Supreme Court of New Jersey
Disciplinary Review Board
Docket Nos. DRB 19-129, 19-130, and 19-131
District Docket Nos. XB-2015-0028E;
XIV-2014-0136E; XIV-2014-0332E; and
XB-2016-0003E

In the Matter of

Nelson Gonzalez

An Attorney at Law

Corrected Decision

Argued: June 20, 2019

Decided: December 4, 2019

Moira E. Colquhoun appeared on behalf of the District XB Ethics Committee (DRB 19-129 and DRB 19-131).

Steven J. Zweig appeared on behalf of the Office of Attorney Ethics (DRB 19-130).

Jay V. Surgent appeared on behalf of respondent.

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

These matters were before us on a recommendation for a six-month suspension filed by the District XB Ethics Committee (DEC). Four complaints (two filed by the DEC and two filed by the Office of Attorney Ethics (OAE)), which were consolidated for hearing, charged respondent with violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4, presumably (b) (failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information) and (c) (failure to explain a matter to the extent reasonably necessary for the client to make informed decisions about the representation); RPC 1.15(a) (failure to safeguard funds, negligent misappropriation, and commingling); RPC 1.15(d) and R. 1:21-6 (recordkeeping deficiencies); RPC 3.2 (failure to expedite litigation); RPC 3.4(d) (failure to comply with reasonable discovery requests); RPC 5.3(a) (failure to supervise nonlawyer staff); RPC 8.1, presumably (a) (false statement of material fact to a disciplinary authority); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

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

Respondent was admitted to the New Jersey bar in 1997 and to the District of Columbia bar in 1999. He has no prior discipline.

I. DRB 19-130

District Docket Nos. XIV-2014-0136E and XIV-2014-0332E

During the relevant time, respondent maintained attorney trust accounts and an attorney business account at Santander Bank, which had formerly been Sovereign Bank.

The Escobar Real Estate Matter

On August 28, 2012, respondent represented Jaime Roa Escobar in the purchase of real estate in Morristown, New Jersey. As settlement agent for the transaction, respondent collected recording fees for the deed and mortgage, for submission to the Morris County Clerk. Those documents were returned, without filing, because he had overpaid the fees. Unbeknownst to respondent at the time, when the originals were returned to his office, his employee, Joanne Rodriguez, simply placed them in the client file. Thereafter, Rodriguez left respondent's employ.

In July or August 2013, a representative of Fidelity National Title Group (Fidelity) contacted respondent's office to ascertain why it had not received a filed copy of the Escobar deed and mortgage. Respondent's wife, Anicia, who served as his primary secretary and paralegal, fielded Fidelity's calls, reviewed the file, and, in September 2013, informed respondent of the problem. She and

respondent prepared new checks for the recording fees, but Anicia sent the documents to the lender, rather than to the county clerk, for filing. When a Fidelity representative continued to contact Anicia about the deed and mortgage, she lied to respondent, claiming that she had filed them. Finally, in October 2013, Fidelity arranged for the recording of the documents.

Respondent conceded that, had he been performing required three-way reconciliations of his attorney trust account at the time, he would have detected that the trust account checks for the estimated recording fees had not been negotiated. Likewise, if he had reviewed the Escobar client file, he would have learned that Rodriguez had placed the original, unrecorded documents in the file.

On January 14, 2014, Fidelity filed an ethics grievance against respondent, citing his failure to promptly record the Escobar deed. At the ethics hearing, Anicia testified that she had intercepted and hidden the grievance from respondent. She then unilaterally decided to reimburse Fidelity for the costs associated with the Escobar transaction. Therefore, in March 2014, without respondent's knowledge or consent, Anicia removed respondent's trust account checkbook from his unlocked desk; drafted two trust account checks, totaling $2,407; forged respondent's name to them; and sent the checks to Fidelity. In a contemporaneous e-mail exchange with Fidelity, she asked a representative to

consider withdrawing the ethics grievance, because the company had been fully reimbursed.

The deed and mortgage in the Escobar matter, thus, remained unrecorded for fourteen months following the closing of the transaction, until Fidelity recorded the documents without respondent's assistance.

In light of these facts, count one of the complaint alleged violations of RPC 1.1, presumably (a), RPC 1.3, RPC 1.15(a), RPC 1.15(d) and R. 1:21-6(c), and RPC 5.3(a).

The Beltran and Gilzapata Matters

On June 24, 2014, the OAE sent respondent a letter requesting his written explanation for an overdraft in his trust account relating to client Roxanna Beltran, for whom respondent had negotiated a $67,500 settlement. Respondent also had settled an unrelated matter for another client, Johnny Gilzapata, for $1,500. Unbeknownst to respondent, those settlement checks inadvertently were deposited in his attorney business account instead of his attorney trust account.

In respect of the overdraft, the OAE conducted a demand audit, for the period January 2012 to September 2014, of respondent's attorney accounts. On September 17, 2014, during the demand audit interview, respondent produced

copies of two June 4, 2014 trust account deposit slips allegedly used to deposit the Beltran and Gilzapata checks. Respondent explained that Anicia had provided him with those specific trust account deposit slips. He also provided the OAE with a letter, dated September 5, 2014, from Kevin J. Kade, a vice president of Santander Bank, indicating that a bank error had led to the inadvertent deposit of those checks into respondent's attorney business account, instead of the attorney trust account.

Anicia testified that, on June 4, 2014, when she made the deposits for the Beltran and Gilzapata matters:

> I wrote out the check correctly, the endorsement to go to the trust account. And instead of picking up the deposit slip for the trust account, I picked up the deposit slip for the business account.
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> [2T88-20 to 2T89-1.][1]

In fact, the reverse side of the two checks contained stamps indicating, "for deposit only," followed by the trust account number. Anicia denied having fabricated the two trust account deposit slips to mislead the OAE or to induce

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[1] 2T refers to the transcript of the October 31, 2017 ethics hearing.

the bank to issue an apology letter. At the hearing, the following exchange took place between the OAE presenter and Anicia:

> Q. I guess what I'm wondering is you're saying that you created both OAE-7 [deposit slips] and OAE-9 [checks] at the same time?
>
> A. Correct.
>
> Q. You didn't -- you're saying you didn't create OAE-7 to throw the OAE off the trail, so to speak?
>
> A. No, sir.
>
> Q. It wasn't created after the fact?
>
> A. No, sir. It was -- that was an error. That was not done to throw anybody off.
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> Q. So you created two deposits slips at the same time?
>
> A. Correct.
>
> Q. Is that your practice to create two deposit slips?
>
> A. No, it is not, sir. I couldn't find the deposit slip on my desk, so I created another one, I thought that I did not -- I was writing it out and didn't find it and so I went and picked up another one.
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> Q. So once again, you're not saying that you created OAE-7 after the fact?

A. Correct, sir.

[2T98-18 to 2T99-16.]

As a consequence of the erroneous deposits, when respondent issued a trust account check to Beltran for $36,872.72, her share of the settlement proceeds, the trust account balance was insufficient, resulting in a shortage of $2,317, plus $35 in bank fees. Respondent testified that he had been unaware of the overdraft or of the OAE's investigation of it, because Anicia had concealed from him the OAE's communications, including the OAE's June 24, 2014 letter to respondent requesting an explanation for the overdraft.

On September 4, 2014, respondent received what he referred to as a "cryptic" e-mail from Jason Saunders, OAE First Assistant Ethics Counsel, regarding an investigation. Respondent testified about his subsequent telephone call to Saunders:

> And I said, sir, I'm responding to an email that I'm not sure what you're -- you're referring to. And he proceeds to say something to the effect of, we've been trying to get ahold of you, sir, since sometime in April, March or April of this year, and you have not returned our calls, my calls, you have not returned -- you have not answered our correspondence, and I have filed a motion with the Supreme Court to have you temporarily suspended.
>
> And I said, what? I have no idea what you're talking about, sir. What is this in regards to? That was a Thursday.

> And Mr. Saunders said to me, Mr. Gonzalez, I'll just mail out the information I have. I said no, no, no, no, sir, no, please tell me where you're located and I'll be there tomorrow. Please prepare a packet for me and I will pick it up personally. No more mailing, no more third-party delivery, I want to pick this up myself, because I know not of what you speak.
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> The following day I drive down to West Trenton to the OA -- to your office, to the OAE's office, and Mr. Saunders had left for me a packet for me to pick up.
>
> I retrieved the packet, I signed for it, and I go back into the parking lot, sit in my car, open up the envelope, and, much to my dismay, I see my wife's name all over everything.
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> And unfortunately, had I known about all of this well in advance, I would have addressed it immediately. . . . However, I can't unring a bell, so I had to move forward. I presented myself [for an audit interview] on or about the 17th of September and started to cooperate immediately.
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> [2T112-25 to 2T114-3.]

Included in the packet that respondent received from the OAE were documents related to the OAE motion for his temporary suspension for failure to reply to requests for information. As detailed below, Anicia admitted that she had hidden from respondent at least a dozen letters, from both the OAE and the DEC.

In light of these facts, count two of the complaint alleged violations of RPC 1.15(a), RPC 5.3(a), RPC 8.1(a), and RPC 8.4(c).

The Rodriguez Matter

Respondent represented his then employee, Joanne Rodriguez, in a personal injury claim against Louis Roselle, Inc. In October 2013, without respondent's knowledge, she negotiated a $50,000 settlement. On October 14, 2013, Anicia drafted a $33,155 trust account check to Rodriguez, representing her share of the settlement proceeds. Anicia issued that check to Rodriguez before the office had received the settlement check from the defendant's insurance carrier. Respondent was unaware of any of these facts when they occurred, learning of them only in early September 2014. He conceded, however, that if he had been reconciling his trust account as required, he would have noticed these issues much sooner.

OAE Disciplinary Auditor Jasmin Razanica subpoenaed respondent's trust and business account records from Santander Bank for comparison with financial statements that respondent had produced. According to Razanica, when Rodriguez's $33,155 settlement check was negotiated, the trust account should have contained $124,776.77 in behalf of respondent's clients, but held just $91,621.77, a shortage of $33,155, causing a corresponding invasion of other clients' funds in the trust account.

Razanica testified that copies of bank statements from November 2014 through February 2015, that respondent provided, had been altered to reflect a false $50,000 increase in the trust account balance.

Anicia admitted that, after respondent had asked her to scan the bank statements, she altered them, using a computer program, to give the appearance that the trust account held the additional $50,000. She concealed her actions from respondent in order to hide other facts from him. Specifically, the law firm's accountant, Robert Gelman, had alerted her to a shortage in the trust account for the Rodriguez matter. Anicia contacted the insurance carrier for the matter and learned that its original $50,000 settlement check had not been negotiated. When Anicia asked for a replacement check, she was told that the Internal Revenue Service (IRS) had placed a lien on the funds, prompted by respondent's failure to withhold payroll taxes. Anicia withheld the IRS information from respondent. She also claimed that the IRS had been mistaken about the payroll taxes, and that they had not been properly credited to respondent.

Respondent testified that, by the time Anicia was to send the bank statements to Gelman, he had limited her to duties such as scanning financial statements. He stated,

> I never thought that she was going to do anything with them, other than scan them and

> send them to Mr. Gelman so I don't have to invest the time to do it. I gotta tell you, not even in my wildest imagination did I ever think that this was even possible. I was comfortable with her doing mundane things. Now, it's -- I guess the term micromanage is -- is the best way to describe what needs to be done after all of this.
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> [3T141-3 to 10.][2]

Respondent denied any awareness of the IRS lien at the time, claiming that Anicia withheld that information from him as well. In April 2015, after learning of the Rodriguez trust account shortage and the IRS lien, he borrowed $50,000 from a relative and cured the trust account shortage.

Based on the above facts, count three of the complaint charged respondent with having violated RPC 1.15(a), RPC 5.3(a), RPC 8.1, presumably (a), and RPC 8.4(c).

The Acosta Matter

In October 2013, respondent obtained a $15,000 settlement of a personal injury claim for his client, Martha Acosta. After Anicia received the settlement check, she misplaced it. Nevertheless, she created and maintained a ledger card

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[2] 3T refers to the transcript of the January 25, 2018 ethics hearing.

for the Acosta file, as though she had deposited the settlement check in the trust account.

Consequently, respondent issued a $10,000.36 check to Acosta without a corresponding deposit of funds in the trust account. On May 17, 2014, when the check posted to the trust account, respondent should have held $111,322.27 in behalf of his clients, but the account was short $43,155.36, including $15,000 attributable to the Acosta error.

According to respondent, Anicia lied to him by presenting a phony deposit slip for the $15,000. He conceded, however, that he neither reviewed the file nor his bank statements to confirm that the settlement check had been received and deposited before disbursing funds to Acosta. Again, respondent acknowledged that, had he reconciled his attorney accounts as required, he would have noticed these discrepancies. Respondent did not contest Razanica's assessment that, from May 17 to October 17, 2014, the negative balance remained, on account of the Acosta matter.

In light of these facts, count four of the complaint alleged violations of RPC 1.15(a) and RPC 5.3(a).

The Yadaisela Matter

Respondent settled an automobile accident case for his client, Blanca Yadaisela,[3] for $15,000. Although respondent obtained Yadaisela's authorization for settlement (presumably a release), Anicia did not forward it to the opposing party to effectuate settlement. Instead, she prepared a trust account ledger sheet to mislead respondent that she had deposited a $15,000 settlement check on account of the matter.

Then, on May 21, 2014, without respondent's knowledge or consent, Anicia accessed the trust account checkbook in respondent's unlocked desk drawer and drafted a $10,353 trust account check to Yadaisela, representing her share of the settlement proceeds. On May 23, 2014, Yadaisela negotiated the check at Santander Bank.

Razanica testified that, on May 21, 2014, respondent should have held $110,815.51 in his trust account in behalf of his clients. After Yadaisela's check posted to the trust account, the balance fell to $53,508.56 — a shortage of $10,353 on account of the Yadaisela matter alone.

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[3] The client's name also appears as "Yadiesala" in the record.

In respect of these facts, count five of the complaint alleged violations of RPC 1.15(a) and RPC 5.3(a).

The Recordkeeping Violations

In his answer to the complaint and testimony at the ethics hearing, respondent admitted that he had violated R.1:21-6, as follows.

In addition to reviewing respondent's financial books and records, the OAE interviewed him on three occasions. Respondent admitted that he had (a) failed to maintain required trust and business account records; (b) commingled personal funds, by leaving earned legal fees in the trust account and by failing to remove incorrectly deposited business funds in the trust account once that error was detected; (c) made an online payment, to a personal creditor, from the trust account; (d) failed to resolve old, outstanding trust account checks, totaling $27,508.40, from as early as 2006; and (e) failed to resolve old, inactive trust account balances, totaling $15,603.39.

In 2005, the OAE had conducted a random audit of respondent's financial records. As a result of recordkeeping deficiencies that the audit revealed, respondent retained Gelman to assist in the preparation of monthly reconciliations of the trust account. Respondent directed Anicia to send to

Gelman, on a monthly basis, preliminary reconciliations, bank statements, receipts and disbursements journals, and client ledger cards.

As a result of the OAE's new investigation, respondent learned that, in about 2008, Gelman had ceased producing his reconciliations. During a 2014 OAE audit interview, respondent admitted that he neither had noticed that the reconciliations had stopped nor had contacted Gelman to discuss the scope of Gelman's services. Instead, respondent had relied on Anicia's repeated assurances that she was properly coordinating the recordkeeping functions with Gelman. However, unbeknownst to respondent, from 2008 to 2014, Anicia had ceased sending financial documents to Gelman for his review. Respondent admitted that, although he had relied on Anicia, responsibility for recordkeeping rested with him alone.

In light of these facts, count six of the complaint alleged violations of RPC 1.15(a) and (d), and R. 1:21-6(c) and (d).

Anicia's Continued Employment At Respondent's Firm

As detailed above, on September 5, 2014, respondent traveled to the OAE offices and received materials relevant to the OAE investigation underlying these matters. On September 17, 2014, respondent attended the first of three audit interviews, where he learned about some of Anicia's misdeeds in his

office. In addition to failing to record the deed and mortgage in the Escobar transaction, Anicia had concealed from respondent the fact that Fidelity had filed an ethics grievance against him, which the OAE investigated; the OAE had sent him a letter seeking information about the Beltran overdraft; and the OAE had filed a motion for his temporary suspension, and obtained a September 4, 2014 Court Order providing for his future suspension if he failed to cooperate. During the ethics hearing, respondent conceded that, had Anicia been anyone but his wife, he would have terminated her employment in September 2014.

Also at the September 17, 2014 demand audit, respondent provided the OAE with deposit slips that Anicia had prepared for the Beltran and Gilzapata matters. By comparing them to the slips subpoenaed from Santander Bank, the OAE concluded that they were not the actual slips that Anicia had used when she had deposited the corresponding checks.

Respondent testified that, as of the September 17, 2014 audit date, he was the only person authorized to handle the trust account financial records, to open client ledgers, or to print or sign trust account checks. He considered those checks to be sacred.

Respondent also claimed to have taken steps to ensure that future communications could not be diverted from him. He changed the office address

to a post office box, from which only he could retrieve the mail. Anicia was not permitted to answer phones or to scan the mail – those tasks were given to another secretary.

A week later, at the September 23, 2014 OAE audit, respondent learned that, as discussed earlier, Anicia had sent two trust account checks to Fidelity for the Escobar matter, hoping to persuade Fidelity to withdraw its grievance. She also had hidden a fee arbitration matter from him, resulting in his default. In June and July 2014, Anicia issued two business account checks, totaling $7,500, to resolve that fee arbitration matter, without respondent's knowledge.

By October 2014, respondent had again enlisted Gelman to address his recordkeeping deficiencies. When he reviewed documents with Gelman, respondent learned that the insurance carrier's $50,000 settlement check in the Rodriguez matter was missing. Despite his knowledge of Anicia's prior conduct, rather than investigate the issue himself, respondent entrusted that task to Anicia.

On November 17, 2014, respondent gave the OAE an October 2014 trust account bank statement that, unbeknownst to him, Anicia had altered to show a false $50,000 deposit in respect of the Rodriguez matter. In March 2015, respondent learned that, without his knowledge, Anicia also had altered the

trust account bank statements for December 2014 through February 2015, in order to reflect a false balance in the trust account.

Despite all of these examples of Anicia's continued improper conduct, respondent did not terminate her employment, but, rather, claimed he was "transitioning" Anicia out of his law office.

Finally, in March 2016, after respondent learned that Anicia had hidden from him yet another ethics grievance (the Garcia matter discussed below), respondent terminated her employment.

Anicia's Mental State

Dr. Mark Lyall, a licensed psychologist, testified at the ethics hearing and gave information about Anicia's background to explain her mental state. In short, her father was "very domineering, very demanding, [and] very hypercritical." Accordingly, in order to avoid receiving criticism from her father, Anicia began to lie to her parents. Anicia became attracted to respondent because he was the first person in her life who was not afraid to stand up to her father. After her father died, Anicia changed her view of respondent's role in her life from someone who protected her to someone who made demands on her.

According to Dr. Lyall, Anicia began lying to respondent and hiding things from him to prevent conflict, consistent with her mental state. She would emotionally "shut down" in order to avoid conflict and to make things "go away."

Anicia testified about difficulties after her father's death:

> It was after my father's death, I wasn't paying attention. Nelson and I were fighting, it was a very bad time in the office. It bled from the office to the house and from the house to the office, it was like very jumbled up. I no longer wanted to fight, so I started hiding things. If something negative came in and I knew that would cause a fight, I wouldn't tell him. I would try to handle it myself. I would try to do what needed to be done to make sure it was corrected because I didn't want to fight. I did not want confrontation and that's what I did. I did hide stuff, I did do what I'm being accused of because I didn't want to fight with my husband.
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> [2T80-23 to 2T81-12.]

II. DRB 19-129

District Docket No. XB-2015-0028E - The Perez Matter

On January 16, 2013, Nolvia Perez retained respondent to represent her in a divorce action. The written fee agreement called for an initial retainer of $1,500. Perez paid respondent $800, apparently in cash. The remaining $700 was due on January 28, 2013. The agreement set respondent's billing rate at

$300 per hour, paralegals at $125 per hour, and secretaries at $85 per hour.

That same date, Perez signed documents required for the divorce case, including a Family Part Case Information Statement, a Confidential Litigant Information Sheet, a R. 5:4-2(h) Certification, and an Affidavit of Insurance Coverage.

Thereafter, respondent prepared an answer to Perez's husband's divorce complaint, but never filed it. Respondent explained that the fee agreement provided that work would commence only after the entire $1,500 retainer was paid. He maintained that Perez was on a payment plan and never returned to his office. Respondent claimed that his staff reached out to Perez, who indicated that she would return to the office, but never did so. Respondent provided no documents to support his explanation, but asserted that, by March or April 2013, just two months after the initial consultation, he concluded that Perez had abandoned her case.

On April 10, 2013, Rodriguez faxed to Timothy Downs, Esq., the attorney for Perez's husband, a signed stipulation extending time to file an answer. Respondent denied, however, that he had prepared or signed that document, speculating that Anicia had done so without his knowledge.

On August 26, 2013, Downs forwarded to respondent a notice of application for equitable distribution, support, and other relief, which

respondent denied having seen. Respondent did not appear on the return date of that application. Consequently, on September 27, 2013, the court entered an amended final judgment of divorce, awarding primary custody of the minor children to Perez's husband, ordering Perez to pay $108 per month in child support, and awarding Perez's husband attorney's fees of $2,500. Respondent denied having received the judgment. Moreover, he admitted that, although he was aware that he needed to file an answer to the complaint, he did not send Perez a letter explaining the importance of that fact or the consequences if she failed to do so.

Respondent did not return the $800 cash payment to Perez, believing that he had earned it by preparing the aforementioned documents. At the ethics hearing, he admitted that he had no record of depositing those funds in either the trust or business account, speculating that he may have used them for office supplies. Likewise, respondent was unable to produce a ledger card for the representation. The only documentation in the file regarding the fee was a written receipt for the initial $800 cash payment.

Moreover, respondent was unable to produce any documentation about telephonic or written communications with Perez. He conceded that he had not sent Perez a final bill, or any documentation, indicating his entitlement to the $800 partial retainer.

The DEC investigator, Mark Hanna, testified at the ethics hearing regarding his attempts to obtain respondent's cooperation in his investigation. On July 20, 2015, Hanna sent respondent a copy of Perez's grievance, requesting a written reply. In August 2015, he left three voicemail messages for respondent. He sent a follow-up letter on August 24, 2015, and called respondent's office on September 2, 2015, leaving a message for respondent to return the call. Respondent did so that day.

On September 3, 2015, Hanna sent respondent a letter memorializing their conversation the previous day, including respondent's assertion that he had not received any of Hanna's letters or the August voicemail messages. The letter also requested respondent's file for the Perez matter, and his written reply to the grievance, within ten days.

In a January 28, 2016 letter, Hanna informed respondent that he had spoken with Perez, who claimed that, in January 2014, respondent had returned the entire $1,500 retainer. Both respondent and Anicia denied having returned any funds to Perez, who did not testify at the ethics hearing. In that letter and a February 25, 2016 follow-up letter, Hanna requested information about the deposit of the retainer in an attorney account and about any return of the initial retainer to Perez. Respondent failed to reply.

In light of the above facts, the amended complaint charged respondent with violations of RPC 1.1(a), RPC 1.3, RPC 1.4, presumably (b) and (c), RPC 1.15, presumably (d) and R. 1:21-6, and RPC 8.1(b).

III. DRB 19-131

District Docket No. XB-2016-0003E – The Garcia Matter

In 2012, Alba Garcia retained respondent to represent her in a personal injury claim arising from an automobile accident. Respondent met with her three times and filed a complaint on her behalf.

On August 9, 2013, Garcia's complaint was dismissed, without prejudice, for plaintiff's failure to provide discovery. Then, on October 9, 2013, the defendant moved to dismiss Garcia's complaint with prejudice. The return date of the motion was November 25, 2013. Respondent admittedly failed to inform Garcia that a motion to dismiss with prejudice was pending, as R. 4:23-5(a)(2) requires. On March 28, 2014, the Honorable Robert J. Brennan, J.S.C., entered an order dismissing Garcia's complaint, with prejudice, for failure to provide discovery.

Before issuing the dismissal order, Judge Brennan placed on the record a statement of the court's efforts to contact respondent's office: (1) on November 25, 2013, the return date of the motion, the judge's law clerk left a message with respondent's secretary; (2) on December 1, 2013, the judge's law clerk

spoke with respondent's secretary, who stated that she would contact the court regarding the status; (3) on December 20, 2013, court personnel spoke with respondent's secretary, who again replied that she would contact the court; (4) on January 16, 2014, court personnel left a voicemail for respondent; (5) on February 10, 2014, court personnel left a message directly with respondent; (6) on March 18, 2014, a court representative spoke with staff, who said she would speak with respondent and contact the court; (7) on March 19, 2014, court personnel spoke with the same staff person, who represented that she would contact the court; (8) on March 20, 2014, court personnel spoke with the same representative; that representative stated that she had spoken with defense counsel, who indicated that he would be entering into a consent order; (9) on March 21, 2014, court personnel spoke with defense counsel's office, who denied having received contact from respondent's office; and (10) on March 21, 2014, the law clerk spoke with the same representative at respondent's office, who said she had spoken with defense counsel.

According to the judge's decision, thereafter, his law clerk spoke with defense counsel, who indicated that no one from respondent's office had contacted him, and that he would not entertain a consent order.

Respondent testified that he had written the court a letter, dated September 18, 2013, after the August 9, 2013 dismissal without prejudice, in

which he explained that he had provided copies of the missing interrogatories in order to reinstate the complaint. He was aware of his adversary's motion to dismiss the complaint with prejudice, but Anicia had assured him that the defendant would be withdrawing that motion. Respondent admitted that he never called his adversary to ascertain the veracity of Anicia's representation.

Notwithstanding the foregoing, respondent testified that Garcia had answered the defendant's interrogatories. Anicia had assured him that the interrogatories had been sent to defense counsel. Garcia, however, denied having seen the interrogatories, or any documents in her case. Eventually, she retained another attorney, who told her that the case had been dismissed. A third attorney was able to restore and resolve her case.

On January 22, 2016, DEC investigator Hanna sent respondent a copy of the grievance and requested his written reply. On March 7, 2016, Hanna sent a follow-up letter. On June 28, 2016, Hanna sent to respondent's counsel at that time copies of his earlier letters to respondent. That letter requested a written reply to the grievance within ten days.

According to the complaint, during a July 5, 2016 telephone conversation, Hanna and respondent's counsel agreed to a July 22, 2016 deadline for a reply to the grievance. Respondent admitted in his answer that he learned, from his counsel, of the filing of the grievance but blamed his failure

to reply to the grievance on a miscommunication with his counsel regarding the deadline for his reply.

In his answer, respondent admitted failing to file a reply to the grievance prior to the September 20, 2016 filing of the complaint, stating that, "if he had known of the agreed upon date by which the grievance was to be filed, he would have filed said response on a timely basis." Finally, respondent's answer stated that the answer itself "is . . . a timely response and the reason for not filing a response to the grievance was the unfortunate miscommunication between Respondent and his counsel."

Based on these facts, the complaint charged respondent with having violated RPC 1.1(a), RPC 1.3, RPC 1.4, presumably (b) and (c), RPC 3.2, RPC 3.4(d), and RPC 8.1(b).

* * *

In its October 22, 2018 summation brief regarding the Escobar, Beltran, Gilzapata, Rodriguez, Acosta, Yadaisela, and recordkeeping matters, the OAE argued that respondent was guilty of all the charges, and that he was willfully blind to both his recordkeeping duties and Anicia's many improper acts. In support of its position, the OAE cited In re Skevin, 104 N.J. 476 (1986). In that case, the attorney had advanced funds to himself in personal injury matters, before having received the corresponding settlement checks. Consequently,

over a six-month period, his attorney trust account had shortages ranging from $12,000 to $133,000. Id. at 483. The attorney had relied on personal funds that he left in the trust account to cover his advances. Id. at 486. The Court found that, because Skevin had not maintained a running balance of funds in the trust account, he knew that the invasion of client funds was a likely result of his conduct, and, further, had no way to know whether the trust account contained personal funds sufficient to cover the improper advances. The Court, thus, found Skevin guilty of knowing misappropriation and disbarred him. Id. at 489.

The OAE further urged the DEC to make a finding of willful blindness, and recommended a six-month suspension, likening this case to In re Kim, 222 N.J. 3 (2015), where an attorney's willful disregard of his recordkeeping obligations placed his clients' trust funds at great risk. Kim was charged with knowing misappropriation of trust account funds and recordkeeping violations. In the Matter of Daniel Donk-Min Kim, DRB 14-171 (December 11, 2014) (slip op. at 3). Although Kim was cleared of the knowing misappropriation charges, we found clear and convincing evidence of "an accounting system and recordkeeping practices that were so horrendous as to be reckless." Id. at 63-64. We recommended that Kim be suspended for three months, but the Court imposed a six-month suspension.

In aggravation, the OAE cited respondent's failure to heed that office's repeated suggestion that he terminate Anicia's employment; a claimed lack of remorse; and a continuing course of dishonesty and misrepresentations by turning a blind eye to Anicia's conduct.

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

In an October 22, 2018 summation brief regarding the Perez and Garcia matters (DECb), the District XB presenter also argued that respondent was guilty of willful blindness by failing to terminate Anicia's employment once he learned, in September 2014, about her improper acts (DECb22). Also citing Skevin, the presenter stated,

> [d]espite knowing that his staff was deceiving him he willfully turned a blind eye and continued to allow business to continue as usual in his office. In fact, he continued to employ his wife, until March 2016. This, in spite of the fact that he told the OAE in September 2014 that she was an issue and should no longer be employed.
>
> [DECb21.]

The presenter sought a suspension of at least six months in duration.

Respondent's prior counsel filed an undated post-hearing brief (Rb), wherein he argued that all of respondent's alleged wrongdoing stemmed from the actions of his staff, primarily Anicia. Because she hid her actions from

respondent, counsel urged the panel to impose no discipline. In the alternative, counsel urged the following:

> If this panel chooses to discipline Respondent, such discipline should be reduced by the mitigating factors herein, particularly where Respondent has no prior disciplinary history, enjoys the benefit of a good reputation and character, has accepted responsibility for the events that occurred in his office, expressed contrition and remorse, fully cooperated with the ethics authorities, and has taken all remedial measures to ensure that the incidents which precipitated these matters will not happen again, which warrants a suspension of the imposition of any discipline.
>
> [Rb27-28.]

In the event that the panel determined that the matter required the imposition of discipline, counsel urged the imposition of "a reprimand or a censure at most, or no discipline at best."

The hearing panel concluded that most of the facts in these matters were undisputed, and that respondent offered explanations and defenses to some of the charges. The panel accepted Anicia's testimony about her background, the death of her father, and the effect that the death had on her, once she went to work for respondent. According to the panel, Anicia's mental state "led to a reduced diligence in her work performance at Respondent's office, including

withholding correspondence from Respondent and handling financial practices contrary to how she had been apparently instructed by Respondent."

In respect of the OAE complaint, the hearing panel found all of the charged violations in the Escobar, Beltran and Gilzapata, Rodriguez, Acosta, and Yadaisela matters (counts one through five), as well as the recordkeeping violations that respondent admitted in his answer and testimony (count six).[4]

Likewise, in the District XB complaints for the Garcia and Perez matters, the hearing panel found all the violations charged in those complaints. Although the panel cited a violation of RPC 1.5 for respondent's failure to deposit the retainer in the Perez matter in his attorney business account, presumably the hearing panel intended to cite RPC 1.15(d) for this infraction, as R. 1:21-6(a)(2) requires that all funds received for professional services be deposited in an attorney business account.

The DEC recommended a six-month suspension for respondent's diverse misconduct.

On May 16, 2019, respondent's current counsel filed with us a brief and a motion to supplement the record. In his brief, counsel argued that, although

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[4] The panel report referenced a violation of RPC 1.15(e), an obvious error as there is no subsection (e).

respondent had admitted violations of RPC 5.3(a) for failure to supervise Anicia, he had seemingly satisfied the Rule by adopting and maintaining reasonable efforts to ensure that the conduct of nonlawyers in his employ was compatible with his professional obligations. Counsel contended that, although respondent had rules in place for his employees, most of the violations in the case were the result of "unauthorized, improper actions by employees."

Counsel also urged us to consider that RPC 5.3(c), which was not charged in any of the complaints, applies to respondent's actions. That Rule provides:

> (c) a lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if:
>
> > (1) the lawyer orders or ratifies the conduct involved;
> >
> > (2) the lawyer has direct supervisory authority over the person and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action; or
> >
> > (3) the lawyer has failed to make reasonable investigation of circumstances that would disclose past instances of conduct by the nonlawyer incompatible with the professional obligations of a lawyer, which evidence a propensity for such conduct.

Counsel highlighted the OAE's concession in its summation brief that, because respondent was not charged with a violation of RPC 5.3(c), Anicia's improper acts could not be imputed directly to him. Respondent's counsel also urged us to dismiss a statement in the hearing panel report that "respondent admitted in his testimony that he violated RPC 5.3(c) by failing to adequately supervise Anicia," as having been made in error.

In fact, none of the complaints underlying this matter charged respondent with a violation of RPC 5.3(c). Respondent's counsel urged us to find that, without an RPC 5.3(c) charge, Anicia's acts cannot be attributed to respondent and that "RPC 5.3(c) cannot be circumvented by the misapplication of 'willful blindness' to what is in essence a negligent failure to supervise claim."

Respondent's counsel, thus, urged us to dismiss numerous violations, such as the gross neglect and lack of diligence charges in the Escobar and Acosta matters, emphasizing they had originated with Anicia, and not with respondent. Counsel urged the imposition of a reprimand and community service, "because this is essentially a matter involving recordkeeping deficiencies that result in the negligent misappropriation of client funds. . . . It is not a case of 'willful misconduct,' or dishonesty, fraud, deceit or misrepresentation, by Respondent."

Respondent's counsel also filed a motion for leave to supplement the record with copies of the deposit slip, settlement check, and a Confirmation of Endorsement Form for the settlement funds that respondent signed in the Beltran matter; a copy of a plaque from a grateful client; an award from the Ministry of Immigrants; and three letters from individuals attesting to his good character. Although respondent's counsel certified that the bank documents had been obtained from Santander Bank by the OAE, but were not admitted in evidence below, the Beltran deposit slip and check were admitted into evidence, as an exhibit.

Both the DEC and OAE presenters objected to respondent's motion to supplement the record, arguing that the documents had been admitted into evidence at the ethics hearing, or constituted self-serving hearsay not subject to cross-examination, or were not relevant.

We are mindful that, although respondent had an opportunity at the hearing below to offer the testimony of character witnesses and their testimonials, his prior attorney did not do so. Because respondent retained new counsel several weeks before oral argument before us, we see no harm in permitting respondent to supplement the record with the letters. Likewise, we are not offended by new counsel's hasty introduction of documents that already

may have been entered in evidence below, in this voluminous record. Therefore, we determine to grant respondent's motion to supplement the record.

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

The overarching theme in these matters is respondent's improper and unreasonable reliance on Anicia, his wife and employee, to handle matters in his law office. Employed in that capacity since 2007, Anicia's mental state suffered and she became untrustworthy after her father's death in 2010.

The record supports respondent's contention that, for a time, he was unaware that Anicia had resorted to lying, hiding correspondence, and fabricating documents in order to avoid conflict with him. Despite that defense, however, respondent's problem is two-fold: (1) much of the conduct that respondent attributed to Anicia is non-delegable, because he was the supervising attorney; and (2) there came a time when a reasonable attorney would have terminated Anicia's employment, yet respondent failed to do so.

The OAE Allegations

Respondent represented Escobar in her August 28, 2012 purchase of real estate in Morristown. As settlement agent, he was required to perform certain

post-closing functions, including promptly recording the deed and mortgage with the Morris County Clerk. Although he sent the documents to the clerk, they were returned. His secretary, Rodriguez, placed the unrecorded instruments in the client file without telling respondent that she had done so.

In July 2013, a year later, Fidelity contacted respondent's office because it had not received filed copies of those documents. In September 2013, Anicia and respondent prepared new checks for recording, but Anicia never sent the documents to the county clerk. Rather, she provided unfiled copies of the documents to the lender, which forwarded them to Fidelity. On October 24, 2013, the title company recorded those documents without respondent's assistance.

Because of respondent's inattention to the Escobar matter, the deed and mortgage went unrecorded for fourteen months, an inordinate length of time, constituting gross neglect and lack of diligence on respondent's part, violations of RPC 1.1(a) and RPC 1.3, respectively.

In January 2014, Fidelity filed an ethics grievance against respondent. Anicia hid the grievance from respondent and, without his knowledge, accessed his trust account checkbook and drafted two checks, totaling $2,407, to Fidelity, as reimbursement for recording the deed and mortgage. Anicia forged respondent's name to the checks, sent them to Fidelity, and asked Fidelity to

withdraw the grievance. Respondent's failure to secure his trust account checkbook, which Anicia then accessed and used to make the unauthorized payments to Fidelity, constituted a violation of RPC 1.15(a).

Because respondent failed to conduct reconciliations of his trust account, he did not notice that these post-closing tasks remained unresolved for fourteen months, and, thus, violated the recordkeeping requirements of R. 1:21-6 and RPC 1.15(d).

Finally, respondent admittedly failed to supervise Anicia in a manner that would have prevented her from concealing information from him and drafting unauthorized checks from the trust account. He, thus, violated RPC 5.3(a).

The Beltran and Gilzapata Matters

On June 24, 2014, the OAE requested respondent's written explanation for an overdraft of his trust account. Respondent had received a $67,500 settlement check for a client, Beltran, and a $1,500 settlement check for another client, Johnny Gilzapata. Unbeknownst to respondent, Anicia mistakenly deposited those checks into his attorney business account instead of his trust account.

Consequently, when respondent issued a trust account check to Beltran for her $36,872.72 share of the proceeds, the trust account contained

insufficient funds, causing a shortage of $2,317, plus $35 in bank fees. Although the OAE did not charge negligent misappropriation in this matter, respondent failed to safeguard client funds by Anicia's having deposited checks in the attorney business account, rather than the trust account, a violation of RPC 1.15(a). Respondent also admitted that he failed to properly supervise Anicia in respect of the incident, another violation of RPC 5.3(a).

On September 5, 2014, respondent traveled to the OAE offices to discuss an ethics investigation of which he previously had been unaware. After his meeting with the OAE, respondent read documents that repeatedly called into question Anicia's trustworthiness.

Thereafter, respondent asked Anicia for the two trust account deposit slips used for the Beltran and Gilzapata deposits. Respondent turned them over to the OAE at the September 17, 2014 audit, along with a September 5, 2014 letter from the bank explaining that it had erred by depositing the checks into the business account. Although the information on the check indicated the deposits were intended for the trust account, respondent conceded that the deposit slips that Anicia gave him for the OAE were not those actually used for the transaction. Respondent, however, was unaware of these facts at the time.

Anicia denied her purpose in creating the two trust account deposit slips was to mislead the OAE or to cause the bank to issue an apology letter. She

claimed to have created two deposits slips for each check on the day she was making deposits – one for the trust account and one for the business account. Because she could not find the first deposit slip on her desk, she started another one. She was adamant that she had not done so, after the fact, to deceive the OAE.

On September 5, 2014, the bank acknowledged an error – that it should have deposited the checks based on the correct information contained on the checks themselves. Although it is plausible that Anicia created phony deposit slips for these two transactions to convey the appearance that she had deposited the Beltran and Gilzapata checks into the trust account, she had properly stamped the reverse side of the checks for deposit into the trust account. The bank teller apparently followed the information on the deposit slips, which had been filled out for the business account in error, even though the checks stated for deposit to the trust account. Hence, the bank took responsibility for the error.

In any event, on September 17, 2014, fewer than two weeks after respondent first learned from the OAE about Anicia's propensity to lie and hide information from him, respondent gave to the OAE the deposit slips that Anicia had furnished to him. Respondent should have been more circumspect, but he did not yet completely mistrust Anicia.

Due to the somewhat divergent facts surrounding the deposit slips, and with the benefit of the bank's acknowledgment of its own error, we find a lack of clear and convincing evidence that, at this juncture, respondent had the requisite knowledge to make a knowingly false statement of material fact or misrepresentations to ethics authorities about the deposit slips. Therefore, we dismiss the RPC 8.1(a) and RPC 8.4(c) charges.

The Rodriguez Matter

Respondent represented his employee, Rodriguez, in a personal injury claim. Without his knowledge, she negotiated a $50,000 settlement with the insurance carrier. Thereafter, Anicia accessed respondent's trust account checkbook and drafted a check to Rodriguez for $33,155, representing her share of the proceeds. The corresponding settlement check, however, had not yet been deposited in the trust account, causing the negligent misappropriation of other clients' funds in the account, in violation of RPC 1.15(a).

Respondent conceded that, had he been conducting reconciliations of his trust account, he would have noticed the shortage. For his failure to do so, respondent is further guilty of having violated RPC 1.15(d) and R. 1:21-6.

Respondent testified that, after September 5, 2014, when he learned of Anicia's conduct, he limited her scope of work to mundane tasks. Nevertheless,

he had authorized her to scan his bank statements, which she then altered via a computer application. On November 17, 2014, respondent unwittingly provided those bogus statements to the OAE. Once he learned that the trust account was short $33,155, and that the IRS obtained a lien on the settlement funds, he borrowed $50,000 from a relative and cured the shortage in his trust account. Respondent, thus, violated RPC 5.3(a) for his failure to properly supervise Anicia and Rodriguez in this matter.

In respect of the RPC 8.1(a) and RPC 8.4(c) allegations, which are rooted in Anicia's falsification of bank statements provided to the OAE, we find that, by November 17, 2014, it was unreasonable for respondent to rely on Anicia for anything having to do with his law practice. By that date, he was aware that her deceitfulness had continued beyond the information obtained on September 5, 2014. Indeed, he knew that she had, without his authorization, attempted to convince Fidelity to withdraw its grievance; issued trust account checks to Fidelity; and issued business account checks to settle a fee arbitration matter.

Given the extent of respondent's knowledge, by this juncture, of Anicia's deceitful proclivities, we find that respondent's decision to allow her continued access to his law office and to trust her to furnish him with bank statements for the OAE was not reasonable. Thus, we find respondent guilty of having

provided fabricated documents to the OAE, in violation of RPC 8.1(a) and RPC 8.4(c).

The Acosta Matter

In October 2013, respondent obtained a $15,000 settlement of a personal injury claim for Acosta. After receiving the settlement check, Anicia misplaced it. Instead of rectifying her mistake, she started a ledger card for Acosta, completing it as if the check had been deposited into the trust account. She also misled respondent via a phony $15,000 deposit slip.

Thereafter, respondent issued a $10,000.36 check to Acosta, which posted to the trust account on May 17, 2014. The account had a shortage of $43,155.36 on account of all clients, with more than $10,000 attributable to the Acosta error. Respondent failed to review the file or bank account statements to ascertain the status of the matter, and conceded that, had he reconciled his attorney accounts as required, he would have noticed the error. The negative balance for Acosta remained from May 17 until October 17, 2014. Respondent's invasion of other clients' funds in the trust account constituted negligent misappropriation, a violation of RPC 1.15(a).

Respondent also failed to properly supervise Anicia, thereby permitting her to prepare the misleading ledger card and phony deposit slip for the transaction, yet another violation of RPC 5.3(a).

The Yadaisela Matter

Respondent obtained a $15,000 settlement for Yadaisela's personal injury claim. After Yadaisela signed a release, Anicia failed to send it to the opposing party to effectuate the settlement. As in the Acosta matter, Anicia prepared a ledger card designed to mislead respondent that she had deposited a settlement check on account of the matter.

Thereafter, without respondent's knowledge, Anicia took the trust account checkbook from respondent's unlocked desk drawer and issued a $10,353 trust account check to Yadaisela, representing her share of the nonexistent settlement proceeds.

On May 21, 2014, when the Yadaisela check posted to his trust account, respondent should have been holding $110,815.51 on account of all his clients, but the balance was just $53,508.56. The Yadaisela matter accounted for $10,353 of the shortage in the trust account.

In respect of the Yadaisela matter, respondent is guilty of negligent misappropriation and failure to safeguard client finds for not securing his trust

account checkbook, in violation of RPC 1.15(a). He also failed to properly supervise Anicia, which enabled her to engage in these improper acts, yet another violation of RPC 5.3(a).

When the OAE matters are considered as a whole, respondent negligently misappropriated trust account funds in the Beltran, Gilzapata, Rodriguez, Acosta, and Yadaisela matters, and failed to safeguard client funds by not securing his trust account checkbook in respect of the Escobar and Yadaisela matters, violations of RPC 1.15(a). He also failed to properly supervise Anicia in the Escobar, Beltran, Gilzapata, Rodriguez, Acosta, and Yadaisela matters, in violation of RPC 5.3(a).

The Recordkeeping Violations

The OAE investigation into the Beltran overdraft resulted in a demand audit of respondent's attorney books and records and three OAE interviews. As a result of that investigation, the OAE concluded that respondent had (a) failed to maintain require trust and business account records; (b) commingled personal funds; (c) made an online payment to a personal creditor from the trust account; (d) failed to resolve outstanding trust account checks, totaling $27,508.40; and (e) failed to resolve inactive trust account balances, totaling $15,603.39.

Respondent tacitly blamed Anicia for a collapse in the office recordkeeping function, testifying that, after a 2005 random audit by the OAE, he had retained Gelman to correct deficiencies and to prepare monthly reconciliations of the trust account. Without respondent's knowledge, Anicia had stopped sending Gelman the records necessary for proper recordkeeping.

For at least the next five years, respondent did not realize that Gelman had ceased providing accounting services. Rather, he relied on Anicia's assurances that the recordkeeping functions were being properly handled. Respondent admitted that the recordkeeping responsibilities ultimately rested with him alone. For his misconduct in this regard, respondent is guilty of commingling, in violation of RPC 1.15(a), and recordkeeping deficiencies, in violation of RPC 1.15(d) and R. 1:21-6.

The District XB Matters

On January 16, 2013, Perez retained respondent to represent her in a divorce. The fee agreement called for a $1,500 retainer, $800 of which Perez paid in cash. Perez also signed a number of documents prepared for her that day.

Thereafter, respondent prepared an answer to the husband's complaint, but never filed it. Respondent claimed that, because the fee agreement stated

that work would commence once the entire $1,500 retainer was paid, and because Perez never returned, he assumed that she had abandoned her case. Also, according to respondent, his staff had reached out to Perez, who indicated that she would return to the office, but never did.

On April 10, 2013, Rodriguez faxed to Downs, the attorney for Perez's husband, a signed stipulation extending the time to file an answer. That document was apparently prepared and signed by Anicia, without respondent's knowledge.

On August 26, 2013, Downs sent respondent a notice of application for equitable distribution and for support, which respondent denied having seen. Respondent failed to appear on the return date of that application, and, on September 27, 2013, the court entered an amended final judgment of divorce awarding primary custody of the couple's minor children to the husband, ordering Perez to pay child support, and awarding the husband's attorney fees. Respondent denied having seen the judgment.

Unquestionably, respondent represented Perez, as evidenced by their fee agreement and his acceptance of a partial fee. He prepared a draft answer and failed thereafter to prosecute her claims or defend against the husband's complaint. His conduct constituted gross neglect and lack of diligence, in violation of RPC 1.1(a) and RPC 1.3, respectively.

Respondent was unable to produce any written correspondence or evidence of telephonic communications with Perez, who was unaware that her matter was in jeopardy, or that her husband was later awarded equitable distribution, custody of their children, child support, and attorneys' fees. Respondent failed to keep Perez reasonably informed about her matter, a violation of RPC 1.4(b). Moreover, respondent failed to explain her matter to the extent reasonably necessary for Perez to make informed decisions about the representation, a violation of RPC 1.4(c).

Respondent testified that he kept the $800, because he had earned it. He admitted that he had no record that the funds were deposited in an attorney account, speculating that he probably spent the cash on office supplies. Likewise, respondent was unable to produce a ledger card for the representation. The only documentation in the file regarding the fee was a written receipt for the $800.

R. 1:21-6(a)(2) requires that "all funds received for professional services" be deposited in an attorney business account. Respondent's failure to do so violated RPC 1.15(d) and R. 1:21-6.

On July 20, 2015, Hanna sent respondent a copy of the Perez grievance, with a follow-up letter on August 24, 2015. He called respondent's office on September 2, 2015 and spoke with respondent that day. On September 3, 2015,

Hanna sent respondent a letter memorializing their conversation the previous day, requesting respondent's file for the Perez matter and his written reply to the grievance within ten days.

On January 28 and February 25, 2016, Hanna sent respondent letters requesting information about the deposit of Perez's retainer in an attorney business account and any refund to Perez. Respondent did not reply to those letters.

According to respondent, the Perez matter was another instance where Anicia had hidden mail from him. Yet, all of Hanna's correspondence to him was post-September 5, 2015, after which respondent claimed to have taken steps to ensure that only he could retrieve office mail. Apparently, Anicia was able to defeat those efforts.

Although respondent ultimately cooperated with investigators, filing an answer to the complaint and retaining ethics counsel, his silence frustrated Hanna's efforts to process Perez's grievance from July 2015 until at least February 25, 2016, the date of Hanna's final correspondence to him before filing the complaint. Respondent's failure to comply with disciplinary authorities' requests for information in Perez's matter violated RPC 8.1(b).

The Garcia Matter

In 2012, Garcia retained respondent for a personal injury matter. Although respondent filed a complaint in her behalf, it was dismissed, first without prejudice, and subsequently with prejudice, for his failure to provide discovery to his adversary. Respondent failed to inform Garcia about the November 25, 2013 motion to dismiss with prejudice, as R. 4:23-5(a)(2) requires.

Following respondent's failure to appear for the motion to dismiss hearing, the judge's chambers contacted respondent's office on at least eight occasions regarding the matter. Respondent did not reply to any of those inquiries. Therefore, on March 28, 2014, the complaint was dismissed with prejudice.

Although respondent was aware of the motion to dismiss the complaint with prejudice, he claimed that Anicia had assured him that his adversary was withdrawing that motion. Respondent, however, never called his adversary to confirm Anicia's representation.

Respondent utterly failed Garcia by allowing her matter to be dismissed with prejudice, despite numerous attempts by the trial court to contact him. Respondent's misconduct amounted to gross neglect, lack of diligence, and failure to expedite litigation, violations of RPC 1.1(a), RPC 1.3, and RPC 3.2,

respectively. Moreover, respondent's failure to make reasonably diligent efforts to comply with his adversary's legally proper discovery requests violated RPC 3.4(d).

Respondent also failed to communicate with Garcia in any meaningful way. Whenever she called his office, staff told her that her case was progressing. Respondent failed to adequately inform Garcia about the status of her case, including that it was about to be dismissed, unless discovery was forthcoming. Had Garcia been properly informed about the status of her case, she would have been better able to make informed decisions about the representation. Respondent, thus, violated RPC 1.4(b) and (c).

The complaint could have charged two additional RPC violations. Respondent's failure to inform Garcia of the complaint's dismissal could support a violation of RPC 8.4(c), as a misrepresentation by silence. Also, respondent engaged in conduct prejudicial to the administration of justice, based on the extraordinary efforts of Judge Brennan's chambers to contact him. Because these RPCs were not charged, however, we do not find them.

When Garcia retained other counsel, she learned that her complaint had been dismissed. Fortunately, subsequent counsel succeeded in restoring the complaint and, ultimately, resolved the matter.

In respect of the charge that respondent failed to cooperate with the ethics investigation, Hanna sent the grievance to respondent on January 22, 2016, with a reminder letter on March 7, 2016. Shortly thereafter, respondent learned that Anicia had hidden those letters from him as well.

Only then did respondent terminate Anicia's employment.

Thereafter, respondent retained ethics counsel, and, on June 28, 2016, Hanna sent respondent's counsel copies of his earlier letters to respondent, and the investigation resumed. Apparently due to miscommunication between respondent and his then-counsel, no reply to the grievance was submitted before the formal ethics complaint was filed on September 20, 2016. For respondent's brief period of recalcitrance, during which he sought the advice of counsel, we dismiss this RPC 8.1(b) charge.

In sum, we find that respondent violated the following Rules of Professional Conduct: RPC 1.1(a) in three client matters; RPC 1.3 in three client matters; RPC 1.4(b) and (c) in two client matters; RPC 1.15(a) in connection with six client matters; RPC 1.15(d) and R. 1:21-6 in numerous respects; RPC 3.2 in one client matter; RPC 3.4(d) in one client matter; RPC 5.3(a) in connection with six client matters; RPC 8.1(a); RPC 8.1(b); and RPC 8.4(c). As detailed above, we dismiss certain alleged violations of RPC 8.1(a)

and (b), and RPC 8.4(c). The only remaining issue is the appropriate quantum of discipline to be imposed for respondent's misconduct.

Respondent's most serious misconduct stems from the lies and fabrication of documents that he fostered through his continued, unreasonable reliance on Anicia, well after she had proven her dishonesty.

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 DeSeno, 205 N.J. 91 (2011) (reprimand for attorney who misrepresented to the district ethics committee the filing date of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand); In re Otlowski, 220 N.J. 217 (2015) (censure for attorney who made misrepresentations to the OAE and the client's lender by claiming that funds belonging to the lender, which had been deposited into the attorney's trust account, were frozen by a court order; to the contrary, they had been disbursed to various parties); In re Freeman, 235 N.J. 90 (2018) (three-month suspension for pool attorney with the Office of the Public Defender (OPD); the attorney failed to communicate with his client about an upcoming hearing on a petition for post-conviction relief; the attorney

appeared at the hearing without the client, took actions that were contrary to the client's wishes, and made misrepresentations to the court and the OPD; those statements would later negatively impact the client's ability to pursue an appeal; during the ethics investigation, the attorney lied to the DEC investigator, and later to the hearing panel; violations of RPC 1.2(a), RPC 1.4(b), RPC 3.3(a), RPC 4.1(a), RPC 8.1(a), and RPC 8.4(c) found); In re Brown, 217 N.J. 614 (2014) (three-month suspension, in a default matter, for an attorney who made false statements to a disciplinary authority; failed to keep a client reasonably informed about the status of the matter; charged an unreasonable fee; failed to promptly turn over funds; failed to segregate disputed funds; failed to comply with the recordkeeping rule; and failed to cooperate with disciplinary authorities); In re Katsios, 185 N.J. 424 (2006) (two-year suspension for attorney who prematurely released a buyer's $20,000 deposit, 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 falsifying bank records and trust account reconciliations to mislead the ethics investigator that the funds had remained in escrow; we agreed with the special master that the cover-up had been worse than the

"crime"); In re Silberberg, 144 N.J. 215 (1996) (two-year suspension imposed on attorney who, in a real estate closing, allowed the buyer to sign the name of the co-borrower; the attorney then witnessed and notarized the "signature" of the co-borrower; the attorney stipulated that he knew at the time that the co-borrower was deceased; after the filing of the ethics grievance against him, the attorney falsely stated that the co-borrower had attended the closing; on another occasion, the attorney sent a false seven-page certification to the district ethics committee in order to cover up his improprieties); and In re Penn, 172 N.J. 38 (2002) (three-year suspension for attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, to placate the client, the attorney lied that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible).

As mentioned above, the OAE also cited In re Kim, where the attorney received a six-month suspension for woeful disregard of his recordkeeping obligations. Although Kim was charged with knowing misappropriation, for lack of clear and convincing evidence of that allegation, he was found only to have negligently misappropriated client funds. In addition, however, his accounting system and recordkeeping practices were found "so horrendous as

to be reckless." Moreover, his actions had placed his clients' funds at great risk. In the Matter of Daniel Donk-Min Kim, DRB 14-171 (December 11, 2014) (slip op. at 63-64).

Respondent's conduct was quite similar to that of the attorney in Kim. Specifically, he ignored his recordkeeping duties for at least five years, during which he unreasonably accepted Anicia's assurances that his accountant was producing monthly reconciliations of the trust account. Like Kim, respondent has no prior discipline. Although we had recommended that Kim receive a three-month suspension, the Court imposed a six-month suspension.

Generally, a reprimand is imposed for commingling, recordkeeping deficiencies, and negligent misappropriation of client funds. See, e.g., In re Christoffersen, 220 N.J. 2 (2014) (attorney negligently misappropriated funds destined for the satisfaction of a lien, failed to segregate funds that were subject to a dispute between the lawyer and his clients, commingled personal and trust funds, and committed recordkeeping violations; violations of RPC 1.15(a), RPC 1.15(c), and RPC 1.15(d); we considered the attorney's unblemished record of thirty years at the New Jersey bar, his reputation for honesty, and his considerable contributions to the community, especially to his church and the Boy Scouts organization) and In re Wecht, 217 N.J. 619 (2014) (attorney's

inadequate records caused him to negligently misappropriate trust funds, violations of RPC 1.15(a) and RPC 1.15(d)).

Attorneys who fail to supervise their nonlawyer staff typically receive discipline ranging from an admonition to a reprimand, depending on the presence of other ethics infractions, prior discipline, or aggravating and mitigating factors. See, e.g., In re Bardis, 210 N.J. 253 (2012) (admonition for attorney who failed to reconcile and review his attorney records, thereby enabling an individual who helped him with office matters to steal $142,000 from his trust account, causing a shortage of $94,000; mitigating factors were the attorney's deposit of personal funds to replenish the account, numerous other corrective actions, his acceptance of responsibility for his conduct, his deep remorse and humiliation for not having personally handled his own financial affairs, and lack of a disciplinary record); In re Mariconda, 195 N.J. 11 (2008) (admonition for attorney who delegated his recordkeeping responsibilities to his brother, a paralegal, who then forged the attorney's signature on trust account checks and stole $272,000 in client funds); In re Deitch, 209 N.J. 423 (2012) (reprimand for attorney who failed to supervise his paralegal-wife, who stole client or third-party funds via thirty-eight checks payable to her, by either forging the attorney's signature or using a signature stamp; no prior discipline); and In re Murray, 185 N.J. 340 (2005) (reprimand for

attorney who failed to supervise nonlawyer employees, which led to an unexplained misuse of client trust funds and to negligent misappropriation; the attorney also failed to maintain books and records that would have revealed the mysterious scheme; she also failed to perform quarterly reconciliations of her trust account and, for a time, failed to maintain an active trust account; prior admonition for similar deficiencies).

Respondent is also guilty of less serious conduct including gross neglect, lack of diligence and failure to communicate, which will ordinarily result in an admonition. See, e.g., In the Matter of Craig C. Swenson, DRB 16-278 (January 20, 2017) and In the Matter of Walter N. Wilson, DRB 15-338 (November 24, 2015).

In aggravation, in the Garcia matter, respondent's neglect was so complete that his client's case was dismissed with prejudice. Fortunately for the client, a subsequent attorney restored the complaint and resolved the matter. Moreover, respondent failed to heed the OAE's repeated suggestion that he terminate Anicia's employment.

In mitigation, respondent has no prior discipline in twenty-two years at the bar.

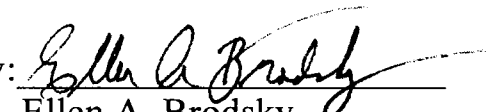
Respondent's conduct was both serious and pervasive. For the totality of his actions, in order to protect the public and preserve confidence in the bar, we

determine that a six-month suspension – the same quantum of discipline imposed in Kim – is warranted. Chair Clark and Members Boyer and Hoberman voted for a three-month suspension. Member Singer voted for a censure.

Member Joseph did not participate.

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

Disciplinary Review Board
Bruce W. Clark, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

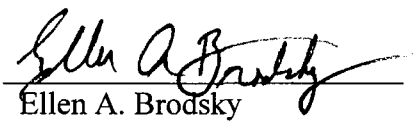
In the Matters of Nelson Gonzalez
Docket Nos. DRB 19-129, 19-130 and 19-131

Argued: June 20, 2019

Decided: December 4, 2019

Disposition: Six-Month Suspension

Members	Six-Month Suspension	Three-Month Suspension	Censure	Recused	Did Not Participate
Clark		X			
Gallipoli	X				
Boyer		X			
Hoberman		X			
Joseph					X
Petrou	X				
Rivera	X				
Singer			X		
Zmirich	X				
Total:	4	3	1	0	1



Ellen A. Brodsky
Chief Counsel