Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-192
District Docket No. XI-2018-0017E

In the Matter of

David M. Schlachter

An Attorney at Law

Decision

Argued: February 16, 2023

Decided: March 28, 2023

Jane M. Personette appeared on behalf of District XI Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for a reprimand filed by the District XI Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (engaging in gross neglect); RPC 1.3 (lacking diligence); RPC 1.4(b) (failing to communicate with a client);

RPC 1.4(c) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions); RPC 1.5(b) (failing to set forth in writing the basis or rate of the attorney's fee); RPC 8.1(b) (failing to cooperate with disciplinary authorities); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

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

Respondent earned admission to the New Jersey bar in 2006 and to the New York bar in 2007. During the relevant times, he maintained a practice of law in Passaic, New Jersey.

On September 13, 2022, we issued a decision determining that a reprimand was the appropriate quantum of discipline for respondent's failure to cooperate with the Office of Attorney Ethics' (the OAE) repeated efforts, spanning between March 2019 and February 2020, to audit his financial records. In the Matter of David M. Schlachter, DRB 22-040 (September 13, 2022) at 15. During that timeframe, respondent failed to provide the OAE with complete financial records, despite the OAE's good faith efforts to accommodate respondent's numerous, last-minute requests to adjourn scheduled demand audits or to extend deadlines to provide the required financial records. Ibid.

Additionally, respondent violated RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:21-6. Id. at 16. Although the OAE identified numerous recordkeeping deficiencies for respondent and, on multiple occasions, attempted to help him take corrective action, respondent's failure to comply with the recordkeeping Rules persisted. Ibid. Our decision in that matter is pending with the Court.

The facts of this matter are set forth exclusively in the parties' disciplinary stipulation, dated June 15, 2022.

In 2009, Joseph Hernandez retained respondent to represent him in connection with an "employment/wrongful termination matter[,]" the circumstances of which had arisen from a 2008 incident involving Hernandez's former New York based employer. Respondent and Hernandez executed a written fee agreement in connection with the representation.

On February 18, 2011, respondent filed in the Supreme Court of New York, Kings County (the trial court in that jurisdiction), a wrongful termination complaint on behalf of Hernandez against his former employer. Respondent, however, failed to file timely proof of service of the complaint with the Supreme Court of New York.

Later in 2011, Hernandez's former employer filed a motion to dismiss the complaint based on respondent's failure to file timely proof of service. On

December 1, 2011, following respondent's failure to oppose the motion, the Supreme Court of New York issued an order dismissing the complaint, without prejudice. Following the dismissal of the complaint, respondent failed to re-file the lawsuit or to inform Hernandez that his complaint had been dismissed.

More than three years later, in May 2015, respondent spoke with Hernandez and represented to him that Hernandez's former employer had offered to settle their dispute for $50,000. In reality, Hernandez's former employer had made no such settlement offer. Additionally, respondent failed to disclose to Hernandez that his complaint had been dismissed, in December 2011, and that the six-year statute of limitations on his claim had expired. Unaware of these facts, Hernandez rejected the bogus settlement offer, telling respondent that he "deserved more money" and "wanted his job and seniority back." Respondent replied to Hernandez that he would "submit his response and continue to negotiate."

Meanwhile, throughout the representation, Hernandez had difficulty communicating with respondent. Specifically, when Hernandez would contact respondent's law office, respondent's staff would inform Hernandez that respondent was on vacation, out of the office due to a religious holiday, or otherwise unavailable. Respondent also failed to timely reply to Hernandez's inquiries, often "taking weeks or even months" to reply to Hernandez regarding

the status of his matter. When respondent would reply, he would "always" inform Hernandez that he was "trying to get a court date, or was trying to reach a settlement[,]" despite the December 2011 dismissal of Hernandez's complaint.

In 2018, Hernandez independently discovered that his complaint had been dismissed and spoke to respondent, who falsely claimed that Hernandez still could "file papers with the [c]ourt."

In the disciplinary stipulation, respondent conceded that he failed to advise Hernandez that his matter had been dismissed and that, thereafter, he misrepresented to Hernandez that his matter remained pending. Consequently, respondent admitted that he had deprived Hernandez of the opportunity to make informed decisions regarding his matter. Additionally, respondent conceded that he failed to reply to Hernandez's ethics grievance until after the DEC made three specifics requests that he reply. Moreover, respondent admitted that his belated reply to the ethics grievance was "brief," "vague," and "did not contain any supporting documents." Similarly, respondent conceded that he failed to "fully" reply to the DEC's requests for "supporting documents."

On June 8, 2022, one week before the scheduled ethics hearing, respondent sent the DEC presenter an e-mail, stating that he would "like to settle this matter by stipulation." On June 9, 2022, the DEC presenter sent respondent an e-mail containing an unexecuted version of a proposed disciplinary

stipulation.

On June 13, 2022, respondent, without having replied to the DEC presenter's June 9 e-mail, sent the DEC panel chair and presenter separate e-mails, claiming that he and the DEC presenter were "in the process of resolving" the matter "by stipulation of facts." On June 14, 2022, at 11:37 a.m., the DEC panel chair replied to the parties and advised them that any stipulation "would still need to be placed on the record" during the ethics hearing scheduled for the next day.

Meanwhile, on June 14, 2022, at 9:18 a.m., the DEC presenter sent respondent another e-mail, inquiring whether he had reviewed the proposed stipulation.

On June 14, 2022, at 5:49 p.m., respondent sent the DEC panel chair and presenter an e-mail, claiming that "[t]he stipulation is signed and may be read on the record tomorrow." Respondent, however, did not attach to his e-mail his version of the stipulation, which the DEC presenter had neither signed nor reviewed. Moreover, at the time respondent had sent his 5:49 p.m. e-mail, respondent had, unbeknownst to the DEC presenter, sent the DEC presenter a 2:43 p.m. e-mail, to her alternate e-mail address, containing a "marked-up" version of the DEC presenter's original stipulation with "substantial changes" to its contents. The DEC presenter did not discover respondent's 2:43 p.m. e-

mail because it was delivered to the “spam folder” of her alternate e-mail address.

On June 15, 2022, at 8:45 a.m., the DEC presenter replied to respondent’s June 14 5:49 p.m. e-mail, requesting that he provide a copy of the stipulation he had prepared. At 9:22 a.m., respondent replied to the DEC presenter’s e-mail and provided a copy of only the final page of his prepared stipulation. At 9:24 a.m., the DEC presenter replied to respondent’s e-mail and requested that he immediately provide the full version of his stipulation. At 9:35 a.m., respondent replied to the DEC presenter and submitted his entire proposed stipulation. The version of the proposed stipulation respondent sent to the presenter was substantially similar to the DEC presenter’s original stipulation. Specifically, respondent’s proposed stipulation contained no edits to the first two pages of the DEC presenter’s original stipulation, and respondent’s proposed stipulation contained only minimal edits to the third and final page of the DEC presenter’s original stipulation. The DEC presenter incorporated respondent’s edits into a new version of the stipulation, executed the document, and sent it to respondent, who also executed the document. The DEC presenter, however, was still unaware of respondent’s June 14 2:43 p.m. e-mail, sent to her alternate e-mail address, which contained respondent’s substantial proposed changes to the original stipulation.

On June 15, 2022, following the execution of the stipulation, the parties appeared for the ethics hearing before the DEC hearing panel. At the outset of the hearing, respondent stated the parties had "come to a stipulation that could be entered" and that he "waive[d]" any "reading" of the stipulation into the record. The DEC presenter then noted that the stipulation addressed all the allegations of the complaint except for the RPC 1.5(b) charge, which the DEC presenter stated that she would later move to dismiss.[1]

Respondent then testified, under oath, that he had made "modest changes" only to the third page of the DEC presenter's original stipulation before the parties had executed the final version of the document. Respondent further admitted that no one had "forced or threatened" him to sign the stipulation and that he "had ample to review [the] document before [he] signed it." Similarly, respondent conceded that he "voluntarily and knowingly" executed the stipulation and that he understood the facts contained therein. The DEC presenter then queried respondent regarding the veracity of the statements contained in the stipulation:

> The DEC Presenter: And . . . is it fair to say you signed it because the statements contained in here, the stipulated facts contained in here, that they're true; is that correct?

[1] The record before us contains no evidence that the DEC presenter made a formal motion to dismiss the RPC 1.5(b) charge, pursuant to R. 1:20-5(d)(3).

