SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-311
District Docket Nos. IV-2015-0035E
and IV-2015-0047E

IN THE MATTER OF	:
JOHN ANDREW KLAMO	:
AN ATTORNEY AT LAW	:

Decision

Argued: November 16, 2017

Decided: February 20, 2018

Lewis C. Fichera appeared on behalf of the District IV Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for a three-month suspension filed by the District IV Ethics Committee (DEC), on consolidated complaints. The first complaint charged respondent with violating RPC 8.4(d) (conduct prejudicial to the administration of justice). The second, a three-count complaint, charged respondent with violations of RPC 1.4(d) (failure to advise a client of the limitations of the lawyer's conduct, when

a client expects assistance not permitted by the Rules), RPC 1.15(b) (failure to promptly notify a client or third person of receipt of funds), RPC 1.15(c) (failure to segregate disputed funds), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

For the reasons expressed below, we determine to impose a two-year suspension.

Respondent was admitted to the New Jersey bar in 1982. He maintains a law office in Cherry Hill, New Jersey.

Respondent has an extensive disciplinary history. In 1996, he was reprimanded for delegating his recordkeeping responsibilities to an employee whom he never supervised or instructed on recordkeeping practices. As a result, the employee misappropriated client funds. Respondent was guilty of gross neglect, negligent misappropriation of client trust funds, commingling fees and trust account funds, and recordkeeping violations. In re Klamo, 143 N.J. 386 (1996).

In 2013, respondent was suspended for three months for charging improper expenses in contingent fee matters (photocopying, postage, and telephone calls); failing to promptly deliver funds belonging to clients and third parties by amassing approximately $100,000 in his trust account and failing to disburse deductibles and co-pays, in some instances for as

long as thirteen years, until the Office of Attorney Ethics (OAE) began its investigation and instructed him to disburse the funds; recordkeeping violations; engaging in conduct involving dishonesty, fraud, deceit or misrepresentation; making material misstatements of fact to ethics authorities; and failing to maintain malpractice insurance. In re Klamo, 213 N.J. 494 (2013).

On September 25, 2013, the Court reinstated respondent to the practice of law, and ordered him to practice under the supervision of an OAE-approved proctor for a two-year period, and to submit to the OAE, for a two-year period, on a quarterly basis, monthly reconciliations of his attorney accounts, prepared by an accountant. In re Klamo, 215 N.J. 520 (2013).

In 2016, respondent was censured, in two consolidated matters, for failure to abide by the client's decisions concerning the scope of the representation, lack of diligence, failure to communicate with the client, failure to expedite litigation, and misrepresentation by silence. Although respondent also failed to maintain malpractice insurance, we did not impose discipline for this finding because he had been found guilty of that infraction, over the same timeframe, in a prior disciplinary matter. In re Klamo, 225 N.J. 331 (2016).

Recently, respondent received a three-month suspension, effective February 9, 2018, in a default, for misconduct that included gross neglect, lack of diligence, and failure to communicate with clients. Respondent's failure to answer interrogatories resulted in a complaint's dismissal. He also failed to obtain his client's permission before retaining an entity to prepare an appellate brief, in violation of RPC 1.2(a), and violated RPC 5.5(a) by failing to submit certificates of insurance to the Clerk of the Court, from 1998 to 2010, as required by R. 1:21-1A(b). He also misrepresented the status of the case to his clients by telling them that their case was proceeding properly, thereby violating RPC 8.4(c). In re Klamo, ___ N.J. ___ (2018).

On October 24, 2017, we transmitted to the Court a decision recommending a prospective two-year suspension for respondent's failure to safeguard funds, misrepresentations to ethics authorities, and conduct involving dishonesty, fraud, deceit or misrepresentation in settling a fire insurance claim. In the Matter of John Andrew Klamo, DRB 17-127 (October 24, 2017). In that matter, respondent failed to deposit settlement funds in his trust account, claiming that his client wanted possession of the check to expedite the process to repair her property, a claim that his client denied. Respondent released the $40,000

check to the contractors he had retained to make repairs; he lied to the OAE about the disposition of the settlement check and his involvement in retaining the contractors for the fire restoration, and made misrepresentations to his client, by preparing a settlement statement and a letter that did not accurately reflect the disposition of the settlement funds.

We considered, as aggravating factors, respondent's serious ethics history, his proclivity for dishonest behavior and for lying to ethics authorities and clients, as well as the extreme harm to the client. The individuals to whom respondent released the funds appeared to have absconded with $32,000 earmarked to fund the repairs and, as of the date of oral argument, virtually none of the repairs had been made to the client's property, which was vacant and boarded up. That matter is pending with the Court.

DISTRICT DOCKET NO. IV-2015-0047 (The Ward Matter)

This matter originated from our September 24, 2015 referral to the OAE, In the Matter of John Andrew Klamo, DRB 15-167 (December 28, 2015), based on grievant William Ward's testimony that respondent tried to persuade him to dismiss his grievance in return for respondent's moving to reopen his workers' compensation case. Because the presenter did not move

to amend the complaint to include a violation of RPC 8.4(d), we remanded the matter for further investigation. Thereafter, on October 5, 2015, the OAE referred the matter to the DEC. Following its investigation, the DEC filed a complaint alleging that respondent's conduct violated RPC 8.4(d).

On February 13, 2017, Ward testified via telephone from Georgia, as he had in the earlier matter. According to Ward, he had sustained injuries to his neck and back in 2007, while employed by Westminster Management.[1] Originally, he had retained a different attorney to pursue a workers' compensation claim, but became dissatisfied with that attorney's services. Thereafter, he was referred to respondent. Ward claimed that, on the occasions he was able to communicate with respondent, respondent informed him that he could not file the workers' compensation petition until he had obtained all of the information needed for the case.

Ward asserted that, when he called respondent's office sometime in 2013, he was informed that respondent had been suspended. Respondent had turned Ward's case over to Alvin and Howard Gross, who later returned the case to respondent, after

[1] This name was also spelled Westminister in the record.

he had served his suspension.[2] In July 2013, when Ward learned that his workers' compensation case had been dismissed, he filed an ethics grievance against respondent. Ward complained that he was continuously lied to about the status of his case. He did not know who was representing him, because each time he called respondent's office, he was informed that Howard Gross was handling his case.

Ward believed that his case had been dismissed in 2011. He recalled that, prior to the October 16, 2014 ethics hearing, respondent called him shortly before the hearing. According to Ward, in their brief conversation, respondent inquired whether Ward had heard anything from the ethics committee. Ward claimed that respondent then proposed: "if I would drop the case, trial, or whatever you call it against him that he would try to reopen my case. And if anybody called me just tell them that I did not want to follow-through with this." Ward remarked that, "of

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[2] The record does not mention whether respondent properly complied with the requirements of R. 1:20-20. Although an inference can be drawn from Ward's testimony that respondent did not comply with the Rule's requirements (that is promptly providing notice of his suspension and advising the client to seek other counsel (R. 1:20-20(b)(10)), we have not considered this factor in assessing the proper quantum of discipline. Respondent maintained that, during his suspension, Mitchell Goldfield, Esq. took over all of his matters and that Ward's file went from the prior attorney to Gross to Goldfield and then back to him.

course I did not tell him that I had . . . talked to somebody a couple of days before." Ward understood that respondent had offered to try to reopen his workers' compensation case if Ward did not proceed with the ethics matter. Although Ward told respondent that he would "drop everything," he did not do so. That telephone conversation was the only time Ward remembered talking to respondent in 2014. Ward did not recall that respondent had taken any steps to reinstate his case.

The DEC presenter and respondent agreed that Ward's testimony varied from his testimony at the prior DEC hearing only in respect of whether his and respondent's conversation had taken place the night before the DEC hearing or a day or two before it.

For his part, respondent testified that, after Ward filed the grievance, in July 2013, he contacted Ward to discuss "in general terms" whether Ward still wanted him to try to reinstate his case. He claimed that Ward wanted him to do so. He admitted calling Ward either a day or two before the hearing to inquire whether Ward would be attending it.

After Ward was no longer participating in the ethics hearing by telephone, respondent asserted that he and Ward had had more than one telephone conversation before the DEC hearing relating to the case. He admitted calling Ward the night before

the DEC hearing, stating, "I thought he would be coming up to New Jersey. And he was still in Georgia, that's all I talked about, you're still in Georgia. Yeah. Has anyone from the Ethic's [sic] committee talked to you? No." The call lasted approximately one minute and, respondent claimed, there was no discussion about dismissing the case. He simply wanted to know whether Ward would be "coming to New Jersey." Respondent asserted further that he had prepared a workers' compensation petition in case Ward appeared.

When asked whether Ward's signature was required on the petition, respondent replied "[u]sually no. Now you just do electronically [sic], I don't have my clients sign that. But they usually do." Respondent was then asked why he needed to see Ward in person, to which he replied, "Well there is a signature line. I'm just saying procedurally back in 2004 the petitioner needed to sign the petition."

Respondent claimed that he had not mailed the petition to Ward because respondent needed to see Ward's signature. When asked whether he considered asking Ward to have his signature notarized, respondent stated "I could've mailed it to him and told him to notarize it. But again this was prepared a couple of days -- a month or so before the hearing, because I thought he was coming in."

According to respondent, he told Ward that he was still pursuing his workers' compensation case and never asked him to dismiss his grievance. He reiterated that he sought to confirm only that Ward wanted him to pursue the case. Although Ward expressed such an interest, and, although respondent had prepared the petition, respondent did not pursue it. He planned to discuss it with Ward "when he came in." Respondent asserted that Ward's claim was an "occupational disease claim" for which there is no statute of limitations and he needed Ward's social security information.

Respondent claimed that he had prepared the petition in the fall of 2014; however, there was no metadata available to corroborate his claim. Respondent asserted further that he was in contact with Ward throughout 2014, but had no telephone records available to substantiate that claim.

The DEC found that Ward's testimony was consistent with the testimony he had given at the October 16, 2014 DEC hearing — differing only on whether he had conversed with respondent the night before that hearing or a day or two earlier. The DEC further found that respondent telephoned Ward to inquire whether he had heard from the ethics committee and to ask him to "drop the case" in exchange for respondent's efforts to reinstate the workers' compensation case.

The DEC noted that respondent could have called the presenter to ascertain whether Ward would be attending the hearing, but instead, on the eve of hearing, called Ward directly. The DEC, thus, determined that, "even if he did not actually mouth the words of a *quid pro quo*, which we find he did, his actions certainly belie his claimed intent in contacting [Ward]."

In his brief to us, the presenter maintained that a determination in this matter rests on the credibility of the witnesses. He noted that Ward's testimony was consistent at both ethics hearings and that respondent waited more than two years after Ward's workers' compensation claim was dismissed to contact him. Respondent's motive, he argued was to convince Ward to dismiss the grievance against him. The fact that the telephone call took place the night before the DEC hearing "cannot be regarded as a coincidence." Moreover, respondent lacked any documentation to corroborate his version of events.

The presenter recommended a six-month suspension for respondent's violations in both matters before us, emphasizing respondent's significant ethics history.

Respondent's brief characterized this matter as "a contentious he said, she said scenario of events;" questioned

Ward's credibility in light of his motive; and claimed that Ward's strong dislike for respondent, tainted his testimony.

Respondent urged us to dismiss the RPC 8.4 violation in this matter.

DISTRICT DOCKET NO. IV-2015-0035 (The Prime/Reyes Matter)

Respondent represented Jose Reyes in a personal injury matter. Reyes was in desperate need of funds, as he was not working. He learned about a funding company, Prime Case Funding (Prime) from respondent.[3]

Edward Shleyger, the president and a founder of Prime, testified that the company provides pre-settlement funding, throughout the country, to plaintiffs with pending litigation. He explained that Prime provides "non-recourse advances," meaning that, if a plaintiff loses a case or the case is dismissed, the company recovers nothing. Typically, Prime's clients are unable to obtain traditional bank loans and need funds for their daily needs. Shleyger noted that Prime's contracts are governed by New York law.

According to Reyes, respondent handled all of his "legal affairs" and he trusted respondent, who obtained the loan for

[3] Reyes testified at the DEC hearing via telephone from Iowa.

him. Reyes, thus, entered into a contract with Prime. Reyes understood that he was required to pay interest on the advance and believed that the total repayment for the $1,000 advance would be $2,500. He was not happy with the amount he ultimately received, but had no choice but to accept it. Although Reyes read the contract, he did not understand it and, instead, relied on respondent.

Shleyger asserted that the total funding amount to Reyes was $1,350. He explained that Prime charged $175 each for an application fee and an origination fee. Although Shleyger initially asserted that Reyes netted $1,000 from the loan, he learned from his office that, because Reyes had wanted the funds expedited, the company deducted courier fees from the advance, leaving Reyes with a check for only $970. Reyes insisted that, after the fees were deducted, he had received only $650.

Shleyger admitted that the interest rate on the advance was almost fifty percent compounded yearly. In his cross-examination of Shleyger, respondent argued that New Jersey usury laws applied to the loan, pursuant to N.J.S.A. 2C:21-19, which states in relevant part that, any loan or forbearance where the interest rate exceeds thirty percent per item shall not be authorized by law. In turn, Shleyger denied that the statute applied to Prime. The agreement provided that disputes would be

submitted to arbitration, and that interest would continue to accrue until either repayment of the advance or the amount due was settled.[4]

According to Shleyger, respondent, as a signatory to the contract, was responsible for providing Prime with case updates and for paying Prime from Reyes' settlement.

The Prime/Reyes agreement stated, in relevant part:

> The Plaintiff is encouraged to use this method of funding only as a last resort. The Plaintiff should seek other forms of funding prior to requesting the Cash Advance. The Plaintiff has been advised that the Company is a provider of funds of last resort and that other sources may afford more favorable rates and payment schedules. The Plaintiff is further encouraged to limit the requested Cash Advance to funds which are absolutely necessary to pay for necessary living and/or medical expenses, so that the Amounts Due will be reasonable. The Plaintiff acknowledges that the Company may make a substantial profit from the Cash Advance in the event that Plaintiff should obtain a settlement or award.
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> [Ex.SP1;¶2.]

[4] The agreement listed the amounts Reyes would be required to pay at various dates: through December 7, 2012 - $1,755.58; through June 7, 2013 — $2,101.58; and through December 7, 2013 — $2,575.78. The agreement added that fees would continue to accrue beyond the final date shown, based on a monthly compounded percentage fee, "a total of 46.78% will be payable for the first year."

Shleyger explained that the purpose of this paragraph is to warn plaintiffs that the funding is a last resort option. Because a plaintiff may not prevail in a lawsuit or realize a significant recovery, the funding is expensive, and plaintiffs should explore other options.

Schedule C to the funding contract is an acknowledgement of counsel, which, on June 11, 2012, respondent signed. The schedule stated in relevant part:

> I, John Klamo, the undersigned Counsel for Jose Reyes, have received and reviewed the attached Agreement and Assignment of Proceeds. I have explained the terms of these documents to the Plaintiff, including the Annual Percentage Fee used to calculate the amounts to be paid by the Plaintiff, and Plaintiff has advised me that he fully understands these documents.
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> . . . .
>
> I agree to distribute any Proceeds of the Claim in accordance with the terms of the Agreement and Assignment of Proceeds. I am acting upon Plaintiff's instructions and I assume no affirmative duties, other than the ministerial obligations of disbursements, and conveying documents and information as specified in the Agreement.
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> [Ex.SP1;Sch.C (emphasis supplied).]

Paragraph ten of the contract is an authorization from the plaintiff to plaintiff's counsel to permit counsel to provide the company with information concerning the plaintiff's claim, copies of pleadings, medical records, and reports on the

progress of the case. Shleyger maintained that the paragraph's intent was to require counsel to provide Prime with updates on the status of the case and other information for Prime's underwriting purposes.

Respondent claimed that he did not read the contract carefully. When he looked at it, "it looked like [Reyes] was going to have to pay back $2,500." Respondent did not explain the contractual terms to Reyes, other than that he would be required to pay Prime $2,500 from his settlement. Respondent asserted that, although he advised Reyes against entering into the contract, Reyes ignored his advice. Respondent never informed Reyes that the amounts due to Prime could increase significantly. Respondent denied knowing that the contract required him to inform Prime of the actual settlement amount, claiming that he never gives funding companies that information.

According to Shleyger, Prime required a breakdown of the settlement and a timetable for payment to Prime. In December 2014, respondent notified Prime that Reyes' case was about to settle, but he did not provide a breakdown of the settlement. Shleyger maintained that Prime is "known" nationwide for negotiating with counsel when a plaintiff receives an insufficient settlement. However, because respondent failed to provide the required

information, Prime was unable to make a business decision concerning whether to negotiate Reyes' repayment amount.

In a December 16, 2014 letter, respondent informed Prime that he was "in the process of trying to settle [Reyes'] matter and am requesting that you compromise the amount due to $2,500.00 as full and final payment." According to Shleyger, Prime telephoned respondent to inform him that the offer would not be acceptable, at least until Prime could review the settlement breakdown. Pursuant to the funding agreement, as of December 2013, Reyes owed Prime $2,575. Respondent asserted that he believed that he was requesting Prime to compromise its claim by only $75.78 and, until he received Prime's January 2015 letter, did not realize that Reyes owed an additional $2,000. In the interim, he sent Prime a check for $2,500, with the notation "in full satisfaction."

According to respondent's client ledger card, he made all of the disbursements from Reyes' settlement, purportedly, in January 2015. However, he had disbursed $26,363.54 to himself on December 27, 2014, following his receipt of $73,500 from New Jersey Manufacturers Insurance Company. Reyes testified that he received two disbursements totaling $50,000.[5]

[5] Reyes received only $14,798.19 from the case at issue; respondent maintained that the other funds Reyes received were from a different case.

After Prime received the $2,500 check, Shleyger informed respondent, by letter dated January 20, 2015, that the amount was an "incorrect payoff amount and the file will not be marked closed until the correct amount [$4,499.45] is received." That payoff amount was valid until June 7, 2015. Shleyger's letter added that Prime would not deposit the check until the matter was resolved and that Prime's "many" attempts to communicate directly with respondent's office were unsuccessful. He asked respondent to contact Prime immediately to "settle" the matter. Shleyger maintained that Prime sent the letter to respondent after he and staff members had made several unsuccessful attempts to contact respondent via telephone. He added that he personally called respondent's law firm more than five times within a month-and-a-half and was placed on hold for ten or fifteen minutes at a time, eventually disconnecting the calls.

Forty-five days after receiving the check, and after numerous unsuccessful attempts to contact respondent via mail, e-mail and phone, Prime deposited it, marking on the back of the check that it was a partial payment. Prime continued to dispute the payment amount. According to Shleyger, Prime did not know whether it had the right to file for either arbitration or a civil lawsuit against Reyes, because respondent had not provided any information about the settlement.

According to respondent, by the time he received Prime's letter, he had disbursed all of Reyes' settlement funds. Respondent believed that Prime did not have a valid civil claim against him or Reyes because the contract was usurious. When Reyes picked up his portion of the settlement, respondent did not inform him about the dispute with Prime because, he asserted, he was not aware of it at the time.[6]

By letter dated February 26, 2015, Prime sought the balance it was owed ($1,999.45), as well as details of the settlement, including expenses and fees, in order to consider the lien satisfied in full. By letter dated March 16, 2015, Prime reiterated that it had made numerous unsatisfactory attempts to contact respondent to dispose of the Reyes matter and stated, "[d]espite the fact that we are lien holders in the case, you informed us on January 22, 2015 that you did not want to send us a breakdown (a document we are entitled to as a matter of law) and that you 'only respond to judges' and do not have to speak with us." The letter added that respondent and his client were in breach of their agreement, and that Prime would pursue payment and would contact ethics authorities.

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[6] Respondent's client ledger card shows the $14,798.19 payment to Reyes was made on January 5, 2015, prior to respondent's receipt of the January 20, 2015 letter from Prime disputing the amount.

Shleyger maintained that respondent did not reply to Prime's March 16, 2015 letter or communicate with Prime thereafter. In a March 23, 2015 letter to respondent, Prime denied any agreement to compromise its lien against Reyes and asserted that Prime had notified "Michelle" from respondent's office that Prime would not reduce its lien until it received a breakdown of all fees. Nevertheless, respondent did not provide Prime with any further information.

By letter to respondent dated February 17, 2016, Shleyger sought $6,551.89 as the payoff amount at that time. As of the date of the DEC hearing, Shleyger did not know the amount Reyes had received as a settlement but admitted that the $2,500 Prime had received was sufficient to repay the initial loan, fees, and a "measure of interest." The $2,500, however, was less than the repayment amount set forth in the agreement. According to Shleyger, he filed the grievance because respondent ignored all of Prime's efforts to communicate with him.

Reyes did not learn about the dispute over the amount due to Prime until the day before the DEC hearing. Respondent never informed him that interest would continue to accrue until the amount was repaid. He did not know that he owed Prime $4,490, that the amount was still in dispute, or that respondent and Prime had engaged in continuing communications. Respondent did

not recall informing Reyes about a problem with Prime before Reyes filed the grievance.

At the DEC hearing, respondent argued that, regardless of the terms of the contract, paying more than $2,500 was not fair or reasonable. He maintained that he did not fail to safeguard property, because he paid Prime, who accepted the payment. Prime did not have a lien, but a form of security agreement. He asserted further that he was not guilty of dishonesty, fraud, deceit or misrepresentation because his conduct was "upfront." He added that, despite the contract's terms, he could not disclose confidential information to Prime, was not required to disclose exact figures to Prime, and had no fiduciary duty to Prime.

According to respondent, because this case amounts to a civil matter relating to an invalid contract under the usury laws, a judicial determination should be made on the contract's validity, not on whether he engaged in unethical conduct.

In turn, the presenter contended that, if respondent had complied with the terms of the agreement, of which he was a signatory, Prime would have known that limited funds were available from the settlement and it could have negotiated the amount it was owed. Instead, respondent disbursed the funds, even though there was a dispute over them, thereby violating RPC

1.15(b) and (c). The presenter further argued that respondent also violated RPC 1.4(d) by failing to inform Reyes about the dispute over the amount due to Prime, and by failing to provide Prime with necessary information, and that he violated RPC 8.4(c) by disbursing all the funds before a resolution had been reached.

The DEC did not find clear and convincing evidence of a violation of RPC 1.15(c) because the dispute over the funds had not arisen until after the money had been disbursed. "Therefore, there was no reason – prior to the disbursement – for the attorney to separate contested monies."

As to RPC 1.15(b), the DEC found that the disbursement of funds was timely and accurate, notwithstanding respondent's misunderstanding of the contract and the amount actually owed to Prime. The DEC found that respondent's attempt to settle the amount owed to Prime for $75 less than the amount he thought was owed "is of no moment to this analysis since that amount is minimal considering the misunderstandings." The DEC did not find that respondent intentionally violated RPC 1.15(b). Rather, respondent quickly disbursed funds to all creditors, including Prime. According to the DEC, because respondent had not read the contract, he failed to realize that the amount due to Prime was

greater than $2,575, and, therefore, did not engage in knowing and intentional conduct.

The DEC, therefore, determined that both RPC 1.15(b) and RPC 1.15(c) should be dismissed. The DEC recognized that respondent's failure to read and understand the contract was "potentially" a violation of RPC 1.3 (lack of diligence), but it was neither charged nor litigated.

The DEC found clear and convincing evidence of a violation of RPC 1.4(d), as respondent never advised Reyes that he could be liable for more than $2,500, even if respondent believed that Prime had no claim to greater amounts. Reyes had a right to know that "at best, there was a misunderstanding about how much interest was owed, or worse, that [respondent] made a mistake in reading the contract and in fact Reyes or [respondent] actually owed [Prime] more money."

The DEC also dismissed the RPC 8.4(c) charge, finding that respondent did not intend to make misrepresentations to Prime; rather, he "made a conscious decision – whether because he misread the contract, thought he was helping his client or simply thought that [Prime] was charging too much – to simply 'settle' with the company rather than telling it how much his client actually received in the settlement."

The DEC found aggravating factors: (1) respondent's violation of RPC 8.4(d) in the Ward matter stemmed from a prior complaint and an effort to subvert the ethics process; (2) his ethics history; (3) his continuing "hostility" to ethics standards; and (4) his lack of remorse.

In mitigation, the DEC considered that, although respondent was guilty of violating RPC 1.4(d) here, and previously was found guilty of the same violation, he did not have an opportunity to learn from his prior mistakes. The DEC further considered that respondent's reaction to an interest rate of 46.75 percent was not inappropriate.

The DEC likened respondent's violation of RPC 1.4(d) to a misrepresentation to a client, for which a reprimand is usually imposed. The DEC found, however, that respondent's conduct was not a simple failure to advise his client of a problem, because respondent's inaction resulted in further problems for his client – the continued accrual of interest on the amount owed.

Noting that efforts to correct respondent's conduct are failing, the DEC determined that discipline greater than another censure, which ordinarily would be imposed for violations of RPC 1.4(d) and RPC 8.4(d), was warranted. The DEC, therefore, recommended the imposition of a three-month suspension.

In his brief to us, the presenter argued that respondent was guilty of violating all of the charged RPCs in the Ward and Prime matters. Based on respondent's ethics history, the presenter urged us to impose a six-month suspension.

In his brief to us, respondent argued that Reyes executed a usurious, unconscionable agreement with Prime and that the repayment terms were never "exactly set-forth in the contract." He maintained that, "[t]he record clearly shows that Respondent, for the benefit of his client, believed the 'agreement' was usurious and against public policy." Respondent added that his actions were taken to protect his client. He contended that his failure to inform his client of the disagreement between himself and Prime was not an ethics violation and that not every nuance of a case is required to be communicated to the client. Had Prime undertaken legal action, respondent would have been required to notify his client. Respondent, therefore, submitted that the RPC 1.4(d) violation should be dismissed.

* * *

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

The DEC properly found that respondent violated RPC 8.4(d) in the Ward matter, for improperly requesting that Ward withdraw the ethics grievance in exchange for respondent's attempt to reopen his workers' compensation case. Ward's testimony at the DEC hearing in In the Matter of John A. Klamo, DRB 15-167 (December 28, 2015), was consistent with his testimony in the instant case, in contrast with respondent's testimony, which was internally inconsistent and incredible. Respondent's attempt to obtain Ward's cooperation in dismissing the ethics grievance constitutes conduct prejudicial to the administration of justice.

We do not, however, agree with the DEC's determination in the Prime/Reyes matter. Respondent's testimony in that matter was simply not believable. Even if respondent viewed the Prime contract as usurious, the actions he took after obtaining the settlement for Reyes were unethical.

Respondent did not dispute Reyes' testimony that respondent had obtained the funding for Reyes. Respondent's claim that he did not read the contract carefully is either a gross misrepresentation or an admission of gross negligence. He was required to execute the agreement in order for his client to obtain funding. Pursuant to the agreement, respondent was required to explain the terms of the contract to his client. The

contract itself explicitly recognized the burdensome nature of its terms and warned of repayment rates that were significantly higher than those traditional in funding. Thus, the contract cautioned that Prime's funding should be considered a source of last resort. Had Reyes suffered economic injuries from respondent's breach of duties under the agreement, the consequences of respondent's actions would have been significantly more serious. As of the date of the hearing, however, Prime had not pursued Reyes or respondent civilly for full repayment.

The agreement also required respondent to explain the annual percentage fee to his client and to ensure that his client fully understood the ramifications of the agreement. It further provided that Reyes authorized respondent to disclose to Prime certain information, which would have enabled Prime to determine whether to compromise the repayment amount. Respondent refused to turn over the information that Prime repeatedly requested, despite Reyes' authorization. Respondent's argument that the contract was usurious does not absolve him of his ethics responsibilities. He should have either (1) persuaded his client not to sign the contract; (2) tried to negotiate the terms of the agreement; or (3) sought other funding sources. Respondent did none of these things. Rather, he allowed his

client to execute the contract, then hurriedly disbursed Reyes' settlement funds, without heed to his obligations.

Respondent did not dispute Shleyger's testimony that Prime had rejected his December 2014 offer to compromise the amount due. Respondent offered Prime only $2,500. However, by the time the case settled, Reyes owed Prime $4,499.45. Respondent ignored Prime's efforts to contact him or to obtain information about the settlement. Instead, on the day immediately after receiving the settlement funds from the insurer, respondent disbursed fees and costs to himself. Nine days later, he disbursed the remaining funds. Respondent's conduct was not the product of mistake but of careful calculation. To find otherwise defies logic on several bases.

First, respondent's contention – that he did not carefully review the contract – is incredible. Indeed, his testimony and his actions subsequent to receipt of the settlement funds were based on a very clear understanding of what respondent characterized as its usurious and "contrary to public policy" terms. Second, respondent distributed the settlement proceeds immediately on receipt, without communicating with Prime. Finally, respondent ignored Prime's many attempts to communicate with him regarding repayment and/or negotiation of the repayment amount. In this context, we find that respondent's actions were

guided by his own sense of fairness, without regard to his legal and ethical obligations.

Taken in the best light, even if we believed that respondent thought he was compromising only $75 of the amount due, he did not wait to obtain Prime's consent to do so. The funds were in dispute. Respondent, nevertheless, disbursed them and avoided all of Prime's attempts to communicate with him. Thus, contrary to the DEC's findings, we find that respondent's conduct violated RPC 1.15(c). He also failed to notify Prime when he received the settlement funds, as required under the terms of the agreement and by RPC 1.15(b). Respondent's dealings with Prime were dishonest and deceitful and violated RPC 8.4(c).

The complaint also charged that respondent assisted his client in the knowing breach of the agreement with Prime and that his failure to inform Reyes that his actions were a breach of the agreement violated RPC 1.4(d). This Rule states:

> When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall advise the client of the relevant limitations on the lawyer's conduct.

Because there is no evidence in the record that Reyes knew of a breach, or expected respondent to breach the agreement, or asked him to do so, this Rule is inapplicable. We, therefore,

dismiss this charged violation. Instead, we find that respondent's conduct in this regard is subsumed by RPC 8.4(c).

The only issue left for determination is the proper quantum of discipline for respondent's violations, in the combined matters, of RPC 1.15(b), RPC 1.15(c), RPC 8.4(c), and RPC 8.4(d).

The discipline for an attorney's attempt to persuade a grievant to withdraw a grievance is typically either an admonition or a reprimand. See, e.g., In the Matter of R. Tyler Tomlinson, DRB 01-284 (November 2, 2001) (admonition for attorney who improperly conditioned the resolution of a collection case on the dismissal of an ethics grievance filed against the attorney by the client's parents) and In re Mella, 153 N.J. 35 (1998) (reprimand imposed on attorney who communicated with the grievant in an attempt to have the grievance against him dismissed, in exchange for a fee refund and some additional remedial conduct; the attorney also was guilty of lack of diligence and failure to communicate with clients).

Aggravating factors, such as a significant ethics history, have resulted in greater discipline for such conduct. See, e.g., In re Pocaro, 214 N.J. 46 (2013) (attorney censured for requesting that his client withdraw an ethics grievance in

exchange for forbearing from instituting a defamation action; prior discipline included a censure and a one-year suspension).

The discipline imposed for the failure to properly release funds varies, depending on the existence of other factors, such as the presence of other ethics violations, and mitigating or aggravating factors. See, e.g., In the Matter of Craig Altman, DRB 99-133 (June 17, 1999) (admonition for attorney who signed a letter of protection for a medical provider and, after the settlement was paid, did not pay the provider's bill, despite being reminded of the obligation); In re Tutt, 163 N.J. 562 (2000) (reprimand in a default case where the attorney failed to distribute funds to beneficiaries of an estate, failed to cooperate with disciplinary authorities, exhibited a lack of diligence, and failed to communicate with clients); In re Breig, 157 N.J. 630 (1999) (reprimand where attorney failed to promptly remit funds received on behalf of a client and failed to comply with recordkeeping rules); In re McKinney 139 N.J. 388 (1995) (reprimand for attorney who failed to notify his client about his receipt of settlement funds, and then disbursed those funds, as his fee, knowing they were in dispute) and In re Lesser, 139 N.J. 233 (1995) (three-month suspension where attorney failed to promptly notify client of receipt of funds and to promptly deliver those funds, failed to comply with recordkeeping

requirements, and failed to communicate with his client; the attorney had refused to comply with any of the client's multiple requests for information in respect of the status of numerous delinquent accounts he had been retained to pursue, unless the client first provided him with a list of the patient files that had been referred to him; the attorney's steadfast refusal to recognize any wrongdoing on his part, along with a prior private reprimand, was considered in aggravation).

Like the attorney in Lesser, supra, respondent, too, refuses to recognize any wrongdoing on his part, but continues, instead, to substitute his own sense of fairness for his legal and ethics obligations. In addition, and in further aggravation, we note that respondent's ethics history is marked by pervasive dishonesty (in 2013, respondent was found guilty of violating RPC 8.4(c) and making material misstatements of fact to ethics authorities; in 2016, respondent was guilty of a misrepresentation by silence; and, in June 2017, respondent was guilty of making misrepresentations to his client). Moreover, respondent clearly has failed to learn from his prior mistakes and continues to exhibit no remorse for his misconduct. In our view, respondent's egregious ethics history (1996 reprimand; 2013 three-month suspension; 2016 censure; and 2017 three-month suspension) and his serious, calculated violations here warrant

a significant period of suspension. Thus, based on the principles of progressive discipline, we determine to impose a prospective two-year suspension.

Members Hoberman and Rivera voted to imposed a prospective three-year suspension. Member Gallipoli voted to recommend respondent's disbarment. Vice-Chair Baugh and Member Zmirich did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John Andrew Klamo

Docket No. DRB 17-311

Argued: November 16, 2017

Decided: February 20, 2018

Disposition: Two-year Suspension

Members	Two-year Suspension	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:	4	2	1	2

Ellen A. Brodsky
Chief Counsel