Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-111
District Docket No. XIV-2021-0389E

In the Matter of

John T. Wynn

An Attorney at Law

Decision

Argued: June 21, 2023

Decided: October 30, 2023

Timothy J. McNamara appeared on behalf of the Office of Attorney Ethics.

Marc D. Garfinkle appeared on behalf of respondent.

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 censure (or, alternatively, in the event respondent failed to finalize two client matters, a three-month suspension), with conditions, filed by a Special Ethics Master. The formal ethics complaint charged respondent with having violated RPC 1.1(a)

(committing gross neglect); RPC 1.3 (lacking diligence); RPC 1.5(a) (committing fee overreaching); RPC 1.15(a) (commingling funds); RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 8.1(b) (failing to cooperate with disciplinary authorities); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation).

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

Respondent earned admission to the New Jersey bar in 1981 and to the New York bar in 1982. He has no prior discipline. Since 2012, he has been employed as in-house counsel for LG Electronics, located in Englewood Cliffs, New Jersey. From approximately 2008 until 2012, he was engaged in the private practice of law. After securing full-time employment with LG Electronics in 2012, respondent continued his private practice, including two estate matters underlying this disciplinary action.

This matter previously was before us during our September 23, 2021 session. On October 29, 2021, following oral argument and in response to our questioning, respondent, through his counsel, Marc D. Garfinkle, Esq., and the

Office of Attorney Ethics (the OAE) entered into a Consent Order, approved by us, in which the parties agreed to the following terms:

> (1) the OAE agreed to immediately move before the Superior Court for the appointment of a temporary attorney-trustee, pursuant to R. 1:20-19(a)(2), over respondent's private practice of law, including both estate matters underlying the ethics proceedings;
>
> (2) the OAE agreed to take the necessary steps to ensure that the appointed attorney-trustee coordinated with Arthur Neiss, Esq., of the law firm Beattie Padovano, who had been engaged to finalize the two estate matters;
>
> (3) respondent agreed to cooperate in the appointment of the attorney-trustee;
>
> (4) respondent agreed to disgorge all legal fees and executor commissions disbursed from one of the estate matters (the Garner Estate, discussed below), totaling $87,050, via month payments of at least $2,000, with additional payments made annually in March, upon his receipt of employment bonuses, until such time as the total disgorgement sum is fully satisfied; and
>
> (5) the OAE agreed to monitor respondent's monthly payments and, in the event of default, the OAE would immediately move for respondent's temporary suspension.

Although we observed the significant benefits achieved by the Consent Order, which would serve to rectify the demonstrable harm to the estate beneficiaries, we retained jurisdiction to render a formal decision on the charged misconduct and quantum of discipline. On November 15, 2021, following our

review of the record, we determined to remand the matter to the OAE for further proceedings, including an examination of whether respondent's misconduct constituted either knowing misappropriation of funds, in violation of the principles of In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985), or egregious fee overreaching, akin to that addressed in In re Ledingham, 240 N.J. 115 (2019), and In re Ort, 134 N.J. 146 (1992). In the Matter of John T. Wynn, DRB 21-105 (November 15, 2021).

As detailed below, following the OAE's determination that there is insufficient evidence to conclude that respondent committed knowing misappropriation or egregious fee overreaching, this matter now returns to us on the record originally presented in September 2021, as supplemented by the OAE's newly submitted affidavit.

We now turn to the facts underlying this matter.

Respondent maintained two attorney bank accounts at PNC Bank (PNC) – his attorney trust account (ATA) and his attorney business account (ABA). On October 12, 2017, the OAE received notice from PNC of a $5,510.48 overdraft of respondent's ATA. Consequently, on October 19, 2017, the OAE directed respondent to provide a written explanation of the overdraft and to produce ATA statements for the past three months. On November 2, 2017, respondent replied to the OAE's inquiry, explaining that the overdraft was the result of his "sloppy

bookkeeping" in connection with his assistance of Gregory P. Place, whom respondent initially described as a friend and client who had a crisis. Respondent asserted that he deposited in his ATA two checks payable to Place, subsequently wrote several checks from that account on behalf of Place, and, when respondent attempted to return the $25,821.98 balance to Place, the reimbursement check respondent issued exceeded the balance of his ATA, triggering PNC's notice to the OAE.

The OAE's ensuing investigation revealed respondent's misconduct across three client matters. Each is addressed below.

The Place Matter

On February 7, 2017, respondent deposited in his ATA a $37,886.56 check on behalf of Gregory P. Place. The check was issued by Prudential Insurance Company of America, dated January 25, 2017, and made payable to Place. Respondent had $5,500 in personal funds in his ATA at the time of this deposit.[1]

---

[1] Respondent told the OAE that, when he initially deposited $5,500 of his own money in the ATA, he believed he deposited those funds in his ABA. When he realized he had deposited the funds in his ATA, however, respondent made no effort to remove the funds. Respondent further explained he "had placed [his] own funds in the account as a way to segregate them for a future time of need, instead of opening a savings account. It was convenient and [he] did not understand this to be prohibited by the regulations governing the account."

On July 3, 2017, respondent deposited in his ATA a second, $52,528.80 check, payable to Place. Respondent did not hold any other client funds in his ATA.

Between approximately February 11 and August 24, 2017, respondent issued multiple checks from his ATA on behalf of Place, including toward credit card bills, loan payments, and rent. Respondent testified that he kept some form of a running balance for his ATA, but that he "[w]asn't keeping it all in one place." Between July 10 and September 11, 2017, respondent attempted to withdraw his own funds from his ATA via four separate checks in the amounts of $2,500; $4,200; $2,000; and $2,000, thereby exceeding the amount of his own personal funds held in the ATA by $5,200 and invading Place's funds.[2] Respondent maintained that he had forgotten about the $2,500 check when he wrote out the second check for $4,200, and that his mistake was the result of his "sloppy bookkeeping," "not keeping track," and not "paying attention." He further explained to the OAE that he "did not keep proper track of the checks [he] wrote to [him]self." Respondent replenished Place's funds shortly after the overdraft occurred, and Place confirmed that respondent returned his funds to

[2] Although respondent negligently misappropriated Place's funds, the OAE did not charge respondent with having violated RPC 1.15(a), presumably due to the ambiguity regarding whether Place was a client.

him, minus the disbursements that Place had authorized respondent to make on his behalf.

Respondent admitted that he had commingled his personal funds with the funds he was holding for Place, but denied that he was representing Place at the time of the overdraft. Respondent admitted, however, that he understood that RPC 1.15(a) also prohibited commingling his personal funds with that of a third party and, thus, acknowledged he had violated RPC 1.15(a).

Respondent had a personal and professional relationship with Place, having represented him in past legal matters. Again, respondent maintained that he was not representing Place in any legal matter during the time he deposited Place's funds in his ATA, and that there was no agreement that he would represent Place in the future.[3] The first deposit respondent made for Place was intended for a potential real estate deal, in which respondent would not have represented Place. Respondent acknowledged, however, that he had fiduciary responsibilities with respect to Place's money, and that Place was aware that his funds were deposited in respondent's ATA.

---

[3] Respondent initially stated, in his November 3, 2017 letter to the OAE, that Place was his client. During the hearing, however, respondent denied that Place was his client at the time of the deposit. Place also told the OAE that he was not being represented by respondent at the time his funds were deposited in respondent's ATA.

Respondent also admitted that he violated RPC 1.15(d) by failing to maintain required financial records. Respondent testified that he did not conduct monthly three-way reconciliations of his ATA and admitted that, when he handled Place's money, he "wasn't really treating it like [he] should have," that he occasionally "lose[s] stuff," and that he is a "pack rat." Respondent further admitted that he did not maintain client ledgers but, instead, improperly relied upon ATA statements and check stubs.

The Garner Estate Matter

On April 21, 2010, respondent was appointed as the guardian of Alice Garner, a lifelong family friend. On September 11, 2010, Garner executed her Last Will and Testament (the Will), wherein respondent was named as executor.[4] Garner died on October 22, 2011 and the Will was submitted to probate on May 14, 2012. Respondent then appointed himself to serve as attorney for the estate (the Garner Estate).

[4] Respondent prepared Garner's Will and named himself executor. Respondent testified that, although Garner had been declared incompetent and he was appointed her guardian, she was not incapacitated, and he believed her competent to execute the Will. Respondent admitted that his wife was one of the two witnesses who signed the Will. Respondent explained that, during the competency hearing, Garner raised the issue of finalizing her Will with the judge, and that the judge did not have an objection to Garner finalizing her Will.

On October 24, 2019, more than seven years after the Will had been submitted to probate, respondent provided the OAE an updated spreadsheet which represented that the gross value of the Garner Estate was $562,611.79, which included securities in Garner's name that he had not yet liquidated.

Respondent admitted that, although he periodically checked the value of the securities, he had not taken any steps to liquidate them or to transfer them to the Garner Estate.[5] Further, respondent told the OAE that two of the securities, Capital One and Allegheny, routinely issued dividend checks. For a while, he had deposited the checks in the executor account, but eventually just let the checks pile up and failed to deposit them. Further, respondent did not request that the banks associated with the securities reissue the undeposited checks. When asked why he did not address the securities, respondent stated he was "listless," "tired," and "burned out," and that he "put selling the securities on the back burner."

Garner's Will provided for eighteen specific bequests, ranging between $500 and $60,000 each, and totaling $145,200. The Will provided that any

---

[5] Respondent submitted to the OAE the value of all the securities on two separate dates, six months apart, with the same values (with one exception). At the hearing, respondent was questioned at length about how the securities' values would not have changed in that six-month period. Respondent testified that he corrected the values and that, with regard to the second submission, the values were not current. The testimony on this point was not very clear, but it is mentioned here because the discrepancy was, at least in part, the basis for the OAE's RPC 8.4(c) charge.

remaining assets were to be distributed to Gwendolyn Smith, who also was one of the eighteen individuals designated to receive a specific bequest from Garner. Respondent failed to distribute seven of the eighteen bequests, totaling $73,000. The below table identifies the name of each beneficiary, the amount of the bequest, and whether the funds were distributed:

Garner's Bequests

Beneficiary	**Amount**	**Distributed**
Gwendolyn Smith	$10,000	Yes
Madelyn Mayer	$10,000	Yes
Ellen Pritchard	$5,000	Yes
Ronald Robinson	$5,000	Yes
Kenneth Robinson	$5,000	Yes
Carolyn Rutledge	$5,000	Yes
Alice Johnson	**$500**	**No**
David Shuler	**$500**	**No**
Walter & Minnie Fraiger	**$1,000**	**No**
Ann Parker	$1,000	Yes
Beatrice Pollard	**$1,000**	**No**
Steven Mayer, Jr.	$700	Yes

Rachel Mayer	$500	Yes
Bethany Baptist Church	$20,000	Yes
Montclair Senior Housing Corporation	**$5,000**	**No**
Neighborhood Center of Montclair	$5,000	Yes
Montclair Glen Ridge Red Cross	**$5,000**	**No**
Children's Health Program in Africa	**$60,000**	**No**
Total of Bequests: **Total Not Distributed:**	**$145,200** **$73,000**	

Respondent asserted that he did not distribute bequests to Johnson; Shuler; the Fraigers; or Pollard because he could not locate them. Respondent claimed that he had inquired of other beneficiaries whether they had contact information for the beneficiaries that he was unable to locate. Respondent chose not to hire an investigator to find any of these beneficiaries, claiming that he did not believe it made sense to spend thousands of dollars to make distributions of less than $1,000. Respondent further claimed that he did not make the $5,000 disbursement to the Montclair Senior Housing Corporation because, as a result of his close involvement with that entity, for approximately thirty years, and having served as its president, he believed the funds were not immediately needed. As such, it was respondent's view that there was no harm in a delayed distribution to this particular beneficiary until after he redeemed the securities.

Respondent testified that he did not make the bequest to the Montclair-Glen Ridge chapter of the American Red Cross because he believed that chapter was expected to close or merge with another chapter. Respondent further admitted that he had not made the $60,000 bequest to a children's health program in Africa because he had been unable to choose an appropriate organization and was busy with other matters.

Respondent testified that he made cash distributions from the Garner Estate to the beneficiaries he had located, which exhausted the estate's cash; he claimed that he planned to make distributions to the remaining beneficiaries after he redeemed the securities.

Although the Garner Estate had not been fully liquidated and all of her beneficiaries had not been paid, respondent issued two checks to Smith (the residuary beneficiary under Garner's Will) in the amounts of $75,000 and $19,824.39, representing a portion of the remaining assets of the estate. Respondent admitted that he disbursed those residuary payments to Smith, despite the fact the estate was not fully liquidated, and that, given market fluctuations, he had no way to know if the redeemed securities would be sufficient to cover the required bequests to beneficiaries he had not yet disbursed.

In his April 30, 2019 letter to the OAE, respondent provided a written representation regarding why he had not yet sold the securities or made the remaining distributions:

> The securities in question have not been sold because: 1) I developed health issues and 2) this investigation[.]
>
> After being the primary care giver for [Garner] for the last 2 years of her life while her health declined and then arranging for her funeral and interment and then the clean-out and sale of her home and resolving a number of her bequests and issues, all of which was extremely time consuming during a very stressful time in my personal life, I became "burnt-out".
>
> [Garner] was gone and I had made distributions to all of the individual legatees I could locate. To me, all that remained was some institutional/charitable distributions with the rest eventually winding up with the State of New Jersey if I could not find the remaining individual legatees. It would have been easier to just to publish the notices and deposit the money with the state, but I originally thought I would make another effort before giving that up. That decision eventually just contributed to my stress, as it remained an open item. After being laid off at the beginning of 2008 and struggling to find full-time in-house corporate work of the nature I have done for the preceding 20 years, I secured a full-time position at my current employer, LG Electronics in 2012 after consulting for them for approximately 6 months.
>
> It was during the period while I was a consultant that [Garner] began to rapidly decline [and] passed away. I started work on the probate of her estate around the time I became a full time employee . . . . I began working long hours and found managing my employment duties with my personal (for example

> family matters, [Garner's] Estate, children college finances, my mother's health) and community responsibilities (as Chair of Montclair Planning Board and president of Montclair Senior Housing Corporation Board of Directors) difficult and stressful. I felt overextended, but not for the first time in my life and I was unwilling to let anything go; I thought it would pass.
>
> [Ex12.][6]

During the ethics hearing, respondent explained that he made no effort to redeem the stocks because "he ran out of time," "energy," and "motivation." Respondent told the OAE that he "figured there was nothing untoward that was going to happen to the monies, that they weren't going away, that they were safe where they were, and that nobody was being hurt by it." Respondent further stated, at his June 7, 2019 interview with the OAE, that he intentionally did not make attempts to settle the Garner Estate[7] after the OAE commenced its investigation:

> As I said, I was afraid that anything -- that if I did something, it could be misinterpreted, like I was trying to clean up something, or I was trying to cover up something. And, you know, this is all -- was all new to me. I didn't have counsel for much of these proceedings. And, you know, I was trying to be, you

---

[6] "Ex" refers to the parties' exhibits entered into evidence during the hearing;
"SMR" refers to the Special Master's April 26, 2021 report;
"RS" refers to respondent's November 30, 2020 summation brief.

[7] Respondent explained that that the estate's assets included cash, which was held in his executor's account, and the securities that were not yet liquidated. Respondent was uncertain of the estate's total value.

> know, forthcoming and cooperative. But, again, I -- the longer they went on, the more afraid that, well, you know, they'd keep asking more questions if I do something to change, that's going to cause more questions and -- you know, so I don't want to do something that will be misinterpreted like -- you know, so I had -- I just froze everything. I didn't do a -- I haven't done anything with any of my accounts.
>
> [Ex10p31.]

Despite not finalizing the administration of the Garner Estate, respondent disbursed to himself, via forty-two checks, $87,050 in Garner Estate funds, comprising both an executor's commission and legal fees. On certain dates, he issued himself multiple checks. Specifically, between January 6, 2014 and March 8, 2018, respondent paid himself a $21,000 executor commission, an amount that he based on the value of the securities. Respondent also paid himself $66,050 in legal fees for 150 hours he claimed to have billed as attorney for the estate.[8]

Although he was not an experienced estate attorney, having handled only one other estate matter, respondent charged the Garner Estate an hourly rate of $500. Respondent, who did not have a standard hourly rate, based this rate upon his "Google" research that he claimed revealed an average range of $200 to $500

[8] Respondent asserted that he paid himself in small increments because he did not want to take his fee all at once.

per hour for similar work. Respondent could not remember the precise search terms he utilized and did not maintain records from his research. Respondent also failed to maintain billing records for the Garner Estate, instead recording his time on a spreadsheet that included minimal descriptions.[9]

The descriptions on the spreadsheet included services such as: "draft probate documents" (multiple entries, nine hours in total); "trip to Newark to probate Will" (four hours); "contracted for property yard maintenance" (two hours); "file review" (multiple entries, twelve hours in total); "resolved contractor dispute" (two and half hours); "searching for address for legatees" (four hours); "post office trip for Smith mail" (.75 hours); "addressed issue with headstone provider" (two and half hours); "trespasser issues" (three hours); multiple entries for communication with and hand-delivering checks to beneficiaries of the Will; sale and closing of the Orange Road property; and various entries for estate accounting.

Respondent also produced documents that he prepared or reviewed in his administration of the Garner Estate, including written communications with beneficiaries and documents relating to the sale of Garner's real property.

Respondent acknowledged that some of the work he billed as legal work overlapped with work that he could have performed in his capacity as executor

[9] Respondent did not keep track of his time in his capacity as executor of the Garner Estate.

of the Garner Estate, including the seven hours he charged for "estate accounting" and the trip to Newark to probate the Will. Respondent also admitted that certain fees should not have been billed at his $500 hourly rate, for example, delivering a letter to the post office.[10]

Respondent testified that he had experienced financial difficulties over the years, particularly after he lost his job, in 2008. Although he admitted that the financial distress contributed to his own stress, respondent denied that it influenced how much he had charged the Garner Estate.

Regarding his above-described conduct in connection with the Garner Estate, respondent admitted that he failed to act with diligence, in violation of RPC 1.3. Respondent also admitted that his conduct was neglectful, but denied that it constituted gross neglect, in violation of RPC 1.1(a). Respondent further refused to concede that the fees he charged the estate were excessive, in violation of RPC 1.5(a), or that he engaged in misconduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of RPC 8.4(c). Respondent maintained that the reason he did not finalize the Garner Estate was because he was busy, depressed, and had other things going on in his life. Respondent

---

[10] Respondent also admitted that he failed to declare his executor commission or legal fees as income until the OAE questioned him, but has since filed amended returns for the years in question. Through counsel, respondent submitted to the OAE copies of his amended returns.

further maintained that the unresolved Garner Estate was a source of his stress. Respondent, however, confirmed that he was not relying on any documented psychological defense to the ethics charges.

The Hazelwood Estate Matter

In 2011, respondent was appointed as the administrator[11] of the estate of Harry and Ruth Hazelwood, which he handled concurrently with the Garner Estate. Respondent was not the original administrator for the Hazelwood Estate. The sole beneficiary of the estate had signed off on an informal accounting approximately one or two years prior to the filing of the January 6, 2020 ethics complaint against respondent. As of the date of September 2020, respondent had neither finalized the Hazelwood Estate nor filed any paperwork with the surrogate's office. That delay persisted despite the fact that the only work remaining was the filing of an accounting approved by the sole heir.

On June 13, August 27, and October 10, 2019, the OAE directed respondent to produce his accounting and bank statements with canceled check images and deposit slips for the Hazelwood Estate. On October 24, 2019,

[11] The pleadings and the special master's report refer to respondent as the executor, rather than the administrator, of the Hazelwood Estate, but exhibits to the record that were produced by respondent demonstrate that the Hazelwoods died intestate and that respondent was appointed administrator of the estate.

respondent admitted to the OAE that he had no formal accounting for the estate, and failed to produce the requested financial records. Specifically, respondent claimed that the bank had sent him the wrong information and that he needed to resubmit his request to the bank. Respondent did not, however, produce the financial records that the OAE requested.

Although respondent acknowledged that he had failed to produce the documents as the OAE directed, he denied having violated RPC 8.1(b), claiming that he did not knowingly fail to cooperate with the OAE. In response to questioning by the OAE, respondent stated "I told you that I don't have them, I tried to get them, and you know, it comes from a source that's beyond my control."

Following the hearing, in his November 30, 2020 written summation to the special master, respondent, through his counsel, acknowledged his misconduct, but stressed it was not the product of fraud, greed, or misrepresentation deserving of suspension or disbarment. Further, he attributed his misconduct to the fact he went into private practice after being laid off from his prior employer and lacked the necessary knowledge or tools to ensure appropriate recordkeeping; he also asserted that he had allowed the lines between friend and client to become blurred.

With respect to the excessive fees he charged the Garner Estate, respondent claimed he "was inexperienced at the billing process," stating:

> In an estate matter, Respondent charged excessive fees and substituted his judgment for that of the decedent. He delayed or avoided action when action seems to have been called for, and he acted inconsistently with the testamentary documents. He was not diligent, and he was not thorough. He also was not dishonest. He was familiar with the decedent's charitable and testamentary intent with regard to her bequests, and he acted as he perceived she would have wanted, irrespective of the language of her Last Will and Testament. He was not diligent, but he was not dishonest.
>
> [RSp2.]

In mitigation, respondent claimed that he had no intention of returning to private practice and, therefore, the events that led to the misconduct were unlikely to recur.

In its December 30, 2020 written summation to the special master, the OAE asserted that the evidence clearly and convincingly established that respondent violated all the charged RPCs.

Specifically, in the Place matter, respondent violated RPC 1.15(a) by twice depositing funds belonging to Place in his ATA, where he also improperly held his own personal funds. The OAE maintained that Place was respondent's client at the time he commingled the funds, contrary to respondent's denials. However, the OAE asserted that RPC 1.15(a) prohibits commingling of funds

belonging to a client or a third person and, further, that respondent admitted he informed Place that the money would be deposited in his ATA and that, as a result, he owed Place fiduciary responsibilities. Next, the OAE asserted that respondent violated RPC 1.15(d) by admittedly not maintaining client ledgers or performing monthly three-way reconciliations.

In the Garner Estate matter, the OAE argued that respondent violated RPC 1.1(a) and RPC 1.3 when, eight years after submitting the Will to probate, he had failed to fully administer the estate. The OAE rejected respondent's attempt to blame his dilatory behavior on his mental health and lack of motivation, citing to the fact that he continued to work full-time and possessed the ability to write to himself forty-two checks from the estate funds. Respondent also committed fee overreaching, in violation of RPC 1.5(a), by paying himself $87,050 in legal and executor fees, despite having not completed the work. Further, his $500 hourly rate was grossly excessive since he had no appreciable experience in the field.

The OAE asserted that respondent's conduct in the Garner Estate matter also violated RPC 8.4(c) evidenced, in part, by the following facts: respondent knew Garner was incompetent yet allowed her to execute the Will in his presence with respondent's wife acting as a witness; respondent hired himself as the attorney for the estate; respondent, who had no estate experience, set his

billing rate at $500 and relied upon an internet search to determine his hourly rate yet failed to cite to a single source upon which he relied; respondent maintained a spreadsheet to record his time but no billing records; respondent took $66,050 in legal fees from the estate and $21,000 in commission fees; respondent failed to liquidate the securities; respondent did not take a lump sum for his legal fees or executor commission, instead paying himself in forty-two smaller disbursements; respondent failed to declare his executor commission or legal fees as income; respondent failed to liquidate Garner's securities; and the fact that respondent's financial state was in a state of flux.

Last, the OAE asserted that, in the Hazelwood Estate matter, respondent had failed to cooperate with its investigation, in violation of RPC 8.1(b), by failing to produce his accounting or bank statements with canceled check images and deposit slips, despite the OAE's repeated requests. Although he informed the OAE that the bank had sent him the wrong information, he failed to follow up with the bank or to provide the records to the OAE.

In support of its recommendation that a three-month suspension was the appropriate quantum of discipline, the OAE relied upon In re Verni, 172 N.J. 315 (2002) (three-month suspension for charging excessive fees in three matters and knowingly making false statements to disciplinary authorities; the attorney made a divorce case appear more complicated than it was in order to justify a

higher fee and charged a fee for the preparation of documents he never prepared), and In re Thompson, 135 N.J. 125 (1994) (three-month suspension for charging $2,250 to file two identical motions necessitated by the attorney's own neglect and to file a pretrial motion, which she never prepared; misrepresentations considered in aggravation, and illness considered in mitigation).

As a condition to the discipline, the OAE recommended that respondent be required to submit proof that all work was complete in connection with the Garner Estate and Hazelwood Estate matters, and that all beneficiaries received the bequests due to them.

The special master found, by clear and convincing evidence, that respondent had violated RPC 1.1(a); RPC 1.3; RPC 1.5(a); RPC 1.15(a); RPC 1.15(d); and RPC 8.1(b). The special master concluded, however, that the OAE had not established, by clear and convincing evidence, that respondent had violated RPC 8.4(c).

Specifically, with respect to the Place matter, the special master found that respondent had violated RPC 1.15(a) by depositing two checks payable to Place in his ATA which, at the time of the deposits, held more than $5,500 of his personal funds. The special master was persuaded by the following evidence and admissions: respondent told Place he was going to put the money in this ATA;

respondent deposited Place's money in the ATA on more than one occasion; respondent improperly held his own money in the account by mistake yet, upon realizing the mistake, failed to move it; respondent admitted to the OAE that he was not handling Place's money in accordance with his ethical obligations; Place wanted to keep the money separate to be used later for a real estate transaction; respondent told Place that he would write a check from his ATA when Place needed it for a down payment; respondent owed fiduciary duties to Place; and respondent commingled the funds.

The special master also determined that Place was, in fact, respondent's client for purposes of RPC 1.15(a), and rejected respondent's argument to the contrary. Specifically, the special master stated:

> I find that Place was a client of [r]espondent for purposes of RPC 1.15(a), since Place turned over his money for safekeeping in [r]espondent's ATA in anticipation of those funds being used in a real estate purchase. In addition, [r]espondent conceded during his hearing testimony that he told Place that when Place was ready to proceed with his real estate purchase, [r]espondent could write the deposit check from [r]espondent's ATA. Those facts support the conclusion that Place's funds were being placed in [r]espondent's possession in connection with a representation, i.e., Place's anticipated real estate transaction, and that they were required to be kept separate from the lawyer's own property.
>
> [SMRp31.]

The special master also found that respondent had violated RPC 1.15(d), citing respondent's admissions that he did not keep proper records; that he violated the recordkeeping Rule; that he was "sloppy;" that he failed to maintain a running ATA ledger; and that he failed to conduct monthly reconciliations of his ATA.

Regarding the Garner Estate matter, the special master found that respondent violated RPC 1.1(a) and RPC 1.3 by mishandling the matter. Specifically, the special master found that, despite Garner's Will being admitted to probate in 2012, respondent delayed distribution of several bequests and had not completed distribution of multiple bequests. Further, respondent admitted that he did not handle the matter with diligence, in violation of the Rules. The special master declined to excuse respondent's conduct based on his claimed depression, citing to the fact that respondent was employed, full time, as in-house counsel, and the fact he was able to issue forty-two checks to himself for fees related to the estate. Further, the special master rejected respondent's claim that he could not locate some of the beneficiaries, noting that respondent never filed "a motion with any court concerning the funds that he believes cannot be distributed," and "never hired an investigator to locate any of the beneficiaries."

The special master also found that respondent had engaged in fee overreaching, in violation of RPC 1.5(a). In particular, the special master found

that respondent's $500 hourly rate was excessive in view of the fact that the rate was set by respondent himself; respondent failed to consult with other estate lawyers within the same county to determine a reasonable rate for the legal services to be performed, relying instead upon a "Google" search for which he did not retain documentation; and the rate was not the product of an arms-length transaction between an attorney and a client. The special master also reasoned that respondent engaged in fee overreaching "by repeatedly charging for legal fees for work that [] could have been performed in his capacity as [e]xecutor." Respondent acknowledged that there were numerous tasks that could have been performed by either an executor or attorney, but rather than performing those tasks as executor, which would have resulted in no additional fee, he billed that work in his capacity as the attorney for the estate, at his $500 hourly rate. The special master also determined respondent's records of legal work contained "insufficient descriptions, consisting of few words to explain how he tracked his time."

The special master concluded, however, that the evidence did not clearly and convincingly establish that respondent had violated RPC 8.4(c). The special master rejected the OAE's argument that respondent's admitted financial hardship while he handled the Garner Estate necessarily leads to the conclusion that respondent engaged in conduct involving dishonestly, fraud, deceit, or

misrepresentation. He was likewise unpersuaded by the OAE's argument that respondent's competence was sufficiently illustrated by his issuance to himself of forty-two checks for payment of legal fees and his executor commission. Instead, the special master found the respondent simply was "overwhelmed by his circumstances, inexperienced and inept in his handling of the Garner Estate." He, thus, declined to find that respondent's conduct rose to the level of dishonestly, fraud, deceit, or misrepresentation.

Finally, regarding the Hazelwood Estate matter, the special master determined that respondent violated RPC 8.1(b) by failing to fully cooperate with the OAE's investigation of the matter. Respondent admitted he did not provide the OAE with the requested financial records and also failed to follow up with his bank to obtain the records. The special master rejected as insufficient and unpersuasive respondent's explanation that the sole beneficiary to the estate had already signed off on an informal accounting, given that respondent still had not filed any paperwork with the surrogate's office and admittedly failed to produce responsive documents to the OAE.

In mitigation, the special master noted that respondent had an unblemished disciplinary history in forty years at the bar. In aggravation, the special master noted that respondent had failed to complete the Garner Estate work despite admitting the Will to probate in 2012; took no steps to complete

the work after the OAE filed the January 6, 2020 ethics complaint; and, as of the filing of respondent's November 30, 2020 summation, had not performed the outstanding work. The special master also weighed, in aggravation, that respondent issued forty-two checks to himself, for "payment of legal fees at an unreasonable hourly rate and for work that should have been performed in his capacity as [e]xecutor without any additional fee to the estate." Further, respondent failed to cooperate with the OAE by not providing the requested records or demonstrating diligent effort to obtain the records.

The special master recommended a censure with the following conditions: (1) prior to the completion of our review of this matter, respondent must complete all outstanding work on both the Garner Estate and the Hazelwood Estate, including but not limited to disbursement of all bequests to the beneficiaries, to the satisfaction of, and approval by, the OAE; (2) in the event respondent fails to complete all outstanding work in both matters prior to our review, then the special master recommended a three-month suspension and, as a condition to reinstatement, respondent must provide proof that all work has been completed; (3) respondent shall not be paid any further executor commission without court approval; (4) if additional legal services are required for the Garner Estate, such services shall not be performed by respondent but rather, in his capacity as executor, respondent shall seek court appointment of

an attorney approved by the OAE. Payment of such legal services shall be paid out of any unpaid executor commission to which respondent may be entitled; (5) respondent shall not be paid any further legal fees in connection with the Garner Estate, and shall reimburse the estate seventy-five percent of the legal fees he already received; (6) respondent shall attend continuing legal education classes, to be determined by the OAE, including classes on ethics compliance and an OAE-approved accounting course; (7) respondent must practice under the supervision of an OAE-approved proctor for two years; and (8) respondent must provide the OAE with monthly reconciliations of his trust account on a quarterly basis for two years.

The special master determined that a censure with these conditions, rather than a three-month suspension as recommended by the OAE, was the appropriate quantum of discipline. The special master reasoned that a suspension of respondent's license may result in the loss of his employment as in-house counsel which, in turn, could hinder his ability to make the reimbursement and pecuniary recommendations contained in the proposed conditions. The special master further reasoned "a significant goal is ensuring that the beneficiaries in the Garner Estate receive their money, and that the work in both the Garner Estate and the Hazelwood Estate be completed, as soon as possible." Moreover, there was no evidence of conduct involving dishonesty, fraud, deceit, or

representation which, in the special master's view, when balanced against the respondent's unblemished forty-year career, weighed in favor of a censure, with conditions, over a term of suspension.

On April 26, 2023, the OAE resubmitted this matter to us, requesting that we adjudicate the matter based upon the hearing record and the parties' September 23, 2021 oral argument before us. The OAE also submitted the Affidavit of Timothy J. McNamara, Assistant Ethics Counsel, attesting to the investigative efforts that were untaken both prior to, and following, our remand of this matter, in consideration of whether respondent's misconduct constituted either knowing misappropriation or egregious fee overreaching.

In particular, McNamara attested to the fact that, whenever there is a financial aspect to any case to which he is assigned, he routinely considers and evaluates whether there is clear and convincing evidence that an attorney's conduct constitutes knowing misappropriation. In this matter, he and the assigned investigator, both of whom are experienced supervisors within the OAE, determined to charge respondent with violating RPC 1.5(a) (fee overreaching), and not knowing misappropriation, based upon their assessment of the facts, and an evaluation of respondent's answers during the investigation, along with his demeanor.

McNamara emphasized that the special master, who had the opportunity to evaluate respondent's credibility during the ethics hearing, concluded that respondent's actions did not rise to the level of dishonesty, fraud, deceit, or misrepresentation. Instead, the special master concluded that respondent was overwhelmed with his circumstances, inexperienced, and inept in his handling of the Garner Estate. Indeed, the special master rejected the OAE's argument that respondent's issuance of forty-two checks to himself was indicative of dishonesty or deceit; but, instead, concluded that he was just overwhelmed.

Further, McNamara attested that the OAE had re-examined respondent's June 7, 2019 demand audit, during which respondent was questioned about his legal fees in the Garner Estate matter. Respondent informed the OAE that, as executor to the Garner Estate, he hired himself as the attorney which he believed was permissible. Further, he explained to the OAE how he determined to charge an hourly rate of $500 despite his lack of experience. McNamara asserted that the OAE's complaint clearly articulated the facts underpinning its charge that respondent committed fee overreaching, to include charging $500 per hour for legal services such as delivering a letter to the post office and meeting with contractors; charging $75,000 for legal work on an estate that he never finalized; setting a $500 hourly rate despite having no experience; and claiming to have based his rate on Internet research which he failed to provide to the OAE.

McNamara emphasized that, during the hearing, he questioned respondent regarding his billing of the estate, including but not limited to a $375 charge to mail a letter.

McNamara stated that, in view of the foregoing evidence, the OAE had "considered knowing misappropriation during the course of its investigation, however, after reviewing the facts the OAE determined that the more appropriate charge was fee overreaching." Following remand, the OAE determined that its "reexamination of the record supports the prior charge of fee overreaching but failed to yield any clear and convincing evidence of knowing misappropriation" Further, the OAE reexamined whether respondent's payment to himself of $87,050 in legal fees and commission constituted either knowing misappropriation or egregious fee overreaching and concluded again that Respondent's actions constituted fee overreaching."

The OAE confirmed that, to date, respondent is current in connection with his repayment plan pursuant to the terms of the Consent Order. Thus, the OAE requested that we issue our decision based upon the existing record, including the oral argument already held in this case.

During oral argument before us, the OAE recommended that respondent be censured for his misconduct, reiterating the extensive investigative and analytical steps it had undertaken to reach its charging decision and, in

particular, the lack of clear and convincing evidence that would be necessary to prove that respondent committed knowing misappropriation or egregious fee overreaching, Further, the OAE confirmed for us that the attorney-trustee continues to work on both estate matters and submits reports to the assignment judge.

Respondent, through his counsel, in his written submission to us and, again, during oral argument, adopted the reasoning of the OAE's April 26, 2023 submission to us and, like the OAE, urged that his actions did not constitute knowing misappropriation. Respondent urged us to impose discipline less than a term of suspension.

Moving to our review of the record, we conclude that the special master's determination that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.5(a); RPC 1.15(a); RPC 1.15(d); and RPC 8.1(b) is supported by clear and convincing evidence. We also determine that the special master correctly concluded that the evidence did not clearly and convincingly establish respondent's violation of RPC 8.4(c).

Specifically, respondent admitted that he deposited in his ATA two separate checks payable to Place, his lifelong friend and former client, totaling $63,708.54. When respondent deposited those funds, his ATA improperly held $5,500 of his personal funds. Although respondent did not dispute these facts,

he argued that he did not violate RPC 1.15(a), claiming that Place was not his client at the time. Respondent's argument is misplaced. RPC 1.15(a) states, in relevant part:

> A lawyer shall hold property of clients **or third persons** that is in the lawyer's possession in connection with a representation separate from the lawyer's own property. (emphasis added)

Moreover, the recordkeeping Rules, especially R. 1:21-6(a)(1) and (2), make clear that ATAs are to be used by New Jersey attorneys exclusively in connection with their practice of law. "The RPCs make explicit that property held in trust may also be that of a third party and that the attorney's ethical obligation to safeguard third party property is no different than the obligation to safeguard client property." Michels, New Jersey Attorney Ethics (GANN 2023), p.98 (citing RPC 1.15(a), (b) and (c)). Accordingly, respondent had an obligation to safeguard Place's funds, including an obligation to keep his own funds separate from Place's funds. Further, respondent acknowledged that he owed a fiduciary duty to Place, had improperly commingled funds, and, ultimately, negligently invaded Place's funds (though he was not charged with negligent misappropriation). Accordingly, respondent violated RPC 1.15(a).

Respondent violated RPC 1.15(d), which requires lawyers to comply with the recordkeeping provisions of R. 1:21-6. Respondent violated this RPC by failing to maintain appropriate ATA ledgers or conduct monthly ATA

reconciliations, conduct which directly resulted in his negligent misappropriation of Place's funds and his overdraft of his ATA.

Respondent also violated RPC 1.1(a) and RPC 1.3 in connection with his representation of the Garner Estate. RPC 1.1(a) provides that a lawyer shall not "handle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence." RPC 1.3 requires a lawyer to "act with reasonable diligence and promptness in representing a client." The testimony and evidence introduced at the hearing, along with respondent's own admissions, clearly establish that respondent failed to conclude the administration of the estate, despite the Will being probated in 2012, eight years earlier. Respondent failed to liquidate the securities; failed to deposit dividend checks in the estate account; failed to make reasonable attempts to locate outstanding beneficiaries, to disburse specific bequests to those beneficiaries, or to place such funds in trust with the court; failed to disburse funds to the Montclair Senior Housing Corporation based upon his improper, subjective, and sole determination that it did not immediately need the funds; unilaterally determined not to disburse funds to the Red Cross; and failed to identify an African charity program consistent with Garner's intent. Equally troubling is the fact respondent offered no reasonable explanation for the extraordinary delay. As a result of respondent's inaction, beneficiaries of the estate had not received

their bequests and the Garner Estate remained open. It was not until September 2021 that respondent turned the matter over to new counsel. These facts clearly and convincingly establish that respondent violated RPC 1.1(a) and RPC 1.3.

Notwithstanding the excessive passage of time and his failure to finalize the Garner Estate, between January 2014 and March 2018, respondent paid himself a $21,000 executor commission and $66,050 in legal fees. As the special master correctly noted, RPC 1.5(a) simply states that "a lawyer's fee shall be reasonable." RPC 1.5(a) identifies the following eight factors for consideration when determining whether a legal fee is reasonable:

> 1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal services properly;
>
> 2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> 3) the fee customarily charged in the locality for similar legal services;
>
> 4) the amount involved and the results obtained;
>
> 5) the time limitations imposed by the client or by the circumstances;
>
> 6) the nature and length of the professional relationship with the client;
>
> 7) the experience, reputation, and ability of the lawyer or lawyers performing the services; and

8) whether the fee is fixed or contingent.

An analysis of the above factors, specifically subsections (1), (3), (4), and (7), establishes that respondent violated RPC 1.5(a). Respondent appointed himself as the attorney for the estate, despite his admitted lack of experience handing estate matters, a consideration contemplated by RPC 1.5(a)(7), and without obtaining court approval which, although not required, could have ensured transparency and reasonableness. Respondent failed to consult with other estate attorneys in the same geographic area, a consideration under RPC 1.5(a)(3), to ascertain a reasonable hourly rate and, instead, relied upon his "Google" research to find a range of fees charged by estate attorneys. Respondent determined that the average hourly rate ranged between $200 and $500 and determined to charge the Garner Estate the top fee of $500 per hour. He did not retain paper or digital copies of his claimed Internet research. Although respondent unilaterally concluded that his years of legal experience supported a fee at the upper end of the range, respondent failed to account for his lack of any estate experience, which is relevant to our analysis under RPC 1.5(a)(7).

Respondent also failed to maintain detailed billing records. Although respondent kept a simple spreadsheet of the legal work he performed, the descriptions were minimal. Moreover, based upon the descriptions of services

performed and respondent's own admissions, some of the legal services for which respondent billed could have been performed in his capacity as executor, thereby saving the estate money. Perhaps most egregious, however, is that respondent failed to finalize the administration of the estate and failed to take proactive steps after the OAE commenced its investigation, yet still paid himself significant legal fees, plus an executor's commission, factors contemplated by RPC 1.5(a)(1) and (4). These facts clearly and convincingly support a violation of RPC 1.5(a). Respondent's agreement to disgorge the legal fees and executor commission he collected does not alter this conclusion.

Next, respondent violated RPC 8.1(b), which requires an attorney to "respond to a lawful demand for information from . . . [a] disciplinary authority." Respondent admitted that, in connection with the Hazelwood Estate matter, he failed to obtain the financial records the OAE had directed him to produce, despite the OAE's repeated directives on June 13, August 27, and October 10, 2019. As of September 25, 2020, when the ethics hearing commenced, he still had not provided the OAE with the banking records. Thus, there can be no doubt that respondent's conduct in this regard fell short of the full cooperation contemplated by the Rules and constitutes a violation of RPC 8.1(b). See In re Wolfe, 236 N.J. 450 (2019); In the Matter of Marc Z. Palfy, DRB 15-193 (March 30, 2016) at 48 (we viewed the attorney's partial "cooperation as no less

disruptive and frustrating than a complete failure to cooperate[,]" noting that "partial cooperation can be more disruptive to a full and fair investigation, as it forces the investigator to proceed in a piecemeal and disjointed fashion"), so ordered, 225 N.J. 611 (2016).

Finally, we determine that there is insufficient evidence to prove, by clear and convincing evidence, that respondent violated RPC 8.4(c). A violation of RPC 8.4(c) requires intent. See, e.g., In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011). Here, respondent was charged with violating RPC 8.4(c) for his mishandling of the Garner Estate and via the excessive fees that he charged. Although respondent admitted he was in financial distress during the relevant time period, having lost his full-time employment between the years 2008 and 2012, and having incurred credit card, student loan, and other debt, the evidence in this record does not clearly and convincingly establish that respondent fabricated evidence, fraudulently billed the estate for work that he did not perform, or intentionally overcharged the estate as a result of his financial motivation or otherwise.

Respondent's lack of transparency in his billing records is troubling, considering that he acted as both the executor and the attorney to the estate. Since respondent served as both executor and attorney for the Garner Estate, with little or no oversight, he should have had the foresight to obtain a court

order prior to accepting any fees or, at a minimum, maintained sufficiently detailed time records fully describing the services he rendered in both capacities. Equally concerning is the fact respondent paid himself in small increments via forty-two checks. However, the special master, who had the opportunity to assess respondent's credibility over the course of the two-day hearing, considered these facts and concluded that respondent's conduct was the product of being "overwhelmed by his circumstances, inexperienced, and inept," and not deceit or dishonesty. Accordingly, despite respondent's failures in these respects, the evidence does not clearly and convincingly support a violation of RPC 8.4(c) and, thus, we dismiss this charge. Cf. In the Matter of Richard Ledingham, DRB 19-021 (August 13, 2019) (the district ethics committee (the DEC) dismissed the RPC 8.4(c) charge against an estate attorney based upon lack of any evidence that the attorney had fabricated timesheets and fraudulently billed the client; we disagreed with the DEC's determination and instead concluded that the attorney's billing of over $120,000 and collection of $88,199 in fees in an estate matter which, according to expert testimony introduced by the DEC, was more than eight times what the total estate administration should have cost, was inexplicable; we further found that the attorney's failure to consult or retain out-of-state counsel to handle an ancillary probate matter, instead choosing to educate himself at the expense of the client, was both

"unethical and fraudulent;" in further support of the RPC 8.4(c) violation, the expert concluded that the attorney overbilled the client on most identifiable issues; moreover, the attorney could not or would not directly answer the panel's question why he believed his fee was reasonable; the attorney had a prior three-month suspension for charging an excessive fee), so ordered, 240 N.J. 115 (2019).

In sum, we find that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.5(a), RPC 1.15(a), RPC 1.15(d), and RPC 8.1(b) by clear and convincing evidence. We determine to dismiss the charge that he violated RPC 8.4(c). The sole issue remaining for our determination is the appropriate quantum of discipline for respondent's misconduct.

Respondent's most serious misconduct stemmed from his neglectful handling of the Garner Estate, the excessive fees he charged, and the fact that, despite probating the Will in 2012, the estate had not been fully administered nine years later when, in September 2021, this matter first came before us.

The discipline imposed on attorneys who commit gross neglect, lack diligence, and fail to communicate with clients (a charge not present here) in estate matters ranges from a reprimand to a term of suspension. Discipline less than a term of suspension was imposed in the following matters. In re Burro, 235 N.J. 413 (2018) (reprimand; the attorney grossly neglected and lacked

diligence in 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, in violation of RPC 1.1(a) and RPC 1.3; 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 disciplinary investigation (RPC 8.1(b)); in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand; in mitigation, the attorney expressed remorse and had suffered a stroke that forced him to cease practicing law); In re Ludwig, 233 N.J. 99 (2018) (reprimand; the attorney lacked diligence in an estate matter, failed to communicate with beneficiaries of the estate, and failed to cooperate with ethics authorities, violations of RPC 1.3, RPC 1.4(b), and RPC 8.1(b)); In re Cook, 233 N.J. 328 (2018) (censure; the attorney, despite his expertise in will, trusts, and estates, failed to diligently administer and complete an estate with a single beneficiary; the attorney further failed to communicate with the beneficiary, despite her dogged efforts; the attorney also failed to cooperate with the district ethics committee's investigation; the attorney was granted thirty days from the date of the Court's disciplinary Order to complete the administration of the estate, and did so; prior admonition); In re Finkelstein, 248 N.J. 573 (2010) (censure; the

attorney was grossly negligent, lacked diligence, and failed to communicate with client; the attorney also failed to safeguard client funds (RPC 1.15(a)), violated the recordkeeping Rules; prior admonition and reprimand; the financial harm to elderly beneficiaries outweighed mitigating factors, including the attorney's ready admission to his wrongdoing, his contrition and efforts to resolve the estate, and his offer to make the beneficiaries whole); In re Goldsmith, 190 N.J. 196 (2007) (censure; the attorney ignored an estate for almost two years with no disbursements of $500,000 of available funds; the attorney also knowingly disobeyed a court order; prior private reprimand and an admonition).

Varying terms of suspension are imposed in estate and trust matters involving more egregious neglect, depending on the seriousness of other factors. See e.g., In re Avery, 194 N.J. 183 (2008) (three-month suspension; the attorney, in two default matters, had mishandled four estates, grossly neglected the estates; failed to disburse funds; and failed to turn over accounting records, resulting in financial harm of $160,000 in penalties and interest to one estate; the attorney also failed to cooperate with disciplinary authorities; no prior discipline); In re Rodgers, 177 N.J. 501 (2003) (three-month suspension; the attorney-administrator of an estate committed gross neglect, lacked diligence, failed to communicate, and failed to disburse funds; the successor-administrator obtained a judgment against the attorney for $70,000, which had not been paid

as of the date of the ethics hearing; no prior discipline; in aggravation, we weighed the economic harm to the estate and the fact that the misconduct spanned six years; no prior discipline); In re Cubberley, 171 N.J. 32 (2002) (three-month suspension; the attorney, in a default matter, failed to reply to requests from the beneficiary and failed to cooperate with disciplinary authorities; prior discipline included an admonition, two reprimands, and a temporary suspension); In re Onorevole, 185 N.J. 169 (2005) (six-month suspension; in a default matter, the attorney, who was retained to probate an estate, obtained his client's signature on forms to permit the attorney to correspond with banks to verify amounts in the decedent's accounts; nine months later, the attorney directed the client to sign the same forms; he also failed to timely file estate tax forms; a successor attorney filed an amended inheritance tax return to correct errors in the initial return; as a result of the errors, interest was charged against the estate; the attorney committed gross neglect; lacked diligence; failed to communicate with a client; failed to cooperate with disciplinary authorities; and engaged in a pattern of neglect; prior admonition and two reprimands).

Respondent also committed fee overreaching, for which the discipline has ranged from a reprimand to disbarment. See, e.g., In re Doria, 230 N.J. 47 (2017) (reprimand; the attorney refused to return any portion of a $35,000 retainer after

the client terminated the representation; we upheld a fee arbitration determination awarding the client the return of $34,100 of the $35,000 retainer; thereafter, the attorney promptly returned the $34,100 to the client; we determined that the fee was so excessive as to evidence an intent to overreach); In re Read, 170 N.J. 319 (2002) (reprimand; the attorney charged grossly excessive fees in two estate matters and presented inflated records to justify them; strong mitigating factors considered); In re Verni, 172 N.J. 315 (2002) (three-month suspension; the attorney charged excessive fees in three matters and knowingly made false statements to disciplinary authorities (RPC 8.1(a)); the attorney made a divorce case appear more complicated than it was in order to justify a higher fee and charged a fee for the preparation of a document he never prepared; the fee arbitration committee reduced his $8,700 fee by almost half, finding that the attorney had exaggerated his time; prior reprimand); In re Thompson, 135 N.J. 125 (1994) (three-month suspension; the attorney charged $2,250 to file two identical motions necessitated by the attorney's own neglect and to file a pre-trial motion, which she never prepared; misrepresentations considered in aggravation, and illness considered in mitigation); In re Ledingham, 240 N.J. 115 (2019) (disbarment; the attorney charged fees of $120,275.25 in an estate matter, $88,410.48 of which the client paid; the customary charge in the same county for a similar estate would range between

$10,000 and $12,000; the client retained subsequent counsel who completed the estate for less than $10,000, with an additional $3,500 billed by local counsel in another state; therefore, the attorney's total fee should not have exceeded $15,500; the attorney, thus, charged the estate almost eight times the amount of the fee considered reasonable for such a matter; further, the attorney failed to establish that he had obtained any specific results on behalf of the estate from the excessive amount of time he billed on the matter); In re Ort, 134 N.J. 146 (1992) (disbarment; the attorney charged an estate valued at approximately $300,000 over $32,000 in legal fees; acted contrary to the wishes of client/administratrix by obtaining a home equity loan from which he paid his legal fees; prepared time sheets for the sole purpose of justifying those fees; and where the attorney's "overstated and exaggerated time sheets reflect conduct involving misrepresentation and deceit prejudicial to the administration of justice, in violation of RPC 8.4(c) and (d)").

Respondent also violated RPC 1.15(a), RPC 1.15(d), and RPC 8.1(b) in connection with the Place and Hazelwood Estate matters.

Attorneys who keep personal funds in the trust account in violation of RPC 1.15(a), often commingled with client funds, and who are guilty of recordkeeping irregularities, have received admonitions. See, e.g., In the Matter of Richard P. Rinaldo, DRB 18-189 (October 1, 2018) (commingling of personal

loan proceeds in the attorney trust account, in violation of RPC 1.15(a); recordkeeping violations also found (RPC 1.15(d)); the commingling did not impact client funds in the trust account); In the Matter of Richard Mario DeLuca, DRB 14-402 (March 9, 2015) (the attorney had a trust account shortage of $1,801.67; because the attorney maintained more than $10,000 of earned legal fees in his trust account, no client or escrow funds were invaded; the attorney was guilty of commingling personal and trust funds and failing to comply with recordkeeping requirements).

Likewise, failure to cooperate with disciplinary authorities, without more, typically will result in an admonition. See, e.g., In the Matter of Carl G. Zoecklein, DRB 16-167 (September 22, 2016), and In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015).

We conclude, based upon disciplinary precedent, that a quantum of discipline less than a term of suspension would be woefully insufficient for the totality of respondent's misconduct. Respondent's most egregious misconduct pertains to his handling of the Garner Estate. As previously criticized, despite submitting Garner's Will to probate in 2012, respondent failed to take the necessary steps to fully administer the estate, including his inexcusable failure to make bequests to various beneficiaries or to simply maintain the growing assets of the estate through routine deposits of dividend checks. Further, despite

his failure to pay $73,000 in bequests to seven beneficiaries, between January 2014 and March 2018, respondent paid himself over $66,000 in legal fees plus a $21,000 executor commission for an estate valued at approximately $560,000.

Standing alone, respondent's neglectful handling of both estate matters is similar to the attorneys in Finkelstein and Goldsmith, who were censured. Respondent, however, committed additional, serious misconduct, including his fee overreaching in the Garner Estate matter. In this respect, respondent's conduct is similar to the misconduct of the attorneys in Ledingham and Ort, both of whom were disbarred by the Court.

In Ledingham, the attorney was disbarred after charging excessive fees of $120,275.25 in an estate matter, $88,410.48 of which the client paid. According to expert testimony, the customary charge for a similar estate would range between $10,000 and $12,000. The client retained subsequent counsel who completed the estate for less than $10,000, with an additional $3,500 billed by local counsel in another state. Thus, we found that the attorney's total fee should not have exceeded $15,500. Yet, the attorney had charged the estate almost eight times the amount of what was considered a reasonable fee. Moreover, the attorney failed to establish that he had obtained any specific results on behalf of the estate from the excessive amount of time he billed on the matter.

In reaching our determination in Ledingham, we relied upon the expert testimony of an estate attorney with forty-five years of experience who opined as to the unreasonableness of the work performed and the time billed. We found that "[b]ased on the expert's opinion, respondent overbilled [the client] on most identifiable issues that arose during the administration of the estate. He also overbilled her regarding general components of the estate's administration." In the Matter of Richard Ledingham, DRB 19-021 (August 13, 2019) at 11. We further weighed, in aggravation, that the attorney previously had received a three-month suspension for similar misconduct, had failed to express remorse for his misconduct, and had preyed upon a vulnerable member of the population. Id. at 2.

Similarly, in Ort, the Court determined that the attorney's fee was unreasonable because it was based on "overstated and exaggerated time sheets," which bore "no reasonable relationship to the responsibilities realistically imposed on [him] in the administration of the estate." Ort, 134 N.J. at 157. By way of example, the Court observed that many entries were "so clearly disproportionate to the service described that an inference of deceit [was] justifiable." Ibid. After reviewing other disturbing aspects of the attorney's billing practices, the Court concluded that "most of the time charges [were] overstated and excessive, and that clear and convincing evidence demonstrate[d]

that their overstatement [was] the product of recklessness or deceit, as opposed to deficiencies in respondent's legal analysis." Id. at 158.

Further, the attorney in Ort had secured a home equity loan against property in an estate proceeding, notwithstanding the client's repeated refusal to authorize such activity. The attorney then paid his legal fees from the proceeds of the loan. Id. at 155-56. "Respondent's conduct in respect of the home-equity loan was flagrantly improper and alone warrants severe discipline." Id. at 156. The Court also noted that the attorney withdrew more than $32,000 from the estate account as attorney's fees without his client's knowledge or authorization. Further, the attorney failed to provide his client with an itemization of his fees. Based on these facts, the Court determined that "the record clearly and convincingly demonstrates that respondent took unfair and improper advantage of his client for his own benefit, and that the extent and severity of respondent's misconduct is such that the appropriate discipline is disbarment." Id. at 161.

Here, respondent engaged in fee overreaching like the attorneys in Ledingham and Ort but, without the benefit of expert testimony, and on this record, we are unable to conclude that disbarment is warranted. For instance, although respondent's billing records are not detailed, there is no evidence that the work described was not performed. Unlike the record in Ort, there is no

allegation or evidence that the respondent's time records were fabricated or exaggerated, or wholly unrelated to the administration of the Garner Estate. Further, there is no evidence that respondent, unlike Ort, took action contrary to the directives of his client. Further, here, unlike in Ledingham, no expert testimony was presented regarding the appropriateness of respondent's hourly rate; the time that respondent allocated to the various legal services he claimed to have provided; or whether the services were reasonable and necessary to the administration of the estate.

In the absence of such expert or other testimony, we are unable to determine whether the legal services for which respondent billed the estate were so unreasonable and unnecessary as to warrant his disbarment. Further, following our remand, the OAE maintains that respondent's misconduct, though violative of the Rules of Professional Conduct, did not amount to egregious fee overreaching akin to that of the attorneys in Ledingham and Ort.

The evidence does, however, reveal that respondent charged the estate for work that he could have completed in his capacity as executor, rather than billing those services as legal fees. Further, like the attorney in Ort, respondent took fees from the estate without the knowledge or approval of anyone but himself. Moreover, respondent's issuance of forty-two separate checks payable to himself for legal fees and executor commission is highly questionable but,

without more, is not proof that his financial circumstances motivated the fees he charged the estate or that he acted with dishonesty, fraud, deceit, or misrepresentation that would warrant a recommendation that respondent be disbarred.

Nonetheless, on the available record, respondent's misconduct undeniably rises to the level of overreaching; it is further exacerbated by the fact that his unethical misconduct spanned three separate matters and, with respect to the Garner Estate, deprived beneficiaries of money due to them under the Will for at least nine years. As the OAE observed, In re Verni, 172 N.J. 319, supports the imposition of at least a three-month suspension. In that matter, we recognized that "[c]ases involving either excessive fees or fee overreaching are necessarily fact-sensitive" and "[n]ot every instance of unreasonable fees rises to the level of overreaching." In the Matter of Anthony N. Verni, DRB 01-245 (January 30, 2002) at 13. We concluded that the attorney had overcharged clients in three separate matters and was unable to provide reasonable explanations for the substantive work performed to justify the charges. Id. at 12. We cited examples, such as a $300 charge for a cover letter to the court; a $1,200 charge to review a "slew" of documents yet the attorney was unable to produce the documents or describe the nature of the documents; and that respondent subsequently lied to the DEC that he had drafted interrogatories for which he

had actually used a template. Id. at 12-13. We determined to impose a three-month suspension, rather than a lesser quantum of discipline, for respondent's overreaching three clients based upon "the element of dishonesty," and his lies to ethics authorities in an attempt to justify his unreasonable fees. Ibid.

In crafting the appropriate discipline in this matter, we also consider any mitigating and aggravating factors.

In mitigation, respondent has no prior discipline in his more than forty years at the bar, a factor we typically accord significant weight. In re Convery, 166 N.J. 298, 308 (2001). Further, respondent has represented that it is extremely unlikely that he would return to private practice and, thus, poses no ongoing threat to the public. However, nothing currently prohibits him from returning to the private practice of law and, accordingly, we accord such a consideration minimal weight.

In aggravation, the Garner Estate has not been fully administered, despite the Will having been probated in 2012. Likewise, the Hazelwood Estate has not been fully administered, despite the simplicity of the matter, and respondent's 2011 appointment. It was not until September 2021, following an inquiry by the Office of Board Counsel and the looming threat of a disciplinary suspension, that respondent agreed to refer the two estate matters to another law firm for handling and finalization.

On balance, given that the substantial harm to the Garner Estate beneficiaries outweighs any mitigation – including respondent's unblemished forty-year career – we conclude, as we did in Verni, that a three-month term of suspension is the appropriate quantum of disciplinary necessary to protect the public and preserve confidence in the bar.

Further, as a condition to his discipline, respondent remains obligated to comply with the terms of the October 29, 2021 Consent Order, including his ongoing obligation to (1) cooperate with the attorney-trustee, and (2) make monthly payments to disgorge all legal fees and executor commission disbursed from the Garner Estate.

Chair Gallipoli voted to impose a six-month suspension, with the above conditions.

Members Petrou and Rodriguez voted to impose a censure, with the above conditions.

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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John T. Wynn
Docket No. DRB 23-111

Argued: June 21, 2023

Decided: October 30, 2023

Disposition: Three-month suspension

Members	Three-month suspension	Censure	Six-month suspension
Gallipoli			X
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph	X		
Menaker	X		
Petrou		X	
Rivera	X		
Rodriquez		X	
Total:	6	2	1

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