SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-121
District Docket No. XII-2014-0001E

IN THE MATTER OF	
TORKWASE YEJIDE SEKOU	
AN ATTORNEY AT LAW	

Decision

Argued: September 15, 2016

Decided: December 20, 2016

Elizabeth A. Weiler appeared on behalf of District XII Ethics Committee.

Thomas R. Ashley appeared on behalf of respondent.

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

This matter is before us on a recommendation for a three-month suspension, filed by the District XII Ethics Committee (DEC). The complaint charged respondent with having violated RPC 8.1(a) (false statement of material fact in connection with a disciplinary matter), RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects), and RPC 8.4(c) (conduct involving dishonesty, fraud,

deceit or misrepresentation).

For the reasons set forth below, we determine that a censure is the appropriate form of discipline.

Respondent was admitted to the New Jersey bar in 1990. She has no history of discipline.

The facts arise out of a personal relationship between respondent and Bonita Spence. Tragically, on September 15, 2013, Spence took her own life. Until five years prior to her death, respondent had been romantically involved with Spence, and had shared a home with her. The two also were co-guardians of respondent's daughter, L.S. Spence was a long time investigator with the Essex County Public Defender's office. She met respondent through that employment. The two became friendly with Michelle Grazul, also an employee with the public defender's office. Grazul remained close friends with Spence, even after Spence's relationship with respondent had ended.

At the DEC hearing, Grazul detailed the course of events on the day of Spence's death. During the day, on September 15, 2013, Denise Brooks, another close friend of Spence, told Grazul that she could not reach Spence. Grazul, too, had sent Spence a text, but presumed Spence was at church, which she regularly attended on Sundays. Nonetheless, Grazul never received a response from Spence.

Sometime between five and six o'clock that evening, after texting back and forth with Brooks several times, Grazul decided to drive to Spence's condominium. When she arrived at about 8:15 p.m., Grazul found the door locked and the inside lights turned off. She retrieved the spare key hidden under a rock next to the doorway and entered the home, where she found Spence, already deceased.

After calling the police, Grazul returned home. Sometime after 11:00 p.m., she received a phone call from respondent, who asked Grazul why she had not identified respondent as Spence's next of kin. Grazul replied that respondent was not the next of kin, and that she had identified Alma Dobbs (Spence's aunt) and Archie Spence (Spence's father) as Spence's next of kin. Respondent also asked Grazul about the location of the spare key to Spence's home. Grazul explained that she had given the key to the detective at the scene, who informed her that the police would keep the key, and that the sheriff's office would have to accompany any individuals wanting access to the house.

The next morning, September 16, 2013, respondent called the West Orange Police Department and left a message inquiring about the key to Spence's home. She received a return call from Detective Michael O'Donnell between 8:00 a.m. and 8:30 a.m., while she was driving her daughter to school. Detective

O'Donnell testified that he told respondent that the key was in the police department's records bureau and, to obtain the key, she would have to communicate with the surrogate's office. After respondent took L.S. to school, respondent's friend, Denelle Waynick, drove respondent to Spence's home. When asked why she went to Spence's home, respondent replied, "Well, Bonita just took L.S. shopping for school. She had just gotten her the new iPhone C on that Friday. [L.S.'s] iPad was still there."

Upon arriving at the gated community, respondent used L.S.'s name to gain admission through the front gate. Respondent then went to the housing office at the complex and asserted that she was a close family member of Spence, and needed to enter Spence's condominium. When she left the management office, respondent went to Spence's unit. She told Waynick to leave because respondent wanted to enter the condominium by herself.

Respondent's explanations of how she gained access to Spence's home that morning have been vague and inconsistent. In her reply to the grievance, respondent indicated that she took L.S.'s key to Spence's house prior to bringing her to school. In her verified answer to the formal ethics complaint, respondent stated, "[w]hile [r]espondent never had a key to the Condominium Unit, she discovered deceased's wallet, keys and other personal items left unattended in deceased's unlocked vehicle. Respondent

maintains that her daughter did, in fact, have a key to the Condominium Unit." Also in her answer, respondent denied misrepresenting to the investigator that she had a key, asserting that she had her daughter's key. In her statement annexed to her answer, however, respondent stated "I gained access to her unit from [Spence's] keys left in her open car [o]n September 16." Respondent repeated this version early in her testimony, stating that, when Waynick dropped her off, she realized Spence's car door was unlocked and she found a set of "keys and stuff" inside the car.

Finally, during cross-examination by the presenter, respondent asserted that, on her first visit, she did not enter Spence's home because she was not able to find the hidden key, presumably, the one she knew was in possession of the police. Therefore, she went home to retrieve her daughter's key. Upon returning to Spence's property, she found the car unlocked and, although she now had access to Spence's keys and garage door opener, she used L.S.'s key to enter the home. She testified that she used the garage door opener during a later visit. Respondent ultimately testified that she did not take L.S.'s key at the outset, on the morning of September 16, 2013, because she did not want to alert her daughter to Spence's death. It was not until during her first visit to Spence's home that respondent

learned that Spence's death had been reported on the news, so she rushed to get her daughter from school in order to tell her, in person, about Spence. At that time, she brought L.S. home and retrieved L.S.'s key to the condominium.

Whitney Fisher, an attorney who also worked in the Essex County Public Defender's Office, had a slightly different memory regarding the keys to Spence's house. Fisher and Spence had been engaged in a romantic relationship from 2008 to 2013. They were in the process of ending their relationship just prior to Spence's death. Fisher also had worked with respondent from 1999 to 2007, and knew L.S. to be Spence's daughter. To her knowledge, however, neither L.S. nor respondent ever had a key to Spence's home. Fisher acknowledged, however, that Spence's car was kept unlocked in the driveway, and contained a garage door opener, which allowed access to an unlocked door to the house. She also acknowledged that Spence kept many personal items in her car, including a purse, book bag, cell phone, iPad, clothes and money.

Once inside the home for the first time after Spence's death, respondent cleaned certain areas of the unit and left the condominium, taking with her Spence's purse, her bible, and family pictures.

Later in the afternoon on September 16, 2013, respondent returned to Spence's home with Waynick, who remained in the car. Respondent claimed that, on this occasion, she gained access to the condominium through the garage, because she had Spence's garage door opener. On direct examination, respondent twice denied having taken anything from the condominium on this visit, but, rather, insisted that she did more cleaning and disposed of Spence's medications. On further questioning, respondent finally admitted that, when she left, she took L.S.'s iPad, L.S.'s clothes that had been in Macy's bags, and other items that L.S. would need. Respondent asserted that she left Spence's iPad in the condominium and is unaware of what became of it.

In her answer, however, respondent admitted that she removed Spence's iPad from the condominium. Additionally, in her statement annexed to her answer, respondent stated, "I maintain possession of the [iPad] because Bonita's phone account and L.S.'s phone account was [sic] the same."

Respondent testified that, the next day, in the early afternoon of September 17, 2013, respondent again went to the condominium with Waynick, who again waited in the car. On this occasion, respondent took Spence's car, explaining that her EZ Pass transponder was bolted on the front license plate, and did not want to remove the plate, but needed to retrieve the

transponder. She drove the car to her home and parked it in her driveway. Earlier in her testimony, however, respondent had stated that she had taken Spence's car to her home on September 18, not September 17, 2013.

Waynick, however, testified that she drove respondent to the condominium on the morning of September 16, 2013 (the day after Spence's death), and that respondent entered the condominium, and then drove herself home in Spence's car. Additionally, Fisher testified that she went to Spence's home on the morning of September 16, 2013, between 7:30 a.m. and 8:00 a.m., and noticed that Spence's car was not in the driveway. She then left Spence's complex and went to respondent's home, where she saw Spence's car in respondent's driveway.

Nonetheless, respondent testified that, after her visit on September 17, 2013, and notwithstanding her contradiction that she took Spence's car during a visit on September 18, 2013, she did not return to the condominium until Friday, September 20, 2016, with friends, who had a pick-up truck. On that date, she took a chaise lounge, a couch, a marble bust (which she stated she had bought and owned for ten years prior to meeting Spence and which Spence had taken without her permission), four dining room chairs, a bed frame, and two small televisions. After that,

she spoke to the surrogate's office and never went inside the condominium again.

When asked by a panel member why she had removed these items from Spence's residence, respondent explained

> I was going to put them in storage and [Spence's Aunt Alma] asked me to try to take care of Bonita's things. I didn't really have in mind to do that. I have a house full of furniture. There was nothing I could really do with them, but put them [in] storage. Originally I [had] both sets in the living room and you couldn't walk around. When I had spoken to the surrogate court they said if you have these things you better make sure they are well taken care of and nothing happens to them. So, that's why I put my set in the garage and left hers, meaning her couch and chaise because my set is a four-piece set. This is just two pieces. So I took two of her pieces and took two of my four and put them in the garage but it wasn't to keep them. I didn't need to have any more furniture in my house. My house is full of furniture. There was nothing that matched anything in my house.
>
> [1T205-206][1]

In the days following Spence's death, her father, Archie, and her sister, Cathy Rabb, tried to handle Spence's affairs. Rabb met with and obtained information from the public defender's office concerning Spence's life insurance policies,

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[1] "1T" refers to the transcript of the November 24, 2015 DEC hearing.

pension, and compensation. Archie also applied at the surrogate's office for administration of Spence's estate, but was informed that he "had no right" because "there was a caveat against the estate. [Respondent] had an adoptive child and she was the heir of the estate." Spence's father passed away two weeks later, on September 29, 2013. In the statement annexed to her answer, respondent claims that no family members attempted to claim Spence's body and that she received a caveat from the surrogate's office. Eventually, she planned and paid for Spence's funeral.

Rabb then hired an attorney to assist with Spence's estate. The process had become frustrating because she was repeatedly told by the surrogate's office that she had no standing but rather that "[respondent] does." After Rabb sent a letter to the surrogate's office, copying Governor Christie and several other people, the surrogate's office suggested that she come to their office to apply for administration of the estate, and that she contact respondent to pick up Spence's car.

On October 23, 2013, Rabb went to respondent's home and took possession of several credit cards, checks, a box of pictures, keys, and Spence's car. Respondent testified that, at this meeting, she gave Rabb L.S.'s key to Spence's home, and the keys she found in Spence's car. However, Rabb testified that

none of the keys she received from respondent fit the doors to the condominium, and that she was forced to pay $600 to a locksmith to change the locks.

During this visit, Rabb also made inquiry about Spence's laptop, iPhone, and iPad. Rabb testified that respondent said, "I'm keeping them." According to Rabb, respondent further informed her that L.S. also had a phone that Spence took care of and that she was keeping it. For the next year, Rabb received the bills for the phone, submitting them to the estate to be paid. Rabb added that she did not push back on this issue because of respondent's status as a former Superior Court judge.[2] Respondent claims that she never had Spence's iPad, only L.S.'s iPad, and that L.S. and Spence had shared a data plan for their devices.

Rabb asserted that, during the visit, respondent showed her furniture in her garage that respondent claimed belonged to Spence, including a couch chaise lounge combination, dining room chairs, and a table. At the time, Rabb remarked that the furniture did not match anything in Spence's home and was a

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[2] Respondent had been a Superior Court judge between 2005 and 2012.

different color. Rabb claimed that respondent simply said "that's it." Rabb took possession of the furniture two weeks later.

Respondent, however, claimed that she identified Spence's furniture and gave Rabb a choice between Spence's chaise lounge and couch, or her own, and that Rabb chose respondent's. Respondent testified, three times, that, during a phone conversation prior to the October 23, 2013 visit, she told Rabb that Spence's furniture was in her home and that her own furniture was in the garage, and that she offered Rabb a choice between the sets. Previously, however, respondent had stated that she first told Rabb about the furniture during her visit to respondent's home on October 23, 2013, in the presence of Dalton Bramwell, a former coworker of Spence and respondent from the Essex County Public Defender's Office. Bramwell testified that he witnessed respondent give Rabb a check and a few other items, including car keys, and that they discussed furniture, in general. However, he did not hear any specific items of furniture mentioned.

Several weeks later, in either November or December 2013, Fisher visited Rabb at her home and told Rabb that the furniture she took from respondent was not Spence's furniture.

Around the same time, Rabb closed all of Spence's credit card accounts. Through this process, she discovered that one of those cards had been used after Spence's death. Specifically, on October 2, 2013, $120.99 was charged at a Renaissance Inn in Philadelphia, Pennsylvania.

Regarding respondent's character, Bramwell testified that she is an upstanding, law-abiding citizen. Waynick, too, asserted that respondent is of good moral character and integrity, and does not know of anyone who has said otherwise.

