Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 18-420
District Docket Nos. XIV-2014-0511E;
XIV-2015-0143E and XIV-2016-0178E

In the Matter of	:	
Arnold M. Abramowitz	:	
An Attorney at Law	:	
	:	Decision

Argued: March 21, 2019

Decided: August 28, 2019

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Catherine M. Brown appeared on behalf of respondent.

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 two-year suspension filed by a special master. Two complaints filed by the Office of Attorney Ethics (OAE) were consolidated for hearing. One complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4 presumably (b) and (c) (failure to communicate with the

client), RPC 1.8(e) (conflict of interest), RPC 1.15(a) (commingling and negligent misappropriation), RPC 1.15(b) (failure to promptly deliver funds to a third party), RPC 1.15(d) and R. 1:21-6 (recordkeeping), RPC 3.3(a) (knowingly making a false statement to a tribunal), RPC 3.4(c) (failure to comply with a court order), RPC 5.4(a) (improper fee-sharing; employing a runner), RPC 5.5(a) (practicing law while suspended), RPC 8.1(a) (false statements to ethics authorities), RPC 8.1(b) (failure to cooperate with an ethics investigation), RPC 8.4(b) (engaging in a criminal act), RPC 8.4(c) (misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). A second complaint alleged gross neglect; lack of diligence; failure to communicate with the client; and conduct involving dishonesty, fraud, deceit or misrepresentation.

For the reasons set forth below, we recommend respondent be disbarred.

Respondent was admitted to the New Jersey bar in 1976. He has an extensive disciplinary history. In 1995, he received an admonition for lack of diligence in pursuing his indigent client's appeal from a criminal conviction, resulting in the dismissal of the appeal for lack of prosecution. The client did not suffer irreparable harm because the court reinstated his appeal. In the Matter of Arnold M. Abramowitz, DRB 95-399 (November 28, 1995).

In 1996, respondent received a second admonition, this time for failure to keep his personal injury client informed about the status of his case and failure to comply with the client's numerous requests for information. We considered that the client was not harmed, and that respondent was beset by personal problems at the time of his ethics infractions. In the Matter of Arnold M. Abramowitz, DRB 95-480 (April 3, 1996).

In 1997, respondent received a third admonition, after he failed to comply with a district ethics committee's requests for information about a grievance filed against him. In the Matter of Arnold M. Abramowitz, DRB 97-150 (July 25, 1997).

On February 13, 2008, in a default matter, respondent received a reprimand for lack of diligence, failure to communicate with clients, and failure to cooperate in the ethics investigations of two separate client matters. In re Abramowitz, 193 N.J. 490 (2008).

On March 13, 2009, respondent was suspended for three months, in another default matter, for grossly neglecting a real estate transaction and preparing a real estate document containing false information. In re Abramowitz, 197 N.J. 504 (2009). He was reinstated to the practice of law on August 26, 2009. In re Abramowitz, 200 N.J. 212 (2009).

In a third default matter, respondent was suspended for one year, effective April 13, 2015, for gross neglect, pattern of neglect, failure to communicate with the client, and failure to cooperate with ethics authorities. In re Abramowitz, 220 N.J. 589 (2015).

Respondent remains suspended to date.

I. District Docket Nos. XIV-2014-0511E and XIV-2015-0143E

On April 2, 2013, Matthew H. Rudd, Esq., an attorney with the Department of Consumer Affairs (DCA) filed two grievances against respondent with the District VB Ethics Committee (DEC), related to respondent's handling of two loans from its Lead Hazard Control Assistance Program (LHCP).

On September 23, 2014, the OAE docketed a grievance against respondent (XIV-2014-0511E) to investigate the financial aspect of the DCA grievances. The OAE ultimately filed a complaint against respondent for his handling of the Gentry Henderson and Marie Benoit loans.

The Henderson Matter

The DCA retained respondent to conduct a closing related to a loan issued to Gentry Henderson in connection with its lead abatement loan program.

Respondent's agreement with the DCA required him to place all loan proceeds in escrow and to make loan disbursements, as specified in the DCA's instructions. On December 29, 2011 and May 8, 2012, respondent deposited $31,000 and $137,652.86, respectively into his attorney trust account (ATA), for a total of $168,652.86, on account of the Henderson loan.

Serving as settlement agent, respondent prepared a November 14, 2012 HUD-1 Settlement Statement for the transaction, requiring him to disburse $164,198.64 to a number of payees, and $4,454.22 to Henderson.

Respondent's client ledger card for the Henderson loan showed that, as of November 14, 2012, the settlement date, he had disbursed all but $6,900.25 of the loan proceeds from the ATA. He admitted that he did not record the mortgage or cancel four tax liens associated with the closing, until May 20, 2013, six months after the settlement. Further, he failed to satisfy the title fees or disburse his attorney fees ($1,000) until June 4, 2013. Respondent did not disburse the remaining $4,454.22 balance to the DCA until September 11, 2014.

Respondent told the OAE that he had been confused about which party was entitled to the remaining $4,454.22. Because the Henderson loan was his first DCA lead abatement transaction, he was not familiar with the program's requirements. According to the HUD-1, the funds should have been disbursed to Henderson, but respondent was unsure whether he should disburse them to Henderson or the DCA. Although respondent initially issued an April 14, 2014 check to Henderson for $4,454.22, he subsequently voided that check when he learned that any funds remaining after all vendors had been paid belonged to the DCA. Therefore, on September 11, 2014, respondent disbursed $4,454.22 to the DCA. The record does not reveal the status of the Henderson check.

The complaint charged that respondent failed to promptly deliver funds to clients or third parties, a violation of RPC 1.15(b), based on his issuance of a check to Henderson on April 14, 2014, and another to the title company for title fees on June 4, 2014, both of which were issued well after the November 14, 2012 loan closing. The complaint further alleged commingling, based on respondent's failure to remove his legal fees from the ATA until June 4, 2014.

Respondent conceded that, because he had not performed three-way reconciliations of his ATA, the OAE was unable to verify that he had maintained the Henderson funds intact until all of the monies were disbursed.

He admitted that he failed to comply with the recordkeeping requirements of R. 1:21-6, a violation of RPC 1.15(d).

The Benoit Matter

The DCA also retained respondent to handle a lead abatement loan to Marie Benoit. As in the Henderson matter, the DCA agreement required respondent to place the loan proceeds in escrow and to disburse the funds according to the DCA's instructions. On April 18 and June 6, 2012, he deposited in his ATA two checks totaling $151,553.50. As settlement agent, respondent prepared the HUD-1 statement, which required the disbursement of $151,553.50 to a number of payees, including $230 to record the mortgage. Because the HUD-1 failed to include a $100 estimated recording fee, the total of the settlement costs on the HUD-1 was incorrect.

The HUD-1 was dated July 30, 2012, but the closing took place on May 20, 2013. Although respondent's answer admitted that he had commingled funds by retaining his legal fee in the ATA until May 29, 2013, about ten months after the original closing date, he actually had removed his legal fee nine days after the closing.

Similarly, although respondent's answer admitted that he failed to promptly disburse $20 to Benoit, he testified at the hearing that he had been

mistaken and that the $20 actually belonged to him because he had disbursed to himself only $931 of his $1,000 legal fee.

In the Benoit matter, the complaint charged respondent with failing to promptly deliver funds ($20) to the client or a third party, commingling for failure to promptly take his fee after the closing date, and recordkeeping violations. Although respondent admitted the recordkeeping violations, in his answer and testimony below, he denied the remaining charges.

The Brown Overdraft Matter

Respondent admitted the facts alleged in the complaint with regard to an overdraft in his ATA. On March 30, 2015, Wells Fargo Bank notified the OAE of a $200.61 overdraft in respondent's ATA, after an $840 trust account check, payable to "Seth Myers Medical" was presented against insufficient funds. Wells Fargo honored the check and assessed a $35 fee for the overdraft.

In a May 21, 2015 letter to the OAE, respondent explained that the overdraft resulted from a $349 erroneous overpayment to his client, Denise Brown. Brown had retained respondent in July 2012 to represent her in a personal injury claim. The matter settled and, on September 24, 2012, respondent received a $2,500 partial settlement from MetLife Insurance

Company (MetLife). On April 23, 2014, respondent issued a $1,200 ATA check for an expert report.

On July 14, 2014, respondent deposited into the ATA $112,500, representing the final Brown settlement proceeds. When calculating costs, respondent erroneously deducted $1,200 for the expert report, an expense he previously had paid from the MetLife settlement funds, thereby inflating the total costs figure by $1,200. On July 21, 2014, respondent disbursed Brown's settlement proceeds to her, and overdisbursed his fees and costs by $1,200 when he issued an ATA check for $39,930.98, rather than $38,730.98.

As a result of the disbursement error, on July 21, 2014, the balance in the ATA for the Brown matter was $1,126. Respondent testified that, because he had no bill for the physical therapy services, he contacted the provider and was told that the services totaled $3,600. After negotiating the final bill to $1,475, he immediately disbursed a February 4, 2015 ATA check to the provider for $1,475, which created a negative balance of $349.

Respondent's May 21, 2015 letter to the OAE asserted that, after he realized his error, he deposited $1,200 of his own funds into the ATA and issued a May 20, 2015 check to Brown for the $851 balance that he calculated she was due: ($1,200 - $349 = $851). However, respondent's subpoenaed bank records revealed that, contrary to his representation to the OAE, he had

deposited only $851, not $1,200, into his ATA, leaving a balance of $502 in the ATA on account of the Brown matter ($851 - $349 = $502). On the same date, respondent issued an ATA check to Brown for $851. That check posted to his account on June 8, 2015, creating another $349 negative balance in the Brown matter.

The OAE also determined that, on July 23, 2015, respondent deposited a $650 personal check into his attorney trust account, which cured the $349 Brown shortage.

Respondent admitted that, from February 9, 2015, when the $1,475 check for physical therapy cleared the account, until May 20, 2015, when respondent corrected the shortage, he invaded other clients' funds in the ATA, and did so again on June 8, 2015, when his $851 check to Brown posted to the ATA.

Respondent, therefore, admitted that he negligently misappropriated client funds, and committed recordkeeping infractions.

Respondent denied that the ten-month delay, from July 21, 2014 to May 20, 2015, in delivering the $851 to Brown constituted failure to promptly deliver funds. Likewise, respondent denied that his claim to the OAE that he had deposited $1,200 in his ATA constituted a false statement to ethics authorities. Rather, he testified that he became "so excited" to have found that

funds were not missing from the ATA he mistakenly referred to those instances as "deposits" rather than as funds that already had been in the ATA. He denied any intention to mislead the OAE, because he was fully aware that OAE investigators would be carefully reviewing his ATA.

The Aladi and Igbinosun Matters

On June 1, 2011, in three matters involving clients Jennifer Aladi, Justice Igbinosun (Justice) and Joanne Igbinosun (Joanne), respondent deposited in his ATA settlement funds of $1,100 per client. Each client was to receive $825 with the remaining $275 representing respondent's fee. On June 6, 2011, respondent issued to himself three ATA checks, each for $275, but incorrectly disbursed $875, instead of $825, to each of the three clients. As a result, respondent over disbursed $150. He told the OAE that he had been unaware of the shortage until he reconciled the ATA during the ethics investigation. On July 23, 2015, he deposited $150 into the ATA to correct the shortage. Therefore, from June 13, 2011 until July 23, 2015, he invaded other clients' funds in the ATA.

Respondent admitted that he negligently misappropriated client funds and failed to comply with recordkeeping rules.

The Garrigan Matter

Kenneth Garrigan retained respondent for a workers' compensation matter. On May 6, 2011, respondent deposited the $123,119 settlement proceeds into his ATA on Garrigan's behalf. Garrigan asked respondent to disburse his share of the proceeds over a six-month period. Consequently, on August 10, 2011, respondent held $40,000 in the ATA for Garrigan.

Respondent made a series of disbursements to Garrigan, but neglected to record them accurately on his ledger sheet. As a result, respondent's ledger showed a balance of $30,000, when the actual balance was only $20,000.

Thereafter, Garrigan called respondent requesting the remainder of his funds. On November 22, 2011, respondent issued an ATA check to Garrigan for $29,970, subtracting $30 for a wire fee. Therefore, respondent over disbursed $9,970 to Garrigan. Respondent was unaware of the shortage until he reconciled his attorney trust account during the OAE investigation. On May 15, 2015, respondent deposited $13,162.38 into the ATA, to correct that shortage, as well as other shortages.

Respondent admitted that the ATA contained a shortage from November 23, 2011 until May 15, 2015, about three-and-a-half years; that in the interim, he invaded other clients' funds held in the ATA; and thus, he negligently misappropriated funds and committed recordkeeping violations.

The Dessin Matter

Respondent represented Wesley Dessin in a personal injury matter. On August 3, 2012, he deposited a $3,000 settlement check into his ATA and, on August 8, 2012, issued a $2,000 ATA check to Dessin, leaving a $1,000 balance.

On August 22, 2012, respondent deposited a second settlement check for $9,000 into the ATA, which brought the balance on account of Dessin to $10,000. Thereafter, on August 29, 2012, respondent issued two checks totaling $2,300 for Dessin's medical costs. On that same date, having forgotten that Dessin already had received $2,000 toward his settlement share, respondent disbursed an additional $5,488 to the client, instead of the $3,488 due to Dessin. Respondent was unaware of the shortage until he reconciled the ATA during the OAE investigation.

On May 15, 2015, respondent deposited $13,162.38 of his own funds into the ATA to correct multiple shortages, including the $2,000 shortage in the Dessin matter. However, as a result of his error, from October 3, 2012 until May 15, 2015, respondent invaded other clients' funds in the ATA.

Respondent admitted in his answer and testimony that he negligently misappropriated client funds and was guilty of recordkeeping violations.

The Young Matter

Respondent represented Leroy Young in a personal injury matter that settled on June 10, 2013 for $17,500. The State of Connecticut held a lien for Young's child support arrearages, which the insurance company paid directly, before forwarding to respondent the balance of $15,752.36. Respondent deposited the $15,752.36 into his ATA on August 20, 2013.

When respondent prepared the disbursement checks for the matter, he mistakenly disbursed funds based on the full $17,500 settlement amount, rather than the $15,752.36 he had received. By September 10, 2013, most of the other disbursements cleared the ATA, creating a shortage of $1,747.64. Respondent had been unaware of the shortage until he reconciled the ATA during the ethics investigation, at which time he deposited his own funds to correct the shortage. Therefore, from September 10, 2013 until May 15, 2015, respondent invaded other client funds in the ATA.

Respondent admitted in his answer that his actions constituted negligent misappropriation and recordkeeping violations.

The Massie Matter

Respondent represented Sabrina Massie in a September 21, 2012 real estate closing in which he also served as settlement agent. On September 25,

2012, he deposited $102,876.38 into his ATA and issued checks from that account totaling $100,355.33, leaving a balance of $2,521.05.

On December 15, 2013, respondent voided a stale, outstanding ATA check to Choice Title Agency for $1,430 and issued a replacement check in the same amount. When the replacement check posted to the ATA, it left a balance in the account of $2,521.05 for Massie.

On April 15, 2014, respondent issued an ATA check to himself for "partial legal fees" in the amount of $1,091.14. That check posted to the account the next day, leaving a balance in the ATA of $1,429.94.

In a letter to the OAE, respondent asserted that, when he reconciled his ATA for the ethics investigation, he found what he thought was a mistake regarding the voided stale check. He told the OAE that he deposited $1,429.94 to cure the shortage. The OAE reconstruction of the transaction, however, revealed no deposit in the amount of $1,429.94, contrary to respondent's letter, which had failed to state that the funds were included in a larger, May 15, 2015 deposit.

During respondent's own reconciliation efforts, he discovered that he had failed to withdraw part of his fees in the Massie matter and, thus, issued an ATA check to himself for $1,350.11 on May 27, 2015, as well as a check to Massie for $79.83 to zero out the client ledger. On June 3, 2015, when those

checks totaling $1,429.94 posted to the ATA, they created a shortage of three cents in the Massie matter.

Respondent testified that he could not ascertain where he had made a mathematical "mistake" in the matter, and took his fee in May 2015, after studying the matter for hours. He also claimed that the funds that remained in his ATA after the closing must have been his legal fees and costs. On that basis, he denied that he failed to promptly deliver funds to clients or third parties.

Respondent, however, admitted that the three-cent shortage in the ATA invaded other client funds, constituting negligent misappropriation, and that he committed recordkeeping infractions.

As in the Brown overdraft matter, respondent denied that his representation to the OAE that he "deposited" funds into the ATA constituted a false statement to ethics authorities, in violation of RPC 8.1(a) and RPC 8.4(c). Here, too, he claims to have become "so excited" to find missing funds that he mistakenly referred to them as "deposits." He had not intended to mislead the OAE, because he was fully aware that OAE investigators would review the ATA. OAE Disciplinary Auditor Harry Rodriguez conceded that respondent's actions were the functional equivalent of deposits.

The Brooke Matter

On April 10, 2015, respondent deposited $10,000 in settlement funds in his ATA on behalf of Shaquana Brooke, a personal injury client. On April 16, 2015, respondent disbursed $4,703.34 to Brooke and $3,496.66 to himself as his legal fees and costs. The $1,800 balance was to remain escrowed for medical expenses. On May 29, 2015, respondent paid Iron Bound MRI $750, Jersey Rehabilitation $250, and Dr. Intintola $800.

Although respondent's checks to Iron Bound MRI and Jersey Rehabilitation posted to the ATA in June 2015, the $800 check to Dr. Intintola remained outstanding. On June 23, 2015, the balance in the ATA was $822.39.

On June 30, 2015, however, the ATA balance dropped to $172.39. As a result, the ATA had insufficient funds for the $800 payment to Dr. Intintola.

On July 23, 2015, respondent deposited $650 into the ATA, bringing the balance to $822.39. Ultimately, in October 2015, respondent issued a replacement ATA check to Dr. Intintola for $800, which cleared and zeroed out the Brooke matter.

According to the complaint, in June 2015, Dr. Intintola contacted respondent, seeking payment of his $800 invoice. The complaint alleged that respondent was aware, in June 2015, that his ATA balance was insufficient to

cover the Intintola check, but he waited a month, until July 2015, to deposit $650 to cover Dr. Intintola's check.

Respondent claimed that, even on July 23, 2015, when he deposited $650 in his ATA, he did not fully understand the extent to which errors existed in the Brooke matter. Respondent admitted that he negligently misappropriated other clients' funds in the ATA, and that his recordkeeping was deficient.

Respondent denied that he failed to promptly disburse funds to Dr. Intintola, pointing out that the first check to Dr. Intintola, dated May 29, 2015, was never negotiated. Moreover, respondent denied having delayed his deposit for the Brooke matter.

The Gonzalez Matter

On December 22, 2009, Nereyda Gonzalez retained respondent to pursue a claim for injuries sustained while, as a pedestrian, she had been struck by a motor vehicle. Although respondent timely filed the complaint, it was dismissed for lack of prosecution on June 20, 2012. Respondent did not file a motion to reinstate the complaint. Despite the dismissal, respondent served Encompass Insurance Company (Encompass) with a summons and complaint on September 4, 2012. When Encompass learned that the complaint had been dismissed, it closed its file without making any payment to Gonzalez.

Effective April 13, 2015, respondent was suspended for one year. Yet, on April 20, 2015, he met with Gonzalez to obtain her signature on a fictitious release and settlement statement that he had prepared. Respondent led Gonzalez to believe that he had settled her case for $50,000 and that her share of the proceeds was $32,764.67. He did not inform her that her lawsuit had been dismissed. On April 24, 2015, he deposited personal funds of $31,264.67 in his attorney trust account. Respondent deducted $1,500 from the "settlement" amount, because he had loaned $1,500 to Gonzalez, but admittedly "lied" to the OAE when he denied that he had ever loaned money to clients. On May 11, 2015, respondent met with Gonzalez in his office and paid her $31,264.67 with his own funds, by issuing two checks, one for $30,264.67, and one for $1,000. He based this fictitious settlement amount on the fact that the defendant's insurance policy had a $50,000 limit and the defendant was judgment-proof. Respondent did not tell Gonzalez that he had been suspended from the practice of law.

Respondent withheld the settlement statement and release from his Gonzalez client file that he produced during the OAE investigation. Instead, he supplied a false settlement statement and release, backdated to March 10, 2015, a date prior to his April 13, 2015 suspension. He admitted that he did so to "deceive the OAE investigators." Further, he reduced the settlement amount

to the net amount, indicated that he had waived his fees and costs, and copied Gonzalez's signature on those documents.

Although respondent submitted an affidavit of compliance in accordance with R. 1:20-20 following his suspension, he did not include Gonzalez on the list of clients attached to the affidavit.

According to the complaint, respondent gave Gonzalez a separate $1,000 check (payable to Gonzalez) as a finder's fee for an individual named "Cano." Respondent denied this allegation, claiming that Gonzalez had requested a separate $1,000 check for reasons she did not explain.

The complaint alleged that respondent knew that, because he was suspended from the practice of law, he was forbidden to use the ATA. Respondent denied the charge, testifying that he had misunderstood R. 1:20-20(a)(5), which prohibits a suspended attorney from using attorney bank accounts and checks, after thirty days from the date of the order of suspension. Respondent claimed a belief that he could continue to use the accounts after the effective date of his suspension, because subsection(a)(5) concludes with the following language: "however, it shall not be a violation of this subparagraph for an attorney to take appropriate action to comply after the stated 30-day period." Respondent had not researched or made inquiry as to whether his interpretation of the Rule was correct.

At the ethics hearing, respondent admitted that he had failed to communicate with Gonzalez over the course of the representation, a violation of RPC 1.4, presumably (b) for his failure to provide his client with accurate information about the status of her case, and (c) for failing to provide information about the dismissal, which would have helped Gonzalez make informed decisions about the representation.

Similarly, respondent admitted that he had practiced while suspended in the Gonzalez matter, in violation of RPC 5.5(a), made false statements of material fact to a tribunal, in violation of RPC 3.3(a); and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, in violation of RPC 8.4(c).

Respondent denied the remainder of the charges — gross neglect; lack of diligence; failure to comply with a court order; improper fee sharing; committing a criminal act by engaging in the unauthorized practice of law, falsifying records, and securing the execution of documents by deception; and conduct prejudicial to the administration of justice.

Practicing While Suspended

On May 5, 2015, Allyson W. Cotton of Cotton Funeral Service wrote to respondent about an unidentified matter, stating, "As per instructions from

your office we are returning check #4261 for the reissue [sic] of another check." On May 12, 2015, respondent deposited $700 in cash into the ATA. On that same day, Gonzalez's $30,264.67 check posted to the account, leaving an ATA balance of $522.39. A week later, on May 19, 2015, respondent issued a $400 replacement check in the Cotton matter, payable to Cotton Funeral Home.

The complaint alleged that respondent failed to inform Cotton of his suspension, which respondent denied, based on his misunderstanding of R. 1:20-20(a) (5). Respondent did not include Cotton in his list of clients attached to his R. 1:20-20 affidavit.

In addition, respondent deposited funds for Cotton into his ATA after the April 13, 2015 effective date of his suspension. He also deposited and/or disbursed funds from the ATA after April 13, 2015, in thirteen matters. Respondent failed to include in his affidavit the names of eleven of the thirteen clients, claiming that he had listed only active "litigation" matters. He explained that the eleven files were closed but added that he was waiting for settlement checks in those cases. Respondent did not explain why he considered cases with outstanding settlement checks to be closed files.

The Criminal Conduct

Respondent was charged with a violation of RPC 8.4(b) after he made certain admissions in his answer about his handling of the Gonzalez matter. Specifically, he admitted that he: (1) "prepared and supplied [the OAE] with a false release and settlement statement, backdating the signing of the release to March 10 [2015], reducing the settlement amount to the net amount and showing a waiver of the costs and fees owed to him;" (2) "copied Ms. Gonzalez's signature" on the documents provided to the OAE; (3) "backdated the date of the signing of the release until March 10, 2015 to deceive the OAE investigators;" (4) loaned Gonzalez $1,500 during the representation, of which "only $1,000.00 of the loan was memorialized in a writing;" and (5) "lied when investigators asked if he had ever loaned money to clients. He said he had not."

Respondent admitted that he engaged in a conflict of interest by providing loans to Gonzalez; knowingly made a false statement of material fact to ethics authorities that he had never loaned money to clients; and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation.

In his answer to the amended complaint, respondent denied the charge that he committed a criminal act by forging Gonzalez's signatures on the documents presented to the OAE.

Respondent's counsel objected strenuously to the use of the New Jersey criminal statutes in support of its case, in particular because the OAE intended to compel respondent's testimony in its case in chief. Counsel contended that to compel respondent's testimony would violate his constitutional right against self-incrimination. After some debate and motion practice, the special master entered an order granting respondent leave to file an interlocutory petition with the Court. The Court, however, denied the application, and respondent reserved any remaining constitutional arguments for the Court.

Failure to Cooperate

During the course of the OAE investigation, respondent failed to cooperate as follows.

On October 28, 2014, the OAE notified respondent of its investigation and requested a written explanation of the status of DCA loan abatement funds held in his ATA. Because respondent failed to reply by the deadline that the OAE had imposed, the OAE sent a second letter requesting respondent's reply, but once again, respondent failed to comply. Therefore, the OAE sent a third request and informed respondent of a scheduled audit interview at the OAE on December 22, 2014. Although respondent attended the demand audit

interview, he neither provided a written reply to the grievance, nor produced requested documents.

On December 23, 2014, the OAE sent respondent a letter memorializing the previous day's events and requested his Henderson and Benoit files, as well as his ATA three-way reconciliations with the supporting bank records for the audit period of June 2011 to the end of 2014. Additionally, the letter informed respondent of a continuation of the demand audit interview, scheduled for January 20, 2015.

On December 23, 2014, respondent sent to the OAE documents for the Henderson and Benoit matters, and a partial explanation of his handling of those matters but failed to provide the requested ATA three-way reconciliations or supporting bank records.

On January 20, 2015, respondent appeared for the continuation of the demand audit interview. The following day, the OAE sent respondent a fourth request for a written response to the allegations in its October 28, 2014 letter, as well as his ATA and business account records. Because respondent again failed to provide the requested documents by the OAE-imposed deadline, the OAE sent a fifth request.

On March 30, 2015, Wells Fargo Bank notified the OAE of the aforementioned overdraft in respondent's ATA in connection with the Denise

Brown matter. On March 31, 2015, the OAE directed respondent to provide a written explanation of the overdraft, to provide a written response to the DCA grievance, to produce his ATA three-way reconciliations, and to provide a copy of a letter he had sent to the Township of Irvington regarding a subordination agreement.

Under cover letter dated April 16, 2015, respondent furnished the Township of Irvington letter and an unsigned subordination agreement. He failed, however, to provide his reply to the grievance or the three-way reconciliations.

By letter dated April 24, 2015, the OAE again directed respondent to furnish his written explanation of the overdraft, by May 1, 2015. On that date, respondent provided the documents related to the overdraft. About three weeks later, on May 21, 2015, he provided his written explanation for the overdraft, as well as his ledger card for the client in the Brown matter.

On July 6, 2015, the OAE requested, by July 24, 2015, respondent's file in the Brown matter, cash receipts and disbursements journals, and monthly bank statements with canceled checks, deposit slips, and three-way reconciliations for the period January 1, 2012 to July 2015. On July 23, 2015, respondent provided bank "reconciliations" prepared on the reverse of his bank statements but did not include three-way reconciliations.

By letter dated October 2, 2015, the OAE again sought the outstanding documentation previously requested in its July 6, 2015 letter, as well as a written explanation for respondent's disbursement of funds to Brown during his period of suspension.

On November 19, 2015, the OAE sent respondent a letter directing him to appear on December 8, 2015 for a continuation of the demand audit interview. Respondent appeared on that date. On January 28, 2016, the OAE sent a letter requesting additional documentation about the Gonzalez matter no later than February 4, 2016, which respondent failed to produce.

Count one charged respondent with failure to cooperate with ethics investigators "in that [he] continuously failed to timely comply with R. 1:20-3(g)(3)," in violation of RPC 8.1(b).

The OAE's auditor, Rodriguez, testified at the DEC hearing that respondent missed numerous deadlines for documents requested by the OAE. Moreover, although respondent appeared for the December 22, 2014 audit interview, he did so without his records. Rodriguez admitted that, although respondent was repeatedly late submitting replies, between January 21, 2015 and April 17, 2015, he furnished everything that the OAE had requested of him in Docket No. XIV-2014-0511E, except ATA three-way reconciliations and up-to-date ledger cards.

In July 23, 2015 correspondence to the OAE, respondent attached what he referred to as ATA reconciliations from January 1, 2011 through July 23, 2015. According to Rodriguez, respondent's attempt to reconcile the account was inadequate, because it did not properly compare bank statements, client ledger cards, and respondent's bank register/ledger. Rodriguez conceded that, although respondent never furnished three-way reconciliations, he provided the OAE with enough information that the office was able to reconstruct respondent's ATA.

Respondent claimed that he tried to perform reconciliations but was unable to do so. He admittedly "did not keep a monthly running balance, because it was -- it was ultimately too late to do anybody any good. Your [the OAE] office had already done that . . . Mr. Rodriguez is much better at that than . . . I am, but I had spent numerous, numerous hours trying to get everything in order."

Respondent testified that he attempted to comply with "the spirit of the rule" when he provided information to the OAE, including four years of bank statements with notations about "which checks had been missing, [and] when they were found."

Respondent did not use "on-line banking," and waited for paper copies of bank statements, which he would give to his secretary to send to an

accountant, Ira Geller, for recordkeeping purposes. At some point, Wells Fargo Bank ceased returning the ATA canceled checks to respondent because he had access to them on-line. Respondent conceded that, from 2011 until the OAE became involved in late October 2014, he let his bookkeeping "slide."

II. District Docket No. XIV-2016-0178E – The McLendon Matter

On September 21, 2008, James Eric McLendon, the grievant, was injured when the automobile in which he was a passenger struck a telephone pole. It was unclear whether the driver was Devon Fiddman or grievant's brother, Robert L. Curry. McLendon suffered serious injuries, including a traumatic brain injury. The vehicle was uninsured. In late 2008, McLendon and his girlfriend, Sakena Dixon, retained respondent to file a personal injury action.

On August 5, 2010, respondent filed a complaint on McLendon's behalf against New Jersey Property-Liability Guaranty Association, (NJPLIGA), Curry, and Fiddman. On October 20, 2010, counsel for NJPLIGA, Kenneth J. Moeller, served respondent with the Uniform Form A Interrogatories, Unsatisfied Claim and Judgment Fund (UCJF) Interrogatories, and a Notice To Produce. The following day, October 21, 2010, NJPLIGA filed an answer to the complaint.

Thereafter, although Dixon and McLendon provided respondent with answers to the UCJF interrogatories, he never informed them about NJPLIGA's request for additional information: answers to the Uniform Form A Interrogatories and the Notice to Produce. Respondent denied the allegation that he never told McLendon and Dixon that those discovery items were outstanding.

Respondent admitted that he had not furnished (1) answers to Uniform Form A Interrogatories by the deadline of November 24, 2010; (2) answers to the Notice to Produce by the deadline of November 25, 2010; or (3) answers to the UCJF interrogatories by the December 20, 2010 deadline.

NJPLIGA also required documentation from McLendon to establish that he was a New Jersey resident at the time of the accident, to confirm that he was eligible for coverage.

By letter dated December 22, 2010, Moeller acknowledged respondent's July 6, 2010 correspondence itemizing four documents in support of McLendon's residency. Missing from the attachments was a collection letter from Capital Collection Services for an outstanding hospital bill. Further, Moeller's letter reminded respondent that McLendon's replies to the discovery requests were overdue, and he included a new demand for information about McLendon's relatives residing with him on the accident date. Finally, Moeller's

letter requested respondent voluntarily dismiss, without prejudice, claims against NJPLIGA for bodily injury, until judgments were received against the alleged tortfeasors, Curry and Fiddman.

In a subsequent, January 3, 2011 letter to respondent, Moeller renewed his requests for the overdue discovery and dismissal of bodily injury claims. Respondent was unsure whether he had received this correspondence from Moeller, but admitted that he had received a similar January 4, 2011 letter cautioning that, if respondent did not provide overdue discovery within ten days, Moeller would file the "appropriate motion."

On January 7, 2011, the court notified respondent that the complaint would be dismissed without prejudice on March 8, 2011 as to defendants Curry and Fiddman, for lack of prosecution, unless respondent took further action. Respondent denied the allegation in the complaint that he failed to take further action as to Curry and Fiddman. He asserted that he could have served neither Curry, who was deceased, nor Fiddman, who could not be located. On March 11, 2011, the court dismissed the Curry and Fiddman claims, without prejudice, for lack of prosecution.

In June 2011, respondent consented to Moeller's request for a sixty-day extension, until October 21, 2011, to complete discovery, which prompted an

August 13, 2011 notice from the court that the new discovery end date was October 21, 2011.

Nevertheless, on August 15, 2011, Moeller filed a motion to dismiss the complaint for failure to provide discovery. Moeller's certification in support of the motion stated that respondent had failed to produce McLendon's answers to Uniform A and UCJF Interrogatories, replies to NJPLIGA's Notice to Produce, or a physician's certification, as N.J.S.A. 39:6A-8 required.

Respondent was served with the motion, returnable September 2, 2011, by regular mail. Although the ethics complaint alleged that respondent failed to tell his clients about the motion, respondent claimed that he informed Dixon and McLendon, and that they came to his office to reply to discovery.

On September 1, 2011, respondent faxed to Moeller McLendon's signed but undated answers to Form UCJF Interrogatories and other "documentation that was outstanding." Respondent's cover letter stated that he would mail "the medical" to Moeller separately.

The complaint alleged that "the medical" referred to a medical certification from Steven H. Dane, M.D., dated May 19, 2010, which was found in respondent's client file. According to the complaint, respondent failed to include the certification in the submission to Moeller.

Respondent admitted that he had not sent Dixon and McLendon his September 1, 2011 letter to Moeller but claimed to have made them aware of it.

On September 6, 2011, the court dismissed McLendon's complaint against NJPLIGA, without prejudice, for "failing to provide discovery, in the form of certified answers to Uniform A Interrogatories, UCJF Interrogatories, responses to the UCJF Notice to Produce and a Physician's Certification pursuant to N.J.S.A. 39:6A-8." On September 13, 2011, Moeller served the order on respondent.

Respondent testified that the case had two problems. First, he was unable to verify McLendon's residency in New Jersey, which would be required in order to collect from NJPLIGA. Second, although respondent obtained McLendon's answers to one set of Moeller's interrogatories, respondent believed that Moeller was not entitled to a second set of interrogatories. Therefore, he did not direct his client to answer them. Respondent acknowledged that he had not filed a motion objecting to Moeller's request for the second set of interrogatories.

Respondent did not provide McLendon or Dixon with the dismissal order because respondent believed he would have the complaint reinstated. He claimed, however, to have informed his clients of the dismissal orally.

On November 8, 2011, Moeller filed a motion to dismiss the complaint, with prejudice, for respondent's failure to provide discovery. Respondent was unsure whether he had notified McLendon and Dixon about this motion, which was returnable on December 2, 2011. On December 1, 2011, respondent sent a letter to the Honorable James S. Rothschild, Jr., J.S.C., opposing Moeller's motion, and requesting oral argument. With the letter, he enclosed McLendon's answers to Form UCJF Interrogatories, which he had hand-delivered to Moeller the day before. Respondent did not copy the clients with his letter.

On December 2, 2011, Judge Rothschild entered an order denying the motion to dismiss with prejudice, noting that he would have granted the motion but for the receipt of the interrogatory answers. Respondent was served with the order on December 7, 2011 but did not give McLendon and Dixon a copy of it.

On December 19, 2011, Moeller filed a reconsideration motion, returnable on January 6, 2012, on the basis that respondent had misled the court to believe that he had provided all of the delinquent discovery when he had not provided certified answers to interrogatories or responses to the UCJF Notice to Produce. In a conference call with the judge and Moeller, respondent indicated that he had attempted to prove McLendon's residency but had not

been able to do so. He told the court that he would continue efforts in that vein.

Thereafter, on January 13, 2012, Judge Rothschild entered an order dismissing the complaint, with prejudice. On that order was a handwritten note that the court would "indulgently review on motion for reconsideration if all requested discovery is supplied in a prompt fashion." Respondent conceded receiving the order.

Respondent denied the allegation that he thereafter "failed to make any additional efforts to respond to Moeller's discovery requests." Nevertheless, he did not file a motion for reconsideration of Judge Rothschild's January 13, 2012 order, or otherwise act to preserve McLendon's claim. Respondent testified, "I didn't know what else I could do. . . . And that's where it ended."

Respondent acknowledged that he never informed McLendon or Dixon, in writing, that the complaint had been dismissed with prejudice due to his failure to provide discovery.

Dixon called respondent numerous times, over the course of the representation, for status updates and left messages for respondent to call her. She denied receiving Moeller's letter to respondent dated January 4, 2010 regarding overdue discovery.

Likewise, respondent neither told her about the court's March 11, 2011 order dismissing the Curry and Fiddman claims, nor sent her a copy. Respondent did not tell her about other important events in the case, such as Moeller's motion to dismiss for failure to complete discovery or respondent's reply.

Dixon further testified that she gave respondent all of McLendon's medical records, but he never returned them. Although Dixon moved once in 2013, she maintained the same cell phone number, which respondent had.

In respect of Moeller's motion to dismiss the complaint with prejudice, which was initially denied at respondent's request, Dixon denied any knowledge of it. She testified: "I would have tried my best to get this . . . insurance information . . . for anybody in that house . . . [for] the driver of that car, if that's the only thing stopping this." Although Dixon went to respondent's office in March 2014, respondent did not tell her then that the case had been dismissed two years earlier.

Dixon learned about the dismissal when, in 2016, she called respondent's office and was told that he had been suspended, that he no longer worked at that office, and that she might call NJPLIGA directly for more information. When she did so, NJPLIGA's personnel told her that the case had been closed, which "was a shock."

* * *

Respondent's psychotherapist, Dr. Kieran Ayre, testified that respondent suffers from a "clinical anxiety disorder that creates a paralysis when faced with issues of fault, responsibility, or blame." Dr. Ayre recommended that respondent participate in a course of evidence-based practice therapy to address the issue and to develop coping skills for "future potential incidents that create anxiety for him."

In mitigation, respondent testified that he has questioned his behavior, particularly in respect of the Gonzalez matter, and realized that it has been self-destructive: "There's some part of me that . . . wants to be punished for, I'm not exactly sure what. Maybe I don't deserve whatever I've had. . . . I've been self-sabotaging now for . . . a few years." Furthermore, as a result of these disciplinary hearings, he has been confronted with all of his actions, has enrolled in behavioral therapy, and is benefiting from it.

In addition, respondent volunteered for court-sponsored arbitration, performed pro bono work in municipal court, and received an award from the Irvington Chamber of Commerce for his service to the community. Finally, respondent had heart stent surgery, but did not recall when that occurred, and his marriage ended at about the time of the within matters.

The special master found witnesses Rodriguez, Gonzalez, Dixon, Moeller, and Dr. Ayre credible, without characterizing respondent's testimony.

The special master also found respondent guilty of every charge in the two complaints, except the charge in the Gonzalez matter that "Cano" was respondent's "runner."

The special master concluded that respondent's continued use of the ATA, after April 13, 2015, constituted the practice of law. He rejected respondent's argument that a client matter could be considered "closed" if the only remaining task was to deposit or disburse settlement funds. He determined that a matter "is not considered closed or finished until all funds involved in the matter have been deposited and/or disbursed and the attorney trust account balance pertaining to that legal matter is zero."

In mitigation, the special master considered respondent's (1) volunteerism and pro bono work; (2) divorce; (3) heart surgery and (4) reputation in the community.

In aggravation, the special master considered (1) respondent's prior discipline; (2) the likelihood that respondent will engage in future misconduct, based on his history of minimizing the seriousness of his actions; (3) the harm to McLendon, who had been seriously injured; and (4) respondent's lack of candor with disciplinary authorities.

The special master recommended a two-year suspension, with one year suspended if respondent (1) submits attorney financial records to the OAE on a monthly basis for thirty-six months; (2) cooperates with the OAE in furnishing any additional financial records requested by the OAE; and (3) reimburses the administrative costs incurred in the disciplinary matter.

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

By far, respondent's most serious misconduct took place in the Gonzalez matter. After filing a personal injury complaint in her behalf, respondent permitted the lawsuit to be dismissed for lack of prosecution. He failed to file a motion to reinstate the complaint. More than two months after the complaint's dismissal, respondent inexplicably served the defendant's insurance carrier with a summons and complaint. Once the insurance carrier determined that the complaint had been dismissed, it closed its file, without having paid any compensation to Gonzalez. Respondent, thus, engaged in gross neglect and a lack of diligence, a violation of RPC 1.1(a) and RPC 1.3.

After the dismissal of the complaint, respondent embarked on a course of deception and fraud. His failure to inform Gonzalez of the dismissal constituted failure to communicate, failure to explain a matter to the extent

necessary to permit the client to make informed decisions about the representation, and a misrepresentation by silence, violations of RPC 1.4(b) and (c) and RPC 8.4(c). Moreover, he misrepresented to Gonzalez that he had settled her case for $50,000 and that her share of the proceeds was $32,764.67; created fictitious documents — a settlement sheet and a release — to perpetuate the falsehood that he had settled her case; deposited personal funds in his trust account, with which he financed the phony settlement; and obtained Gonzalez's signature on those false documents. Respondent's conduct further violated RPC 8.4(c).

Respondent's actions not only violated disciplinary rules, but criminal statutes as well. Specifically, respondent violated N.J.S.A. 2C:21-16, which provides that a "person commits a crime of the fourth degree if by deception as to the contents of the instrument, he causes or induces another to execute any instrument affecting, purporting to affect, or likely to affect the pecuniary interest of another." Here, respondent obtained Gonzalez's signature on phony settlement documents by deception — misleading her to believe that he had settled her case. Respondent, therefore, violated RPC 8.4(b).

In addition, respondent neither informed Gonzalez that he was suspended from the practice of law nor included her name on the list of clients attached to his affidavit of compliance, another misrepresentation by silence,

as well as a failure to comply with R. 1:20-20, and therefore, a violation of RPC 8.1(b) and RPC 8.4(d). He practiced law while suspended by meeting with Gonzalez in his law office, after the date of his suspension, a violation of RPC 5.5(a), as respondent acknowledged at the hearing. Because the unauthorized practice of law constitutes criminal conduct (N.J.S.A. 2C:21-22), respondent again violated RPC 8.4(b), this time, by practicing law while suspended.

Next, respondent engaged in additional criminal misconduct when he forged Gonzalez's signature on the backdated settlement statement and release. N.J.S.A. 2C:21-1 states that a person is guilty of forgery "if, with purpose to defraud or injure anyone, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor: (1) Alters or changes any writing of another without his authorization." Respondent admitted that he signed Gonzalez's name on settlement documents, without her authorization, in order to mislead the OAE. Respondent's commission of forgery, therefore, constituted a violation of RPC 8.4(b). Additionally, by being dishonest with the OAE, respondent is guilty of violating RPC 8.1(a) and RPC 8.4(c). Because, however, the OAE is not a "tribunal," we dismiss the charged violation of RPC 3.3(a).

Respondent testified that, based on his misunderstanding of R. 1:20-20(a)(5), he believed that he was permitted to use his attorney bank accounts after the effective date of his suspension. He further testified that he considered a file "closed" if the only remaining tasks were to deposit or disburse settlement funds. Yet, respondent went through the exercise of backdating the settlement documents to Gonzalez in order to mislead the OAE and to conceal the fact that he practiced law while suspended. This conduct is inconsistent with his alleged belief of his permitted activities as a suspended attorney.

Respondent further admitted that he loaned money to Gonzalez, a violation of RPC 1.8(e). Consistent with his propensity for dishonesty, respondent made yet another misrepresentation to the OAE when he denied that he had ever loaned funds to clients, an additional violation of RPC 8.1(a) and RPC 8.4(c).

The special master correctly dismissed the charge that respondent had employed a runner named Cano, and, had improperly shared fees with the runner. Because the record did not contain clear and convincing evidence that respondent violated RPC 5.4(a), we, too, dismissed that charge.

Although respondent admitted that, in Gonzalez, he practiced law while suspended, he denied all other charged instances of that violation. Yet, the

record established that respondent either deposited funds in his trust account after the date of his suspension, or disbursed trust account funds, or both, in fourteen client matters. We reject respondent's illogical explanation that he considered files to be closed, even if he had not yet received the settlement funds expected in those cases. Respondent's receipt and disbursement of settlement funds constituted the practice of law. Respondent, thus, practiced law while suspended in fourteen cases, a violation of RPC 5.5(a) and RPC 8.4(b). Moreover, in twelve of the fourteen matters, respondent failed to include the clients' names on the R. 1:20-20 affidavit that he filed, a violation of RPC 8.1(a) and RPC 8.4(c).

However, we dismiss the additional charged violations of RPC 3.4(c) and RPC 8.4(d). We consider respondent's alleged disobedience of his suspension Order in twelve of the fourteen client matters subsumed in the practicing-while-suspended charge. Moreover, the record is devoid of evidence that respondent's conduct in these matters prejudiced the administration of justice.

Respondent's conduct in the McLendon case was also egregious. In that case, respondent's client had been injured when, as a passenger in an automobile driven by his brother or another individual, the vehicle struck a telephone pole.

In August 2010, respondent filed a complaint against various defendants, including McLendon's brother (Curry), Fiddman, and NJPLIGA. Thereafter, respondent's adversary, Moeller, repeatedly tried to obtain discovery, some of which respondent admittedly never answered.

In March 2011, the case was dismissed against Curry and Fiddman for lack of prosecution. Respondent took no measures to restore the complaint against Fiddman or to ascertain whether Curry, who was deceased, had estate assets against which a claim could be made.

In the fall of 2011, Moeller filed a motion to dismiss the complaint against NJPLIGA for respondent's failure to comply with discovery requests. On September 6, 2011 the complaint was dismissed without prejudice, and then briefly reinstated after respondent told the court he had provided all discovery. Eventually, Moeller's motion to dismiss with prejudice was granted on January 13, 2012, with a notation that the court would view generously an application from respondent if he provided the remainder of the outstanding discovery to Moeller.

Yet, notwithstanding the judge's obvious invitation, respondent took no action to reinstate the case or to protect McLendon's claims. Unquestionably, respondent's decision to abandon the case at that critical, final opportunity for redemption constituted gross neglect and lack of diligence.

In respect of communications with the client, respondent claimed to have always kept Dixon, with whom he had the most contact, informed about events in the case. However, he admittedly sent her no documents or orders in the case, or letters with status updates. Instead, he claimed that he would discuss her case in detail and show her documents when she visited his office.

Dixon's version of events contradicted respondent's version in every respect. She asserted that she never knew the status of the case, was unaware of any serious issues in the case, and was not shown important court orders, such as dismissals in the case. Indeed, she learned about the dismissal in 2016, when she called respondent's office, contacted NJPLIGA, and was informed of the dismissal, which left her "in shock."

The special master found Dixon's testimony credible. In the absence of any documentary evidence to support respondent's claim, such as phone records, notes of meetings, letters to the client and the like, we conclude that respondent did not keep his client adequately informed about events in the case, a violation of RPC 1.4(b).

Finally, respondent is guilty of a misrepresentation by silence for his failure to inform Dixon about the dismissal of McLendon's case, despite all of her efforts, over a period of years, to learn the true status of the case. Therefore, once again, respondent violated RPC 8.4(c).

Respondent is also guilty of less-serious violations.

In respect of the charge that respondent failed to cooperate with ethics investigators, the complaint went into painstaking detail about respondent's actions. As seen above, the OAE sent numerous letters and spent inordinate resources in its attempts to obtain respondent's attorney books and records. In the end, respondent never provided the OAE with three-way reconciliations, leaving investigators to forensically recreate his ATA records. Respondent's chronic untimely submissions to the OAE and failure to perform proper reconciliations constitute a violation of RPC 8.1(b).

In the Henderson loan matter, respondent admitted having used poor recordkeeping practices, a violation of RPC 1.15(d) and R. 1:21-6. As a direct result of his deficient records, respondent failed to take his legal fee for seven months after the closing, an unreasonable length of time to leave personal funds in the ATA, for which respondent is guilty of commingling, a violation of RPC 1.15(a).

In respect of RPC 1.15(b), respondent failed to deliver Henderson's loan proceeds for ten months post-closing; to cancel four tax liens until six months post-closing; and to pay title fees for seven months post-closing. Albeit de minimis, an error that should have been detected in a proper reconciliation, a three-cent error to the detriment of the DCA, was permitted to linger on the

books. Respondent's protestations aside, the record established that he failed to promptly deliver funds to third parties, in violation of RPC 1.15(b).

In the Benoit matter, respondent conceded that, due to his poor recordkeeping, he made calculation errors in the transaction, for which he acknowledged having violated RPC 1.15(d). Further, the OAE charged respondent with commingling his legal fee in the ATA for ten months after the July 30, 2012 settlement date, until he took the fee on May 29, 2013. Respondent admitted in his answer that he failed to promptly take his fee but was permitted to change that admission during the hearing before the special master to a denial. Respondent explained that title issues delayed the closing until May 20, 2013. He took his fee nine days later. Therefore, we dismiss the RPC 1.15(a) charge in the Benoit matter.

In respect of RPC 1.15(b), the estimated mortgage recording fee was $100 but turned out to be $80. Respondent was charged with an RPC 1.15(b) violation for failing to promptly deliver the $20 difference to the client or third party. We determine to dismiss that charge for two reasons. First, that amount is de minimis. Second, respondent testified that his fee for the matter was $1,000, but he took only a $931 fee. Therefore the $20 was attributable to his fee.

In the Brown overdraft matter, due to poor recordkeeping, respondent erroneously disbursed funds for an expert fee twice, an admitted violation of RPC 1.15(d) and R. 1:21-6. The overdisbursement resulted in an overdraft and shortage in the ATA of $349, for which respondent admitted the negligent misappropriation charge, a violation of RPC 1.15(a). Although respondent denied that he failed to promptly disburse funds to Brown, the client was deprived of $1,200 from the July 21, 2014 closing date until respondent discovered his error and rectified it on May 20, 2015. For that ten-month delay, respondent is guilty of having violated RPC 1.15(b).

Finally, in respect of respondent's denial that his representation to the OAE that he deposited $1,200 constituted a false statement to ethics authorities, in violation of RPC 8.1(a) and RPC 8.4(c), respondent claimed to have become "so excited," having discovered funds that he thought were missing from the ATA, that he mistakenly referred to those funds as "deposits," instead of calculation errors. In the Massie matter, Rodriguez conceded that respondent's actions when he corrected the calculation errors were the "functional equivalent" of deposits.

We discern no reason for respondent to have lied about the "deposit" issue. As he testified, he knew that OAE investigators would review the ATA.

Therefore, we dismiss these two charges for lack of clear and convincing evidence of an intent to mislead.

In the Aladi, Garrigan, Dessin, Young, Massie, and Brooke matters, the OAE's forensic reconstruction of respondent's attorney books and records uncovered calculation errors that resulted in the negligent misappropriation of other client funds and recordkeeping violations. Respondent acknowledged his guilt in his answer and at the hearing below. In all six matters, we find respondent guilty of having violated RPC 1.15(a) and RPC 1.15(d).

In the Massie and Brooke matters, respondent denied the additional charge that he failed to promptly deliver funds to clients or third parties. In Massie, it appears that, after respondent zeroed out the account in May 2015, the account still held a three-cent balance. We conclude that respondent's failure to deliver those funds does not rise to the level of an ethics violation and dismiss the RPC 1.15(b) charge in Massie.

In the Brooke matter, the OAE's charge of failure to promptly disburse funds was based on the issuance of a replacement check. The matter settled in April 2015. On May 29, 2015, respondent disbursed an $800 ATA check to Dr. Intintola. Apparently, because that check never posted to the ATA, respondent issued a replacement check on October 23, 2015. Therefore, any delay between

May 29, 2015 and October 23, 2015 cannot be attributed to respondent. For this reason, we dismiss this RPC 1.15(b) charge.

In sum, respondent is guilty of gross neglect, lack of diligence, failure to communicate with clients, providing financial assistance to a client, failure to safeguard funds (commingling and negligent misappropriation), failure to promptly deliver funds, recordkeeping violations, practicing law while suspended, myriad instances of misrepresentation and deceit to the OAE and clients, criminal conduct, and failure to cooperate with disciplinary authorities.

The OAE recommended the imposition of a two-year suspension with proof of psychological fitness to practice prior to reinstatement and financial monitoring and two years of proctorship upon reinstatement.

Respondent's counsel's brief to us likewise recommended a two-year suspension, consecutive to the one-year suspension effective April 13, 2015.

As to sanction, the level of discipline for practicing law while suspended ranges from a lengthy suspension to disbarment, depending on the existence of other misconduct, the attorney's disciplinary history, and aggravating or mitigating factors. See, e.g., In re Phillips, 224 N.J. 274 (2016) (one-year suspension for attorney who stipulated that, while suspended, he had secured consent to an adjournment of a matrimonial motion that was to be heard during the term of suspension, and assisted the client in the matter;

extensive prior discipline, including a prior admonition, two censures, and a three-month suspension); In re Brady, 220 N.J. 212 (2015) (one-year retroactive suspension imposed on attorney who, after a Superior Court judge had restrained him from practicing law, represented two clients in municipal court and appeared in a municipal court on behalf of a third client, after the Supreme Court had temporarily suspended him; the attorney also failed to file the required R. 1:20-20 affidavit following the temporary suspension; significant mitigating factors, including the attorney's diagnosis of a catastrophic illness and other circumstances that led to the dissolution of his marriage, the loss of his business, and the ultimate collapse of his personal life, including becoming homeless, and, in at least one of the instances of his practicing while suspended, his desperate need to provide some financial support for himself; prior three-month suspension); In re Wheeler, 140 N.J. 321 (1995) (two-year suspension imposed on attorney who practiced law while serving a temporary suspension for failure to refund a fee to a client; the attorney also made multiple misrepresentations to clients, displayed gross neglect and pattern of neglect, engaged in negligent misappropriation and in a

conflict of interest situation, and failed to cooperate with disciplinary authorities);[1] In re Marra, 183 N.J. 260 (2005) (three-year suspension for attorney found guilty of practicing law in three matters while suspended; the attorney also filed a false affidavit with the Court stating that he had refrained from practicing law during a prior suspension; the attorney had received a private reprimand, a reprimand, two three-month suspensions, a six-month suspension, and a one-year suspension also for practicing law while suspended); In re Cubberley, 178 N.J. 101 (2003) (three-year suspension for attorney who solicited and continued to accept fees from a client after he had been suspended, misrepresented to the client that his disciplinary problems would be resolved within one month, failed to notify the client or the courts of his suspension, failed to file the affidavit of compliance required by Rule 1:20-20(a), and failed to reply to the OAE's requests for information; the attorney had an egregious disciplinary history: an admonition, two reprimands, a three-month suspension, and two six-month suspensions); In re Walsh, Jr., 202 N.J. 134 (2010) (attorney disbarred in a default case for practicing law while

[1] In that same Order, the Court imposed a retroactive one-year suspension, on a motion for reciprocal discipline, for the attorney's retention of unearned retainers, lack of diligence, failure to communicate with clients, and misrepresentations.

suspended by attending a case conference and negotiating a consent order on behalf of five clients and making a court appearance on behalf of seven clients; the attorney also was guilty of gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities during the investigation and processing of these grievance; the attorney failed to appear on an order to show cause before the Court; extensive disciplinary history: reprimanded in 2006, censured in 2007, and suspended twice in 2008); and In re Olitsky, 174 N.J. 352 (2002) (attorney disbarred after he was suspended and agreed to represent four clients in bankruptcy cases, did not notify them that he was suspended from practice, charged clients for the prohibited representation, signed another attorney's name on the petitions without that attorney's consent and then filed the petitions with the bankruptcy court; in another matter, the attorney agreed to represent a client in a mortgage foreclosure after he was suspended, accepted a fee, and took no action on the client's behalf; in yet another matter, the attorney continued to represent a client in a criminal matter after the attorney's suspension; the attorney also made misrepresentations to a court and was convicted of stalking a woman with whom he had had a romantic relationship; prior private reprimand, admonition, two three-month suspensions, and two six-month suspensions).

Severe discipline is warranted where an attorney creates false documents in support of a non-existent case. See, e.g. In re Weingart, 127 N.J. 1 (1992) (two-year suspension imposed for grossly neglecting one case, lying to the client about the status of the case and preparing and submitting to his client, the Office of the Attorney General, and the Administrative Office of the Courts a fictitious complaint with intent to mislead the client into believing that a lawsuit had been instituted when, in fact, it had not; all but six months of the suspension were suspended for compelling mitigating factors) and In re Morell, 184 N.J. 299 (2005) (attorney disbarred for misrepresenting the status of a malpractice action and concocting a settlement, complete with false documents, when the attorney had never filed suit on his client's behalf).

In Morell, the client, Mark Fink, retained Morell to file a medical malpractice action against a surgeon and a hospital after surgeries to repair four herniated discs in his lower back were unsuccessful. Fink, a professional baseball player, had been injured in a 1994 automobile accident. After the allegedly substandard surgeries and a staphylococcus infection, Fink suffered deterioration of his lower extremities, which ended his baseball career. In the Matter of Philip M. Morell, DRB 04-245 (October 26, 2004) (slip. op. at 3).

Having failed to file the malpractice action for which he was retained, Morell lied to Fink for the next four years about the status of the case. He then

contrived a story that he had filed suit, retained experts, and consulted with representatives from the insurance carrier of one of the defendants. After telling Fink that he thought the case was worth about $10,000,000, Morell lied to Fink that the carrier offered first $250,000, and then $700,000, both of which Morell thought were insufficient. Ultimately, Morell obtained Fink's approval for a $1.1 million settlement, which was a fabrication. He obtained Fink's signature on a phony release and told him that he could now purchase the car of his dreams. Fink borrowed funds from his father and purchased a Lexus GS400 luxury automobile. Ibid.

A short time later, Morell told Fink that he had received the settlement funds, which had cleared his bank, and that he would wire the funds to Fink. After several days passed without a wire transfer, Morell told Fink that there was a problem with the Federal Reserve Bank, and that the funds were due to be wired on July 4, 2001 – a federal bank holiday. Morell finally admitted to Fink's father that the story was a fabrication to obscure the fact that he had never filed suit. Id. at 4.

We found "the most troublesome aspect of [Morell's] misconduct" to be "the outrageous web of deceit and misrepresentation perpetrated upon his client and others — that he had properly handled the case and had obtained a highly favorable result." Id. at 5. In aggravation, we considered Morell's prior

one-year suspension for having told elaborate lies to two clients, and for fabricating a settlement statement, a court notice, and a court order. Id. at 2.

In Morell, we voted to impose a two-year suspension. The Court, however, ordered his disbarment.

Here, as in Morell, respondent's settlement for Gonzalez was created out of whole cloth to obscure his shameful neglect. Respondent's conduct was arguably worse. After he used phony documents to deceive Gonzalez, he "tweaked" them and forged his client's signature, thereby retailoring them for his new lies to the OAE.

In addition, respondent practiced law while suspended. In Marra, the attorney was suspended for three years after practicing law in three matters while suspended, as against respondent's fourteen matters. Both Marra and respondent had extensive ethics histories. However, respondent has engaged in additional, serious misconduct in the Gonzalez matter, as well as numerous, less serious violations, including gross neglect, lack of diligence, failure to communicate with his clients, conflict of interest, commingling, negligent misappropriation, failure to promptly deliver funds to third parties, recordkeeping deficiencies, and failure to cooperate with disciplinary authorities.

In mitigation, respondent has enrolled in behavioral therapy to address his behavior, volunteered for court-sponsored arbitration, and performed pro bono work in municipal court. He received an award from the Irvington Chamber of Commerce for his service to the community, had heart surgery, and was divorced from his wife at about the time of these matters.

In our view, the aggravating factors far outweigh the above mitigation. Respondent has extensive prior discipline: admonitions in 1995, 1996, and 1997; a 2008 reprimand in a default; a three-month suspension in a 2009 default; and a one-year suspension in 2015, also in a default.

In further aggravation, McLendon was seriously injured by respondent's inaction and forever lost his claims. In addition, the special master had ample opportunity to assess respondent's credibility and character. He concluded that there "is a likelihood that Respondent will repeat his actions in the future based upon his minimizing the seriousness of his conduct in the past." The special master's final observation, in aggravation, was "respondent's lack of candor with disciplinary authorities," although it does not appear to have been a direct reference to respondent's demeanor before him.

Respondent's misconduct in these numerous matters demonstrates a lack of good judgment, good character, and willingness to learn from prior mistakes. The imposition of prior discipline has not convinced him to change

his ways. Respondent has shown, time and again, that he is incapable or unwilling to conform his behavior to the standard expected of attorneys of this state. Because he has proven to be unsalvageable, it is impossible to protect the public from him.

We determine that he must be disbarred.

Vice-Chair Clark and Members Boyer and Hoberman voted for a three-year prospective suspension with the conditions that the OAE suggested: proof of psychological fitness to practice prior to reinstatement, financial monitoring, and a proctor for two years upon reinstatement.

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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Arnold M. Abramowitz
Docket No. DRB 18-420

Argued: March 21, 2019

Decided: August 28, 2019

Disposition: Disbar

Members	Disbar	Three-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:	6	3	0	0

Ellen A. Brodsky
Chief Counsel