BEFORE THE BOARD OF DISCIPLINARY APPEALS
APPOINTED BY
THE SUPREME COURT OF TEXAS

IN THE MATTER OF	§	
PETER JONATHAN CRESCI,	§	**CAUSE NO.** 65262
STATE BAR CARD NO. 24005767	§	

PETITION FOR RECIPROCAL DISCIPLINE

TO THE BOARD OF DISCIPLINARY APPEALS:

Petitioner, the Commission for Lawyer Discipline (hereinafter called "Petitioner"), brings this action against Respondent, Peter Jonathan Cresci, (hereinafter called "Respondent"), showing as follows:

1. This action is commenced by Petitioner pursuant to Part IX of the Texas Rules of Disciplinary Procedure. Petitioner is also providing Respondent a copy of Section 7 of this Board's Internal Procedural Rules, relating to Reciprocal Discipline Matters.

2. Respondent is a member of the State Bar of Texas and is licensed and authorized to practice law in Texas. Respondent may be served with a true and correct copy of this Petition for Reciprocal Discipline at Peter Jonathan Cresci, 10149 Campbell Road, Paris, New York 13456.

3. Attached hereto and made a part hereof for all intents and purposes as if the same were copied verbatim herein, is a true and correct copy of a set of documents in the Cresci matter consisting of the Decision of the Supreme Court of New Jersey Disciplinary Review Board filed on December 28, 2018; and the Order of the Supreme Court of New Jersey filed on March 21, 2019, relating to the matter entitled *In the Matter of Peter Jonathan Cresci, An Attorney at Law*, Supreme Court of New Jersey, Disciplinary Review Board, Docket Nos. DRB 18-124 and DRB 18-196 District Docket Nos. XIV-2016-0749E; XIV 2017-0587E; XIV-2017-

0588E; and XIV-2017-0589E (Exhibit 1). Petitioner expects to introduce a certified copy of Exhibit 1 at the time of hearing of this cause.

4. On or about December 12, 2018, the Decision of the Supreme Court of New Jersey Disciplinary Review Board was filed in a matter styled*, In the Matters of Peter Jonathan Cresci, An Attorney at Law*, Supreme Court of New Jersey, Disciplinary Review Board, Docket Nos. DRB 18-124 and DRB 18-196 District Docket Nos. XIV-2016-0749E; XIV 2017-0587E; XIV-2017-0588E; and XIV-2017-0589E, which set out the allegations against him, and states in pertinent part as follows:

> …These charges arose from respondent's continued practice of law following his November 17, 2016 temporary suspension and from his failure to cooperate with the OAE's investigation of his post-suspension conduct. … As of April 13, 2018, respondent had not filed an answer to the complaint in this matter, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.
>
> The first count of the two-count complaint arises from respondent's alleged practice of law while suspended, commission of the criminal act of the unauthorized practice of law, and conduct involving dishonesty, fraud, deceit or misrepresentation. The second count stems from respondent's failure to cooperate with the OAE's investigation.
>
> We note that few of the allegations in the first count of the complaint relate to the OAE's claim that respondent practiced while suspended. Instead, they pertain to respondent's failure to comply with R. 1:20-20, which imposes several obligations on suspended attorneys, and which resulted in the censure recently imposed by the Court. For example, following respondent's November 17, 2016 temporary suspension, the Cresci firm continued to represent clients in several matters, albeit through attorneys other than respondent. Yet, between November 21, 2016 and March 20, 2017, no fewer than thirteen letters, in seven client matters, were written to adversaries, judges, and courts on letterhead that contained the following banner:
>
> CRESCI
> LAW FIRM
> A Limited Liability Company
>
> With one exception, respondent did not sign the letters and the record does

not suggest that they were written by him or at his direction. The signatory to every letter almost always signed his or her name as "For the Firm." In some cases, the letters were signed by a non-lawyer firm employee and an attorney who was not identified on the letterhead and whose name does not appear in the New Jersey attorney index. Other issues with the letterhead involve the continued identification of respondent as an attorney with the Cresci firm, from his November 17, 2016 suspension until December 1, 2016. From December 12, 2016 through February 20, 2017, the letterhead did not contain the name of any attorney affiliated with the firm, although the street, post office box, and e-mail addresses and the telephone and fax numbers remained the same.

By February 21, 2017, the letterhead identified Christine Finnegan and John G. O'Brien as firm attorneys. All other information remained the same. Two days later, the letterhead reflected a different street address and the post office box number was removed, but the e-mail address and the telephone and fax numbers remained the same through at least March 3, 2017, when the original post office box address re-appeared. By March 20, 2017, the firm's telephone and fax numbers had changed, and the e-mail address was removed. The original post office box remained, however. Finnegan was now identified as "Member of Cresci Law Firm, LLC."

COUNT ONE:

On November 21, 2016, four days into respondent's temporary suspension, he wrote and signed a letter to Valley National Bank (VNB), where he maintained attorney trust and business accounts for the Cresci firm. Respondent requested VNB to honor all attorney business account checks issued prior to the Order of temporary suspension, in addition to "several automatic debits." The letterhead identified three attorneys: respondent, Drew M. Pratko-Rucando, and John G. O'Brien (who was of counsel). Respondent signed the letter. Below his name were the words "For the Firm."

COUNT TWO:

On December 20, 2016, the [Office of Attorney Ethics] ["]OAE["] docketed a grievance against respondent, alleging that he had practiced law while temporarily suspended. Judges and attorneys had alerted the OAE and the local district ethics committee to most of the communications emanating from the Cresci firm after respondent's temporary suspension.

On January 11, 2017, the OAE informed respondent that it was investigating whether he had practiced law while temporarily suspended and directed him to submit a written reply no later than January 26, 2017. Specifically, the OAE asked respondent to explain his use of letterhead with

> the banner "Cresci Law Firm, A Limited Liability Company" on the letters to VNB and the letters written to the judge and other attorneys in the Percella matter, while he was under suspension…
>
> … On July 13, 2017, the OAE directed respondent to provide a written reply to the January 11, 2017 grievance and to all of the outstanding inquiries. Respondent's deadline was July 24, 2017…On July 14, 2017, the OAE directed respondent to explain why he had used the title "Peter J. Cresci, Esq." in his verified answer to the formal ethics complaint in the knowing misappropriation matter (DRB 18-196). Respondent ignored the letters…On July 19, 2017, the OAE directed respondent to appear for a demand interview on August 22, 2017… Respondent ignored the letter and did not appear for the interview…Finally, on August 2, 2017, the OAE sent a second letter to respondent, directing him to appear for the August 22, 2017 demand interview. In total, between and including January 11 and August 2, 2017, the OAE sent more than twenty letters to respondent, seeking information. He ignored every letter.
>
> … Here, respondent has demonstrated, clearly and convincingly, that he is unsalvageable. He should be disbarred for knowing misappropriation of client, escrow, and trust funds. In the alternative, should the Court decline to find that respondent is guilty of knowing misappropriation, respondent should, nevertheless, be disbarred for his inability or refusal to conform his conduct to the standards required of all members of the New Jersey Bar.
>
> Members Gallipoli and Rivera were recused. Member Hoberman 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.

5. On or about March 21, 2019, an Order of the Supreme Court of New Jersey was filed in a matter styled*, In the Matter of Peter J. Cresci*, *An Attorney At Law (Attorney No. 025281992)*, D-57 September Term 2018 082189, that states in pertinent part as follows:

> … The Disciplinary Review Board having filed with the Court its decision in DRB 18-124 and DRB 18-196, recommending on the records certified to the Board pursuant to Rule 1:20-4(f)(default by respondent) that Peter J, Cresci of Bayonne, who was admitted to the bar of this State in 1992, and who has been temporarily suspended from the practice of law since November 17, 2016, be disbarred for violating RPC 1.3(lack of diligence), RPC l.4(b)(failure to communicate with client), RPC l.5(c)(on conclusion of a contingent fee matter, failure to provide the client with a written

> statement of the outcome, showing also any remittance to the. client and its method of determination), RPC l.15(a)(failure to safeguard funds of a third person and commingling of funds), RPC 1.15(b)(failure to make a prompt disposition of funds in which a client or third person has an interest), RPC l.15(d)(failure to comply with the recordkeeping requirements of Rule 1:20-16), RPC 5.5(a)(l)(practicing law while suspended), RPC 8.1(a)(false statement of material fact to a disciplinary authority) RPC 8.l(b)(failure to cooperate with disciplinary authorities), RPC 8.4(b)(commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), RPC 8.4(c)(conduct involving dishonesty, fraud, deceit, or misrepresentation), and the principles of In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985)(knowing misappropriation of client and/or escrow funds);
>
> And Peter J. Cresci having been ordered to show cause why he should not be disbarred or otherwise disciplined;
>
> And good cause appearing;
>
> It is ORDERED that Peter J. Cresci be disbarred, effective immediately, and that his name be stricken from the roll of attorneys;
>
> ORDERED that Peter J. Cresci be and hereby is permanently restrained and enjoined from practicing law; and it is further ORDERED that all funds, if any, currently existing in any New Jersey financial institution maintained by Peter J. Cresci pursuant to Rule 1:21-6, which were restrained from disbursement by Order of the Court filed November 17, 2016, shall be transferred by the financial institution to the Clerk of the Superior Court, who is directed to deposit the funds in the Superior Court Trust Fund pending further Order of this Court; and it is further
>
> ORDERED that Peter J, Cresci comply with Rule 1:20-20 dealing with disbarred attorneys; and it is further
>
> ORDERED that the entire record of this matter be made a permanent part of respondent's file as an attorney at law of this State; and it is further
>
> ORDERED that respondent reimburse the Disciplinary Oversight Committee for appropriate administrative costs and actual expenses incurred in the prosecution of this matter, as provided in Rule 1:20-17…

6. Petitioner prays that, pursuant to Rule 9.02, Texas Rules of Disciplinary Procedure, that this Board issue notice to Respondent, containing a copy of this Petition with exhibits, and an order directing Respondent to show cause within thirty (30) days from the date of the mailing of

the notice, why the imposition of the identical discipline in this state would be unwarranted. Petitioner further prays that upon trial of this matter that this Board enter a judgment imposing discipline identical with that imposed by the Supreme Court of New Jersey and that Petitioner have such other and further relief to which it may be entitled.

Respectfully submitted,

Seana Willing
Chief Disciplinary Counsel

Amanda M. Kates
Office of the Chief Disciplinary Counsel
State Bar of Texas
P.O. Box 12487
Austin, Texas 78711
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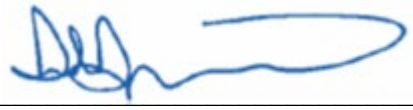
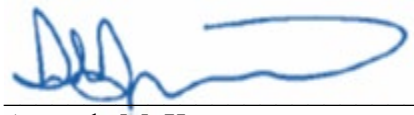


Amanda M. Kates
Bar Card No. 24075987
ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I certify that upon receipt of the Order to Show Cause from the Board of Disciplinary Appeals, I will serve a copy of this Petition for Reciprocal Discipline and the Order to Show Cause on Peter Jonathan Cresci, by personal service.

Peter Jonathan Cresci
10149 Campbell Road
Paris, New York 13456



Amanda M. Kates

SUPREME COURT OF NEW JERSEY

HEATHER JOY BAKER
CLERK

GAIL GRUNDITZ HANEY
DEPUTY CLERK

OFFICE OF THE CLERK
PO BOX 970
TRENTON, NEW JERSEY 08625-0970

September 30, 2020

State Bar of Texas
Attention: Tanya Galinger, Legal Assistant
P.O. Box 12487
Capitol Station
Austin, Texas 78711-2487

Re: D-57-18 Peter Jonathan Cresci (082189)

Dear Ms. Galinger:

I, Heather Joy Baker, Clerk of the Supreme Court, hereby certify that the attached order (DRB 18-124 and DRB 18-196) in the above entitled matter is a true copy of the original now on file in the Office of the Clerk of the Supreme Court of New Jersey.

Heather Joy Baker
CLERK OF THE SUPREME COURT

EXHIBIT
1

Supreme Court of New Jersey
Disciplinary Review Board
Docket Nos. DRB 18-124 and DRB 18-196
District Docket Nos. XIV-2016-0749E;
XIV-2017-0586E; XIV-2017-0587E;
XIV-2017-0588E; and XIV-2017-0589E

In The Matters Of	
Peter Jonathan Cresci	
An Attorney At Law	

Decision

Decided: December 12, 2018

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

These matters were before us on certifications of the record, filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f). They have been consolidated for disposition.[1]

[1] Office of Board Counsel docketed the DRB 18-124 matter on April 16, 2018. The DRB 18-196 matter was docketed on June 15, 2018.

In the first matter (DRB 18-124), the OAE charged respondent with practicing law while suspended (RPC 5.5(a)(1)); committing a criminal offense, the unauthorized practice of law (RPC 8.4(b)); engaging in conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)); and failing to cooperate with disciplinary authorities (RPC 8.1(b)).

In the second matter (DRB 18-196), the OAE charged respondent with knowing misappropriation of client and/or escrow funds in three client matters (RPC 1.15(a) and the principles set forth in In re Wilson, 81 N.J. 451 (1979) and/or In re Hollendonner, 102 N.J. 21 (1985)), failing to make prompt disposition of funds in which a client or third person had an interest (RPC 1.15(b)); making a false statement of material fact to a disciplinary authority (RPC 8.1(a)); and conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)).

In two of the three client matters, the OAE also charged respondent with gross neglect (RPC 1.1(a)) and lack of diligence (RPC 1.3)); failing to communicate with the client (RPC 1.4(b)); charging an unreasonable fee (RPC 1.5(a)); upon conclusion of a contingent fee matter, failing to provide the client with a writing stating the outcome of the matter and showing the remittance to the client and the method of its determination (RPC 1.5(c)); failing to comply with the recordkeeping requirements of R. 1:21-6 (RPC

1.15(d)); failing to cooperate with disciplinary authorities (RPC 8.1(b)); and committing a criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as a lawyer (RPC 8.4(b)).

Finally, in one of the client matters, the OAE charged respondent with commingling personal funds and trust account funds (RPC 1.15(a)).

In both disciplinary cases, respondent filed a motion to vacate the default. We deny both motions, and now recommend respondent's disbarment for the knowing misappropriation of client, escrow, and estate trust funds. Alternatively, we recommend disbarment based on respondent's repeated defaults and his inability or refusal to conform his conduct to the standards required of all members of the New Jersey bar.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1992, to the Texas bar in 1998, and to the New York bar in 2011. At the relevant times, he maintained an office for the practice of law in Bayonne, which operated under various names, including Cresci, A Limited Liability Company; Cresci Law Firm, A Limited Liability Company; and Cresci Law Firm, LLC (collectively, the Cresci firm).

On November 17, 2016, the Court temporarily suspended respondent, effective immediately, based on the knowing misappropriation claims asserted

in DRB 18-196. In re Cresci, 227 N.J. 139 (2016). Respondent remains suspended.

On December 3, 2018, in another default matter, the Court imposed a censure on respondent for his failure to file an affidavit of compliance with R. 1:20-20 following his temporary suspension, a violation of RPC 8.1(b) and RPC 8.4(d) (conduct prejudicial to the administration of justice). In re Cresci, ___ N.J. ___ (2018).

DRB 18-124 (XIV-2016-0749E)

These charges arose from respondent's continued practice of law following his November 17, 2016 temporary suspension and from his failure to cooperate with the OAE's investigation of his post-suspension conduct.

Service of process was proper. On February 16, 2018, the OAE sent a copy of the formal ethics complaint, by regular and certified mail, return receipt requested, to respondent's last known home address listed in the records of the New Jersey Lawyers' Fund for Client Protection (CPF). Although the certified green cards were returned to the OAE, without signatures, the United States Postal Service (USPS) tracking system reflected that the letters had been "Delivered, Left with Individual." The letters sent by regular mail were not returned.

On March 14, 2018, the OAE sent another letter to respondent, at the same addresses, by regular and certified mail, return receipt requested. The letter informed respondent that, if he failed to file an answer within five days, the allegations of the complaint would be deemed admitted, the record would be certified directly to us for the imposition of a sanction, and the complaint would be deemed amended to include a charge of a violation of RPC 8.1(b). The certified letters were marked "unclaimed" and "vacant unable to forward," and, thus, returned to the OAE. The letters sent by regular mail were not returned.

As of April 13, 2018, respondent had not filed an answer to the complaint in this matter, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

The first count of the two-count complaint arises from respondent's alleged practice of law while suspended, commission of the criminal act of the unauthorized practice of law, and conduct involving dishonesty, fraud, deceit or misrepresentation. The second count stems from respondent's failure to cooperate with the OAE's investigation.

We note that few of the allegations in the first count of the complaint relate to the OAE's claim that respondent practiced while suspended. Instead, they pertain to respondent's failure to comply with R. 1:20-20, which imposes

several obligations on suspended attorneys, and which resulted in the censure recently imposed by the Court.

For example, following respondent's November 17, 2016 temporary suspension, the Cresci firm continued to represent clients in several matters, albeit through attorneys other than respondent. Yet, between November 21, 2016 and March 20, 2017, no fewer than thirteen letters, in seven client matters, were written to adversaries, judges, and courts on letterhead that contained the following banner:

CRESCI
LAW FIRM
A Limited Liability Company

With one exception, respondent did not sign the letters and the record does not suggest that they were written by him or at his direction. The signatory to every letter almost always signed his or her name as "For the Firm." In some cases, the letters were signed by a non-lawyer firm employee and an attorney who was not identified on the letterhead and whose name does not appear in the New Jersey attorney index.

Other issues with the letterhead involve the continued identification of respondent as an attorney with the Cresci firm, from his November 17, 2016 suspension until December 1, 2016. From December 12, 2016 through February 20, 2017, the letterhead did not contain the name of any attorney

affiliated with the firm, although the street, post office box, and e-mail addresses and the telephone and fax numbers remained the same.

By February 21, 2017, the letterhead identified Christine Finnegan and John G. O'Brien as firm attorneys. All other information remained the same. Two days later, the letterhead reflected a different street address and the post office box number was removed, but the e-mail address and the telephone and fax numbers remained the same through at least March 3, 2017, when the original post office box address re-appeared.

By March 20, 2017, the firm's telephone and fax numbers had changed, and the e-mail address was removed. The original post office box remained, however. Finnegan was now identified as "Member of Cresci Law Firm, LLC."

Our recitation of the facts omits the details underlying the changes to the letterhead, except when necessary for context or relevant to the issue of respondent's continued practice of law following the temporary suspension.

COUNT ONE

On November 21, 2016, four days into respondent's temporary suspension, he wrote and signed a letter to Valley National Bank (VNB), where he maintained attorney trust and business accounts for the Cresci firm. Respondent requested VNB to honor all attorney business account checks

issued prior to the Order of temporary suspension, in addition to "several automatic debits."

The letterhead identified three attorneys: respondent, Drew M. Pratko-Rucando,[2] and John G. O'Brien (who was of counsel). Respondent signed the letter. Below his name were the words "For the Firm."

The Finnegan Interview

On March 29, 2017, the OAE interviewed Finnegan. The complaint alleged both that, at the time, Finnegan had a solo practice in Washington, New Jersey, and that "Respondent's firm is now her firm."

Finnegan told the OAE that she and respondent met at New York Law School in 1989. They have socialized and worked together since that time.

Finnegan claimed that, as of November 1, 2016, she became of counsel to the Cresci firm and the "transitional process" began. Yet, she also stated that respondent did not inform her of the temporary suspension until mid-November, when he gave her a copy of the Order "because they would eventually merge her practice with his firm." Regardless, she became a

[2] As shown below, Pratko-Rucando had left respondent's employ in April 2016, seven months earlier.

"member/partner" by late December 2016, and, in February 2017, she was registered with the State of New Jersey as a member of the LLC.

Finnegan and respondent discussed the matter of the Cresci firm's name and neither believed that it had to be changed. Finnegan explained:

> Plus there was the issue of this whole thing with transition, with Pete no longer [being] affiliated with the firm, cases filed in court and associated with Cresci Law. At that juncture[] it didn't also make sense to then also change the firm name and make things even more confusing.
>
> [C¶63;Ex.19p.85.][3]

Further, Finnegan explained to the OAE that, after respondent's temporary suspension, the Cresci firm's name was not changed because that was "the original name of the firm, the name of the firm whom the clients hired, and was the name registered with the courts." Moreover, the complaint alleged that, because "all of the correspondence, orders, and filings go through the Court system electronically, . . . [Finnegan] was afraid that something would come through, or get missed, and the firm would not have the ability to review matters pertaining to the clients' cases."

[3] "C" refers to the formal ethics complaint, dated January 29, 2018.

In addition, respondent's firm's answering machine remained active. Finnegan stated that she had left it in place until she could "transition everything over."

Finnegan claimed that, after respondent was temporarily suspended, she did not review the cases with him. Rather, she put a wall between respondent and the Cresci firm. She and respondent talked "twice a week, maybe." Although they did not talk "about everyday things that go on with each case," she admitted that, if she did not understand something about a particular client matter, even after reviewing the file, she "may have reached out" to respondent about the issue. Moreover, she admitted that she talked to respondent "about motions that specifically address what transpired with the firm when he was in control of the firm."

The complaint detailed a number of items that Finnegan had discussed with respondent after the effective date of his temporary suspension. These included respondent's signature on the check drawn against the TD Bank "transitional" account. They also discussed various aspects of a client matter (Percella), including the settlement value.

Finnegan assumed that, between November 16, 2016 and February 16, 2017, respondent handled the firm's bills. On February 16, 2017, Finnegan opened new trust and business accounts with PNC Bank. The accounts

remained in the name of the Cresci firm, however. Presumably, Finnegan took over the payment of bills upon the opening of the PNC accounts.

When Finnegan became a registered member of the Cresci Firm, she reviewed the client files, which did not contain copies of letters informing the clients of respondent's suspension. Finnegan believed that the clients had been informed orally. At the time of her interview, Finnegan was in the process of sending letters to the clients, re-notifying them of respondent's suspension.

Other OAE Interviews

On March 29, 2017, the OAE interviewed attorney Pratko-Rucando, who had left the Cresci firm in April 2016. She did not know that, thereafter, the letterhead continued to list her name as a Cresci firm attorney.

On April 3, 2017, the OAE interviewed attorney Gina Mendola-Longarzo, who represented Anthony Larino in a union disciplinary matter, underlying the state and federal court litigation in which respondent had represented Larino. Mendola-Longarzo stated that, on March 15, 2017, respondent had called her to discuss settlement terms, presumably in the litigation, but that she was unavailable to talk to him. In an e-mail exchange with another attorney in the litigation, Mendola-Longarzo learned that respondent was suspended. Mendola-Longarzo texted respondent and said that,

if it was true that he was suspended, she would "just handle it." Respondent replied that Finnegan would be "the point of contact."

Based on the above facts, the complaint charged respondent with having violated RPC 5.5(a)(1) and RPC 8.4(b) and (c).

COUNT TWO

On December 20, 2016, the OAE docketed a grievance against respondent, alleging that he had practiced law while temporarily suspended. Judges and attorneys had alerted the OAE and the local district ethics committee to most of the communications emanating from the Cresci firm after respondent's temporary suspension.

On January 11, 2017, the OAE informed respondent that it was investigating whether he had practiced law while temporarily suspended and directed him to submit a written reply no later than January 26, 2017. Specifically, the OAE asked respondent to explain his use of letterhead with the banner "Cresci Law Firm, A Limited Liability Company" on the letters to VNB and the letters written to the judge and other attorneys in the Percella matter, while he was under suspension.

The OAE's letter was sent to respondent at his home address by regular and certified mail, return receipt requested. The certified letter was marked

"unclaimed" and returned to the OAE. The letter sent by regular mail was not returned.

On January 27 and June 21, 2017, the OAE sent two letters to respondent, in respect of the practicing while suspended allegation, at his home address by regular and certified mail, return receipt requested. The certified letter was marked "unclaimed" and returned to the OAE. The letter sent by regular mail was not returned. The OAE confirmed respondent's address with the USPS.

Respondent ignored the OAE's letters.

On July 13, 2017, the OAE directed respondent to provide a written reply to the January 11, 2017 grievance and to all of the outstanding inquiries. Respondent's deadline was July 24, 2017. The letter was sent to a new address that respondent had identified on his April 11, 2017 verified answer to the formal ethics complaint in the knowing misappropriation matter (DRB 18-196). On July 14, 2017, the letter was delivered to respondent's new address via UPS ground delivery.

On July 14, 2017, the OAE directed respondent to explain why he had used the title "Peter J. Cresci, Esq." in his verified answer to the formal ethics complaint in the knowing misappropriation matter (DRB 18-196). The letter was sent to the new address by regular and certified mail, return receipt

requested. On August 2, 2017, the OAE sent a follow up letter to respondent, also by certified and regular mail.

The certified letters were marked "unclaimed" and returned to the OAE. The letters sent by regular mail were not returned. Respondent ignored the letters.

On July 19, 2017, the OAE directed respondent to appear for a demand interview on August 22, 2017. The letter was sent to the new address by regular and certified mail, return receipt requested. The certified letter was marked "unclaimed" and returned to the OAE. The letter sent by regular mail was not returned. Respondent ignored the letter and did not appear for the interview.

Finally, on August 2, 2017, the OAE sent a second letter to respondent, directing him to appear for the August 22, 2017 demand interview. The letter was sent to respondent's home address by regular and certified mail, return receipt requested. The certified letter was marked "unclaimed" and returned to the OAE. The letter sent by regular mail was not returned. Respondent ignored the letter and did not appear for the interview.

In total, between and including January 11 and August 2, 2017, the OAE sent more than twenty letters to respondent, seeking information. He ignored every letter. Based on the above facts, the second count of the complaint

charged respondent with having violated R. 1:20-3(g)(3) and, thus, RPC 8.1(b).

Respondent's Motion to Vacate the Default

As stated previously, respondent has filed a motion to vacate the default. To succeed, he must (1) offer a reasonable explanation for the failure to answer the ethics complaint and (2) assert a meritorious defense to the underlying charges. Respondent has not satisfied either prong and, therefore, we denied the motion.

In respect of the excusable neglect prong, respondent claims that he filed an answer to the ethics complaint on April 11, 2018, as instructed. Respondent attached to his motion what purports to be a copy of the answer. That answer, however, was filed in DRB 17-117, which is the knowing misappropriation matter now docketed as DRB 18-196.

In addition to respondent's claim that he filed an answer in this matter, he offers other reasons in support of his motion to vacate. These reasons, identified below, neither support a finding of excusable neglect nor constitute defenses to any of the claims asserted in the ethics complaint.

Moreover, respondent copied and pasted from a previous motion to vacate default that he filed in DRB 17-117 some of the same reasons for his failure to file an answer in this matter. Of particular note is his reference, in this motion, to the OAE's "underlying complaints apparently filed in March, 2017." The complaint in this matter is dated January 29, 2018, and was mailed to respondent on February 16, 2018.

Similar to his previous motion, respondent offers the following reasons for his failure to file an answer to the ethics complaint: (1) we lack jurisdiction, as a federal court action that respondent filed against OAE Director Charles Centinaro and OAE Assistant Ethics Counsel Timothy J. McNamara "preempted" the filing of the "underlying complaints apparently filed in March, 2017;" (2) he is entitled to representation by counsel, but is without same because the OAE froze his bank accounts, thus causing former counsel to terminate the representation; (3) he (presumably) acted on the advice of counsel; and (4) he was precluded from changing his current address when he submitted his annual registration to the CPF, in March 2017.

In respect of the meritorious defense prong, respondent identifies many of the same meritorious defenses that he raised before: (1) the age of two of the client matters at issue in the knowing misappropriation case; (2) the conflict of interest on the part of Centinaro and McNamara, defendants in a

federal civil action that respondent has filed against them; and (3) his temporary suspension, which prevents harm to the courts and the public while this matter is held in abeyance or stayed.

Respondent's additional meritorious defenses are (1) that "[t]here is no rational basis for Defendant McNamara's actions," and, thus, respondent is entitled to a hearing; and (2) there is an appeal in another federal case filed by Cresci, which has either been filed or "is necessary."

We determine to deny respondent's motion to vacate the default in this matter for several reasons. First, he has done nothing more than copy and paste many of the same claims he made in the motion to vacate the default in the DRB 17-117 matter, which involved grievances filed by several clients. The ethics complaint in that matter charged respondent with neither practicing law while suspended nor failure to cooperate with disciplinary authorities.

Second, because respondent has copied and pasted most of what he had raised in the previous motion to vacate, his proffered "reasonable" excuses for his failure to file an answer in this matter are inapplicable, as are his "meritorious" defenses.

For the above reasons, we deny the motion to vacate the default.

* * * *

The facts recited in the complaint support most of the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Notwithstanding that Rule, each charge must be supported by sufficient facts for us to determine that unethical conduct has occurred.

The first count of the complaint offers only a few examples of respondent's unauthorized practice of law. All other examples are violations of R. 1:20-20, which defines the administrative requirements imposed on an attorney who is suspended from the practice of law.

RPC 5.5(a) prohibits an attorney from practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction. Under N.J.S.A. 2C:21-22(1)(a) knowingly engaging in the unauthorized practice of law constitutes a crime of the fourth-degree. Under RPC 8.4(b), the violation of N.J.S.A. 2C:21-22(1)(a) constitutes the commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

Here, once respondent was suspended, albeit temporarily, he was prohibited from practicing law. Thus, his continued involvement in certain client matters constituted the unauthorized practice of law, contrary to RPC 5.5(a), and a fourth-degree crime and, thus, a violation of RPC 8.4(b).

The limited examples of respondent's unauthorized practice of law are his March 2017 communication with Mendola-Longarzo regarding a possible settlement in the Larino matter and his discussions with Finnegan "about twice a week" when she had questions about client matters, including the settlement value of the Percella matter. All other incidents alleged in the complaint involve violations of R. 1:20-20.[4]

Specifically, respondent allowed the Cresci Firm to continue with business as usual, with the only exception that, after December 11, 2016, he was no longer identified as an attorney with the firm. The most egregious example is the continued use of letterhead with the banner "Cresci Law Firm," which is a violation of R. 1:20-20(b)(4). In re Powell, 219 N.J. 128 (2014) (the continued use of the name of the suspended attorney on the firm's letterhead, following the attorney's suspension, whether the attorney or someone else

[4] By its very terms, a violation of R. 1:20-20 operates as a violation of RPC 8.1(b) and RPC 8.4(d) – the same violations on which the recent censure was based.

signs the letter, is a violation of R. 1:20-20(b)(4) and, thus, RPC 8.1(b) and RPC 8.4(d)).

Respondent violated other provisions of R. 1:20-20(b), by (1) setting up the "transitional account," which identified the holder of the account as "CRESCI LAW FIRM" (R. 1:20-20(b)(5)); (2) failing to notify clients, attorneys for adverse parties, and the assignment judges in all litigated matters of his suspension (R. 1:20-20(b)(11)); and (3) failing to file an affidavit of compliance with R. 1:20-20(b)(15), which resulted in the recent censure. These are just a few of the violations of R. 1:20-20(b), based on the allegations of the complaint.

Failure to comply with the above requirements of R. 1:20-20 does not constitute practicing law while suspended. Accordingly, these violations cannot support that charge. However, as shown below, some violations support the RPC 8.4(c) charge.

Specifically, count one charged respondent with having violated RPC 8.4(c), by the continued use of the Cresci firm banner on letterhead following his temporary suspension, and his failure to advise the courts and his clients and adversaries, in writing, of his suspension. As stated previously, these particular violations of R. 1:20-20 constitute violations of RPC 8.1(b) and RPC 8.4(d). However, if the intention in doing so was for the purpose of subverting

the effect of the suspension, the attorney can be found guilty of violating RPC 8.4(c). See, e.g., In re Stolz, 229 N.J. 223 (2017) (the continued use of the attorney's surname in the firm's name, following his temporary suspension, was intended to circumvent the very purpose of the suspension, that is, the complete removal of the attorney from the practice of law and the prohibition against continued representation of clients in existing matters and the ability to continue taking on new matters during the period of suspension).

Here, Finnegan clearly asserted that the Cresci firm banner continued to be used because it was "the original name of the firm, the name of the firm whom the clients hired, and was the name registered with the courts." In other words, it was an intentional decision, made by respondent and Finnegan, to create the impression that it was business as usual for the Cresci firm. This is particularly so, given the continued use of the same telephone number, fax number, and e-mail address for at least three months following the November 2016 temporary suspension, coupled with the absence of letters to clients, adversaries, and courts notifying them of the suspension. Moreover, prior to respondent's suspension, Finnegan was not an attorney associated with the firm, in any capacity, but, rather, was brought on board for the purpose of acting in respondent's stead.

Finally, respondent violated RPC 8.1(b), by ignoring the OAE's multiple and painstaking attempts to secure his cooperation in its investigation of his conduct.

To conclude, the clear and convincing evidence supports the alleged violations of RPC 5.5(a)(1), RPC 8.1(b), and RPC 8.4(b) and (c).

DRB 18-196 (XIV-2017-0586E, XIV-2017-0587E, XIV-2017-0588E, XIV-2017-0589E)

The five-count formal ethics complaint charged respondent with multiple ethics infractions in three matters, including knowing misappropriation of client, escrow, and trust funds, and failing to cooperate with the OAE in its investigation of two of them.

This is the third time that this matter has been before us on a certification of the record. The record was first certified on March 22, 2017. On June 21, 2017, we granted respondent's motion to vacate the default and remanded the matter for the filing of an answer.

On July 10, 2017, respondent filed an answer, which the OAE deemed deficient on the ground that it did not comply with In re Gavel, 22 N.J. 248, 263 (1956), and with R. 1:20-4(e). Accordingly, the OAE certified the record again, and respondent filed another motion to vacate the default.

Although we agreed that respondent's answer did not fully comply with In re Gavel and the Court Rule, in our view, R. 1:20-4(f) permits certification of the record only when a respondent either fails to file an answer or files an answer without the required verification. Thus, on October 23, 2017, we denied the motion to vacate, as moot, and directed that the matter be assigned to a special ethics master (or a hearing panel) who, guided by R. 1:20-5(b)(3), was to schedule a pre-hearing conference where the sufficiency of both the OAE's complaint and respondent's answer could be addressed, along with possible sanctions for non-compliance with any pre-hearing orders the factfinder might issue, including suppression of respondent's answer.

The Court appointed Honorable Harold W. Fullilove, J.S.C. (ret.), to serve as the special ethics master. On March 22, 2018, the special master set a deadline of March 28, 2018 for respondent to retain counsel, and April 11, 2018 to file an amended answer that complied with Gavel and the Court Rule.

Respondent did not retain counsel, but, on April 11, 2018, filed a pro se amended answer to the complaint. On April 30, 2018, the special master informed the parties that the amended answer "in no way complies with the requirements of Gavel" and, therefore, "the appropriate remedy," under R. 1:20-5(c), was to suppress the pleading and bar respondent's defenses. On May

14, 2018, the special master entered an order confirming his April 30, 2018 determination.

In the special master's April 30, 2018 letter, he offered a number of reasons in support of his finding that the amended answer did not comply with Gavel's requirements. In general, the special master determined that many of respondent's answers to individual paragraphs were "at best, duplicitous," inappropriate, or "clearly disingenuous." The special master's conclusions focused mainly on general denials or respondent's claims that he lacked sufficient knowledge or information to form a belief about the truth of the allegations, or both.

On June 6, 2018, the OAE, once again, certified the record to us. Once again, respondent has filed a motion to vacate the default.

We had determined, long before, that service of process was proper in connection with our consideration of respondent's motion to vacate the default. Respondent has since filed an answer to the complaint, participated in a pre-hearing conference regarding the sufficiency of his answer, and filed an amended answer with the special ethics matter. The special master struck the amended answer, as non-compliant with In re Gavel and R. 1:20-4(e), which resulted in re-certification of this matter to us as a default. Thus, there was no need for the OAE to serve the complaint again.

Respondent's Motion to Vacate the Default

On August 22, 2018, respondent filed a motion to vacate the default in this matter. The motion repeats most of the same arguments that already have been raised and rejected repeatedly. These include pre-emption by a federal court action that respondent has filed against Centinaro and McNamara; the OAE's failure to provide him with materials supporting the allegations in the complaint; respondent's claim that he both lacked counsel and acted on advice of counsel; his inability to change his contact information with the CPF; the conflict of interest on the part of Centinaro and McNamara; the OAE's dilatory conduct in investigating the grievances; and the lack of harm to the public because his temporary suspension remains in effect.

The only new argument advanced by respondent is that his license is a property right, which demands due process, before he may be deprived of the license. Among the requirements that due process demands, according to respondent, is adequate notice, the opportunity for a hearing, a fair and impartial hearing panel, and the opportunity to confront and cross-examine adverse witnesses.

The OAE opposes respondent's motion on the grounds that respondent has been given multiple chances to be heard but has availed himself of none. Moreover, the OAE notes, respondent was given, and rejected, the opportunity

to retain counsel. Finally, the OAE maintains that most of respondent's reasons for overturning the default previously have been raised and rejected.

We agree that respondent has been given multiple opportunities to file a fully responsive and confirming answer to the ethics complaint. He repeatedly has failed to do so. There is no reason to believe that, given yet another chance, he will submit a pleading that complies with Gavel and R. 1:20-4(e). We, thus, deny the motion.

We now turn to the allegations of the complaint. The five counts of the formal ethics complaint stems from a wrongful termination case, a real estate transaction, and the administration of an estate. Among other RPC violations, the complaint charged respondent with knowing misappropriation of client and/or escrow funds in all three matters. The remaining counts arise from respondent's failure to cooperate with the OAE in its investigation of two of the knowing misappropriation cases.

COUNT ONE: XIV-2017-0587E (Figueroa Matter)

On December 12, 2012, Nuala Figueroa filed a grievance against respondent, alleging that he had settled her employment wrongful termination case without her knowledge, deposited the settlement proceeds into his attorney trust account, failed to disburse any funds to her, and failed to

communicate with her.[5] The facts uncovered during the OAE's investigation are set forth below.

In April 2010, Figueroa retained respondent to represent her in a wrongful termination action against the Bayonne Housing Authority (BHA). The retainer agreement required the payment of a $1,500 non-refundable retainer fee, as well as both a contingent and an hourly fee.

In June 2010, respondent filed a federal wrongful discharge action against BHA, which was settled in March 2011 for $25,000. Respondent did not inform Figueroa of the settlement, and she never saw or signed a settlement agreement. Moreover, Figueroa claimed that someone had forged her signature on the settlement agreement and release, and had attested to the signature's authenticity.

The $25,000 settlement check was issued on April 2, 2011, and made payable to the Cresci Firm and Figueroa. Yet, respondent deposited the check in his new Bayonne Community Bank business account, without Figueroa's

[5] The grievance did not allege that respondent failed to communicate with Figueroa, or that he deposited the monies in his attorney trust account. These claims are based on information gathered during the OAE's investigation, as set forth in the formal ethics complaint.

endorsement or her knowledge.[6] He did not disburse a penny to Figueroa, on the claim that the entire sum represented his fee and, thus, she had no right to the funds. Respondent further contended that, in this regard, Figueroa "knew the score," and knew "what was going on." By April 27, 2011, about three weeks later, the balance in the new BCB bank account was only $15,235.82.

Respondent denied that he had settled Figueroa's case without her knowledge and that he had not informed her about the settlement. According to respondent, he "kept in constant contact with Figueroa" and provided her with "updates."

Specifically, respondent claimed that he had informed Figueroa of the settlement, in a letter dated April 7, 2011, which contained an attachment that reflected a total settlement amount of $67,075, representing $42,075 in "compensatory damages" to Figueroa and $25,000 in "money paid at conclusion of case." The attachment also reflected $57,971.47 due to the firm, representing $22,335.97 in "compensatory damages to firm" and $35,635.50 in "attorney fees, costs & expenses." Thus, according to the attachment and respondent, the $25,000 settlement monies were to be applied to outstanding

[6] Over the years, respondent maintained attorney trust and business accounts at Valley National Bank (VNB) and Bayonne Community Bank (BCB). The old BCB business account ended in 3502. The new BCB business account ended in 7288.

fees that Figueroa owed to the Cresci firm. Respondent acknowledged that he did not meet with Figueroa to discuss the itemization of figures in the letter because he "sent her everything."

Figueroa told the OAE that respondent did not discuss a final settlement figure with her; she never agreed upon a figure; she never saw or signed a settlement agreement; and respondent never told her that he had received a settlement check from BHA. Indeed, throughout the representation, Figueroa attempted, on several occasions, to ask respondent about the status of her case, to no avail.

Between September 11, 2011 and September 2012, Figueroa made several attempts to communicate with respondent by e-mail, telephone, and personal appearances at his office. He called her once, but told her that he would have to review her file. She never heard from him.

In respect of the settlement negotiations and settlement terms, respondent took the position that, as part of the settlement, Figueroa had received $40,000 in bi-weekly unemployment benefits, which he had negotiated, representing "compensatory damages received from the settlement." He claimed that, "at all times," Figueroa understood this to be the case, and that, if he had not negotiated the unemployment benefits, she would not have received any.

Despite respondent's claim that he had negotiated $40,000 in unemployment benefits, he neither discussed these benefits with his client, nor took any action to obtain those benefits. Rather, Figueroa had applied for unemployment benefits on-line, and participated, without respondent, in an in-person interview with both an unemployment insurance case worker and a BHA representative. She received her first check, in the amount of $389, on June 28, 2010. Respondent had filed the civil complaint against BHA only a week earlier.

Notwithstanding Figueroa's personal involvement in obtaining unemployment compensation, and her receipt of the first check in June 2010, respondent claimed that a January 2011 letter that he sent to BHA lawyer, John J. Mercun, demonstrated that he was responsible for obtaining "unemployment benefits as compensatory damages from BHA." Respondent acknowledged that the letter merely made a settlement offer of $65,000, without reference to $40,000 in unemployment compensation. Yet, he claimed that this was his goal in requesting $65,000 to settle the case.

According to respondent, he discussed the matter with BHA lawyers Steven Zabarsky, Jeanette Samra-Arteaga, and Harold Fitzpatrick, who represented BHA at the "termination hearing" and, possibly, BHA Executive Director John Mahon. The OAE interviewed Mercun, Zabarsky, Samara-

Arteaga, and John Mahon, all of whom denied having discussed with respondent unemployment benefits for Figueroa.

In respect of the actual settlement agreement and release, respondent had no recollection of meeting with Figueroa to review the documents, and he did not "think" that someone else from the firm had done so. When asked whether Figueroa had signed both documents, he answered "I believe so" and "I think so."

Respondent acknowledged that the release reflected that Cresci firm employee and receptionist Duffy had notarized Figueroa's signature. He did not know, however, whether Duffy had actually witnessed Figueroa sign the document, claiming that, sometimes, clients "drop things off." When the OAE informed respondent that one cannot notarize a signature without knowing the witness, respondent replied that he thought Duffy knew Figueroa.

Although Duffy notarized Figueroa's signature on the settlement agreement, Figueroa stated that she had never seen the document. As shown below, respondent eventually pleaded guilty to uttering a false document, contrary to N.J.S.A. 2C:21-4.

Respondent acknowledged that the $25,000 check was deposited in the Cresci firm's business account. Figueroa stated that she never saw the check,

was not told that it had been received, and did not authorize respondent to use the settlement monies in any way, either temporarily or permanently.

According to respondent, the $25,000 was the fee owed to the firm because it was through his efforts that Figueroa was able to collect unemployment benefits. He claimed that, "[i]f she had never come into our building, she would never have gotten unemployment benefits, and she would never have received over $40,000 in compensatory money." Respondent denied that Figueroa had paid him any attorney fee, claiming instead that the defendants paid the fee by issuing the $25,000 settlement check.

Respondent claimed that, despite his assertion that the $25,000 was due to the firm and that Figueroa had no right to the funds, the check was payable to both the Cresci firm and Figueroa because the monies paid were in respect of "Figueroa's case." Respondent did not believe that he had told the BHA attorneys that the $25,000 was going to the Cresci firm.

Zabarsky told the OAE that respondent had requested that the check be made payable to the firm and to Figueroa. Further, if Zabarsky had understood that the $25,000 belonged solely to the Cresci firm, the check would have been payable to the firm only.

The ethics complaint contained several allegations regarding respondent's fee agreement with Figueroa. Respondent referred to the agreement as a "hybrid retainer." According to respondent, the agreement provided that the Cresci firm would receive one-third of the gross recovery. The firm also charged Figueroa a $1,500 non-refundable retainer. Section XII of the fee agreement provides:

> There is a contingent nature to this case, and Client will not be billed hourly in accordance with paragraph III c. Client is responsible for costs and expenses from the proceeds.
>
> [Ex.23.]

Respondent agreed that there was "an hourly component" to the agreement, but denied that Figueroa was charged an hourly rate, in addition to the contingency fee, saying "[s]he didn't have the money." Later, he claimed that she had been charged both types of fee, in addition to the $1,500 retainer. In the end, respondent stated that the hourly rate "is coming from the settlement."

In July 2013, respondent was indicted for third degree theft by unlawful taking and third degree forgery. On September 22, 2015, he pleaded guilty to uttering a document, knowing that it contained a false statement or information, under N.J.S.A. 2C:21-4, a fourth-degree crime. Respondent testified, in the criminal matter, that he had presented to counsel for BHA a

settlement agreement that he knew to be false, as it contained an incorrectly notarized signature. He was admitted to the pre-trial intervention program and agreed to pay Figueroa $15,000 in twelve monthly payments of $1,250.

Based on the above facts, the complaint charged respondent with having violated RPC 1.15(a) (knowing misappropriation of client funds and/or escrow funds, in violation of the principles set forth in In re Wilson, 81 N.J. 451 (1979) and/or In re Hollendonner, 102 N.J. 21 (1985)); RPC 1.15(a) (failure to safeguard funds of a client or third person); and RPC 1.15(b) (failure to make prompt disposition of funds in which a client or third person has an interest). The complaint also charged respondent with having violated RPC 1.5(a) (unreasonable fee) and RPC 1.5(c) (upon conclusion of a contingent fee matter, failure to provide the client with a writing stating the outcome of the matter and showing the remittance to the client and the method of its determination).

Presumably,[7] based on respondent's failure to inform Figueroa that her case had settled for $25,000, and other deceitful and fraudulent conduct (e.g., his guilty plea arising out of the forged signature on the settlement documents), the complaint charged him with having violated RPC 1.4(b)

[7] The complaint lists the RPC violations without identifying which facts support the individual violations.

(failure to communicate with the client), RPC 8.4(b) (commission of a criminal act that reflects adversely on the attorney's honesty, trustworthiness or fitness as a lawyer), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The complaint charged respondent with a second RPC 8.4(c) violation, in addition to RPC 8.1(a) (false statement of material fact to a disciplinary authority), as the result of various misrepresentations that he had made to the OAE during the investigation of Figueroa's grievance. These charges apparently relate to respondent's claim that he had discussed with BHA's lawyers the inclusion of Figueroa's unemployment benefits in the settlement.

Finally, respondent was charged with having violated RPC 1.1(a) (gross neglect) and RPC 1.3 (lack of diligence).

We find that respondent violated all RPCs charged, except RPC 1.1(a) and RPC 1.3. In particular, we find that respondent knowingly misappropriated at least $16,675 of the $25,000 settlement collected from BHA. (Respondent was entitled to a one-third contingent fee, or $8,325.)

In Wilson, 81 N.J. 451, the Court described knowing misappropriation as follows:

> Unless the context indicates otherwise, "misappropriation" as used in this opinion means any unauthorized use by the lawyer of clients' funds entrusted to him, including not only stealing, but also

> unauthorized temporary use for the lawyer's own purpose, whether or not he derives any personal gain or benefit therefrom.

Six years later, the Court elaborated:

> The misappropriation that will trigger automatic disbarment under *In re Wilson,* 81 *N.J.* 451 (1979), disbarment that is "almost invariable," *id.* at 453, consists simply of a lawyer taking a client's money entrusted to him, knowing that it is the client's money and knowing that the client has not authorized the taking. It makes no difference whether the money is used for a good purpose or a bad purpose, for the benefit of the lawyer or for the benefit of others, or whether the lawyer intended to return the money when he took it, or whether in fact he ultimately did reimburse the client; nor does it matter that the pressures on the lawyer to take the money were great or minimal. The essence of *Wilson* is that the relative moral quality of the act, measured by these many circumstances that may surround both it and the attorney's state of mind, is irrelevant; it is the mere act of taking your client's money knowing that you have no authority to do so that requires disbarment. To the extent that the language of the DRB or the District Ethics Committee suggests that some kind of intent to defraud or something else is required, that is not so. To the extent that it suggests that these varied circumstances might be sufficiently mitigating to warrant a sanction less than disbarment where knowing misappropriation is involved, that is not so either. The presence of "good character and fitness," the absence of "dishonesty, venality, or immorality" – all are irrelevant. While this Court indicated that disbarment for knowing misappropriation shall be "almost invariable," the fact is that since *Wilson*, it has been invariable.
>
> [In re Noonan, 102 N.J. 157, 159-60 (1986).]

Thus, to establish knowing misappropriation, the evidence must be clear and convincing that the attorney took client funds, knowing that the client had not authorized him or her to do so, and used them.

We find that, in March 2011, respondent orally agreed to settle Figueroa's case, without her knowledge, for $25,000; that the $40,000 in unemployment compensation benefits paid to Figueroa were not a part of the settlement; that either respondent or someone acting on his behalf forged Figueroa's signature on the settlement documents; that, despite several direct inquiries from Figueroa through September 2012, he never informed her of (1) the settlement, (2) his receipt of the $25,000 check, or (3) his deposit of the funds in the new BCB business account; and that he dissipated the funds without Figueroa's knowledge or authorization.

According to the allegations of the complaint, respondent informed the OAE that the Cresci firm was entitled to the entire $25,000 because the firm's "1/3rd compensatory damages" of $22,335.97, plus the $35,635.50 in "attorney fees, costs, and expenses," totaled $57,971.47, which far exceeded the $25,000 recovery. In support of respondent's claim, he produced a copy of an April 7, 2011 letter to Figueroa with an attachment showing the breakdown of the settlement, including the firm's entitlement to the full $25,000. We give this letter and attachment no credence for several reasons.

First, all of the attorneys involved in the BHA litigation denied that respondent ever discussed the topic of Figueroa's unemployment compensation with them. Indeed, she already had filed and received unemployment benefits months before respondent made the January 2011 settlement demand. Second, Figueroa denied that respondent ever informed her of the settlement, and he could not recall ever having met with her. Third, Figueroa's signature was forged on the settlement documents, leading to respondent's guilty plea to and conviction of uttering a false instrument. In this context, we question the authenticity of the April 2011 letter and attachment.

Moreover, although the OAE alleged that the fee agreement is hopelessly unclear about how the fee was to be calculated in this matter, and respondent's attempt to explain it was confusing, section twelve of that agreement expressly states that "[t]here is a contingent nature to this case," thus, the client will not be billed hourly, although the client "is responsible for costs and expenses from the proceeds." Thus, the Cresci firm was entitled to one-third of the gross recovery, plus reimbursement of costs and expenses, and no more.

Although the firm's contingent fee, plus costs and expenses, could have exceeded the $25,000 recovery, the so-called breakdown of fees, costs, and expenses fails to clearly and convincingly establish that the Cresci firm was

due anything more than one-third of the $25,000. It is not clear why the one-third was identified as "compensatory damages" to the firm. It is not clear, why, in addition to that one-third, the firm claimed entitlement to additional attorney fees of any amount. There is not a shred of evidence identifying the nature and amount of the individual costs and expenses allegedly incurred by the Cresci firm. There is no reason to believe that the letter and the attachment were sent to Figueroa. Thus, we give the document no credence.

In short, respondent settled Figueroa's case for $25,000 without her knowledge and consent, never told her that he had settled the case, forged her signature on the settlement documents, and dissipated the entire $25,000, all while ignoring his client's pleas for information about her case. Thus, under Wilson, respondent knowingly misappropriated at least $16,675 of the $25,000 in settlement monies. In turn, he also violated RPC 1.15(a) and (b).

Respondent violated RPC 1.4(b), by failing to keep Figueroa informed about the status of her case, particularly the settlement negotiations and his receipt of the settlement check; RPC 1.5(c), by failing to provide Figueroa with a written statement informing her of the outcome of the matter and, in the event of a recovery, showing the remittance to her and the method of its determination; RPC 8.4(b), by virtue of his conviction of uttering a false document, that is, the settlement documents with Figueroa's forged signature;

and RPC 8.1(a) and RPC 8.4(c), based on his multiple misrepresentations to the OAE, such as his claim that he had discussed the unemployment benefits with BHA's various lawyers.

Respondent did not violate RPC 1.1(a) or RPC 1.3, however. None of the facts alleged support a finding that respondent exhibited gross neglect or a lack of diligence in representing Figueroa. Therefore, we dismiss those charges.

COUNT TWO: XIV-2017-0586E (Mortgage Plus Matter)

In this matter, the OAE charged respondent with knowing misappropriation of escrow funds due to his failure to maintain $6,781.09 intact (RPC 1.15(a) and the principles of Wilson and/or Hollendonner); commingling personal and client funds (RPC 1.15(a)); failure to promptly disburse the monies to Mortgage Plus (RPC 1.15(b)); misrepresentations to the OAE during the investigation of the grievance (RPC 8.1(a) and RPC 8.4(c)); and recordkeeping violations (RPC 1.15(d)).

Respondent represented Danielle Carreno, the purchaser of a South Plainfield property, and served as the settlement agent at the May 21, 2009 closing. Thomas J. Bock, the owner of Mortgage Plus, Inc. (Mortgage Plus),

obtained a mortgage for Carreno with Security Atlantic Mortgage Company (Security Atlantic).

On April 13, 2009, Carreno and Mortgage Plus entered into a written loan origination agreement. Security Atlantic's closing instructions listed $6,781.09 in fees due to Mortgage Plus, which were to be disbursed from respondent's trust account, either at the closing or shortly thereafter.[8] On May 22, 2009, the day after closing, respondent deposited in his old BCB trust account $281,142.68 in proceeds.[9] He disbursed all funds, in accordance with the HUD-1 settlement statement, except for the $6,781.09 due to Mortgage Plus. Respondent acknowledged that the funds should have remained in the trust account.

According to the complaint, the trust account funds did not remain intact, despite respondent's claim to the contrary. At the OAE's direction, respondent finally disbursed the monies due to Mortgage Plus, on September 22, 2012, more than three years after the closing. The road to that point, however, was long.

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[8] The fees comprised the loan origination fee ($2,800), a credit report ($24.84), an application fee ($395), a broker commitment fee ($550), and a yield spread premium ($3,011.25).

[9] The BCB trust account ending in 614 is the "old BCB trust account." The BCB trust account ending in 7288 is the "new BCB trust account."

On June 11, 2009, Bock requested from respondent a signed copy of the note, mortgage, and HUD-1. He also requested payment of the $6,781.09 due to Mortgage Plus.

On June 26, 2009, respondent informed Bock that the closing instructions did not refer to any payment owed to Mortgage Plus. According to respondent, the origination, application, and broker fees were prepaid finance charges and the yield spread premium (YSP) fee was to be paid by the lender to the broker.

On that same date, Bock replied that the settlement statement correctly listed the $6,781.09 in fees due to Mortgage Plus. He also stated that a prepaid finance charge is not a charge paid outside of closing and, further, the YSP fee had been included in the wire transfer to respondent.

On July 30, 2009, Bock complained to respondent that, after the closing, he had called the Cresci firm "numerous times" seeking assistance, and requested that respondent remit the funds to Mortgage Plus immediately.

On August 6, 2009, Bock offered to meet with respondent to discuss the matter, but respondent would agree only if Bock paid him for his time. The next day, respondent told Bock that he would try to resolve the issue by August 12, 2009, but failed to do so. Although respondent acknowledged to

the OAE that he understood that an attorney must hold intact disputed funds, the $6,781.09 did not remain intact in the trust account.

On December 24, 2009, respondent issued an old BCB trust account check, payable to the Cresci firm, in the amount of $3,105.13. This check closed the old trust account, which should have held at least $6,781.09 at that time, representing a $3,679.96 shortage in the "disputed" Mortgage Plus funds. On that same date, respondent deposited the check into the Cresci firm's new BCB trust account.

On February 21, 2011, Bock filed a grievance against respondent. During the OAE's September 22, 2011 demand audit, respondent did not disclose to the OAE that, when he opened the new BCB trust account, he already had invaded the $6,781.09 that he should have been safeguarding for Bock. Even though the OAE's review of the Cresci firm's records uncovered the $3,679.96 shortfall, respondent stated falsely that he was still holding the full amount and that he was unaware that he had invaded the funds.

Respondent informed the OAE that his practice was to review his trust account bank statement, checkbook, and online account to keep track of the trust account activity. He admitted that he did not prepare monthly three-way reconciliations of the new trust account.

As of March 15, 2010, the new BCB trust account balance was $1,031.48, leaving the account short by at least $5,749.61 in the Mortgage Plus matter.[10] On March 18, 2010, respondent deposited $4,401.76 in his new BCB trust account, which represented the value of twenty-five United States Savings Bonds. The $4,401.76 deposit increased the new BCB trust account balance to $5,433.24, but the account was still $1,347.85 short in Mortgage Plus funds.

By March 17, 2011, the balance in the new BCB trust account was only $34.73, which was $6,746.36 less than the (disputed) amount that respondent should have been safeguarding for Mortgage Plus, and, as shown later, at least $3,278.64 less than he should have been safeguarding in the Bartosiewicz matter.

By letter dated July 20, 2012, the OAE asked respondent to explain what had happened to the Mortgage Plus funds. He did not reply.

Respondent's bank records showed that, from December 8, 2009 through November 22, 2011, he transferred a total of $135,231.39 from the new BCB trust account to the business account, including a number of transfers without

[10] As discussed below, the trust account also was short by $3,278.64, which respondent should have been safeguarding in the Bartosiewicz matter, the subject of count four of the ethics complaint.

client references. Because respondent did not produce client ledger cards, the OAE could not determine whether the funds transferred were earned legal fees and, if so, the client matters to which they were attributable.

By January 25, 2012, the new BCB trust account balance was $33,559.73.[11] According to the OAE, this total now included the $6,781.09 Mortgage Plus funds. The next day, respondent disbursed the funds (with the exception of $10,000 related to another matter) from the new BCB trust account to another trust account at Valley National Bank (VNB trust account). By June 4, 2012, the remaining $10,000 had been disbursed, thus zeroing out the BCB account.

During the OAE's September 22, 2011 demand audit, respondent admitted that Bock may have been entitled to the $6,781.09, but questioned whether Carreno was obligated to pay the monies to Bock. At a March 22, 2012 demand interview, the OAE informed respondent that, based on its review of the mortgage loan origination agreements, the $6,781.09 in disputed funds belonged to Bock. Respondent replied that he had already disbursed the funds to Carreno, on January 25, 2009.

[11] The complaint does not identify the source of the funds.

On September 21, 2012, respondent told the OAE that he had disbursed the funds to Carreno on the advice of "several counsel." At a May 10, 2016 demand audit, respondent stated that he had disbursed the funds to Carreno because she and her husband were first-time home buyers and lifetime friends, Bock had been calling the Carreno residence and leaving messages about the disputed funds, and respondent wanted the Carrenos to have a "good experience." As stated previously, at the OAE's direction, respondent disbursed $6,781.09 to Mortgage Plus, on September 22, 2012, more than three years after the closing.

The complaint asserted a number of facts allegedly establishing that respondent also commingled personal and client funds, and failed to safeguard funds. Specifically, in 2009, the Cresci firm ran out of business account checks. Thus, until the firm received more checks, "'a couple of months'" later, respondent deposited $29,809.48 in non-client funds in his old BCB trust account, which he then used to pay business expenses. When respondent made those disbursements, he crossed out the words "Attorney Trust Account" on the checks to indicate that the disbursement was for a business expense. In all, between January and December 2009, respondent issued trust account checks, totaling $117,918.84, to pay business expenses.

Respondent also commingled personal and client funds in the new BCB trust account. Specifically, on January 5, 2010, he deposited a $5,000 personal check in the new trust account, which raised the balance from $4,991.39 to $9,991.39. On January 6, 2010, respondent electronically transferred $4,750 of the commingled funds from the new trust account to the firm's new business account (which had previously held a balance of $1,601.40) and immediately issued and negotiated a $5,000 business account check payable to cash.

On March 18, 2010, respondent commingled the $4,401.76 in savings bonds proceeds, by depositing the monies in the new trust account. According to the complaint, the purpose of the deposit was to replenish the shortage in Mortgage Plus funds.

On June 27, 2011, respondent transferred $22,500 from an unidentified attorney business account into his new trust account. According to respondent's counsel at the time, E. Carr Cornog, III, Esq., the funds were distributed to three individuals in the Bartosiewicz matter.

Finally, the complaint alleged that respondent's attorney books and records were in violation of the following recordkeeping rules:

- No proper old or new BCB ATA three-way reconciliations for 2009-2012, in violation of R. 1:21-6(c)(1)(H);
- Failure to provide the OAE with properly constructed client ledger cards, in violation of RPC 8.1;

- Electronic transfers of legal fees out of the ATA without signed, written instructions from the attorney, in violation of R. 1:21-6(c)(1)(A);

- No proper ledger card identifying attorney funds for bank charges, in violation of R. 1:21-6(d);

- Earned legal fees not disbursed from the ATA timely, in violation of R. 1:21-6(a)(2);

- Legal fees not deposited into the ABA, in violation of R. 1:21-6(a)(2);

- Funds unrelated to the practice of law deposited into the ATA, (commingling personal funds in the ATA), in violation of RPC 1.15(a) and R. 1:21-6(a)(1); and

- Attorney trust funds for bank charges exceed $250.00, in violation of RPC 1.15(a).

COUNT THREE: XIV-2017-00586E (Failure to Cooperate – Mortgage Plus)

Count three of the complaint charged respondent with failure to cooperate in the OAE's investigation of Bock's grievance (RPC 8.1(b)). Specifically, on July 20, 2012, the OAE requested that respondent produce, by August 6, 2012, all client ledgers from January 1, 2009 to March 2012. Respondent ignored this letter, as well as follow up letters dated August 22 and September 13, 2012. Four years later, on June 9, 2016, he finally produced improperly-constructed ledger cards, but only for the year 2012.

Meanwhile, on May 17, 2016, the OAE requested, through Cornog, respondent's counsel, that respondent produce three-way trust account reconciliations for the period encompassing January 2009 through December 2012. Respondent did not comply with the OAE's request. On June 16, 2016, the OAE renewed its request and further requested the production of bank statements, canceled checks, deposit slips, and client ledger cards by June 27, 2016. Respondent only partially complied with the requests.

On June 29, 2016, the OAE renewed its request for properly-constructed three-way reconciliations and client ledger cards for the years 2009 through 2012. On July 11, 2016, respondent produced VNB trust account three-way reconciliations, but only for the year 2012. According to Cornog, respondent had not prepared reconciliations for the years 2009, 2010, and 2011. Respondent never produced properly constructed client ledger cards for those years.

On July 14, 2016, the OAE requested that Cornog direct respondent to provide written confirmation that he had not constructed ledger cards that complied with the recordkeeping rules. On July 19, the OAE requested three-way reconciliations for the new trust account for 2012. On July 22, 2016, the OAE requested that respondent provide eight client files by August 5, 2016.

By that date, the OAE had received nothing from respondent, and Cornog informed the OAE that he had been unable to contact respondent.

On August 9, 2016, the OAE gave respondent a final extension to August 15, 2016. On that date, Cornog informed the OAE that respondent had informed him that the United States District Court for the District of New Jersey had accepted jurisdiction "on all matters being investigated by the OAE."

On August 16, 2016, the OAE informed Cornog that respondent had three days to provide all authority, including court orders, on which he was relying to ignore the OAE's requests for information. Cornog referred the OAE to 28 U.S.C. § 1331, which grants to federal district courts "original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

On September 20, 2016, Cornog informed the OAE that, "for the time being," further communication between him and the OAE had to be in writing. The next day, the OAE told Cornog that respondent had until September 23, 2016 to provide the information requested in the August 16 letter. Also, on September 21, 2016, the OAE filed a petition for respondent's temporary suspension based on his failure to cooperate with the investigation. On November 17, 2016, the Court temporarily suspended respondent.

Based on these facts, the complaint charged respondent with having violated RPC 8.1(b).

In addition to multiple other violations, the allegations in count two of the complaint establish, clearly and convincingly, that respondent knowingly misappropriated $6,781.09 in monies due to Mortgage Plus. Respondent should have been holding that amount in his trust account, intact, until the "dispute" between respondent and Mortgage Plus was resolved. Instead, he disbursed the funds to Carreno.

Mortgage Plus was entitled to the $6,781.09, which was to be paid from the proceeds collected by respondent at the closing. Documents that Bock provided establish that none of the costs were to be paid outside of closing because they were included within the amount wired from Security Atlantic to respondent. At the least, respondent should have segregated the funds, but he did not. Moreover, when he closed the old BCB trust account, in which the funds had been located, the account balance was only $3,105.13. By March 15, 2010, the new BCB trust account balance had decreased to $1,031.48. A year later, it had fallen to $34.73.

Respondent invaded Mortgage Plus's funds and disbursed them to Carreno, despite Bock's repeated demands for the monies. Respondent, thus, violated the Hollendonner principle and RPC 1.15(a) and (b).[12]

Respondent also violated RPC 8.1(a) and RPC 8.4(c) when he made multiple misrepresentations to the OAE during its investigation by, for example, telling the OAE that, despite its discovery that he had invaded the $6,000+, he had kept the full amount intact and was unaware of any invasion of funds.

Finally, respondent committed all of the recordkeeping violations identified in paragraph 167 of the complaint, including the commingling of personal and client trust funds, which was the subject of paragraph 153.

The allegations in count three clearly and convincingly establish that respondent failed to cooperate in the OAE's investigation of Bock's grievance filed in behalf of Mortgage Plus. He never provided properly-constructed client ledger cards, and he submitted three-way reconciliations for only one year out of four.

[12] In Hollendonner, the Court held that the Wilson principle also applies to other funds that an attorney must hold inviolate, such as escrow funds. In re Hollendonner, 102 N.J. 21.

COUNT FOUR: XIV-2017-0589E (Bartosiewicz Estate Matter)

Margaret Bartosiewicz died on September 4, 2005. Her son, John Bartosiewicz (Bartosiewicz), was the executor of her estate. He and his siblings, James Bartosiewicz and Irene Schultz, were the beneficiaries.

On September 16, 2005, Bartosiewicz retained respondent to assist him in his duties as executor, at a rate of $275 an hour. Ten years later, Bartosiewicz filed a grievance against respondent.

Margaret's estate comprised two bank accounts, totaling $111,484.46, Margaret's home, and nine different stocks. Since Margaret's death, the home and "approximately half the stocks" had been sold.

As shown below, respondent recovered $251,144.22 in estate assets, but distributed only $116,289.63 to the beneficiaries. The beneficiaries have received no further distributions, including "some dividends" and the balance of the estate's bank accounts. Further, four stocks (Host Marriott, PSE&G, Verizon, and Lucent) have not been settled.

As stated above, when Margaret died, she had two bank accounts with a total balance of $111,484.46. In approximately December 2005, respondent received the $21,287.79 balance in a Provident Bank checking account, which was then closed. Margaret's other account was a savings account with North Fork Bank, which had a $90,196.67 balance.

On January 24, 2006, respondent requested North Fork to release at least half the balance so that inheritance taxes could be paid. On February 3, 2006, respondent confirmed to North Fork that he had received the bank's $55,207.16 cashier's check and requested that the bank forward the balance to him. Presumably, the bank complied with respondent's request.

Even though respondent had received $111,484.46 from both banks, he distributed to the beneficiaries a total of $75,000 in March 2006 and a total of $22,500 in June 2011, leaving an undistributed balance of $13,984.46. Yet, at the May 2016 demand interview, respondent stated that he had no idea why Bartosiewicz had claimed that not all of the bank account monies had been distributed.

In addition to Margaret's bank accounts, at the time of her death, she held stock in several entities. Between February 12 and August 25, 2009, respondent deposited a total of $37,667.35 in the old BCB trust account. The deposits included $235.69 in Verizon dividends, $5,587.64 in Verizon stock proceeds, $307.50 in Host dividends, $12,272.70 in Host stock proceeds, $454.40 in Middlesex Water Company (MWC) dividends, $18,789.63 in MWC stock proceeds, a $12.32 Idearc dividend, and a $7.47 Lucent dividend. Of

these deposits, respondent recorded on the estate's "first" ledger card only the $18,789.63 MWC stock proceeds.[13]

The new BCB trust account bank records show that, on November 18, 2009, respondent deposited $202.54 in PSE&G dividends and $5.38 in Host dividends. Respondent did not record these deposits on the ledger card, disburse the funds to the beneficiaries, or identify the funds in any letter to the beneficiaries.

Between December 1 and 21, 2009, respondent deposited in the new BCB trust account $101,784.51 in estate monies, representing a $211.97 Host dividend, $65,438.34 in Host stock proceeds, $111.20 in Lucent stock proceeds, $1,335.74 in AT&T dividends, $8,174.74 in AT&T stock proceeds, and $26,512.52 in PSE&G stock proceeds. Respondent failed to record any of these deposits on the estate's client ledger card. Instead, he recorded two undated, unidentified deposits, totaling $93,397.80, representing all but the deposit of the $8,174.74 in AT&T stock proceeds and the $211.97 Host dividend.

Based on the above, in 2009, respondent deposited $37,667.35 in the old BCB trust account and $101,992.43 in the new BCB trust account, for a total

[13] Respondent maintained more than one ledger card for the estate.

of $139,659.78 in stock dividends and sale proceeds. Yet, his ledgers reflected only $112,187.43 in total deposits.

Respondent disbursed some of the dividends and stock sale proceeds to the beneficiaries. On August 18, 2009, he issued separate old BCB trust account checks to the three beneficiaries, each in the amount of $6,263.21. These payments represented distribution of the $18,789.63 in MWC stock sale proceeds, which was the only asset that respondent had recorded on the estate's "first" ledger card. However, instead of recording a $6,263.21 distribution to each beneficiary, he recorded $6,000. Thus, respondent had recorded $789.63 less than the actual amount of distributions. To zero out the ledger card, respondent disbursed $789.63 to the Cresci firm, without reference to a check number.

On December 4, 2009, respondent distributed from the new BCB trust account $25,000 to each beneficiary, which, he claimed, in a December 18, 2009 letter to Bartosiewicz, represented stock proceeds totaling $75,060.02. In the letter, respondent itemized the proceeds as follows: $65,438.34 in Host stock proceeds, $8,174.74 in AT&T stock proceeds, $111.20 in Lucent stock proceeds, and $1,335.74 in AT&T dividends. Respondent did not mention the $26,512.52 in PSE&G stock proceeds or the $211.97 in Host dividends.

Respondent's records demonstrated that, contrary to his representation in the letter, the $8,174.74 in AT&T proceeds were not included in the $75,000 distribution. Although these proceeds and dividends were included in the $101,784.51 deposited in December 2009, both were omitted from the estate's "second" ledger card, resulting in the entry reflecting $93,397.80 in total monies deposited. After respondent had deducted the $75,000 in distributions to the beneficiaries, on the second ledger card, the balance was $18,397.80, which he mistakenly recorded as $18,497.80. To zero out the second ledger card, respondent recorded, without reference to a check number, an $18,497.80 disbursement to the Cresci firm, noted as reimbursements, expenses, and fees.

At the May 10, 2016 demand interview, respondent told the OAE that the purpose of the December 18, 2009 letter was to confirm that each of the beneficiaries had received a $25,000 distribution from the sale proceeds of the Host, AT&T, and Lucent stocks, in addition to the AT&T dividends. Respondent claimed that, when he distributed the funds, he relied on the estate ledger cards, which recorded the deposits, distributions, and the payment of fees and reimbursement of expenses to the Cresci firm.

Respondent could not explain why the December 18, 2009 letter to Bartosiewicz identified proceeds other than the amounts actually distributed to the beneficiaries at that time (i.e., the $8,174.74 in AT&T proceeds). He did

state, however, that the $18,497.80 withdrawal on the second client ledger card corresponded to two of Margaret's bills from the Hamilton Park Nursing and Rehabilitation Center, charges for the "Gold Medallion" program, which "certifies Fed Exes, things of that nature," and the Cresci firm's "time."

In addition to the stock sale and dividend proceeds that were distributed, as described above, there were stock sale and dividend proceeds that respondent did not distribute to the beneficiaries. As shown above, of the $37,667.35 deposited in the old BCB trust account in 2009, respondent's ledger card reflected the distribution of only the $18,789.63 MWC stock proceeds. According to the ethics complaint, the old BCB trust account records did not reflect any disbursement of the remaining $18,877.72, representing the $12,272.70 Host stock sale proceeds and the $5,587.64 in Verizon stock sale proceeds, which respondent had deposited in the old BCB trust account in August 2009.

Other dividends deposited in the old BCB trust account, in 2009, were neither recorded on the client ledger card nor distributed. They are Host's $307.50, Verizon's $235.69, MWC's $454.40, Idearc's $12.32, and Lucent's $7.47.

In respect of respondent's new BCB trust account, he failed to distribute the $8,174.74 in AT&T stock sale proceeds and the $211.97 Host dividend. Moreover, he never recorded these deposits on the client ledger cards.

At the May 2016 demand interview, respondent was unable to explain his statement to Bartosiewicz, in the December 2009 letter, that he had distributed the $8,174.74 in AT&T stock proceeds. Further, in his June 2016 letter, Cornog stated that, according to respondent, he had distributed the AT&T proceeds "after his expenses and fees were remitted." Respondent asserted that paragraph seven of the retainer agreement permitted him to retain proceeds to pay fees.[14]

Despite respondent's claim that he was attempting to retrieve estate records, he never submitted billing records to support what the OAE characterized as the appropriation of the $8,174.74.

Bartosiewicz claimed that, when Margaret died, she owned 180 shares of Lucent stock. A Lucent stock certificate confirmed the number of shares, as of April 19, 1999, which was six years prior to her death.

[14] Paragraph seven permitted respondent to retain attorney fees from the estate's assets, plus costs and advanced expenses, prior to distributing the assets to the beneficiaries.

On November 30, 2006, Lucent merged with Alcatel Corporation, resulting in Margaret's receipt of thirty-five shares of Alcatel stock. Although respondent deposited $111.20 in Lucent stock sale proceeds in the new BCB trust account in December 2009, and distributed the proceeds to the beneficiaries as part of the $75,000 distribution that month, Bartosiewicz claimed that the beneficiaries had received the proceeds only from the sale of the thirty-five Alcatel shares, not the Lucent shares. The argument appears not to appreciate the merger.[15]

To summarize the issue of the stock proceeds and dividends, according to the complaint, respondent recovered a total of $139,659.78 in stock dividends and proceeds, but distributed only $93,789.63, leaving a balance of $45,870.15 unpaid. He recovered $111,484.46 in bank account funds, but distributed only $97,500, leaving a balance of $13,984.46. Thus, respondent should have continued to hold $59,854.61 in estate assets.

Bartosiewicz's grievance alleged that respondent failed to prepare and provide him with a final accounting of the estate. Respondent denied this claim, asserting that, on February 24, 2011, Bartosiewicz had signed a

[15] Lucent shareholders received 0.1952 shares of Alcatel stock for each share of Lucent stock. Thus, Margaret's 180 shares of Lucent stock converted to 35.136 shares of Alcatel.

certification of the "Closing of the Estate of Margaret Bartosiewicz," which, together with the estate tax return, comprised the accounting. According to respondent, the purpose of the certification was to obtain Bartosiewicz's acknowledgement that, to the best of his knowledge, all debts and expenses of the estate had been paid and all property distributed. Moreover, respondent asserted, the certification "noted" that the estate was "officially closed."

Despite respondent's testimony, he admitted that, notwithstanding the certification, the estate did have assets that could not be located and that other stocks had escheated to the State of New Jersey. Yet, he still included in Bartosiewicz's certification the representation: "I know of no other property of the estate outstanding."

Respondent did not know whether any final accounting paperwork had been filed with the Surrogate's Office. The Surrogate's Office "Will Book" did not contain a final accounting of Margaret's estate.

When Bartosiewicz signed the February 24, 2011 certification, he understood that additional assets had not yet been distributed, based on paragraph three, which stated that "the remaining Estate property will be distributed to the appropriate beneficiaries via certified mail, FedEx or hand delivery."

On March 31, 2014, Bartosiewicz signed a second certification. Thereafter, he met with respondent on the belief that he would receive any remaining proceeds of the estate. Respondent was unable to "fully explain and confirm" that all assets of the estate had been collected and distributed. Thus, Bartosiewicz directed him to destroy the second certification, as respondent had failed to account for all the stocks and dividends, including his distribution of the funds. Specifically, Bartosiewicz maintained that the estate still held shares of stock in Host, PSE&G, Verizon, and Lucent. Although respondent stated that he would look into the status of the stock, he never reported back to Bartosiewicz. Respondent neither accounted for his attorney fees, nor produced estate closing accounting documents.

Respondent denied that Bartosiewicz had instructed him to destroy the second certification. By that time, respondent was under investigation by the OAE and, thus, he wanted Bartosiewicz to certify that he had handled the estate properly.

Despite Bartosiewicz's February 2011 certification, respondent met with Bartosiewicz and James, in August 2014, to discuss closing the estate, as well as the stocks and monies that "were still out there."

Neither Bartosiewicz nor respondent produced copies of the $25,000 checks paid to each of the beneficiaries in 2006. However, Bartosiewicz

supplied the OAE with a copy of a March 3, 2006 letter from respondent, in which he enclosed a $25,000 "interim" check and a Refunding Bond & Release form, identifying the distribution, and directed Bartosiewicz to return the completed form to respondent's office after it had been signed and notarized. Respondent also stated in the letter that no federal estate tax was due on the distribution and that the estate would pay the tax owed to the State of New Jersey. On March 9, 2006, Bartosiewicz signed the form and had it notarized.

Bartosiewicz also provided the OAE with a copy of the Refunding Bond & Releases signed in 2006 and 2011, both of which were executed in respect of the monies released from Margaret's bank accounts. Although the 2006 release did not identify the distribution as proceeds from a bank account, the 2011 form did.

Despite the amount of funds recovered for the estate, respondent encountered difficulty with the June 24, 2011 distributions of $7,500 to each of the beneficiaries from the new BCB trust account, which he identified as proceeds from Margaret's bank accounts. At the time respondent issued the checks, the new BCB trust account balance was $3,559.73, which was $18,940.27 less than the $22,500 in checks issued to the beneficiaries. Thus, on June 27, 2011, respondent transferred $22,500 from the BCB business

account to the new BCB trust account so that the three $7,500 checks would be honored.

On June 20, 2013, the OAE requested that respondent provide a detailed explanation regarding the June 24, 2011 distribution of $22,500. Nearly two months later, on August 9, 2013, respondent stated that the checks represented "a fee and expense concession" that he had made after a discussion with Bartosiewicz.

At the May 2016 demand audit, the OAE asked respondent why he had given two different explanations for the $22,500 disbursed to the beneficiaries. He replied that the June 24, 2011 letter was a form letter that his staff had used for prior distributions. The OAE examined the language set forth in the June 2011 letter against the 2006 and 2009 form letters sent to Bartosiewicz prior to the distributions made at that time. The content of the June 2011 letter was not the same as that in the 2006 and 2009 letters.

The complaint alleged that respondent misappropriated estate funds when he zeroed out the estate funds, on January 23, 2012, by issuing a $3,278.64 new BCB trust account check to the VNB trust account. The estate ledger reflected the payment of that same amount directly to Bartosiewicz, on May 7, 2012, by way of VNB trust account check number 1040. Respondent's records also contained an "invoice," dated May 7, 2012, stating that, on

January 24, 2012, $3,278.64 was transferred from the new BCB trust account and turned over to Bartosiewicz on May 7, 2012, via that check. According to the 2012 VNB trust account statements, the VNB trust account check number 1040 identified on the ledger and the invoice was never cashed, however. Thus, respondent should have continued to hold the funds intact.

During the May 2016 demand interview, respondent surmised that check number 1040 could have represented small dividends or life insurance premiums that he had recovered for the estate. The OAE asked respondent to produce a copy of the canceled check, explain what the disbursement represented, and provide billing and any other records that supported the check. He never did.

In Cornog's June 10, 2016 letter, he stated that, according to respondent, the funds represented reimbursement of either a refund from Hamilton Park Health Care Center for overbilling or small dividend checks. On the OAE's follow up, Cornog stated that the funds likely represented dividends. The OAE then asked respondent to identify the proceeds that had been used to fund the $3,278.64 disbursement to Bartosiewicz.

It appears that respondent never located a copy of check number 1040. Thus, according to the complaint, when respondent transferred the funds from

the new BCB trust account to the VNB trust account, on January 23, 2012, he was aware that he still owed the funds to the beneficiaries.

The OAE reviewed respondent's new BCB trust account records and discovered that, prior to the January 23, 2012 transfer of the $3,278.64 from the new BCB trust account to the VNB trust account, and his alleged issuance of check number 1040, on May 7, 2012, respondent already had invaded estate funds. Specifically, as shown in the Mortgage Plus matter, from December 14, 2010 through March 15, 2011, the new BCB trust account balance was only $434.73. By March 17, 2011, the new BCB trust account balance was $34.75, which was $3,243.91 less than the amount respondent should have been safeguarding for the estate.

According to the complaint, the $3,243.91 shortage was "aggravated further" because the $3,278.64 was itself short of the $8,386.71 in funds ($8,174.74 AT&T proceeds and $211.97 Host dividends) that respondent should have had in the trust account in December 2009. Respondent never explained how the estate balance had been reduced to $3,278.64, as of January 24, 2012.

Based on respondent's failure to complete the estate by filing a final accounting, and perhaps, too, his failure to distribute all the funds due to the beneficiaries, he was charged with having violated RPC 1.1(a), RPC 1.3, and

RPC 1.4(b). Although the complaint is unclear, the OAE charged respondent with having violated RPC 1.5(a), presumably because he had failed to support the $18,497.80 fee taken from the estate's funds. Respondent had entered into an hourly fee agreement with Bartosiewicz, but the complaint included a charge of a violation of RPC 1.5(c), which applies only to contingent fee cases.

Respondent's failure to maintain estate funds intact resulted in a knowing misappropriation charge, in addition to failure to safeguard funds and failure to promptly disburse the funds to the beneficiaries, a violation of RPC 1.15(a) and (b). In addition, based on alleged misrepresentations made to the estate's executor and to the OAE, respondent was charged with having violated RPC 8.1(a) and RPC 8.4(c).

Although respondent was charged with RPC 8.4(b), the complaint fails to identify the criminal statute that he allegedly violated. Finally, respondent was charged with having committed unspecified recordkeeping violations, which presumably include the inaccurate entries on the client ledger card.

COUNT FIVE: XIV-2017-0588E (Failure to Cooperate -- Bartosiewicz)

The fifth count of the ethics complaint charged respondent with failure to cooperate with the OAE in its investigation of the Bartosiewicz grievance, a violation of RPC 8.1(b). Respondent's lack of cooperation in the Bartosiewicz

estate matter began in May 2016 and continued through the filing of the motion seeking his temporary suspension. The lack of cooperation took the form of not providing documents requested during the course of the investigation, although respondent did appear for several demand interviews.

Respondent never produced the records, despite follow up requests from the OAE, and his claim that he was looking for them.

In the OAE's May 17, 2016 letter to Cornog, respondent was directed to produce the final accounting submitted to the Surrogate's Office or any court. Cornog replied that respondent had provided a final accounting to Bartosiewicz when he signed the two certifications. Respondent never provided the OAE with a copy of the final accounting, and he never replied to the OAE's request that he explain why the Surrogate's Office had no record of the final accounting.

In its May 17, 2016 letter, the OAE also requested respondent to submit the following: a confirmation letter sent to Schultz, Bartosiewicz's sister, acknowledging that she did not sign a Refunding Bond and Release; his hourly billing records used to support the $18,497.80 in charges to the estate as stated on the 2009 second estate client ledger card; an explanation of how he had disbursed the $8,174.74 in AT&T stock proceeds, as claimed in his December 18, 2009 letter to Bartosiewicz; a copy of the retainer agreement signed by

Bartosiewicz; and a copy of canceled VNB trust account check number 1040, and an explanation of what the $3,278.64 represented, as well as billing and any other records that would explain the issuance of the check. The OAE set a deadline of May 27, 2016.

Despite an extension to June 8, 2016, Cornog informed the OAE, on June 10, 2016, that: respondent could not locate a letter sent to Schultz, but, instead, believed that confirmation was done over the telephone; respondent's hourly billing records were determined by multiplying the hourly rate by the number of hours worked on the estate file; the AT&T stock sale proceeds check was disbursed to the estate beneficiaries after expenses and fees were remitted; the $3,278.64 represented either a reimbursement of Hamilton Park Health Care Center's overbilling or small dividend checks; and that a final accounting had been provided to Bartosiewicz the day he signed the two certifications. Cornog also provided a copy of the signed retainer agreement, dated September 16, 2005.

In a June 17, 2016 letter to Cornog, the OAE again directed that respondent provide, by June 30, hourly billing records supporting the $18,497.80 in charges to the estate, as stated on the second estate client ledger card; an explanation of, and the cancelled check(s) showing, the disbursement of the $8,174.74 of AT&T stock proceeds to the estate beneficiaries; a copy of

VNB trust account check number 1040; an explanation as to what proceeds were used to fund the $3,278.64 disbursement to Bartosiewicz; and the final accounting provided to the Surrogate's Office or any court for the estate. Despite another extension, respondent still did not comply with the OAE's directives.

By letter dated July 11, 2016, Cornog replied that respondent was attempting to retrieve the billing records (supporting the $18,497.80 in fees charged to the estate), but respondent's office had changed computers and programs where the billing records were stored from 2005-2011; that the fees included (but were not limited to) a reimbursement to the Cresci firm for payments to the Hamilton Park Nursing Home, on grievant's behalf; and that the date of death bank figures were not the withdrawal figures, as the withdrawal amounts did not account for burial expenses and inheritance taxes paid by respondent. Cornog's letter also stated that respondent was seeking records concerning the $8,174.74 of AT&T stock proceeds from the previously mentioned retired computers; that paragraph seven in the client retainer agreement signed by Bartosiewicz appeared to allow respondent to retain the proceeds for fees as appropriate; that respondent was attempting to obtain a copy of VNB trust account check number 1040 for $3,278.64; and that respondent maintains his position that a final accounting was provided to

Bartosiewicz on February 24, 2011, when Bartosiewicz signed two Certifications as Executor of his mother's estate.

After yet another request from the OAE, on July 15, 2016, for an explanation regarding the transfer of the billing records from the old computer system to the new, the billing records supporting the $8,174.74 in fees, and an explanation for the absence of a recording in the will book, and another extension, on August 5, 2016, Cornog informed the OAE that he could not contact respondent. The OAE granted an additional extension to August 15, 2016.

Having heard nothing, the OAE sought respondent's temporary suspension, on September 21, 2016. After the Court granted respondent numerous extensions of time to file a reply to the petition, which did not result in any filing by respondent or Cornog, the Court granted the OAE's motion and suspended respondent, effective November 17, 2016.

The allegations in count four of the complaint clearly and convincingly establish that respondent captured $251,144.24 in estate assets, but distributed only $116,289.63 to the beneficiaries. It is difficult to determine what happened to the $134,854.61 difference. None of the allegations claim that the disbursements were made to cover Margaret's outstanding debts, expenses, and funeral costs. It is not clear how much respondent was entitled to receive in

attorney fees, because respondent failed to produce the requested records. Despite the omission of these facts, the complaint's allegations establish respondent's failure to distribute certain assets.

Respondent never distributed the $8,174.74 in AT&T stock proceeds or the $211.97 in Host dividends, contrary to his representation in the December 18, 2009 letter to Bartosiewicz. Further, he did not disburse $18,877.72, which comprised $12,272.70 in Host stock proceeds and $5,587.64 in Verizon stock proceeds. Yet, again, there is no explanation for this. Perhaps these funds covered attorney and other fees and costs, plus certain expenses, as described above. There is also the possibility that respondent's failure to record certain deposits resulted in the negligent misappropriation of estate funds.

The complaint does establish that respondent purportedly issued a $3,278.64 check to Bartosiewicz, but it was never cashed, Bartosiewicz denied having received it, and respondent either was unable to or refused to substantiate his claim. Yet, the allegations establish, clearly and convincingly that, as early as March 2011, when the new BCB trust account balance was only $34, the $3,278.64 funds were gone.

"[C]ircumstantial evidence can add up to the conclusion that a lawyer 'knew' or 'had to know' that client funds were being invaded." In re Johnson, 105 N.J. 249, 258 (1987). Accord In re Cavuto, 160 N.J. 185, 196 (1999)

(noting that the circumstantial evidence clearly and convincingly established that the attorney knew or had to know that he had repeatedly invaded client funds that were to be kept inviolate); In re Roth, 140 N.J. 430, 445 (1995) (observing that circumstantial evidence can add up to the conclusion that a lawyer knew, or had to know, that a client's funds were being invaded); and In re Davis, 127 N.J. 118 (1992) (attorney disbarred for knowing misappropriation of client funds based on "overwhelming" circumstantial evidence involving the absence of deposits in the trust account to cover disbursements, the removal of a legal fee that exceeded the amount of the trust account deposit, and premature disbursements).

In our view, the circumstantial evidence of knowing misappropriation in this case is overwhelming. Respondent offered several stories regarding check number 1040, but, in the end, he was unable to substantiate having issued the check or the purpose of the disbursement. Moreover, the record contains no evidence to establish that the check was ever issued. Given the $34 trust account balance many months prior to, and up until, the alleged issuance of the check, the circumstantial evidence demonstrates that respondent had, at some point, knowingly misappropriated the funds.

To conclude, respondent knowingly misappropriated at least $3,278.64 in trust funds belonging to the Bartosiewicz estate, a violation of Wilson, in

addition to RPC 1.15(a) and (b). He also violated RPC 1.3, by dithering in the completion of the estate; RPC 1.4(b), by failing to keep Bartosiewicz informed about the various distributions and to follow up on promises to investigate various issues; RPC 8.1(a) and RPC 8.4(c), by making various misrepresentations to Bartosiewicz and the OAE; and RPC 8.1(b), by failing to cooperate in the OAE's investigation of the grievance. Indeed, respondent subverted that investigation.

Although respondent acted negligently, in respect of keeping his books and records, he did not exhibit gross neglect. There is no evidence that his fee was unreasonable because the complaint does not allege the amount that respondent charged for fees. Thus, a violation of RPC 1.5(a) cannot be sustained. No contingent fee is at issue and, therefore, RPC 1.5(c) does not apply to this case. Finally, the complaint contains no support that respondent engaged in criminal conduct. Consequently, we dismiss the charges that respondent violated RPC 1.1(a), RPC 1.5(a), RPC 1.5(c), and RPC 8.4(b).

In summary, the allegations of the ethics complaint clearly and convincingly establish that respondent knowingly misappropriated at least $16,675 in the Figueroa matter, $6,781.09 in the Mortgage Plus matter, and at least $3,278.62 in the Bartosiewicz matter. In addition, he committed the following ethics infractions:

Figueroa: RPC 1.4(b), RPC 1.15(a), RPC 1.15(b), RPC 1.5(c), RPC 8.1(a), RPC 8.4(b), RPC 8.4(c)

Mortgage Plus: RPC 1.15(a), RPC 1.15(b), RPC 1.15(d), RPC 8.1(a), RPC 8.1(b), RPC 8.4(c)

Bartosiewicz: RPC 1.3, RPC 1.4(b), RPC 1.15(a) and (b), RPC 8.1(a) and (b), and RPC 8.4(c)

In our view, respondent must be disbarred for knowingly misappropriating client, escrow, and trust funds in the DRB 18-196 matter. Wilson, 81 N.J. at 455 n.1, 461, and Hollendonner, 102 N.J. at 26-27. If the Court determines that respondent did not knowingly misappropriate any funds, we, nevertheless, recommend his disbarment for his cumulative violations in all three matters, as described below.

In the matter docketed at DRB 18-124, we determine that a two-year suspension is sufficient for respondent's practicing while suspended. The discipline imposed on attorneys who engage in such conduct ranges from a lengthy suspension to disbarment, depending on the presence of other misconduct, the attorney's disciplinary history, and aggravating or mitigating factors. See, e.g., In re Nihamin, 235 N.J. 144 (2018) (one-year suspension imposed on attorney who continued to practice law after he received a three-month suspension in New York; even though the attorney did not actively engage in the practice of law during the suspension, he discussed client matters with law firm personnel; prior admonition and three-month suspension arising

from conviction of third degree misapplication of entrusted property); In re Poley, 232 N.J. 195 (2018) (one-year suspension imposed on attorney who, following her suspension in New York for failure to comply with the state's attorney registration requirements, represented a client in a criminal proceeding); In re Phillips, 224 N.J. 274 (2016) (one-year suspension imposed on attorney who represented the wife in a matrimonial matter against her pro se husband; following a 2012 temporary suspension, the attorney obtained the husband's consent to an adjournment of a motion scheduled to be heard while the suspension was still in effect, typed the letter to the court requesting the adjournment, directed the husband to sign and file the request, and delivered "paperwork" to his client at the courthouse prior to the hearing; prepared a cross-motion for her; provided "substantial amounts of information" to her; provided a certification to the court in which he acknowledged assisting his client with the adjournment and her cross-motion; and stated that both parties had dropped off or picked up papers at his law office, including after his date of suspension; extensive disciplinary history); In re Viteritto, 227 N.J. 391 (2017) (default; two-year suspension imposed on attorney who, following a temporary suspension for failure to comply with the determination of a fee arbitration determination, practiced law in four client matters; he wrote three letters in two client matters, and filed a motion to dismiss the complaint in a

third matter, which had to be dismissed given his suspended status; violations of RPC 5.5(a)(1) and RPC 8.4(d); in a fourth matter, he instituted a lawsuit in behalf of a client, with no written fee agreement, and, for six months, participated in the litigation, including the filing of a certification identifying himself as authorized to practice law in New Jersey, a violation of RPC 1.5(b), RPC 3.3(a)(1), RPC 5.5(a)(1), and RPC 8.4(a)–(d); he also failed to file an affidavit of compliance with R. 1:20-20 and failed to cooperate with disciplinary authorities, a violation of RPC 8.1(b) and RPC 8.4(d); although we had determined to impose a one-year suspension, the attorney failed to appear for the Court's order to show cause); In re Saint-Cyr, 210 N.J. 615 (2012) (default; two-year suspension imposed on attorney who, in addition to practicing law while suspended, exhibited gross neglect and lack of diligence, and failed to communicate with the client in one matter, failed to communicate with the client in a second matter, and failed to file a written reply to the grievance in both matters; prior censure in a default); In re Adelhock, 232 N.J. 359 (2018) (three-year suspension imposed on attorney who practiced law following his temporary suspension for failure to cooperate with disciplinary authorities, violations of RPC 5.5(a)(1) and RPC 8.4(b); the attorney sent a letter to a daycare center in behalf of a child's parents, placing the center on notice of potential claims relating to the child's care, and represented co-

owners of a property in respect of a homeowners insurance policy claim; the attorney also had failed to pay state and federal income taxes since 2008; practiced while ineligible, failed to communicate with a client, failed to promptly disburse funds to a client, commingled personal funds and earned fees in the trust account in order to hide personal funds from creditors, including the Internal Revenue Service, failed to comply with the recordkeeping requirements of R. 1:21-6, failed to cooperate with disciplinary authorities, and engaged in a "significant and prolonged course of and dishonesty and fraud"); In re Walsh, Jr., 202 N.J. 134 (2010) (attorney disbarred on a certified record for practicing law while suspended by attending a case conference and negotiating a consent order on behalf of five clients and making a court appearance on behalf of seven clients; the attorney also was guilty of gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities during the investigation and processing of these grievances; the attorney failed to appear on an order to show cause before the Court; extensive disciplinary history: reprimanded in 2006, censured in 2007, and suspended twice in 2008); and In re Olitsky, 174 N.J. 352 (2002) (disbarment for attorney who agreed to represent clients in bankruptcy cases after he was suspended, did not advise them that he was suspended from practice, charged clients for the prohibited representations,

signed another attorney's name on the petitions, without that attorney's consent, and then filed the petitions with the bankruptcy court; in another matter, the attorney agreed to represent a client in a mortgage foreclosure after he was suspended, accepted a fee, and took no action on the client's behalf; the attorney also made misrepresentations to the court, was convicted of stalking a woman with whom he had had a romantic relationship, and engaged in the unauthorized practice of law; prior private reprimand, admonition, two three-month suspensions, and two six-month suspensions).

Here, despite the somewhat limited evidence that respondent practiced law while suspended, a two-year suspension is appropriate, given respondent's default.

Like this case, the two-year suspension cases both involve defaults. Although respondent's conduct can be described as minor, compared to that of the attorneys in those cases, given his disciplinary history, and the absence of any mitigation weighing in his favor, a two-year suspension is appropriate.

In the matter docketed at DRB 18-196, the most serious charge is RPC 8.4(b), which is supported by respondent's conviction of uttering a false document, a fourth-degree crime, arising out of the forgery of Figueroa's signature on the settlement documents. At a minimum, this violation warrants a one-year suspension. See, e.g., In re White, 191 N.J. 553 (2007) (one-year

suspension imposed on attorney who, without her friend's authority, used the friend's credit to apply for a student loan and then forged the friend's signature on the application; the attorney admitted the forgery after she had been charged, in two counties, with forgery and uttering a false document with the purpose to defraud).

In all three client matters, respondent lied to his clients, third parties, and the OAE. Individual misrepresentations to clients, third parties, and the OAE ordinarily result in the imposition of at least a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989) (client); In re Walcott, 217 N.J. 367 (2014) (third party); and In re Sunberg, 156 N.J. 396 (1998) (OAE). In this case, however, respondent did not make a misrepresentation here and there. Rather, he lied repeatedly, when expedient, to Figueroa, Bock, Bartosiewicz, and the OAE.

The extent and degree of respondent's pathological dishonesty alone warrant a two- to three-year suspension. See, e.g., In re Katsios, 185 N.J. 424 (2006) (two-year suspension for attorney who improperly released escrow funds to his cousin, a party to the escrow agreement, and then falsified bank records and trust account reconciliations to mislead the ethics investigator that the funds had remained in escrow); In re Silberberg, 144 N.J. 215 (1996) (two-year suspension imposed on attorney who, in a real estate closing, allowed the buyer to sign the name of the co-borrower; the attorney then witnessed and

notarized the "signature" of the co-borrower; the attorney stipulated that he knew at the time that the co-borrower was deceased; after the filing of the ethics grievance against him, the attorney falsely stated that the co-borrower had attended the closing; on another occasion, the attorney sent a false seven-page certification to the district ethics committee in order to conceal his improprieties); and In re Penn, 172 N.J. 38 (2002) (three-year suspension imposed on attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, in order to placate the client, the attorney lied that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible).

In Figueroa, respondent settled his client's case, never told her of the settlement, even when she asked him about the status of her case, forged her signature on the settlement documents, fabricated a letter to her, attaching a breakdown of the settlement funds, and repeatedly lied to the OAE about the matter during its investigation.

In the Mortgage Plus matter, respondent lied to the OAE when he stated that he had retained the disputed $6,781.09 in escrow, knowing that he had

invaded the funds and that he was obligated to hold the monies intact until the dispute was resolved.

In Bartosiewicz, respondent not only lied to Bartosiewicz about the status of the estate when he met with him to sign the 2011 certification, but also he strong-armed Bartosiewicz into signing another certification, three years later, so that the OAE would believe that Bartosiewicz was satisfied with respondent's handling of the estate.

The degree and depth of respondent's dishonesty, some – if not all – of which was for the purpose of personal gain, extends well beyond that of the attorneys in the above-referenced cases. Thus, at a minimum, a three-year suspension would be in order for respondent's lies.

The remaining violations call for admonitions or reprimands, at most, and, therefore, do not serve to enhance a three-year suspension any further. See, e.g., In the Matter of Andrew M. Newman, DRB 18-153 (July 23, 2018) (admonition for recordkeeping violations); In the Matter of Fred Braverman, DRB 17-015 (April 25, 2017) (admonition for lack of diligence and failure to communicate with the client); In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (admonition imposed on attorney who 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); and In re Mitnick, 231 N.J. 133 (2017) (reprimand imposed on attorney who failed to safeguard funds and committed recordkeeping violations).

The question becomes whether the totality of respondent's misconduct in this matter, plus the misconduct in DRB 18-124 (practicing while suspended, for which we determined to impose a two-year suspension), renders respondent unsalvageable, and, thus, unworthy of continued membership in this State's bar. In our view, it most certainly does, especially when other aggravating factors are taken into consideration.

We have not yet mentioned that, in addition to these matters, docketed at DRB 18-124 and DRB 18-196, respondent defaulted in DRB 18-075, the matter in which the Court recently imposed a censure on respondent. Further, respondent has, over the years, repeatedly filed motions to vacate that do nothing more than parrot the same arguments, regardless of their applicability to the case at hand or our prior rejection of them.

Finally, in further aggravation, it has been nearly two years since respondent's November 2016 temporary suspension, and, yet, he refuses to file the required affidavit of compliance with R. 1:20-20, thus establishing that he has little to no interest in practicing law.

In determining that disbarment is appropriate for the totality of respondent's conduct in both matters, irrespective of the knowing misappropriation charges, we rely on In the Matter of Marc D'Arienzo, DRB 16-345 (May 25, 2017) (slip op. at 26-27) in which we stated:

> Given the contemptible set of facts present in these combined matters, we must consider the ultimate question of whether the protection of the public requires respondent's disbarment. When the totality of respondent's behavior in all matters, past and present, is examined, we find ample proof that he is unsalvageable, and that no amount of redemption, counseling, or education will overcome his penchant for disregarding ethics rules. As the Court held in another matter, "[n]othing in the record inspires confidence that if respondent were to return to practice [from his current suspension] that his conduct would improve. Given his lengthy disciplinary history and the absence of any hope for improvement, we expect that his assault on the Rules of Professional Conduct would continue." In re Vincenti, 152 N.J. 253, 254 (1998). Similarly, we determine that, based on his extensive record of misconduct and demonstrable refusal to learn from his mistakes, there is no evidence that respondent can return to practice and improve his conduct. Accordingly, we recommend respondent's disbarment.

The Court agreed with our recommendation and disbarred D'Arienzo. In re D'Arienzo, 232 N.J. 275 (2018).

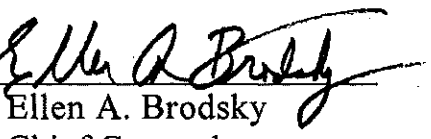
Here, respondent has demonstrated, clearly and convincingly, that he is unsalvageable. He should be disbarred for knowing misappropriation of client, escrow, and trust funds. In the alternative, should the Court decline to find that

respondent is guilty of knowing misappropriation, respondent should, nevertheless, be disbarred for his inability or refusal to conform his conduct to the standards required of all members of the New Jersey Bar.

Members Gallipoli and Rivera were recused. Member Hoberman 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
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Peter Jonathan Cresci
Docket Nos. DRB 18-124 and 18-196

Decided: December 12, 2018

Disposition: Disbar

Members	Disbar	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli		X	
Hoberman			X
Joseph	X		
Rivera		X	
Singer	X		
Zmirich	X		
Total:	6	2	1

Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
D-57 September Term 2018
082189

In the Matter of

Peter J. Cresci,

An Attorney At Law

(Attorney No. 025281992)

FILED

MAR 21 2019

CLERK

ORDER

The Disciplinary Review Board having filed with the Court its decision in DRB 18-124 and DRB 18-196, recommending on the records certified to the Board pursuant to Rule 1:20-4(f)(default by respondent) that **Peter J. Cresci** of **Bayonne**, who was admitted to the bar of this State in 1992, and who has been temporarily suspended from the practice of law since November 17, 2016, be disbarred for violating RPC 1.3(lack of diligence), RPC 1.4(b)(failure to communicate with client), RPC 1.5(c)(on conclusion of a contingent fee matter, failure to provide the client with a written statement of the outcome, showing also any remittance to the client and its method of determination), RPC 1.15(a)(failure to safeguard funds of a third person and commingling of funds), RPC 1.15(b)(failure to make a prompt disposition of funds in which a client or third person has an interest), RPC 1.15(d)(failure to comply with the recordkeeping requirements of Rule 1:20-16), RPC 5.5(a)(1)(practicing law while suspended), RPC 8.1(a)(false statement of material fact to a disciplinary

authority) RPC 8.1(b)(failure to cooperate with disciplinary authorities), RPC 8.4(b)(commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), RPC 8.4(c)(conduct involving dishonesty, fraud, deceit , or misrepresentation), and the principles of In re Wilson, 81 N.J. 451 (1979) and In re Hollendonner, 102 N.J. 21 (1985)(knowing misappropriation of client and/or escrow funds);

And **Peter J. Cresci** having been ordered to show cause why he should not be disbarred or otherwise disciplined;

And good cause appearing;

It is ORDERED that **Peter J. Cresci** be disbarred, effective immediately, and that his name be stricken from the roll of attorneys;

ORDERED that **Peter J. Cresci** be and hereby is permanently restrained and enjoined from practicing law; and it is further

ORDERED that all funds, if any, currently existing in any New Jersey financial institution maintained by **Peter J. Cresci** pursuant to Rule 1:21-6, which were restrained from disbursement by Order of the Court filed November 17, 2016, shall be transferred by the financial institution to the Clerk of the Superior Court, who is directed to deposit the funds in the Superior Court Trust Fund pending further Order of this Court; and it is further

ORDERED that **Peter J. Cresci** comply with Rule 1:20-20 dealing with disbarred attorneys; and it is further

ORDERED that the entire record of this matter be made a permanent part of respondent's file as an attorney at law of this State; and it is further

ORDERED that respondent reimburse the Disciplinary Oversight Committee for appropriate administrative costs and actual expenses incurred in the prosecution of this matter, as provided in Rule 1:20-17.

WITNESS, the Honorable Stuart Rabner, Chief Justice,
at Trenton, this 19th day of March, 2019.

CLERK OF THE SUPREME COURT

INTERNAL PROCEDURAL RULES

BOARD OF DISCIPLINARY APPEALS

Current through June 21, 2018

Contents

I. GENERAL PROVISIONS 1

Rule 1.01. Definitions 1

Rule 1.02. General Powers 1

Rule 1.03. Additional Rules in Disciplinary Matters 1

Rule 1.04. Appointment of Panels 1

Rule 1.05. Filing of Pleadings, Motions, and Other Papers 1

Rule 1.06. Service of Petition 2

Rule 1.07. Hearing Setting and Notice 2

Rule 1.08. Time to Answer 2

Rule 1.09. Pretrial Procedure 2

Rule 1.10. Decisions 3

Rule 1.11. Board of Disciplinary Appeals Opinions 3

Rule 1.12. BODA Work Product and Drafts 3

Rule 1.13. Record Retention 3

Rule 1.14. Costs of Reproduction of Records 3

Rule 1.15. Publication of These Rules 3

II. ETHICAL CONSIDERATIONS 3

Rule 2.01. Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases 3

Rule 2.02. Confidentiality 4

Rule 2.03. Disqualification and Recusal of BODA Members 4

III. CLASSIFICATION APPEALS 4

Rule 3.01. Notice of Right to Appeal 4

Rule 3.02. Record on Appeal 4

IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS 4

Rule 4.01. Perfecting Appeal 4

Rule 4.02. Record on Appeal 5

Rule 4.03. Time to File Record 6

Rule 4.04. Copies of the Record 6

Rule 4.05. Requisites of Briefs 6

Rule 4.06. Oral Argument 7

Rule 4.07. Decision and Judgment 7

Rule 4.08. Appointment of Statewide Grievance Committee 8

Rule 4.09. Involuntary Dismissal 8

V. PETITIONS TO REVOKE PROBATION 8

Rule 5.01. Initiation and Service 8

Rule 5.02. Hearing 8

VI. COMPULSORY DISCIPLINE 8
Rule 6.01. Initiation of Proceeding 8
Rule 6.02. Interlocutory Suspension 8
VII. RECIPROCAL DISCIPLINE 9
Rule 7.01. Initiation of Proceeding 9
Rule 7.02. Order to Show Cause 9
Rule 7.03. Attorney's Response 9
VIII. DISTRICT DISABILITY COMMITTEE HEARINGS 9
Rule 8.01. Appointment of District Disability Committee 9
Rule 8.02. Petition and Answer 9
Rule 8.03. Discovery 9
Rule 8.04. Ability to Compel Attendance 10
Rule 8.05. Respondent's Right to Counsel 10
Rule 8.06. Hearing 10
Rule 8.07. Notice of Decision 10
Rule 8.08. Confidentiality 10
IX. DISABILITY REINSTATEMENTS 10
Rule 9.01. Petition for Reinstatement 10
Rule 9.02. Discovery 10
Rule 9.03. Physical or Mental Examinations 10
Rule 9.04. Judgment 10
X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS 11
Rule 10.01. Appeals to the Supreme Court 11

INTERNAL PROCEDURAL RULES

Board of Disciplinary Appeals

Current through June 21, 2018

I. GENERAL PROVISIONS

Rule 1.01. Definitions

(a) "BODA" is the Board of Disciplinary Appeals.

(b) "Chair" is the member elected by BODA to serve as chair or, in the Chair's absence, the member elected by BODA to serve as vice-chair.

(c) "Classification" is the determination by the CDC under TRDP 2.10 or by BODA under TRDP 7.08(C) whether a grievance constitutes a "complaint" or an "inquiry."

(d) "BODA Clerk" is the executive director of BODA or other person appointed by BODA to assume all duties normally performed by the clerk of a court.

(e) "CDC" is the Chief Disciplinary Counsel for the State Bar of Texas and his or her assistants.

(f) "Commission" is the Commission for Lawyer Discipline, a permanent committee of the State Bar of Texas.

(g) "Executive Director" is the executive director of BODA.

(h) "Panel" is any three-member grouping of BODA under TRDP 7.05.

(i) "Party" is a Complainant, a Respondent, or the Commission.

(j) "TDRPC" is the Texas Disciplinary Rules of Professional Conduct.

(k) "TRAP" is the Texas Rules of Appellate Procedure.

(l) "TRCP" is the Texas Rules of Civil Procedure.

(m) "TRDP" is the Texas Rules of Disciplinary Procedure.

(n) "TRE" is the Texas Rules of Evidence.

Rule 1.02. General Powers

Under TRDP 7.08, BODA has and may exercise all the powers of either a trial court or an appellate court, as the case may be, in hearing and determining disciplinary proceedings. But TRDP 15.01 [17.01] applies to the enforcement of a judgment of BODA.

Rule 1.03. Additional Rules in Disciplinary Matters

Except as varied by these rules and to the extent applicable, the TRCP, TRAP, and TRE apply to all disciplinary matters before BODA, except for appeals from classification decisions, which are governed by TRDP 2.10 and by Section 3 of these rules.

Rule 1.04. Appointment of Panels

(a) BODA may consider any matter or motion by panel, except as specified in (b). The Chair may delegate to the Executive Director the duty to appoint a panel for any BODA action. Decisions are made by a majority vote of the panel; however, any panel member may refer a matter for consideration by BODA sitting en banc. Nothing in these rules gives a party the right to be heard by BODA sitting en banc.

(b) Any disciplinary matter naming a BODA member as Respondent must be considered by BODA sitting en banc. A disciplinary matter naming a BODA staff member as Respondent need not be heard en banc.

Rule 1.05. Filing of Pleadings, Motions, and Other Papers

(a) **Electronic Filing.** All documents must be filed electronically. Unrepresented persons or those without the means to file electronically may electronically file documents, but it is not required.

(1) Email Address. The email address of an attorney or an unrepresented party who electronically files a document must be included on the document.

(2) Timely Filing. Documents are filed electronically by emailing the document to the BODA Clerk at the email address designated by BODA for that purpose. A document filed by email will be considered filed the day that the email is sent. The date sent is the date shown for the message in the inbox of the email account designated for receiving filings. If a document is sent after 5:00 p.m. or on a weekend or holiday officially observed by the State of Texas, it is considered filed the next business day.

(3) It is the responsibility of the party filing a document by email to obtain the correct email address for BODA and to confirm that the document was received by BODA in legible form. Any document that is illegible or that cannot be opened as part of an email attachment will not be considered filed. If a document is untimely due to a technical failure or a system outage, the filing party may seek appropriate relief from BODA.

(4) Exceptions.

(i) An appeal to BODA of a decision by the CDC to classify a grievance as an inquiry is not required to be filed electronically.

(ii) The following documents must not be filed electronically:

a) documents that are filed under seal or subject to a pending motion to seal; and

b) documents to which access is otherwise restricted by court order.

(iii) For good cause, BODA may permit a party to file other documents in paper form in a particular case.

(5) Format. An electronically filed document must:

(i) be in text-searchable portable document format (PDF);

(ii) be directly converted to PDF rather than scanned, if possible; and

(iii) not be locked.

(b) A paper will not be deemed filed if it is sent to an individual BODA member or to another address other than the address designated by BODA under Rule 1.05(a)(2).

(c) **Signing.** Each brief, motion, or other paper filed must be signed by at least one attorney for the party or by the party pro se and must give the State Bar of Texas card number, mailing address, telephone number, email address, and fax number, if any, of each attorney whose name is signed or of the party (if applicable). A document is considered signed if the document includes:

(1) an "/s/" and name typed in the space where the signature would otherwise appear, unless the document is notarized or sworn; or

(2) an electronic image or scanned image of the signature.

(d) **Paper Copies.** Unless required by BODA, a party need not file a paper copy of an electronically filed document.

(e) **Service.** Copies of all documents filed by any party other than the record filed by the evidentiary panel clerk or the court reporter must, at or before the time of filing, be served on all other parties as required and authorized by the TRAP.

Rule 1.06. Service of Petition

In any disciplinary proceeding before BODA initiated by service of a petition on the Respondent, the petition must be served by personal service; by certified mail with return receipt requested; or, if permitted by BODA, in any other manner that is authorized by the TRCP and reasonably calculated under all the circumstances to apprise the Respondent of the proceeding and to give him or her reasonable time to appear and answer. To establish service by certified mail, the return receipt must contain the Respondent's signature.

Rule 1.07. Hearing Setting and Notice

(a) **Original Petitions.** In any kind of case initiated by the CDC's filing a petition or motion with BODA, the CDC may contact the BODA Clerk for the next regularly available hearing date before filing the original petition. If a hearing is set before the petition is filed, the petition must state the date, time, and place of the hearing. Except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the hearing date must be at least 30 days from the date that the petition is served on the Respondent.

(b) **Expedited Settings.** If a party desires a hearing on a matter on a date earlier than the next regularly available BODA hearing date, the party may request an expedited setting in a written motion setting out the reasons for the request. Unless the parties agree otherwise, and except in the case of a petition to revoke probation under TRDP 2.23 [2.22], the expedited hearing setting must be at least 30 days from the date of service of the petition, motion, or other pleading. BODA has the sole discretion to grant or deny a request for an expedited hearing date.

(c) **Setting Notices.** BODA must notify the parties of any hearing date that is not noticed in an original petition or motion.

(d) **Announcement Docket.** Attorneys and parties appearing before BODA must confirm their presence and present any questions regarding procedure to the BODA Clerk in the courtroom immediately prior to the time docket call is scheduled to begin. Each party with a matter on the docket must appear at the docket call to give an announcement of readiness, to give a time estimate for the hearing, and to present any preliminary motions or matters. Immediately following the docket call, the Chair will set and announce the order of cases to be heard.

Rule 1.08. Time to Answer

The Respondent may file an answer at any time, except where expressly provided otherwise by these rules or the TRDP, or when an answer date has been set by prior order of BODA. BODA may, but is not required to, consider an answer filed the day of the hearing.

Rule 1.09. Pretrial Procedure

(a) **Motions.**

(1) Generally. To request an order or other relief, a party must file a motion supported by sufficient cause with proof of service on all other parties. The motion must state with particularity the grounds on which it is based and set forth the relief sought. All supporting briefs, affidavits, or other documents must be served and filed with the motion. A party may file a response to a motion at any time before BODA rules on the motion or by any deadline set by BODA. Unless otherwise required by these rules or the TRDP, the form of a motion must comply with the TRCP or the TRAP.

(2) For Extension of Time. All motions for extension of time in any matter before BODA must be in writing, comply with (a)(1), and specify the following:

(i) if applicable, the date of notice of decision of the evidentiary panel, together with the number and style of the case;

(ii) if an appeal has been perfected, the date when the appeal was perfected;

(iii) the original deadline for filing the item in question;

(iv) the length of time requested for the extension;

(v) the number of extensions of time that have been granted previously regarding the item in question; and

(vi) the facts relied on to reasonably explain the need for an extension.

(b) **Pretrial Scheduling Conference.** Any party may request a pretrial scheduling conference, or BODA on its own motion may require a pretrial scheduling conference.

(c) **Trial Briefs.** In any disciplinary proceeding before BODA, except with leave, all trial briefs and memoranda must be filed with the BODA Clerk no later than ten days before the day of the hearing.

(d) **Hearing Exhibits, Witness Lists, and Exhibits Tendered for Argument.** A party may file a witness list, exhibit, or any other document to be used at a hearing or oral argument before the hearing or argument. A party must bring to the hearing an original and 12 copies of any document that was not filed at least one business day before the hearing. The original and copies must be:

(1) marked;

(2) indexed with the title or description of the item offered as an exhibit; and

(3) if voluminous, bound to lie flat when open and tabbed in accordance with the index.

All documents must be marked and provided to the opposing party before the hearing or argument begins.

Rule 1.10. Decisions

(a) **Notice of Decisions.** The BODA Clerk must give notice of all decisions and opinions to the parties or their attorneys of record.

(b) **Publication of Decisions.** BODA must report judgments or orders of public discipline:

(1) as required by the TRDP; and

(2) on its website for a period of at least ten years following the date of the disciplinary judgment or order.

(c) **Abstracts of Classification Appeals.** BODA may, in its discretion, prepare an abstract of a classification appeal for a public reporting service.

Rule 1.11. Board of Disciplinary Appeals Opinions

(a) BODA may render judgment in any disciplinary matter with or without written opinion. In accordance with TRDP 6.06, all written opinions of BODA are open to the public and must be made available to the public reporting services, print or electronic, for publishing. A majority of the members who participate in considering the disciplinary matter must determine if an opinion will be written. The names of the participating members must be noted on all written opinions of BODA.

(b) Only a BODA member who participated in the decision of a disciplinary matter may file or join in a written opinion concurring in or dissenting from the judgment of BODA. For purposes of this rule, in hearings in which evidence is taken, no member may participate in the decision unless that member was present at the hearing. In all other proceedings, no member may participate unless that member has reviewed the record. Any member of BODA may file a written opinion in connection with the denial of a hearing or rehearing en banc.

(c) A BODA determination in an appeal from a grievance classification decision under TRDP 2.10 is not a judgment for purposes of this rule and may be issued without a written opinion.

Rule 1.12. BODA Work Product and Drafts

A document or record of any nature—regardless of its form, characteristics, or means of transmission—that is created or produced in connection with or related to BODA's adjudicative decision-making process is not subject to disclosure or discovery. This includes documents prepared by any BODA member, BODA staff, or any other person acting on behalf of or at the direction of BODA.

Rule 1.13. Record Retention

Records of appeals from classification decisions must be retained by the BODA Clerk for a period of at least three years from the date of disposition. Records of other disciplinary matters must be retained for a period of at least five years from the date of final judgment, or for at least one year after the date a suspension or disbarment ends, whichever is later. For purposes of this rule, a record is any document, paper, letter, map, book, tape, photograph, film, recording, or other material filed with BODA, regardless of its form, characteristics, or means of transmission.

Rule 1.14. Costs of Reproduction of Records

The BODA Clerk may charge a reasonable amount for the reproduction of nonconfidential records filed with BODA. The fee must be paid in advance to the BODA Clerk.

Rule 1.15. Publication of These Rules

These rules will be published as part of the TDRPC and TRDP.

II. ETHICAL CONSIDERATIONS

Rule 2.01. Representing or Counseling Parties in Disciplinary Matters and Legal Malpractice Cases

(a) A current member of BODA must not represent a party or testify voluntarily in a disciplinary action or proceeding. Any BODA member who is subpoenaed or otherwise compelled to appear at a disciplinary action or proceeding, including at a deposition, must promptly notify the BODA Chair.

(b) A current BODA member must not serve as an expert witness on the TDRPC.

(c) A BODA member may represent a party in a legal malpractice case, provided that he or she is later recused in accordance with these rules from any proceeding before BODA arising out of the same facts.

Rule 2.02. Confidentiality

(a) BODA deliberations are confidential, must not be disclosed by BODA members or staff, and are not subject to disclosure or discovery.

(b) Classification appeals, appeals from evidentiary judgments of private reprimand, appeals from an evidentiary judgment dismissing a case, interlocutory appeals or any interim proceedings from an ongoing evidentiary case, and disability cases are confidential under the TRDP. BODA must maintain all records associated with these cases as confidential, subject to disclosure only as provided in the TRDP and these rules.

(c) If a member of BODA is subpoenaed or otherwise compelled by law to testify in any proceeding, the member must not disclose a matter that was discussed in conference in connection with a disciplinary case unless the member is required to do so by a court of competent jurisdiction

Rule 2.03. Disqualification and Recusal of BODA Members

(a) BODA members are subject to disqualification and recusal as provided in TRCP 18b.

(b) BODA members may, in addition to recusals under (a), voluntarily recuse themselves from any discussion and voting for any reason. The reasons that a BODA member is recused from a case are not subject to discovery.

(c) These rules do not disqualify a lawyer who is a member of, or associated with, the law firm of a BODA member from serving on a grievance committee or representing a party in a disciplinary proceeding or legal malpractice case. But a BODA member must recuse himor herself from any matter in which a lawyer who is a member of, or associated with, the BODA member's firm is a party or represents a party.

III. CLASSIFICATION APPEALS

Rule 3.01. Notice of Right to Appeal

(a) If a grievance filed by the Complainant under TRDP 2.10 is classified as an inquiry, the CDC must notify the Complainant of his or her right to appeal as set out in TRDP 2.10 or another applicable rule.

(b) To facilitate the potential filing of an appeal of a grievance classified as an inquiry, the CDC must send the Complainant an appeal notice form, approved by BODA, with the classification disposition. The form must include the docket number of the matter; the deadline for appealing; and information for mailing, faxing, or emailing the appeal notice form to BODA. The appeal notice form must be available in English and Spanish.

Rule 3.02. Record on Appeal

BODA must only consider documents that were filed with the CDC prior to the classification decision. When a notice of appeal from a classification decision has been filed, the CDC must forward to BODA a copy of the grievance and all supporting documentation. If the appeal challenges the classification of an amended grievance, the CDC must also send BODA a copy of the initial grievance, unless it has been destroyed.

IV. APPEALS FROM EVIDENTIARY PANEL HEARINGS

Rule 4.01. Perfecting Appeal

(a) **Appellate Timetable.** The date that the evidentiary judgment is signed starts the appellate timetable under this section. To make TRDP 2.21 [2.20] consistent with this requirement, the date that the judgment is signed is the "date of notice" under Rule 2.21 [2.20].

(b) **Notification of the Evidentiary Judgment.** The clerk of the evidentiary panel must notify the parties of the judgment as set out in TRDP 2.21 [2.20].

(1) The evidentiary panel clerk must notify the Commission and the Respondent in writing of the judgment. The notice must contain a clear statement that any appeal of the judgment must be filed with BODA within 30 days of the date that the judgment was signed. The notice must include a copy of the judgment rendered.

(2) The evidentiary panel clerk must notify the Complainant that a judgment has been rendered and provide a copy of the judgment, unless the evidentiary panel dismissed the case or imposed a private reprimand. In the case of a dismissal or private reprimand, the evidentiary panel clerk must notify the Complainant of the decision and that the contents of the judgment are confidential. Under TRDP 2.16, no additional information regarding the contents of a judgment of dismissal or private reprimand may be disclosed to the Complainant.

(c) **Filing Notice of Appeal.** An appeal is perfected when a written notice of appeal is filed with BODA. If a notice of appeal and any other accompanying documents are mistakenly filed with the evidentiary panel clerk, the notice is deemed to have been filed the same day with BODA, and the evidentiary panel clerk must immediately send the BODA Clerk a copy of the notice and any accompanying documents.

(d) **Time to File.** In accordance with TRDP 2.24 [2.23], the notice of appeal must be filed within 30 days after the date the judgment is signed. In the event a motion for new trial or motion to modify the judgment is timely filed with the evidentiary panel, the notice of appeal must be filed with BODA within 90 days from the date the judgment is signed.

(e) **Extension of Time.** A motion for an extension of time to file the notice of appeal must be filed no later than 15 days after the last day allowed for filing the notice of appeal. The motion must comply with Rule 1.09.

Rule 4.02. Record on Appeal

(a) **Contents.** The record on appeal consists of the evidentiary panel clerk's record and, where necessary to the appeal, a reporter's record of the evidentiary panel hearing.

(b) **Stipulation as to Record.** The parties may designate parts of the clerk's record and the reporter's record to be included in the record on appeal by written stipulation filed with the clerk of the evidentiary panel.

(c) **Responsibility for Filing Record.**

(1) Clerk's Record.

(i) After receiving notice that an appeal has been filed, the clerk of the evidentiary panel is responsible for preparing, certifying, and timely filing the clerk's record.

(ii) Unless the parties stipulate otherwise, the clerk's record on appeal must contain the items listed in TRAP 34.5(a) and any other paper on file with the evidentiary panel, including the election letter, all pleadings on which the hearing was held, the docket sheet, the evidentiary panel's charge, any findings of fact and conclusions of law, all other pleadings, the judgment or other orders appealed from, the notice of decision sent to each party, any postsubmission pleadings and briefs, and the notice of appeal.

(iii) If the clerk of the evidentiary panel is unable for any reason to prepare and transmit the clerk's record by the due date, he or she must promptly notify BODA and the parties, explain why the clerk's record cannot be timely filed, and give the date by which he or she expects the clerk's record to be filed.

(2) Reporter's Record.

(i) The court reporter for the evidentiary panel is responsible for timely filing the reporter's record if:

a) a notice of appeal has been filed;

b) a party has requested that all or part of the reporter's record be prepared; and

c) the party requesting all or part of the reporter's record has paid the reporter's fee or has made satisfactory arrangements with the reporter.

(ii) If the court reporter is unable for any reason to prepare and transmit the reporter's record by the due date, he or she must promptly notify BODA and the parties, explain the reasons why the reporter's record cannot be timely filed, and give the date by which he or she expects the reporter's record to be filed.

(d) **Preparation of Clerk's Record.**

(1) To prepare the clerk's record, the evidentiary panel clerk must:

(i) gather the documents designated by the parties' written stipulation or, if no stipulation was filed, the documents required under (c)(1)(ii);

(ii) start each document on a new page;

(iii) include the date of filing on each document;

(iv) arrange the documents in chronological order, either by the date of filing or the date of occurrence;

(v) number the pages of the clerk's record in the manner required by (d)(2);

(vi) prepare and include, after the front cover of the clerk's record, a detailed table of contents that complies with (d)(3); and

(vii) certify the clerk's record.

(2) The clerk must start the page numbering on the front cover of the first volume of the clerk's record and continue to number all pages consecutively—including the front and back covers, tables of contents, certification page, and separator pages, if any—until the final page of the clerk's record, without regard for the number of volumes in the clerk's record, and place each page number at the bottom of each page.

(3) The table of contents must:

(i) identify each document in the entire record (including sealed documents); the date each document was filed; and, except for sealed documents, the page on which each document begins;

(ii) be double-spaced;

(iii) conform to the order in which documents appear in the clerk's record, rather than in alphabetical order;

(iv) contain bookmarks linking each description in the table of contents (except for descriptions of sealed documents) to the page on which the document begins; and

(v) if the record consists of multiple volumes, indicate the page on which each volume begins.

(e) **Electronic Filing of the Clerk's Record.** The evidentiary panel clerk must file the record electronically. When filing a clerk's record in electronic form, the evidentiary panel clerk must:

(1) file each computer file in text-searchable Portable Document Format (PDF);

(2) create electronic bookmarks to mark the first page of each document in the clerk's record;

(3) limit the size of each computer file to 100 MB or less, if possible; and

(4) directly convert, rather than scan, the record to PDF, if possible.

(f) **Preparation of the Reporter's Record.**

(1) The appellant, at or before the time prescribed for

perfecting the appeal, must make a written request for the reporter's record to the court reporter for the evidentiary panel. The request must designate the portion of the evidence and other proceedings to be included. A copy of the request must be filed with the evidentiary panel and BODA and must be served on the appellee. The reporter's record must be certified by the court reporter for the evidentiary panel.

(2) The court reporter or recorder must prepare and file the reporter's record in accordance with TRAP 34.6 and 35 and the Uniform Format Manual for Texas Reporters' Records.

(3) The court reporter or recorder must file the reporter's record in an electronic format by emailing the document to the email address designated by BODA for that purpose.

(4) The court reporter or recorder must include either a scanned image of any required signature or "/s/" and name typed in the space where the signature would otherwise

(6[1]) In exhibit volumes, the court reporter or recorder must create bookmarks to mark the first page of each exhibit document.

(g) **Other Requests.** At any time before the clerk's record is prepared, or within ten days after service of a copy of appellant's request for the reporter's record, any party may file a written designation requesting that additional exhibits and portions of testimony be included in the record. The request must be filed with the evidentiary panel and BODA and must be served on the other party.

(h) **Inaccuracies or Defects.** If the clerk's record is found to be defective or inaccurate, the BODA Clerk must inform the clerk of the evidentiary panel of the defect or inaccuracy and instruct the clerk to make the correction. Any inaccuracies in the reporter's record may be corrected by agreement of the parties without the court reporter's recertification. Any dispute regarding the reporter's record that the parties are unable to resolve by agreement must be resolved by the evidentiary panel.

(i) **Appeal from Private Reprimand.** Under TRDP 2.16, in an appeal from a judgment of private reprimand, BODA must mark the record as confidential, remove the attorney's name from the case style, and take any other steps necessary to preserve the confidentiality of the private reprimand.

[1] So in original.

Rule 4.03. Time to File Record

(a) **Timetable.** The clerk's record and reporter's record must be filed within 60 days after the date the judgment is signed. If a motion for new trial or motion to modify the judgment is filed with the evidentiary panel, the clerk's record and the reporter's record must be filed within 120 days from the date the original judgment is signed, unless a modified judgment is signed, in which case the clerk's record and the reporter's record must be filed within 60 days of the signing of the modified judgment. Failure to file either the clerk's record or the reporter's record on time does not affect BODA's jurisdiction, but may result in BODA's exercising its discretion to dismiss the appeal, affirm the judgment appealed from, disregard materials filed late, or apply presumptions against the appellant.

(b) **If No Record Filed.**

(1) If the clerk's record or reporter's record has not been timely filed, the BODA Clerk must send notice to the party responsible for filing it, stating that the record is late and requesting that the record be filed within 30 days. The BODA Clerk must send a copy of this notice to all the parties and the clerk of the evidentiary panel.

(2) If no reporter's record is filed due to appellant's fault, and if the clerk's record has been filed, BODA may, after first giving the appellant notice and a reasonable opportunity to cure, consider and decide those issues or points that do not require a reporter's record for a decision. BODA may do this if no reporter's record has been filed because:

(i) the appellant failed to request a reporter's record; or

(ii) the appellant failed to pay or make arrangements to pay the reporter's fee to prepare the reporter's record, and the appellant is not entitled to proceed without payment of costs.

(c) **Extension of Time to File the Reporter's Record.** When an extension of time is requested for filing the reporter's record, the facts relied on to reasonably explain the need for an extension must be supported by an affidavit of the court reporter. The affidavit must include the court reporter's estimate of the earliest date when the reporter's record will be available for filing.

(d) **Supplemental Record.** If anything material to either party is omitted from the clerk's record or reporter's record, BODA may, on written motion of a party or on its own motion, direct a supplemental record to be certified and transmitted by the clerk for the evidentiary panel or the court reporter for the evidentiary panel.

Rule 4.04. Copies of the Record

The record may not be withdrawn from the custody of the BODA Clerk. Any party may obtain a copy of the record or any designated part thereof by making a written request to the BODA Clerk and paying any charges for reproduction in advance.

Rule 4.05. Requisites of Briefs

(a) **Appellant's Filing Date.** Appellant's brief must be filed within 30 days after the clerk's record or the reporter's record is filed, whichever is later.

(b) **Appellee's Filing Date.** Appellee's brief must be filed

within 30 days after the appellant's brief is filed.

(c) **Contents.** Briefs must contain:

(1) a complete list of the names and addresses of all parties to the final decision and their counsel;

(2) a table of contents indicating the subject matter of each issue or point, or group of issues or points, with page references where the discussion of each point relied on may be found;

(3) an index of authorities arranged alphabetically and indicating the pages where the authorities are cited;

(4) a statement of the case containing a brief general statement of the nature of the cause or offense and the result;

(5) a statement, without argument, of the basis of BODA's jurisdiction;

(6) a statement of the issues presented for review or points of error on which the appeal is predicated;

(7) a statement of facts that is without argument, is supported by record references, and details the facts relating to the issues or points relied on in the appeal;

(8) the argument and authorities;

(9) conclusion and prayer for relief;

(10) a certificate of service; and

(11) an appendix of record excerpts pertinent to the issues presented for review.

(d) **Length of Briefs; Contents Included and Excluded.** In calculating the length of a document, every word and every part of the document, including headings, footnotes, and quotations, must be counted except the following: caption, identity of the parties and counsel, statement regarding oral argument, table of contents, index of authorities, statement of the case, statement of issues presented, statement of the jurisdiction, signature, proof of service, certificate of compliance, and appendix. Briefs must not exceed 15,000 words if computer-generated, and 50 pages if not, except on leave of BODA. A reply brief must not exceed 7,500 words if computer-generated, and 25 pages if not, except on leave of BODA. A computer generated document must include a certificate by counsel or the unrepresented party stating the number of words in the document. The person who signs the certification may rely on the word count of the computer program used to prepare the document.

(e) **Amendment or Supplementation.** BODA has discretion to grant leave to amend or supplement briefs.

(f) **Failure of the Appellant to File a Brief.** If the appellant fails to timely file a brief, BODA may:

(1) dismiss the appeal for want of prosecution, unless the appellant reasonably explains the failure, and the appellee is not significantly injured by the appellant's failure to timely file a brief;

(2) decline to dismiss the appeal and make further orders within its discretion as it considers proper; or

(3) if an appellee's brief is filed, regard that brief as correctly presenting the case and affirm the evidentiary panel's judgment on that brief without examining the record.

Rule 4.06. Oral Argument

(a) **Request.** A party desiring oral argument must note the request on the front cover of the party's brief. A party's failure to timely request oral argument waives the party's right to argue. A party who has requested argument may later withdraw the request. But even if a party has waived oral argument, BODA may direct the party to appear and argue. If oral argument is granted, the clerk will notify the parties of the time and place for submission.

(b) **Right to Oral Argument.** A party who has filed a brief and who has timely requested oral argument may argue the case to BODA unless BODA, after examining the briefs, decides that oral argument is unnecessary for any of the following reasons:

(1) the appeal is frivolous;

(2) the dispositive issue or issues have been authoritatively decided;

(3) the facts and legal arguments are adequately presented in the briefs and record; or

(4) the decisional process would not be significantly aided by oral argument.

(c) **Time Allowed.** Each party will have 20 minutes to argue. BODA may, on the request of a party or on its own, extend or shorten the time allowed for oral argument. The appellant may reserve a portion of his or her allotted time for rebuttal.

Rule 4.07. Decision and Judgment

(a) **Decision.** BODA may do any of the following:

(1) affirm in whole or in part the decision of the evidentiary panel;

(2) modify the panel's findings and affirm the findings as modified;

(3) reverse in whole or in part the panel's findings and render the decision that the panel should have rendered; or

(4) reverse the panel's findings and remand the cause for further proceedings to be conducted by:

(i) the panel that entered the findings; or

(ii) a statewide grievance committee panel appointed by BODA and composed of members selected from the state bar districts other than the district from which the appeal was taken.

(b) Mandate. In every appeal, the BODA Clerk must issue a mandate in accordance with BODA's judgment and send it to the evidentiary panel and to all the parties.

Rule 4.08. Appointment of Statewide Grievance Committee

If BODA remands a cause for further proceedings before a statewide grievance committee, the BODA Chair will appoint the statewide grievance committee in accordance with TRDP 2.27 [2.26]. The committee must consist of six members: four attorney members and two public members randomly selected from the current pool of grievance committee members. Two alternates, consisting of one attorney and one public member, must also be selected. BODA will appoint the initial chair who will serve until the members of the statewide grievance committee elect a chair of the committee at the first meeting. The BODA Clerk will notify the Respondent and the CDC that a committee has been appointed.

Rule 4.09. Involuntary Dismissal

Under the following circumstances and on any party's motion or on its own initiative after giving at least ten days' notice to all parties, BODA may dismiss the appeal or affirm the appealed judgment or order. Dismissal or affirmance may occur if the appeal is subject to dismissal:

(a) for want of jurisdiction;

(b) for want of prosecution; or

(c) because the appellant has failed to comply with a requirement of these rules, a court order, or a notice from the clerk requiring a response or other action within a specified time.

V. PETITIONS TO REVOKE PROBATION

Rule 5.01. Initiation and Service

(a) Before filing a motion to revoke the probation of an attorney who has been sanctioned, the CDC must contact the BODA Clerk to confirm whether the next regularly available hearing date will comply with the 30-day requirement of TRDP. The Chair may designate a three-member panel to hear the motion, if necessary, to meet the 30-day requirement of TRDP 2.23 [2.22].

(b) Upon filing the motion, the CDC must serve the Respondent with the motion and any supporting documents in accordance with TRDP 2.23 [2.22], the TRCP, and these rules. The CDC must notify BODA of the date that service is obtained on the Respondent.

Rule 5.02. Hearing

Within 30 days of service of the motion on the Respondent, BODA must docket and set the matter for a hearing and notify the parties of the time and place of the hearing. On a showing of good cause by a party or on its own motion, BODA may continue the case to a future hearing date as circumstances require.

VI. COMPULSORY DISCIPLINE

Rule 6.01. Initiation of Proceeding

Under TRDP 8.03, the CDC must file a petition for compulsory discipline with BODA and serve the Respondent in accordance with the TRDP and Rule 1.06 of these rules.

Rule 6.02. Interlocutory Suspension

(a) **Interlocutory Suspension.** In any compulsory proceeding under TRDP Part VIII in which BODA determines that the Respondent has been convicted of an Intentional Crime and that the criminal conviction is on direct appeal, BODA must suspend the Respondent's license to practice law by interlocutory order. In any compulsory case in which BODA has imposed an interlocutory order of suspension, BODA retains jurisdiction to render final judgment after the direct appeal of the criminal conviction is final. For purposes of rendering final judgment in a compulsory discipline case, the direct appeal of the criminal conviction is final when the appellate court issues its mandate.

(b) **Criminal Conviction Affirmed.** If the criminal conviction made the basis of a compulsory interlocutory suspension is affirmed and becomes final, the CDC must file a motion for final judgment that complies with TRDP 8.05.

(1) If the criminal sentence is fully probated or is an order of deferred adjudication, the motion for final judgment must contain notice of a hearing date. The motion will be set on BODA's next available hearing date.

(2) If the criminal sentence is not fully probated:

(i) BODA may proceed to decide the motion without a hearing if the attorney does not file a verified denial within ten days of service of the motion; or

(ii) BODA may set the motion for a hearing on the next available hearing date if the attorney timely files a verified denial.

(c) **Criminal Conviction Reversed.** If an appellate court issues a mandate reversing the criminal conviction while a Respondent is subject to an interlocutory suspension, the Respondent may file a motion to terminate the interlocutory suspension. The motion to terminate the interlocutory suspension must have certified copies of the decision and mandate of the reversing court attached. If the CDC does not file an opposition to the termination within ten days of being served with the motion, BODA may proceed to decide the motion without a hearing or set the matter for a hearing on its own motion. If the CDC timely opposes the motion, BODA must set the motion for a hearing on its next available hearing date. An order terminating an interlocutory order of suspension does not automatically reinstate a Respondent's license.

VII. RECIPROCAL DISCIPLINE

Rule 7.01. Initiation of Proceeding

To initiate an action for reciprocal discipline under TRDP Part IX, the CDC must file a petition with BODA and request an Order to Show Cause. The petition must request that the Respondent be disciplined in Texas and have attached to it any information concerning the disciplinary matter from the other jurisdiction, including a certified copy of the order or judgment rendered against the Respondent.

Rule 7.02. Order to Show Cause

When a petition is filed, the Chair immediately issues a show cause order and a hearing notice and forwards them to the CDC, who must serve the order and notice on the Respondent. The CDC must notify BODA of the date that service is obtained.

Rule 7.03. Attorney's Response

If the Respondent does not file an answer within 30 days of being served with the order and notice but thereafter appears at the hearing, BODA may, at the discretion of the Chair, receive testimony from the Respondent relating to the merits of the petition.

VIII. DISTRICT DISABILITY COMMITTEE HEARINGS

Rule 8.01. Appointment of District Disability Committee

(a) If the evidentiary panel of the grievance committee finds under TRDP 2.17(P)(2), or the CDC reasonably believes under TRDP 2.14(C), that a Respondent is suffering from a disability, the rules in this section will apply to the de novo proceeding before the District Disability Committee held under TRDP Part XII.

(b) Upon receiving an evidentiary panel's finding or the CDC's referral that an attorney is believed to be suffering from a disability, the BODA Chair must appoint a District Disability Committee in compliance with TRDP 12.02 and designate a chair. BODA will reimburse District Disability Committee members for reasonable expenses directly related to service on the District Disability Committee. The BODA Clerk must notify the CDC and the Respondent that a committee has been appointed and notify the Respondent where to locate the procedural rules governing disability proceedings.

(c) A Respondent who has been notified that a disability referral will be or has been made to BODA may, at any time, waive in writing the appointment of the District Disability Committee or the hearing before the District Disability Committee and enter into an agreed judgment of indefinite disability suspension, provided that the Respondent is competent to waive the hearing. If the Respondent is not represented, the waiver must include a statement affirming that the Respondent has been advised of the right to appointed counsel and waives that right as well.

(d) All pleadings, motions, briefs, or other matters to be filed with the District Disability Committee must be filed with the BODA Clerk.

(e) Should any member of the District Disability Committee become unable to serve, the BODA Chair must appoint a substitute member.

Rule 8.02. Petition and Answer

(a) **Petition.** Upon being notified that the District Disability Committee has been appointed by BODA, the CDC must, within 20 days, file with the BODA Clerk and serve on the Respondent a copy of a petition for indefinite disability suspension. Service must comply with Rule 1.06.

(b) **Answer.** The Respondent must, within 30 days after service of the petition for indefinite disability suspension, file an answer with the BODA Clerk and serve a copy of the answer on the CDC.

(c) **Hearing Setting.** The BODA Clerk must set the final hearing as instructed by the chair of the District Disability Committee and send notice of the hearing to the parties.

Rule 8.03. Discovery

(a) **Limited Discovery.** The District Disability Committee may permit limited discovery. The party seeking discovery must file with the BODA Clerk a written request that makes a clear showing of good cause and substantial need and a proposed order. If the District Disability Committee authorizes discovery in a case, it must issue a written order. The order may impose limitations or deadlines on the discovery.

(b) **Physical or Mental Examinations.** On written motion by the Commission or on its own motion, the District Disability Committee may order the Respondent to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. Nothing in this rule limits the Respondent's right to an examination by a professional of his or her choice in addition to any exam ordered by the District Disability Committee.

(1) Motion. The Respondent must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(2) Report. The examining professional must file with the BODA Clerk a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the CDC and the Respondent.

(c) **Objections.** A party must make any objection to a request for discovery within 15 days of receiving the motion by filing a written objection with the BODA Clerk. BODA may decide any objection or contest to a discovery motion.

Rule 8.04. Ability to Compel Attendance

The Respondent and the CDC may confront and cross-examine witnesses at the hearing. Compulsory process to compel the attendance of witnesses by subpoena, enforceable by an order of a district court of proper jurisdiction, is available to the Respondent and the CDC as provided in TRCP 176.

Rule 8.05. Respondent's Right to Counsel

(a) The notice to the Respondent that a District Disability Committee has been appointed and the petition for indefinite disability suspension must state that the Respondent may request appointment of counsel by BODA to represent him or her at the disability hearing. BODA will reimburse appointed counsel for reasonable expenses directly related to representation of the Respondent.

(b) To receive appointed counsel under TRDP 12.02, the Respondent must file a written request with the BODA Clerk within 30 days of the date that Respondent is served with the petition for indefinite disability suspension. A late request must demonstrate good cause for the Respondent's failure to file a timely request.

Rule 8.06. Hearing

The party seeking to establish the disability must prove by a preponderance of the evidence that the Respondent is suffering from a disability as defined in the TRDP. The chair of the District Disability Committee must admit all relevant evidence that is necessary for a fair and complete hearing. The TRE are advisory but not binding on the chair.

Rule 8.07. Notice of Decision

The District Disability Committee must certify its finding regarding disability to BODA, which will issue the final judgment in the matter.

Rule 8.08. Confidentiality

All proceedings before the District Disability Committee and BODA, if necessary, are closed to the public. All matters before the District Disability Committee are confidential and are not subject to disclosure or discovery, except as allowed by the TRDP or as may be required in the event of an appeal to the Supreme Court of Texas.

IX. DISABILITY REINSTATEMENTS

Rule 9.01. Petition for Reinstatement

(a) An attorney under an indefinite disability suspension may, at any time after he or she has been suspended, file a verified petition with BODA to have the suspension terminated and to be reinstated to the practice of law. The petitioner must serve a copy of the petition on the CDC in the manner required by TRDP 12.06. The TRCP apply to a reinstatement proceeding unless they conflict with these rules.

(b) The petition must include the information required by TRDP 12.06. If the judgment of disability suspension contained terms or conditions relating to misconduct by the petitioner prior to the suspension, the petition must affirmatively demonstrate that those terms have been complied with or explain why they have not been satisfied. The petitioner has a duty to amend and keep current all information in the petition until the final hearing on the merits. Failure to do so may result in dismissal without notice.

(c) Disability reinstatement proceedings before BODA are not confidential; however, BODA may make all or any part of the record of the proceeding confidential.

Rule 9.02. Discovery

The discovery period is 60 days from the date that the petition for reinstatement is filed. The BODA Clerk will set the petition for a hearing on the first date available after the close of the discovery period and must notify the parties of the time and place of the hearing. BODA may continue the hearing for good cause shown.

Rule 9.03. Physical or Mental Examinations

(a) On written motion by the Commission or on its own, BODA may order the petitioner seeking reinstatement to submit to a physical or mental examination by a qualified healthcare or mental healthcare professional. The petitioner must be served with a copy of the motion and given at least seven days to respond. BODA may hold a hearing before ruling on the motion but is not required to do so.

(b) The petitioner must be given reasonable notice of the examination by written order specifying the name, address, and telephone number of the person conducting the examination.

(c) The examining professional must file a detailed, written report that includes the results of all tests performed and the professional's findings, diagnoses, and conclusions. The professional must send a copy of the report to the parties.

(d) If the petitioner fails to submit to an examination as ordered, BODA may dismiss the petition without notice.

(e) Nothing in this rule limits the petitioner's right to an examination by a professional of his or her choice in addition to any exam ordered by BODA.

Rule 9.04. Judgment

If, after hearing all the evidence, BODA determines that the petitioner is not eligible for reinstatement, BODA may, in its discretion, either enter an order denying the petition or direct that the petition be held in abeyance for a reasonable period of time until the petitioner provides additional proof as directed by BODA. The judgment may include other orders necessary to protect the public and the petitioner's potential clients.

X. APPEALS FROM BODA TO THE SUPREME COURT OF TEXAS

Rule 10.01. Appeals to the Supreme Court

(a) A final decision by BODA, except a determination that a statement constitutes an inquiry or a complaint under TRDP 2.10, may be appealed to the Supreme Court of Texas. The clerk of the Supreme Court of Texas must docket an appeal from a decision by BODA in the same manner as a petition for review without fee.

(b) The appealing party must file the notice of appeal directly with the clerk of the Supreme Court of Texas within 14 days of receiving notice of a final determination by BODA. The record must be filed within 60 days after BODA's determination. The appealing party's brief is due 30 days after the record is filed, and the responding party's brief is due 30 days thereafter. The BODA Clerk must send the parties a notice of BODA's final decision that includes the information in this paragraph.

(c) An appeal to the Supreme Court is governed by TRDP 7.11 and the TRAP.