SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-348
District Docket No. XIV-2009-0607E

IN THE MATTER OF	:
KENNETH S. THYNE	:
AN ATTORNEY AT LAW	:

Decision

Argued: February 21, 2013

Decided: March 19, 2013

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

Alan L. Zegas appeared on behalf of respondent.

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

This matter was before us, at our September 20, 2012 session, on a recommendation for an admonition, filed by the District XI Ethics Committee (DEC). We determined to treat the recommendation for an admonition as a recommendation for greater discipline, pursuant to R. 1:20-15(f)(4).

The complaint charged respondent with having violated RPC 3.3(a)(1) (knowingly making a false statement of material fact or law to a tribunal); RPC 8.1(a) (knowingly making a false

statement of material fact in connection with a bar admission application or in connection with a disciplinary matter); RPC 8.1(b) (failing to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter or knowingly failing to respond to a lawful demand for information from a disciplinary authority); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). For the reasons expressed below, we determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1990. He maintains a law office in Totowa, New Jersey. He has no history of discipline in New Jersey.

Grievant Michael S. Stein, Esquire was not involved in the United States Court of Appeals, Second Circuit (the Second Circuit) litigation that prompted his grievance. He was retained by the law firm of Rivkin Radler, respondent's adversary in the underlying Second Circuit litigation, to file the grievance with the Office of Attorney Ethics (OAE). Some of the underlying litigation between respondent's client and of Rivkin Radler's client was still pending at the time that the OAE docketed the grievance. Even though, on October 7, 2009, Stein had informed the Second Circuit that respondent's application for admission contained "false and misleading information," respondent was

admitted to practice before the Second Circuit on October 23, 2009 and remains admitted there to date.

Stein's October 21, 2009 grievance alleged that respondent had made "misrepresentations/omissions" in his application for admission to the Second Circuit and that, in a letter to the Second Circuit's admissions clerk, replying to allegations from Rivkin Radler, respondent had suggested that the OAE had elected not to prosecute him on a referral made by the Honorable Donald S. Goldman, J.S.C.[1] Stein also attached Rivkin Radler's October 7, 2009 letter to the admissions clerk for the Second Circuit, stating that respondent had failed to advise it that his pro hac vice admission before the Colorado Court of Appeals had been

[1] Exhibit C-1, which includes a number of exhibits, contains Judge Goldman's October 11, 2006 opinion on the criminal contempt proceedings against respondent and others for violating a sealing order entered by the trial judge in contentious litigation in which respondent was involved. The state moved to dismiss the contempt charges, which the court granted. In support of its motion, the state pointed out that the sealing order had been determined to be invalid, that it would not seek incarceration even if the defendants (including respondent) were found guilty, and that "the costs of proceeding would vastly exceed any permissible fine imposed." The judge's opinion stated that the defendants "concede that even though they claim that the allegations do not rise to the level required for criminal contempt, their conduct may involve a violation of the Rules of Professional Conduct." The judge notified the OAE of respondent's unethical conduct in the underlying litigation by forwarding a copy of his decision to that office.

vacated because respondent would not agree to comply with the trial court's protective orders regarding confidentiality.

At the DEC hearing, respondent testified that he had applied for admission to the Second Circuit because of his law firm's involvement in a matter that had originated in the District Court of Manhattan. When the complaint in the Manhattan District Court matter was dismissed, respondent filed an appeal before the Second Circuit. He moved for admission pro hac vice, but was informed that was not the proper procedure. He was advised to apply for admission to the Second Circuit.

The formal ethics complaint in this matter was based on respondent's responses to questions on his application for admission to the Second Circuit, dated September 22, 2009. Question two asked:

> Have you been disbarred or suspended from practice, or have you received a reprimand pertaining to your conduct or fitness to practice law from any court, department, bureau or commission of any state or the United States?

Respondent's reply was "no." Question three asked:

> Are there currently pending against you any proceedings or allegations regarding an action for disbarment, suspension, or reprimand pertaining to your conduct or fitness to practice law from any court, department, bureau or commission of any state or the United States?

Respondent replied "no" to this question as well. Question four asked:

> Are you currently under investigation, or have you been a party to criminal or civil proceedings alleging fraud, misrepresentation, or other dishonesty?

Again, respondent checked the box for "no." Each question asked for a detailed explanation, if the reply was "yes."

The attached attorney admission oath appended to the application stated: "I am a member in good standing of each bar I listed on my Attorney Admission Application. I am an attorney of good moral and professional character and have been neither disbarred nor suspended from practice in any court." Respondent signed the oath and his application listed Minnesota as an additional jurisdiction where he had been admitted, in 1989.

Respondent graduated from the University of Michigan Law School in 1989. After graduation, he was employed by the Minnesota House of Representatives Research Department for approximately one year. Thereafter, he moved to New Jersey and, in 1990, clerked for a judge in Hunterdon County, New Jersey. After he completed the clerkship, he began practicing law with a firm and has been practicing law in New Jersey ever since.

According to respondent, he paid his Minnesota fees for his first year of admission. He claimed that, "when it came time to

renew it, I informed them I was never practicing there and I never did anything with my Minnesota license since then." Although it was quite a long time ago, respondent recalled receiving something from the Minnesota bar informing him that he had to "pay to renew [his] bar admission," and that he wrote to them "something to the effect that I'm not practicing in Minnesota anymore."

Respondent claimed that, after he received the New Jersey ethics complaint, he telephoned the Minnesota authorities, who informed him that his license was listed as "voluntary inactive." He understood that he could not practice law there unless he paid certain fees and took certain classes that were not required in New Jersey. Prior thereto, respondent had never investigated what would be necessary to reactivate his license but believed he could do so by simply paying "back dues." He stated that he had never done anything in Minnesota that resulted in a disciplinary action against him.

In response to question two on the application, asking if he had ever been disbarred, suspended or reprimanded, relating to his conduct or fitness to practice, respondent stated that he did not view his inactive license in Minnesota as conduct relating to his fitness to practice or as unethical conduct. He understood that the question sought disclosure of incidents

where attorneys had been disciplined for unethical conduct, rather than for nonpayment of fees. Respondent could not state that, when he replied to that question, he knew that his license had been suspended or that he had merely been listed as inactive.

Respondent conceded that he should not have signed the oath affirming that he was a member in good standing of the Minnesota bar, but explained that it had been a mistake, an oversight, an error, not committed intentionally, but accidentally or negligently. He did not intend to deceive the Second Circuit Court of Appeals. He stated, "why would I?" He maintained that there was nothing "harmful" about his conduct. He had applied for admission to other courts and disclosed in those applications that his license was inactive in Minnesota.

After consulting with his counsel in this matter, on July 14, 2011, respondent wrote to the Second Circuit claiming that he had made "an error," when he had certified on his application that he was a member in good standing in Minnesota, because he knew that he was not in good standing there.

At the DEC hearing, OAE Assistant Chief of Investigations Jeanine Verdel testified that, when the OAE had received Stein's October 21, 2009 grievance, the OAE was already investigating respondent in connection with an unrelated grievance that had

been docketed as XIV-2008-0070E. Respondent had notice of that first grievance and investigation, at the time he applied for admission to the Second Circuit, on September 22, 2009. By letter dated April 17, 2008, the OAE notified respondent that it had not received a reply to its February 19, 2008 letter, seeking confirmation that the earlier grievance (Docket No. XIV-2008-0070E) was still the subject of a civil suit. The OAE, therefore, notified respondent that it was going to start its investigation and would contact him to schedule an interview.

According to respondent's April 22, 2008 reply to the OAE, he never received the February 19, 2008 letter. He requested a copy of it so that he could file a reply. On May 2, 2008, the OAE sent another letter to respondent and gave him ten days to reply to the grievance. The OAE interviewed respondent with regard to this grievance on September 8, 2009.

By letter dated December 15, 2009, the OAE informed respondent about the Stein grievance and requested a written reply to it. On January 15, 2010, respondent submitted his reply.[2]

As to question three, relating to any proceedings or allegations regarding an action for disbarment, suspension, or

[2] The OAE letter referenced the wrong docket number.

reprimand pertaining to conduct or fitness to practice law from any court, department, bureau or commission of any state or the United States, respondent testified that he perceived an investigation as being different from an action. He viewed an action to be "when you file a piece of paper you're saying to someone you've done this wrong and these are the consequences of the allegations against you." He would not perceive it as an action" until he received notice that they were "coming after my license." He considered the OAE's interview of him to be an investigation. He was never informed that an action had been instituted against his license on the first grievance. In short, he did not view question three as relating to an investigation of a grievance. If the question had asked whether there was "currently pending any investigation of a grievance against you," he stated, he would have replied "yes." Because he had not been served with any "paper" or complaint saying that he was subject to discipline or that an action was pending against him, he did not deem the OAE's investigation as falling within the purview of the question. He believed that it was the OAE's prerogative whether to file an action against him. He did not call the clerk's office for a definition of the term, "action," because he believed he understood the definition of the term, based on his having practiced law for twenty years.

As to his pro hac vice admission being vacated in Colorado because he would not "agree to comply with the trial court protective orders regarding confidentiality," respondent explained that he had made three such applications for admission and had withdrawn two of them. He had been admitted there, even though he had disclosed that his Minnesota license was "inactive." According to respondent, he had withdrawn the two applications because he had been required to enter into a confidentiality order. He could not agree to it, however, because his adversary had used a similar "sealing order" in New Jersey. By letter dated April 21, 2009 to the Colorado Court of Appeals, respondent withdrew his application to be admitted pro hac vice, stating that he would not agree to any confidentiality restrictions regarding documents that he had not seen that could interfere with his ability to represent his clients. The Colorado Court of Appeals, however, had already stayed the order granting respondent's admission. Respondent did not view this as the type of information that question three sought and, therefore, did not mention it on the application.

As to question number four, "Are you currently under investigation or have you been a party to a criminal or civil proceedings alleging fraud, misrepresentation or other dishonesty?" respondent replied "no." As noted above, on

September 8, 2009, the OAE interviewed him in connection with the grievance docketed as XIV-2008-0070E which, according to Verdel, involved allegations of fraud, misrepresentation or dishonesty. During the preliminary portion of the interview, Verdel informed respondent that he was under investigation and that there was a docketed case against him. That interview occurred before respondent submitted his application to the Second Circuit, on September 22, 2009. The investigation continued for more than a year from the time of the OAE interview.

Respondent maintained that the criminal contempt proceedings did not allege fraud, misrepresentation, or dishonesty, but merely that he had disobeyed a court order to keep certain papers confidential. It alleged that he was disobedient. He, therefore, believed that he had properly answered question four. Respondent added that, ultimately, the criminal contempt allegations against him were "dismissed by the prosecutor." The prosecutor's office found that there was no merit to the charges against him. Respondent did not view the OAE's investigation as a civil or criminal proceeding. He interpreted question three as relating to actions against his license and question four as relating to a civil lawsuit or a criminal indictment. He conceded that he could have disclosed

the pending grievance, but did not interpret the questions as calling for it; none of the questions called for its disclosure. He added that

> I could have answered these questions no and attached a paper say [sic], yes, I have a grievance against me being investigated which is frivolous and has been brought by my adversaries in a pending lawsuit but that doesn't call for it, it says no. I saw no reason to alert the court of things that frankly I didn't think were relevant to my admission, it was investigation of a grievance, didn't have anything to do with honesty or fitness to practice law, the things that were alleged against me were preposterous, could never result in discipline in any event. You folks investigated these complaints many years ago, none of the ones that were pending then never filed complaints against me, even after my adversaries filed to bring grievances against me.
>
> [T102-15 to T103-7.][3]

According to Verdel, a complaint was ultimately filed in connection with the grievance docketed as XIV-2008-0070E, after the complaint in this matter was filed.

Respondent maintained that he had no reason to intentionally mislead the Second Circuit with respect to the answers he had supplied on his application.

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[3] T refers to the DEC hearing transcript, dated December 19, 2011.

Exhibit C-1 sheds some light on the criminal contempt action against respondent and other defendants and its relevance to the application process. As noted earlier, the criminal contempt proceedings against respondent and other defendants were for violations of a sealing order that had been entered by the trial judge in August 2003. The state moved to dismiss the contempt charges, which motion was granted. Judge Goldman, however, found that respondent's conduct presented a likelihood, which the defendants acknowledged, that they had violated the Rules of Professional Conduct. The judge, therefore, referred the matter to the OAE. In the course of the criminal contempt proceeding, the judge summarized some of the allegations that had remained in the matter, after pretrial motions had reduced the number of the charges lodged in support of the criminal contempt charges:

Specifications 19 and 20:

> Roper and [respondent] violated paragraph (g) of the sealing order between December 11, 2003 and December 31, 2003, by participating in a telephone conversation with Bonvillain during which Roper and [respondent] discussed portions of the sealed Agreements and the sealing order. They also encouraged and coached Bonvillain to lie, falsify, deceive, conceal, and withhold information in response to any inquiries regarding the source of the sealed documents and sealed information as well as the violation of said order.

Defense to Specifications 19 and 20:

> If it is true that the attorneys encouraged Bonvillain to lie, their conduct is reprehensible and worthy of disciplinary action, but this behavior is not contempt. . . .

State's Response to the Defense to Specifications 19 and 20:

> . . . . Roper and [respondent] do not defend their cover up, which also leads to an inference of Roper's and [respondent's] consciousness of guilt and establishes that they knew that they were violating the sealing order. . . .
>
> [In the Matter of Angela Roper, Kenneth Thyne and Schubert Jacques, defendant, Charged With Contempt of Court, No. MM-439-04 (Super. Ct. Law Div. October 11, 2006) (Slip op. 9-10).]

The court "emphasized" that these were not its findings, but had been taken from counsel's briefs and represented the positions of the parties.

Respondent maintained that he practices law in conformity with the highest standards of the bar. Because most of his practice consists of representing clients in legal malpractice cases, he believes that he practices in a way that would not subject him to the same criticism directed at the attorney-defendants.

According to respondent, he did not believe that this grievance against him was proper or that the OAE should be expending its resources investigating or prosecuting it, noting that it was his adversaries who had hired people to file the grievance.

The DEC did not find that respondent violated RPC 3.3(a)(1) (making a false statement of material fact or law to a tribunal). The DEC noted that respondent's Minnesota law license had been suspended for failure to pay his assessment, not for engaging in fraud, dishonesty or misrepresentation. The DEC did not find that respondent's "statements" or "answers" made in response to questions 2, 3 and 4 in the application for admission to the Second Circuit had amounted to material facts. The DEC found, however, that respondent had violated RPC 8.1(a) and (b) (knowingly making a false statement of material fact or failure to disclose a fact necessary to correct a misapprehension in connection with a bar admission application

or disciplinary matter), in that respondent had failed to disclose the OAE's pending investigation against him.

The DEC pointed out that, after each question, the application had included a request to further explain the circumstances, if there had been an affirmative response. The DEC found that respondent should have disclosed the pending OAE "allegations against him." Instead, respondent "elected to remain silent and disclose nothing". The DEC rejected respondent's assertion that the questions referred only to filed complaints and to those alleging fraud, misrepresentation or dishonesty.

Finally, the DEC found that the evidence presented did not establish a violation of RPC 8.4(c).

In a June 27, 2012 brief to us, counsel for respondent argued, among other things, that the proofs submitted did not demonstrate by clear and convincing evidence that respondent had knowingly made false statements on his application for admission to the Second Circuit and that respondent believed that he was answering the questions truthfully.

As to question two, counsel conceded that respondent had been suspended from practice in Minnesota for failing to pay his

fees, but that, in "an abundance of caution," he had informed the Second Circuit of his suspension.[4]

As to question three, counsel argued that, when respondent completed the Second Circuit application, he was aware of an OAE investigation, but perceived that the grievance filed by Rivkin Radler was "part of a continued tactical strategy to gain an advantage in the very contentious litigation [respondent's firm] was pursuing against Rivkin Radler," respondent did not believe that the investigation fell within the definition of "action." To support this argument, counsel relied on definitions and examples of "action" in Black's Law Dictionary: "an ordinary proceeding in a court of justice, by which one party prosecutes another party . . ." and "'action' and 'suit' are nearly if not quite synonymous . . . ."

According to counsel, these examples supported respondent's interpretation of question three: an action is more than a mere investigation or inquiry; it is a civil or criminal judicial proceeding and no such proceeding was pending against respondent.

[4] The letter to which counsel referred, dated July 14, 2011, was sent only after respondent consulted with his counsel.

Counsel argued that respondent's interpretation of the questions had been reasonable and that there had been no knowing violation of the RPCs.

As to question four, counsel asserted that respondent had understood the question to seek disclosure of criminal or civil proceedings alleging that he had engaged in fraud, misrepresentation or other dishonesty. Counsel contended that the OAE's investigation centered on respondent's alleged violation of a sealing order, not on whether he had engaged in fraud, misrepresentation or other dishonesty. Counsel submitted that, even if respondent had misunderstood the import of the question, he had not knowingly violated the RPCs.

In short, counsel contended that respondent had answered all three questions honestly, that he had not knowingly violated the Rules of Professional Conduct, and that he should not be disciplined.

In its letter-brief to us, the OAE argued that the DEC's findings are logically inconsistent and that we should find that respondent violated all of the charged rule violations (RPC 3.3(a)(1), RPC 8.1(a) and (b), and RPC 8.4(c)). The OAE contended that respondent's denials to questions two, three, and four amounted to false statements of material fact to a tribunal, misrepresentations, knowing false statements of

material fact, and a failure to disclose a fact necessary to correct a misapprehension in a bar admission application. The OAE urged the imposition of a reprimand for respondent's unethical conduct.

Respondent's counsel filed a supplemental letter-brief with us, dated August 13, 2012. Its purpose was two-fold: counsel brought to our attention two decisions which he deemed to be similar to respondent's case and counsel requested that the Board Chair recuse himself, because of his law partnership with the grievant's attorney.

Counsel suggested that In re Singer, 210 N.J. 554 (2012) (censure for attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, negligent misappropriation of trust funds, recordkeeping violations and conduct involving dishonesty, fraud, deceit or misrepresentation) is similar, in that the attorney was charged with violating RPC 8.4(c) for making a negative response on a malpractice insurance application that inquired the following:

> Has any attorney listed on your letterhead EVER been refused admission to practice, disbarred, suspended or formally reprimanded, or been subject to ANY disciplinary proceedings?
>
> Applicant further warrants on its behalf . . . a continuing obligation to report to the Company immediately any material changes in all such information after signing the

> application and prior to issuance of the policy. . . .
>
> [In the Matters of Clifford B. Singer, DRB 10-033 and 11-387 (original order file date 06/28/12; corrected order date 07/05/12) (slip op. at 6.)]

Singer had previously been interviewed by the OAE about another matter (L'Ecuyer) and believed that most of the OAE's questions regarding that matter had been answered to its satisfaction. In addition, Singer had made the insurance company aware of the L'Ecuyer matter because he had disclosed the matter in his answer to another question, on the form relating to potential claims.

Counsel highlighted the fact that the DEC had dismissed the portion of the complaint against Singer relating to the RPC 8.4(c) charge as it pertained to the application because, at the time of Singer's application, there were no disciplinary charges pending against him, he had already disclosed the underlying facts of the matter on the application, there was no indication that the omission was material, and Singer only had a duty to correct the application between the time of the application and the issuance of the policy. The DEC dismissed this count of the complaint because it did not conclude that Singer's duty to supplement the application ever arose. We agreed with the DEC's recommendation to dismiss those allegations, because there were

no charges pending against Singer at the time of the application (In the Matter of Clifford B. Singer, slip op. at 11).

Counsel argued that the questions posed in the malpractice insurance application were "strikingly similar" to the questions posed to respondent and that the OAE had not yet filed an ethics complaint against respondent. Counsel argued further that an "outside party" had disclosed the OAE's investigation to the Second Circuit and that the Second Circuit must not have considered the information to be material because it had granted the application without further action. Counsel, thus, concluded that the similarities in both cases required the dismissal of all of the charges against respondent as well.

Counsel also compared this case to In re Hyderally, 208 N.J. 453 (2011). That case was dismissed based on a lack of clear and convincing evidence that the attorney had violated RPC 8.4(c) by intentionally including the New Jersey Supreme Court Certified Attorney seal on his website or by approving its continued presence on the site that had been created by someone else. Counsel argued that neither respondent nor Hyderally had violated any RPC with knowledge or intent, that "both attorneys corrected the error," and that neither attorney benefited from the error.

According to counsel, respondent believed that his negative responses were accurate, that he had no intention to deceive, and that he did not knowingly engage in any wrongdoing. Therefore, the case should be dismissed.

At oral argument before us, counsel argued that the grievance against respondent had been filed for no reason other than grievant's client's attempt to gain an advantage in pending civil litigation, thereby compromising the legitimacy of the ethics process. According to counsel, in order to maintain the integrity of the ethics process, this matter should be dismissed.

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

At the outset, we note that, whether or not the grievance against respondent was filed to gain a tactical advantage in civil litigation, it is of no moment to our determination as to whether respondent engaged in unethical conduct.

Respondent professed his innocence and claimed that he answered the questions on the Second Circuit admission application truthfully. He asked "why would I" attempt to deceive the admissions Board for the Second Circuit? The answer is simple -- he was involved in contentious litigation that

ended up in that venue and he wanted to ensure that he continued to represent his client in that litigation.

Respondent's arguments that he forgot that he was not in good standing or that he misinterpreted the questions on the application for admission are specious and strain credulity. Respondent was clearly an able attorney with twenty years of experience. He could not have forgotten that he was no longer in good standing in Minnesota. He had not paid his annual fee there in close to twenty years. He had to know that his license was, at best, inactive, and, at worst, suspended. In fact, in his reply to the grievance in this matter, he stated unequivocally: "Unfortunately, Rivkin Radler is correct in that I failed to disclose that my admission in Minnesota was suspended due to unpaid fees." In addition, respondent further admitted that, when he applied for admission in other jurisdictions, he disclosed that his license was inactive in Minnesota.

Given the seriousness of the underlying allegations in the criminal contempt proceedings, it is hard to believe that respondent could have misinterpreted the language of the remaining questions. Question three asked specifically:

> Are there currently pending against you any proceedings or allegations regarding an action for disbarment, suspension, or reprimand pertaining to your conduct or fitness to practice law from any court,

> department, bureau or commission of any state or the United States?

Undeniably, at the time that respondent submitted his application, the OAE was investigating his conduct in connection with the grievances that had been filed against him. For respondent to argue that he did not recognize that there were pending "allegations" that could lead to an "action" relating to his fitness to practice is disingenuous and a distorted interpretation of the question. Clearly, respondent is more astute than he professed to be. Moreover, had he been candid in disclosing matters that might affect his fitness to practice, he would have also disclosed the April 23, 2009 order vacating his admission pro hac vice in Colorado and explained how it had come about.

Finally, question four inquired:

> Are you currently under investigation, or have you been a party to criminal or civil proceedings alleging fraud, misrepresentation, or other dishonesty?

The conjunction "or" indicates that the inquiry seeks to ascertain whether the applicant was under investigation or whether the applicant was a party to a civil or criminal proceeding, alleging fraud, misrepresentation, or dishonesty. Respondent alleged that he did not view the OAE's investigation as a civil or criminal proceeding and that the criminal contempt

proceedings did not involve allegations of fraud, misrepresentation or other dishonesty. Based on the "specifications" set forth in Judge Goldman's opinion and Verdel's testimony that the grievance against respondent involved allegations of fraud, misrepresentation or dishonesty, respondent's argument is without merit. Moreover, Judge Goldman's opinion noted that the defendants in the matter before him, of which respondent was one, had conceded that their conduct may have involved a violation of the RPCs.

Respondent admitted that he did not disclose the information about the grievance to the Second Circuit because he did not think it was relevant to his admission. He determined that the allegations against him were preposterous. Thus, by respondent's own admission, he made a conscious decision to omit it. The information was critical, however, to an assessment of his character. Respondent either unilaterally believed that it was for him, not the admissions Board, to determine the relevance of his history or he was concerned that disclosing his past would bar his admission to the Second Circuit. Regardless, the decision about the relevance of the information was not his to make.

We, therefore, find that respondent was guilty of knowingly making a false statement of material fact to a tribunal (RPC

3.3(a)(1)), making a false statement of material fact in connection with a bar admission application (RPC 8.1(a)), failing to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter (RPC 8.1(b)), and conduct involving dishonesty, fraud, deceit or misrepresentation (RPC 8.4(c)). Even though respondent may have properly assumed that his Minnesota license was inactive, rather than suspended, he erroneously held himself out to be in good standing in that state, withheld information about previous actions against him (the vacating of his Colorado pro hac vice admission and criminal contempt proceedings), and withheld information about the grievances against him, one of which was for conduct involving fraud, misrepresentation or dishonesty.

The discipline for conduct involving false statements in connection with bar admissions ranges from a reprimand to a suspension, depending on the severity of the misconduct and the presence of other rule violations or aggravating factors. See, e.g., In re Tan, 188 N.J. 389 (2006) (reprimand for attorney who falsely represented to the New Jersey Board of Bar Examiners that he had achieved a bachelor's degree when he was one course shy of doing so; he also graduated from law school without disclosing the deficiency; extreme mitigating factors were his and his fiancée's medical problems while in college, which

prevented him from successfully completing the course, his attempt to remedy the problem on two occasions, and his eventual completion of the course work, his status as the sole support for his family, the passage of eight years since the misconduct, his acceptance of full responsibility for his misconduct, and the character witness attestations to his reputation for truthfulness, honesty and compassion and services to the Filipino community); In re Duke, 207 N.J. 37 (2011) (censure for attorney who failed to disclose to the Board of Immigration Appeals that he had been disbarred in New York, deposited his fee in his personal bank account, rather than in his business or trust account, failed to communicate with his client by not providing the client with copies of his submissions to the Board of Immigration Appeals, and failed to return his client's numerous phone calls; prior reprimand); In re Solvibile, 156 N.J. 321 (1998) (six-month suspension for attorney who passed the Pennsylvania bar examination after three attempts, but whose application to the Pennsylvania bar was returned because it was received after the filing deadline; the attorney then misrepresented to the Pennsylvania Board of Law Examiners that the money order accompanying the application was misdated and that the application had been mailed prior to the closing deadline and also engaged the assistance of others to substantiate the

misrepresentation; when her misrepresentations came to light, she admitted her actions); In re Guilday, 134 N.J. 219 (1993) (six-month suspension for attorney who failed to disclose on his bar admission application that, beginning when he was seventeen years old until he was twenty-seven, he had been arrested five times for driving while under the influence of alcohol and once for disorderly conduct; his misconduct came to light when he applied for admission to the Delaware bar; shortly before a hearing before Delaware authorities, the attorney notified the New Jersey Board of Bar Examiners of his prior arrests); In re Gouiran, 130 N.J. 96 (1992) (attorney's revocation of his license was stayed for failing to disclose disciplinary proceedings in connection with his real estate broker's license by misrepresenting in his certified statement of candidate that he had not been a party to any civil proceeding, that he had not been disciplined as a member of any profession, and that disciplinary proceedings had not been filed against him; at the ethics hearing, the attorney explained that, because he had read the questions narrowly, he had answered them in good faith, adding that he would answer them differently now; the Court revoked his license, but stayed the revocation to permit the attorney to reapply for admission; the stay was based on the significant passage of time (eight years) since the attorney had applied for bar admission, the attorney's

recognition of his mistake, and his current awareness of a lawyer's duty of candor).

We cannot find that respondent's explanations for his misstatements or omissions render his actions "not knowing" (as in Hyderally). Respondent included in his "explanations" the acknowledgment that he did not deem the information he withheld to be relevant to his admission and, thus, he chose to withhold it. As we stated previously, that was not his decision to make. He was required to disclose the information and to provide an explanation as to why the disclosed circumstances did not negatively affect his character or preclude his admission to the Second Circuit. Instead of permitting the admission authorities to make that determination, he withheld the information, making his responses to the questions false – a misrepresentation of the facts.

In some respects, this matter is similar to Gouiran. Gouiran failed to disclose disciplinary proceedings in connection with his real estate license. He misrepresented on his certified statement of candidate that he had not been a party to any civil proceeding, nor been disciplined as a member of any profession. He claimed, like respondent, that he had "read the questions narrowly." Gouiran, however, recognized his mistake and professed a current awareness of a lawyer's duty of

candor. Moreover, eight years had elapsed since he had applied for admission to the bar. Here, respondent did not admit his mistake. Instead, he tried to justify his conduct. The Court in Gouiran stayed the revocation of his license to permit him to reapply for admission. That is not an option here.

As for the Singer case, which counsel argued was similar to the instant matter, it involved an application for malpractice insurance, not an application for admission to practice law. The insurance questionnaire asked the attorney if any attorney in the firm had "EVER been refused admission to practice, disbarred, suspend or formally reprimanded, or been subject to ANY disciplinary proceeding," while the bar admission application in this case asked, in addition to the above, whether the candidate had currently pending "any proceedings or allegations" pertaining to his fitness to practice law and whether he was "currently under investigation . . . [for] fraud, misrepresentation, or other dishonesty?" Clearly, the questions on the application for admission to the bar were much broader than those on the application for malpractice insurance. The bar admission questions sought information about any potential proceedings that could affect the applicant's character, as opposed to seeking information that could form the basis for the carrier's potential liability.

The totality of the circumstances here are somewhat less serious than in Duke (censure). That attorney had a prior reprimand and his misconduct included failure to communicate with a client, as well as a recordkeeping infraction. Thus, for this respondent we find that a censure is too severe and that an admonition is insufficient discipline. We, therefore, determine that a reprimand is the appropriate discipline in this case.

Chair Pashman recused himself. Member Gallipoli voted to impose a censure.

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
Bonnie C. Frost, Vice-Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Kenneth S. Thyne
Docket No. DRB 12-348

Argued: February 21, 2013

Decided: March 19, 2013

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Censure	Disqualified	Did not participate
Pashman					X	
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Gallipoli				X		
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			7	1	1	

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel