Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-280
District Docket No. I-2015-0017E

In the Matter of	:
Nancy Martellio	:
An Attorney at Law	:

Decision

Argued: April 15, 2021

Decided: June 29, 2021

Scott D. Sherwood appeared on behalf of the District I Ethics Committee.

Vincent J. Pancari appeared on behalf of respondent.

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

This matter was before us on a recommendation for a three-month suspension filed by the District I Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 1.1(b) (pattern of

neglect);[1] RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); RPC 7.1(a) (false communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement); RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another); RPC 8.4(b) (criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

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

Respondent earned admission to the New Jersey bar in 2005. She maintains a law office in Vineland, New Jersey and has no disciplinary history.

The facts of this case are largely undisputed. Beginning in January 2006, respondent began working for the law firm of Goldenberg, Mackler, Sayegh, Mintz, Pfeffer, Bonchi & Gill, P.C. (GM). She handled workers' compensation cases and, until 2012, worked out of GM's Atlantic City, New Jersey office. In 2012, in order to accommodate its Cumberland County clients, GM tasked respondent with opening a satellite office in Vineland, New Jersey. Respondent

[1] The Complaint gave sufficient notice that respondent was charged with "pattern of neglect" but did not specifically cite RPC 1.1(b).

successfully located and opened GM's Vineland office on Landis Avenue in Vineland, New Jersey.

From 2012 through April 2015, respondent worked at GM's Vineland location. For a time, Jeanine Warrington, another GM associate, also worked at the Vineland location. Respondent did not get along with Warrington, and Warrington often told respondent and at least one secretary that she hated the Vineland office and thought that GM should close it. In July 2014, Warrington transferred back to GM's Atlantic City office.

On April 2, 2015, GM's managing partner, Kenneth Mackler, Esq., sent a memo to all GM employees, announcing that Warrington would take over management of GM's workers' compensation department and also would handle personnel changes, responsibilities, and work assignments. The memo indicated that Warrington had been tasked with streamlining GM's structure to make it more responsive to client needs and, thus, had authority to implement changes as she saw fit. Respondent interpreted the memo as an announcement that GM would close the Vineland office and, ultimately, terminate her employment. Three minutes after Mackler sent the memo, respondent used her GM e-mail address to send a list of clients – including their addresses and phone numbers – to her personal e-mail account.

On April 8, 2015, respondent sent a draft resignation letter to her former employer, Henry Zarella, Esq., for his review. In the draft letter, respondent proposed a May 1, 2015 resignation date and detailed an eight-point plan to facilitate her exit from GM. The letter and eight-point plan were drafted in a future tense, making statements, from respondent, such as "I will [perform the following task]" in order to transition away from GM. Respondent and Zarella discussed the draft letter of resignation and a separate draft letter to clients. Following their conversation, respondent updated the resignation letter to request a COBRA insurance package and to address her return of all keys to the Vineland office and her disclosure of the password for the Vineland computer server connection.

On April 9, 2015, respondent contacted Mackler to request assistance for medical expenses. Mackler agreed to provide respondent a check for $1,945.93, to cover a deductible for an out-of-network doctor, which would be treated as compensation in respondent's yearly W-2 form. GM issued that check on April 14, 2015.

On April 10, 2015, respondent hired a locksmith to change the locks of the Vineland office. Respondent claimed she did so because a secretary at the office had lost her key and that her actions were not an effort to lock GM out of

its office. Respondent, however, failed to inform GM that she had the locks changed or to provide the firm with the new keys.

On April 13, 2015, respondent filed with the State of New Jersey a certification of formation for the Law Office of Nancy Martellio, LLC. The address of record on the certification was GM's Vineland office address.

The next day, despite having no authorization from GM to do so, respondent prepared and executed a termination of the lease for the firm's Vineland office between Antebi Properties, LLC (Antebi) and GM, purportedly on behalf of the firm. At the time, GM's lease had two years remaining. The same date, respondent prepared and executed a new lease between Antebi and the Law Office of Nancy Martellio, LLC for the same office space GM had leased. Further, without GM's permission, respondent arranged with Antebi to apply the security deposit GM had paid in 2012 as the security deposit for the lease for her solo practice. Respondent dated both the lease termination and the new lease effective as of April 13, 2015.

