Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-248
District Docket No. VII-2017-0002E

In The Matter Of

Michael Evan Weintraub

Attorney At Law

Decision

Argued: October 18, 2018

Decided: December 28, 2018

Thomas M. Letizia appeared on behalf of the District VII 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 disciplinary stipulation filed by the District VII Ethics Committee (DEC), in which respondent admitted having violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice).

The DEC recommended a reprimand. We determine to impose a six-month suspension.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1996. He has no prior discipline.

The facts are contained in a July 2, 2018 stipulation between respondent and the DEC. During the relevant time, respondent was employed as an associate attorney at the law firm of Peluso, Castelluci & Weintraub P.C. (PC&W). Samuel L. Peluso, Esq., PC&W's sole shareholder, is the grievant.

In August 2006,[1] Philip and Bernadette Dunphy retained respondent to represent them in connection with an action against their investment advisor/broker for alleged mismanagement of investments in the profit-sharing plan of their physical therapy company. In December 2006, respondent filed a breach of contract action in the Superior Court of New Jersey, Monmouth County, against the broker and the broker's "back office."

In May 2007, the parties filed a stipulation of dismissal, after respondent learned that the Superior Court action was improper, because the venue for such a claim more properly rested with the Financial Industry Regulatory Authority (FINRA).

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[1] Erroneously referred to in the stipulation as 2016.

FINRA rules required respondent to file a statement of claim on behalf of the Dunphys no later than six years from the date of the last event that gave rise to the claim, either June 30 or December 7, 2012, depending on whether the Superior Court action tolled the claim. Nevertheless, respondent failed to file a claim until April 3, 2013, four months after the later deadline.

After filing the claim, respondent missed critical deadlines and failed to file responsive pleadings to the defendants' motions. In October 2013, defendants filed a motion to dismiss the Dunphys' claims. Respondent failed to oppose that motion and, on January 15, 2014,[2] a FINRA arbitration panel granted the defendants' motion to dismiss the action.

Additionally, from August 2007 through January 2014, the Dunphys periodically contacted respondent for information about the status of their matter, but respondent repeatedly lied to them that the matter was proceeding apace. Yet, he had taken no action to advance their claims, from May 2007, when the Superior Court action was dismissed, until April 2013, when he filed the late FINRA claim.

In June 2015, the Dunphys served respondent with a complaint against him and PC&W, alleging legal malpractice for the law firm's poor handling of

[2] Erroneously referred to in the stipulation as 2004.

the brokerage matter. Respondent failed to inform Peluso or PC&W of his receipt of the complaint, or to file answers for himself and the law firm. During the following year, respondent met twice with, and had other communications with, the Dunphys' malpractice attorney, but did not disclose those communications to Peluso or PC&W.

In January 2016, the court entered a default judgment against respondent and PC&W for damages and costs totaling $453,583. Respondent concealed the default judgment from Peluso and the law firm. Thereafter, respondent was served with subpoenas seeking post-judgment discovery, including information about PC&W's bank accounts, but he concealed the subpoenas from Peluso. Instead, he furnished the Dunphys' attorney with PC&W's operating and payroll bank account information, without revealing to Peluso or PC&W that he had done so.

On June 23, 2016, Peluso received a notice in respect of a writ of execution that had been placed on PC&W's operating and payroll accounts. When Peluso questioned respondent about the levy, he replied that "[i]t was the first [he] heard about it." When asked whether he had been served with a complaint against PC&W and failed to answer it, respondent replied, "Not that I can recall."

After Peluso pressed for more information, respondent finally admitted having intentionally concealed the malpractice action and default judgment against PC&W. He also admitted having deposited $3,500 of his own funds into the law firm operating account to cover checks that otherwise would have been returned for insufficient funds due to the levy.

According to the stipulation, respondent acknowledged that he had intentionally:

> (1) Hid[den] and secreted information from [PC&W] regarding his handling of the original Dunphy Brokerage Matter;
>
> (2) Concealed, misdirected and lied regarding (i) being served with the complaint in the Malpractice Action; (ii) being served with the request to enter and entry of default; (iii) his participation in supplemental post-judgment discovery proceedings; (iv) the pendency of a motion for contempt seeking attorney's fees; and
>
> (3) Intercepted and removed from the flow of information within [PC&W]: documents evidencing service of the complaint in the Malpractice Action; the entry of default judgment; and his participation in supplemental post-judgment discovery proceedings.

When Peluso ultimately filed a motion in Superior Court to vacate the default judgment against PC&W, respondent furnished his own certification acknowledging his concealment of the malpractice action.

The DEC recommended a reprimand, citing respondent's misrepresentations and concealment of material information as his most

serious infractions. The DEC noted that, had respondent's misconduct spanned multiple matters, or, had he forged court documents, a censure might have been warranted.

In mitigation, the parties cited respondent's lack of prior discipline.

Following a full review of the record, we are satisfied that the stipulation clearly and convincingly establishes that respondent's conduct violated RPC 1.1(a), RPC 1.3, RPC 8.4(c), and RPC 8.4(d).

Respondent stipulated that his actions in respect of the brokerage action for the Dunphys and his later concealment were improper. Specifically, in December 2006, respondent filed a breach of contract action in Superior Court, but in May 2007, filed a stipulation of dismissal after being informed that the proper venue for the claim lay with FINRA.

Thereafter, for more than six years, respondent took no action to prosecute the Dunphys' claims. In April 2013, he finally filed a claim with FINRA, but missed deadlines and failed to file responsive pleadings to the defendants' motions. Moreover, his claim was filed between four and ten months late. In October 2013, defendants filed a motion to dismiss the Dunphys' claims. Respondent failed to oppose the motion, resulting in a January 15, 2014 FINRA determination to dismiss the Dunphys' claim.

Respondent's inaction in the above regard amounted to gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively.

In respect of RPC 8.4(c), over a span of almost seven years, from August 2007 through January 2014, the Dunphys' communicated with respondent for information about their matter. Respondent repeatedly lied that the matter was proceeding apace, when it had been dismissed as a result of his own neglect. Respondent's repeated and prolonged misrepresentations violated RPC 8.4(c).

In June 2015, the Dunphys filed a legal malpractice complaint against respondent and PC&W based on respondent's mishandling of the brokerage claim. Respondent failed to file an answer for himself or the law firm, and, further, hid the existence of the matter from Peluso. Although respondent spent the next year meeting and communicating with the Dunphys' malpractice attorney, he never told Peluso or PC&W about the malpractice action, resulting in a January 2016 default judgment against respondent and PC&W for $453,583.

Moreover, respondent concealed the default judgment from Peluso and the law firm, surreptitiously supplied the plaintiff with information about PC&W's bank accounts, and deposited $3,500 of his own funds into the law firm operating account to hide his misconduct.

In June 2016, Peluso finally uncovered respondent's wrongdoing after he received a notice of writ of execution placed on PC&W's operating and payroll accounts. Even at that late juncture, however, respondent's primary reaction was to lie – he misrepresented to Peluso that he was unaware of the writ and did not recall having received a complaint against the law firm.

Respondent ultimately "came clean," admitting to Peluso that he had concealed the malpractice action, the default judgment against PC&W, and his deposit of $3,500 into the operating account. Respondent's pattern of lies and omissions to Peluso and the law firm were dishonest and deceitful, additional violations of RPC 8.4(c).

Finally, by concealing from Peluso and PC&W the existence of the malpractice action, respondent adversely affected the course of that litigation, resulting in the entry of a $453,583 judgment against the firm.[3] Additionally, resources were required to address PC&W's motion to vacate the default, all of which was the direct result of respondent's improper actions. Thus, respondent is guilty of having violated RPC 8.4(d).

[3] At oral argument before us, respondent stated that PC&W's motion to vacate the judgment was granted as to the law firm, and the case resolved with its insurance carrier. The judgment against respondent, however, is still in force.

Conduct prejudicial to the administration of justice comes in a variety of forms, but the discipline imposed for that misconduct typically results in at least a reprimand. See, e.g., In re Cerza, 220 N.J. 215 (2015) (attorney failed to comply with an order requiring him to produce subpoenaed documents in a bankruptcy matter, a violation of RPC 3.4(c) and RPC 8.4(d); he also exhibited a lack of diligence and failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b)) and In re Gellene, 203 N.J. 443 (2010) (attorney found guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney also was guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors considered were the attorney's financial problems, his battle with depression, and significant family problems; two prior private reprimands and an admonition).

Misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). See, e.g., In re Dwyer, 223 N.J. 240 (2015) (reprimand for attorney who made a misrepresentation by silence to his client, by failing to inform her that her complaint had been dismissed, a violation of RPC 8.4(c); violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b) and (c), and RPC

3.2 also found); In re Ruffolo, 220 N.J. 353 (2015) (reprimand for attorney who assured the client that his matter was proceeding apace, knowing that the complaint had been dismissed, and that the expectation of a monetary award in the near future was false, in violation of RPC 8.4(c)); violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b) also found).

The sanction imposed on attorneys who, in addition, have lied to clients and/or third parties, often found alongside fabricated documents to conceal their mishandling of legal matters, has ranged from a reprimand to a long-term suspension, depending on the facts of each case, including the extent or prolonged nature of the wrongdoing, the harm to the clients or others, and the presence of mitigating circumstances. See, e.g., In re Walcott, 217 N.J. 367 (2014) (reprimand for attorney who misrepresented to a third party, in writing, that he was holding $2,000 in escrow from his client as collateral for a settlement agreement; violations of RPC 4.1(a)(1) and RPC 8.4(c)); 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 Office of Attorney Ethics (OAE) during the investigation of a grievance against him; the attorney told the OAE that the note was genuine 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, and 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 Brollesy, 217 N.J. 307 (2014) (three-month suspension in a consent to discipline matter for an attorney who misled his client, a Swedish pharmaceutical company, that he had obtained visa approval for one of the company's top-level executives to begin working in the United States; although the attorney had filed an initial application for the visa, he took no further action thereafter and failed to keep the client informed about the status of the case; in order to conceal his inaction, the attorney lied to the client, fabricated a letter purportedly from the United States Embassy, and forged the signature of a fictitious United States Consul to it, in violation of RPC 8.4(c); violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b) also found; mitigation included the attorney's twenty years at the bar without prior discipline and his ready admission of wrongdoing by entering into a disciplinary stipulation); In re Yates, 212 N.J. 188 (2012) (three-month suspension for attorney who allowed the statute of limitations to expire on a medical malpractice claim; over the course of the year that followed, he hid that fact from the client and his firm by

stalling all communications with the client, until eventually fabricating a $600,000 settlement agreement; when the client visited the law office to demand the settlement funds, the attorney admitted his misconduct, after which the client filed a malpractice action against him and the firm; in mitigation, the attorney had a thirty-year career with no disciplinary record and cooperated with the OAE by entering into a stipulation); In re Kasdan, 115 N.J. 472 (three-month suspension for misconduct in six matters, including numerous misrepresentations to a client that a complaint had been filed and preparation and delivery of a false pleading to the client; in another case, the attorney concealed from the client the fact that the case was dismissed due to her failure to answer interrogatories; she then repeatedly misrepresented the status of the case and fabricated trial dates to mislead the client; in two other cases, a real estate closing and a custody matter, the attorney ignored the clients' numerous requests for information; in two other real estate matters, she engaged in gross neglect when closing title without securing payment of the purchase price from her clients; she also knowingly delivered to the seller's attorney a trust account check drawn against insufficient funds); In re Bosies, 138 N.J. 169 (1994) (six-month suspension for misconduct in four matters; in one matter, for a period of five months, the attorney engaged in an elaborate scheme to mislead his clients that, although he had subpoenaed a witness, the

witness was not cooperating; to "stall" the client, the attorney prepared a motion for sanctions against the witness, which he showed the client but never filed with the court; he then informed the client that the judge had declined to impose sanctions; thereafter, the attorney traveled three hours with his client to a non-existent deposition, feigned surprise when the witness did not appear, and then traveled to the courthouse purportedly to advise the judge of the witness's failure to appear at the deposition; the attorney also was found guilty of a pattern of neglect, lack of diligence, failure to communicate with clients, failure to abide by discovery deadlines contained in a court order, failure to abide by the clients' decisions concerning the representation, and a pattern of misrepresentations; although the attorney's conduct involved only four matters, the six-month suspension was predicated on his pattern of deceit); In re Morell, 180 N.J. 153 (2004) (reciprocal discipline matter; one-year suspension for attorney who told elaborate lies to the client about the status of the case and fabricated documents, including a court notice and a settlement statement for his clients' signature); In re Weingart, 127 N.J. 1 (1992) (two-year suspension, all but six months of which were suspended; the attorney lied to his client about the status of the case and prepared and submitted to his client, to the Office of the Attorney General, and to the Administrative Office of the Courts a fictitious complaint to mislead the client that a lawsuit had

been filed; the attorney was also found guilty of lack of diligence, failure to communicate, dishonesty and misrepresentation, and conduct prejudicial to the administration of justice); In re Penn, 172 N.J. 38 (2002) (three-year suspension in a default matter for attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, in order to placate the client, the attorney lied that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible); and In re Yacavino, 100 N.J. 50 (1985) (three-year suspension for attorney who prepared and presented to his clients two fictitious orders of adoption to conceal his neglect in failing to advance an uncomplicated adoption matter for nineteen months; the attorney misrepresented the status of the matter to his clients on several occasions; in mitigation, the Court considered the absence of any purpose of self-enrichment, the aberrational character of the attorney's behavior, and his prompt and full cooperation with law enforcement and disciplinary matters).

This case is similar to Yates (three-month suspension), where, like respondent, the attorney allowed the statute of limitations on his client's claim to expire, and thereafter hid his inaction from the client and his law firm.

Ultimately, the client filed a malpractice action against respondent and the law firm.

Yates' improper actions took place over a one-year period, whereas respondent's improper activities occurred over the course of ten years, and continuing even after the clients filed a malpractice claim against him and the law firm. Although respondent did not engage in fabrication of documents, he intercepted incoming documents related to the malpractice litigation to conceal them from the law firm, and furnished law firm bank account information to the plaintiffs, equally serious acts. Moreover, respondent disclosed proprietary information about the law firm's bank accounts — another serious breach. Not once, over the entire ten-year period, did respondent reveal his misconduct. Indeed, only after he was finally discovered and backed into a corner did respondent finally admit his misdeeds. In addition, respondent's actions caused harm to his clients and the law firm – a $453,583 malpractice judgment against respondent and PC&W.

In mitigation, Yates had no prior discipline in thirty years at the bar, against respondent's twenty-two years. Both attorneys admitted their misconduct and entered into disciplinary stipulations.

For respondent's prolonged, serious, and harmful dishonest and deceitful actions, spanning a period of ten (10) years, we determine that a six-month suspension is warranted.

Vice-Chair Clark and Member Boyer voted for a three-month suspension. Member Gallipoli voted for a one-year suspension. Member Joseph 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: Paula A. Franzese
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael Evan Weintraub
Docket No. DRB 18-248

Argued: October 18, 2018

Decided: December 28, 2018

Disposition: Six-Month Suspension

Members	Six-Month Suspension	Three-Month Suspension	One-Year Suspension	Recused	Did Not Participate
Frost	X				
Clark		X			
Boyer		X			
Gallipoli			X		
Hoberman	X				
Joseph					X
Rivera	X				
Singer	X				
Zmirich	X				
Total:	5	2	1	0	1

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