

# DISCIPLINARY REVIEW BOARD

OF THE

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June 29, 2018

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

Re: **In the Matter of Christopher R. Welgos**  
Docket No. DRB 18-126  
District Docket No. XIV-2016-0522E

Dear Mr. Neary:

The Disciplinary Review Board reviewed the motion for discipline by consent (reprimand to censure or such lesser discipline as the Board shall deem warranted) filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-10(b). Following a review of the record, the Board determined to grant the motion. In the Board's view, a censure is the appropriate quantum of discipline for respondent's violations of RPC 3.3(a)(1) (knowingly make a false statement of material fact to a tribunal), RPC 8.1(b) and R. 1:20-3(g)(3) (failing to cooperate with disciplinary authorities), and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

Specifically, on December 18, 2015, Robert A. Knee, on behalf of the District IIA Ethics Committee (DEC), filed an ethics complaint against respondent alleging that respondent violated RPC 5.5(a)(1) (unauthorized practice of law); RPC 8.1(b) and R. 1:20-3(g)(3) (failure to cooperate with disciplinary authorities); and RPC 8.4(d) (conduct prejudicial to the administration of justice). On January 8, 2016, Knee contacted respondent to discuss resolving the matter through discipline by consent, to which respondent

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requested an open-ended timeframe to file his answer. Knee granted respondent a two-week extension. On January 27, 2016, the District IIA Secretary sent a letter to respondent, noting that he had failed to timely file an answer and providing an additional five days for respondent to do so. Respondent never filed an answer.

On February 12, 2016, the DEC certified the record to the Board. Respondent filed a motion to vacate the default, on June 6, 2016. In support of the motion, by certification to the Board, respondent claimed he had reached an agreement with the DEC investigator allowing him an open-ended period within which to file an answer, so that he could rectify his ineligible status. In support of his position, respondent enclosed an e-mail, dated January 8, 2016, in which he stated, "[t]o confirm my understanding, I can hold off on preparing and filing an answer to the complaint while you explore what options would be [sic] for Discipline by Consent. You will get back to me when you have options to present and we can proceed from there."

In his response to the motion to vacate, however, Knee explained that he had agreed to only an additional two weeks for respondent to file his answer, not an open-ended extension, and provided the Board with copies of the complete e-mail exchange with respondent.

Respondent denied having received the e-mail granting only a two-week extension. He claimed that the e-mail did not have his complete e-mail address and, thus, he did not receive that particular message. In turn, Knee countered that respondent's complete e-mail address was not displayed because, by that time, his e-mail program recognized respondent's e-mail address. He provided an e-mail "receipt" that indicated that respondent had read his message. Ultimately, respondent stipulated that he had opened and/or read the e-mail granting the two-week extension. Based on this conduct, the Board referred the matter to the OAE for an investigation.

During its investigation, the OAE sent a letter to respondent requesting a reply to the issues raised by the Board, which was due by January 13, 2017. Respondent contacted the OAE on January 13, 2017, and requested an extension. He was given until February 3, 2017 to provide a response. Despite having received an additional extension until February 6, 2017, he failed to respond to the grievance. The OAE notified respondent, by letter dated March 8,

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2017, that if he failed to reply to the grievance by March 17, 2017, he would be charged with failing to cooperate. To date, respondent has not replied to the grievance.

Respondent admitted violating RPC 3.3(a)(1) and RPC 8.4(c), when he knowingly made a misrepresentation to the Board, in his motion to vacate, by failing to provide the complete chain of e-mails and by his denial of having received Knee's e-mail. Further, respondent admitted that he never provided a response to the OAE's request that he reply to the grievance, in violation of RPC 8.1(b).

In aggravation, the stipulation noted respondent's prior discipline, a reprimand. In mitigation, respondent asserted that he was no longer practicing law and that his misconduct happened at a time when his son was experiencing health issues, requiring surgery and rehabilitation.

Lack of candor to a tribunal has resulted in discipline ranging from an admonition to a long-term suspension. See, e.g., In the Matter of George P. Helfrich, Jr., DRB 15-410 (February 24, 2016) (admonition imposed on attorney who failed to notify his client and witnesses of a pending trial date, a violation of RPC 1.4(b); thereafter, he appeared at two trial dates, but failed to inform the trial judge and his adversary that he had not notified his client or the witnesses of the trial date, violations of RPC 3.3(b) and RPC 3.4(c)); In re Marraccini, 221 N.J. 487 (2015) (reprimand imposed on attorney who had attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications that had been pre-signed by the manager, who then died; the attorney was unaware that the manager had died and, upon learning that information, withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); mitigation considered); In re Duke, 207 N.J. 37 (2011) (attorney received a censure for failure to disclose his New York disbarment on a form filed with the Board of Immigration Appeals; the attorney also failed to adequately communicate with the client and was guilty of recordkeeping deficiencies; prior reprimand; the attorney's contrition and efforts at rehabilitation justified only a censure); In re Trustan, 202 N.J. 4 (2010) (three-month suspension for attorney who, among other things, submitted to the court a client's case information statement that falsely asserted that the client owned a home, and who drafted a false certification for the client, which was submitted to the court in a domestic violence trial); and In re Marshall, 165 N.J. 27 (2000) (one-year suspension for attorney who deceived his adversary and the court in a litigated matter by

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failing to reveal a material fact during litigation, serving false answers to interrogatories, and permitting his client to produce misleading documents to his adversary, all the while maintaining his silence; the attorney backdated a stock transfer document and put an incorrect date in his notarization of the transfer agreement, knowing that the timing of the transfer could have a material effect on the case; no prior discipline).

In a recent case, the lawyer received a three-year suspension for, among other significant RPC violations, making misrepresentations to this Board. In re Clausen, 231 N.J. 193 (2017). The lawyer had represented a client in a personal injury matter but failed to file the complaint, and her matter was barred by the statute of limitations. Subsequently, the client filed a malpractice action against the lawyer in which he defaulted. He ultimately negotiated a \$25,000 settlement of that action with the client. When the attorney appeared before the Board on the underlying matter, he led the Board to believe that he had made multiple payments to the client, when, in fact, he had made only one \$1,000 payment. The Board referred the matter to the OAE for investigation, and respondent was charged with violating RPC 3.3(a)(1) and (a)(5), RPC 8.1(a) and (b), and RPC 8.4(d). The matter proceeded as a default for these charges, as well as other allegations of misrepresentations, commingling, recordkeeping, and failure to cooperate. Given the attorney's ethics history and multiple RPC violations, he received a three-year suspension.

Although respondent has advanced, in mitigation, that he is not currently practicing law and that he was dealing with personal issues at the time of his misconduct, these factors were given little weight. Respondent has a prior reprimand, and this matter arose directly from his interactions with the Board during that matter, demonstrating a disregard for disciplinary authorities.

Nevertheless, respondent's conduct does not rise to the level of the attorney's misconduct in Clausen. While both attorneys lied to the Board, in the Clausen matter, there were a significant number of additional misrepresentations to other tribunals, as well as the default nature of that matter, which justified the imposition of a three-year suspension. Here, the Board determined that, based on the relevant precedent, respondent's misrepresentations warranted, a least, a reprimand, increased by respondent's failure to cooperate with the OAE and his prior discipline. Thus, the Board determined to impose a censure.

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Enclosed are the following documents:

1. Notice of motion for discipline by consent, dated April 6, 2018.
2. Stipulation of discipline by consent, dated April 6, 2018.
3. Affidavit of consent, dated February 13, 2018.
4. Ethics history, dated June 28, 2018.

Very truly yours,



Ellen A. Brodsky  
Chief Counsel

EAB/trj

Encls.

c: (w/o enclosures)

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