

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-345
District Docket Nos. XIV-2015-
0052E; XIV-2015-0129E; XIV-2015-
0249E; XIV-2015-0376E; and XIV-
2015-0377E

IN THE MATTER OF :
MARC D'ARIENZO :
AN ATTORNEY AT LAW :
:

Decision

Decided: May 25, 2017

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-4(f)(1). The five-count formal ethics complaint charged respondent with violations of RPC 1.15(d) (failure to comply with recordkeeping requirements) (count one); RPC 3.2 (failure to expedite litigation), RPC 3.4 (presumably, subsection (c), knowingly disobeying an obligation under the rules of a tribunal), and RPC 8.4(d) (conduct prejudicial to the administration of justice) (count two); RPC 8.4(d) (count

three); RPC 1.1 (presumably, subsection (a), gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client), RPC 1.4(c) (failure to explain a matter to a client to the extent reasonably necessary to permit the client to make informed decisions regarding the representation), and RPC 1.16 (presumably, subsection (d), upon termination of the representation, failure to take steps reasonably practicable to protect a client's interests) (count four); and RPC 3.2, RPC 3.3(a)(1) (false statement of material fact or law to a tribunal), RPC 3.3(a)(5) (failure to disclose a material fact to a tribunal, knowing that the omission is reasonably certain to mislead the tribunal), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (count five).

For the reasons set forth below, we recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1993. During the relevant timeframe, he maintained an office for the practice of law in Bradley Beach, New Jersey.

Respondent has an extensive disciplinary history. Effective March 1, 1999, the Court suspended him from the practice of law for three months for making false statements of fact to a tribunal and for conduct involving dishonesty, fraud, deceit or

misrepresentation. In re D'Arienzo, 157 N.J. 32 (1999). Specifically, respondent twice misrepresented to a municipal court judge his reason for failing to appear in a criminal matter. In the Matter of Marc D'Arienzo, DRB 97-302 (June 29, 1998) (slip op. at 2). At the ethics hearing, the municipal court judge testified that respondent "had a history of either failing to appear on matters before her or of being late in those instances when he did appear." Ibid. We determined that, although a reprimand is the typical quantum of discipline for an isolated incident of misrepresentation, "respondent was brazen enough to lie to the same judge who had recently given him a very stern warning that his misconduct would not be tolerated. Respondent's misconduct was not a single, isolated event. Rather, his lies were almost seamless in their transition." Id. at 9.

Respondent was reinstated to the practice of law on June 14, 1999. In re D'Arienzo, 158 N.J. 448 (1999).

Two years later, in 2001, respondent was admonished for recordkeeping violations. Specifically, he did not use his trust account in connection with his practice and did not maintain required receipts and disbursements journals or client ledger cards. In the Matter of Marc D'Arienzo, DRB 00-101 (June 28, 2001).

In 2004, respondent received another admonition for violating RPC 8.4(b) (committing a criminal act that reflects adversely on an attorney's honesty, trustworthiness, or fitness as a lawyer). Specifically, in December 2003, he was charged with possession of fewer than fifty grams of marijuana (N.J.S.A. 2C:35-10(a)(4)) and possession of drug paraphernalia, a water bong (N.J.S.A. 2C:36-2), for which he received a conditional discharge. In imposing only an admonition, we considered that respondent's misconduct, unlike his prior two infractions, was not related to the practice of law. In the Matter of Marc D'Arienzo, DRB 04-151 (December 10, 2004).

In 2011, respondent was censured for conduct prejudicial to the administration of justice. In re D'Arienzo, 207 N.J. 31 (2011). On September 11, 2008, he failed to appear in a Bergen County municipal court for a scheduled criminal trial; he subsequently failed to appear for two orders to show cause stemming from his failure to appear at the trial. In the Matter of Marc D'Arienzo, DRB 10-406 (June 29, 1998) (slip op. at 3).

