SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. 23-149
District Docket No. XB-2021-0012E

In the Matter of Robert James Stack
An Attorney at Law

Decided
December 21, 2023

Certification of the Record

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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 certification of the record filed by the District XB Ethics Committee (the DEC), pursuant to R. 1:20-4(f). The amended formal ethics complaint charged respondent with having violated RPC 1.3 (lacking diligence); RPC 1.4(b) (failing to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information); RPC 1.5(b) (failing to set forth in writing the basis or rate of the legal fee); and RPC 8.1(b) (two instances – failing to cooperate with disciplinary authorities).[1]

For the reasons set forth below, we recommend to the Court that respondent be disbarred.

Respondent earned admission to the New Jersey bar in 1996. Prior to his November 2020 temporary suspension, he maintained a practice of law in Kinnelon, New Jersey.

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

On February 25, 2019, respondent received an admonition for violating RPC 1.7(a)(2) (engaging in a concurrent conflict of interest) and RPC 1.9(a) (engaging in a conflict of interest with a former client). In the Matter of Robert James Stack, DRB 18-393 (February 25, 2019) (Stack I). Specifically, respondent represented a client in an uncontested matrimonial matter, despite previously having represented both the client and her husband in a foreclosure action and in the sale of their marital residence. Respondent failed to obtain the client's or the husband's written waiver to the conflicted representation, as the Rule requires.

Effective November 19, 2020, the Court temporarily suspended respondent for his failure to comply with an investigation by the Office of Attorney Ethics (the OAE) concerning his financial records. In re Stack, 244 N.J. 326 (2020). To date, he remains temporarily suspended.

On September 14, 2022, the Court reprimanded respondent, in a default matter, following his willful failure to comply with R. 1:20-20 following his November 2020 temporary suspension. In re Stack, __ N.J. __ (2022), 2022 N.J. LEXIS 737 (Stack II).

On September 12, 2023, the Court suspended respondent for two years in connection with his misconduct underlying two consolidated default matters. In re Stack, 255 N.J. 325 (2023) (Stack III).

In the first matter comprising Stack III, between approximately 2010 and 2016, respondent grossly mishandled, on behalf of a single client, three distinct matters which resulted in the issuance of three judgments, totaling more than $128,192, against the client in a personal capacity. In the Matters of Robert James Stack, DRB 23-005 and 23-006 (May 18, 2023) at 7-12. During that timeframe, respondent altogether failed to advise his client of the adverse judgments or the significant developments of the client's matters. It was not until April 2020, when the client attempted to obtain a mortgage, that the client independently discovered the three outstanding judgments against him, each of which had been issued several years earlier. Id. at 11-12. Respondent failed to cooperate with the OAE's investigation of his misconduct underlying the client's matters, which investigation spanned between June and December 2020. Id. at 12-13.

In the second matter comprising Stack III, between May and December 2020, respondent failed to cooperate with the OAE's investigation of his issuance of "questionable" attorney trust account (ATA) checks, made payable

to himself in round numbers, which he negotiated for cash. Respondent's total failure to cooperate resulted in his November 19, 2020 temporary suspension. Additionally, respondent failed to comply with numerous recordkeeping requirements of R. 1:21-6. Finally, based on respondent's failure to place descriptions on numerous ATA transactions, the OAE was unable to determine the disposition of $800 in settlement funds in connection with one client matter, and funds in a confidential settlement in connection with a separate client matter. Consequently, throughout 2020, respondent continuously and negligently misappropriated the settlement funds in both client matters.

In the third matter comprising Stack III, respondent practiced law while suspended before the United States Bankruptcy Court for the District of New Jersey. Id. at 21-24. Specifically, on November 20, 2020, the day after respondent's temporary suspension, he paid his client's $335 Bankruptcy Court filing fee from his attorney business account. Weeks later, on December 14, 2020, respondent filed with the Bankruptcy Court a letter, on his law firm letterhead, requesting an extension to reply to a creditor's motion based on his claim that he was "embroiled" in a "submission" to our Court. Between January and March 2021, respondent failed to cooperate, in any way, with the OAE's

investigation of his practice of law while suspended before the Bankruptcy Court.

In the fourth matter comprising Stack III, respondent practiced law in New Jersey while suspended on at least two separate occasions. Id. at 25-27. Specifically, in October 2021, eleven months after the Court temporarily suspended him, respondent appeared at the Clerk's Office and unsuccessfully attempted to file documents in connection with a client's previously dismissed notice of petition for certification to the Court. Six months later, on April 8, 2022, respondent again appeared at the Clerk's Office and attempted to file a similar submission in connection with the client's matter. Finally, between June and August 2022, respondent failed to cooperate in any way with the OAE's investigation of his practice of law before the Court while suspended.

In determining that a two-year suspension was the appropriate quantum of discipline for the totality of respondent's misconduct, we weighed, in aggravation, respondent's repeated attempts to practice law while suspended, his outright refusal to cooperate with disciplinary authorities, and that he had allowed both matters to proceed as defaults. The Court agreed with our recommended discipline.

On September 14, 2023, we issued a decision determining that a one-year suspension, consecutive to the two-year suspension imposed in Stack III, was the appropriate quantum of discipline for respondent's misconduct underlying a default matter. In the Matter of Robert James Stack, DRB 23-073 (Stack IV).

In that matter, in July 2016, Frank and Marjorie Jonas retained respondent to secure the return of their $3,150 security deposit from their landlords, Todd and Daun Majka. Id. at 8. On February 6, 2017, respondent failed to appear for Frank and Marjorie's trial before the Superior Court of New Jersey, Special Civil Part, prompting the court to adjourn the trial date and require the parties to attend mediation that same day. Although respondent attended the mediation, via telephone, he made no effort to directly communicate with his clients. Rather, respondent spoke directly with Todd and Daun's attorney, who then relayed respondent's statements to Frank and Marjorie. At the conclusion of mediation, the parties reached a settlement, which required Todd and Daun to pay Frank and Marjorie a total of $7,000, via four monthly installment payments. Id. at 9.

Following Todd and Daun's failure to abide by the settlement agreement, on March 21, 2017, respondent filed a motion for "entry of default judgment" against Todd and Daun. Respondent's motion included two certifications

containing the purported signatures of Frank and Marjorie, who neither reviewed nor signed the documents. Respondent had forged Frank and Marjorie's signatures, without their authorization, in order to "expedite" the filing of the motion, in violation of RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). Id. at 18. The Superior Court granted respondent's motion and, on April 7, 2017, entered default judgment in favor of Frank and Marjorie.

Meanwhile, between February 21 and April 24, 2017, respondent, without Frank or Marjorie's knowledge or consent, provided Todd, a represented party, with several of Frank's privileged text messages, which Frank had sent respondent regarding the status of his matter. During that timeframe, respondent complained about Frank, via text messages to Todd, and improperly attempted to establish a rapport with Todd, without his attorney's knowledge, in violation of RPC 1.6(a) (failing to maintain confidential information). Id. at 10, 17.

Between July and August 2018, based on Todd and Daun's continuing failure to satisfy the default judgment, respondent applied for and obtained a writ of execution. Respondent, however, failed to serve the writ on the appropriate entities or to make any attempt to levy upon the judgment, which operated as a lien on Todd and Daun's property.

One year later, in July 2019, respondent received notice of a foreclosure lawsuit naming, as defendants, Todd and Daun, as the property owners, and Frank and Marjorie, as the holders of a subordinate judgment lien on the property. Id. at 11. Additionally, between July and October 2019, Frank provided respondent a letter from a potential buyer of Todd and Daun's property. The potential buyer sought to negotiate a compromise of Frank and Marjorie's judgment lien in connection with his intent to purchase the property free of any liens. Frank instructed respondent to immediately contact the buyer's attorney to attempt to collect upon their judgment. Respondent, however, ignored the buyer's attorney's attempts to communicate with him and made no effort to collect upon Frank and Marjorie's judgment. Consequently, at the October 11, 2019 closing, which took place without notice to Frank or Marjorie, no funds were disbursed in satisfaction of their judgment. Id. at 12-13.

Following the October 2019 closing, respondent failed to reply to Frank's repeated inquiries regarding a November 2019 motion filed by the mortgage holder of Todd and Daun's property. Thereafter, respondent failed to communicate in any way with Frank or Marjorie, whose collection matter remained unresolved.

We found that respondent violated RPC 1.3 and RPC 1.4(b) by failing to (1) apprise Frank and Marjorie of the significant developments of their matter, (2) reply to Frank's repeated inquires, and (3) protect Frank and Marjorie's interests in connection with their attempts to recover their security deposit and collect upon their default judgment. Id. at 15-17. We also found that respondent violated RPC 1.16(d) (failing to protect a client's interests upon termination of the representation) by unilaterally abandoning his representation of Frank and Marjorie, in November 2019, when he altogether ceased communicating with his clients and failed to return their client file. Id. at 17. Following respondent's November 2020 temporary suspension, respondent shuttered his law office, disconnected his telephone lines, and failed to notify Frank and Marjorie of his suspension, as R. 1:20-20(b)(11) requires. Respondent's conduct left Frank and Marjorie without a means to communicate with him.

Finally, we found that respondent twice violated RPC 8.1(b). First, respondent failed to reply, in any way, to the DEC's three letters, dated between August 2021 and March 2022, requiring that he submit a written reply to Frank's ethics grievance. Second, respondent failed to answer the formal ethics complaint and allowed the matter to proceed as a default. Id. at 18-19.

We observed that respondent's misconduct completely overlapped with the timeframe underlying his misconduct in Stack III, where we determined that a two-year suspension was the appropriate quantum of discipline based primarily on his practice of law while suspended. Id. at 19. Consequently, had the matter been considered with Stack III, we concluded that an aggregate three-year suspension would have been the appropriate quantum of discipline, considering the significant harm caused by respondent's abandonment of Frank and Marjorie; his brazen disregard for the sanctity of Frank and Marjorie's privileged communications; his egregious falsification of Frank and Marjorie's signatures in at least two certifications filed with the Superior Court; his continued refusal to cooperate in any way with disciplinary authorities; and the default status of the matter. Id. at 29. To achieve that result, we determined that a one-year suspension, consecutive to the two-year suspension imposed in Stack III, was the appropriate quantum of discipline. Ibid. Our decision in Stack IV is pending with the Court.

Service of Process

Turning to the instant matter, service of process was proper.

On June 10, 2022, the DEC sent a copy of the complaint, by certified and regular mail, to respondent's home address of record, given his temporary

suspension. The certified mail was returned to the DEC marked "No Robert" and the regular mail was not returned.

On July 28, 2022, the DEC sent a copy of the amended complaint,[2] by certified and regular mail, to respondent's home address of record. The certified mail was returned to the DEC marked "Refused/Unable to Forward," and the regular mail was not returned.

On September 30, 2022, the DEC sent an additional copy of the amended complaint, by certified and regular mail, to respondent's home address of record. The certified mail was returned to the DEC marked "unable to forward," and the regular mail was returned with the notation "return to sender; [respondent] no longer lives here."

After the certified and regular mail were returned to the DEC, it discovered, based on an internet search of the Morris County Clerk's website, that, on May 2, 2022, respondent had sold the property associated with his home address of record and relocated to Florida.[3]

[2] The amended complaint contained in the record before us is dated August 31, 2022. The original complaint is dated June 6, 2022. No other versions of the complaint are contained in the record before us.

[3] Respondent, however, failed to update his home address with the Court, as R. 1:20-1(c) requires.

On November 4, 2022, the DEC sent a copy of the amended complaint, by certified and regular mail, to respondent's Florida address. The certified mail was returned to the DEC marked "Refused/Unable to Forward," and the regular mail was returned with the notation "Moved. Return to Sender."

On February 13, 2023, the DEC sent an additional letter to respondent's Florida address, by certified and regular mail, informing him that, unless he filed a verified answer to the amended complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). The certified mail was returned to the DEC marked "Not Deliverable As Addressed/Unable to Forward," and the regular mail was returned with the notation "Does not live at this address. Return to Sender."

On March 24, 2023, the OAE sent respondent a message, to his e-mail addresses of record, advising him that the DEC had been attempting to send him a copy of the amended complaint in the instant matter. The OAE requested that respondent confirm his e-mail addresses and offered to send a copy of the amended complaint in the instant matter, as well as the complaint in Stack IV, to his e-mail addresses. The OAE advised respondent that, if he failed to reply,

the DEC would certify the record in this matter to us, as a default. Delivery of the OAE's message to respondent's e-mail addresses was completed, although no delivery notification was sent by the destination server. Respondent, however, failed to reply.

On March 30, 2023, the OAE sent respondent another copy of its March 24, 2023 e-mail message, by electronic mail, to respondent's e-mail addresses of record. In its e-mail, the OAE stated that it was "stressing" the "urgency" of its March 24, 2023 e-mail message and required that respondent reply. Although the OAE received an e-mail confirmation that its message was delivered, respondent failed to reply.

On April 20, 2023, the OAE notified the DEC via e-mail that respondent had not replied to its March 24 and March 30 e-mails.

As of April 20, 2023, respondent had not filed an answer to the amended complaint, and the time within which he was required to do so had expired. Accordingly, the DEC certified this matter to us as a default.

On July 31, 2023, Acting Chief Counsel to the Board sent respondent a letter, by certified and regular mail, to his home address of record, and by electronic mail, to both of his e-mail addresses of record, informing him that

this matter was scheduled before us on September 21, 2023, and that any motion to vacate must be filed by August 15, 2023.

On September 5, 2023, the certified mail was returned to the Office of Board Counsel (the OBC) marked "no mail receptable/unable to forward." On September 11, 2023, the regular mail was returned to the OBC marked "not deliverable as addressed/unable to forward." As of the date of this decision, the electronic mail has not been returned to the OBC as undeliverable.

Meanwhile, on August 7, 2023, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on September 21, 2023. The notice informed respondent that, unless he filed a successful motion to vacate the default by August 15, 2023, his failure to answer would remain deemed an admission of the allegations of the amended complaint.

Respondent did not file a motion to vacate the default.

Facts

We now turn to the allegations of the complaint.

On December 17, 2019, John DeWitt and Jeanette Crowley met with respondent at his Kinnelon, New Jersey law office. During their meeting, DeWitt and Crowley agreed to retain respondent to reestablish Crowley's visitation rights with her son and, if necessary, to file a court action to achieve

that objective. DeWitt and Crowley further retained respondent in connection with the denial of their insurance claim stemming from a motor vehicle accident. Finally, DeWitt and Crowley retained respondent to recoup a purportedly improper $2,200 hotel charge to DeWitt's debit card.

At the conclusion of their meeting, DeWitt and Crowley paid respondent $3,500 in cash toward his retainer fee. Respondent simultaneously provided DeWitt and Crowley with a written "retainer receipt" dated December 17, 2019, which indicated that respondent "acknowledge[d]" the $3,500 cash payment "for legal representation." The "retainer receipt" further provided that the $3,500 cash payment "constitute[d] an advance payment for services that will be performed starting December 18, 2019." Respondent, DeWitt, and Crowley signed their names on the bottom of the receipt. Respondent, however, advised DeWitt and Crowley that he would provide them "a formal retainer agreement," given that the "retainer receipt" did not explain the basis of respondent's legal fee. Specifically, DeWitt and Crowley were unaware of whether respondent intended to charge an additional hourly rate for his legal services or whether the $3,500 retainer payment constituted a flat fee. Respondent, however, altogether failed to provide DeWitt and Crowley with a written fee agreement explaining the basis of his legal fee, as RPC 1.5(b) requires.

Following the December 17, 2019 consultation, respondent failed to reply to any of DeWitt and Crowley's e-mails, text messages, and telephone calls seeking updates regarding the status of their matters. Respondent's secretary, however, advised DeWitt, on at least one occasion, that respondent was "working on an appeal in an estate matter" and would "get back to him."

On April 17, 2022, respondent sent Crowley the following text message:

> Jeanette – OMG, it is SO important that we speak, PLEASE TRUST ME & DON'T BE MAD, I REALLY enjoy u guys & ur company, I considered us as friends, BUT I am IN SUCH AN UNFAIR WAR w the Unethical Committee[4] because they favor the Elder Abuser Senator over me & u remember how bogged down I was over the 6 Year BS & then it retaliated against me & I assumed I could finish faster, but they hacked my computer & then stole it & my printer from my office & I knew ur Ex was such a prick like them, he'd get me in more trouble, but the whole thing took so long, I'm just texting the u the basics in advance, I WANTED TO GO TO STITT & talk sense into him because it disgusts me that a parent can do this to another & I basically stayed in my office 24/7 for the last year, we could've have & should have talked because again, I view u as friends & THIS COMMItTEE is ABUSING THEIR POWER BIGTIME
>
> I'll repay U or do whatever u want, but TRUST ME, it's SO important that we talk about this & OF COURSE, I'm beyond sick about this

[4] In the amended complaint, the DEC alleged that the "unethical committee" referred to by respondent was the DEC. All typographical errors contained in the quoted text message are contained in respondent's original text message.

> They FKG Ruined me to save his snake skin, but IM NOT TAKING IT, I FILED FOR A hearing w Supreme & wait till u see my proof
>
> Happy Easter & again, I'm only asking that u hear me because people like us can't be screwed over like this & I WOULD NVR DO THAT TO U GUYS, THEY CAUSED THIS & I'm SO Angry & SORRY, there's about 5 MILLION ($5M) REASONS why they did this too, be smart & the same person I came to REALLY Like & admire & WANT TO HELP!!!
>
> Happy Easter
>
> [CEx.B.][5]

In reply to respondent's text message, Crowley asked respondent when he was "free to talk?" Respondent, however, failed to reply. Indeed, other than the April 17, 2022 text message, respondent altogether failed to communicate with DeWitt and Crowley following their December 17, 2019 consultation. Additionally, respondent failed to perform any legal work in furtherance of DeWitt and Crowley's matters and, despite his assertion, in his April 17, 2022 text message to Crowley, that he would refund their $3,500 retainer fee,

[5] "CEx." refers to the exhibits appended to the amended complaint.

respondent failed to refund any portion of his unearned legal fee, as RPC 1.16(d) requires.[6]

On March 20 and April 5, 2022, the DEC sent respondent letters, to his home and business addresses of record, requiring that he reply to the ethics grievance filed by DeWitt and Crowley. In its letters, the DEC reminded respondent of his obligation to cooperate with its investigation. Respondent, however, failed to reply.

Based on respondent's failure to perform any legal work in furtherance of DeWitt and Crowley's matters, the amended complaint charged respondent with having violated RPC 1.3. Additionally, based on respondent's failure to reply to any of DeWitt and Crowley's repeated inquiries regarding the status of their matters, the amended complaint charged respondent with having violated RPC 1.4(b).

Further, based on respondent's failure to set forth in writing the basis or rate of his legal fee, the amended complaint charged him with having violated

[6] Although respondent was not charged with having violated RPC 1.16(d), we consider, in aggravation, his failure to refund his unearned retainer fee. See In re Steiert, 201 N.J. 119 (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).

RPC 1.5(b). The DEC alleged that respondent's "retainer receipt" failed to satisfy the requirements of RPC 1.5(b), given that it did not establish the basis of respondent's legal fee or clarify whether respondent intended to charge additional fees at an hourly rate. The DEC also noted that, although respondent previously had represented Crowley, respondent never "regularly" represented Crowley and, thus, RPC 1.5(b) required that he set forth the basis of his legal fee in writing.

Finally, based on respondent's total failure to cooperate with the DEC's investigation of DeWitt and Crowley's ethics grievance, the amended complaint charged respondent with twice having violated RPC 8.1(b).

Analysis and Discipline

Violations of the Rules of Professional Conduct

We find that the facts set forth in the amended complaint support all the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

First, respondent's failure to perform any legal work in furtherance of DeWitt and Crowley's matters unquestionably violated RPC 1.3. Similarly,

respondent's total failure to reply to DeWitt and Crowley's repeated inquiries regarding the status of their matters violated RPC 1.4(b).

Specifically, despite respondent's promise, in his December 17, 2019 "retainer receipt," that he would begin performing legal work in furtherance of the representation on December 18, 2019, respondent altogether failed to perform any legal work for DeWitt and Crowley. Following the December 17, 2019 consultation, DeWitt and Crowley repeatedly attempted to communicate with respondent regarding the status of their matters. Respondent, however, ignored their pleas for information.

On April 17, 2022, nearly two-and-a-half years after the December 2019 consultation, respondent sent Crowley a text message in which he appeared to acknowledge his failure to perform any legal work. Specifically, respondent asked that Crowley not be upset, insisted that they discuss the situation, and offered to refund his retainer fee. Respondent, however, failed to advise Crowley of the fact that he had been temporarily suspended since November 2020, following which he shuttered his law office. Moreover, respondent failed to offer any information regarding the status or outcome of her matters. Rather, respondent baselessly accused the DEC, which he referred to as the "unethical committee," of "abusing their power big time" and "ruin[ing]" him to protect an

"elder abuser senator." In reply to respondent's text message, Crowley asked respondent when he was available to speak with her. Respondent, however, failed to reply or to refund any portion of his $3,500 retainer fee.

Consequently, in the years since DeWitt and Crowley provided respondent $3,500 to begin the representation, respondent failed to make any effort to reestablish Crowley's visitation rights with her son, recoup an improper $2,200 charge to DeWitt's debit card, or take any action to contest the denial of their insurance claim in connection with a motor vehicle accident. Rather, since the December 2019 consultation, it appears that respondent communicated with Crowley only once, on April 17, 2022, when he sent her a text message in which he falsely blamed the DEC for his current predicament.

Additionally, respondent violated RPC 1.5(b) by failing to set forth, in writing to DeWitt and Crowley, the basis or rate of his legal fee. RPC 1.5(b) requires a lawyer to communicate the basis or rate of the legal fee in writing to the client "[w]hen the lawyer has not regularly represented the client."

Here, respondent's December 17, 2019 "retainer receipt" did not communicate the basis or rate of his legal fee to DeWitt and Crowley. Rather, the receipt stated, in relevant part, only that the $3,500 retainer "payment constitute[d] an advance payment for services that will be performed starting

December 18, 2019." Because the retainer receipt did not clearly explain whether respondent intended to charge additional legal fees in connection with the representation, or whether such additional fees would be billed at an hourly rate, respondent offered to provide DeWitt and Crowley with "a formal retainer agreement" setting forth the basis of his legal fee. Respondent, however, failed to fulfill his promise to do so. Moreover, respondent did not previously represent DeWitt and, although he previously had represented Crowley, respondent did not "regularly" represent her. Consequently, RPC 1.5(b) required respondent to explain the basis or rate of his legal fee in writing to both DeWitt and Crowley.

Finally, respondent violated RPC 8.1(b) by altogether failing to cooperate with the DEC in two respects. First, respondent failed to reply in any way to the DEC's March 20 and April 5, 2022 letters requiring that he submit a written reply to DeWitt and Crowley's ethics grievance. Second, respondent failed to file an answer to the amended complaint and, consequently, allowed this matter to proceed as a default.

In sum, we find that respondent violated RPC 1.3; RPC 1.4(b); RPC 1.5(b); and RPC 8.1(b) (two instances). The sole issue left for our determination is the appropriate quantum of discipline for the totality of respondent's misconduct.

Quantum of Discipline

The timeframe underlying respondent's misconduct in this matter completely overlaps with the timeframe underlying his misconduct in Stack III and largely overlaps with the timeframe underlying his misconduct in Stack IV.

In Stack III, we determined that a two-year suspension was the appropriate quantum of discipline based primarily on respondent's practice of law while suspended before our Court and a federal bankruptcy court. In Stack IV, we determined that a one-year suspension, consecutive to the two-year suspension imposed in Stack III, was the appropriate quantum of discipline based primarily on respondent's client abandonment of his clients, his continued refusal to cooperate with disciplinary authorities, and his failure to file an answer to the formal ethics complaint. Given that the timeframe underlying respondent's misconduct in Stack IV completely overlapped with the timeframe underlying his misconduct in Stack III, we determined, in Stack IV, that, had those default matters been considered together, an aggregate three-year suspension would have been the appropriate quantum of discipline.

In the instant matter, based on past precedent, we must determine whether discipline greater than an aggregate three-year suspension would have resulted had we considered this matter along with Stack III and Stack IV. See In re

Milara, 241 N.J. 27 (2020) (no additional discipline for attorney where the misconduct at issue was similar to the misconduct underlying a prior matter and occurred during an overlapping period; we determined that, had the matters been considered together, no discipline greater would have resulted).

As detailed below, in the past four years, respondent has demonstrated a consistent and alarming trend of deserting clients, practicing law while suspended, and refusing to reply to disciplinary authorities seeking to address his conduct. Here, respondent accepted legal fees from DeWitt and Crowley without performing any legal work, ignored their repeated pleas for information regarding their matter, and declined to refund his retainer fee. Indeed, respondent committed client abandonment by shuttering his law office, relocating to Florida, and, thereafter, relocating to another, unknown address, without notifying DeWitt and Crowley or updating his residential address with the OAE, as R. 1:20-1(c) requires. Moreover, respondent failed to reply in any way to the DEC's requests for information and allowed this matter to proceed as a default. Significantly, this matter represents respondent's fifth consecutive default, within the past two years, and the seventh consecutive disciplinary investigation, within the past three years, that he has elected to completely ignore.

Respondent's ongoing mistreatment of his clients, indifference to the Court's November 2020 temporary suspension Order, and refusal to cooperate in any way with disciplinary authorities demonstrates that he is a danger to the public and "[in]capable of meeting the standards that must guide all members of the profession." In re Cammarano, 219 N.J. 415, 421 (2014) (citing In re Harris, 182 N.J. 594, 609 (2005)). Based on these profound aggravating factors, we determine that, had this matter been considered with Stack III and Stack IV, respondent's combined misconduct would have placed him over the threshold of disbarment, a sanction well supported by disciplinary precedent.

In In re Rak, 217 N.J. 278 (2014), the Court disbarred an attorney following his fifth consecutive default. In that matter, the attorney practiced law while suspended by making appearances in municipal court on behalf of four clients. The attorney also lied to two clients about the status of their respective municipal court and bankruptcy matters. Further, the attorney misrepresented, in forms submitted to a bankruptcy court, that his clients had reviewed and signed their bankruptcy petition when, in fact, they had not. Finally, the attorney engaged in gross neglect and failed to communicate with his clients in connection with three bankruptcy matters.

We determined that, standing alone, the attorney's misconduct warranted discipline no greater than a two-year suspension. However, we weighed, in aggravation, the attorney's (1) 2010 reprimand, in his first default matter, for lacking diligence, failing to communicate with a client, and failing to cooperate with disciplinary authorities; (2) 2011 three-month suspension, in two consolidated default matters, for, among other infractions, engaging in a pattern of neglect and failing to cooperate with disciplinary authorities; and (3) 2013 three-month suspension, in a fourth default matter, for failing to comply with R. 1:20-20 following his 2011 three-month suspension.

We further weighed, in aggravation, the fact that the attorney's misconduct resulted in a fifth consecutive default matter. Indeed, the attorney had refused to cooperate with disciplinary authorities in any of his ethics matters. In recommending the attorney's disbarment, we observed that the attorney had:

> displayed an unremitting disdain for the attorney discipline system, never taking one step to protect his license to practice law. Respondent has shown that his license to practice law is unimportant to him. In fact, he even practices law without it. Under the circumstances, we find that his disbarment is warranted, both as a logical enhancement . . . for this, his fifth consecutive default, and on the basis of his utter disdain for the discipline system, under [In re Kantor, 180 N.J. 226 (2004)] and [In re Kivler, 193 N.J. 332, 342 (2008)].

> [In the Matter of Samuel Rak, DRB 13-069 (Nov. 7, 2013).]

In In re Moore, 143 N.J. 415 (1996), the attorney accepted retainers in two matters and then failed to take any action on behalf of his clients. Although he agreed to refund one of the retainers and was ordered to do so after a fee arbitration proceeding, he retained the funds and then disappeared. The attorney failed to cooperate with the disciplinary investigation. In recommending disbarment, we observed:

> It is unquestionable that this respondent holds no appreciation for his responsibilities as an attorney. He has repeatedly sported a callous indifference to his clients' welfare, the judicial system and the disciplinary process . . . . [We] can draw no other conclusion but that this respondent is not capable of conforming his conduct to the high standards expected of the legal profession.
>
> [In the Matter of John A. Moore, DRB 95-163 (Dec. 4, 1995) at 8-9.]

Similarly, in In re Cohen, 120 N.J. 304 (1990), the attorney, after accepting representation of a client, failed to file the complaint until after the statute of limitations had expired. He compounded his misconduct by altering the filing date on the complaint to mislead the court and opposing counsel that he had timely filed the complaint. The attorney misrepresented the status of the matter to the client, giving false assurances that the case was proceeding. The

Court disbarred the attorney, observing that "[w]e are unable to conclude that respondent will improve his conduct." Id. at 308. See also In re Vincenti, 152 N.J. 253 (1998) (attorney disbarred for his repeated abuses of the judicial process resulting in harm to his clients, adversaries, court personnel and the entire judicial system).

Like the disbarred attorney in Moore, respondent has demonstrated a disturbing trend of deserting clients and failing to complete promised legal services.