On April 20, 2015, at 1:15 p.m., respondent cashed the $1,945.93 check she received from GM to cover her out-of-network health expenses. Twenty minutes later, respondent sent Mackler her resignation letter, via e-mail. After receiving the resignation letter, Mackler called respondent by telephone to discuss its contents. Following their conversation, Mackler sent respondent an

e-mail stating that he had not planned on firing respondent. Additionally, Mackler specifically instructed respondent not to remove any client files from the Vineland office, not to communicate with any clients for any reason, and not to practice law in GM's Vineland office. Mackler also informed respondent how GM planned to divide client files between GM and respondent. Finally, Mackler informed respondent that GM would provide a letter to send to clients regarding respondent's departure from the firm.

Unbeknownst to Mackler, because respondent did not disclose it during their telephone conversation, she had already sent out a letter, that day, to approximately 150 clients identified from the list her secretary maintained. The letter, sent on GM letterhead, informed clients that the Vineland office space was going to be taken over by respondent's solo practice; their files would be transferred to GM's Atlantic City office; and they had the right to choose who would represent them. The letter offered the clients the choice between representation by respondent in her new practice, GM in the Atlantic City office, or some other attorney of their own choosing. Respondent included a line at the bottom of the letter for the clients to sign indicating they would like their file to remain with her. Respondent did not provide such a line for GM or a different attorney.

Later that evening, Warrington and Daniel Tracey, Esq., another associate at GM, traveled to the Vineland office. When they arrived, they found out for the first time that the locks to the building and office had been changed. With Mackler's permission, Warrington contacted a locksmith to change the locks again, so that she and Tracey could gain entry to GM's office.

Once Warrington and Tracey were able to enter the office, they observed that respondent had left many files unopened in the GM case management system, which was contrary to GM's procedures.

The next morning, despite Mackler rejecting the proposals in her resignation letter and despite Warrington hiring a locksmith to change the locks, respondent gained entry to the Vineland office. Later that day, when Tracey returned to the office, the new keys the locksmith had supplied, just the night before, did not work. Respondent denied having changed the locks a second time.

Ultimately, on April 24, 2015, GM obtained relief against respondent, via an order to show cause, enjoining her from interfering with GM's clients, files, and Vineland office space. In June 2015, the parties reached an agreement to settle the matter. As of the date of the ethics hearing, GM still maintained a presence in Vineland.

After reviewing the evidence and testimony presented at the ethics hearing, the DEC concluded that respondent's April 20, 2015 letter to GM clients, on GM letterhead, contained material misrepresentations and omissions of facts which made the letter, as a whole, misleading to clients. The DEC also concluded that the letter failed to explain matters to the extent reasonably necessary to allow GM clients to make an informed decision about their legal representation going forward. Thus, the DEC concluded that respondent had violated RPC 7.1(a) and RPC 1.4(c). Additionally, the DEC found that respondent had violated RPC 8.4(a) by authoring the attorney selection letter to GM clients without the firm's knowledge or consent.

The DEC found that the presenter failed to meet his burden of proof by clear and convincing evidence that respondent violated RPC 8.4(b). The DEC concluded that, although respondent may have committed forgery in altering GM's Vineland office lease, in violation of N.J.S.A. 2C:21-1(a)(1), she was never criminally charged. In so finding, the DEC noted it heavily weighed the parties' ability to settle the civil litigation between them.

Nevertheless, the DEC found that respondent violated RPC 8.4(c) when she did not communicate to GM management that she had changed the Vineland office locks; negotiated and executed a termination of GM's office lease without the authority to do so; and sent a misleading letter to GM clients, which made it

appear that GM was closing the Vineland office and transferring all client files to the Atlantic City office.

Finally, the DEC found that respondent demonstrated a pattern of neglect, in violation of RPC 1.1(b), by virtue of her violations of RPC 1.4(c), RPC 7.1(a), and 8.4(a) and (c).

In aggravation, the DEC found that, even though respondent's misconduct occurred over a few weeks, her misconduct was not an aberrant or compulsive act, but, rather, constituted a continuing course of dishonesty.

In mitigation, the DEC found that respondent had no disciplinary history; had an otherwise good reputation and character; readily admitted to her wrongdoing; expressed contrition and remorse; contributed to her community; and cooperated with ethics authorities. The DEC also found, in mitigation, that no client had been injured by respondent's misconduct and that it had occurred five years prior to the ethics hearing.

As to the proper quantum of discipline to be imposed, the DEC recommended the imposition of a three-month suspension. Relying on In re Siegel, 133 N.J. 162, 167 (1993), to find that there was no "ethical distinction" between defrauding clients and defrauding one's law firm, the DEC concluded that a term of suspension, rather than disbarment, was adequate to protect the public.

Respondent argued that, although she had committed misconduct, the DEC's recommendation of a three-month suspension was too harsh. Relying on much of the testimony and evidence presented at the hearing, respondent argued that a suspension for conduct that occurred over a few weeks, six years ago, is not justified.

