Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-249
District Docket No. XIV-2020-0048E

In the Matter of	:
Scott A. Rumizen	:
An Attorney at Law	:

Decision

Argued: February 18, 2021

Decided: June 30, 2021

Colleen L. Burden appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-14(a), following a June 27, 2019 order from the Supreme Court of Ohio suspending respondent for two years, with eighteen months "stayed on conditions." The suspension was

based on respondent's violation of Ohio RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), which the OAE asserted is equivalent to New Jersey RPC 8.4(c).[1]

For the reasons set forth below, we determine to grant the motion for reciprocal discipline and to impose a two-year suspension.

Respondent was admitted to the New Jersey bar in 2008, to the Ohio bar in 1992, and to the New York bar in 1995. At the relevant times, he maintained an office for the practice of law in Ohio.

Respondent has no disciplinary history in New Jersey. On July 22, 2019, the Court entered an Order administratively revoking respondent's license to practice law, based on his failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection for seven consecutive years.[2]

On December 20, 2019, as a matter of reciprocal discipline, the Supreme Court of the State of New York, Appellate Division, Fourth Judicial Department (the New York court) imposed a two-year suspension on respondent.

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[1] Although the Supreme Court of Ohio also found that respondent had violated Ohio RPC 8.4(h) (conduct that adversely reflects on the lawyer's fitness to practice law), the OAE asserted that no New Jersey RPC corresponds to that violation. In New Jersey, RPC 8.4(b) addresses a lawyer's fitness to practice law, albeit within the context of a criminal act, not as a general proposition. See RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects).

[2] Rule 1:28-2(c) provides that an Order of revocation does not preclude the Court from exercising jurisdiction in respect of misconduct that pre-dated such an Order.

In this matter, on October 18, 2018, respondent and the Ohio Office of Disciplinary Counsel entered into Agreed Stipulations, which were filed with the Board of Professional Conduct of the Supreme Court of Ohio (the Ohio Disciplinary Board). On February 11, 2019, the Ohio Disciplinary Board filed with the Supreme Court of Ohio (the Ohio Court) Findings of Fact, Conclusions of Law, and Recommendation of the Board of Professional Conduct (the Findings). The Ohio Disciplinary Board recommended the imposition of a two-year suspension, eighteen months of which were to be stayed on the following conditions: (1) that respondent remain compliant with his three-year Ohio Lawyers Assistance Program (OLAP) contract; (2) that respondent remain in counseling with his treating psychologist and follow all recommendations; and (3) that respondent refrain from further misconduct.

On June 27, 2019, the Ohio Court imposed the discipline recommended by the Ohio Disciplinary Board. The Ohio Court further ordered that, if respondent violated any condition of the stay, he would serve the entire two-year suspension.

The following facts are taken from the Ohio Disciplinary Board's Findings. From August 2010 through December 31, 2013, respondent was an independent contractor for the Ohio law firm Kraig & Kraig (the Kraig firm).

The Kraig firm provided respondent with office space, office support, and professional liability insurance coverage.

The Kraig firm compensated respondent pursuant to an "agreed-upon fee structure." Pursuant to that agreement, if the matter originated with the Kraig firm and was referred to respondent, the Kraig firm received two-thirds of "any realized attorney fees," and respondent received one-third. If the matter originated with respondent or was referred to respondent by an attorney other than the Kraig firm, the fee would be divided evenly between respondent and the Kraig firm.

In December 2013, respondent terminated his relationship with the Kraig firm and established a law firm that operated as Rumizen Weisman Co., Ltd. (the Rumizen firm). Despite the termination, the Kraig firm agreed that respondent could continue to handle more than one hundred pending matters. Consequently, respondent and the Kraig firm entered into a new fee-sharing agreement regarding those matters. The specific terms of that agreement are not set forth in the record, other than a statement that respondent would pay the Kraig firm "an agreed-upon percentage of any realized fee," and that the percentage "varied depending on whether respondent or the Kraig firm had initiated the matter and the stage of the proceeding at the time of resolution."

In turn, respondent and his "new partners" in the Rumizen firm agreed that, from January through June 2014, respondent would keep 100% of his portion of the fees generated by the cases subject to the fee-sharing agreement with the Kraig firm. Thereafter, respondent's share of such fees would be paid to the Rumizen firm and distributed to its members pursuant to an unidentified formula.

Respondent testified that, by July 2014, he had become dissatisfied with the terms of his fee-sharing agreement with the Kraig firm. It was undisputed that, although the Kraig firm had refused to renegotiate the terms, the firm had agreed to reduce its fee percentage in one matter.

Brian Kraig, a principal of the Kraig firm, denied that respondent had expressed dissatisfaction with the terms of the agreement or that he had requested the renegotiation of its terms. According to Kraig, if respondent had expressed dissatisfaction with the fee-sharing agreement, the Kraig firm would readily have agreed to modify its terms, as it previously had done.

The Ohio Disciplinary Board found that Kraig's testimony was more credible than respondent's. Accordingly, the Ohio Disciplinary Board found that respondent neither expressed to the Kraig firm dissatisfaction with the fee-sharing agreement nor sought to renegotiate its terms. Instead, on thirteen occasions, between August 2014 and June 2016, respondent "purposely

underpaid" the Kraig firm the amount it was entitled to receive. As detailed below, respondent underpaid the Kraig firm by more than $48,000. Some of the client matters and the misrepresentations are reflected in the below chart:

Case Name	Date	True Settlement Amount	False Settlement Amount	True Attorney Fees	False Attorney Fees	Fees Owed to Kraig	Payment to Kraig	Deficit
Gallagher	Aug-14	$170,000.00	$60,000.00	$62,000.00	$15,000.00	$15,000.00	$3,750.00	$11,250.00
Gamble	Oct-14	$60,000.00	$15,000.00	$24,000.00	$6,000.00	$4,799.00	$3,333.33	$1,465.67
Beesler	Nov-14	$110,000.00	$62,500.00	$40,000.00	$19,000.00	$10,000.00	$4,750.00	$5,250.00
Calderon	Dec-14	$25,000.00	N/A	$10,000.00	$8,333.33	$2,500.00	$2,083.33	$416.67
Tang	Apr-15	$35,000.00	$17,500.00	$11,666.67	$5,833.33	$2,333.33	$1,666.67	$666.66
Acevedo	Sep-15	$17,500.00	$11,500.00	$6,000.00	$3,500.00	$3,000.00	$1,750.00	$1,250.00
Serrano	Sep-15	$11,500.00	$10,000.00	$4,000.00	$3,000.00	$2,000.00	$1,500.00	$500.00
Connelly	Nov-15	$45,000.00	$25,000.00	$15,000.00	$8,333.33	$1,500.00	$750.00	$750.00
Lewanski	Nov-15	$70,000.00	N/A	$26,500.00	$23,333.33	$8,833.33	$7,777.77	$1,055.56
Southern	Jan-16	$27,500.00	$10,000.00	$9,000.00	$2,500.00	$1,800.00	$500.00	$1,300.00
Mozdzer	Mar-16	$95,000.00	$35,000.00	$31,666.66	$11,666.66	$7,916.67	$2,916.00	$5,000.67
Lynch	Mar-16	N/A	N/A	$20,000.00	N/A	$5,000.00	$2,000.00	$3,000.00
Hudson	Jun-16	$35,000.00	$15,000.00	$13,000.00	$5,000.00	$2,600.00	$1,000.00	$1,600.00

[OAEa,Ex.E,¶11.][3]

[3] "OAEa" refers to the appendix to the OAE's September 3, 2020 brief in support of the motion for reciprocal discipline.

In the above cases, respondent deceived the Kraig firm by creating false settlement statement disbursement sheets, often changing the amount of the settlement, the amount of the fees paid, or the medical expenses. Some false disbursement sheets were unsigned and undated. Others contained client signatures that respondent either had forged or had cut and pasted for the purpose of misleading the Kraig firm to believe that the settlement disbursement sheets were accurate. Respondent engaged in this conduct for two purposes: (1) to increase the Rumizen firm's revenue, and (2) to more accurately reflect the time that he had spent on the matters.

On eight additional occasions, between February 2014 and July 2016, respondent failed to either inform the Kraig firm that a case had settled or to timely pay the firm the amounts due pursuant to the fee-sharing agreement. The details are provided in the below chart:

Case Name	Date	Settlement Amount	Attorney Fees	Kraig Firm's Entitlement
Carey	Feb-14	$2,500.00	$1,000.00	$333.00
Damore	Feb-14	$12,500.00	$4,166.66	$1,041.66
Arenas[4]	N/A	$12,500.00	$5,000.00	$1,000.00
Mihalic	Mar-15	$125,000.00	$50,000.00	$5,000.00
Cunningham	Aug-15	$35,000.00	$8,000.00	$1,200.00
Wheeler	Aug-15	$7,500.00	$2,500.00	$833.33
Gillich	Feb-16	$67,500.00	$18,000.00	$1,800.00
Fullerton	Jul-16	$37,500.00	$12,500.00	$6,250.00

[4] Respondent obtained two partial settlements in the Arenas case, each in the amount of $12,500. The first partial settlement occurred in March 2014. Respondent timely paid the Kraig firm its share of the $5,000 fee. The Ohio Disciplinary Board's decision does not set forth when respondent obtained the second partial settlement.

[OAEa,Ex.E,¶12.]

In December 2016, Kraig received an anonymous letter informing him that respondent had provided "numerous false settlement statements to justify a reduced fee payment to" the Kraig firm. In February 2017, Kraig confronted respondent with the allegations, which respondent denied. Shortly thereafter, however, respondent, through counsel, admitted that he had underpaid the Kraig firm. Respondent's counsel assured Kraig that respondent would make the firm whole.

In March 2017, respondent's counsel provided Kraig with a list of cases in which respondent had failed to pay the actual fees due, as well as payment for all the identified, unpaid fees. Three months later, respondent identified two more cases in which he had failed to pay the Kraig firm the actual amount due and tendered the total amount due to the Kraig firm for those matters.

On April 7, 2017, respondent's counsel reported respondent's misconduct to the Ohio disciplinary authorities.

At some point, Kraig demanded copies of the files in all matters that were subject to the fee-sharing agreement, so that he could verify the representations set forth on respondent's list and determine whether the settlement proceeds had been distributed properly. When respondent failed to immediately provide Kraig

with copies of the files, Kraig threatened to file a lawsuit against respondent and the Rumizen firm.

Either respondent or the Rumizen firm then hired an accounting firm, which conducted an audit of all cases subject to the fee-sharing agreement. The accounting firm completed the audit in September 2017, and respondent's lawyer provided Kraig with the audit results and electronic copies of the cases at issue. Upon receipt of this information, Kraig learned "the precise nature" of respondent's misconduct.

Between March 15 and December 31, 2017, respondent made full restitution to the Kraig firm, in the amount of $48,457.81, plus $2,883.77 in interest. In early 2018, respondent and the Rumizen firm paid the Kraig firm an additional $100,000 to resolve the threatened lawsuit.

Based on the above facts, the Ohio Disciplinary Board concluded that the clear and convincing evidence established respondent's violation of Ohio RPC 8.4(c) and (h). In addition, according to the Ohio Disciplinary Board, respondent's conduct was "sufficiently egregious" to warrant the finding of a second RPC 8.4(h) violation.

The Ohio Disciplinary Board cited the following aggravating factors: (1) respondent's actions stemmed from a dishonest and selfish motive; (2) he engaged in a pattern of misconduct, involving thirteen instances over a two-year

period, which included falsifying settlement disbursement sheets and, in some instances, forging the client's signature; and (3) he committed multiple offenses.

The following mitigating factors weighed in respondent's favor: (1) he had an unblemished disciplinary record since his 1992 admission to the Ohio bar; (2) he had made full restitution, plus interest, to the Kraig firm, and paid an additional $100,000 to resolve the threatened legal action; (3) he disclosed his wrongful conduct, cooperated fully throughout the disciplinary process, and stipulated to the facts and violations; (4) he presented forty-four character letters from judges, attorneys, and clients, all of whom knew the nature of his misconduct; and (5) he was remorseful and took full responsibility for his actions.

Although the Ohio Disciplinary Board also noted that respondent had properly reported his misconduct, this factor was given "only limited weight," as "the circumstances of his reporting suggest that he knew his conduct would be reported if he failed to do so." Little weight also was afforded to respondent's humiliation and embarrassment suffered as the result of telling family, friends, and colleagues what he had done.

Finally, although the parties had stipulated, in mitigation, to respondent's "mental health disorder," the Ohio Disciplinary Board gave "minimal weight" to the underlying diagnoses of two mental health experts. Specifically, at the

Ohio disciplinary hearing, respondent had offered the testimony of psychologist Mark Lovinger, Ph.D., who diagnosed respondent with "adjustment disorder with severe anxiety and moderate depression" and mild attention deficit hyperactivity disorder. In the Ohio Disciplinary Board's view, "the causal connection between Dr. Lovinger's diagnosis" and respondent's conduct was "thin, at best." Rather, his diagnoses bore more directly on "why respondent entered into a fee-sharing agreement without sufficient thought as well as respondent's mental state following the disclosure of his misconduct."

Robert G. Kaplan, Ph.D., also a psychologist, had diagnosed respondent with "adjustment disorder with mixed anxiety and depressed mood" and "other specified personality disorder with dependent and histrionic traits." Dr. Kaplan opined that, but for respondent's personality disorder, he would not have "engaged in behavior that brought him to the attention of the Bar Association." The Ohio Disciplinary Board noted that Dr. Kaplan's report based the causal connection between respondent's diagnosis and his misconduct on the assumption that Kraig had refused respondent's request to renegotiate the fee-sharing agreement. Accordingly, because it had found that respondent never asked Kraig to renegotiate the agreement, the Ohio Disciplinary Board determined that Dr. Kaplan's assumption was false, thus, "greatly reducing the value of the diagnosis as a mitigating factor."

Despite the Ohio Disciplinary Board's tepid response to the psychologists' opinions, the panel found that respondent had "demonstrated sincerity and commitment to continuing his mental health treatment" and noted that he was receiving services from the OLAP.

Notwithstanding the "strong" mitigation; respondent's "demeanor and forthrightness during his testimony;" his acceptance of full responsibility for his misconduct; and the fact that he was not charged with a crime, the Ohio Disciplinary Board recommended a two-year suspension, with eighteen months stayed, subject to the following conditions: (1) that respondent remain compliant with his three-year OLAP contract; (2) that he remain in counseling with his treating psychologist and follow all recommendations; and (3) that he refrain from further misconduct. In the panel's view, "this sanction [was] sufficient to demonstrate to the public and the bar that dishonest conduct by an attorney will not be tolerated."

As stated previously, the Ohio Court accepted the Ohio Disciplinary Board's recommendation and suspended him for two years, eighteen months of which were stayed, subject to the above conditions. On February 11, 2020, the Ohio Court reinstated respondent to the practice of law in that state.

As set forth above, on December 20, 2019, as a matter of reciprocal discipline, the New York court imposed a two-year suspension on respondent.

Respondent failed to report his Ohio suspension to the OAE, as R. 1:20-14(a)(1) requires.

