SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 16-426
District Docket Nos. XIV-2015-0016E
and XIV-2015-0374E

IN THE MATTER OF	:
PAUL FRANKLIN CLAUSEN	:
AN ATTORNEY AT LAW	:

Decision

Decided: June 27, 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). The five-count formal ethics complaint charged respondent with violations of RPC 1.15(a) (commingling), RPC 1.15(d) (failure to comply with recordkeeping requirements and Advisory Committee on Professional Ethics Opinion 454, 105 N.J.L.J. 441 (May 15, 1980), as amended by 114 N.J.L.J. 110 (August 2, 1984) (disbursing trust account checks against uncollected funds)) (count one); RPC 8.1(a) (false statements to disciplinary authorities) and RPC 8.1(b) (failure to cooperate

with disciplinary authorities) (count two); RPC 3.3(a)(1) (false statement of material fact or law to a tribunal), RPC 3.3(a)(5) (candor toward a tribunal), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice) (count three); RPC 1.15(a) and RPC 8.4(c) (count four); and RPC 3.3(a)(1), RPC 3.3(a)(5), RPC 8.1(a), RPC 8.1(b), and RPC 8.4(c) (count five).

For the reasons set forth below, we determine to impose a three-year prospective suspension, with conditions.

Respondent earned admission to the New Jersey bar in 1982. During the relevant time frame, he maintained an office for the practice of law in Clinton, New Jersey. On April 23, 2013, he consented to a reprimand for knowingly practicing law while ineligible for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection. In re Clausen, 213 N.J. 461 (2013).

On January 13, 2016, respondent received a second reprimand for gross neglect, lack of diligence, and failure to communicate with a client in a slip-and-fall matter. In re Clausen, 224 N.J 30 (2016).

On June 21, 2017, respondent received a censure, in a default matter, for failure to communicate and failure to

cooperate. In re Clausen, ____ N.J. ____ (2017).

* * *

Service of process was proper in this matter. On September 30, 2016, the OAE sent a copy of the formal ethics complaint to respondent, by certified and regular mail, at his law office address. The certified mail receipt was returned to the OAE bearing the signature of "V. Faber," presumably an employee of respondent, and the regular mail was not returned.

Accordingly, on October 28, 2016, the OAE sent a second letter to respondent, by certified and regular mail, at his law office address. That letter informed him that, unless he filed a verified answer to the complaint within five days, the allegations of the complaint would be deemed admitted; the record would be certified to us for the imposition of discipline; and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). On November 18, 2016, the certified mail receipt was returned to the OAE, marked "Insufficient Address/Unable to Forward." Once again, the regular mail was not returned.

On November 28, 2016, the OAE submitted a request to the United States Postal Service (USPS), seeking to confirm that respondent was receiving mail at his known office address. On

December 8, 2016, the USPS confirmed that mail was being routinely delivered to respondent's office address.

On November 29, 2016, the OAE sent to respondent, by certified and regular mail, at his home address, a third letter, which was virtually identical to the October 28, 2016 letter. USPS tracking data confirmed that the certified mail notice was delivered on December 2, 2016, but, as of two weeks later, remained unclaimed. The regular mail was not returned.

Respondent failed to file a verified answer to the complaint. Therefore, on December 16, 2016, the OAE certified the record to us as a default.

On February 24, 2017, respondent filed a motion to vacate the default, supported by a certification and a belated verified answer to the formal ethics complaint. In order to prevail on such a motion, respondent must satisfy 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 an answer to the underlying ethics complaints is that, when he was charged with the allegations, "it was very difficult for [him] to process." He asserted that he "was not

sure how to handle the matter or whether to engage counsel and . . . did not move quickly" because he was embarrassed.

Respondent's explanation for his failure to file answers to the complaints is not reasonable. First, respondent ignored the fact that, as previously stated, the OAE informed him, in writing, on September 30, October 28, and November 29, 2016, that the formal ethics complaint had been filed and that he was required to submit a verified answer. Despite the OAE's efforts, he failed to timely file an answer or to respond to the OAE's correspondence. The first letter was sent via both regular and certified mail, to his office address, and was signed for, presumably by an employee, acknowledging receipt. The regular mailings of all three letters were not returned.

Second, respondent is intimately familiar with the disciplinary process, having been previously served with ethics complaints, and disciplined, on multiple occasions. Thus, we are not persuaded by his inability to "process" the latest allegations.

