SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-265
District Docket Nos. XIII-2022-0016E

In the Matter of Richard Del Vacchio
An Attorney at Law

Decided
May 22, 2024

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 XIII Ethics Committee (the DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.4(b) (failing to keep a client reasonably informed about the status of a matter); RPC 1.4(c) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation); RPC 8.1(b) (two instances – failing to cooperate with disciplinary authorities);[1] RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

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

Respondent earned admission to the New Jersey bar in 1993. At the relevant time, he was a partner at Del Vacchio O'Hara, P.C., located in Flemington, New Jersey.

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[1] Due to respondent's failure to file an answer to the formal ethics complaint, and, on notice to him, the DEC amended the complaint to include the second RPC 8.1(b) charge and the additional charge of RPC 8.4(d).

On November 18, 2021, the Court censured respondent. In re Del Vacchio, 249 N.J. 7 (2021) (Del Vacchio I). In that matter, which also proceeded as a default, the grievant's brother had retained respondent in connection with a slip and fall matter. In the Matter of Richard Del Vacchio, DRB 20-186 (April 26, 2021). Approximately three years later, the brother (the decedent) passed away, and the grievant was appointed the executor of his estate. Id. at 3. A few months before his death, the decedent had told the grievant that respondent had informed him that his case had settled, and he soon would receive the settlement proceeds. Ibid. According to the grievant, he had attempted to contact respondent "more than 100 times" concerning the status of the settlement but received no response. Additionally, during the course of the ethics investigation, respondent failed to reply to the DEC's telephonic and written requests for information. Id. at 4.

Based on the foregoing, we determined that respondent violated RPC 8.1(b) and RPC 8.4(d). In determining that a censure was the appropriate quantum of discipline, we considered, in aggravation, that "respondent defaulted in this matter, despite the DEC's extensive efforts to garner his cooperation." Id. at 6-7.

Service of Process

Service of process was proper. On August 3, 2023, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address of record.[2] The certified mail receipt was returned to the DEC bearing an illegible signature and a delivery date of August 8, 2023. The regular mail was not returned to the DEC.

On September 29, 2023, the DEC sent a second letter, by certified and regular mail, to respondent's office address. The letter informed respondent that, unless he filed a verified answer to the 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) and RPC 8.4(d) by reason of his failure to answer. The signed certified mail receipt was returned to the DEC with a delivery date of October 3, 2023 and regular mail was not returned.

As of November 29, 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 DEC certified this matter to us as a default.

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[2] The DEC confirmed with the OAE that respondent's office address was the correct address for service.

On December 26, 2023, Chief Counsel to the Board sent respondent a letter, by certified and regular mail, with an additional copy sent by electronic mail, informing him that the matter was scheduled before us on February 15, 2024, and that any motion to vacate the default must be filed by January 16, 2024. The certified mail was returned unclaimed and the regular mail was not returned.

Moreover, on December 26, 2023, the Office of Board Counsel caused a notice to be published in the New Jersey Law Journal, stating that we would consider this matter on February 15, 2024. The notice informed respondent that, unless he filed a successful motion to vacate the default by January 16, 2024, his prior failure to answer the complaint would remain deemed an admission of the allegations of the complaint.

On February 14, 2024, the day before we were scheduled to consider this matter, respondent requested an adjournment, which we denied. Respondent did not file a motion to vacate the default.

Facts

We now turn to the allegations of the complaint.

Respondent represented Patricia F. Giordano (Patricia) in connection with a personal injury action against the owner of a Red Roof Inn located in

Parsippany, New Jersey. In January 2016, he filed a civil complaint, captioned Giordano v. La Roy Family Holdings, Docket No. MRS-L-76-16, in the Superior Court of New Jersey, Morris County. On August 10, 2016, Patricia passed away, at which time the personal injury action was still pending.

Following her death, Patricia's estate was probated in New Haven, Connecticut, where she had resided. On March 21, 2017, the East Haven Probate Court appointed Patricia's daughter, Charlene A. Giordano (Charlene), as the administrator of her estate, and issued her a Fiduciary's Probate Certificate. Charlene had attended the initial meeting between her mother and respondent and served as the primary contact for the estate with respect to the personal injury litigation. In July 2017, respondent amended the complaint to name the estate and Charlene, as the administrator of the estate, as plaintiffs.

Subsequently, the litigation was selected for mandatory, non-binding arbitration in accordance with R. 4:21A-1(a). Following two adjournments, the arbitration hearing took place on September 28, 2017. On that same date, the arbitrator issued an award in favor of the estate in the net amount of $36,000, concluding that Patricia was partially liable for the fall.

Charlene did not attend the arbitration. According to the ethics complaint, the DEC alleged that respondent had failed to notify her of any of the arbitration dates and, thus, she was unaware the hearing had taken place. Pursuant to R.

4:21A-6, Charlene, on behalf of the plaintiff estate, had thirty days from the date of the arbitration award to reject it and file for a demand for a trial de novo.

On October 30, 2017, more than thirty days after the issuance of the arbitration award, respondent called Charlene and informed her of the outcome of the arbitration, stating that he had reached a tentative settlement in the amount of $35,000 on behalf of the estate.[3]

On October 31, 2017, respondent sent Charlene, as the administrator of the estate, the settlement release for her signature. In his cover letter, respondent reiterated his opinion that the matter should be settled. Specifically, respondent stated:

> As explained, we could not prove the accident due to the fact that there were no witnesses and that your mother had passed away prior to depositions and testimony in Court. In fact, during our interrogatory meeting with your mother, she had difficulty explaining to me how, if at all the accident took place in which she injured herself. Based on such, I am pleased that we were able to resolve the matter in favor of your mother.
>
> [C¶21;Ex. F.][4]

[3] The record does not provide an explanation for the discrepancy between that amount and the actual net arbitration award of $36,000.

[4] "C" refers to the formal ethics complaint, dated July 18, 2023.
"Ex." refers to the exhibits appended to the complaint.

Through November and December 2017, Charlene sent respondent numerous e-mails regarding the arbitration hearing and settlement, questioning why she had not been provided an opportunity to attend or to meaningfully participate in the matter. In reply to her inquiries, respondent expressed his view that Charlene was being "difficult" in a case that was "impossible to win," and that she should either settle the matter for $35,000 or retain another attorney. Notably, respondent never claimed, during this period, that he timely had notified Charlene of the scheduled arbitration hearings.

On or about March 12, 2018, Charlene executed the settlement documents and mailed them to the respondent.

On April 20, 2018, the $35,000 settlement proceeds were paid and deposited in respondent's attorney trust account. As the result of a Medicare lien, the final distribution of the settlement was delayed for approximately six months. However, in late October 2018, the distribution was finalized and, after paying $13,422.38 to himself in legal fees, and $21,577.62 to Medicare in satisfaction of the lien, there were no remaining funds. Thus, the estate recovered nothing.

On March 24, 2021, Charlene filed an ethics grievance against respondent based on his failure to keep her reasonably informed as to the status of the matter. On April 25, 2022, following its investigation, the DEC dismissed the

grievance. Thereafter, Charlene appealed the dismissal and, on September 28, 2022, we reversed the DEC's decision and remanded the matter for further investigation.

In January 2023, in connection with the new investigation, respondent produced a copy of his case file for the personal litigation. Within his file was a copy of a signed letter from him to Charlene, dated February 3, 2017, purportedly advising her that the arbitration hearing was scheduled for September 28, 2017. Charlene denied having received that letter.

On January 4, 2023, respondent produced to the DEC investigator a certification from his paralegal, in which she represented that she verbally informed Charlene of the initial arbitration hearing date and the rescheduled dates. However, Charlene denied receiving these telephone calls and respondent's file does not contain any documentation supporting the paralegal's position.

On January 19, 2023, as part of the new investigation, respondent was interviewed, via video conference, regarding the grievance. Specifically, he was asked how he could have notified Charlene, in February 2017, that the arbitration had been scheduled on September 28, 2017, when it had not yet been scheduled by the court. In reply, respondent stated that he "did not have a clear answer to this question" and that he needed to review his file.

On January 23, 2023, the DEC investigator sent respondent a letter, via certified and regular mail, directing that he provide, within ten days, copies of all e-mails, letters, and other written documents between his office and Charlene regarding the arbitration, the scheduled dates, and the ability of Charlene to attend the hearing. The certified mail receipt was returned to the DEC investigator, signed by another individual, with a delivery date of January 25, 2023. Respondent, however, failed to submit a reply.

On February 13, 2023, the DEC investigator sent respondent a second letter, by certified mail, again directing him to produce the previously requested documents and information. The signed certified mail receipt was returned to the DEC, with a delivery date of February 16, 2023.

On February 24, 2023, respondent left the DEC investigator a voicemail message stating that he was working on his response and needed a few more days to complete it.

On March 17, 2023, respondent left the DEC investigator another voicemail message, stating that he had been out of the office for a few weeks due to a medical issue, but was working on his response.

On March 29, 2023, respondent and the DEC investigator spoke via telephone. Respondent informed the investigator that his IT assistant had recovered a "stack of e-mails" from his server and, following his review, he

would respond to the DEC's letter the following week. Respondent also claimed that his secretary must have inserted the wrong date on the February 3, 2017 letter regarding the scheduled arbitration. Respondent provided no additional explanation; nor did he produce any other letters or communications with Charlene regarding the scheduled arbitration. Further, he failed to produce any documents by the deadline.

On April 13, 2023, the DEC investigator sent an e-mail to respondent inquiring about the status of the requested documents. The next day, respondent replied, stating that he would mail the documents he had located.

On April 20, 2023, the DEC investigator received respondent's submission containing copies of e-mails between his office and Charlene, between 2016 and 2018. However, the e-mails related to the civil litigation, in general, and failed to respond to the DEC investigator's specific request for communications between respondent and Charlene regarding the scheduling of the arbitration.[5] Accordingly, the DEC alleged, in the ethics complaint, that respondent's "submission clearly shows that his file does not contain any credible written communications with [Charlene] prior to the September 28 arbitration hearing relating to the arbitration process, the date on which the

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[5] Respondent's e-mails were not attached as exhibits to the complaint.

arbitration hearing was to take place, or [Charlene's] ability to attend the hearing."

Further, the complaint alleged that respondent's production of the February 3, 2017 letter was "suspect" because (1) it was not provided to the DEC investigator who conducted the initial investigation, prior to our remand, despite the same allegation having been raised; (2) it was deficient on its face given that the arbitration was first scheduled months later, on June 8, 2017, to take place on July 13, 2017; (3) respondent was unable to give a clear answer when asked to explain the discrepancy; (4) respondent took almost three months to provide additional information to resolve the discrepancy; and (5) respondent's submission of documents to the DEC included no corroborating evidence to support his claim that Charlene had been notified of the arbitration and afforded the opportunity to participate, despite respondent having a three-year history of e-mails with her. Consequently, the complaint alleged that respondent had fabricated the letter "in an attempt to mislead" the second DEC investigation.

Based on the foregoing, the DEC alleged that respondent violated RPC 1.4(b) by failing to notify Charlene of the arbitration and failing to provide her, as the administrator of the estate and party to the litigation, the opportunity to participate in the hearing, and further violated RPC 1.4(b) and RPC 1.4(c) by

failing to inform Charlene of the arbitration award prior to the expiration of the thirty-day period to reject the award and seek a trial de novo.

Additionally, the DEC asserted that respondent violated RPC 8.1(b) by failing to respond to lawful requests for additional information during the course of the investigation and, further, violated RPC 8.1(b) and RPC 8.4(c) by fabricating the February 3, 2017 letter in an attempt to mislead the investigation. Last, as a result of respondent's failure to file an answer, the DEC amended the complaint to include an additional violation of RPC 8.1(b), as well as a violation of RPC 8.4(d).

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a review of the record, we find that the facts set forth in the formal ethics complaint support most, but not all, of the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. 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.

Here, we conclude that the facts recited in the complaint support the allegations that respondent violated RPC 1.4(b), RPC 1.4(c), RPC 8.1(b) (two instances), and RPC 8.4(c). We determine, however, that the evidence does not clearly and convincingly support the charged violation of RPC 8.4(d).

Respondent violated RPC 1.4(b), which requires an attorney to keep their client "reasonably informed about the status of a matter and promptly comply with reasonable requests for information," and RPC 1.4(c), which obligates an attorney to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

Specifically, respondent violated both of these Rules by failing to keep Charlene reasonably informed regarding the status of the personal injury action and, in particular, of the scheduled arbitration hearing. Following Patricia's death, Charlene was appointed the administrator of Patricia's estate. Thus, in July 2017, respondent amended the civil complaint to name the estate and Charlene, as administrator of the estate, as plaintiffs in the personal injury action. Despite his obligation to keep Charlene informed about the case, he failed to notify her that the case had been scheduled, on multiple dates, for arbitration. Consequently, Charlene was unaware of the arbitration hearing and denied the opportunity to participate in that hearing, despite her status as the administrator of the estate and, thus, a party to the litigation. Further, respondent

failed to timely inform Charlene of the arbitration award, thereby depriving her of the ability to reject the award and file a demand for a trial de novo.

Additionally, respondent failed to timely reply to Charlene's repeated inquiries regarding the arbitration proceeding, including why she had not been given the opportunity to attend, leaving Charlene without the knowledge required to make informed decisions regarding the personal injury case. Thus, respondent violated RPC 1.4(b) and RPC 1.4(c).

Next, respondent violated RPC 8.1(b), which requires an attorney to "respond to a lawful demand for information from . . . [a] disciplinary authority." He violated this Rule by failing to promptly respond to the DEC's written requests for information. Specifically, respondent failed to reply to the DEC's January 23, 2023 letter seeking written documentation between his office and Charlene regarding the arbitration process. Respondent failed to comply until April 20, 2023, three months later, and in the interim, gave excuses or simply ignored the DEC's repeated requests. Respondent violated this Rule a second time by failing to file a verified answer to the formal ethics complaint, despite proper notice, and allowing this matter to proceed as a default.

Further, respondent violated RPC 8.4(c) by engaging in conduct involving dishonesty, fraud, deceit, and misrepresentation. Specifically, in response to the DEC's inquiry whether he had notified Charlene of the arbitration hearing,

respondent produced, for the first time, a letter dated February 3, 2017 in which he purportedly notified Charlene of the September 2017 arbitration date. The date of respondent's letter does not align with the timeframe in which the court scheduled the arbitration hearing. Specifically, the court's first notice of arbitration was dated June 8, 2017, and set the initial arbitration hearing date for July 13, 2017. Thus, in February 2017, when respondent purportedly notified Charlene of the arbitration hearing, it had not yet even been scheduled. Further, when the DEC questioned him about the letter, respondent was unable to provide a clear answer. Moreover, respondent failed to provide this letter during the initial investigation, raising the issue as to whether it existed in the first place.

When specifically questioned about the date on his letter, respondent provided a vague answer, stating that he would need to review his file to provide a more detailed response. He failed, however, to do so, despite the DEC's persistent efforts. Rather, he claimed, without substantiation, that the date must have been erroneously entered by his secretary. As such, we conclude that the record evidence clearly and convincingly establishes that respondent intended to deceive the DEC investigator with this fabricated letter.

By contrast, however, we determine to dismiss the RPC 8.4(d) charge, which was added contemporaneously with the RPC 8.1(b) charge, with both charges stemming from respondent's failure to answer the formal ethics

complaint. Although failure to file an answer to a complaint does constitute a violation of RPC 8.1(b), it is not per se grounds for an RPC 8.4(d) violation. See In re Ashley, 122 N.J. 52, 55 n.2 (1991) (following the attorney's failure to answer the formal ethics complaint and cooperate with the investigator, the DEC charged her with violating RPC 8.4(d); the Court expressly adopted our finding that, "[a]lthough the committee cited RPC 8.4(d) for failure to file an answer to the complaint, RPC 8.4(d) deals with prejudice to the administration of justice. RPC 8.1(b) is the correct rule for failure to cooperate with disciplinary authorities."). Moreover, we consistently have dismissed RPC 8.4(d) charges that are based solely upon an attorney's failure to file an answer to the complaint. See In the Matter of Richard Donnell Robinson, DRB 23-032 (July 5, 2023) at 12-13, and In the Matter of John Anthony Feloney, IV, DRB 23-179 (March 23, 2023).

In sum, we find that respondent violated RPC 1.4(b), RPC 1.4(c), RPC 8.1(b) (two instances), and RPC 8.4(c). We dismiss the RPC 8.4(d) charge as a matter of law. The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

Typically, attorneys who fail to adequately communicate with their clients receive an admonition. See In the Matter of Cynthia A. Matheke, DRB 13-353 (July 17, 2014) (the attorney violated RPC 1.4(b) and RPC 1.4(c) by failing to advise her client about "virtually every important event" in the client's malpractice case between 2006 and 2010, including the dismissal of her complaint).

If the attorney has a disciplinary record, however, a reprimand may result. See In re Tyler, 217 N.J. 525 (2014) (the attorney violated RPC 1.4(b) when, after a client had retained her to re-open a Chapter 7 bankruptcy to add a previously omitted creditor and to discharge that particular debt, she ceased communicating with him and never informed him that the creditor had been added to the bankruptcy schedules, the debt had been discharged, and the bankruptcy closed; prior reprimand for, among other things, failure to communicate with clients in six bankruptcy cases), and In re Tan, 217 N.J. 149 (2014) (the attorney violated RPC 1.4(b) when he failed to return approximately twenty calls from his client; due to his disciplinary history, which included, among other things, a censure for failing to communicate with a client, a reprimand was imposed for his failure to learn from his prior ethics mistakes).

Likewise, when an attorney fails to cooperate with disciplinary authorities and previously has been disciplined, reprimands have been imposed. See In re Howard, 244 N.J. 411 (2020) (the attorney failed to respond to the DEC's four requests for a written reply to an ethics grievance, which alleged that the attorney had failed to prosecute his client's claim for social security disability benefits; the attorney had received a prior censure for similar misconduct in which he had failed to cooperate with disciplinary authorities; in mitigation, the attorney ultimately retained ethics counsel, cooperated with the DEC, and stipulated to some of his misconduct), and In re Larkins, 217 N.J. 20 (2014) (the attorney failed to reply to the ethics investigator's attempts to obtain information about the grievance and failed to file an answer to the formal ethics complaint; although we noted that a single violation of RPC 8.1(b), in a default matter, does not necessitate enhancement of the discipline from an admonition to a reprimand, a reprimand was imposed based on a prior admonition and, more significantly, a 2013 censure, also in a default matter, in which the attorney had failed to cooperate with an ethics investigation).

Generally, attorneys who make misrepresentations to disciplinary authorities, including those who backdate or fabricate documents to deceive those authorities, have received discipline ranging from a reprimand to a term of suspension, depending on the gravity of the offense, the presence of other

unethical conduct, and aggravating or mitigating factors. See, e.g., In re DeSeno, 205 N.J. 91 (2011) (reprimand for an attorney who misrepresented to the DEC the filing date of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand); In re Homan, 195 N.J. 185 (2008) (censure for an attorney who fabricated a promissory note reflecting a loan to him from a client, forged the signature of the client's attorney-in-fact, and provided the note to the Office of Attorney Ethics (the OAE) during the investigation of a grievance against him; for several months, the attorney continued to mislead the OAE, claiming that the note was authentic and that it had been executed contemporaneously with its creation; ultimately, the attorney admitted his impropriety to the OAE; compelling mitigating factors were considered, including the attorney's impeccable forty-year professional record, the legitimacy of the loan transaction connected to the note, the fact that the attorney's fabrication of the note was prompted by his panic at being contacted by the OAE, and his embarrassment over his failure to prepare the note contemporaneously with the loan); In re Allen, 250 N.J. 113 (2022) (three-month suspension for attorney who falsely represented to the OAE and to the Board that he had procured a settlement with a client, knowing he had not, in violation of RPC 3.3(a)(1) and RPC 8.4(c); the attorney also engaged in recordkeeping

violations, failed to maintain required professional liability insurance, and did not produce a number of records requested by the OAE during its investigation, violations of RPC 1.15(d), RPC 5.5(a)(1), and RPC 8.1(b); prior admonition and censure); In re Picillo, 205 N.J. 234 (2011) (three-month suspension for an attorney who misrepresented to the OAE that an overdraft in his ATA was caused by an "overdisbursement" of funds in one client matter rather than his failure to reconcile his ATA for a ten-month period; the attorney fabricated documents to support his false claim but, one month later, confessed to his acts of deception; the attorney also committed recordkeeping violations and had engaged in a conflict of interest by obtaining an interest-free loan from a client); In re Silberberg, 144 N.J. 215 (1996) (two-year suspension for an attorney who, in a real estate closing, allowed the buyer to sign the name of the co-borrower; the attorney then witnessed and notarized the "signature" of the co-borrower; the attorney stipulated that he knew at the time that the co-borrower was deceased; after the filing of the ethics grievance against him, the attorney falsely stated that the co-borrower had attended the closing; on another occasion, the attorney sent a false seven-page certification to the district ethics committee in order to cover up his improprieties).

In our view, respondent's misconduct most closely resembles that of the attorney in DeSeno who (1) failed to adequately communicate the status of the

matter to his client, (2) misrepresented to the DEC the filing date of the complaint, and (3) allowed the matter to proceed as a default. In determining to impose a reprimand, we weighed, in aggravation, DeSeno's disciplinary history which included reprimand.

Similar to DeSeno's misrepresentation regarding a filing date of the complaint, respondent misrepresented to the DEC that he had informed Charlene of the scheduled arbitration hearing when, in fact, he had not; worse, however, respondent produced to the DEC a backdated letter to support his misrepresentation. Also like DeSeno, respondent has prior discipline; however, respondent's prior discipline consisted of a censure in connection with Del Vacchio I, whereas DeSeno's prior discipline consisted of a reprimand. In these respects, respondent's misconduct is more severe than that of DeSeno, who was reprimanded.

Based on the above disciplinary precedent, and DeSeno in particular, we determine that the baseline discipline for respondent's misconduct is at least a censure. However, to craft the appropriate discipline in this case, we also consider mitigating and aggravating factors.

There are no mitigating factors to consider.

In aggravation, this matter represents respondent's second consecutive default. Here, as in Del Vacchio I, respondent failed to cooperate with the DEC

and allowed the matter to proceed as a default. "[A] respondent's default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008). Thus, it is evident that to us respondent has failed to learn from his past mistakes. His prior encounter with the disciplinary system should have engendered heightened awareness of his obligations to participate in the disciplinary proceeding and address his misconduct. Notably, too, respondent's misconduct in Del Vacchio I was strikingly similar to his conduct underlying this matter.

Finally, in further aggravation, respondent's misconduct harmed his client by depriving her, as the administrator for the estate, of the opportunity to participate in the arbitration hearing or to file a timely demand for trial de novo.

Finally, respondent allowed this matter to proceed as a default.

Conclusion

On balance, we conclude that the harm respondent caused his client, by depriving Charlene, the estate's administrator, of the opportunity to seek trial de novo, in conjunction with having allowed this matter to proceed as a default notwithstanding his prior interactions with the disciplinary system, is sufficient aggravation to warrant the enhanced penalty of a term of suspension. On

balance, we conclude that a six-month suspension is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Member Joseph agreed with the quantum of discipline imposed by the majority. However, considering respondent's false statements to his client, along with the harm caused by his misconduct, Member Joseph also voted to recommend to the Court that respondent be required to disgorge his entire legal fee to Charlene within sixty days of the Court's issuance of a disciplinary Order in this matter.

Vice-Chair Boyer and Member Rodriguez voted to impose a censure.

Members Hoberman and Rivera voted to impose a three-month suspension.

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 Richard Del Vacchio
Docket No. DRB 23-265

Decided: May 22, 2024

Disposition: Six-Month Suspension

Members	Six-Month Suspension	Censure	Three-month suspension
Gallipoli	X		
Boyer		X	
Campelo	X		
Hoberman			X
Joseph	X		
Menaker	X		
Petrou	X		
Rivera			X
Rodriguez		X	
Total:	5	2	2

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