SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-237
District Docket No. IV-2022-0015E

In the Matter of Ryan David Nussey
An Attorney at Law

Argued
February 20, 2025

Decided
April 9, 2025

Daniel Q. Harrington appeared on behalf of the
District IV Ethics Committee.

Respondent waived appearance for oral argument.

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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 censure filed by the District IV Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.3 (lacking diligence) and RPC 1.4(b) (failing to communicate with a client).

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

Ethics History

Respondent earned admission to the New Jersey and Pennsylvania bars in 1999. During the relevant timeframe, he practiced law as a partner at a firm located in Haddonfield, New Jersey. He has prior discipline in New Jersey.

Nussey I

On June 16, 2020, the Court censured respondent for his violation of RPC 1.1(a) (engaging in gross neglect); RPC 1.3; RPC 1.4(b); and RPC 8.4(c)

(engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation). In re Nussey, 242 N.J. 153 (2020) (Nussey I).

In that matter, in 2011, a client retained respondent to represent him in connection with a matrimonial matter. In the Matter of David Ryan Nussey, DRB 19-280 (February 20, 2020) at 2. Following the issuance of an October 2011 divorce judgment, respondent promised the client that he would file a post-judgment motion concerning (1) "take-back time" related to the shared custody of the client's children, and (2) the division of gas rights associated with a parcel of land that was part of the marital estate. Ibid. Between November 2011 and June 2012, the client sent respondent multiple requests for information regarding the status of his motion. Id. at 11. Respondent, however, failed to file the motion. Ibid.

Meanwhile, unbeknownst to the client, the adversary filed a motion to enforce litigant's rights. Ibid. Rather than advise his client of the adversary's enforcement motion, respondent sent the client a copy of his letter to the court requesting an adjournment of a "motion." Id. at 6. By his conduct, we found that respondent misled his client into believing that the adjournment request pertained to his motion concerning "take-back time" and gas rights, which application respondent had failed to file. Id. at 11-12.

Respondent failed to reply to the adversary's enforcement motion and, thereafter, failed to appear for the September 14, 2012 hearing in connection with that motion. Id. at 12. The client discovered the existence of the adversary's enforcement motion only after the adversary provided him with the resulting September 19, 2012 court order. Ibid. Although the client implored respondent to take prompt corrective action concerning the enforcement order, he failed to do so until December 2012, when he finally filed a cross-motion concerning the client's "take-back time" and gas rights, relief which the client had directed respondent to pursue more than a year earlier. Ibid.

Thereafter, in January 2013, the court denied respondent's request for relief, largely granted the supplemental relief requested by the adversary, and required the client to pay the adversary's attorney's fees. Ibid. Respondent, however, failed to advise his client of the outcome of the hearing. Ibid.

We determined that respondent grossly mishandled the representation, failed to adequately communicate with his client, and engaged in deception toward his client concerning his matter. Id. at 12-14. In determining that a reprimand was the appropriate quantum of discipline, we weighed, in mitigation, respondent's then lack of prior discipline. Id. at 16.

Nussey II

On July 12, 2022, the Court censured respondent for his violation of RPC 1.15(a) (negligently misappropriating client funds), RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6), and RPC 8.1(b) (failing to cooperate with disciplinary authorities). In re Nussey, 251 N.J. 383 (2022) (Nussey II).

In that matter, in August 2018, respondent caused a $3,552.55 overdraft in his attorney trust account (ATA) based on his failure to account for a prior $4,000 disbursement to a client. In the Matter of David Ryan Nussey, DRB 21-065 (November 8, 2021) at 8-9. Respondent's ATA overdraft resulted in the negligent misappropriation of a separate client's entrusted funds. Id. at 9. Additionally, he admittedly exhibited a pattern of failing to cooperate with the financial audit conducted by the Office of Attorney Ethics (the OAE). Ibid. Moreover, the OAE's investigation, which spanned from October 2018 through July 2019, uncovered numerous recordkeeping violations. Id. at 9-10.

In determining that a censure was the appropriate quantum of discipline, we weighed, in aggravation, respondent's 2020 reprimand in Nussey I and his failure to remediate his recordkeeping violations despite a 2016 random audit. Id. at 14. We also noted that, as a result of his failure to cooperate, the OAE was forced to schedule four demand audits "to painstakingly extract information it

had clearly requested, and to which it was entitled by Rule." Ibid. In mitigation, however, respondent stipulated to his misconduct and hired a bookkeeper to prevent further recordkeeping infractions. Id. at 13.

Nussey III

On January 24, 2023, the Court again censured respondent for his violation of RPC 1.4(b) and RPC 8.1(b). In re Nussey, __ N.J. __ (2023), 2023 N.J. LEXIS 149 (Nussey III).

In that matter, in August 2016, a client retained respondent in connection with her matrimonial matter. In the Matter of David Ryan Nussey, DRB 21-245 (May 18, 2022) at 2. In January 2017, the client's divorce was finalized, following which respondent continued to represent her in connection with several post-judgment matters. Id. at 2-3.

Despite the express terms of respondent's written fee agreement promising to provide the client with an invoice at least once every four months, he failed to provide his client with a single invoice, despite her repeated requests that he do so from May 2017 through November 2018. Id. at 13-14.

Additionally, respondent ignored the DEC's October 2018 request for his reply to the client's ethics grievance. Id. at 15. Although respondent, eventually, filed an answer to the formal ethics complaint in that matter, his answer came in

August 2019 – ten months after the DEC's initial request. Ibid. Similarly, respondent failed to provide the DEC with a copy of the client's file as directed until January 2020 – another five months later. Ibid.

In determining that a censure was the appropriate quantum of discipline, we weighed, in aggravation, respondent's heightened awareness of his obligations to cooperate with disciplinary authorities, considering the timing of the disciplinary proceedings underlying Nussey I and Nussey II. Id. at 19. Indeed, we emphasized that it took the filing of a formal ethics complaint to secure respondent's participation in the disciplinary process. Ibid. We also underscored how respondent failed to appreciate the gravity of his misconduct, despite his prior experiences with the disciplinary system. Id. at 20.

We now turn to the facts of this matter.

Facts

In November 2019, Russell Kolins retained respondent in connection with a potential action for divorce against his spouse, Christine Kolins. Prior to their separation, Christine and Russell resided together in a single-family home (the Property), which was titled solely in Christine's name. On November 13, 2019, respondent and Russell executed a written fee agreement memorializing the scope of the matrimonial representation and setting forth the basis of

respondent's legal fee.

Following his retention, Russell provided respondent a $3,500 retainer fee. Thereafter, between November 20, 2019 and February 1, 2020, respondent (1) obtained Russell's personal and financial information; (2) prepared a draft complaint for divorce; (3) drafted proposed discovery requests; and (4) contacted Russell's "business manager and accountant." However, sometime in 2020, Russell decided not to file for divorce and requested that respondent place his matter "on hold." During the ethics hearing, Russell expressed his satisfaction with the legal work respondent had performed in contemplation of the potential matrimonial litigation.

On March 21, 2021, Christine died, intestate, while taking a shower at the Property. Christine was not discovered until approximately fourteen hours later. During that timeframe, the Property flooded and sustained significant water damage. Consequently, Russell filed a claim with USAA, which insured the Property in connection with the water damage. In mid-2021, USAA reviewed the damage to the Property but declined to release any insurance funds to Russell until he could provide (1) letters of administration for Christine's estate, and (2) proof that the deed for the Property had been transferred to his name. USAA agreed to hold the insurance funds, in escrow, pending Russell's submission of those materials.

On or around March 24, 2021, Russell met with respondent and requested that he apply to the Camden County Surrogate's Court for letters of administration for Christine's estate. Russell also directed respondent to prepare wills and medical directives for himself and his romantic partner, Wendy Handler. Additionally, Russell informed respondent what documents USAA required in order to disburse the insurance proceeds. Although respondent primarily practices family law, he agreed to "open" Christine's estate and to prepare the estate planning documents for Russell and Handler. Respondent did not request any additional legal fees in connection with the proposed estate work, given that he had not depleted his $3,500 retainer fee underlying the matrimonial matter.[1]

On March 24, 2021, following his meeting with respondent, Russell sent him an e-mail regarding a payable on death account that Christine had opened in or around 2000. Minutes later, respondent requested that Russell identify the beneficiary for that account. Russell, however, told respondent that he was unaware of the identity of the beneficiary.[2] Meanwhile, on or around March 28,

[1] Respondent failed to set forth, in writing, the basis or rate of his legal fee for the estate work he had agreed to perform on behalf of Russell and Handler, as RPC 1.5(b) requires. Rather, Russell claimed that he had made a "verbal agreement" with respondent regarding the scope of the estate work.

[2] In his reply to the ethics grievance, respondent claimed that Russell "later" discovered that his son was the beneficiary of Christine's payable on death account.

2021, Russell provided respondent with Christine's death certificate.

In April 2021, respondent prepared draft wills and medical directives for Russell and Handler. Thereafter, Russell and Handler provided respondent with revisions to the documents, following which, between April 2021 and January 2022, they repeatedly requested that respondent meet with them to finalize and execute their documents.

Additionally, during the ethics hearing, Russell claimed that, between March 2021 and January 2022, he had contacted respondent's office at least twice a week concerning whether respondent had secured letters of administration for Christine's estate, considering his need to obtain the insurance funds. Russell testified that respondent "made himself totally unavailable to me, with the exception of maybe a couple of times." Russell further alleged that, on one occasion, in April 2021, respondent had advised him that the Surrogate's Court was either "closed" or "six months behind," due to the COVID-19 pandemic.[3] Russell claimed that, although respondent's staff insisted that he would "handle" the matter, respondent "was never available" and "basically [was] not working on the file." Additionally, Russell stated that

[3] During the ethics hearing, the Deputy Surrogate of the Camden County Surrogate's Court testified that, despite the COVID-19 pandemic, "the operations of the [Surrogate's Court] went forward as usual." Moreover, the Deputy Surrogate testified that the Surrogate's Court could be easily contacted throughout the COVID-19 pandemic.

he had provided respondent with the original deed to the Property, which listed Christine as the fee owner, and asserted that respondent had advised him that he would "redo the deed" to reflect Russell's fee ownership. Russell further testified that he "immediately" provided respondent with any documents he had requested.

Russell also testified that respondent had called him only "once" regarding the status of Chrstine's estate. He also expressed his view that respondent should have known that he was unavailable to discuss the matter on that sole occasion, given that he previously had provided respondent with his "schedule."

On April 11, 2021, Russell sent respondent an e-mail, copying Handler, inquiring whether he was available on April 13 to finalize their wills and to discuss the status of Christine's estate. Two days later, on April 13, respondent replied and offered to meet with them on April 15. Minutes later, Russell told respondent that he and Handler were available to meet on the morning of April 15. Respondent, however, failed to reply until April 19, when he sent his clients an e-mail claiming that "an explosion"[4] recently had occurred at his office and offering to "talk this afternoon." Handler, however, told respondent that they

[4] In his reply to the ethics grievance, respondent claimed that he had informed Russell that the "explosion" at his office referred to "one of our custody cases . . . exploding."

were unavailable to meet that day and asked him whether he was available to meet later that week.

On June 16, 2021, respondent sent Handler and Russell an e-mail requesting that they "schedule a time to meet" in connection with their wills and medical directives. Five days later, on June 21, having received no reply from his clients, respondent sent them another e-mail inquiring as to their availability to meet that week. In reply, on June 21, Handler notified respondent that, although Russell was unavailable, she could, potentially, meet with respondent either "later this afternoon or tomorrow."[5]

Meanwhile, on June 18, 2021, frustrated by respondent's failure to obtain letters of administration for Christine's estate, Russell called the Surrogate's Court to determine whether the court was operating normally, considering the COVID-19 pandemic, and to inquire about the procedure to obtain estate administration letters. The Surrogate's Court informed Russell "that it was in full operation" and promptly sent him a document detailing the materials and information he would need to obtain the letters of administration. Thereafter, Russell provided respondent's office with the information he had received from the Surrogate's Court.

[5] The record before us is unclear regarding whether respondent replied to Handler's April 19 or June 21, 2021 e-mails.

During the ethics hearing, Russell testified that he had "consider[ed]" applying to the Surrogate's Court himself for letters of administration for Christine's estate. However, because respondent was representing him, he declined to take such action.

On January 10, 2022, at approximately 4:02 p.m., Handler sent respondent an e-mail, copying Russell, attempting to "set up an appointment to finalize" their wills and medical directives. In reply, at 5:30 p.m., respondent offered either to meet with his clients or to provide them the final versions of their estate documents to execute before a notary public. In response, at 8:45 p.m., Russell told respondent:

> We can come in any time tomorrow, Wednesday, or Thursday. We will get the wills signed and notarized when we come in, but also I need the [letters of administration for Christine's estate] and the deed [for the Property] transferred to my name. As you are aware, the insurance company will not release the funds for the water damage and property claims until the deed has been transferred. I've been telling the adjuster you advised that it was taking time because of COVID closing, but they tell me that is no longer the case. I can't get the bank to transfer the money until I produce the [letters of administration]. They already have the death certificate and other paperwork. I can't get the house fixed until the money is released. I need to wrap this up now.
>
> [P-7.][6]

[6] "P-7" refers to the presenter's exhibit.

One day later, on January 11, 2022, having received no reply from respondent, Handler sent him another e-mail requesting that he promptly arrange a meeting with her and Russell to finalize their wills and medical directives. On January 12, respondent advised Handler and Russell, via e-mail, that "[w]e are now back in court via ZOOM full time. I am trying to figure out my schedule to get you in here this week but right now I am locked into the court until Friday. I can do Friday later afternoon if you can."

Two days later, on Friday, January 14, 2022, at 10:02 a.m., having received no reply from his clients, respondent sent them another e-mail inquiring as to their availability to meet on the following "Monday or Tuesday." At 11:28 a.m., Russell told respondent that he was unavailable to meet on those proposed days. Russell also accused respondent of proposing meeting times that, in Russell's view, respondent should have known conflicted with his schedule. Russell told respondent "[t]hat is the third time you pulled this stunt. Enough is enough. You leave me no choice but to take appropriate action." At 11:38 a.m., respondent offered to meet with Russell and Handler on either Monday, Tuesday, Thursday, or Friday of the following week. At 12:33 p.m., Russell sent respondent a reply e-mail, stating, in relevant part:

> You mentioned twice about wills. They were done when [Handler] corrected all the typos and corrected the names, which took [five] minutes before returning them to your office. They are for [Handler] and me. The

> issue that has cost me to lose a lot of money is not getting the [letters of administration] and deed transfer[red] timely. I bought your excuses about COVID until I learned from the Surrogate's [Court] otherwise and how easy it was for you to get the documents. I informed you of my conversation in writing.
>
> Your office knows nothing about any of those documents and advised you were the only person dealing with them. It was a simple administrative task that you advised would only take a couple of weeks but later invoked the COVID closure excuse. Other excuses included family issues, an explosion[,] and court obligations.
>
> To be clear, as your staff has been apprised, I will be away all next week . . . . Knowing that, now all of a sudden you are readily available! Same MO you used three other times when you knew I was traveling and unavailable.
>
> Unless you confirm that you have the [letters of administration] and have transferred the deed to my name, I will be communicating with you formally and doing what I need to do upon my return.
>
> [P-7.]

At 9:39 p.m., having received no reply from respondent, Russell sent him an additional e-mail instructing him not to "do any work on my behalf. I will be in touch with you next week during my travels."

On January 24, 2022, based on the deterioration of their attorney-client relationship and his view that respondent was "unconcerned" about his matter, Russell terminated respondent as counsel, requested the return of his client file,

and directed that respondent refund any unearned portion of his $3,500 retainer fee. Four days later, on January 28, respondent sent Russell a letter enclosing his client file, a $2,000 refund check representing his unearned legal fee, and Russell's and Handler's "corrected" wills and medical directives. In his letter, respondent noted that he did not charge any legal fees for his (1) work performed in connection with Christine's estate, or (2) preparation of Russell's and Handler's wills and medical directives.

Meanwhile, on January 25, 2022, Russell retained substitute counsel to obtain letters of administration for Christine's estate and to take the necessary legal action to title the Property in his name. Thereafter, on January 25, at approximately 12:00 p.m., substitute counsel filed Russell's application for letters of administration with the Surrogate's Court. During the ethics hearing, Russell claimed that substitute counsel "handled all [the] work within hours and in just a few days I received results."

In or around March 2022, at least a year after Christine's passing, USAA released the insurance proceeds to Russell, after substitute counsel had obtained the letters of administration and taken the appropriate steps to ensure that Russell's name appeared on the deed for the Property, as a fee owner. Russell, however, maintained that, by the time he received the insurance funds, the cost to repair the Property had increased because of "supply chain problems."

Finally, Russell asserted that he and Handler declined to use the wills and medical directives prepared by respondent because they no longer "trust[ed] him."

The Parties' Positions Before the Hearing Panel

In his submissions to the DEC, respondent denied having violated RPC 1.4(b), emphasizing that Russell failed to corroborate his assertion that he had contacted respondent's office on a weekly basis concerning his matter. Respondent also underscored how, based on the e-mail records admitted into evidence, he made efforts to meet with Russell, both to finalize his will and to "address" the letters of administration for Christine's estate. Respondent, however, noted that, due to Russell's busy schedule, it was difficult to meet with his clients. Additionally, he claimed that he "never advised [Russell] that the Surrogate's [Court] was closed." Rather, he maintained that he had informed Russell that "there were going to be delays" due to the COVID-19 pandemic, considering his office's purported "difficulties getting deeds recorded [and] documents back." Respondent further stated that he had "advise[d] [Russell] that contact was difficult at the time due to COVID restrictions, which was accurate." In respondent's view, he was attempting to "manag[e]" Russell's "expectations."

Similarly, respondent denied having violated RPC 1.3, based on his view that he had attempted to adequately communicate with Russell. In support of his contention, respondent argued that Russell frequently was unavailable because he could not "immediately" reply to Russell's requests for a potential meeting. Finally, respondent asserted that Russell failed to support his claim that the costs to remediate the water damage to the Property had increased due to supply chain issues.

In his submissions to the hearing panel, the presenter argued that respondent violated RPC 1.3 by failing, for ten months, between March 2021 and January 2022, to take any action to advance the administration Christine's estate. The presenter emphasized that respondent failed to provide any proof that he had attempted to contact the Surrogate's Court during that ten-month timeframe. The presenter also asserted that respondent never alleged that Russell had failed to provide any information or documents that would have been necessary to obtain letters of administration for Christine's estate. Rather, as Russell testified, he promptly provided respondent with "everything" he requested.

Additionally, the presenter argued that respondent violated RPC 1.4(b) by failing, "most of the time," to adequately communicate with Russell. The presenter asserted that, between March 2021 and January 2022, respondent

failed to reply to Russell's multiple attempts at communication each week. When respondent did reply, the presenter argued that respondent "lie[d]" to Russell by claiming that the Surrogate's Court was "backlogged" because of issues related to the COVID-19 pandemic. The presenter also underscored Russell's testimony that, in June 2021, he had no difficulty communicating with the Surrogate's Court, which, as the Deputy Surrogate testified, remained fully operational during the COVID-19 pandemic. Although the presenter acknowledged that the charges of unethical conduct in this matter "do not specifically include lying to [Russell] or to the [DEC] investigator," the presenter alleged that respondent lied to his client, during the representation, and to disciplinary authorities, in his reply to the ethics grievance, by claiming that there were difficulties in "contact[ing]" the Surrogate's Court due to the COVID-19 pandemic.

The presenter argued that even if Russell – hypothetically – did not contact respondent's office for updates on Christine's estate, respondent "would still be culpable for failing to take any action on the matter" for ten months. The presenter noted that "[l]awyers are not relieved of their duty to exercise reasonable diligence under RPC 1.3 merely because the client supposedly [is not] pestering the lawyer hard enough." However, the presenter emphasized that Russell's e-mails demonstrate that, as early as April 11, 2021, he had

communicated with respondent seeking updates on the status of Christine's estate.

The presenter urged the hearing panel to recommend the imposition of a three-month suspension based on respondent's disciplinary history, consisting of the 2020 reprimand in Nussey I, 2022 censure in Nussey II, and 2023 censure in Nussey III. In the presenter's view, respondent's recent disciplinary history "present[s] a classic circumstance where progressive discipline is appropriate," particularly when, as here, Nussey I and Nussey III involved similar infractions that pre-dated respondent's misconduct in this matter.

The Hearing Panel's Findings

The hearing panel determined that respondent violated RPC 1.3 by failing, for ten months, to take any action to advance the administration of Christine's estate. Based on the credible, neutral testimony of the Deputy Surrogate, the hearing panel found that, between March 2021 and January 2022, the Surrogate's Court was "operating normally." Nevertheless, respondent offered no reasonable explanation for why he had failed to obtain letters of administration for Christine's estate.

Additionally, the hearing panel found that, although Russell provided respondent with all relevant information, including the document that he had

received from the Surrogate's Court in June 2021, respondent failed to take any action in connection with Christine's estate. By January 2022, respondent's inaction forced Russell to obtain substitute counsel, who secured letters of administration and a new deed reflecting Russell's fee ownership of the Property "within a few days." The panel found that respondent's delay in "opening" Christine's estate was "inexcusable based upon the testimony and evidence presented." Additionally, the panel observed that the work respondent had agreed to undertake – the "opening" of Christine's estate – "was not an overly complex or burdensome process."

Moreover, the hearing panel stated that, although respondent appeared to have prepared Russell's and Handler's respective wills and medical directives, that "action did not rectify his failure to initiate [Christine's] estate." Nevertheless, even though respondent's inaction resulted in Russell receiving the insurance proceeds for the Property more than a year after Christine's death, the panel found that there was insufficient evidence "to conclusively [determine] the extent to which [Russell] suffered additional [financial] loss." In that vein, the record contained "no reliable evidence . . . that [Russell] would have been able to complete the" repairs to the Property at a more affordable price, had he timely received the insurance proceeds.

However, the hearing panel declined to find that respondent violated RPC

1.4(b) by clear and convincing evidence. The hearing panel observed that Russell's testimony "was credible at times while, at other times . . . [his] testimony was evasive and self-serving." Consequently, the hearing panel determined that there was insufficient evidence to establish that, between March 2021 and January 2022, Russell had attempted to contact respondent multiple times each week. Moreover, the hearing panel found that, based on the e-mail records admitted into evidence, respondent, "at times," attempted to communicate with Russell, who was often unavailable due to his busy work schedule. Indeed, the panel expressed that it was "unsure as to the extent [Russell] made himself available to speak with [respondent] regarding the matter."

The hearing panel reasoned that, because both Russell and respondent "appeared to have difficulty in communicating with each other," there was insufficient evidence to establish that "the communication issues were solely based on . . . respondent and his actions." The hearing panel found that "a significant question" remained regarding "the nature and extent of the communications between" respondent and Russell.

In determining the appropriate quantum of discipline, the hearing panel found that, other than respondent's disciplinary history, the record contained no compelling aggravating or mitigating factors. The hearing panel expressed its

"concern" regarding respondent's recent disciplinary history and "considere[d]" whether a three-month suspension was the appropriate quantum of discipline. However, the hearing panel recommended the imposition of a third censure, based on its view that respondent's conduct was neither "egregious" nor reflected that he acted "deliberately or with malice."

The Parties' Positions Before the Board

The presenter urged us to conclude, contrary to the hearing panel's findings, that respondent violated RPC 1.4(b) by failing to adequately communicate with Russell. Specifically, the presenter argued that the hearing panel's credibility determinations regarding Russell's attempts at communication would "establish a problematic standard under which a violation of [RPC 1.4(b)] could only be" found if sufficient corroborating evidence supported a grievant's testimony concerning an attorney's failure to communicate. The presenter also argued that respondent failed to advise Russell of the fact that he had made "no progress in opening [Christine's estate] for nearly ten months."

Moreover, the presenter emphasized that respondent "affirmatively attempted to mislead" Russell and the DEC investigator concerning the operations of the Surrogate's Court during the COVID-19 pandemic.

The presenter urged the imposition of a three-month suspension, given respondent's heightened awareness of his obligations to adhere to the Rules of Professional Conduct, considering the timing of his prior disciplinary matters resulting in a prior reprimand and two censures. Additionally, the presenter argued that respondent's lack of diligence in this matter directly resulted in Russell's inability to timely receive the necessary insurance proceeds, resulting in "increased costs to repair [the Property]."

Respondent did not submit a brief for our consideration.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following our de novo review, we are satisfied that the hearing panel's determination that respondent's conduct was unethical is fully supported by clear and convincing evidence in connection with the charge that he violated RPC 1.3. However, based on the thorough and well-reasoned findings of the hearing panel, we dismiss the charge that respondent violated RPC 1.4(b).

Specifically, respondent violated RPC 1.3 by failing, for ten months, between March 2021 and January 2022, to apply for letters of administration for Christine's estate and to take the basic steps to ensure that Russell's name appeared on the deed for the Property as a legal fee owner. As the hearing panel

observed, respondent's inaction during that protracted timeframe was inexcusable, given that the work he had agreed to perform on Russell's behalf was neither "complex" nor "burdensome." Moreover, as early as March 24, 2021, respondent was acutely aware of Russell's urgent need to obtain the estate administration letters and the new deed for the Property, considering that USAA required those materials before it could release the insurance proceeds to Russell to repair the significant water damage to the Property. Further, respondent did not contest Russell's assertion that, following Russell's June 2021 discussion with Surrogate's Court staff, Russell had informed him of the requirements to obtain the estate administration letters. Russell also told respondent that, despite the COVID-19 pandemic, the Surrogate's Court had informed him that it "was in full operation."

Respondent's total lack of diligence forced Russell, in January 2022, to terminate the representation and to obtain substitute counsel, who, within hours of their retention, successfully applied to the Surrogate's Court for letters of administration for Christine's estate. Indeed, as Russell testified, substitute counsel obtained the necessary "results" within "just a few days." Respondent's misconduct also directly resulted in Russell's inability to obtain the insurance funds for at a least a year following Christine's March 2021 death. Although the financial harm to Russell stemming from respondent's inaction is impossible to

calculate based on the record before us, the fact remains that his prolonged lack of diligence occurred while Russell urgently needed the insurance proceeds to repair the significant damage to the Property.

Finally, as the hearing panel found, the fact that respondent, prior to the termination of the representation, prepared draft wills and medical directives for Russell and Handler in no way ameliorates his total failure to initiate the estate administration process following Christine's death. As Russell's January 10 and 14, 2022 e-mails to respondent demonstrate, in contrast to the wills and medical directives, Russell urgently needed the new deed for the Property and the letters of administration to obtain the necessary insurance proceeds to repair the Property.

We determine to dismiss, however, the RPC 1.4(b) charge for lack of clear and convincing evidence. Specifically, as the e-mail records before us demonstrate, it appears that Russell and Handler attempted, on multiple occasions, between April 2021 and January 2022, to arrange a meeting with respondent to finalize their wills and medical directives and to discuss the status of Christine's estate. Further, between June 16 and 21, 2021, respondent sent both Russell and Handler two e-mails attempting to arrange a meeting with his clients in connection with their wills and medical directives.

As the hearing panel observed, the extent to which respondent and Russell attempted to communicate with each other is unclear. Although respondent appeared to have replied to his clients' e-mails within a few days or less, because of Russell's and respondent's mutually conflicting work schedules, Russell and Handler were unable to meet with respondent. Moreover, there is insufficient evidence to find that respondent knowingly attempted to arrange multiple meetings with his clients when, as Russell alleged, respondent should have known that Russell was unavailable based on his busy work schedule. Rather, both respondent and Russell appeared to have encountered difficulties in communicating with each other. Indeed, the hearing panel found that, although Russell's testimony was "credible at times," his testimony regarding his attempts to communicate with respondent was also "evasive and self-serving."[7]

Consistent with its credibility findings, the hearing panel found that there was insufficient evidence to clearly and convincingly establish that Russell had

[7] Likewise, although not charged in the formal ethics complaint, the record before us does not clearly and convincingly establish that respondent lied to Russell or to the DEC investigator concerning the operations of the Surrogate's Court during the COVID-19 pandemic. Specifically, considering the hearing panel's credibility determinations of Russell, it is unclear exactly what respondent had advised his client concerning the Surrogate's Court's operations. Moreover, nothing in the record before us contradicts respondent's statement, in his reply to the ethics grievance, that he had experienced difficulty "getting deeds recorded [and] documents back" – government functions that do not involve a surrogate's court. Further, respondent's vague statement, in his reply to the ethics grievance, that he had advised Russell that "contact was difficult at the time due to COVID restrictions" does not clearly and convincingly demonstrate that he was referring to difficulties in contacting the Surrogate's Court.

attempted to contact respondent multiple times each week, as he testified. We decline to disturb the hearing panel's credibility findings and conclude that, based on the difficulties respondent and Russell each appeared to have encountered while attempting to communicate with each other, there is insufficient evidence to clearly and convincingly establish that respondent violated RPC 1.4(b).

In sum, we find that respondent violated RPC 1.3 and determine to dismiss the charge that he violated RPC 1.4(b). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

Attorneys who grossly neglect or exhibit a lack of diligence in estate matters have received discipline ranging from an admonition to a censure, even when accompanied by less serious infractions. See, e.g., In the Matter of Andrew V. Zielyk, DRB 13-023 (June 26, 2013) (admonition for an attorney who failed to reply to a tax auditor's request for information, thereby delaying the completion of the estate's tax returns; the attorney also failed, for fifteen months, to adequately communicate with the estate beneficiaries; no prior discipline); In re Burro, 235 N.J. 413 (2018) (reprimand for an attorney who grossly mishandled an estate matter for ten years and failed to file inheritance

tax returns, resulting in the accrual of $40,000 in interest and the imposition of a lien on property belonging to the executor; the attorney also failed to keep the client (the estate's executor) reasonably informed about events in the case, return the client file upon termination of the representation, and cooperate with the ethics investigation; in aggravation, we considered the significant harm to the client and the attorney's prior private reprimand (now, an admonition); in mitigation, the attorney expressed remorse and had suffered a stroke that forced him to cease practicing law); In re Trella, __ N.J. __ (2023) (censure for an attorney who failed to timely administer two estate matters by not promptly paying inheritance taxes; the attorney also negligently misappropriated estate funds and, in both estate matters, charged excessive fees; in a third client matter, the attorney engaged in a conflict of interest by loaning funds to his client, and he made misrepresentations to the OAE with respect to the loan; the attorney's unblemished fifty-year career at the bar was insufficient mitigation to warrant a downward departure from the baseline discipline of a censure given the totality of the misconduct, spanning three client matters; we also weighed, in aggravation, the harm to the clients caused by the attorney's delay, as well as the attorney's admission that he rarely entered into written fee agreements with his clients); In re Cook, 233 N.J. 328 (2018) (censure for an attorney who, despite his expertise in estate law, failed to diligently administer an estate with

a single beneficiary; the attorney failed to complete even the most routine tasks required of him as executor, including providing written notice to the sole beneficiary that the will had been admitted to probate; in addition, the attorney failed to communicate with the beneficiary, despite her persistent attempts to obtain information regarding the status of the estate; the attorney also failed to cooperate with the disciplinary investigation; we did not consider the attorney's prior admonition in aggravation, considering that his misconduct pre-dated the imposition of that admonition).

Varying terms of suspension have been imposed in estate matters involving more egregious neglect or more significant disciplinary histories, depending on the seriousness of other factors. See In re Wynn, 256 N.J. 465 (2024) (three-month suspension for an attorney who, for nine years, failed to properly administer an estate; he failed to liquidate securities, deposit dividend checks in the estate account, or locate outstanding beneficiaries; he also failed, without any reasonable explanation, to make bequests to various beneficiaries; despite his serious mishandling of the estate and his failure to pay $73,000 to seven beneficiaries, he paid himself $66,000 in grossly excessive legal fees and $21,000 in executors commissions, without the knowledge or approval of anyone but himself; the attorney also committed recordkeeping infractions, engaged in commingling and negligent misappropriation in a second client

matter, and failed to cooperate with the OAE in a third client matter; in aggravation, we weighed the substantial harm to the beneficiaries underlying the estate matter that the attorney had failed to fully administer for nine years; no prior discipline in his forty-year career at the bar), and In re Onorevole, 185 N.J. 169 (2005) (in a default matter, six-month suspension for an attorney who was retained to probate an estate but then failed, for more than three years, to file the tax forms for the estate, which he then filed without the necessary signature; as a result of the attorney's errors, interest was charged against the estate; the attorney's neglect forced substitute counsel to file an amended inheritance tax return; although we determined that the underlying conduct, without more, would generally result in a reprimand, we found that a six-month suspension was the appropriate sanction based on the default status of the matter and the attorney's disciplinary history, which included a prior admonition and two reprimands for similar misconduct).

Here, like the censured attorney in Cook, who failed to take even the most rudimentary actions required of him in connection with the administration of his client's estate, respondent, in our view, advanced no compelling justification for his protracted failure to commence the administration process for Christine's estate. Specifically, for ten months, between March 2021 January 2022, respondent failed to apply for letters of administration and made no attempt to

secure a new deed for the Property reflecting Russell's fee ownership.

Thus, based on the foregoing disciplinary precedent, Cook in particular, we determine that the baseline discipline for respondent's misconduct is a censure. To craft the appropriate discipline in this case, however, we also consider mitigating and aggravating factors.

There is no mitigation to consider.

In aggravation, respondent's prolonged failure to take simple measures to commence the administration process resulted in significant harm to his client, given that USAA declined to release the urgently needed insurance proceeds to Russell until he could demonstrate that he was the fee owner of the Property and had been appointed as the estate's administrator. Respondent's inaction forced Russell, in January 2022, to secure substitute counsel, who, within days, secured the appropriate materials to allow USAA to disburse the insurance proceeds. However, by the time Russell received the insurance proceeds, the Property had remained in a serious state of water damage for at least a year.

In further aggravation, in contrast to the attorney in Cook, whose limited disciplinary history we did not consider in aggravation, this matter represents respondent's fourth consecutive disciplinary matter in less than five years. Indeed, respondent's inexcusable lack of diligence in this matter represents a continuation of his alarming pattern of indifference to the interests of his clients

that he has exhibited since his misconduct underlying his 2020 reprimand in Nussey I, his 2022 censure in Nussey II, and his 2023 censure in Nussey III.

In Nussey I, respondent failed, for at least fourteen months, between October 2011 and December 2012, to file a post-judgment motion concerning his client's child custody issues and the division of gas rights associated with a parcel of land. During that timeframe, respondent also failed to notify his client of the adversary's motion to enforce litigant's rights. Further, he misled his client, on at least one occasion, that he had filed his motion when, in fact, he had not. Compounding his misconduct, in January 2013, respondent failed to apprise his client of the adverse outcome of his belatedly filed custody and gas rights motion.

In Nussey II, in August 2018, respondent negligently invaded client funds due to his poor recordkeeping practices and, thereafter, between October 2018 and July 2019, failed to cooperate with the OAE's financial audit. Respondent stipulated to his misconduct underlying Nussey II in March 2021, at the outset his misconduct in the instant matter.

In Nussey III, respondent failed, for eighteen months, between May 2017 and November 2018, to provide his client with a single invoice underlying her matrimonial matter, despite the client's repeated pleas that he do so. Additionally, respondent refused to participate in the disciplinary process in that

matter until August 2019, when he, eventually, filed an answer to the formal ethics complaint more than ten months after his total failure to reply to the ethics grievance.

As we observed in Nussey III, based on the timing of his prior disciplinary matters, respondent clearly had a heightened awareness of his obligations to protect his clients' interests consistent with the Rules of Professional Conduct. Nevertheless, respondent, without any compelling justification, refused, for ten months, to take the basic steps necessary to begin the estate administration process for Russell. By his conduct, respondent prevented Russell, for at least a year, from receiving the insurance proceeds required to remediate the significant damage to the Property. In our view, respondent's serious lack of diligence in this matter establishes that he clearly has failed to utilize his experiences with the disciplinary system as a foundation for reform. See In re Zeitler, 182 N.J. 389, 398 (2005) ("[d]espite having received numerous opportunities to reform himself, [the attorney had] continued to display his disregard, indeed contempt, for our disciplinary rules and our ethics system").

Conclusion

In conclusion, respondent's misconduct resulted in significant harm to his client and demonstrates that, despite his recent and burgeoning disciplinary

history, his indifference to the interests of his clients has continued, unabated, in this fourth consecutive disciplinary matter in less than five years.

On balance, consistent with disciplinary precedent and principles of progressive discipline, we determine that a three-month suspension is the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Members Hoberman and Petrou were absent.

Member Rodriguez was recused.

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 Ryan Nussey
Docket No. DRB 24-237

Argued: February 20, 2025

Decided: April 9, 2025

Disposition: Three-month suspension

Members	Three-Month Suspension	Recused	Absent
Cuff	X		
Boyer	X		
Campelo	X		
Hoberman			X
Menaker	X		
Modu	X		
Petrou			X
Rodriguez		X	
Spencer	X		
Total:	6	1	2

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