Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-190
District Docket No. VIII-2021-0021E

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

Decision

Decided: March 23, 2023

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

This matter was before us on a certification of the record filed by the District VIII Ethics Committee (the DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated 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); RPC 1.5(a) (committing fee overreaching); RPC 1.5(c) (failing to provide in writing

whether expenses would be deducted before or after the contingent fee is calculated); RPC 1.16(d) (upon termination of the representation, failing to refund any advance payment of a fee that has not been earned or incurred and failing to surrender papers and property to which the client is entitled); RPC 8.1(b) (two instances – failing to cooperate with disciplinary authorities);[1] and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to reiterate our previous recommendation to the Court – that respondent be disbarred.

Respondent earned admission to the New Jersey bar in 1995.

Respondent has an egregious and repetitive disciplinary history, beginning with an admonition he received, in May 2005, for committing gross neglect and failing to communicate with his client in connection with a foreclosure matter. In the Matter of John Charles Allen, DRB 05-087 (May 23, 2005) (Allen I).

On May 6, 2015, respondent received a censure for committing gross neglect and lacking diligence; failing to communicate with the client; and engaging in conduct prejudicial to the administration of justice. In re Allen, 221 N.J. 298 (2015) (Allen II). In that case, we determined that respondent provided

[1] Due to respondent's failure to file an answer to the formal ethics complaint, and on notice to respondent, the DEC amended the complaint to include the second RPC 8.1(b) charge.

legal services to his client only after the client filed an ethics grievance against him. He failed to reply to any correspondence from his client for over a year and failed to keep his client reasonably informed about the status of the matter. Respondent also improperly sought to persuade his client to withdraw the grievance in exchange for a refund of his fees or continued work on the matter without additional fees. In the Matter of John Charles Allen, DRB 14-226 (January 22, 2015) at 13-14.

In 2018 and 2019, the Court temporarily suspended respondent for failing to comply with fee arbitration awards in two client matters. In re Allen, 235 N.J. 363 (2018),[2] and In re Allen, 237 N.J. 435 (2019).[3] In both matters, the Court reinstated respondent within a month's time, after he satisfied the awards. In re Allen, 236 N.J. 90 (2018), and In re Allen, 237 N.J. 586 (2019).

Effective July 6, 2021, the Court temporarily suspended respondent for failing to comply with two additional fee arbitration matters. In the Matter of John Charles Allen, DRB 21-107 (May 27, 2021); In re Allen, __ N.J. __ (2021); In the Matter of John Charles Allen, DRB 21-078 (May 27, 2021); In re Allen, __ N.J. __ (2021). In a December 1, 2021 letter, the Court acknowledged that,

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[2] The Court's October 18, 2018 Order temporarily suspended respondent, effective November 19, 2018. Respondent was reinstated to the practice of law on November 30, 2018.

[3] The Court's April 12, 2019 Order temporarily suspended respondent, effective May 13, 2019. Respondent was reinstated to the practice of law on May 15, 2019.

on November 24, 2021, respondent satisfied his obligation in connection with DRB 21-107. The Court noted that respondent must file with the Court a petition for reinstatement to practice and would remain suspended for additional unsatisfied fee arbitration obligations.

On February 25, 2022, the Court again temporarily suspended respondent for failing to comply with two additional fee arbitration matters. In the Matter of John Charles Allen, DRB 21-242 (January 20, 2022); In re Allen, __ N.J. __ (2022); and In the Matter of John Charles Allen, DRB 21-243 (January 20, 2022); In re Allen, __ N.J. __ (2022).

On March 11, 2022, the Court suspended respondent for three months, with the conditions that, prior to reinstatement, he complete a recordkeeping course, and that, after reinstatement, he be subjected to quarterly recordkeeping monitoring by the OAE, for a period of two years. In re Allen, 250 N.J. 113 (2022); In the Matter of John Charles Allen, DRB 20-296 (July 8, 2021) (Allen III). In that matter, we found that respondent violated RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 3.3(a)(1) (two instances – making a false statement of material fact to a tribunal); RPC 5.5(a)(1) (engaging in the unauthorized practice of law – failing to maintain professional liability insurance); RPC 8.1(a) (two instances – making a false statement of material fact in a disciplinary matter); RPC 8.1(b) (two instances);

and RPC 8.4(c) (two instances – engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

Also on March 11, 2022, in a default matter, the Court suspended respondent for three months, consecutive to the three-month suspension imposed in DRB 20-296, for his violation of RPC 1.15(d) and RPC 8.1(b) (two instances). In re Allen, 250 N.J. 115 (2022); In the Matter of John Charles Allen, DRB 21-028 (July 21, 2021) (Allen IV). In addition to maintaining the previously ordered conditions upon respondent's reinstatement to the practice of law, the Court also imposed the condition that, upon reinstatement, respondent practice under the supervision of a proctor for a period of no less than one year.

On April 8, 2022, in respondent's second consecutive default matter, the Court imposed an indeterminate suspension, prohibiting him from seeking reinstatement to the practice of law for a minimum of five years. In re Allen, 250 N.J. 360 (2022); In the Matter of John Charles Allen, DRB 21-126 (December 6, 2021) (Allen V). In that matter, respondent violated RPC 1.3; RPC 1.4(b); RPC 1.16(d); and RPC 8.1(b) (two instances). Respondent received a $3,250 fee from the client but subsequently abandoned the client by failing to have documents translated, failing to file or serve the client's divorce complaint, and failing to otherwise perform legal work for the client or communicate with

the client. Upon termination, respondent failed to refund the unearned portion of the fee. Further, respondent failed to cooperate with disciplinary authorities or to provide information requested by the DEC. In imposing an indeterminate suspension, the Court parted ways with our recommendation that respondent be disbarred.

At our February 17, 2022 session, we considered respondent's third and fourth consecutive defaults, in a consolidated matter, and determined to again recommend to the Court that respondent be disbarred. In the Matter of John Charles Allen, DRB 21-260 and DRB 21-264 (Allen VI). In that matter, we found that respondent violated RPC 1.1(a) (engaging in gross neglect); RPC 1.2(a) (failing to abide by client's decisions); RPC 1.3 (two instances); RPC 1.4(b); RPC 1.5(a); RPC 1.7(a)(2) (engaging in a conflict of interest – continuing to represent a client despite the client's filing of an ethics grievance, the client's filing for fee arbitration, and the client terminating the representation); RPC 1.16(a)(2) (failing to withdraw from representation if the lawyer's physical or mental condition materially impairs the lawyer's ability to represent the client); RPC 1.16(a)(3) (failing to withdraw from representation despite being discharged by the client); RPC 1.16(d) (two instances); RPC 3.2 (failing to expedite litigation); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 5.5(a) (practicing law while suspended); RPC 8.1(a);

RPC 8.1(b) (two instances); RPC 8.4(b) (committing a criminal act that reflects adversely on lawyer's honesty, trustworthiness, or fitness as a lawyer – practicing law while suspended (N.J.S.A. 2C:21-22(b)(1))); RPC 8.4(c) (four instances); and RPC 8.4(d). We found that respondent's misconduct in the two default matters was identical to his earlier misconduct and clearly demonstrated his ongoing victimization of clients. We determined that respondent refused to acknowledge his wrongdoing, had not learned from his prior contacts with the disciplinary system, and, in fact, had demonstrated his utter disdain for the disciplinary process. Our decision in Allen VI was transmitted to the Court on May 26, 2022.

At our July 21, 2022 session, we considered respondent's fifth consecutive default matter and again determined to recommend to the Court that respondent be disbarred. In the Matter of John Charles Allen, DRB 22-067 (July 21, 2022) (Allen VII). In that matter, respondent violated RPC 8.1(b) (two instances) and RPC 8.4(d) by failing to file the required R. 1:20-20 affidavit following the Court's June 2, 2021 Order temporarily suspending him, effective July 6, 2021. Respondent further failed to file a verified answer to the formal ethics complaint in that matter.

We found that respondent's repeated and flagrant disregard for the disciplinary system unmistakably demonstrated that he no longer possesses the

qualities of an attorney privileged to practice law in the State of New Jersey, for which disbarment was the only remedy available to protect the public. Our decision in Allen VII was transmitted to the Court on September 16, 2022.

At our September 15, 2022 session, we considered respondent's sixth, seventh, eighth, and ninth consecutive defaults, in a consolidated matter, and determined to again recommend to the Court that respondent be disbarred. In the Matter of John Charles Allen, DRB 22-104; DRB 22-121; DRB 22-124; and DRB 22-125 (Allen VIII). In that matter, we found that respondent violated RPC 1.3 (four instances); RPC 1.4(b) (four instances); RPC 1.5(a); RPC 1.16(a)(2); RPC 1.16(a)(3); RPC 1.16(d); RPC 3.2; RPC 8.1(b) (eight instances); RPC 8.4(c); and RPC 8.4(d) (two instances).

We again found that respondent's misconduct in the four default matters was identical to the misconduct that we already had found in multiple matters and demonstrated that respondent continued to acknowledge or account for his wrongdoing and continued his gross exploitation of his clients' trust in him.

Furthermore, we specifically found that respondent's failure to participate in four ethics investigations and his failure to file an answer to any of the four ethics complaints was in stark contrast to his statements to the Court on March 29, 2022, when he told the Court that if given the opportunity, he was going to reform his conduct.

On November 28, 2022, the Court issued a second amended Order to Show Cause in Allen VI; an amended Order to Show Cause in Allen VII; and an Order to Show Cause in Allen VIII, scheduling all seven default matters for oral argument before the Court on January 31, 2023. On January 23, 2023, the Court then adjourned that oral argument without rescheduling the matters.

To date, respondent remains suspended pursuant to both his temporary suspensions and his disciplinary suspensions.

Service of process was proper. On June 16, 2022, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record, given his suspended status. The certified mail was left with an individual at respondent's home and the regular mail was not returned.

By letter dated September 7, 2022, sent via certified and regular mail to respondent's home address, the DEC informed respondent that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of discipline, and the complaint would be amended to include a willful violation of RPC 8.1(b). The certified mail was delivered to an individual at respondent's home and the regular mail was not returned.

As of September 28, 2022, respondent had not filed an answer to the complaint and the time within which he was required to do so had expired. Accordingly, the DEC certified this matter to us as a default.

On November 15, 2022, Acting Chief Counsel to the Board sent a letter to respondent's home address, by certified and regular mail, with a third copy via an e-mail address respondent regularly has used in correspondence with us, informing him that the matter was scheduled before us on January 19, 2023, and that any motion to vacate must be filed by December 12, 2022. Delivery to respondent's e-mail address was complete. According to United States Postal Service (USPS) tracking, the certified mail was delivered to an individual at respondent's home. As of the date of this decision, the regular mail had not been returned.

Finally, on December 5, 2022, the Office of Board Counsel published a disciplinary notice in the New Jersey Law Journal, stating that a formal ethics complaint had been filed against respondent, that respondent had not filed an answer, and that the matter was scheduled for our review on January 19, 2023. The notice informed respondent that, unless he filed a motion to vacate by December 12, 2022, his failure to answer the formal ethics complaint would be deemed an admission of the allegations of the complaint.

Respondent did not file a motion to vacate the default.

We now turn to the allegations of the complaint.

On August 15, 2017, Richard Elton Spicer, Jr. retained respondent to represent him in a wrongful termination action against Spicer's former employer, Enable, Inc. (Enable), pursuant to the New Jersey Law Against Discrimination (the NJLAD). Spicer also retained respondent to pursue unemployment benefits.

Specifically, respondent's retainer agreement provided that Spicer would pay respondent $5,450 as an "unrestricted advance, i.e., [respondent] shall have the immediate use of these funds," and that $5,000 of the initial retainer "shall represent the minimum non-refundable portion of [respondent's] fee for handling this matter." Additionally, the fee agreement indicated that respondent's fee, "subject to the above stated $5,000.00 minimum fee will be the greater of the following: **1. 1/3 of any recovery of more than $15,000.00**."

Spicer was also required to pay all costs and "all disbursements incurred" by respondent. Respondent's retainer agreement stated that, at his option, either he would "pay for these costs from the advance payment made by you, or they will be added to my bill. If they are substantial (which means in excess of $100.00), you will pay for them in advance." Furthermore, respondent informed Spicer that disbursements were "separate from [his] fee for [his] services." The retainer agreement informed Spicer that respondent would add to his "bill for

professional services an amount equal to five percent (5%) of our fees to cover these items or their actual costs, whichever is of a greater amount." Within the fee agreement, respondent provided a non-exhaustive list of expenses and their charges, including a charge of $1 per page of a facsimile sent or received, $.25 per page for photocopies, and $50 for file setup.

On August 14, 2018, approximately one year after Spicer had retained him, respondent sent a pre-litigation demand letter to Enable. Seventeen months later, on January 12, 2020, on behalf of Spicer, respondent filed a complaint against Enable, its chief executive officer, and its program director, alleging two causes of action under the NJLAD.[4]

On August 15, 2020, three years after Spicer retained respondent, the Superior Court of New Jersey, Middlesex County, Law Division, sent respondent a dismissal for lack of prosecution notice. The notice informed respondent that, unless he took action in the case, the court would dismiss Spicer's lawsuit on October 13, 2020. Respondent failed to take any action in

[4] The NJLAD complaint alleged that the defendants "wrongfully and discriminatorily discriminated" against Spicer; demoted Spicer in August 2015; transferred Spicer to a location further from his home; gave Spicer a promotional job title in February 2017; promoted Spicer to manager and increased his hourly pay rate in March 2017; secretly switched Spicer from an hourly pay to a salary in February 2018; and falsely accused Spicer in August 2018 of falsifying timesheets. Although respondent alleged that the discrimination Spicer suffered was ongoing throughout his employment with Enable, and that Enable wrongfully terminated Spicer, respondent did not state in the NJLAD complaint the date Enable terminated Spicer's employment. Presumably, however, it occurred prior to August 15, 2017, when Spicer signed a retainer agreement for respondent to file a wrongful termination lawsuit against Enable.

the case; consequently, on October 17, 2020, the court dismissed the lawsuit for lack of prosecution, with notice to respondent. The court's dismissal order informed respondent that he was required to file a formal notice of motion in order to restore Spicer's complaint.

On unspecified dates, Spicer attempted to contact respondent about his lawsuit; however, respondent did not speak to Spicer. Thus, Spicer contacted the court himself and was surprised to learn that the court had dismissed his lawsuit.

On February 25, 2021, Spicer finally spoke to respondent about his lawsuit against Enable. During the conversation, respondent provided no explanation for why he took no action in the case and allowed the matter to be dismissed on procedural grounds. Instead, respondent simply told Spicer they could "resubmit" the lawsuit.

However, on March 5 and April 2, 2021, Spicer sent respondent letters, by certified mail, informing respondent that he had terminated respondent's representation and requesting a partial refund of his initial retainer fee.[5] According to the ethics complaint, USPS tracking indicated that respondent

[5] The letters Spicer sent to respondent terminating his representation and requesting a partial refund were not part of the record. Thus, it is not known why Spicer requested only a partial refund of his retainer fee.

received both letters. Nevertheless, respondent failed to reply to either of Spicer's letters, failed to return the file to Spicer, and failed to provide a refund of the initial retainer fee.

Based on the above facts, the complaint alleged that respondent failed to diligently and promptly represent Spicer in his NJLAD action against Enable, in violation of RPC 1.3. Specifically, the DEC alleged that respondent's failure to diligently represent Spicer resulted in the expiration of the two-year statute of limitations on the NJLAD complaint[6] before respondent even filed the complaint. Moreover, after he filed the NJLAD complaint (beyond the expiration of the statute of limitations),[7] respondent failed to take any action in the matter, failed to communicate with Spicer about its status, and failed to comply with reasonable requests for information, in violation of RPC 1.3 and RPC 1.4(b).

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[6] Claims pursuant to the NJLAD are subject to the two-year statute of limitations set forth in N.J.S.A. 2A:14-2(a). However, determining when the statute of limitation period begins is dependent upon "when the cause of action accrued, which in turn is affected by the type of conduct a plaintiff alleges to have violated the LAD." See Alexander v. Seton Hall University, 204 N.J. 219, 228 (2010).

[7] As noted above, it is not clear from the NJLAD complaint that respondent filed when, in fact, Enable terminated Spicer's employment. For example, the NJLAD complaint alleges that Spicer had been completing timesheets through August 2018 – which is one year after Spicer retained respondent to represent him in a wrongful termination matter. It could be that respondent mistakenly referred to "August 2018" instead of "August 2017" in the complaint. However, the NJLAD complaint also refers to events that occurred in February 2018 – six months after Spicer retained respondent for representation in a wrongful termination matter. It could be that respondent mistakenly referred to "February 2018" instead of "February 2017."

The complaint also alleged that, pursuant to the retainer agreement, Spicer was required to pay $1 per page for any facsimile sent or received in the case, which was an unreasonable fee, in violation of RPC 1.5(a). Additionally, the complaint alleged that the retainer agreement failed to specify whether respondent would deduct expenses before or after he calculated his contingent fee, a violation of RPC 1.5(c).

The complaint further alleged that respondent's failure to properly terminate the attorney-client relationship, by virtue of his failure to provide Spicer with his file and his failure to refund the unearned retainer fee, violated RPC 1.16(d).

Finally, the complaint alleged that respondent "failed to engage with disciplinary authorities through the investigative process," in violation of RPC 8.1(b) and RPC 8.4(d). Moreover, the DEC amended the complaint, on notice to respondent, to include a second RPC 8.1(b) violation for his failure to file an answer.

Following our review of the record, we find that the facts recited in the complaint support almost all the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. See R. 1:20-4(f)(1).

Specifically, respondent violated RPC 1.3 by agreeing to represent Spicer but failing to take proper action in his matter to preserve and pursue his claims. Despite agreeing to represent Spicer, it took respondent one year before he sent a pre-litigation demand letter to Enable and another seventeen months before he actually filed the NJLAD complaint. Respondent's inaction would have further supported a charge of gross neglect, in violation of RPC 1.1(a).

Assuming that, in August 2017, when Spicer retained respondent to represent him in a wrongful termination lawsuit, Enable already had terminated Spicer's employment. Thus, by the time respondent filed the NJLAD complaint on January 12, 2020, the applicable two-year statute of limitations had expired. Therefore, although respondent prepared and filed a complaint, it lacked legal basis and, in any event, the court ultimately dismissed the complaint for lack of prosecution due to respondent's failure to take any action on the case. Thereafter, respondent took no action to restore the matter.

Not only did respondent fail to restore Spicer's lawsuit, but he also failed to inform Spicer that the court dismissed the matter, a clear violation of RPC 1.4(b). Moreover, despite Spicer's requests for information, respondent failed to communicate with his client, another violation of the Rule.

Additionally, respondent's retainer agreement was violative of RPC 1.5(a) in several ways. First, respondent charged Spicer $5,450 for the representation,

$5,000 of which purportedly was non-refundable. Thereafter, it took respondent three years to prepare and file a two-count complaint, after the statute of limitations likely had expired. Then, respondent's failure to perform any work on the matter – beyond filing a complaint – resulted in the court dismissing the matter for lack of prosecution.

In analyzing the eight factors of RPC 1.5(a), respondent's preparation of a complaint after he knew, or should have known, the statute of limitations had already passed did not justify any fee, let alone a $5,450 fee. That respondent wrote into the retainer agreement he would keep a non-refundable $5,000 portion (nearly the entirety of the fee) does not justify the fee, nor does it permit respondent to retain the fee given factor number four of RPC 1.5(a) – the amount of the fee and the results obtained. To be clear, any work that respondent performed on the matter resulted in the filing of a defective complaint beyond the appropriate statute of limitations and, ultimately, its dismissal for lack of prosecution due to respondent's inaction. Therefore, respondent's retainer fee was per se unreasonable.

Second, respondent's attempt to charge Spicer $1 per page for any facsimile sent or received is a patently unreasonable attempt to inflate his fees in the matter, in violation of RPC 1.5(a).

Respondent's failure to specify whether he would deduct expenses before or after he calculated his contingent fee violated RPC 1.5(c). The Rule states, in relevant part, that a:

> contingent fee agreement shall be in writing and **shall state** the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and **whether such expenses are to be deducted before or after the contingent fee is calculated**.
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> [emphasis added.]

Furthermore, in NJLAD cases, pursuant to R. 1:21-7(c), litigation and other expenses must be deducted before calculating the contingent fee. Therefore, by operation of law, respondent was required, under RPC 1.5(c), to inform Spicer, in writing, that he would deduct expenses before calculating his contingent fee and he failed to do so, in violation of the Rule.

Likewise, respondent's failure to properly terminate the attorney-client relationship, including his refusal to refund Spicer's retainer fees or to provide Spicer with his file, violated RPC 1.16(d).

Moreover, the record contains clear and convincing evidence that respondent violated RPC 8.1(b) in two respects: first, by failing to cooperate with disciplinary authorities and, again, by failing to file an answer to the ethics complaint. Given respondent's history of temporary and disciplinary

suspensions, particularly his eighteen previous violations of RPC 8.1(b), he is acutely aware of his obligation to cooperate with an ethics investigation and to file an answer to a disciplinary complaint. Thus, we conclude that respondent's decision to not cooperate with the DEC's investigation and his decision to not file an answer in this case was knowing and intentional.

However, we determine to dismiss the charge that respondent violated RPC 8.4(d). This charge was added contemporaneously with the RPC 8.1(b) charge, with both charges stemming from respondent's failure to answer the formal ethics complaint. Although failure to file an answer to a complaint does constitute a violation of RPC 8.1(b), it has not been found to be per se grounds for an RPC 8.4(d) violation. See In re Ashley, 122 N.J. 52, 55 n.2 (1991) (after respondent failed to answer the formal ethics complaint and cooperate with the investigator, the DEC charged her with violating RPC 8.4(d); upon review, the Court noted that "[a]lthough the committee cited RPC 8.4(d) for failure to file an answer to the complaint, RPC 8.4(d) deals with prejudice to the administration of justice. RPC 8.1(b) is the correct rule for failure to cooperate with disciplinary authorities.").

In sum, we find that respondent violated RPC 1.3; RPC 1.4(b); RPC 1.5(a); RPC 1.5(c); RPC 1.16(d); and RPC 8.1(b) (two instances). We dismiss the RPC 8.4(d) charge as adequately addressed by respondent's RPC 8.1(b)

violation. The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Just six months ago, on September 15, 2022, we considered Allen VIII, another of respondent's default matters. Allen VIII represented respondent's sixth, seventh, eighth, and ninth consecutive defaults – seven of which occurred in the year 2022 alone.

Respondent has an obligation to cooperate with disciplinary authorities. However, here, for the tenth consecutive time, respondent chose to ignore his obligation – one he knows well due to his near constant contact with the disciplinary system.

There is no reason for us to deviate from our earlier findings, which began in Allen V, continued through Allen VIII, and apply in the instant matter. Therefore, any lengthy recitation here regarding what we found in this tenth default would simply be repetitive. This matter, unfortunately, represents yet another victim in respondent's clearly established exploitative scheme to take client money, never do any work, and then refuse to refund the unearned fee. Thus, Spicer represents yet another client who will likely never see a refund of the retainer fee he paid respondent to complete, effectively, no work on a legal matter important to him.

Yet again, due to respondent's refusal to abide by the Rules requiring him to cooperate with disciplinary authorities, respondent has provided us with no information and thus, there are no mitigating factors for us to consider.

However, as we have already found in Allen V through Allen VIII, the aggravating factors are dangerous and astounding.

Rarely, if ever, have we seen a respondent with such a substantial disciplinary history, with so many defaults, utterly refuse to reform his conduct in any attempt to save himself from yet another disbarment recommendation. See In re Kivler, 197 N.J. 255 (2009) (disbarred after we considered his eighth default; all of the defaults were consolidated into one matter for our consideration). Whereas Kivler's eight defaults were contained within a single decision, here, each time respondent defaults, we issue a corresponding decision, within which he is provided a roadmap to change his conduct to conform with the Rules. Yet, with each opportunity, respondent chooses to continue down his path of ignoring the Rules, us, and the Court.

Consistently, the Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such scenarios, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system).

By defaulting for a tenth consecutive time respondent has, once again, refused to acknowledge or account for his wrongdoing, let alone express remorse for his gross exploitation of his clients' trust in him. "[A] respondent's default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted).

It is clear that respondent has not learned from his past contacts with the disciplinary system, nor has he used those prior experiences as a foundation for reform. See In re Zeitler, 182 N.J. 389, 398 (2005) ("[d]espite having received numerous opportunities to reform himself, respondent has continued to display his disregard, indeed contempt, for our disciplinary rules and our ethics system"). To the contrary, as was clear in Allen V through Allen VIII, respondent has actively demonstrated that he has no intent to reform the way he interacts with the disciplinary system.

We also note that respondent's continuing failure to participate in ethics investigations and to file an answer to ethics complaints is in stark contrast to his statements to the Court on March 29, 2022, during an Order to Show Cause when, facing the prospect of his disbarment, he told the Court that, if given the opportunity, he was going to reform his conduct.

Undoubtedly, an attorney's cooperation with the disciplinary system (and discipline for failing to do so) serves as the cornerstone for the public's confidence that it will be protected from nefarious attorneys. Equally without question is that respondent's disciplinary record of nine suspensions (temporary and disciplinary) in less than four years, and his failure to obey Court Orders demonstrates that he no longer possesses the qualities of an attorney privileged to practice law in the State of New Jersey. To wit, prior to the instant matter, respondent has been found guilty of eighteen instances of failing to cooperate with disciplinary authorities. In considering respondent's conduct in the instant matter, he has been guilty of failing to cooperate with disciplinary authorities twenty times in ten default matters. Thus, it is unmistakable that respondent believes his conduct need not conform to RPC 8.1(b).

Although the bulk of our recommendation is based on respondent's repetitive disciplinary history, we would be remiss if we did not acknowledge the damage he caused Spicer. Based on the record before us, there appears a strong likelihood the respondent's misconduct resulted in the loss of Spicer's ability to pursue his claims.

In In re Spagnoli, 115 N.J. 504 (1989), which we discussed in Allen VI, the attorney accepted retainers from fourteen clients over a three-year period without any intention of performing services for them. He lied to the clients,

assuring them that their cases were proceeding. After neglecting their cases to the point that judgments had been entered against his clients, the attorney ignored their efforts to contact him by telephone. To explain his prior failure to appear in court, he lied to a judge. Afterward, the attorney failed to cooperate in the disciplinary process.

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

> Respondent's repetitive, unscrupulous acts reveal not only a callous disregard for his responsibilities toward his clients and disdain for the entire legal system [. . .] [It also] shows that respondent's conduct is incapable of mitigation. A lesser sanction than disbarment will not adequately protect the public from this attorney, who has amply demonstrated that his "professional good character and fitness have been permanently and irretrievably lost."
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> [Id. at 517-18 (quoting Matter of Templeton, 99 N.J. 365, at 376 (1985).]

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

> It is unquestionable that this respondent holds no appreciation for his responsibilities as an attorney. He has repeatedly sported a callous indifference to his clients' welfare, the judicial system and the disciplinary process . . . . The Board can draw no other conclusion but that this respondent is not capable of conforming his conduct to the high standards expected of the legal profession.
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> [In the Matter of John A. Moore, DRB 95-16 (December 4, 1995).]

Similarly, in In re Cohen, 120 N.J. 304 (1990), the attorney, after accepting representation in a matter, failed to file the complaint until after the statute of limitations had expired. He compounded his misconduct by altering the filing date on the complaint to mislead the court and opposing counsel that he had timely filed the complaint. The attorney misrepresented the status of the matter to the client, giving assurances that the case was proceeding. The Court disbarred the attorney, observing that "[w]e are unable to conclude that respondent will improve his conduct." Id. at 308. See also In re Vincenti, 152 N.J. 253 (1998) (attorney disbarred for his repeated abuses of the judicial process resulting in harm to his clients, adversaries, court personnel and the entire judicial system).

Like the attorney in Spagnoli, respondent has continued his pattern of accepting legal fees from clients and failing to provide the promised services.

Therefore, we again recommend to the Court that, in order to protect the public from respondent's pernicious practices, disbarment is the proper course of action.

Additionally, we recommend that the Court impose the condition that respondent disgorge Spicer's entire retainer fee of $5,450.

Member Joseph was absent and also was recused from this matter.

Member Rodriguez did not participate.

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 John Charles Allen
Docket No. DRB 22-190

Decided: March 23, 2023

Disposition: Disbar

Members	Disbar	Absent and Recused	Did Not Participate
Gallipoli	X		
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph		X	
Menaker	X		
Petrou	X		
Rivera	X		
Rodriguez			X
Total:	7	1	1

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