In 2013, on a motion for discipline by consent, respondent was reprimanded for practicing law while ineligible, based on his failure to comply with IOLTA registration requirements. In re D'Arienzo, 214 N.J. 623 (2013). During his five-month period of ineligibility, respondent entered his appearance in a Newark municipal court. We concluded that respondent's actions were

inadvertent, that he had been unaware of his ineligibility, and that, once he became aware of his ineligibility, he filed the IOLTA registration statement. We determined, however, that respondent's ethics history warranted increasing the typical discipline for such a violation from an admonition to a reprimand. In the Matter of Marc D'Arienzo, DRB 13-045 (August 8, 2013).

In 2014, respondent was censured for again practicing law while ineligible. In re D'Arienzo, 217 N.J. 151 (2014). His cousin/part-time secretary was responsible for sending his annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). In the Matter of Marc D'Arienzo, DRB 13-205 (December 16, 2013) (slip op. at 10-11). When respondent discovered that she had failed to submit the payment, resulting in his ineligibility, he failed to take appropriate steps to ensure that the assessment was paid. Id. at 15-16. Because respondent previously had been ineligible on four occasions for similarly failing to pay the assessment, we determined that he should have been more vigilant about his obligations to the CPF. Id. at 16.

Effective August 22, 2016, the Court suspended respondent from the practice of law for three months, after he failed to keep a client reasonably informed about the status of her matter and failed to set forth in writing the basis or rate of the fee. In re D'Arienzo, 225 N.J. 604 (2016). We found that, not only had

respondent failed to provide his client with a writing setting forth the basis or rate of his fee, but also had lied about it to the committee investigator and later testified falsely about it at the DEC hearing. In the Matter of Marc D'Arienzo, DRB 15-234 (April 29, 2016) (slip op. at 21). Additionally, he had failed to explain to his client the charges pending against her, had not given her a copy of the discovery, despite her repeated requests, and left her feeling "afraid, nervous, and extremely worried." Id. at 21-22. We noted respondent's "history of being untruthful" and determined he "has not learned from his prior mistakes and has not accepted responsibility for his wrongdoing." Id. at 25-26. Respondent remains suspended to date.

On December 28, 2016, respondent filed a motion to vacate the default in this matter. Despite his suspended status, he filed the motion on his law firm letterhead. In order to prevail on such a motion, respondent must overcome a two-pronged test. First, he must offer a reasonable explanation for his failure to answer the ethics complaint. Second, he must assert a meritorious defense to the underlying charges.

As to the first prong, respondent's explanation for his failure to file answers to the underlying ethics complaints is that he had "previously filed full and complete answers to three of the five complaints" comprising this matter and, as to the

other two complaints, "was under the mistaken impression that his July 2016 suspension . . . would unilaterally place [those] two complaints . . . on hold" until the suspension was served.

Respondent's explanation for his failure to file answers to the complaints is not reasonable. First, respondent ignores the fact that the OAE informed him, in writing, on both April 15 and May 5, 2016, that his asserted "full and complete answers" to three of the five complaints had been deemed deficient for his failure to comply with the basic requirements of R. 1:20-4(e)(1). Despite having received two extensions of the deadline to file conforming answers, he failed to timely file answers or to respond to the OAE's correspondence. The second letter was sent via both regular and certified mail, to his home address, and was signed for by a member of his household, acknowledging receipt. The regular mailings of both letters were not returned.

Second, respondent's asserted impression that his most recent suspension would "unilaterally" place the remaining complaints "on hold" is without any basis in the disciplinary rules governing New Jersey attorneys.

In respect of prong two, meritorious defenses, respondent offers defenses to only select portions of the underlying ethics charges.

We determine that respondent has not satisfied either prong of the test to vacate a default. Therefore, we denied the motion to vacate the default.

Service of process was proper in this matter. On February 29, 2016, the OAE sent a copy of the formal ethics complaint to respondent, by certified and regular mail, at both his law office and home addresses. The certified mail sent to respondent's law office was returned marked "Unclaimed;" the regular mail sent to that address was not returned. The certified mail receipt for the complaint sent to respondent's home address was returned, reflecting a delivery date of March 3, 2016 and bearing an illegible signature; the regular mail sent to his home was not returned.

On April 5, 2016, respondent filed an answer that was not verified and, therefore, did not comply with R. 1:20-4(e). In that answer, respondent asked the OAE to return to him a transcript he had previously submitted in connection with the allegations underlying this matter. On April 15, 2016, the OAE sent another letter to respondent, by regular mail to his home address, informing him that his answer was deemed deficient because it did not comply with the requirements of R. 1:20-4(e)(1); enclosing a copy of the transcript he had requested; and extending to April 29, 2016 the deadline to file a

conforming answer. Once again, the regular mail sent to respondent's home was not returned.

On May 5, 2016, the OAE sent a third letter to respondent's home address, by certified and regular mail, informing him that the deadline to file a conforming answer had passed and that, unless he filed a verified answer to the complaint by May 20, 2016, the allegations of the complaint would be deemed admitted and the record would be certified to us for the imposition of discipline. The certified mail receipt was returned, indicating a delivery date of May 9, 2016 and bearing an illegible signature; the regular mail sent to his home was not returned. Respondent did not timely file a verified answer to the complaint. Therefore, on October 3, 2016, the OAE certified the record to us as a default.

We now turn to the facts alleged in the complaint.

Count One

In 2015, respondent submitted his annual attorney registration statement to the CPF, including a certification that he maintained an attorney trust account at PNC Bank and an attorney business account at Wells Fargo. On April 1, 2015, the OAE issued subpoenas to those financial institutions for respondent's attorney trust and attorney business account

records.

In response to the attorney trust account subpoena, PNC Bank informed the OAE that it maintained no such account for respondent. In an undated letter received by the OAE on May 14, 2015, respondent admitted that he had not used his attorney trust account in ten years, explaining that he uses a "flat fee arrangement" for all of his work.

In response to the attorney business account subpoena, Wells Fargo produced account statements, cancelled checks, and deposit slips. The Wells Fargo account was not properly designated as an attorney business account, as R. 1:21-6(a)(2) requires; rather, it was identified only by respondent's name, and the qualifying title "ESQ."

On August 19, 2015, respondent appeared at the OAE's offices for a demand audit. At the audit, notwithstanding PNC's disclosure that it maintained no account for respondent, he again claimed that he had an attorney trust account with PNC Bank, but had not used it in ten years. Although respondent provided the OAE with documents that he claimed were his attorney business account receipts and disbursements journals, the documents consisted only of client names with handwritten annotations purportedly reflecting fees and disbursements. The documents did not satisfy the recordkeeping requirements of R.

1:21-6(c). He asserted that his practice, generally, was to deposit all earned legal fees into his attorney business account, but conceded that he did not always do so.

Based on the foregoing, the complaint charged respondent with violations of RPC 1.15(d).

Count Two

In October 2014, respondent represented one of multiple defendants indicted in a criminal matter pending before the Honorable Robert H. Gardner, J.S.C., in the Superior Court of New Jersey, Essex County. Although respondent's client had multiple criminal matters on Judge Gardner's docket, respondent initially represented him in only one matter, which was scheduled for both arraignment and oral argument on a suppression motion on November 14, 2014. By letter dated October 3, 2014, Judge Gardner had notified all counsel, including respondent, that oral argument on the suppression motion would be heard on November 14, 2014; despite the court's written notice, respondent failed to appear on that date.

By letter dated November 14, 2014, Judge Gardner informed all counsel, including respondent, that an evidentiary hearing for the suppression motion would be held on December 1, 2014. Moreover, Judge Gardner warned that any counsel not present on

that date "will be subject to sanctions." Respondent again failed to appear, prompting Judge Gardner to issue a December 2, 2014 Order to Show Cause (OSC) for respondent to "show cause why he should not be held in contempt of court." In the OSC, Judge Gardner recounted respondent's failures to appear in court, including after sanctions had been threatened, and stated that "[t]he character of the conduct of [respondent] and its continuation after an appropriate warning [unmistakably] demonstrates its willfulness."

On January 5, 2014, after having been served with the OSC by the Essex County Sheriff, respondent hand-delivered a letter of apology to Judge Gardner. In the apology, respondent claimed that he failed to appear the first time because he believed his client had retained a public defender, and failed to appear the second time because he had "misdiaried" [sic] the date; respondent also represented to the court that he would attend the January 16, 2014 OSC hearing.

On the morning of January 16, 2014, during a status conference in Judge Gardner's chambers, respondent agreed to represent his client in all of his pending matters, except a robbery charge. Judge Gardner then notified all counsel present that the evidentiary hearing for the motion to suppress would be adjourned to March 9, 2015. Respondent left the courtroom and

did not return for his OSC hearing, which was scheduled for 1:30 in the afternoon.

At 3:30 that afternoon, Judge Gardner's law clerk called respondent to ask whether he would be appearing for the OSC; respondent replied that he thought there would no longer be an OSC hearing, since he had earlier agreed to represent his client in additional pending criminal cases. The law clerk advised respondent to return to court for the OSC hearing, but respondent replied that he would not return that day. Although Judge Gardner agreed to adjourn the OSC hearing until January 20, 2015, respondent again failed to appear.

Accordingly, on January 22, 2015, Judge Gardner issued a warrant for respondent's arrest. The next day, respondent appeared before Judge Gardner and apologized for not appearing for the OSC hearing. Judge Gardner found respondent guilty of contempt of court and fined him \$500.

Based on the foregoing, the complaint charged respondent with a violation of RPC 8.4(d).

Count Three

On or about May 4, 2015, respondent was retained to represent a client in a trial scheduled for May 7, 2015, in Piscataway Municipal Court. At the time he was retained,

respondent already had been scheduled to appear that same date in defense of his own pending criminal matter, in the Superior Court of New Jersey, Mercer County. On May 6, 2015, respondent submitted a request to the Piscataway Municipal Court for an adjournment of his client's trial, due to a "conflict with an indictable matter in Mercer County Superior Court;" that request was denied after respondent failed to provide the municipal court with requested information regarding the Superior Court matter.

Despite the denial of his adjournment request, respondent did not appear in Piscataway Municipal Court on May 7, 2015, instead attending his own criminal matter in Mercer County. Consequently, on that date, the Honorable James P. Hoebich, J.M.C., imposed a \$1,000 sanction for respondent's failure to appear for the municipal court trial, noting that he had failed to provide requested documentation to the municipal court regarding the claimed conflict in Superior Court and had informed municipal court staff, during a telephone call that very morning, that he would appear in Piscataway for the trial no later than 12:30 p.m. Respondent neither appealed nor paid the sanction imposed by Judge Hoebich; rather, he told the court that he has no intention of paying the fine.

Based on the foregoing, the complaint charged respondent with a violation of RPC 8.4(d).

Count Four

In 2014, Tanisha Walker was charged with driving while under the influence in East Orange. On April 2, 2014, just prior to her first appearance in East Orange Municipal Court, Walker retained respondent to represent her, paying him \$300 toward a \$650 retainer fee. Respondent appeared in court on that date and again on April 17, 2014, but failed to appear on behalf of Walker at all subsequent court dates. Respondent did not inform Walker that he would not be appearing in court, did not explain to her why he failed to appear, did not formally terminate his representation of her, and did not return the \$300 that she had paid, despite her request for a refund. Notwithstanding her efforts, Walker was not able to contact respondent. She ultimately retained a public defender to represent her in the matter.

Based on the foregoing, the complaint charged respondent with violations of RPC 1.1(a), RPC 1.3, and RPC 1.16(d).

Count Five

In 2014, respondent represented Terrance Rose and Nancy Lopez, who were defendants in a Sayreville Municipal Court action that their neighbor, Tiffany Chavis, had initiated against them. Rose and Lopez responded to the civil action, filing cross-complaints against Chavis. The consolidated matter was scheduled to be heard in the Sayreville Municipal Court on August 28, 2014. Chavis appeared as scheduled; respondent was present, but Rose and Lopez were not.

Respondent told Judge Hoebich, the same judge who had sanctioned respondent only a few months prior for his misconduct toward the tribunal (count three), that his clients "aren't here and I don't have a good reason why they're not here . . . I understand if Your Honor issues a warrant at this point." Based on respondent's representations to the court, Judge Hoebich dismissed the cross-complaints filed by Rose and Lopez, and issued warrants for their arrest.

The hearing, now limited to Chavis' original complaint, was adjourned to September 25, 2014, at 8:30 a.m. On that date, at 9:03 a.m., respondent sent a fax to the court, requesting a "ready-hold" for 12:00 p.m. Rose, Lopez, and Chavis appeared in court, as scheduled, and the case was called at 12:46 p.m. Despite respondent's communication to the court that very day,

he failed to appear.

In court, Judge Hoebich informed Rose and Lopez that, due to their prior failure to appear, their cross-complaints had been dismissed, and warrants had been issued for their arrest. In response, Rose and Lopez told the court that, the day before the August 28, 2014 court date, respondent had advised them that they need not attend court because he would be requesting an adjournment. Respondent's August 28, 2014 representation to Judge Hoebich, thus, was false, as he had not informed the court that he was directly responsible for his clients' failure to attend that scheduled court date. Accordingly, Judge Hoebich reinstated the Rose and Lopez cross-complaints against Chavis, and vacated the arrest warrants he had issued.

Based on the foregoing, the complaint charged respondent with violations of RPC 3.2, RPC 3.3(a)(1), RPC 3.3(a)(5), RPC 8.4(c), and RPC 8.4(d).

* * *

The facts recited in the formal ethics complaint support all of the charges of unethical conduct set forth therein. Respondent's failure to file a verified answer to the complaint is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f). Notwithstanding that Rule, each

charge in an ethics complaint must be supported by sufficient facts for us to determine that unethical conduct occurred.

Count One

Respondent falsely certified, on his 2015 annual attorney registration statement, that he maintained an attorney trust account at PNC Bank. The OAE discovered this falsehood after issuing a subpoena for respondent's attorney trust account records and learning that PNC Bank maintained no such account for respondent. Although respondent admitted to the OAE that he had not used his attorney trust account in ten years, he attempted to justify his conduct by claiming that he always uses a "flat fee arrangement" with his clients. By failing to maintain an attorney trust account, respondent violated RPC 1.15(d) and R. 1:21-6(a)(1) and (b), which do not contain exceptions to the mandatory trust account rule for attorneys who use flat fee arrangements.

During a demand audit, respondent claimed that his general practice was to deposit all earned legal fees into his attorney business account, but he admitted to the OAE that he did not always do so. By failing to deposit all earned legal fees into his attorney business account, respondent violated RPC 1.15(d) and R. 1:21-6(a)(2).

In connection with its investigation, the OAE also subpoenaed respondent's attorney business account records from Wells Fargo. His Wells Fargo account was not properly designated as an attorney business account; rather, it was identified only by his name, and the title "ESQ." By failing to properly designate his attorney business account as an "Attorney Business Account," "Attorney Professional Account," or "Attorney Office Account," respondent violated RPC 1.15(d) and R. 1:21-6(a)(2).

During the demand audit, respondent provided the OAE with documents that he claimed were his attorney business accounts receipts and disbursements journals. The documents, however, did not comply with recordkeeping requirements. By failing to properly maintain trust and business account receipts and disbursements journals and ledger books, respondent violated RPC 1.15(d) and R. 1:21-6(c)(1)(a).

Count Two

In October 2014, respondent represented one of several defendants in a criminal case pending in the Superior Court of New Jersey, Essex County.

On multiple occasions, respondent failed to appear in Superior Court for scheduled court dates, unnecessarily delaying the litigation of the matter, including a motion to determine

whether the constitutional rights of the defendants had been violated. Despite being expressly threatened with sanctions, respondent again failed to appear for the criminal matter, and then failed to appear at two OSCs the court had scheduled, based on his failures. Judge Gardner, who exhibited abundant patience, observed, "[t]he character of the conduct of [respondent] and its continuation after an appropriate warning [unmistakably] demonstrates its willfulness." Respondent's unethical behavior, which unnecessarily delayed the criminal matters and showed disdain for the court's order that he appear for an OSC hearing, violated RPC 3.2, RPC 3.4(c), and RPC 8.4(d).

Count Three

When respondent agreed to represent a client in a trial scheduled three days later in Piscataway Municipal Court, he had a known conflict - he was already scheduled to appear, on that same date, to defend his own pending criminal matter in Mercer County. The Piscataway Municipal Court denied respondent's adjournment request, which had cryptically cited a "conflict with an indictable matter in Mercer County Superior Court," because respondent failed to provide the municipal court with requested information about the conflict.

Despite the court's denial of his adjournment request, respondent did not appear in Piscataway Municipal Court on May

7, 2015, instead attending his own criminal court date in Mercer County. Consequently, Judge Hoebich imposed a \$1,000 sanction on respondent for his failure to appear, noting that respondent had failed to provide requested documentation and had represented to municipal court staff, that same morning, that he would appear in Piscataway no later than 12:30 p.m. Respondent informed the court that he would not pay the \$1,000 fine. His unethical behavior, which unnecessarily delayed the municipal court matter and showed contempt for the court's time and authority, was prejudicial to the administration of justice, in violation of RPC 8.4(d).¹

Count Four

Tanisha Walker retained respondent to represent her on a driving while under the influence charge in East Orange Municipal Court, paying him \$300 toward a \$650 retainer fee. Respondent represented her in court on two occasions in April 2014, but then failed to appear at all subsequent court proceedings. Respondent failed to (1) inform Walker that he would not be appearing at those court dates; (2) explain to her

¹ We note that respondent was not charged with a violation of RPC 3.4(c) (disobeying an obligation under the rules of a tribunal) based on his open refusal to pay the court-ordered sanction against him. Thus, we make no finding in that regard. See R. 1:20-4(b).

why he failed to appear; (3) formally terminate his representation of Walker; or (4) return the \$300 portion of his fee that Walker had paid, even though she had requested a refund. Walker was not able to get in touch with respondent, and was ultimately represented by the public defender in her matter.

Respondent's utter lack of engagement in Walker's matter, despite accepting her money, culminating in his unilateral abandonment of her as a client, violated RPC 1.1(a), RPC 1.3, RPC 1.4(b) and (c), and RPC 1.16(d).

Count Five

Respondent represented Terrance Rose and Nancy Lopez in defense of a Sayreville Municipal Court action and in cross-complaints against the plaintiff, their neighbor, Chavis. On the record, respondent lied to Judge Hoebich, who recently had imposed a \$1,000 sanction on respondent for his own misconduct. Specifically, respondent stated that his clients "aren't here and I don't have a good reason why they're not here . . . I understand if Your Honor issues a warrant at this point." Relying on respondent's false representations, Judge Hoebich dismissed the cross-complaints that Rose and Lopez had filed, and issued warrants for their arrest.

Although Rose, Lopez, and Chavis appeared in court on the adjourned September 25, 2014 date, respondent, despite

requesting special consideration that very morning, failed to appear.

When Judge Hoebich informed Rose and Lopez that their cross-complaints had been dismissed and that warrants had been issued for their arrest, they told him that, the day before the August 28, 2014 court date, respondent had advised them that they need not appear. Thus, respondent's August 28, 2014 representation to Judge Hoebich had been patently false, as he had been directly responsible for their failure to appear. Making matters worse, he had suggested that the issuance of warrants for his clients' arrest was justified.

Respondent's unethical behavior unnecessarily delayed the municipal court matter and evidenced his unfettered propensity to lie in open court, including to the detriment of his own clients, whom he exposed to arrest. By doing so, respondent violated RPC 3.2, RPC 3.3(a)(1), RPC 3.3(a)(5), RPC 8.4(c), and RPC 8.4(d).

* * *

Respondent's misconduct in these matters replicates and combines multiple facets of his extensive disciplinary history. He has a well-established pattern of being untruthful to courts; lying to disciplinary authorities, including while under oath;

failing to obey court orders; and failing to comply with recordkeeping obligations imposed on New Jersey attorneys.

Respondent's inaugural brush with the disciplinary system, in 1999, evidences his unabashed willingness to lie to courts. There, he was suspended for three months for twice lying to a municipal court judge regarding his failure to appear. That judge recounted that respondent "had a history of either failing to appear on matters before her or of being late in those instances when he did appear." We reasoned that enhanced discipline was necessary because "respondent was brazen enough to lie to the same judge who had recently given him a very stern warning that his misconduct would not be tolerated. Respondent's misconduct was not a single, isolated event. Rather, his lies were almost seamless in their transition." More than fifteen years later, rather than learning from his mistakes, respondent continues to engage in the same deceitful behavior toward courts.

Respondent is well aware of the recordkeeping requirements imposed on New Jersey attorneys, yet continues to disregard them. In 2001, he was admonished for failing to use a trust account in connection with his practice and failing to maintain required receipts and disbursements journals or client ledger cards. Again, fifteen years later, respondent still refuses to

comply with the most basic recordkeeping obligations imposed on New Jersey attorneys.

Respondent also has been previously disciplined for failing to appear at scheduled court dates and to obey court orders. In 2011, he was censured for failing to appear in a Bergen County municipal court for a scheduled criminal trial. Exacerbating his misconduct, he then failed to appear for two orders to show cause stemming from his failure to appear at the trial. More than a decade later, respondent is repeating this disdainful conduct. He failed to appear for scheduled hearings in both Superior and Municipal Courts and then failed to appear for his OSC hearing, despite knowing that he would be subject to contempt charges and ethics violations. Moreover, he openly displayed disrespect to Judge Hoebich, defiantly refusing to pay the \$1,000 sanction imposed on him.

In 1999, we enhanced respondent's discipline to a three-month suspension due to his brazen lies to a municipal court. Here, respondent again engaged in a pattern of deceit, involving multiple courts, including the Superior Court, and actually escalated his misconduct by exposing his own clients to arrest as a result of his lies. Alarming, respondent engaged in this egregious misconduct before a judge who, only three months earlier, had sanctioned him for misconduct. Respondent has


demonstrated an absolute refusal to learn from his past mistakes. To impose a lesser quantum of discipline in this case than imposed in 1999, when respondent has now committed even more egregious violations of RPC 3.3 and RPC 8.4(c), would be incongruent. The discipline here must be further increased, in accordance both with the concept of progressive discipline and to protect the public.

Given the contemptible set of facts present in these combined matters, we must consider the ultimate question of whether the protection of the public requires respondent's disbarment. When the totality of respondent's behavior in all matters, past and present, is examined, we find ample proof that he is unsalvageable, and that no amount of redemption, counseling, or education will overcome his penchant for disregarding ethics rules. As the Court held in another matter, "[n]othing in the record inspires confidence that if respondent were to return to practice [from his current suspension] that his conduct would improve. Given his lengthy disciplinary history and the absence of any hope for improvement, we expect that his assault on the Rules of Professional Conduct would continue." In re Vincenti, 152 N.J. 253, 254 (1998). Similarly, we determine that, based on his extensive record of misconduct and demonstrable refusal to learn from his mistakes, there is no

evidence that respondent can return to practice and improve his conduct. Accordingly, we recommend respondent's disbarment.

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, Chair

By: 
Ellen A. Brodsky
Chief Counsel


SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Marc D'Arienzo
Docket No. DRB 16-345

Decided: May 25, 2017

Disposition: Disbar

Members	Disbar	Recused	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli	X		
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	9		


Ellen A. Brodsky
Chief Counsel