SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 17-340
District Docket No. XIV-2014-0375E

IN THE MATTER OF

JACOB LOUIS HAFTER

AN ATTORNEY AT LAW

Decision

Argued: January 18, 2018

Decided: March 23, 2018

Steven J. Zweig appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a disciplinary recommendation for a reprimand filed by a special master. The original, three-count formal ethics complaint charged respondent with violations of RPC 1.15(a) and the principles of In re Wilson, 81 N.J. 451 (1979) (knowing misappropriation of client funds), RPC 8.1(a) (knowingly making a false statement of material fact in

connection with a disciplinary matter), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and R. 1:20A-6 (failure to provide client with required fee arbitration pre-action notice prior to filing suit) (count one); RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6) (count two); and RPC 8.1(b) (failure to cooperate with disciplinary authorities) (count three).

On October 27, 2016, the Office of Attorney Ethics (OAE) filed an amended complaint, withdrawing the allegation that respondent knowingly misappropriated client funds, and, instead, alleging violations of RPCs 1.15(a) and (c) (failure to safeguard disputed client funds in a New Jersey financial institution). The remainder of the complaint was unchanged.

The OAE recommends that respondent be suspended for three months. During the ethics hearing, respondent argued that an admonition was the appropriate sanction for his misconduct. On November 29, 2017, however, he transmitted an e-mail to the special master, stating that he would not appear at oral argument before us, and that he "consent[s] to the discipline" recommended by the special master, a reprimand. For the reasons set forth below, we determine to impose a six-month suspension.

Respondent earned admission to the New Jersey and Pennsylvania bars in 2001, to the Nevada bar in 2005, and to the

New York bar in 2012. During the relevant times, he maintained a solo law practice in Las Vegas, Nevada. He has no prior discipline in New Jersey.[1]

We turn to the facts of this case. On June 14, 2012, Dr. Neelu Pal, the grievant, retained respondent to assume her representation in a Law Against Discrimination (LAD) action pending in the United States District Court, District of New Jersey.[2] On November 5, 2012, the parties' original retainer agreement was amended in response to a dispute over respondent's handling of certain pretrial expenses; in addition, a clause requiring dispute arbitration in Nevada was stricken, and a clause addressing the immediate payment of respondent's accrued legal fees, in the event of termination, was added.

In early 2013, respondent obtained a favorable jury verdict in the LAD case, and, in September 2013, he received two checks, totaling $2,118,156.96, in full satisfaction of the award. By

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[1] On November 17, 2017, respondent was suspended from the practice of law in Nevada for six months for making intentional representations while under oath. In re Discipline of Hafter, 406 P.3d 23 (2017). In 2012, he was also reprimanded in Nevada. We did not consider this discipline in rendering our decision.

[2] The LAD statute, N.J.S.A. 10:5-12, makes it unlawful to subject people to different treatment based on race, creed, color, national origin, nationality, ancestry, race, sex (including pregnancy), familial status, marital status, domestic partnership or civil union status, sexual orientation, gender identity or expression, hereditary cellular or blood trait, genetic information, liability for military service, mental or physical disability, and AIDS and HIV status.

October 17, 2013, respondent deposited both checks in his Nevada attorney trust account, which previously had a balance of $23,062.50 in unidentified funds.

Dr. Pal also had requested that respondent assume her representation in respect of a second civil action, pending in the Superior Court of New Jersey. On or about May 2013, however, Dr. Pal terminated respondent's representation in that case. In turn, respondent averred that Dr. Pal owed him $100,268.75 in legal fees and costs for work he had performed in connection with the terminated representation; Dr. Pal refused to pay him any sum. As noted above, the amended retainer agreement provided that, in the event that Dr. Pal terminated the representation, respondent's accrued legal fees, calculated on an hourly basis, would be "immediately due and owing."

On October 1, 2013, citing the termination clause of the amended retainer agreement, respondent filed a lawsuit against Dr. Pal, in Nevada state court, alleging breach of contract, and seeking to recover his $100,268.75 fee. On October 11, 2013, Dr. Pal's husband, whom she had granted power of attorney to administer her successful court case, and, thus, to communicate with respondent, instructed him, via e-mail, to make no disbursements from Dr. Pal's $2,118,156.96 award.

Nonetheless, in an October 17, 2013 letter to Dr. Pal, respondent provided an accounting of the $2,118,156.96 award he had received in trust in her behalf, including disbursements he had already made to his firm for fees and costs. Respondent's undisputed contingent portion of the award, which he had disbursed to himself, was $847,262.76. In that letter, in respect of the terminated representation and the more than $100,000 disputed fee, respondent represented that "[w]e will be depositing $130,000 of the settlement proceeds from this case with [the court] for the court to hold pending the outcome of that case;" he added that "the monies are currently in our trust account and per state law, they do not accrue any interest for you."[3] Accompanying the letter was a check for $1,088,493.58, representing Dr. Pal's net award, per respondent's accounting, which Dr. Pal cashed.

During the ethics hearing, Dr. Pal testified that she had relied on respondent's representation that the $130,000 would be deposited "in some secure account with the court and that that money will stay there until the dispute was resolved one way or the other," adding that "I never authorized [respondent] to transfer any of this money anywhere." At the time of the ethics

[3] The additional approximately $30,000 represented attorneys' fees and costs that respondent believed he might recoup in connection with his lawsuit for the disputed $100,268.75 fee.

hearing, the Nevada court dispute over the $130,000 was proceeding. Dr. Pal had counterclaimed with an allegation of malpractice and was seeking a return of the entire withheld sum, plus fees, costs, and interest.

Despite the "holdback" representation that respondent had affirmatively made to Dr. Pal in his October 17, 2013 letter and accounting, he proceeded to disburse, for his own use, more than $100,000 of the $130,000 disputed sum, during the pendency of the Nevada state court litigation over his fee. Specifically, during the ethics hearing, respondent admitted that he had failed to maintain the $130,000, inviolate, in an IOLTA or court account, and that he had never received Dr. Pal's permission to disburse those funds. He maintained, however, that he "didn't need permission from her." Respondent confirmed that, on June 30, 2014, his IOLTA balance fell below $130,000 and remained below that amount until November 18, 2014. Moreover, as of January 31, 2015, respondent's trust account balance had fallen to $37,376.77. In the lawsuit that respondent had filed, he admitted that the fee that Dr. Pal owed him was "a question of fact in this case" and that a trial was required to determine his fee. Nevertheless, respondent maintained that $100,268.75 of the disputed sum "was mine" once Dr. Pal terminated the representation.

Additionally, respondent filed a motion for summary judgment, on November 12, 2014, representing to the Nevada court that he had "retained $130,000 of his disbursal [to Dr. Pal] as holdback against the sums due" from Dr. Pal in respect of his work completed on the second case. On the date respondent made that representation to the court, he held only $30,376.77 in his attorney trust account. By March 6, 2015, respondent had replenished his trust account to a balance of more than $130,000. Although he had filed the lawsuit for his fees, during the ethics hearing respondent admitted that he took more than $100,000 from the disputed sum, stating he did so "because it's mine, because I got tired of having to wait for Dr. Pal to play these games in court. So now it's mine." Respondent added, "I knew that we were going to win because the law is on our side on this."

During the OAE's investigation, respondent made several false representations regarding whether he had been maintaining the entire $130,000 in his IOLTA account. In a letter to the OAE, dated August 5, 2014, respondent stated that, in connection with his lawsuit against Dr. Pal, "I withheld $130,000 from" the jury award, and that "[t]he money is still in the IOLTA account to this day." The OAE later discovered, through subpoenaed bank records, that the beginning balance for respondent's trust

account, when he made that representation in August 2014, was only $117,376.77, and that the ending balance for that month was only $90,376.77.

On November 18, 2014, the date he originally was scheduled to be interviewed by the OAE, respondent transferred $100,000 from his attorney business account to his trust account, thus, increasing the balance in trust to over $130,000.

Then, on December 3, 2014, in response to the ethics grievance, respondent provided the OAE with a screenshot of his trust account balance, which was more than $130,000 at that time, in order to support his false representations that he was holding the disputed sum inviolate. That same date, during a telephonic interview, the OAE instructed respondent to produce receipts and disbursements journals for his trust account, along with client ledger cards and three-way reconciliations. During the interview, respondent repeated the representation that he was safeguarding the $130,000, stating "[i]t's still sitting in my trust account, to this day." The next day, the OAE sent respondent a follow-up letter, instructing him to hold the $130,000 in disputed funds inviolate, as required by RPC 1.15(c), until the fee dispute with Dr. Pal was resolved in court, and to send proof, by January 16, 2015, that he had been holding that sum, inviolate, since he had deposited it in

October 2013. Respondent did not provide the required records to the OAE.

Contrary to the instructions in the OAE's letter, from December 10, 2014 through February 18, 2015, respondent made eight additional electronic funds transfers, totaling $98,000, from his trust account to his business account, reducing his trust account balance to $30,376.77. On February 18, 2015, one day after the OAE sent its fourth letter demanding proof that the $130,000 had been held, inviolate, respondent transferred $90,000 from his business account into his trust account, increasing the balance in trust to $127,376.77.

On March 6, 2015, respondent again sent the OAE a screenshot of his trust account balance, which was more than $137,000 at that time, in order to support his repeated, false representations that he had been holding the disputed sum, inviolate.

On March 13, 2015, the OAE again interviewed respondent, who admitted that he did not employ an accountant or bookkeeper in respect of his recordkeeping obligations, but, instead, "I try to do stuff myself." He also admitted that he had no New Jersey trust account, and queried the OAE on what level of discipline he was potentially facing, stating, "[i]f you guys want to give me a ding, I understand." Respondent further

admitted that he did not perform three-way reconciliations of his trust account, "so I'm going to have to create those."

After the OAE again demanded detailed financial records, including respondent's business account records, respondent replied "I will – I will download and get them to you." Despite that representation, respondent neither provided those records nor replied to multiple subsequent OAE demand letters. Ultimately, with the assistance of its Nevada counterpart, the OAE subpoenaed respondent's financial records, receiving them on August 11, 2015. Upon review, the OAE concluded that respondent had failed to perform any of the recordkeeping required by R. 1:21-6.

In a March 16, 2015 letter, respondent thanked the OAE for its "on-going patience with this matter" and claimed that his ability to produce bank records had been complicated by a bank error. He also disclosed, for the first time, that trust funds, including the disputed $130,000, had been erroneously transferred to his business account, and had been used to cover shortfalls. With the letter, he enclosed some bank statements, but not the detailed financial records the OAE had repeatedly demanded. The records respondent provided disclosed that, between June and November 2014, respondent made eleven disbursements to his attorney business account from those

disputed funds, totaling $101,000, in even dollar amounts. Attached to the letter was another screenshot of his trust account balance, which was more than $137,000 at that time, intended to support his representation that he had replenished the disputed sum.

During the ethics hearing, respondent refused to answer questions posed by the OAE regarding whether he had served Dr. Pal with a pre-action notice, pursuant to R. 1:20A-6, claiming that he did not want to assist Dr. Pal in bringing further claims against him, and noting that his retainer agreement contained a waiver of arbitration. In turn, Dr. Pal testified that respondent had never served her with a R. 1:20A-6 pre-action notice, that she had never waived her right to fee arbitration in New Jersey, and that she "absolutely" would have availed herself of her right to fee arbitration, because she believed that respondent could not support his claim for fees.

Respondent further argued that the OAE had no authority to direct him to hold the $130,000 inviolate, and complained that the OAE had been threatening him with disbarment. Respondent admitted that he had deliberately disbursed the disputed funds, despite the pending Nevada court action and the OAE's instruction that he not do so, because his fee was due "immediately upon termination" and the OAE had "no jurisdiction"

to prohibit him from making disbursements of those funds. During the OAE investigation and interviews preceding the hearing, respondent had not raised the "jurisdiction" defense, but, rather, had provided the OAE with multiple screenshots purporting to demonstrate a trust account balance above $130,000.

Respondent also admitted knowing that he was required to maintain a New Jersey trust account. Although he had investigated opening one with Wells Fargo Bank, he had decided not to do so, because he did not regularly take on New Jersey matters and did not want to spend money to open the account or to deposit a minimum balance in it.

At the commencement of the ethics hearing, respondent stipulated that he committed all of the recordkeeping violations alleged in the complaint and that he failed to maintain attorney business and trust accounts in a New Jersey financial institution. He denied, however, that he had failed to cooperate in respect of the demands that he produce financial records and three-way reconciliations, asserting that the OAE did not have the authority to compel him to create records, after the fact, that comply with R. 1:21-6, and stating that he had not been willing to create any records that the OAE would use to "prosecute" him for misconduct. He added that such

reconstruction "would have been expensive, it would have been time consuming. And [the OAE] kept badgering me, in my mind, to do this."

Respondent also refuted the allegation that he had failed to safeguard Dr. Pal's funds, specifically the $130,000 under scrutiny, asserting that the OAE had failed to prove, by clear and convincing evidence, that he had committed an ethics violation. In support of this contention, respondent cited his amended retainer agreement with Dr. Pal, which stated that, upon termination, he was immediately owed his fee for work performed. Respondent dismissed the representations he had made to Dr. Pal about safeguarding the disputed funds, calling them "accommodations," and "an abundance of kindness," and further denied that he had made any misrepresentations to the Nevada court. Although respondent admitted that the Nevada court case had not been concluded, he stressed that he had won summary judgment on the issue of liability, with a remand for a trial on the amount of his fee, and, thus "in my mind" pursuant to the amended retainer agreement, "I was right, those [fees] were due immediately upon termination."

* * *

The special master determined that respondent violated RPC 1.15(c) and RPC 8.4(c). Specifically, he found that, once Dr.

Pal terminated the representation, an expressly acknowledged dispute arose as to the legal fee; yet, respondent had disbursed more than $100,000 of the $130,000 sum, during the pendency of the litigation. The special master further concluded that respondent misrepresented to both the Nevada court and to the OAE that he had been holding the $130,000, inviolate, in his trust account, pending the outcome of the litigation, when he had purposely disbursed more than $100,000 of those funds. Given those same facts, the special master further determined that respondent violated RPC 1.15(a), by disbursing those funds prior to a final adjudication in the Nevada court litigation.

The special master found that respondent committed numerous recordkeeping violations, citing respondent's concession that he was obligated to comply with R. 1:21-6, and his admissions that he had intentionally declined to open a New Jersey attorney trust account, and, in respect of his Nevada attorney trust account, that he did not maintain receipts and disbursements journals or client ledgers, and performed no three-way reconciliations. The special master emphasized that "[i]n essence, Respondent acknowledges both an obligation to follow Rule 1:21-6 and that he completely and purposefully violated the Rule."

In addition, the special master determined that respondent violated RPC 8.1(a) by making misrepresentations to the OAE during its investigation regarding his maintenance of the entire $130,000 "holdback" in his trust account. Specifically, the special master concluded that, even if respondent's misrepresentation had not been "purposeful," he had made so many transfers from his trust account and the balance had fallen below $130,000 for such a length of time that he had failed to correct a misapprehension that had arisen.

As to respondent's refusal to reconstruct his financial records, the special master declined to find respondent guilty of a failure to cooperate with the OAE. In this regard, the special master agreed with respondent's position – that he had readily admitted to the OAE that he did not maintain financial records as required by R. 1:21-6, had provided the OAE with the financial records that he had available, and had no duty to reconstruct his attorney business and trust account records.

Finally, the special master addressed the allegation that respondent had violated R. 1:20A-6 by failing to provide Dr. Pal with a pre-action notice of her right to New Jersey fee arbitration, prior to suing her. In summary, the special master determined that respondent's failure to provide the pre-action notice did not constitute a violation of RPC 1.15, and, thus,

was not relevant to the determination of the proper quantum of discipline.

In aggravation, the special master emphasized that respondent had accepted Dr. Pal's cases, and had agreed to try matters in New Jersey state and federal courts, yet had purposely chosen not to open a New Jersey attorney trust account. Additionally, the special master determined that respondent's interaction with the OAE during its investigation, and his testimony during the hearing were less than transparent, and that his timed replenishments of his attorney trust account, to balances exceeding $130,000, during the OAE's investigation, were "telling" in respect of his veracity. In mitigation, the special master noted respondent's lack of prior discipline and his sincere belief that he had earned and was entitled to the $100,268.75 fee. Finding "no comparable case for the purposes of discipline," the special master stated a "censure could be well justified," but, on balance, recommended that respondent be reprimanded.

* * *

Following a de novo review of the record, we are satisfied that the record clearly and convincingly establishes that respondent was guilty of all but one of the charges of unethical conduct set forth in the formal ethics complaint. Specifically,

we determine that respondent violated RPC 8.1(a), RPC 8.1(b), RPC 8.4(c), RPC 1.15(a), RPC 1.15(c), and RPC 1.15(d). As discussed more fully below, however, we do not make a finding of misconduct in respect of respondent's failure to provide Dr. Pal with a pre-action notice prior to filing suit to recover his fees.

In respect of count one of the complaint, Dr. Pal retained respondent to represent her in two lawsuits pending in New Jersey courts. Respondent successfully tried the first matter to conclusion, resulting in a jury award to Dr. Pal in the amount of $2,118,156.98, plus attorney's fees. Despite the fact that he was practicing in New Jersey, respondent had made a conscious decision not to open and maintain a New Jersey attorney trust and business account, as required by R. 1:21-6. Thus, he deposited the judgment proceeds into his attorney trust account in Nevada. Respondent's failure to maintain New Jersey attorney accounts, therefore, violated RPC 1.15(d).

Thereafter, Dr. Pal terminated respondent's services in the second action, and refused to pay the $100,268.75 fee that he claimed was due and owing under the retainer agreement the parties had signed. Therefore, respondent filed suit against Dr. Pal in Nevada state court, alleging breach of contract and seeking to collect his fee. Dr. Pal filed a counterclaim,

alleging malpractice. Respondent did not provide Dr. Pal with a pre-action notice, as required by R. 1:20A-6.

Subsequently, despite Dr. Pal's written instruction that respondent make no disbursements from her $2,118,156.96 award, respondent sent Dr. Pal an accounting of the monies he had received in her behalf, which included the disbursement he already had made to his firm in the amount of $847,262.76 – his undisputed contingent fee in the first action. In his letter, respondent stated that he would deposit with the court $130,000 of the settlement proceeds (representing the disputed fee plus additional attorney's fees respondent requested) pending the outcome of the fee dispute case.

Notwithstanding respondent's representation in respect of those funds, and in spite of the disputed nature of the funds, respondent did not hold them separately and intact. Indeed, he disbursed more than $100,000 of those funds for his own use. During the hearing before the special master, respondent admitted that he had not maintained those funds inviolate and that he did not have Dr. Pal's permission to use them. Rather, he insisted that the funds belonged to him because he knew he would be successful in his suit and simply "got tired of having to wait for Dr. Pal to play these games in court." Respondent's failure to maintain the disputed $130,000 in a separate account

in a New Jersey financial institution until the dispute was resolved violated both RPC 1.15(a) and (c).

A dispute clearly existed over the $130,000, as respondent acknowledged to both his former client and to the Nevada court. In fact, he had commenced a lawsuit to resolve the issue. Thus, pursuant to RPC 1.15(c), he was required to keep the $130,000 separate and intact until the dispute was resolved. In addition, pursuant to RPC 1.15(a), respondent was required to maintain those funds in a New Jersey financial institution. He knew he had an obligation to hold those funds separate, and, to that end, made multiple misrepresentations to Dr. Pal, to the Nevada courts, and to the OAE that he was complying with that duty. Specifically, he claimed that he had been safeguarding the $130,000, when, in truth, he had converted the funds for his own use. This deceptive conduct violated RPC 8.4(c).

During the OAE's investigation, respondent made false statements of material fact regarding the $130,000 in dispute. For example, in a letter to the OAE, dated August 5, 2014, respondent represented that, in connection with his lawsuit against Dr. Pal, "I withheld $130,000 from the" jury award, and that "[t]he money is still in the IOLTA account to this day." The OAE later proved, through subpoenaed bank records, that respondent had lied, and that, in August 2014, the beginning

balance for respondent's trust account was only $117,376.77 and the ending balance for that month was only $90,376.77.

During the ethics hearing, respondent admitted that he had purposely disbursed the "holdback" funds, despite the OAE's written instruction that he not do so, because his fee was due "immediately upon termination" and the OAE had "no jurisdiction" to prohibit him from making such a disbursement. On March 16, 2015, respondent finally admitted to the OAE that the $130,000 had not been held, inviolate, in his trust account. Prior to that admission however, respondent had, on multiple occasions, transferred funds from his business account to his trust account, to temporarily increase the balance in trust to over $130,000. Respondent then, on multiple occasions, provided the OAE with screenshots of his account balance, intending to support his misrepresentations that he had been maintaining the $130,000, inviolate.

In truth, between June and November 2014, respondent had made disbursements totaling $101,000 from those funds; moreover, from December 10, 2014 through February 18, 2015, after the OAE had instructed him, pursuant to RPC 1.15(c), to hold the funds inviolate, respondent made eight additional electronic funds transfers, totaling $98,000. Respondent's misrepresentations of this material fact to the OAE constituted a violation of RPC

8.1(a), and his fabrication of evidence, in the form of the timed transfers and corresponding screenshots of trust fund balances, violated both RPC 8.1(a) and RPC 8.4(c).

Although the complaint charged that respondent's failure to provide Dr. Pal with a pre-action notice for fee arbitration prior to filing the lawsuit violated R. 1:20A-6, the complaint charged no RPC violation to capture that failure and, thus, render it unethical conduct. Moreover, in a November 24, 2017 letter to us, the OAE agreed with the special master's finding that respondent's conduct in this regard did not violate the RPCs. The OAE cited, in support, our recent decision in In the Matter of Albert Anthony Ciardi, III, DRB 17-073 (September 12, 2017).[4] Given the OAE's failure to state a cognizable RPC violation in respect of this conduct, and the OAE's current position, we dismiss the alleged violation of R. 1:20A-6.

In respect of count two of the complaint, during the OAE's investigation, respondent repeatedly admitted that he had failed to comply with the recordkeeping requirements of R. 1:21-6, and had purposely determined not to maintain a New Jersey trust account. Respondent also admitted that he did not perform the three-way reconciliations of his trust account repeatedly

[4] In that case, the Board dismissed all charges against Ciardi, including those based on his failure to notify his client of his right to fee arbitration. The Court has not yet entered an Order in that case.

demanded by the OAE, stating "so I'm going to have to create those." Despite that representation, respondent did not reconstruct and provide those records, and did not reply to multiple OAE demands and deadlines. Ultimately, the OAE was forced to subpoena respondent's financial records, with the assistance of Nevada disciplinary authorities. During the ethics hearing, respondent stipulated to all of the charged recordkeeping violations. He admitted knowing that he was required to have a New Jersey trust account and that he had researched opening one with Wells Fargo Bank, but had decided not to do so. As the special master correctly determined, respondent both acknowledged his obligation to follow R. 1:21-6 and then completely and purposefully violated the Rule. He, thus, violated RPC 1.15(d).

Finally, in respect of count three of the complaint, we find unpersuasive respondent's argument that he had no duty to reconstruct financial records, as repeatedly demanded by the OAE. Rule 1:21-6(c)(1) sets forth the financial records that "attorneys . . . who practice in this state shall maintain in a current status and retain for a period of seven years after the event that they record." As set forth above, respondent admitted that he was bound by this Rule but made no attempt to adhere to it. Moreover, RPC 8.1(b) prohibits an attorney from

"knowingly fail[ing] to respond to a lawful demand for information from . . . [a] disciplinary authority." The Court routinely has found a violation of RPC 8.1(b) when an attorney has failed to comply with OAE requests for production of attorney business and trust account records, including demands that attorneys reconstruct and produce those records. We find that respondent was obligated to reconstruct the very trust account records that he was required to maintain. We, thus, determine that respondent's failure to comply with the OAE's repeated lawful demand that he reconstruct and produce financial records for his attorney business and trust accounts, which attorneys are required to maintain pursuant to R. 1:21-6(c)(1), constitutes a purposeful violation of RPC 8.1(b).

* * *

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

Respondent's most egregious infractions were his repeated and calculated misrepresentations, made to the OAE during its investigation, which the special master properly characterized as "telling" in respect of his veracity. Specifically, respondent made multiple misrepresentations to the OAE regarding his safeguarding of the $130,000 in dispute. In an attempt to bolster those misrepresentations, he fabricated supporting

evidence by repeatedly replenishing the balance of his attorney trust account via timely transfers of funds. He would then send the OAE a corresponding screenshot of his attorney trust account balance, in each instance showing funds in excess of $130,000. Respondent's efforts clearly were intended to conceal his improper invasion of the $130,000 in disputed funds, which he knew he had a duty to safeguard, and to deflect a potential charge of knowing misappropriation, which was pending at the time.

Generally, in matters involving misrepresentations to ethics authorities, the discipline ranges from a reprimand to a term of suspension, depending on the gravity of the offense, the presence of other unethical conduct, and aggravating or mitigating factors. See, e.g., In re Fusco, 197 N.J. 428 (2009) (attorney reprimanded where, in connection with an ethics matter, he falsely asserted that another attorney had drafted a response to a grievance and then signed that letter on that attorney's behalf without that attorney's authorization; prior reprimand); In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who created a phony arbitration award to mislead his partner and then lied to the OAE about the arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his numerous

professional achievements, and his pro bono contributions); In re Otlowski, 220 N.J. 217 (2015) (censure imposed on attorney who demonstrated a troubling pattern of deception toward multiple parties; the attorney made misrepresentations to a third party and to the OAE that funds deposited into his trust account had been frozen by a court order when he had disbursed the funds to various parties pursuant to his client's instructions; the attorney also made misrepresentations on an application for professional liability insurance; mitigating factors included the passage of time, the absence of a disciplinary history in the attorney's lengthy career, and his public service and charitable activities); In re Homan, 195 N.J. 185 (2008) (censure for attorney who fabricated a promissory note reflecting a loan to him from a client, forged the signature of the client's attorney-in-fact, and gave the note to the OAE during the investigation of a grievance against him and continued to mislead the OAE throughout its investigation that the note was authentic, and that it had been executed contemporaneously with its creation; ultimately, the attorney admitted his impropriety to the OAE; extremely compelling mitigating factors considered, including the attorney's impeccable forty-year professional record, the legitimacy of the loan transaction listed on the note, the fact that the attorney's fabrication of the note was

prompted by his panic at being contacted by the OAE, and his embarrassment over his failure to prepare the note contemporaneously with the loan); In re Bar-Nadav, 174 N.J. 537 (2002) (three-month suspension for attorney who submitted two fictitious letters to the district ethics committee in an attempt to justify his failure to file a divorce complaint on behalf of a client; the attorney also filed a motion on behalf of another client after his representation had ended, and failed to communicate with both clients); In re Rinaldi, 149 N.J. 22 (1997) (three-month suspension for attorney who did not diligently pursue a matter, made misrepresentations to the client about the status of the matter, and submitted three fictitious letters to the ethics committee in an attempt to show that he had worked on the matter); In re Katsios, 185 N.J. 424 (2006) (two-year suspension for attorney who prematurely released a buyer's deposit (about $20,000), which he held in escrow for a real estate transaction, to the buyer/client, his cousin, without the consent of all the parties to the transaction; ordinarily, that misconduct would have warranted no more than a reprimand, but the attorney panicked when contacted by the OAE, and then sought to cover up his misdeed by fabricating evidence; we noted that the cover-up had been worse than the "crime"); and In re Silberberg, 144 N.J. 215 (1996)

(two-year suspension imposed on attorney who, in a real estate closing, allowed the buyer to sign the name of the co-borrower; the attorney then witnessed and notarized the "signature" of the co-borrower; the attorney stipulated that he knew at the time that the co-borrower was deceased; after the filing of the ethics grievance against him, the attorney falsely stated that the co-borrower had attended the closing; on another occasion, the attorney sent a false seven-page certification to the district ethics committee in order to cover up his improprieties).

Recent disciplinary cases involving egregious violations of RPC 8.4(c), where the lie is compounded by the fabrication of documents to hide the misconduct, have resulted in the imposition of terms of suspension, even where the attorney has a non-serious ethics history. See, e.g., In re Steiert, 220 N.J. 103 (2014) and In re Carmel, 219 N.J. 539 (2014).

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

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

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

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

Attorneys also fail to promptly deliver funds to clients or third persons, even where accompanied by other ethics violations, typically receive admonitions. See, e.g., In the Matter of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-453 (March 19, 2012) (in three personal injury matters, attorney did not promptly notify his clients of his receipt of settlement funds and did not promptly disburse their share of the funds; the attorney also failed to properly communicate with the clients; mitigation considered, including attorney's unblemished record since his 1994 admission); In the Matter of Gary T. Steele, DRB 10-433 (March 29, 2011) (following a real estate closing, attorney paid himself a $49,500 fee from the closing proceeds, knowing that the client had not authorized that disbursement, and did not promptly turn over the balance of the funds to the client; the attorney also did not return the file to the client, as had been requested); and In the Matter of Joel C. Seltzer, DRB

09-009 (June 11, 2009) (attorney failed to promptly deliver funds to a third party; he also failed to memorialize the rate or basis of his fee; attorney had an unblemished record since his 1980 admission).

An admonition also 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).

Generally, a misrepresentation to a client requires the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still be imposed if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Singer, 200 N.J. 263 (2009) (reprimand imposed on an attorney who misrepresented to his client for a period of four years that he was working on the case; the attorney also exhibited gross neglect and lack of diligence, and failed to communicate with the client; no ethics history); and In re Wiewiorka, 179 N.J. 225 (2004) (reprimand for an attorney who misled the client that a complaint had been filed; in addition, the attorney took no action on the client's behalf and did not inform the client about the status of the matter and the expiration of the statute of limitations).

Ordinarily, admonitions are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In the Matter of Carl G. Zoecklein, DRB 16-167 (September 22, 2016) (attorney lacked diligence in the representation of his client, by failing to file a complaint on the client's behalf; failed to communicate with his client; and failed to cooperate with the ethics investigation; violations of RPC 1.3, RPC 1.4(b), and RPC 8.1(b); the attorney had an unblemished disciplinary record

since his 1990 admission to the bar); In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the district ethics committee investigator regarding his representation of a client in three criminal defense matters, a violation of RPC 8.1(b)); In re Gleason, 220 N.J. 350 (2015) (attorney did not file an answer to the formal ethics complaint and ignored the district ethics committee investigator's multiple attempts to obtain a copy of his client's file, a violation of RPC 8.1(b); the attorney also failed to inform his client that a planning board had dismissed his land use application, a violation of RPC 1.4(b)); and In the Matter of Raymond A. Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written, formal reply to the grievance and a copy of the filed pleadings in the underlying case, despite repeated assurances that he would do so, a violation of RPC 8.1(b)).

Here, respondent's scheming fabrication of trust account evidence and brazen deception during the OAE's investigation, which was intended to conceal his failure to safeguard the $130,000 and to defeat a looming charge of knowing misappropriation, were calculated and serious. Pursuant to the precedent of Bar-Nadav, Rinaldi, Steiert, and Carmel the range

of discipline for this variety of misconduct is a three- to six-month suspension.

In crafting the appropriate sanction, however, we must weigh respondent's additional serious misconduct. In addition to his violations of RPC 8.1(a) and RPC 8.4(c), respondent intentionally failed to maintain a New Jersey attorney trust account, as required by RPC 1.15(a); failed to keep the $130,000 in disputed funds separate and inviolate, as required by RPC 1.15(c); failed to maintain the funds in a New Jersey financial institution, as required by RPC 1.15(a); wholly ignored the recordkeeping requirements imposed on New Jersey attorneys, in violation of RPC 1.15(d); and failed to cooperate with the OAE's demands that he produce financial records to comply with R. 1:21-6, in violation of RPC 8.1(b).

In aggravation, respondent's unyielding attempts to place himself above reproach in respect of his failure to safeguard the $130,000, despite his statements to his client, the Nevada court, and the OAE, and his admittedly known obligation to comply with RPC 1.15(c), illustrates respondent's arrogance, his lack of remorse, and his refusal to accept responsibility for his misconduct.

The only mitigation to consider is respondent's lack of prior discipline in New Jersey. We, however, accord this factor

limited weight, given respondent's correspondingly limited practice of law in New Jersey.

Respondent's duplicity and astounding denials of wrongdoing in respect of his conversion of the more than $100,000 of funds that he was duty-bound to safeguard convince us that he presents a substantial danger to the public. Moreover, the sanction to be imposed must also account for respondent's additional misconduct, some of which he openly admitted. Neither the special master nor the OAE examined respondent's misconduct through the precedential lens of Steiert and Carmel. Accordingly, in our view, given those recent decisions addressing egregious violations of RPC 8.4(c), we determine that respondent's serious misconduct is deserving of a six-month suspension.

Chair Frost and Member Zmirich did not participate. Member Gallipoli would remand the matter to the OAE for the filing of a complaint charging respondent with the knowing misappropriation of client funds.

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
Edna Y. Baugh, Vice-Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jacob Louis Hafter

Docket No. DRB 17-340

Argued: January 18, 2018

Decided: March 23, 2018

Disposition: Six-month Suspension

Members	Six-month Suspension	Remand	Did not participate
Frost			X
Baugh	X		
Boyer	X		
Clark	X		
Gallipoli		X	
Hoberman	X		
Rivera	X		
Singer	X		
Zmirich			X
Total:	6	1	2

Ellen A. Brodsky
Chief Counsel