SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 19-070
District Docket No. XIV-2017-0681E

In the Matter of

David Michael De Clement

An Attorney at Law

Decision

Argued: April 18, 2019

Decided: October 10, 2019

Joseph A. Glyn appeared on behalf of the Office of Attorney Ethics.

Marc D. Garfinkle 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 by way of a disciplinary stipulation filed by the Office of Attorney Ethics (OAE), in which respondent admitted having violated RPC 3.1 (asserting an issue with no basis in law or fact); RPC 3.3(a)(1) (false statement of material fact or law to a tribunal) and (5) (failure

to disclose a material fact to a tribunal, knowing that the omission is reasonably certain to mislead the tribunal); RPC 4.1(a)(1) (making a false statement of material fact or law to a third person); RPC 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter); RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

For the reasons expressed below, we determine to impose a six-month suspension.

Respondent earned admission to the New Jersey and Pennsylvania bars in 1994. In 2013, he received a reprimand, by consent, after failing to safeguard funds he held in his capacity as an escrow agent. In re De Clement, 214 N.J. 47 (2013). During the relevant time frame, respondent maintained a solo law practice in Pitman, Gloucester County, New Jersey.

Respondent and the OAE entered into a disciplinary stipulation, dated February 11, 2019, which sets forth the following facts in support of respondent's admitted ethics violations.

In May 2012, respondent filed a lawsuit against Sara Ann Edmonson in the Small Claims Section of the Special Civil Part, Superior Court of New Jersey, seeking $2,917 in damages in behalf of his client, Lilliston Ford, Inc.

(Lilliston), a Ford automotive sales dealership located in Vineland, New Jersey. The lawsuit arose from a transaction wherein Edmonson had traded in a 2004 Lincoln to Lilliston toward her purchase of a used, 2012 Ford Focus. Lilliston's complaint alleged that Edmonson had promised to provide Lilliston with title to the 2004 Lincoln, but had failed to do so and, therefore, had committed breach of contract, fraud, and theft by deception. On August 9, 2012, Edmonson counterclaimed, alleging that Lilliston had committed fraud and engaged in deceptive trade practices.

After additional pleadings were filed, respondent filed a motion for summary judgment, which was scheduled for hearing on January 4, 2013. On that date, the Honorable Robert G. Malestein, J.S.C. entered an Order of Disposition that dismissed Lilliston's case with prejudice, and stated that, per counsel for Edmonson, the case had settled. Such a settlement, however, was "never confirmed by way of a written settlement agreement or confirming letter."

In 2013, respondent filed a motion to enforce the settlement; in turn, Edmonson filed a motion for sanctions against Lilliston. At a June 26, 2013 hearing, respondent represented to the Honorable Richard J. Geiger, J.S.C., that, prior to the January 4, 2013 order of dismissal, he and Edmonson's then counsel, Joseph DiNicola, had settled the matter, agreeing that Edmonson

would execute a duplicate title form and then "[e]verybody was going to walk away from this [lawsuit]." Respondent further represented to Judge Geiger that

> [w]hat happened is that Mr. DiNicola went into the court, put the settlement and told Judge Malestein it was settled before I got there. When I got there, he had already told the Court it was settled. Ms. Edmonson never showed up . . . . I actually met Mr. DiNicola in the hallway. And I said, "Okay, well, let's go put this thing on the record." And [DiNicola] says, "Well, I already told the Court it was all settled and it was done."
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> [S§B¶16;Ex.6.][1]

Edmonson, now appearing pro se, represented to Judge Geiger that she had never agreed to such a settlement. DiNicola testified at the hearing before Judge Geiger that he had held settlement discussions with respondent and had spoken to Judge Malestein prior to the January 4, 2013 hearing. Specifically, DiNicola admitted that, although he "absolutely did not have the authority" to settle the case, he had told Judge Malestein that "the parties intended to dismiss [Lilliston's lawsuit] without prejudice and then settle it." DiNicola further testified that he then saw respondent walking into the courthouse and told him "he would work on getting the title signed over to Lilliston."

Judge Geiger denied and dismissed Lilliston's motion to enforce the settlement, without prejudice, ruling that DiNicola had no authority to settle

[1] "S" refers to the February 11, 2019 stipulation between respondent and the OAE.

the case or to bind Edmonson to signing over title. Subsequently, Judge Geiger also denied Edmonson's motion for sanctions. Judge Geiger's rulings ended the state court litigation between Lilliston and Edmonson, without prejudice.

On December 20, 2013, Edmonson filed a lawsuit against Lilliston in the United States District Court, District of New Jersey (District Court). Respondent filed an answer and a counterclaim, and, subsequently, a motion to dismiss Edmonson's suit. In the motion to dismiss, respondent argued that Edmonson's claims were barred by the entire controversy doctrine, which, he asserted, requires: (1) a final judgment on the merits in a prior lawsuit involving (2) the same parties . . . ; and (3) a subsequent suit based on the same cause of action. In support of the first prong of the doctrine, respondent misrepresented that the prior state court matter had been dismissed as settled by the state court. Respondent's filing further misrepresented that Edmonson's counsel had entered into the settlement and that the duplicate title had become unnecessary because Edmonson abandoned the vehicle.

In support of his motion to dismiss, respondent attached, as exhibits, Judge Malestein's January 4, 2013 order and Judge Geiger's August 6, 2013 order denying sanctions against Lilliston, but did not attach Judge Geiger's first order, wherein he ruled that the matter had not been settled and was dismissed without prejudice. Respondent also attached a certification to the

motion to dismiss, under penalty of perjury, wherein he again misrepresented that the matter had settled, and then stated, in court, that Edmonson had abandoned the vehicle. Respondent did not disclose, in his federal court filings, that Judge Geiger had ruled that the state court matter had not been settled; that Judge Geiger had determined that DiNicola did not have Edmonson's authority to settle the matter; or that Judge Geiger had dismissed the state court proceedings without prejudice.

On February 28, 2014, the Honorable Renee Marie Bumb, U.S.D.J., ordered respondent to produce all transcripts of the state court proceedings to support the representations he had made to the District Court in respect of the entire controversy doctrine in his motion to dismiss Edmonson's suit. In a March 19, 2014 reply to Judge Bumb, respondent admitted that he had not appeared before Judge Malestein on January 4, 2013, but did not address the multiple misrepresentations, including via a certification, he had made to the District Court regarding the disposition of the state court matter.

After obtaining the transcripts of the state court matter herself, Judge Bumb issued a March 26, 2014 memorandum, wherein she denied respondent's motion to dismiss Edmonson's suit, and found that the state court matter had not settled, as respondent had represented, quoting Judge Geiger's orders. Moreover, Judge Bumb concluded that respondent had made multiple

misrepresentations to the District Court, including that the state court matter had settled and that Edmonson had abandoned the vehicle.

On October 25, 2017, the Honorable Jose Linares, Chief Judge of the District Court, referred respondent to the District IV Ethics Committee for "possible misconduct." The OAE docketed the matter and served respondent with an ethics grievance. In his written reply to the grievance, respondent asserted that the state court matter had been dismissed without prejudice and that, because Edmonson had not re-filed within six months, that dismissal became a final dismissal with prejudice.

During respondent's demand interview, he reiterated that position. Respondent also attempted to justify his representation to the District Court that the state court matter had settled, maintaining that "settled" means that the "litigation had reached its finality;" he further claimed that his secretary had attached the wrong exhibit to his motion to dismiss in the federal case. When further pressed, respondent altered his position, stating, instead, that a sentence was missing from his motion to dismiss in the federal case, and he had meant to say that the state court matter was "settled by the order of dismissal."

In the stipulation, respondent finally admitted that the dismissal without prejudice in the state court matter was not a final adjudication, and, thus, he had attempted to mislead Judge Bumb by stating that the matter had settled,

and by failing to disclose the material fact that Judge Geiger had dismissed the state court matter without prejudice. Moreover, respondent admitted that his motion to dismiss Edmonson's federal lawsuit was frivolous, as his attempted reliance on the entire controversy doctrine had no basis in law or fact.

Respondent, thus, admitted that he violated RPC 3.1, by making a frivolous motion to dismiss Edmonson's federal lawsuit; violated RPC 3.3(a)(1) and (5), by both knowingly making false statements of material fact to Judge Bumb and by failing to disclose a material fact to Judge Bumb; violated RPC 4.1(a)(1), by knowingly making a false statement of material fact to Edmonson, in respect of her federal lawsuit; violated RPC 8.1(a), by knowingly making false statements of material fact to the OAE during his demand interview; violated RPC 8.4(b), by making false statements, under penalty of perjury, in his certification in support of his motion to dismiss Edmonson's federal lawsuit; and violated RPC 8.4(c), by making misrepresentations in connection with the federal litigation.