The OAE seeks the imposition of either a two- or three-year suspension for respondent's violation of the Ohio equivalent of New Jersey RPC 8.4(c), citing respondent's "theft of fees and forgery of documents to conceal the theft." In seeking a suspension rather than disbarment, the OAE likened respondent's conduct to that of the attorneys in In re Sigman, 220 N.J. 141 (2014), and In re Lankenau, 234 N.J. 261 (2018), both of whom avoided disbarment despite retaining legal fees intended for their employers. In support of its request for a long-term suspension, the OAE relied on New Jersey disciplinary precedent involving forgery and theft by attorneys.

In mitigation, the OAE noted respondent's unblemished disciplinary history in twenty-eight years of practice in Ohio; his cooperation with the Ohio disciplinary authorities; his remorse; and the restitution paid to the Kraig firm. In aggravation, the OAE cited respondent's failure to report his Ohio suspension to the OAE.

In turn, respondent urged the imposition of a two-year suspension. He did not dispute the OAE's positions asserted in its brief. He did, however, offer additional mitigation and sought to explain why he failed to report his Ohio suspension to the OAE. In addition to the mitigation cited by the OAE,

respondent offered the forty-four character letters submitted in the Ohio disciplinary proceeding and Dr. Lovinger's and Dr. Kaplan's reports. As discussed above, the Ohio Disciplinary Board considered these documents in making its recommendation.

Regarding his failure to report his Ohio suspension to the OAE, respondent asserted that, in the spring of 2019, the Court had notified him that his license would be administratively revoked for non-compliance with R. 1:28-2. Respondent did not reply to the notice, as he had no intention of returning to the practice of law in New Jersey. In addition, respondent "firmly, but wrongly, believed" that the notification of pending revocation, and the revocation itself, "terminated any future obligation or duty to report" his Ohio suspension to either the Court or to the OAE.

Respondent expressed regret and apologized for his error. He maintained that he did not intend to "hide or conceal this information" from the OAE, noting that he had reported his Ohio suspension to the New York disciplinary authorities.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish

conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

In an Ohio attorney disciplinary proceeding, the standard of proof is clear and convincing evidence. Supreme Court Rules for the Government of the Bar of Ohio, Rule V, Section 12(I). Regardless, in this matter, respondent stipulated to all the charged misconduct.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

> (E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E).

Respondent's circumvention of the fee-sharing agreement to cheat the Kraig firm of more than $48,000 in legal fees due to it, in thirteen client matters, was a blatant violation of RPC 8.4(c). Respondent further violated that Rule via his concealment of his theft, whereby he created false settlement disbursement sheets on which he either forged or cut and pasted clients' signatures. Finally, respondent also violated RPC 8.4(c) by failing to inform the Kraig firm that eight additional matters had settled.

In sum, we find that respondent violated RPC 8.4(c). The only remaining issue for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

As the OAE suggested, although respondent was not entitled to the fees owed to the Kraig firm, his theft of those funds does not warrant disbarment under In re Wilson, 81 N.J. 451 (1979) (client funds); In re Hollendonner, 102 N.J. 21 (1985) (escrow funds); or In re Siegel, 133 N.J. 162 (1993) (law firm funds). In re Wilson and In re Hollendonner do not apply because the funds at issue in this case were not client or escrow funds.

Although the funds belonged to either Kraig or the Kraig firm, In re Siegel does not require disbarment, as respondent was not a partner with the Kraig firm. Indeed, the Court has been reluctant to disbar attorneys who are not partners in law firms. For example, in In re Sigman, 220 N.J. at 145, an associate with 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 the firm. Id. at 145.

After the firm had terminated Sigman's 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, Sigman did not cite the fee dispute with his firm as justification for his misappropriation. Id. at 162. For his violations of RPC 1.15(a) and (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. In the Matter of Scott P. Sigman, DRB 13-411 (June 13, 2014) (slip op. at 2, 31). The Court, however, imposed a thirty-month

suspension, identical to the discipline imposed by Pennsylvania, noting the presence of compelling mitigating factors: respondent had no disciplinary history in Pennsylvania or New Jersey; he submitted character 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. In re Sigman, 220 N.J. 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 160-61.

In In re Lankenau, 234 N.J. 261, the Court imposed a two-year suspension, retroactive to the effective date of the attorney's equivalent suspension in Delaware. Lankenau arose from two matters. In the first, Lankenau I, the Delaware Supreme Court suspended the attorney for eighteen months. In the Matters of Stephen Harold Lankenau, DRB 16-442 and DRB 17-143 (December 14, 2017) (slip op. at 1).[5]

[5] In the second matter, Lankenau II, respondent received a consecutive six-month suspension. Id. at 1-2. The facts underlying Lankenau II have no bearing on the issue of theft of law firm funds and therefore are inapplicable to the instant matter.

For the purpose of this matter, we are guided by Lankenau I, which involved the attorney's misappropriation of law firm funds. Id. at 5-6. Specifically, Lankenau was an associate at Lundy Law, a Wilmington, Delaware personal injury law firm, from October 2008 through September 2014, when his employment was terminated. Id. at 5. As the sole attorney admitted in Delaware, respondent was responsible for the firm's Delaware cases. Id. at 6.

Lankenau had entered into an agreement with Lundy Law, and knew the firm's specific rules for accepting cases. Ibid. The firm's practice was restricted to personal injury cases; it rejected all cases nearing their applicable statutes of limitation; and the firm referred all cases that did not meet its stringent requirements to outside firms. Ibid. Despite knowing his contractual obligations, Lankenau accepted and litigated four cases during his tenure at Lundy Law, without the knowledge or permission of the firm; used firm funds to pay costs associated with two of the cases; and kept the legal fees generated by this work. Ibid.

Lankenau admitted that the $6,444.44 in fees he earned in those matters should have been remitted to Lundy Law pursuant to the terms of his employment agreement, but he kept the funds for himself. Ibid. He claimed that

the cases were referrals from friends, which Lundy Law would not have accepted anyway. Ibid.

Lankenau further claimed that, in 2013, which was about four years after he had filed the first unauthorized lawsuit, he became overwhelmed by the cost of his son's private education and his workload at Lundy Law. Ibid. He also had fallen behind on his mortgage payments due to the mismanagement of his personal finances. Ibid.[6] He claimed, however, that he did not need the unauthorized legal fees to meet his financial obligations and denied that he had tried to start his own law firm or to "steal" Lundy Law clients. Id. at 9.

In aggravation, the Delaware Supreme Court found that respondent had substantial experience when he committed the misconduct; that he had engaged in a pattern of misconduct over an extended period of time; that he had engaged in multiple forms of dishonesty; and, by his admission, he had committed the misconduct for dishonest and selfish motives. Id. at 11.

In mitigation, Lankenau had an unblemished disciplinary history; he cooperated throughout the disciplinary proceeding; he was remorseful; and his misconduct was exacerbated by his reluctance to confront personal problems,

[6] In a further act of misconduct in Lankenau I, the attorney, who was facing foreclosure, misrepresented to his mortgage company that Lundy Law had furloughed him for a six-month period. Id. at 9. He made the same misrepresentations on a financial assistance form, and forged Lundy Law partner L. Leonard Lundy's signature on a fabricated letter memorializing the bogus furlough period. Ibid.

stemming from his "abusive childhood." Ibid. (During the Delaware disciplinary proceeding, Lankenau offered evidence that he was receiving treatment for mental health issues, dating back to his childhood, which caused him to avoid confronting personal problems. Id. at 10.)

In our majority decision, the members noted that a law partner who knowingly misappropriates law firm funds will be disbarred, citing In re Siegel, unless the partner takes the funds under a disputed, but reasonable, belief that he or she is entitled to the monies. Id. at 18-19. In terms of the applicability of those cases to law firm associates, the majority noted that a law firm partner and an associate "are very different creatures under the law." Id. at 20. Notably, partners have a fiduciary duty to each other, whereas an associate is a mere employee, having neither the superior rights nor the correlating fiduciary duties of a partner. Ibid. Thus, Lankenau's relationship with Lundy Law was "purely an employment arrangement." Id. at 21. The majority explained:

> Respondent admittedly breached several contractual obligations to the firm. He further admitted to secretly profiting from legal work done outside the firm, forging a partner's signature, and lying about his employment status to a mortgage lender. As to misappropriation, the sum total of the evidence is that respondent wrongfully charged $900 in filing fees to the firm's court account. His assorted misdeeds were certainly dishonest and violated several RPCs. But what he did or failed to do was not a breach of a fiduciary duty. An associate improperly charging a filing fee to his firm's account is

> just not the sort of "knowing misappropriation" that triggers mandatory disbarment.
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> [Id. at 21-22.]

We provided several examples in which "a lawyer in a non-fiduciary context can knowingly 'misappropriate' all sorts of things without facing mandatory disbarment," such as stealing food and drink from a blind vendor or credit cards from a dead relative or cash from co-workers. Id. at 22-23. In the cases in which associates, and one attorney who served as "of counsel," were disbarred for knowing misappropriation, we noted that the funds at issue belonged to clients, not their respective firms. Id. at 23-25. Lankenau did not mislead any clients, and he did not misuse their funds. Id. at 25.

In summary, we stated, the principle is "crystal clear." Id. at 27. "A New Jersey lawyer is subject to mandatory disbarment under the 'knowing misappropriation' cases where the misappropriation violates a fiduciary duty to a client, to an escrow beneficiary, or to a fellow law partner." Ibid. Thus, Lankenau was not subject to disbarment. Id. at 28.

We were careful to note, however, that

> a lawyer can still be disbarred for egregiously dishonest misconduct outside a fiduciary duty. There are too many examples of this outcome to bother citing. However, unlike Wilson's mandatory disbarment for even the slightest knowing misappropriation, the magnitude of the misconduct matters for discretionary disbarment. Mitigation matters, too. Where an

> associate's overall conduct in misusing firm funds is reprehensible, disbarment may still be appropriate. . . . Disbarment is the most severe punishment, reserved for circumstances in which "the misconduct of [the] attorney is so immoral, venal, corrupt or criminal as to destroy totally any vestige of confidence that the individual could ever again practice in conformity with the standards of the profession." In re Templeton, 99 N.J. 365, 376 (1985).
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> [Id. at 26.]

In this case, there is no basis on which we may determine to disbar respondent for the knowing misappropriation of client funds, as the funds belonged to either Kraig or the Kraig firm. Still, respondent cannot be found to have knowingly misappropriated law firm funds, as he was neither a partner in nor an associate of the Kraig firm. Further, although respondent had been an independent contractor of the Kraig firm, that relationship had terminated prior to his acts of dishonesty. Thus, Kraig and respondent's relationship was purely contractual and governed by the post-termination fee-sharing agreement. There was no fiduciary relationship between respondent and Kraig or the Kraig firm.

The facts established that respondent retained more than $48,000 in fees that should have been paid to the Kraig firm. To mislead the Kraig firm, respondent created false disbursements sheets. Although respondent also either forged or cut and pasted client signatures on some of the disbursement sheets, the Ohio Disciplinary Board's decision does not identify the number of

documents on which respondent did this. The facts also established that respondent failed to inform the Kraig firm that eight additional matters had settled.

Respondent's conduct in respect of these twenty-one matters took place over a two-and-a-half-year period. As the Ohio Disciplinary Board found, this certainly was a pattern of misconduct on respondent's part.

The fabrication of documents typically involves two scenarios: either to cover up the attorney's mistakes or to gain an advantage either for the attorney or the client. See In re Steiert, 220 N.J. 103 (2014) (six-month suspension imposed on attorney for serious misconduct, in violation of RPC 8.4(c) and (d); through coercion, the attorney had attempted to convince his former client, who had been a witness in the attorney's prior disciplinary proceeding, to execute false statements, which the attorney intended to use to exonerate himself in respect of the prior discipline; in aggravation, the attorney's conduct was found to amount to witness tampering, a criminal offense; he exhibited neither acceptance of his wrongdoing nor remorse; and he had a prior reprimand, in 2010, for practicing law while ineligible and making misrepresentations in an estate matter) and In re Carmel, 219 N.J. 539 (2014) (three-month suspension imposed on attorney for "egregious misconduct," in violation of RPC 8.4(c); to avoid duplicate transfer taxes, the attorney and the bank which he had

represented in a successful real estate foreclosure proceeding against a borrower, chose not to immediately record the bank's deed in lieu of foreclosure; when a subsequent buyer for the property was under contract, the attorney discovered that, in the interim, an Internal Revenue Service (IRS) lien had been filed against the property; because the IRS lien was superior of record to the bank's interest, the IRS would levy against the bank's proceeds from the intended sale of the property; rather than disclose the prior IRS lien to his client, the attorney fabricated a lis pendens for the foreclosure action, which was intended to deceive the IRS into believing that its lien was junior to the bank's interest; the attorney then sent the false lis pendens to the IRS, represented that it had been filed prior to the IRS lien, and attempted to engage the IRS in settlement discussions; rather than settle, the IRS referred the matter to the U.S. Attorney's Office, at which point the attorney finally admitted his misconduct; in mitigation, the attorney had an unblemished disciplinary history of thirty-seven years when he sent the false lis pendens to the IRS and paid off the IRS lien with his own funds, in the amount of $14,186 plus interest, in order to make both his client and the government whole).

Generally, theft by an attorney also 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 guilty of 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) guilty of third-degree official misconduct for stealing items, including cash, from coworkers; 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 golf clubs worth $5,800, and made multiple misrepresentations on firearms purchaser identification cards and handgun permit applications by failing to disclose his psychiatric condition and involuntary commitment; prior reprimand).

Forgery alone warrants a one-year suspension. See, e.g., In re White, 191 N.J. 553 (2007) (one-year suspension imposed on attorney who, without her friend's authority, used the friend's credit to apply for a student loan and then forged the friend's signature on the application; the attorney admitted the forgery after she had been charged, in two counties, with forgery and uttering a false document with the purpose to defraud).

Considering the plethora of precedent that calls for suspensions in cases involving fabrications, thefts, and forgeries, a significant term of suspension is required for respondent's misconduct. In aggravation, we accord considerable weight to the degree and scope of respondent's deception. Respondent, however, also presents significant mitigation in his favor, including his unblemished disciplinary history; the full restitution paid to the Kraig firm; the numerous character letters; and his subsequent reinstatement to the practice of law in Ohio.

On balance, there is no reason to impose substantially different discipline from that which respondent received in Ohio. We, thus, determine to impose a two-year suspension, the same quantum of discipline imposed in Ohio. Given the passage of time, a stay of the suspension, either in whole or in part, is unnecessary.

Vice-Chair Gallipoli voted to disbar respondent.

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: **/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Scott A. Rumizen
Docket No. DRB 20-249

Argued: February 18, 2021

Decided: June 30, 2021

Disposition: Two-year Suspension

Members	Two-year Suspension	Disbar
Clark	X	
Gallipoli		X
Boyer	X	
Hoberman	X	
Joseph	X	
Petrou	X	
Rivera	X	
Singer	X	
Zmirich	X	
Total:	8	1

/s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel