Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-092
District Docket No. XIV-2019-0204E

In the Matter of	:
Darryl M. Saunders	:
An Attorney at Law	:

Decision

Argued: July 21, 2022

Decided: September 22, 2022

Colleen L. Burden 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 final discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-13(c)(2), following respondent's guilty plea, in the Wayne Township, New Jersey, Municipal Court (the WTMC), to one count of disorderly persons theft by deception, in

violation of N.J.S.A. 2C:20-4. The OAE asserted that the totality of respondent's misconduct constitutes a violation of RPC 1.3 (engaging in a lack of diligence); RPC 1.16(d) (failing to refund the unearned portion of the fee upon termination of representation); RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

For the reasons set forth below, we determine to grant the motion for final discipline, 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. At the relevant times, he maintained a practice of law in Newark, New Jersey.

Effective April 2, 2020, the Court temporarily suspended respondent for his failure to comply with a fee arbitration determination. In re Saunders, 241 N.J. 222 (2020).

Effective May 24, 2021, the Court again temporarily suspended respondent for his failure to comply with another fee arbitration determination. In re Saunders, __ N.J. __ (2021). He remains temporarily suspended in connection with both fee arbitration matters.

Effective September 13, 2021, the Court suspended respondent for three months, in a default matter, for his gross mishandling of a client's matters. In re Saunders, 248 N.J. 273 (2021) (Saunders I). In the first matter, respondent failed to inform his client that he had been sued individually, rather than in his capacity as an employee of a construction company. Thereafter, respondent failed to appeal an order granting partial summary judgment against his client, failed to oppose a second motion for partial summary judgment, and failed to oppose a motion for counsel fees and costs. Moreover, respondent failed to adequately inform his client of these adverse developments. Respondent's inaction resulted in the issuance of a $217,388.68 final judgment and an order requiring his client to pay more than $50,000 in fees and costs.

In the client's second matter, respondent failed to oppose a motion to strike his client's third-party pleadings, resulting in the striking of those pleadings, with prejudice. Thereafter, respondent failed to reply to the district ethics committee investigator's repeated attempts to contact him regarding the grievance.

Respondent's misconduct in Saunders I spanned from May 2016 through August 2018.

In our February 3, 2021 decision in Saunders I, we determined that a censure was the appropriate quantum of discipline, based on the significant harm to the client, the default status of the matter, and respondent's repeated failure to cooperate with disciplinary authorities. In the Matter of Darryl M. Saunders, DRB 20-061 (February 3, 2021) at 15. The Court, however, imposed a three-month suspension, after respondent failed to appear for an Order to Show Cause issued by the Court. In re Saunders, 248 N.J. 273 (2021).

On December 13, 2021, we determined that a censure was the appropriate quantum of discipline for respondent's misconduct, in a second default matter, for his failure to comply with R. 1:20-20 following his April 2020 temporary suspension. In the Matter of Darryl M. Saunders, DRB 21-131 (December 13, 2021) (Saunders II). The Court, however, imposed a reprimand. In re Saunders, __ N.J. __ (2021).

We now turn to the facts of this matter.

On February 23, 2018, Denise Funnell met with respondent at a restaurant in Wayne Township, New Jersey and retained him to defend her son in connection with a municipal court matter. While at the restaurant, Funnell provided respondent with a $1,000 check toward his legal fee. Respondent, in

turn, provided Funnell with a receipt, which indicated that his fee had been "Pd in full."

Following their meeting at the restaurant, respondent failed to appear at the municipal court hearing to defend Funnell's son. Rather, on the date of the scheduled hearing, respondent sent Funnell a text message, claiming that he had been in a "car crash." At oral argument before us, respondent conceded that he had neither arranged for an attorney from his law firm to cover his court appearance nor contacted the municipal court to re-schedule Funnell's son's matter.

Following respondent's failure to appear at the initial court hearing, Funnell repeatedly attempted to contact respondent regarding her son's matter. Respondent, however, not only failed to reply, but also failed to appear at a second hearing date in the case.[1] Respondent's failure to appear at the court hearings forced Funnell to retain a new attorney to represent her son.

Funnell discovered that, on March 22, 2018, respondent had negotiated her $1,000 legal fee check, further endorsing the instrument with the notation "payable to Edward Hubinger" directly below respondent's signature on the back of the check. Consequently, on April 6, 2018, Funnell went to the Wayne

[1] The record does not reveal when Funnell attempted to contact respondent or the dates of the scheduled municipal court hearings.

Township Police Department (the WTPD) to report that her $1,000 check had been negotiated, despite respondent's failure to perform any legal services on behalf of her son.

Following Funnell's report, WTPD officer Henry Ellis discovered that Hubinger was respondent's residential landlord. When officer Ellis questioned Hubinger regarding Funnell's $1,000 check, Hubinger claimed that respondent had offered him the check as payment for back rent, given that respondent "was facing eviction." Officer Ellis also spoke with respondent's law partner, who claimed that he had neither "seen" nor "heard" from respondent in more than one month.

On August 24, 2018, given respondent's failure to perform any legal work for Funnell for more than six months, the WTPD charged respondent with one count of third-degree theft by deception, in violation of N.J.S.A. 2C:20-4.[2] Specifically, the complaint alleged that respondent committed theft by accepting $1,000 from Funnell for legal services which he wholly failed to perform.

[2] "A person is guilty of theft if he purposely obtains property of another by deception." N.J.S.A. 2C:20-4. A person "deceives" if, among other things, he purposely "[c]reates or reinforces a false impression, including false impressions as to law, value, intention[,] or other statement of mind[.]" N.J.S.A. 2C:20-4(a). Theft constitutes a third-degree crime if "[t]he amount involved exceeds $500 but is less than $75,000[.]" N.J.S.A. 2C:20-2(b).

On February 22, 2019, respondent appeared in the Wayne Township Municipal Court (WTMC) before Judge Lawrence Katz, J.M.C., and pleaded guilty to one count of disorderly persons theft by deception, in violation of N.J.S.A. 2C:20-4.[3] During that proceeding, respondent allocuted, under oath, that he had accepted $1,000 in legal fees from Funnell and, thereafter, failed to perform any legal services. Respondent further admitted that he had failed to refund Funnell's $1,000 legal fee. Moreover, respondent allocuted that he was pleading guilty voluntarily, without any threats or promises from anyone else, because he was, in fact, guilty.

Judge Katz accepted respondent's guilty plea and imposed a conditional dismissal, pursuant to N.J.S.A. 2C:43-13.1,[4] with the requirements that

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[3] Theft constitutes a disorderly persons offense if the amount involved is less than $200. N.J.S.A. 2C:20-2(b).

[4] In New Jersey, a defendant who has no prior criminal or disorderly persons convictions and who is charged with a disorderly persons offense may apply for entry into the "conditional dismissal program[.]" N.J.S.A. 2C:43-13.1. If accepted into the program, the municipal court may place the defendant "under a probation monitoring status for a period of one year" and may also impose financial obligations. N.J.S.A. 2C:43-13.2. If, at the end of the one-year period, the defendant has not been convicted of any further offenses and has complied with the conditions of the program, the court may dismiss the proceedings against the defendant. N.J.S.A. 2C:43-13.5.

Here, because respondent was initially charged with third-degree theft by deception, it is unclear how he was eligible for conditional dismissal, given that the program is reserved for offenders charged with disorderly persons offenses. The municipal prosecutor, however, offered no objection to respondent's admission into the conditional dismissal program.

respondent: (1) pay Funnell $1,000 in restitution, within thirty days; (2) pay $339 in court costs, within sixty days; and (3) successfully complete one year of probation. Judge Katz advised respondent that, if he complied with each of the conditions, his matter would be dismissed in one year.

On March 27, 2019, one month into respondent's probationary period, respondent's probation officer sent the WTMC a "notice to the court[,]" stating that respondent's "performance while on [c]onditional [d]ismissal ha[d] been unsatisfactory." Specifically, respondent's probation officer stated that he had spoken to respondent, who had "refuse[d]" to report to probation, despite having received notice of his obligation to do so.

On April 3, 2019, the WTPD informed the OAE of respondent's February 22, 2019 guilty plea to disorderly persons theft by deception.[5]

On April 29, 2019, respondent sent the WTMC a letter, stating that the affidavit of probable cause attached to the August 2018 criminal complaint contained "false statements." Specifically, respondent alleged that the affidavit of probable cause erroneously stated that there was an eviction proceeding against him, based on his failure to pay rent, even though, in his view, "[t]here were no proceedings or any court orders." Respondent also maintained that the

[5] The record does not reveal whether respondent independently notified the OAE of his theft charge or guilty plea, as R. 1:20-13(a)(1) requires.

municipal prosecutor was obligated to inform the court "of this lie[.]" Additionally, despite the fact that respondent had pleaded guilty to theft by deception, respondent claimed that Judge Katz and the municipal prosecutor "should have disclosed [that respondent] had charges pending for theft by deception for money [he] gave to [. . .] Hubinger." Moreover, respondent stated that "[t]here [was] no way I would have dismissed my theft against [. . .] Hubinger, if I knew there were charges filed against me for money I gave him."[6] Finally, respondent claimed that he had learned from his law partner that the WTPD had called his office and "left messages stating that [he] was passing fraudulent checks," which, in his view, was "totally untrue."

On May 2, 2019, the WTMC sent respondent a notice, to his home address of record, requiring that he appear in court, on May 15, 2019, to address his failure to comply with the terms of his probation. Respondent, however, failed to appear. Consequently, on May 20, 2019, the WTMC issued a warrant for respondent's arrest.

On September 7, 2019, the WTMC issued an order suspending respondent's driver's license, pursuant to N.J.S.A. 2B:12-31, for his failure to

[6] Although irrelevant to the instant matter, it appears that respondent filed, and later withdrew, a municipal court complaint against Hubinger for items allegedly stolen from respondent's apartment.

pay the required restitution and costs in connection with his conditional dismissal.[7]

On March 5, 2020, the WTMC sent a letter to the New Jersey Motor Vehicle Commission, stating that respondent had appeared in municipal court on March 5, 2020, and that Judge Katz had "no objection" to reinstating respondent's driver's license based on his prior failure to appear in municipal court.[8]

On June 25, 2020, respondent appeared in the WTMC and informed Judge Katz that he had paid the required $1,000 in restitution to Funnell. During the proceeding, a WTMC employee also confirmed that, on June 24, 2020, Funnell had advised the court that respondent had paid the required restitution.[9] Judge Katz, however, advised respondent that he had failed to report to probation, as the terms of his conditional dismissal required, despite

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[7] N.J.S.A. 2B:12-31(a) allows a municipal court to suspend a person's driver's license for his failure to comply with the terms of his sentence.

[8] The WTMC's March 5, 2020 letter, makes no mention of the fact that the WTMC previously had suspended respondent's driver's license for his failure to pay the required costs and restitution, not for his failure to appear in municipal court.

[9] Respondent claimed, in his submissions to us, that Funnell had received her restitution directly from respondent's attorney, whom he had retained sometime in March 2020 in connection with his failure to comply with the terms of his conditional dismissal. Thus, although it is unclear precisely when Funnell had received her restitution, respondent could not have fulfilled his obligation to Funnell any earlier than March 2020, one year after the WTMC's March 22, 2019 court-ordered deadline to repay Funnell.

having received adequate notice of his obligation to report. Respondent, nevertheless, maintained his unsupported view that he "was [not] ordered to probation" and that was "why [he] did [not] go." Despite respondent's failure to comply with the terms of his probation, Judge Katz dismissed respondent's disorderly persons theft matter because "restitution ha[d] been paid[.]"

Additionally, although not addressed at the June 25, 2020 court hearing, municipal court records demonstrate that respondent failed to pay the required $339 in court costs. Indeed, in his submissions to us, respondent claimed that he had "never paid a cent to the [WTMC]."

In urging the imposition of a censure, the OAE analogized respondent's criminal conduct to the censured attorneys in In re Lowenberg, 238 N.J. 475 (2019), and In re Walzer, 203 N.J. 582 (2010).

As detailed below, in Lowenberg, a client retained the attorney to appeal an adverse decision from the Pennsylvania Department of Health and Human Services that listed his client's name on the child abuse registry. In the Matter of Frederick S. Lowenberg, DRB 18-198 (December 12, 2018) at 3. The attorney, however, neither filed the appeal nor refunded the client's $500 fee, even after Pennsylvania disciplinary authorities directed that he issue a refund. Id. at 4-5. Moreover, the attorney failed to participate in the Pennsylvania or New Jersey disciplinary proceedings. Id. at 5-6. In imposing a censure, we

weighed, in aggravation, the attorney's failure to report his Pennsylvania discipline to the OAE and his refusal to cooperate with disciplinary authorities.

In Walzer, the attorney committed at least fourteen separate criminal acts of shoplifting, spanning more than one month, stealing less than $100 in merchandise from a blind vendor. In the Matter of Elwood J. Walzer, Jr., DRB 10-031 (August 2, 2010) at 2-3. The attorney agreed to pay the vendor $1,200 in restitution for his criminal acts. Id. at 2. In imposing a censure, we weighed the attorney's lack of prior discipline and his retirement from the practice of law against the fact that he took advantage of a blind vendor. Id. at 9-10.

The OAE argued that, like the attorney in Lowenberg, respondent failed to perform any legal work on behalf of his client and then failed, for at least two years, to refund his unearned legal fee. Additionally, the OAE argued that, like the attorney in Walzer, respondent committed a low-level theft crime that ultimately was resolved by payment of restitution.

At oral argument and in his submissions to us, respondent did not attempt to dispute the specific facts underlying his conviction but, rather, criticized the municipal prosecutor's and the WTMC's procedures in connection with his guilty plea. Specifically, he claimed that the WTMC did not elicit a sufficient "factual basis" for his guilty plea. Respondent also maintained that the municipal court record contained "false documents[,]"

given that, in his view, he had not been required to attend probation as a condition of his conditional dismissal. Respondent further emphasized that he had paid Funnell the required $1,000 in restitution. Finally, respondent made numerous allegations irrelevant to the instant matter, including that (1) he had filed with the WTPD a criminal complaint against Hubinger for allegedly stealing items from his house, which complaint he later withdrew when the municipal prosecutor became "abrasive;" (2) the WTPD allegedly had retained some of those items purportedly taken by Hubinger; (3) the WTMC unlawfully had issued the May 20, 2019 warrant for his arrest; (4) the WTMC and the WTPD did not provide him with adequate notice of Funnell's criminal complaint; and (5) he had suffered from numerous physical ailments throughout the proceedings below.

Following a review of the record, we determine to grant the OAE's motion for final discipline. Final discipline proceedings in New Jersey are governed by R. 1:20-13(c). Under that Rule, a "transcript of a plea of guilty to a crime or disorderly persons offense, whether the plea results either in a judgment of conviction or admission to a diversionary program," is conclusive evidence of guilt in a disciplinary proceeding. R. 1:20-13(c)(1); In re Magid, 139 N.J. 449, 451 (1995); In re Principato, 139 N.J. 456, 460 (1995). Respondent's guilty plea to disorderly persons theft by deception, in violation

of N.J.S.A. 2C:20-4, thus, establishes a violation of RPC 8.4(b) and RPC 8.4(c). Pursuant to those respective Rules, it is professional misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer" or to "engage in conduct involving dishonesty, fraud, deceit[,] or misrepresentation."