The OAE asserts, in respect of discipline, that a censure is appropriate. Respondent requests an admonition or, at most, a reprimand. In aggravation, the stipulation cites respondent's 2013 reprimand and his failure to correct his misrepresentations to the District Court, despite multiple opportunities to do so. As to mitigation, the parties contend that respondent's misconduct did not

cause harm to any client, and that by stipulating to his misconduct, respondent saved disciplinary resources.

Following a review of the record, we are satisfied that the facts contained in the stipulation clearly and convincingly support the finding that respondent violated RPC 3.1, RPC 3.3(a)(1) and (5), RPC 4.1(a)(1), RPC 8.1(a), RPC 8.4(b), and RPC 8.4(c).

In an effort to secure a swift dismissal of Edmonson's lawsuit in the District of New Jersey, respondent made multiple, brazen misrepresentations to both Edmonson and the District Court. Moreover, he manipulated the state court records in an attempt to deceive Judge Bumb and to secure a ruling in his client's favor. Specifically, he misrepresented multiple times, including in a certification under penalty of perjury, that the state litigation had settled, despite knowing that it had not settled, but, rather, had been dismissed without prejudice. Respondent continued his course of deception during the OAE's investigation into whether he had made misrepresentations to the federal court by continuing his lies, offering both hollow excuses and unsupportable legal arguments that the state court matter had settled. By way of the stipulation, respondent has now come clean, admitting his scheme to attempt to deceive a District Court judge in New Jersey.

Respondent further stipulated that his motion to dismiss Edmonson's federal lawsuit was frivolous, as he had no legal or factual basis to support his entire controversy doctrine argument, given the lack of a final adjudication in the state court matter. He, thus, violated RPC 3.1.

Respondent further conceded that he both knowingly made false statements of material fact to Judge Bumb and failed to disclose a material fact to her regarding the disposition of the state court matter. In particular, he both affirmatively claimed, including under oath, that the matter had settled, and attempted to manipulate the state court record to support that misrepresentation, intentionally failing to provide the federal court with Judge Geiger's first order, wherein he ruled that no settlement had occurred and dismissed the matter without prejudice. Respondent, thus, violated RPC 3.3(a)(1) and (5).

Respondent also stipulated that he knowingly made a false statement of material fact to Edmonson, in respect of her federal lawsuit, by making multiple misrepresentations, including under oath, that the state court matter had been adjudicated via a settlement. He, thus, violated RPC 4.1(a)(1).

Respondent acknowledged that, in respect of the OAE's investigation, he knowingly made false statements of material fact during his demand interview. Specifically, he denied having made misrepresentations to the District Court

via false and unsupportable legal arguments that the state court matter had settled, when he knew that was not the truth. He, thus, violated RPC 8.1(a).

Further, respondent made false statements, under penalty of perjury, in his certification in support of his motion to dismiss Edmonson's federal lawsuit when he stated, under oath, that the state litigation had settled, when he knew that was not the truth. He, thus, violated RPC 8.4(b).

Finally, respondent engaged in a pattern of misrepresentation in connection with the federal litigation. In his motion to dismiss, in his sworn certification, and in his interactions with Judge Bumb and Edmonson, he continued to perpetrate the falsehood that the state court matter had settled, when he knew that was not the truth. He, thus, violated RPC 8.4(c).

In sum, respondent violated RPC 3.1, RPC 3.3(a)(1) and (5), RPC 4.1(a)(1), RPC 8.1(a), RPC 8.4(b), and RPC 8.4(c). The sole issue left for our determination is the proper quantum of discipline for respondent's misconduct.

Generally, the discipline imposed on an attorney who makes misrepresentations to a court or exhibits a lack of candor to a tribunal, or both, ranges from a reprimand to a long-term suspension. See, e.g., In re Marraccini, 221 N.J. 487 (2015) (reprimand imposed on attorney who attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications that had been pre-signed by the manager,

who had since died; the attorney was unaware that the manager had died and, upon learning that information, withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); in mitigation, we found that the attorney's actions were motivated by a misguided attempt at efficiency, rather than by dishonesty or personal gain); In re Schiff, 217 N.J. 524 (2014) (reprimand for attorney who filed inaccurate certifications of proof in connection with default judgments; specifically, at the attorney's direction, his staff prepared signed, but undated, certifications of proof in anticipation of defaults; thereafter, when staff applied for default judgments, at the attorney's direction, they completed the certifications, added factual information, and stamped the date; although the attorney made sure that all credits and debits reflected in the certification were accurate, the signatory did not certify to the changes, after signing, a practice of which the attorney was aware and directed; the attorney was found guilty of lack of candor to a tribunal and failure to supervise nonlawyer employees, in addition to RPC 8.4(a) and RPC 8.4(c)); In re McLaughlin, 179 N.J. 314 (2004) (reprimand imposed on attorney, who had been required by the New Jersey Board of Bar Examiners to submit quarterly certifications attesting to his abstinence from alcohol, but falsely reported that he had been alcohol-free during a period within which he had been convicted of driving while intoxicated, a violation of RPC 8.4(c); in mitigation, after the false

certification was submitted, the attorney sought the advice of counsel, came forward, and admitted his transgressions); In re Duke, 207 N.J. 37 (2011) (attorney received a censure for failure to disclose his New York disbarment on a form filed with the Board of Immigration Appeals, a violation of RPC 3.3(a)(5); the attorney also failed to adequately communicate with the client and was guilty of recordkeeping deficiencies; prior reprimand; the attorney's contrition and efforts at rehabilitation justified only a censure); In re Monahan, 201 N.J. 2 (2010) (attorney censured for submitting two certifications to a federal district court in support of a motion to extend the time within which to file an appeal; the attorney misrepresented that, when the appeal was due to be filed, he was seriously ill and confined to his home on bed rest and, therefore, either unable to work or unable to prepare and file the appeal, a violation of RPC 3.3(a)(1); the attorney also practiced law while ineligible); In re Clayman, 186 N.J. 73 (2006) (censure imposed on attorney who misrepresented the financial condition of a bankruptcy client in filings with the bankruptcy court to conceal information detrimental to the client's Chapter 13 bankruptcy petition; in mitigation, we observed that, although the attorney had made a number of misrepresentations in the petition, he was one of the first attorneys to be reported for his misconduct by a new Chapter 13 trustee who had elected to enforce the strict requirement of the bankruptcy rules, rather

than permit what had been the "common practice" of bankruptcy attorneys under the previous trustee; violations of RPC 3.3(a)(1), (2), and (5); RPC 4.1(a)(1) and (2); and RPC 8.4(c) and (d); in mitigation, the attorney also had an unblemished disciplinary record, was not motivated by personal gain, and did not act out of venality); In re Trustan, 202 N.J. 4 (2010) (three-month suspension for attorney who, among other things, submitted to the court a client's case information statement that falsely asserted that the client owned a home, and drafted a false certification for the client, which was submitted to the court in a domestic violence trial; violations of RPC 3.3(a)(1) and (4); other violations included RPC 1.8(a) and (e), RPC 1.9(c), and RPC 8.4(a), (c), and (d)); In re Perez, 193 N.J. 483 (2008) (on motion for final discipline, three-month suspension for attorney guilty of false swearing; the attorney, then the Jersey City Chief Municipal Prosecutor, lied under oath at a domestic violence hearing that he had not asked the municipal prosecutor to request a bail increase for the person charged with assaulting him; violations of N.J.S.A. 2C:28-2a and RPC 8.4(b)); In re Stuart, 192 N.J. 441 (2007) (three-month suspension for assistant district attorney in New York who, during the prosecution of a homicide case, misrepresented to the court that he did not know the whereabouts of a witness; however, the attorney had made contact with the witness four days earlier; violations of RPC 8.4(c) and (d);

compelling mitigation justified only a three-month suspension); In re Forrest, 158 N.J. 428 (1999) (six-month suspension imposed on attorney who, in connection with a personal injury action involving injured spouses, failed to disclose the death of one of his clients to the court, to his adversary, and to an arbitrator, and advised the surviving spouse not to voluntarily reveal the death; violation of RPC 3.3(a)(5), RPC 3.4(a), and RPC 8.4(c); the attorney's motive was to obtain a personal injury settlement); In re Telson, 138 N.J. 47 (1994) (after an attorney concealed a judge's docket entry dismissing his client's divorce complaint, the attorney obtained a divorce judgment from another judge without disclosing that the first judge had denied the request; the attorney then denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was afraid; the attorney was suspended for six months; violation of RPC 3.3(a)(1) and (5) and RPC 8.4(c) and (d)); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve; violation of RPC 3.3(a)(1) and (2), RPC

3.5(b), and RPC 8.4(c) and (d); two prior private reprimands [now admonitions]); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who had been involved in an automobile accident and then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing; violations of RPC 3.3(a)(4), RPC 3.4(f), and RPC 8.4(b)-(d)).

