SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-270
District Docket Nos. XIV-2012-0508E and XIV-2013-0143E

IN THE MATTER OF	:
NESTOR SMITH	:
AN ATTORNEY AT LAW	:

Decision

Argued: November 19, 2015

Decided: May 12, 2016

Christina Blunda Kennedy appeared on behalf of the Office of Attorney Ethics

David H. Dugan, III appeared on behalf of respondent.

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

This matter was before us on a disciplinary stipulation between the Office of Attorney Ethics (OAE) and respondent. Respondent admitted to violations of RPC 1.2, presumably (a) (failure to abide by the client's decision concerning the scope and objective of representation), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with a client), RPC 1.4(c)

(failure to explain a matter to the extent reasonably necessary to allow client to make informed decisions), RPC 8.4(b) (criminal act), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The OAE made no recommendations as to the quantum of discipline. Respondent however, argued for a reprimand. We determined to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 2002. He has no history of discipline.

Respondent and the OAE entered into a disciplinary stipulation on July 30, 2015 (S). The facts are as follows:

While an associate at Mattleman, Weinroth & Miller, P.C. (MWM), respondent was the sole attorney responsible for more than 300 collection matters of the firm's client, South Jersey Gas (SJG). In 2010, Verizon claimed that a representative of SJG had damaged property lines, on February 5, 2008, while digging with a backhoe. Verizon estimated the amount of alleged damage to be $5,274.29.

In accordance with the utility rules, the matter proceeded to arbitration before the Office of Dispute Settlement. On November 4, 2010, the arbitrator determined that SJG and the contractor it had hired to mark the utility lines prior to the

dig each were liable to pay $2,407.50. On February 17, 2011, SJG rejected the arbitration determination.

On April 11, 2011, Verizon filed a formal complaint against SJG. On June 2, 2011, respondent endorsed the bottom of a letter from SJG, acknowledging that his firm would handle the matter for a flat $1,500 fee, and anticipated a total of five hours of legal work. The letter also stated that the file for the Verizon matter had been sent to MWM on May 11, 2011. An answer to the complaint was due from SJG by June 8, 2011.

On June 7, 2011, SJG e-mailed respondent to confirm that he was handling the matter, as it did not want a default entered against it. On June 9, 2011, respondent sent a reply e-mail to SJG, stating that he had obtained from Verizon's counsel an extension of time to answer the complaint. He also claimed that the answer would be filed within the next week.

Twenty-one days later, on June 28, 2011, respondent filed an answer to the complaint. Thereafter, on July 11, 2011, respondent learned that, on June 13, 2011, a default had been entered against SJG. In a July 20, 2011 letter, respondent informed the court that the answer he filed had contained a stipulation for an extension. The answer, however, contained no such stipulation. On July 28, 2011, respondent moved to vacate

the default. That motion was granted six months later, in January 2012.

On October 5, 2011, SJG sent an e-mail to respondent requesting a status update on the Verizon matter. Respondent replied the next day that he had filed an answer, but had not received a stamped copy.

On October 26, 2011, respondent received a message from counsel for Verizon expressing interest in settling the matter. On November 15, 2011, respondent notified SJG of this development and requested settlement authorization. The next day, SJG asked respondent for a settlement demand from Verizon.

Four months later, on March 1, 2012, respondent sent a letter to SJG suggesting it settle the matter. On March 23, 2012, SJG reversed its initial position and told respondent that it wanted to vigorously defend the Verizon claim and did not wish to pursue settlement. On the same date, respondent sent to SJG a certification of Angelo Valentine of Verizon. Respondent suggested that, based on the certification, SJG would be liable to Verizon for the damage. He also stated that counsel for Verizon requested the court to conference the matter on March 26, 2012. SJG's matter against Verizon, however, was listed for trial, not a conference, on that date. In accordance with standard procedure in Superior Court, Special Civil Part, the

case was referred to mediation. Thereafter, the case was relisted for trial on April 30, 2012.

On March 27, 2012, Verizon filed a motion for summary judgment. Further, on March 29, 2012, Verizon served respondent with a motion to strike SJG's answer for failure to provide discovery. Almost a month later, on April 26, 2012, without SJG's authorization, respondent agreed to settle the Verizon matter for $3,955.72. He failed to inform SJG that he had done so. On April 27, 2012, counsel for Verizon informed the court of the settlement and copied respondent on the letter.

More than one month later, on June 1, 2012, respondent informed SJG in a letter that a telephone conference with the judge was scheduled for June 7, 2012. In a June 29, 2012 letter to SJG, respondent claimed that, during the June 7, 2012 conference, the court recommended that Verizon file a summary judgment motion and that, pursuant to an expedited discovery schedule, SJG had until July 10, 2012 to respond to the documents presented by Verizon.

On July 6, 2012, SJG e-mailed respondent reiterating its settlement position and providing case law in support of that position. SJG also requested additional proofs be provided by Verizon. Respondent replied by e-mail on July 10, 2012, acknowledging that he did not have settlement authority and

stating that he would speak with opposing counsel about SJG's concerns. He further cautioned SJG against its "all or nothing" approach. On that same day, SJG changed its position and authorized respondent to settle the Verizon matter for $1,000.

Respondent followed up with SJG on July 12, 2012 by e-mail, expressing concern over the judge's "tone and tenor" regarding the disposition of the case. Four days later, on July 16, 2012, respondent sent a letter to SJG stating that he had spoken with counsel for Verizon and that it was likely they would reject the $1,000 settlement offer. He also stated that Verizon had filed a motion for summary judgment. Respondent, however, had not spoken with counsel for Verizon regarding the settlement offer.

Soon thereafter, on July 17, 2012, respondent sent another letter to SJG stating that Verizon had rejected the $1,000 offer and had made a counter-offer of eighty-five percent of the damages. He also asserted that the summary judgment motion was to be heard on July 24, 2012, and the brief in opposition was due by July 20, 2012. Respondent prepared a draft of that brief and sent it to SJG for review.

On July 25, 2012, respondent informed SJG, by e-mail, that the argument on summary judgment had been held the prior day. In reply, on that same day, SJG requested a revised copy of the final motion for summary judgment submission. On July 30, 2012,

respondent's legal secretary, at his direction, informed SJG by e-mail that the court had issued its decision in favor of Verizon. The e-mail also directed SJG to issue a $5,274.29 check to Verizon, in accordance with the court's order. An order allegedly signed by James J. McGann, J.S.C., was attached to the e-mail. In a reply e-mail, SJG expressed its disbelief with the outcome and indicated a desire to appeal the matter. In an August 2, 2012 e-mail, respondent replied that he believed there were no grounds for filing a motion for reconsideration, but that he would contact counsel for Verizon to discuss resolving the matter to avoid appeal or reconsideration. The stipulation is silent as to how respondent's misconduct ultimately was discovered.

In mitigation, the parties stipulated that respondent has since reimbursed his former firm, MWM, for the settlement amount it had paid on behalf of SJG. Respondent also refunded the $1,500 fee that SJG had paid to MWM for the work in the Verizon matter.

In his brief to us, respondent contends that the appropriate quantum of discipline for his conduct is a reprimand. Respondent argues that, although fabrication of a court order or other court record is "among the more serious offenses an attorney may commit," lengthy suspensions are not

typical. He cites several cases where attorneys falsified court orders but received only reprimands. He notes, however, that unlike some of those attorneys, respondent did not use the fabricated order to obtain a benefit from a public official. Rather, respondent used his fabricated order as a means of reinforcing misrepresentations he had been making to his client. The order neither benefitted respondent, nor impacted other counsel or the court. Therefore, respondent argues, if the fabricated order is viewed as simply another in the series of misrepresentations he made to his client, his case fits comfortably among the other cited reprimand cases.[1]

Respondent offers several factors in mitigation. First, he points to his unblemished record of thirteen years and his cooperation with the OAE throughout this process. Next, he notes that his misconduct involved only one client and one case (out of more than 300 for which he was then responsible, for this client alone). Essentially, in haste, respondent agreed to a settlement of the Verizon claim, which would have been consistent with settlement authority his client had given him at the outset of the representation, without taking time to study the file and become aware of the fact that his settlement authority had been rescinded. When respondent came to realize

[1] The pertinent cases cited by respondent are included and discussed below.

his mistake, he foolishly tried to cover it up with his client, generating a series of misrepresentations, including fabrication of a court order.

Respondent further notes that he has made full restitution for the financial harm caused by his misconduct, paying $3,955.72 to his former law firm to cover the funds it had paid to Verizon in settlement, and paying $1,500 to SJG to reimburse it for the legal fee it had paid for representation in the Verizon matter. In addition, respondent has apologized to SJG.

Moreover, respondent is fully aware of his ethics failures in this matter and is determined never to commit such failures again. At the time respondent represented SJG in the Verizon matter, he suffered from depression. After his misconduct became known, respondent sought therapeutic help from a licensed clinical social worker. Although respondent has acknowledged that he has no excuse for his misconduct, he asserts that his weakened emotional condition helps to explain why he did not have the resolve to acknowledge his settlement error as soon as he became aware of it and to address the situation forthrightly. Since the incident, however, at his own expense, without insurance contribution, respondent remains in therapy. Additionally, apart from therapy, respondent has secured a life coach who assists him in navigating an assortment of personal

challenges. Since the incident, respondent has not represented any person or entity in a matter similar to the Verizon case or in any other Superior Court, Special Civil Part action, and has no intent to do so.

Finally, respondent notes his extensive community service on behalf of multiple non-profit organizations. He serves as Board President to Quality Care Resource and Referral, which meets the early education needs of the underserved community; he is vice president of the Noyes Museum of Art, which supports the efforts of artists in South Jersey; he is a member of the American Conference on Diversity, which promotes diversity and inclusion programs; he donates time to Code Blue, which meets the temporary shelter needs of the Bridgeton homeless community; and he is the sponsor of a Galloway Township Ambulance Squad Scholarship.

The stipulation contains sufficient evidence to support the finding that respondent's conduct was unethical. Respondent admitted to violations of RPC 1.2 (presumably (a)), RPC 1.3, RPC 1.4(b) and (c), RPC 8.4(b), RPC 8.4(c) and RPC 8.4(d).

Respondent lacked diligence in handling the Verizon matter on behalf of SJG. He allowed the matter to proceed as a default because his answer was filed untimely. Further, he failed to

reply to discovery requests, leading to a motion to strike SJG's answer. His conduct violated RPC 1.3.

Respondent also violated RPC 1.4(b) by failing to keep SJG informed of the status of its matter. Further, respondent violated RPC 1.4(c) by failing to accurately inform SJG of the status of its matter, thereby depriving his client of the opportunity to make informed decisions regarding the representation.

Most seriously, in an ongoing effort to conceal his misconduct, respondent proceeded to make various misrepresentations, once to the court, and repeatedly to his client, in violation of RPC 8.4(c) and RPC 8.4(d). Respondent began making misrepresentations to his client when he told SJG that he had obtained from Verizon's counsel an extension of time to answer the complaint and that he would file the answer within the next week. Not only is there no evidence that he received such an extension, but also respondent failed to file the answer for twenty-one days. When the answer was rejected by the court as untimely, respondent followed up with a misrepresentation in a letter to the court, claiming to have filed the alleged stipulation to extend his time to answer. In fact, he had filed no such stipulation with the court.

Respondent then engaged in misrepresentation by silence when he provided a status update to his client, but omitted any mention of the entry of default or his subsequent motion to vacate. Several months later, he failed to inform his client of the terms of a settlement offer by Verizon or of the fact that he had accepted those terms on its behalf.

Respondent's misconduct then escalated. To conceal his ongoing misrepresentations and mishandling of the matter, respondent began to make additional affirmative misrepresentations to SJG: he stated that a telephone conference was scheduled for July 7, 2012 with the judge and then, after the date of this fictitious conference, invented outcomes by claiming that the judge had invited Verizon to file a summary judgment motion and had scheduled expedited discovery.

Eventually, SJG expressed concerns about the proofs presented and offered legal authority it believed was in its favor. Despite committing to discuss these issues with opposing counsel and to convey SJG's $1,000 settlement offer, respondent could not, and did not do so, as he already had agreed to settle the matter. He did, however, misrepresent to SJG that he had done so. Respondent continued in his serial misrepresentations, informing SJG that Verizon had rejected its $1,000 offer, that it had made a counter-offer, that Verizon filed a motion for

summary judgment, that the court scheduled due dates for briefs and oral argument, and that he participated in oral arguments on that motion. Respondent even submitted a draft brief to SJG.

Finally, respondent misrepresented that the court had granted Verizon's motion. This misconduct culminated in his fabrication of a July 26, 2012 court order sent to SJG, on which he forged Judge McGann's signature. Respondent was not only dishonest and deceitful by this conduct, but also, by forging the judge's signature, he committed a criminal act that reflected adversely on his honesty, trustworthiness, and fitness, in violation of RPC 8.4(b).

Respondent, thus, settled the Verizon matter without SJG's knowledge or consent, and contrary to his client's specific direction, a violation of RPC 1.2(a).

Typically, attorneys who settle cases without their clients' consent, even when accompanied by other less serious infractions, are either admonished or reprimanded. See, e.g., In the Matter of John S. Giava, DRB 01-455 (March 15, 2002) (admonition imposed on attorney who was hired to obtain a wage execution against a defaulting real estate purchaser but instead entered into a settlement agreement with the buyer without the clients' consent); In the Matter of Thomas A. Harley, DRB 95-215 (July 26, 1995) (admonition imposed on attorney who settled case

without his client's authority and represented to the other parties and the court that he had such authority); and In re Kane, 170 N.J. 625 (2002) (reprimand imposed on attorney who was retained in connection with a lawsuit to recover damages from tenants; attorney settled the case without the client's knowledge or consent, received a check, put it in his file, and did nothing further; he then moved his practice without informing the client or giving her his new address; the attorney also misrepresented the status of the case to the client and failed to provide a retainer agreement; attorney's lack of prior discipline was considered as mitigation in imposing only a reprimand for these numerous infractions).

Respondent, however, is guilty of more egregious violations. Misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). The sanction imposed on attorneys who, in addition, have lied to clients or supervisors and fabricated (and/or forged) documents to conceal their mishandling of legal matters, has ranged from a reprimand to a long-term suspension, depending on the facts of each case, including the extent of the wrongdoing, the harm to the clients or others, and the presence of mitigating circumstances. See, e.g., In re Yoelson, 212 N.J. 457 (2012) (reprimand for attorney who fabricated a court order permitting

her son's use of her surname as his last name; for most of the son's life, his father had permitted the use of the mother's surname; when the attorney sought to register the son in an out-of-state school, the school required an official document to permit the son to use the mother's surname; the attorney, under time constraints just days before the enrollment deadline, fabricated the court order; other mitigation included the terminal illness of the attorney's husband at that time, her lack of disciplinary history, her admission of wrongdoing, and remorse); In re Bedell, 204 N.J. 596 (2011) (reprimand for attorney who represented two passengers for injuries sustained in an automobile accident; after the clients refused settlement offers for their injuries, the attorney fabricated individual releases for both clients, reflecting the offered amounts ($17,500 and $15,000); he then signed the clients' names, attempting to mimic their signatures, and signed his own name as a witness to the signature on each release, knowing that neither client had signed it; in addition, the attorney took the jurat on both releases, falsely indicating that his clients had personally appeared before him and signed the documents; when the clients later confirmed with the attorney their rejection of the settlement offers, the attorney failed to inform them that he had sent the executed releases on which he had forged their

signatures, witnessed their signatures, and affixed jurats; mitigation included the attorney's admission of wrongdoing and lack of prior discipline); In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who created a phony arbitration award in order to mislead his partner; the attorney then lied to the OAE about the arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his numerous professional achievements, and his pro bono contributions); In re Gasper, 149 N.J. 20 (1997) (reprimand for attorney who provided his client with a court order he had forged, which purported to grant the relief the client sought; the attorney, however, had never even filed a complaint in the client's case); In re Homan, 195 N.J. 185 (2008) (censure for attorney who fabricated a promissory note reflecting a loan to him from a client, forged the signature of the client's attorney-in-fact, and gave the note to the OAE during the investigation of a grievance against him; the attorney told the OAE that the note was genuine and that it had been executed contemporaneously with its creation; ultimately, the attorney admitted his impropriety to the OAE; extremely compelling mitigating factors considered, including the attorney's impeccable forty-year professional record, the legitimacy of the loan transaction listed on the note, and the

fact that the attorney's fabrication of the note was prompted by his panic at being contacted by the OAE and his embarrassment over his failure to prepare the note contemporaneously with the loan); In re Brollesy, 217 N.J. 307 (2014) (three-month suspension in a consent to discipline matter for an attorney who misled his client, a Swedish pharmaceutical company, that he had obtained visa-approval for one of the company's top-level executives to begin working in the United States; although the attorney had filed an initial application for the visa, he took no further action thereafter and failed to keep the client informed about the status of the case; in order to cover up his inaction, the attorney lied to the client, fabricated a letter purportedly from the United States Embassy, and forged the signature of a fictitious United States Consul to it, in violation of RPC 8.4(c); violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b) also found; mitigation included the attorney's twenty years at the bar without prior discipline and his ready admission of wrongdoing by entering into a disciplinary stipulation); In re Yates, 212 N.J. 188 (2012) (three-month suspension for attorney who allowed the statute of limitations to expire on a medical malpractice claim and hid that fact from the client and his firm by stalling all communications with the client, until eventually fabricating a $600,000 settlement

agreement; in mitigation, the attorney had a thirty-year career with no disciplinary record and cooperated with the OAE by entering into a stipulation); In re Kasdan, supra, 115 N.J. 473 (three-month suspension for misconduct in six matters, including numerous misrepresentations to a client that a complaint had been filed and preparation and delivery of a false pleading to the client; in another case, the attorney concealed from the client the fact that the case was dismissed due to her failure to answer interrogatories; she then repeatedly misrepresented the status of the case and fabricated trial dates to mislead the client; in two other cases, a real estate closing and a custody matter, the attorney ignored the clients' numerous requests for information; in two other real estate matters, she engaged in gross neglect when closing title without securing payment of the purchase price from her clients; she also knowingly delivered to the seller's attorney a trust account check that turned out to be drawn against insufficient funds); In re Bosies, 138 N.J. 169 (1994) (six-month suspension for misconduct in four matters; in one matter, for a period of five months, the attorney engaged in an elaborate scheme to mislead his clients that, although he had subpoenaed a witness, the witness was not cooperating; to "stall" the client the attorney prepared a motion for sanctions against the witness, which he showed the client but never filed

with the court; he then informed the client that the judge had declined to impose sanctions; thereafter, the attorney traveled three hours with his client to a non-existent deposition, feigned surprise when the witness did not appear, and then traveled to the courthouse purportedly to advise the judge of the witness' failure to appear at the deposition; the attorney was also found guilty of a pattern of neglect, lack of diligence, failure to communicate with clients, failure to abide by discovery deadlines contained in a court order, failure to abide by the clients' decisions concerning the representation, and a pattern of misrepresentations; although the attorney's conduct involved only four matters, the six-month suspension was predicated on his pattern of deceit); In re Morell, 180 N.J. 153 (2004) (reciprocal discipline matter; one-year suspension for attorney who told elaborate lies to the client about the status of the case and fabricated documents, including a court notice and a settlement statement for his clients' signature); In re Weingart, 127 N.J. 1 (1992) (two-year suspension, all but six months of which were suspended; the attorney lied to his client about the status of the case and prepared and submitted to his client, to the Office of the Attorney General, and to the Administrative Office of the Courts a fictitious complaint to mislead the client that a lawsuit had been filed; the attorney

was also found guilty of lack of diligence, failure to communicate, dishonesty and misrepresentation, and conduct prejudicial to the administration of justice); In re Penn, 172 N.J. 38 (2002) (three-year suspension in a default matter for 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); and In re Yacavino, 100 N.J. 50 (1985) (three-year suspension for attorney who prepared and presented to his clients two fictitious orders of adoption to conceal his neglect in failing to advance an uncomplicated adoption matter for nineteen months; the attorney misrepresented the status of the matter to his clients on several occasions; in mitigation, the Court considered the absence of any purpose of self-enrichment, the aberrational character of the attorney's behavior, and his prompt and full cooperation with law enforcement and disciplinary matters).

But see, In re Lewis, 138 N.J. 33 (1994) (admonition imposed on attorney who attempted to deceive a court by introducing into evidence a document falsely showing that a

heating problem in an apartment that he owned had been corrected, in order to avoid the issuance of a summons; the admonition was imposed in part because the court saw through the ruse, and was not deceived by the attorney's actions).

Respondent's conduct here is more serious than the conduct in Lewis. Lewis created a heating and plumbing receipt that did not affect the judge's decision. Here, respondent created a court order and affixed the signature of a sitting New Jersey judge to it. He then submitted it to his client in an effort not only to cover his mishandling of the matter, but also to convince his client to pay a settlement it had not authorized.

Respondent's conduct is similar to that of the attorney in Gasper, supra, (reprimand) who fabricated a court order and forged a judge's signature on it to mislead the client that the requested relief had been granted. Here, respondent fabricated a court order and forged a judge's signature to mislead a client, although for a different reason – to convince the client that a motion for summary judgment had been granted against the client. Although the attorney in Yoelson, supra, also fabricated a court order and signed a judge's name on it, she did so, not to mislead a client, but for personal reasons.

Respondent's misconduct however, is also close to that of the attorney in Brollesy, a 2014 case where the attorney

consented to a three-month suspension for a single fabrication and forgery. Like respondent, Brollesy misled his client with the aid of a fabricated document upon which he affixed the signature of a phony United States Consul. Like respondent, he did so in order to conceal his inaction, and, like respondent, he lied to the client about his actions. Brollesy and respondent were found guilty of similar violations. Brollesy, however, had the added violation of RPC 1.1(a) compared to respondent's added violations of RPC 1.2(a) and RPC 8.4(d). Nonetheless, Brollesy also had no prior discipline in twenty years at the bar (thirteen years for respondent) and, like respondent, readily admitted his wrongdoing by entering into a disciplinary stipulation. Brollesy's actions were found to be an aberration, a mitigating factor also urged here.

The six-month and longer suspension cases cited above involve much more serious conduct, such as fabrications and lies in multiple matters, generally over the course of years, as well as additional misconduct not present here.

Respondent, however, as noted, also misrepresented to the court that he had a stipulation from opposing counsel to extend his time to answer the initial complaint. Generally, in matters involving misrepresentations to a tribunal, the discipline imposed ranges from an admonition to a term of suspension. See,

e.g., In the Matter of Lawrence J. McGivney, DRB 01-060 (March 18, 2002) (admonition for attorney who improperly signed the name of his superior, an assistant prosecutor, to an affidavit in support of an emergent wiretap application moments before its review by the court, knowing that the court might be misled by his action; in mitigation, it was considered that the superior had authorized the application, that the attorney was motivated by the pressure of the moment, and that he brought his impropriety to the court's attention one day after it occurred); In re Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failing to disclose to a court his representation of a client in a prior lawsuit, where that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); In re Clayman, 186 N.J. 73 (2005) (censure imposed on attorney who made numerous misrepresentations about the financial condition of a bankruptcy client in filings with the bankruptcy court; he did so to conceal information detrimental to the client's Chapter 13 bankruptcy petition; in mitigation, the attorney was one of the first attorneys to be reported for his misconduct by a new Chapter 13 trustee who had elected to strictly enforce the requirements of the bankruptcy rules, rather than permit more lax "common practices" of bankruptcy attorneys under the

previous trustee; no prior discipline; no personal gain or venality); In re Hasbrouck, 185 N.J. 72 (2005) (three-month suspension imposed on attorney who did not disclose to the court and to his adversary the disbursement of $600,000 to his client, contrary to a court order requiring the attorney to hold the funds in an interest-bearing account until further order of the court; other improprieties found were the attorney's failure to safeguard trust funds and violation of the final judgment of divorce); In re Paul, 167 N.J. 6 (2001) (three-month suspension for attorney who made misrepresentations in several certifications filed with the court; the attorney also made misrepresentations to his adversary and in the course of a deposition); In re Telson, 138 N.J. 47 (1994) (attorney suspended for six months after he concealed a judge's docket entry dismissing his client's divorce complaint, obtained a divorce judgment from another judge without disclosing that the first judge had denied the request, and denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was scared); and In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who misrepresented to a judge that a case had been settled and that no other attorney would be appearing for a conference and obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to

his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds to remain in reserve).

It is true that respondent made one misrepresentation to the court (that his untimely answer to the complaint had been accompanied by a stipulation extending the deadline) that likely was ignored as being a simple oversight on respondent's part. Further, there is little detail other than a passing reference to this infraction in the stipulation. Nevertheless, it is part and parcel of a larger pattern of misrepresentations respondent made.

In his brief to us, respondent claims he made the misrepresentations to conceal the oversight he made by settling the Verizon matter with the belief he had the authority to do so. He asserts that he simply failed to review his case file and overlooked the fact that the authority had been revoked. His contention, however, ignores several critical occurrences during his handling of the Verizon matter.

Respondent settled the matter on April 26, 2012. On June 9, 2011, however, he reported to his client in an e-mail that he had obtained an extension of time to answer the complaint and that the answer would be filed within the next week. Respondent failed to file the answer twenty-one days after that letter. Internal e-

mails at SJG establish that respondent received the Verizon complaint as early as May 11, 2011. Thus, respondent's pattern of misrepresentations began even before he settled the case and likely were intended not to cover up the settlement agreement, but rather to hide his lack of diligence in allowing entry of default against his client.

Moreover, respondent went to great lengths to mislead his client that the case was pending with the court, going so far as drafting a brief and sending it to the client.

Although respondent's conduct in some respects, does fall within the scope of the several reprimand cases cited, we consider additional factors that serve to increase the discipline. First, respondent not only made serial misrepresentations to his client, but also made a misrepresentation to the court. He also failed to abide by the client's decision concerning the scope of representation by settling the case without authority to do so. In addition, he fabricated an order and forged a judge's signature to mislead and manipulate his client. In our view, the appropriate discipline here rests between a censure and a short-term suspension.

In mitigation, respondent has apologized and reimbursed not only his former firm, but also SJG. He acknowledged his wrongdoing by entering into a stipulation and expressed remorse

for his conduct. He also offered the emotional trouble he was experiencing at the time, not as an excuse for his conduct, but as an explanation for why he carried on the charade for so long. Finally, he has an otherwise unblemished record in thirteen years at the bar and continues to address his emotional issues through ongoing therapy.

Nonetheless, the fact that respondent not only forged a judge's signature, but also forged the clerk of the court's stamp and drafted an entirely fictitious brief for his client's review exemplifies the severity of his behavior and tips the scales in favor of more severe discipline. Therefore, we determine that a three-month suspension is warranted.

Chair Frost and Member Singer voted for a censure. Member Zmirich 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
Edna Y. Baugh, Vice-Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Nestor Smith
Docket No. DRB 15-270

Argued: November 19, 2015

Decided: May 12, 2016

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Censure	Disqualified	Did not participate
Frost			X		
Baugh		X			
Clark		X			
Gallipoli		X			
Hoberman		X			
Rivera		X			
Singer			X		
Zmirich					X
Total:		5	2		1

Ellen A. Brodsky
Chief Counsel