> Respondent: I signed it because I'm stipulating to the facts.
>
> The DEC Presenter: To the truthfulness of the facts, correct?
>
> Respondent: I am – I signed it as a – as a stipulation of the facts to put on the record.
>
> [1T22.][2]

Following the colloquy regarding the stipulation, the DEC panel chair admitted the document into evidence. The DEC presenter offered no further exhibits or testimony during the ethics hearing. However, the DEC panel chair afforded the parties the opportunity to submit written closing statements.

In his July 5, 2022 brief to the DEC, respondent attempted to challenge the veracity of the facts contained in the stipulation. Specifically, respondent maintained that "as I was clear on the record," the facts contained in the stipulation "were not the facts as they occurred." Rather, respondent claimed that he had "stipulated to the facts as presented by [Hernandez,] and [as] written by the [DEC] [p]resenter, in order to expedite the resolution of this matter." Respondent noted that, although he "could" have "conduct[ed] a two or three-day hearing on this matter," such a hearing "would not [have been] judicious for

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[2] 1T refers to the transcript of the June 15, 2022 ethics hearing before the DEC. 2T refers to the transcript of the February 17, 2023 oral argument proceedings before us.

myself—I have current clients that rely on my time—nor would it [have been] for the [DEC].”

Additionally, respondent claimed that the stipulation provided only “one side of the incident” and that there were “facts missing.” Respondent then offered a series of “missing” facts, which he claimed did not contradict the facts contained in the executed stipulation. However, respondent’s “missing” facts stated, among other things, that he had “followed New York’s Rules and therefore, de facto, [I] acted ethically.” Respondent also contradicted the stipulation by claiming that he had “effected service of process” of Hernandez’s matter “in a timely manner” and that Hernandez’s former employer “never contested the service of process.” Respondent’s “missing” facts also contended, contrary to the executed stipulation, that respondent himself had proposed a $50,000 settlement offer to Hernandez’s former employer, who purportedly had rejected respondent’s offer.

Additionally, respondent criticized Hernandez for engaging in “forum shopping” by filing his ethics grievance in New Jersey, given that New York disciplinary authorities allegedly had rejected Hernandez’s purported ethics grievance in that jurisdiction as untimely. Respondent also blamed Hernandez for leaving “his case alone” for many years and stated that Hernandez “now

comes, all these years later, with no recourse other than to file a[n] [ethics] [g]rievance complaint where he— mistakenly— thought he would win money."

Respondent also stated that, although he had executed the stipulation admitted into evidence during the ethics hearing, he did not, "initially," stipulate to the facts of that document. Rather, he stated that, on June 14, 2022, at 2:43 p.m., he had sent the DEC presenter an e-mail, to her alternate e-mail address, containing a "marked-up" copy of the DEC presenter's original stipulation. Respondent complained that the DEC presenter did not "check" her alternate e-mail address, which forced the DEC presenter, on June 15, 2022, at 8:45 a.m., to request that respondent re-send his proposed "marked-up" stipulation. Respondent claimed that, less than an hour later, at 9:22 a.m., he re-sent the DEC presenter his proposed "marked-up" stipulation; however, respondent complained that the DEC presenter incorporated only "some of the changes [that he had] made to page 3[,] but not to the second page."[3] Respondent claimed that "[i]t was a lot of pressure that morning and could have been avoided if [the DEC presenter had] checked her e-mail."

[3] On June 15, 2022, during the morning of the ethics hearing, respondent never sent the DEC presenter a proposed stipulation which contained edits to pages one or two of the original stipulation. Rather, respondent sent the DEC presenter a proposed stipulation containing only minimal edits to page three of the DEC presenter's original stipulation.

Respondent attempted to urge, as mitigation, the passage of time since the underlying misconduct, claiming that "he should not be fully judged now for possible errors years ago." Respondent, however, stated that "even with all that I have written, I am ashamed at myself that a client can feel badly toward an officer of the court and steward of the law." Respondent then stated that he had "apologize[d]" to Hernandez and that he had "learned to better communicate with clients." Respondent further claimed that he will "no longer leave cases that have stalled or dismissed, but will inform clients in writing, and then follow up regarding next steps." Respondent then emphasized his commitment to serving as a volunteer paramedic and urged the DEC to recommend the imposition of a "warning or admonition."

In the DEC presenter's July 20, 2022 brief to the hearing panel, she urged the imposition of a reprimand based on the protracted length of respondent's misconduct, including his "ongoing misrepresentations" to Hernandez regarding the status of his case and the existence of a settlement offer. The DEC presenter also emphasized that respondent's misconduct was "amplified" by his failure to "promptly and fully respond to requests . . . for information" by the DEC investigator.

The DEC presenter urged, as aggravation, respondent's attempt to "negate" the facts contained in the executed stipulation, via his "contradictory

information" contained in his summation brief. In that vein, the DEC presenter expressed her view that respondent was "attempting to distance himself from the [s]tipulation and to manipulate [the disciplinary] proceedings to make it seem that he offered a 'no contest' resolution, whereby he neither admit[ted] nor denie[d] the allegations." The DEC presenter also emphasized the prejudicial effect of respondent's "extraneous and contradictory statements" in his summation brief, given that the DEC presenter had no opportunity to contest respondent's contrary allegations at a hearing. Consequently, the DEC presenter urged the DEC hearing panel to disregard respondent's proffered "missing" facts set forth in his summation brief.

The DEC presenter highlighted, as mitigation, respondent's lack of prior, final discipline and his relative inexperience at the time he had engaged in the misconduct. Nevertheless, the DEC presenter suggested that the hearing panel accord only modest weight to respondent's inexperience, given that the misconduct had concluded in 2018, when respondent had twelve years of experience at the bar. Finally, although the DEC presenter acknowledged respondent's attempt to express remorse, the DEC presenter stated that such remorse was outweighed by respondent's attempt to shift the blame of his misconduct to Hernandez, whom respondent accused of "forum shopping."

The DEC found that respondent violated RPC 1.1(a) and RPC 1.3 by failing to oppose the motion to dismiss Hernandez's wrongful termination complaint. Following the December 2011 dismissal of the complaint, without prejudice, respondent failed to refile the complaint and allowed the statute of limitations on Hernandez's claim to expire.

The DEC also found that respondent violated RPC 1.4(b) based on the significant difficulties Hernandez faced when attempting to communicate with respondent, who was often unavailable to reply to his inquiries. Additionally, respondent failed to inform Hernandez of the dismissal of his complaint and of the expiration of the statute of limitations on his claim. The DEC further found that respondent violated RPC 1.4(c) by misrepresenting to Hernandez, in May 2015, that his employer had offered a $50,000 settlement, when no such offer had been made. Based on that false information, Hernandez informed respondent that he had declined the settlement offer because he "deserved more money" and "wanted his job and seniority back." Hernandez's rejection of the fictitious settlement offer prompted respondent to advise Hernandez that he would continue to negotiate.

The DEC further found that respondent violated RPC 8.4(c) by misrepresenting to Hernandez that his complaint remained ongoing, despite the fact that his matter had been dismissed, in December 2011. In 2018, after

Hernandez independently discovered the dismissal of his complaint, respondent compounded his deception by falsely claiming that Hernandez could still "file papers with the [c]ourt," despite the fact that the statute of limitations on his claim had expired.

Finally, the DEC found that respondent violated RPC 8.1(b) by failing to submit a timely reply to Hernandez's ethics grievance. The DEC found that respondent provided a "brief" and "vague" reply to the ethics grievance, without any supporting documentation, only after the DEC investigator had made three specific requests requiring respondent to submit his reply.

The DEC did not discuss whether respondent violated RPC 1.5(b), as alleged in the complaint, by failing to set forth, in writing, the basis or rate of his legal fee to Hernandez.

In recommending the imposition of a reprimand, the DEC stressed, as aggravation, respondent's lack of remorse, lack of candor, and lack of cooperation with disciplinary authorities. Specifically, the DEC described respondent's summation brief as both "concerning and disappointing at the same time." The DEC stated that, although respondent had "admitted his wrongdoing under oath on the day of the hearing," in his summation brief, respondent had attempted to set forth contradictory facts to demonstrate, in his view, "what actually occurred," without affording the DEC presenter the opportunity to

cross-examine respondent regarding his version of events. The DEC stated that respondent's lack of remorse in his summation brief, coupled with his "excuses for his actions," was a "significant factor" in its recommendation for a reprimand. Nevertheless, the DEC weighed, in mitigation, respondent's lack of prior, final discipline, his "[r]elative youth and inexperience," and the fact that his misconduct was not for personal gain.

At oral argument before us, the DEC presenter again urged the imposition of a reprimand based on respondent's repeated acts of dishonesty towards Hernandez regarding the status of his matter and the existence of his former employer's purported $50,000 settlement offer. The DEC presenter also emphasized that respondent's misconduct spanned approximately seven years, from 2011 until 2018, when Hernandez independently discovered that his case had been dismissed.

Additionally, the DEC presenter urged, as aggravation, respondent's improper attempts to contradict the stipulated facts by claiming, in his summation brief to the DEC hearing panel, that he had acted ethically. Finally, the DEC presenter argued that respondent failed to accept any responsibility for his behavior towards Hernandez, whom respondent blamed for not acting diligently, and who, for years, continued to believe that his case was worth at least $50,000 based on respondent's prolonged course of dishonesty.

In his November 29, 2022 letter to us, respondent stated that he "st[oo]d by" his statements made during the ethics hearing and in his July 5, 2022 summation brief to the DEC hearing panel.

At the outset of oral argument before us, respondent claimed that he "st[oo]d by the stipulation that [he had] certified to" and that his summation brief to the DEC hearing panel merely "gave color and flesh to all of the facts." However, minutes later, respondent claimed, contrary to the stipulated facts, that he had informed Hernandez, during a 2013 meeting in respondent's office, and in a separate letter to Hernandez, that his matter had, in fact, been dismissed. Additionally, respondent conceded that his purported 2013 discussion with Hernandez did "not square" with paragraph 12 of the parties' stipulation, which stated, in part, that, during a May 2015 telephone conversation, respondent had informed Hernandez that his former employer had offered to settle the matter for $50,000 when, in fact, no such settlement offer had been made.

Also during oral argument, respondent alleged that he had informed Hernandez, at the outset of his matter, that his case was worth $50,000. However, respondent claimed, contrary to the stipulation, that he and Hernandez later "realized there was no case." Thereafter, when asked whether respondent ever informed Hernandez that his employer had made a $50,000 settlement offer, respondent claimed, contrary to the stipulation, "No. We dis -- no. We

discussed settling the matter [for] $50,000. And that was, like, that was what I presented to [Hernandez]." Later, when asked about the existence of Hernandez's former employer's purported settlement offer, the following colloquy ensued:

> Respondent: There was no – there was no offer – well, no. The only offer I ever received from them was about $5,000 when the litigation was still pending.
>
> Member Menaker: So that part of your stipulation was untrue?
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> Respondent: It was . . . presented poorly. Yes. If it meant – if it meant –
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> Member Menaker: Does that mean it was untrue?
>
> Respondent: I could say that it – it was presented poorly.
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> Member Menaker: I'm not giving you the option to say that it's either true, as you certified in your stipulation, or it was untrue[,] contrary to your certifications. Which would you choose?
>
> Respondent: I would choose in – I would choose or [sic] rely on – on the stipulation as – as I signed it. I – I already con – considered that as – as the facts. So whatever the stipulation says I'm – I'm – I'm held to.
>
> Member Menaker: And if that's true that was a false statement, was it not?
>
> Respondent: Then it—then it could have been a false statement. That's—that's—it could have been yes.

> Member Menaker: And you communicated that untruth to your client?
>
> Respondent: But I – yeah. I commuted (sic) it. Yes, but not – not intentionally to – to be a false statement. It wasn't intentional to be a false statement.
>
> Member Menaker: You communicated that false statement to your client, what, some two years after the lawsuit was dismissed?
>
> Respondent: That's what the stipulation of facts is. Yes.
>
> [2T31-2T32.]

Finally, respondent argued that "a discipline warning would be appropriate" for his actions, based on his view that that this matter stemmed from a "misunderstanding" with Hernandez, with whom he "emphathize[d]."

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

Specifically, respondent violated RPC 1.1(a) and RPC 1.3 by failing to file timely proof of service in connection with Hernandez's Kings County, New York, wrongful termination lawsuit. Based on respondent's failure to file the timely proof of service, Hernandez's former employer filed a motion to dismiss Hernandez's lawsuit, which motion respondent failed to oppose. Thereafter, the Supreme Court of New York, Kings County, issued a December 2011 order dismissing Hernandez's complaint, without prejudice, based on respondent's

failure to file the timely proof of service and his failure to oppose the motion. Following the dismissal of Hernandez's complaint, respondent failed to attempt to re-file Hernandez's lawsuit.

Additionally, respondent violated RPC 8.4(c) by failing to advise Hernandez of the December 2011 dismissal of his lawsuit and by repeatedly misrepresenting to Hernandez that his lawsuit remained pending. Moreover, in May 2015, three-and-a-half years after the dismissal of Hernandez's complaint, respondent lied to Hernandez by claiming that his employer had offered a $50,000 settlement, when no such offer had been made. Based on respondent's misrepresentations, Hernandez advised respondent to decline the purported settlement offer because he "deserved more money" and "wanted his job and seniority back," which prompted respondent to compound his deception by claiming to Hernandez that he would "continue to negotiate." In 2018, when Hernandez independently discovered that his complaint had been dismissed, respondent again engaged in deception by falsely claiming to Hernandez that he could still "file papers with the court," even though the six-year statute of limitations on his claim had expired. Respondent's persistent course of dishonesty regarding the pendency of Hernandez's dismissed lawsuit and the existence of the settlement offer deprived Hernandez of the opportunity to make informed decisions regarding his matter, in violation of RPC 1.4(c).

Similarly, respondent violated RPC 1.4(b) by failing to inform Hernandez of the significant developments of his matter, including the December 2011 dismissal of his complaint and the expiration of the statute of limitations on his claim. Additionally, throughout the representation, respondent failed to promptly reply to Hernandez's reasonable requests for information regarding his matter. Specifically, respondent was frequently unavailable to communicate with Hernandez and would often take "weeks or even months" to reply to Hernandez. Making matters worse, when respondent would reply, he would "always" advise Hernandez that he was "trying to get a court date, or was trying to reach a settlement," even after the December 2011 dismissal of Hernandez's complaint.

Finally, respondent violated RPC 8.1(b) by failing to reply to Hernandez's ethics grievance until after the DEC had made three specific requests requiring respondent to reply. Respondent's belated reply, however, was "brief," "vague," and contained no supporting documents. Respondent also failed to "fully" reply to the DEC's requests for "supporting documents."

Nevertheless, we determine to dismiss the charge that respondent violated RPC 1.5(b) by failing to set forth the basis or rate of his legal fee in writing, as alleged in the formal ethics complaint. The stipulation set forth, as fact, that respondent and Hernandez executed a written fee agreement concerning the

representation. Consequently, we determine to dismiss the RPC 1.5(b) charge.

In sum, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.4(c); RPC 8.1(b); and RPC 8.4(c). We determine to dismiss the charge that respondent violated RPC 1.5(b). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Generally, misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand or censure may be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Rudnick, __ N.J. __ (2022), 2022 N.J. LEXIS 258 (2022) (reprimand for attorney who allowed his client's lawsuit to be dismissed for his failure to respond to interrogatories; thereafter, the attorney failed to attempt to reinstate his client's matter; the attorney also failed to reply to his client's inquiries regarding the case and misrepresented to his client that the entire case had been dismissed for reasons other than the attorney's failure to respond to interrogatories; the attorney's misconduct occurred during a one-year timeframe; in mitigation, the attorney had no prior discipline, accepted responsibility for his misconduct, and fully refunded the client's fee, on his own accord); In re Kalma, 249 N.J. 538 (2022) (censure for attorney who represented a client in a civil matter arising out of the client's employment with Monmouth

County; the attorney failed to file the complaint prior to the expiration of the applicable statute of limitations; thereafter, the attorney repeatedly and falsely claimed that he had timely filed the civil complaint; the attorney even sent his client a false letter, purporting to show that the matter was scheduled for a court date; when the client showed up for court, the attorney claimed that he had been "sent home" and advised his client to do the same because there was a "two-hour window wait time[;]" to further his deception, the attorney told his client that the court was "backed up" and reassured his client that he would "see the case through to the end[;]" the client eventually learned, from court staff, that the complaint never had been filed; when the client confronted the attorney with that discovery, the attorney claimed that "it was all part of a cover up[;]" we weighed, in aggravation, the default status of the matter, the significant harm to the client, who lost the ability to pursue a claim, and the lengths to which the attorney went to conceal his misconduct; no prior discipline).

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, the presence of additional violations, and the attorney's disciplinary history. <u>See, e.g.</u>, <u>In the Matter of Mark A. Molz</u>, DRB 22-102 (September 26, 2022) (admonition for attorney whose failure to file a personal

injury complaint allowed the applicable statute of limitations for his clients' cause of action to expire; approximately twenty months after the clients had approved the proposed complaint for filing, the attorney failed to reply to the clients' e-mail, which outlined the clients' unsuccessful efforts, spanning three months, to obtain an update on their case; the record lacked any proof that the attorney had advised his clients that he had failed to file their lawsuit prior to the expiration of the statute of limitations; in mitigation, the attorney had an otherwise unblemished thirty-five year career); In re Burro, 235 N.J. 413 (2018) (reprimand for attorney who grossly neglected an estate matter for ten years and failed to file New Jersey Inheritance Tax returns, resulting in the accrual of $40,000 in interest and the imposition of a lien on property belonging to the executrix; the attorney also failed to keep the client reasonably informed about events in the case (RPC 1.4(b)); to return the client file upon termination of the representation (RPC 1.16(d)); and to cooperate with the ethics investigation (RPC 8.1(b)); in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand (now, an admonition); in mitigation, the attorney expressed remorse and had suffered a stroke that forced him to cease practicing law).

Finally, admonitions typically are imposed for failure to cooperate with disciplinary authorities if the attorney does not have an ethics history. See, e.g.,

In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the DEC investigator regarding his representation of a client in three criminal matters, in violation of RPC 8.1(b)); In re Gleason, 220 N.J. 350 (2015) (attorney failed to answer the formal ethics complaint and ignored the DEC investigator's multiple attempts to obtain a copy of his client's file, in violation of RPC 8.1(b); the attorney also failed to inform his client that a planning board had dismissed his land use application, in violation of RPC 1.4(b)).

Here, like the reprimanded attorney in Rudnick, who allowed his client's lawsuit to be dismissed for his failure to reply to interrogatories, respondent allowed Hernandez's wrongful termination lawsuit to be dismissed, without prejudice, for his failure to timely file a proof of service and for his failure to oppose his adversary's motion to dismiss. Also, like Rudnick, who failed to attempt to reinstate his client's lawsuit, respondent altogether failed, for several years, to attempt to reinstate Hernandez's lawsuit.

Unlike Rudnick, however, who informed his client of the dismissal, but who had misrepresented the basis on which the lawsuit was dismissed, respondent altogether failed to advise Hernandez of the December 2011 dismissal of his lawsuit and continued, for years, to misrepresent to Hernandez that his lawsuit had remained pending. Specifically, in May 2015, respondent

lied to Hernandez by informing him of a non-existent $50,000 settlement offer purportedly made by Hernandez's former employer. Hernandez, however, rejected that non-existent offer, prompting respondent to further misrepresent to Hernandez that he would "continue to negotiate." In 2018, when Hernandez independently discovered that his complaint had been dismissed, Hernandez confronted respondent, who again refused to tell Hernandez the truth. Rather, respondent falsely advised Hernandez that he could still "file papers with the court[,]" despite the fact that the applicable statute of limitations on his claim had expired.

Moreover, like the attorney in Rudnick, who failed to reply to his client's inquiries regarding the status of his case, respondent failed, throughout the protracted representation, to reply to Hernandez's inquiries, often taking "weeks or even months" to provide vague or inaccurate updates. Specifically, respondent stipulated that he "always" would advise Hernandez that he was "trying to get a court date, or was trying to reach a settlement[,]" even after the December 2011 dismissal of Hernandez's lawsuit.

The totality of respondent's misconduct, however, is far more egregious than that of the attorney in Rudnick, whose misconduct was confined to a one-year period and who accepted responsibility for his actions. By contrast, respondent's misconduct persisted for approximately seven years, between 2011

and 2018, after which respondent not only failed to cooperate with the DEC's investigation of Hernandez's ethics grievance, but also failed to demonstrate any remorse for his actions.

Specifically, although respondent admitted, under oath during the ethics hearing, that he had "voluntarily and knowingly" executed the stipulation and understood the facts contained therein, in his summation brief to the DEC, respondent alleged that the facts contained in the stipulation "were not the facts as they occurred." Rather, respondent alleged that he had "stipulated to the facts" merely to "expedite the resolution of this matter," given that, in his view, an ethics hearing "would not [have been] judicious for myself—I have current clients that rely on my time—nor would it [have been] for the [DEC]." Respondent also maintained his unsupported view that he had "followed New York's Rules and therefore, de facto, [I] acted ethically."

Additionally, although respondent stated, in his summation brief, that he was "ashamed" at himself for allowing a client to "feel badly toward an officer of the court," respondent simultaneously and baselessly accused Hernandez of "forum shopping" for electing to file his ethics grievance in New Jersey, following the alleged dismissal of Hernandez's purportedly untimely filed New York ethics grievance. Respondent also attacked Hernandez for "com[ing], all

these years later, with no recourse other than to file [a]n [ethics] [g]rievance complaint where he— mistakenly— thought he would win money."

Moreover, respondent's e-mail exchanges with the DEC presenter and panel chair, in the days preceding the ethics hearing, further demonstrate his penchant for deception. Specifically, on the evening before the ethics hearing, respondent represented to the DEC panel chair and presenter, via e-mail, that the stipulation had been "signed and may be read on the record tomorrow," despite the fact that the DEC presenter had neither signed nor reviewed respondent's proposed version of the stipulation. The next morning, hours before the ethics hearing, the DEC presenter requested that respondent provide his version of the stipulation. Respondent then sent the DEC presenter a reply e-mail containing his version of the stipulation, which contained only minimal edits to the third and final page of the DEC presenter's original proposed stipulation. The DEC presenter accepted respondent's minimal edits and, thereafter, the parties executed the stipulation. Nevertheless, in his summation brief to the DEC, respondent complained that the DEC presenter only had incorporated "some of the changes [that he had] made to page 3 but not to the second page" of his proposed stipulation that he had sent to the DEC presenter hours before the ethics hearing. Respondent, however, omitted from his summation brief the fact that the version of the stipulation that he had sent to

the DEC presenter on the morning of the ethics hearing contained no such suggested edits to the second page of the original stipulation.

Based on past precedent, we also find, as a major aggravating factor, the fact that respondent's prolonged and inexcusable neglect of Hernandez's matter permanently extinguished his potential claim against his former employer. See In re Heyburn, __ N.J. __ (2022), 2022 N.J. LEXIS 1112 (2022) (according significant aggravating weight to the attorney's inexplicable failure to reinstate his client's complaint following its administrative dismissal, which failure permanently extinguished his client's potential cause of action; compounding matters, the attorney continued, for years, to lie to his client that his matter was proceeding apace). Like the attorney in Heyburn, between December 2011 and 2018, respondent had numerous opportunities to come forward and admit the truth to Hernandez that his matter had been dismissed due to his inaction. Instead, respondent continued, for years, to engage in obfuscation to Hernandez, who believed, based on respondent's lies, that his matter remained pending and was worth at least $50,000.

Finally, we accord significant aggravating weight to respondent's conduct during oral argument before us, where he continued to engage in the same deceptive and worrisome behavior that he had exhibited during the proceedings below. Specifically, when confronted with the information contained in his

stipulation, especially regarding his misrepresentations to Hernandez, respondent was dishonest towards us until he was forced to take a position. Indeed, respondent attempted to mislead us until he was forced, through pointed questioning, to concede the truth—that he had concocted a bogus $50,000 settlement offer and presented it to Hernandez despite knowing that, years earlier, Hernandez's lawsuit had been dismissed due to respondent's lack of diligence. In our view, respondent's gamesmanship with the stipulated facts throughout this process clearly demonstrates his disdain for the attorney disciplinary system designed to protect the public.

In conclusion, considering respondent's prolonged course of deception towards Hernandez and the DEC, his improper attempts, throughout the disciplinary proceedings, to contradict the facts contained in the executed stipulation, and his utter lack of remorse for the harm that he had caused to Hernandez, whose claim against his former employer was permanently extinguished due to respondent's inaction, we determine that a three-month suspension is the appropriate quantum of discipline necessary to protect the public and to preserve confidence in the bar.

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 David M. Schlachter
Docket No. DRB 22-192

Argued: February 16, 2023

Decided: March 28, 2023

Disposition: Three-Month Suspension

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

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