In requesting our consideration of the passage of time, respondent explained that, after the complaint was filed in November 2016, she and the DEC worked to prepare a motion for discipline by consent, a stipulation of discipline by consent, and an affidavit of consent. However, in 2017, respondent suffered an accident which delayed the execution of the documents by all parties. The motion was ultimately submitted to the OAE on April 24, 2019, but respondent received no further information from the OAE until she received a letter dated July 25, 2019, appointing a chair for the hearing panel. Subsequently, the hearing commenced on February 19, 2020, without respondent receiving any information regarding the motion for discipline by consent.

Following a de novo review of the record, we are satisfied that the DEC's determination that respondent violated RPC 1.4(c), RPC 7.1(a), and RPC 8.4(c) is supported by clear and convincing evidence. However, we disagree with the DEC's conclusion that respondent violated RPC 1.1(b) and RPC 8.4(a).

Additionally, for the reasons discussed below, we disagree with the DEC's determination that respondent did not violate RPC 8.4(b) simply because she was not criminally charged for her forgery of the lease termination and her theft of GM's security deposit.

Specifically, respondent violated RPC 1.4(c) and RPC 7.1(a) by sending the misleading letter to GM's clients, informing them that she was taking over GM's Vineland office space and that the client files would be transferred to GM's Atlantic City office. By engaging in this misconduct, she gave the clients the impression that GM was closing its Vineland location and would no longer have a presence in the area. Respondent chose to author the letter on GM letterhead, instead of on the letterhead of her own fledgling practice, which she had established seven days earlier. In so doing, respondent's clear, but false, message to clients was that GM was aware of, and approved of, the content of the letter. Moreover, she advised the clients that they could retain the services of her new law firm and included a signature line exclusively for that purpose – a premeditated and deceptive effort to secure as many of GM's clients as she could.

There is no evidence that GM was planning to close its Vineland office or to transfer client files to the Atlantic City location. To the contrary, the record reflects that GM never planned to close its Vineland location and still maintains

a presence in Vineland. Therefore, by virtue of respondent's intentionally misleading letter, she provided GM clients with information based on her misguided perception, which she intentionally chose not to fact-check. Had respondent taken simple steps to ensure she understood the meaning of Mackler's memo, she would have sent a letter to clients which would have enabled them to make an informed decision regarding representation after respondent left GM. However, respondent acted on her perceptions and, thus, misled clients and deprived them of information they needed to make an informed decision. Clearly, her dishonest conduct was designed to induce GM's existing clients to retain her new law firm.

Indeed, the crux of respondent's misconduct was her continuing course of dishonesty, misrepresentation, and deceitful actions, based on her misguided view of Mackler's memo. Respondent's violation of RPC 8.4(c) is more extensive than the DEC found. Respondent's letter to GM clients clearly violated the Rules of Professional Conduct for the reasons above; however, the letter merely capped off nearly three weeks of calculated and deceitful behavior.

When respondent received Mackler's April 2, 2015 memorandum, announcing Warrington's promotion, she incorrectly assumed GM was going to close the Vineland office and that she would be fired. Instead of asking Mackler what his announcement meant for her future at the firm, respondent instead sent

herself a list of all of GM's Vineland clients, so that she could pursue those clients for her own firm. GM neither authorized nor had knowledge of respondent's actions.

Eleven days later, respondent established her own law firm. The next day, respondent committed a brazen act of forgery when, purportedly on behalf of GM, she prepared and executed a termination of the lease between Antebi and GM. Respondent did not have GM's authorization to terminate the lease. Respondent then prepared and executed a new lease between Antebi and her own law firm. In so doing, respondent committed an act of theft by arranging, without permission, to have the security deposit GM paid for the office space in 2012 applied to her law firm's new lease.

Respondent's misconduct came to a head on April 20, 2015, when she e-mailed Mackler her letter of resignation. In each of the nine proposals detailed in the resignation letter, respondent used the future tense "I will." By selecting the future tense, respondent clearly intended to mislead Mackler into believing that the conduct was yet to occur, even though she knew she had already altered the lease for the office space, changed the locks to the office, and sent letters to GM clients offering them the opportunity to continue with her representation at her new solo practice.

Worse still, when Mackler called respondent after receiving her resignation letter, and thereafter e-mailed her detailed instructions concerning her departure from the firm, she further misled Mackler by failing to admit to him that she had already completed most of the nine action items. More than that, despite Mackler's clear instruction to respondent that she was not to contact any clients, respondent failed to inform him that she had already done so, yet another misrepresentation, albeit by omission. Additionally, despite Mackler's instruction not to return to the Vineland office, respondent gained entry to the office on April 21, 2015, despite Warrington changing the locks the night before.