In its analysis, the DEC noted that, throughout the case, respondent offered many contradictions and inconsistencies in her written submissions and her testimony, which were squarely contradicted by other witnesses. First, the hearing panel noted, in her verified answer, respondent admitted that permission to enter Spence's condominium was not granted by a "proper representative" of the decedent's estate. But, later in her answer, she stated, "at no time did Respondent enter the Condominium unit without permission...."

Second, respondent also admitted in her answer that she first entered the condominium on September 16, 2013, and, thereafter, she used her daughter's key. In her statement annexed to her answer, respondent stated, "I gained access to her unit from Bonita['s] keys left in her open car on September

16." In her testimony, however, respondent denied having used Spence's key when she first entered the condominium, and stated that she took her daughter's key before she went to school. Yet, later in her testimony, she again contradicted herself, stating that she first went to the condominium without a key, and did not enter at that time. Respondent again denied using Spence's key, claiming that she did not enter the condominium until after she had retrieved her daughter's key, and only then found the car door unlocked.

Third, the DEC noted that, although respondent had testified that she gave Rabb both the keys from Spence's car and her daughter's key, Rabb testified that none of them fit the doors to the condominium and she was forced to change the locks.

Fourth, despite respondent's testimony that she had taken Spence's car on September 17, 2013, and her own contradictory testimony that the date was September 18, 2013, both Waynick and Fisher testified that respondent took the car on September 16, 2013, the day after Spence's death.

Fifth, in her answer, respondent admitted that she had removed Spence's iPad from the condominium. Indeed, in the statement annexed to her answer, respondent declared, "I maintain possession of the iPad because Bonita's phone account and L.S.'s phone account was [sic] the same." In her testimony,

however, respondent claimed that the iPad she took was L.S.'s, not Spence's. Conversely, Rabb testified that when she asked respondent for her sister's iPad, iPhone, and laptop, respondent replied that she was keeping them. Rabb never saw the iPad, but received the final bills for it.

Sixth, in her testimony, respondent stated that she kept only the couch/chaise lounge combination from Spence's condominium, and gave the four dining room chairs to Rabb. However, Fisher confirmed that the chairs Rabb received did not belong to Spence.

Seventh, respondent was neither the executrix nor the administratrix of Spence's estate, and did not have permission from an authorized representative of her estate to remove any items from the condominium unit. The explanation that respondent gave for removing the remaining items from Spence's home was that she wanted to "safeguard" these items, and protect them pending administration of the estate.

In light of these contradictions and inconsistencies, the DEC determined that respondent had made false statements to disciplinary authorities. It noted that respondent attempted to excuse her conduct by alleging that she had "permission" to enter the condominium, given by the gatekeeper at the condominium complex, and by the manager of the business office,

as well as by Alma Dobbs, who had told her to "take care of things." Respondent also made conflicting statements to explain her entry to Spence's condominium with reference to her daughter's key, when it appears that she entered the condominium using the key found in Spence's unlocked car. The hearing panel found that these representations were intended to impede the investigation of Rabb's grievance and, thus, constituted a violation of RPC 8.1(a).

The DEC also determined that respondent violated RPC 8.4(b) in that, almost all of respondent's actions have their counterparts in New Jersey's criminal code. N.J.S.A. 2C:20-3, Theft by Unlawful Taking or Disposition provides as follows:

> A. Moveable property. A person is guilty of theft if he unlawfully takes, or exercises unlawful control over, moveable property of another with purpose to deprive him thereof.

The DEC found that respondent entered Spence's condominium and took her personal items and her car, with the purpose to deprive her heirs of these assets. To this day, she retains furniture, an iPad, the marble bust, and other items taken from the condominium, having failed to deliver them to Rabb, the administratrix of the estate.

Further, theft by deception is defined, at N.J.S.A. 2C:20-4, as a taking where a person

A. Creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind...

C. Fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

In this regard, the DEC determined that respondent held Spence's furniture under instruction by the county surrogate to protect and deliver it to the administrator of the estate and that respondent "created a false impression in Rabb's mind about which furniture belonged to Spence, and which had previously belonged to her." Accordingly, the DEC determined, "it is clear that most, if not all, of respondent's actions have their counterpart in New Jersey criminal law and a violation of RPC 8.4(b)."

