Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-039
District Docket No. XIV-2021-0202E

In the Matter of	:
Morton Chirnomas	:
An Attorney at Law	:

Decision

Argued: May 12, 2022

Decided: August 18, 2022

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

Respondent appeared pro se.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-14(a), following respondent's exclusion from practice before the United States Patent and

Trademark Office (USPTO).[1] Additionally, after the USPTO excluded respondent from practice, the Massachusetts bar disbarred him, effective December 18, 2021, pursuant to a reciprocal disciplinary proceeding.[2]

The OAE asserted that respondent was found to have violated the equivalents of New Jersey RPC 1.3 (lacking diligence); RPC 1.4(b) (failing to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information – two instances); RPC 1.15(a) (commingling); RPC 1.15(b) (failing to promptly deliver to the client funds or property that the client is entitled to receive); RPC 1.16(d) (upon termination of representation, failing to take steps to the extent reasonably practicable to protect a client's interests); RPC 8.1(b) (failing to cooperate with disciplinary authorities); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

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[1] The USPTO is the federal agency that grants U.S. patents and registers trademarks, consistent with Article I, Section 8, Clause 8, of the U.S. Constitution, directing the legislative branch "[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries." U.S. Const. art. I, §3 cl.8; U.S. Patent and Trademark Ofc., About Us, https://www.uspto.gov/about-us, (last visited August 12, 2022). Pursuant to 37 C.F.R. § 11.60(b), a practitioner excluded from practice before the USPTO "is eligible to apply for reinstatement no earlier than five years from the effective date of the exclusion."

[2] In Massachusetts, a disbarred attorney may apply for reinstatement eight years from the effective date of the order of disbarment. Mass. Supreme Judicial Court Rule 4:01, §18(2)(a).

For the reasons set forth below, we determine to grant the OAE's motion and conclude that a six-month suspension is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 1990 and to the Massachusetts bar in 2003. During the relevant timeframe, he was a solo practitioner with a law office in Mount Freedom, New Jersey. Respondent has no disciplinary history in New Jersey. He has, however, been ineligible to practice law in New Jersey, since November 5, 2018, for failing to comply with Continuing Legal Education requirements and, since July 19, 2021, for failing to pay his annual assessment to the Lawyers' Fund for Client Protection (the Fund).

We now turn to the facts of this matter.

On September 4, 1990, respondent registered as a patent agent with the USPTO. On January 29, 1991, following his admission to the New Jersey bar, the USPTO updated respondent's status from agent to attorney. Thereafter, respondent received a unique, USPTO-issued customer number, enabling him to easily associate his filings with a single mailing address. Respondent provided a Clifton, New Jersey address as his address of record with the USPTO, which also is his home address of record with the New Jersey Supreme Court.

In December 2017, a business entity, Fyzikální ústav AV ČR v.v.i. (FZU), through Karel Bauer, Esq., of the Czech Republic, retained respondent to prepare and file a national stage utility patent application with the USPTO.[3] On January 11, 2018, respondent informed Bauer that the cost for handling the national stage application would be $2,040, including filing fees. However, on January 15, 2018, respondent sent an e-mail to Bauer, enclosing a $2,610 invoice, representing $2,110 for filing the application plus a $500 patent legal services fee. He provided his personal bank account information for payment. In response, later that day, FZU sent the full $2,610 via wire transfer to respondent's personal bank account, as requested. Respondent confirmed receipt of the wired funds on January 18, 2018.

On January 15, 2018, respondent filed the application for FZU's invention, using his Clifton address of record. However, he failed to pay the

[3] A utility patent is a form of intellectual property that protects what an invention is, how it works, and how it is made or used. A utility patent typically includes an abstract, drawing, descriptive specification, and listing of claims, defining the metes and bounds of the protection proffered by the utility patent. In order to obtain a utility patent, an investor must file a utility patent application with the USPTO. Moreover, a patent cooperation treaty (PCT) application, is a placeholder utility application that establishes a filing date for an invention, which subsequently can be nationalized in the more than one-hundred-and-forty PCT member countries. Cynthia Kozakiewicz, Utility Patents and Utility Patent Applications, COOLEYGO (July 19, 2020), https://www.cooleygo.com/utility-patents-utility-patent-applications/. A PCT application extends the deadline for filing the utility patent in both the United States and foreign countries, which is referred to as the "national stage" or "national phase" of the desired member country. Vic Lin, PCT national phase entry into foreign countries: What to Know, Patent Trademark Blog | IP Q&A, https://www.patenttrademarkblog.com/pct-national-phase/, (last visited August 12, 2022).

required filing fee. Thus, the USPTO notified respondent, by letter, of his failure to pay the filing fee required to perfect FZU's application. Respondent failed to notify FZU or Bauer of the USPTO's deficiency notice. Moreover, he failed to pay the required filing fee or to otherwise reply to the USPTO. Consequently, the USPTO notified respondent, by letter, that FZU's application had been deemed abandoned, pursuant to 37 C.F.R. § 1.495, due to his failure to pay the filing fee. Respondent failed to notify FZU or Bauer of the USPTO's abandonment notice.

Subsequently, Bauer learned of the abandoned status of FZU's patent application and, on September 30, 2019, sent an e-mail to respondent requesting an explanation. Respondent failed to reply to that e-mail. Bauer followed up with an October 16, 2019 e-mail, requesting a telephone conference with respondent, but respondent again failed to reply. Thereafter, Bauer unsuccessfully attempted to reach respondent via e-mail, telephone, and messages sent via LinkedIn. Respondent ignored all of Bauer's attempts to contact him.

Although FZU subsequently retained new counsel to represent it before the USPTO, the application filed by respondent remained abandoned for more than a year.

During the course of its investigation, on December 31, 2019, the USPTO Office of Enrollment and Discipline (the OED)[4] issued a request for information and evidence (RFI) to respondent, to which he was obligated to reply. See 37 C.F.R. § 11.22(f)(1)(ii) and 37 C.F.R. § 11.801(b). Specifically, the OED sent its December 31, 2019 RFI, by regular and certified mail, to three addresses that it reasonably believed respondent utilized; namely, his Clifton address of record; a Mount Freedom, New Jersey address, which respondent had registered with the OED; and a Randolph, New Jersey address, where the OED believed respondent received mail.[5] The RFI inquired about FZU's application and whether respondent had paid the filing fee. The OED requested respondent's reply by January 31, 2019.

The United States Postal Service (USPS) returned the letters sent to the Mount Freedom and Randolph addresses. Additionally, the USPS records

[4] The OED is responsible for registering agents and attorneys to practice before the USPTO. It also investigates allegations of misconduct before the USPTO. U.S. Patent and Trademark Ofc., About the Office of Enrollment and Discipline, https://www.uspto.gov/about-us/organizational-offices/office-general-counsel/office-enrollment-and-discipline-oed (last visited August 12, 2022).

[5] 37 C.F.R. § 11.11(a) requires admitted USPTO attorneys to register addresses in a manner analogous to R. 1:20-1(c). Respondent was therefore required to provide the Director of the OED with his up-to-date postal address, e-mail address, and business telephone number. He was further required to notify the Director of the OED of any changes to his contact information, within thirty (30) days of the date of a change. 37 C.F.R. § 11.11(a).

indicated that no one had been available to accept delivery of the letter sent to respondent's Clifton address of record.

Next, on January 21, 2020, the OED sent letters to all three addresses, by regular and certified mail and by United Parcel Service, enclosing its December 31, 2019 RFI and informing respondent of his obligation to notify the OED of any changes to his contact information.

Again, the USPS returned the letters sent by regular and certified mail to the Mount Freedom and Randolph addresses. The USPS records indicated that no one had been available to accept delivery of the letter sent to respondent's Clifton address of record. The United Parcel Service also returned the letter sent to respondent's Mount Freedom address.

On February 5, 2020, the OED sent an e-mail to respondent, at three known addresses, two of which also were his primary and secondary e-mail addresses of record with the Court. The OED received no notification that delivery to any of the three addresses had failed. Yet, respondent failed to reply.

Thereafter, on February 7, 2020, the OED sent a lack of response notice to respondent, to all three mailing addresses, by regular and USPS certified mail and by United Parcel Service, enclosing its December 31, 2019 RFI and requiring respondent's reply by February 21, 2020.

The USPS returned the letters sent by regular and certified mail to the Mount Freedom, Randolph, and Clifton addresses. The United Parcel Service also returned the letter sent to respondent's Mount Freedom address.

Finally, on April 6, 2020, an OED attorney spoke with respondent via telephone. Respondent admitted that his contact information had changed and that he had failed to update his address of record. He also confirmed his e-mail address and agreed to accept service of the December 31, 2019 RFI via e-mail. Thus, later that same date, the OED send an e-mail to respondent at his primary e-mail address, attaching its December 31, 2019 RFI and requesting his reply by April 20, 2020. The OED received no notice of an unsuccessful delivery. Yet, respondent again failed to reply.

On April 27, 2020, the OED again sent a lack of response notice to respondent, at all three mailing addresses, plus a Summit, New Jersey address, by certified mail, enclosing its December 31, 2019 RFI. The USPS returned the letters sent by certified mail to the Mount Freedom and Randolph addresses. However, the USPS records indicate that the letter sent to respondent's Summit address was delivered on May 1, 2020. The OED also sent a copy of the April 27, 2020 lack of response notice to respondent via e-mail. The OED received no indication that its e-mail had been undeliverable. Respondent failed to reply.

On July 8, 2020, the OED sent a letter to respondent, at all four mailing addresses by certified mail, and via e-mail, identifying the USPTO Rules of Professional Conduct under consideration in its investigation. The OED received no indication that its e-mail had been undeliverable.

The USPS returned the July 8, 2020 letters sent by certified mail to the Mount Freedom and Randolph addresses; USPS records indicated that no one had been available to accept delivery at the Summit address. However, the USPS records indicate that the letter sent to respondent's Clifton address of record was delivered on July 14, 2020. Despite the OED's repeated efforts to serve respondent, he failed to reply to the RFI.

In the complaint before the USPTO, the OED asserted that respondent abandoned FZU, in September 2019, by failing to (1) pay the required filing fee for FZU's application, (2) reply to the USPTO's deficiency notice, and (3) respond to Bauer's September 30, 2019 e-mail. Consequently, on October 15, 2020, the OED filed a complaint against respondent, before the USPTO, charging him with having violated the USPTO Rules of Professional Conduct. Specifically, the complaint charged respondent with having violated 37 C.F.R. § 11.103 (lacking diligence); 37 C.F.R. § 11.104(a)(3) (failing to keep a client reasonably informed about the status of the matter); 37 C.F.R. § 11.104(a)(4) (failing to comply with reasonable requests for information from the client); 37

C.F.R. § 11.115(a) (failing to hold property of a client that is in a practitioner's possession in connection with the representation separate from the practitioner's own property); 37 C.F.R. § 11.115(c) (failing to deposit into a client trust account legal expenses that have been paid in advance to be withdrawn by the practitioner only as expenses are incurred); 37 C.F.R. § 11.115(d) (failing to promptly deliver to the client any funds or property that the client is entitled to receive); 37 C.F.R. § 11.116(d) (failing to, upon the de facto termination of representation, take steps to protect a client's interest); 37 C.F.R. § 11.804(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); 37 C.F.R. § 11.804(i) (to the extent that such acts and omissions do not constitute violations of the cited provisions of the USPTO Rules of Professional Conduct, engaging in other conduct that adversely reflects on the practitioner's fitness to practice before the office, by engaging in the acts and omissions described in paragraphs a. through h. above); 37 C.F.R. § 11.801(b) (knowingly failing to cooperate with OED in an investigation or knowingly failing to respond to a lawful demand for information from a disciplinary authority); 37 C.F.R. § 11.804(d) (engaging in conduct prejudicial to the administration of justice); and 37 C.F.R. § 11.804(i) (engaging in conduct that adversely reflects on the practitioner's fitness to practice before the office).

As of the filing of the complaint, FZU's application remained abandoned, and respondent had neither paid the required filing fee nor returned the corresponding funds to FZU. Moreover, as of the filing of the complaint, respondent had failed to reply to the OED's December 31, 2019 RFI or lack of response notices.

On October 20, 2020, the administrative law judge overseeing the proceedings directed respondent to file an answer to the OED's complaint by November 16, 2020. On November 23, 2020, the OED notified the USPTO that respondent had failed to file an answer, despite proper service of the complaint. Later, on January 5 and January 12, 2021, the OED further effectuated service upon respondent by publication. Pursuant to 37 § C.F.R. 11.35(b), respondent had thirty days from the date of publication to file an answer to the complaint. Respondent failed to file an answer. Consequently, on March 26, 2021, the OED filed a motion for default judgment and the imposition of disciplinary sanctions.

On April 29, 2021, the USPTO excluded respondent from practice before it for having violated its rules of professional conduct. Specifically, the USPTO determined that respondent violated the following USPTO rules of professional conduct, as described below:

1. 37 C.F.R. § 11.103 provides that a practitioner "shall act with reasonable diligence and promptness in representing a client." Respondent violated this rule during his representation of the client by failing to pay

the basic national fee for the [FZU] application, failing to respond to Notice of Insufficient Basic National Fee and Notification of Abandonment, and allowing the [FZU] application to become abandoned without the client's knowledge or consent.

2. 37 C.F.R. § 11.104(a)(3) provides that a practitioner shall "[k]eep the client reasonably informed about the status of the matter." Respondent violated this rule by failing to notify the client about the Notice of Insufficient Basic National Fee and the Notification of Abandonment.

3. 37 C.F.R. § 11.104(a)(4) provides that a practitioner shall "promptly comply with reasonable requests for information from the client." Respondent violated this rule by failing to respond to Mr. Bauer's multiple inquiries regarding the abandonment of the [FZU] application.

4. 37 C.F.R. § 11.115(a) provides that a practitioner shall "hold property of clients or third persons that is in a practitioner's possession in connection with a representation separate from the practitioner's own property." Respondent violated this rule by placing money paid by FZU for filing fees into his personal bank account rather than a client trust account.

5. 37 C.F.R. § 11.115(c) provides that a practitioner shall "deposit into a client trust account legal fees and expenses that have been paid in advance, to be withdrawn by the practitioner only as fees are earned or expenses incurred." Respondent violated this rule by receiving money from FZU for the payment of legal fees associated with the [FZU] application into his personal bank account rather than a client trust account.

6. 37 C.F.R. § 11.115(d) provides that a practitioner shall "promptly deliver to the client or third person any funds or other property that the client or third person is

entitled to receive." Respondent violated this rule by receiving money for the basic national fee, failing to remit the basic national fee to the USPTO, and failing to return the money for the basic national fee to FZU.

7. 37 C.F.R. § 11.116(d) provides that "[u]pon termination of representation, a practitioner shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred." Respondent violated this rule by failing to give reasonable notice to the client and to refund the advance payment of filing fees that FZU paid him on January 15, 2018.

8. 37 C.F.R. § 11.804(c) provides that Respondent shall not "engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Respondent violated this rule by representing to his client that the filing fee would be paid and receiving payment from FZU on January 15, 2018, but then not remitting the basic national fee to the USPTO.

9. 37 C.F.R. § 11.801(b) provides that Respondent shall not "fail to cooperate with the Office of Enrollment and Discipline in an investigation of any matter before it, or knowingly fail to respond to a lawful demand or request for information from an admissions or disciplinary authority." Respondent violated this rule by failing to respond to the December 31, 2019 RFI, and the February 7, 2020 and April 27, 2020 Lack of Response letters, despite being provided ample notice, time, and opportunity to do so.

10. 37 C.F.R. § 11.804(d) provides that Respondent shall not "engage in conduct that is prejudicial to the administration of justice." Respondent violated this

> rule by failing to respond to the December 31, 2019 RFI, and the February 7, 2020 and April 27, 2020 Lack of Response letters, despite being provided ample notice, time, and opportunity to do so.
>
> [Ex. K at 7-8].[6]

In aggravation, the USPTO considered (1) respondent's lack of remorse; (2) his indifference to making restitution, as evidenced by his failing to return FZU's funds; (3) the harm caused to FZU by his misconduct – namely, shortened patent life and delayed marketing and sales of its invention; and (4) his more than thirty years at the bar, based on which he should have known better than to engage in the misconduct under scrutiny.

Respondent further failed to report to the OAE either his April 29, 2021 discipline imposed by the USPTO or his December 18, 2021 reciprocal discipline imposed in Massachusetts, as R. 1:20-14(a)(1) requires. On July 15, 2021, the OAE docketed this matter against respondent.

In support of a censure, the OAE cited New Jersey disciplinary precedent, discussed below. The OAE also argued that little weight should be given to respondent's lack of a disciplinary history in New Jersey because it did not appear that he had practiced in New Jersey.

Respondent did not submit any brief in response to the OAE's motion for

[6] "Ex." refers to the exhibits attached to the OAE's March 28, 2022 brief.

reciprocal discipline. However, he briefly appeared for oral argument before us, via telephone. Respondent stated that he did not oppose the OAE's motion, had not practiced the law for a few years, and had no intention of resuming the practice of law. Respondent chose not to remain connected to the proceeding to hear the OAE's oral argument in support of its motion.

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

Like our Court, the USPTO has the "exclusive authority to establish qualifications for admitting persons to practice before it, and to suspend or exclude them from practicing before it." Kroll v. Finnerty, 242 F.3d 1359, 1364 (Fed. Cir. 2001). The clear and convincing standard of proof applies to proceedings before the USPTO. 37 C.F.R. § 11.49. Moreover, the USPTO's procedural rules state that "[f]ailure to timely file an answer will constitute an

admission of the allegations in the complaint and may result in the entry of default judgment." 37 C.F.R. § 11.36(e).

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

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
>
> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

In our view, subsection (E) applies in this matter because the unethical conduct warrants substantially different discipline in New Jersey. Indeed, the OAE recognized that, considering these facts, disbarment was not appropriate, and argued that a censure was the appropriate quantum of discipline.

New Jersey RPC 1.3, the equivalent of 37 C.F.R. § 11.103, states that "[a] lawyer shall act with reasonable diligence and promptness in representing a client." Respondent violated that Rule by failing to pay the filing fees for FZU's application before the USPTO, even after having been notified of the deficiency. Respondent further violated that Rule by taking no action to advance FZU's application and, consequently, permitting the application to be deemed abandoned.

Next, 37 C.F.R. § 11.104(a)(3) contains obligations which are equivalent to RPC 1.4(b), the latter of which provides that "[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information." Respondent violated that Rule by failing to keep FZU and Bauer informed about the status of FZU's application before the USPTO. Indeed, there is no proof in the record that respondent communicated with FZU or Bauer after having confirmed receipt of their wired funds. Thus, respondent further violated RPC 1.4(b) by failing to respond to Bauer's numerous inquiries about the status of FZU's application. Although the record generally stated that Bauer attempted to reach respondent via telephone, e-mail, and LinkedIn messaging, respondent clearly failed to reply to Bauer's September 30 and October 16, 2019 e-mails.

Respondent also violated New Jersey RPC 1.15(a), the equivalent of

language within 37 C.F.R. § 11.115(a) and (c). That Rule required respondent to "hold property of clients or third parties that is in the lawyer's possession in connection with a representation separate from the lawyer's own funds." Respondent violated RPC 1.15(a) by depositing funds received from FZU, representing the filing fees for the application before the USPTO and respondent's legal fee, into his personal bank account, rather than his attorney trust account. Moreover, respondent specifically provided his personal bank account to effectuate the wire transfer of funds.

Respondent next violated New Jersey RPC 1.16(d), which is the equivalent of 37 C.F.R. § 11.116(d). RPC 1.16(d) states that:

> [u]pon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect the client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fees that has not been earned or incurred.

Respondent effectively terminated his representation of FZU, in September 2019, by permitting its application before the USPTO to be deemed abandoned and ceasing all communication with his client. Stated differently, he abandoned his client after having confirmed receipt of its wired funds. Thereafter, respondent failed to return FZU's funds, which included the advance payment of the filing fees. Thus, respondent violated RPC 1.16(d).

Respondent also violated New Jersey RPC 8.1(b), which is the equivalent of 37 C.F.R. § 11.801(b). Specifically, respondent failed to cooperate with the OED, the USPTO disciplinary authority, by failing to reply to the OED's multiple written requests for information. Moreover, the OED spoke to respondent via telephone to confirm his e-mail address, by which he agreed to accept service of the December 31, 2019 RFI. Service had been effectuated by mail, on May 1 and July 14, 2020, and via e-mail, on February 5, April 6, April 27, and July 14, 2020. Yet, respondent repeatedly failed to reply, violating RPC 8.1(b).

Last, respondent violated New Jersey RPC 8.4(c), which is the equivalent of 37 C.F.R. § 11.804(c). RPC 8.4(c) states, in relevant part, that "[i]t is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Respondent violated that Rule by intentionally deceiving FZU. Specifically, respondent agreed to represent FZU; accepted funds from FZU, inclusive of the filing fees for its application with the USPTO; filed FZU's application, without having submitted the filing fees; and, thereafter, ceased all communications with FZU and Bauer. Respondent similarly ignored the USPTO's communications regarding the outstanding filing fee, which he retained.

However, the USPTO also found that respondent had violated 37 C.F.R.

§ 11.115(d), which is the equivalent of New Jersey RPC 1.15(b), by failing to return unearned funds to FZU. In New Jersey, RPC 1.16(d) is the more applicable Rule and adequately addresses respondent's misconduct. See In the Matter of Elliot H. Gourvitz, DRB 08-326 (May 12, 2009), so ordered, 200 N.J. 261 (2009); In the Matter of Larissa A. Pelc, DRB 05-165 (July 28, 2005); In the Matter of Stephen D. Landfield, DRB 03-137 (July 3, 2003).

Similarly, the USPTO found that respondent had violated 37 C.F.R. § 11.804(d), which is the equivalent of New Jersey RPC 8.4(d), by failing to cooperate with the disciplinary authorities. In New Jersey, that misconduct is addressed by respondent's RPC 8.1(b) violation, which we find is the more applicable Rule to the facts of the instant matter.

In sum, we grant the motion for reciprocal discipline and find that respondent violated RPC 1.3; RPC 1.4(b) (two instances); RPC 1.15(a); RPC 1.16(d); RPC 8.1(b); and RPC 8.4(c). For the reasons set forth above, we dismiss the charges that respondent further violated RPC 1.15(b) and RPC 8.4(d). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

The crux of respondent's misconduct was his abandonment of FZU. Abandonment of clients almost invariably results in a suspension, the duration of which depends on the circumstances of the abandonment, the presence of

other misconduct, and the attorney's disciplinary history. See, e.g., In re Nwaka, 178 N.J. 483 (2004) (three-month suspension for attorney who was disbarred in New York for abandoning one client and failing to cooperate with New York ethics authorities; prior three-month suspension); In re Perdue, 240 N.J. 43 (2019) (in three consolidated default matters, six-month suspension imposed on attorney who, in two of the matters, abandoned his clients; the attorney also exhibited gross neglect and lack of diligence, failed to communicate with the clients, failed to return the file to one of the clients, and made misrepresentations to the clients; in all three matters, the attorney failed to submit a written reply to the grievance); In the Matter of Michele S. Austin, DRB 21-191 (February 25, 2022) (in a default matter, we imposed a one-year suspension on an attorney for her misconduct, which included gross neglect, lack of diligence, failure to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information, failure to promptly deliver to the client funds that the client was entitled to receive, failure to take steps to the extent reasonably practicable to protect a client's interest upon termination of representation, including the failure to refund any advance payment of fees that had not been earned or incurred, unauthorized practice of law, false statement of material fact in a disciplinary matter, and two instances of failure to cooperate with disciplinary authorities; at the time, the attorney had been administratively

ineligible to practice law in New Jersey for failing to pay her annual assessment to the Fund; attorney also had twice been temporarily suspended, including for failure to cooperate in the OAE's investigation in the underlying ethics matter; the corresponding disciplinary Order remains pending with the Court); In re Milara, 237 N.J. 431 (2019) (in two default matters, one-year suspension imposed on attorney for the totality of his misconduct, which included the abandonment of two clients, one of whom suffered serious harm as a result; misrepresentations to the clients, failure to file an affidavit of compliance with R. 1:20-20 following a temporary suspension for failure to cooperate with the OAE and a second temporary suspension for failure to comply with a fee arbitration determination, and other conduct prejudicial to the administration of justice; at the time, a censure was pending before the Court, which entered an Order confirming our decision); In re Cataline, 223 N.J. 269 (2015) (default; two-year suspension imposed on attorney who exhibited gross neglect in three matters, failed to cooperate with the district ethics committee in all four matters, and ignored the client's request for the return of his original documents in one matter; in aggravation, the attorney engaged in a pattern of neglect and abandoned the four clients by closing her office without notice to the clients or the attorney regulatory authorities, and by failing to maintain an office telephone; prior reprimand); In the Matter of Thomas J. Whitney, DRB 19-296

(May 12, 2020) (we determined to impose a two-year suspension for abandonment of five matters involving six clients; discipline amplified by respondent's default upon federal and state disciplinary proceedings), ordered as modified, In re Whitney, 248 N.J. 569 (2020) (the Court disbarred the attorney, citing his unexcused failure to comply with its disciplinary Order to Show Cause).

Generally, an admonition is the appropriate form of discipline for lack of diligence and failure to communicate with a client. See, e.g., In the Matter of Kourtney Anna Borchers, DRB 21-237 (February 22, 2022) (the attorney failed to file client's post-judgment motion, for which she specifically had been hired, and regularly took weeks to reply to the client's repeated requests for an update regarding the status of her case); In the Matter of Christopher G. Cappio, DRB 15-418 (March 24, 2016) (after the client had retained the attorney to handle a bankruptcy matter, paid his fee, and signed the bankruptcy petition, the attorney failed to file the petition or to return his client's calls in a timely manner).

Similarly, commingling ordinarily will be met with an admonition. See, e.g., In the Matter of Richard P. Rinaldo, DRB 18-189 (October 1, 2018) (the attorney commingled personal loan proceeds in his attorney trust account, in violation of RPC 1.15(a); notably, that commingling did not impact client funds in the trust account; attorney also violated RPC 1.15(d) (failing to comply with

the recordkeeping requirements of R. 1:21-6)); In the Matter of Richard Mario DeLuca, DRB 14-402 (March 9, 2015) (the attorney had a trust account shortage of $1,801.67; but, because the attorney maintained more than $10,000 of earned legal fees in his trust account, no client or escrow funds had been invaded; the attorney commingled personal and trust funds, and failed to comply with recordkeeping requirements).

Admonitions also typically are imposed for failure to cooperate with disciplinary authorities, if the attorney has a limited or no ethics history. See, e.g., In the Matter of Giovanni DePierro, DRB 21-190 (January 24, 2022) (attorney failed to respond to letters from the investigator in the underlying ethics investigation in violation of RPC 8.1(b); attorney also violated RPC 1.4(b), RPC 1.5(c) (failing to set forth in writing the basis or rate of the attorney's fee – two instances), and RPC 1.16(d)); In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the district ethics committee investigator regarding his representation of a client in three criminal defense matters, in violation of RPC 8.1(b)).

However, RPC 8.4(c) violations typically result in the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). Indeed, a reprimand still may be imposed even if the misrepresentation is accompanied by other, non-

serious ethics infractions. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney made a misrepresentation by silence to his client, failing to inform her, despite ample opportunity to do so, that her complaint had been dismissed, a violation of RPC 8.4(c); the complaint was dismissed because the attorney had failed to serve interrogatory answers and ignored court orders compelling service of the answers, violations of RPC 1.1(a), RPC 1.3, and RPC 3.2 (failing to expedite litigation); the attorney also violated RPC 1.4(b) by his complete failure to reply to his client's requests for information or to otherwise communicate with her; the attorney never informed his client that a motion to compel discovery had been filed, that the court had entered an order granting the motion, or that the court had dismissed her complaint for failure to serve the interrogatory answers and to comply with the court's order, violations of RPC 1.4(c)); In re Ruffolo, 220 N.J. 353 (2015) (knowing that the complaint had been dismissed, the attorney assured the client that his matter was proceeding apace, and that he should expect a monetary award in the near future; both statements were false, in violation of RPC 8.4(c); the attorney also exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, not working on it after filing the initial claim, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter, violations of RPC 1.1(a) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's

requests for status updates); In re Falkenstein, 220 N.J. 110 (2014) (attorney led the client to believe that he had filed an appeal and concocted false stories to support his lies, a violation of RPC 8.4(c); he did so to conceal his failure to comply with his client's request that he seek post-judgment relief, violations of RPC 1.1(a) and RPC 1.3; because he did not believe the appeal had merit, the attorney's failure to withdraw from the case was a violation of RPC 1.16(b)(4) (failure to withdraw from representation); the attorney also practiced law while ineligible, although not knowingly, a violation of RPC 5.5(a)(unauthorized practice of law).

Most like the attorney in Nwaka, who received a three-month suspension, respondent was disbarred in another jurisdiction, abandoned a client, and failed to cooperate with disciplinary authorities. Thus, the totality of respondent's misconduct, particularly his abandonment of a client, warrants at least a three-month suspension. In crafting the appropriate discipline, however, we also consider aggravating and mitigating factors.

In aggravation, respondent failed to report his discipline before the USPTO and Massachusetts, as R. 1:20-14(a)(1) requires. Respondent also failed to demonstrate any remorse for his misconduct and has yet to return FZU's funds.

In further aggravation, we consider the default status of this matter. "[A]

respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted). Indeed, respondent has exhibited a pattern of ignoring disciplinary proceedings. Specifically, he failed to participate in the disciplinary proceedings before the USPTO and the subsequent proceedings in Massachusetts. Those failures were not remediated by his brief attendance at oral argument before us.

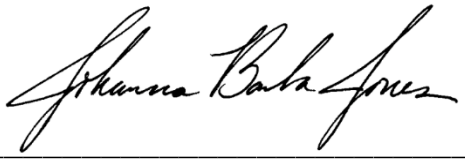
There is no mitigation to consider, because respondent's lack of disciplinary history has already been considered in determining the baseline quantum of discipline.

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

Members Campelo, Joseph, Menaker, and Petrou would have conditioned respondent's reinstatement upon his refund of the USPTO filing fees to FZU.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: 

Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Morton Chirnomas
Docket No. DRB 22-039

Argued: May 12, 2022

Decided: August 18, 2022

Disposition: Six-Month Suspension

Members	Six-Month Suspension
Gallipoli	X
Boyer	X
Campelo	X
Hoberman	X
Joseph	X
Menaker	X
Petrou	X
Rivera	X
Singer	X
Total:	9

Johanna Barba Jones
Chief Counsel