Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-069
District Docket No. VIII-2021-0015E

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

Decision

Decided: August 11, 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 1.1(a) (committing gross neglect); 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 (b) (failing to set forth in

writing the basis or rate of the legal fee); 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] RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to reiterate our previous recommendation to the Court – that respondent be disbarred. We also recommend the imposition of a condition.

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).

[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 and the RPC 8.4(d) charge.

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 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 more than 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 his failure 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).

[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.

Effective July 6, 2021, the Court temporarily suspended respondent for his failure 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, 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 the additional unsatisfied fee arbitration obligations.

On February 25, 2022, the Court again temporarily suspended respondent for his failure 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).

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 (May 26, 2022) (Allen VI). In that matter, we found that respondent violated RPC 1.1(a); 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 (September 16, 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 (October 7, 2022) (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, again, that respondent failed 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 represented to the Court that, if given the opportunity, he was going to reform his conduct. Our decision in Allen VIII was transmitted to the Court on October 7, 2022.

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.

At our January 19, 2023 session, we considered respondent's tenth default and, for the fifth time, recommended to the Court that respondent be disbarred. In the Matter of John Charles Allen, DRB 22-190 (March 23, 2023) (Allen IX). In that matter, we found 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 again found that respondent's misconduct was identical to the misconduct that we already had found in multiple matters and demonstrated, again, that respondent failed to acknowledge or account for his wrongdoing and continued his gross exploitation of his client's trust in him. Further, we emphasized the damage

respondent's misconduct caused his client who lost the ability to pursue his claims. Our decision in Allen IX was transmitted to the Court on March 23, 2023.

Effective February 23, 2023, the Court temporarily suspended respondent for his failure to comply with an additional fee arbitration award. In the Matter of John Charles Allen, DRB 22-196 (November 22, 2022); In re Allen, __ N.J. __ (2023).

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

Turning to the instant matter, service of process was proper. On August 23, 2022, the DEC sent a copy of the complaint, by certified and regular mail, to respondent's home address of record, given his suspended status. The certified mail was not claimed. The regular mail was not returned to the DEC.

By letter dated September 29, 2022, sent via certified and regular mail to respondent's home address, the DEC informed informing respondent that, unless he filed a verified answer to the complaint within five days 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 charge a willful violation of RPC 8.1(b) and RPC 8.4(d). According to the undated certified mail receipt, the certified mail was delivered,

although the signature is illegible. The letter sent by regular mail was not returned to the DEC.

As of November 7, 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 March 24, 2023, Acting Chief Counsel to the Board sent a letter to respondent's home address, by certified and regular mail, and a third copy via an e-mail address respondent regularly has used to correspond with the Office of Board Counsel (the OBC), informing him that the matter was scheduled before us on May 24, 2023, and that any motion to vacate the default must be filed by April 17, 2023. Delivery to respondent's e-mail address was complete. The certified mail was returned to the OBC as unclaimed. As of the date of this decision, the regular mail had not been returned.

Finally, on April 3, 2023, the OBC 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 May 24, 2023. The notice informed respondent that, unless he filed a motion to vacate by April 17, 2023, his failure to answer the formal ethics complaint 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 December 4, 2020, Edward T. Turner, the grievant, retained respondent to represent him in defense of a temporary restraining order that his wife had filed against him (the TRO matter) and to initiate a divorce proceeding (the divorce proceeding). According to the parties' written fee agreement, Turner agreed to pay a fixed fee of $2,000 for respondent's representation in the TRO matter, and a fixed fee of $15,000 for the divorce proceeding, plus costs. In relevant part, the agreement provided:

> You have given/will give the Law Offices of John Charles Allen, LLC and John Charles Allen, Esquire, a minimum fee retainer in the amount **$2,000.00** fixed fee for the Temporary restraining Order matter and **$15,000.0** [sic] for the Divorce matter for all work to be done following thew [sic] entry of this agreement **PLUS ALL COSTS, DISBURSEMENTS AND FILING FEES** as an unrestricted advance, i.e., I shall have the immediate use of these funds and shall represent they represent the fixed fees for each matter.
>
> **FEES**
>
> **Domestic Violence/Temporary Restraining Order Matters $2,000**
>
> **Divorce Matter: $15,000**
>
> **Plus all costs, disbursements and Filing Fees.**

[ExA (emphasis in original).][4]

The agreement described the work to be performed by respondent to include "conferences, telephone calls, pretrial discovery, trial preparation, document drafting, correspondence and pleading and other legal documents, legal research and court time."