Additionally, respondent violated RPC 1.3 by accepting a $1,000 legal fee from Funnell and, thereafter, failing to appear in municipal court on behalf of Funnell's son. Indeed, from February 23, 2018, when Funnell retained respondent, through February 22, 2019, when respondent pleaded guilty to theft by deception, respondent failed to perform any legal services in furtherance of the representation.

Moreover, respondent violated RPC 1.16(d) by failing, for at least two years, to refund Funnell's $1,000 legal fee. Respondent's failure to refund Funnell's legal fee forced Funnell to resort to the criminal justice system to seek restitution. Nevertheless, even after the WTMC ordered respondent to pay Funnell $1,000 in restitution, by March 24, 2019, as a condition of his conditional dismissal, respondent failed to fulfill that obligation until at least March 2020.

Finally, we decline to consider respondent's arguments that are inconsistent with the elements of his guilty plea to disorderly persons theft by

deception. R. 1:20-13(c)(2) provides, in pertinent part, that in a motion for final discipline:

> the sole issue to be determined shall be the extent of final discipline to be imposed. The Board and the Court may consider any relevant evidence in mitigation that is not inconsistent with the essential elements of the criminal matter for which the attorney was convicted or has admitted guilt as determined by the statute defining the criminal matter.

Here, despite respondent's subjective criticisms of the WTMC's procedures, the fact remains that he voluntarily pleaded guilty to theft and allocuted, under oath, that he had accepted $1,000 in legal fees from Funnell and, thereafter, failed to perform any legal services. Respondent further admitted that, at the time of his guilty plea, he had failed to refund Funnell's $1,000 legal fee. Given these uncontroverted facts, he is prohibited, by Court Rule, from offering arguments that are inconsistent with the elements of the offense to which he pleaded guilty. In that vein, respondent cannot use this matter as a forum to collaterally attack his otherwise final guilty plea or the WTMC's or the WTPD's procedures for handling Funnell's complaint or his unrelated complaint against Hubinger.

In sum, we determine to grant the motion for final discipline and find that respondent violated RPC 1.3; RPC 1.16(d); RPC 8.4(b); and RPC 8.4(c). The sole issue left for us to determine is the proper quantum of discipline for

respondent's misconduct. R. 1:20-13(c)(2); Magid, 139 N.J. at 451-52; and Principato, 139 N.J. at 460.

In determining the appropriate measure of discipline, we must consider the interests of the public, the bar, and respondent. "The primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar." Principato, 139 N.J. at 460 (citations omitted). Fashioning the appropriate penalty involves a consideration of many factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation, his prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989).

The Court has noted that, although it does not conduct "an independent examination of the underlying facts to ascertain guilt," it will "consider them relevant to the nature and extent of discipline to be imposed." Magid, 139 N.J. at 452. In motions for final discipline, it is acceptable to "examine the totality of the circumstances" including the "details of the offense, the background of respondent, and the pre-sentence report" before "reaching a decision as to [the] sanction to be imposed." In re Spina, 121 N.J. 378, 389 (1990). The "appropriate decision" should provide "due consideration to the interests of the attorney involved and to the protection of the public." Ibid.

Attorneys who commit acts of theft have received a wide range of discipline, depending on the nature of the crime and the presence of mitigating or aggravating factors. See, e.g., In re LaVergne, 168 N.J. 409 (2001) (reprimand for an attorney found guilty in municipal court of theft by failure to make required disposition of property received, a disorderly persons offense; the attorney entered into an agreement to purchase an automobile for $700, never made payment, and, instead, took possession of the vehicle and allowed it to be registered to a new owner); In re Frieze, 249 N.J. 99 (2021) (censure for an attorney convicted of disorderly persons shoplifting; during a twelve-day period, the attorney, on at least eight separate occasions, shoplifted merchandise with a total value of $470.23 from a grocery store; in imposing a censure, we weighed, in aggravation, the attorney's history of shoplifting and the fact that he had engaged in a pattern of theft during a twelve-day period; in mitigation, however, the attorney had a nearly unblemished forty-eight year career at the bar); In re Walzer, 203 N.J. 582 (2010) (censure for an attorney employed by the New Jersey Department of Human Services who, on at least fourteen occasions, stole food and beverage items from a refreshment counter operated by a blind individual associated with the Commission for the Blind and Visually Impaired Enterprise Program; the total value of the stolen items was less than $100; in aggravation, the attorney victimized an individual who

was blind; in mitigation, however, the attorney had no prior discipline, completed the pre-trial intervention program (PTI), and made restitution of $1,200); In re Martellio, 250 N.J. 266 (2022) (three-month suspension for an attorney who, days after she established her own law firm, committed forgery by altering the lease of the law firm that employed her and then stole that law firm's security deposit; specifically, the attorney falsely represented to the law firm's landlord that the law firm had authorized her to terminate the office space lease; the attorney also arranged, without permission, to have the law firm's security deposit applied to her own law firm's new lease; compounding matters, the attorney engaged in a series of deceptive acts, without the law firm's knowledge, to induce the law firm's existing clients to retain her new law firm; in aggravation, the attorney's conduct exhibited a course of escalating, deceptive misconduct, spanning a period of weeks; in mitigation, the attorney had no prior discipline and admitted her misconduct); In re Pariser, 162 N.J. 574 (2000) (six-month suspension for a deputy attorney general (DAG) who pleaded guilty to one count of third-degree official misconduct for stealing items, including cash, from co-workers; his conduct was not an isolated incident, but a series of petty thefts occurring over a period of time; the attorney received a three-year probationary term and was ordered to pay a $5,000 fine, to forfeit his public office as a condition of probation,

and to continue psychological counseling until medically discharged; the attorney's status as a DAG was considered an aggravating factor); In re Bevacqua, 185 N.J. 161 (2005) (three-year suspension for an attorney who attempted to use a fraudulent credit card to purchase items at a department store; his wallet contained credit cards in different names; he was charged with identity theft, credit card fraud, and theft; he was accepted into PTI; the attorney had a prior reprimand and a six-month suspension).

Attorneys who fail to promptly refund the unearned portion of a fee have received admonitions if their misconduct is not accompanied by other ethics infractions. See In the Matter of Larissa A. Pelc, DRB 05-165 (July 28, 2005), and In the Matter of Stephen D. Landfield, DRB 03-137 (July 3, 2003). The quantum of discipline is enhanced, however, if additional aggravating factors are present, such as an attorney's failure to perform any legal work in furtherance of the representation, an attorney's disciplinary history for similar ethics infractions, or an attorney's failure to refund the unearned fee altogether. See, e.g., In re Howard, 244 N.J. 411 (2020) (reprimand for an attorney who received a $1,200 legal fee to appeal an adverse social security administration disability determination; although the attorney claimed to have spent time on the client's case, he provided no evidence that he had engaged in legal research, that he had prepared and filed pleadings, or that he had

maintained time records for the matter; the attorney took no action to withdraw from the matter and, instead, allowed it languish for two years; the attorney ultimately refunded the legal fee only after the client was compelled to seek redress through fee arbitration; the attorney had a prior censure, in a default matter, for neglecting three client matters); In re Lowenberg, 238 N.J. 475 (2019) (censure for an attorney who, in a reciprocal discipline matter, failed to appeal a decision from the Pennsylvania Department of Health and Human Services that listed his client's name on the Department's child abuse registry; we found that the attorney seemingly failed to perform any work on his client's behalf; moreover, the attorney altogether failed to refund his client's $500 legal fee, even after Pennsylvania disciplinary authorities directed that the attorney issue a refund; in imposing a censure, we weighed, in aggravation, the attorney's failure to report his Pennsylvania discipline to the OAE and to participate in the Pennsylvania or the New Jersey disciplinary proceedings; the attorney had no prior discipline in New Jersey and had received a one-year suspension in Pennsylvania for his misconduct); In re Wise, 240 N.J. 239 (2019) (three-month suspension for an attorney who ceased work, in two separate matters, after the clients each had paid him a $2,500 retainer fee; the attorney failed to return the unearned portion of the fee in one of the matters and only returned the fee in the second matter after the client had filed a

grievance against him; the attorney also failed to communicate with the clients; in imposing a three-month suspension, we weighed, in aggravation, the attorney's disciplinary history, consisting of a 1996 admonition and three reprimands, imposed in 1995, 2005, and 2008, respectively; two of the attorney's prior matters involved similar misconduct); In re Calpin, 242 N.J. 75 (2020) (one-year suspension for an attorney, in a default matter, who performed little or no legal work on three client matters, failed to communicate with his clients, and failed to return the unearned portion of the fees as to each client; the attorney received between $500 and $1,500 in legal fees from each client and lied to disciplinary authorities regarding the return of the unearned fees in one of the client matters; compounding matters, after a client posted a negative online review of the attorney's law practice, the attorney retaliated by posting his own negative review of the client's business, disclosing information not generally known to the public; we found that the attorney's misconduct bordered on client abandonment and that a censure would be the minimum sanction for the attorney's misconduct; the attorney had a prior reprimand and an admonition for similar ethics infractions).

Here, respondent's misconduct is similar to the attorney in Lowenberg, who was censured, and the attorney in Wise, who received a three-month suspension. Like Lowenberg, respondent received a $1,000 legal fee and then

failed, for one year, to perform any legal services on behalf of Funnell's son. During that timeframe, respondent also failed to reply to Funnell's repeated inquiries regarding her son's matter or to refund his unearned legal fee. Respondent's abandonment of Funnell forced her to retain a new attorney to represent her son and to seek restitution from respondent through the criminal justice system. Respondent, however, was not charged with abandonment of the client in this case.

Moreover, like Wise, who refunded his fee to one of his clients only after the client filed a grievance, respondent failed to refund Funnell's legal fee until at least March 2020, approximately one year after the WTMC had ordered respondent to pay Funnell's restitution and more than two years after respondent had failed to perform any legal work on behalf of Funnell's son. Unlike Wise, however, who altogether failed to refund his unearned legal fee in a second client matter, respondent's misconduct spanned only one client matter in which he, eventually, refunded Funnell.

Respondent's disciplinary history, however, is far more egregious than that of Lowenberg, who had no prior discipline in New Jersey, and that of Wise, whose prior admonition and three reprimands each had occurred more than one decade earlier. By contrast, within the past year alone, respondent has received a three-month suspension, in the September 2021 Saunders I default

matter, for his gross mishandling of two client matters and for his repeated failure to cooperate with disciplinary authorities. Making matters worse, respondent then failed to appear in that matter for an Order to Show Cause issued by the Court. Subsequently, in connection with the December 2021 Saunders II default matter, respondent received a reprimand for his failure to comply with R. 1:20-20 following his April 2020 temporary suspension. The Court repeatedly has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such cases, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system).

Respondent's continued indifference toward his clients and court orders clearly warrants enhanced discipline. Specifically, respondent not only failed to perform any legal work on behalf of Funnell's son, but also failed to pay Funnell's court-ordered restitution for at least one year. Worse still, respondent refused to report to his court-ordered probation and falsely claimed, in his submissions to us and during his June 2020 municipal court appearance, that he was not required to do so. Finally, respondent altogether failed to pay any portion of the court-ordered $339 in costs in connection with his conditional dismissal.

Thus, considering respondent's failure to learn from his past mistakes and his penchant for disregarding client matters and court orders, including the Court's 2021 Order to Show Cause, we determine that a six-month suspension is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Members Joseph and Petrou voted for a censure.

Member Campelo voted for a three-month suspension.

Member Hoberman was absent.

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

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

By: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Darryl M. Saunders
Docket No. DRB 22-092

Argued: July 21, 2022

Decided: September 22, 2022

Disposition: Six-Month Suspension

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

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel