

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-179
District Docket No. XIV-2020-0471E

In the Matter of Marcel R. Wurms
An Attorney at Law

Decided
February 8, 2024

Certification of the Record

Table of Contents

Introduction.....1

Service of Process2

Facts4

 The Serraino Estate Matter.....6

 The Bernardo Estate Matter.....12

 The Serraino Matter – Representation of the Successor Executors20

 Failure to Cooperate with the OAE’s Investigation27

Motion to Vacate the Default.....30

Analysis and Discipline32

 Violations of the Rules of Professional Conduct32

 Quantum of Discipline43

Conclusion51

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 Office of Attorney Ethics (the OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.3 (two instances – lacking diligence); RPC 1.4(b) (two instances – failing to keep a client reasonably informed about the status of a matter and failing to comply with reasonable requests for information); RPC 1.4(c) (two instances – failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation); RPC 1.5(b) (three instances – failing to set forth in writing the basis or rate of the legal fee); RPC 1.16(d) (two instances – failing to protect the client’s interests upon termination of representation and failing to surrender the client’s file); RPC 8.1(b) (two instances – failing to cooperate with disciplinary authorities);¹ and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

On October 1, 2023, respondent filed a motion to vacate the default (MVD), which we denied on October 20, 2023. For the reasons set forth below,

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

we determine that a three-month suspension is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 1982. During the relevant period, he maintained a practice of law in Lodi, New Jersey.

Respondent has no prior discipline in New Jersey.

Service of Process

Service of process was proper. On June 19, 2023, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home and office addresses of record.² The certified mail receipt for the mail sent to respondent's home address was returned to the OAE signed, though the signature was illegible, and indicating delivery on June 23, 2023. The regular mail sent to respondent's home address was not returned to the OAE. According to the United States Postal Service tracking system, the certified mail sent to respondent's office address of record could not be delivered and was being returned to the OAE. The regular mail sent to respondent's office address was not returned to the OAE.

² Respondent's office address of record is a Post Office Box located in Lodi. According to his September 19, 2023 letter to us, respondent closed his law office in early 2023 and has been winding down his practice of law with the intention of retiring.

On July 27, 2023, the OAE sent a second letter to respondent's home and office addresses of record, by regular mail, and also by electronic mail, informing him that, unless he filed a verified answer to the complaint within five days of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be amended to charge a willful violation of RPC 8.1(b). The letter sent by regular mail was not returned to the OAE. The letter sent by electronic mail was successfully delivered, although respondent did not acknowledge receipt despite the OAE's specific request that he do so.

As of August 10, 2023, respondent had not filed an answer to the complaint and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

On August 28, 2023, Acting Chief Counsel to the Board sent a letter to respondent's home address, by certified and regular mail, with an additional copy sent by electronic mail, informing him that the matter was scheduled before us on October 19, 2023, and that any motion to vacate the default (MVD) must be filed by September 18, 2023. The certified mail was returned to the Office of Board Counsel (the OBC) as "unclaimed." The regular mail was not returned to the OBC, and delivery to respondent's e-mail address was complete, although no delivery notification was sent by the destination server.

Moreover, on September 4, 2023, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on October 19, 2023. The notice informed respondent that, unless he filed a successful MVD by September 18, 2023, his prior failure to answer the complaint would remain deemed an admission of the allegations of the complaint.

On September 19, 2023, respondent requested an extension of time to file his answer, which the OBC granted, clarifying, however, that respondent was required to file an MVD by October 3, 2023. On October 5, 2023, the OBC received respondent's MVD, which was dated October 1, 2023 and accompanied by his two-page certification. As noted above, on October 20, 2023, following our review of respondent's MVD, we issued a letter denying that motion.

Facts

We now turn to the allegations of the complaint.

On December 5, 2012, Kathryn Vinci retained respondent to assist her in the administration of Michael Serraino's estate (the Serraino Estate). Serraino, her uncle, had died on November 30, 2012.³ Respondent, who previously had

³ Respondent specialized in real estate; estate administration; estate planning; and the preparation of income tax returns. He also is a licensed certified public accountant and serves as the Deputy Emergency Management Coordinator for the Borough of Lodi.

never represented Kathryn, did not memorialize the basis or rate of his fee or the scope of the representation in writing.

Kathryn was appointed the executor of the Serraino Estate and, on December 11, 2012, the Bergen County Surrogate's Court admitted Serraino's last will and testament to probate and issued letters testamentary to Kathryn.

Two months later, on February 23, 2013, Kathryn's aunt, Gertrude Bernardo, died. Serraino and Bernardo were siblings. Kathryn was appointed the executor of the estate (the Bernardo Estate). On March 5, 2013, she retained respondent to represent her in the administration of the Bernardo Estate and, again, respondent failed to memorialize the terms of the representation in writing. On March 6, 2013, the Bergen County Surrogate's Court admitted Bernardo's last will and testament to probate and issued letters testamentary to Kathryn.

The Serraino Estate had eight beneficiaries, seven of whom were Serraino's nieces (including Kathryn). The eighth beneficiary was Serraino's friend, Marie Malia. The Bernardo Estate also had eight beneficiaries, seven of whom were the same nieces named as beneficiaries to the Serraino Estate. The eighth beneficiary was Bernardo's goddaughter and grandniece, Linda Fragale.

Respondent's handling of each estate matter is discussed, in detail, below. In short, he failed to complete the administration of either estate matter and,

following Kathryn's September 18, 2017 death, still held funds in his ATA on behalf of both estates. On November 16, 2019, Kathryn's daughter, Rozann Vinci (Rozann), who had been appointed executor of Kathryn's estate and substitute executor to the Bernardo Estate, filed an ethics grievance against respondent, alleging that he had failed to (1) respond to her numerous requests for information, and (2) release to her the Bernardo Estate file or remaining estate funds.

On August 17, 2020, in response to the OAE's request, Rozann provided the OAE with additional information, including the fact that respondent also had failed to release funds to the substitute executor for the Serraino Estate. The OAE's investigation ensued.

The Serraino Estate Matter

In January 2013, shortly after her appointment as executor, Kathryn met with respondent on multiple occasions to review the estate's financial records, including bank and annuities statements, and to sign releases and other necessary paperwork so that she could begin liquidating the estate. Kathryn also opened an estate account with Bank of America.⁴

⁴ Prior to his death, Serraino helped to manage Bernardo's financial affairs. Following both of their deaths, Kathryn discovered several jointly held bank accounts in both of the decedents' names and,

Although she maintained an estate account, on September 6, 2013, Kathryn transferred to respondent, on behalf of the Serraino Estate, AXA annuity funds totaling \$354,482.80, which he deposited in his attorney trust account (ATA) on behalf of the Serraino Estate.⁵ Respondent memorialized this deposit on the client ledger that he maintained for the Serraino Estate.

Between October 16 and October 31, 2013, respondent made partial distributions to the eight Serraino Estate beneficiaries, including Kathryn, totaling \$333,293.81. On October 16, 2013, respondent also issued to himself a \$5,000 ATA check, which he denoted on his client ledger as a partial payment for legal fees.

On October 15, 2013, respondent filed with the State of New Jersey an inheritance tax return on behalf of the Serraino Estate. The Serraino Estate paid inheritance taxes totaling \$276,331, plus \$6,865.61 in interest. Only the interest payment (\$6,865.61) was disbursed from respondent's ATA.

On November 18, 2013, respondent deposited \$41,500 in his ATA, on behalf of the Serraino Estate, representing the buyer's deposit (Polstar

further, that Serraino had used Bernardo's funds to set up the accounts. According to his billing invoices, respondent assisted Kathryn in disclaiming from the Serraino Estate the jointly held accounts that held Bernardo's funds.

⁵ Respondent maintained his ATA at Capital One Bank and his attorney business account (ABA) at Santander Bank.

Construction Group) in connection with the sale of Serraino's home. On December 23, 2013, Serraino's home was sold. However, the net sale proceeds, totaling \$321,567.06, were not deposited in respondent's ATA because, according to the complaint, respondent did not represent Kathryn in the sale of the home. Following the sale of Serraino's home, respondent used the buyer's real estate deposit (\$41,500), which remained in his ATA, to pay expenses and make distributions on behalf of the estate.

Although he filed the Serraino Estate's state inheritance tax return, respondent did not file the federal tax return on behalf of the estate, instead directing Kathryn to retain an outside accountant. On April 23, 2014, however, respondent issued from his ATA a check in the amount of \$90,000, payable to the Internal Revenue Service (IRS), which represented the Serraino Estate's estimated federal tax liability.

Prior to making this disbursement to the IRS, however, respondent only held \$56,157.04 in his ATA on behalf of the Serraino Estate and, thus, the estate held insufficient funds to cover the \$90,000 IRS payment. Accordingly, Kathryn transferred to respondent \$23,000 from the funds she was holding in connection with the Bernardo Estate (discussed below). On April 17, 2014, respondent deposited the \$23,000 loan in his ATA, and designated it as a "Loan from Estate

of Bernardo” on the client ledger for the Serraino Estate.⁶ Respondent told the OAE that Kathryn did not believe there was any problem with transferring funds from one estate to the other since seven of the beneficiaries (the nieces) overlapped with both estate matters.

On August 21, 2014, respondent issued to Kathryn a \$10,000 ATA check, payable to the “Estate of Gertrude Bernardo,” designated as a “partial repayment of loan.” The record does not indicate if Kathryn deposited the check in the Bernardo estate account that she maintained or otherwise negotiated the check.

Also on August 21, 2014, Kathryn deposited in the estate checking account that she maintained for the Serraino Estate, an IRA distribution from Hudson City Bank, in an unknown amount. Shortly thereafter, on October 14, 2014, Kathryn issued a check in the amount of \$15,000 from the estate account, and deposited it in the Bernardo Estate account, with the notation “repayment of loan.” Respondent did not receive or deposit Kathryn’s October 14, 2014 loan repayment in his ATA.

On November 6, 2014, Immacolata Columba and Tom O’Brien filed a civil complaint against the Serraino Estate, captioned Columbo, et al. v. The Estate of Josephine Serraino and Michael Serraino, et al., Docket No. BER-L-

⁶ Although this “loan” did not fully satisfy the shortage of funds to cover the \$90,000 IRS payment, the record is silent in this respect.

19217-14, in the Superior Court of New Jersey, Bergen County, Law Division, stemming from injuries they allegedly sustained during a November 8, 2012 slip and fall accident that occurred at Serraino's home prior to his death (the Columbo case). On February 24, 2015, Kathryn was served with a copy of the Columbo complaint.

Respondent did not represent the Serraino Estate in the Columbo litigation; he did, however, have limited contact with the defense attorney that had been assigned by the homeowner's insurance policy. Respondent asserted that Kathryn had determined to hold funds, in both estate matters, in the event that the Serraino Estate was ordered to pay a judgment or settlement as a result of the Columbo case.⁷

Respondent issued to himself, on October 16, 2013 and August 21, 2014, two separate ATA checks, in the amount of \$5,000 each, totaling \$10,000, for legal fees. Respondent had estimated, on the inheritance tax return he previously had filed, that his legal fees would be \$17,000, and that Kathryn's executor fees would be \$43,179. Respondent did not, however, disburse to Kathryn, from his ATA, any payments for her executor fees in the Serraino Estate matter.

⁷ The OAE asserted that it did not receive full bank records for the bank accounts Kathryn maintained for the Serraino and Bernardo Estates.

According to the OAE's complaint, Kathryn may have paid herself an executor fee from other assets she held on behalf of the Serraino Estate.

Respondent maintained contemporaneous time records for the legal services he rendered on behalf of the Serraino Estate, which he produced to the OAE in response to its request. From December 5, 2012 to September 27, 2017, respondent incurred \$15,619.91 in legal fees and costs. Respondent, however, never was fully compensated for his fees and costs over the course of his representation of Kathryn. Following her September 2017 death, respondent did not charge the substitute executor for the Serraino Estate for the assistance he provided.

On September 18, 2017, at the time of Kathryn's death, respondent held \$14,530.43 in his ATA on behalf of the Serraino Estate. Kathryn separately held, at the time of her death, \$106,361.82 in the Bank of America account she maintained on behalf of the Serraino Estate.

Respondent believed that, in addition to confirming that the pending appeal in the Columbo case had been resolved, the remaining tasks to complete the administration of the Serraino Estate were to "distribute the funds" held in his ATA on the estate's behalf and to prepare a final refunding bond and releases.

The Bernardo Estate Matter

On March 19, 2013, Kathryn opened an estate account at Santander Bank on behalf of the Bernardo Estate.

On July 23, 2015, Bernardo's former home was sold and, on July 29, 2015, the net sale proceeds, totaling \$204,481.46, were deposited in respondent's ATA on behalf of the Bernardo Estate. The Bernardo Estate's gross assets totaled \$408,434. On July 29, 2015, respondent filed the estate's New Jersey inheritance tax return and issued a \$65,000 ATA check toward payment of the inheritance and estate taxes.

Between May and July 2016, respondent made partial distributions to four of the Bernardo Estate beneficiaries, totaling approximately \$80,000. Nearly one year later, between April and May 2017, respondent made a second partial distribution (\$5,000 each) to the eight beneficiaries, totaling \$40,000.

On July 6, 2017, Kathryn closed out the Bernardo Estate's bank account at Santander and directed the bank to disburse the balance, totaling \$14,364.97, to respondent. According to the complaint, it appeared Kathryn was attempting to finalize her work on the Bernardo Estate; however, it remains unknown what she intended to do with the remaining funds once deposited in respondent's ATA. The funds, however, were not deposited in respondent's ATA prior to

Kathryn's death; further, respondent denied ever having received a check from Kathryn.

According to the inheritance tax returns that respondent filed on behalf of the Bernardo Estate, his legal fees totaled \$11,000, and Kathryn's executor's commission totaled \$20,421. Respondent maintained contemporaneous time records of the work he performed on the Bernardo Estate, which he produced to the OAE. Between March 5, 2013 and September 27, 2017, respondent incurred \$5,562.61 in legal fees. On February 2, 2017, he issued to himself a \$4,500 ATA check, as a partial payment for his legal fees.

On September 18, 2017, the date of Kathryn's death, respondent held, in his ATA, \$10,594.46 on behalf of the Bernardo Estate.

Respondent stated that the majority of the Barnardo Estate had been administered at the time of Kathryn's death; however, he admitted that he failed to make final distributions to the beneficiaries and failed to complete an informal accounting.

On October 12, 2017, following Kathryn's death, Rozann Vinci was appointed, with respondent's assistance, as the substitute executor of the Bernardo Estate. On the same date, Rozann was appointed executor of Kathryn's Estate, in accordance with the terms of Kathryn's will.

Respondent, who previously had not represented Rozann, failed to memorialize the terms of his representation in writing and, further, failed to discuss with her the scope of the representation. Respondent informed Rozann that he held \$10,594.46 in his ATA on behalf of the Bernardo Estate and, further, that he was owed legal fees for work he had performed for Kathryn. Respondent also informed Rozann that Kathryn was owed additional executor fees. He also provided Rozann with a copy of his client ledger for the Bernardo Estate.

Thereafter, Rozann's only sibling, Gordon Vinci, contacted both respondent and Rozann with questions concerning the Bernardo and Serraino Estates, as well as Kathryn's Estate. Gordon had concerns with Rozann's handling of Kathryn's Estate. Rozann, for her part, believed Gordon had entered Kathryn's former home, without permission, and removed property, including weapons, valued at \$75,000, and toolboxes previously owned by their father. Respondent claimed that he did not represent Rozann or Gordon; however, he admittedly received numerous telephone calls from them, and had attempted to assist them following Kathryn's death.

On November 1, 2017, Gordon notified Rozann, through his counsel, that he was contesting Kathryn's will. Rozann retained counsel to represent her in the administration of Kathryn's Estate and to address Gordon's will challenge.

In December 2017, Rozann located, among Kathryn's records, documentation that the Bernardo Estate account with Santander had been closed on July 16, 2017, and that a check had been issued on the same date, payable to respondent. Rozann also found a Bank of America statement regarding Kathryn's IRA, valued at \$8,704.93, which she provided to respondent on December 11, 2017.

Approximately one month later, on January 31, 2018, Rozann asked respondent to search his records for the Santander close-out check, as well as information regarding the IRA. Despite his efforts, respondent could not locate the check; Santander re-issued the check, payable to respondent, which he deposited in his ATA on February 22, 2018. Thus, on February 22, 2018, respondent held \$24,959.43 in his ATA on behalf of the Bernardo Estate.

Three months later, on May 31, 2018, Rozann wrote to respondent, expressing her concern that he was not taking her seriously, and demanding that he settle the Bernardo Estate within ninety days. Respondent failed to promptly reply. Instead, months later, on August 2, 2018, he replied, stating only, "I've been out of the office for about 6 weeks. Today is my first day back. Give me a few days to catch up please." Rozann, in reply, requested that respondent "make this a priority," and "provide a full accounting of the estate."

On November 1, 2018, Rozann instructed respondent to liquidate Bernardo's IRA and deposit it in his ATA. In her e-mail, Rozann emphasized the urgency of her requesting, stating:

I need this completed ASAP before your tax season begins. I can't keep postponing my mother's estate issues because of this. All the heirs are in agreement and are concerned that Gordon may get involved if this is not done before the new year.

[CEx19p73.]⁸

Subsequently, when he saw Rozann at the Lodi Township Town Hall while she was paying her mother's property taxes, respondent promised her that he would get back to her regarding the Bernardo Estate. Despite his promise, respondent failed to reply to Rozann's requests for information.

The OAE alleged that Rozann reasonably believed that respondent was representing her from September 18, 2017 to November 16, 2019 (the date she filed her grievance against him). Rozann repeatedly requested that respondent perform legal services for her and, in fact, he performed legal services on her behalf, including providing assistance to her in obtaining letters testamentary and obtaining outstanding funds due to the Bernardo Estate which, in turn, he deposited in his ATA on behalf of the estate. Further, respondent never notified

⁸ "C" refers to the formal ethics complaint, dated May 26, 2023. "CEx" refers to the exhibits attached to the complaint.

Rozann that she should retain other counsel to complete the administration of the Bernardo Estate, even after she repeatedly pleaded with him to finalize the estate.

Subsequently, Rozann's attorney in the will contest attempted, unsuccessfully, to reach respondent. On August 14, 2019, after respondent had failed to reply to her attorney's March 1, 2019 e-mail, the attorney sent respondent a letter, via regular, certified, and electronic mail, stating:

[Rozann] has advised that she and the representatives of the above Estates have been attempting to contact you for approximately one year and have received no response. If this information is accurate this is a very concerning and serious matter.

Please contact our office immediately upon receipt of this correspondence to discuss these matters. I am advised that your clients seek a full accounting of the Estates in which you are involved on their behalf.

[CEx1.]

The certified and regular mail were both returned to Rozann's attorney and respondent failed to reply to the e-mail.

On October 30, 2019, Rozann again attempted to contact respondent, this time by regular and certified mail, sent to his home and office addresses. In her letter, Rozann recounted her efforts, for over a year, to obtain information regarding the Bernardo Estate, stating she would report him to the OAE if he

did not reply to her attorney within seven days. Respondent failed to reply and, on November 16, 2019, Rozann filed an ethics grievance with the OAE.

On December 10, 2020, Gordon filed a verified complaint, in the Superior Court of New Jersey, Bergen County, Chancery Division, captioned In the Matter of the Estate of Kathryn Vinci, Docket No. BER-P-523-20, against Kathryn's Estate. In his supporting certification, Gordon alleged that Rozann should be removed as the executor of Kathryn's Estate, in part, because she failed to administer the nominal estate, despite his repeated prompting. Gordon repeatedly had demanded that Rozann obtain Kathryn's executor commission in the Bernardo Estate matter.

Meanwhile, respondent, through his disciplinary attorney, Frank Luciano, Esq., made four document productions to the OAE, along with his April 23, 2021 written reply to Rozann's grievance. Respondent denied that he represented Rozann. He maintained that, following Kathryn's death, there were family disputes and, in late 2019 or early 2020, the son of a deceased heir had showed up at his home, unannounced and uninvited. He felt threatened and "decided I could no longer represent this family," which, according to respondent, he relayed to Rozann. Further, respondent asserted that his decision was solidified by the fact that Kathryn's "son, Gordon Vinci, and daughter, Rozanne [sic] Vinci began fighting over [Kathryn's] estate."

On February 24, 2022, respondent disbursed to Rozann an ATA check in the amount of \$24,959.42, representing the balance of funds that he held on behalf of the Bernardo Estate.

Subsequently, despite her requests on April 11 and July 15, 2022, respondent failed to provide Rozann with a copy of the Bernardo Estate file. On December 30, 2022, the OAE informed respondent that Rozann had not yet received the client file and directed that he provide it to her. On February 10, 2023, the OAE informed respondent that, unless he notified the OAE of an objection, it intended to produce to Rozann a copy of the Bernardo Estate documents in its possession. Respondent failed to reply and, accordingly, on February 22, 2023, the OAE produced to Rozann the Bernardo Estate documents that respondent previously had produced to the OAE.

Based on the foregoing, in Count One of its complaint, the OAE charged respondent with having violated RPC 1.3, RPC 1.4(b), and RPC 1.4(c) by failing to (1) diligently represent Rozann, as substitute executor in the Bernardo Estate matter, (2) keep her reasonably informed about the status of the matter, by failing to reply to her reasonable requests for information, and (3) provide her with the necessary information to permit her to make informed decisions about the matter. Respondent violated RPC 1.5(b), the OAE alleged, by failing to memorialize in writing the terms of his representation of Kathryn in the Serraino

and Bernardo Estate matters, and separately, by failing to memorialize his representation of Rozann, as substitute executor, in the Bernardo Estate matter. The OAE asserted that respondent violated RPC 1.16(d) by failing to inform Rozann that she needed to retain other counsel and failing to produce to her the entire Bernardo Estate file, despite her repeated requests that he do so. Finally, the OAE alleged respondent violated RPC 8.4(d) by failing to surrender to Rozann the Bernardo Estate file and remaining ATA funds, thereby preventing her from finalizing the estate.

The Serraino Matter – Representation of the Successor Executors

Following Kathryn's death, Gordon asked respondent for a status update concerning the Serraino Estate matter. Respondent informed Gordon that, due to the pendency of an appeal in the Columbo case, the Serraino Estate had not been finalized because Kathryn wanted to hold funds aside in the event of a judgment or settlement. Gordon also asked Rozann whether respondent had released to her Kathryn's "percentage" from the Serraino Estate.

Respondent and Rozann informed Gordon that Linda Fragale, a beneficiary of the Serraino Estate, had agreed to replace Kathryn as the executor. Maria Malia, who had been named in Serraino's will as the alternate executor, had formally renounced the appointment. On November 3, 2017, Gordon's

attorney wrote to each beneficiary of the Serraino Estate, enclosing renunciation forms for their signatures, and suggesting that Gordon be appointed as substitute successor.

On November 10, 2017, respondent wrote to each beneficiary of the Serraino Estate, include Rozann and Gordon, informing them that Malia was not willing to serve as executor and inquiring whether any of the other beneficiaries were interested in serving as substitute executor. Respondent offered to conduct a meeting of all interested parties. Gordon did not respond.

On December 8, 2017, Gordon filed a verified complaint in the Superior Court of New Jersey, Bergen County, Chancery Division, captioned In the Matter of the Estate of Michael Serraino, Docket No. P-508-17, seeking to be named substitute executor for the Serraino Estate. Gordon alleged that the sole remaining distribution was to Kathryn but failed to disclose the pendency of the appeal in the Columbo personal injury action against the estate. Gordon also sought an award of his attorney's fees.

In late December 2017, respondent met with Rozann and the other beneficiaries to the Serraino Estate for the purpose of discussing Gordon's complaint, as they believed Gordon was engaging in "bullying and aggressive tactics." They did not want Gordon to be appointed substitute executor and, instead, agreed that beneficiaries Patricia Mosca and Marilyn Weitz should

serve as co-administrators to the estate. Accordingly, respondent agreed to oppose Gordon's complaint and order to show cause on behalf of the Serraino Estate.

On March 8, 2018, respondent entered his appearance and filed an answer on behalf of the Serraino Estate. Respondent also paid the \$110 filing fee, drawn on the Serraino Estate funds he held in his ATA. Respondent opposed Gordon's claim for attorney's fees, supported by certifications signed by himself, Mosca, and Weitz. In response, Gordon withdrew his claim to be named substitute executor of the Serraino estate.

On April 6, 2018, Mosca and Weitz were appointed substitute co-administrators of the Serraino Estate. On April 25, 2018, the court granted Gordon's application for attorney's fees and awarded fees totaling \$9,407.23, to be paid from the Serraino Estate.

Despite having never previously represented Mosca or Weitz, respondent did not memorialize in writing the terms or scope of his representation. Although respondent's billing records reflect two hours of time spent on March 29, 2018 to "review file in anticipate of hearing," he did not otherwise document his time for any time spent on the Serraino Estate following Kathryn's death.

On May 8, June 26, July 5, and July 23, 2018, Mosca attempted to contact respondent regarding the completion of the surrogate paperwork so that she and

Weitz could obtain letters testamentary to begin handling the Serraino Estate. Respondent failed to reply.

Mosca, without respondent's assistance, facilitated the transfer of the certificates from Ocean County to Bergen County. On August 23, 2018, the letters of substitute administration were issued to Mosca and Weitz; however, they were sent to respondent's office address. Respondent failed to reply to Mosca's repeated attempts to obtain the certificates from him. Accordingly, in September 2018, she ordered duplicate copies of the certificates from the Superior Court.

On September 9, 2018, Mosca sent an e-mail to respondent, stating that she would like to meet in his office, "promise[d] to be as quick as possible," and, "[a]t the very least we need to get our copies of the papers and an answer as to how this is being handled." Mosca also discovered that respondent had not paid Gordon's attorney's fees, as required by the Court's April 25, 2018 Order. On September 12, 2018, in response to her e-mail of the same date, respondent informed Mosca that he was holding \$14,420.43 in his ATA on behalf of the Serraino Estate, plus \$41,500 in a "separate file" related to the sale of Serraino's former home. Respondent also asked Mosca for her permission to pay Gordon's attorney's fees, as required by the court order. Further, respondent informed her

that he needed to “finish going through [Kathryn’s] checkbooks to determine if there are any additional amounts [held by Kathryn for the estate.]”

Gordon’s attorney, who had not yet been paid, filed a second order to show cause to compel the Serraino Estate to pay the court ordered attorney fees, returnable on September 21, 2018. On September 19, 2018, respondent issued a \$10,834.73 ATA check payable to Gordon’s attorneys, as approved by Mosca. Thereafter, respondent held a balance of \$3,585.70 in his ATA on behalf of the Serraino Estate.

Approximately one week later, on September 26, 2018, Mosca sent respondent a detailed e-mail, setting forth the information she needed from him that would enable her to perform her responsibilities as the successor executor for the Serraino Estate. She also requested that respondent perform an accounting of the estate. Respondent failed to reply. On January 24 and June 18, 2019, Mosca again attempted to contact respondent, expressing her family’s interest in finalizing the estate; again, he failed to respond.

On November 18, 2019, Mosca contacted the law firm that had been representing the Serraino Estate in the Columbo case and learned that the appeal had been dismissed, in May 2019.

On January 29, 2020, Mosca, yet again, sent an e-mail to respondent, informing him that the appeal had been dismissed and stating, that if he no

longer wished to handle the matter, to let her know and she would arrange to pick up the client files. She expressed her ongoing frustration, stating that she debated reaching out “since the last time you had responded to us was in Sept. of 2018.” Thereafter, in February 2020, respondent spoke to Mosca, informing her that he needed to locate the Serraino Estate file.

On May 29 and June 16, 2020, Mosca attempted to reach respondent, via e-mail, inquiring about the Serraino Estate file. Respondent did not reply to Mosca’s e-mails; however, on July 20, 2020, he accepted her telephone call and advised her that he had located the Serraino file but needed time to review it and would get back to her. Once again, respondent failed to follow up.

Mosca retained new counsel to assist her with finalizing the administration of the Serraino Estate.

On March 25, 2021, Mosca left a voicemail message at respondent’s office, requesting a return telephone call. The next day, Luciano (respondent’s disciplinary attorney) contacted Mosca and, on June 7, 2021, provided Mosca with the Serraino Estate file. On August 24, 2021, Mosca’s attorney contacted Luciano, seeking additional information about the Serraino Estate. Luciano did not respond to the letter and, on September 3, 2021, withdrew as respondent’s attorney.

Thereafter, Mosca's attorney spoke to respondent and sent him e-mails on several different dates; however, respondent did not release the funds he still held on behalf of the Serraino Estate. On December 21, 2021, Mosca's attorney demanded that respondent release the funds, along with the trust account ledger and other documents.

On February 24, 2022, respondent provided Mosca's attorney with a written response and enclosed an ATA check in the amount of \$3,585.70, payable to the Serraino Estate. The attorney confirmed that she received the estate funds.

Based on the foregoing, in Count Two of its complaint, the OAE charged respondent with having violated RPC 1.3, RPC 1.4(b), and RPC 1.4(c) by failing to (1) diligently represent Mosca and Weitz, as substitute executors in the Serraino Estate matter, (2) keep them reasonably informed about the status of the estate matter, and (3) reply to Mosca's reasonable requests for information. Respondent violated RPC 1.5(b), the OAE alleged, by failing to memorialize in writing the terms of his representation of Mosca and Weitz, as substitute executors, in the Serraino Estate matter. The OAE asserted that respondent violated RPC 1.16(d) by failing to inform Mosca or Weitz that they needed to retain other counsel and, further, by failing to release the estate funds or to

produce the Serraino Estate file, despite Mosca's repeated requests that he do so.

Failure to Cooperate with the OAE's Investigation

The complaint further charged respondent with failing to cooperate with disciplinary authorities in the investigation of the underlying ethics grievance, in violation of RPC 8.1(b). Specifically, on December 11, 2020, the OAE investigator mailed a copy of the grievance, by certified and regular mail, to respondent's then-office address of record, with another copy sent by electronic mail. The OAE also informed respondent that, as part of its investigation, it was taking over the ongoing random audit and directed respondent to produce previously requested records. Although respondent replied to the OAE regarding the audit, he failed to submit a written reply to the grievance. More than two months later, on February 24, 2021, the OAE reminded respondent that his reply to the grievance was outstanding.

Respondent's attorney, Luciano, entered his appearance, requested an extension and, on March 30, April 26, May 3, and June 7, 2021, produced respondent's written reply to the grievance with supporting documents. Respondent, however, was unable to locate all the Bernardo Estate records, due to renovations to his office building.

On October 13, 2021, respondent attended his demand interview. Although he produced additional documents, on October 22, 2021, the OAE requested additional information from respondent. In response, on January 5, 2022, respondent submitted additional information to the OAE and, on January 12, the OAE continued the demand interview.

During his January 12, 2022 interview, respondent informed the OAE that he had not released any funds from his ATA to Rozann (on behalf of the Bernardo Estate) or Mosca (on behalf of the Serraino Estate) because he was not sure whether the loan made by the Bernardo Estate to the Serraino Estate had been repaid. Further, respondent informed the OAE that was unsure if he held correct balances for both estates. On February 22, 2022, the OAE informed respondent that, on October 24, 2014, Kathryn had repaid the balance of the loan owed by the Serraino Estate.

Accordingly, on February 24, 2022, respondent disbursed to Rozann an ATA check, payable to the Bernardo Estate, in the amount of \$24,959.43. Respondent also provided Rozann with a copy of the client ledger, reflecting a zero balance for the account. On the same date, respondent sent a letter to Mosca's attorney, responding to several questions that she had asked, and enclosing a check, payable to the Serraino Estate, in the amount of \$3,586.70.

Respondent also provided Mosca's attorney with a copy of the client ledger, reflecting a zero balance for the account.

On July 15, 2022, Rozann informed the OAE that respondent had failed to provide her with the Bernardo Estate file, despite her specific requests that he do so. Five months later, on December 30, 2022, the OAE asked respondent whether he had produced a copy of the file to Rozann. On January 3, 2022, the OAE followed up by telephone, and advised respondent that (1) the OAE had requested information from him that remained outstanding, and (2) that Rozann had not yet received his Bernardo Estate file.

In reply, respondent informed the OAE that he believed he had produced the Bernardo Estate file to Rozann but would check his records and report back to the OAE. Respondent failed to reply to the OAE's December 30, 2022 request for information and failed to return the client file to Rozann. Accordingly, on February 22, 2023, the OAE produced to Rozann the Bernardo Estate file documents in its possession.

Based on the foregoing, the OAE alleged, in Count Three of its complaint, that respondent had violated RPC 8.1(b) by failing to respond to the OAE's December 30, 2022 demand for proof that he had produced a copy of his Bernardo Estate file to Rozann.

Motion to Vacate the Default

As previously mentioned, on October 5, 2023, we received respondent's MVD. The OAE did not file opposition to the MVD, but also did not consent to it. To succeed on a motion to vacate a default, a respondent must (1) offer a reasonable explanation for the failure to answer the ethics complaint, and (2) assert a meritorious defense to all the underlying charges. In this matter, we determined that respondent failed to satisfy either prong.

As to the first prong, respondent failed to offer a reasonable explanation for his failure to file an answer to the formal ethics complaint. Importantly, respondent does not deny having received the complaint or the OAE's May 25, 2023 letter, warning him that his failure to file an answer would result in the matter being certified to us and that the complaint would be deemed amended to include a violation of RPC 8.1(b). Instead, he contends that he closed down his office, retired from the practice of law, and believed that, by "letting my license expire, there was no reason to proceed with this [ethics] matter."

Respondent failed, however, to provide any further explanation for his failure to file an answer. As an attorney licensed to practice law in New Jersey, respondent is charged with knowledge of the Rules of Professional Conduct, the Rules governing disciplinary matters, and his obligations thereunder. Further, if he was unsure of his obligation to file an answer to the OAE's complaint, in

view of his retirement status, respondent should have contacted the OAE upon receipt of the complaint. He does not claim to have done so.

Because respondent has not offered a reasonable explanation for his failure to file an answer, his MVD fails the first prong of the analysis.