The agreement recited that respondent had offered Turner the option of paying an hourly rate but that Turner instead had opted to pay the agreed upon fixed fees for respondent's representation in both matters. Specifically, the agreement provided:

> By signing below you ACKNOWLEDGE THAT I OFFERED YOU THE OPTION OF PAYING FOR MY SERVICES ON AN HOURLY BASIS AT THE BELOW RATES, HOWEVER, YOU OPTED FOR THE FIXED FEES SET FORTH ABOVE. _____:
>
> **Attorney time …… $375 per hour**
>
> [ExA (emphasis in original).]

Although Turner had agreed to pay, and respondent had agreed to accept, a fixed fee in both matters, the agreement stated that these fees were "estimates" and that Turner would be required to pay for additional time that was not contemplated by the fixed fee:

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[4] "Ex" refers to the exhibits attached to the August 15, 2022 formal ethics complaint.

> Any figures I quote for our total cost of my services are merely estimates and nothing more. Your adversary, the opposing attorney, or others may engage in activities beyond our control and/or information, facts, changes in the law, or other information may come to light after our entry into this agreement that require me or my office to expend time that was not originally contemplated. Costs are as incurred. It is impossible to determine how much time or expense will be needed.
>
> [ExA.]

Pursuant to the terms of the agreement, Turner also was responsible for paying out-of-pocket expenses including, but not limited to, transcript expenses. Respondent agreed to provide Turner with monthly billing statements that "will advise you of the services that have been performed and the disbursements incurred on your behalf."

On December 4, 2020, Turner paid respondent, via personal check, in the amount of $15,000.[5]

Respondent attended the court hearings in the TRO matter and, ultimately, a final restraining order was entered against Turner. Thereafter, his wife's attorney filed a motion for the award of attorney's fees. Despite having agreed to accept a $2,000 fixed fee for his representation in the TRO matter, respondent

[5] The record does not indicate if or when Turner paid respondent the $2,000 fixed fee for his representation in the TRO matter.

charged Turner an additional $500 to object to the fee application, which Turner paid. The terms of this subsequent agreement were not reduced to writing. Respondent, however, failed to oppose the motion for attorney's fees and the matter proceeded by way of default.[6]

Subsequently, an amended TRO was filed. Respondent failed to file an opposition to the amended TRO, which also proceeded as a default.

Thereafter, respondent agreed to file an appeal from the final restraining order entered against Turner, in exchange for an additional fee of $4,500, which Tuner paid. According to Turner, this additional fee included $700 for the costs associated with ordering transcripts from the TRO hearing, which were required to perfect the appeal. The terms of this subsequent agreement were not memorialized in writing.

Respondent filed a notice of appeal on Turner's behalf, however, on May 20, 2021, the appeal was dismissed. When Turner contacted the case manager with the Superior Court of New Jersey, Appellate Division, he was informed that the appeal had been dismissed due to respondent's failure to pay for the

[6] The record consisted of the complaint and the parties' fee agreement. It did not include additional documents or information regarding the TRO proceeding; further, no additional information was publicly available on eCourts. Although the complaint was, overall, scant on detail, it provided sufficient facts to allow us to determine whether respondent's conduct violated the Rules of Professional Conduct, as alleged in the complaint.

transcripts. Respondent failed to provide Turner with any bills or invoices for the appellate work; nor did respondent refund to Turner the $4,500 fee.

During the course of the representation, respondent failed to communicate with Turner, despite Turner's repeated attempts to contact him.

On December 4, 2021, one year after having retained respondent, Turner informed respondent via text message to put the divorce filing "on hold." A few weeks later, on December 29, 2021, Turner notified respondent that he no longer needed respondent's legal services for the divorce proceeding. In reply, respondent promised to refund the $15,000 prepaid fee, minus compensation for any work performed by his office.

Respondent failed to refund to Turner any portion of the $15,000 fee. Further, respondent was uncooperative and unresponsive in facilitating the transfer of Turner's file to his newly-retained counsel.

Respondent failed to submit a reply to the grievance, despite the DEC investigator's repeated attempts to contact him and having been granted more than one extension.

Based on the above facts, the complaint alleged that respondent failed to diligently represent Turner in the TRO matter or the subsequent appeal, in violation of RPC 1.1(a) and RPC 1.3. Specifically, on at least two occasions, respondent failed to submit documentation to the court resulting in the entry of

default, despite his promises to Turner that he would file opposition briefs. Further, the DEC alleged respondent had accepted an additional fee to pursue an appeal of the final restraining order, yet, allowed the appeal to be dismissed for failure to request and pay for the required transcripts. Moreover, the DEC alleged that "[r]espondent failed to communicate during the TRO Matter, the FRO Appeal and the Divorce Matter," and that Turner had "made numerous attempts to obtain information from [r]espondent regarding the status of the matter," in violation of RPC 1.4(b).

The complaint also alleged that respondent violated RPC 1.5(b) by failing to memorialize, in writing, his subsequent agreement to represent Turner in his appeal of the final restraining order, in exchange for an additional fee of $4,500. The complaint also alleged that the parties' written fee agreement contained conflicting language, "namely fixed fee versus hourly" and that, despite having agreed to accept a fixed fee for the representation in the TRO matter, respondent charged Turner an additional $500 to oppose the fee application.

The complaint further alleged that respondent violated RPC 1.16(d) by both failing to provide Turner's file to his new attorney and failing to refund the unearned fee.

The complaint alleged that respondent failed to submit a written reply to the grievance, "despite the fact that the Investigator reached out to him

numerous times and provided more than one extension," in violation of RPC 8.1(b). Moreover, the DEC amended the complaint, on notice to respondent, to include a second violation of RPC 8.1(b) and a charge pursuant to RPC 8.4(d) for his failure to file an answer the complaint.

Finally, the complaint charged respondent with having violated RPC 8.4(c) by accepting a fee – inclusive of costs for ordering the hearing transcripts – to file an appeal on Turner's behalf, and then failing to use those funds to pay for the transcripts resulting in the dismissal of Turner's appeal.

Following our review of the record, we find that the facts recited in the complaint support most, but not all, of 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).

Notwithstanding that Rule, we must determine whether each charge in the complaint is supported by sufficient facts to determine that unethical conduct has occurred. In re Pena, 164 N.J. 222 (2000) (describing the Court's "obligation in an attorney disciplinary proceeding is to conduct an independent review of the record, R. 1:20-16(c), and determine whether the ethic[s] violations found by us have been established by clear and convincing evidence"); see also R. 1:20-4(b) (entitled "Contents of Complaint" and requiring, among other notice

pleading requirements, that a complaint "shall set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct"). We will, therefore, decline to find a violation of a Rule of Professional Conduct where the admitted facts within the certified record do not constitute clear and convincing evidence that the Rule was violated. See, e.g., In the Matter of Philip J. Morin, III, DRB 21-020 (September 9, 2021) at 26-27 (declining to find a charged RPC 3.3(a)(4) violation based upon insufficient evidence in the record), so ordered, 250 N.J. 184 (2022); In the Matter of Christopher West Hyde, DRB 16-385 (June 1, 2017) at 7 (declining to find a charged RPC 1.5(b) violation due to the absence of factual support in the record), so ordered, 231 N.J. 195 (2017); In the Matter of Brian R. Decker, DRB 16-331 (May 12, 2017) at 5 (declining to find a charged RPC 8.4(d) violation due to the absence of factual support in the record), so ordered, 231 N.J. 132 (2017).

Here, we conclude that the facts recited in the DEC's complaint support the allegations that respondent violated RPC 1.1(a); RPC 1.3 RPC 1.4(b); RPC 1.16(d); and RPC 8.1(b) (two instances). We determine, however, that the evidence does not clearly and convincingly support violations of RPC 1.5(b), RPC 8.4(c), or RPC 8.4(d).

Specifically, the record clearly and convincingly demonstrates that respondent committed gross neglect and lacked diligence, in violation of RPC

1.1(a) and RPC 1.3, by accepting a fee to represent Turner in the TRO matter, and then failing to oppose or otherwise respond to the entry of an amended TRO, resulting in the order being entered as a default. Further, respondent accepted an additional fee of $500 from Turner in the TRO matter to file an opposition to his adversary's motion for an award of attorney's fees; he then failed to do so, resulting in the motion proceeding without opposition. Thereafter, respondent agreed to file an appeal of the final restraining order, in exchange for an additional payment of $4,500, which Turner advanced. Although this additional fee was inclusive of costs associated with ordering the transcripts required for the appeal, respondent failed to pay for the transcripts resulting in the dismissal of his client's appeal. Further, respondent failed to inform Turner that his appeal had been dismissed. Had respondent acted with diligence, he could have opposed, or otherwise responded to, the amended TRO and the motion for attorney's fees; instead, he allowed both to proceed as defaults, to the detriment of his client. Respondent then allowed Turner's appeal to be dismissed by failing to pay for the hearing transcripts, despite having been paid to do so. Respondent's gross neglect deprived his client of his ability to pursue his appeal.

Respondent also failed to communicate with Turner, despite Turner's repeated attempts to obtain information from him. Further, respondent failed to inform Turner that his appeal had been dismissed as a result of his failure to pay

the costs associated with the transcripts. Respondent, thus, violated RPC 1.4(b) which requires a lawyer to "keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information."

RPC 1.16(d) provides that, upon termination of representation, "a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as … surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned or incurred." Respondent violated this Rule in two respects. First, respondent failed to provide Turner's file to his new attorney, despite Turner's request that he do so. Second, respondent failed to refund to Turner the unearned portion of his fee in the divorce matter and the appeal.

Moreover, the record contains clear and convincing evidence that respondent violated RPC 8.1(b), which requires an attorney to respond to a lawful demand for information from a disciplinary authority," in two respects. First, he failed to cooperate with the DEC investigator's requests that he submit a reply to the grievance. Next, respondent failed to file an answer to the formal ethics complaint and allowed this matter to proceed as a default. R. 1:20-4(f). Given respondent's extensive disciplinary history and prior interactions with the disciplinary system, he is acutely aware of his obligation to cooperate with an ethics investigation and to file an answer to the complaint. We, thus, conclude

that his decision to not cooperate with the DEC's investigation and his decision to not file an answer in this case was knowing and intentional.

We determine, however, that there is insufficient evidence to establish respondent's violation of RPC 1.5(b), which requires an attorney, who has not regularly represented a client, to communicate the basis or rate of their legal fee in writing. The DEC asserted that respondent violated this Rule when, after agreeing to represent Turner in his appeal from the final restraining order in exchange for an additional fee of $4,500, he failed to memorialize that agreement in writing. However, RPC 1.5(b) only requires a written agreement when an attorney has not "regularly represented the client" and, on this record, there is no clear and convincing evidence that respondent had not regularly represented Turner. Indeed, to the contrary, respondent and Turner had a pre-existing relationship that was memorialized by their December 4, 2020 fee agreement, which agreement set forth respondent's hourly rate as $375.[7]

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[7] R. 5:3-5(a) provides, in relevant part, that "[e]xcept where no fee is to be charged, every agreement for legal services to be rendered in a civil family action shall be in writing signed by the attorney and the client, and an executed copy of the agreement shall be delivered to the client." Here, respondent was providing legal representation in connection with a civil family action (the domestic relations restraining order and the divorce proceeding) and, thus, a written fee agreement comporting with the requirements of the Court Rule was mandated. The complaint did not allege that respondent's initial written fee agreement or subsequent oral agreement to represent Turner on appeal, failed to comport with the requirements of this Court Rule; only that respondent's subsequent oral agreement to represent Turner in his

(footnote cont'd on next page)

Further, although the complaint alleged that respondent also violated RPC 1.5 (no subsection) by charging Turner $500 to oppose the attorney fee application, despite having agreed to accept a fixed fee, it did not specifically indicate how respondent's actions in this respect violated the Rule. It is possible the complaint intended to charge respondent pursuant to subsection (a) for charging an unreasonable fee;[8] it also is possible that the complaint intended to charge respondent pursuant to subsection (b) for failing to memorialize in writing this subsequent agreement with Turner. Due to the lack of clarity, R. 1:20-4 precludes us from making a finding in this context.

Similarly, we find that there is insufficient evidence to prove, by clear and convincing evidence, that respondent violated RPC 8.4(c), which prohibits an attorney from engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation." The complaint charged respondent with having violated this Rule by accepting a fee to file the appeal of the final restraining order – a fee

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appeal failed to comply with the writing requirement contained in RPC 1.5(b). Because the complaint did not charge respondent in this respect, we are unable to find a violation of the Rule on this basis.

[8] We previously had determined that respondent's practice of accepting a fee for legal services that he failed to perform was per se unreasonable and violative of RPC 1.5(a). See Allen VI, at 36. Here, respondent accepted three separate fees from Turner ($15,000, $500 and $4,500) and failed to provide the promised legal services for which he was paid. However, the complaint did not charge respondent with having violated RPC 1.5(a) in this respect and, thus, we are unable to find a violation of the Rule on this basis. We did, however, consider this uncharged conduct in aggravation.

that included $700 to cover the costs associated with the hearing transcripts – and then allowing the appeal to be dismissed for failure to pay for the transcripts.

Although respondent committed misconduct by collecting a fee to file an appeal, inclusive of costs, and then failing to do so, his misconduct is fully addressed by his violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b). Further, a violation of RPC 8.4(c) requires intent. See In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011). Based on the record before us, there is insufficient evidence that respondent possessed the requisite intent to deceive, such as intentionally misrepresenting to Turner the status of his appeal, or falsely stating that he paid for the transcripts when, in fact, he had not. In the absence of such evidence, we determine to dismiss this charge. Cf. Allen VI, at 33 (we concluded that respondent had violated RPC 8.4(c) through his repeated failures to inform his client about the dismissal of her case, and adverse motions by defense counsel, instead telling his client her case was "okay" after it had been dismissed with prejudice; and for requiring an additional $2,000 fee for deposition preparation when, in fact no depositions had been scheduled or pending); Allen VIII, at 33 (we determined that respondent had violated RPC 8.4(c) by misrepresenting to one client that he would handle a child custody motion for a fixed fee of $2,500 plus costs, but subsequently provided the client with a retainer agreement that stated that the $2,500 only was a retainer fee and that

she would be billed at his hourly rate; more than one year later, when the client requested a refund, respondent demanded additional fees despite having performed no work on her behalf).

Finally, 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 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.16(d); and RPC 8.1(b) (two instances). We determine to dismiss the charges pursuant to RPC 1.5(b), RPC 8.4(c), and RPC 8.4(d). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

On March 23, 2023, we transmitted to the Court our decision in Allen IX, respondent's tenth default at the time and, for the fifth time, recommended respondent's disbarment. There is no reason for us to deviate from our earlier findings, which began in Allen V, continued through Allen IX, and apply in the instant matter.

This matter represents yet another victim in respondent's clearly established exploitive scheme to take client money, perform little to no work, and then refuse to refund the unearned fee. Turner represents yet another client who will likely never recover the fees he paid respondent to complete, essentially, little to no work on a legal matter that was important to him.

