SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-061
District Docket No. XII-2010-008E

IN THE MATTER OF

PHILIP C. PROTHRO

AN ATTORNEY AT LAW

Decision

Argued: May 19, 2011

Decided: August 4, 2011

Bill R. Fenstemaker appeared on behalf of the District XII Ethics Committee.

Respondent waived appearance for oral argument.

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

This matter came before us on a recommendation for a one-year suspension filed by the District XII Ethics Committee (DEC). The formal ethics complaint charged respondent with violating RPC 8.1(a) (knowingly making a false statement of

material fact to a disciplinary authority), RPC 8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The charges were based on respondent's falsification of his law school transcript, which he submitted to his first and second employers, and his misrepresentations to the DEC that he had not submitted a falsified transcript or made any misrepresentations to his first employer. The DEC concluded that respondent had violated RPC 8.1(a) but that there was insufficient evidence to conclude that respondent had violated RPC 8.1(b).

Because we are equally divided on the discipline to be imposed (censure and three-month suspension), we submit this decision to the Court for a final determination.

Respondent was admitted to the New Jersey bar in 2005. Presently, he is not engaged in the private practice of law. He has no disciplinary history.

Most of the evidence in this disciplinary matter is in the form of documents. Nevertheless, on October 20, 2010, the DEC presided over a one-day hearing, where respondent, who appeared pro se, was the only witness.

Respondent testified that he attended Rutgers School of Law – Newark from September 2001 through May 2004. His official

transcript reflects that, for the fall 2001 semester, he received a B in Torts and a B in Legal Research and Writing. In the spring 2002 semester, respondent received a C+ in Constitutional Law.

Respondent worked as a summer associate for Sills Cummis & Gross from May 28 through August 2, 2002 and, again, from June 9 through August 1, 2003. He was an associate of the firm from September 20, 2004 until October 10, 2008.

On October 13, 2008, respondent began employment as an associate with Herrick, Feinstein, LLP. He remained in that position until his employment was terminated, in early- to mid-October 2009. His discharge led to the ethics investigation in this matter.

When respondent was hired by the Herrick firm, he presented a photocopy of his law school transcript, which reflected a grade of A for Constitutional Law. The firm, however, required its attorneys to provide original law school transcripts and, therefore, respondent was repeatedly asked to obtain one so that it could be placed in his file.

A year after he was hired, respondent finally provided an original transcript to the Herrick firm. However, he had affixed to the transcript a yellow Post-It® note, on which he had written a message to someone named "Elise" in a black,

indelible marker. When respondent wrote the name "Elise," he did so in such a way that part of the letter "E" was written directly on the transcript, exactly over the Constitutional Law grade, thereby blocking it.

Someone at the Herrick firm held the transcript up to a light and noticed that the Constitutional Law grade was C+, not A. Rutgers – Newark confirmed that respondent had received a C+ in that course. As a result, the Herrick firm's managing director, George J. Wolf, Jr., terminated respondent's employment and informed him that "it would be in his best interest to self-report the incident to the appropriate authority no later than October 16, 2009." On November 20, 2009, Wolf, who had not heard from respondent, directly reported the incident to the DEC.[1]

The DEC assigned Bill R. Fenstemaker to investigate the matter. He forwarded Wolf's letter to respondent, who explained what had happened in a two-page letter, dated February 1, 2010.

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[1] Respondent denied that Wolf had instructed him to self-report the misrepresentation made to the firm. Instead, Wolf "advised that it would be better if I self-reported." Respondent claimed that he intended to do that, but he never did, for reasons he did not explain.

In the letter, respondent initially admitted that he provided the Herrick firm with a photocopy of the transcript, which he had altered to reflect a grade of A in Constitutional Law; that he delayed in providing the firm with an original transcript; and that, when he did provide the original, he "attempted to obscure the C+ grade with black marker." Based on these facts, the complaint charged respondent with having violated RPC 8.4(c).

According to respondent, "extremely poor judgment" caused him to alter the transcript submitted to the Herrick firm. He testified that he had long admired the firm, with its prestigious reputation, born of excellent attorneys and challenging work. However, when he applied for an associate position there, he doubted whether he would be hired, given the C+ on his transcript. Thus, he altered the grade, which he described as "an indefensible decision that I have regretted ever since." He continued:

> Words alone cannot express the depths of my regret for my actions. I know what I did was wrong, and am truly sorry. I have disappointed my family, friends and colleagues, and have betrayed my chosen profession. Most importantly, I feel that I have let down my son, [name redacted]. One day, when he's old enough to understand, I will have to explain to him what I've done, and hope that he forgives me. I would like to apologize to Herrick, specifically,

> George Wolf, Jr., Elise Rippe, Scott Tross, Esq., Paul Schafhauser, Esq., and Jaimee K. Sussner, Esq. I look forward to doing so more formally in the near future. I very much enjoyed working at the firm, and have the deepest respect and admiration for its attorneys.
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> I make no excuses for my actions. I hope only that one extremely bad decision will not ruin my entire legal career. This is my first and only ever alleged infraction. Additionally, neither my integrity nor character has ever previously been at issue. With respect to my self-reporting, it has always been my intention to do so. It has just been very tough at home of late, and difficult for me to fully reflect on and properly address this issue. I pray that my misconduct is considered "minor," and that diversion rather than discipline is recommended pursuant to R. 1:20-3(i)(2)(A)(B).
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> [Ex.5.][2]

At the DEC hearing, respondent acknowledged that his decision to alter the C+ was "clearly misguided and for that I take full responsibility."

On February 4, 2010, Fenstemaker wrote to respondent and asked whether his current employer had been provided with an altered transcript or a correct transcript. Fenstemaker added:

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[2] "Ex.5" refers to respondent's February 1, 2010 letter to Fenstemaker.

"Also, please advise me if there was anything at all provided to your current employer and or as part of your bar application which could be construed as a misrepresentation or omission." As of March 3, 2010, Fenstemaker had not received a reply from respondent. Therefore, he renewed his request for the information in another letter, dated March 3, 2010.

On March 8, 2010, respondent wrote to Fenstemaker, acknowledged the receipt of Fenstemaker's February 4 and March letters, and stated:

> With respect to my current employer, I am presently self-employed and, as such, my transcript was not given to any employer. Also, there were no misrepresentations or omissions in my bar application.
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> [Ex.7.][3]

On March 10, 2010, Fenstemaker replied to respondent's March 8, 2010 letter and informed respondent that he was attempting to determine whether respondent had supplied a false transcript or resumé or made "any other misrepresentations to any other employer." Among other things, Fenstemaker

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[3] "Ex.7" is respondent's March 8, 2010 letter to Fenstemaker.

specifically asked respondent if he had supplied an altered transcript or made any misrepresentations to Sills Cummis.

On March 29, 2010, respondent replied to Fenstemaker's letter and stated that Sills Cummis and Herrick were his only employers "[s]ince enrolling in law school." He informed Fenstemaker that he had worked as a law clerk at Sills Cummis in 2002, a summer associate in 2003, and as an associate from 2004 until 2008. He stated that he did not provide Sills Cummis with an altered transcript. He also stated that, as of the date of his letter, he was not practicing law. Instead, he advised, "I work in real estate."

Despite respondent's claims to Fenstemaker, when respondent sought employment as a summer associate for Sills Cummis in 2002, he submitted an unofficial, self-prepared transcript for the fall 2001 semester at Rutgers – Newark. The transcript reflected a grade of B+ in both Torts and Legal Research and Writing, even though respondent had received a B in each class.

When respondent sought employment as a summer associate at Sills Cummis in 2003, he submitted another unofficial, self-prepared transcript for the fall 2001 and spring 2002 semesters. In addition to the B+ grades for Torts and Legal Research and Writing, the "transcript" reflected a grade of B- for Constitutional Law rather than C+.

Based on respondent's misrepresentation to Fenstemaker, the ethics complaint charged respondent with having violated RPC 8.1(a). He was again charged with RPC 8.4(c), for his misrepresentations to Sills Cummis.

At the DEC hearing, respondent conceded that the transcript provided to Sills Cummis was inaccurate. He denied, however, having made a misrepresentation to Fenstemaker. He explained that, when he wrote a May 27, 2010 letter in reply to a May 19, 2010 reply from Fenstemaker (not in the record), he did not believe that he had made any misrepresentations to Sills Cummis. Accordingly, when he told Fenstemaker that he had not provided that firm with an altered transcript, he was not "trying to be coy" or "to misstate any of the facts." Moreover, he stated, he fully expected that Fenstemaker would request his file from Sills Cummis. Under these circumstances, he asserted, it would not have made sense for him to make a misrepresentation to Fenstemaker.

The focus of respondent's, May 27, 2010 letter to Fenstemaker was the unofficial, self-prepared transcripts for the fall 2001 and spring 2002 semesters, which reflected inaccurate grades for Torts, Legal Research and Writing, and Constitutional Law, and which respondent had presented to Sills Cummis. Respondent wrote:

Let me begin by stating that I have been fully candid with you thus far, and will continue to do so. I take this matter very seriously, and have no intention of being anything but completely forthcoming. I have reviewed the Unofficial and Self-Prepared 2001-2002 Transcript ("Unofficial Transcript") you provided, and have no recollection of preparing this document. Therefore, with respect to the specific courses you mentioned, I can only speculate as to the reason for any grade discrepancy. Notwithstanding this speculation, however, I can assure you that these grades were not "inflated" as you stated in your letter. Rather, any discrepancy was more than likely attributable to harmless error.

At the time I would have prepared the Unofficial Transcript, no official transcript would have existed. Therefore, the Unofficial Transcript sets forth my understanding of my grades at that time. Given my desultory lack of attention to detail, it's likely that I simply misrecorded or incorrectly transcribed these grades at some point after they were released. I recognize that this may seem somewhat incogitable given the present circumstance, but in all candor, that's probably what happened. With respect to my GPA, this calculation was based on a formula set forth by Rutgers, the specifics of which I do not recall. To the best of my knowledge, the GPA is accurate.

Regarding your statement that my March 29, 2010 letter may be a basis for RPC 8.4(c) and 8.1 violations, I must respectfully disagree. Per that letter, I advised you that I had not provided Sills with an "altered transcript," and I did not. Rather, it appears that I gave Sills a self-prepared unofficial transcript, which was not altered, but rather, reflected my

> understanding of my grades at that time. Moreover, notwithstanding the above, as I previously stated, I did not (and do not) recall preparing the Unofficial Transcript. Accordingly, my letter contains no basis for any RPC violations as it accurately and truthfully reflected my recollection and understanding of your inquiry. Any discrepancy in the grades was purely accidental, and any implication or suggestion otherwise is simply untenable.
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> [Ex.14.][4]

Respondent testified that Rutgers – Newark did not issue written grade reports, either in the form of a transcript or a report card, at the end of the semester. However, he stated, grades were posted in writing at the law school; he then "would typically try to write them down."

According to the DEC, the clear and convincing evidence established that respondent had violated RPC 8.1(a) and RPC 8.4(c). As indicated previously, the DEC dismissed the RPC 8.1(b) to charge as unsupported by the evidence.

Specifically, the DEC found that respondent violated RPC 8.4(c) by falsifying the copy of the transcript provided to the Herrick firm so that it reflected a grade of A, instead of C+,

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[4] "Ex.14" refers to respondent's May 27, 2010 letter to Fenstemaker.

for Constitutional Law. According to the DEC, the grade change was "a calculated misrepresentation made by Respondent in an effort to deceive Herrick." Moreover, the alteration of the transcript was compounded by respondent's one-year failure to comply with the firm's request for an original transcript, as well as his attempt to cover up the grade on the original by using a Post-It® note and an indelible marker.

Further, the DEC found that respondent violated RPC 8.4(c) when he submitted a "self-prepared" transcript to Sills Cummis, which reflected the B+ grades in Torts and Legal Research and Writing, followed by another "self-prepared" transcript, which included those grades, plus a B- in Constitutional Law.

The DEC also determined that respondent violated RPC 8.1(a), when he denied to Fenstemaker that he had provided an altered transcript to the Sills Cummis firm. The DEC rejected as not credible respondent's claim that he had "no recollection" of providing the firm with altered transcripts. The DEC also rejected respondent's claim that he had no reason to make such a misrepresentation to Fenstemaker because, in his mind, Fenstemaker would likely seek information directly from the firm. Instead, the DEC determined that, in making that misrepresentation to Fenstemaker, respondent "gambled" on the

possibility that Fenstemaker might not go to Sills Cummis for the information.

As to the charged violation of RPC 8.1(b), although the DEC acknowledged respondent's repeated misrepresentations to Fenstemaker, during the investigation, it noted that, nevertheless, "he did respond to the requests for information and in a timely manner."

As noted earlier, the DEC recommended a one-year suspension for respondent's violations of RPC 8.1(a) and RPC 8.4(c).

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Respondent engaged in multiple acts of dishonesty and deceit over the course of many years. He submitted to Sills Cummis a self-prepared "transcript" for the Fall 2001 semester, misrepresenting that he had received a grade of B+ in Torts and in Legal Research and Writing. In fact, respondent had received a grade of B in both courses. He repeated that misrepresentation, when he submitted a self-prepared "transcript" for the Fall 2001 and Spring 2002 semesters, reflecting the same grades for Torts and Legal Research and Writing, in addition to a B- in Constitutional Law.

Respondent claimed that the incorrect grades for Torts and Legal Research and Writing were the product of a faulty memory. We find this explanation unworthy of belief. Even if respondent's notification of the grades received in his classes were limited to the bulletin board postings, it is difficult to imagine that those first semester grades would not have been seared into his memory. Nevertheless, even assuming that one could "misremember" two B grades as B+, it is hard to accept that one could "misremember" a C+ as a B-. Like the DEC, we find that respondent's claim did not ring true. We conclude that respondent committed separate violations of RPC 8.4(c) when he prepared the two "transcripts" and submitted them to Sills Cummis.

In addition, respondent submitted to the Herrick firm a falsified copy of his law school transcript, which reflected a grade of A, instead of C+, for Constitutional Law and, when he finally produced an original transcript to the Herrick firm, he covered up the C+ by the calculated placement of a Post-It® note directly onto the transcript and the calculated use of a black indelible marker. We find that such actions were additional violations of RPC 8.4(c).

Finally, respondent violated RPC 8.1(a) when he misrepresented to the DEC investigator that he did not supply an

altered transcript to Sills Cummis or make any misrepresentations to the firm. As previously discussed, there is clear and convincing evidence that he intentionally submitted false grades on the two self-prepared "transcripts" that he submitted to Sills Cummis. The overall record does not support respondent's position that his representations to a member of the disciplinary system were, as he maintains, the product of a faulty memory.

There remains for determination the discipline to be imposed on respondent for his multiple violations of RPC 8.4(c) and his violation of RPC 8.1(a). Four members voted for a three-month suspension, while four members voted for a censure. One member recused himself.

I. View of Members for a Three-Month Suspension

Four members find this case nearly identical to In re Hawn, 193 N.J. 588 (2008), where, on a motion for reciprocal discipline, a three-month suspension was imposed on an attorney who violated RPC 8.4(c) by falsifying his resumé and altering his law school transcripts in an attempt to obtain legal employment in California. In the Matter of Gregory G. Hawn, DRB 07-243 (December 17, 2007) (slip op. at 1-2).

In March 2005, the attorney, who had passed the District of Columbia bar in 2004 and was employed by a law firm there, moved to Los Angeles to escape financial, family, and girlfriend problems. Id. at 2. One month later, he contacted a "head hunter" but, by mid-June 2005, he had received rejection letters from nearly all of the law firms to which he had sent his resumé. Id. at 3. As a result, the attorney believed that, in order to obtain employment, he would have to "embellish" his resumé to overly-impress each prospective employer. Id. at 3-4.

Hawn modified his resumé to falsely reflect that, in law school, he had received an academic scholarship and an AmJur award and that he was a moot court finalist. Ibid. His resumé also misrepresented that, as an attorney, he was co-chair of an ABA working group on technology, program director of a D.C. bar standing committee, and an advisory board member and docent of a Smithsonian museum. Id. at 4.

The "head hunter" sent the modified resumé and Hawn's law school transcript to additional law firms, including Mayer Brown Rowe & Mew (Mayer Brown). Ibid. Hawn did that as well. Ibid. When Hawn continued to receive mostly rejection letters, he determined that it was his law school grade point average that was the problem. Ibid. Accordingly, he downloaded a program designed to alter computer document files and proceeded to alter

an electronic version of his law school transcript. Id. at 5. Specifically, Hawn changed twelve grades, thereby raising his cumulative GPA from 3.12 to 3.59. Ibid.

In late June and early July 2005, Hawn mailed the falsified resumé and falsified transcript to five large Los Angeles law firms. Ibid. In the meantime, he learned that Mayer Brown was seeking a real estate associate with experience similar to his. He, therefore, sent a second resumé to that firm, with the altered transcript. Ibid.

On July 26, 2005, someone at Mayer Brown discovered that the firm had received two different transcripts from Hawn. The firm reported that information to respondent's law school. Ibid. Two days later, the academic dean requested that Hawn explain the discrepancy. Ibid.

In an email to the dean, Hawn denied that he had altered the transcript, falsely suggesting that the discrepancies may have resulted from a malfunction in the electronic transmission of the transcript from the law school registrar to him. Ibid. After insisting that he had not altered the transcript, Hawn granted the dean permission to contact certain law firms where he had applied, in order to obtain copies of the materials that he had sent to them. Id. at 5-6. However, none of those firms had been sent the altered transcript. Id. at 6.

Hawn also implored the dean to launch an investigation within the registrar's office to uncover the source of the error, claiming that he was "stricken with grief over the thought that an error like this could affect [his] fitness to practice law for the remainder of [his] career." Id. at 6.

On July 18, 2005, Hawn met with three law school deans. Ibid. He soon became overwhelmed with emotion, sensed that he needed an attorney, and ended the meeting. Ibid. Three days later, he retained counsel and reported his conduct to the D.C. Office of Bar Counsel. Ibid.

In the letter to Bar Counsel, Hawn noted that his actions did not affect any clients and that his behavior was "caused by a lapse of judgment." Id. at 7. A few weeks later, he withdrew all applications for employment and requested that the "head hunter" do the same. Ibid.

According to Hawn, his dishonest conduct was due to panic caused by increasing pressure. Ibid. He claimed that he altered the transcripts for the sole purpose of determining whether his inability to secure an interview for a job was due to his GPA. Ibid. He further claimed that he knew that he could never accept any interview or actually obtain employment from any of the firms. Ibid. He also asserted that he had

inadvertently sent the second transcript to Mayer Brown. Id. at 8.

In mitigation, Hawn alleged that, as a result of his personal problems with his family and girlfriend in June 2005, he had developed severe anxiety and had to take medication. Ibid. He apologized to D.C. Bar Counsel, resigned from his position with the D.C. law firm, was working with several charitable organizations, and intended to seek employment in another field. Ibid.

In determining that a three-month suspension was appropriate discipline under the circumstances, we found that Hawn's conduct fell somewhere between that of the attorney in In re Tan, 188 N.J. 389 (2006), who received a reprimand, and the attorney in In re Telson, 138 N.J. 47 (1994), who received a six-month suspension. In the Matter of Gregory G. Hawn, supra, DRB 07-243 (slip op. at 18).

In Tan, the attorney falsely represented to the New Jersey Board of Bar Examiners that he had received his Bachelor's degree from New York University (NYU) when, in fact, he had fallen one course short of doing so. In the Matter of Herbert Tan, supra, DRB 06-021 (slip op. at 3). Despite the absence of an undergraduate degree, Tan was admitted to and graduated from

law school, without having disclosed the above deficiency. Ibid.

During his final semester of college, Tan was in the Philippines with his wife, who doctors believed was suffering from Hodgkin's Disease. Ibid. He kept up with his assignments from abroad and returned to the States in time to take his final exams. Ibid. However, he did not pass a senior seminar, due to a failing grade on the thesis paper. Ibid.

Tan did not inform the law school that he had not received a degree. Ibid. He feared that, if he did, his law school admission would be revoked. Id. at 4.

In addition to being beset by his wife's health problems, Tan also suffered from hyperthyroidism, during his senior year in college. Id. at 4. His condition contributed to his poor academic performance, during his first year of law school. Id. at 5. Due to his poor performance, he was called before the law school's review board and asked to explain his deficient grades. Ibid. He was academically dismissed and required to seek reinstatement, which was granted, based on his medical issues. Id. at 5, 7-8.

In the spring of 1993, Tan contacted the director of the history department at NYU to seek his help with the seminar

grade. Ibid. The director purportedly agreed, but neither he nor Tan followed up on the matter. Id. at 5-6.

Tan was admitted to the New Jersey bar in 1998. Id. at 5. He certified on his bar application that he had earned a bachelor's degree in history. Id. at 6.

Tan explained that, when he applied for admission to the New Jersey bar, he was the sole financial support of his family. Id. at 8. He feared that, if his lack of an undergraduate degree surfaced, he would be barred from practicing law. Ibid.

In the year 2000, Tan wrote a letter to one of the deans at NYU and explained what had happened with his failure to obtain a degree, his attendance at law school, and his previous attempt to cure the undergraduate deficiency. Id. at 9. Tan requested that the dean waive the credits necessary to confer the degree. Ibid.

Tan wrote the letter on a computer at a law firm where he worked at the time. Id. at 10. After he left, the letter was discovered during a systems upgrade. Ibid. It was forwarded to the appropriate district ethics committee and to the OAE. Ibid.

In the summer of 2004, Tan submitted a paper to the history department at NYU. As a result, his grade for the seminar was changed from F to C. Ibid. He received a degree in September of that year. Ibid.

Tan apologized to the district ethics committee for what he had done and for the time expended by the committee in investigating the matter. Ibid. He took full responsibility for his actions. Ibid.

In mitigation, Tan relied upon the work that he performed on behalf of the Filipino community. Id. at 10-11. In addition, several witnesses testified to his reputation for truthfulness, honesty, and compassion. Ibid.

We determined that Tan violated RPC 8.1(a) and RPC 8.4(c) by knowingly making false statements on his bar application. Id. at 13. In our assessment of the appropriate measure of discipline to be imposed for his misconduct, we noted that attorneys who engaged in similar misconduct had either been suspended from the practice of law or had their licenses revoked. Ibid. In the case of Tan, however, we imposed a reprimand because he was candid about his misconduct, which was the result of poor judgment and inexperience, rather than a lack of scruples; he recognized the impropriety of his conduct, accepted responsibility for what he had done, and expressed remorse; he had no disciplinary history; eight years had passed since he had committed the offense; he had given back to his ethnic community; and he deserved a second chance. Id. at 26.

In short, Tan had shown that his character had been salvaged. Ibid.

In In re Telson, supra, 138 N.J. 47, the attorney received a six-month suspension for altering a court record by "whiting out" an entry, noting that a divorce complaint of his client had been dismissed. Telson then presented the case to a different judge, who granted the divorce. In the Matter of Scott A. Telson, DRB 93-147 (March 3, 1994) (slip op. at 2).

Telson was called before a judge and asked to explain himself. Id. at 2-3. He admitted his wrongdoing (presumably, in going to another judge), but denied having "whited-out" the court record. Id. at 3. One week later, he was called before the same judge. This time, he admitted that he had "whited-out" the record. Ibid.

Telson apologized to the judge and explained that he had lied the first time he was called to account for his conduct because he was "scared." Ibid. Thereafter, the judge who had dismissed the complaint vacated that order, thereby allowing the order of divorce to stand. Ibid.

Although we recognized that Telson's misconduct was "grave," we found that he did not "purposely or affirmatively attempt to subvert the administration of justice." Id. at 6. Rather, he had attempted only to "assuage his client's extreme

distress over the dismissal of the divorce complaint." Ibid.

In light of this factor, as well Telson's extreme candor, deep contrition, and unblemished career before and since the incident, we determined to impose a reprimand. Id. at 7. The Supreme Court, however, suspended Telson for six months. In re Telson, supra, 138 N.J. 47.

In this matter, respondent made multiple misrepresentations to multiple parties, including the DEC. On two occasions, he misrepresented to Sills Cummis his grades in three classes, via "self-prepared" transcripts. He submitted to the Herrick firm a copy of an official transcript, which he had altered to reflect an A, rather than a C+, in Constitutional Law. When he was forced to provide the firm with an actual official transcript, he concealed the C+ with the use of a Post-It® note and black indelible marker.

Finally, respondent deliberately attempted to mislead the DEC investigator, when he was asked about any misrepresentations that he had made to Sills Cummis. Fenstemaker asked respondent directly: "Did you supply an altered transcript or make any misrepresentations to Sill, Cummis" [sic]? Respondent replied: "I did not provide them an altered transcript." Respondent's half-answer conveniently avoided the broader aspect of the question, that is, whether he had made "any misrepresentations"

to Sills Cummis, which, of course, he did. Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984) (sometimes "silence can be no less a misrepresentation than words").

Here, as in Hawn, we believe that a three-month suspension is the appropriate measure of discipline to be imposed on respondent for his pattern of misrepresentations to two employers and to the DEC. Like the attorney in Hawn, respondent undertook the alteration scheme for the purpose of self-gain. Moreover, the scheme was not a one-time incident, but, rather, continued over a period of time and involved two employers.

Although respondent did not alter court documents, as did the attorney in Telson, there is an absence of compelling mitigation, as was the case with the attorney in Tan. Moreover, we note that, unlike the attorneys in all three of the above cases, respondent also lied to the DEC. Accordingly, we determine that a three-month suspension is the appropriate measure of discipline for respondent's misconduct.

II. View of Members for a Censure

We agree that respondent's conduct was reprehensible. However, nothing in the record suggests that his grades were material to the decision to hire him, on the part of either

Sills Cummis or the Hendrick firm. Moreover, no one suffered any harm as a result of respondent's misrepresentations.

In our view, a three-month suspension is too severe, under the circumstances of this case. The attorney in Hawn undertook a two-part scheme. First, he altered his law school honors and professional activities, as identified on his resumé. When he failed to procure employment, the attorney then proceeded to alter the grades on his law school transcript. Finally, the attorney involved a third party in his fraudulent activities, by giving the falsified resumé and transcript to the "head hunter" who was working with him and who, in turn, provided these falsified documents to prospective employers.

We acknowledge that the compelling mitigation present in the Tan case is absent from this case. However, the degree of respondent's misconduct is not as severe as that of the attorney in Hawn. Accordingly, it is our view that a censure is sufficient discipline for respondent's violations of RPC 8.1(a) and RPC 8.4(c).

Member Yamner recused himself.

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 Philip C. Prothro
Docket No. DRB 11-061

Argued: May 19, 2011

Decided: August 4, 2011

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost			X			
Baugh			X			
Clark			X			
Doremus		X				
Stanton			X			
Wissinger		X				
Yamner					X	
Zmirich		X				
Total:		4	4		1	

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel