SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-204
District Docket No. VC-2004-0050E

IN THE MATTER OF

WILLIAM N. STAHL

AN ATTORNEY AT LAW

Decision

Argued: October 17, 2008

Decided: December 4, 2008

Lindsey H. Taylor appeared on behalf of the District VC Ethics Committee.

Thomas A. Battaglia appeared on behalf of respondent.

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

This matter came before us on a recommendation for discipline (unspecified term of suspension) filed by the District VC Ethics Committee ("DEC"). The charges stem from respondent's conduct while performing per diem work for another attorney. The complaint alleged violations of RPC 1.15(b) (a lawyer shall promptly notify a third person of the receipt of funds in which the third person has an interest and shall

promptly deliver such funds to the third person), RPC 1.15(c) (a lawyer shall segregate disputed funds until the resolution of a dispute between the lawyer and a third person), RPC 3.3 (a)(1) (a lawyer shall not knowingly make a false statement of material fact or law to a tribunal), RPC 3.3(a)(4) (a lawyer shall not knowingly offer evidence that the lawyer knows to be false), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

We determine that a one-year suspension is the appropriate degree of discipline in this matter.

Respondent was admitted to the New Jersey bar in 1983. In 2004, he received an admonition for not maintaining a business and a trust account in New Jersey and for representing two clients, in 2002, while he was ineligible to practice law for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. Respondent's representation consisted of filing a complaint on behalf of one client and making a court appearance on behalf of another. In mitigation, we considered that, in representing the two clients, respondent was moved by humanitarian reasons. In the Matter of William N. Stahl, DRB 04-166 (June 22, 2004).

The conduct that gave rise to the present disciplinary charges against respondent was as follows:

In November 1995, respondent replied to an ad placed in the

New York Law Journal by Linda Strumpf, an attorney with a heavy debt-collection practice. Although Strumpf is admitted in New Jersey, New York, and Connecticut, at the time she practiced out of her New York and Connecticut offices. Twenty years ago, she began to hire per diem attorneys to assist her in covering the numerous court appearances that her collection practice required.

Strumpf charged clients twenty to thirty percent of the amounts collected. She paid the per diem attorneys either $100 or $200, depending on whether the court proceedings lasted half a day or an entire day. The per diem attorneys received compensation even if no monies were collected.

The case that led to Strumpf's grievance against respondent involved a client by the name of KBI Securities Services ("KBI"). Strumpf had provided prior legal services to KBI. Robert King was the president of the company. His son, Stuart King, was in charge of KBI's New Jersey operation.

KBI had hired Strumpf to file a New Jersey suit against J. Sepenuk & Sons, Inc. ("Sepenuk"), who owed KBI $12,000. According to Strumpf, although Sepenuk filed an answer and counterclaim, no one appeared on its behalf at the trial, which she personally handled. As a result, she obtained a default judgment against Sepenuk and later levied on its bank account.

Subsequently, Sepenuk filed a motion to vacate the default. In February 1996, Strumpf retained respondent to prepare an

opposition to the motion and to appear on its return date. Respondent did so. The court vacated the default judgment and set a trial date for March 1996.

Strumpf continued to retain respondent's services for KBI's representation at the trial. His compensation arrangement remained unchanged, $200 for each day of trial.

At the end of a four-day jury trial, respondent obtained a very favorable result, including an award for counsel fees. The final order and judgment, dated June 18, 1996, provided for the payment of the $12,132.84 debt, plus $7,144.08 in interest, plus $13,431.25 in counsel fees, for a total of $32,708.17. The counsel fee award was based on Strumpf's and respondent's certifications listing their time spent on the case.[1]

According to Strumpf, despite the $13,000-fee windfall, she informed KBI that she was going to honor their agreement for twenty-five percent of $32,000 and that KBI should keep the balance.

On March 25, 1996, Strumpf's office issued an $800 check to respondent to cover his four-day appearance at the trial. Strumpf

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[1] Although the certifications are not part of the record, Strumpf's was reviewed by the hearing panel, at the ethics hearing. The panel chair noted that it listed $5,906.25 for Strumpf's services. When the panel chair asked respondent why the court had awarded a $13,000 fee, respondent replied that it was based on his certification as well. Presumably, respondent listed his own services as approximately $7,000. Respondent told the hearing panel that he had been unable to locate his certification.

asked respondent to continue working on the case by executing on the judgment. His remuneration for those services continued to be on a per diem basis.

In early April 1995, before the entry of the final order and judgment, respondent went to Strumpf's Connecticut office to prepare a counsel fee affidavit. Strumpf testified that

> [a]fter the trial, work had to be done to get a final judgment in order. As a matter of fact, April 5 or 6 I happen to remember [respondent] came to my office, the office that I have in Connecticut, and worked out of my office on my computer to prepare — I remember we had to prepare a time sheet because he got attorneys' fees, the time I spent before and the time he spent on the trial and various work and some kind of motion to be submitted to the court.
>
> I paid him on that date . . . . He came to my office then in April. After that we were also on the phone with Mr. King, who was Bob King, the president of KBI. We spoke to him, told him about the judgment, and at this point [respondent] was making the effort to collect and I was paying him on a per diem basis for that.
>
> [T36-10 to T37-5.][2]

As mentioned previously, the court entered a final order and judgment on June 18, 1996. Before that, in early June 1996, respondent prepared a motion, supported by a memorandum of law, for the entry of the final order and judgment. Both documents

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[2] T denotes the transcript of the DEC hearing on November 28, 2006.

identified Strumpf and respondent as attorneys for KBI and listed Strumpf's office address and telephone number. Strumpf's name appeared above that of respondent. The June 18, 1996 judgment, which respondent prepared for the court's signature, also bore Strumpf's name, office address, and telephone number.

On the same day that the final order and judgment was signed, respondent sent the following fax to Hal Siegel, Strumpf's husband and office manager:

> Hal, the Judge signed the order in Sepenuk this morning for the full amount that my motion asked for. The Judge agreed with everything I said. Hal, I want to address the attorney's fee issue and my participation, this is clearly a windfall and not contemplated by our deal. How about if I keep the award as it relates to my time? You still get the windfall of Linda's fees plus 20% of the full amount collected by the client.
>
> Attached are copies of all my papers so you can see what was involved.
>
> Did you know that Mr. Sepenuk turned down KBI's offer to take half or $6,000? Now he has a judgement [sic] against him for almost $33,000.
>
> [Ex.G-8.]

According to Strumpf, her husband replied as follows:

> "Look, I understand if you want some kind of bonus, we're happy to do that . . . .
>
> I'm happy to give you a bonus once I get my money. You have to understand that you appear for us on a lot of cases. 90 or 80

> percent of the cases we pay you, we don't get paid. It all comes out in the wash in the sense you're not – we're doing this on a contingency basis. We take the risk by paying you and not getting paid on 90 percent of the cases. If we win on one of the cases or receive money, the deal isn't that we're supposed to share it. We're taking the risk, not you. You're getting paid for your time."
>
> My husband said, "Yes, once we get paid, I'll certainly give you some extra money."
>
> [T44-14 to T45-8.]

Strumpf testified that no amount had been discussed at that time.

The next document that respondent prepared in the Sepenuk case was a writ of execution, dated July 16, 1996. That document, also, identified Linda Strumpf and respondent as attorneys for KBI and listed Strumpf's office address and phone number. The writ commanded the sheriff to satisfy the $32,000 judgment out of property belonging to J. Sepenuk & Sons, Inc. and to "pay the monies realized . . . from such property to KBI SECURITY SERVICES, INC. **or to Linda Strump [sic] and William N. Stahl, attorneys for plaintiff in this action . . .** " [emphasis added].

After June 18, 1996, the date of respondent's fax to her husband, Strumpf called respondent constantly to find out if he had collected the amount of the judgment. According to Strumpf, respondent's reply was always that he was "working on it."

Unbeknownst to Strumpf, on August 23, 1996, Sepenuk wrote a check for the full amount of the judgment, $32,708.17, payable to respondent. Respondent deposited the check in what he called "a special account" and disbursed the entire proceeds directly to KBI.

Shortly thereafter, respondent disclosed to Strumpf that he had received the check, that he had distributed it to KBI, and that he had taken his fee. Respondent told Strumpf that her dispute was with KBI, not with him.

Strumpf testified that she was "just dumbfounded" by respondent's conduct. In all other instances, her per diem attorneys would turn over to her the proceeds collected, even if the checks also named them as payees.

In September 1996, Strumpf wrote to Robert King, demanding her twenty-five percent fee. According to Strumpf, his reply was, essentially, "[y]ou're discharged." She then returned the file to KBI.

Subsequently, Strumpf filed a suit against respondent in the Superior Court, Law Division – Civil Part, Essex County. At this trial, respondent testified that, on the first day of the Sepenuk trial, March 19, 1996, Stuart King had fired Strumpf and had hired him instead:

> Mr. Stuart King got on the phone and he got into a big argument with Linda Strumpf. He came out and he talked to me and he said that he wanted me to continue with the

> matter, and wanted me to proceed to the trial, which I then did . . . . I had assumed, and perhaps erroneously, that I could continue on a per diem basis with Linda Strumpf's office and also continue this relationship with KBI.
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> [Ex.G-3 at 58-12 to 21.][3]

Respondent acknowledged to the trial judge that, notwithstanding his new position as KBI's sole counsel, he had subsequently billed Strumpf for his services on behalf of KBI and had accepted her payment. His explanation was that he had done so in order to continue his relationship with Strumpf.

Following a two-day trial, the judge entered a judgment against respondent in the amount of $8,262.04, plus pre-judgment interest. The $8,000 represented twenty-five percent of the recovered amount ($32,708.17), the rate provided in the fee agreement between Strumpf and KBI. The judge made the following findings:

> I found it incredible that [Strumpf] was discharged from service in that case by Mr. King, and yet issued checks to Mr. Stahl for services performed in that case thereafter. I think to determine credibility one must decide not only does the testimony come from the mouth of credible witnesses, but it must be credible in and of itself. It must be such that reasonable men and women can approve as probable under the circumstances.

[3] Exhibit G-3 is the transcript of the March 27, 1998 trial date.

> In this case, the testimony of the alleged firing of Mrs. Strumpf on March 19th, 1996, in my opinion, is incredible and should be disregarded. Indeed, the conduct of Mr. Stahl thereafter was completely inconsistent with the view that she had been discharged. Indeed, in the documents that were . . . prepared by Mr. Stahl subsequent to [March 19, 1996], up to and including the entry of the judgment, the attorney of record appeared to be Linda Strumpf and William N. Stahl. His explanation that this was because it was on the computer I find completely incredible.
>
> [Ex.G-4 at 105-18 to 106-9.][4]

The judge then referred to some checks that respondent had accepted from Strumpf for per diem work performed after March 19, 1996:[5]

> When confronted with these checks that were subsequent to March 19th, 1996, [Mr. Stahl] said: I don't know what they're for. But if I looked at my file, I might be able to answer that question.
>
> I find it incomprehensible that a lawyer, an experienced lawyer, confronted with the accusations that are made in this case, wasn't completely familiar with this file and the explanation for those checks. The only answer that I can come to is, is that

[4] Ex.G-4 is the transcript of the March 31, 1998 trial date.

[5] Some of these checks were presented to the hearing panel at the ethics hearing, but, for some reason, were not introduced into evidence. At the hearing, the panel member who sifted through the various checks submitted by Strumpf noted that only two of those checks were dated after June 18, 1996, the judgment date: a check for $400, dated June 25, 1996, and a check for $300, dated July 24, 1996. Respondent acknowledged having accepted those two payments. The two checks are not in evidence.

> he is not able to deny that those checks were paid to him for those services, and I so find.
>
> [Ex.G-4 at 106-11 to 20.]

The judge then concluded:

> It is clear that Mr. Stahl continued to function under the – and left in the mind of Miss Strumpf that he was functioning solely and exclusively for her, as a lawyer employed by her office. That is clearly confirmed by facsimile which was sent to Mr. Siegel dated June 19, 1996 . . . .
>
> That is as clear as clear can be, that Mr. Stahl acknowledged after the judgment . . . that Miss Strumpf's office was entitled to the fees as attorney of record.
>
> . . . .
>
> According to the testimony of both sides nothing was ever agreed upon and Mr. Stahl took it upon himself to convert to himself the entire case file and the fee. I see nothing in the record that can justify such actions.
>
> . . . .
>
> Therefore, I find that [Linda Strumpf] has established by a preponderance of the evidence, that Mr. Stahl did violate his duty to [her] and converted an asset, namely, the accounts receivable on this matter, to his own uses.
>
> [Ex.G-4 at 108-24 to 110-7.]

At the ethics hearing, respondent testified that KBI had terminated Strumpf's services and had retained him not on March 19, 1996, as he and Stuart King had testified at the civil trial, but on a subsequent date, July 15, 1996. Respondent never

mentioned the July 15, 1996 date at the civil trial. At the ethics hearing, he testified that, for a period after March 1996, he had continued acting in the Sepenuk matter as a per diem attorney for Strumpf.

As to his June 18, 1996 fax to Strumpf's husband, respondent testified that its purpose was to "[try] to work out some better deal because it didn't make any sense what we were doing. They were shoving all this responsibility on me and yet I was still just this per diem attorney." He referred to the favorable outcome in the Sepenuk case as "my genius work."

At the ethics hearing, respondent gave the following testimony about the circumstances that had led to KBI's retention of his services:

> On or about July 15, [1996], probably a little bit before July 15, I'm not sure exactly of the date . . . . I got a call from Stuart King just one day during July, I'm not sure of the date, and he said what's going on with the KBI Sepenuk matter. And I'm not sure what he said. It came down to, look, we want you to go forward with it. We don't want you involved with Ms. Strumpf. We'll pay you. We want to hire you. Don't get Linda Strumpf involved it [sic]. You do it.
>
> They saw what I did at the trial. They wanted me to do it. They didn't want Linda Strumpf to do it. Why, you have to ask Stuart King about it. He has a panoply of reasons . . . .
>
> I said, "Hey, this is great. This is a good job finally coming my way." I was going to get paid for my work. I said, "Okay, I'll do it."

> And they also wanted it to be done . . . right away. [Stuart King] had an opportunity to close on some real estate. He wanted the cash right away, and then that was all they wanted.
>
> What evidently happened, I am surmising, things got dragged on with Linda Strumpf, months and months nothing would happen. He called me, "I'll pay you. You do it. Do it expeditiously."
>
> And I said, fine. I dropped everything I was doing and did just that thing.
>
> [T124-21 to T126-5.]

Thereafter, respondent continued, he prepared a letter for Stuart King's signature, confirming their conversation and providing for the amount of his and Linda Strumpf's compensation. The letter, dated July 15, 1996 and addressed to respondent, read as follows:

> This is to advise you that KBI Security Services, Inc. and myself are appointing you to act as attorney for KBI in the [Sepenuk] matter. You are to proceed as sole counsel and not in connection with the law offices of Linda Strumpf. We are instructing you to act on behalf of the company in the above matter in as expeditiously a manner as possible.
>
> In the event you are able to effect a recovery from Sepenuk & Sons, Inc., you are instructed to pay to Linda Strumpf the total amount of $6,715 in total payment of her attorney's fees for this matter. It was originally anticipated that Ms. Strumpf was to have been paid approximately $3,000 for

her efforts in this matter. It is my feeling that this settlement for her is more than generous.

[Ex.G-10.]

Strumpf testified that she learned about this letter only when she saw respondent's appeal from the trial court's decision in her suit against him.

At the trial of Strumpf's suit against respondent, Stuart King testified about the events that had prompted him to engage respondent as KBI's lawyer. He told the judge that, on the first day of the March 1996 trial, he had called Strumpf from the courthouse, complaining about her handling of the Sepenuk case:

> What I told her was I was very dissatisfied in the way this case was handled. I did not know Mr. Stahl at all, nor did he consult with me or did they consult with me for the last four years of this case. It wasn't just a collection case. They're not my cup of tea any longer, I wanted nothing to do with them, and slammed the phone down in anger . . . . It would have been better if she, as a seasoned person for the company for many years, handled herself. But she gave me no indication she wasn't going to be here, I didn't know this man from Adam, and he wasn't briefed properly about my case. And my company, my money is my bread and butter, and if I'm going to buy black shoes, why should I be handed brown? And I was fed up with them and I just terminated my service at that point. And I told this man: Look, you want to work with me a hundred and ten percent on this, you have to study the records. The law books, the incident reports, what led up to the actual case at

> trial in point here, not just a case. It's a case in point.
>
> So he agreed he'd work very hard, and I hired him outright to go to work.
>
> [Ex.G-4 at 8-9 to 9-9.][6]

As mentioned above, at the civil trial, respondent told the judge that, on the first day of the Sepenuk trial, March 19, 1996, Stuart King had fired Strumpf and had hired him. At the ethics hearing, however, respondent denied knowing that Stuart King had ended KBI's attorney-client relationship with Strumpf during a phone call from the courthouse, on March 19, 1996. He testified that he had heard portions, but not all, of King's "animated discussion" with Strumpf:

> Stuart King was on the telephone. We were in the hallway in the Essex County courthouse waiting for things to begin, and he got on the telephone and there was an animated discussion. He was angry. He flies off the handle and gets angry, one of those types of guys. That was all I heard.

[6] The panel chair noted that King's testimony about the date of respondent's retention was at variance with respondent's testimony at the DEC hearing. Despite having been subpoenaed to testify at the DEC hearing, King did not appear. Near the end of the hearing, when respondent's counsel highlighted the relevancy of King's testimony, the panel chair gave him an opportunity to produce King within two weeks of the hearing date. King never testified.

> At that point I did not know and I wasn't told that he was — he was severing his relationship with Linda Strumpf. I didn't understand that. I wasn't party to the conversation.
>
> [T121-6 to 18.]

Strumpf vigorously denied having had such a conversation with Stuart King. She testified that KBI had never expressed any dissatisfaction with her services, other than to complain that the cases sometimes did not move fast enough, and that Robert King had never informed her that he wanted to replace her with a new attorney. In fact, she added, Robert King had given her new collection cases after Sepenuk.

As to Stuart King's instruction to respondent about the amount of the fee that Strumpf should receive, respondent testified that he and King had discussed this subject:

> At the time, you know, we were wrestling with how to handle [Linda Strumpf's fee]. We didn't really know. I'm not sure where it came from. If I suggested it or he suggested it or it came from KBI. I don't really know where it came from, but I put it in the letter because, obviously, it was part of the discussion and they said Linda Strumpf should be paid some $6,000, whatever the letter says.
>
> [T126-8 to 16.]

The hearing panel asked respondent whether he had an obligation to disclose to Strumpf that he had collected the

$32,000, particularly because the court papers that he had prepared for the execution of the judgment cited her name as attorney for KBI. Respondent replied, "My client specifically said don't involve her, specifically expressed in the [July 15, 1996] letter." The panel then asked respondent whether he had advised KBI that he had a duty to inform Strumpf of his receipt of the Sepenuk check. Respondent answered:

> No, because I don't think I did have an obligation to do that. Tom [presumably, Thomas Battaglia, his attorney] and I disagree on this. I learned in the ethics school when I went to classes that the client's interests come first, and so the client said collect this money. Don't involve them.
>
> And at first they said turn part of it over to her. Then you see the subsequent letter said don't give it to her.
>
> . . . .
>
> [M]y whole view of it is that this was KBI's deciding not to pay Linda Strumpf the money that they supposedly owed her.
>
> [T132-12 to T133-25.]
>
> So did I specifically say I have an obligation to tell Linda Strumpf this information, notwithstanding the fact that you want me to give the money to you, did I say that to them? We discussed it. I know it was discussed or I know the question of her getting paid was discussed because it is in the first letter.
>
> But then — oh, now that you're mentioning it, what happened then, Stuart called me. This is how the second letter got generated. Stuart called me and said that Robert King

> said not to pay them because they were owed money for other things. That's what happened. Stuart King called me and said that Robert King had told him, no, tell him not to pay the $6,000 to Linda Strumpf, to pay it to us instead.
>
> . . . .
>
> Did I say I have an obligation? In my view, what I learned in ethics classes was that the obligation goes first to your client. If they're not asking you to do something illegal, then that's your obligation. They come first. And, in my view, an obligation to my client certainly comes ahead of making sure that they're getting paid, making sure that they're paying legal obligations to prior lawyers.
>
> [T134-14 to T136-6.]

The hearing panel pressed on: "Did you feel some obligation to the attorney who had employed you prior to your . . . obvious obligation to your client?" Respondent replied:

> There was no obligation to do that . . . . Not regarding this matter. Remember, I was hired per diem . . . . She would call me up a day before and say go to the Essex County courthouse to represent us for a credit card thing for a hundred dollars.
>
> [T137-18 to T138-2.]

On August 26, 1996, three days after respondent received the $32,000 check from Sepenuk, he prepared the following letter for Stuart King's signature:

Dear Bill:

You were previously instructed to pay Linda Strumpf the total amount of $6,715 in total payment for all their attorneys' fees in this matter. You are further instructed to pay to Stuart King the amount of $19,264.92, that being the amount of the judgment of $12,132.84, interest in the amount of $7,144.08, less $7.00 for the bank check fee and $5.00 for the Writ of Execution. Pay the remaining amount of $6,720 to yourself as an attorney's fee to you.

[Ex.P-1.]

The letter is unsigned.

Instead of forwarding $6,700 to Strumpf, as directed in the letter, respondent gave the entire $32,000 to KBI because, he said, "it was their money" and because he "wanted to make it absolutely clear [he] wasn't withholding money or strong-arming anybody. KBI was doing it. It was KBI's decision." KBI then issued him a check for his $6,700 fee. Strumpf got nothing.

At the ethics hearing, respondent was asked where, in Stuart King's letters, there was an instruction that Strumpf be paid nothing. Respondent replied:

> [RESPONDENT]: There was a subsequent letter [to July 15, 1996] that says don't pay the money to Linda Strumpf.
>
> . . .
>
> [PANEL MEMBER]: Where does it say nothing goes to Linda Strumpf?
>
> [RESPONDENT]: That's what it says. You have to read both letters together. It says, "You

were previously" — you have to add the numbers. I made the — I asked the same question. It doesn't say not to pay Linda Strumpf. It says you were previously told to pay Linda Strumpf.

THE CHAIRMAN: Did you draft this letter?

[RESPONDENT]: I probably did. They didn't have a computer ability to just make up letters. They would send handwritten faxes and things.

THE CHAIRMAN: So you drafted this letter on August 26, 1996. It is not signed by Mr. King. Do you have a signed one?

[RESPONDENT]: That was the one I have. This is the only thing I have in my file.

THE CHAIRMAN: You understood this letter to mean that the money that was supposed to be sent to Linda Strumpf was now being paid to you?

[RESPONDENT]: No. It was being paid to KBI.

THE CHAIRMAN: Where does it say that?

[RESPONDENT]: If you add up the amounts, you'll see that the amount going to Stuart King is the half of the attorneys' fee plus interest.

THE CHAIRMAN: It does not say that anywhere.

[RESPONDENT]: You have to add up.

THE CHAIRMAN: If you add up the amount that was supposed to be paid to Linda Strumpf [$6,715], the amount paid to you [$6,720] and the remaining balance [$19,264.92], you get $32,000.

[RESPONDENT]: Okay. But it said previously sent to.

THE CHAIRMAN: You were previously instructed to pay to Linda Strumpf the total amount of $6,715. It doesn't say don't do that.

[RESPONDENT]: You mean all those numbers add up to 32?

THE CHAIRMAN: Yes.

. . . .

> THE CHAIRMAN: You wrote this letter. What did you understand it to mean?
>
> [RESPONDENT]: That they gave to me [sic].
>
> THE CHAIRMAN: You wrote it.
>
> [RESPONDENT]: Well—
>
> [T153-1 to T156-8.]

When the panel chair asked respondent if his release of the entire $32,000 to KBI was not inconsistent with the contents of Stuart King's August 26, 1996 letter, respondent pleaded a lack of memory on his part:

> It could be [inconsistent]. I don't know. I don't know. It happened a long time ago . . . . I don't have — I remember the time, like I said, maybe I'm just fantasizing, that's what I thought at the time. Maybe I didn't do that. As best as I can remember, that's what I did.
>
> [T158-22 to T159-8.]

When the panel chair suggested to respondent that he must have known that Strumpf was entitled to a fee, respondent countered, "That's not true at all. . . . There was no dispute [between Strumpf and KBI]." At this juncture, the presenter pointed to respondent's testimony at the trial of Strumpf's case against him:

> How much clearer can this testimony be? The court asked you, page 79 of Exhibit G-3, line 5:
>
> > "The Court: . . . At the time you [collected] the $32,000, it was a dispute[d] question?

Mr. Stahl: Correct.

The Court: As to who got what?

Mr. Stahl: Correct . . . ."

[T163-12 to 21.]

Respondent retorted that, when he gave that testimony, he was confused about the time frame of the dispute between Strumpf and KBI. He reiterated that the dispute had arisen after his disbursement of the $32,000.

Returning to the topic of Strumpf's right to some compensation, the hearing panel again asked respondent if she was not entitled to at least a portion of the fee. Respondent answered:

> [RESPONDENT]: As I have frequently — what was I supposed to have a preliminary hearing and call witnesses and then decide the proper execution of the remedy of quantum meruit?
>
> [PANEL MEMBER]: Doesn't it say she probably should have been entitled to some money from that?
>
> [RESPONDENT]: You're asking me did I know that KBI was trying to not pay her attorney's bill. Is that my business?

[T165-12 to 24.]

Using all the logic that he could muster, the panel chair made a special effort to obtain a responsive answer from respondent:

THE CHAIRMAN: Here is the easiest way to answer. The 32,000 and change you received, you knew that at least $13,000 of that money was allotted as counsel fees, correct?

[RESPONDENT]: By the judgment, that's correct.

THE CHAIRMAN: Which meant it did not belong to KBI, correct?

[RESPONDENT]: That is an interesting question. No, I don't think so. I don't think so.

THE CHAIRMAN: Why did it belong to KBI?

[RESPONDENT]: It was pursuant to their contract.

THE CHAIRMAN: But it —

[RESPONDENT]: It was their contract. It didn't matter how much attorneys were paid.

THE CHAIRMAN: Isn't it true that the basis for the attorneys' fee award was a certification from you and Ms. Strumpf as to the time spent so that the judge could come up with that money?

[RESPONDENT]: That's right.

THE CHAIRMAN: The jury did not set that money. The jury awarded the concept of attorneys' fees.

[RESPONDENT]: Pursuant to the terms of the contract.

THE CHAIRMAN: In a subsequent submission, you put together a submission of counsel's time --

[RESPONDENT]: Right.

THE CHAIRMAN: -- that was spent to come up with the $13,000?

[RESPONDENT]: Correct. That's right.

THE CHAIRMAN: At least some of the time spent of $13,000 [sic] was spent by Ms. Strumpf?

[RESPONDENT]: Correct.

THE CHAIRMAN: Some was spent by you?

[RESPONDENT]: Correct.

THE CHAIRMAN: So we know that that money did not belong to KBI. They had not paid you or Ms. Strumpf.

[RESPONDENT]: Wait a minute. I'm not sure that is accurate. As a matter of law, I'm not sure that it is accurate. It was their judgment. Let me ask you a question.

THE CHAIRMAN: No.

[RESPONDENT]: A rhetorical question. Pursuant to her agreement she was owed 25 percent of whatever amount was collected. By happenstance, there was an attorneys' fee as part of the contractual award.

Was -- does that mean I wasn't entitled to that money? The judgment was not in favor of William N. Stahl. The judgment was in favor of KBI. As part of the contractual recovery they assessed the amount of attorneys' fees. Whether or not -- what if Stuart King represented himself? The attorneys' fee would have still been there.

THE CHAIRMAN: Not $13,000.

[RESPONDENT]: I'm not sure that is correct.

THE CHAIRMAN: It absolutely is. You would not have had an attorney to submit a certification to get the fees.

[RESPONDENT]: I see. So, therefore, the money did not belong to KBI is what you're telling me?

THE CHAIRMAN: Did you think it belonged to KBI?

[RESPONDENT]: Yes, it is their judgment.

[PANEL MEMBER]: At the time you distributed the check, the entire 32-thousand-dollar check to KBI --

[RESPONDENT]: Right.

[PANEL MEMBER]: -- did you think that Ms. Strumpf would not have an issue with that?

[RESPONDENT]: I didn't know. I didn't know.

[PANEL MEMBER]: You didn't know?

[RESPONDENT]: I had no idea.

[PANEL MEMBER]: You thought it would be okay with her?

[RESPONDENT]: As far as KBI told me, yes. KBI told me that she owed them money for some other matters. They had names of them. I can't remember what they were. There was [sic] other matters. This was one of her only clients that was [sic] not just a collection client.

[T165-25 to T170-2.]

As to his submission of court papers with Strumpf's name as KBI's attorney, namely, a notice of motion for the entry of a judgment against Sepenuk and a memorandum of law dated May 16, 1996, respondent pointed out that he had filed those documents before July 15, 1996, the date of his retention by KBI. With regard to his preparation and filing of a writ of execution bearing a July 16, 1996 date (one day after he was allegedly retained) and still listing Strumpf as KBI's attorney, respondent explained that this "old letterhead" had been computer-generated, that is, his computer had "spun off those things." Asked by the presenter if he could have corrected the letterhead on his computer to reflect the change in the representation, respondent conceded that he could have, but added that he had not paid attention to that detail.

In addition to alleging that the above conduct constituted

failure to safeguard trust funds and dishonesty, the complaint charged respondent with having falsely testified at the trial of Strumpf's case against him and with having procured false testimony from Stuart King, in connection with the same case.

Specifically, the complaint alleged that respondent falsely told the court that Stuart King had discharged Strumpf from the representation on the first day of the March 1996 trial and had hired him instead. As mentioned above, respondent's testimony at the DEC hearing fixed July 15, 1996 as his retention date. The complaint did not cite the specific conduct that would support the charge that respondent coached Stuart King to lie. Presumably, King's allegedly false testimony also related to his termination of Strumpf's services and hiring of respondent.

As to these charges, the presenter presented the case against respondent by reading portions of respondent's testimony at the civil trial and by addressing the hearing panel in a format more suitable to summations. The presenter read the following excerpts, from respondent's trial testimony, about the circumstances and timing of Stuart King's retention of his services:

> MR. STAHL: Well the client, it was clear to me, wanted to terminate the relationship with Linda Strumpf.
>
> THE COURT: It was clear to you?
>
> MR. STAHL: Yes.

THE COURT: That he was going to terminate the relationship?

MR. STAHL: Yes, that's what he wanted to do.

THE COURT: He was through with Linda Strumpf?

MR. STAHL: Correct. There was very bitter complaining.

THE COURT: **And this was at the beginning of the trial?**

MR. STAHL: **Yes.**

THE COURT: And did he indicate at the time that he wanted you, not only to continue with the matter, but to act for him in the matter?

MR. STAHL: Yes.

THE COURT: And so he did that?

MR. STAHL: Yes.

THE COURT: And did you convey that to Miss Strumpf?

MR. STAHL: No.

THE COURT: Did you accept that engagement?

MR. STAHL: Yes, I did.

THE COURT: Did you consider him — yourself, his lawyer at that point?

MR. STAHL: Yes, Your Honor, I did.

THE COURT: Did you bill Miss Strumpf for the services performed after that date?

MR. STAHL: Oh, I understand your questions, yes. Your Honor, what I did was, I had anticipated that I would continue in my relationship with Linda Strumpf. It was a per diem basis.

THE COURT: Simple question, Mr. Stahl. Did you bill her for your activities?

MR. STAHL: Yes.

THE COURT: After that, even though you considered yourself working for Mr. King directly?

MR. STAHL: Correct.

THE COURT: And did you do that?

MR. STAHL: Your Honor is right, I guess — I had thought at that time that I could continue my relationship with Linda Strumpf.

THE COURT: You saw nothing inconsistent about that?

MR. STAHL: No. I thought that —

THE COURT: Go ahead, Mr. Stahl.

MR. STAHL: I know you're asking the question. I had thought that, at the time, that [sic] if there was [sic] to be adjustments in the amounts of money that were paid to attorneys, that we would simply make that judgment somewhere down the road. [Emphasis added].

[Ex.G-3 at 62-24 to 64-25.]

The presenter's position was that respondent's testimony that he had been retained at the start of the trial was false because, if true, he would not have accepted the $800 per diem fee that Strumpf had paid him for his appearance at the four-day trial and would not have listed Linda Strumpf's name on the papers that he had filed with the court after the trial. The presenter made the following argument to the hearing panel:

The matter doesn't come down to a question of credibility between what Ms. Strumpf said here today . . . and what Mr. Stahl . . . may testify to here today. The issue is this was Mr. Stahl's testimony at the trial that . . . Ms. Strumpf had been fired and he was retained on the first day of the trial. That can't be true. That testimony cannot be true if you look at Exhibits [G] 5, 6, 7, 8 . . . and 10, because if Mr. Stahl had been retained and Ms. Strumpf had been discharged as KBI's attorney, then he would not have

> been paid for the trial as Exhibit [G] 5 [the $800 check for his four-day attendance at trial] shows. He wouldn't be filing papers with Ms. Strumpf's name and address and phone number on it as . . . Exhibits [G] 6, 7 and 8 show. And Exhibit [G] 8, if he had been working directly for KBI as opposed to continuing to work for Ms. Strumpf, then he would not have sent this fax in [G] 8 asking to renegotiate his fee agreement with Ms. Strumpf, nor would it have been necessary for Mr. King to send G-10 to him on July 15, 1996 asking Mr. Stahl to begin representing him in the Sepenuk matter.
>
> So all of the documentary evidence is contrary to Mr. Stahl's testimony before Judge Kirsten.
>
> [T114-12 to T115-20.]

Alternatively, the presenter argued:

> If [respondent's testimony] is true, if it is to be believed that Ms. Strumpf was discharged as of the beginning of the trial in the Sepenuk matter, then he was taking money from her doing the same work as he was being paid by KBI.
>
> [T117-1 to 6.]

Respondent's explanation for his conflicting testimony on his retention date was that he had been confused at the trial:

> If you look at the testimony, just those few paragraphs, that's completely inaccurate. But if you go ahead with the rest of the testimony, you see that . . . I'm talking about two different periods of time and I obviously got it confused. Because KBI hired me as their attorney sometime in July, which is when I wrote the letter. That's why the

> letter is crucial to all this. The letter was dated July 15.
>
> [T124-10 to 19.]

Respondent alleged that he had been unprepared for the civil trial:

> I was not very prepared at all for the trial . . . . I was shocked when we got to the trial because I really wasn't prepared. I got the dates mixed up. I couldn't remember everything that was how the testimony got kind of mixed up. I'm talking about one date and then right below it I'm talking about the two checks which is obviously a date later on. Anyway, so I wasn't prepared at all.
>
> [T139-22 to T140-12.]

Presumably to attempt to dispel any suspicion that he had induced Stuart King to testify falsely about the date of his retention, respondent told the hearing panel that, before the civil trial, he and King had not spent much time discussing the case. He added: "[Stuart King] showed up that morning and we briefly went over some things and then that was it."

At the conclusion of the ethics hearing, the DEC found respondent guilty of violating several RPCs. Noting that respondent had "provided absolutely no credible explanation" for his conflicting testimony about when he had been hired by KBI, the DEC found that respondent lied under oath at the civil

trial, a violation of RPC 3.3 (no subsection cited, presumably (a)(1) (knowingly making a false statement of material fact to a tribunal), when he testified that he had been hired by KBI on March 19, 1996, the first day of the Sepenuk trial. The DEC also found that respondent offered false testimony through Stuart King, a violation of RPC 3.3 (no subsection cited, presumably (a)(4) (knowingly offering evidence that the lawyer knows to be false.

It follows, thus, that the DEC must have found that respondent was not retained in March 1996 and that he continued to work for Strumpf until at least July 15, 1996, the date of Stuart King's letter to him. Nevertheless, the DEC also found that respondent's receipt of his per diem compensation ($800) from Strumpf, on March 25, 1996, was dishonest and a violation of RPC 8.4(c) because he testified before Judge Kirsten that he had been hired on March 19, 1996, the first day of the Sepenuk trial. The inconsistency between these two findings is addressed below.

Finally, the DEC found that respondent's release of all the funds received from Sepenuk, "without at a minimum considering Ms. Strumpf's potential interest in the attorney's fees portion of that award, and without notifying Ms. Strumpf and determining whether a bona fide dispute existed as to the distribution of those funds, violated RPC 1.15," no subsection cited, as charged

in the complaint.[7]

Two weeks before oral argument before us, the presenter and respondent's counsel submitted briefs. Attached to counsel's brief was a certification by Stuart King. That brief states:

> An important event has happened since the November 28, 2006 hearing before the Hearing Panel almost two years ago.
>
> A crucial witness, Stuart King, who had been subpoenaed, (but who was out of state), refused to come forward and offer testimony to the Hearing Panel in November of 2006.
>
> He is now willing to voluntarily come forward and provide testimony. He now offers a sworn Certification . . . . In late November of 2006, he had for personal reasons refused to appear as he just did not want to "get involved". He was out of state in New York and as a result it was impossible, at that time, to compel the appearance of Mr. Stewart [sic] King.

---

[7] The complaint also could have charged respondent with perjury, a violation of N.J.S.A. 2C:28-1, tampering with a witness, a violation of N.J.S.A. 2C:28-5, and RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects). N.J.S.A. 2C:28-1 provides that "[a] person is guilty of perjury, a crime of the third degree, if in any official proceeding he makes a false statement under oath . . . when the statement is material and he does not believe it to be true." N.J.S.A. 2C:28-5, in turn, provides that "[a] person commits an offense if, believing that an official proceeding is pending, he knowingly attempts to induce or otherwise cause a witness to: (1) Testify or inform falsely."

> Mr. Stuart King should now properly be allowed to now come forward an [sic] offer testimony and or a certification because he has now become available and was not available at the November 28, 2006 hearing before the Hearing Panel.
>
> [Rb2.][8]

Because the proceedings below have been concluded, because the record is now closed for testimony purposes, and because the presenter did not have an opportunity to cross-examine King, we have determined not to consider King's certification.

We have also declined to consider some statements made in the presenter's brief. Specifically, for the first time in these proceedings, the presenter took the position that respondent had knowingly misappropriated funds belonging to Strumpf and that the only available penalty for his conduct was disbarment. Because the complaint did not charge respondent with knowing misappropriation, we were unable to consider the presenter's argument. R. 1:20-4(b).

Following our de novo review of the record, we find that the DEC's conclusion that respondent's conduct was unethical was fully supported by clear and convincing evidence.

At the outset, we note that respondent's testimony at the civil trial and at the ethics hearing was so fraught with inconsistencies and claims of confusion and lack of preparation

[8] Rb refers to respondent's brief, dated October 1, 2008 and filed on October 3, 2008.

on his part that it cannot be assigned any degree of reliability. In too many respects, respondent failed abysmally to convince the hearing panel of his sincerity.

First and foremost, in two critical proceedings, the 1998 trial of Strumpf's suit against him and the disciplinary hearing below, respondent gave conflicting accounts of the timing and circumstances of his alleged retention as KBI's counsel. In both instances, he was under oath.

At the civil trial, he testified with apparent conviction that Stuart King had fired Strumpf and had hired him on the first day of the Sepenuk trial, March 19, 1996. He described to the trial judge, in detail, why and how Stuart King had discharged Strumpf from the representation on that date and had engaged his services instead. Stuart King, too, testified that the date of respondent's retention was March 19, 1996.

At the ethics hearing, however, respondent spun a different yarn. And he did so without any attempt to present a plausible explanation for the discrepancy that his new testimony created. This time, he told the hearing panel that Stuart King had ended Strumpf's representation on July 15, 1996, and had hired him on that same date. He presented to the panel a July 15, 1996 letter that he had prepared for Stuart King's signature, confirming his engagement as KBI's attorney.

For his contradictory testimony on this topic respondent's

sole explanation to the hearing panel was that he had been confused and unprepared at the civil trial and that the actual date of his retention had been July 15, 1996, not March 19, 1996.

A factor of exceptional significance that we considered in assessing respondent's overall credibility is that, not once during the civil trial, did he bring up the July 15, 1996 date or submit to the court the July 15, 1996 letter. One would expect that it would have been beneficial to him to present that letter to the court, as proof of his appointment as KBI's counsel. Yet, he did not so much as mention it to the judge. His steadfast testimony before the judge was that he had been retained at the start of the Sepenuk trial.

In In re Alcantara, 144 N.J. 257, 264 (1995), the Court held that "[c]onsistency of testimony, both internally and between witnesses, is an important indicator of truthful testimony." [Citation omitted]. Conversely, inconsistency of testimony is an important indicator of untruthful testimony.

The following considerations convince us that respondent was never retained by KBI, that he continued to work for Strumpf, and that, later, he and Stuart King embarked on a course of conduct designed to legitimize respondent's receipt of a $6,700 fee, as well as King's ultimate retention of the $6,700 that he had directed respondent to forward to Strumpf: (1)

respondent never filed a substitution of attorney; (2) he did not disclose to Strumpf that he had replaced her as KBI's attorney; (3) he accepted an $800 payment from Strumpf for his four-day appearance at the trial; (4) his fax to Strumpf's husband, in which he proposed that he "keep the [fee] award as it relate[d] to [his] time," was an obvious acknowledgement that the entire fee award belonged to Strumpf, who would decide whether to give him the requested bonus; (5) after the Sepenuk trial, he continued to file court documents with Strumpf's name as KBI's attorney and with her office address and phone number; even the July 16, 1996 writ of execution, which he prepared one day after he was allegedly retained by KBI, listed Strumpf as KBI's attorney; (6) his explanation that the letterhead was "old" and that he had neglected to remove Strumpf's name from it does not ring true; Strumpf's name on the "letterhead" was not the only indication of her continuing representation; the body of the writ commanded the sheriff to forward to Strumpf the proceeds of the execution; and (7) until July 25, 1996, he continued to accept Strumpf's payments for per diem work performed for KBI after the Sepenuk trial.

The findings made by the judge who presided over the civil trial are also significant. The judge, who had the opportunity to observe respondent's and Stuart King's demeanor and to assess their credibility, found their testimony untruthful. The judge

found "inconceivable" that, on the first day of the trial, King would have hired an attorney whose competence was unknown to him, particularly because King alleged that the chief reason for having fired Strumpf was her delegation of the handling of the case to someone he did not know. The judge also noted that, if it was true that King had fired Strumpf during a phone call from the courthouse, she would not have issued checks to respondent for services performed thereafter. Finally, the judge found that respondent's conduct after the trial was "inconsistent with the view that [Strumpf] had been discharged." The judge, therefore, concluded that respondent had not been retained by KBI, as alleged by respondent and King.

Although the judge's findings are not binding in this disciplinary matter, particularly because of the different standards of proof, they deserve considerable deference, at least as to credibility, given that the judge had a "better perspective than a reviewing [tribunal] in evaluating the veracity of witnesses." Pascale v. Pascale, 113 N.J. 20, 33 (1988) (quoting Gallo v. Gallo, 66 N.J. Super. 1, 5 (App. Div. 1961)).

Not surprisingly, the hearing panel, too, found respondent's testimony unworthy of belief -- and not only at the ethics hearing ("Overall, Mr. Stahl's testimony was not believable"), but before the trial judge as well ("[R]espondent's testimony

before Judge Kirsten . . . was false as it relates to his representation of KBI Security"). The hearing panel's credibility findings are entitled to deference as to "those intangible aspects of the case not transmitted by the written record, such as, witness credibility . . . ." Dolson v. Anastasia, 55 N.J. 2, 7 (1969).

In summary, the overwhelming circumstantial evidence in this case adds up to the conclusion that both respondent and Stuart King testified falsely that respondent had been retained by KBI. The record developed at the civil trial and at the ethics hearing clearly and convincingly establishes that Strumpf was not fired and that respondent continued to work for her in the Sepenuk case. It follows, logically, that the July 15 and the August 26, 1996 letters were prepared with the nefarious intent to confirm an attorney-client relationship that never existed and to justify respondent's retention of a $6,700 fee that rightfully belonged to his employer, Strumpf.

We find, thus, that respondent violated RPC 3.3(a)(1) (knowingly making a false statement of material fact to a tribunal) by testifying falsely before the trial judge, RPC 3.3(a)(4) (offering evidence that the lawyer knows to be false) by producing the false testimony of Stuart King, and RPC 8.4(c) (engaging in conduct involving conduct involving dishonesty, fraud, deceit or misrepresentation) by both of those ethics

offenses. These are the only possible findings related to the above conduct because that is all the complaint alleged and those are the only RPCs charged. As detailed below, respondent's fabrication of the July and August 1996 letters and his false testimony before the judge and the hearing panel are aggravating factors.[9]

We are unable to agree with the DEC's finding in one respect. The second count of the complaint alleged that, if respondent's testimony that he had been retained by KBI on the first day of the trial was true, then his acceptance of per diem payments from Strumpf after the trial violated RPC 8.4(c) because he was not entitled to those payments. As to this count, the DEC found that respondent improperly collected per diem payments from Strumpf, a violation of RPC 8.4(c). As indicated above, however, the DEC also found that respondent lied to the trial judge that he had been retained as KBI's counsel. The two findings appear to be conflicting. Either respondent continued to work for Strumpf, in which case his acceptance of her per

[9] For the fabrication of the letters the complaint could have charged respondent with having violated RPC 8.1(a) (false statement of material fact in connection with a disciplinary matter), RPC 8.4(c), and RPC 8.4(d) (conduct prejudicial to the administration of justice). Presumably, copies of the letters were produced during discovery. As to respondent's false testimony at the ethics hearing, the complaint could have been amended, at the hearing, to include charges of violations of those same RPCs.

diem payments was *not* dishonest, or he became KBI's attorney, in which case his acceptance of compensation from Strumpf *was* an act of dishonesty. Because we conclude that respondent was never retained by KBI, his acceptance of payment from Strumpf did not constitute an act of dishonesty. We, therefore, dismiss the second count of the complaint.

There remain the allegations of the third count, which charged respondent with violating RPC 1.15(b), by not notifying Strumpf of his receipt of the $32,000 and not delivering those funds to her, and RPC 1.15(c), by not segregating the portion of the funds that was the subject of a dispute between Strumpf and KBI, namely, the $13,000 fee award.

That respondent violated RPC 1.15(b) is unquestionable. He worked for Strumpf, not for KBI. Strumpf was his employer. His duties to her were no different from the duties of an associate attorney to his or her law firm. Associate attorneys do not keep for themselves or turn over to clients the proceeds of cases assigned to them. They have an obligation to deliver to their employers any funds or property obtained in the course of their employment. In fact, had respondent been an associate (or partner) of Strumpf, he would have been facing charges of knowing misappropriation of law firm's funds.

Respondent's argument that "the client always comes first," a lesson he learned in "ethics school," was contrived to justify

his "allegiance" to KBI and his disbursement of the entire $32,000 to his "client." It should be recalled, however, that KBI never requested that respondent turn over the $32,000 to it. Stuart King's letter of July 15, 1996 instructed respondent to "pay to Linda Strumpf the total amount of $6,715 in total payment of her attorney's fees for this matter." King's subsequent letter too, dated August 26, 1996, did not request the entire $32,000, but reiterated his prior direction to respondent: remit $6,715 to Strumpf.

Faced, at the ethics hearing, with the unambiguous directions contained in both letters, respondent tried different explanations for the hearing panel. They were all rejected. His first unplausible explanation was that the August 26, 1996 letter did not direct him at all to pay any monies to Strumpf ("at first [KBI] said turn part of it over to her. Then you see the subsequent letter said don't give it to her"). However, not only is the letter abundantly clear -- "pay to Linda Strumpf the total amount of $6,715" -- but respondent could not have interpreted it to mean anything different because he drafted it himself.

Next, respondent had something akin to an epiphany: "Oh, now that you're mentioning it, what happened then, Stuart called me . . . and said that Robert King said not to pay [Strumpf] because they were owed money for other things." Nothing

corroborated respondent's testimony -- no writings and no testimony by the Kings.

Finally, unable to come up with any cogent justification for having turned over the $32,000 to KBI, respondent attempted to put the blame on his memory: "I don't know . . . It happened a long time ago . . . . Maybe I'm just fantasizing . . . ."

Nothing in the record, thus, clearly and convincingly demonstrates that either of the Kings directed respondent not to pay any monies to Strumpf and to release the entire judgment amount to them.

We pause at this point to note that, even if KBI had demanded that respondent disburse all the funds to it and not to Strumpf, his alleged "loyalty" to the client would not have supplanted his responsibilities to Strumpf. Respondent received the $32,000 as her fiduciary. She trusted that, like all her per diem attorneys, respondent would turn over the recovered funds to her for proper distribution. The proper place for the funds was her trust account, not his "special account." For instance, associate attorneys who, without authorization, surrender the product of their recoveries to clients and take increased compensation from the recovered amounts because they feel entitled to a special reward will face serious ethics charges, including knowing misappropriation. Their fixed salaries are their compensation.

Here, the fixed sum of $200 for a full day's work was respondent's negotiated "salary." There was no special arrangement or recompense for "genius work."

It is against this ethical backdrop that respondent had to reconcile his respective duties to Strumpf and to KBI. Even if KBI had insisted on being given the whole sum because of some alleged fee dispute with Strumpf, respondent had an ethical duty to advise KBI that, as Strumpf's fiduciary, he was obligated to turn over the funds to her. Strumpf would then have been required, under RPC 1.15(c), to keep the disputed portion of the funds segregated until the resolution of her dispute with KBI.

Once again, the analogy to associate attorneys is applicable here. If a client directs an associate attorney to release to the client the proceeds from a lawsuit, the associate must inform the client that he is ethics-bound to deliver the proceeds to his or her law firm. If the client insists, the associate will not be running afoul of the rules by turning over the proceeds to the law firm. It is not the associate's role to mediate a dispute between his or her employer and the client.

Here, respondent violated RPC 1.15(b) by breaching his duty to deliver the entire $32,000 to Strumpf for her to disburse as appropriate. In addition, he personally divested her of her fee. KBI put him in charge of disbursing the funds as directed. Instead, he gave all of the funds to Stuart King, who then paid

him $6,700.

At a minimum, Strumpf was entitled to the benefit of her bargain with KBI (twenty-five percent of $32,000) and respondent so knew; at a minimum, he had an obligation to comply with KBI's direction to remit $6,700 to her.

On the other hand, we find that the charged violation of RPC 1.15(c) is inapplicable here. As mentioned previously, once respondent was entrusted with the receipt of the $32,000 check, his duty was to deliver it to Strumpf, as required by RPC 1.15(b). Even assuming, for the sake of argument, that KBI did, in fact, demand that respondent relinquish all the funds to it, respondent's obligation at this juncture was to inform KBI that the Rules of Professional Conduct prohibited him from doing so. The rules did not require him, in such a situation, to segregate the portion of the funds that were the subject of a dispute between KBI and Strumpf. We, thus, dismiss that charge.

Altogether, respondent violated RPC 3.3(a)(1) and RPC 8.4(c) by falsely testifying before the trial judge that KBI had terminated Strumpf's representation and hired him as its counsel; RPC 3.3(a)(4) and RPC 8.4(c) by presenting the false testimony of Stuart King on that same issue; and RPC 1.15(b) by not notifying Strumpf of his receipt of the funds and delivering them to her but, instead, releasing them to Stuart King.

Although the proofs adduced at the ethics hearing would

have sustained other serious RPC violations, such as respondent's fabrication of the July 15 and August 26, 1996 letters for use in this disciplinary proceeding and his false testimony to the hearing panel that he had been retained on July 15, 1996, the complaint did not charge respondent with those violations. R. 1:20-4(b) requires the complaint to "set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct, specifying the ethical rules alleged to have been violated."

Those two improprieties may, however, be considered as aggravating factors, as may perjury and tampering with a witness. In a fairly recent opinion, the Court concurred with our determination to consider, coincidentally, perjury and subornation of perjury as aggravating factors. In re Pena, In re Rocca, In re Ahl, 164 N.J. 222 (2000). There, the Court noted the following:

> The DRB also concluded that, although respondents lied under oath repeatedly during the trial before Judge D'Italia, the complaint did not contain a sufficient allegation to place respondents on notice that perjury could be part of the ethics proceeding. The DRB found that respondent Pena suborned perjury when he conducted the direct examination of Rocca and Ahl, and that Rocca suborned perjury when he conducted the direct examination of Pena during the civil trial. However, the DRB

> concluded that such evidence of perjury and subornation of perjury could be considered as an aggravating factor.
>
> [Id. at 231-32.]

The Court agreed with our determination that "[t]he misconduct of respondents Pena and Rocca [was] aggravated by perjury and the subornation of perjury in their representation of a fellow respondent [Ahl] during the civil trial."

In this instance, respondent could have been, but was not, charged with perjury or tampering with a witness. In a very important sense, however, he was put on notice that such offenses could be considered in this proceeding, even if only as aggravating factors. The complaint charged him with testifying falsely before the trial judge and with offering the false testimony of Stuart King. In contrast, Pena and Rocca were charged only with a violation of RPC 8.4(c) for having participated in a sham business transaction, but still had their conduct aggravated by perjury and subornation of perjury. As in Pena and Rocca, we find that respondent's conduct was aggravated by his perjury and tampering with a witness.

Other aggravating factors are respondent's lack of disclosure to Strumpf of his receipt of the judgment amount and subsequent disbursement to KBI; his seizure of Strumpf's fee (Strumpf was forced to file a suit against him to recover her

fee); his prior encounter with the disciplinary system (an admonition in 2004); his refusal to acknowledge any wrongdoing; the absence of any remorse for his actions; his aim at self-benefit; and his monumental lack of understanding of a lawyer's professional obligations.

The only mitigating factors are the passage of twelve years since respondent's serious improprieties and some delay in the processing of this disciplinary matter, after the grievance was re-docketed.[10]

We now turn to the issue of the suitable discipline for this respondent.

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 Robin K. Lord, DRB 01-250 (September 24, 2001) (admonition for attorney who failed to reveal her client's real name to a municipal court judge when her client appeared in court using an alias; unaware of the client's significant history of motor vehicle infractions, the court imposed a lesser sentence; in

[10] The grievance was first docketed in September 1998. Presumably, the matter was placed on "untriable status" because of the pendency of Strumpf's suit against respondent. The grievance was re-docketed in December 2004 (why so late after the 1998 trial is unknown). In November 2005, the DEC investigator filed his investigative report. The formal complaint was filed in December 2005 and the answer in April 2006. The hearing took place in November 2006. Although the hearing panel report was due in December 2006, it was completed almost a year and a half later, in May 2008.

mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); In re Whitmore, 117 N.J. 472 (1990) (reprimand imposed on a municipal prosecutor who failed to disclose to the court that a police officer whose testimony was critical to the prosecution of a DWI charge had intentionally left the courtroom before the case was called, resulting in the dismissal of the charge); In re Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failure to disclose to a court his representation of a client in a prior lawsuit, when 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 Shafir, 92 N.J. 138 (1983) (an assistant prosecutor who forged his supervisor's name on internal plea disposition forms and misrepresented information to another assistant prosecutor to consummate a plea agreement received a reprimand); In re Stuart, 192 N.J. 441 (2007) (three-month suspension for assistant district attorney in New York who, during the prosecution of a homicide case, misrepresented to the court that he did not know the whereabouts of a witness; in fact, the attorney had made contact with the witness four days earlier; compelling mitigation justified only a three-month suspension); In re D'Arienzo, 157 N.J. 32 (1999) (three-month suspension for attorney who made multiple misrepresentations to a judge about his tardiness for court appearances or failure to appear); In re

Chasan, 154 N.J. 8 (1998) (three-month suspension for attorney who distributed a fee to himself after representing that he would maintain the fee in his trust account pending a dispute with another attorney over the division of the fee, and then led the court to believe that he was retaining the fee in his trust account; the attorney also misled his adversary, failed to retain fees in a separate account, and violated recordkeeping requirements); In re Norton and Kress, 128 N.J. 520 (1992) (both the prosecutor and defense counsel were suspended for three months for permitting the dismissal of a DWI charge; although the attorneys participated in a representation to the court that the arresting officer did not wish to proceed with the case, they did not disclose that the reason therefor was the officer's desire to give a "break" to someone who supported law enforcement); In re Forrest, 158 N.J. 428 (1999) (attorney who failed to disclose the death of his client to the court, to his adversary, and to an arbitrator was suspended for six months; the attorney's motive was to obtain a personal injury settlement); In re Telson, 138 N.J. 47 (1994) (after an attorney concealed a judge's docket entry dismissing his client's divorce complaint, he obtained a divorce judgment from another judge without disclosing that the first judge had denied the request; the attorney then denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was scared; the attorney was suspended for six

months); 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); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who had been in an automobile accident and then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing).

Unlike the attorneys in the above cases, respondent did not simply make misrepresentations to the court during the representation of a client. More egregiously, he lied under oath and for his own benefit. Although making a misrepresentation to a court is a serious offense that cannot be tolerated, the conduct becomes more serious when the false statement is made under oath and for personal purposes, as here. Furthermore, respondent knowingly presented false evidence to a court through the testimony of Stuart King.

Disciplinary cases arising out of conduct involving perjury

lead to suspensions and, if accompanied by other grievous conduct, result in disbarment. See, e.g., In re Santiago, 175 N.J. 499 (2003) (three-month suspension for attorney who concocted a "misidentification" plan in representing a DWI client; the attorney arranged for another individual to appear in court in place of the client; the attorney was indicted for conspiracy to commit perjury, making a false report to law enforcement authorities, and contempt of court; the attorney was admitted into PTI, whereupon the charges were dismissed; the attorney did not have a disciplinary record; compelling mitigating factors considered); In re Chianese, 157 N.J. 527 (1999) (three-year suspension for attorney who, during a civil proceeding that he instituted for the collection of a brokerage fee for his work in procuring a buyer for a former client's business, took the client's signature from a former document, placed it by photocopy process on a purported brokerage agreement, and then attached the document to an affidavit that he filed with the court; the attorney was convicted of perjury (by knowingly filing a false document with the court), attempted theft by deception (by taking a substantial step in an effort to obtain money by false pretenses), forgery (by altering the agreement to add the false signatures), and forgery by uttering (by presenting the false document to the court in the course of litigation); and In re Pena, In re Rocca, supra, 164 N.J. 222 (disbarment for two law partners who participated in a sham transaction as buyers; perjury and

subornation of perjury deemed aggravating factors); and In re Carbone, 178 N.J. 322 (2004) (disbarment for attorney convicted in the United States District Court for the Southern District of Florida of conspiracy to obstruct justice and to commit perjury, subornation of perjury, obstruction of justice, and perjury; while representing a client in a criminal matter, the attorney fabricated a defense, coached a witness to testify falsely at his client's trial, and elicited the testimony from the witness at trial; after the client admitted to a probation officer that the witness' testimony had been untrue, the attorney offered her a bribe to recant her admission and to testify falsely to the district court, which she did).

In Pena and Rocca, the attorneys and another law partner, Ahl, were involved in a business transaction with an indiviudal named Santorella. Years before the transaction, Santorella had been disqualified from participating in the alcohol beverage industry because of a federal conviction for stealing from foreign shipments. Despite his disqualification, Santorella bought a bar in Hoboken, the Good N'Plenti, through an entity. The building in which the bar was located belonged to Santorella's girlfriend, Krause. The liquor license was in Krause's name. Id. at 224-25.

When the ABC discovered that Santorella had continued involvement in the business, it suspended Krause's license

indefinitely, pending its transfer to a bona fide purchaser. Id. At 225.

At one point, Pena, Rocca, and Ahl became aware that the bar business was for sale and expressed an interest in buying it. Id. at 225-26. Because they were either unable or unwilling to spend more than a certain amount, they reached an agreement calling for Pena, Rocca, and Ahl's purchase of a one-half interest in the bar. They agreed to project to the rest of the world, through a sham contract, that Hoboken Fun Place, Inc., a New Jersey corporation, was the buyer. It was also agreed that a sham lease would be executed. Whited-out documents showed a transfer of the license to Hoboken Fun Place, Inc. and a complete divestiture of their interest. In reality, Pena, Rocca, and Ahl would pay $110,000 in checks to Santorella and Krause and $40,000 in cash (undocumented). Id. at 236.

Sometime thereafter, Pena, Rocca, and Ahl had extensive interviews with the New Jersey State Police and the ABC Enforcement Unit. They represented to them that they were the only persons who were to have an interest in the license and, by inference, that Krause would have no interest in the bar business. Id. at 227.

The day after the City of Hoboken Board of Alcohol and Beverage Control transferred the license to Hoboken Fun Place, Inc., the sham transaction closed. Ibid.

Subsequently, problems developed between the Pena and the Santorella camps. A chain of events led to civil litigation before Judge D'Italia and the disciplinary proceeding. Id. at 229.

At the conclusion of the civil trial, Judge D'Italia found that Pena, Rocca, and Ahl were involved in a "scheme to dupe the ABC," and that the agreement of sale was designed to "thwart *N.J.S.A.* 33:1-25, to evade the divestiture order of the Director of the ABC and perpetuate a fraud on the ABC Board of the City of Hoboken and the State of New Jersey." Id. at 229-30. The cited statute precludes persons convicted of a crime involving moral turpitude from becoming a licensee or from owning more than ten percent of the stock of a corporate license. Id. at 230. The judge also found that Pena, Rocca, and Ahl had lied under oath. Id. at 231.

In the disciplinary matter, this Board and the Court found that the attorneys had concealed that Santorella and Krause were partners in the Good N'Plenti, thereby evading the divestiture order of the State ABC, perpetuating a fraud on the State ABC, the Hoboken ABC, and the State of New Jersey. As mentioned above, we and the Court also found that the conduct of all three had been aggravated by perjury and that Pena and Rocca had suborned perjury. Id. at 231-32;233;234.

Pena and Rocca were disbarred. Ahl was suspended for three

years.[11]

Comparing respondent's conduct to that of the above attorneys, we find that his conduct was more serious than Santiago's, but not as serious as that of Chianese, Pena, Rocca, Ahl, and Carbone.

In Santiago, the attorney, during the representation of a client, made misrepresentations to a municipal prosecutor and to a municipal judge. Unlike respondent, he did not testify falsely under oath. His indictment for conspiracy to commit perjury stemmed from his attempt to present the false testimony of a witness to exonerate his client. Our decision noted that, if not for significant mitigation, Santiago would have been suspended for six months, rather than three months. In the Matter of Emilio Santiago, DRB 02-168 (December 4, 2004) (slip op. at 15).

In Chianese, the attorney, like respondent, committed perjury and other serious offenses. In a civil suit for the collection of a commission that Chianese believed he was owed by a former client, he photocopied the signature of the former client onto a document that he attached to his affidavit to the court. Like respondent, Chianese was moved by self-benefit. Unlike respondent, however, he was criminally convicted of perjury, attempted theft by deception, forgery, and forgery by

[11] Rocca had a prior private reprimand (now an admonition); Pena had a prior private reprimand and a six-month suspension.

uttering.

Pena, Rocca, and Ahl, too, exhibited conduct more grievous than respondent's. They were accomplices in a sham transaction, the purpose of which was to deceive several local and state agencies. Their deceitful conduct was calculated, repetitive, and for economic profit. Throughout the transaction, they acted with deliberation and with utter disregard for the laws. They topped their premeditated course of deception with perjury and subornation of perjury.

Finally, Carbone, unlike respondent, was convicted of conspiracy to obstruct justice and commit perjury, subornation of perjury, obstruction of justice, and perjury. Carbone fabricated a defense for a criminal client, instructed a witness to lie at the trial, elicited the testimony from the witness at the trial, and offered the witness a bribe to recant a subsequent admission to a probation officer and to testify falsely to the district court. The witness did so. Clearly, thus, Carbone's criminal offenses were far more serious than respondent's.

It is true that respondent also committed other improprieties. Although he came into possession of the judgment monies in his capacity as a fiduciary for Strumpf, he did not reveal to her that the funds were in his custody and distributed them to Stuart King without her knowledge. He also lied to the

DEC, created two letters for the purpose of legitimizing an attorney-client relationship that never existed, and presented the letters to the hearing panel. His prior admonition, lack of contrition, and failure to recognize any wrongdoing are additional aggravating factors.

On the other hand, his misconduct took place ten years ago, with no further incidents in the interim.

After consideration of the above circumstances, we determine that a one-year suspension is the appropriate form of discipline for this respondent's serious transgressions.

Member Doremus 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
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of William N. Stahl
Docket No. DRB 08-204

Argued: October 17, 2008

Decided: December 4, 2008

Disposition: One-year suspension

Members	Disbar	One-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Boylan		X				
Clark		X				
Doremus						X
Lolla		X				
Stanton		X				
Wissinger		X				
Total:		8				1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel