SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-264
District Docket No. VIII-2010-0003E

IN THE MATTER OF	
OWEN CHAMBERS	
AN ATTORNEY AT LAW	

Decision

Argued: November 17, 2011

Decided: December 22, 2011

Anish A. Joshi appeared on behalf of the District VIII Ethics Committee.

Donald M. Lomurro 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 a six-month suspension filed by the District VIII Ethics Committee (DEC). The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter or to comply with reasonable requests for information), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make

informed decisions about the representation), RPC 1.15(a) (failure to safeguard property), RPC 1.15(d) (recordkeeping violations, mentioned in the complaint as "safekeeping property"), RPC 3.2 (failure to expedite litigation), RPC 8.1(a) (making a false statement in connection with an ethics proceeding), RPC 8.1(b) (failure to cooperate with the ethics investigator), RPC 8.4(b) (criminal conduct that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons expressed below, we determine that a three-month suspension is appropriate discipline.

Respondent, a sole practitioner with an office in New Brunswick, New Jersey, was admitted to the New Jersey bar in 2000. He has no disciplinary record.

Preliminarily, we note that respondent did not appear at the ethics hearing that was originally scheduled for January 18, 2011. He claimed that, because he had a migraine headache, he instead went to see his doctor. Later that evening, his attorney advised him to obtain documentation of his appointment. Respondent submitted a note from Dr. Thomas N. Koutelos, located in Brooklyn, New York, stating merely that, "[o]n January 18, 2011, Mr. Owen Chambers had a migraine headache and was unable

to attend the court hearing." As of the date of the DEC hearing, March 15, 2011, respondent had not yet been billed for the visit to the doctor.

On March 15, 2011, at the re-scheduled hearing, the presenter moved to strike respondent's answer, on the basis that (1) it did not conform to the requirements of R. 1:20-4(e)(2), that is, it was not properly verified[1] and (2) the answer did not comply with the requirements of In re Gavel, 22 N.J. 248 (1956), because it lacked specificity and contained only basic admissions and denials. As such, the presenter argued, it did not comply with the "letter or spirit of the law." The DEC reserved its decision on the presenter's motion and went forward with the hearing.

We now turn to the facts of this matter.

Grievant Walter Richardson retained respondent to pursue the return of funds he believed an individual named Patricia Royster had taken from his retirement dinner. At the DEC hearing, the parties stipulated that Richardson had given respondent, as evidence for his case against Royster, five $100 bills that respondent did not deposit into his trust account and

[1] Respondent's answer to the amended complaint, dated August 4, 2010, appears to contain a verification on the same sample form provided by the DEC.

a $500 travel gift certificate that expired while in respondent's possession. Both were gifts that Richardson had received at his retirement party.

According to Richardson, he retired from the Middlesex County Sheriff's Department as a sheriff's officer, sometime around July 2003. Tickets for his retirement party cost $45 a piece. Richardson estimated that between 200 and 250 people had attended his party and that the party had cost approximately $4,400.

After the party, Patricia Royster, the person in charge of organizing it, gave Richardson a cash gift of $500 (five $100 bills) and a $500 travel gift certificate from Liberty Travel Service. Richardson believed that Royster had shortchanged him. He, therefore, collected the tickets from the event to establish the amount that she had kept, which he estimated was approximately $6,400.

When Richardson's own efforts to get the money back from Royster were unsuccessful, he met with respondent, in about September 2003. At that time, Richardson gave respondent, as evidence, an envelope with a retirement card that contained the five $100 bills that he had received and the $500 trip certificate. Respondent did not give Richardson a receipt for those items.

The cash was not respondent's fee, which Richardson had paid separately. Richardson paid an initial $500 fee in cash, for which he recalled having been given a receipt, and two other $500 installments, for a total of $1,500. Richardson did not authorize respondent to use the "evidential" $500 for a fee.

