SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
DRB Docket No. 23-140
District Docket Nos. XIV-2022-0250E and XIV-2022-0310E

In the Matter of Anthony M. Orlando
An Attorney at Law

Argued
November 16, 2023

Decided
December 18, 2023

Ryan J. Moriarty, Assistant Ethics Counsel, appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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Introduction

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

This matter was before us on a disciplinary stipulation between the Office of Attorney Ethics (the OAE) and respondent. Specifically, respondent stipulated to having violated RPC 1.15(d) (two instances – failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 5.5(a)(1) (two instances – practicing law while suspended); RPC 8.1(b) (failing to cooperate with disciplinary authorities); RPC 8.4(c) (two instances – engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (two instances – engaging in conduct prejudicial to the administration of justice).

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

Respondent earned admission to the New Jersey bar in 2003. At the relevant time, he maintained a practice of law in Hoboken, New Jersey.

Effective November 17, 2014, the Court declared respondent ineligible to practice law for his failure to comply with Continuing Legal Education (CLE) requirements.

Effective September 12, 2016, the Court declared respondent ineligible to practice law for his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (the CPF). Effective November 2, 2016, the Court reinstated respondent following his satisfaction of the CPF annual assessment. However, effective July 22, 2019, the Court again declared respondent ineligible to practice law for his failure to pay the annual assessment to the CPF.

Effective October 21, 2016, the Court declared respondent ineligible to practice law for his failure to comply with the mandatory procedures for annual Interest on Lawyers Trust Accounts registration (IOLTA). Subsequently effective October 20, 2017, July 22, 2019, and August 30, 2023, the Court declared respondent ineligible to practice law for his failure to comply with the mandatory procedures for annual IOLTA registration.

To date, respondent remains ineligible to practice law on all three bases.

Effective April 8, 2022, the Court temporarily suspended respondent in connection with his failure to cooperate with the OAE's investigation underlying DRB 23-094. In re Orlando, 250 N.J. 362 (2022). He remains temporarily suspended to date.

On June 23, 2023, in connection with a motion for discipline by consent (censure or such lesser discipline as the Board deems appropriate), we

determined that a censure was the appropriate quantum of discipline for respondent's violation of 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 1.15(b) (failing to promptly deliver funds to the client or a third party); RPC 5.5(a)(1) (engaging in the practice of law while ineligible); and RPC 8.1(b). In the Matter of Anthony M. Orlando, DRB 23-094 (June 23, 2023). In that matter, in 2016, respondent practiced law while ineligible and, in 2019, continued to practice law despite having discovered his ineligibility. Id. at 1, 3. He also failed to respond to his clients' inquiries regarding a real estate transaction in which he represented them. Id. at 2. Additionally, he failed to promptly release funds to third parties in the real estate transaction. Ibid. After his clients filed a grievance, he failed to cooperate with the OAE's investigation. Id. at 2-3. Our decision in that matter is pending before the Court.

Facts

Respondent and the OAE entered into a disciplinary stipulation, dated June 7, 2023, which sets forth the following facts in support of respondent's admitted ethics violations.

The Ye Matter (District Docket No. XIV-2022-0250E)

On March 30, 2022, Hangling Ye and Yamping Zhang retained respondent to represent them in the sale of their home.[1] The next day, Ye and Zhang entered into a sale contract with buyers and, on April 5, 2022, the buyers provided respondent with a $129,000 check representing their earnest money check. On April 8, 2022, the effective date of his temporary suspension, respondent deposited the check in his attorney trust account (ATA). The OAE's investigation "did not reveal [r]espondent was aware of the suspension at the time he deposited the $129,000 check."

In April 2022, respondent became aware of his temporary suspension from the practice of law in New Jersey. Nonetheless, on May 18, 2022, he executed a power of attorney with Ye and Zhang to enable him to attend the closing on their behalf. Later the same day, he successfully conducted the closing in Ye and Zhang's absence.

Ye and Zhang paid respondent $1,200 toward the representation. Respondent deposited this amount in his personal account rather than his attorney business account (ABA), in violation of R. 1:21-6(a)(2).

[1] "DS" refers to the parties' June 7, 2023 disciplinary stipulation.
"Ex" refers to the exhibits to the disciplinary stipulation.

On May 19, 2022, Ye sent respondent an e-mail, inquiring when she could expect to receive the buyers' $129,000 in deposit funds. Several hours later, respondent replied that he would wire the funds to her that day. However, respondent was unable to do so because the Court had restrained his bank from disbursing his ATA funds in connection with the temporary suspension Order. Respondent did not inform Ye that he had been suspended, or that he was unable to provide her with the funds.

On May 20, 2022, Ye sent respondent another e-mail, informing him that she had not received the deposit funds. In a continued effort to conceal his suspension and the status of his ATA, respondent replied "I was out of the office yesterday, though I was not planning on that. I will go to the bank to take care of that today."

On May 23, 2022, Ye sent respondent two e-mails regarding the deposit funds, stating that she had not received the money and asking whether he had sent the funds. On June 6, 2022, Ye again sent respondent an e-mail, asking that he provide her with the deposit funds because she needed proof of available funds for the purchase of her next house. She also asked that respondent communicate with the buyers' attorney regarding a sewer pipe maintenance matter at the home she had sold.

On June 10, 2022, Ye sent respondent another e-mail, threatening to contact the OAE unless respondent wired the deposit funds and resolved the pipe maintenance issue within a week. Ye expressed her frustration with respondent, pointing out that she had had "over 15 rounds of communications" with him, including "emails, text messages and calls," and had "heard many times apologies on [his] side" without receiving the deposit funds. She further informed respondent that his "unethical behavior" had "caused trouble in [her] new house purchase."

On June 13, 2022, Ye sent respondent yet another e-mail, informing him that she had consulted with other lawyers and demanding to see proof that he had sent her the deposit funds by the next day. She also demanded that he refund a separate, $100,000 deposit that had been provided to him in connection with an unrelated real estate transaction. Respondent replied on the same day, stating that "the title company" was holding the $100,000 deposit and could wire it back immediately, but that "there [was] a problem regarding sending the $129,000," which he would call Ye the next day to discuss. Ye replied that she would be available at 8:30 a.m.

The next morning, respondent sent Ye an e-mail, enclosing a screenshot of his ATA and stating "[y]ou'll see that the Trust Account has over $304,000, which includes your $129,000. However, the available balance is $0. I'm also

attaching the deposit receipt from April showing that the fund[s] . . . were deposited into this account. If you have questions, we can speak this afternoon."

On July 6, 2022, Jill Gropper, Esq., filed a claim in the amount of $129,000 with the CPF on Ye and Zhang's behalf. On July 20, 2022, the CPF and Ye and Zhang executed a Release, Assignment and Subrogation Agreement, which awarded $129,000 to Ye and Zhang. On July 25, 2022, the CPF provided Ye and Zhang with a check in that amount.

On November 30, 2022, respondent provided a written reply to the allegations contained in Gropper's submission to the CPF. Specifically, respondent stated that he did not "dispute any facts" presented by Gropper. He maintained that, after he deposited the $129,000 in deposit funds in his ATA, he became aware that he was suspended, and that his ATA was frozen. He claimed that he "had no experience with a suspension" and, "at first," he was "hopeful that it was something that would be resolved relatively quickly, which would allow [him] to disburse the funds to [his clients] after closing of title the following month."

However, at the time of the closing, respondent's ATA was still frozen and he "was unsure what the next steps would be or how long the disciplinary process would take." He was aware that his clients needed the deposit funds for the purchase of a new home in June 2022, and he "was not sure how to even

discuss this matter" with them. He was "embarrassed and confused that something like this could even happen." After several weeks, he told them the truth and cooperated with their effort to obtain funds from the CPF. He further explained:

> At the time that my representation of [these clients] began, I was not under a temporary suspension Order and my trust account was not frozen. The funds were properly received into my trust account in April 2022 and have remained there since. As I have explained in my response to Docket No XIV-2019-0253E, I was also unaware that disciplinary matter was still outstanding, so the suspension in April of this year was very much a surprise to me. If I were aware of the pending suspension, I never would have received any funds in the trust account.
>
> [Ex17.]