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

However, as we have repeatedly found in Allen V through Allen IX, the aggravating factors are extensive and alarming.

We, again, accord significant weight to respondent's substantial disciplinary history, outlined above and discussed at length in Allen V through Allen IX, and its similarity to the instant default matter. Respondent's disciplinary record consists of ten suspensions (temporary and disciplinary) in less than six years. 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 IX, respondent has actively demonstrated that he no longer possesses the qualities of an attorney privileged to practice law in the State of New Jersey.

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 an eleventh consecutive time, respondent has, once again, refused to account for his misconduct, let alone express any 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).

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. Considering respondent's conduct in the instant matter, he has failed to cooperate with disciplinary authorities twenty-two times in eleven default matters. Undoubtedly, respondent believes his conduct need not conform to RPC 8.1(b). See In re Brown, 248 N.J. 476 (2021) (we observed that the attorney's obstinate refusal to participate, in any way, in the disciplinary process across five client matters was "the clearest of indications that she has no desire to practice law in New Jersey;" we recommended the attorney's disbarment based, in part, on her utter lack of regard for the disciplinary system with which she was duty-bound to cooperate but rebuffed at every turn).

We also, again, 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.

The disciplinary precedent cited in our prior decisions supports respondent's disbarment. In In re Spagnoli, 115 N.J. 504 (1989), which we discussed in Allen VI, Allen VIII, and Allen IX, 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."
>
> [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.
>
> [In the Matter of John A. Moore, DRB 95-163 (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).

Likewise, we, again, echo our decision in In the Matter of Marc D'Arienzo, DRB 16-345 (May 25, 2017) at 26-27, where we stated:

> Given the contemptible set of facts present in these combined matters, we must consider the ultimate

> question of whether the protection of the public requires respondent's disbarment. When the totality of respondent's behavior in all matters, past and present, is examined, we find ample proof that . . . no amount of redemption, counseling, or education will overcome his penchant for disregarding ethics rules. As the Court held in another matter, "[n]othing in the record inspires confidence that if respondent were to return to practice [from his current suspension] that his conduct would improve. Given his lengthy disciplinary history and the absence of any hope for improvement, we expect that his assault on the Rules of Professional Conduct would continue." In re Vincenti, 152 N.J. 253, 254 (1998). Similarly, we determine that, based on his extensive record of misconduct and demonstrable refusal to learn from his mistakes, there is no evidence that respondent can return to practice and improve his conduct. Accordingly, we recommend respondent's disbarment.

The Court agreed with our recommendation and disbarred the attorney. In re D'Arienzo, 232 N.J. 275 (2018). See also In re Lowden, 248 N.J. 508 (2021) (disbarment for attorney who failed to comply with R. 1:20-20 following two temporary suspensions and a six-month term of suspension; the attorney had a significant disciplinary history, including a reprimand, a censure, two temporary suspensions for failing to comply with fee arbitration committee determinations, a six-month suspension in a default matter, and a two-year suspension in two consolidated default matters; in finding that the attorney reached the "tipping point" of disbarment, we observed that the attorney's egregious ethics history

demonstrated a repeated and deep disdain for not only the disciplinary system, but also for her clients).

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 deleterious practices, disbarment is the proper course of action.

Additionally, we recommend that the Court impose the condition that respondent disgorge Turner's entire fee paid in the divorce proceeding ($15,000); the fee paid to oppose the attorney fee application ($500); and the fee paid in connection with the appeal of the final restraining order ($4,500). However, we are unable to recommend that respondent disgorge the $2,000 fee Turner paid in the TRO matter because the record reflects that respondent performed some work in that matter.

Member Joseph was recused from this matter.

Vice Chair Boyer 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 John Charles Allen
Docket No. DRB 23-069

Decided: August 11, 2023

Disposition: Disbar

Members	Disbar	Recused	Absent
Gallipoli	X		
Boyer			X
Campelo	X		
Hoberman			
Joseph		X	
Menaker	X		
Petrou	X		
Rivera	X		
Rodriguez	X		
Total:	7	1	1

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