Richardson also paid respondent an additional $125 or $150 to send a letter of intent to Royster. Respondent gave Richardson a receipt, dated September 5, 2003, for that payment. Respondent explained that the letter was intended to let Royster know that they were seeking the return of funds from the retirement party and that, if she did not return them, they would pursue legal action. Royster did not reply to the letter.[2]

Richardson claimed that quite some time had elapsed before the matter had been scheduled for a hearing, which had then been adjourned and re-scheduled. According to a time line contained in respondent's reply to the grievance, he prepared the summons and complaint and filed it with the Middlesex County Special Civil Part on December 17, 2003. The time line showed that, on

---

[2] Notwithstanding that Richardson paid respondent for the letter of intent in September 2003, the retainer agreement was not executed until November 5, 2003. It was signed on behalf of the firm by Michael Dawson. The agreement cited a $125 hourly fee and separate billing for the firm's out-of-pocket expenses. Richardson had already paid the firm "an initial, nonrefundable, deposit of $500."

January 22, 2004, respondent received notice from the court that the summons had been mailed to the defendant and that the matter was set to default on March 1, 2004, "unless otherwise notified."

Royster did not file an answer. Richardson recalled that, at some point, respondent filed a request for a proof hearing, based on Royster's default. According to respondent, he made four requests for a proof hearing, the first of which was on August 11, 2004. The proof hearing was re-scheduled several times. It finally took place on January 27, 2005. Richardson obtained a default judgment against Royster for approximately $6,400. Afterwards, respondent was to obtain an execution of Royster's wages, but he failed to do so.

Respondent's explanation was that, for a few months, he did not have access to either Richardson's file or the safe. He claimed that, on December 9, 2005, his former law partner, Michael Dawson, had locked him out of the office. There ensued a dispute over which files respondent would recover. In January 2006, respondent wrote to Dawson, seeking the return of the files of the clients whom he represented.

Respondent claimed that, when he got Richardson's file back, in February 2006, he intended to start the wage execution. He drafted a notice of wage execution on February 8, 2006, one

year after the judgment was entered. Although his letter to the DEC investigator states that he filed it and sent it to the "defendant," he claimed that he did not do so because he wanted an additional retainer to pursue "the enforcement aspect of the collection."

According to respondent, he had received an April 20, 2005 letter from Royster's counsel, stating that Royster had never received the complaint, but was aware of the judgment against her. Respondent maintained that he learned from Royster's attorney that Royster had filed a Chapter 7 bankruptcy petition on October 12, 2005, as a result of which Richardson's judgment had been discharged. Respondent informed Richardson that, for an additional fee, he could try to pursue a claim against Royster in federal court. According to respondent, Richardson did not want to pay to have his default judgment restored.

To summarize, the default judgment was entered in January 2005. In December 2005, respondent was locked out of the office. He did not prepare an application for a wage execution until February 2006 because, he claimed, he did not recover the file until then. Nevertheless, he did not proceed with the wage execution because, allegedly, Richardson was unwilling to pay him for that endeavor.

At times not specified in the record, Richardson unsuccessfully tried to telephone respondent on numerous occasions and even went to respondent's office more than once. According to Richardson, he knew respondent was there, but respondent would not talk to him. Eventually, respondent's secretary/office manager, Mia, informed Richardson that respondent was busy, involved with other trials. She told Richardson that respondent would contact him when respondent was available. Richardson told Mia that he did not want to keep talking to her; he wanted respondent to return his telephone calls.

Eventually, Richardson discovered that respondent had never started the wage execution. Richardson testified that, despite his numerous attempts to contact respondent, the only correspondence that he received from respondent was a letter stating that he owed respondent more money.

Richardson explained that he filed the grievance against respondent because of his difficulties contacting him.

Kim Connor, a DEC member, was assigned to investigate Richardson's November 2008 grievance against respondent. At some point, she forwarded a copy of the grievance to respondent and

requested a written reply within ten days.[3] Respondent did not reply within the allotted time. Therefore, Connor tried to communicate with his office. Ultimately, Mia informed Connor that they were having trouble finding the files that were in storage and that respondent would provide a written reply within a short time. Connor then sent a second letter to respondent, requesting a written reply within five days. According to the hearing panel report, the letter was sent on May 12, 2009. She received a response dated May 15, 2009.

Afterwards, Connor communicated with respondent's office orally and in writing, asking for copies of documents that respondent had identified in his May 15, 2009 reply to the grievance. According to Connor, "after begging" for the documents and after a substantial delay, respondent provided most of the documents identified in his reply. According to the hearing panel report, they were supplied on July 9, 2009. Because Connor was dissatisfied with the information that respondent had given her, she had several "communications" with his office (presumably, with Mia) and ultimately was able to schedule an August 7, 2009 appointment to review the entire file

[3] The hearing panel report states that Connor's letter was dated March 31, 2009.

at respondent' office. Respondent claimed that he was not aware of all of the communications between Connor and Mia.

During their August 7, 2009 meeting, respondent informed Connor that the $500 that Richardson had given him as evidence was in his trust account. Connor did not ask for proof of the deposit, an error that, she stated, she will not make again. When Connor asked respondent why he had not returned the travel certificate and the funds to Richardson (the certificate had expired several months earlier), respondent's reply was that Richardson had never asked for them. He then told Connor that he would return the $500 to Richardson.

Connor attributed the expiration of the Liberty Travel certificate, while in respondent's possession, to an oversight on his part. Connor recommended that respondent attempt to obtain an extension of the gift certificate. Respondent agreed to do so.

Respondent conceded that Connor left the meeting believing that he would "honor [his] word" that he would reimburse Richardson and would contact Liberty. He understood that Connor would dismiss the grievance, based on his representations. He never told Connor that he planned to bill Richardson.

After the meeting with respondent, Connor believed that he would address the issue about the funds and certificate "almost

immediately." Based on respondent's representations, including his difficulties with his former law partner, Connor drafted a report recommending the dismissal of the grievance.

Approximately ten days later, around September 21, 2009, Richardson notified Connor that he had not heard from respondent. Connor called respondent's office that same date, but there was a gap of a month or more, when respondent would not reply to her. Respondent's office informed Connor that they were reviewing the file and would resolve the matter shortly. More than a week later, Connor learned from Richardson that respondent's office was preparing an accounting of Richardson's account and would contact Richardson shortly. Thereafter, under cover letter dated October 9, 2009, respondent sent an invoice to Richardson, showing a balance due of $83.42 for legal services.

As of the date of the DEC hearing, March 11, 2011, respondent had not returned Richardson's $500 or at least the balance of the $500, after deducting the amount he believed he was owed for fees.

After Richardson received respondent's bill, in 2009, Connor consulted with the Office of the Attorney Ethics (OAE). They determined to re-open the matter and file a formal ethics complaint for respondent's failure to communicate with

Richardson and misrepresentations to Connor. The matter was reassigned to another DEC investigator for an "impartial look" at the case and to allow Connor to be a witness.

At the DEC hearing, respondent denied that he had deposited the $500 into his trust account, as he had told Connor. Instead, he claimed that he had put the cash in his office safe, where, he said, it had remained to that day. He contended that he had never deposited the money because he considered it to be evidence in Richardson's case. When his counsel asked him where the cash was at that very moment, he replied that it was in the office safe, "still intact." He added that Connor had not inspected his safe, during their meeting, because there had been no discussion about it at the time. Later, however, the following exchange occurred about the funds:

> Panel Chair: . . . this safe that you have, is that over at 75 Paterson Street?
>
> [Respondent]: It is.
>
> Panel Chair: Mr. Soos [presenter], would you go with him? Let's get the money. The 500 dollars today.
>
> [Respondent]: The money? Okay. I brought the money here in expectation of settlement. I have the money on me.
>
> Panel Chair: You have the 500 dollars?
>
> [Respondent]: Yes, sir. I do.

Panel Chair: Why don't you give him [Richardson] the 500 dollars.

. . . .

Presenter: . . . I thought we were told five or six times that it's sitting in a safe in a lock box.

Panel Member: . . . it's not necessarily in lieu of further prosecution. We have to establish what this means. . . .

. . . .

[Respondent handed the bills to the presenter who turned them over to Richardson.]

Panel Chair: This is the 500 dollars that was removed from the safe?

[Respondent]: It is.

Panel Member: When did you remove it?

[Respondent]: This morning.

Panel Member: Is it all the same 500 dollars that were in the greeting card or retirement card in the envelope that was given to you back in late 2003?

[Respondent]: Those are funds that was [sic] removed from the card.

. . . .

> Panel Chair: Three of the 100 dollar bills on the left side below Franklin's portrait it says [sic] series 2006.[4]
>
> [T158-24 to 161-15.][5]

Respondent testified that he had taken the money out of the safe only that morning, before going to the hearing. He maintained that, until then, the money had always been in the safe. He then explained that he had first put the money in the firm's safe in 2003 and that the safe had been turned over to him at the same time as the files. He could not say whether the bills were the same ones that Richardson had given him. He testified that the money had been "packaged, labeled, indicated that was Mr. Richardson's evidence." He added that a post-it note had been placed on the package, identifying it as evidence. He told the panel that the post-it note was still in the safe.

At this juncture, the hearing recessed to allow respondent, the presenter, and one of the panel members to go to respondent's office to retrieve the safe. When respondent opened it, at the DEC hearing, there was no post-it note in the safe. Respondent explained that a per diem attorney working at his office also had access to the safe, where he kept petty cash.

---

[4] As indicated previously, Richardson gave the five $100 bills to respondent in September 2003.

[5] T refers to the transcript of the DE hearing on March 15, 2011.

According to respondent, the attorney "[went] in and out the box" [sic].

As to the expired gift certificate, respondent testified that, when he contacted Liberty, he was informed that he had "no recourse to get those funds back." He conceded that he was responsible for the amount of the certificate and volunteered that he was prepared to return that amount to Richardson. He also conceded that he owed Richardson the $500 that he had received at the retirement party, stating that he did not "have any problem making restitution in that regard."

As to his bill to Richards, respondent stated:

> I guess my mindset was that I didn't have a rationale that I should not bill this man. I had been working on this case since '03 and only received an initial 500 dollars retainer separate and apart from the 150 or letter intent feeling I should pay for my service [sic].
>
> That's why I sent the invoice. Now, this notion that I was going to apply the evidence money to the money that I thought was owed to me for service rendered, in retrospect I see in hindsight that was a bad idea. Initially I didn't think so. That's why I sent the bill out and gave him credit for money that I had been holding.
>
> [T119-15 to T120-2.]

Later, respondent stated that Richardson's fee was a flat fee arrangement and that Richardson was going to pay him in installments. He testified that he had never returned the $500 to

Richardson because he did not feel it was appropriate to do so after Richardson had filed the grievance. He stated further that the preparation of the letter to Royster was not to be calculated against the retainer but, rather, that he had charged a flat fee for it. He did not recall whether Richardson had paid it.

As mentioned previously, when this disciplinary matter was re-opened, it was reassigned to a new investigator. On January 22, 2010, the investigator, Allan Marain, sent a copy of the draft complaint to respondent, by certified mail, seeking his reply to the allegations and copies of specific documents, within ten days (the letter mistakenly requested information relating to the "Walter Robinson matter"). Respondent neither replied to the letter nor submitted the requested documentation. At the DEC hearing, he admitted that he had received the letter and that his signature appeared on the certified mail receipt card. He could not provide a reason for not replying to Marain's letter and accepted responsibility for his failure to do so.

Marain sent a second certified letter to respondent, dated February 17, 2010, directing him to appear at his office, on March 12, 2010, and to bring the original trust ledger card for the matter, bank statements for the trust account, and copies of all cancelled attorney trust and business account checks (again, the letter mistakenly referred to the "Walter Robinson matter").

Respondent did not appear at Marain's office, contact him, or submit any documentation. Linda Smink, the attorney who represented respondent at the DEC hearing, had signed the certified mail receipt card.

At the DEC hearing, respondent claimed that he was not aware of the letter, but acknowledged that he should have been. He did not know if he had been in New Jersey at the time. He stated that he was a solo practitioner, with no staff, implying that this circumstance had caused him to miss Marain's deadline but, nevertheless, accepted responsibility therefor.[6]

Faced with respondent's lack of cooperation, Marain contacted the OAE for the location of respondent's trust account. He then subpoenaed respondent's records from the New Millenium Bank. According to Marain, his review of the bank records did not uncover any deposits made in connection with the Richardson case. Marain then prepared an amended complaint, to which respondent filed an answer.

---

[6] Respondent originally attributed his failure to cooperate with the DEC investigation on the move of his office from one suite to another in the same building. He speculated that he may have been at his Brooklyn law office for several days and may not have received all of his mail. He conceded that he ultimately had received the pertinent letters from Marain. He also admitted that, when he ran into Marain at the courthouse, he never informed him that he had relocated his law office.

Thereafter, by letter dated August 19, 2010, and by an amended letter dated August 24, 2010, Marain informed respondent that his answer was insufficient in that it did not satisfy the requirements of R. 1:20-4(e). He also informed respondent that respondent was required to disclose all facts "reasonably within the scope of the complaint" by August 30, 2010. Respondent did not provide Marain with an amended answer.

Marain sent all correspondence to respondent at 61 Livingston Avenue, New Brunswick, 08901. When Marain learned that some of the letters were delivered to 73 Paterson Street, New Brunswick (respondent's new address), and that they were signed by someone other than respondent, he re-sent them.

In September 2010, Marain realized that he would have to testify about respondent's lack of cooperation with the DEC. He, therefore, returned the file to the DEC secretary to have the matter re-assigned to another investigator/presenter.

At the DEC hearing, respondent turned over $500 in cash to Richardson and offered to reimburse him for the expired travel voucher. Nevertheless, Richardson did not feel as if he had been made whole. He stated:

> I feel okay about the fact that I have retrieved the stuff that I did put out. That I got back at least something from this whole ordeal. That I got something back that was in my possession at one point. I gave it for one reason. I'm glad to have it back.

> But I can't say I'm complete because you have . . . almost 6500 dollars out there that should have been probably been in a bank account but it wasn't.
>
> [T171-10 to 18.]

Following oral argument before us, respondent submitted three character letters: one from his mother, one from a client, and one from a deputy public defender. The deputy public defender underscored that, if respondent were suspended, it would be a loss to the "under-represented minority community." His mother stressed that he pays child support for three children and that a suspension of his license could be devastating to him. We have considered those letters, in reaching our determination.

The DEC found that respondent had failed to timely move for a proof hearing, following the court's entry of a default judgment against Royster, and had neglected to timely move for an application for an execution of Royster's wages to satisfy the default judgment, which had been entered against Royster on January 27, 2005. The DEC noted that the delay resulted in Richardson's "complete inability to collect on any part of the debt," once Royster filed for bankruptcy, on October 12, 2005. The DEC found respondent guilty of a violation of RPC 1.3 (lack of diligence) and RPC 3.2 (failure to expedite litigation).

The DEC further found that respondent's

> neglect and failure to respond to the inquiries of Richardson regarding the status of his case, as well as the respondent's continual failure to communicate with Richardson by phone and or in writing informing Richardson about the status of his case and Richardson's option for pursuing recovery of the Judgment entered against Royster constitutes gross neglect in violation of RPC 1.4(c) (Communication).
>
> [HR10¶3.][7]

In addition, the DEC found that respondent failed to safeguard Richardson's $500, as well as the travel gift certificate, by not returning it to Richardson prior to its expiration, a violation of RPC 1.15.

The DEC rejected as unreliable respondent's testimony on the whereabouts of the $500 evidence. The DEC pointed out that, although respondent had told Connor that the money was in his trust account, at the hearing he had denied having made that representation to Connor, claiming that the money could not have been placed in his trust account because of its evidentiary value.

The DEC underscored the fact that, at the hearing, respondent had first testified that the cash was in his office safe, but that, when asked to retrieve the safe (his office was

[7] HR refers to the hearing panel report.

across the street from the location of the hearing), he had replied that the cash was in his pocket. Furthermore, the DEC remarked, respondent had represented that the five $100 bills that he had pulled from his pocket were the same bills that Richardson had given him in 2003, but three of the bills were dated 2006.

The DEC found that respondent's testimony lacked credibility, given his conflicting statements at the hearing. The DEC concluded that Connor had no reason to fabricate her conversation with respondent about the deposit of the $500 in the trust account, noting that she had recommended the dismissal of the first grievant, based on respondent's representations. The DEC found that respondent's misrepresentation to Connor violated RPC 8.4(c) and RPC 8.4(d).[8]

The DEC did not address the charged violations of RPC 8.1(b) or RPC 8.4(b), but, without explanation, found that respondent had violated RPC 8.4(b).

The DEC recommended a six-month suspension.

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

[8] The amended complaint did not charge respondent with violating RPC 8.4(d).

evidence. We are unable to agree, however, with all of the DEC's findings.

In September 2003, Richardson hired respondent to retrieve from Royster the funds he believed he was entitled to receive from his retirement party. He paid respondent a $1,500 retainer and an additional $125/$150 for a letter to Royster. Richardson got nothing back in return, not even the evidence that he had turned over to respondent. In fact, the gift certificate expired, while in respondent's possession.

The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), and RPC 3.2 (failure to expedite litigation) for not timely moving for a proof hearing, after the entry of a default judgment against Royster, and for neglecting to timely move for a wage execution of Royster's wages. The delay enabled Royster to file for bankruptcy, which prevented Richardson from collecting on his judgment.

We find no clear and convincing evidence that respondent failed to timely move for a proof hearing. The presenter did not rebut respondent's claim that, between August 2004 and January 2005, he filed four requests for a proof hearing, which ultimately took place on January 13, 2005. Nor did the evidence establish that respondent was responsible for having the proof

hearings adjourned. Therefore, it cannot be said that respondent was responsible for the delay in scheduling the proof hearing.

Once respondent obtained the January 27, 2005 judgment against Royster, however, he never filed a petition for a wage execution. Royster filed for bankruptcy in October 2005, thereby eliminating any possibility that Richardson might have collected on the judgment. In this regard, respondent was guilty of violating RPC 1.1(a) and RPC 1.3.

On the other hand, the charged RPC 3.2 violation is not applicable here, because there was no ongoing litigation at that time. More appropriately, respondent's inaction constituted lack of diligence and gross neglect.

The complaint also charged respondent with violating RPC 1.4(b) and (c). The evidence clearly and convincingly established that respondent failed to reply to Richardson's repeated attempts to contact him about the status of the matter (RPC 1.4(b)). It did not demonstrate, however, that respondent failed to explain the matter to the extent reasonably necessary for Richardson to make informed decisions about the representation (RPC 1.4(c)). We, therefore, dismiss that charge.

Respondent also failed to safeguard Richardson's funds and property, a violation of RPC 1.15(a). Not only was he obligated to maintain the $500 intact as cash, but also as evidence. He

was unable, however, to produce those very bills at the DEC hearing. He testified that a per diem attorney who worked for him also had access to the safe, where petty cash was maintained. He testified that the attorney "was in and out [of] the box," presumably with respondent's authorization. There was no allegation that respondent's failure to keep inviolate the same bills that Richardson had given him constituted a misappropriation, either knowing or negligent. Nevertheless, giving someone else access to the safe amounted to a failure to ensure that the integrity of the $500 tendered to him was maintained.

Respondent also failed to safeguard the Liberty Travel gift certificate, which expired while in his possession. Typically, the type of "property" governed by RPC 1.15(a) is of the sort that has material worth, such as cash, securities, bonds, art, jewelry, etc. The Annotated Rules of Professional Conduct (Annotated Rules) state that, under RPC 1.15(a), a lawyer "is responsible for safekeeping the client's property, whether money or personal property, including documents." Annotated Rules (5th ed.) 251 (2003). The property that respondent had a duty to safeguard - the five evidential $100 bills and the Liberty Travel certificate - falls within the above categories.

The complaint also charged respondent with misrepresenting to Richardson that he would return his property (RPC 8.4(c)). The record does not support such a finding, although his explanation for failing to return the property – that Richardson never asked for its return – was nothing but unreasonable.

Respondent misrepresented to Connor, however, that the $500 had been deposited into his trust account. Based on respondent's assurance that the money was safeguarded and that he would try to obtain an extension of the travel certificate expiration date, Connor recommended that the grievance against him be dismissed. His statement to Connor, thus, violated both RPC 8.1(a) and RPC 8.4(c).

The complaint also charged that respondent's "failure to keep funds belonging to client in a separate account, pursuant to R. 1:21-6(a)(1), constituted a violation of RPC 1.15(d) (safekeeping property)." RPC 1.15(d) addresses recordkeeping violations, not the safekeeping of property. The record does not establish that respondent violated the recordkeeping rules. Neither does it demonstrate that he violated RPC 8.4(b) (criminal conduct that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer). We, therefore, find no violations of those rules.

As to RPC 8.1(b), there is ample evidence that respondent failed to reply to the grievance until coaxed to do so by Connor and then by failing to provide the additional documentation that she had requested. After Connor's repeated efforts to contact respondent, she was finally able to meet with him to review his file.

Similarly, respondent failed to reply to Marain's requests for information about the grievance, failed to appear at Marain's office, as directed, failed to contact Marain, and failed to file an amended answer that was more than a denial of the allegations.

A significant aggravating factor here was respondent's lies at the DEC hearing. At first, he unequivocally testified that the five $100 bills had been kept in his office safe, intact, until that day. When the panel chair asked him to retrieve his safe to show the bills to the panel, he pulled five $100 bills from his pocket, representing that they were the same bills that he had kept as evidence for the Richardson matter. Three of bills, however, had been printed in 2006, three years after Richardson had given him the money. Respondent, thus, lied when he said that the bills were in his safe, intact. He also testified that a post-it note label identifying the bills as evidence was still in the safe. When he opened the safe, however, his testimony was again proven false.

However, we do not find clear and convincing evidence that respondent presented false evidence when he turned over the five $100 bills, at the DEC hearing, three of which were dated three years after the date that Richardson had given them to him. Respondent testified that, for a few months, he did not have access to the safe because his former partner, Dawson, had locked him out of the office. He also testified that, after he became a sole practicioner, his per diem attorney had access to the safe for petty cash. It is possible that she may have taken the actual bills and replaced them with the newer bills.

The only issue left for determination is the proper quantum of discipline for this attorney who lied under oath, violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.15(a), RPC 8.1(a), RPC 8.1(b), and RPC 8.4(c).

By far, respondent's most serious conduct was lying under oath at the DEC hearing. In the following cases, the attorneys got a three-month suspension: In re Perez, 193 N.J. 483 (2008) (attorney who was then the Jersey City Chief Municipal Prosecutor lied under oath that he had not asked the municipal prosecutor to request a bail increase for a person charged with assaulting him); In re Coffee, 174 N.J. 292 (2002) (motion for reciprocal discipline following attorney's one-month suspension in Arizona; the attorney submitted a false affidavit of

financial information in his own divorce case, followed by his misrepresentation at a hearing, under oath, that he had no assets other than those identified in the affidavit); and In re Brown, 144 N.J. 580 (1996) (we rejected the attorney's claim that his untruthful denial of drug use was the result of the shock, fear, and shame he experienced as a result of the court's questioning of him about his drug use; specifically, during a trial in the plaintiff-hospital's collection suit against the attorney for recovery of expenses incurred in the treatment of the attorney's drug and alcohol dependency, he testified untruthfully that he had never used cocaine, that he had never been treated for cocaine dependency, that his treatment at the hospital was limited to alcoholism, and that he treatment had occurred in fewer than the number of days billed; we noted that the attorney's misrepresentations at trial were made nearly five years after his alleged successful completion of a rehabilitation program).

Lesser discipline was imposed in In re De Seno, 205 N.J. 91 (2011) (reprimand). There, the attorney was guilty of misrepresenting to a hearing panel that he had filed a complaint on one date, when he had done so almost a month later. He also failed to cooperate with the ethics investigation of the grievance. He had been previously reprimanded.

Respondent's conduct was more serious than De Seno's, however. He lied twice to the hearing panel. First, he stated that the five $100 bills were in his office safe, "intact." When pressed, he pulled the bills out of his pocket. Next, he testified that there was a post-it note in his office safe that identified the bills as evidence. Yet, no post-it note was found in the safe. He also made a misrepresentation to the first ethics investigator. Therefore, for the totality of respondent's conduct, particularly his lies under oath, we see no reason to deviate from the measure of discipline (three-month suspension) imposed in Perez, Coffee, and Brown. We determine that a three-month suspension is the appropriate level of discipline in this case as well.

Member Wissinger 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 Owen Chambers
Docket No. DRB 11-264

Argued: November 17, 2011

Decided: December 22, 2011

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Wissinger						X
Yamner		X				
Zmirich		X				
Total:		7				1

Julianne K. DeCore
Chief Counsel