SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-018
District Docket No. IX-2022-0016E

In the Matter of David L. Rosenthal
An Attorney at Law

Decided
July 23, 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 IX Ethics Committee (the DEC), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.3 (lack of diligence); RPC 1.4(a) (failure to fully inform a prospective client of how, when, and where the client may communicate with the lawyer); RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information); RPC 8.1(b) (failure to cooperate with disciplinary authorities); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (two instances – conduct prejudicial to the administration of justice).[1]

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

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

Ethics History

Respondent earned admission to the New Jersey bar in 2010 and to the New York bar in 2011. He has no prior discipline in New Jesey. During the relevant period, he maintained a practice of law in Freehold, New Jersey.

Effective October 17, 2022, the Court declared respondent administratively ineligible to practice law in New Jersey for his failure to comply with continuing legal education requirements.

Effective June 24, 2024, the Court declared respondent administratively ineligible to practice law in New Jersey for his failure to pay his annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection.

He remains administratively ineligible, on both bases, to date.

We now turn to the matter pending before us.

Service of Process

Service of process was proper. On May 1, 2023, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address of record. The United States Postal Service (USPS) tracking system indicates that the certified mail was returned to the DEC. The regular mail, however, was not returned to the DEC.

On August 15, 2023, the DEC again sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address. The certified mail receipt was returned to the DEC bearing an illegible signature and a delivery date of August 17, 2023. The regular mail was not returned to the DEC.

On October 17, 2023, for the third time, the DEC sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office address. The certified mail was returned to the DEC, marked "UNCLAIMED" and "UNABLE TO FORWARD." The regular mail was not returned to the DEC.[2]

On November 17, 2023, the DEC sent a letter, by certified and regular mail, to respondent's office address, informing him 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 certified mail was returned to the DEC,

[2] New Jersey attorneys have an affirmative obligation to inform both the New Jersey Lawyers' Fund for Client Protection and the Office of Attorney Ethics of changes to their home and primary law office addresses, "either prior to such change or within thirty days thereafter." R. 1:20-1(c). Respondent's official Court record reflected the same address for his office and home, and disciplinary authorities used this address when sending respondent all correspondence described herein.

marked "UNCLAIMED" and "UNABLE TO FORWARD." The letter sent by regular mail was not returned to the DEC.

As of January 22, 2024, 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.

On March 5, 2024, Chief Counsel to the Board sent respondent a letter, by certified and regular mail, to his office address, with an additional copy sent by electronic mail, informing him that the matter was scheduled before us on April 18, 2024, and that any motion to vacate the default must be filed by March 25, 2024. The USPS tracking system indicated that the letter sent by certified mail was still in transit to respondent. The regular mail was not returned to the Office of Board Counsel (the OBC).

Moreover, on March 11, 2024, the OBC published a notice in the New Jersey Law Journal, stating that we would consider this matter on April 25, 2024. The notice informed respondent that, unless he filed a successful motion to vacate the default by March 25, 2024, his prior failure to answer the complaint would remain deemed an admission of the allegations of the complaint.

Respondent did not file a motion to vacate the default.

Facts

We now turn to the allegations of the complaint.

In 2013, Daniel Zaltsman and Erick Szentmiklosy jointly founded a business. In 2014, a third partner joined their team; however, some years later, that partner left the venture and launched a new business.

Subsequently, Zaltsman and Szentmiklosy sought to pursue a number of legal claims against their former business partner. In January 2019, they retained respondent to file suit, paying him an initial retainer fee of $10,000. The written retainer agreement set forth an hourly rate for respondent and a second attorney, Anthony Solano, Esq.

In his ethics grievance, Zaltsman asserted that, after he and Szentmiklosy retained respondent, "[f]or a year we actively pursued the case and [respondent] delivered on his commitments to move the case forward." Supporting this account, the eCourts docket for their civil lawsuit reflects that, on November 10, 2019, respondent filed the complaint. Thereafter, on November 26, 2019, defense counsel filed a motion to dismiss the complaint. Respondent timely filed opposition to the defense motion.

According to the trial court's December 24, 2019 order on the motion (which was not included in the record but is publicly available to us through eCourts), following oral argument on December 23, 2019, the trial court denied

the defense motion. Thereafter, the matter proceeded with defense counsel's filing of an answer, followed by numerous case management conferences in 2020 and early 2021. The ethics complaint alleged that respondent then "failed to appear for numerous court hearings . . . between December 2019 and . . . July 2021," citing the eCourts case jacket.[3]

Following the onset of the COVID-19 pandemic, respondent informed Zaltsman and Szentmiklosy that litigation matters were proceeding more slowly. Eventually, however, he stopped responding to their telephone calls and text messages seeking updates on the status of their matter. He also ceased communicating with opposing counsel.

On or around June 23, 2021, respondent failed to appear for a case management conference in the matter. On July 27, 2021, he again failed to appear for a case management conference.

Consequently, on July 27, 2021, the trial court entered an order dismissing the complaint, with prejudice. The order stated that the matter was dismissed after "having come before the Court for a case management conference, and

[3] Documents accessed through eCourts indicate that, in February 2020, respondent agreed to opposing counsel's request for an adjournment and, according to opposing counsel, there was some talk of settlement. On March 11, 2020, the trial court confirmed a case management conference, to be held the next day, and memorialized the judge's grant of permission for the parties to appear telephonically. It is unclear whether that case management conference took place and, if so, whether respondent took part. Subsequently, in May and December 2020, the trial court entered notices requesting a discovery plan, and stating that the parties had failed to provide same; however, these notices do not state that respondent failed to appear for court proceedings.

with Plaintiff failing to appear for a second time despite an Order from this Court compelling said appearance."

Respondent last communicated with Zaltsman and Szentmiklosy in April and May 2022, more than eight months after their lawsuit had been dismissed. Specifically, in an April 21, 2022 text message, respondent informed one or both of them that he was not available to speak with them because he allegedly was working on a case for the Ukrainian Minister of Defense. In a May 6, 2022 text message, he informed them that he was unavailable because he needed to complete a matter for Orthodox Jewish clients before the start of the sabbath, at sundown.

Thereafter, on or about May 20, 2022, Zaltsman filed the grievance underlying the present matter. In the grievance, he stated that, earlier that week, he and Szentmiklosy had "inquired with another lawyer on the status of our case and . . . learned that it [had been] dismissed."

The eCourts case jacket reflects that the lawsuit filed by respondent ended with the entry of the order dismissing the matter, with prejudice. At the time Zaltsman and Szentmiklosy filed the grievance, they were seeking replacement counsel. The record does not indicate whether, subsequently, they attempted to revive their legal claims.

On September 6, 2022, the DEC sent respondent a copy of the grievance and directed him to submit a written reply. He failed to reply.[4]

Subsequently, on October 19, 2022, the DEC investigator left a voicemail message for respondent, who returned the investigator's telephone call on the same date. According to the investigator, a "brief conversation" followed, during which respondent "was unable to provide either basic or coherent responses to straightforward questions." When the investigator questioned him about his representation of Zaltsman and Szentmiklosy, he stated that their matter had been handled primarily by an associate, whose name he initially could not recall. He then clarified that he was referring to Solano (the second attorney whose rates were set forth in the retainer agreement), and further stated that Solano had been a "temp."[5]

The October 19, 2022 telephone call ended with respondent asking if he could call the investigator back the next day to provide more information.

[4] Pursuant to R. 1:20-3(g)(2), in order for a district ethics committee to dispose of a grievance by means other than "dismissal, declination or designation as untriable," the respondent must first be notified "in writing of the substance of the matter and afford[ed] . . . an opportunity to respond in writing." Further, R. 1:20-3(g)(3) provides that "[e]very attorney shall cooperate in a disciplinary investigation and reply in writing within ten days of receipt of a request for information." (Emphasis added.) Accordingly, although the complaint did not specifically describe the "ten-day letter," the context – including the investigator's follow up e-mail – makes clear that the letter sought information from respondent in reply to Zaltsman's and Szentmiklosy's grievance.

[5] The record does not clarify whether Solano worked for respondent as an associate or a "temp" (presumably, a temporary employee hired through a legal staffing agency).

However, he failed to call the investigator back, despite the investigator sending him a confirming e-mail immediately after their initial call. Moreover, respondent did not reply to the investigator's e-mail correspondence, nor did he subsequently communicate with the investigator in any other manner.

The investigator attempted, without success, to contact Solano regarding his role in the case. However, the investigator learned from Zaltsman and Szentmiklosy that Solano had recommended respondent's services to them and, initially, worked in tandem with respondent on their case. However, eventually, respondent took primary control of the matter because he anticipated that it might "involve both New Jersey and New York legal issues," and Solano was not licensed to practice law in New York.

Based on the foregoing facts, the DEC charged respondent with having violated RPC 1.1(a) and (b). Specifically, the DEC alleged that respondent failed to adequately communicate with Zaltsman and Szentmiklosy or to keep them apprised of the matter's status, and also failed to appear for a number of virtual court appearances, after failing to communicate with opposing counsel. The DEC further asserted that his inaction and negligence ultimately led to the dismissal of the matter, with prejudice. Finally, the DEC stated that instead of "tak[ing] any responsibility for his negligent representation, [r]espondent attempted to shift blame to" Solano.

Second, the DEC charged respondent with violating RPC 1.3 by "fail[ing] to adequately protect [Zaltsman's and Szentmiklosy's] legal interests by ignoring various court hearings . . . and [failing] to engage in the pending litigation." Moreover, the DEC asserted that, when Zaltsman and Szentmiklosy asked for status updates on the matter, respondent "provided absurd responses" and "failed to take any responsibility for his inexcusable inaction." Also in support of this charge, the DEC stated that Zaltsman and Szentmiklosy paid respondent "close to $30,000 for little to no activity on their behalf."

Third, the DEC charged respondent with violating RPC 1.4(a) and (b) by "not communicating with [Zaltsman and Szentmiklosy] in a reasonable manner." Specifically, the DEC asserted that respondent "cut off all communications with [Zaltsman and Szentmiklosy] in or around April-May 2022 after communicating various bizarre excuses to them to explain his failure to work on their litigation."

Fourth and finally, the DEC charged respondent with violating RPC 8.4(c) and (d). Regarding RPC 8.4(c), the DEC asserted that, in his communications with Zaltsman and Szentmiklosy, respondent misled them regarding why their matter was not proceeding in a timely manner; and, in his conversation with the DEC investigator, he attempted to shift blame for the matter's mishandling to

Solano. Regarding RPC 8.4(d), the DEC asserted that respondent's failure to appear for multiple court proceedings prejudiced the administration of justice.

As noted above, the DEC later amended the complaint to add the charge that respondent willfully violated RPC 8.1(b) and RPC 8.4(d) based on his failure to answer the formal ethics complaint.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a review of the record, we determine 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. See 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 ethical violations found by the [Board] have been established by clear and convincing evidence"); see also R. 1:20-4(b) (entitled "Contents of Complaint" and requiring, among other

notice pleading requirements, that a complaint "shall set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct"). We will therefore decline to find a violation of a Rule of Professional Conduct where the facts within the certified record do not constitute clear and convincing evidence that the respondent violated a specific Rule. 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) (offering evidence that is known to be false) 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) (failing to set forth in writing the basis or rate of the legal fee) 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, we conclude that the record clearly and convincing establishes respondent's violations of RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 8.1(b); RPC 8.4(c); and RPC 8.4(d) (one instance). We determine to dismiss, however, the

charged violations pursuant to RPC 1.1(b), RPC 1.4(a), and the second charged instance of RPC 8.4(d).

Specifically, RPC 1.1(a) prohibits a lawyer from handling a client matter in a way that constitutes gross neglect. Likewise, RPC 1.3 requires a lawyer to "act with reasonable diligence and promptness in representing a client." Respondent violated both Rules by failing to attend at least two case management conferences; ceasing to provide updates and meaningful responses to Zaltsman and Szentmiklosy about their case; and eventually, through his disengagement, allowing the matter to be dismissed, with prejudice. Respondent's misconduct extinguished his clients' claims and potential recoupment of damages.

According to Zaltsman and Szentmiklosy, respondent had worked on the matter and kept them apprised of developments for about a year after they retained him, and the eCourts docket reflects that, during that time, he not only prepared and filed their complaint, involving multiple claims in a complex commercial dispute, but also successfully defended the complaint against the defendant's pre-answer motion to dismiss.

However, respondent eventually stopped communicating in a meaningful way with his clients, ceased communicating with defendant's counsel, and failed to appear for two case management conferences, resulting in the dismissal of his

clients' case, with prejudice. Although respondent told the investigator that Solano had primary responsibility for the matter, the record does not support this representation. The court docket listed respondent, not Solano, as Zaltsman's and Szentmiklosy's attorney, and he was the only attorney to file documents on their behalf. Moreover, Zaltsman and Szentmiklosy stated that, although Solano worked with respondent on the matter initially, respondent later took the lead because Solano was not licensed in New York. Finally, in respondent's last two communications with the clients, he offered excuses based on the press of his own workload, without reference to Solano. Accordingly, we conclude that respondent was primarily responsible for the case, and that it was his failure to continue working on the matter that led to the dismissal of his clients' claims.

Next, respondent violated RPC 1.4(b), which requires an attorney to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information. Here, respondent failed to keep Zaltsman and Szentmiklosy reasonably informed about the status of their matter by failing to inform them that the case had been dismissed, despite their inquiries, and notwithstanding the passage of more than nine months between July 2021 (when the court issued the order of dismissal) and May 2022 (when his clients filed their grievance). Further, although he communicated with them, via text

message, in April and May 2022, he omitted from these communications any mention of the dismissal of their matter. His wholly inadequate responses to his clients failed to satisfy the standard required of attorneys pursuant to RPC 1.4(b).

Respondent also violated RPC 8.4(c) by misleading Zaltsman and Szentmiklosy regarding the status of their matter, both through his silence and through his April and May 2022 text messages. Instead of responding to their inquiries honestly by informing them that, in July 2021, the trial court had dismissed their lawsuit, he either failed to respond or – in his two final text messages – obfuscated the status of their case by claiming that he was busy with other matters.

In our view, respondent's failure to apprise his clients of the dismissal of their lawsuit is analogous to the attorney's misconduct underlying our conclusion that the attorney engaged in misrepresentation in In the Matter of Fred R. Braverman, DRB 14-030 (July 2014), so ordered, 220 N.J. 25 (2014). In that matter, the attorney represented a client in two personal injury lawsuits. Id. at 3. Each of the cases was dismissed for lack of prosecution; however, the attorney subsequently failed to inform the client that her claims were dismissed. Id. at 4, 6-7. We concluded that, "[b]y his silence, he misled [the client] that her claims were still proceeding" and, thus, "violated RPC 8.4(c) through his

'misrepresentation by silence.'" Id. at 7 (citing Crispen v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984) (noting that, "[i]n some situations, silence can be no less a misrepresentation than words[,]" and referring counsel to the Office of Attorney Ethics for further disposition based on an apparent lack of candor to a tribunal)).

Here, respondent's communications to Zaltsman and Szentmiklosy were silent regarding the fact that their matter had been dismissed. Indeed, by limiting his May and April 2022 text messages to statements to the effect that he was too busy with other matters to provide them with an update at those times, he perpetuated a false impression that the lawsuit remained pending.

In addition, in violation of RPC 8.4(d), respondent prejudiced the administration of justice by wasting judicial resources on court proceedings for which he failed to appear. Specifically, he twice failed to appear for case management conferences, without notice or explanation. The second time he missed a conference, he did so despite the court's order compelling said appearance.

Finally, respondent violated RPC 8.1(b), which requires an attorney to "respond to a lawful demand for information from … [a] disciplinary authority." Specifically, respondent violated this Rule by failing to file a verified answer to

the formal ethics complaint, despite proper notice, and allowing this matter to proceed as a default.[6]

However, we determine to dismiss the allegation that respondent also violated RPC 1.1(b) because, in order to find a pattern of neglect, at least three instances of neglect, in three distinct client matters, are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) at 12-16. Here, respondent neglected only one client matter.

Likewise, the record does not support a finding that respondent violated RPC 1.4(a). That Rule addresses the provision of an attorney's contact information to prospective clients. Here, Zaltsman's and Szentmiklosy's difficulties in contacting respondent began more than a year after they retained him. Thus, they were current, not prospective, clients. Moreover, there was no evidence that respondent failed to provide them with his accurate contact information.

Finally, we dismiss the second charged violation of RPC 8.4(d), 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

[6] Respondent was not charged with violating RPC 8.1(b) based on his failure to provide additional information to the DEC investigator following their October 19, 2022 telephone conversation.

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) (after the attorney failed to answer the formal ethics complaint and cooperate with the investigator, the DEC charged her with violating RPC 8.4(d); upon review, the Court noted 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.").

In sum, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 8.1(b); RPC 8.4(c); and RPC 8.4(d) (one instance). However, we determine to dismiss the charged violations of RPC 1.1(b) and RPC 1.4(a), as well as the charge that he violated RPC 8.4(d) a second time by failing to answer the formal ethics complaint. The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

Standing alone, misrepresentations to clients require a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand or censure may be imposed even if the misrepresentation is accompanied by other, less serious ethics infractions. See, e.g., In re Rudnick, __ N.J. __ (2022), 2022 N.J. LEXIS 258 (reprimand for an attorney who allowed his client's lawsuit to be dismissed for his failure to

respond to interrogatories; thereafter, the attorney failed to attempt to reinstate his client's matter; the attorney also failed to reply to his client's inquiries regarding the case and misrepresented to his client that the entire case had been dismissed for reasons other than the attorney's failure to respond to interrogatories; the attorney's misconduct occurred during a one-year timeframe; in mitigation, the attorney had no prior discipline, accepted responsibility for his misconduct, and fully refunded the client's fee, on his own accord); In re Kalma, 249 N.J. 538 (2022) (censure for an attorney who represented a client in a civil matter arising out of the client's employment with Monmouth County; the attorney failed to file the complaint prior to the expiration of the applicable statute of limitations; thereafter, the attorney repeatedly and falsely claimed that he had timely filed the civil complaint; the attorney even sent his client a false letter, purporting to show that the matter was scheduled for a court date; when the client showed up for court, the attorney claimed that he had been "sent home" and advised his client to do the same because there was a "two-hour window wait time;" to further his deception, the attorney told his client that the court was "backed up" and reassured his client that he would "see the case through to the end;" the client eventually learned, from court staff, that the complaint never had been filed; when the client confronted the attorney with that discovery, the attorney claimed that "it was all

part of a cover up;" we weighed, in aggravation, the default status of the matter, the significant harm to the client, who lost the ability to pursue a claim, and the lengths to which the attorney went to conceal his misconduct; no prior discipline).

Here, however, respondent committed additional misconduct, resulting in egregious harm to his clients.

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, the presence of additional violations, and the attorney's disciplinary history. See In the Matter of Mark A. Molz, DRB 22-102 (September 26, 2022) (admonition for an attorney whose failure to file a personal injury complaint allowed the applicable statute of limitations for his clients' cause of action to expire; approximately twenty months after the clients had approved the proposed complaint for filing, the attorney failed to reply to the clients' e-mail, which outlined the clients' unsuccessful efforts, spanning three months, to obtain an update on their case; the record lacked any proof that the attorney had advised his clients that he had failed to file their lawsuit prior to the expiration of the statute of limitations; in considerable mitigation, the attorney had an otherwise unblemished career in more than thirty-five years at

the bar), and In re Abasolo, 235 N.J. 326 (2018) (reprimand for an attorney who grossly neglected and lacked diligence in a slip-and-fall case for two years after filing the complaint; consequently, the court dismissed his client's matter with prejudice; although the attorney successfully restored the matter to the active trial list, he subsequently failed to pay a filing fee, thereby permitting the order of dismissal with prejudice to stand; in addition, for four years, the attorney failed to keep the client reasonably informed about the status of the case).

Moreover, where an attorney's neglect of a client matter has caused the client's claims to be extinguished or potential remedies to be lost, and, in addition, the attorney has misrepresented to the client the status of the case, terms of suspension have been imposed. See In re Schlachter, 254 N.J. 379 (2023) (three-month suspension for an attorney who continued, for years, to misrepresent to a client that the client's wrongful termination lawsuit had remained pending, despite the fact that it had been dismissed, and the client's claim permanently extinguished, due to the attorney's neglect; in aggravation, we weighed that the attorney's neglect of the matter had permanently extinguished the client's potential claim, the attorney showed no remorse for his actions, and, throughout the disciplinary proceedings, the attorney attempted to contradict the facts contained in his sworn admissions in his disciplinary stipulation, thereby demonstrating his contempt for the attorney disciplinary

system), and In re Kantor, 178 N.J. 69 (2003) (in default matter, three-month suspension for an attorney whose failure to file an appellate brief resulted in the dismissal of his client's appeal; the attorney never advised the client of the dismissal or took any action to ameliorate the consequences of his derelict behavior; the attorney also failed to communicate the basis or rate of the fee in writing to the client; prior reprimand).

Respondent also failed to cooperate with disciplinary authorities which, typically, is met with an admonition if the attorney has no disciplinary history. See In the Matter of Giovanni DePierro, DRB 21-190 (January 24, 2022) (the attorney failed to respond to letters from the investigator in the underlying ethics investigation; in addition, the attorney failed to communicate with the client, failed to set forth in writing the basis or rate of the attorney's fee, and committed recordkeeping violations), and In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (the attorney failed to reply to repeated requests for information from the district ethics committee investigator regarding his representation of a client in three criminal matters).

Based on the above disciplinary precedent, particularly Schlachter and Kantor, we determine that a three-month suspension is the baseline discipline for the totality of respondent's misconduct in this matter. To craft the

appropriate discipline in this case, however, we also consider aggravating and mitigating factors.

In aggravation, respondent's misconduct caused his clients egregious and quantifiable harm. Zaltsman and Szentmiklosy paid respondent nearly $30,000 in legal fees. In exchange, after the initial filing and pretrial motion phase, respondent simply ceased work on their matter, ultimately failed to attend case management conferences, and, consequently, caused the dismissal of their matter with prejudice, extinguishing their claims and potential damages.

In further aggravation, respondent allowed this matter to proceed as a default. R. 1:20-4(f). "[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).

Both aggravating factors, however, were built into the three-month suspensions imposed in both Schlachter and Kantor and, thus, do not necessitate further enhancement in this matter.

In mitigation, respondent has no prior discipline in his fourteen years at the bar.

Conclusion

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.

Additionally, based on respondent's inability to provide basic or coherent responses to straightforward questions posed by the investigator during their telephone call, we recommend, as a condition to his reinstatement, that respondent be required to provide to the OAE proof of fitness to practice law, as attested to by a medical doctor approved by the OAE.

Members Hoberman and Rivera were absent.

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

Disciplinary Review Board
Hon. Mary Catherine Cuff, P.J.A.D. (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 David L. Rosenthal
Docket No. DRB 24-018

Decided: July 23, 2024

Disposition: Three-month suspension

Members	Three-month suspension	Absent
Cuff	X	
Boyer	X	
Campelo	X	
Hoberman		X
Menaker	X	
Petrou	X	
Rivera		X
Rodriguez	X	
Spencer	X	
Total:	7	2

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