Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-302
District Docket Nos. XIV-2017-0499E
and XIV-2017-0698E

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| In the Matter of | : |
| Mark H. Jaffe | : |
| An Attorney at Law | : |

Decision

Argued: March 18, 2021

Decided: July 27, 2021

Eugene A. Racz appeared on behalf of the Office of Attorney Ethics.

Raymond S. Londa, Esq. appeared on behalf of respondent.

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

This matter previously was before us on a recommendation for an admonition filed by the District XIII Ethics Committee (the DEC). We determined to treat the admonition as a recommendation for greater discipline, pursuant to R. 1:20-15(f)(4), and to bring it on for oral argument.

The formal ethics complaint charged respondent with having violated RPC 1.7(a)(2) (conflict of interest); RPC 1.15(d) (failure to comply with the recordkeeping requirements of R. 1:21-6); RPC 3.3(a)(5) (failure to disclose a material fact to a tribunal, knowing that the omission is reasonably certain to mislead the tribunal); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

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

Respondent was admitted to the New Jersey bar in 1988.

In 1998, he received a reprimand for gross neglect; lack of diligence; failure to communicate with a client; and failure to cooperate with an ethics investigation (violations of RPC 1.1(a); RPC 1.3; RPC 1.4; RPC8.1(b)). In re Jaffe, 154 N.J. 136 (1998).

In 2012, respondent received a second reprimand for lack of candor to a tribunal. In that case, based on respondent's written and oral misrepresentations about a client's refusal to communicate with him, a municipal court judge permitted him to withdraw from a case. Respondent also disobeyed the judge's directive to notify the client that he had been relieved as counsel (violations of RPC 3.3(a)(1); RPC 3.3(a)(5); RPC 3.3(d)). In re Jaffe, 211 N.J. 1 (2012).

In 2017, respondent received a censure for his misconduct in two consolidated matters. In one matter, respondent failed to file an expungement petition for his client; failed to communicate with the client; made misrepresentations to the court and to his client; engaged in conduct prejudicial to the administration of justice; and failed to cooperate with disciplinary authorities. In the second matter, respondent lacked diligence in a criminal case, failed to communicate with his client, and failed to protect the client's interests upon termination of the representation (violations of RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.16(d); RPC 8.1(b); RPC 8.4(c); and RPC 8.4(d)). In re Jaffe, 230 N.J. 456 (2017).

On January 17, 2020, respondent received a third reprimand for failing to communicate the basis or rate of his fee in writing to the client and failing to cooperate with disciplinary authorities (violations of RPC 1.5(b) and RPC 8.1(b)). In re Jaffe, 240 N.J. 433 (2020).

The allegations in the instant matter arose from two separate investigations by the Office of Attorney Ethics (the OAE), one arising from the Random Audit Program, and the other from a referral from a municipal court judge. Respondent admitted the recordkeeping charges arising from the random audit, but disputed the alleged violations arising from the municipal court referral.

During the times relevant to this case, respondent maintained a solo practice in Kingston, New Jersey. He maintained both an active attorney trust account (ATA), and an active attorney business account (ABA), with Wells Fargo Bank. Between 2015 and 2018, he also maintained four other accounts at TD Bank, one additional ATA, and three ABAs. Finally, in that period, respondent had one additional ABA at PNC Bank, and one additional ABA at Santander Bank.

On May 24, 2017, the OAE notified respondent that he had been selected for a random compliance audit, to be held at his office on June 23, 2017. Respondent failed to appear for the compliance audit. Although the OAE twice rescheduled the audit, for August 10 and September 13, 2017, respondent still failed to appear. Thereafter, on September 15, 2017, the OAE scheduled a demand audit for October 11, 2017.

On October 11, 2017, respondent appeared at the demand audit, but brought no records. He claimed that his accountant, Brian Levine, CPA, had the records and was in the process of reviewing them.

On October 16, 2017, the OAE sent a letter to respondent directing him to produce certain documents, including his ATA and ABA bank statements for May 1, 2015 through the date of the letter, and all accounting records detailing transactions for that period, including client trust ledger cards; ATA and ABA

receipts and disbursements journals; and ATA bank reconciliations, including his checkbook and schedule of trust clients identifying the total balance on deposit in his ATA.

Respondent failed to comply with the OAE's October 16, 2017 letter. Consequently, on December 29, 2017, the OAE informed respondent that it was conducting an ethics investigation and that he needed to cooperate with the audit by January 10, 2018. The letter was sent by certified mail, but was returned to the OAE marked "vacant, unable to forward."

By letter dated January 24, 2018, the OAE informed respondent's counsel of the OAE's December 29, 2017 letter to respondent, however, no documents were submitted pursuant to the OAE's request. On April 9, 2018, the OAE again wrote to respondent,[1] and requested a reply by April 19, 2018.

On April 18, 2018, the OAE received a letter from respondent, via facsimile, asking for "several more weeks" to provide the previously requested financial documents. The OAE granted the request and set a new deadline of April 26, 2018.

On April 26, 2018, the OAE conducted an interview with respondent regarding his failure to comply with the random compliance audit. During the

[1] Only one item of correspondence included in the record submitted to us was addressed to Robert Ramsey, Esq. The record does not include the precise beginning or end dates of Mr. Ramsey's representation.

interview, respondent provided copies of ATA bank statements, a letter from his accountant, Levine, and some of the documents requested, including the October 2016 monthly bank statement from his TD Bank ATA; and monthly bank statements from his Wells Fargo ATA for October 24, 2017 through March 31, 2018.

On May 22, 2018, the OAE directed respondent to produce, by June 8, 2018, certain documents, including copies of his ABA records for January 1, 2017 through May 22, 2018, as well as a summary of all ATA transactions for that period. Respondent was directed to inform the OAE in writing if no transactions occurred during that period, specifying the last date he used his ATA.

Respondent subsequently produced Wells Fargo ATA records to the OAE. The bank records provided for respondent's Wells Fargo ATA consisted of bank statements of all ATA activity, from October 2017 through June 2018, and two ledger cards. One ledger card was for respondent himself, consisting of both start-up money for bank fees, and money inadvertently deposited and removed from the ATA; the other ledger card was labeled "Attorney Trust Ledger – Misc Acct," for items that should have been placed in the ABA but were inadvertently deposited in the ATA. The packet further contained a sheet labeled "Trust Transaction Journal," consisting of a chronological listing of all ATA

transactions and bank statements for the period examined, and bank reconciliations for each month. Levine indicated that "there were no ledger cards for clients because [respondent's] practice does not lend itself to trust account activity."

Respondent represented that his practice was limited to defending speeding tickets and careless driving tickets, services that involve low fees and flat rates, and that he billed clients exclusively by flat-fee arrangements. He further stated that Levine had been his accountant for more than twenty-five years; that Levine previously had interacted with his mother, who had been his bookkeeper and manager until her death in November 2013; that he had no other staff at the time of his mother's passing; and that management of his financial affairs was difficult for him, following her death, because she had maintained all his records.

Respondent further asserted that Levine had been his accountant during the audit period of May 2015 to June 2017; had reviewed and compiled the bank statements for tax purposes; and had performed the recordkeeping for his ATA and ABA accounts. Respondent's daily recordkeeping practice included compiling bank statements, checks with photocopies, and deposit slips. He produced no separate records to reflect the amounts deposited and withdrawn from his accounts.

The OAE's audit revealed that the Wells Fargo ATA #3577 was active for a nine-month period, between October 24, 2017 and July 31, 2018, and then was closed. The TD Bank ATA #0214 was active for two months, from October 25, 2016 to December 29, 2016. That account was opened with a zero balance, there were no transactions, and the account was closed with a zero balance.

Therefore, during the period of the random audit, from May 1, 2015 through October 16, 2017, respondent maintained an ATA for only nine-months at Wells Fargo, and for the two-month period at TD Bank. Further, respondent failed to maintain his records for his ATA and ABA for seven years; failed to maintain a business receipts journal; and failed to maintain a business disbursements journal, as R. 1:21-6(c)(1), R. 1:21-6(c)(2), and R. 1:21-6(c)(1)(A), respectively, require.

The allegations associated with Docket No. XIV-2017-0499E, the referral from municipal court, alleged misconduct in connection with his representation of a friend in that forum.

Specifically, respondent and Phat Le, friends since 1980, shared an interest in cameras and cars. In 2015, Le loaned a Mercedes Benz motor vehicle to respondent, who kept the car for eighteen months before making a small deposit toward its purchase. Although respondent had insured the car in his name, the car remained registered to Le. In February 2016, respondent and Le

entered into an agreement for respondent to purchase the car for $13,000. Respondent made a partial payment of $10,000 and received a Certificate of Title from Le, dated February 3, 2016.

Initially, respondent did not change the registration for the car, because he had not yet paid the full purchase price to Le. However, at some point, when respondent attempted to register the car in his name, the Division of Motor Vehicles suggested that the odometer had been tampered with and that there were issues impacting the value of the car. Because respondent was not able to contact Le, who was spending time in California, Le remained the owner of record of the car, although respondent continued to use it.

On February 29, 2016, a West Windsor police officer issued two parking tickets for the car – one for failure to inspect and one for an unregistered vehicle. That same officer issued a parking ticket, on March 9, 2016, again for an unregistered vehicle, for a total of three tickets. Given the prior registration of the vehicle, the tickets were issued to Le. To avoid the issuance of further tickets to Le, respondent finally registered the car in his own name.

Thereafter, on June 1, 2016, respondent entered an appearance in West Windsor Municipal Court, before the Honorable Kenneth W. Lozier, J.M.C., on behalf of Le, entered a plea of not guilty, and requested an adjournment to obtain discovery. Respondent failed to inform the judge, in connection with that first

appearance, either in person or by letter, that he had purchased the car from Le, subsequently insured and registered the car in his own name, and that the tickets should have been issued to him.

On October 5, 2016, respondent again appeared in municipal court. During a recess, respondent spoke with the municipal prosecutor, Jeffrey I. Rubin, Esq. On the record, the Rubin informed the judge that, based on a current inspection sticker that respondent had shown Rubin, respondent "may have a conflict in this," because "it's [respondent's] car now." Rubin noted that respondent might be a witness in the case against Le. As a result of the potential conflict, respondent agreed that another lawyer should assume representation of Le.

The following exchange then occurred among Judge Lozier, Rubin, and respondent:

> Mr. Rubin: Judge, Mr. Jaffe may have a conflict in this. The failure to inspect, he—Mr. Jaffe showed me a picture of the current inspection sticker.
>
> The Court: Yes.
>
> Mr. Rubin: And it's his car now. So he may be a witness in the case. So I'll—
>
> Mr. Jaffe: Your Honor, I don't think there are any witnesses in this case, because the state has to prove its case and we don't—my client doesn't have to say anything.

> Mr. Rubin: So here's—I don't know if you want to mark that in. That was turned over to me by Mr. Jaffe moments ago, but that's—apparently, that's the same car, but it's Mr. Jaffe's car now. And so he may be a witness because he turned over an inspection sticker as part of discovery that belongs to his car, and it's the same car. Have I misstated anything, Mr. Jaffe?
>
> Mr. Jaffe: I'm not going to say anything further, Mr. Prosecutor.
>
> Mr. Rubin: That's fine. I need to bring the conflict to the judge's attention though.
>
> The Court: So all right. This inspection sticker—
>
> Mr. Jaffe: I'll bring—and Your Honor, I'll be happy to sign—have another attorney come in. It's a simple case. This was not a motor vehicle stop. These were two parked cars. As I understand, the law has to prove operation.
>
> The Court: All right. So look, I mean, you can argue the legal aspects of it. And so you're going to have another attorney substitute in?
>
> Mr. Jaffe: Yes.
>
> [Exhibit P-7B at pp. 5-7.]

On November 2, 2016, Le appeared pro se in municipal court. He asserted that he had sold the car to respondent "back in January" 2016, before the issuance of the three tickets. The court and the prosecutor indicated they would accept a plea bargain, but Le steadfastly maintained he did not own the car at

the time the tickets were issued and, thus, the court declined to accept any guilty plea from Le.

On April 19, 2017, respondent again appeared in municipal court, now as a witness in the State's case against Le. When asked to testify, respondent asserted his Fifth Amendment privilege against self-incrimination. The court found that respondent, not Le, was the owner of the car. Judge Lozier thereafter granted Rubin's motion to dismiss the charges against Le and entered findings of not guilty on all three tickets.

At the ethics hearing, although the testimony of respondent and Rubin diverged on some points, it was clear that respondent withdrew from Le's representation on October 5, 2016. Respondent also stated that he had given Le $200 to pay the municipal court fines, admitting that he had used the car as if it were his own, despite some ambiguity over the then legal ownership. Respondent admitted that he never raised before the municipal judge the issue of ownership or the fact that parking tickets had been issued in the wrong name; rather, he "went before the prosecutor" and testified that "the prosecutor could have just simply told the Court."

During the ethics hearing, respondent testified that Le asked respondent to represent him in the municipal court matter concerning the tickets. However, respondent also testified that he "should have said no at the time. Hindsight is –

I didn't think it would be a problem because I've been doing this for 33 years . . . ." He added "[e]very case I've had with parking tickets is dismissed . . . . This is the only case that's being treated differently in probably 100 years for this type of ticket. And I don't know why."

The OAE argued in its summation brief that the material facts largely were undisputed. Citing N.J.S.A. 39:10-11, the OAE asserted that respondent was required to transfer the vehicle title within ten days after Le signed the title over to him, on February 3, 2016. The OAE pointed out that respondent admitted in his amended verified answer that he had purchased the vehicle from Le and had failed to timely register it or to transfer title. Further, respondent admitted that he continued to operate the vehicle as the legal owner, even though the car still was improperly registered to Le.

The OAE argued that respondent should have informed the judge during his first appearance, on June 1, 2016, that he was the owner of the vehicle or, at a minimum, that he and Le were in an ongoing business dispute about the car and that respondent ultimately could be a witness or a defendant in the case. The OAE contended that this was the "point of no return" after which respondent's acts were indisputably a conflict of interest.

Further, the OAE argued that respondent failed to adhere to his duty of candor to the tribunal because he did not, at any point in the municipal

proceedings, directly disclose to Judge Lozier the circumstances underlying the tickets. Instead, the prosecutor raised the issue of ownership to the judge, and respondent refused to say more. Consistently, respondent repeatedly invoked his Fifth Amendment privilege during the municipal trial. Finally, the OAE asserted that it was highly improper and egregious for respondent to give Le money to pay the tickets that should have been issued to him.

The OAE, thus, contended that respondent violated RPC 1.7(a) because his representation of Le involved a concurrent conflict of interest, based on respondent's personal interest and ownership of the vehicle; that respondent violated RPC 3.3(a)(5) by failing to disclose to the court that he was the actual owner of the car, knowing that his omission would mislead the tribunal; that respondent violated RPC 8.4(c) by failing to disclose ownership, thereby engaging in dishonesty, fraud, deceit or misrepresentation; and that respondent violated RPC 8.4(d) by engaging in conduct prejudicial to the administration of justice by failing to disclose ownership, which resulted in multiple hearings and necessitated a municipal court trial, wasting judicial resources.

Through counsel, respondent submitted a summation brief, denying that he violated any RPC and observing that, on the October 5, 2016 court date, the prosecutor was aware that respondent owned the vehicle. Respondent denied any attempt to mislead the court, and claimed that the case, which involved only

summonses and parking tickets, had been "blown out of all proportion." He argued that, when the disclosure was made on October 5, 2016, the summonses in question should have been dismissed against Le, and new or amended summonses issued to respondent if the State wanted to proceed against him. Further, respondent asserted that "it is respectfully submitted that this entire ethics proceeding was initiated by Judge Lozier for reasons other than what has been articulated." Finally, respondent argued that, on October 5, 2016, he directly told the prosecutor that he owned the vehicle, and then withdrew due to the potential conflict; thus, respondent concluded, he committed no ethics violations.

In the hearing panel report, the DEC remarked that respondent's amended verified answer to the complaint admitted each factual allegation of count one, as well as the legal conclusion that respondent violated RPC 1.15(d) by failing to comply with the recordkeeping requirements of R. 1:21-6.

The DEC dismissed all the ethics violations associated with Docket No. XIV-2017-0698E. As a preliminary matter, the DEC declined to make a finding as to the legal ownership of the car, because it was "immaterial to [its] determination as to whether" respondent committed ethics violations.

As to RPC 1.7(a)(2), the DEC found that respondent avoided a conflict of interest by withdrawing from the municipal court case on October 5, 2016.

Further, the DEC found that respondent did not violate RPC 3.3(a)(5) (failure to disclose a material fact that is reasonably certain to mislead the tribunal) because he withdrew from the case and all material circumstances were on the record. The DEC found that the presenter had not identified any material omissions with potential to mislead the court.

Regarding RPC 8.4(c), the DEC found no clear and convincing evidence that respondent engaged in active misrepresentations or dishonest, deceitful, or fraudulent conduct because, once the court became aware that he was the apparent owner of the car, respondent recused himself from the case.

Finally, as to RPC 8.4(d), conduct prejudicial to the administration of justice, the DEC found that the transcripts of the West Windsor municipal court proceedings, coupled with Rubin's testimony at the ethics hearing, demonstrated that all the facts concerning respondent's interest in the car were known to the prosecutor prior to the April 2017 trial. The DEC made a "reasonable inference that had the tickets been dismissed and reissued to respondent, they would have been resolved without a trial."

Based on the foregoing, the DEC found that respondent had admitted a violation of RPC 1.15(d). It further concluded that the presenter had not met the burden of proof of clear and convincing evidence that respondent violated RPC 1.7(a)(2); RPC 3.3(a)(5); RPC 8.4(c); or RPC 8.4(d).

The DEC found, as aggravating factors, that respondent had a history of ethics violations, and that his own "ill-advised conduct, while not meeting the standard for an ethics violation, invited the problems that led to the charges embodied in Count II of the Complaint."

