SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-281
District Docket No. XB-2022-0001E

In the Matter of George T. Daggett
An Attorney at Law

Argued
March 21, 2024

Decided
June 6, 2024

Robert L. Ritter appeared on behalf of the
District XB Ethics Committee.

Michael D. Critchley appeared on behalf of respondent.

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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 recommendation for a three-month suspension filed by the District XB Ethics Committee (the DEC). 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), and RPC 1.5(b) (failing to set forth in writing the basis or rate of the legal fee).

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

Respondent earned admission to the New Jersey bar in 1966. At the relevant time, he maintained a practice of law in Sparta, New Jersey.

On September 30, 1988, respondent received a private reprimand (now, an admonition) for his mishandling of a matrimonial matter. In the Matter of George T. Daggett, DRB 88-096 (September 30, 1988) (Daggett I).

On June 6, 1997, respondent received an admonition for violating RPC 1.3 (lacking diligence) and RPC 1.4(a) (failing to fully inform a prospective client of how, when, and where the client may communicate with the lawyer).

In the Matter of George T. Daggett, DRB 97-063 (June 6, 1997) (Daggett II). In that matter, respondent was retained to represent a client in connection with a workers' compensation claim. During the representation, respondent failed to communicate to his client numerous developments in the case. Additionally, he failed to pursue discovery and investigation that would have enhanced his client's position in the case.

On February 23, 1999, respondent again received an admonition for failing to prepare a written retainer agreement for his client in connection with an appeal, in violation of RPC 1.5(b). In the Matter of George T. Daggett, DRB 98-441 (February 23, 1999) (Daggett III).

Facts

On July 21, 2023, prior to the commencement of the ethics hearing in this matter, the parties entered a stipulation of facts in which respondent admitted most of the facts underlying this matter. Respondent denied, however, having violated the Rules of Professional Conduct.

In or around February 2010, respondent was retained to represent James Anthony DeLorenzo. At the time, DeLorenzo was employed by the New Jersey State Police and respondent represented him in connection with an employment-related administrative proceeding. Although respondent previously had not

represented DeLorenzo, he failed to provide DeLorenzo with a written agreement memorializing the basis or rate of the fee.

Following their initial meeting, respondent verbally confirmed to DeLorenzo that he was a participating attorney in the Legal Defense Assistance Plan for the Non-Commissioned Officers Association (the Fund). According to respondent, he informed DeLorenzo that he would accept the Fund's rate of $125 an hour as compensation, until such time as coverage under the Fund was exhausted. On May 14, 2010, the Fund confirmed that DeLorenzo would be provided coverage under the Fund, with a limit of $15,000.[1]

In January of 2011, DeLorenzo reached mandatory retirement and the administrative case against him was converted to a criminal action. In February 2011, the New Jersey Attorney General obtained an eight-count indictment against DeLorenzo relating to his allegedly prohibited outside employment with an insurance company.

Thereafter, respondent continued to represent DeLorenzo throughout discovery, preparation for trial, and several postponements related to the criminal proceeding. During the representation, respondent billed the Fund intermittently. However, on March 15, 2011, the Fund notified respondent, in

[1] This limit pertained to the administrative matter only and increased once the administrative matter was converted to a criminal matter.

writing, that, as a matter of policy, the Fund did not permit intermittent billing, and that interim bills would not be honored but maintained in their files pending the outcome of the conclusion of the case. In that same letter, the Fund informed respondent that $21,761.95 was available towards DeLorenzo's defense. DeLorenzo was not copied on the correspondence between the Fund and respondent.

On December 20, 2011, the Fund issued two checks, in the amounts of $13,847 and $2,478.85, to respondent toward the representation. In its letter, the Fund directed respondent to deposit the checks in his trust account and to bill against the funds for his continued representation. The Fund informed respondent, however, that once those funds were depleted, respondent would "need to obtain all further [funds] from Sergeant DeLorenzo. The terms and conditions thereof are between you and Sergeant DeLorenzo, however we understand that the same billable rate that applies to the plan will apply to the sergeant."

DeLorenzo was not copied on this letter. Respondent, however, denied that he had an obligation or an agreement to keep billing DeLorenzo at the same rate, regardless of what the letter stated.

In May 2014, the criminal trial against DeLorenzo commenced. Respondent still had not provided DeLorenzo with a retainer agreement or other

written explanation of the basis or rate of his legal fee. On July 3, 2014, a mistrial was declared after the jury was unable to reach a unanimous decision on any of the eight counts of the indictment.

On August 14, 2014, respondent sent an invoice to DeLorenzo, for the first time, in the amount of $154,314.50 for work performed from January 31, 2013 to June 13, 2014. According to the invoice, respondent charged an hourly rate of $400. In his accompanying cover letter, respondent stated, "[w]hen we met two weeks ago, I indicated to you that I had not been forwarding legal bills because I wanted you to concentrate on the case and not on legal financial obligations."

Upon receipt of respondent's billing statement invoice, DeLorenzo asked respondent for clarification, including a more comprehensive invoice reflecting the amounts respondent already had received from the Fund, when those funds had been exhausted, and when respondent began work at the $400 per hour rate.

On February 6, 2015, respondent sent DeLorenzo a revised invoice. The revised invoice purportedly encompassed work performed from August 3, 2010 through June 30, 2014, credited payments made by the Fund, and reflected a balance owed of $171,132.85. In his accompanying letter to DeLorenzo, respondent stated:

> In order to receive the benefit of the union funds, I agreed to their hourly rate. Their hourly rate is not

> mine. Again, in order to get those funds to you, I agreed to that rate with them.
>
> While we are on the subject of money, as you can appreciate, I can't begin a new trial without a significant payment towards the outstanding legal fees. Also, we will need to enter into a new retainer agreement, again setting forth my hourly rate since we've already used up the union money.
>
> [Ex.J-3.][2]

Prior to his receipt of the August 2014 and February 2015 billing statements, DeLorenzo had neither been provided nor signed any retainer agreement or other written explanation of the basis or rate of respondent's fee.

In March 2015, the retrial of DeLorenzo's criminal case commenced. Four days prior to the start of that trial, respondent's legal assistant sent DeLorenzo an e-mail requesting that he sign a retainer agreement attached to the e-mail. The retainer agreement included respondent's hourly rate of $400, as well as the rates for respondent's associates. Respondent admitted that this was the first time he had sent DeLorenzo a retainer letter or agreement. DeLorenzo did not sign the agreement.

[2] "Ex." refers to the exhibits admitted into evidence during the ethics hearing.
"T" refers to the transcript of the August 11, 2023 ethics hearing.
"RS" refers to respondent's August 18, 2023 written summation.
"RL" refers to respondent's October 5, 2023 letter to the DEC.

During the second trial, the State dismissed one charge against DeLorenzo, the jury acquitted DeLorenzo on two charges, and, on the five remaining counts, the jury could not reach a unanimous verdict. Thus, the court again declared a mistrial. After this second mistrial, the State dismissed the five remaining accounts against the DeLorenzo.

Leading up to and during the second criminal trial, DeLorenzo paid respondent approximately $170,000 towards his legal fee, in incremental payments, by drawing upon a $250,000 line of credit. DeLorenzo, however, refused to pay respondent any invoice amounts billing more than an hourly rate of $125.

On March 7, 2016, respondent filed a civil complaint against DeLorenzo, in the Superior Court of New Jersey, Sussex County, Law Division, for outstanding legal fees totaling $168,681.54 – purportedly the amount owed to respondent for work billed at an hourly rate of $400.[3] Following a trial, a jury awarded respondent only $15,845, based upon a quantum meruit analysis.

Based on the foregoing, the DEC charged respondent with having violated RPC 1.4(b) by failing to regularly communicate with DeLorenzo, between 2010 and 2014, regarding the status of the allowance from the Fund and about the

[3] The record does not indicate whether respondent properly served DeLorenzo with the mandatory pre-action notice, required by R. 1:20A-6, advising him of the availability of fee arbitration.

amount owed toward legal fees. Additionally, the DEC asserted that six months passed between DeLorenzo's request for clarification relating to the August 2014 billing statement and his receipt of the February 2015 billing statement, which the DEC alleged was an unreasonable amount of time to address billing inquiries and fees owed. Moreover, the DEC alleged that respondent violated RPC 1.4(c) by failing to communicate with DeLorenzo regarding the fees, which rendered DeLorenzo unable to make an informed decision concerning his representation. Last, the DEC alleged that respondent violated RPC 1.5(b) by failing to communicate the basis or rate of his fee in writing until five years after commencement of the representation.

The Ethics Proceeding

Motion Practice

Prior to the commencement of the ethics hearing, the hearing panel chair decided two motions. First, on July 13, 2023, the panel chair granted the presenter's motion to amend the complaint to include a violation of RPC 1.4(c). Next, on the same date, the panel chair entered an order, barring respondent from testifying as an expert witness concerning the emotional state of DeLorenzo but permitting him to present evidence as to the emotional state of DeLorenzo.

The Ethics Hearing

During the August 11, 2023 ethics hearing, the DEC heard testimony from DeLorenzo and respondent.

DeLorenzo testified that, prior to meeting with respondent in 2010, he had consulted with another attorney who also participated in the Fund. That attorney agreed, in writing, to represent DeLorenzo in connection with the administrative and criminal matters at the reduced $125 hourly rate authorized by the Fund. However, that attorney required a $40,000 retainer towards the representation.

DeLorenzo explained that, when he met with respondent, they discussed legal fees and that respondent had agreed to represent him at an hourly rate of $125 throughout the course of the representation. Specifically, DeLorenzo stated:

> I first confirmed and – with him and I had called my union, that the hourly rate was $125 an hour. I confirmed that with [respondent] when I met with him, he confirmed it, and he also confirmed that he would extend that same [rate] after the union – union funds ran out.
>
> [T29.]

DeLorenzo explained that he had decided to retain respondent, rather than the other attorney with whom he had met, because respondent had a reputation for defending troopers and his office location was more convenient. However,

most important to his decision to retain respondent was the fact that "respondent did not ask for a retainer" because he does not charge troopers a retainer fee.

DeLorenzo asserted that respondent neither sent him a retainer agreement at the outset of the representation nor informed him that he would charge $400 per hour once the Fund benefit ran out. DeLorenzo unequivocally testified, however, that had he known respondent would charge him a $400 hourly rate once the Fund's money ran out, he would not have hired respondent. Instead, he would have retained another attorney. Specifically, DeLorenzo testified:

> Q: Now, if he had sent you a retainer letter saying that you were responsible for $400 per hour after the Fund ran out, what would you have done?
>
> A: I would never have gone with him, I would have retained another attorney . . . but I would have probably went and spoke with another one in our Fund. But I would not have gone with somebody three times the rate.
>
> [T31.]

DeLorenzo testified that, upon his receipt of respondent's August 14, 2014 invoice, he sent an e-mail to respondent's assistant requesting the complete billing statements for the Fund's billing, a request he had to repeat three times before he received a corrected bill.

DeLorenzo denied that respondent had told him the reason he previously did not send invoices was because he wanted DeLorenzo to concentrate on his

criminal case and not the legal financial obligations. Further, DeLorenzo testified that, following his receipt of respondent's August 14, 2014 invoice, when he discussed the $400 hourly rate, respondent claimed that it had been included so that he could later bill that rate in anticipated future civil litigation against the state. Specifically:

> Q: So between the first bill on August 14, 2014 and the second bill . . . February 6, 2015, did you discuss with [respondent] his previous agreement to bill you $125 an hour when the Fund ran out?
>
> A: Yes, I mentioned it at one of our next meetings.
>
> Q: What did – what did he say to you?
>
> A: He said that was only for purposes of billing the state or charging the state after the case was over.
>
> Q: Did he – did he tell you that if you won you could recover legal fees from the state?
>
> A: Yes, he continually told me that.
>
> [T35-T36.]

DeLorenzo explained that he refused to sign the March 7, 2015 retainer agreement because, as he had told respondent, he did not agree with the terms.

Respondent, in turn, testified that he first met DeLorenzo and his wife in 2010. Respondent described them as "basket cases" who were worried about the prospect of DeLorenzo going to prison and losing his pension after twenty-seven years of service. Respondent did not demand "a dime up front" and agreed that

he would seek payment from the Fund because, based on the facts as he saw them, DeLorenzo was going to prison and was going to lose his pension, and he wanted to protect DeLorenzo. Respondent explained that he met regularly with DeLorenzo, but never asked him for money because it was his obligation to defend him and not get funds up front. Respondent emphasized the seriousness of the criminal charges and his view that DeLorenzo likely was going to prison.

Respondent admittedly did not prepare a written retainer agreement or provide DeLorenzo with billing invoices until August 2014, more than four years after the commencement of the representation. He testified, however, that his concern for DeLorenzo's and his wife's well-being created an exception to the Rule. Specifically, citing Starkey v. Estate of Nicolaysen, 172 N.J. 60 (2002), respondent testified:

> [T]here are circumstances precluding the execution of the agreement before representation. And RPC 1.5(b) recognizes such circumstances. The circumstances here are that I cared more for him and his wife than I did for money. So that's---the circumstances are important here.
>
> [T48.]

By August 2014, however, respondent maintained that things changed and he "began to see some light," since the first jury was unable to reach a unanimous verdict, resulting in a mistrial, and it was time to go back to court for the second criminal trial. Thus, on August 14, 2014, respondent sent

DeLorenzo the billing statements, which included his $400 hourly rate. He maintained, however, that DeLorenzo "knew from the beginning" that he would be charged $400 per hour once the Fund money was depleted, and never disagreed in writing regarding the $400 per hour billing rate. According to respondent, "that's why I didn't look for his money, I looked for his freedom."

Respondent emphasized that, during the second criminal trial, DeLorenzo began making payments toward his legal fees at the $400 hourly rate. On cross-examination, however, he admitted that DeLorenzo was making lump sum payments, by credit card, in amounts of $7,500, $2,000, $5,000, $15,000, and did not reflect whether DeLorenzo was making payments based upon a $125 hour rate or the $400 hourly rate.

Respondent also testified that, following the second criminal trial, DeLorenzo began referring to him as "Uncle George" because, in respondent's view, DeLorenzo realized that respondent had his best interests in mind, namely, his pension and freedom, and had not accepted the representation for the money.

Respondent testified that DeLorenzo never told him that he objected to the March 2015 retainer agreement but, rather, claimed that he either had forgotten it or lost it. Respondent then testified, "it's just like he cheated the State Police, he cheated me."

On cross examination, respondent testified that he began billing DeLorenzo the $400 hourly rate hour on September 19, 2012, when the Fund money was exhausted. However, when confronted with the billing invoice that reflected January 31, 2013 as the first date he billed his legal served at the $400 hourly rate, respondent stated, "I was too busy making sure he didn't go to prison. If I made a mistake, I made a mistake."

When asked why he sent a retainer agreement at all if he was so concerned about DeLorenzo's well-being, respondent answered, "because I thought it was appropriate and because there was a hung jury in the first trial, and I thought now maybe we had a chance. But, if we lost, there would be a written—there would be a Retainer Agreement, but there wouldn't be any payment, because he'd be in prison."

Respondent maintained that DeLorenzo never discussed with him an objection to paying the $400 hourly rate.

The Parties' Written Summations

In his August 18, 2023 post-hearing summation, respondent denied having violated RPC 1.5(b) on the following three bases: (1) the Fund was sending him money; (2) DeLorenzo was facing prison; and (3) DeLorenzo risked losing his pension. He acknowledged that he should have had DeLorenzo sign "a bunch of

papers" before representing him. However, respondent approached the case with the concern that DeLorenzo was going to jail and would lose his pension. He was, thus, more concerned about DeLorenzo than he was about his legal fees.

Respondent argued that DeLorenzo refused to sign the March 2015 retainer agreement because he also knew that he likely would be convicted and sent to prison and, if he signed the agreement, his wife would be bound by the agreement. Further, respondent maintained that DeLorenzo kept telling him that he either forgot the retainer, or had lost it, but never once said "I won't sign it."

After the first criminal trial, in August 2014, respondent sent DeLorenzo his billing statements for work performed up to that date and reflecting his $400 hourly rate. Yet, according to respondent, DeLorenzo "never contacted me saying, 'that's not our agreement.'" Next, leading up to the second criminal trial, he never objected to the increased rate. Respondent emphasized that DeLorenzo called him "Uncle George" and had almost a year before the start of the second trial to replace respondent, but he did not do so.

Respondent described DeLorenzo as "a thief" who "got caught," and that "his testimony was a lie." He called DeLorenzo a "traitor to the State Police and to me."

In short, respondent stated that RPC 1.5(b) requires a written fee agreement within a reasonable time after commencing the representation and, in

his view, that "reasonable time" arose after the first criminal trial when it became evident that DeLorenzo could defeat the criminal charges against him. Citing Starkey, respondent argued:

> The word 'reasonable,' has to be understood from the viewpoint of a criminal defense attorney. You have to judge me in terms of not looking for a retainer, accepting the Fund until it ran out, and then, looking for money. Except for Juror No. 6, James DeLorenzo would go to prison with no pension, and I would have received the Fund monies and nothing more. My every movement was to benefit James DeLorenzo and seven years after the second trial, he signs an Ethics Grievance against me.
>
> [RSpp5-6.]

In a supplemental letter, at the DEC's request, respondent addressed aggravating and mitigating circumstances. In the first paragraph of his letter, respondent asserted:

> First of all, no matter how you vote, I will always believe that I did the right thing. Perhaps the most aggravating, from my perspective, is to see a person who I did everything to protect who now wants you to impose a penalty on me. That is aggravating.
>
> [RLp1.]

Next, respondent reiterated that he was focused on keeping his client out of jail and maintaining his pension, claiming that "If you don't do criminal law, you don't know." Further, respondent stated:

> I made decisions that had to be made. I believed that the monies available from the Fund would carry the case because he was on his way to jail with no payments to me. You may admonish me, but you will never convince me that I did anything but good for James DeLorenzo. That's how I became 'Uncle George.' … You may admonish me and that will be on my record, but even better on my record is that James DeLorenzo didn't go to jail, got his pension and retired like any other trooper. So if you admonish me, it will be for doing the right thing at the right time.
>
> [RLp2.]

In turn, the presenter argued that the facts to which respondent stipulated clearly and convincingly established his violations of RPC 1.4(b), RPC 1.4(c), and RPC 1.5(b). He described respondent's defense as "excuses that have no basis in fact, no basis in law, no basis in common sense and, having read respondent's August 18, 2023 submission, no basis in decency."

Further, the presenter argued that respondent's interpretation of the words "reasonable time" exceeded their logical meaning. Specifically, respondent's excuse that he was billing the Fund and, thus, had no reason to enter into a written fee agreement with DeLorenzo, failed to account for the fact that the Fund payments had been depleted by September 2012, nearly two years before the start of the first criminal trial. Yet, respondent failed to prepare a retainer agreement until March 2015.

The presenter described respondent's purported concern that DeLorenzo would go to jail or lose his pension as a "subjective thought process" that failed to excuse him for waiting five years to provide DeLorenzo with a written retainer agreement. Further, the Starkey decision, upon which respondent relied, provided respondent no shelter from his failure to provide a written fee agreement for nearly five years.

The presenter asserted that none of respondent's various explanations for failing to provide a written fee agreement excused his failure in this respect and, thus, urged the DEC to find respondent in violation of RPC 1.5(b).

Further, the presenter asserted respondent violated RPC 1.4(b) by failing to provide billing statements for four years and, when repeatedly asked for corrected invoices, taking six months to send updated invoices. Respondent violated RPC 1.4(c), according to the presenter, by failing to inform DeLorenzo that he would be billed at $400 per hour, thereby preventing DeLorenzo from making an informed decision concerning the representation.

As a final point, the presenter noted his outrage at respondent's name-calling tactics, stating that the "reprehensible outburst [in respondent's written summation] is unsupported by evidence offered at the hearing, and has nothing to do with any good faith defense to the RPCs charged in the complaint, and

violates RPC 1.6, Confidentiality of Information." He urged the panel to consider this fact in aggravation in determining the quantum of discipline.

In further aggravation, the presenter argued that respondent lacked candor with disciplinary authorities, referring to inconsistencies between respondent's position during the ethics proceeding and his lawsuit for fees against DeLorenzo. Further, he emphasized respondent's lack of remorse and his prior discipline, including discipline for similar conduct.

The presenter urged the imposition of a three-month term of suspension, stating that anything less would "represent a victory for the [r]espondent who appears to lack the capacity to understand his ethical lapses."

The Hearing Panel's Findings

The DEC found, by clear and convincing evidence, that respondent violated RPC 1.4(b), RPC 1.4(c), and RPC 1.5(b).

Specifically, the DEC determined that respondent violated RPC 1.5(b) by not providing DeLorenzo with the basis or rate of his fee, in writing, within a reasonable time after commencing the representation. The hearing panel accorded no weight to respondent's justifications for his failure to provide a retainer agreement. Specifically, the DEC concluded that "each reason provided by [r]espondent could not be tested by a reasonableness standard or was

contradicted by the credible testimony of [DeLorenzo], by a document admitted into evidence, or both." Moreover, the DEC determined that respondent believed, as he testified, that DeLorenzo would be found guilty and sentenced to prison, leaving respondent with compensation solely from DeLorenzo's benefits under the Fund, making a retainer agreement unnecessary in respondent's view, since respondent would be unable to collect a fee from DeLorenzo once the benefits under the Fund were exhausted.

The DEC also determined that respondent did not promptly comply with DeLorenzo's reasonable requests for information, in violation of RPC 1.4(b). The DEC found that respondent admittedly sent his first invoice to DeLorenzo on August 14, 2014 and, thereafter, DeLorenzo contested the hourly rate and requested clarification as to the completeness of the invoice to reflect the Fund's money. The DEC emphasized that DeLorenzo made three requests for a corrected invoice and it was not until six months later, on February 6, 2015, that DeLorenzo received a revised invoice.

Last, the DEC determined that respondent violated RPC 1.4(c) by failing to timely provide DeLorenzo with the terms of the representation, including his hourly rate, thereby depriving him of information necessary to make informed decisions regarding the representation. The DEC highlighted DeLorenzo's testimony that he would have retained a different attorney had he known that

respondent would charge an hourly rate of $400. The DEC further found that the admitted evidence demonstrated that respondent did not explain to DeLorenzo the essential terms of the legal relationship, including the basis for respondent's fee, or provide invoices at reasonable intervals.

In recommending a three-month suspension for respondent's misconduct, the DEC accorded weight to respondent's prior discipline, emphasizing that the misconduct underlying Daggett III was substantially similar to the instant misconduct. Specifically, the DEC stated, "[r]espondent, though disciplined once for substantially the same conduct, nevertheless repeated his error; the pedagogical function of the prior discipline did not produce a different result."

The DEC also accorded significant weight to respondent's lack of remorse and failure to accept responsibility for this misconduct. Further, as the presenter had argued, respondent lacked candor with the DEC, offering multiple explanations for his failure to follow the Rules.

Weighing the aggravating factors against the absence of any mitigating factors, the DEC recommended that respondent be suspended from the practice of law for three months.

The Parties' Positions Before the Board

On January 31, 2024, respondent, through counsel, submitted a brief with exhibits for our consideration.[4] In his brief, and during oral argument before us, respondent reiterated the arguments he had raised in his summation brief to the DEC. In short, he continued to maintain that the retainer agreement was sent to DeLorenzo one month after the first mistrial was declared and, in respondent's view, this timing as reasonable because it was at first point at which respondent "recognized a glimmer of hope" for his client.

As to the quantum of discipline, respondent argued that the DEC improperly weighed his disciplinary history and failed to consider less severe forms of discipline. Specifically, respondent asserted that his prior misconduct was remote and that there was insufficient information in the record to support the DEC's conclusion that respondent had been disciplined for similar misconduct.

Respondent urged us to impose an admonition. Alternatively, respondent maintained that a reprimand or a censure would be more appropriate than a term

[4] In his January 31, 2024 submission, respondent included four exhibits: (1) Indictment, dated February 4, 2011, marked as Ra 1-16; (2) Motion to Dismiss Remaining Counts of Indictment, dated May 28, 2015, marked as Ra17-23; (3) Second Amended Complaint and Jury Demand, dated September 10, 2015, marked as Ra24-30; and (4) Letter from Respondent to DEC Investigator, dated February 14, 2022, marked as Ra31-33. These exhibits were not part of the record below, and respondent failed to file with us a motion seeking to expand the record to include these new documents. Further, respondent failed to explain the relevancy of the documents to our determination of whether the misconduct occurred or the quantum of discipline to be imposed.

of suspension, particularly in view of the passage of time since his prior discipline. Further, respondent asserted that he had successfully defended DeLorenzo and spared him devastating consequences.

On February 1, 2024, the presenter submitted a written objection to respondent's attempt to supplement the record and, further, urged us to not consider those portions of respondent's brief that rely on those exhibits. During oral argument, the presenter argued that the DEC had considered and addressed each of respondent's arguments. Further, the presenter maintained that a three-month suspension was the appropriate quantum of discipline in view of respondent's prior discipline and his lack of candor and remorse during the proceedings.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a review of the record, we determine that the DEC's determination that respondent violated RPC 1.4(c) and RPC 1.5(b) is supported by clear and convincing evidence. We respectfully part company with the DEC, however, and determine that there is insufficient evidence to establish respondent's violation of RPC 1.4(b). Accordingly, we dismiss that charge.

Specifically, RPC 1.5(b) provides that, "when 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 stipulated that he previously had not represented DeLorenzo and, further, that he did not provide him with a written retainer agreement until March 7, 2015, five years after the representation had commenced and four days before the start of the second criminal trial. Thus, at issue is whether the retainer agreement was sent to DeLorenzo within a "reasonable time" after commencing the representation, as the Rule requires. We conclude that it was not.

Respondent asserted several reasons for not providing DeLorenzo with a written retainer agreement prior to March 7, 2015, including his belief that DeLorenzo was going to prison and, thus, he did not want DeLorenzo to unnecessarily focus on financial obligations during the criminal proceedings. He maintained that it was not until the conclusion of the first criminal trial, in 2014, when the jury was unable to reach a unanimous verdict, that he started to believe DeLorenzo might prevail against the criminal charges.

An attorney's subjective belief in the outcome of a case, however, does not permit that attorney to ignore the RPCs. Nor does the fact that respondent

successfully defended DeLorenzo in both criminal trials excuse his failure to memorialize the basis or rate of his fee sooner than five years after the representation had commenced.

Next, respondent's initial belief the Fund's payments would be sufficient to pay for the representation, which was based upon respondent's expected outcome of the case, does not excuse his failure to enter into a fee agreement with DeLorenzo, his client. Further, this explanation does not expound why, once the Fund's payments had been exhausted, he did not immediately notify DeLorenzo and inform him that, going forward, DeLorenzo was responsible for his fees at the increased rate of $400. In short, respondent's various excuses are neither reasonable nor excuse him from his obligation to adhere to the requirement of the Rules of Professional Conduct. His failure to do so led DeLorenzo to believe, for five years over the course of the representation, that respondent would continue to charge him $125 per hour when the Fund credit ran out.

Respondent's reliance on Starkey is misplaced and, contrary to his position, supports the conclusion that respondent violated RPC 1.5(b). In Starkey, the Court upheld the Appellate Division's decision, which invalidated an attorney's contingency fee agreement with his client because it was not reduced to writing until thirty-three months after the representation had

commenced and, thus, was not prepared within a reasonable time, as RPC 1.5(b) requires. 172 N.J. at 67. The Court, therefore, affirmed the Appellate Division's decision to deny recovery to the attorney on his contract claim based upon his failure to comply with RPC 1.5(b), but allowed for partial recovery of fees on the basis of quantum meruit. Id. at 68-69.

Emphasizing the importance of a written fee agreement, the Court stated:

> The reason for the writing requirement is to avoid misunderstandings and to avoid fraud. DeGraaff v. Fusco, 282 N.J. Super. 315, 320, 660 A.2d 9 (App.Div.1995). "The very purpose of RPC 1.5(b) is to have the client . . . know without question his or her financial responsibility, as well as to prevent . . . overcharging." Ibid.; Kevin H. Michels, New Jersey Attorney Ethics: The Law of New Jersey Lawyering § 33:4-1, at 735 (2002) (stating that RPC 1.5(b) was imposed "[i]n the hope that early, written disclosure would reduce the likelihood of a fee dispute at a later date"). Here, invalidating the contingent fee agreement that was susceptible to misunderstanding because it was not reduced to writing within a reasonable time is a sufficient vindication of the Rule. There is not the slightest hint of fraud or bad faith by Starkey. Nor is there any suggestion of a misunderstanding by anyone. Although Starkey may have negligently failed to reduce the agreement to writing much sooner, the loss of a potentially substantial contingency fee, as well as the possibility of a professional disciplinary action, should provide adequate incentive to lawyers similarly situated to take greater care in complying with the Rules of Professional Conduct.
>
> [Starkey, 172 N.J. at 69.]

Accordingly, we conclude that respondent's five-year delay in providing his client with a written fee agreement was not reasonable and, thus, he violated RPC 1.5(b).

Next, respondent violated RPC 1.4(c), which provides that "a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." This Rule also necessitates full and complete disclosure of all charges which may be imposed upon the client. Alpert, Goldberg, Butler, Norton & Weiss, P.C. v. Quinn, 410 N.J. Super. 510, 531 (App. Div. 2009) (noting that, if the client does not know what charges and costs beyond the hourly rate he may be exposed to, the client cannot be expected to make an informed decision regarding representation).

Here, respondent began representing DeLorenzo in February 2010. However, he admittedly failed to provide DeLorenzo with a retainer agreement or billing statements until August 14, 2014, more than four years after the representation had commenced and one month after the conclusion of the first criminal trial. It was only then that DeLorenzo learned, for the first time, that respondent had increased his hourly rate from $125 to $400.

DeLorenzo unequivocally testified that, if he had known that respondent's hourly rate would increase to $400 once the Fund's money ran out, he would have hired another attorney. DeLorenzo also testified that, upon receipt of the

August 2014 billing statement, he sought clarification from respondent, including a more detailed statement that accounted for (1) the money respondent had received from the Fund, (2) when the Fund's money was exhausted, and (3) when the respondent began charging his $400 per hour rate. However, respondent failed to provide updated invoices for six months, despite DeLorenzo's repeated requests. Further, respondent failed to provide DeLorenzo with any of his communications with the Fund, including the Fund's letter setting forth its understanding that respondent would continue to charge DeLorenzo $125 per hour, even after the Fund's credit had been depleted. These combined failures deprived DeLorenzo of information critical to his making informed decisions concerning the representation. Thus, respondent violated RPC 1.4(c).

We determine to dismiss, however, the charge that respondent violated RPC 1.4(b) by failing to keep DeLorenzo reasonably informed about the status of the criminal matters and failing to promptly comply with reasonable requests for information. The DEC's charge in this respect was based largely on the fact that respondent issued a bill to DeLorenzo four years after the representation had commenced and, when he did, the bill was incomplete because it did not account for any of the Fund's money at the hourly rate of $125. Further, the presenter argued that it then took three requests by DeLorenzo and six months

by respondent to send a complete bill and, even then, the bills were inconsistent with one another. In our view, respondent's misconduct is more precisely addressed by the charged violations of RPC 1.4(c) and RPC 1.5(b).

In sum, we find that respondent violated RPC 1.4(c) and RPC 1.5(b). We determine to dismiss the RPC 1.4(b) charge. 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 admonitions. See In the Matter of Cynthia A. Matheke, DRB 13-353 (July 17, 2014) (the attorney violated RPC 1.4(b) and (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).

However, if the attorney has a disciplinary record, 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 in six bankruptcy cases), and In re Tan, 217 N.J. 149 (2014) (the attorney violated RPC 1.4(b) by failing to return approximately twenty calls from his client; prior discipline including a censure for, among other misconduct, failure to communicate with a client).

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).

Based on the foregoing disciplinary precedent, respondent's misconduct could be met with an admonition. However, to craft the appropriate discipline in this case, we also consider mitigating and aggravating factors.

There is no mitigation to consider.

In aggravation, this matter represents respondent's fourth disciplinary matter, including one in which he engaged in similar misconduct by failing to set forth in writing the basis or rate of his fee (Daggett III). Prior to this matter, however, respondent has been without formal discipline in nearly twenty-five years. Accordingly, we accord respondent's remote disciplinary history, including the prior matter involving similar misconduct, minimal weight. See In the Matter of Thomas Martin Keeley-Cain, DRB 20-034 (February 5, 2021) at 19 ("[a]lthough [the attorney] received an admonition, in 2005, for similar misconduct, given the passage of time, that prior misconduct does not serve to enhance the discipline"), so ordered, In re Keeley-Cain, 247 N.J. 196 (2021); In the Matter of Alan Monte Kamel, DRB 19-086 (May 30, 2019) (in imposing only an admonition, we considered the significant passage of time since prior discipline for unrelated misconduct (1990, private reprimand (now an admonition), and 1995, admonition)).

In further aggravation, however, respondent lacked remorse, refused to accept responsibility for this conduct and, instead, reiterated his belief that he

had done the right thing. Moreover, in his written summation brief to the DEC, respondent engaged in an attack against his former client by repeatedly referring to him as a "thief," "traitor," and "proven liar." In our view, this type of conduct not only lacks the professional and high standards expected of members of the bar, but also reflects respondent's unwillingness to accept responsibility for his misconduct.

Conclusion

On balance, we conclude that respondent's lack of remorse, along with his attacks against his former client, warrant discipline greater than the baseline and, thus, we determine that a reprimand is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Chair Gallipoli and Members Hoberman and Rivera voted to impose a censure.

Member Campelo was absent.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: */s/ Timothy M. Ellis*
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of George T. Daggett
Docket No. DRB 23-281

Argued: March 21, 2024

Decided: June 6, 2024

Disposition: Reprimand

Members	Reprimand	Censure	Absent
Gallipoli		X	
Boyer	X		
Campelo			X
Hoberman		X	
Joseph	X		
Menaker	X		
Petrou	X		
Rivera		X	
Rodriguez	X		
Total:	5	3	1

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