Specifically, in Stack III, between approximately 2010 and 2016, respondent grossly mishandled a single client's three distinct matters, which resulted in the issuance of three judgments against the client personally. Due to respondent's failure to advise his client of the adverse judgments or the significant developments of his matters, the client did not discover the judgments until several years later, in April 2020, when he was attempting to obtain a mortgage. In Stack IV, respondent failed to properly serve a writ of execution to recover his clients' outstanding debt and, thereafter, ceased all communication with his clients, in November 2019, even though their collection matter remained unresolved. One year later, following his November 2020 temporary suspension, respondent shuttered his law office, disconnected his

telephone lines, and failed to notify his clients of his suspension, leaving them without a means to communicate with him. In the instant matter, in December 2019, respondent accepted a $3,500 retainer fee from DeWitt and Crowley but failed to perform any legal work in furtherance of their matters. Additionally, respondent ignored their attempts to gain information regarding their matters and, other than his April 17, 2022 text message to Crowley, in which he launched baseless attacks against the DEC, respondent made no effort to communicate with his clients.

Moreover, like the disbarred attorney in Rak, since 2020, respondent has refused to cooperate in any way with seven consecutive disciplinary investigations and has not taken a single step to protect his law license. Indeed, like Rak, respondent has even practiced law without it, on multiple occasions, before our Court and a bankruptcy court.

In further aggravation, this matter represents respondent's fifth consecutive default in less than two years. See In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted) (an attorney's "default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced"). Consequently, respondent has, once again, refused to acknowledge or account

for his wrongdoing, let alone express remorse for the harm he has caused by deserting his clients. Rather, as he indicated in his April 17, 2022 text message to Crowley, respondent blamed disciplinary authorities for his current predicament, baselessly alleging that he was in an "unfair war" with the DEC, which he referred to as the "unethical committee." Instead of updating Crowley regarding her matters that she had entrusted him to handle, for a $3,500 retainer fee, respondent elected to send a lengthy and incoherent text message accusing disciplinary authorities of "abusing their power big time" and "ruin[ing]" him. Following respondent's text message, he failed to not only refund his unearned legal fee, but to communicate any further with DeWitt or Crowley.

An attorney's cooperation with the disciplinary system (and resulting discipline for failing to do so) serves as the cornerstone of the public's confidence that it will be protected from unethical attorneys. Respondent's outright refusal to participate in seven consecutive disciplinary investigations, resulting in five consecutive defaults before us in less than two years, demonstrates that respondent has no intention of ever conforming his conduct to comport with RPC 8.1(b). See In re Brown, 248 N.J. 476 (2021) (in aggravation, we described the attorney's obstinate refusal to participate, in any way, in the disciplinary process across five client matters as "the clearest of

indications that she ha[d] no desire to practice law in New Jersey;" we recommended the attorney's disbarment based, in part, on her utter lack of regard for the disciplinary system with which she was duty-bound to cooperate but rebuffed at every turn). Indeed, respondent's April 17, 2022 text message to Crowley demonstrates his open hostility towards a disciplinary system designed to protect the public.

In determining that disbarment is appropriate for the totality of respondent's misconduct, we also echo our decision in In the Matter of Marc D'Arienzo, DRB 16-345 (May 25, 2017) at 26-27, where we stated:

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

The Court agreed with our recommendation and disbarred D'Arienzo. In re D'Arienzo, 232 N.J. 275 (2018).

Conclusion

In our view, as we reasoned in D'Arienzo, respondent's dangerous trend of deserting clients, practicing law while suspended, and refusing to cooperate in any way with numerous disciplinary investigations demonstrates that, should respondent ever be restored to practice, his assault on the Rules of Professional Conduct would continue unabated. Thus, to protect the public from respondent's harmful practices, we determine to recommend to the Court that respondent be disbarred.

Moreover, in light of respondent's failure to perform any legal work in furtherance of DeWitt and Crowley's matters, we recommend that the Court impose the condition that respondent disgorge DeWitt and Crowley's entire $3,500 retainer fee. See In re Saponaro, 249 N.J. 352 (2022) (requiring that the attorney disgorge his entire legal fee after failing to perform any legal work on the client's matter), and In the Matter of Brian LeBon Calpin, DRB 21-082 (Sept. 27, 2021) ("[n]ormally, disgorgement of a fee is ordered when the record is clear that an attorney accepted a fee and performed no work on a matter").

Members Joseph and Rivera 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
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 Robert James Stack
Docket No. DRB 23-149

Decided: December 21, 2023

Disposition: Disbar

Members	Disbar	Absent
Gallipoli	X	
Boyer	X	
Campelo	X	
Hoberman	X	
Joseph		X
Menaker	X	
Petrou	X	
Rivera		X
Rodriguez	X	
Total:	7	2

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