However, despite the multiple instances of respondent's misrepresentations and Rule violations, the RPC 1.1(b) charge cannot be sustained. To find a pattern of neglect, at least three instances of neglect, in three distinct client matters, are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). Here, there are no allegations of neglect of client matters. Thus, there is no evidence in this matter to support a finding that respondent engaged in a pattern of neglect, in violation of RPC 1.1(b).

Similarly, the RPC 8.4(a) charge cannot be sustained. Had the DEC charged and prosecuted this allegation under the theory that respondent violated RPC 8.4(a) by directing her secretary to send her the client list, that charge could have been sustained. The complaint charged, however, that respondent violated

RPC 8.4(a) merely by violating other Rules of Professional Conduct, an approach that we have historically rejected as superfluous. Pursuant to stare decisis, we, thus, dismiss the RPC 8.4(a) charge.

Conversely, we find that respondent violated RPC 8.4(b) because she committed criminal acts that reflect adversely on her honesty and trustworthiness. First, she committed forgery, in violation of N.J.S.A. 2C:21-1(a)(2), by falsely representing to Antebi that GM had authorized her to terminate the Vineland office space lease. Second, by deceitfully convincing Antebi to convert what GM had paid as a security deposit for office space as her own security deposit, respondent committed theft, in violation of N.J.S.A. 2C:20-3. Respondent's unsuccessful attempt to assume possession of the office space with GM's security deposit does not render her conduct non-criminal.

As such, the DEC's finding that respondent did not violate RPC 8.4(b) because she was not criminally charged is inconsistent with New Jersey jurisprudence. It is well-settled that a violation of RPC 8.4(b) may be found even in the absence of a criminal conviction or guilty plea. In re Gallo, 178 N.J. 115, 121 (2003) (the scope of disciplinary review is not restricted, even though the attorney was neither charged with nor convicted of a crime) and In re McEnroe, 172 N.J. 324 (2002) (attorney found to have violated RPC 8.4(b), despite not having been charged with or found guilty of a criminal offense).

In sum, we find that respondent violated RPC 1.4(c); RPC 7.1(a); RPC 8.4(b); and RPC 8.4(c). We dismiss the charges that respondent further violated RPC 1.1(b) and RPC 8.4(a). The sole issue remaining for determination is the appropriate quantum of discipline for respondent's misconduct.

Respondent's most egregious conduct was her commission of criminal acts. Generally, theft by an attorney results in a period of suspension, the length of which depends on the severity of the crime and mitigating or aggravating factors. See, e.g., In re Jaffe, 170 N.J. 187 (2001) (three-month suspension for attorney who pleaded guilty to third degree theft by deception; over a nine-month period, he improperly obtained $13,000 from a healthcare provider by submitting false health insurance claims to reimburse him for prescription formula purchased for his infant child, who was born with life-threatening medical problems; the attorney was entitled to reimbursements of only $4,400; mitigation included lack of prior discipline, the attorney's physical and emotional stress over his child's illness, his acceptance of responsibility for his actions, payment of full restitution ($15,985) to the insurer, a $10,000 civil penalty, and completion of PTI); In re Pariser, 162 N.J. 574 (2000) (six-month suspension for deputy attorney general (DAG) who pleaded guilty to one count of third-degree official misconduct for stealing items, including cash, from co-workers; his conduct was not an isolated incident, but a series of petty thefts

occurring over a period of time; the attorney received a three-year probationary term and was ordered to pay a $5,000 fine, to forfeit his public office as a condition of probation, and to continue psychological counseling until medically discharged; the attorney's status as a DAG was considered an aggravating factor); In re Burns, 142 N.J. 490 (1995) (six-month suspension for attorney who committed three instances of burglary of an automobile, two instances of theft by unlawful taking, and one instance of unlawful possession of burglary tools); In re Kopp, 206 N.J. 106 (2011) (retroactive three-year suspension for identity theft, credit card theft, theft by deception, and burglary; the attorney used the fruits of her criminal activity to support her addiction; mitigating factors included her tremendous gains in efforts at drug and alcohol rehabilitation); In re Bevacqua, 185 N.J. 161 (2005) (three-year suspension for attorney who used a stolen credit card to attempt to purchase merchandise at a K-Mart store, and had five additional fraudulent credit cards and a fake driver's license in his possession at the time; prior reprimand and six-month suspension); and In re Meaden, 165 N.J. 22 (2000) (three-year suspension for attorney who wrongfully obtained the credit card number of a third party, then attempted to commit theft by using the credit card number to purchase $5,800 worth of golf clubs, and made multiple misrepresentations on firearms purchase identification cards and handgun permit applications by failing to disclose his psychiatric condition and

involuntary commitment; prior reprimand); But see In re Walzer, 203 N.J. 582 (2010) (censure for attorney employed by the Department of Human Services who, on at least fourteen occasions, took various items, totaling approximately $100, from a blind refreshment vendor).

Additionally, in In re Siegel, 133 N.J. 162 (1993), the Court addressed, for the first time, the question of whether knowing misappropriation of law firm funds should result in disbarment. During a three-year period, Siegel, a partner at his firm, had converted more than $25,000 in funds from his firm by submitting false disbursement requests to the firm's bookkeeper. Id. at 163-64. Although the disbursement requests listed ostensibly legitimate purposes, they represented Siegel's personal expenses, including a mortgage service fee for his mother-in-law. Ibid. While the payees were not fictitious, the stated purposes of the expenses were. Ibid. Although we did not recommend the attorney's disbarment, the Court agreed with our dissenting public members, who "saw no ethical distinction between the prolonged, surreptitious misappropriation of firm funds and the misappropriation of client funds." Ibid. The Court concluded that knowing misappropriation from one's partners is just as wrong as knowing misappropriation from one's clients, and that disbarment was the appropriate discipline. Id. at 168.

In In re Greenberg, 155 N.J. 138 (1998), the Court refined the principle

announced in Siegel. Greenberg was also disbarred, after misappropriating $34,000 from his law firm partners, over a sixteen-month period, and using the ill-gotten proceeds for personal expenses, including mortgage payments and country club dues. Id. at 153, 159. He improperly converted the funds by endorsing two insurance settlement checks to a client, rather than depositing the checks in his firm's trust account. Id. at 141. Per his instructions, the client then issued checks for legal fees directly payable to Greenberg. Ibid. Additionally, the attorney falsified disbursement requests, and used those proceeds to pay personal expenses. Id. at 141-43.

In mitigation, Greenberg asserted that a psychiatric condition, which he attributed to childhood development issues and depression, rendered him unable to form the requisite intent to misappropriate his firm's funds. Id. at 153. Additionally, he submitted over 120 letters from peers and community members, attesting to his reputation for honesty and integrity. Id. at 162. Determining that Greenberg appreciated the difference between right and wrong, and had "carried out a carefully constructed scheme," the Court rejected his mitigation and disbarred him. Id. at 158, 162.

In In re Staropoli, 185 N.J. 401 (2005), the attorney received a one-year suspension in Pennsylvania and Delaware, but was disbarred in New Jersey, for retaining a $3,000 legal fee, two-thirds of which belonged to his firm. Staropoli,

an associate in a Pennsylvania law firm, was aware that contingent fees were to be divided in certain percentages between the firm and its associates, if the associates originated the cases. In the Matter of Charles C. Staropoli, DRB 04-319 (March 2, 2005) (slip op. at 2). In May 2000, Staropoli settled a personal injury case he had originated, earning a contingent fee. Ibid. The insurance company issued a check payable to both him and the client. Ibid. He did not tell the firm of his receipt of the check and deposited it in his personal bank account, rather than the firm's account. Ibid. He then distributed $6,000 to the client and kept the $3,000 fee for himself. Ibid.

We issued a divided decision. Four members found that the attorney's single aberrational act should not require "the death penalty on [Staropoli's] New Jersey law career." Id. at 22-23. Those members were convinced that his character was not permanently flawed or unsalvageable. Id. at 23.

The four members who voted for disbarment found that the attorney did not have a reasonable belief of entitlement to the funds that he withheld from the firm, and that he had advanced no other valid reason for his misappropriation of law firm funds. Id. at 19-20, 22. The Court agreed and disbarred the attorney.

However, the misappropriation of law firm funds is not always met with disbarment. Lesser sanctions have been imposed where attorneys have been engaged in business disputes with their law firms.

In In re Bromberg, 152 N.J. 382 (1998), the attorney entered into an employment agreement with two other attorneys, in February 1994. In the Matter of Arthur D. Bromberg, DRB 97-129 (December 16, 1997) (slip op. at 3). Although the parties later disagreed over whether the agreement created a partnership, Bromberg reasonably believed that he was a partner in the firm. Id. at 3-4. Compensation problems surfaced almost immediately, due to the dissatisfaction with the amount of fees Bromberg generated. Id. at 5-6. In September 1994, the attorney in control of the firm's finances informed Bromberg that he would no longer receive his $8,000 monthly salary, despite the fact that the executed agreement provided that he would receive that sum through the end of 1994. Id. at 6-7.

By September 1994, Bromberg was receiving no income from the firm. Id. at 9-10. In late October or early November 1994, Bromberg requested that one of his corporate clients send its legal fee checks directly to him. Ibid. The client did not reply to the request and Bromberg did not pursue it. Ibid. Subsequently, however, Bromberg asked the firm's accounts receivables clerk to permit Bromberg to examine the firm's mail, and misrepresented that he was expecting mail from his prior law firm. Id. at 7-8. On November 13 or 14, 1994, Bromberg intercepted an envelope from his client, containing two checks payable to the firm, in the amounts of $3,260.18 and $3,355.38. Ibid. He

endorsed those checks by signing the firm's name and his own name, and deposited them in his own business account, which he had maintained because he was still receiving fees from his prior law practice. Ibid.

In late November or early December 1994, he told his "partner" that he had taken the checks. Id. at 9. It was eventually agreed that Bromberg would remain with the firm until the end of December 1994, because he was to begin selecting a jury for matters in New York. Ibid.

Although the OAE argued that Bromberg should be disbarred for knowing misappropriation of law firm funds, he received only a reprimand. Id. at 18. We found that Bromberg

> reasonably believed that he was a partner with that firm. Even if [Bromberg's] belief was mistaken, that belief led him to understand that he was entitled to receive the checks from [the client]. [Bromberg] had not been paid any salary for October or November. He was experiencing cash flow problems and he felt that [his partner] had unilaterally breached the letter-agreement. Thus, he resorted to 'self-help.' That is not to say that [Bromberg] acted correctly. . . [but he] did not have the mens rea to steal. In his mind, he was advancing to himself funds to which he was absolutely entitled. He acted out of self-righteousness. It is the manner in which [Bromberg] chose to make things right that is reproachable.
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> [Id. at 19-20.]

Similarly, in In re Glick, 172 N.J. 319 (2002), the attorney entered into an agreement with a law firm, whereby he would receive a base annual salary, plus

benefits, reimbursement of expenses, and profit-sharing. In the Matter of Adam H. Glick, DRB 01-151 (January 29, 2002) (slip op. at 2). Glick was responsible for supervising a unit concentrating on personal injury cases and PIP medical arbitration work. Ibid. Because Glick had a prior solo practice, he continued to maintain his attorney business account to deposit fees earned from that practice. Ibid. Almost from the inception of his association with the law firm, Glick and the firm disagreed about his unit's productivity and about Glick's share of the firm's profits. Id. at 2-3.

Between 1994 and 1997, Glick deposited checks totaling $12,747.50 in his own attorney business account. Id. at 4. The checks had been made payable to him and the majority of the fees were for his services as an arbitrator on insurance matters that he had originated. Ibid. However, Glick admitted that the fees were due to the firm, and that he had taken them without the firm's knowledge or consent. Ibid. He stated that he had retained the fees as a form of self-help to compensate him for the firm's failure, in his view, to properly remit his profit share. Ibid. Glick, too, received a reprimand. See also, In re Spector, 178 N.J. 261 (2004) (reprimand for attorney who remained at a firm while in the process of forming his own firm; he was under the impression that the prior firm had failed to comply with its employment agreement and that it intended to cheat him; he, therefore, retained fees that he had earned while still at the prior firm,

intending to hold them in escrow but, through a miscommunication with his new partner, some of the fees were deposited in the business account and were spent); and In re Nelson, 181 N.J. 323 (2004) (reprimand for attorney who took funds from his law firm while in the midst of a partnership dispute; the attorney had learned that legal malpractice lawsuits had been filed against the firm and had been concealed from him; that attorneys in the firm had made improper payments of referral fees to other attorneys; that one of his partners had been trying to "steal" his clients so that the partner would receive credit for generating the fees paid by those clients; and that, contrary to his expressed position, law firm funds had been expended for such items as payment of sanctions imposed on individual attorneys in the firm or payment to an accountant to reconcile an individual attorney's accounts).

Finally, in In re Sigman, 220 N.J. 141, 145 (2014), the attorney, an associate at a Pennsylvania law firm, kept legal fees and referral fees, over a four-year period, repeatedly violating the terms of his employment contract. Sigman knew he was prohibited from handling client matters and referrals independent of the firm, but did so anyway, and instructed clients to issue checks for fees directly to him. Id. at 147-48. In total, he withheld $25,468 from his firm. Id. at 145.

After the firm terminated his employment, but prior to the imposition of

discipline in Pennsylvania, Sigman successfully sued his prior employer, resulting in the award of $123,942.93 in legal and referral fees that the firm had wrongfully withheld from him. Id. at 151. During the disciplinary proceedings, he did not raise the dispute with his prior firm over legal fees as justification for his misappropriation. For his violations of RPC 1.15(a), RPC 1.15(b), RPC 3.4(a), and RPC 8.4(c), the Pennsylvania Supreme Court, citing substantial mitigation, suspended Sigman for thirty months. Ibid.

The OAE moved for reciprocal discipline, recommending that Sigman be disbarred, and we agreed. The Court, however, imposed a thirty-month suspension, identical to the discipline imposed by Pennsylvania, noting that the presence of compelling mitigating factors: respondent had no disciplinary history in Pennsylvania or New Jersey; he submitted character reference letters exhibiting his significant contributions to the bar and underserved communities; he readily admitted his wrongdoing and cooperated with disciplinary authorities; he did not steal funds belonging to a client; his misappropriation occurred in the context of fee payment disputes and a deteriorating relationship with his firm, where he ultimately was vindicated; and his misconduct was reported only after the conflict over fees had escalated. Id. at 161. The Court further noted that the unique nature of the payment and receipt of referral fees in Pennsylvania warranted substantial deference to that jurisdiction's disciplinary decision. Id.

at 160-161.

A misrepresentation to a client requires the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand still may be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney made a misrepresentation by silence to his client, by failing to inform her, despite ample opportunity to do so, that her complaint had been dismissed, a violation of RPC 8.4(c); the complaint was dismissed because the attorney had failed to serve interrogatory answers and ignored court orders compelling service of the answer, violations of RPC 1.1(a), RPC 1.3, and RPC 3.2; the attorney also violated RPC 1.4(b) by his complete failure to reply to his client's requests for information or to otherwise communicate with her; the attorney never informed his client that a motion to compel discovery had been filed, that the court had entered an order granting the motion, or that the court had dismissed her complaint for failure to serve the interrogatory answer and to comply with the court's order, violations of RPC 1.4(c)); In re Ruffolo, 220 N.J. 353 (2015) (knowing that the complaint had been dismissed, the attorney assured the client that his matter was proceeding apace, and that he should expect a monetary award in the near future; both statements were false, in violation of RPC 8.4(c); the attorney also exhibited gross neglect and a lack of diligence by allowing his client's case to

be dismissed, not working on it after filing the initial claim, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter, violations of RPC 1.1(a) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates); and In re Falkenstein, 220 N.J. 110 (2014) (attorney led the client to believe that he had filed an appeal and concocted false stories to support his lies, a violation of RPC 8.4(c); he did so to conceal his failure to comply with his client's request that he seek post-judgment relief, violations of RPC 1.1(a) and RPC 1.3; because he did not believe the appeal had merit, the attorney's failure to withdraw from the case violated RPC 1.16(b)(4); the attorney also practiced law while ineligible, although not knowingly, a violation of RPC 5.5(a)).

Suspensions have been imposed where an attorney's violations of RPC 8.4(c) included the fabrication of documents. See, e.g., In re Brollesy, 217 N.J. 307 (2014) (three-month suspension in an immigration matter; attorney was guilty of gross neglect, lack of diligence, failure to communicate with the client, misrepresentations to the client, fabrication of a letter from the United States Embassy, and forgery of the signature of a fictitious United States Consulate); In re Yates, 212 N.J. 188 (2012) (three-month suspension in a malpractice matter; attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; attorney hid the fact that the statute of limitations

expired on a medical malpractice claim and eventually fabricated a $600,000 settlement; mitigation considered); In re Bosies, 138 N.J. 169 (1994) (six-month suspension for misconduct in four matters; attorney guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; in one matter, for a period of five months, the attorney engaged in an elaborate scheme to mislead his client by engaging in a pattern of misrepresentations, including preparing a motion for sanctions against a witness, which he showed to the client but never filed with the court); In re Natkow, 243 N.J. 290 (2020) (six-month suspension for an attorney found guilty of falsifying information on immigration papers; the attorney failed to inform her supervisors that she had missed deadlines and instead made false statements to them; we found in aggravation the lengths to which the attorney went to conceal her mistakes, rather than admitting her failures; mitigation included mental health issues, employment stressors, and remorse); In re Marshall, 165 N.J. 27 (2000) (one-year suspension for attorney who deceived his adversary and the court in a litigated matter by failing to reveal a material fact during litigation, served false answers to interrogatories, and permitted his client to produce misleading documents to his adversary, all the while maintaining his silence; the attorney backdated a stock transfer document and put an incorrect date in his notarization of the transfer agreement, knowing that the timing of the transfer could have a

material effect on the case; no prior discipline); In re Nash, 127 N.J. 383 (1992) (one-year suspension, on a motion for reciprocal discipline, where the attorney backdated and notarized a separation agreement in a divorce action that contained several statements that the attorney knew were false and filed a divorce action in New York, knowing that both parties were residents of New Jersey); and In re Bartlett, 114 N.J. 623 (1989) (one-year suspension where the attorney attempted to obtain a mortgage under false pretenses by signing mortgage documents on behalf of his client and having his secretary notarize the signatures, even though he knew some of the statements were false; attorney also engaged in a conflict of interest).

Here, the DEC panel recommended a three-month suspension for respondent's misconduct. Based on the case law cited above, however, we determine that the baseline level of discipline for the totality of respondent's violations is a one-year suspension. However, to craft the appropriate discipline in this case, we also consider both aggravating and mitigating factors.

In aggravation, respondent's conduct was not an aberrant act but, rather, was a course of escalating, deceptive misconduct, over a period of weeks. As soon as she received Mackler's e-mail announcing that Warrington would oversee GM's workers' compensation department, respondent set into motion a series of dishonest decisions and actions. Respondent sent a confidential list of

GM client phone numbers and addresses to her personal e-mail; employed forgery to terminate GM's lease; entered into her own lease and engaged in theft in connection with the security deposit GM previously had paid; communicated false information to clients to make it seem as though GM approved of the false information; sent a misleading letter to Mackler covering up actions she had already taken; and continued to conceal her actions when speaking with him. In so doing, respondent committed two separate crimes.

Although respondent's misconduct is not as egregious as that of the attorney in Siegel, she does not have the benefit of a legitimate employment dispute, as in Glick and Bromberg. In those cases, the attorneys turned to self-help when they believed their law firms were not paying them a fair share of legal fees, or were not paying them at all. Here, respondent was not told that GM was closing the Vineland office; nor did GM withhold earned fees or her salary from her. Therefore, respondent unreasonably assumed that Mackler's memo implicated her employment with the firm. She acted on that unreasonable belief to misrepresent to Antebi that GM had granted her authority to use the security deposit it paid as the security deposit for her new solo practice. Thus, the facts surrounding respondent's theft of GM's security deposit are more reprehensible than the misconduct we found in Bromberg and Glick, where reprimands were imposed.

We cannot turn a blind eye to the fact that respondent had multiple opportunities to resign from GM without committing ethics violations, yet chose to continue down her path of dishonesty. Additionally, in aggravation, GM had to seek judicial intervention to curb respondent's misconduct. Only then did GM learn of the totality of respondent's actions, which she had until then willfully hidden from the firm.

In mitigation, respondent has no disciplinary history; readily admitted to the wrongdoing; expressed contrition and remorse; and the conduct occurred six years ago. We allocate substantial mitigation to the passage of six years since the misconduct in this case occurred. Such passage of time is considered a mitigating factor. See, e.g., In re Verdiramo, 96 N.J. 183 (1984) (finding mitigation where events occurred more than eight years earlier, holding that "the public interest in proper and prompt discipline is necessarily and irretrievably diluted by the passage of time"); and In re Davis, 230 N.J. 385 (2017) (imposing significantly lesser discipline than otherwise warranted because, as stated in the Court's Order, there was "extraordinary delay in initiating disciplinary proceedings"). We also noted that, both prior to and subsequent to this snapshot of time, respondent has committed no other ethics violations in her more than fifteen-year career.

Considering the totality of respondent's misconduct, and the mitigating factors present in this case, we determine that a six-month, prospective suspension is the appropriate quantum of discipline for respondent's misconduct.

Vice-Chair Singer and Member Petrou voted for a three-month, prospective suspension.

Member Menaker voted to impose a censure.

Member Campelo was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: 

Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Nancy Martellio
Docket No. DRB 20-280

Argued: April 15, 2021

Decided: June 29, 2021

Disposition: Six-Month Suspension

Members	Six-Month Suspension	Three-Month Suspension	Censure	Absent
Gallipoli	X			
Singer		X		
Boyer	X			
Campelo				X
Hoberman	X			
Joseph	X			
Menaker			X	
Petrou		X		
Rivera	X			
Total:	5	2	1	1

Johanna Barba Jones
Chief Counsel