

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-003
District Docket No. XIV-2011-0118E

IN THE MATTER OF
MARK G. YATES
AN ATTORNEY AT LAW

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Decision

Argued: March 15, 2012

Decided: June 15, 2012

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us on a disciplinary stipulation
between respondent and the Office of Attorney Ethics (OAE).
Respondent stipulated that he violated RPC 1.1(a) (gross
neglect), RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to
communicate with client), and RPC 8.4(c) (conduct involving
dishonesty, fraud, deceit or misrepresentation). The OAE

recommended a three-month suspension. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1980. He has no prior discipline.

Respondent and the OAE entered into a December 28, 2011 disciplinary stipulation, in which he admitted the following conduct.

On April 23, 2008, Magdi Gadalla met with William J. Courtney, Esq., the grievant, at the offices of William J. Courtney, L.L.C., to discuss a possible medical malpractice action against the Somerset Medical Center, Inc. (SMC). Courtney directed Gadalla to speak with respondent, an attorney at his firm. The stipulation is silent about respondent's position at the law firm. As a result of his meeting with respondent, Gadalla retained the firm to represent him on a contingent fee basis.¹

Intake procedures at the law firm required the completion of a computerized intake form so that the case could be properly

¹ Implicit in the stipulation is the notion that respondent became the responsible attorney for the Gadalla matter.

tracked in the office. Neither respondent nor Courtney completed an intake form for the Gadalla matter. As a result, the case was not properly tracked in the computer system.

In January 2010, when respondent reviewed the file to prepare the complaint, he discovered that the statute of limitations had expired in December 2009. Rather than tell Courtney and take remedial action, respondent "panicked." He took no action, hiding the status from Courtney and from the client for all of 2010.

In late 2010, Gadalla grew curious about the status of the case. He pressed respondent for answers. Rather than tell his client the truth, respondent fabricated a settlement agreement. The agreement falsely stated that a complaint had been filed on November 13, 2004 (a date four years before the law firm ever became involved) and that SMC had filed an answer denying the allegations. The agreement also falsely stated that SMC had agreed to settle the matter for \$600,000. Respondent then had his client sign the phony document, leading the client to believe that a large settlement was assured.

For the next six weeks, Gadalla repeatedly asked respondent about the settlement funds. Respondent repeatedly misrepresented to him that SMC had drafted a check and that it was "on its

way." When respondent could stall him no more, Gadalla and his wife paid respondent a visit at his office, looking for the settlement funds. Only then did respondent disclose to his client, for the first time, that he had "screwed up" and that the couple should discuss the matter with Courtney. According to the stipulation, Courtney then advised the couple to contact a legal malpractice attorney.

On May 24, 2011, the Gadallas filed a malpractice action against Courtney and respondent. That litigation is ongoing.

In mitigation, the parties cited respondent's cooperation with the OAE and his ready admission of wrongdoing. The stipulation also indicated that he is "under the care of a psychiatrist with respect to the causes and consequences of his actions." Beyond that statement, there is no other evidence in the record of the nature of respondent's psychiatric condition or of the details of his treatment.

Following a review of the stipulation, we find that the facts recited therein clearly and convincingly establish that respondent's conduct was unethical.

Respondent was retained to file a complaint for Gadalla, but failed to do so. The matter then "fell through the cracks,"

when it did not appear in the computerized tracking system in the office.

One month after the statute of limitations expired, respondent discovered the problem, but took no corrective action, such as filing a motion to allow the filing of a complaint out of time. Rather, for the next year, respondent "buried his head in the sand" and did nothing. In so doing, respondent grossly neglected and lacked diligence in the matter, violations of RPC 1.1(a) and RPC 1.3, respectively. Respondent also failed to keep his client apprised of actual events in the case for all of 2010, including that the statute of limitations had expired.²

More seriously, rather than alert attorney Courtney or Gadalla about his inaction, respondent chose a cover-up, through a series of lies to the client. When the lies failed to assuage Gadalla, respondent fabricated a \$600,000 settlement agreement and had Gadalla sign it. For the next six weeks, respondent lied repeatedly that SMC had sent a check and that the funds would

² We find that such conduct more appropriately constituted misrepresentation by silence (RPC 8.4(c)), rather than a violation of RPC 1.4(b), as stipulated.

soon be Gadalla's. When the funds never arrived, respondent was forced to "fess up" about his wrongdoing.

Were respondent's misconduct confined to gross neglect and lack of diligence in one matter, an admonition would suffice. See, e.g., In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011); In re Russell, 201 N.J. 409 (2009); In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008); and In re Dargay, 188 N.J. 273 (2006). Respondent's fabrication of the \$600,000 settlement agreement and the repeated lies to his client about the supposed settlement were, however, much more serious than the above misconduct.

The sanction imposed on attorneys who have lied to clients or supervisors and fabricated (and/or forged) documents to conceal their mishandling of legal matters has varied, depending on the specific facts of each case. The Court has considered the extent of the wrongdoing, the harm to the clients or others, and also mitigating circumstances. See, e.g., In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who created a phony arbitration award to mislead his partner and then lied to the Office of Attorney Ethics about the arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his

numerous professional achievements, and his pro bono contributions); In re Kasdan, 115 N.J. 473 (1989) (three-month suspension for misconduct in six matters, including numerous misrepresentations to a client that a complaint had been filed and preparation and delivery of a false pleading to the client; in another case, the attorney hid from the client that the case was dismissed due to her failure to answer interrogatories; she then repeatedly misrepresented the status of the case and fabricated trial dates to mislead the client; in two other cases, a real estate closing and a custody matter, the attorney ignored the clients' numerous requests for information; in two other real estate matters, she engaged in gross neglect when closing title without securing payment of the purchase price from her clients; she also knowingly delivered to the seller's attorney a trust account check that turned out to be drawn against insufficient funds); In re Bosies, 138 N.J. 169 (1994) (six-month suspension for misconduct in four matters; in one matter, for a period of five months, the attorney engaged in an elaborate scheme to mislead his clients that, although he had subpoenaed a witness, the witness was not cooperating; to "stall" the client the attorney prepared a motion for sanctions against the witness, which he showed the client but never filed

with the court; he then informed the client that the judge had declined to impose sanctions; thereafter, the attorney traveled three hours with his client to a non-existent deposition, feigned surprise when the witness did not appear, and then traveled to the courthouse purportedly to advise the judge of the witness' failure to appear at the deposition; the attorney was also found guilty of a pattern of neglect, lack of diligence, failure to communicate with clients, failure to abide by discovery deadlines contained in a court order, failure to abide by the clients' decisions concerning the representation, and a pattern of misrepresentations; although the attorney's conduct involved only four matters, the six-month suspension was predicated on his pattern of deceit); In re Morell, 180 N.J. 153 (2004) (reciprocal discipline matter; one-year suspension for attorney who told elaborate lies to the client about the status of the case and fabricated documents, including a court notice and a settlement statement for his clients' signature); In re Weingart, 127 N.J. 1 (1992) (two-year suspension, all but six months suspended; the attorney lied to his client about the status of the case and prepared and submitted to his client, to the Office of the Attorney General, and to the Administrative Office of the Courts a fictitious complaint to mislead the

client that a lawsuit had been filed; the attorney was also found guilty of lack of diligence, failure to communicate, dishonesty and misrepresentation, and conduct prejudicial to the administration of justice); In re Alterman, 126 N.J. 410 (1991) (two-year suspension for attorney who got in over his head during his successive employment with two multi-member law firms and neglected several matters; to cover up his inaction, the attorney lied to his clients that the cases were proceeding apace, fabricated documents to mislead his supervisors and the clients that the matters were progressing normally, and misrepresented to a judge that he had authority to settle a suit on behalf of a client; in the last instance, when confronted by his superiors, the attorney denied rumors that the matter had been settled and also denied knowledge of the draft settlement agreement; he finally admitted his misconduct when his superiors were about to telephone his adversary; he was also found guilty of failure to withdraw from or to decline representation, practicing law while ineligible, and failure to cooperate with disciplinary authorities by not filing an answer to an ethics complaint; in mitigation, the attorney testified that his work was unsupervised and that he suffered from psychological illness; although we found a causal link between the attorney's

acts of misconduct and his psychological problems, we determined that the abominable nature of his behavior merited a two-year suspension); In re Penn, 172 N.J. 38 (2002) (three-year suspension in a default matter for attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, in order to placate the client, the attorney lied that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible); In re Meyers, 126 N.J. 409 (1991) (three-year suspension for attorney who prepared and presented to his client a fictitious divorce judgment in order to conceal his failure to file a complaint for divorce for about two years; he then failed to file a motion to vacate default after the husband filed a complaint for divorce; failed to inform his client that the husband had filed a complaint for divorce; lied to the client that the husband's action was just a re-examination of equitable distribution and that he had missed the trial date due to a calendar error; left the client to believe that she had been divorced for those two years and that all issues attendant to the divorce had been resolved; the attorney then asked his

client to misrepresent to the court that the phony divorce judgment had been merely a draft and misrepresented to a court intake officer that the fabricated divorce judgment had been a mere draft and that his client had misunderstood its significance; the attorney also made other misrepresentations to his client and covered up the divorce action filed by the husband; as a result of the attorney's gross neglect, the client lost her interest in the husband's pension and the ability to claim the couple's son for tax purposes); and In re Yacavino, 100 N.J. 50 (1985) (three-year suspension for attorney who prepared and presented to his clients two fictitious orders of adoption to conceal his neglect in failing to advance an uncomplicated adoption matter for nineteen months; the attorney misrepresented the status of the matter to his clients on several occasions; in mitigation, the Court considered the absence of any purpose of self-enrichment, the aberrational character of the attorney's behavior, and his prompt and full cooperation with law enforcement and disciplinary matters).

Here, respondent fabricated a settlement agreement for his client's signature to cover up a year-old event, the expiration of the statute of limitations, when the case fell through the cracks in the office. Respondent's deception is akin to that In

Sunberg, where the attorney fabricated an arbitration award to mislead his partner. Sunberg received a reprimand. Like Sunberg, respondent has no prior discipline. The three-month suspension case, Kasdan, is more serious than the present matter. There, the attorney fabricated a document to mislead the client that litigation was pending, when a complaint had never been filed. However, the attorney also engaged in fabrication in a second matter and committed a host of violations in a total of six client matters.

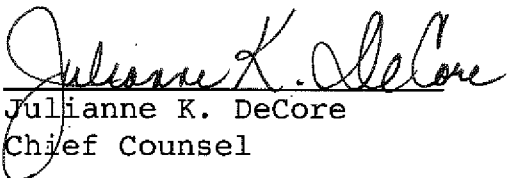
The six-month and longer suspension cases cited above, too, are inapplicable, for they involve fabrications and lies in multiple matters, as well as additional misconduct not present here.

In mitigation, we considered that this is respondent's first brush with disciplinary authorities since his admission to the bar, over thirty years ago, and that he readily admitted his misconduct, including having entered into a stipulation with the OAE. On the other hand, respondent's deceit in creating an expectation that hundreds of thousands of dollars would come the client's way cannot be viewed lightly. We, therefore, determine that a censure, rather than a reprimand, as in Sunberg, is the appropriate sanction.

Members Zmirich and Gallipoli voted for a three-month suspension. 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
Chief Counsel

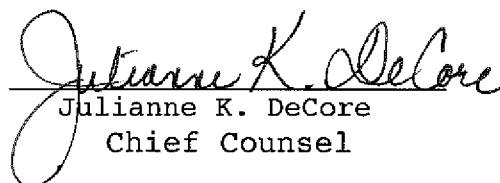
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Mark G. Yates
Docket No. DRB 12-003

Decided: June 15, 2012

Disposition: Censure

Members	Disbar	Censure	Three-month suspension	Disqualified	Did not participate
Pashman		X			
Frost		X			
Baugh		X			
Clark		X			
Doremus					X
Gallipoli			X		
Wissinger		X			
Yamner		X			
Zmirich			X		
Total:		6	2		1


Julianne K. DeCore
Chief Counsel