SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-139
District Docket Nos. VB-2021-0902E
and XIV-2019-0633E

In the Matter of Nelson Gonzalez
An Attorney at Law

Argued
September 21, 2023

Decided
December 13, 2023

Darrell M. Felsenstein appeared on behalf of the
Office of Attorney Ethics.

Marc D. Garfinkle appeared on behalf of respondent.

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Introduction

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

This matter was before us on a recommendation for a three-month suspension filed by the District VB Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 3.3(a)(5) (failing to disclose to the tribunal a material fact, knowing that the omission is reasonably certain to mislead the tribunal); RPC 8.1(b) (failing to cooperate with disciplinary authorities); and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).

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

Respondent earned admission to the New Jersey bar in 1997 and to the District of Columbia bar in 1999. During the relevant timeframe, he maintained a practice of law in Dover, New Jersey.

On April 9, 2020, respondent received a three-month suspension for violating RPC 1.1(a) (engaging in gross neglect); RPC 1.3 (lacking diligence); RPC 1.4(b) and (c) (failing to communicate with clients); RPC 1.15(a) (failing to safeguard client funds, committing negligent misappropriation, and

commingling); RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 3.2 (failing to expedite litigation); RPC 3.4(d) (failing to comply with reasonable discovery requests); RPC 5.3(a) (failing to supervise nonlawyer staff); RPC 8.1(a) (making a false statement of material fact to a disciplinary authority); RPC 8.1(b); and RPC 8.4(c). In re Gonzalez, 241 N.J. 526 (2020) (Gonzalez I).

As further detailed below, the charges in the instant matter stem from respondent's conduct while the Gonzalez I disciplinary proceedings were pending – first, before the District XB Ethics Committee (the DEC-XB), and subsequently, before us.

On October 20, 2020, in a default matter, respondent was censured for violating RPC 1.3; RPC 1.4(b); RPC 1.5(b) (failing to set forth in writing the basis or rate of the legal fee); and RPC 8.1(b), for diverse misconduct committed between 2012 and 2019. In re Gonzalez, 244 N.J. 271 (2020) (Gonzalez II).

On March 15, 2023, respondent received a six-month suspension, effective April 11, 2023, for violating RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.5(b); RPC 3.2; RPC 5.3(a); RPC 5.3(b) (failing to make reasonable efforts to ensure that the conduct of nonlawyer employees is compatible with the professional obligations of the lawyer); RPC 7.1(a) (making a misleading communication about the lawyer or the lawyer's services); RPC 7.5(a) (using a

professional designation that violates RPC 7.1); and RPC 8.1(b). In re Gonzalez, 253 N.J. 229 (2023) (Gonzalez III). There, respondent's violations in handling client matters occurred between 2007 and 2016; his violations of RPC 7.1 and RPC 7.5, based on his use of inaccurate letterhead, occurred between 2015 and 2018.

On December 8, 2023, the Court reinstated respondent to the practice of law. Further, the Court required him to practice under the supervision of a practicing attorney approved by the OAE for a period of six months and until further of the Court. In re Gonzalez, __ N.J. __ (2023), 2023 N.J. LEXIS 1273.

Facts

In the instant matter, the parties stipulated to the following facts.

Between December 2017 and December 2019, while the proceedings underlying Gonzalez I were pending before the DEC-XB and, subsequently, before us, respondent failed to disclose that he had reemployed and continued to employ his wife, Anicia Soto-Gonzalez (also referred to as Anicia Gonzalez in our prior decisions).[1]

[1] Because respondent and his wife, Anicia, share a last name, this decision refers to her by her first name to avoid any confusion.

Respondent previously had employed Anicia between 2007 and March 2016. During this time, Anicia had concealed information from him, altered financial records, and diverted mail and other communications from him. Her misconduct, in combination with respondent's own acts and omissions, eventually resulted in many of the disciplinary charges that were pending against respondent in December 2017, when he reemployed her. Anicia's wrongdoing was so intertwined with the charges at issue in Gonzalez I that respondent, in his verified answer to the underlying OAE complaint, had highlighted his March 2016 termination of Anicia's employment as one of several steps taken to remediate the deficiencies alleged in that complaint.

Because respondent's knowledge of Anicia's earlier misconduct directly bears on the charges in the instant matter, we summarize relevant statements and admissions from the OAE's 2014 to 2015 investigation underlying Gonzalez I.

The Gonzalez I investigation was prompted, first, by a January 2014 grievance filed against respondent in connection with his failure to promptly record a deed following a real estate transaction in which he represented the purchaser and, second, by an unrelated overdraft of his attorney trust account (ATA), which occurred after two settlement checks sent to his office were deposited into his attorney business account (ABA) instead of his ATA.

On September 17, 2014, during the OAE's ensuing demand audit of his books and records, respondent advised the OAE that he had not responded to mail and telephone messages from the OAE because Anicia failed to pass these communications along to him. Further, he informed the OAE that Anicia had misrepresented to him that monthly ATA reconciliations were being completed for his firm, when she had not even provided the accountant with the records needed to generate these reconciliations. In addition, respondent admitted that Anicia had improperly disbursed funds from his ABA to a client (A.A.) without respondent's knowledge or authorization. Finally, he admitted that, because Anicia had concealed information from him, he had been unaware of the OAE's investigation, or a random audit conducted by the OAE at his office almost a year earlier.

Also, during the September 17, 2014 demand audit, respondent's then-counsel stated that he "felt it was not a good thing for [Anicia] to continue to be employed" by respondent.

On January 7, 2015, respondent and his then-counsel were present when the OAE interviewed Anicia. Anicia, who was still working for respondent, confirmed that she had not provided him with the OAE's correspondence; had placed all mail from the OAE and the DEC-XB in her drawer, unopened, without informing him; had paid client A.A. $7,500 from respondent's ABA without

respondent's knowledge or authorization; and had falsely informed respondent that the accountant was working on monthly ATA reconciliations, although for the last five to six years, she had never transmitted the necessary records to the accountant.

In addition, on February 10, 2015, respondent provided the OAE with a certification from Anicia, wherein she admitted disbursing funds from his ATA to or on behalf of clients without his knowledge or authorization.

Finally, on July 1, 2015, the OAE again interviewed respondent. During this interview, he admitted that Anicia had altered an ATA bank statement before providing it to the OAE. Specifically, she altered the statement to make it appear as though a $50,000 settlement check had been deposited in respondent's ATA when, in reality, the check had been diverted by the IRS, with Anicia's approval but without respondent's knowledge. Moreover, respondent did not know that Anicia had been communicating with the IRS about a levy on his ABA due to unpaid income taxes, nor was he aware of the unpaid taxes, because Anicia had never informed him of same and had prevented him from receiving correspondence from the IRS.

During the July 1, 2015 interview, respondent stated that he was transitioning Anicia out of his office and that his "timetable to bring in new people to get everything squared away is probably the end of the summer."

On November 30, 2015, the OAE filed a complaint against respondent, charging him with violating RPC 1.1(a); RPC 1.3; RPC 1.15(a) and (d); and RPC 5.3(a) based on his mishandling, between 2012 and 2014, of the real estate matter. Further, based on respondent's alleged misconduct in connection with five client matters in 2013 and 2014, as well as Anicia's falsification of bank statements in late 2014 and early 2015, the OAE charged respondent with violating RPC 1.15(a) (four instances); RPC 5.3(a) (four instances); RPC 8.1(a) (two instances); and RPC 8.4(c) (two instances). Finally, the OAE charged him with failing to comply with multiple provisions of R. 1:21-6(c), in violation of RPC 1.15(d), as well as commingling, in violation of RPC 1.15(a).

For purposes of the ethics hearing, the OAE's complaint was consolidated with two matters that the DEC-XB had docketed against respondent. The first DEC-XB matter arose in connection with respondent's representation of a client who retained him, in 2013, to represent her in a divorce action. The second matter stemmed from respondent's representation of a client who retained him, in 2012, to represent her in a personal injury claim following an automobile accident. In both matters, respondent was charged with violating RPC 8.1(b), based on his failure to timely reply to the underlying ethics grievances.

A hearing on the consolidated matters took place before a panel of the DEC-XB on October 30, 2017; October 31, 2017; and January 25, 2018. On the

first date, respondent testified that he had dismissed Anicia from his employment, in March 2016.

In December 2017, less than two months after so testifying, respondent reemployed Anicia.

On January 25, 2018, when the hearing resumed, respondent failed to disclose to the hearing panel that he had allowed Anicia to return to work at his office. Thus, the DEC-XB proceeded in the belief that Anicia no longer worked for him.

On February 22, 2019, the DEC-XB hearing panel found that respondent had committed all the charged RPC violations and recommended a six-month suspension. The panel emphasized its view that respondent:

> [d]espite acknowledging that he was ultimately responsible for the recordkeeping lapses that occurred in his office, . . . sought to lay blame on his wife, whom he continued to employ as a paralegal long after he knew she had engaged in deceptive conduct that imperiled his clients' funds and frustrated the OAE's investigation. The only possible conclusion that the Panel can reasonably draw is that Respondent's ethical responsibilities to his clients and the bar took a back seat to his decision to keep his wife, Anicia, employed at his law firm.
>
> [J-14 at 12.][2]

[2] "J-" refers to the joint exhibits admitted into evidence during the November 21, 2022 ethics proceeding.
"T" refers to the transcript of the November 21, 2022 ethics hearing.
"HPR" refers to the DEC's May 30, 2023 hearing panel report.

On June 20, 2019, we heard oral argument in that matter. Respondent again failed to disclose his reemployment of Anicia, even when his attorney was questioned about the timing of her employment:

> HONORABLE JUDGE GALLIPOLI: [W]hen was the date that [respondent] first became aware of his wife's misconduct?
>
> [COUNSEL]: Judge, it was September 4, 2014.
>
> HONORABLE JUDGE GALLIPOLI: And when did he ultimately let her go from his employment?
>
> [COUNSEL]: Ultimately, I believe sometime in early March of 2016. But all this happened before, Judge.
>
> [J-15 at 18:18-19:2 (emphasis added).]

The colloquy on this topic continued, as Judge Gallipoli, then-Chair Clark, and Member Boyer endeavored to clarify the timeline. Finally, Judge Gallipoli stated:

> in March of 2015, my understanding of the record is that his wife altered a trust account bank statement, for a previous . . . period of time. So in March of 2015, he knows his wife is still at it, if you will, and it takes him until March of 2016, a year later . . . .
>
> [J-15 at 19:3-25.]

Respondent's failure to advise us during that oral argument that he had reemployed Anicia in December 2017, and that she had continued working for

him since that time, left us with the misimpression that she was no longer employed in his office.

On December 4, 2019, we issued our decision in Gonzalez I, recommending that respondent receive a six-month suspension for his misconduct. In the Matter of Nelson Gonzalez, DRB 19-129, DRB 19-130, and DRB 19-131 (December 4, 2019). Therein, we observed that the "overarching theme" in the underlying matters was "respondent's improper and unreasonable reliance on Anicia, his wife and employee, to handle matters in his law office." Id. at 35.

We rejected most of respondent's attempts to exonerate himself from specific charges by blaming Anicia for the conduct underlying the charged violations, noting that "(1) much of the conduct that respondent attributed to Anicia is non-delegable, because he was the supervising attorney; and (2) there came a time when a reasonable attorney would have terminated Anicia's employment, yet respondent failed to do so." Ibid. Elaborating on the second point, we observed that, although respondent had become aware of Anicia's deceptions in September 2014, he did not terminate her employment until March 2016. We also weighed, in aggravation, that respondent "failed to heed the OAE's repeated suggestion that he terminate Anicia's employment." Id. at 57.

On November 8, 2019, less than a month before we issued our decision in Gonzalez I, the OAE received information relating to respondent's undisclosed reemployment of Anicia. Specifically, Moira E. Colquhoun, Esq. (who had investigated the related DEC-XB matters), notified the OAE that she had learned from one of respondent's former employees that he had rehired Anicia.

By letter dated November 15, 2019, the OAE wrote to respondent's counsel to ask for further information regarding respondent's alleged reemployment of Anicia. In correspondence received by the OAE on November 27, 2019, respondent confirmed that, in December 2017, Anicia had "come back to assist in the office."

Consequently, on December 26, 2019, the OAE filed an emergent petition with the Court, seeking an Order temporarily suspending respondent.

Subsequently, on April 9, 2020, the Court suspended respondent for three-months in connection with Gonzalez I. 241 N.J. at 526-27. Further, the Court "determined that as a condition of reinstatement to the practice of law, respondent should submit proof that his wife is not employed by him or given access in any manner to respondent's law practice." Ibid.

On the same date, the Court dismissed the OAE's December 2019 petition to temporarily suspend respondent as moot, based upon the Court "having

imposed a three-month term of suspension for respondent's unethical conduct" in Gonzalez I.

On October 20, 2020, respondent was reinstated to the practice of law following his three-month suspension in Gonzalez I. In re Gonzalez, 244 N.J. 272 (2020).

Almost immediately thereafter, on October 28, 2020, the OAE filed the complaint underlying the present matter. The OAE alleged that, during the Gonzalez I disciplinary proceedings, respondent violated RPC 3.3(a)(5) by failing to disclose to the DEC-XB and to us "a material fact, namely, that he had reemployed Anicia in December 2017, knowing that the omission was reasonably certain to mislead them." The OAE further alleged that he violated RPC 8.1(b) by failing to disclose to the OAE, the DEC-XB, and to us "a fact necessary to correct a misapprehension known by him to have arisen in the matter relating to Anicia's employment[.]" Finally, the OAE alleged that, by means of the same conduct, he also violated RPC 8.4(c).

On December 16, 2020, respondent, through counsel, filed a verified answer, denying the charged violations of the Rules of Professional Conduct. In January 2021, he filed an amended verified answer.

On September 21, 2022, respondent and the OAE entered into a joint stipulation of facts. In addition to the facts recounted above, respondent

stipulated that he "had a duty to correct the misimpressions left with the OAE, the [DEC-XB] Hearing Panel, and the Board regarding Anicia's employment at his office."

The Ethics Hearing

On November 21, 2022, the ethics hearing took place before the DEC, solely on the issue of mitigation. Respondent, who was the only witness, testified that he is a representative of the Spanish-speaking community, which he described as underrepresented, and that his practice of law, as of November 2022, focused on "premigration" and deportation defense matters. He also stated that he provided free seminars (typically in the Spanish language) at churches and civic organizations, regarding individuals' legal rights in criminal and immigration matters; volunteered his services to help individuals in need of assistance or representation in immigration matters; and regularly volunteered for a food pantry and an organization that promotes motorcycle safety.

Asked how he could assure the panel that he would not repeat his past misconduct, respondent emphasized that he had reduced his litigation matters substantially and made his practice "leaner." He was the only person working in his law practice. He represented that he had implemented a number of tools and methods to address past shortcomings: for example, he had found a company to

assist him with his briefs, motions, and immigration work; implemented an online case management program that allowed clients to see their own files, assisted with calendaring and reminders, and provided a place for his digital files; and employed a full-time answering service. He also testified that Anicia had last worked in his office in February or March 2020.

Regarding his December 2017 reemployment of his wife, he stated:

> A: I at no time intended to hide that my wife was back in the office. On the contrary, that was [a] very, very open issue. . . .
>
> Q: Meaning you didn't hide it from whom?
>
> A: From anyone.
>
> * * *
>
> A: . . . The reality is that I was unaware that that change had to be disclosed. And I certainly understand today how not providing that information could be seen as misleading.
>
> I was more – I was concerned with the amount of work . . . that I needed to get done on the immigration (indiscernible); the petitions, the translation of documents from Spanish into English and the like.
>
> And that's what I was focusing in on, and my wife was very, very good at that, and I brought her back exclusively to – to do that type of work.
>
> Knowing now if I – knowing what I know today, I would have clearly, whether the question was asked or not, I would have volunteered that information.

[T33:3-25.]

Moreover, he stated that "[a]ll of my attorneys" during the ethics matters "were aware . . . [d]uring the first hearing, and even during the DRB [sic], the attorneys knew that my wife was in the office and, unfortunately, I never – I was never counseled to say, look, we have to provide this information."

Respondent confirmed that, at oral argument before us, his attorney had not disclosed that Anicia was again in his employ. He added: "It was . . . a case of more omission than commission, if you understand what I'm saying. . . . I wasn't hiding anything, but . . . the complete information or facts were not provided. And I understand how that could be taken as misleading."

Later in the proceeding, he was asked, "did it occur to you . . . in your own mind at any point that you should have told the hearing panel and/or the DRB that you had re-hired your wife?" He replied:

> Would it have been clearer or would it have been correct to do so? I absolutely acknowledge that. Was I aware that I had to do so? No. And that's really . . . my concern. The concern is that I did not know.
>
> And I understand why . . . it would have been important for them to know. So if I can turn back time and go back, knowing what I know today, I would have done that in a heartbeat, I would have told [counsel], please make sure that before you leave the podium that you answer Judge Gallipoli by providing and volunteering this information.

> And I would have done the same when [the DEC-XB] panel chair . . . asked when . . . my wife left, I would have followed up and provided and volunteered the information that she was back in the office.
>
> And of course I would have explained to both the . . . limitations under which she was back.
> Q. When Judge Gallipoli asked the question . . . when did your wife leave the office? Did that suggest to you his concern that she may still have been working at your office?
>
> A. It expressed – what it expressed to me was that she had been there for the period of time that she was, and that she left when she left; that she had access to the office for that period of time, so to speak.
>
> I did not get that he was concerned that she was back. But again, regardless, I understand that whether the question was asked or not, today I understand that I have an obligation and a duty to provide that information, to have provided the change.
>
> [T45:19-47:17.]

He also stated that he now understood that "[t]he Supreme Court ultimately owns my license [to practice law], and therefore I must follow and be clear and cognizant" of the requirements of the Rules of Professional Conduct to maintain that license in good standing.

Respondent's Written Summation

In his December 19, 2022 summation brief, respondent, through his current disciplinary counsel, Marc D. Garfinkle, Esq., acknowledged that, "in

the course of the investigation and prosecution of the OAE's case against him" in the underlying matter, he had "allowed his wife to work in his law office despite his earlier assurances that she would not." Respondent also admitted that he "did not correct a wrong or misleading statement made at his hearing before the DRB, and otherwise conducted himself improperly in the disciplinary matter against him."

Summarizing respondent's testimony during the November 2022 hearing before the DEC, counsel explained that respondent's efforts to explain his thinking after he rehired Anicia in December 2017 – that is, at a time when he "was allowing his wife to work in the office, allowing misleading statements to be made, and otherwise acting in apparent derogation of [the] OAE's justified expectations" – although "not absolving him of any violations, [did] not reflect any intent to deceive or knowing misrepresentation to any party." Instead, he urged, respondent's testimony "suggest[ed] an attorney struggling with family and financial issues, trying to hold his practice together with the help of his wife, when neither was equipped to do so."

Respondent, through counsel, acknowledged that a three-month suspension was "not unreasonable" but urged us to impose a lesser quantum discipline on grounds that "events of this sort cannot recur, as [r]espondent has simplified and streamlined his practice." Moreover, Anicia "no longer is allowed

in the offices." Further, he urged that another suspension "on the heels of" his discipline in Gonzalez III would be unnecessary and cause him hardship.

The OAE's Written Summation

The OAE, for its part, argued that "[t]ime and time again, the issue of Respondent's wife was at the forefront and Respondent allowed the DRB, like the hearing panel and the OAE before that, to proceed under false information." The OAE urged that it was "the height of disingenuity" for respondent to testify that he did not know he needed to disclose that he had reemployed his wife. To the contrary, the OAE argued, respondent was keenly aware that the issue of his wife's employment "was squarely before the OAE, [the] hearing panel and the DRB." Moreover, the OAE asserted that respondent's testimony regarding subsequent changes to his law practice had "little to do with the focus here," which was on his "deliberate and knowing lack of candor."

The OAE argued that respondent's lack of candor toward disciplinary authorities was most similar to that of attorneys who have received three-month suspensions for such misconduct. The OAE asserted that there was "no mitigation which explains [respondent's] repeated failure to simply tell the truth." The OAE also stressed that respondent has a disciplinary history; acted based on "self-motivat[ion];" and engaged in "calculated and repeated"

misrepresentations. In conclusion, the OAE argued that a term of suspension was the appropriate discipline.

The DEC's Findings

The DEC found, by clear and convincing evidence, that respondent violated RPC 3.3(a)(5); RPC 8.1(b); and RPC 8.4(c). As an initial matter, the DEC "[did] not find credible Respondent's testimony that he was unaware during the pendency of the District XB Matter that his decision to re-hire his wife should have been disclosed to the hearing panel and the DRB." The DEC noted that respondent's testimony was inconsistent with his admission that he violated the charged RPCs, including RPC 3.3(a)(5) (which provides that "a lawyer shall not knowingly: . . . fail to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal") and RPC 8.1(b) (which provides that a lawyer, "in connection with a disciplinary matter, shall not: . . . fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter").

Moreover, the DEC deemed it "simply not believable that Respondent did not know that failing to disclose his wife's return to his office would mislead the hearing panel and the DRB," noting also that the question of why he continued to employ his wife, long after he first learned of her misconduct,

"arose repeatedly during the investigation and hearing of the matter," and later was addressed during oral argument before us. The DEC concluded that:

> no reasonable attorney in Respondent's position could have been unaware that he should have disclosed to the hearing panel and the DRB that he had re-hired his wife after all her misdeeds and the resultant harm done to Respondent's clients. Nor could any reasonable attorney have been unaware that failing to make such a disclosure would mislead the hearing panel and the DRB.
>
> [HPR at 13-14.]

Turning to the charged violations, the DEC determined that the OAE had established, by clear and convincing evidence, that respondent committed two violations of RPC 3.3(a)(5). Weighing the importance of Anicia's employment as an issue in the Gonzalez I proceedings, the panel determined that he had failed to disclose a material fact, knowing that the omission was reasonably certain to mislead the tribunal. He did so during proceedings before two tribunals: first, before the DEC-XB, and second, before us.

Next, the DEC determined that the same misconduct constituted a violation of RPC 8.1(b), which applies when an attorney, in connection with a disciplinary matter, "fail[s] to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter."

Finally, the DEC determined that respondent's failure to disclose the re-hiring of his wife, knowing that we and the DEC-XB were misled by his failure

to make such a disclosure, constituted "conduct involving dishonesty, fraud, deceit or misrepresentation," in violation of RPC 8.4(c).

Citing disciplinary precedent, the DEC acknowledged that cases involving lack of candor to a tribunal are often met with terms of suspension, although the range of discipline is wide. See In the Matter of Eric J. Clayman, DRB 05-278 (December 28, 2005) at 24 (recommending a censure), so ordered, 186 N.J. 73 (2006), and In the Matter of Aaron S. Friedmann, DRB 03-237 (December 8, 2003) at 25 (recommending a six-month suspension), so ordered, 181 N.J. 320 (2004)). The DEC further noted that the Court has held that a "misrepresentation to a tribunal is a most serious breach of ethics because it affects directly the administration of justice" and that "the destructive potential of such conduct to the justice system warrants stern sanctions." See In re Forrest, 158 N.J. 428, 437 (1999) (internal quotation marks omitted).

The DEC gave little weight to most of the mitigating factors that respondent had offered during his testimony. The panel found that neither his charitable work nor his measures to improve his office management were germane to the issues in the present matter, where "the charges . . . concern honesty offenses." Moreover, the DEC found respondent's testimony that he fired Anicia in early 2020 and would not rehire her was "the bare minimum

corrective action that is required, given all that transpired while Respondent employed his wife." In addition, the DEC concluded that:

> [r]espondent's explanation of why he re-hired his wife does not justify his failure to disclose that he had re-hired her. Whatever the reason, Respondent should have disclosed his decision to re-hire Anicia to the Hearing Panel and the Board. If Respondent believed his decision was justified, he could have – and should have – explained his decision to them, particularly in light of their clear concerns about Anicia's continued employment.
>
> [HPR at 18.]

In mitigation, the DEC determined that respondent "appears sincerely to have changed his understanding of how he must conduct himself as an attorney;" noted his statement that "he now views himself as, essentially, the custodian of a law license that belongs to the Supreme Court;" and credited "his renewed commitment to acting ethically." In aggravation, the DEC weighed respondent's three-month suspension in Gonzalez I and his censure in Gonzalez II.

Based on the foregoing, the DEC determined that a three-month suspension was the appropriate quantum of discipline for respondent's misconduct. In addition to other relevant precedent, the DEC noted, in particular, In re Kaplan, 208 N.J. 487 (2012), in which the attorney was suspended for three months after failing to take corrective action that she had assured the DEC she would undertake to remediate her prior unethical conduct.

In the Matter of Rachel D. Kaplan, DRB 07-347 (May 28, 2008) at 10-14. Because the attorney in Kaplan deceived the DEC through her unfulfilled promise, we recommended, and the Court imposed, a term of suspension. Kaplan, 208 N.J. at 488.

The Parties' Positions Before the Board

During oral argument before us, the OAE again urged that respondent's admitted misconduct warranted a three-month suspension. Although the OAE recognized the mitigating factors that he had described during the hearing, including his community service and changes to his office organization, the OAE argued that his RPC violations related to honesty and that "none of [his] testimony actually dealt with [his] honesty." Instead, the OAE highlighted his "troubling" testimony during the proceedings underlying Gonzalez I. In that matter, although his wife's actions were "front and center," it never occurred to him that he needed to disclose her reemployment.

Respondent, through his counsel, again emphasized the steps he had taken to reform his practice. He asserted that, although a three-month suspension was not unreasonable, it would be a "stern" and unnecessary penalty, given that he had corrected past deficits in his practice and intended "to follow the straight and narrow" in the future. Instead, he argued, other appropriate sanctions would

achieve the goal of protecting the public, while also being "less injurious" to him, as he had worked hard to prepare for his anticipated reinstatement following his suspension in Gonzalez III. Specifically, he urged that, if we determine to impose a suspension, we should suspend the suspension, contingent on there being no additional disciplinary grievances or inquiries against him.

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a de novo review of the record, we find that the DEC's determination that respondent violated all the charged Rules of Professional Conduct is supported by clear and convincing evidence.

The crux of all three charges is that respondent represented or provided information to the OAE, the DEC-XB, and us that he had terminated Anicia's employment in March 2016, and subsequently failed to correct or update this information to reflect that, in December 2017, Anicia returned to work for him. Clearly, after December 2017, respondent's representation that Anicia stopped working for him in 2016 was an incomplete and misleading account of her role in his office. Simply stated, March 2016 marked the beginning of a twenty-one-month hiatus in her employment, after which she resumed her work with

respondent and remained in his employ throughout the remainder of the DEC-XB's proceedings and the entirety of our proceedings.

RPC 3.3(a)(5) provides that an attorney "shall not knowingly . . . fail to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal[.]" The duty to disclose "continue[s] to the conclusion of the proceeding[.]" RPC 3.3(b). Thus, the Rule serves "to prevent errors in decision making by a tribunal that . . . has been misled because it lacks information about material facts." In re Seelig, 180 N.J. 234, 253 (2004).

Like the DEC, we find incredible respondent's claim that he did not know that Anicia's rehiring should be disclosed. Similarly, as aptly stated by the DEC, "it is simply not believable that [r]espondent did not know that failing to disclose his wife's return to his office would mislead" the DEC-XB and us.

Respondent knew Anicia's continuing employment was a "material fact." As early as September 2014, Anicia's role in his failure to adequately serve clients and safeguard clients' funds was addressed with him; about four-and-a-half years later, in June 2019, during oral argument before us, Anicia's employment remained a dominant concern; and during the years between, respondent seldom let pass an opportunity to fault Anicia for pervasive unprofessionalism in his practice. Simply put, Anicia's employment status was material in the Gonzalez I proceedings because, time and again, respondent

blamed Anicia for the circumstances and incidents that had given rise to the charges against him.

Anicia's continuing employment was also material to whether we (and the DEC, for that matter) should weigh, in mitigation, steps respondent allegedly had taken to curb his wrongdoing. Thus, among other defenses raised by respondent in his March 2016 verified answer to the Gonzalez I complaint, he asserted that he had taken the remedial step of terminating Anicia's employment – an accurate statement at the time he filed his answer, but no longer a candid representation in January 2018, when he testified before the DEC-XB.

During the June 2019 oral argument before us, respondent, though his counsel, stated that he had taken "extraordinary remedial measures immediately after learning of his wife's misconduct," including "very severely limiting her responsibilities . . . to purely ministerial ones." But he (and his counsel) then misled us in their carefully constructed answers to our questions relating to when respondent "ultimately" terminated Anicia's employment. He avoided revealing to us the truth – that Anicia had resumed work at his office about eighteen months earlier and was presently still working there – not only during oral argument, but on a continuing basis thereafter, with Anicia's return only brought to light after an OAE investigation that was prompted by a former employee's statement in an unrelated matter.

Thus, respondent knowingly fostered and, further, sought to preserve, as a potential mitigating factor, the continuing misapprehension that he had once and for all addressed Anicia's pervasive undermining of his practice.

Clear and convincing evidence also supports the DEC's conclusion that respondent violated RPC 8.1(b) by failing to disclose, in connection with a disciplinary matter, "a fact necessary to correct a misapprehension known by [him] to have arisen in the matter." Specifically, respondent failed to correct the misapprehension – shared by us, the OAE, and the DEC hearing panel – that Anicia had last worked for him in March 2016.

Finally, owing to the same failure to disclose, respondent engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation, in violation of RPC 8.4(c).

In sum, we find that respondent violated RPC 3.3(a)(5); RPC 8.1(b); and RPC 8.4(c). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

The discipline imposed on attorneys who make misrepresentations to a court or exhibit a lack of candor to a tribunal, or both, ranges from an admonition to a significant term of suspension. See, e.g., In the Matter of George P. Helfrich,

Jr., DRB 15-410 (February 24, 2016) (admonition for attorney who failed to notify his client and witnesses of a pending trial date; thereafter, he appeared at two trial dates, but failed to inform the trial judge and his adversary that he had not informed his client or the witnesses of the trial date; significant mitigation); In re Vaccaro, 245 N.J. 492 (2021) (reprimand for attorney, in a reciprocal discipline matter, who lied to a judge, during a juvenile delinquency hearing, claiming that he had no knowledge of his client's other lawyer or his client's counseling in connection with his client's immigration matter; violations of RPC 3.3(a)(1) and RPC 8.4(c)); In re Myerowitz, 235 N.J. 416 (2018) (censure for attorney who lied to the court on at least two occasions regarding the reasons for needing an extension of time to file an answer to his adversary's summary judgment motion and about the dates he mailed his opposition papers, thus, causing delays and wasting judicial resources; violations of RPC 3.3(a)(1) and RPC 8.4(c) and (d); the attorney also failed to reply to an order to show cause, in violation of RPC 3.4(c) (disobeying the rules of a tribunal)); In re Alexander, 243 N.J. 288 (2020) (three-month suspension for attorney who gave false testimony before a hearing officer and a Superior Court judge in connection with a domestic violence matter; the attorney filed a false domestic violence complaint against his paramour, leading to the issuance of a temporary restraining order in the attorney's favor; thereafter, during a two-day Superior

Court hearing, the attorney's paramour presented an audio recording of the alleged incident, which contradicted the attorney's testimony; although the judge allowed the attorney the opportunity to review the evidence and withdraw his false testimony, the attorney refused to do so; instead, the attorney presented an audio-visual recording of the incident, which again contradicted his version of events; the attorney also misrepresented the nature of his testimony to the OAE; violations of RPC 3.1 (engaging in frivolous litigation), RPC 3.3(a)(1), RPC 8.1(a), RPC 8.4(c), and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice), among other RPCs; in mitigation, the attorney had no prior discipline in his twelve-year career at the bar); In re DeClement, 241 N.J. 253 (2020) (six-month suspension for attorney who, in an attempt to secure a swift dismissal of a federal lawsuit, misrepresented in a certification, under penalty of perjury, that prior state court litigation had settled, despite knowing that it merely had been dismissed without prejudice; to support his deception, the attorney then omitted, in his submissions to the federal judge, critical portions of the state court record; the attorney continued to misrepresent to the judge and, later, to the OAE, the status of the state court matter; violations of RPC 3.1, RPC 3.3(a)(1); RPC 8.1(a), and RPC 8.4(c), among other RPCs; in aggravation, the attorney did not cease his acts of deception until he was "completely cornered" by the OAE; prior reprimand); In re Cillo, 155 N.J. 599

(1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, 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 remain in reserve; violations of RPC 3.3(a)(1) and (2) (failing to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting in an illegal, criminal, or fraudulent act), RPC 3.5(b) (engaging in ex parte communication), and RPC 8.4(c) and (d); two prior private reprimands (now admonitions)).

Generally, in matters involving misrepresentations to ethics authorities, 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 aggravating or mitigating factors. See, e.g., In re DeSeno, 205 N.J. 91 (2011) (reprimand for attorney who misrepresented to the district ethics committee the filing date of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand); In re Otlowski, 220 N.J. 217 (2015) (censure for attorney who made misrepresentations to the OAE and to a client's lender by claiming that funds belonging to the lender, which had been

deposited into the attorney's trust account, were frozen by a court order; to the contrary, they had been disbursed to various parties); In re Allen, 250 N.J. 113 (2022) (three-month suspension for attorney who falsely represented to the OAE and to us that he had procured a settlement with a client, knowing he had not, in violation of RPC 3.3(a)(1) and RPC 8.4(c); the attorney also committed recordkeeping violations, failed to maintain required professional liability insurance, and did not produce a number of records requested by the OAE during its investigation, violations of RPC 1.15(d), RPC 5.5(a)(1) (engaging in the unauthorized practice of law), and RPC 8.1(b); prior admonition and censure); In re Freeman, 235 N.J. 90 (2018) (three-month suspension for attorney performing pool work for the Office of the Public Defender (the OPD); the attorney failed to communicate with his client about an upcoming hearing on a petition for post-conviction relief; the attorney appeared at the hearing without the client, took actions that were contrary to the client's wishes, and made misrepresentations to the court and the OPD; those statements would later negatively impact the client's ability to pursue an appeal; during the ethics investigation, the attorney lied to the DEC investigator, and later to the hearing panel; violations of RPC 1.2(a) (failing to abide by the client's decisions regarding the scope of the representation), RPC 1.4(b), RPC 3.3(a), RPC 4.1(a) (false statement of material fact or law to a third person), RPC 8.1(a), and RPC

8.4(c)); In re Silberberg, 144 N.J. 215 (1996) (two-year suspension for 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 cover up his improprieties); In re Clausen, 231 N.J. 193 (2017) (three-year suspension, in a default matter, for attorney who, in connection with a voluntary bankruptcy petition, made multiple misrepresentations, under penalty of perjury, regarding his debt and his creditors, in an attempt to manipulate the bankruptcy code for his personal benefit, violations of RPC 3.3(a)(1) and (a)(5), RPC 8.4(c), and RPC 8.4(d); in connection with an earlier disciplinary matter involving his mishandling of a client's case, he made misrepresentations to us regarding the status of payments made to the client, in an attempt to mitigate the discipline imposed on him, violations of RPC 3.3(a)(1) and (5) and RPC 8.4(c); he also made multiple misrepresentations during an OAE demand audit and committed violations of RPC 1.15(a) and (d); prior censure and two prior reprimands).

Respondent's misconduct, which combined misrepresentations both during disciplinary proceedings and to a tribunal, is similar to that of the attorneys in Allen and Freeman, each of whom received a three-month suspension.

Kaplan, on which the DEC relied, is also instructive. Although that attorney was not charged with violating RPC 3.3(a), RPC 8.1(b), or RPC 8.4(c), the dominant factor weighed by us in recommending her suspension was that, during the proceedings before the DEC, she had misrepresented to the DEC and to the client that she would swiftly take the steps needed to rectify her failure to complete work on the client's matter. Kaplan, DRB 07-347 at 9, 11-13. The DEC – swayed by her apparent contrition and assurances that she would correct her prior neglect of the client's matter – recommended that she receive only an admonition. Id. at 11. She then failed to do any additional work on the client's behalf and ignored the client's efforts to contact her about his matter. Id. at 9. Consequently, we found that her misconduct, which could otherwise have warranted only an admonition, required nothing short of a suspension. Id. at 8-9, 12-13.

Respondent, like the attorney in Kaplan, sought to capitalize on the misapprehension that he had finally terminated Anicia's employment in March 2016. While leading disciplinary authorities to believe that he had cured prior

deficiencies, he exposed the public to ongoing risks arising from his practice by rehiring an employee whom he admittedly knew had lied; altered documents; hidden mail and other communications; redirected or failed to adequately track funds; and otherwise instigated or exacerbated numerous issues that related to the mishandling of client matters and financial books and records. Respondent's cavalier attitude toward the disciplinary process, evident in both his rehiring of Anicia and his failing to disclose that he had done so, warrants no less a sanction than the suspensions imposed in Allen, Freeman, and Kaplan.

Consequently, we determine that a three-month suspension is the baseline quantum of discipline for respondent's misconduct. To craft the appropriate discipline in this case, we also consider mitigating and aggravating factors.

In mitigation, we consider respondent's renewed commitment to comport himself in accordance with the Rules of Professional Conduct, his promise that events of this sort would not recur, and his claim that he no longer allows Anicia into his offices. However, respondent's significant history of repeating misconduct, despite taking corrective steps, precludes us from weighing these alleged remedial measures as significant mitigation.[3]

[3] Respondent also urged us to weigh, in mitigation, the fact that, upon reinstatement from his suspension in Gonzalez III, he is required to practice under the supervision of an OAE-approved proctor for a period of time and until further Order of the Court. In our view, that Court-ordered condition, associated with prior discipline, does not constitute a mitigating factor in the present matter.

In aggravation, when respondent testified before the DEC, in November 2022, he sought to shift responsibility for the conduct at issue by alleging that prior counsel failed to advise him to correct the misapprehension that Anicia last worked for him in March 2016.

In further aggravation, we consider the timeline of respondent's prior discipline. At the time of the instant misconduct, respondent had no disciplinary history.[4] However, the discipline recommended by us in respondent's other, subsequent matters did not serve as a global sanction that would have addressed the violations now before us. His prolonged misleading of disciplinary authorities constitutes a distinct course of dishonesty, not addressed by the discipline imposed by the Court in his other matters and, thus, requiring a specifically tailored sanction.

Finally, we reject respondent's position that a suspended term of suspension is appropriate for his misconduct. A suspended suspension "constitutes an exceptional form of discipline[.]" In re Schaffer, 140 N.J. 148, 158 (1995). Thus, in Schaffer, the Court held that in "a case in which an attorney has been convicted of a possessory crime relating to controlled dangerous substances," a term of suspension should not be suspended "even when, prior to

[4] Respondent's misconduct in this matter occurred between December 2017, when he rehired Anicia, and December 4, 2019, when we entered our decision in DRB 19-129. In April 2020, the Court first disciplined respondent, imposing the three-month suspension in Gonzalez I.

the imposition of discipline, the underlying addiction has been zealously addressed by the attorney and rehabilitation has been accomplished." Ibid.

In In re Alum, 162 N.J. 313, 317 (2000), the Court authorized a suspended suspension based on "the length of time that ha[d] passed since [the attorney's] transgressions, his otherwise unblemished career as an attorney, and his exemplary service to the community." There, more than a decade had passed since the attorney's misconduct. Id. at 315.

Most recently, the Court suspended a six-month suspension in Chechelnitsky, which came before us on a motion for final discipline following the attorney's multiple arrests and convictions, during a four-year period, for alcohol-fueled misconduct. In the Matter of Yana Chechelnitsky, DRB 17-043 (July 24, 2017) at 15. During the disciplinary proceedings, the attorney provided proof that she had successfully completed inpatient treatment but offered no assurances, from a mental health professional, that she would not reoffend. Id. at 19-20. Although the OAE recommended a suspension, the attorney argued for lesser discipline, emphasizing (among other mitigating factors) that her alcohol abuse was precipitated by her spouse's physical, psychological, and emotional abuse of her. Id. at 12. She further emphasized her recent treatment; contended that her domestic discord had been abated by divorcing her abusive spouse; and argued that a suspension would "have a 'disastrous affect' [sic] on her life,

which she has been slowly piecing together." Id. at 11-12. Taking account of the attorney's "considerable efforts toward rehabilitation and the hardships that a suspension may cause at this juncture," we determined to impose a six-month, suspended term of suspension, "conditioned on [the attorney's] continued sobriety and good behavior." Id. at 19. The Court agreed. In re Chechelnitsky, 232 N.J. 331 (2018).

Here, in our view, respondent has presented no exceptional circumstances that justify a suspended suspension. His record of repeated disciplinary infractions contrasts starkly with the decade-long, unblemished record that the attorney in Alum maintained between the dates of that attorney's misconduct and the entry of the Court's final Order in his case. Moreover, he did not present exceptional circumstances on a par with the unique combination of factors that justified a suspended suspension in Chechelnitsky.

Conclusion

On balance, we conclude that the mitigating and aggravating factors do not justify a departure from the baseline discipline. Thus, we determine that a three-month suspension is the appropriate quantum of discipline for respondent's misconduct.

Member Menaker was recused.

Members Joseph and Rivera were absent.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: */s/ Timothy M. Ellis*
Timothy M. Ellis
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Nelson Gonzalez
Docket No. DRB 23-139

Argued: September 21, 2023

Decided: December 13, 2023

Disposition: Three-month suspension

Members	Three-Month Suspension	Recused	Absent
Gallipoli	X		
Boyer	X		
Campelo	X		
Hoberman	X		
Joseph			X
Menaker		X	
Petrou	X		
Rivera			X
Rodriguez	X		
Total:	6	1	2

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