Moreover, the DEC determined that respondent violated RPC 8.4(c) by entering Spence's condominium after Spence's death, knowing that she did not have permission or authority to do so and that it was likely illegal. Here, the DEC noted that Grazul had advised respondent that entry to the condominium would be allowed only with permission of the surrogate's office, and only if accompanied by a sheriff's officer. She also told respondent that she had identified Alma Dobbs and Archie Spence as Spence's next of kin. The next morning, on September 16, 2013, Detective

O'Donnell repeated the restrictions on entry when he returned respondent's phone call.

The DEC also determined that, during the investigation, respondent misrepresented the manner of her entry to Spence's condominium on the morning of September 16, 2013. The hearing panel found that she did not use her daughter's key. Rather, she used the key she found in Spence's unlocked car. To the DEC, it was not clear that respondent's daughter even had a key to Spence's home. Nonetheless, the DEC found, even if her daughter did have a key, it was clear that respondent did not use it when she first entered the condominium.

Hence, the DEC found, by clear and convincing evidence, that by entering the condominium without permission and by misrepresenting the manner in which she gained entry to Spence's home, respondent violated RPC 8.4(c).

Further, the DEC found incredible respondent's explanation that she removed Spence's furniture to protect it pending the administration of the estate. The DEC noted that Spence's belongings needed no safeguarding; her home was located in a gated community, where Spence herself felt comfortable leaving her car door unlocked, with her purse and keys to the condominium inside. Respondent's removal of Spence's personal property, thus, had no logical explanation, other than her

desire to possess those items. Therefore, the DEC found that respondent further violated RPC 8.4(c) by removing Spence's personal items.

The DEC also found that respondent misrepresented to Rabb that her own furniture had belonged to Spence and vice-versa, specifically finding that respondent had "created, out of whole cloth" a telephone conversation in which respondent claimed to have offered Rabb the option of taking Spence's furniture or respondent's own furniture. Respondent then misrepresented these facts to the investigator, another violation of RPC 8.4(c).

The DEC, however, declined to find a violation of RPC 8.4(b) or RPC 8.4(c), based on the alleged use of Spence's credit card following her death. The panel noted that no evidence was offered in this respect, other than the fact that respondent had the credit card in her possession.

In aggravation, the DEC considered respondent's continuing course of dishonesty and misrepresentations; her lack of candor with disciplinary authorities; her lack of remorse; her failure

to remediate the situation despite opportunities to do so; and her status as a public official.[3]

In mitigation, the DEC noted respondent's clean ethics history, the testimony regarding her good reputation and character, and respondent's emotional and parental connection with Spence. Weighing all these factors, the DEC recommended a three-month suspension for respondent's violations of RPC 8.1(a), RPC 8.4(b), and RPC 8.4(c).

Hearing panel member Judge Boyle dissented from the majority's finding that respondent misrepresented the manner in which she gained entry to Spence's home on the morning of September 16, 2013. He believed that respondent's various explanations of how she gained entry, and whether or not she used L.S.'s key, made it impossible to know exactly how she got inside the house. Ultimately, however, he considered the issue to be secondary to respondent's misappropriation of Spence's belongings. In all other respects, Judge Boyle joined in the majority's findings.

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[3] Respondent is currently a municipal court judge in the City of Orange.

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

The record demonstrates, by clear and convincing evidence, that respondent violated RPC 8.1(a) and RPC 8.4(c). We determine, however, to dismiss the RPC 8.4(b) charge.

From the outset of the disciplinary process, respondent has made multiple misleading, contradictory, and, ultimately, false statements of material fact to disciplinary authorities regarding various topics, including how respondent gained access to Spence's home during her first visit on September 16, 2013; whether she ever had permission to enter the premises; who has possession of Spence's iPad; whether she ever gave Rabb a choice of furniture; and whether Rabb took dining room chairs that belonged to Spence.

In her answer to the grievance, respondent claimed that, on the morning of September 16, 2013, she took her daughter's key to Spence's house, prior to bringing her to school. Respondent later claimed, in her answer, that she used the keys to Spence's house that she found in Spence's unlocked car and that she later used her daughter's key to gain entry after her first visit. Yet, also in her answer, respondent denied misrepresenting her possession of a key and claimed she had her daughter's key.

Nonetheless, in her statement annexed to her answer, respondent once again claimed that she gained access by using the keys she found in Spence's unlocked car.

In our view, respondent's contradictions represent nothing more than an attempt to conceal her misconduct – an attempt that is foiled by ordinary common sense. Plainly stated, respondent's statements are simply implausible in several respects.

First, it defies reason that respondent would go to Spence's condominium on the morning after her death, without a way to enter her home. She knew that Grazul had removed the spare key to Spence's unit and had given it to Detective O'Donnell. She knew, by speaking with Detective O'Donnell, that she would not be able to access that key without first communicating with the Surrogate (and then only with an escort from the sheriff's office). She did not do so. Thus, respondent knew, before she visited Spence's unit that morning, that she had no legitimate means to enter the unit. Under those circumstances, if L.S. truly had a key to Spence's home, an assertion refuted by Fisher (someone who clearly had a close relationship with Spence), respondent would not have found it necessary to inquire into the whereabouts of the spare key to begin and would not have found it necessary to access the garage door opener in Spence's unlocked car to enter the unit.

Beginning with her answer to the grievance and continuing through the filing of her answer to the complaint and her testimony before the DEC, respondent has been inconsistent and disingenuous in respect of her entry into Spence's home on the morning following her death.

Respondent also was untruthful in other respects. In her verified answer, respondent admitted that she did not have permission from a representative of the estate to enter Spence's premises. She claimed that, believing that she was acting in Spence's best interest, she told the management office of the community who she was when she arrived. However, later in that same answer, respondent denied entering the premises without permission. In reality, she never had any such permission. Rather, she misrepresented herself as L.S. to gain access through the front gate of the community and then misrepresented herself as Spence's close family member when she arrived at the community's management office.[4]

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[4] We note here that, over the presenter's strenuous objection, the DEC admitted into evidence an unauthenticated letter, purportedly from the property manager of Spence's complex, stating that respondent appeared on Spence's "allowed visitors" list, and, therefore, "[the] gatehouse attendant granted Tezeka access to the community." However, that statement

(footnote cont'd on next page)

Further, in her answer, respondent admitted that she removed Spence's iPad from her home. In the statement annexed to the answer, respondent stated that she maintains possession of the iPad. Yet, in her testimony before the DEC, respondent denied that she took Spence's iPad. Rather, she claimed that she took only L.S.'s iPad and left Spence's iPad in the condominium. Rabb testified, however, that she asked respondent for Spence's iPad and respondent told her that she was keeping it.

Moreover, in her answer, respondent claimed that all of the chairs taken by Rabb had belonged to Spence. Later in her answer, respondent maintained that she told Rabb which furniture belonged to Spence and which was her own, and that she gave Rabb

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(footnote cont'd)

is contradictory to respondent's own testimony that she used L.S.'s name to gain access through the community's gate. Moreover, in our view, the letter contained double hearsay, which the presenter had no opportunity to challenge. Nor did the presenter have the opportunity to learn the circumstances under which the letter was prepared, and at whose behest. To us, an examination of the entire letter suggests that it was prepared in the condominium complex's self-interest and in anticipation of a future challenge by the estate representative, based on missing contents from Spence's unit. Because acceptance of the statements in that letter require us to engage in speculation and to rely on double hearsay, we consider the document to be inherently unreliable and decline to accord any weight to its contents.

her choice of furniture. Respondent maintained that Bramwell was a witness to this conversation, presumably, on October 23, 2013, when all parties were together at respondent's home. Bramwell however, testified that, although there was a conversation about furniture when he was at respondent's house, he was not privy to the details thereof. At the hearing, respondent claimed, for the first time, that her conversation with Rabb regarding the furniture occurred via telephone, prior to Rabb's visit on October 23, 2013, a telephone call the DEC referred to as "made up of whole cloth." What is clear is that Bramwell never was privy to the detailed conversation regarding the furniture, and respondent's claim in her answer to the contrary was false. Ultimately, Rabb took furniture that she believed had belonged to her sister, Spence, and learned only later that respondent had misled her. This much also was confirmed by Fisher – again, someone who had maintained a close personal relationship with Spence and who, presumably, was familiar with Spence's dwelling and the contents thereof.

Respondent's contradictions within her answer to the grievance, in her answer to the complaint, and in her statement annexed to her verified answer to the complaint constitute false statements of material fact to disciplinary authorities, in violation of RPC 8.1(a). Although the complaint was not amended

to charge respondent with a violation of RPC 8.1(a) in respect of her testimony before the DEC, we note that respondent persisted in inconsistency throughout the hearing – a fact the DEC specifically considered in aggravation.

Respondent also violated RPC 8.4(c) on numerous occasions. First, respondent misrepresented herself as L.S. on the morning of September 16, 2013, in order to gain access. She did so because she knew that L.S. was listed as an authorized visitor to Spence's home within the gated community. Then, once inside the community, respondent went to its management office and misrepresented that she was a close family member of Spence.

Additionally, respondent made misrepresentations to Rabb, telling her that the keys given to Rabb included both the house key respondent found in Spence's car and the house key that her daughter, L.S., kept. Yet, Rabb testified that none of the keys respondent gave her fit the locks at Spence's home. Respondent also made misrepresentations to Rabb about which items of furniture in her home and in her garage belonged to Spence, and which belonged to her. She then also made a misrepresentation by silence, by allowing Rabb to leave with furniture she believed belonged to Spence. Respondent's testimony to the contrary is not supported by the testimony of Bramwell or Fisher, or by any other evidence in the record.

The record, however, lacks clear and convincing evidence that respondent violated RPC 8.4(b). The complaint alleged that respondent engaged in criminal conduct by using a credit card belonging to Spence, after the date of her death. Respondent denied the allegation and the only evidence presented pertaining to this charge was a bill indicating the date, location, and the amount of the charge, along with the stipulation that the credit card was in the control of respondent at the time of the charge. It is possible that a third party used Spence's credit card, without having possession of the card itself. Without more, this accusation cannot be sustained.

Although we agree with the DEC's dismissal of the RPC 8.4(b) charge based on respondent's alleged unauthorized use of Spence's credit card, we cannot agree with its finding of respondent's violation of that RPC on an alternate basis. Specifically, the DEC found that respondent's other conduct amounted to theft by unlawful taking and theft by deception. Although the DEC makes a compelling argument in this regard, respondent was not charged with a violation of RPC 8.4(b) in this context. The complaint strictly limited the RPC 8.4(b)

charge to the use of Spence's credit card. Because the complaint failed to charge respondent with theft of any of Spence's property, we cannot find a violation of RPC 8.4(b).[5]

In sum, respondent violated RPC 8.1(a) and RPC 8.4(c).

A reprimand or censure is typically imposed for a misrepresentation to disciplinary authorities, so long as the lie is not compounded by the fabrication of documents to hide the misconduct. See, e.g., In re DeSeno, 205 N.J. 91 (2011) (attorney reprimanded for misrepresenting to the district ethics committee the filing date of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand); In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who lied to the OAE during an ethics investigation of the attorney's fabrication of an arbitration award to mislead his partner and of the attorney's failure to consult with a client before permitting two matters to be dismissed); In re Powell, 148 N.J. 393 (1997) (attorney

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[5] R. 1:20-4(b) provides that the complaint "shall set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct, specifying the ethical rules alleged to have been violated."

reprimanded for violations of RPC 8.1(b) and RPC 8.4(c) based on his misrepresentation to the DEC, during its investigation of the client's grievance, that his associate had filed a motion to reinstate an appeal when the motion had not yet been filed; the attorney's misrepresentation was based on an assumption rather than an actual conversation with the associate about the status of the matter; the attorney also was guilty of gross neglect, lack of diligence, and failure to communicate with the client); In re Otlowski, 220 N.J. 217 (2015) (censure imposed on attorney who had misrepresented to an individual lender of his client and to the Office of Attorney Ethics that funds belonging to the lender and his co-lenders, which had been deposited into respondent's attorney trust account, were frozen by a court order when, to the contrary, they had been disbursed to various parties, and who also made misrepresentations on an application for professional liability insurance; violations of RPC 8.1(a) and RPC 8.4(c); mitigating factors included the passage of time, the absence of a disciplinary history in respondent's lengthy career, and his public service and charitable activities); In re Schroll, 213 N.J. 391 (2013) (censure imposed on attorney who misrepresented to a district ethics committee secretary that the personal injury matter in which he was representing the plaintiff was pending, when he knew that the complaint had been

dismissed over a year earlier; for the next three years, the attorney continued to mislead the committee secretary that the case was still active; in addition, the attorney misrepresented to the client's former lawyer that he had obtained a judgment of default against the defendants; the attorney was also found guilty of gross neglect, lack of diligence, and failure to reply to the client's numerous attempts to obtain information about her case; no prior discipline); and In re Allocca, 185 N.J. 404 (2005) (censure for attorney who made material misrepresentations to the ethics investigator about a real estate mortgage pay-off, payment of taxes, and recording of the deed, in order to obscure his mishandling of the underlying matter; the attorney also lacked diligence in the case; no prior discipline).

Cases involving egregious violations of RPC 8.4(c), even where the attorney has a non-serious ethics history, have resulted in the imposition of terms of suspension. See, e.g., In re Steiert, 220 N.J. 103 (2014) and In re Carmel, 219 N.J. 539 (2014).

In Steiert, a six-month suspension was imposed on the attorney for serious misconduct, in violation of RPC 8.4(c) and (d). Through coercion, the attorney had attempted to convince his former client, who had been a witness in the attorney's prior disciplinary proceeding, to execute false statements. The

attorney intended to use the former client's false statements to exonerate himself with regard to the prior discipline. In aggravation, the attorney's conduct was found to amount to witness tampering, a criminal offense. Additionally, the attorney exhibited neither acceptance of his wrongdoing nor remorse. Finally, he had a prior reprimand, in 2010, for practicing law while ineligible and making misrepresentations in an estate matter. Proof of fitness was required as a condition to the attorney's reinstatement.

In Carmel, a three-month suspension was imposed on the attorney for his "egregious misconduct," in violation of RPC 8.4(c). The attorney had represented a bank in a successful real estate foreclosure proceeding against a borrower. To avoid duplicate transfer taxes, the attorney and bank chose not to immediately record the bank's deed in lieu of foreclosure. When a subsequent buyer for the property was under contract, the attorney discovered that, in the interim, an Internal Revenue Service (IRS) lien had been filed against the property. Because the IRS lien was superior of record to the bank's interest, the IRS would levy against the bank's proceeds from the intended sale of the property. Rather than disclose the prior IRS lien to his client, respondent fabricated a lis pendens for the foreclosure action, which was intended to deceive the IRS into

believing that its lien was junior to the bank's interest. The attorney then sent the false lis pendens to the IRS, represented that it had been filed prior to the IRS lien, and attempted to engage the IRS in settlement discussions. Rather than settle, the IRS referred the matter to the U.S. Attorney's Office. The attorney finally admitted his misconduct. In mitigation, the attorney had an unblemished disciplinary history and paid off the IRS lien with his own funds, in the amount of $14,186 plus interest, in order to make both his client and the government whole.

Here, like the attorneys in Steiert and Carmel, respondent's actions must be branded as serious misconduct. In aggravation, respondent took contrary positions during the investigation, in her verified answer, and her statement attached to her verified answer. She persisted in her inconsistencies throughout the DEC hearing, which, in our view, demonstrated a lack of remorse on respondent's part, as well as a refusal to accept responsibility for her conduct.

Additionally, respondent's status as a public officer – a municipal court judge for the City of Orange, New Jersey – serves as further aggravation. See, e.g., In re Boylan, 162 N.J. 289, 293 (2000).

In mitigation, respondent has no history of discipline and two witnesses testified as to her good character. We considered,

as well, the tragedy underlying this matter. For some time, respondent clearly had shared a very close relationship with Spence, and her demise was, no doubt, a traumatic experience both for respondent and for her daughter. Although we do not accept respondent's reaction to this tragedy as an excuse for her misconduct, we recognize that respondent was likely grief-stricken and that her grief may have clouded her judgment. Hence, the mitigation, in total, dissuades us from imposing a term of suspension.

Nevertheless, respondent's misrepresentations were both numerous and egregious, and sometimes made to persons who were equally grief-stricken by Spence's tragic death. Accordingly, in our view, respondent's serious misconduct is deserving of a censure.

Chair Frost and Member Singer voted to dismiss the complaint. Member Singer wrote separately in dissent. Member Gallipoli writing separately in dissent, and member Zmirich voted for a three-month suspension. Vice-Chair Baugh recused herself. Member Clark did not participate.

Disciplinary Review Board
Peter J. Boyer, Member

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Torkwase Y. Sekou
Docket No. DRB 16-121

Argued: September 15, 2016

Decided: December 20, 2016

Disposition: Censure

Members	Censure	Three-month Suspension	Dismiss	Recused	Did not participate
Frost			X		
Baugh				X	
Boyer	X				
Clark					X
Gallipoli		X			
Hoberman	X				
Rivera	X				
Singer			X		
Zmirich		X			
Total:	3	2	2	1	1

Ellen A. Brodsky
Chief Counsel