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October 25, 2016

Mark Neary, Clerk
Supreme Court of New Jersey
P.O. Box 970
Trenton, New Jersey 08625-0962

Re: In the Matter of Nirav Kurt Mehta
Docket No. DRB 16-276
District Docket No. IIIB-2015-0033E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand or such lesser discipline as the Board deems appropriate) filed by the District IIIB Ethics Committee (DEC), pursuant to R. 1:20-10(b)(1). Following a review of the record, the Board determined to grant the motion. In the Board's view, a reprimand is the appropriate discipline for respondent's violations of RPC 8.1(a)¹ (false statement of material fact in connection with a disciplinary matter) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Specifically, on May 25, 2015, respondent's former client, Shanti Sarup, filed a grievance against him, alleging that, more than ten years prior, respondent had given him poor legal advice in an immigration matter and, thus, exposed him to deportation from the United States. In response to the DEC's investigation

¹ The stipulation erroneously cited RPC 8.1(b). The admissions contained in the stipulation, however, clearly support an intent to admit a violation of subsection (a).

October 25, 2016

Page 2 of 5

of the grievance, respondent fabricated a document and submitted it to disciplinary authorities.

The fabricated document purported to be a May 7, 2003 letter from respondent to the grievant, providing sound legal advice on the underlying immigration matter. Respondent's motivation for submitting the fabricated document was to neutralize the grievant's claim that respondent had provided him incorrect legal advice in 2003.

In mitigation, the stipulation recited respondent's lack of prior discipline, the more than ten-year passage of time since his representation of the grievant, and the fact that the fabricated letter was submitted only to the DEC. The stipulation described respondent's deception as "an unfortunate reflexive response to the filed Grievance" and an "effort . . . to mitigate what [respondent] may have perceived as a professional negligence issue."

Generally, in matters involving misrepresentations to ethics authorities through fabricated documents, the discipline ranges from a reprimand to a term of suspension, depending on the gravity of the offense, the presence of other unethical conduct, and the effect of aggravating and mitigating factors. See, e.g., In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who fabricated an arbitration award to mislead his partner, and then lied to the Office of Attorney Ethics (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 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 Bar-Nadav, 174 N.J. 537 (2002) (three-month

October 25, 2016

Page 3 of 5

suspension for attorney who submitted two fictitious letters to the district ethics committee in an attempt to justify his failure to file a divorce complaint on behalf of a client; the attorney also filed a motion on behalf of another client after his representation had ended, and failed to communicate with both clients); In re Rinaldi, 149 N.J. 22 (1997) (three-month suspension for attorney who did not diligently pursue a matter, made misrepresentations to the client about the status of the matter, and submitted three fictitious letters to the ethics committee in an attempt to show that he had worked on the matter); In re Katsios, 185 N.J. 424 (2006) (two-year suspension for attorney who prematurely released a buyer's deposit (about \$20,000), which he held in escrow for a real estate transaction, to the buyer/client, his cousin, without the consent of all the parties to the transaction; ordinarily, that misconduct would have warranted no more than a reprimand, but the attorney panicked when contacted by the OAE, and then sought to cover up his misdeed by submitting altered bank statements and false reconciliations to the investigator; the special master and the Board noted that the cover up had been worse than the "crime"); 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 for attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, 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).

Respondent's conduct here is comparable to that of the attorney in Sunberg (reprimand). Although respondent's fabrication of the letter was wholly inexcusable, it did not result in additional harm to any party, did not persist for an extended period of time, and was made in response to the grievance filed by Mr. Sarup more than ten years after the

October 25, 2016

Page 4 of 5

alleged poor representation occurred. Moreover, respondent's unethical conduct in this case was limited to the misrepresentations made to the DEC in connection with the grievance, rather than to the actual client or a tribunal.

There are no aggravating factors to consider in this case. In mitigation, the Board considered that respondent has no disciplinary history and readily admitted his misconduct by consenting to discipline. Accordingly, based on the above precedent, respondent's misconduct warrants the imposition of a reprimand.

Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated June 6, 2016;
2. Stipulation of discipline by consent, dated July 23, 2016;
3. Affidavit of consent, dated July 18, 2016; and
4. Ethics history, dated October 25, 2016.

Very truly yours,



Ellen A. Brodsky
Chief Counsel

Enclosures

c: See attached list

I/M/O Nirav Kurt Mehta, DRB 16-276

October 25, 2016

Page 5 of 5

c: Bonnie C. Frost, Chair

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John M. Hanamirian, Investigator

District IIIB Ethics Committee (w/o enclosures)

Shanti Sarup, Grievant (w/o enclosures)