SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-087
District Docket Nos. XIV-2020-0462E
and I-2023-0900E

In the Matter of Eric Craig Garrabrant
An Attorney at Law

Argued
June 20, 2024

Decided
October 2, 2024

Colleen L. Burden appeared on behalf of the
Office of Attorney Ethics.

Kim D. Ringler 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 one to two-year suspension filed by the District I Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 5.5(a)(1) (engaging in the unauthorized practice of law); RPC 7.1(a)(1) (making a false or misleading communication about the lawyer or the lawyer's services);[1] RPC 8.1(b) (failing to cooperate with disciplinary authorities); RPC 8.4(b) (committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); 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) and the principles of Advisory Committee on Professional Ethics Opinion 721, 204 N.J.L.J. 928 (June 27, 2011) (Opinion 721) (determining that the negotiation of

[1] Although the complaint did not identify the subsection of RPC 7.1 charged, the allegations make clear that the Office of Attorney Ethics (the OAE) intended to charge respondent pursuant to subsection (a)(1). Thus, respondent was on notice as to the charged subsection. Based on the allegations in the complaint, respondent also violated RPC 7.5(a) (using a firm name, letterhead, or other professional designation that violates RPC 7.1). However, the OAE did not charge respondent with having violated this Rule.

an ethics grievance constitutes a per se violation of RPC 8.4(d) because it "thwarts the disciplinary system from serving its principal purpose," namely, the "protection of the public and preserving confidence in the bar").

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

Ethics History

Respondent earned admission to the New Jersey bar in 1996. At the relevant times, he maintained a practice of law in Wildwood, New Jersey.

On October 4, 2022, the Court reprimanded respondent for having violated RPC 1.3 (lacking diligence), RPC 1.4(b) (failing to keep a client reasonably informed about the status of a matter and to comply with reasonable requests for information), and RPC 8.1(b). In re Garrabrant, __ N.J. __ (2022), 2022 N.J. LEXIS 842 (Garrabrant I). In that matter, for more than eight years, respondent failed to secure his client's release from a mortgage. Although respondent ultimately cooperated with the disciplinary investigation, he admittedly failed to timely comply with the DEC investigator's repeated written and verbal requests for information.

Facts

The OAE's investigation underpinning this matter stemmed from an October 27, 2020 referral by Marcus H. Karavan, Esq., who alleged that respondent had violated the Rules of Professional Conduct in various respects.[2]

RPC 5.5(a)(1) and RPC 7.1(a)(1)

On July 30, 2014, respondent registered a new domestic professional corporation, known as Garrabrant Law Office, P.C., with the State of New Jersey, Department of Treasury, Division of Revenue and Enterprise Services.

More than two years later, on February 16, 2017, the State of New Jersey revoked the entity's corporate charter due to respondent's failure to file annual reports. Despite the revocation of his firm's corporate charter, between February 2017 and December 2020, respondent continued to use the "P.C." designation on his letterhead and in pleadings submitted in connection with his representation of clients in courts and before zoning and planning boards.

On August 26, 2021, during a demand interview with the OAE, respondent

[2] Karavan initially submitted the referral pursuant to RPC 8.3, which requires an attorney who knows that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects, to inform the appropriate professional authority. On September 27, 2022, Karavan agreed to be the named grievant in connection with a formal ethics complaint. Consequently, his name appears in the complaint and the stipulation of facts, and he appeared, in his capacity as the grievant, at the virtual ethics hearing in this matter.

admitted knowing that his corporate charter had been revoked. However, he claimed that he was unaware the charter had been revoked until approximately December 2020, when he received the OAE's notice concerning its investigation in this matter. Respondent later admitted to the OAE that, from December 2020 through August 2021, he failed to take any action to reinstate his corporate charter or to reform his business entity to remove the improper designation.

Respondent asserted that, on September 9, 2021, he opted to proceed as a solo practitioner under the name Garrabrant Law Offices. As of the date of the ethics complaint, he had not reinstated his corporate charter.

RPC 8.4(b), RPC 8.4(c), and Failure to Cooperate with the OAE

Karavan alleged in his referral that respondent had failed to employ an accountant or payroll service or to pay payroll taxes or quarterly tax payments, despite issuing paychecks to himself and his secretary. On August 21, 2021, during the demand interview, respondent admitted to the OAE that he had failed to file employer, business, or personal tax returns from 2016 through 2021, resulting in an outstanding tax liability of $109,277.15.[3]

[3] On September 25, 2023, respondent's accountant confirmed for the OAE that respondent had not filed employer tax returns (federal and state) for 2016 through 2018, business tax returns (Professional Corporation) (federal and state) for 2016 through 2018, or personal tax returns (federal and state) for 2016 through 2022.

On September 20, 2022, the OAE sent respondent a letter, directing him to provide an explanation, no later than September 30, 2022, for his failure to file "several back tax returns." On September 27, 2022, respondent sent an e-mail to the OAE, requesting an extension of time to provide the required explanation, which the OAE granted to October 7, 2022.

On October 25, 2022, the OAE sent respondent another letter, reminding him that his explanation concerning his failure to file tax returns was past due and directing him to submit a reply within five days. That same date, respondent acknowledged receipt of the OAE's letter.

On November 1, 2022, respondent sent a letter to the OAE, admitting that he had failed to file tax returns since 2016. He again requested an extension of time, until November 9, 2022, to provide the required explanation. The OAE did not grant another extension. Respondent, however, failed to produce the required explanation to the OAE on or after November 9, 2022.

On December 5, 2022, the OAE sent a letter to respondent, by regular mail, with another copy sent by electronic mail, directing him to provide his explanation by December 13, 2022. Neither the regular mail nor the e-mail was returned as undeliverable. Respondent failed to provide the explanation or supporting documents by December 13, 2022, or any date thereafter.

Recordkeeping Violations

Respondent maintained an attorney trust account (ATA) with Crest Savings Bank (Crest). In October 2017, Crest closed respondent's ATA with an account number ending in 7960. However, he did not immediately open a new ATA. Nearly two years later, in July 2019, respondent opened a new ATA with an account number ending in 7603.

Based on the foregoing, the OAE filed a formal ethics complaint charging respondent with having violated RPC 1.15(d) by failing to maintain an ATA, as R. 1:21-6(a)(1) requires; RPC 5.5(a)(1) and RPC 7.1(a)(1) by continuing to practice law as a professional corporation for more than three years after his corporate charter was revoked; RPC 8.1(b) by failing to cooperate with disciplinary authorities; RPC 8.4(b) and (c) by failing to pay his payroll tax liabilities, in violation of 26 U.S.C. § 7202,[4] and by failing to file tax returns, in violation of 26 U.S.C. § 7203;[5] and RPC 8.4(d) and the principles of Opinion

[4] 26 U.S.C. § 7202, Willful failure to collect or pay tax, states:

> Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

[5] 26 U.S.C. § 7203, Willful failure to file return, or pay tax, states in relevant part:

> Any person required under this title to pay any estimated tax or tax, or required by

721.[6]

The Ethics Hearing

On September 18, 2023, prior to the commencement of the ethics hearing in this matter, the panel chair granted the OAE's motion to dismiss the charge that respondent violated RPC 8.4(d) and the principles of Opinion 721, and entered a corresponding order.

Two days later, on September 20, 2023, the OAE and respondent entered into a stipulation of facts, in which respondent admitted most, but not all, of the facts underpinning the disciplinary charges.

During the September 26, 2023 ethics hearing, the DEC heard testimony from respondent, the OAE's disciplinary auditor, and respondent's character witnesses, Theodore Meskers and Krista Fitzsimons.

> this title or by regulations made under authority thereof to make a return, keep any records, or supply any information who willfully fails to pay such estimated tax or tax, make such return, keep such records, or supply such information, at the time or times required by law or regulations, shall, in addition to other penalties provided by law, be guilty of a misdemeanor.

[6] The OAE had asserted that respondent violated this Rule and Opinion 721 by entering into a settlement agreement to resolve a pending domestic violence action that included the following provision:

> Plaintiff and Defendant agree that they are aware of all facts relevant to this matter and based upon their review of the same will not file, encourage or assist others in filing criminal, quasi-criminal, or ethics charges against one another based upon all conduct that has occurred up to the date of this agreement.

Specifically, the OAE auditor testified about the OAE's efforts to obtain information from respondent in connection with its investigation into his admitted failure to file tax returns for multiple years.[7] The auditor also testified about respondent's failure to reply to the OAE, despite multiple opportunities to do so during the investigation.

On cross-examination, the auditor acknowledged that respondent ultimately provided the OAE with copies of the tax returns for the years in question, albeit on the Monday prior to the commencement of the ethics hearing. On both cross-examination and re-direct, he testified that respondent admitted, at the time of the OAE's investigation, that he had not filed tax returns since 2016.

During his testimony, respondent attributed his failure to file tax returns, between 2016 and 2021, to his inability to meet his financial obligations. He explained that, between 2015 and 2020, he was going through a highly contentious, post-judgment divorce litigation that he described as financially draining. Respondent further testified that, pursuant to the terms of his January 2015 divorce settlement, he was obligated to pay the mortgage for his former marital residence until the property sold, which did not occur until May 2017. Respondent explained that, during that same period, he was obligated to pay

[7] Much of the auditor's testimony related to facts to which respondent had already stipulated.

seventy percent of the college expenses for one of his children. He further stated that he made multiple unsuccessful applications to the court to modify his support obligations under the terms of his divorce. Respondent testified that he regretted his decision to not file his tax returns but explained that he simply did not have the funds to pay the tax obligations.

Respondent acknowledged, however, that he could have established a payment plan with the Internal Revenue Service (the IRS). He testified that he elected to "deal with [his] family obligations" over his tax obligations because he felt like it was "the only thing [he] could do." He stated that it "came to a point where [his] responsibilities to [his] family and [his] practice and the government were not all able to be met at the same time" and, in the face of those converging responsibilities, he "made choices."

Respondent asserted that he had maintained an ATA from 2014 through 2017. He testified that, in July 2019, when he attempted to make a deposit in his ATA, he learned, for the first time, that the bank had closed his ATA. Respondent conceded, however, that he should have known that his ATA was closed because he should have been reviewing his bank statements every month.

Respondent testified that, in 2017, he did not pay the required annual fee and, consequently, the State revoked his corporate charter. He claimed that he continued to use the "P.C." designation because he was not aware the charter

had been revoked. Respondent conceded, however, that he did not change the designation on his letterhead, bank accounts, or firm checks until after the OAE's demand interview.

Respondent testified that it was not his intent to fail to cooperate with the OAE's investigation. However, he conceded that he did not reply to the OAE's multiple requests for an explanation regarding his failure to file tax returns.

Respondent also presented the testimony of character witnesses, Meskers and Fitzsimons, who testified concerning respondent's reliability, diligence, and his overall reputation, as well as his charitable endeavors.

In his written summation to the DEC, respondent acknowledged, through his counsel, that he acted "inappropriately" with respect to the charged violations of RPC 1.15(d); RPC 5.5(a)(1); RPC 7.1(a)(1); and RPC 8.4(b) and (c). However, he argued that he did not violate RPC 8.1(b) by failing to cooperate with the investigation, as the OAE had alleged.

Specifically, respondent admitted to the "uncontroverted proof" of his failure to maintain an ATA, in violation of RPC 1.15(d), but claimed it was "due in large measure" to the bank unilaterally closing the account without his knowledge. However, he did acknowledge that "greater attention on his part may have prevented the account's closure."

Respondent argued, through counsel, that his continued use of the "P.C."

designation constituted "more of an 'advertising' violation than an indication that [he] acted unethically or intentionally." Respondent asserted that, when he learned of the issue, he immediately took steps "to correct his attorney registration, letterhead, bank accounts and otherwise ceased to represent his business as a professional corporation," and queried whether "unwittingly" presenting oneself as a corporation satisfies the "material misrepresentation" requirement of RPC 7.1(a)(1). Through counsel, he maintained that it was a "minor transgression," and "essentially a ministerial violation" of RPC 5.5(a)(1) and RPC 7.1(a)(1), which warranted minimal discipline.

Moreover, respondent reasoned that he did not violate RPC 8.1(b) because he (1) readily had admitted to the tax-related misconduct at the demand interview, (2) voluntarily produced documents to the OAE prior to any formal request, and (3) executed a stipulation of facts. Respondent argued that the "only proof of 'non-cooperation' was [his] failure to 'update' the OAE on the status of his tax returns which were unfiled at the time of the request." Through counsel, he further argued that his "solitary failure to provide an additional update and explanation, when the status of his taxes at that time was unchanged, by itself [did] not constitute a failure to cooperate . . . ."

Although respondent acknowledged that his tax returns, for years 2016 through 2021, were "tardy," he asserted that the OAE failed to present any

evidence that his conduct violated any criminal statute "other than asking that the Panel note a federal statute exists." Respondent further argued that he had not been charged with a crime in connection with his failure to file tax returns. Citing In re Garcia, 119 N.J. 86, 88 (1990), discussed below, respondent argued that "not every failure to file a tax return constitutes a criminal offense." Ultimately, respondent did not deny that he violated RPC 8.4(c) and reiterated that he failed to file tax returns but argued that the proofs offered by the OAE did not support a finding that he committed a criminal act.

In support of the recommendation that a reprimand was the appropriate quantum of discipline for his misconduct, respondent presented several mitigating factors, including: the lack of criminal prosecution or other collateral proceeding; the source of the ethics referral; his admission to wrongdoing and the corrective actions taken; his significant financial obligations at the time; his charitable work; his accomplishments at the bar; his good reputation; his efforts to seek assistance; the unlikelihood that the misconduct would recur; and his remorse.

In its written summation to the DEC, the OAE argued that, although respondent did not directly admit to having violated RPC 1.15(d); RPC 5.5(a)(1); RPC 7.1(a)(1); and RPC 8.1(b), he stipulated to the facts underpinning each charge. Specifically, respondent admitted to failing to maintain an ATA,

utilizing the "P.C." designation after his corporate charter had been revoked, and failing to provide the OAE an explanation for not filing tax returns.

The OAE also maintained that respondent admitted to the facts underlying the charged violations of RPC 8.4(b) and (c). Specifically, respondent testified that he did not file tax returns or pay the more than $109,000 in taxes he owed to the IRS, for tax years 2016 through 2021. Consequently, respondent violated 26 U.S.C. § 7202 and 26 U.S.C. § 7203, notwithstanding the lack of a criminal conviction.

In aggravation, the OAE noted respondent's prior reprimand. In mitigation, the OAE acknowledged respondent's efforts to resolve his tax issues. The OAE asserted, however, that the remainder of his proffered mitigating factors demonstrated a lack of remorse and, instead, were attempts to shift the blame for his ethical transgressions to others.

In recommending the imposition of a one to two-year suspension, the OAE cited to disciplinary precedent involving an attorney's attempted or actual income tax evasion. The OAE analogized respondent's conduct to that of the attorney in In re Gottesman, 222 N.J. 28 (2015), who, as detailed below, received a three-year suspension following his guilty plea to tax evasion and willful failure to remit payroll taxes.

The Hearing Panel's Findings

The DEC hearing panel found, by clear and convincing evidence, that respondent violated RPC 1.15(d); RPC 5.5(a)(1); RPC 7.1(a)(1); and RPC 8.4(c). The DEC determined, however, that the OAE did not prove, by clear and convincing evidence, that respondent violated RPC 8.1(b) or RPC 8.4(b).

Specifically, the DEC found that respondent violated RPC 1.15(d) by failing to maintain an ATA from October 2017 through July 2019, as R. 1:21-6 requires.

The DEC also found that respondent violated RPC 5.5(a)(1) and RPC 7.1(a)(1) by continuing to use the "P.C." designation on his pleadings and in making appearances, both in court and before planning and zoning boards, despite the revocation of his firm's corporate charter. The DEC noted that, even after becoming aware that his charter was revoked, respondent failed to take any action to reinstate the charter and, nevertheless, continued to use the designation.

The DEC, however, determined that the OAE had not proven, by clear and convincing evidence, that respondent violated RPC 8.1(b) by failing to cooperate with the OAE's investigation. The DEC based its finding on the fact that respondent had partially cooperated with the OAE by appearing for the demand interview, completing numerous document productions, and admitting

that he had failed to file tax returns. The DEC emphasized that the failure to file tax returns was the final issue addressed the OAE during its investigation and, further, since respondent admitted to failing to file tax returns, it was unclear to the DEC what further cooperation was required.

Last, the DEC found that respondent violated RPC 8.4(c) by his admitted failure to file both personal and business tax returns from 2016 through 2021.The DEC determined, however, that the OAE had not proven, by clear and convincing evidence, that respondent violated RPC 8.4(b) in connection with his failure to file tax returns based upon the lack of any evidence establishing that he was under criminal investigation, charged with or pled guilty to any criminal activity, or convicted of any crimes.

In aggravation, the DEC weighed respondent's prior reprimand.

In mitigation, the DEC considered respondent's participation in the New Jersey State Bar Association's Lawyers Assistance Program during the relevant period, as well as his expressed remorse and admission of wrongdoing. The DEC noted that the record lacked any indication that respondent's admitted misconduct caused harm to his clients. In further mitigation, the DEC considered the testimony of respondent's character witnesses, who both spoke of his good character and their willingness to retain him in the future.

The DEC determined, based on disciplinary precedent, that a reprimand

was the appropriate discipline for respondent's misconduct.[8]

The Parties' Submissions to the Board

At oral argument and in his written submission to us, respondent, through counsel, largely reiterated the arguments he had raised in his summation brief to the DEC. Through counsel, he continued to claim that he committed "technical," "ministerial," and "unintentional" violations of the Rules concerning his ATA and his use of an inaccurate designation for his law practice. In his view, the use of the inaccurate designation was more akin to an advertising violation than a violation of the Rules of Professional Conduct.

Respondent asserted that, ultimately, all tax returns were filed and, further, that he had paid one-third of the outstanding tax liability. However, in response to our questioning during oral argument, respondent, through his counsel, admitted that he did not withhold or remit payroll taxes for either

[8] In support of its recommendation, the DEC relied upon In re Conroy, 254 N.J. 169 (2024) (attorney admitted to a violation of RPC 1.5(b) by failing to set forth in writing the basis or rate of legal fee relating to a $2,500 retainer paid by client and subsequently disgorged); In re Vassallo, 250 N.J. 517 (2022) (attorney found to have knowingly disobeyed an obligation under the rules of a tribunal and engaging in the unauthorized practice of law); In re Murphy, 248 N.J. 516 (2021) (attorney admitted to violations of failing to comply with recordkeeping requirements, commingling of funds, and failing to promptly deliver funds to a third party); In re Elfar, 246 N.J. 56 (2021) (attorney admitted to recordkeeping violations, practicing law while administratively ineligible, failing to maintain liability insurance while practicing as a professional corporation, and using false, misleading and improper firm name); In re Winograd, 237 N.J. 404 (2019) (attorney admitted to engaging in the unauthorized practice of law and engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

himself or his one employee. Respondent claimed that he "incorrectly assumed" that he needed the funds available to pay the tax liability to file his returns.

Respondent argued that he "promptly" and "robustly" replied to the OAE and, without prompting, provided documentation to the investigator. Although he admittedly failed to provide the OAE with an explanation for his failure to file tax returns for six years, respondent argued that he appeared for the OAE's interview and responded to their additional requests for records and information. According to respondent, his proof of cooperation was evidenced by his admission of wrongdoing and his agreement to enter into the stipulation of facts prior to the ethics hearing in this matter.

Respondent reiterated the "robust" and "substantial" mitigation, noting that the DEC found the mitigation to be "overwhelming." He further emphasized the DEC's finding that none of his clients had been harmed by his misconduct. Further, he asserted that the circumstances that led to his failure to file taxes were not likely to recur.

Respondent agreed with the DEC's recommendation that a reprimand was the appropriate quantum of discipline for his misconduct which, he suggested, was proven largely based on his consistent admission of wrongdoing. In his brief to us, respondent cited disciplinary precedent, in which attorneys received reprimands for their failure to remit payroll taxes but were not criminally

prosecuted.

In reply to our questioning during oral argument, respondent, through his counsel, argued that the cases in which we imposed terms of suspension involved attorneys who had been convicted of crimes, as well as other serious offenses, such as fraud and misappropriation, all of which were distinguishable from the facts in this matter. Respondent argued that, even if his misconduct was deemed to be similar to the attorneys in those matters, the presence of overwhelming mitigation warranted discipline less than a term of suspension.

The OAE did not submit a brief for our consideration. However, at oral argument, the OAE reiterated the arguments it had advanced before the DEC and urged us to impose a one to two-year suspension. The OAE also urged that we not consider, as mitigation, respondent's claim that he had "self-reported" his misconduct, emphasizing that he had reported his failure to file his tax returns only after the ethics grievance was filed. Last, the OAE argued that the lack of a criminal conviction does not prevent a finding of misconduct.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Turning to our de novo review of the record, we are satisfied that the DEC's conclusion that respondent committed unethical conduct is fully supported by clear and convincing evidence. We do not, however, adopt all the DEC's findings.

Throughout the disciplinary investigation, and during the ethics hearing, respondent repeatedly admitted that he had failed to comply with the recordkeeping requirements of R. 1:21-6 by failing to maintain an ATA for approximately two years, from October 2017 through July 2019. Respondent's admitted failure to maintain an ATA while engaged in the private practice of law, as R. 1:21-6(a)(1) requires, constitutes a violation of RPC 1.15(d).

Next, the record clearly and convincingly establishes respondent's violation of RPC 7.1(a)(1), which prohibits an attorney from making a false or misleading communication about the lawyer or the lawyer's services. Respondent admittedly failed to file, with the State of New Jersey, the required annual report and filing fee necessary to maintain his professional corporation. Consequently, in February 2017, his corporate charter for Garrabrant Law Office, P.C. was revoked. Respondent admitted, however, that he continued to use the "P.C." designation on his letterhead and pleadings after the charter had

been revoked.

Respondent claimed that he continued to use the P.C. designation because he was unaware that his charter had been revoked. However, it is well-settled that prior conduct is competent evidence to establish constructive knowledge. For example, in In re Clausen, 213 N.J. 461 (2013), the attorney consented to the imposition of a reprimand, despite his claimed unawareness of his ineligibility to practice law due to his failure to pay his annual registration fee to the New Jersey Lawyers' Fund for Client Protection (CPF). In that matter, Clausen had made late payments to the CPF in the past, curing periods of ineligibility. He acknowledged that his ineligibility was the result of carelessness, and that his carelessness did not excuse his failure to comply with his CPF obligations or his continued practice of law while ineligible. As a result of Clausen's pattern of late payments, made to cure periods of ineligibility, we determined that he was, at a minimum, constructively aware of his ineligible status. In the Matter of Paul Franklin Clausen, DRB 13-010 (April 22, 2013). The Court agreed.

Here, respondent initially registered his corporation in July 2014, three years before the revocation occurred. Respondent was aware he had not filed his annual reports because he, presumably, had complied with those annual registration requirements for years 2014 through 2016 when his charter

remained in good standing. It is improbable that respondent would have simply overlooked those requirements between February 2017 and December 2020, until the issue was brought to his attention by the OAE. In addition, respondent admittedly failed to take any proactive steps to address the revocation of his firm's charter or to reform his business entity, for an additional eight months, from December 2020 through August 2021, despite the OAE having confronted him with the issue during the demand interview.

Respondent also violated RPC 8.1(b), which requires an attorney to "respond to a lawful demand for information from . . . [a] disciplinary authority." The OAE alleged that respondent violated this Rule by failing to fully cooperate with the OAE's efforts to investigate his failure to file tax returns for multiple years. Specifically, on three separate occasions, between September and December 2022, the OAE directed respondent to provide a written explanation for his failure to file tax returns. Notwithstanding the OAE's good faith efforts to accommodate respondent, he failed to provide the required explanation. Respondent's defense to this charge focused on his perceived inability to reply to the OAE because he had not yet filed his tax returns. However, the OAE was not seeking proof that he had filed the late returns but, rather, an explanation for why he had failed to file the tax returns in the first place.

It is well-settled that cooperation short of the full cooperation required by

the Rules has resulted in the finding that the attorney violated RPC 8.1(b). See In the Matter of Marc Z. Palfy, DRB 15-193 (March 30, 2016) at 48 (we viewed the attorney's partial "cooperation as no less disruptive and frustrating than a complete failure to cooperate" noting that "partial cooperation can be more disruptive to a full and fair investigation, as it forces the investigator to proceed in a piecemeal and disjointed fashion") so ordered, 225 N.J. 611 (2016).

Respondent asserted, in his November 1, 2022 letter, that he would provide his written explanation for his failure to file taxes to the OAE no later than November 9, 2022. Despite his representation, respondent admittedly failed to provide any explanation to the OAE, either on or after November 9, 2022. Respondent's cooperation in other aspects of the disciplinary process does not excuse his admitted failure to cooperate with the OAE's demand for this particular information. Thus, we respectfully part company with the DEC's determination to dismiss this charge and, to the contrary, conclude that the evidence clearly and convincingly establishes respondent's violation of RPC 8.1(b).

Respondent also violated RPC 8.4(b), which prohibits a lawyer from committing "a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects." It is well-settled that a violation of this Rule may be found even in the absence of a criminal conviction

or guilty plea. See In re Gallo, 178 N.J. 115, 121 (2003) (the scope of disciplinary review is not restricted, even though the attorney was neither charged with nor convicted of a crime); In re McEnroe, 172 N.J. 324 (2002) (the attorney was found to have violated RPC 8.4(b) by failing to file tax returns for seven years and pay nearly $70,000 in taxes, despite not having been charged with or found guilty of a criminal offense).

The OAE charged respondent with having violated RPC 8.4(b) by failing to remit payroll taxes, contrary to 26 U.S.C § 7202, and by failing to file federal tax returns, contrary to 26 U.S.C § 7203. To properly assess whether respondent violated RPC 8.4(b), we analyze both theories advanced by the OAE.

First, in order for us to find that respondent failed to account for and remit payroll taxes, in violation of 26 U.S.C. § 7202, the evidence must establish that respondent (1) had a duty to collect, account for, and pay over a tax; (2) failed to collect, truthfully account for, or pay over the tax; and (3) acted willfully. United States v. Thayer, 201 F.3d 214, 219-21 (3d Cir. 1999).

Throughout the disciplinary proceeding, respondent consistently admitted that he had failed to file state and federal tax returns for calendar years 2016 through 2021. He further admitted that he had accumulated $109,277.15 in "unpaid taxes" that was owed to the IRS. During oral argument before us, in response to our questioning, respondent, through his counsel, confirmed that,

during the relevant period, he had one employee and issued W-2 statements, but that he failed to collect and remit the required payroll taxes.

Specifically, the following exchange took place.

> MR. MENAKER: [Ms. Ringler, can you] clarify for me whether the respondent failed to withhold unemployment taxes and failed to file those tax returns?
>
> MS. RINGLER: I – I can tell you, Mr. Menaker, that he had one employee for only a – a portion of the time period. And my understanding as to the withholding is they were not.
>
> MR. PETROU: Well, they were not removed from the – withheld from the employee's paycheck or they were not remitted to the Government?
>
> MS. RINGLER: Well, it -- I can confer with Mr. Garrabrant because I -- the record is bereft of that information. Would you like to indulge me a moment and I'll confer with Mr. –
>
> HONORABLE MARY CATHERINE CUFF: Please.
>
> MS. RINGLER: -- Garrabrant?
>
> MR. HOBERMAN: Can you also ask him if timely W-2 forms were filed?
>
> MS. RINGLER: The answer to that I think is no.
>
> MR. HOBERMAN: Okay.
>
> (Ms. Ringler confers with Mr. Garrabrant)
>
> MS. RINGLER: I apologize. I misspoke. And I thank you for allowing me to confer with Mr. Garrabrant. I -- I won't make assumptions going forward. Um. He did

> file a W-2, Mr. Menaker, or, I believe, Mr. Hoberman, who asked that question. He did not take out withholdings from his one employee's pay. And he didn't turn it over to the Government either. But he didn't take it from the employee. So that's the direct answer.
> [T20-21 (emphasis added).][9]

Accordingly, we are satisfied that respondent violated 26 U.S.C § 7202 by failing to collect and remit payroll taxes and, consequently, violated RPC 8.4(b).

We also conclude that respondent willfully failed to file income tax returns or to pay income tax obligations to the IRS, in violation of 26 U.S.C. § 7203. To establish a violation pursuant to 26 U.S.C. § 7203, the evidence must prove that (1) respondent was a person required to file a tax return; (2) respondent failed to file a tax return at the time required by law; and (3) the failure to file was willful. United States v. McKee, 506 F.3d 225, 244 (3d Cir. 2007). A defendant's prior taxpaying history is competent evidence to establish both knowledge of a legal duty to file tax returns for subsequent tax years and "willfulness" in violation of 26 U.S.C. § 7203. United States v. Grumka, 728 F.2d 794,797 (6th Cir. 1984).

The record before us clearly and convincingly establishes that respondent failed to file employer, business, and personal tax returns from 2016 through

[9] "T" refers to the transcript of the June 20, 2024 oral argument before the Board.

2021, and failed to pay $109,277.15 in tax liabilities, contrary to 26 U.S.C § 7203. Respondent acknowledged that he was required to file tax returns for the stated tax years. Further, respondent consistently admitted throughout the proceeding, and his accountant confirmed, that he failed to file his employer, business, and personal income tax returns for the stated years.

Further, respondent's testimony clearly established that he willfully failed to file his tax returns and to pay his tax liabilities. Specifically, he stated that he did not file his income tax returns because he did not have the resources to pay the taxes due to the IRS. Respondent conceded, however, that he could have established a payment plan with the IRS but, because he did not have the money to make the payments, he chose not to do so. He testified that he made the decision to "deal with [his] family obligations" over his tax obligations because he felt like it was "the only thing [he] could do." He stated that it "came to a point where [his] responsibilities to [his] family and [his] practice and the government were not all able to be met at the same time," and in the face of those converging responsibilities he "made choices."

Accordingly, we are satisfied that respondent violated 26 U.S.C § 7203 by willfully failing to file tax returns for six consecutive years and failing to pay $109,277.15 in taxes and, consequently, violated RPC 8.4(b).

Respondent also violated RPC 8.4(c), which prohibits an attorney from

engaging "in conduct involving dishonesty, fraud, deceit or misrepresentation." A violation of RPC 8.4(c) requires intent. See In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011). Based on the record before us, there is sufficient evidence to establish that respondent possessed the requisite intent, specifically, by intentionally failing to file tax returns and to pay his tax liabilities and, separately, by intentionally failing to collect and remit payroll taxes. Thus, respondent violated RPC 8.4(c).[10]

We determine to dismiss, however, the charge that respondent violated RPC 5.5(a)(1), which prohibits an attorney from practicing law "in a jurisdiction where doing so violates the regulation of the legal profession." Specifically, the OAE alleged, and the DEC agreed, that respondent violated this Rule by continuing to practice law as a professional corporation, for almost four years, after the corporate charter for Garrabrant Law Office, P.C. was revoked. However, we are unaware of any Rule or disciplinary precedent that supports the OAE's theory that practicing law under a revoked corporate charter constitutes the unauthorized practice of law, in violation of RPC 5.5(a)(1) or any

[10] Pursuant to New Jersey disciplinary precedent, an attorney's failure to file tax returns has not always resulted in findings of violations of both RPC 8.4(b) and RPC 8.4(c). In some instances, only RPC 8.4(b) was charged and found. See In re Leahey, 118 N.J. 578 (1990), and In the Matter of James Michael Scott, III, DRB 19-218 (January 17, 2020). However, when both RPC 8.4(b) and RPC 8.4(c) have been charged stemming from an attorney's failure to file tax returns, as in the instant matter, we consistently have found that failure to constitutes a violation of both Rules. See, e.g., In re Cattani, 186 N.J. 268 (2005); In re Williams, 172 N.J. 325 (2002); In re Vecchione, 159 N.J. 507 (1999).

other regulation. Accordingly, we dismiss the RPC 5.5(a)(1) charge.

In sum, we find that respondent violated RPC 1.15(d); RPC 7.1(a)(1); RPC 8.1(b); RPC 8.4(b); and RPC 8.4(c). We determine to dismiss the charge that respondent violated RPC 5.5(a)(1). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

The crux of respondent's misconduct was his failure to file state and federal income tax returns for six years, spanning 2016 to 2021, and his failure to pay the associated income tax obligations totaling more than $109,000.

It is well-settled that a violation of either state or federal tax law is a serious ethics breach. In re Queenan, 61 N.J. 579, 580 (1972), and In re Duthie, 121 N.J. 545 (1990). "[D]erelictions of this kind by members of the bar cannot be overlooked." In re Gurnik, 45 N.J. 115, 116 (1965). "A lawyer's training obliges [them] to be acutely sensitive of the need to fulfill his personal obligations under the federal income tax law." Ibid.

In Garcia, the Court observed that an attorney's willful failure to file an income tax return requires the imposition of a suspension, even in the absence of a criminal conviction. 119 N.J. at 89. Willfulness does not require "any motive, other than a voluntary, intentional violation of a known legal duty." In

the Matter of Eugene F. McEnroe, DRB 01-154 (January 29, 2002) at 2, so ordered, 172 N.J. 324 (2002).

Since Garcia, attorneys who willfully fail to file multiple income tax returns and to pay the required federal and state income taxes generally have received terms of suspension of at least one year, in the absence of compelling mitigation. See e.g., In re Hand, 235 N.J. 367 (2018) (one-year suspension for an attorney who pleaded guilty to two counts of failing to file federal income tax returns for two calendar years, resulting in a $50,588 tax loss to the federal government; the attorney was sentenced to three years' federal probation, which included a five-month period of home confinement, and was ordered to pay $50,588 in restitution and to fully cooperate with the IRS; the attorney had a disciplinary history consisting of two prior admonitions), In re Cattani, 186 N.J. 268 (2006) (one-year suspension for an attorney who failed to file federal and state income tax returns for eight years, despite the absence of related criminal charges or a conviction; following a random audit, the OAE discovered that the attorney had failed to file federal income tax returns, as well as New Jersey and New York state income tax returns for years 1992 through 1999, and owed the IRS between $60,000 and $70,000; the attorney also entered into a loan transaction with a client (RPC 1.8(a)); negligently misappropriated client funds (RPC 1.15(a)); and committed recordkeeping violations (RPC 1.15(d)); in

determining a one-year suspension was the appropriate quantum of discipline for his willful failure to file tax returns, we recognized that the Court rarely has imposed lesser discipline when an attorney fails to file multiple tax returns; we concluded that the proffered mitigation did not warrant a downward departure); In re Rich, 234 N.J. 21 (2018) (two-year suspension for an attorney who pleaded guilty in the New York Supreme Court to one count of fifth-degree criminal tax fraud, a Class A misdemeanor; the attorney had failed to file state personal income tax returns for the 2008 through 2013 tax years, and, for each year, he had a tax liability of more than $50,000; he agreed to pay nearly $1.2 million in back taxes, including penalties and interest).[11]

Respondent's failure to file his business, employer, and personal income tax returns, and to pay the accumulated tax liability exceeding $109,000, is most analogous to the attorneys in Hand and Cattani, who both received a one-year suspension. Unlike the attorney in Hand, however, who failed to file income tax returns for two calendar years, respondent failed to file state and federal income tax returns (personal and business) for six calendar years. Further, respondent's tax liability, according to what he reported to the OAE, totaled more than $109,000, thereby exceeding the $50,588 tax loss caused by the attorney in Hand

[11] Generally, discipline short of a one-year suspension is imposed only when the attorney who fails to file multiple tax returns did not owe any taxes or presented compelling mitigation.

and the $60,000 to $70,000 loss caused by the attorney in Cattani. In these respects, respondent's misconduct is more egregious than that of Hand and Cattani and, thus, warrants a term of suspension greater than one year.

Although the OAE relied on Gottesman in support of its recommendation that a one to two-year suspension was warranted for respondent's misconduct, the attorney in Gottesman was convicted of tax evasion and the willful failure to remit payroll taxes. Typically, an attorney's attempted or actual income tax evasion results in a substantial term of suspension, the length of which depends on the tax loss to the government, the duration of the misconduct, and the presence of other criminal offenses or aggravating factors. Here, however, the OAE did not allege, and there is no clear and convincing evidence in the record before us, that respondent committed tax evasion and, thus, we find that line of precedent less persuasive to our analysis.

Respondent also admittedly failed to collect and to remit payroll taxes on behalf of his employee. Generally, the discipline imposed for an attorney's failure to remit payroll taxes on behalf of an employee is met with a reprimand or censure. See, e.g., In re Carlin, 244 N.J. 512 (2021) (reprimand; the attorney admittedly failed, for nearly two years, to withhold and remit his secretary's social security taxes to the IRS, in violation of RPC 1.15(b); to conceal his misconduct, he directly issued net paychecks to her which did not reflect her

gross pay or payroll deductions; we weighed this act of dishonesty in aggravation); In re Pemberton, 181 N.J. 551 (2004) (reprimand; the attorney had, for an eight-year period, failed to pay quarterly federal withholding taxes on behalf of his employees, yet issued false W-2 forms reflecting the payment of those taxes; violations of RPC 1.15(b) and RPC 8.4(c)); In re Frohling, 153 N.J. 27 (1998) (reprimand; the attorney did not pay all or part of federal withholding taxes for five years and state unemployment compensation taxes for two years, yet issued W-2 forms reflecting that certain sums had been deducted from his employees' gross salaries and either had been or would be paid to the government; violations of RPC 1.15(b) and RPC 8.4(c)); In re Bhalla, 233 N.J. 464 (2018) (censure; the attorney failed to remit an employee's social security withholding payments, a violation of RPC 1.15(b); he also negligently misappropriated and failed to remit the employee's contributions to his retirement account, a violation of RPC 1.15(a) and (b); further, the attorney violated RPC 8.4(c), by misrepresenting payment of the unpaid taxes on the employee's W-2 form and by making multiple misrepresentations to the employee regarding the status of the unremitted retirement contributions). But see In re Gold, 149 N.J. 23 (1997) (six-month suspension; the attorney failed to pay his secretary's social security and federal and state income taxes for two calendar years; the attorney also entered into business transactions with a client

without the required disclosures (RPC 1.8); we found no clear and convincing evidence that the attorney's failure to pay the taxes had been intentional; no prior discipline).

The remainder of respondent's misconduct is typically met with an admonition.

The use of a misleading letterhead ordinarily results in an admonition. See In the Matter of Raymond A. Oliver, DRB 09-368 (May 24, 2010) (admonition imposed on an attorney who used letterhead that identified three attorneys as "of counsel," despite his having had no professional relationship with them, a violation of RPC 7.1(a) and RPC 7.5(a); the attorney also violated RPC 8.4(d) because two of those attorneys were sitting judges, which easily could have created a perception that he had improper influence with the judiciary; we noted other improprieties).

Similarly, recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not caused a negligent misappropriation of clients' funds. See In the Matter of David Stuart Bressler, DRB 22-157 (November 21, 2022) (the attorney committed several recordkeeping violations, including failing to perform three-way reconciliations, maintaining an improper account designation, and failing to preserve images of processed checks; the attorney also commingled client and personal funds, in violation of RPC

1.15(a)), and In the Matters of Grant J. Robinson, DRB 21-059 and DRB 21-063 (July 16, 2021) (the attorney failed to properly designate his trust account, maintain trust account ledger cards for bank charges, and maintain business receipts and disbursements journals; the attorney also allowed an inactive balance to remain in his trust account; the attorney's recordkeeping deficiencies resulted in the return of more than twenty checks, issued to the Superior Court, for insufficient funds; in imposing only an admonition, we weighed the fact that the attorney corrected his recordkeeping errors and took remedial measures to decrease the likelihood of a future recordkeeping violation).

Finally, admonitions typically are imposed for failure to cooperate with disciplinary authorities if the attorney has a limited or 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 violation of RPC 8.1(b); the attorney also violated RPC 1.4(b) (failing to communicate with a client), RPC 1.5(c) (failing to set forth, in writing, the basis or rate of the attorney's fee in a contingent fee case), and RPC 1.16(d) (failing to protect the client's interests upon termination of the representation)), 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 defense matters, in violation of RPC 8.1(b)).

Based on the foregoing disciplinary precedent –Hand and Cattani in particular – we determine that respondent's willful failure to (1) file personal and business income tax returns for six consecutive years, and (2) report and remit to the IRS a total tax obligation of $109,277.15, warrants at least a one-year suspension. In crafting the appropriate discipline in this case, we also considered the presence of any mitigating and aggravating factors.

In mitigation, respondent presented character testimony regarding his good reputation, his successful representation of clients, and his chartable work. Although commendable, these are attributes that all New Jersey lawyers should possess and, thus, we accord them minimal weight. We also acknowledge that, during the relevant period, respondent was undergoing a contentious divorce proceeding that took a mental and financial toll on him.

In aggravation, respondent's prolonged failure to file income tax returns and to pay his tax obligations deprived the government of more than $109,000 to which it was owed. Further, respondent failed to rectify his tax obligations immediately following the October 2020 ethics referral. Rather, it was not until three years later that respondent's accountant informed the OAE that the tax returns finally were prepared. By then, the oldest unfiled tax return from 2016, was more than seven years past due. To date, he has not fully reimbursed the

IRS.

Moreover, this is respondent's second disciplinary matter before us in which he failed to fully cooperate with disciplinary authorities. Because the underlying ethics investigation in Garrabrant I commenced in or around October 2018 and concluded with a stipulation in November 2019, respondent had a heightened awareness of his obligation under the Rules of Professional Conduct to cooperate with the disciplinary authorities in connection with the investigation in this matter, which commenced in October 2020. The Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such scenarios, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for an attorney's abandonment of clients and repeated failure to cooperate with the disciplinary system).

Finally, respondent admitted, during oral argument before us, that he had failed to withhold and remit payroll taxes on behalf of his employee. We do not know, on the record before us, whether respondent's employee suffered any adverse consequences stemming from respondent's dereliction in this regard. We would be remiss, however, if we did not acknowledge the potential consequences that could befall an unsuspecting individual who reasonably believed that their employer was collecting and paying over to the government required payroll taxes on their behalf when, in fact, they were not.

Conclusion

On balance, when considering the totality of respondent's misconduct, including his persistent failure to file income tax returns, for six calendar years, and the resulting financial loss to the government, which exceeded $109,000, against the lack of any compelling mitigating factors, we determine that a two-year suspension is the appropriate quantum of discipline to protect the public and to preserve confidence in the bar.

Members Campelo and Petrou voted to recommend a one-year suspension.

Vice-Chair Boyer was recused, and Member Rodriguez did not participate.

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 Eric Craig Garrabrant
Docket No. DRB 24-087

Argued: June 20, 2024

Decided: October 2, 2024

Disposition: Two-year suspension

Members	Two-Year Suspension	One-Year Suspension	Recused	Did Not Participate
Cuff	X			
Boyer			X	
Campelo		X		
Hoberman	X			
Menaker	X			
Petrou		X		
Rivera	X			
Rodriguez				X
Spencer	X			
Total:	5	2	1	1

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