Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-014
District Docket Nos. XB-2016-0026E,
XB-2016-0028E, and XB-2016-0041E

In the Matter of	:
Nelson Gonzalez	:
An Attorney at Law	:

Decision

Argued: April 21, 2022

Decided: August 4, 2022

Pamela C. Castillo appeared on behalf of the District XB Ethics Committee.

Marc D. Garfinkle appeared on behalf of respondent.

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

This matter was before us on a recommendation for a six-month suspension, with a condition, filed by the District XB Ethics Committee (the DEC). Three formal ethics complaints, which were consolidated for an ethics hearing, charged respondent with a variety of RPC violations.

In the matter docketed as XB-2016-0026E (the Thomas Rosa matter), the complaint charged respondent with having violated RPC 1.1(a)[1] (engaging in gross neglect); RPC 1.3 (engaging in lack of diligence); RPC 1.4(b) (failing to communicate with a client); RPC 3.1 (engaging in frivolous litigation); RPC 3.2 (failing to expedite litigation); RPC 3.3(a)(1) (making a false statement of material fact to a tribunal); RPC 3.3(a)(4) (offering evidence that the lawyer knows to be false); RPC 3.4 (unlawfully altering or destroying document with potential evidentiary value); RPC 4.1 (knowingly making a false statement of material fact or law to a third party); RPC 5.3 (failing to oversee responsibilities regarding nonlawyer assistants); RPC 7.1 (misleading communication about the lawyer or the lawyer's services); RPC 7.5 (using an improper professional designation that violates RPC 7.1, which provides that a lawyer shall not make false or misleading communications about the lawyer or the lawyer's services); and RPC 8.1(b) (failing to cooperate with disciplinary authorities).

[1] Multiple charges in each complaint did not explicitly identify a specific subparagraph of the Rule of Professional Conduct charged. However, the language of the pleading and the specific facts used in support of each charge satisfied the notice pleading requirements of R. 1:20-4(b) (entitled "Contents of Complaint" and requiring in part that a disciplinary complaint "set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct, specifying the ethical rules alleged to have been violated") and enabled the Board to identify the intended subparagraph. Moreover, it is clear from the record that respondent understood the charges against him and that the parties litigated the charges set forth above.

In the matter docketed as XB-2016-0028E (the Noel Alvarenga matter), the complaint charged respondent with having violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.5(b) (failing to set forth in writing the basis or rate of the attorney's fee); RPC 3.2; RPC 5.3; RPC 7.1; RPC 7.5; and RPC 8.1.

Finally, in the matter docketed as XB-2016-0041E (the Elizabeth Rosa matter), the complaint charged respondent with having violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 3.2; RPC 3.3(a)(1); RPC 5.3; RPC 7.1; and RPC 7.5.

For the reasons set forth below, we determine that a six-month suspension, with a condition, is the appropriate quantum of discipline for the totality of respondent's misconduct.

Respondent earned admission to the New Jersey bar in 1997 and to the District of Columbia bar in 1999. During the relevant timeframe, he maintained a practice of law with offices in Dover and North Bergen, New Jersey.

This is respondent's fourth disciplinary matter before us. In all his matters, he consistently has attributed his misconduct to his staff and, particularly, his wife, Anicia Gonzalez.

Respondent's first disciplinary matter proceeded as a default. In the Matter of Nelson Gonzalez, DRB 16-140 (November 23, 2016), so ordered, 230 N.J. 55 (2017) (Gonzalez I) (finding that respondent had violated RPC 8.1(b) and "concluding that discipline is not warranted for this violation alone under

the circumstances presented"). Notably, in his July 11, 2016 certification to the Board in support of his unsuccessful motion to vacate the default (MVD) in that matter, respondent asserted that two members of his staff (Anicia Gonzalez and Gail Little) had received his certified mail, which they subsequently hid from him (slip op. at 4-5). In response to his staff's deceitful conduct, respondent claimed to have implemented an office policy whereby he directly received the office mail (slip op. at 3-5).

In 2019, in connection with a presentment, we recommended a six-month suspension for respondent's multiple violations of RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.4(c); RPC 1.15(a); RPC 1.15(d); RPC 3.2; RPC 3.4(d); RPC 5.3(a); RPC 8.1(a); RPC 8.1(b); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation). In the Matter of Nelson Gonzalez, DRB 19-129, DRB 19-130, and DRB 19-131 (December 4, 2019).

The misconduct underlying all charges other than the RPC 8.1(b) charge occurred between 2012 and 2014; respondent's RPC 8.1(b) failure to cooperate occurred between 2015 and 2016. Respondent participated in that proceeding, filing answers to the three consolidated ethics matters on March 11 and November 29, 2016, and January 6, 2017. We determined that:

> The overarching theme in these matters is respondent's improper and unreasonable reliance on Anicia, his wife and employee, to handle matters in his law office . . . . The record supports respondent's contention that, for a

> time, he was unaware that Anicia had resorted to lying, hiding correspondence, and fabricating documents in order to avoid conflict with him. Despite that defense, however, respondent's problem is two-fold: (1) much of the conduct that respondent attributed to Anicia is non-delegable, because he was the supervising attorney; and (2) there came a time when a reasonable attorney would have terminated Anicia's employment, yet respondent failed to do so.
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> * * *
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> [B]y November 17, 2014, it was unreasonable for respondent to rely on Anicia for anything having to do with his law practice. By that date, he was aware that her deceitfulness had continued beyond the information obtained on September 5, 2014 . . . . Given the extent of respondent's knowledge, by this juncture, of Anicia's deceitful proclivities, we find that respondent's decision to allow her continued access to his law office . . . was not reasonable.
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> [Id. at 35, 41.]

The Court agreed with our legal findings but reduced our recommended discipline to a three-month suspension, effective May 7, 2020. In re Gonzalez, 241 N.J. 526 (2020) (Gonzalez II). The Court further prohibited respondent from employing his wife or providing her access to his law practice or his attorney accounts, books, and records. Id. at 527 (ordering that respondent "shall not employ his wife or give her access to his law practice or his attorney accounts, books and records and shall provide proof thereof to the Office of Attorney Ethics prior to reinstatement to practice").

In 2020, in connection with respondent's second default matter, we determined that respondent had violated RPC 1.3; RPC 1.4(b); RPC 1.5(b); and RPC 8.1(b). In the Matter of Nelson Gonzalez, DRB 19-363 at 22 (June 23, 2020) (three Members voting to impose a censure, three Members voting to impose a three-month suspension, and three Members not participating); In re Gonzalez, 244 N.J. 271 (2020) (imposing a censure) (Gonzalez III).

That same date, the Court issued an Order reinstating respondent[2] to the practice of law following his suspension in Gonzalez II. In re Gonzalez, 244 N.J. 272 (2020).

[2] Respondent filed a Petition for Reinstatement on July 20, 2020. Appended to that Petition was Exhibit I, which consisted of three documents: (1) an April 13, 2020 letter from the OAE requesting that respondent's counsel submit proof that his wife is not employed by him, and had not been given access to his law practice or attorney accounts books and records; (2) respondent's cover letter of July 10, 2020 providing the requested certification; and (3) respondent's undated certification in which he stated:

> 2. Presently Anicia has no association with my office nor does she do any legal work that is related to the business of the office or practice. Furthermore, she has had no access to my attorney accounts, books, and financial records for many months prior to the Supreme Court's April 9, 2020 Order.
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> 3. Anicia will also have no future access to or association with my law practice or my attorney accounts, books, or financial records either in or outside of my office. Further, she has no means of physical access to the office, attorney accounts, books, or financial records.
>
> 4. Anicia has been and will continue to seek employment and will not have access to my law practice or my attorney accounts, books, and financial records.

In the instant matter, respondent stipulated to having violated three RPCs. First, he stipulated to having violated RPC 7.1 and RPC 7.5(a) by falsely representing his ability to practice law in the District of Columbia. Specifically, respondent's letterhead identified him as a member of the New Jersey and District of Columbia bars. However, respondent's license in the District of Columbia had been suspended, from September 20, 2015 through January 18, 2018, for nonpayment of dues. By the time of the Elizabeth Rosa ethics complaint, his status had changed to inactive, yet, he had not updated his letterhead.[3] Notwithstanding his stipulation, respondent subsequently argued that he was ignorant of the status of his license in the District of Columbia, and therefore had not knowingly and intentionally misrepresented its status.[4] He also asserted that the error had not injured or prejudiced any of his clients.

Respondent further stipulated to having failed to cooperate with disciplinary authorities, in violation of RPC 8.1(b), by (1) failing to reply to the DEC's document requests, and (2) failing to reply to the Thomas and Alvarenga ethics grievances.

[3] The parties also stipulated that respondent had not appeared before any court or administrative agency in the District of Columbia and had not represented any clients in that jurisdiction.

[4] Based upon the stipulation, the Panel Chair denied respondent's request to testify about the status of his license to practice law in the District of Columbia.

Specifically, on October 19, 2016, the DEC sent respondent a copy of both grievances, via certified mail, and requested his reply within ten days. Little, his employee, signed for the certified mail. After having received no reply from respondent, the DEC followed up with a November 7, 2016 letter, advising respondent that his failure to comply would be deemed a violation of RPC 8.1(b). Little again signed for that certified mail. Thereafter, on December 8, 2016 and January 12, 2017, respondent sent letters to the DEC representing that his reply would be provided by a date certain. Thereafter, he failed to reply. Respondent stipulated to having failed to provide a reply to the grievances prior to the filing of the complaint, more than a year after the DEC had initially transmitted them for his response in accordance with R. 1:20-3(g).

Respondent disputed all other charged violations of the Rules of Professional Conduct and proceeded to a ten-day hearing, during which the following evidence was presented.

Respondent maintained two law offices, a primary office in Dover and a satellite office in North Bergen. In 2007, respondent's wife Anicia joined his law office as office manager and paralegal, primarily working at the Dover office. Respondent described Anicia's role as "supervising and overseeing the day-to-day duties of the office," and he believed her skillset to be vital.

From July 2015 through July 2018, respondent also employed Little as a secretary at his Dover office. Little regularly worked with Anicia, handling adjournments and municipal court matters[5] while Anicia handled superior court matters; prepared motions; communicated with the courts; checked respondent's e-mails; and accessed financial records, including the checkbook for respondent's attorney business account.

According to respondent and Anicia, Anicia temporarily stopped working at respondent's law office in March 2016.[6] Both admitted that Anicia had reached out to Little, reminding her to send office files home with respondent, but maintained that Anicia did not work on any files at the North Bergen office or at their residence.

Little, in turn, believed that Anicia continued working at the North Bergen office and from home, because Anicia had contacted her, after March 2016, to request that between twenty and thirty office files be sent to respondent's and Anicia's residence. Little complied, but admittedly did not know what happened with the files at respondent's residence.

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[5] Respondent, in turn, claimed that Little handled the organization of the files, calendaring, and mail.

[6] Although Anicia's March 2016 departure occurred contemporaneously with respondent's filing of his answers in Gonzalez II, there is no indication that it related to the pendency of the ethics matters.

Regarding the office mail, when she first started working at respondent's office, Little provided all mail to Anicia. However, in March 2016, respondent created a new policy directing his staff to provide the mail directly to him and, if he were out of the office, to stamp the mail, put it on the conference room table, and send him a text message regarding important items. Little understood that the new mail policy had been instituted because Anicia previously had concealed mail from respondent, but she had no personal knowledge of Anicia's deceptive behavior.

Respondent, however, became aware of Anicia's deceitful behavior in September 2014. Specifically, on September 17, 2014, the OAE informed respondent, via telephone, that it had unsuccessfully attempted to contact him via mail. Respondent, unaware of the OAE's prior efforts, agreed to personally retrieve a packet from the OAE the next day. Based on the documentation provided by the OAE, respondent became aware that Anicia had been concealing mail and telephone messages from him.[7]

Respondent admitted that he then – in September 2014 – had reason to believe that Anicia would lie to him and withhold legal documents from him,

[7] Indeed, unbeknownst to respondent, Anicia concealed documents sent by the OAE, including its motion seeking his temporary suspension for his failure to cooperate in the ethics proceedings.

based upon both the documentation provided by the OAE and Anicia's corresponding admissions to him. Despite that knowledge, respondent continued to employ Anicia, claiming that he restricted her access to the office mail and checkbooks. He also limited Anicia's contact with clients, although she assisted Spanish-speaking[8] clients on the telephone, and respondent provided clients with his cellular telephone number to ensure that he received their calls. Respondent further maintained that he oversaw Anicia's work, stating that, "[i]f she had worked on a file, the moment that she had completed the work on the file, [he] would take it, review it, and confirm that everything was done correctly."

Anicia lost both her father and father-in-law in 2010, and her relationship with respondent became strained. Thereafter, she sought to avoid confrontations with respondent. Anicia admitted that she had concealed respondent's mail, including mail from the OAE. Anicia stated that "the hole that [she] dug [her]self in was a little deeper than previously. It wasn't just a simple letter. Now, it had escalated and [she] did not know how to come up." She claimed that, after respondent discovered her deceit, she would put unopened mail in a drawer for respondent, pursuant to the new policy.

[8] Respondent and Anicia both speak Spanish. According to respondent, more than eighty-five percent of his clients are Hispanic or Latino.

Anicia also admitted that she forgot to file pleadings on behalf of clients and, when confronted by respondent, had tried to correct her errors without telling him the truth. She also signed checks associated with respondent's attorney business account, forging respondent's name without his authorization. Respondent noted that Anicia had not been designated as a signatory on his attorney business account.

Respondent asserted that, on September 17, 2014, he had inquired about the status of reconciliations for his attorney trust account but, when Anicia claimed that the reconciliations would be forthcoming, he did not inquire further, because he trusted her. Later, at her January 7, 2015 OAE interview, Anicia admitted that, for four or five years, she had lied to respondent about the status of reconciliations for his trust account. More egregiously, Anicia admitted that she had falsified bank statements, particularly with regard to a $50,000 check that she knew had not been deposited in the trust account.

In turn, at his January 7, 2015 interview, respondent suggested that he had rectified any concerns with Anicia's continued employment at his law office, noting that Anicia attended an ethics course with him and that he had impressed upon her that her misconduct could be attributed to him. Regarding the concealed mail, respondent stated that he had his mail directly routed to a post office box. He further stated that no employee had been authorized to sign for

certified mail and that, if such a document arrived at the office, his employees had been directed to inform him so that he personally could retrieve the certified mail.

However, respondent also stated that, after he opened the post office box, he subsequently directed Little to go to the post office, retrieve his mail, and place it on his desk. He also permitted Little to open court notices. Contrary to the office policy, Little also gave mail to Anicia, who once again began concealing it from respondent. Indeed, despite his restrictions, respondent believed that, in March 2016, Anicia had intercepted and concealed more of the OAE's mail to him.

In January 2015, respondent acknowledged his duty, under the RPC 5.3, to supervise his employees. He disagreed, however, with the OAE's characterization of his lack of oversight as "severe," questioning how he could supervise something if it had been hidden from him.

Six months later, at his July 1, 2015 interview in connection with Gonzalez II, the OAE questioned respondent about his continued failure to supervise Anicia, despite previously having been advised of her deceitful conduct, during a September 17, 2014 interview. The interview proceeded as follows:

> Question: Your wife had a pattern of behavior where she would secret information from you according - -

> according to what you've said. And she would hide documents, she would divert the mail and she was not frank with you about what was actually happening, so much to the extent that you came within a hair's breadth of being temporarily suspended, in inches of being temporarily suspended, that's how close it was. But for my insistence in trying to contact you and demanding that one of your employees contact me and give me your contact information, you probably would have been temp suspended or defaulted. How is the employee continued to allow – how are they – how is she allowed to handle an appeal of a federal tax levy and you're completely unaware of it? How is she even in a position to do that?
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> Answer: Well, the simple question and simple answer is I don't know, I didn't know about it. If I had known about it, I would have attacked it directly, as I did the moment that I learned about it in April – in April of 2015.
>
> [3T193-3T194.][9]

Additionally, when asked about Anicia's continued employment at his law office, respondent stated "[s]he is invaluable, but unfortunately, her value can no longer be utilized, it's unfortunate." The OAE interview went on:

> Question: Well, when – when did it crystalize in your mind that she can no longer be an employee?
>
> Answer: That crystalized back in September [of 2014].

[9] "3T" refers to the January 8, 2020 transcript, wherein parts of the July 1, 2015 interview were read into the record.
"9T" refers to the November 4, 2020 transcript.
"DEC" refers to the presenter's exhibits.

[3T197-3T198.]

Despite his statements at the July 1, 2015 OAE interview and his awareness that (1) in September 2014, Anicia had signed and issued two checks – one from his attorney trust account and one from his attorney business account – without his knowledge or authorization, and (2) from October through April 2015, she had altered his attorney trust account bank statements, instead of promptly terminating her, respondent permitted Anicia to be "transitioned out [of the office in] March 2016." Stated differently, respondent permitted Anicia to have continued access to his law office for an additional nine months, as the senior paralegal. Notably, respondent admitted that, if Anicia had not been his wife, he would have fired her in September 2014.

Less than a year after her departure, Anicia returned to respondent's office, in December 2017, after having engaged psychologist Dr. Lyall for approximately eighteen months. Her employment continued through February 2020. At that time, Anicia claimed that her job responsibilities included completing immigration applications and translating documents from Spanish to English, but she had no access to the office mail or e-mail. However, Anicia would call clients if she had questions when completing their immigration forms.

Respondent maintained that, upon Anicia's return to the office, he exclusively handled the office finances; mail; client documents; and court orders. Respondent further claimed that he maintained direct oversight of Anicia upon her return to the office.

At both the October 30, 2017 and January 25, 2018 hearings in Gonzalez II, respondent again acknowledged his supervisory obligations related to his employees, pursuant to RPC 5.3. On October 30, 2017, he stated "I'm ultimately responsible for supervising these individuals, but if I don't get the full scope of what's going on, there's only so much I can do. And the most that I can do is release these individuals or fire them . . . . I take full responsibility for what goes on in my office." On January 25, 2018, however, during his testimony, respondent admitted that he failed to supervise his staff from September 2014 onward.

Notably, although Gonzalez III proceeded by default, respondent filed an unsuccessful MVD, and his February 5, 2020 certification in support of that motion stated "I did not receive any of the grievances or relevant letters and did not knowingly fail to cooperate." The DEC opposed that application. In his February 8, 2020 supplemental certification, respondent represented that he fired Anicia, after having been confronted with Anicia's voicemail message to the DEC wherein she expressed knowledge of two ethics grievances and claimed

that respondent's reply would be forthcoming. Indeed, at that time, pursuant to respondent's office policy, Anicia should not have had access to the office mail. Respondent maintained that he had never seen the grievances, that Anicia informed him that she had not seen the grievances, yet, he still maintained that, in February 2020, he had no reason to mistrust her.[10]

In this matter, respondent distinguished Anicia's misconduct in the prior matters, arguing that the remedial measures he adopted in response to Gonzalez II could not have prevented the instant misconduct. Additionally, when confronted with his prior statements that he could be held liable for matters his staff concealed from him, respondent replied "I supervise my staff, but I can't look for something that I don't know even exists." Respondent characterized Anicia's misconduct, prior to September 2014, as "isolated instances." In turn, the DEC characterized Anicia's prior pattern of deception as "pervasive."

Despite the foregoing facts, respondent testified during the February 5, 2020 ethics hearing that he had no concerns about Anicia's continued employment at his law office, asserting "[s]he has no access to anything that had

[10] Anicia stated that she went into respondent's personal office space; saw the answering machine indicating that there was a message; entered the password on the machine; and listened to the message. She stated that the message had been from the DEC regarding grievances filed against respondent and that she returned the DEC's telephone call, advising that respondent's reply would be provided by Monday and to contact her with any questions. Anicia did not inform respondent of the message or the telephone call, but she did not delete the DEC's message from the answering machine.

caused the issues in the past." However, as detailed above, respondent terminated Anicia later that month, after discovering her additional deceptive behavior.

The Thomas Rosa Matter (XB-2016-0026E)

In 2009, grievant Thomas Rosa sustained injuries from a motor vehicle accident. The other party to the accident, Ted Sisson, operated a truck owned by H&S Enterprises, Inc. (H&S) and insured by Carolina Casualty Insurance Company (CCIC). Specifically, Thomas sustained injuries to his left elbow, shoulder, and lower back. On February 7, 2009, Thomas and respondent entered into a contingent-fee retainer agreement, whereby respondent would receive thirty-three percent of any net settlement funds. Thomas understood that there would be no legal action taken until he had reached a maximum level of improvement in his medical treatment.[11]

On March 12, 2009, respondent sent a letter to CCIC, copying Thomas, and advising that he had been retained and would be initiating a personal injury

[11] The maximum level of improvement is obtained when a patient has reached a plateau in terms of improvement from medical treatment. Patients typically receive temporary benefits until they reach such a maximum level of improvement. https://definitions.uslegal.com/m/maximum-medical-improvement-mmi/.

claim. That same date, respondent also sent a personal injury protection letter to Thomas's insurance carrier.[12]

CCIC's records indicated that it unsuccessfully attempted to reach respondent from June to October 2009. On November 16, 2009, CCIC sent a letter to respondent requesting Thomas's medical records. One month later, on December 16, 2009, Floyd Cottrell, Esq., counsel to the defendants, informed CCIC that respondent had not replied to him either.

In February 2010, Thomas continued to obtain medical and therapeutic treatment for his physical injuries. Respondent and Thomas communicated via telephone, e-mail, and text messages. On February 5, 2010, respondent sent a letter to CCIC, copying Thomas, summarizing the matter in advance of a scheduled February 8, 2010 mediation session. CCIC's records indicated that respondent made no settlement demand nor otherwise sought settlement during mediation. Cottrell confirmed that, in March 2010, respondent provided Thomas's medical records.

CCIC indicated that, later in May 2010, Cottrell and Don Reeder, the mediator, both made numerous attempts to schedule a second mediation, but respondent failed to reply to their requests.

[12] A letter of protection is sent when the patient's insurance coverage has been exhausted and, in order for that patient to continue treatment, the provider requires assurances that it will be paid by any settlement funds.

Thereafter, on June 1, 2010, respondent sent additional letters of protection to Thomas's medical providers – Frank & Sussman, St. Claire's Hospital, and Dr. Robert Petrucelli – copying Thomas. Several months later, on September 30, 2010, CCIC sent a letter to respondent inquiring about Thomas's treatment status and any settlement demand. Respondent did not reply to that letter in writing; claiming that he dealt with Cottrell's office, instead of CCIC. Notwithstanding that assertion, on October 6, 2010, Cottrell's office requested additional medical documentation and respondent's file contained no proof that he provided the requested documentation.

Again, in November 2010, CCIC's records indicated that respondent failed to return multiple calls and messages left by Reeder and its corporate representative, Allyn Maines. On December 14, 2010, Maines sent a letter to respondent stating that its representative had "left [him] numerous messages to call and determine [his] demand in the . . . case. None of these calls have been returned." Indeed, CCIC's records indicated that respondent continuously failed to communicate, through August 2011, including failing to reply to discovery requests.

In its December 14, 2010 letter, CCIC offered to settle the matter for $25,000, which Thomas rejected. Respondent made a $50,000 counteroffer.

Thereafter, on January 3, 2011, respondent filed a complaint in the Superior Court of New Jersey, Morris County, against Ted Sisson and H&S, for negligently causing serious, permanent injury to Thomas. Although Thomas's treatment was ongoing, respondent filed the complaint to preserve his right to file the lawsuit, which would have expired under the applicable statute of limitations two years after the date of the accident.

Next, on January 21, 2011, respondent filed proof of service of the complaint on defendant H&S. Defendant Ted Sisson had since passed away. As a consequence of respondent's failure to prosecute the civil action, on July 22, 2011, pursuant to R. 1:13-7, the Superior Court dismissed, without prejudice, Thomas's complaint as to defendant Ted Sisson.

H&S did not file an answer to the complaint and respondent admittedly failed to seek the entry of a default judgment against it. Thus, on August 26, 2011, the Superior Court dismissed, without prejudice, Thomas's complaint as to H&S.

In November 2011, even though Thomas's complaint had been dismissed, respondent and Cottrell propounded and replied to discovery demands. Cottrell's office also drafted an answer to the dismissed complaint and discussed the filing of that answer with respondent. On November 11, 2011, Cottrell wrote to respondent stating:

> As I understand, a Complaint on behalf of your client was filed January 3, 2011. However, the parties were discussing mediation, and thus, no Answer was filed.
>
> Apparently, an agreement on mediation could not be reached. In following, I was recently contacted by your office and asked to file an Answer on behalf of our clients. Nevertheless, when reviewing the judiciary web site, there is no indication that our case remains active. Accordingly, I can only assume that it was dismissed for lack of prosecution.
>
> Kindly advise if you intend to file a Motion to reinstate. If you prefer, I will also enter into a Consent Order, so long as we are provided with proof of service and given the appropriate time to file a responsive pleading.
>
> [DEC82.]

The post office did not return that letter to Cottrell's office. Cottrell's billing records indicated that, on November 15, 2011, his office spoke with respondent about the "status of pleadings and potential for mediation." Cottrell's office and CCIC continued to pursue a resolution of the case, even though the complaint had been dismissed, because they sought to amicably resolve the matter via settlement or mediation and, thereafter, by litigation if necessary.

On November 21, 2011, respondent's office filed a motion to reinstate Thomas's complaint, which the trial court denied on December 21, 2011.

Having received no reply to his November 11, 2011 letter, Cottrell followed up with respondent by letter dated March 22, 2012. Cottrell's office received no reply to the March 22, 2012 letter, which the post office did not

return. CCIC's records similarly indicated that it had unsuccessfully attempted to reach respondent through June 2012.

On January 8, 2013, respondent sent letters to Sall Myers Medical Associates (Sall Myers), confirming that they had been retained as medical experts and scheduling Thomas's medical exam. That same date, respondent sent a letter to Thomas advising him of the scheduled exam. Thus, on January 15, 2013, Thomas reported to Sall Myers for an examination. However, later that day, Thomas exchanged e-mails with Anicia, sometimes copying respondent, at gonzalezlawpc@optonline.net, requesting that paperwork required for his medical exam be forwarded to the medical office and expressing his disappointment at the lack of progress on his case during the preceding two years. Anicia's reply e-mails claimed that the paperwork had been submitted and re-submitted per Thomas's request. Sall Myers prepared a report, dated February 23, 2013, and Thomas received a copy of that report.

More than a year later, on May 23, 2014, Thomas sent an e-mail to respondent, at gonzalezlawpc@optonline.net, stating:

> I am writing you this email [to] inform you that I am unsatisfied with your representation as my lawyer thus far. The reasoning behind why I am so displeased with your representation is this:
>
> You have been provided four cases, by my recommendation, that have potential for settlement and you have yet to settle one of them.

> You have numerous times not: returned my phone calls, my emails, and have even made appointments with me at your office on my days off and have NOT SHOWN UP.
>
> You are delinquent in keeping me informed on the current status of my cases and are unprofessional.
> I want a current status report on BOTH of my cases that you currently on representing and also my mom and wife [sic].
>
> [DEC7 (emphasis in original).]

The following month, on June 4, 2014, Thomas met with respondent and requested a detailed, written update on his case. At the 2014 meeting, respondent did not inform Thomas that his case had been dismissed, in 2011.

Three months later, on September 19, 2014,[13] Thomas followed up with an e-mail to respondent, sent to nelson.gonzalez@nlglawpc.com,[14] stating "I am contacting you to ensure that my cases are being diligently worked on. We last met on June 4[, 2014] and we are now about to enter October of this year. I will

[13] Notably, it was at this time, September 2014, that respondent finally spoke with the OAE about Gonzalez II, after its efforts to contact him had been thwarted by Anicia. In response to the information provided by the OAE, respondent hired Greg Reed, Esq., to support his practice on a per diem basis. Reed went to the Morris County courthouse to review files associated with respondent's office. Consequently, respondent became aware of the court's dismissal of Thomas's complaint and the denial of the November 2011 motion to reinstate the complaint. Respondent disputed Thomas's claim that he had not been informed of the dismissal, testifying that he told Thomas "[t]hat there was an administrative problem and that [he] was working to get it resolved" and that he "needed to file a motion." Anicia, like Thomas, stated that respondent did not advise Thomas of the dismissal.

[14] Unless otherwise stated herein, when Thomas communicated via e-mail with respondent, he used the nelson.gonzalez@nlglawpc.com e-mail address.

be sending you an email detailing my request for an official response from you in writing stating what the current status of my cases are."[15]

On October 2, 2014, Thomas sent another e-mail to respondent, stating "I know you gave me an update on the phone with what was going on with my cases however I still want my official memo. I want documentation from now on because I don't want to get to December and I am hearing the same story."

The next day, on October 3, 2014, Thomas sent a third e-mail to respondent, copying Anicia's cellular telephone number and inquiring when he should expect the requested, written update.

On October 3, 2014, Anicia scheduled a meeting with Thomas for October 10, 2014, via e-mail, from the same cellular telephone number and AT&T provider that Thomas previously had used, and she copied respondent using the same e-mail address that Thomas had used.

In his October 10, 2014 letter,[16] respondent provided Thomas with a written update regarding his and Elizabeth's cases, in reply to Thomas's request for a written update. In that letter, respondent stated that (1) a $25,000 settlement offer had been made in Thomas's matter, which he sought to have increased,

[15] Respondent also represented Thomas's mother, Elizabeth Rosa, as detailed below.

[16] It appears that this letter was sent via regular mail, not e-mail. Further, it is unsigned. Thomas claimed that he never received the letter.

and (2) Elizabeth's matter had been on hold because they needed approval from the New York bankruptcy court to proceed, which approval recently had been received. Respondent did not advise Thomas in the October 10, 2014 letter that his matter had been dismissed, in 2011. Further, contrary to the representation in his letter, respondent had not received approval from the New York bankruptcy court.

The next day, on October 11, 2014, Thomas sent an e-mail to respondent,[17] entitled "Official memorandum update," stating "you still have not sent anything … This is really unprofessional and lack of communication [sic] is showing that nothing has been done on these cases." One month later, on November 13, 2014, Thomas sent another e-mail, entitled "no official updates memorandum," stating:

> We really need to sit down and have a serious talk ..
> I don't see any progress on this cases. .it has been more [sic] 30 days since I requested a [sic] official written updates memorandum and nothing has been done. .Also no email, text or call telling me went [sic] it will be done . . [sic].
>
> [DEC12.]

On December 17, 2014, Thomas sent another follow up e-mail to respondent, to which respondent did not reply.

[17] The precise e-mail address used is not clear from the printed copy in the record, which is addressed to "Nelson Gonzalez."

Thomas had a scheduled meeting with respondent on December 23, 2014, which had been "canceled like always last minute" by respondent. Thomas later sought to confirm their January 7, 2015 meeting, but respondent canceled via e-mail – using text message delivery through AT&T, which Thomas previously had used, and copying himself at nelson.gonzalez@nlglawpc.com.

On February 18, 2015, respondent filed a second motion to reinstate Thomas's complaint in the Superior Court, returnable on March 6, 2015.[18] In his certification in support of the reinstatement application, respondent certified that (1) "there were serious problems with the support staff" at his office, (2) the staff had not alerted him to the problems in Thomas's matter, including the dismissal notice, and (3) he had been told that everything was proceeding appropriately. Respondent further stated that he had not sought the entry of a default judgment against H&S, maintaining that he had been "unaware of the original dismissal warning, and was attending to the settlement possibility that remained open after the Complaint was filed." He also argued that he had provided the court with proof of effective service upon H&S and, thus, the dismissal had been improper.

[18] Respondent alleged that he had attempted to file the motion in December 2014, but that the court lost his pleadings and required him to re-file the application.

Respondent relied upon Anicia, who informed him that the February 18, 2015 motion to reinstate Thomas's complaint had been rescheduled. Anicia, however, had known about the May 5, 2015 return date, but forgot to calendar it. On May 5, 2015, the court denied the second motion to reinstate Thomas's complaint. The handwritten notation on that order reads "[Thomas] seeks reinstatement of an action that was dismissed over four years ago. Although the Court scheduled a conference on May 5, 2015 to address the issues raised by the motion, Plaintiff failed to appear." Upon receipt of the court's order, knowing that she had failed to calendar the return date, Anicia placed the order in Thomas's file without showing it to respondent.

Thereafter, on May 21, 2015, Anicia and Thomas met at respondent's office to discuss a purported $75,000 settlement offer. Thomas executed a release for the settlement funds and Anicia told him to expect a settlement check within forty-five days. Respondent did not attend that meeting, and Thomas had not spoken to respondent about the $75,000 settlement offer.

On July 30, 2015, having received no settlement funds, Thomas sent an e-mail to respondent, seeking an update. Anicia informed Thomas that respondent had the settlement check in his briefcase.

The following month, in August 2015, Thomas approached respondent outside of his office and requested to speak with him. Respondent stated that he

needed to park his car and Thomas proceeded to wait for respondent inside the office, where Anicia later represented that respondent had become unavailable. Ultimately, respondent and Thomas met later that day, and Thomas again requested regular, written updates on his matters. Thomas questioned respondent about the May 21, 2015 release and the $75,000 settlement funds, to which respondent expressed confusion, stating that he had never seen the May 21, 2015 release and knew nothing about a $75,000 settlement offer. In response, respondent immediately called Anicia into his office, where she confessed that she prepared the fake settlement and release.

Consequently, respondent informed Anicia that she would no longer be involved in Thomas's matter, that he would take over all responsibility, and that he would make renewed efforts to resolve the case. Anicia anticipated having less contact with respondent's clients going forward, but she continued to interact with Thomas through December 2015.

Thereafter, Anicia provided respondent with an unfiled, undocketed September 3, 2015 order, bearing the apparent signature of the Honorable Robert J. Brennan, J.S.C., purportedly reinstating Thomas's complaint. Respondent, relieved to have received that order, directed Anicia to update Thomas. Thus, on September 16, 2015, Anicia sent an e-mail to Thomas, enclosing a copy of

the September 3, 2015 order. Thomas unsuccessfully attempted to discuss that order with respondent.

Unbeknownst to respondent and Thomas, Anicia had fabricated the reinstatement order, upon which she forged[19] the judge's signature. Indeed, the unfiled, undocketed September 3, 2015 order was bogus, and Judge Brennan confirmed that it did not bear his signature.

A few months later, Anicia provided respondent with a December 11, 2015 letter, purportedly from Maines of CCIC, confirming a $45,000 settlement offer. Respondent authorized Anicia to communicate the settlement offer to Thomas.

On January 12, 2016, Anicia alerted Thomas to the $45,000 settlement offer, provided him with a copy of the December 11, 2015 letter, and requested that he appear at respondent's office to execute a release. Thomas had not spoken to respondent about the settlement. Additionally, he did not question the validity of the December 11, 2015 letter or the release, because he thought

[19] On January 25, 2017, Anicia admitted, under oath, to the Morris County prosecutor's office, that she had forged three documents, specifically: (1) a false release for Thomas, stating the settlement amount, (2) the false letter from CCIC for Thomas's matter, which she signed, alleging that there had been a settlement offer, and (3) a false Superior Court order stating that Thomas's complaint had been reinstated. She further admitted that she knew her conduct had been wrong. The Morris County prosecutor's office charged Anicia with having violated N.J.S.A. 2C:21-1 (forgery), which was later resolved by her entry into the Pretrial Intervention Program. The Morris County Prosecutor's office declined to charge respondent in connection with the forged September 3, 2015 Superior Court order.

"everything was going smooth" and he trusted respondent. Later that day, at respondent's request, Thomas met with Anicia and executed the release, which had been prepared by respondent. However, yet again, there had been no settlement offer and Anicia had forged the December 11, 2015 letter.

In May 2016, after Anicia had left his office, respondent reached out to CCIC to obtain Thomas's purported $45,000 in settlement funds. Specifically, on May 2, 2016, respondent sent an e-mail to CCIC and defense counsel, attaching the September 3, 2015 reinstatement order, the December 11, 2015 letter from CCIC extending the $45,000 settlement offer made by Maines of CCIC, and the release executed by Thomas. At the time, respondent believed all three documents to be genuine. However, CCIC immediately questioned the validity of the unfiled reinstatement order and the settlement offer from Maines, because (1) their letterhead was outdated, (2) Maines had not been employed there for years, and (3) CCIC had no record of extending a $45,000 settlement offer. Consequently, respondent confronted Anicia, who confessed, once again, to having forged the additional documents related to Thomas's matter.

Through July 2016, Thomas followed up with respondent about his expected $45,000 settlement funds. Specifically, Thomas called respondent and attempted to set up a meeting with him. He also sent a July 14, 2016 e-mail to respondent, to gonzalezlawpc@optonline.net, inquiring about the status of his

settlement check. Thomas received neither the settlement check nor a reply from respondent. On July 28, 2016, after having received no reply from respondent, Thomas filed an ethics grievance against respondent. At this time, Thomas continued to believe that his case remained active. He expressed frustration and disappointment at respondent's shortcomings, noting that he had "trusted [respondent] to do the right job."

Indeed, Thomas had been wholly uninformed about his matter. He had not known that respondent had filed a complaint in the Superior Court, believing only that a claim had been made with CCIC. Thomas admitted having discussed the filing of the complaint and the statute of limitations with respondent, explaining that, although he knew respondent intended to file the complaint, he never received a copy of the filed complaint or proof of service, despite his requests for a copy. Similarly, Thomas had not seen the dismissal notices prior to the related ethics hearing. He had not known about the November 21, 2011 or February 2015 reinstatement motions and, therefore, he believed his case remained active.

Thomas further stated that, despite his repeated requests, between 2009 and 2014, he received no written update about his matters from respondent, and he had been disappointed with respondent's lack of communication and progress on his case. Thomas stated that, at their June 4, 2014 meeting, respondent

claimed to have been working on settling the case and that everything was fine. Although he had been frustrated and unhappy with respondent, Thomas had not terminated respondent's services, because he believed respondent could settle his matter.

Thomas admitted that he often appeared at respondent's office without an appointment, and that, if respondent was unavailable, he spoke with Anicia. He explained that he appeared at respondent's office because his e-mails, text messages, and telephone calls had gone unanswered. Thomas believed that, in 2015, respondent blocked him from calling respondent's cellphone. Thomas claimed that, because he never fired respondent and respondent had not withdrawn from his matter, he still believed respondent to be his attorney.

In reply to Thomas's allegations, Anicia and respondent maintained that respondent continuously communicated with Thomas throughout the period of representation. Indeed, respondent claimed that he had verbally discussed with Thomas both his and Elizabeth's cases, providing updates via telephone and text messages.[20] He maintained that he never blocked Thomas from communicating with him via cellphone.

[20] Respondent did not produce any such text messages for the record.

Regarding Thomas's e-mail communications, Anicia stated that Thomas's September 19 and October 2, 2014 e-mails had not been received, because Thomas (1) sent them to an e-mail address erroneously adding a period between respondent's first and last name, and (2) copied an incorrect cellphone provider – AT&T – in the text message delivery. Respondent similarly claimed that he did not receive Thomas's January 15, 2013 or May 23, 2014 e-mails, noting that he had not used the gonzalezlawpc@optonline.net e-mail address for "quite some time."[21] Respondent further claimed that he did not receive Thomas's September 19, October 2, October 4, October 11, November 13, and December 17, 2014, and July 30, 2015 e-mails, because he had never used a nelson.gonzalez@nlglawpc.com e-mail address.

Respondent also stated that, in June 2009 – six months after Thomas's accident – Thomas had not yet reached his maximum level of improvement and, therefore, in his view, filing a lawsuit would have been premature. Respondent, nevertheless, attempted to negotiate a settlement. Respondent claimed that, during the mediation, CCIC made a $5,000 settlement offer, and that he countered with a $50,000 demand.

[21] Despite this representation, as of October 10, 2014, respondent's letterhead listed his e-mail address as gonzalezlawpc@optonline.net. As recently as January 12, 2016, respondent's letterhead listed his e-mail address as nelsongonzalez@nlglawpc.com, without a period between his first and last name, which is respondent's current e-mail address of record.

Respondent maintained that he had been unaware of Cottrell or Reeder's attempts to reach him, in May or November 2010. He recalled no messages or speaking to CCIC's representative, maintaining that he normally communicated directly with Cottrell's office.

Respondent denied having received the dismissal notices related to Thomas's complaint, despite the fact that the notices included his correct address. Respondent further argued that the court wrongly dismissed the complaint against H&S because proof of service had been filed against that defendant. Although respondent maintained that he continued to communicate with Cottrell's office, in pursuit of a settlement, he claimed that he never saw Cottrell's November 11, 2011 or March 22, 2012 letters.

Anicia, Little, and respondent maintained that Thomas would appear at respondent's office, without an appointment, to check on the status of his cases. If Thomas arrived at the office and respondent was busy, Anicia or another staff member would assist him. Respondent did not recall a June 4 or December 23, 2014 meeting, but stated that he met with Thomas when he had been available.

Next, Anicia admitted to having lied to Thomas multiple times about the status of his case. Specifically, she prepared the fake $75,000 settlement and release, scheduled the May 21, 2015 meeting with Thomas, and prepared the fake December 11, 2015 settlement letter, all without respondent's knowledge.

Anicia further admitted to forging the judge's signature on the September 3, 2015 order, when she "knew that it was wrong" but did so because Thomas "was mean" and she wanted to get "[him] off [her] back," after he had repeatedly shown up at the office stating that the case should have been settled.

With regard to the November 21, 2011 reinstatement motion, respondent and Anicia denied having any knowledge about the filing of the motion, surmising that Joanne had filed it without respondent's knowledge. Respondent concluded that Joanne had filed the pleading because she had direct access to Thomas's file and assisted in the maintenance of office files. Notably, respondent produced the November 21, 2011 motion as part of Thomas's file. Similarly, regarding the second motion to reinstate Thomas's complaint, respondent had been unaware of its May 5, 2015 return date, at which he failed to appear.

Respondent stated that, in July 2016, Thomas requested his file, advising that he would retain new legal counsel, and, therefore, he provided Thomas with a copy of his file. On October 14, 2016, Edward Grossi, Esq., sent a letter to respondent, requesting Thomas's file and enclosing Thomas's October 6, 2016 authorization. Respondent stated that, in reply, he had provided a second copy of Thomas's file and that he had no further involvement in Thomas's matter.

However, respondent produced neither proof that he had provided the file nor a substitution of attorney.

The Noel Alvarenga Matter (XB-2016-0028E)

On May 24, 2012, the grievant, Noel Alvarenga, sustained a work-related injury to his right thumb and forefinger and, thereafter, sought treatment at the Englewood Hospital and Medical Center, in Englewood, New Jersey. While at the hospital, Alvarenga's employer, Seok Lee, punched him in the left side of his head, near his ear. Thus, the hospital security staff removed Lee from the treatment room. Alvarenga reported pain and ringing in his left ear; a reduced ability to hear in his left ear; blood coming from his ear; and complained of coughing up blood. When the police arrived, Alvarenga gave a statement and provided his full name – Noel Lorenzo Alvarenga Reyes.[22] However, unbeknownst to Alvarenga, the Englewood police department's investigation report identified him as Noel Lorenzo.

On May 26, 2012, Alvarenga met respondent at his North Bergen office. Alvarenga identified himself as "Noel Lorenzo Alvarenga" and he provided respondent with his hospital records and the Englewood police department's

[22] A nurse helped Alvarenga communicate with the police because the officer did not speak Spanish.

investigation report. Respondent had Alvarenga sign a document, which Alvarenga did not understand, because it was written in English and he cannot read or write any language. Respondent did not provide Alvarenga with a copy of the signed document, but he gave Alvarenga his business card. Respondent previously had not represented Alvarenga, yet, they did not enter into a retainer agreement or discuss respondent's legal fee.

Regarding the workers' compensation matter, CNA, the workers' compensation carrier for Alvarenga's employer, sent letters to Alvarenga on July 16, July 17, and July 20, 2012, seeking to discuss his workers' compensation claim. Alvarenga forwarded those letters to respondent's office, and provided CNA with respondent's name and telephone number, identifying him as his attorney. Alvarenga also informed Anicia that the insurance company had called him and that he had referred them to respondent's office. Later, on September 24, 2012, CNA sent a letter directly to respondent regarding Alvarenga's workers' compensation claim. On October 12, 2012, CNA sent a letter to Alvarenga, copying respondent, denying responsibility for his claim. Thereafter, on November 26, 2012, CNA closed Alvarenga's matter,

determining that no claim petition had been filed with the New Jersey Workers' Compensation Board.[23]

Regarding the Englewood Municipal Court matter, on May 25, 2012, the police filed a charge of simple assault, in violation of N.J.S.A. 2C:12-1(a), against Lee, listing "Noel Lorenzo" as the complaining witness. On August 13, 2012, respondent sent a letter to the Englewood Municipal Court, "re: Noel L. Alvarenga," specifically stating "this office represents the above-named defendant." The following day, on August 14, 2012, respondent sent a second letter of representation to the Englewood Municipal Court, again stating that he represented Alvarenga, erroneously identifying Alvarenga as the defendant in summons SC-2012-009713, entering a plea of not guilty and making a demand for discovery.[24] The August 14, 2012 letter of representation had been prepared at respondent's direction, with Alvarenga having provided the summons number.

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[23] When an employer and employee dispute the employee's entitlement to benefits, the employee may file with the Division of Workers' Compensation either a formal claim petition or an application for an informal hearing. https://www.nj.gov/labor/workerscompensation/employer-requirements/index.shtml?open=reporting.

[24] Although respondent mistakenly characterized Alvarenga as the defendant, it is clear that the docket number refers to the same matter (Summons 0215-SC-009713).

The Englewood Municipal Court informed respondent that it had no matter under the name Noel Alvarenga. Thus, Anicia told Alvarenga that no trial date had been scheduled. Alvarenga did not contact the municipal court to follow up on the scheduling of his matter, because he relied upon respondent as his attorney. Ultimately, Alvarenga never went to court on that matter and respondent had no further contact with him. However, respondent later found out that, consistent with the police report, Alvarenga had been identified as "Noel Lorenzo" before the municipal court.

At all times, Alvarenga believed that he had retained respondent in connection with both his workers' compensation matter and the assault matter, stating "I always knew [respondent] was my attorney" because respondent had said to him "I'm going to represent you. I'm your attorney." Alvarenga stated that respondent told him not to answer questions posed by anyone about the incidents because, as his attorney, respondent would answer any questions. He further claimed that respondent stated that (1) he would obtain a physician for Alvarenga, (2) he would obtain outstanding wages for Alvarenga, and (3) Alvarenga should have no further contact with his former employer. Alvarenga did not know what he signed at respondent's office but believed that the document related to the two lawsuits he intended to file. He had signed the document, without inquiring further, because he "trusted [respondent] fully."

Alvarenga believed that respondent would determine his fee for the workers' compensation matter after the lawsuit concluded, taking his fee from any funds recovered from Alvarenga's employer. Alvarenga further stated that respondent had agreed to represent him in the municipal court matter free of charge but had not explained the role of the municipal court prosecutor.

Alvarenga claimed that respondent failed to recommend doctors or to provide him with information about any medical appointment. He stated that he had been waiting for respondent to provide the information, rather than making appointments on his own, because he could not afford the appointments and respondent had advised that Alvarenga's employer's insurance would cover the cost. Alvarenga remained unaware that CNA had closed his workers' compensation matter.

Alvarenga further claimed that he called respondent's office more than twenty times, unsuccessfully attempting to speak with him. He claimed that respondent's office hung up on him after he identified himself. In August 2012, three months after their initial meeting, Alvarenga reached respondent for the first time, via telephone, and claimed that respondent told him to be patient, stating that he had been working on Alvarenga's matters, including securing him a medical appointment. Having received no further information, Alvarenga made an appointment, in December 2015, at respondent's North Bergen office,

to obtain an update on his matters. Respondent failed to appear for that meeting. Notwithstanding, in December 2015, Alvarenga still believed that his workers' compensation claim remained active and that respondent represented him in both matters.

Finally, Alvarenga claimed that he requested that respondent provide him with his file but respondent failed to comply with his request. As of January 2020, Alvarenga had not received any financial compensation related to either of his matters.

Respondent, in turn, maintained that he had informed Alvarenga that he would not represent him in the workers' compensation claim and that Alvarenga had not contacted him further about the claim. He had no knowledge of Alvarenga contacting his office after May 26, 2012, or of any mistreatment by his staff. He also denied having had the August 2012 telephone conference with Alvarenga.

Respondent further maintained that he had not been involved in obtaining a physician for Alvarenga or providing information about a doctor, asserting that, even if he had taken Alvarenga's case, the insurance carriers provide that information. He stated that Alvarenga had not updated him regarding any treatment he had received. He claimed to be unaware that a claim had been filed with CNA, or of any telephone calls from CNA to his office. Respondent

claimed not to have received CNA's September 24 or October 12, 2012 letters. Respondent could not recall if Alvarenga had provided him with additional documentation but claimed that he would have returned any documents to Alvarenga because he had not agreed to represent him in his workers' compensation case.

Respondent also asserted that the municipal court prosecutor represented Alvarenga, as the victim in the simple assault charge, but that he had agreed to act as a translator and a victim advocate for Alvarenga. Respondent argued that, because he had agreed to assist Alvarenga in the municipal court matter on a pro bono basis, no written fee agreement had been required.

Anicia similarly claimed that she had no knowledge of CNA's attempts to contact respondent. She did not recall receiving regular telephone calls from Alvarenga or him providing documents to her at the North Bergen office, where she had been the only staff member. Neither respondent nor Anicia had any recollection of making a December 2015 appointment with Alvarenga.

The Elizabeth Rosa Matter (XB-2016-0041E)

On July 12, 2007, the grievant, Elizabeth Rosa,[25] was involved in a motor vehicle accident with Jesus Garcia, who operated a truck owned by All Island

[25] Elizabeth was unavailable to testify at the ethics hearing due to health issues.

Truck Leasing (All Island) and insured by High Point Insurance (High Point). On August 29, 2007, Elizabeth retained respondent to represent her in connection with a personal injury claim. They entered into a contingent fee agreement, whereby respondent would be paid only if Elizabeth received funds from a settlement or lawsuit.

Respondent described Elizabeth as elderly and claimed she had difficulty explaining how the accident had occurred. However, according to Elizabeth, she had sustained injuries to her neck, back, and shoulder. On October 2, 2008, High Point determined that Elizabeth had reached the maximum medical improvement for pain management treatment. However, she continued to be treated by a chiropractor and attended physical therapy.

On July 13, 2009, on behalf of Elizabeth, respondent filed a civil lawsuit in the Superior Court of New Jersey, Union County, against All Island and Garcia. Both defendants were properly served – Garcia on September 26, 2009 and All Island on November 16, 2009. Respondent filed Elizabeth's complaint within the two-year statute of limitations, believing that, at this time, her treatment had concluded.

On October 9, 2009, prior to being served with Elizabeth's civil complaint, All Island filed for bankruptcy in the United States Bankruptcy Court, Eastern District of New York. Consequently, an automatic stay was

placed on all pending civil proceedings involving All Island, which would have to be vacated for Elizabeth's Superior Court matter to proceed.[26] At this point, neither respondent nor Elizabeth had been notified of the bankruptcy petition, because All Island had not yet been served with Elizabeth's complaint and, thus, Elizabeth had not been listed as a potential creditor on that petition.

For the next year and a half, respondent regularly communicated with Anthony Grossi, Esq., counsel for All Island and Garcia, about Elizabeth's Superior Court matter. Grossi filed an answer to the Superior Court matter in January 2010 and an amended answer in August 2010. Additionally, respondent and Grossi took depositions; served interrogatories; exchanged discovery; and scheduled arbitration. Grossi, however, maintained that no settlement discussions occurred at this time because discovery had not been completed.

Grossi did not learn of the stay until August 16, 2010. In response to that information, on November 10, 2010, Grossi notified the Superior Court of New Jersey of All Island's pending bankruptcy matter; provided a copy of the corresponding September 2, 2010 order from the bankruptcy court; and sought a stay of the Superior Court proceedings against both defendants. Grossi maintained that none of the insurance proceeds would have been available to

[26] Upon the filing of a bankruptcy petition, an automatic stay is imposed on collections against the petitioner and his or her property. 11 U.S.C.S. § 362(a)(1).

Garcia without the stay being vacated. Grossi copied respondent on his August 16, 2010 letter, yet, respondent continued to negotiate a settlement of Elizabeth's matter, believing that the stay only applied to defendant All Island.

Next, on February 16, 2011, Grossi sent a letter to respondent enclosing a January 19, 2011 order of the Superior Court dismissing, without prejudice, Elizabeth's civil lawsuit "as to: All Island Truck Leasing Corp., ONLY" as a result of the bankruptcy proceedings (emphasis in original). Thereafter, on April 7, 2011, Grossi deposed Elizabeth, and the Superior Court scheduled non-binding arbitration sessions, through 2013, some of which respondent and Grossi attended.

Later, on June 7, 2011, Anicia sent a facsimile to Grossi, enclosing a May 15, 2011 motion to vacate the stay (MVS) in the bankruptcy proceedings, which she represented had a return date later that month. Either Anicia or respondent prepared the MVS, which respondent directed Anicia to electronically file in the United States Bankruptcy Court for the Eastern District of New York. Respondent had not been involved in the electronic filing of the motion, which accepted his electronic signature. Anicia informed respondent that the motion had been filed. However, Anicia improperly submitted the MVS and, consequently, the bankruptcy court rejected the filing.

Upon receipt of a copy of the MVS, Grossi determined not to file opposition. He maintained that he could not engage in settlement discussions unless and until the MVS had been granted. Grossi had been informed by Anicia that the motion remained pending. Thus, he and respondent continued to exchange discovery and appear for arbitration sessions.

On September 20, 2011, respondent sent a letter to the Superior Court, advising that the MVS in the bankruptcy proceedings had been scheduled for October 31, 2011 and requesting an adjournment of a September 22, 2011 arbitration session. Respondent admitted to having authored the September 20, 2011 letter, but asserted that it had been based upon incorrect information, provided by Anicia, about the filing and return date of the MVS.

Respondent did not contact the bankruptcy court or check the Public Access to Court Electronic Records (PACER) system; instead, he relied upon Anicia to provide him with updates on the purported pending motion. However, at this time, respondent had not been admitted to practice before the United States Bankruptcy Court for the Eastern District of New York.

Notably, respondent last spoke directly with Elizabeth in 2012. Instead, Elizabeth authorized respondent to speak with her son, Thomas, about her matter.

On February 10, April 4, and September 5, 2012, and on January 4, 2013, respondent sent letters to the Superior Court requesting adjournments of the scheduled arbitration for Elizabeth's civil matter, each time referencing the purportedly pending MVS in the federal bankruptcy court in New York. During this timeframe, respondent had not himself contacted the bankruptcy court or accessed PACER to ascertain the status of the motion; instead, he continued to rely upon Anicia to provide that information. Notably, by February 10, 2012, Anicia knew that the motion had been rejected but she did not inform respondent.

Elizabeth's arbitration continued to be rescheduled, until June 6, 2013, when the Superior Court sua sponte dismissed the civil matter, without prejudice, pursuant to Rule 4:21A-3.[27]

Through March 2016, respondent continued to rely upon Anicia to update him on the status of the purportedly pending MVS in the bankruptcy proceedings. Respondent and Grossi continued to communicate about Elizabeth's matter. Respondent maintained that, at all times, he and Grossi

[27] Rule 4:21A-3 states that "[i]f an action is settled prior to the arbitration hearing, the attorneys shall so report to the civil division manager and an order dismissing the action shall be entered." It is unclear why the court's records cite to that Rule, as no settlement had been reached. However, consistent with 11 U.S.C.S. § 362(a)(1), Grossi maintained that the matter had been removed from the arbitration list because it could not proceed as a result of the stay in the bankruptcy proceedings.

continued to work towards a settlement, claiming that Grossi "was hoping to put some money on the case." Grossi, in turn, maintained that he could not discuss a settlement, or make an offer of settlement related to Garcia and Elizabeth, until the stay had been vacated – believing that the stay should have been applied to both defendants. Grossi testified that:

> We continued with discovery because I anticipated eventually receiving an order vacating the stay up to the limits of the policy, and rather than wait and then start discovery again, and perhaps getting into trouble with the court because of a discovery end date expiration, we simply continued with the depositions . . . we did continue with discovery in anticipation of the vacating of the stay. But no settlement discussions were conducted other than a generalized, "when the stay is lifted, we'll talk settlement." That was all.
>
> * * *
>
> You have to have the stay lifted before you can make an offer. I have no money up until that point, and I never told [respondent] otherwise.
>
> [9T91;9T99.]

Grossi further stated that Anicia inquired if he could get funds to settle Elizabeth's matter, without the bankruptcy being vacated, to which he replied that he could not, and that a copy of an order vacating the stay would be required prior to the authorization of any settlement funds.

As outlined above, respondent suspended Anicia's employment for a period beginning in March 2016. Respondent's negotiations with Grossi broke

down and, thus, respondent had a renewed interest in the MVS in the bankruptcy court. Respondent ultimately discovered that Anicia had not successfully filed the motion and that he would need to seek admission to the United States Bankruptcy Court for the Eastern District of New York to successfully do so.[28]

On June 29, 2016, respondent gained admission to the Eastern District of New York and, on July 4, 2016, he filed a conforming MVS. Thereafter, on November 16, 2016, the bankruptcy court entered an order vacating the stay. Respondent admittedly failed to provide a copy of that order to Grossi and High Point. Thereafter, he also failed to file a motion to reinstate Elizabeth's civil matter. Instead, he ceased working on Elizabeth's civil matter the following month, after receiving her ethics grievance against him, despite continuing to be her counsel of record.

Respondent claimed that he had verbally discussed with Thomas both his and Elizabeth's cases, providing updates via telephone and text messages. In an October 10, 2014 letter, respondent provided Thomas with a written update regarding his and Elizabeth's cases, in reply to Thomas's request for a written update.

[28] Respondent had mistakenly believed that his admission to the Southern District of New York enabled him to file a motion in the Eastern District of New York.

Thomas did not dispute that he had spoken with respondent about Elizabeth's case, but he believed, following those conversations, that his mother's case remained active. Thomas claimed that, although respondent informed him that there had been a related bankruptcy proceeding, he had been unaware of any action taken by respondent in the bankruptcy matter.

Respondent claimed that, around December 2016, Thomas requested that he surrender Elizabeth's file, and that he provided a copy as requested. It had been respondent's understanding that Thomas sought other legal counsel for Elizabeth; yet, on November 27, 2017, Elizabeth sent a letter to respondent requesting an update on her matter.

The Parties' Briefs to the Hearing Panel

In his brief to the hearing panel, respondent, through counsel, argued that the presenter had failed to prove any of the charged RPC violations by clear and convincing evidence. Specifically, he argued that the presenter failed to prove that he had any knowledge or awareness of the deceptive conduct committed by his staff, particularly Anicia, and that, upon becoming aware of Anicia's behavior, he had taken remedial action. Respondent argued that his staff's failure to adhere to the policy in place – specifically, the mail policy – did not demonstrate that the policy had been unreasonable. Respondent maintained that Anicia's past conduct "in no way reasonably or logically equated to [the] future

misconduct that was committed in the instant matter[s], thus, in no way can Anicia's misconduct be imputed to [him]."

In mitigation, respondent argued that (1) he already had been subjected to substantial discipline in the form of his prior, three-month suspension; (2) he had not been reinstated until October 20, 2021 and, thus, actually served a six-month suspension; and (3) the prior disciplinary matters should have been consolidated with the instant matters, rather than exposing him to additional discipline. Respondent also noted that he maintained a good reputation and character; engaged in community service; provided pro bono representation to indigent clients; any misconduct had been isolated and atypical; and that the misconduct was unlikely to reoccur because he had terminated Anicia.

In turn, the presenter argued that respondent's continued employment of Anicia, despite his knowledge of her prior deceptive behavior, constituted willful blindness. Specifically, the presenter argued that, in September 2014, respondent had actual knowledge of Anicia's deceitful conduct and continued to employ her through February 2020, with only a short interruption in employment in that extensive period. Thus, respondent had been responsible for Anicia's actions. The presenter further asserted that all charged RPC violations had been proven, by clear and convincing evidence.

In aggravation, the presenter noted the (1) seriousness of the forgeries; (2) the stipulated misconduct; (3) the pattern of conduct; (4) the lack of remorse expressed by respondent; and (5) the financial harm to respondent's clients. The presenter maintained that those aggravating factors, in combination with respondent's disciplinary history, merited a minimum three-year suspension.

The presenter observed that respondent's petition for reinstatement had not been filed until July 27, 2020 and the OAE had opposed the application, citing bases for concern. It also argued that the prior ethics matters had been at the hearing stage when the instant matters began, and that there was no requirement that ethics matters be consolidated or delayed because of additional pending ethics grievances.

Following a ten-day hearing, the hearing panel determined respondent's testimony to be incredible, stating that "[w]hen confronted with letters that contradicted his testimony, Respondent repeatedly and conveniently testified that he never received those letters . . . These and other persistent denials rang hollow and have led the Hearing Panel to disbelieve many aspects of Respondent's testimony." The panel found that, in all three matters, respondent had violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 3.2; RPC 5.3(a) and (b); RPC 7.1(a); and RPC 7.5(a). It found that respondent further violated RPC 1.5(b) in the Alvarenga matter and RPC 3.3(a)(1) in the Elizabeth Rosa matter.

The hearing panel, however, determined that the DEC had not proven, by clear and convincing evidence, the charged violations, in the Thomas Rosa matter, of RPC 3.1; RPC 3.3(a)(1); RPC 3.3(a)(4); RPC 3.4; and RPC 4.1, or the charged violation of RPC 8.1(b) in the Thomas Rosa and Alvarenga matters.

The panel determined there to be no mitigating factors. In aggravation, it considered (1) respondent's prior discipline, (2) respondent's lack of remorse, and (3) the harm respondent's clients suffered as a result of the dismissal of their respective cases, resulting in their inability to financially recover. It recommended that (1) respondent serve a six-month suspension, (2) upon his reinstatement, practice under a proctor for not less than six months, and (3) reiterated the Court's May 7, 2020 order that Anicia not be involved in his law practice.

During oral argument before us, respondent's counsel agreed that "there certainly should be discipline" but argued in favor of a censure, focusing on respondent's service to the community. He did not oppose a proctorship.

Counsel argued that the OAE's recommendation for higher discipline "may have incorporated [its] implicit bias, and that the investigation overlooked the extraordinarily good character" of respondent. In that regard, counsel requested that we consider, in mitigation, the alleged ineffective advocacy of respondent's prior counsel, and (2) respondent's social, religious, and

professional community service. To that end, counsel enumerated respondent's volunteerism as a mock trial judge, youth mentor, and motorcycle safety instructor; religious volunteerism; pro bono legal services provided to the underserved and underrepresented Spanish-speaking community, including helping individuals achieve citizenship; participation in seminars to provide low-income families with home buyer's education; and blood donations. He also provided current photographs of respondent's office to show how organized it was.

The DEC opposed expansion of the record to include our consideration of new arguments or the photographs, which had not previously been provided to the hearing panel. The presenter recommended a one-year term of suspension, in addition to a one-year proctorship.

Following a de novo review of the record, we determine that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence. The facts set forth in the record clearly and convincingly support the finding that respondent committed most of the charged unethical conduct.

RPC 1.1(a) and RPC 1.3

RPC 1.1(a) states that "[a] lawyer shall not . . . [h]andle or neglect a matter entrusted to the lawyer in such a manner that the lawyer's conduct constitutes gross negligence." RPC 1.3 further provides that "[a] lawyer shall act with reasonable diligence and promptness in representing a client."

In all three client matters, respondent violated RPC 1.1(a) and RPC 1.3. In the Thomas Rosa matter, respondent violated those Rules by (1) failing to communicate with CCIC[29] and Cottrell; (2) failing to prosecute the civil action in accordance with the Court Rules, resulting in its dismissal; (3) failing, for more than three years, to take appropriate steps to reinstate the complaint; and (4) failing to appear at the May 5, 2015 return date for the second reinstatement motion.

Respondent repeatedly failed to communicate with CCIC, delaying any possible settlement. Like the panel below, we reject as incredible respondent's claims that he had not received Thomas's and CCIC's numerous letters and calls. Moreover, respondent's claim that he communicated with Cottrell, instead of CCIC, even if true, would be insufficient to satisfy his obligations under the RPCs. Indeed, had respondent handled Thomas's matter with the diligence

[29] Despite CCIC's represented status, it appears to have communicated with respondent both directly and through its counsel, Cottrell.

expected of a New Jersey attorney, he would have regularly communicated with both Cottrell and CCIC.

Regarding the dismissal, respondent failed to advance Thomas's matter or to keep himself or his client apprised of its status. Respondent received two dismissal notices from the court, in 2011, and Cottrell informed respondent, on November 11 and November 15, 2011, of the dismissal of the civil action. Respondent alleged that he regularly communicated with Cottrell, but he failed to respond to either of those letters. Respondent's claim of having not seen either letter also is unbelievable, as his file contained a November 21, 2011 motion to reinstate the complaint. Here again, even if respondent had not known about Cottrell's letters or the filing of that motion to reinstate the complaint, had he diligently reviewed his own files he would have discovered the motion. Moreover, respondent could have viewed the status of the matter electronically, on eCourts, as Cottrell had done.[30]

Next, respondent admittedly failed to advance the Thomas Rosa matter when he failed to seek the entry of a default judgment against H&S after it failed

[30] eCourts became available, on a rolling basis by county, to the special civil part, as of September 30, 2016, and to the civil part, as of December 31, 2017. Although the final date of implementation is beyond that of Thomas's matter, it is clear that Cottrell had used eCourts to ascertain the status of the case.

to timely file an answer. Respondent subsequently failed to advance Thomas's matter for more than three years.

Not until February 18, 2015, despite having learned of Anicia's deceptive behavior in September 2014, did respondent finally thoroughly review Thomas's file. Thereafter, respondent filed a second motion to reinstate Thomas's complaint, specifically noting the "serious problems with the support staff" at his office. Yet, respondent unreasonably continued to rely upon Anicia to keep him apprised of the status of the second motion, resulting in him being uninformed and failing to appear on the return date. Additionally, the trial court's May 5, 2015 order, denying the reinstatement motion, had been placed in Thomas's file and, thus, again respondent arguably would have seen that order if he had diligently reviewed his own file or accessed his e-Courts account. Ultimately, respondent failed to complete the task for which he had been hired, and Thomas's complaint was never reinstated.

Respondent further violated RPC 1.1(a) and RPC 1.3 in the Alvarenga matter by failing to: (1) communicate with CNA; (2) file a workers' compensation claim; (3) keep Alvarenga informed about the status of his workers' compensation matter; and (4) keep Alvarenga informed about the status of his municipal court matter.

Respondent utterly failed to communicate with CNA. Specifically, he failed to reply to CNA's telephone calls; September 24, 2012 letter, which had been sent directly to him; or October 12, 2012 letter, forwarded by Alvarenga. Respondent's contrary claims of failure of memory and not receiving letters are incredible.

Moreover, if, as he claimed, respondent had declined to represent Alvarenga in his workers' compensation claim, CNA's September 24 and October 12, 2012 letters alerted him to Alvarenga's and CNA's understanding that he had been retained. He did not advise Alvarenga or CNA that he was not Alvarenga's attorney. Moreover, respondent provided no proof that he had advised Alvarenga of the scope of the representation.

Respondent's inaction in failing to communicate with CNA or to file Alvarenga's workers' compensation petition resulted in denial of his claim. Respondent failed to keep Alvarenga informed about the status of his workers' compensation claim and his municipal court matter.

In the municipal court matter, respondent also failed to act as counsel or advocate for Alvarenga. Despite having the proper summons number for the municipal complaint, he failed to keep himself or Alvarenga informed about the matter or to properly identify Alvarenga's status as a victim in the matter. It is undisputed that respondent's office informed Alvarenga that the municipal court

matter had not been scheduled. Thereafter, respondent had no further contact with Alvarenga.

Respondent's attempts to blame the municipal court and Alvarenga for his shortcomings are unpersuasive. Indeed, the language barrier and Alvarenga's illiteracy made it all the more crucial that respondent be diligent in his efforts and clear in his communications.

Last, in the Elizabeth Rosa matter, respondent violated RPC 1.1(a) and RPC 1.3 by failing to: (1) take action to vacate the stay in the bankruptcy proceedings, between September 2011 and July 2016; (2) inform High Point and Grossi that the stay had been vacated; (3) reinstate Elizabeth's civil complaint once the stay had been vacated; and (4) work on Elizabeth's matter upon receipt of the ethics grievance.

The record clearly demonstrates that respondent failed to advance Elizabeth's civil complaint. Pursuant to 11 U.S.C.S. § 362(a)(1), and as Grossi correctly maintained, the stay had to be vacated in order for the civil matter to proceed. However, respondent failed to file an MVS between September 2011 and July 2016. Although respondent believed that an MVS had been pending before the bankruptcy court, he unreasonably failed to confirm its filing by contacting that court or accessing his PACER account, for more than four years.

In November 2016, after the stay in the bankruptcy proceedings had been vacated, respondent admittedly failed to (1) inform High Point and Grossi that the stay had been vacated; (2) file a motion to reinstate Elizabeth's civil complaint; and (3) take any further action on Elizabeth's matter, after receipt of her ethics grievance.

In conclusion, respondent violated RPC 1.1(a) and RPC 1.3 in all three client matters.

RPC 1.5(b)

RPC 1.5(b) states that "[w]hen the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation." An attorney-client relationship may be formed in the absence of a writing where there is both a sign that the attorney "affirmatively accept[ed] a professional responsibility" and that the client by "some act, some word, some identifiable manifestation . . . reli[ed] on the attorney in his professional capacity." In re Palmieri, 76 N.J. 51 at 58, 60 (1978). The payment of a fee is not a necessary element of an attorney-client relationship. In re Makowski, 73 N.J. 265 (1977).

The hearing panel below correctly determined that an attorney-client relationship had been formed between respondent and Alvarenga. Here, Alvarenga reasonably believed that respondent had been his attorney and that

respondent would be paid from any funds recovered in his lawsuits, and CNA sent at least one letter to Alvarenga, copying respondent, seeking to discuss Alvarenga's claim. Additionally, and mostly notably, respondent also sent two letters regarding "Noel L. Alvarenga" to the Englewood Municipal Court specifically stating "this office represent the above-named defendant" and seeking information related to the upcoming court proceedings. Alvarenga clearly relied upon respondent's legal skills, and respondent, conscious of that reliance, manifested an acceptance of that responsibility. Respondent also had a heightened responsibility to Alvarenga given his illiteracy and the language barrier that existed.

Having established that an attorney-client relationship had been formed, it is undisputed that respondent failed to set forth, in writing, the basis or rate of his fee. Thus, respondent violated RPC 1.5(b) in this client matter.

RPC 3.2

RPC 3.2 requires an attorney to make reasonable efforts to expedite litigation consistent with the client's interests.

The hearing panel correctly found that the above facts, evidenced by clear and convincing evidence, demonstrated that respondent also violated RPC 3.2

in the Thomas Rosa and Elizabeth Rosa matters. The charged violation in the Alvarenga matter is discussed below.

Specifically, in the Thomas Rosa matter, respondent violated RPC 3.2, following the filing of the civil complaint, by failing to (1) communicate with CCIC[31] and Cottrell, (2) failing to prosecute the civil action in accordance with the Court Rules, resulting in its dismissal, and (3) failing to properly reinstate the matter from December 2011 through February 2015. Likewise, in the Elizabeth Rosa matter, respondent violated RPC 3.2 by failing to (1) take action to vacate the stay in the bankruptcy proceeding, between September 2011 and July 2016, or (2) reinstate Elizabeth's civil matter after the stay had been vacated.

[32] According to Supreme Court records, respondent's current e-mail address is nelsongonzalez@nlglawpc.com, with a secondary address of nelsongonzalez0420@gmail.com. While the Court's requirements that attorneys maintain current e-mail addresses with it were instituted in 2017, respondent is responsible for corresponding with clients at the e-mail address he held out to the public. Notice and Order, "Attorneys Required to Maintain a Current Email Address with the Courts for Billing and Registration Purposes – Relaxation of Court Rules 1:20 and 1:21" (March 28, 2017); Order, "Attorneys to Provide and Maintain a Valid E-Mail Address" (July 18, 2017) (requiring attorneys to "maintain a valid email address at all times, informing the Court of any changes to that email address throughout the course of the year using a form or process determined by the Administrative Director of the Courts, with those attorney email addresses to be used by the Court for the limited purpose of court business, such as annual registration and billing").

RPC 1.4(b)

RPC 1.4(b) further provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." As the hearing panel found, respondent violated that Rule in all three client matters.

In the Thomas Rosa matter, the record contains no proof that Thomas received copies of the complaint, proof of service, or other documents. Additionally, Thomas repeatedly requested a written update from respondent but respondent consistently failed to promptly comply.

We reject respondent's claim that he did not receive Thomas's May 23, 2014 e-mail, wherein Thomas noted his repeated failed attempts to get in touch with respondent and requested to be informed about his matter. Respondent claimed that he had not used gonzalezlawpc@optonline.net for "quite some time." However, that exact e-mail address appeared on respondent's letterhead through at least October 2014.[32]

[32] According to Supreme Court records, respondent's current e-mail address is nelsongonzalez@nlglawpc.com, with a secondary address of nelsongonzalez0420@gmail.com. While the Court's requirements that attorneys maintain current e-mail addresses with it were instituted in 2017, respondent is responsible for corresponding with clients at the e-mail address he held out to the public. Notice and Order, "Attorneys Required to Maintain a Current Email Address with the Courts for Billing and Registration Purposes – Relaxation of Court Rules 1:20 and 1:21" (March 28, 2017); Order, "Attorneys to Provide and Maintain a Valid E-Mail Address" (July 18, 2017) (requiring attorneys to "maintain a valid email address at all times, informing the Court of any changes

(footnote cont'd on next page)

We also reject respondent's claim that he did not receive Thomas's September 19, October 2, October 3, October 11, and November 13, 2014 e-mails (wherein Thomas repeatedly requested a written update on his and Elizabeth's matters), claiming that the nelson.gonzalez@nlglawpc.com e-mail address had been incorrect and the text message delivery option contained an incorrect cellular telephone provider. On October 3, 2014, Anicia sent an e-mail to Thomas using the same contact information for respondent. Moreover, on January 7, 2015 respondent replied to Thomas's e-mail, copying himself at nelson.gonzalez@nlglawpc.com. Thus, it is clear that respondent communicated via that e-mail address.

On October 10, 2014, although respondent did provide Thomas with the requested written update, he provided incomplete and untrue information. Specifically, respondent's October 10, 2014 letter failed to inform Thomas that his matter had been dismissed, in 2011, and incorrectly claimed, in Elizabeth's matter, that approval to proceed had been obtained from the bankruptcy court.

However, the record contains no proof to support Thomas's suspicion that respondent blocked calls from his cellular telephone. Indeed, respondent stated

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to that email address throughout the course of the year using a form or process determined by the Administrative Director of the Courts, with those attorney email addresses to be used by the Court for the limited purpose of court business, such as annual registration and billing").

that he specifically provided his cellular telephone number to Thomas, and it is undisputed, based on the evidence in the record, that they communicated via text-messages.

Next, in the Alvarenga matter, it is undisputed that respondent neither kept Alvarenga informed about the status of his matters nor provided him with updates. We reject as incredible respondent's excuse that he had not been retained as Alvarenga believed, and instead reiterate that an attorney-client relationship had been formed. Stated differently, it was incumbent upon respondent to adequately inform his client, especially given the factual circumstances present, of the scope of the representation. Respondent wholly failed to do so.

Lastly, in the Elizabeth Rosa matter, respondent failed to keep Elizabeth, or her son, Thomas, informed about the status of her matter. Respondent admitted that he last spoke directly with Elizabeth in 2012. Although Thomas did not dispute that he had spoken with respondent about Elizabeth's case, he believed that her case remained active, consistent with respondent's October 10, 2014 letter. As previously stated, that letter falsely claimed that approval to proceed had been obtained from the bankruptcy court.

Indeed, at all times, the Rosas and Alvarenga believed that their matters remained active, despite the dismissal of their respective cases. The main reason

for those mistaken beliefs was respondent's utter failure to communicate with all three clients and to comply with their reasonable requests for information, in violation of RPC 1.4(b).

RPC 5.3

RPC 5.3 states:

> With respect to a nonlawyer employed or retained by or associated with a lawyer:
>
> (a) every lawyer, law firm or organization authorized by the Court Rules to practice law in this jurisdiction **shall adopt and maintain** reasonable efforts to ensure that the conduct of nonlawyers retained or employed by the lawyer, law firm or organization is compatible with the professional obligations of the lawyer.
>
> (b) **a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer**; and
>
> (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
>
> 1) the lawyer orders or ratifies the conduct involved;
>
> 2) the lawyer has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take remedial action; or
>
> 3) the lawyer has failed to make reasonable

> investigation of circumstances that would disclose past instance of conduct by the nonlawyer incompatible with the professional obligations of a lawyer, which evidence a propensity for such conduct. (emphasis added).

Throughout the lengthy record before us, one thing becomes abundantly clear – respondent failed to appropriately supervise his nonlawyer staff, especially his wife, Anicia. As stated above, in Gonzalez II, we determined that:

> The overarching theme in these matters is respondent's improper and unreasonable reliance on Anicia, his wife and employee, to handle matters in his law office . . . . The record supports respondent's contention that, for a time, he was unaware that Anicia had resorted to lying, hiding correspondence, and fabricating documents in order to avoid conflict with him. Despite that defense, however, respondent's problem is two-fold: (1) much of the conduct that respondent attributed to Anicia is non-delegable, because he was the supervising attorney; and (2) there came a time when a reasonable attorney would have terminated Anicia's employment, yet respondent failed to do so.
>
> [slip op. at 35, 41.]

The same is true in the three ethics matters before us. First, with regard to respondent's mail, it is clear from the record that respondent permitted Little to sign for his certified mail in October and November 2016 (related to the Thomas Rosa and Alvarenga matters) and in March 2017 (related to the Elizabeth Rosa matter), despite his self-professed, remedial office policy that only he was authorized to sign for the certified mail. By this time, as he represented in his

February 18, 2015 certification, respondent knew that "there were serious problems with the support staff" at his office. As such, respondent's delegation of such duties to a subordinate was not reasonable and he, thus, violated RPC 5.3(a) in all three client matters.

Respondent further violated RPC 5.3(a) and (b), in the Thomas Rosa and Elizabeth Rosa matters, by repeatedly failing to supervise his staff. In the Thomas Rosa matter, on November 21, 2011, according to respondent, an unidentified staff member filed a motion to reinstate Thomas's complaint, without respondent's knowledge.

Additionally, as outlined above, respondent became aware of Anicia's egregious and deceptive behavior in September 2014. Despite that knowledge, he continued to employ her and allow her access to client matters. Indeed, in early 2015, respondent admittedly continued to rely upon Anicia, incredibly testifying that he had no reason to doubt that Anicia had been telling him the truth. Although respondent alleged that Anicia's responsibilities had been limited, it is clear from the record that respondent entrusted her with significant independence, which she repeatedly and predictably exercised in a manner incompatible with respondent's professional obligations as a lawyer.

Specifically, with regard to the Thomas Rosa matter, (1) from March to May 2015, respondent relied upon Anicia to keep him informed about the return

date for the motion to reinstate Thomas's complaint, which she failed to do; (2) on May 21, 2015, Anicia met with Thomas, providing him with a fake release for a bogus $75,000 settlement offer, unbeknownst to respondent, until August 2015, after which he – incredibly – still failed to supervise her; and (3) Anicia subsequently forged a September 3, 2015 Superior Court order reinstating Thomas's complaint and a December 11, 2015 letter from CCIC – respondent neither knew that the documents had been forged nor questioned their authenticity, until May 2016, despite his prior knowledge of Anicia's deceit.

In light of the information provided to respondent by the OAE in September 2014, respondent unreasonably continued to rely upon and failed to supervise Anicia, in violation of RPC 5.3(a) and (b). Indeed, had respondent fired Anicia or properly supervised her, the aforementioned acts of deceit – occurring after September 2014 – arguably could have been avoided or, at least, discovered and mitigated.

Next, in the Elizabeth Rosa matter, respondent also failed to supervise his staff, in violation of RPC 5.3(a) and (b), by (1) failing to confirm that Anicia had filed the May 15, 2011 MVS in the bankruptcy court, and (2) subsequently, relying upon Anicia to update him on the status of that motion for almost five years, rather than confirming its status with the court or on PACER. Notably, by February 2012, Anicia knew that the motion had not been filed, but hid that

information from respondent.

Regarding the Alvarenga matter, the complaint charged that respondent further violated RPC 5.3(a) and (b) by failing to supervise his staff who (1) hung up on Alvarenga; (2) failed to inform respondent that Alvarenga attempted to reach him; (3) failed to inform respondent that CNA attempted to reach him; and (4) failed to advise respondent of scheduled meetings. Respondent disputed these allegations, and the presenter was unable to provide direct evidence that those events occurred. Thus, there is insufficient evidence to prove that respondent further violated RPC 5.3 in those respects.

Additionally, as the hearing panel correctly noted, respondent did not order or ratify Anicia's deceitful conduct, nor had he been contemporaneously aware of it. Indeed, upon being made aware of Anicia's deception, respondent took steps, albeit inadequate steps, to change his office polices and, thus, mitigate future harm. Therefore, there is insufficient evidence to determine, by clear and convincing evidence, that respondent violated RPC 5.3(c).

In conclusion, respondent violated RPC 5.3(a) in all three client matters and RPC 5.3(b) in the Thomas Rosa and Elizabeth Rosa matters.

RPC 7.1(a) and RPC 7.5(a)

RPC 7.1(a) states, in relevant part, that "[a] lawyer shall not make false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement." Violations of RPC 7.1(a) typically involve a lawyer affirmatively making misleading communications about the lawyer or the lawyer's services in advertisements, in solicitation letters, or, as in the instant matter, on letterhead. RPC 7.5(a) furthers that "[a] lawyer shall not use a firm name, letterhead, or other professional designation that violates RPC 7.1."

Respondent stipulated to having violated RPC 7.1 and RPC 7.5(a). Specifically, respondent admitted that his letterhead identified him as a member of District of Columbia bar during a time when he had been suspended for non-payment of dues. Thus, as the hearing panel correctly determined, respondent violated RPC 7.1(a) and RPC 7.5(a), by misrepresenting his ability to practice in the District of Columbia to Thomas, Alvarenga, and Elizabeth.

It does not matter if Thomas, Alvarenga, and Elizabeth were harmed by respondent's misrepresentation. Additionally, we are unmoved by respondent's argument that he was unaware of the status of his license in the District of Columbia. As an attorney, it was respondent's duty to ensure that his license to practice law, in this jurisdiction and any other jurisdiction, remains in good

standing.

RPC 8.1(b)

Finally, respondent admittedly failed to cooperate with disciplinary authorities by initially ignoring the DEC's written requests for information, about the Thomas Rosa and Alvarenga matters. Specifically, on October 19, 2016, the DEC sent respondent a copy of Thomas and Alvarenga's grievances, via certified mail, and requested his reply within ten days. After having received no reply from respondent, the DEC followed up with a November 7, 2016 letter, advising respondent that his failure to comply would be deemed a violation of RPC 8.1(b). Respondent admittedly received the DEC's letter. Indeed, on December 8, 2016 and January 12, 2017, respondent sent letters to the DEC representing that his reply to the grievances would be provided by a date certain. He subsequently failed to reply, until after the complaint had been filed – more than a year after the DEC's initial letter.

We reject respondent's argument that his non-cooperation should be excused by his prior legal counsel's illness or the criminal investigation of his wife's forgeries. Neither proposed excuse released respondent from his R. 1:20-3(g)(3) duty to cooperate, non-cooperation that consumed more than a year. Thus, we diverge from the hearing panel's determination that respondent's

ultimate cooperation with the DEC cured his prior failure to cooperate and find that respondent violated RPC 8.1(b) (Thomas Rosa and Alvarenga matters). See In the Matter of Leticia Zuniga, DRB 19-432 (March 20, 2020) (the attorney violated RPC 8.1(b), despite her cooperation after the filing of a formal ethics complaint, by initially failing to reply to the DEC investigator's letters and telephone call).

Dismissed Charges

By contrast, we find that there is insufficient evidence to prove, by clear and convincing evidence, that respondent violated RPC 3.1; RPC 3.3(a)(1); RPC 3.3(a)(4); RPC 3.4; and RPC 4.1, in the Thomas Rosa matter; RPC 3.2 in the Alvarenga matter; and RPC 3.3(a)(1) in the Elizabeth Rosa matter. First, with regard to RPC 3.1, Thomas's complaint had been dismissed and respondent had to reinstate the complaint in order to advance his client's interests. Even if the application had been unlikely to succeed, as alleged by the DEC, respondent's filing was not frivolous.

Next, respondent did not violate RPC 3.2 in the Alvarenga matter. Historically, we and the Court have not sustained violations of that Rule when no civil action has been filed on behalf of a client. See, e.g., In re Perdue, 240 N.J. 43 (2019). Because respondent never filed Alvarenga's workers'

compensation petition or any civil action, he could not have failed to expedite litigation.

Finally, RPC 3.3(a)(1); RPC 3.3(a)(4); RPC 3.4, and RPC 4.1 all have a "knowing" element. The Court has held that when a third party commits a dishonest act, without the attorney's knowledge, then the attorney does not violate the RPCs. In re Purrazzella, 134 N.J. 228 (1993). There is no evidence in the record that respondent participated in Anicia's forgeries or was contemporaneously aware of her criminal conduct. Similarly, there is no clear and convincing evidence in the record that respondent himself made knowingly false statements to a tribunal, falsified evidence, or offered knowingly false evidence to the court or opposing counsel.

In sum, we find that, in all three client matters, respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 5.3(a); RPC 7.1(a); and RPC 7.5(a). We find that respondent further violated RPC 1.5(b) (Alvarenga); RPC 3.2 (Thomas Rosa and Elizabeth Rosa); RPC 5.3(b) (Thomas Rosa and Elizabeth Rosa); and RPC 8.1(b) (Thomas Rosa and Alvarenga).

Additionally, we dismiss the charges that respondent further violated RPC 3.1, RPC 3.3(a)(1), RPC 3.3(a)(4), RPC 3.4, and RPC 4.1 (Thomas Rosa); RPC 3.2 (Alvarenga); RPC 3.3(a)(1) (Elizabeth Rosa); and RPC 5.3(b) (Alvarenga). 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, e.g., In the Matter of Esther Maria Alvarez, DRB 19-190 (September 20, 2019) (admonition for attorney who had been retained to obtain a divorce for her client but, for the next nine months, failed to take any steps to pursue the matter, and failed to reply to all but one of the client's requests for information about the status of her case, violations of RPC 1.1(a) and RPC 1.4(b); in another matter, the attorney agreed to seek a default judgment, but waited more than eighteen months to file the necessary papers with the court; although the attorney obtained a default judgment, the court later vacated it due to the passage of time, which precluded a determination on the merits; violations of RPC 1.1(a) and RPC 1.3); In the Matter of Michael J. Pocchio, DRB 18-192 (October 1, 2018) (admonition for attorney who filed a divorce complaint and permitted it to be dismissed for failure to prosecute the action; he also failed to seek reinstatement of the complaint, and failed to communicate with the client; violations of RPC 1.1(a); RPC 1.3; RPC 1.4(b); and RPC 3.2); In re Burro, 235 N.J. 413 (2018) (reprimand for attorney who

grossly neglected and lacked diligence in an estate matter for ten years and failed to file New Jersey Inheritance Tax returns, resulting in the accrual of $40,000 in interest and the imposition of a lien on property belonging to the executrix, in violation of RPC 1.1(a) and RPC 1.3; the attorney also failed to keep the client reasonably informed about events in the case (RPC 1.4(b)); to return the client file upon termination of the representation (RPC 1.16(d)); and to cooperate with the ethics investigation (RPC 8.1(b)); in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand; in mitigation, the attorney expressed remorse and had suffered a stroke that forced him to cease practicing law); 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); no prior discipline).

Conduct involving the failure to memorialize the basis or rate of a fee, as RPC 1.5(b) requires, typically results in an admonition, even if accompanied by other, non-serious ethics offenses. See, e.g., In the Matter of Peter M. Halden,

DRB 19-382 (February 24, 2020) (the attorney failed to set forth in writing the basis or rate of the legal fee, and failed to abide by the client's decisions concerning the scope of the representation; no prior discipline); In the Matter of Kenyatta K. Stewart, DRB 19-228 (October 22, 2019) (the attorney failed to set forth in writing the basis or rate of the legal fee, and engaged in a concurrent conflict of interest; no prior discipline); In the Matter of Alan Monte Kamel, DRB 19-086 (May 30, 2019) (the attorney failed to provide the client with a writing setting forth the basis or rate of his fee in a collection action, failed to communicate with the client, and failed to communicate the method by which a contingent fee would be determined; no prior discipline).

The actual discipline imposed may be different, however, if the record demonstrates mitigating or aggravating circumstances. Reprimands have been imposed on attorneys who, in addition to violating RPC 1.5(b), have defaulted, have committed other acts of misconduct, or have a disciplinary history. See, e.g., In re Yannon, 220 N.J. 581 (2015) (the attorney failed to memorialize the basis or rate of his fee in two real estate transactions, a violation of RPC 1.5(b); discipline enhanced from an admonition based on the attorney's prior one-year suspension); In re Gazdzinski, 220 N.J. 218 (2015) (the attorney failed to set forth in writing the basis or rate of the attorney's fee in a matrimonial matter; the attorney also failed to comply with the district ethics committee

investigator's repeated requests for the file, a violation of RPC 8.1(b), and violated RPC 8.4(d) (conduct prejudicial to the administration of justice) by entering into an agreement with the client to dismiss the ethics grievance against him, in exchange for a resolution of the fee arbitration between them; no prior discipline); In re Kardash, 210 N.J. 116 (2012) (in a default matter, the attorney failed to set forth in writing the basis or rate of the attorney's fee in a matrimonial case). Censures also have been imposed. See In re Hyde, 231 N.J. 195 (2017) (in a default matter, the attorney charged an unreasonable fee, in violation of RPC 1.5(a), failed to set forth in writing the basis or rate of the fee, in violation of RPC 1.5(b), and failed to cooperate with an ethics investigation, in violation of RPC 8.1(b); we considered the attorney's prior disciplinary history, an admonition in 2008 and a censure in 2013, when we enhanced discipline to a censure).

Admonitions have been imposed for an attorney's failure to expedite litigation, even when accompanied by other, non-serious violations. See e.g., In the Matter of Leticia Zuniga, DRB 19-432 (March 20, 2020) (the attorney failed to provide discovery to plaintiff, which prompted the plaintiff's attorney to file a motion to suppress the defendant's answers and defenses; attorney subsequently failed to appear for the motion hearing, despite the court's multiple notifications that required the attorney to appear; thereafter, the attorney failed

to cooperate with disciplinary authorities; violations of RPC 1.3; RPC 3.2; RPC 3.4(c) (disobeying the rules of a tribunal); RPC 8.1(b); and RPC 8.4(d); in mitigation, the attorney had no prior discipline in her sixteen years at the bar); In the Matter of Diane Marie Acciavatti, DRB 18-162 (July 23, 2018) (the attorney failed to file a motion to vacate a default judgment and to dismiss the complaint for eleven months after she had been retained, despite repeated assurances that she would take such action; violations of RPC 1.3 and RPC 1.1(a); in mitigation, the attorney had no prior discipline in her thirty-four years at the bar, no longer practiced law, and had compelling personal and professional mitigation); In the Matter of Leonard B. Zucker, DRB 12-039 (April 23, 2012) (after the attorney had filed a foreclosure complaint against a California resident, the defendant retained a New Jersey attorney, who provided proof that the defendant had not been the proper party and requested the filing of a stipulation of dismissal; the attorney ignored the request, as well as all telephone calls and letters from the other attorney; only after the other attorney had filed an answer, a motion for summary judgment, and a grievance against him did Zucker forward a stipulation of dismissal; the foreclosure matter had "fallen through the cracks" due, in part, to the large number of foreclosure matters that the firm handled and the failure to direct the attorney's calls and letters to a staff member trained to handle the problems that arose therefrom; violations of RPC

3.2 and RPC 5.3(a); we considered that the attorney had no disciplinary history in fifty-two years, that he had semi-retired at the time of the events, that his firm apologized to the grievant and reimbursed his legal fees, and that the firm instituted new procedures to avoid the recurrence of similar problems).

Attorneys who fail to supervise their nonlawyer staff typically receive an admonition or a reprimand, depending on the presence of other violations, prior discipline, or aggravating and mitigating factors. See, e.g., In the Matter of Vincent S. Verdiramo, DRB 19-255 (January 21, 2020) (admonition; as a result of the attorney's abrogation of his recordkeeping obligations, his nonlawyer assistant was able to steal more than $149,000 from his trust account; attorney also violated RPC 1.15(a) (failing to safeguard funds, negligent misappropriation, and commingling) and RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); mitigating factors included the attorney's prompt actions to report the theft to affected clients, law enforcement, and disciplinary authorities; his deposit of $55,000 in personal funds to replenish the account; his extensive remedial actions; his acceptance of responsibility for his misconduct; and his unblemished, thirty-three-year career); In re Bardis, 210 N.J. 253 (2012) (admonition; as a result of the attorney's failure to review and reconcile his attorney records, his bookkeeper was able to steal $142,000 from his trust account, causing a shortage of $94,000; mitigating factors were the

attorney's deposit of personal funds to replenish the account; numerous other corrective actions; his acceptance of responsibility for his misconduct; his deep remorse and humiliation for not having personally handled his own financial affairs; and his lack of a disciplinary record); In re Mariconda, 195 N.J. 11 (2008) (admonition; the attorney delegated his recordkeeping responsibilities to his brother, a paralegal, who then forged the attorney's signature on trust account checks and stole $272,000 in client funds; in mitigation, the attorney had an unblemished career of thirty years); In re Deitch, 209 N.J. 423 (2012) (reprimand; as a result of the attorney's failure to supervise his paralegal-wife and his poor recordkeeping practices, $14,000 in client or third-party funds were invaded; the paralegal-wife stole the funds by negotiating thirty-eight checks issued to her by forging the attorney's signature or using a signature stamp; no prior discipline); In re Murray, 185 N.J. 340 (2005) (attorney reprimanded for failure to supervise nonlawyer employees, which led to the unexplained misuse of client trust funds and negligent misappropriation; the attorney also committed recordkeeping violations); In re Bergman, 165 N.J. 560 (2000) and In re Barrett, 165 N.J. 562 (2000) (companion cases; attorneys reprimanded for failure to supervise bookkeeper/office manager, who embezzled almost $360,000 from the firm's business and trust accounts and from a guardianship account; the attorneys cooperated with the OAE, hired a CPA to reconstruct the account, and

brought their firm into full compliance with the recordkeeping rules; a bonding company reimbursed the losses caused by the embezzlement).

The use of misleading letterhead ordinarily results in an admonition. See, e.g., In the Matter of Raymond A. Oliver, DRB 09-368 (May 24, 2010) (the attorney used letterhead that identified three attorneys as "of counsel," despite the absence of a professional relationship with them, a violation of RPC 7.1(a) and RPC 7.5(a); attorney also violated RPC 8.4(d) because two of those attorneys were sitting judges, which easily could have created a perception that he had improper influence with the judiciary); In the Matter of Paul L. Abramo, DRB 08-209 (October 20, 2008) (the attorney used firm letterhead that contained the name of an attorney after he was no longer associated with the firm, violations of RPC 7.5(c) and N.J. Advisory Committee on Professional Ethics Opinion 215, 94 N.J.L.J. 600 (1971)); In the Matter of Carlos A. Rendo, DRB 08-040 (May 19, 2008) (the attorney used letterhead that failed to identify that a lawyer was admitted to practice law only in New York; a violation of RPC 7.1(a) and RPC 7.5(a)).

Respondent, however, also failed to promptly cooperate with disciplinary authorities, in violation of RPC 8.1(b). Admonitions are typically imposed for an attorney's delayed cooperation in a disciplinary investigation, in violation of RPC 8.1(b). See, e.g., In the Matter of Leticia Zuniga, DRB 19-432 (March 20,

2020) (the attorney violated RPC 8.1(b) by initially failing to reply to the DEC investigator's two letters and one telephone call; the attorney became responsive upon the filing of a formal ethics complaint; the attorney also violated RPC 1.3; RPC 3.2; RPC 3.4(c); and RPC 8.4(d)); In the Matter of Kevin R. Shannon, DRB 04-152 (June 22, 2004) (the attorney violated RPC 8.1(b) by failing to promptly reply to the DEC investigator's request for information about a grievance); In the Matter of Mark D. Cubberley, DRB 96-090 (April 19, 1996) (the attorney violated RPC 8.1(b) by initially failing to reply to the investigator's requests for information, but subsequently cooperated after being served with a subpoena duces tecum; in another matter, the attorney failed to reply to the investigator's requests for a reply to the grievance).

The quantum of discipline for delayed cooperation with a disciplinary investigation has been enhanced when accompanied by other RPC violations. See In re Bronson, 204 N.J. 76 (2010) (reprimand; the attorney delayed his response to three written requests for information from the OAE and also failed to comply with the OAE's efforts to schedule a demand audit, in violation of RPC 8.1(b); the attorney also violated RPC 1.15(a) and RPC 1.15(d); In re Higgins, 247 N.J. 20 (2021) (three-month suspension; although the attorney ultimately filed a reply to the grievance, for a lengthy period of time prior he failed to comply with the OAE's numerous requests for information and written

responses to the matters under investigation, in violation of RPC 8.1(b); the attorney also violated RPC 1.1(a); RPC 1.3; RPC 1.5(b); RPC 1.15(a), RPC 1.15(d) and R. 1:21-6; RPC 1.16(c) (notice requirement upon termination of representation); RPC 1.16(d) (protection of a client's interest upon the termination of representation); RPC 3.2; RPC 3.4(c); and RPC 8.4(d)).

In our view, considering the foregoing precedent, we determine that the totality of respondent's misconduct in these three client matters warrants the baseline discipline of either a censure or a term of suspension. In crafting the appropriate discipline, however, we also consider aggravating and mitigating factors.

In limited mitigation, respondent's misconduct was not for financial gain, other than to earn his respective fees.

In aggravation regarding the RPC 8.1(b) charge, considering the timeline of his participation in prior disciplinary matters, respondent had a heightened awareness of his obligation to cooperate with the disciplinary authorities, and yet he failed to reply to the Thomas Rosa and Alvarenga grievances for more than a year. Specifically, in Gonzalez I, respondent ultimately participated on July 11, 2016, by filing a certification in support of his MVD. In Gonzalez II, respondent participated, by filing his answers on March 11 and November 29, 2016, and January 6, 2017. In Gonzalez III, respondent again filed an MVD on

February 6, 2020. Respondent's past participation in disciplinary proceedings overlapped his failure to cooperate in the instant Thomas Rosa and Alvarenga matters as the grievances in those instant matters were filed on July 28 and August 17, 2016, respectively. On October 19, 2016, the DEC provided respondent with a copy of the grievances, requesting his reply, and it followed up on November 7, 2016. Despite his assurances that a reply would be forthcoming, respondent failed to reply to either grievance for a substantial amount of time.

We observe that some, but not all, of the misconduct involved in the instant grievances occurred during the same period as the misconduct in respondent's prior disciplinary proceedings. Specifically, the misconduct in Gonzalez II occurred between 2012 and 2014; in Gonzalez III between 2010 and 2018; in Thomas Rosa between February 2009 and July 2016; in Alvarenga between May and August 2012; and in Elizabeth Rosa between August 2007 and November 2016. Thus, although respondent had a heightened awareness of his obligation to cooperate with the disciplinary authorities, it cannot be said that he failed to learn from his prior discipline.

However, it is equally clear that, if we had the opportunity to consider this matter together with Gonzalez II, we would have determined that greater discipline was needed to protect the public and preserve public confidence in

the bar.

In Gonzalez II we considered three consolidated cases and recommended a six-month suspension; the Court imposed a three-month suspension. The Court has, however, enhanced discipline when the attorney's misconduct involved a substantial number of client matters. See e.g., In re Rosenthal, 208 N.J. 485 (2012) (misconduct involved seven matters; one-year suspension imposed on attorney who exhibited gross neglect and a pattern of neglect in two matters; lacked diligence in four matters; failed to keep the client reasonably informed about the status of a matter and promptly comply with reasonable requests for information in seven matters; failed to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation in one matter; charged an unreasonable fee in three matters; failed to communicate in writing the basis or rate of his fee in one matter; failed to expedite litigation in one matter; failed to cooperate with disciplinary authorities in seven matters; engaged in dishonesty in two matters; and engaged in conduct prejudicial to the administration of justice in two matters; he also abandoned six of the seven clients; attorney had unblemished disciplinary history in his more than twenty years at the bar); In re Palfy, 225 N.J. 611 (2016) (misconduct involved eight clients; three-year suspension imposed on attorney for having violated RPC 1.1(a) in three matters; RPC 1.1(b) (pattern of gross neglect); RPC

3.3(a)(1) in four matters; RPC 5.5 (failure to maintain a bona fide office) in two matters; RPC 5.5(a) (practicing law while ineligible) in two matters; RPC 8.1(b) in four matters; RPC 8.4(c) in four matters; and RPC 8.4(d) in five matters); In re Whitney, 248 N.J. 569 (December 1, 2020) (misconduct also involved eight clients; attorney disbarred for having violated RPC 1.1(a) in six matters; RPC 1.3 in six matters; RPC 1.4(b) in six matters; RPC 1.15(a) in one matter; RPC 1.16(d) in five matters; RPC 3.2 in one matter; RPC 8.1(b) in one matter; and RPC 8.4(c) in one matter; unlike respondent, the attorney had no disciplinary history).

We observe that, had the contemporaneous misconduct in the three instant grievances been charged in Gonzalez II, the DEC would have had the opportunity to charge respondent with having further violated RPC 1.1(b). As we are aware, in order to find a pattern of neglect, in violation of RPC 1.1(b), at least three instances of neglect, in three distinct client matters, are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). Thus, it is clear that a three-month suspension would have been insufficient to address six client matters. The recurring character of similar misconduct must therefore be addressed in this case for the protection of the public and reputation of the bar. Next, we consider, in aggravation, respondent's misconduct in connection with his representation of an underserved community, despite his

suggestion that we consider it in mitigation. See In the Matter of Douglas Andrew Grannan, DRB 20-236 (June 2, 2021) at 49 (we considered, in aggravation, the harm caused to a vulnerable class of clientele; specifically, immigrants with a limited understanding of the English language), so ordered, 250 N.J. 319 (2022).

Respondent represented that more than eighty-five percent of his clients are Hispanic. Indeed, respondent's client Alvarenga only spoke Spanish, and he did not read or write in any language. During his representation of Alvarenga, respondent failed to ensure the proper identification of his client in two ways. First, he called him the defendant rather than the victim of an assault. Second, he failed to recognize the surname confusion in Alvarenga's matter.

We agree with the theme of the presenter's oral argument. Individuals with limited English proficiency (LEPs)[33] may face barriers to achieving legal services from an attorney. Nothing about respondent's misconduct in these three matters suggests that respondent exercised special care in light of those challenges. Instead, he neglected his LEP clientele.

[33] According to the New Jersey Judiciary's Language Access Plan, Administrative Directive 01-17 (January 10, 2017) "A limited English proficient (LEP) person is someone who speaks a language other than English as his or her primary language and has a limited ability to read, write, speak, or understand English." Id. at 4 & n.1 (citing ABA Standards for Language Access in the Courts; p.11 (2012)).

In further aggravation, respondent failed to show any remorse for his misconduct. He continuously maintained that he had done no wrong, even after having stipulated to three RPC violations. He argued that his misconduct caused no harm, and he sought to deflect blame to his illiterate client, his staff, and the courts. Thus, although it initially appeared that respondent appreciated the severity of his misconduct, his subsequent denials and blame-shifting tactics raise concern.

Also in aggravation, respondent caused demonstrable harm to the three clients in this case, whose complaints were dismissed as a result of his misconduct. All three clients went on to obtain judgments against respondent, which he later discharged in chapter 7 bankruptcy proceedings, on February 7, 2019. Respondent's discharge of those judgments resulted in further harm to all three clients, because it rendered them unable to recover their respective losses. Respondent's conduct, thus, warrants progressive, enhanced discipline.

On balance, we determine that the aggravating factors support the enhancement of discipline to a six-month suspension.

Additionally, upon his return to the practice of law, to protect the public, we require respondent to practice under the supervision of a practicing attorney approved by the Office of Attorney Ethics, for a period of six-months. We need not reiterate the Court's May 7, 2020 directive that Anicia have no further

involvement in respondent's law office.

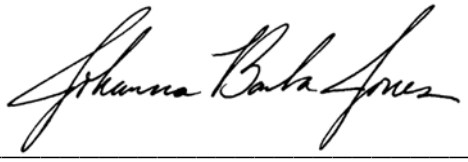
Member Rivera voted to impose a one-year suspension.

Chair Gallipoli and Member Menaker were recused.

Member Joseph 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
Peter J. Boyer, Vice-Chair

By: 
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Nelson Gonzalez
Docket No. DRB 22-014

Argued: April 21, 2022

Decided: August 4, 2022

Disposition: Six-Month Suspension

Members	Six-Month Suspension	One-Year Suspension	Recused	Absent
Gallipoli			X	
Boyer	X			
Campelo	X			
Hoberman	X			
Joseph				X
Menaker			X	
Petrou	X			
Rivera		X		
Singer	X			
Total:	5	1	2	1

Johanna Barba Jones
Chief Counsel