Regarding the second prong, respondent failed to assert a meritorious defense to any of the underlying charges. In fact, respondent did not address the allegations of the complaint, other than stating that he had determined he “wanted nothing more to do with these clients who were fighting among themselves and harassing me, as it was also (and still does) causing me great stress and anxiety.” Respondent asserted that his decision to terminate the representation was the result of having threats from one of the family members of his client, Kathryn Vinci, which caused him great anxiety. Further, he claimed he had received harassing telephone calls from Kathryn’s son, Gordon Vinci. Respondent’s explanation for why he wanted to terminate the attorney-client relationship, however, did not address the allegations of the complaint.

The OAE’s complaint charged respondent with misconduct in his handling of two estate matters, following the death of the executor (Kathryn) of both estates. However, other than explaining why, on an unspecified date, he no longer wished to represent the family, he presented no defense to the specific charges of misconduct. Further, assuming respondent had a valid basis for

withdrawing from the representation, he offered no explanation as to the steps he took to terminate the attorney-client relationship he had formed with the successor-executors to both estates.

In addition to his mishandling of the estate matters, the OAE also alleged that respondent failed to memorialize the terms of his representation of Kathryn. In his certification, respondent admitted that, at the time he undertook his representation of Kathryn in the first estate matter, he had not regularly represented her.

In short, respondent asserted no defenses to any of the charged RPCs. Therefore, respondent failed to assert a meritorious defense to the allegations set forth in the complaint and, thus, failed to satisfy prong two. Accordingly, we determined to deny respondent's MVD.

Analysis and Discipline

Violations of the Rules of Professional Conduct

As a preliminary matter, we find that, as the OAE alleged, an attorney-client relationship existed between respondent and the successor executors in both estate matters. Specifically, the record demonstrates that both Rozann, as the successor executor to the Bernardo Estate matter, and Mosca, as the successor co-executor to the Serraino Estate matter, harbored reasonable

expectations that respondent would continue and, indeed, did continue, to represent them in their capacities as executors to each estate, following Kathryn's death. See e.g., Estate of Albanese v. Lolio, 393 N.J. Super. 355, 375, (App. Div.), certif. denied, 192 N.J. 597 (2007) (finding that, despite the attorney's arguments to the contrary, the executrix held a reasonable belief, based upon ambiguous language in the attorney's retainer agreement, that her attorney represented her in both her capacity as executrix and in her capacity as a beneficiary to the estate; the attorney had argued that he had represented her solely in her capacity as executrix, an argument rejected by the court). Cf. Estate of Spencer v. Gavin, 400 N.J. Super. 220 (App. Div. 2008) (in general, when a lawyer is retained by an executor to perform specific tasks in connection with an estate, the attorney's client is the executor of the estate and not the estate itself).

Routinely, the Court has applied similar principles in determining whether an attorney-client relationship may be inferred from the conduct of the attorney and "client," or from the surrounding circumstances. In re Palmieri, 76 N.J. 51, 58-59 (1978). It must, however, be "an aware, consensual relationship." Id. at 58. On the attorney's side, there must be a sign that the attorney is "affirmatively accepting a professional responsibility." Id. at 58, 60. On the client's side, there must be evidence that the client was relying upon the attorney in a professional

capacity. “Before a professional obligation is created, there must be some act, some word, some identifiable manifestation that the reliance on the attorney is in his professional capacity.” Id. at 60. The relationship can begin absent an express agreement or a bill for services rendered. Id. at 58-59; see also In re Makowski, 73 N.J. 265 (1977) (the payment of a fee is not a necessary element of an attorney-client relationship).

Here, the record supports the conclusion that the parties “relate[d] to each other generally as attorney and client.” Petit-Clair v. Nelson, 344 N.J. Super. 538, 543 (App. Div. 2001). Despite his assertion to the OAE that he did not represent Rozann, respondent successfully assisted her in replacing Kathryn as executor to the Barnardo Estate; he continued to hold estate funds totaling \$10,594.46 in his ATA; and he accepted numerous telephone calls from Rozann and her brother, regarding ongoing disputes relating to Kathryn’s estate. Further, when Santander re-issued the missing estate check, representing the funds Kathryn had held in her estate account but had intended to transfer to respondent, Rozann presented the replacement check to respondent who, on February 22, 2018, deposited it (\$14,364.97), in his ATA, for a total of \$24,959.43 in Bernardo Estate funds. Thereafter, when respondent saw Rozann at the town’s municipal building, in response to her inquiry, he promised to get back to her regarding the estate matter.

Moreover, respondent never told Rozann, despite her repeated requests of him, that he did not represent her and, further, failed to direct her to obtain new counsel. Consequently, she reasonably believed that respondent continued to represent her, in her capacity as executor to the estate, from September 18, 2017, when Kathryn died, to November 2019, when she filed the grievance against him. Indeed, even in her grievance form, Rozann indicated that respondent continued to represent her.

Likewise, Mosca reasonably believed that respondent was representing her, in her capacity as the successor co-executor to the Serraino Estate. Specifically, following Kathryn's death, respondent continued to represent the estate and communicated with the estate beneficiaries, even assisting with the appointment of the successor executor. When Gordon filed a probate action, seeking to be named successor executor, respondent entered his appearance in Superior Court and filed an answer on behalf of the estate, objecting to Gordon's appointment. One month later, with respondent's knowledge, Mosca and Weitz were appointed co-executors for the estate. Respondent informed Mosca that, at the time of Kathryn's death, he continued to hold \$14,420.43 in his ATA on behalf of the estate, plus an additional \$41,500. He also informed Mosca that he intended to go through Kathryn's financial records to determine if there were any additional amounts due to the estate. Respondent, thus, was providing legal

services to Mosca and, accordingly, she held a reasonable belief that respondent represented her, as he had represented Kathryn, in her capacity as successor co-executor to the Serraino Estate.

Having established the existence of an attorney-client relationship, we turn to the allegations of the complaint. We find that the facts recited in the complaint support most, but not all, of the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Notwithstanding that Rule, each charge in the complaint must be supported by sufficient facts for us to determine that unethical conduct has occurred. In re Pena, 164 N.J. 222 (2000) (describing the Court's "obligation in an attorney disciplinary proceeding is to conduct an independent review of the record, R. 1:20-16(c), and determine whether the ethic[s] violations found by us have been established by clear and convincing evidence"). We will, therefore, decline to find a violation of a Rule of Professional Conduct where the admitted facts within the certified record do not constitute clear and convincing evidence that the Rule was violated. See, e.g., In the Matter of Philip J. Morin, III, DRB 21-020 (September 9, 2021) at 26-27 (declining to find a charged RPC 3.3(a)(4) violation based upon insufficient evidence in the record), so ordered, 250 N.J.

184 (2022); In the Matter of Christopher West Hyde, DRB 16-385 (June 1, 2017) at 7 (declining to find a charged RPC 1.5(b) violation due to the absence of factual support in the record), so ordered, 231 N.J. 195 (2017); In the Matter of Brian R. Decker, DRB 16-331 (May 12, 2017) at 5 (declining to find a charged RPC 8.4(d) violation due to the absence of factual support in the record), so ordered, 231 N.J. 132 (2017).

Here, the record clearly and convincingly demonstrates that respondent violated RPC 1.3 (two instances), which requires an attorney to “act with reasonable diligence and promptness,” in his handling of the Serraino and Bernardo Estate matters. Specifically, the OAE asserted that respondent violated this Rule by failing to diligently administer the estates, following Kathryn’s September 18, 2017 death and the appointment of the successor executors.

In the Serraino Estate matter, respondent failed to complete the administration of the estate, despite the Will having been probated in 2012. On April 7, 2018, following Kathryn’s death, Mosca and Weitz were appointed substitute co-executors of the Serraino Estate. Respondent was well aware of the appointment, having entered his appearance in response to Gordon’s lawsuit in which he sought to be appointed executor, following Kathryn’s death. At the time, respondent still held \$14,530.43 in his ATA on the estate’s behalf. Thereafter, respondent failed, for nearly three years, to respond to Mosca’s

repeated requests for information and documents that she needed in order to fulfill her fiduciary responsibilities, as executor, to the estate. In 2021, three years after her appointment as successor executor, respondent finally produced, to her newly hired attorney, the Serraino Estate file. Worse, it was not until 2022, nearly a decade after his representation in the Serraino Estate matter began, that respondent disbursed to Mosca the remaining estate funds that he held in his ATA (now totaling \$3,585.70).

Respondent claimed to the OAE that he had not disbursed funds in the Serraino Estate matter based upon the pendency of the appeal in the Columbo litigation; however, that appeal had been dismissed in 2019. Further, after Mosca informed him that the Columbo appeal had been resolved, respondent's inaction persisted. Consequently, beneficiaries of the Serraino Estate, some of whom had since died, still had not received their full bequests and, further, the estate remained open.

Likewise, in the Bernardo Estate matter, respondent held \$10,594.46 in his ATA at the time of Kathryn's death. Thereafter, despite having assisted Rozann in her appointment as successor executor to the estate, he failed to take any affirmative steps toward finalizing the Bernardo Estate. Further, he repeatedly ignored Rozann's attempts to obtain information and documentation from him, including her pleas to promptly resolve the estate due to her concern

that Gordon would attempt to insert himself into the process – a concern that proved to be valid. As a result of his inaction, Rozann did not receive the remaining funds that respondent held in his ATA on behalf of the Bernardo Estate until February 2022, nearly a decade after the Will had been submitted to probate. Thus, respondent violated RPC 1.3 (two instances).

Next, respondent violated RPC 1.4(b), which states that “[a] lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information,” and RPC 1.4(c), which requires a lawyer to “explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.”

In the Serraino Estate matter, respondent violated RPC 1.4(b) and RPC 1.4(c) by repeatedly ignoring Mosca’s e-mails and telephone calls in which she sought information regarding the status of the estate, including her repeated requests for a copy of the file and a full accounting. Further, respondent failed to inform Mosca that he did not intend to represent her or the estate going forward and, thus, failed to provide her with information necessary to permit her to make an informed decision regarding the representation. In fact, his prolonged failure to communicate with Mosca prevented her from settling the Serraino Estate.

Similarly, in the Bernardo Estate matter, respondent failed to communicate with Rozann, despite her repeated requests and his promises to review the file and provide her with a response to her inquiries. Further, respondent failed to inform Rozann that he did not intend to continue his representation of her, leading her to believe that he would finalize the Bernardo Estate which, in turn, would allow her to finalize Kathryn's estate. Respondent's omissions precluded Rozann from making informed decisions about the representation. Thus, respondent violated RPC 1.4(b) (two instances) and RPC 1.4(c) (two instances).

RPC 1.5(b) provides that "[w]hen the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation." Here, respondent – who had not regularly represented Kathryn – admittedly failed to provide the required written communication stating the basis or rate of his fee or scope of the representation. Respondent's failure to provide any written document memorializing the scope of his representation of Kathryn and the administration of the Serraino and Bernardo Estates constituted a clear violation of RPC 1.5(b).

Respondent separately violated this Rule when, in October 2017, following Kathryn's death, he continued to represent Rozann, who held a

reasonable belief that respondent represented her in her capacity as the successor executor for the Bernardo Estate. Despite having never represented Rozann, respondent failed to memorialize the scope or terms of the representation. Respondent violated this Rule a third time when, in April 2018, he continued to represent Mosca and Weitz, as the successor co-executors of the Serraino Estate, both of whom held reasonable beliefs that respondent represented them. Accordingly, respondent violated RPC 1.5(b) (three instances), as the OAE alleged.

RPC 1.16(d) provides that, upon termination of representation:

A lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned or incurred.

Here, respondent violated this Rule by failing to inform Mosca and Rozann, following their respective appointments as successor executors for the Serraino and Bernardo Estate matters, to retain new counsel. Respondent subsequently violated this Rule when he failed to surrender to Mosca and Rozann copies of the estate files and the remaining estate funds he held in his ATA, despite their repeated requests that he do so.

RPC 8.1(b) requires an attorney to “respond to a lawful demand for information from . . . [a] disciplinary authority.” Respondent violated this Rule by failing to file a verified answer to the formal ethics complaint, thus, allowing the matter to proceed as a default. R. 1:20-4(f).

Respondent was separately charged with having violated RPC 8.1(b) based upon his failure to respond to the OAE’s letter dated December 30, 2022, in which the OAE sought confirmation from respondent that he had turned over the Bernardo Estate file to Rozann. Although it is true that respondent failed to reply to the OAE’s correspondence in this respect, the record demonstrates that respondent cooperated with the OAE’s investigation in all other respects. Further, there is no evidence to indicate that respondent’s failure to reply to the OAE’s December 30, 2022 letter inhibited its ability to conduct, or even finalize, the investigation underlying this matter. Accordingly, we determine to dismiss this charge. Moreover, respondent’s misconduct in this respect is adequately addressed by his violation of RPC 1.16(d).

We also determine to dismiss the charge that respondent violated RPC 8.4(d). The OAE alleged that respondent violated this Rule by failing to surrender the Bernardo Estate file, as well as the remaining estate funds, to Rozann which prevented her from finalizing the estate. Typically, a violation of this RPC is found when the record demonstrates that an attorney’s misconduct

caused a waste of judicial resources, which is not the case here. Respondent's misconduct is appropriately addressed by the other charged violations.

In sum, we find that respondent violated RPC 1.3 (two instances); RPC 1.4(b) (two instances); RPC 1.4(c) (two instances); RPC 1.5(b) (three instances); RPC 1.16(d) (two instances); and RPC 8.1(b). We determine to dismiss the second RPC 8.1(b) charge and the RPC 8.4(d) charge. The sole issue left for our determination is the proper quantum of discipline for respondent's misconduct.

Quantum of Discipline

The discipline imposed on attorneys who commit gross neglect (a charge not present here), lack diligence, and fail to communicate with clients 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. See, e.g., 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 ethics

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 Trella, ___ N.J. ___ (2023) (censure; the attorney, despite his expertise in estate matters, stipulated that he had failed to timely administer two estate matters by not promptly paying inheritance taxes (RPC 1.1(a), RPC 1.3; and RPC 1.15(b)); the attorney also negligently misappropriated estate funds that should have been held in escrow (RPC 1.15(a)) and, in both estate matters, charged excessive fees (RPC 1.5(a)); in a third client matter, the attorney engaged in a conflict of interest by loaning funds to his client, and also made misrepresentations to the OAE with respect to the loan (RPC 1.8(a), RPC 8.1(a), and RPC 8.4(c)); in imposing a censure, we concluded that the attorney's unblemished fifty-year career was insufficient mitigation to warrant a downward departure from the baseline discipline of a censure given the totality of the misconduct, spanning three client matters; we also weighed, in aggravation, the harm to the clients caused by the attorney's delay; we also considered, in aggravation, respondent's admission that he rarely entered into

written fee agreements with his clients); 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 sole 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).

Varying terms of suspension have been 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 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).

Conduct involving the failure to memorialize the basis or rate of a fee typically results in an admonition, even if accompanied by other, non-serious

ethics offenses. See In the Matter of John J. Pisano, DRB 21-217 (January 24, 2022) (the attorney failed to communicate the basis or rate of his fee in writing; although he initially claimed to have executed a retainer agreement, he ultimately stipulated that he had failed to do so; the attorney also engaged in a concurrent conflict of interest by simultaneously representing a driver and a passenger in connection with an automobile accident; among other mitigating factors, the attorney had no prior discipline in more than thirty years at the bar), and In the Matter of Robert E. Kingsbury, DRB 21-152 (October 22, 2021) (the attorney failed to set forth the basis of his \$1,500 flat legal fee in writing; the attorney also mishandled the client's matter for almost three years before the client retained substitute counsel to complete her matter; in mitigation, the attorney completely refunded the client, who suffered no ultimate financial harm; the attorney had no prior discipline).

Generally, admonitions or reprimands have been imposed on attorneys who have failed to return their clients' files, even when accompanied by additional, non-serious ethics violations. See, e.g., In the Matter of Eralides Eric Cabrera, DRB 21-216 (January 21, 2022) (admonition for attorney who failed to comply with his client's and replacement counsel's repeated requests to return the client file; in mitigation, the attorney's misconduct spanned only one client matter and the attorney purportedly had taken remedial efforts to ensure that no

similar errors would occur in the future; the attorney had no prior discipline in his thirty years at the bar), and In re Keeley-Cain, 247 N.J. 196 (2021) (reprimand for attorney who grossly mishandled his clients' foreclosure matter and consumer fraud counterclaim, resulting in the dismissal of the clients' answer and counterclaim, with prejudice; thereafter, the clients terminated the representation and hired new counsel, who, for several months, repeatedly requested that the attorney execute a substitution of attorney and return the clients' file; the attorney failed, for ten months, to sign and return the substitution of attorney form; the attorney altogether failed to return the client file; although the attorney had a prior 2005 admonition for similar misconduct, that misconduct did not serve to enhance the discipline, given the passage of time).

Here, respondent's mishandling of the Serraino and Bernardo Estate matters following Kathryn's death is similar to that of the attorney in Finkelstein, who was censured for his mishandling a single estate matter. Like respondent, the attorney in Finkelstein failed to conclude the estate for nine years. Further, the attorney failed to timely file the New Jersey inheritance tax return, failed to obtain the necessary tax waiver, and permitted a certificate of debt to be filed against the estate. Finkelstein did not file the required tax returns until the OAE commenced its investigation. Like respondent, Finkelstein also

failed to communicate with his client. As a result of his neglectful handling of the estate matter, Finkelstein deprived the two elderly beneficiaries of the estate of approximately \$117,000.

In determining that a censure was the appropriate sanction for Finkelstein's misconduct, we considered, in mitigation, that his misconduct spanned just one client matter; he readily admitted his wrongdoing; he offered to make the estate beneficiaries whole; and he retained an accountant. We concluded, however, that any mitigation was outweighed by the aggravating factors, including the financial harm Finkelstein had caused to the elderly beneficiaries by depriving them of needed funds for a prolonged period. We also weighed Finkelstein's prior discipline, which consisted of an admonition and reprimand, both of which were for his neglectful handling of client matters. In the Matter of Terry J. Finkelstein, DRB 09-264 (December 8, 2009), at 15-16.

Respondent, like Finkelstein, failed to timely administer both estates on behalf of his clients, despite their repeated requests. Specifically, respondent held funds in his ATA, on behalf of both estates, for five years, following Kathryn's death. As a result, individual distributions were not completed, and the estates remained open. Further, in the Bernardo Estate matter, his failure to disburse the remaining estates funds to Rozann, the successor executor, prevented her from not only finalizing the Bernardo Estate, but also inhibited

her ability to finalize Kathryn's Estate. Beneficiaries to both estates were deprived of their financial bequests, to which they were entitled. Unlike Finkelstein, whose misconduct was limited to one client matter, however, respondent's misconduct occurred in two separate client matters. Further, unlike Finkelstein, who admitted to his wrongdoing, respondent allowed this matter to proceed as a default. In these respects, we consider respondent's misconduct more egregious than the misconduct committed in Finkelstein.

Based upon applicable precedent, and Finkelstein in particular, we conclude that the baseline discipline for respondent's misconduct is a censure. To craft the appropriate discipline, however, we also consider mitigating and aggravating factors.

In mitigation, this is respondent's first brush with the disciplinary system in his more than forty years at the bar, a consideration that we typically accord significant weight. In re Convery, 166 N.J. 298, 308 (2001).

In aggravation, respondent's inaction needlessly delayed the final administration of both estate matters, despite the wills having been probated in 2012 and 2013, respectively. Indeed, it was not until February 2022 that respondent disbursed the remaining funds that he held on behalf of the Serraino Estate and Bernardo Estate matters to the estates' substitute executors. Further, respondent's inexcusable failure to act with diligence needlessly delayed

Rozann’s administration of her mother’s estate (Kathryn), which was comprised, in part, of funds that Kathryn was due as executor and beneficiary to both estates. Harm to the client is an aggravating factor that is ordinarily accorded significant weight. See In re Burro, 235 N.J. 413 (we weighed, in aggravation, the significant harm caused by the attorney’s neglect of the estate matter, which resulted in the accrual of \$40,000 in interest and the imposition of a lien on property belonging to the executrix).

Further, respondent allowed this matter to proceed as a default, which serves as an aggravating factor. See In re Kivler, 193 N.J. 332, 342 (2008) (“[A] respondent’s default . . . acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced.”); see also R. 1:20-4(e) (“A respondent is required to file an answer even if the respondent does not wish to contest the complaint.”).

Conclusion

Although respondent has had an otherwise unblemished career of more than four decades at the bar, we conclude that the serious harm his misconduct caused to his clients and the beneficiaries to both estates, in conjunction with having allowed this matter to proceed a default, is sufficient aggravation to warrant the enhanced penalty of a short term of suspension. Thus, on balance,

we determine that a three-month suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Members Petrou and Rodriguez voted to impose a censure.

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 Marcel R. Wurms
Docket No. DRB 23-179

Decided: February 8, 2024

Disposition: Three-month suspension

<i>Members</i>	Three-month suspension	Censure
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