On January 11, 2023, respondent attended a demand interview with the OAE. During the interview, respondent admitted that he became aware of his suspension at some point in April 2022, but claimed that he incorrectly believed that the suspension would resolve itself. He further stated that, once he realized that it would not resolve itself, he "so advised his clients and ceased practicing law in October 2022."

On January 27, 2023, more than nine months after the effective date of his temporary suspension, respondent belatedly filed his R. 1:20-20 affidavit.

Based on the above facts, the parties stipulated that respondent violated RPC 5.5(a)(1) by practicing law while suspended; RPC 8.4(c) by advising Ye that he would send her the deposit funds, despite knowing that he was unable to do so because the Court had frozen his ATA; RPC 8.4(d) by violating the Court's temporary suspension Order; and RPC 1.15(d) by depositing earned legal fees in his personal account rather than his ABA.

The Stanley Matter (District Docket No. XIV-2022-0310E)

Respondent represented Joseph Stanley in the sale of a liquor license. On November 15, 2021, Stanley executed an agreement with Khoa Bui, the manager of Nauti Crab, LLC (Nauti Crab) and the grievant in this matter, for the sale of the liquor license to Nauti Crab. Nauti Crab was represented by William Fay, Esq., in the transaction.

Pursuant to the agreement, Nauti Crab wired a deposit of $52,000 to respondent's ATA and, on January 24, 2022, respondent confirmed receipt of this amount. In February 2022, Nauti Crab sought to cancel the sale. Thereafter, respondent and Fay discussed the termination of the agreement and, on March 18, 2022, respondent proposed a settlement offer. Respondent and Fay continued to discuss settlement even after April 8, 2022, when the Court temporarily suspended respondent. Between April 27, 2022 and July 7, 2022, respondent

sent Fay three e-mails regarding the settlement negotiations. On July 15, 2022, respondent and Fay agreed to settle the matter for $7,500.

Pursuant to the agreement, respondent was to retain $7,500 of the $52,400 deposit for his client and release the remaining $45,000 to Nauti Crab. On August 5, 2022, respondent provided Fay with a draft settlement agreement and, on August 15, 2022, respondent provided Fay with an executed agreement.

On August 19, 2022, Fay sent respondent an e-mail, asking him to confirm the status of the funds he was to release to Nauti Crab. Subsequently, Fay reported respondent's conduct to the OAE.

On September 7, 2022, the OAE spoke with Fay by telephone and, on September 20, 2022, the OAE sent respondent a letter, asking him to provide a written reply to Fay's allegations. On November 30, 2022, respondent sent the OAE a letter, admitting that Fay's allegations were accurate. Respondent further admitted that, in late August 2022, he advised Fay that he was suspended and that his ATA was frozen. He also informed Fay that another client of his had successfully obtained her funds from the CPF.

Based on the above facts, the parties stipulated that respondent violated RPC 5.5(a)(1) by practicing law while suspended; RPC 8.4(c) by failing to advise Fay and Stanley of his suspension and leading them to believe that he

could still practice law and return the funds as part of the settlement; and RPC 8.4(d) by violating the Court's temporary suspension Order.

Respondent's Additional Misconduct

On September 20, 2022, the OAE sent a letter to respondent's office and home addresses, by regular mail, with an additional copy by e-mail, requesting that respondent provide the following records by October 4, 2022: (1) three-way reconciliations of his ATA for the audit period; (2) ATA and ABA receipts and disbursement journals for the audit period; (3) client ledger cards for matters handled during the audit period; (4) a completed attorney account disclosure form, which was enclosed with the letter; and (5) a written reply to the grievance in the Ye matter.

The OAE's e-mail of September 20, 2022 was confirmed as delivered and the regular mail was not returned to the OAE. Respondent failed to provide the requested documents by October 4, 2022.

On November 16, 2022, the OAE sent another letter to respondent's home address, by regular mail, with an additional copy by e-mail, directing him to provide the previously requested documents by November 30, 2022. The e-mail was confirmed delivered and the regular mail was not returned to the OAE. Respondent acknowledged receipt of the e-mail and, on November 30, 2022,

provided a written reply to the allegations in the Ye matter. He did not, however, produce to the OAE the required financial records.

On December 6, 2022, the OAE sent a letter to respondent's home address, by regular mail, with an additional copy by e-mail, directing him to appear for a demand interview on January 11, 2023. The OAE also directed respondent to provide his ABA and ATA statements, along with the previously requested records, by December 23, 2022. Respondent acknowledged receipt of the letter on the same day but did not provide the required documents by December 23, 2022.

On January 11, 2023, respondent appeared for the demand interview and admitted that he had not complied with the recordkeeping requirements of R. 1:21-6. Following the interview, the OAE sent a letter to respondent's home address by regular mail, with an additional copy by e-mail, directing him to provide the previously requested documents for the period from January 2021 to the present, by February 24, 2023. The OAE also enclosed a copy of its Outline of Recordkeeping Requirements Under RPC 1.15 and R. 1:21-6. Respondent acknowledged receipt of the letter on the same date.

On January 27, 2023, respondent provided the OAE with the attorney account disclosure form. However, he did not produce the remaining documents by February 24, 2023.

On March 24, 2023, the OAE again sent a letter to respondent's home address by regular mail, with an additional copy by e-mail, requesting the same documents previously requested in the January 11, 2023 letter. The OAE directed respondent to provide these documents by April 21, 2023 and enclosed another copy of its recordkeeping outline. The regular mail was not returned and the e-mail was not returned as undeliverable. Respondent, however, failed to produce the requested documents. Furthermore, as of the date of the stipulation, respondent's books and records were not in compliance with the Rules.

Based on the above, the parties stipulated that respondent violated RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:21-6 and RPC 8.1(b) for failing to fully cooperate with the OAE's investigation, as R. 1:21-6(i) requires.

In mitigation, the OAE identified the following factors: (1) respondent had no final prior discipline at the time of the misconduct; (2) he readily admitted to his wrongdoing; and (3) he expressed sincere contrition and remorse.

In aggravation, the OAE noted that respondent failed to remediate his recordkeeping deficiencies despite multiple opportunities to do so. In further aggravation, respondent had engaged in a continuing course of dishonesty and misrepresentation by continuing to practice law and failing to promptly notify

the affected parties of his suspension, despite having actual knowledge of his suspended status.

Citing In re Frank, 240 N.J. 46 (2019) (discussed below), the OAE argued that a one-year suspension was the minimum quantum of discipline appropriate for respondent's practice of law while suspended. The OAE emphasized that, in this matter, respondent had practiced law while suspended for several months, and that his lack of candor impeded his clients' ability to explore alternate avenues for recouping their entrusted funds. The OAE also pointed out, however, that respondent's actions did not result from malice, but from a desire to avoid the reality of the temporary suspension. The OAE further stated that respondent's "motivation was to assist his clients in those two matters," and that he eventually had complied with his obligations under R. 1:20-20. Taking these factors into account, especially respondent's lack of final discipline, the OAE concluded that the appropriate quantum of discipline was an eighteen-month suspension or such other lesser discipline as we deemed appropriate.

Respondent did not file a brief for our consideration.

Analysis and Discipline

Violations of the Rules of Professional Misconduct

Following a review of the record, we conclude that the facts contained in the stipulation clearly and convincingly support the finding that respondent violated RPC 1.15(d) (two instances); RPC 5.5(a)(1) (two instances); RPC 8.1(b); and RPC 8.4(c) (two instances). However, we determine to dismiss the charge that respondent violated RPC 8.4(d) (two instances).

Specifically, respondent violated RPC 1.15(d) by depositing his fee in the Ye matter in his personal account rather than his ABA, in violation of R. 1:21-6(a)(2). Moreover, respondent violated this Rule by admittedly not maintaining his books and records, as R. 1:21-6 requires.

Respondent violated RPC 5.5(a)(1) by practicing law after April 8, 2022, the effective date of his temporary suspension. By his own admission, he became aware of his suspension in April 2020. Yet, in May 2022, respondent attended the closing in the Ye matter and, as of August 2022, respondent was still exchanging correspondence and negotiating a settlement in the Stanley matter. Indeed, he admitted during the demand interview that he improperly continued to practice law in New Jersey until October 2022. Thus, respondent violated RPC 5.5(a)(1) (two instances).

Respondent violated RPC 8.4(c) by repeatedly promising to send Ye the buyers' deposit funds despite knowing he was unable to do so because his ATA had been frozen in connection with the Court's temporary suspension Order. He violated this RPC a second time by failing to inform Stanley and Fay that he was temporarily suspended and, thus, his ATA was frozen. As escrow agent, respondent had the duty to hold entrusted funds inviolate and to make such funds available when required by the parties. When he became unable to fulfill this duty, he should have disclosed his inability to act, allowing his clients and the third parties the opportunity to make decisions and take required action. Additionally, respondent's failure to disclose his suspension to his clients constituted a misrepresentation by omission. See In the Matter of Dianne E. Laurenzo, DRB 20-201 (March 31, 2021) at 13 (stating that the attorney's failure to disclose her suspension was a misrepresentation by silence in violation of RPC 8.4(c)), so ordered, 247 N.J. 200 (2021). Thus, respondent violated RPC 8.4(c) (two instances).

Respondent further violated RPC 8.1(b) by violating R. 1:21-6. Pursuant to R. 1:21-6(i), an attorney who "fails to comply with the requirements of [R. 1:21-6] in respect of the maintenance, availability and preservation of accounts and records . . . shall be deemed to be in violation of RPC 1.15(d) and RPC

8.1(b)." Therefore, respondent's failure to maintain his financial books and records, as R. 1:21-6 requires, constituted a per se a violation of RPC 8.1(b).

However, we dismiss the charge that respondent violated RPC 8.4(d) (two instances) by practicing law during his suspension. Respondent' conduct did not result in a waste of judicial resources, as he was not involved in a litigation matter. We have declined to find a violation of RPC 8.4(d) under similar circumstances in the past. See In the Matter of Young Min Kim, DRB 19-134 (November 27, 2019) at 14 (finding that the attorney, who was engaged in two transactional matters, did not violate RPC 8.4(d) by practicing law while suspended because the offense was adequately addressed by RPC 5.5(a)(1)), so ordered, 241 N.J. 350 (2020).

In sum, we find that respondent violated RPC 1.15(d) (two instances); RPC 5.5(a)(1) (two instances); RPC 8.1(b); and RPC 8.4(c) (two instances). We determine to dismiss the charge that respondent further violated RPC 8.4(d) (two instances). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

The crux of respondent's misconduct was his blatant practice of law while temporarily suspended in New Jersey, including for months after becoming

acutely aware of his suspended status. Attorneys who knowingly practice law while suspended have received discipline ranging from a lengthy term of suspension to disbarment, depending on the presence of other misconduct, the attorney's disciplinary history, and aggravating or mitigating factors. See, e.g., In re Gonzalez, __ N.J. __ (2022), 2022 N.J. LEXIS 996 (one-year suspension for attorney who, during a three-month term of suspension, called the Motor Vehicle Commission (the MVC) on behalf of a friend whose driver's license had been suspended, identified himself as an attorney, and requested information on how to adjourn the friend's MVC hearing; thereafter, the attorney accompanied his friend, in a representative capacity, to the MVC hearing, where the attorney presented an MVC employee with a business card of another lawyer with an active law license; following the MVC's demand that he produce his own driver's license or social security number to confirm his identity, the attorney left the MVC; we weighed the fact that the attorney's misconduct was confined to a singular matter against his prior discipline, which included a 1995 reprimand, a 2012 admonition, and a 2017 three-month suspension); In re Choi, 249 N.J. 18 (2021) (two-year suspension for attorney who, following his indefinite suspension in New York for federal criminal convictions for money laundering and submitting false statements to federal authorities, represented a client, in New York state court, where he falsely certified that he was admitted

to practice in New York; the attorney also maintained a law firm website that improperly claimed that he was admitted to practice in New York; finally, the attorney failed to comply with New York's affidavit of compliance rule for suspended or disbarred attorneys; in finding that a two-year suspension was appropriate, we considered the fact that the attorney was suspended for a serious crime as well as his false certification); In re Boyman, 236 N.J. 98 (2018) (three-year suspension for the attorney, in a default matter, who, for more than four years following his temporary suspension, represented borrowers in nineteen, predominately commercial, real estate transactions involving the same title company; when the title company discovered the attorney's suspended status, the attorney misrepresented to the title company that he had been reinstated to practice; additionally, despite the OAE's numerous attempts, spanning almost nine months, seeking the attorney's written reply to the ethics grievance, the attorney failed to respond, despite acknowledging receipt of the OAE's letters in a telephone conversation; we weighed, in aggravation, the attorney's 2010 and 2014 censures, in default matters, in which he also failed to cooperate with disciplinary authorities; we also weighed the fact that the attorney's misconduct had continued, unabated, for four years, in numerous high-value matters); In re Kim __ N.J. __ (2022), 2022 N.J. LEXIS 1068 (the attorney was disbarred, in a default matter, for practicing while suspended for almost three-and-a-half years

following his temporary suspension, in connection with sixteen small business loan closings before the United States Small Business Administration (the SBA); during each loan closing, the attorney falsely certified that he maintained an active New Jersey law license; the attorney also ignored the OAE's communications, spanning several months, which required him to reply to the SBA's ethics grievance; the attorney had received a prior three-year suspension, in 2020, also for practicing law while suspended in connection with at least two client matters, among other misconduct); In re Frank, 240 N.J. 46 (2019) (disbarment; in a default matter, the attorney practiced law while suspended in a foreclosure matter; the attorney neglected the matter over a five-year period and assured the client that she did not need to worry even after her house was listed for sheriff sale; the client paid the attorney over $10,000 but received nothing in return; we stated that a minimum of one-year suspension was required by the attorney's unauthorized practice of law; after factoring in the attorney's previous censure and one-year suspension as well as the fact that he previously had defaulted in two matters, was under three suspension Orders, had failed to cooperate with the OAE in seven investigations, and had caused great harm to his client, we decided that disbarment was the appropriate quantum of discipline).

Recently, the Court imposed a two-year suspension on an attorney, in a consolidated default matter, where the attorney practiced law in two client matters while temporarily suspended. In re Stack, 255 N.J.325 (2023). In the first matter, despite his suspension from the practice of law, the attorney wrote to a bankruptcy court to seek an adjournment, even though his client's case had already been dismissed. In the Matters of Robert James Stack, DRB 23-005 and 23-006 (May 18, 2023) at 35. In the second matter, the suspended attorney twice appeared in person at the Clerk's Office and attempted to file documents. Id. at 37. In addition to practicing law while suspended, the attorney also grossly mishandled three matters, causing the issuance of judgments against his client totaling $128,192, committed negligent misappropriation and recordkeeping violations, and failed to cooperate with the OAE. Id. at 28. The attorney previously had received an admonition for engaging in a conflict of interest and a reprimand for failing to file an R. 1:20-20 affidavit. Id. at 2-3.

Recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not caused a negligent misappropriation of clients' funds. See In the Matter of David Stuart Bressler, DRB 22-157 (November 21, 2022) (the attorney commingled and committed several recordkeeping violations, including failure to perform three-way reconciliations, improper account designation, and failure to preserve images of processed checks).

Misrepresentations to clients and third parties generally require a reprimand. See In re Cerruti, 254 N.J. 121 (2023) (reprimand for the attorney who helped her client, in a matrimonial matter, conceal proceeds from a real estate transaction from the Indian government; the attorney performed pro bono work and had an unblemished career of thirty-four years; we found, however, that the attorney's experience should have heightened her awareness of her duty to counsel clients toward lawful transactions), and In re Dwyer, 223 N.J. 240 (2015) (the attorney made a misrepresentation by silence to his client, failing to inform her, despite ample opportunity to do so, that her complaint had been dismissed; the complaint was dismissed because the attorney had failed to serve interrogatory answers and ignored court orders compelling service of the answers; the attorney also completely failed to reply to his client's requests for information or to otherwise communicate with her; the attorney never informed his client that a motion to compel discovery had been filed, that the court had entered an order granting the motion, or that the court had dismissed her complaint for failure to serve the interrogatory answers and to comply with the court's order).

Admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney has a limited or no ethics history. See In the Matter of Giovanni DePierro, DRB 21-190 (January 24, 2022) (the attorney

failed to respond to letters from the investigator in the underlying ethics investigation in violation of RPC 8.1(b); the attorney also violated RPC 1.4(b) (failing to communicate with a client), RPC 1.5(c) (failing to set forth in writing the basis or rate of the attorney's fee in a contingent fee case – two instances), and RPC 1.16(d) (failing to protect the client's interests upon termination of the representation)), and In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (the attorney failed to reply to repeated requests for information from the district ethics committee investigator regarding his representation of a client in three criminal defense matters, in violation of RPC 8.1(b)).

Considering the above disciplinary precedent, we conclude that respondent's misconduct readily could be met with a two-year suspension. Like the attorney in Stack, who was suspended for two years, respondent knowingly practiced law while suspended in two client matters and committed additional misconduct. In crafting the appropriate discipline, however, we also consider aggravating and mitigating factors.

In aggravation, respondent failed to file his R. 1:20-20 affidavit in a timely manner and failed to remediate his financial records, despite the OAE's repeated requests that he do so. See In re Steiert, 220 N.J. 103 (2014) (evidence of unethical conduct contained in the record can be considered in aggravation, even though such unethical conduct was not charged in the formal ethics complaint).

Moreover, respondent engaged in a continuing course of dishonesty, deceit, and misrepresentation by promising to send Ye's funds and concealing his suspension for months. See In re Forrest, 158 N.J. 428, 438 (1999) (weighing, in aggravation, the fact that the attorney engaged in a "continuing course of dishonesty, deceit, and misrepresentation" by concealing his client's death for nine months).

We note, however, that principles of progressive discipline do not apply in this matter because, at the time respondent committed the instant misconduct, the Court had not entered an Order in DRB 23-094. See In the Matter of Neal E. Brunson, DRB 22-149 (January 17, 2023) at 17 (stating that progressive discipline did not apply because the Court had not entered its Order in the attorney's prior matter), so ordered, 253 N.J. 325 (2023).

In mitigation, respondent was remorseful, admitted responsibility, and entered into this stipulation.

Conclusion

On balance, considering that the aggravating and mitigating factors are in equipoise, we determine that a two-year suspension remains the appropriate quantum of discipline for respondent's misconduct.

As conditions precedent to his reinstatement, we recommend that respondent be required to (1) attend a recordkeeping course approved by the OAE; (2) bring his financial records fully into compliance to the satisfaction of the OAE; and (3) provide all outstanding financial records to the OAE. Moreover, following his reinstatement, we recommend that respondent be required to submit to the OAE, on a quarterly basis, his monthly ATA reconciliations and supporting financial records, for a period of two years.

Chair Gallipoli and Members Hoberman and Rodriguez were 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
Peter Boyer, Esq., Vice-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 Anthony M. Orlando
Docket No. DRB 23-140

Argued: November 16, 2023

Decided: December 18, 2023

Disposition: Two-year suspension

Members	Two-year Suspension	Absent
Gallipoli		X
Boyer	X	
Campelo	X	
Hoberman		X
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Rodriguez		X
Total:	6	3

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