, when respondent submitted his January 13, 2020 request for the hearing transcript, he was informed that no record of a hearing existed.[9] Respondent testified that he did not know why the motion was denied.[10]

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[8] A copy of GEICO's response to respondent's March 8, 2019 motion to turnover funds was obtained from eCourts in the MacAdams v. GEICO litigation; it was not part of the record.

[9] Respondent requested the transcript at the behest of the OAE and not on his own initiative.

[10] Although he denied knowing why the first motion was denied, respondent testified that when he filed the second motion for the turnover of funds, he did so "with the notice that was required that wasn't a part of the first motion." Respondent also testified that he had "done everything that the court had asked when - when the reason for the first motion being denied was notice to Mr. Williams. I supplied that information and again there was no record from the court as to why the second motion was denied."

Nearly one year later, on February 13, 2020, respondent re-filed the motion for the release of funds.[11] Respondent served counsel for GEICO but failed to serve the Williams or Van Syoc. On February 19, 2020, GEICO opposed the motion on the basis that respondent had not cured the service defect that resulted in the denial of his first motion for the turnover of funds.[12] Specifically, GEICO stated that it "does not appear that [respondent] has addressed the issue which caused the denial of the previous motion" and that GEICO "continues to request that the Court take the appropriate action to ensure that Mr. and Mrs. Williams as well as their counsel are protected prior to distribution of the settlement proceeds to [respondent]." Respondent subsequently requested that the motion be adjourned so that he could locate the Williams. Respondent did not have Van Syoc's contact information, although he testified that he had contacted a former colleague of Van Syoc's to obtain it.

On June 5, 2020, Judge Kassel again denied respondent's motion. Respondent admitted that the motion was denied because he failed to effectuate proper service.

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[11] Respondent refiled this motion after MacAdams filed an ethics grievance against him.

[12] GEICO's February 19, 2020 letter to the Court is available on eCourts in the MacAdams v. GEICO litigation. It was not part of the record before us.

Respondent did not file a third motion to release the funds.

To date, MacAdams has not been paid and the $49,000 in settlement funds remain on deposit with the Superior Court.

During the ethics hearing, respondent admitted that he could have "done more looking back on it," but denied having violated any of the Rules of Professional Conduct. Respondent testified:

> So, I can't say I was perfect, but I don't believe that it rises to the level of a disciplinary violation, although I certainly, looking back could've done something perhaps a little faster, perhaps a little better, maybe insisted that there be an oral argument with the [Superior Court], but was advised by the [c]ourt there would be no oral argument. So I don't believe that it rises to a level of a disciplinary infraction.
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> [T96.]

In defense of his actions, respondent asserted that GEICO deposited the settlement funds with the Superior Court over his objection. Respondent acknowledged that he had informed GEICO's counsel that the settlement check should be payable to respondent, MacAdams, and Van Syoc, but that he had also urged GEICO to issue separate checks, one payable to MacAdams and the other payable to respondent and Van Syoc.[13] Moreover, respondent asserted that he

[13] At the ethics hearing, respondent denied having told GEICO that the check should be payable to himself, MacAdams, and Van Syoc, notwithstanding having admitted the same in

(footnote cont'd on next page)

had repeatedly but unsuccessfully requested that GEICO enter a consent order agreeing to release the funds to respondent, MacAdams, and Van Syoc.

When asked what additional efforts he had made during the intervening three years before he had filed the motion for the release of funds, respondent testified that he "had been attempting to get GEICO to change things, and to have Mr. Van Syoc agree to have two checks cut on this and I was unable to do so and finally did file a motion." Respondent continued, stating that he "tried several times to have this released from court and that I understood as I said several times that Mr. MacAdams was having another attorney look into this."

Respondent testified that he was "very stymied and didn't know what else to do." Respondent did not, however, seek help from other counsel in the case. Respondent also suggested that MacAdams could hire new counsel on his own behalf to assist recovering the funds and, following respondent's April 10, 2020

his answer and in his February 13, 2020 letter to the OAE in response to the grievance. Respondent testified that GEICO informed him the check had to be payable to all three individuals, rejecting respondent's request that GEICO issue two separate checks, one payable to MacAdams, and the other payable to respondent and Van Syoc. Instead, respondent testified that it was only after learning that GEICO would not issue the check without all three names on it that he agreed to same. Respondent never asked GEICO to memorialize, in writing, its refusal to issue two checks. In his March 14, 2022 submission to us, however, respondent stated he agreed with the factual findings of the DEC, which included a finding that "[r]espondent requested that the settlement check from GEICO be payable to [r]espondent, [g]rievant and Clifford Van Syoc."

suspension from the practice of law, believed that MacAdams had hired new counsel.

Respondent also blamed the pandemic for his actions, stating that, after the onset of the pandemic in March 2020, it became very difficult to get in touch with the Superior Court law clerk to find out why the second motion had been denied.

Respondent also denied having failed to communicate with MacAdams, stating that he spoke with MacAdams "at least ten or more times over … the course of the four years," despite admitting that he may have only spoken to him one time in the last two years. Respondent claimed that he informed MacAdams that the second motion for the turnover of funds had been filed, and that the hearing date had been postponed.

For these same reasons, respondent denied having failed to safeguard MacAdams's settlement proceeds.

MacAdams, who was respondent's long-time friend, testified that the last time he communicated with respondent was in May 2019, although he admitted having discussed the second motion with respondent. MacAdams testified that each time he contacted respondent for an update on the underinsurance claim against GEICO, he was never given a clear answer. MacAdams explained:

> Well I would ask him what's going on with my money Barry, he would say we got to go to Court, I filed a motion. I'm just waiting for it. I'll get back to you in two or three days. So a week would go by, I would say Bar, you hear anything? He said no they postponed it and I'll get back to you in a week or two. And it kept going like that. I got my text messages from him, from 1-14-16 to 5.15-19, now there's probably 70 or 80 of them there. It just shows all of the excuses.
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> [T136.]

MacAdams further stated that, even when respondent communicated with him, he did not explain what was occurring in the case. MacAdams testified that respondent never explained why the funds were being held by the Superior Court. Instead, respondent gave excuses like "I've been out all day," "I'll check back when I get in the office," and that his "computer system wouldn't connect with the court system." Respondent failed to explain to MacAdams that there was a lien, or dispute concerning unrelated litigation, holding up the disbursement of MacAdams's settlement proceeds. MacAdams explained that he was very frustrated.

MacAdams testified that he did not owe money to Van Syoc or Williams. MacAdams also maintained that he financially suffered as a result of respondent's actions. MacAdams explained that he had intended to pay off a bank loan with the settlement proceeds; instead, he accumulated additional interest on the unpaid loan. Finally, MacAdams testified that he had contacted

three attorneys to represent him in connection with obtaining the settlement funds, and none were willing to accept the representation.

The parties presented their summations at the July 21, 2020 ethics hearing.

Respondent asserted that the underlying matter was difficult and that he did what he could to retrieve the settlement funds from the Superior Court. Respondent again denied knowledge of the Van Syoc lien and testified that, when GEICO informed him that it would only issue the check payable to respondent, MacAdams, and Van Syoc, he objected. Respondent requested that GEICO issue two checks, with one payable to MacAdams, but GEICO refused. GEICO, instead, determined to deposit the check with the Superior Court and repeatedly rejected respondent's suggestion of a consent order.

Respondent ultimately filed a motion for the release of funds with the court, but the motion was denied without explanation. Respondent subsequently learned from the court's law clerk that the Williams were entitled to notice of the motion; respondent, however, claimed that he encountered difficulties locating the Williams. Respondent explained that his second motion seeking the release funds was, again, denied without explanation.

Respondent stated that he "feel[s] very badly that Mr. MacAdams still does not have his money" and that he's "going to see what else [he] can possibly do." Respondent denied knowing that MacAdams had encountered difficulties

retaining new counsel, but claimed that he would "try and press further with him to see what can be done to make some attorney be persuaded to handle a motion with the court to finally get this done."

In conclusion, respondent denied having violated any Rules of Professional Conduct.

The OAE, in turn, asserted that respondent's mishandling of MacAdams's case was the epitome of gross neglect and lack of diligence. Specifically, the OAE maintained that respondent was the one who told GEICO to issue the settlement check in the names of respondent, MacAdams, and Van Syoc, without informing MacAdams or obtaining his consent. Subsequent to GEICO's deposit of the funds with the court, respondent failed to take any formal action to exclude his client's portion of the settlement funds from the deposit. Instead, respondent did nothing for three years until, eventually, he filed a motion for the release of funds. Respondent abandoned his client and continued to blame everyone but himself for the manner in which the case was handled. The OAE contended that respondent blamed GEICO for depositing the funds with the court; he blamed the court for denying both motions without explanation; he blamed MacAdams for not hiring new counsel; and he blamed the three unknown attorneys who declined to assume representation of MacAdams to

obtain the settlement funds. This misconduct, according to the OAE, violated RPC 1.1(a) and RPC 1.3.

The OAE asserted that respondent violated RPC 1.4(b) by failing to communicate with MacAdams in a way that enabled MacAdams to understand what was happening in his case. "It is not communicating if the client doesn't understand what is taking place." Instead, the OAE argued that respondent was "taking advantage of the situation because [respondent] had such a longstanding relationship with Mr. MacAdams."

Concerning the RPC 1.15(b) charge, the OAE maintained that the settlement proceeds belonged to MacAdams, not respondent. "When you are an attorney and you take on the responsibility that you're going to pursue a case and then you get a recovery, that money has to go to the client." Respondent's failure to take the necessary steps to obtain the settlement proceeds, according to the OAE, constituted a failure to safeguard property, in violation of RPC 1.15(b).

The OAE also pointed out that respondent's credibility was wanting and that he "danced all around the testimony."

For his misconduct, and in view of respondent's extensive disciplinary history and his failure to learn from past mistakes, the OAE recommended that respondent be disbarred.

The DEC issued a hearing panel report on October 12, 2021, finding that respondent violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b). The panel, however, found that the OAE did not meet its burden to prove, by clear and convincing evidence, that respondent violated RPC 1.15(b). Specifically, the DEC found that, because respondent never actually received the funds from GEICO, he, therefore, did not take possession of any funds or property for purposes of RPC 1.15(b).

As to the appropriate quantum of discipline, the DEC detailed respondent's lengthy disciplinary history. The DEC found no mitigating factors but noted that respondent's conduct did not involve dishonesty or fraud. In aggravation, the DEC found that MacAdams suffered "financial hardship due to the extensive and ongoing delay in obtaining the release of settlement funds." Considering respondent's conduct in "completely abandon[ing]" his client, taken together with respondent's extensive disciplinary history, the DEC applied the principles of progressive discipline to recommend an indeterminate suspension, pursuant to R. 1:20-15A, which would prohibit respondent from seeking reinstatement for five years.

Neither party submitted a brief for our consideration. However, on March 14, 2022, respondent submitted a letter to us stating that he accepted the factual findings and determination of the DEC. Moreover, at oral argument before us,

respondent reiterated that he agreed with the DEC's recommendation that he be suspended for an indeterminate period of time.

In turn, the OAE recommended respondent's disbarment. The OAE underscored to us that this was the first time it had recommended respondent's disbarment, but that it was compelled to do so in view of respondent's utter failure to learn from his past mistakes.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Specifically, in March 2015, respondent settled an underinsured motorist claim against GEICO on MacAdams's behalf for $49,000. Thereafter, on May 20, 2016, GEICO deposited the entire $49,000 in settlement proceeds with the Superior Court, as the result of a $15,000 lien on respondent's legal fees which stemmed solely from respondent's unrelated malpractice debt to a former client.

For the next three years, respondent failed to take any successful formal action to secure the release of MacAdams's settlement funds from the Superior Court. Eventually, on March 8, 2019, nearly three years after the funds had been deposited with the Superior Court, respondent filed a motion for the release of the funds. As a result of respondent's failure to serve all interested parties with the motion, however, that motion was denied.

Respondent took no further action until March 13, 2020, nearly one year later, when, following the filing of the ethics grievance in this matter, respondent refiled the motion for the release of funds. Respondent, again, failed to cure the service defect that had resulted in the denial of his first motion, and the motion was denied. Respondent took no further action and, to date, the funds remain on deposit with the Superior Court.