Third, this case is the second consecutive default by respondent in respect of a formal ethics complaint. In the prior default matter, respondent also filed a motion to vacate the default, on August 30, 2016, which we denied, based on his failure to meet prong one of the test. In that matter,

respondent had answered the initial complaint filed by the OAE, but subsequently failed to answer an amended complaint. Here, he made no such effort to answer the complaint. Respondent, thus, was acutely aware of the default aspect of the disciplinary process, yet ignored the OAE's multiple letters requiring a verified answer in this case, even after he had filed his motion to vacate in the prior matter.

In respect of prong two, meritorious defenses, respondent offered specific defenses to only select portions of the underlying ethics charges. Specifically, he asserted that "the charges are factually incorrect . . . and draw incorrect conclusions in other instances." Moreover, in his belated verified answer, he admitted significant portions of the alleged misconduct.

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

We now turn to the allegations of the complaint.

Count One

During the relevant time frame, respondent maintained both his attorney business account and attorney trust account with TD Bank. On January 8, 2015, TD Bank alerted the OAE that, the day

prior, respondent had overdrawn his attorney trust account by $67.10, in connection with the "Trenta" client matter. On March 3, 2015, the OAE directed respondent to provide statements and three-way reconciliations for his attorney trust account - for November 2014 through and including January 2015 - and client ledgers for the Trenta matter. On March 26, 2015, respondent submitted those records to the OAE.

The OAE then scheduled a demand audit, on April 23, 2015, to examine respondent's financial records from March 21, 2014 through March 2015. On April 22, 2015, respondent sent the OAE the required statements and three-way reconciliations for his attorney trust account for that period.

During the demand audit, the OAE determined that respondent caused the overdraft of his attorney trust account, on January 6, 2015, when he deposited $250 in connection with the Trenta client matter, and withdrew a fee for the matter, in the same amount, that same date. TD Bank's records revealed that respondent made this withdrawal against uncollected funds. TD Bank charged respondent a $35 overdraft fee, which he paid with personal funds. Respondent's banking records further revealed that, on seventy-seven occasions during the audit period, he withdrew fees directly from his attorney trust account, rather than issuing checks payable to his business account.

During the audit, respondent admitted that he did not always deposit his earned fees into his attorney business account, a violation of R. 1:21-6(a)(2). Although the audit produced no evidence of misappropriation, it revealed additional recordkeeping deficiencies, in violation of RPC 1.15(d). Specifically, respondent disbursed checks against uncollected funds, a violation of ACPE Opinion 454; improperly image-processed business and trust checks, a violation of R. 1:21-6(b); made cash withdrawals from his attorney trust account, a violation of R. 1:21-6(c)(1)(A); lacked sufficient detail on deposit slips, a violation of R. 1:21-6(c)(1)(H); maintained his attorney business and trust accounts in the name of "Clausen & Associates," when he was a sole practitioner, a violation of R. 1:21-6(a); and commingled personal and client funds in his attorney trust account, a violation of RPC 1.15(a).

Count Two

During the demand audit, respondent made misrepresentations to the OAE, denying that he had ever filed for bankruptcy. Subsequent to the audit, the OAE confirmed that, on February 3, 2015, respondent had filed a voluntary Chapter 13 bankruptcy petition. On April 17, 2015, less than a week before the demand audit occurred and respondent made those misrepresentations, the

case was dismissed due to his failure to make required payments to the trustee and to his failure to resolve creditor objections.

Respondent made additional misrepresentations to the OAE during the demand audit. Specifically, he denied that he had ever made cash withdrawals from his attorney trust account. Subsequent to the audit, through examination of respondent's attorney trust account records, the OAE discovered that, on multiple occasions during the audit period, respondent had made $100 cash withdrawals from his attorney trust account.

On August 6, 2015, the demand audit continued at the offices of the OAE. During that session, respondent admitted making the cash withdrawals from his attorney trust account. He explained that he repeatedly drew on his attorney trust account to supplement his attorney business account, which was frequently overdrawn during the audit period, and to avoid the payment of overdraft fees.

That same date, respondent "unequivocally denied" having large debts or attempting to hide money, and maintained that there were no liens or garnishments against his attorney business account. At the time of these denials, he had amassed more than $500,000 in debt, and was aware of numerous attempts by creditors to levy on his attorney business account. Five

months earlier, on March 10, 2015, in support of his bankruptcy petition, respondent had certified total debts of $264,021.60. That false certification was made despite the perjury warnings expressly included on respondent's "Declaration Concerning Debtor's Schedules," which he filed with the United States Bankruptcy Court. Additionally, on June 23, 2015, respondent and his wife had executed an "Amended and Restated Balloon Mortgage Note," in the principal sum of $466,495, in favor of respondent's friend, Kenneth Clifford. That note consolidated three prior loans from Clifford, with a maturity date of May 1, 2017. Respondent used part of the proceeds of the restated note to pay off approximately $188,243.60 in past due property taxes on his residence. As of June 23, 2016, respondent owed Clifford the entire principal amount of the consolidated loan, plus interest.

The complaint alleged that respondent's lack of candor to disciplinary authorities violated RPC 8.1(a) and (b).

Count Three

On February 3, 2015, when respondent filed his voluntary Chapter 13 bankruptcy petition, he intentionally failed to list Clifford as a creditor. At the time of his false certification, respondent owed Clifford approximately $216,800, in principal

alone, in connection with the loans subsequently consolidated, on June 23, 2015. During an OAE interview on June 23, 2016, respondent admitted that he had intentionally omitted Clifford as a debtor, because he was initiating the bankruptcy proceedings solely to achieve an automatic stay, in an attempt to delay an imminent sheriff's sale of his residence. The complaint charged that respondent's intentional misrepresentations to the United States Bankruptcy Court violated RPC 3.3(a)(1) and (a)(5), RPC 8.4(c), and RPC 8.4(d).

Count Four

Before and during the audit period, numerous creditors attempted to collect debts from respondent by levying on his personal accounts and attorney business account. Creditors had also seized respondent's personal vehicle and office equipment.

Specifically, in 2009 and 2010, Martindale-Hubbell attempted to enforce a $14,878.84 judgment for unpaid fees associated with its creation of respondent's business website. In 2011, an attorney for Grace Casement[1] attempted to enforce a $29,254.84 default judgment against respondent in connection with her malpractice action against him. In April 2014 and

[1] Grace Casement's matter was the subject of DRB 15-087, for which respondent was reprimanded. That matter is discussed in detail under count five, below.

January 2015, Meridian Property Group, LLC (Meridian), respondent's prior office landlord and creditor, attempted to enforce a $6,000 judgment against respondent for unpaid office rent. None of these attempts succeeded, because respondent maintained no funds in his personal or attorney business account.

On August 22, 2014, Meridian seized respondent's vehicle, a 2004 Lexus, via a writ of replevin, and sold it at public auction. On December 17, 2014, Meridian also attempted to levy on office equipment and furniture in respondent's law office, but that attempt was unsuccessful because respondent did not own those items.

On or about September 2, 2014, the same day his Lexus was seized, respondent deposited $10,000, representing legal fees in the "Reismann" matter, into his attorney trust account. That same date, respondent withdrew $10,000 cash from his attorney trust account. During the demand audit, respondent claimed that he could not recall what he did with that cash. On September 25, 2014, about three weeks after withdrawing the $10,000, respondent deposited $4,500, representing a retainer in the "Bugbee" client matter, into his attorney trust account. The next day, respondent withdrew $4,100 cash from his attorney

trust account and deposited it into the bank account of his client, Park Avenue Auto Lot, as a down payment for a vehicle.

On August 11, 2014, Meridian served an information subpoena on respondent, in connection with its collection efforts against him in Superior Court. Respondent failed to comply with the subpoena. Consequently, on October 17, 2014, the court issued an order granting Meridian's motion to enforce litigant's rights. The order provided that, unless respondent furnished answers to the subpoena, a warrant for his arrest would issue. Although he was served with the order, respondent did not comply with it; consequently, on December 1, 2014, a warrant for his arrest issued. On December 16, 2014, respondent finally responded to Meridian's information subpoena.

During the August 6, 2015 demand audit session, respondent produced a handwritten document entitled "2014 Income Analysis." That document listed respondent's 2014 revenue by month, and enumerated all cash withdrawals from his attorney trust account and all deposits into his attorney business account. In September 2014, for example, respondent had $21,250 in revenue. He withdrew $19,500 of that revenue, in cash, from his attorney trust account, and deposited $1,750 of that revenue into his attorney business account. For the entire year, respondent

received $122,595 in revenue. He withdrew $56,040, or 46%, of that revenue, in cash, from his attorney trust account.

From April through December 2014, while Meridian was attempting to collect on respondent's $6,000 debt, he withdrew $46,590 in cash from his attorney trust account. Specifically, in May 2014, he withdrew $3,175; in June, he withdrew $6,265; in July, he withdrew $3,800; in September, he withdrew $19,500; in October, he withdrew $6,250; and in December, he withdrew $7,600.

On September 19, 2013, in connection with its collection efforts, Meridian deposed respondent. During that deposition, while under oath, respondent maintained that his attorney business account had a negative balance ($1,093.18), and that it was "the only bank account I have." Respondent then specifically denied having any other checking or savings accounts. When pressed with pointed questions, he acknowledged that he also maintained an attorney trust account, with TD Bank, which had a positive balance. He also acknowledged the pending tax-sale foreclosure of his residence, and his then $175,000 indebtedness to Clifford. Respondent further admitted that he had not paid his New Jersey or federal income taxes from 2010-2012.[2]

[2] The formal ethics complaint did not charge respondent with this admitted misconduct.

Based on its demand audit and investigation of respondent, the OAE concluded that

> [r]espondent's deposit of his earned and unearned legal fees in his trust account and subsequent cash withdrawals therefrom was intended to insulate respondent's personal assets and to attempt to place them beyond the reach of his creditors, who had previously levied on his attorney business account and other assets in enforcement of their liens against respondent's assets.

The complaint charged that respondent engaged in commingling and conduct involving dishonesty, fraud, deceit, or misrepresentation, violations of RPC 1.15(a) and RPC 8.4(c), respectively.

Count Five

Because the violations in this count stem from respondent's misconduct that led to his 2016 reprimand, a review of the facts in that case will be helpful. In October 2013, the District VIII Ethics Committee (DEC) filed a formal ethics complaint against respondent, alleging that he committed gross neglect, lack of diligence, and failure to communicate in connection with his representation of Grace Casement. Respondent had agreed to represent Casement in a slip-and-fall claim against ShopRite. In the Matter of Paul F. Clausen, DRB 15-087 (October 26, 2015) (slip op. at 2-3). During the DEC hearing, however, respondent

stipulated that he never filed a complaint against ShopRite on behalf of Casement and that, as a result, the statute of limitations had expired, barring her personal injury claim. Ibid. Moreover, after May 2010, respondent suddenly ceased communicating with Casement and her agents, purposely ignoring repeated inquiries about her case. Id. at 4-5.

After Casement retained attorney Kathleen Cavanaugh to pursue her personal injury claim, Cavanaugh advised her that the applicable statute of limitations had expired. Id. at 5. Thus, Cavanaugh filed a malpractice action against respondent in Casement's behalf. Ibid.

During the DEC hearing, respondent asserted that he had made Casement whole by accepting "full financial responsibility" and "by making a financial arrangement with [Casement], to [her] full satisfaction." Id. at 5. On cross-examination, however, respondent conceded that the settlement was negotiated after a default judgment had been entered against him in the malpractice action brought by Cavanaugh on Casement's behalf; that the settlement amount represented damages for both Casement's fall and his malpractice, including attorneys' fees in the amount of $9,000, for the malpractice action; that the $25,000 allocation for personal injury damages was suggested by the judge in a proof hearing for the malpractice case, which respondent had not

attended; and that, as of the ethics hearing date (June 17, 2014), respondent had not made a single payment toward satisfaction of the settlement, which had been negotiated in 2011. Id. at 5-6.

Despite these facts, in recommending a reprimand for respondent's misconduct, the DEC cited, in mitigation, that Casement's judgment against respondent in the malpractice action included remuneration for her pain and suffering from the fall. Id. at 7.

Following a de novo review of that matter and after hearing oral argument from both the DEC and respondent, we concluded that respondent violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b) in connection with his representation of Casement, and imposed a reprimand. Id. at 13.[3] We rejected respondent's offer of mitigation, concluding

> Respondent's failure to make a single payment towards satisfaction of the settlement with Casement, as of June 2014, after negotiating the settlement with her in 2011, belies his assertion that he had accepted "full financial responsibility . . . by making a financial arrangement with [Casement], to [her] full satisfaction." During oral argument, respondent represented to us that he had finally made settlement **payments** to Casement, but could not recall

[3] On January 13, 2016, the Court entered an Order reprimanding respondent for those violations. In re Clausen, 224 N.J. 30 (2016).

> any details regarding the **payments**, including the balance owed to Casement. He offered to submit proof of such **payments** to us after the hearing and, by letter dated May 22, 2015, we required him to provide a written certification detailing all monetary payments made to Casement to date, including supporting documentation. On June 5, 2015, respondent submitted a certification in response, including a letter from Casement's attorney, which enclosed a warrant to satisfy the judgment against him. Respondent's submission did not clarify when **payments** were made to Casement, making it difficult for us to determine whether respondent had been forthright during oral argument. However, this submission did establish that, as of June 23, 2014, respondent still had not made a payment to Casement but rather had requested and was granted a payment plan. As of June 5, 2015, the judgment was finally paid in full. Based on the vague details respondent provided at oral argument and in his post-hearing certification, a finding of mitigation is unwarranted.
>
> [Id. at 12-13] (emphasis added).

On July 15, 2015, we requested an OAE investigation into whether respondent made misrepresentations, during oral argument and in his post-hearing certification, regarding the payment history of his settlement with Casement. Our letter to the OAE emphasized that, during oral argument, respondent "clearly created the impression that he had made multiple payments to her [prior to May 21, 2015]."

On November 26, 2015, after our decision had been transmitted to the Court, respondent provided the OAE with

further details regarding his "payment plan" with Casement, and the source of funds used to pay her. Specifically, respondent admitted that

> [m]y settlement agreement . . . was to pay $25,000 over time. I failed to comply with the [payment plan] because I was generating insufficient income to make the payments. An initial payment of $1,000 was made . . . and no other payments were made until I was able to borrow $24,000 from Ken Clifford.

The OAE determined that the $24,000 loan from Clifford was made on June 3, 2015, and was later consolidated with the prior Clifford loans via the Amended and Restated Balloon Mortgage Note described in count two, above. On June 4, 2015, almost two weeks after oral argument before us, respondent wired the $24,000 in loan proceeds into his attorney trust account. He then withdrew those funds, via certified check, and made the second of two payments to Casement, in the amount of $24,000, thus satisfying the settlement amount.

The OAE concluded that, during the May 2015 oral argument before us, respondent knew the status of his payments to Casement – that he had "failed to comply with the [payment plan] because [he] was generating insufficient income to make the payments." Yet, he purposely gave us the impression that he had made multiple payments to Casement, stating the payment was "in process," that "there's been payment made," and answering "yes"

when we asked him whether he had made "payments" toward the settlement.

The complaint charged that respondent engaged in lack of candor toward disciplinary authorities, including us, and conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of RPC 3.3(a)(1) and (a)(5), RPC 8.1(a) and (b), and RPC 8.4(c).

* * *

The facts recited in the formal ethics complaint support all but one 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)(1). Notwithstanding that rule, each charge in an ethics complaint must be supported by sufficient facts for us to determine that unethical conduct occurred.

Respondent drew against uncollected funds in the Trenta client matter, causing an overdraft in his trust account. Moreover, respondent admitted, during the OAE's audit, that he did not always deposit his earned fees into his attorney business account, in repeated violation of RPC 1.15(d) and R. 1:21-6(a)(2), and that he was guilty of various other

recordkeeping violations. Specifically, respondent admitted that he disbursed checks against uncollected funds; made cash withdrawals from his attorney trust account; did not include sufficient detail on deposit slips; maintained his attorney business and trust accounts in the name of "Clausen & Associates," when he was a sole practitioner; and commingled personal funds in his attorney trust account, all in violation of RPC 1.15(a), RPC 1.15(d), and R. 1:21-6.

Respondent also is guilty of making multiple misrepresentations to the OAE during its demand audit and investigation. First, although he denied that he had filed for bankruptcy, on February 3, 2015, he had filed a voluntary Chapter 13 bankruptcy petition. The bankruptcy undoubtedly was fresh in his mind when he lied to the OAE, because, only one week earlier, the court had dismissed his petition.

Second, despite respondent's denials, he had repeatedly withdrawn cash from his attorney trust account during the audit period, finally admitting this misconduct at the August 6, 2015 session of the demand audit.

Third, during that same session, respondent lied once again, denying that he had large debts or that he had concealed money from creditors, and asserting that there were no liens or garnishments against his attorney business account. Yet, at the

time he made these misrepresentations, he had amassed more than $500,000 in debt, and knew that creditors had repeatedly attempted to levy on his personal accounts and attorney business account.

Respondent's misrepresentations to the OAE, made during the demand audit and the collateral disciplinary investigation, constituted multiple violations of RPC 8.1(a). Although the complaint also charged respondent with having violated RPC 8.1(b) (failure to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter), the facts in the complaint do not support such a violation. Respondent did not fail to correct a misapprehension or to cooperate with the OAE. Rather, he made a blatantly false statement of material fact. Thus, our finding of a violation of RPC 8.1(a) for those affirmative misrepresentations to the OAE more appropriately addresses his lack of candor in this regard. Therefore, we dismiss the RPC 8.1(b) charge.

Respondent was guilty of additional dishonesty. Specifically, he intentionally omitted Clifford as a creditor in connection with his certified Chapter 13 bankruptcy disclosures, despite owing him approximately $216,800 at that time. Respondent admitted to the OAE that he had purposely omitted the debt to Clifford, notwithstanding the perjury warnings contained

on his filings with the United States Bankruptcy Court, in an effort to manipulate the bankruptcy's automatic stay provision and to forestall the imminent sheriff's sale of his residence.

Respondent's misrepresentations to the United States Bankruptcy Court in connection with his voluntary bankruptcy proceedings violated RPC 3.3(a)(1) and (5), RPC 8.4(c), and RPC 8.4(d).

During its audit and investigation, the OAE learned of additional misconduct that respondent had committed to further his scheme to protect his personal assets. Specifically, the OAE discovered that, before and during the audit period, numerous creditors had attempted to collect on respondent's debts by levying on his personal accounts and his attorney business account. Creditors had also seized respondent's personal vehicle and law office equipment during or prior to the audit period. Respondent admitted that, to forestall these collection efforts, he withdrew, in cash, $56,040, or forty-six percent of his 2014 revenue of $122,595 from his attorney trust account. Respondent engaged in this conduct while Meridian and other creditors were attempting to collect on his debts. The OAE properly concluded that respondent intentionally deposited earned and unearned fees into his attorney trust account, and made cash withdrawals on his attorney trust account, to "insulate [his] personal assets"

and to "place them beyond the reach of his creditors," who were repeatedly levying on his personal assets and attorney business account. Respondent's abuse of his attorney trust account to avoid his creditors violated both RPC 1.15(a) and RPC 8.4(c).

Finally, respondent clearly misled us, during oral argument, when we asked him if he had made "payments" to his client, Casement, toward the settlement, to which he answered that they were "in process," and that "there's been payment made." In fact, the OAE's investigation revealed that respondent had made no payments to Casement pursuant to the negotiated payment plan because he was generating insufficient income to do so. Respondent knew this when he appeared before us for oral argument, yet represented that "payments" were "in process." Moreover, it was not until June 4, 2015 – almost two weeks after oral argument before us – that respondent borrowed $24,000 from Clifford and finally made payment to Casement, in full satisfaction of the settlement.

Thus, respondent knowingly made false statements of material fact to us in connection with his disciplinary matter, during oral argument, when he created the impression that he had made "payments" to his former client prior to that date, by specifically answering "yes," when we asked him if he had made "payments." Respondent's misrepresentations to us violated RPC

3.3(a)(1) and (a)(5), and RPC 8.4(c). Moreover, given the unique facts of this case, where his misrepresentations were made directly to us during the oral argument of his disciplinary matter, respondent's conduct also violated RPC 8.1(a) and (b).

In sum, respondent violated RPC 1.15(a); RPC 1.15(d); RPC 3.3(a)(1) and (a)(5) (in respect of both the United States Bankruptcy Court and us); RPC 8.1(a) and (b); RPC 8.4(c); and RPC 8.4(d).

* * *

The sole issue left for determination is the proper quantum of discipline for respondent's misconduct.

Respondent's most egregious misconduct was his calculated misrepresentations to both the United States Bankruptcy Court and to us. In connection with his voluntary bankruptcy petition, he violated RPC 3.3(a)(1) and (a)(5), RPC 8.4(c), and RPC 8.4(d) by making misrepresentations, under penalty of perjury, regarding his debt and his creditors, in an attempt to manipulate the bankruptcy code for his personal benefit. In connection with the Casement matter, he violated RPC 3.3(a)(1) and (a)(5) and RPC 8.4(c) by making misrepresentations to us regarding the status of payments made to Casement, in an attempt to mitigate the discipline imposed on him.

Lack of candor to a tribunal has resulted in discipline ranging from an admonition to a long-term suspension. See, e.g., In the Matter of George P. Helfrich, Jr., DRB 15-410 (February 24, 2016) (admonition imposed on attorney who failed to notify his client and witnesses of a pending trial date, a violation of RPC 1.4(b); thereafter, he appeared at two trial dates, but failed to inform the trial judge and his adversary that he had not informed his client or the witnesses of the trial date; significant mitigation considered); In the Matter of Robert Moon, DRB 09-085 (July 7, 2009) (admonition for attorney whose client agreed, as part of a settlement, to pay two months' past due rent; the client produced checks for the past due rent, but the payments were not made a part of the settlement terms presented to the court; the attorney was aware prior to completing the settlement that the client had placed stop-payments on the checks, but failed to immediately inform his adversary of the stop-payment orders); In the Matter of Robin K. Lord, DRB 01-250 (September 24, 2001) (admonition for attorney who failed to reveal her client's real name to a municipal court judge when her client appeared in court using an alias; unaware of the client's significant history of motor vehicle infractions, the court imposed a lesser sentence; in mitigation, the attorney disclosed her client's real name to the municipal court the next day, whereupon the sentence was vacated);

In re Marraccini, 221 N.J. 487 (2015) (reprimand imposed on attorney who had attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications that had been pre-signed by the manager, who then died; the attorney was unaware that the manager had died and, upon learning that information, withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); mitigation considered); In re Manns, 171 N.J. 145 (2002) (attorney reprimanded for misleading the court, in a certification in support of a motion to reinstate the complaint, about the date the attorney learned of the dismissal of the complaint; the attorney also lacked diligence in the case, failed to expedite litigation, and failed to properly communicate with the client; prior reprimand); In re Whitmore, 117 N.J. 472 (1990) (reprimand imposed on a municipal prosecutor who failed to disclose to the court that a police officer, whose testimony was critical to the prosecution of a driving while intoxicated charge, had intentionally left the courtroom before the case was called, resulting in the dismissal of the charge); In re Duke, 207 N.J. 37 (2011) (attorney received a censure for failure to disclose his New York disbarment on a form filed with the Board of Immigration Appeals; the attorney also failed to adequately communicate with the client and was guilty of recordkeeping deficiencies; prior reprimand; the attorney's contrition and efforts at rehabilitation

justified only a censure); In re Hummel, 204 N.J. 32 (2010) (censure in a default matter for gross neglect, lack of diligence, failure to communicate with the client, and misrepresentation in a motion filed with the court; the attorney had no disciplinary record); In re Trustan, 202 N.J. 4 (2010) (three-month suspension for attorney who, among other things, submitted to the court a client's case information statement that falsely asserted that the client owned a home and who drafted a false certification for the client, which was submitted to the court in a domestic violence trial); In re Stuart, 192 N.J. 441 (2007) (three-month suspension for assistant district attorney in New York who, during the prosecution of a homicide case, misrepresented to the court that he did not know the whereabouts of a witness; in fact, the attorney had made contact with the witness four days earlier; compelling mitigation justified only a three-month suspension; no prior discipline); In re Hasbrouck, 186 N.J. 72 (2006) (attorney suspended for three months for, among other serious improprieties, failing to disclose to a judge his difficulties in following the judge's exact instructions about the deposit of a $600,000 check in an escrow account for the benefit of the parties to a matrimonial action; instead of opening an escrow account, the attorney placed the check under his desk blotter, where it remained for eight months; no prior discipline); In re

Forrest, 158 N.J. 428 (1999) (attorney, who failed to disclose the death of his client to the court, to his adversary, and to an arbitrator, was suspended for six months; the attorney's motive was to obtain a personal injury settlement; prior private reprimand); In re Marshall, 165 N.J. 27 (2000) (one-year suspension for attorney who deceived his adversary and the court in a litigated matter by failing to reveal a material fact during litigation, serving false answers to interrogatories, and permitting his client to produce misleading documents to his adversary, all the while maintaining his silence; the attorney backdated a stock transfer document and put an incorrect date in his notarization of the transfer agreement, knowing that the timing of the transfer could have a material effect on the case; no prior discipline); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve; two prior private reprimands); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who was involved in an automobile accident

and then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing; 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 Carmel, 219 N.J. 539 (2014), In re Steiert, 220 N.J. 103 (2014), and In re Franco, 227 N.J. 155 (2016).

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, Carmel and the 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, Carmel 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. Carmel 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.

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.

In Franco, a one-year suspension was imposed on the attorney for his "brazen deception" and egregious violations of RPC 8.4(c). The attorney represented a real estate developer in a failed business transaction. Initially, he assisted his client in securing a $350,000 short-term loan under false pretenses. In order to benefit his clients by delaying their obligation to repay the loan, Franco violated his fiduciary duties as an escrow agent, and purposely omitted material facts from his subsequent communications with the lender. Then, in an attempt to avoid all discipline and civil liability, the attorney engaged in a scheme of self-serving evasion and deceit, even lying, while under oath, during the disciplinary proceedings brought against him by the OAE. He showed no remorse, and refused to accept responsibility for his misconduct.

A reprimand is typically imposed for a misrepresentation to disciplinary authorities, so long as the lie is not compounded by the fabrication of documents to conceal the misconduct. See, e.g., In re DeSeno, 205 N.J. 91 (2011) (attorney misrepresented 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) (attorney lied to the OAE during an ethics investigation of the attorney's fabrication of an arbitration award to mislead his partner and failed to consult with a client before permitting two matters to be dismissed; no prior discipline); and In re Powell, 148 N.J. 393 (1997) (attorney misrepresented to the district ethics committee, 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; prior reprimand).

An admonition is the usual form of discipline for recordkeeping violations. See, e.g., In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (attorney recorded erroneous information in client ledgers, which also lacked full descriptions and running balances, failed to promptly remove earned fees from the trust account, and failed to perform monthly three-way reconciliations, in violation of R. 1:21-6 and RPC 1.15(d); in mitigation, we considered that the attorney had been a member of the New Jersey bar for forty-nine years without

prior incident and that he had readily admitted his misconduct by consenting to discipline); In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014) (attorney maintained outstanding trust balances for a number of clients, some of whom were unidentified; no prior discipline); and In the Matter of Stephen Schnitzer, DRB 13-386 (March 26, 2014) (an audit conducted by the OAE revealed several recordkeeping deficiencies; the attorney also commingled personal and trust funds for many years; prior admonition for unrelated conduct).

Where commingling and recordkeeping violations were intentionally committed to circumvent creditors, however, stronger discipline has been imposed. See, e.g., In re Weber, 205 N.J. 467 (2011) (attorney with an unblemished career of nearly forty years, censured for circumventing an IRS levy on his attorney business account by intentionally allowing the business account to lie dormant and using his trust account for both business and trust matters, violations of RPC 1.15(a) and RPC 8.4(c); attorney also committed multiple recordkeeping violations); In re Al-Misri, 197 N.J. 503 (2009) (censure imposed on attorney who intentionally placed personal funds into his trust account to prevent a creditor from seizing the monies; attorney also committed recordkeeping violations, grossly neglected a client's real estate matter and, in two separate

real estate matters, practiced while ineligible as a result of his failure to pay the 2003 annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection; although there were aggravating factors, that is, his two prior admonitions and his failure to abide by several warnings from the OAE over the years about using his trust account for his personal obligations, we gave "great weight" to the mitigating factors, which included his admission to the misconduct, the lack of harm to his clients, his sobriety for twenty years, and his devotion of many years to helping other drug-and-alcohol-dependent individuals through Alcoholics Anonymous, Narcotics Anonymous, and a lawyers assistance program; nevertheless, we pointed out that, were it not for his dedication to helping others recover from their addictions, he would have received a three-month suspension); and In re Olitsky, 149 N.J. 27 (1997) (prior to censure becoming a recognized form of discipline, three-month suspension imposed on attorney who intentionally commingled client funds, business funds, and personal funds for the purpose of circumventing an IRS levy; he also committed recordkeeping violations and failed to safeguard client funds; prior private reprimand and admonition).

To craft the appropriate discipline in this case, we must consider both aggravating and mitigating factors. In

aggravation, respondent has twice been reprimanded for significant, but dissimilar conduct, and awaits the Court's decision in a third matter, which also proceeded as a default. There is no basis in the record to support a finding of any mitigating factors.

The default status of this matter must also be considered as an aggravating factor. "A respondent's default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008). This is respondent's second consecutive default, which exhibits a persistent disdain for his obligations in respect of our attorney disciplinary system.

Here, like the attorneys in Kornreich, Steiert, Carmel, and Franco, respondent's brazen deception toward tribunals can be regarded as nothing less than serious and deserving of a suspension. Respondent exhibits an alarming willingness to deceive for his personal benefit, making documented misrepresentations to the United States Bankruptcy Court, creditors, and New Jersey disciplinary authorities. In an effort to manipulate the bankruptcy code for his own benefit, respondent lied, under penalty of perjury, on his filed certifications regarding his debts and creditors. He admitted to

the OAE that this deception was strategic, in order to manipulate the automatic stay and save his residence from an imminent tax sale. Then, with purpose to minimize potential discipline in the current case, respondent lied to the OAE regarding multiple issues, including his bankruptcy filing, his persistent abuse of his trust account, the amount of his debts, and the repeated attempts by creditors to levy on his personal assets and attorney business account. Finally, in respect of the Casement matter, respondent lied to both the DEC and to us – first, during oral argument and, later, in a certification - in an unabashed effort to mitigate the discipline imposed on him.

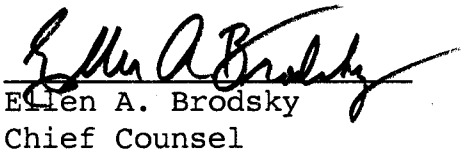
Respondent's pervasive duplicity illustrates that he presents a more substantial danger to the public than Steiert or Carmel. Like the attorney in Kornreich, respondent has proven that there are no bounds to his deception to protect himself from reproach. Accordingly, we determine that a three-year prospective term of suspension is warranted.

In addition, given respondent's penchant for dishonesty, we require him to complete courses in ethics and law office management, and to provide the OAE with monthly reconciliations of his trust account, on a quarterly basis, for a period of two years.

Member Gallipoli voted to 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 Paul F. Clausen
Docket No. DRB 16-426

Decided: June 27, 2017

Disposition: Three-year Suspension

Members	Three-year Suspension	Disbar	Did not participate
Frost	X		
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	8	1	

Ellen A. Brodsky
Chief Counsel