A reprimand is the typical discipline for violations of RPC 4.1 and RPC 8.4(c), absent other serious ethics infractions or an ethics history. See, e.g., In re Walcott, 217 N.J. 367 (2014) (attorney 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 Chatterjee, 217 N.J. 55 (2014) (for a five-year period, the attorney misrepresented to her employer that she had passed the Pennsylvania bar examination, a condition of her employment; she also requested, received, but ultimately returned, reimbursement for payment of the annual fee required of Pennsylvania attorneys; compelling mitigation considered); and In re Liptak, 217 N.J. 18 (2014) (attorney misrepresented to a mortgage broker the source of the funds she was holding in her trust account; attorney also committed recordkeeping violations; compelling mitigation).

Generally, in matters involving misrepresentations to ethics authorities, the discipline ranges from a reprimand to a term of suspension, depending on the gravity of the offense, the presence of other unethical conduct, and aggravating or mitigating factors. See, e.g., In re Fusco, 197 N.J. 428 (2009) (attorney reprimanded where, in connection with an ethics matter, he falsely asserted that another attorney had drafted a response to a grievance and then signed that letter on that attorney's behalf without that attorney's authorization; prior reprimand); In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who created a phony arbitration award to mislead his partner and then lied to the OAE about the arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his numerous professional achievements, and his pro bono contributions); In re Otlowski, 220 N.J. 217 (2015) (censure imposed on attorney who demonstrated a troubling pattern of deception toward multiple parties; the attorney made misrepresentations to a third party and to the OAE that funds deposited into his trust account had been frozen by a court order when he had disbursed the funds to various parties pursuant to his client's instructions; the attorney also made misrepresentations on an application for professional liability insurance; mitigating factors included the passage of time, the absence of a disciplinary history in the attorney's lengthy career, and

his public service and charitable activities); In re Homan, 195 N.J. 185 (2008) (censure for attorney who fabricated a promissory note reflecting a loan to him from a client, forged the signature of the client's attorney-in-fact, and gave the note to the OAE during the investigation of a grievance against him and continued to mislead the OAE throughout its investigation that the note was authentic, and that it had been executed contemporaneously with its creation; ultimately, the attorney admitted his impropriety to the OAE; extremely compelling mitigating factors considered, including the attorney's impeccable forty-year professional record, the legitimacy of the loan transaction listed on the note, the fact that the attorney's fabrication of the note was prompted by his panic at being contacted by the OAE, and his embarrassment over his failure to prepare the note contemporaneously with the loan); In re Bar-Nadav, 174 N.J. 537 (2002) (three-month suspension for attorney who submitted two fictitious letters to the district ethics committee in an attempt to justify his failure to file a divorce complaint on behalf of a client; the attorney also filed a motion on behalf of another client after his representation had ended, and failed to communicate with both clients); In re Rinaldi, 149 N.J. 22 (1997) (three-month suspension for attorney who did not diligently pursue a matter, made misrepresentations to the client about the status of the matter, and submitted three fictitious letters to the ethics committee in an attempt to show

that he had worked on the matter); In re Katsios, 185 N.J. 424 (2006) (two-year suspension for attorney who prematurely released a buyer's deposit (about $20,000), which he held in escrow for a real estate transaction, to the buyer/client, his cousin, without the consent of all the parties to the transaction; ordinarily, that misconduct would have warranted no more than a reprimand, but the attorney panicked when contacted by the OAE, and then sought to conceal his misdeed by fabricating evidence; we noted that the cover-up had been worse than the "crime"); and In re Silberberg, 144 N.J. 215 (1996) (two-year suspension imposed on attorney who, in a real estate closing, allowed the buyer to sign the name of the co-borrower; the attorney then witnessed and notarized the "signature" of the co-borrower; the attorney stipulated that he knew at the time that the co-borrower was deceased; after the filing of the ethics grievance against him, the attorney falsely stated that the co-borrower had attended the closing; on another occasion, the attorney sent a false seven-page certification to the district ethics committee in order to conceal his improprieties).

Disciplinary cases involving egregious violations of RPC 8.4(c), where the lie is compounded by the fabrication of documents to hide the misconduct, have resulted in the imposition of terms of suspension, even where the attorney

has a non-serious ethics history. See, e.g., In re Steiert, 220 N.J. 103 (2014) and In re Carmel, 219 N.J. 539 (2014).

In Steiert, a six-month suspension was imposed on the attorney for serious misconduct, in violation of RPC 8.4(c) and (d). Through coercion, the attorney had attempted to convince his former client, who had been a witness in the attorney's prior disciplinary proceeding, to execute false statements. The attorney intended to use the former client's false statements to exonerate himself in respect of the prior discipline. In aggravation, the attorney's conduct was found to amount to witness tampering, a criminal offense. Additionally, the attorney exhibited neither acceptance of his wrongdoing nor remorse. Finally, he had a prior reprimand, in 2010, for practicing law while ineligible and making misrepresentations in an estate matter. Proof of fitness was required as a condition to the attorney's reinstatement.

In Carmel, a three-month suspension was imposed on the attorney for his "egregious misconduct," in violation of RPC 8.4(c). The attorney had represented a bank in a successful real estate foreclosure proceeding against a borrower. To avoid duplicate transfer taxes, the attorney and bank chose not to immediately record the bank's deed in lieu of foreclosure. When a subsequent buyer for the property was under contract, the attorney discovered that, in the interim, an Internal Revenue Service (IRS) lien had been filed against the

property. Because the IRS lien was superior of record to the bank's interest, the IRS would levy against the bank's proceeds from the intended sale of the property. Rather than disclose the prior IRS lien to his client, the attorney fabricated a lis pendens for the foreclosure action, which was intended to deceive the IRS into believing that its lien was junior to the bank's interest. The attorney then sent the false lis pendens to the IRS, represented that it had been filed prior to the IRS lien, and attempted to engage the IRS in settlement discussions. Rather than settle, the IRS referred the matter to the U.S. Attorney's Office. The attorney finally admitted his misconduct. In mitigation, the attorney had an unblemished disciplinary history and paid off the IRS lien with his own funds, in the amount of $14,186 plus interest, in order to make both his client and the government whole.

Finally, the level of discipline imposed in cases involving the commission of a crime depends on numerous factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation . . . prior trustworthy conduct, and general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989). Here, respondent's misrepresentations to the District Court were alarming, were committed in his capacity as a lawyer, and, worse, were directly related to his practice of law.

In 1984, the Court imposed a significant suspension, seven years (time served), on an attorney who attempted to persuade a witness to testify falsely before a grand jury, and, thus, directly impacted the administration of justice. In re Verdiramo, 96 N.J. 183 (1984). The attorney pleaded guilty only to influencing a witness, in violation of 18 U.S.C. § 371, and, in accordance with a plea agreement, other charges against the attorney were dismissed. In finding certain conduct unworthy of lawyers, the Court stated:

> [p]rofessional misconduct that takes deadly aim at the public-at-large is as grave as the misconduct that victimizes a lawyer's individual clients. Because such a transgression directly subverts and corrupts the administration of justice, it must be ranked among the most egregious of ethical violations.
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> We have not, in the past, been uniform in our approach to appropriate sanctions for serious ethical violations of this kind -- those that involve criminal acts of dishonesty that directly impact the administration of justice. Compare In re Rosen, supra, 88 N.J. 1 [1981] (respondent's conviction of attempted subornation of perjury resulted in suspension of three years in view of mitigating factors) and In re Mirabelli, 79 N.J. 597 (1979) (respondent's guilty plea to accusation charging bribery warranted three year suspension and not disbarment due to mitigating circumstances) with In re Hughes, 90 N.J. 32 (1982) (respondent's guilty plea to charges of bribing public official and forging public documents warrants disbarment despite mitigating factors). We believe that ethical misconduct of this kind -- involving the commission of crimes that directly poison the well of justice -- is deserving of

> severe sanctions and would ordinarily require disbarment. See, e.g., In re Hughes, supra, 90 N.J. 32.
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> [In re Verdiramo, 96 N.J. at 187.]

Verdiramo was not disbarred because the events calling for his discipline had occurred more than eight years earlier. The Court remarked that "the public interest in proper and prompt discipline is necessarily and irretrievably diluted by the passage of time," and that disbarment would have been "more vindictive than just."

In In re Giordano, 123 N.J. 362 (1991), the Court remarked that crimes of dishonesty touch on an attorney's central trait of character. The Court declared that, when an attorney "participate[s] in criminal conduct designed to subvert fundamental objectives of government, objectives designed to protect the health, safety, and welfare concerns of society, the offense will ordinarily require disbarment." Id. at 370 (citation omitted). Arguably, respondent's criminal conduct falls within this category, given his interference with the administration of justice, his false sworn submission to the District Court, and his attempts to continue the deceit during the ethics investigation.

Pursuant to the above disciplinary precedent, we reject the recommendation of a censure as the appropriate quantum of discipline for respondent's misconduct. Respondent's behavior was so egregious as to clearly warrant a term of suspension. Like the attorneys in Trustan, Perez,

Stuart, Forrest, Telson, Cillo, and Kornreich, who were suspended for their lies to courts, respondent engaged in a scheme of brazen deception toward the District Court, in a concerted effort to manipulate the judge and achieve the outcome he sought in litigation – the swift dismissal of Edmonson's federal lawsuit. Arguably, his misconduct did not extend as far as that of the attorneys in Cillo and Kornreich, who both fabricated documents and placed an innocent third party in legal jeopardy. Respondent's case, however, lacks the compelling mitigation cited in Stuart, which reduced his suspension to only three months.

Moreover, although respondent did not go so far as to affirmatively fabricate documents, he did produce a false certification and manipulate the state court record, by selective omission, to attempt to induce Judge Bumb to believe his false claims that the state litigation had been adjudicated by settlement. That behavior constitutes the type of egregious violation of RPC 8.4(c) examined in Steiert and Carmel, as it was directed at the District Court and Edmonson, with the clear motive of obtaining a victory through deception. Although not rising to the level of the coercion and criminal witness tampering presented in Steiert, respondent's attempted manipulation of the record, combined with his false sworn statement, is akin to the deception and fabrication in Carmel, which warranted a three-month suspension.

Respondent's production of the false certification, under penalty of perjury, touched on the central traits of his character to practice law, and constituted the commission of a criminal act. Pursuant to Verdiramo and its progeny, respondent's premeditated misconduct places him in jeopardy of the ultimate sanction of disbarment. But for Judge Bumb's prompt recognition of his deception, we would need to strongly consider whether respondent is salvageable as an attorney. The fact that the District Court was not fooled by respondent's clumsy attempts to mislead it spares him from such consequences, as there was no direct impact on the administration of justice in this case, or evidence of harm to Edmonson.

Respondent's misconduct did not, however, end with his dishonesty during the federal litigation. Alarmingly, once the OAE investigation commenced, respondent refused to admit his misconduct. Rather, he continued his attempts to appear above reproach, alternatively making hollow legal arguments or placing the blame on his secretary. It was only when he was completely cornered by the OAE that respondent took responsibility for his scheme of deception. We weigh that fact heavily, in aggravation, and conclude that respondent is, thus, similarly situated to the attorneys in Bar-Nadav, Rinaldi, Katsios, and Silberberg, who also continued to lie to ethics authorities in feeble attempts to avoid facing the consequences of their actions.

The only mitigation to consider is respondent's entry into the stipulation. As discussed above, however, we attribute little weight to that factor, as respondent had become tangled in his web of lies and had exhausted all avenues of deceit. On balance, given respondent's attempts to deceive the District Court, exacerbated by his continued efforts to avoid consequences by misleading the OAE, his ethics history, and the lack of compelling mitigation, we determine that a six-month suspension is necessary to protect the public and to preserve confidence in the bar.

Chair Clark and Members Boyer, Petrou, and Singer voted to impose a three-month suspension.

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
Bruce W. Clark, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of David Michael DeClement
Docket No. DRB 19-070

Argued: April 18, 2019

Decided: October 10, 2019

Disposition: Six-Month Suspension

Members	Six-Month Suspension	Three-Month Suspension	Recused	Did Not Participate
Clark		X		
Gallipoli	X			
Boyer		X		
Hoberman	X			
Joseph	X			
Petrou		X		
Rivera	X			
Singer		X		
Zmirich	X			
Total:	5	4	0	0

Ellen A. Brodsky
Chief Counsel