Consequently, MacAdams still has not received settlement proceeds to which he is entitled. Nearly six years have passed since the funds were deposited with the Superior Court. Yet, respondent has not filed a successful motion to retrieve the funds on MacAdams's behalf, has not taken any affirmative steps to assist MacAdams in finding replacement counsel to assist him in retrieving the funds and, in fact, has taken no action whatsoever to advance MacAdams's interests.

Having undertaken the representation, respondent had an ethical obligation to act with diligence, to keep MacAdams reasonably informed as to the status of the matter, and to ensure he communicated with MacAdams in a clear and understandable manner. Respondent utterly failed to fulfill those responsibilities. Respondent's claim that he was "stymied" and did not know what next steps to take to secure the release of settlement funds does not relieve him of his obligations under the RPCs. Respondent's gross neglect in his

handling of this matter severely harmed MacAdams, depriving him of the settlement proceeds to which he is entitled. Respondent, thus, violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b).

We determine, however, like the DEC, that there is insufficient evidence to prove respondent violated RPC 1.15(b). RPC 1.15(b) provides:

> Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.

Here, GEICO deposited the settlement proceeds with the Superior Court and not with respondent. In fact, respondent has never possessed the settlement proceeds. Thus, although respondent's gross neglect in his handling of the case deprived MacAdams of his settlement funds, there is no factual or legal basis to support a determination that respondent failed to safeguard those funds.

In sum, we find that respondent violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b). We determine to dismiss the RPC 1.15(b) charge. The sole issue left for us to determine 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 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 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)).

A censure may be appropriate in cases where an attorney's gross neglect, lack of diligence, and failure to communicate is accompanied by serious aggravating factors, such as the presence of additional, serious ethics infractions, an egregious disciplinary history, severe prejudice to the client, or a lack of contrition. See In re Jaffe, 230 N.J. 456 (2017) (censure for an attorney in two consolidated client matters; in the first client matter, the attorney failed to file an expungement petition for his client, despite his client's numerous attempts to obtain information regarding his case; following the client's termination of the representation, the attorney immediately filed with the court a deficient expungement petition, without his client's knowledge, that mispresented to the court that he still represented his client; in the second client matter, the attorney failed to diligently defend his client in a criminal matter, ignored numerous requests for information regarding the case, and failed to provide his client or replacement counsel with the client file; in aggravation, the attorney failed to cooperate with disciplinary authorities in the first client matter, repeatedly engaged in dismissive treatment toward his clients, and was previously reprimanded twice – the first time for gross neglect; lack of diligence; failure to communicate; and failure to cooperate with disciplinary authorities; and the second time for lack of candor to the tribunal).

Thus, standing alone, the totality of respondent's misconduct in this single client matter would likely warrant a reprimand or censure considering the demonstrable financial harm to the client. However, to craft the appropriate discipline in this case, we must consider both mitigating and aggravating factors.

There is no mitigation to consider.

In aggravation, we accord significant weight to respondent's extensive disciplinary history and his alarming failure to learn from his past mistakes. The Court has signaled an inclination toward progressive discipline and the stern treatment of repeat offenders. In such scenarios, 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).

Here, severe progressive discipline is warranted, just as in Kantor, in light of respondent's significant disciplinary history which includes: a 2004 reprimand; a 2009 admonition; a 2016 censure; a 2017 censure; a 2018 three-month suspension; the six-month and three-year suspensions imposed in 2020; and the two, three-year suspensions imposed in 2021. This is respondent's tenth time before us, three of which have been the consequence of respondent's default.

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 should have a heightened awareness that his neglect and abandonment of his own clients will result in progressively harsher disciplinary sanctions. Specifically, as discussed above, in 2009, in Beran II, we imposed an admonition for respondent's failure to communicate with his client, in violation of RPC 1.4(b) and RPC 1.4(c). In 2017, in Beran IV, we again disciplined respondent and imposed a censure for his lack of diligence and failure to communicate with a client in a personal injury matter. In that matter, the client did not receive her settlement funds until six years after she had signed a release. More recently, in 2019, in Beran VI, we imposed a six-month term of suspension for respondent's lack of diligence and failure to communicate in three separate client matters; violations of RPC 1.3, RPC 1.4(b), and RPC 8.1(b). The discipline imposed in these matters predates[14] the misconduct under scrutiny in

[14] We issued our decision in Beran VI on October 17, 2019. That decision post-dates most of the misconduct that occurred in the instant matter. The underlying investigation in Beran VI, however, occurred in 2018 (contemporaneous with the ongoing misconduct in the instant matter) and the complaint was served on September 27, 2018. Similarly, in Beran VII, where respondent was again disciplined for his lack of diligence and failure to communicate with his client and received a three-year suspension, we issued our decision on May 13, 2020. The

(footnote cont'd on next page)

this case and, yet, respondent continues to demonstrate an alarming failure to learn from his past mistakes. Respondent clearly has not demonstrated the initiative to reform his conduct, necessitating the repeated intervention of the disciplinary system.

Respondent's ongoing behavior exhibits a complete disregard for his clients and New Jersey's disciplinary system. Such behavior by an attorney cannot be tolerated. Through this tenth disciplinary matter, respondent has established a proclivity for breaching his duties to his clients. Respondent's misconduct caused, and continues to cause, substantial harm to MacAdams, who has been deprived of his settlement proceeds for over seven years and has been unable to obtain replacement counsel.

As in our May 5[15] and June 14, 2021 determinations to recommend to the Court that respondent be disbarred, here, we neither ignore nor accept what is clearly respondent's dangerous, improper practice of law. This case is a minor scene in the protracted odyssey of respondent's misconduct. His prior practice

underlying investigation, however, commenced in July 2018, also contemporaneous with the ongoing misconduct in the instant matter. Thus, respondent, at a minimum, was on alert that his lack of diligence and failure to communicate in various client matters, were under scrutiny by the OAE.

[15] Notably, in that matter, respondent was disciplined for similar misconduct to the instant matter, including his lack of diligence, failure to communicate with his client, and failure to advance his client's interests, among other violations.

of law, as a whole, demonstrates that respondent lacks professional integrity and is incapable of following the most basic Rules of Professional Conduct imposed on New Jersey attorneys.

In determining that disbarment is appropriate for the totality of respondent's misconduct, we echo our decision In the Matter of Marc D'Arienzo, DRB 16-345 (May 25, 2017) at 26-27, where we stated:

> Given the contemptible set of facts present in these combined matters, we must consider the ultimate question of whether the protection of the public requires respondent's disbarment. When the totality of respondent's behavior in all matters, past and present, is examined, we find ample proof that . . . no amount of redemption, counseling, or education will overcome his penchant for disregarding ethics rules. As the Court held in another matter, "[n]othing in the record inspires confidence that if respondent were to return to practice [from his current suspension] that his conduct would improve. Given his lengthy disciplinary history and the absence of any hope for improvement, we expect that his assault on the Rules of Professional Conduct would continue." In re Vincenti, 152 N.J. 253, 254 (1998). Similarly, we determine that, based on his extensive record of misconduct and demonstrable refusal to learn from his mistakes, there is no evidence that respondent can return to practice and improve his conduct. Accordingly, we recommend respondent's disbarment.

The Court agreed with our recommendation and disbarred D'Arienzo. In re D'Arienzo, 232 N.J. 275 (2018).

The imposition of prior discipline has not convinced respondent to change his ways. Despite his extensive disciplinary history, respondent failed to alter his conduct and, in this matter, failed to appreciate the gravity of his misconduct or the significant harm it has caused his client. Thus, as we previously stated in our May 5 and June 14, 2021 decisions, we must endeavor to protect the public from respondent's harmful practices by recommending to the Court that respondent be disbarred.

Vice-Chair Singer and Members Boyer and Joseph voted to impose an indeterminate suspension, to run consecutive to the terms of suspension that respondent is serving in connection with Beran VIII and Beran IX.

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 Matter of Barry J. Beran
Docket No. DRB 22-006

Argued: March 17, 2022

Decided: July 5, 2022

Disposition: Disbar

Members	Disbar	Indeterminate Suspension	Absent
Gallipoli	X		
Singer		X	
Boyer		X	
Campelo			X
Hoberman	X		
Joseph		X	
Menaker	X		
Petrou	X		
Rivera	X		
Total:	5	3	1

Johanna Barba Jones
Chief Counsel