As to mitigating factors, the DEC found that respondent's mother had handled the bookkeeping for respondent until her death; that Le sustained no injury; that respondent cooperated in the ethics investigation and hearing; and that respondent had a good reputation for character, integrity, honesty, and competence as expressed in the numerous character reference letters provided with his summation.

The DEC recommended an admonition for respondent's violation of RPC 1.15(d), reasoning that an admonition is usually imposed when an attorney's recordkeeping irregularities have not caused a negligent misappropriation of funds.

Respondent's counsel submitted a letter brief, agreeing with the DEC's findings and requesting that we adopt the admonition recommendation. Further, by letter to Chief Counsel, respondent's counsel enclosed his prior letters to the hearing panel in which he had argued that the case had been blown out of proportion; that no conflict occurred because the prosecutor eventually told the court that respondent may have had a conflict; and that the prosecutor should

have dismissed the charges against Le when respondent disclosed his ownership of the vehicle to the prosecutor.

The OAE submitted to us a brief in which it agreed with the findings of the hearing panel as to the first count but disagreed with the dismissal of the violations in the second count. Consistent with its summation brief and its oral argument before us, the OAE contended that respondent's ownership of the vehicle was a material issue in determining whether ethics violations occurred in his representation of Le. The OAE emphasized that Judge Lozier concluded, by proof beyond a reasonable doubt, that respondent was the owner of the car at the time the tickets were issued, and that respondent admitted, in his first amended verified answer, that he was the legal owner of the car.

Additionally, the OAE argued that respondent's belated agreement to recuse himself from the case did not avoid the existing conflict of interest; that he represented Le for six months in the matter; and that he "came perilously close" to committing a fraud upon the court by giving Le money to pay the tickets. The OAE also emphasized that respondent owed a duty of candor to the court and, therefore, his disclosure of his ownership of the car to the prosecutor failed to satisfy that duty. Respondent never directly informed the judge of the potential conflict; instead, he subsequently invoked the Fifth Amendment during Le's municipal trial.

Finally, the OAE asserted that the hearing panel deprived the OAE of procedural due process by failing to allow the OAE to be heard regarding the quantum of discipline. The OAE asked us to correct the panel's error by considering the OAE's arguments regarding applicable disciplinary precedent and aggravating factors.

In both its written and oral submissions, the OAE contended that a censure or a three-month suspension was warranted, based on respondent's recordkeeping and other violations, his ethics history, and the principle of progressive discipline.

During oral argument before us, counsel again conceded respondent's violation of RPC 1.15(d). However, he continued to press the argument that no unethical conduct had occurred concerning the Le matter. Counsel emphasized respondent's friendship with Le, his willingness to pay for the tickets, and that the court and the prosecutor had become aware of the conflict prior to Le's trial.

We find that the DEC's determination that respondent violated RPC 1.15(d) is supported by clear and convincing evidence. In both his verified answer to the complaint and at the ethics hearing, respondent admitted that he had failed to comply with the recordkeeping requirements of R. 1:21-6 by failing to maintain his ATA records for a period of seven years and by failing to maintain required business receipts and disbursements journals.

As to charges associated with the Le matter, which the DEC dismissed, we part company with the DEC and find that the OAE proved by clear and convincing evidence that respondent purchased the car from Le on February 3, 2016, when the Certificate of Title was exchanged. Respondent then insured the vehicle. The tickets were issued on February 29 and March 9, 2016, after which respondent registered the car in his name. Le's first appearance in court was June 1, 2016, well after respondent had purchased the car.

During the first hearing, on June 1, 2016, respondent purported to enter an appearance for Le and to enter "not guilty" pleas, without disclosing to the court that he was the legal owner of the car, a fact which rendered him a possible witness in the municipal court case, in which ownership was directly related to Le's guilt and financial liability for the three tickets.[2]

Even at his October 5, 2016 court appearance, respondent failed to disclose these facts. Instead, he showed the prosecutor a picture of the then-current inspection sticker, from which the prosecutor independently concluded that respondent owned the car. Despite an ensuing exchange with the court,

[2] The obligations to register and inspect a vehicle are duties which fall squarely upon the owner, which respondent was and which Le was not. N.J.S.A. 39:8-1; N.J.S.A. 39:3-4. See also N.J.S.A. 39:4-139.5 (entitled "Joint Liability of owner and operator; recovery by owner against operator; leased vehicles"); State v. Bucich, 134 N.J. Super. 111, 115-116 (App. Div. 1975) (discussing the rebuttable presumption that "an owner may be presumed or inferred to have been the operator of a vehicle at the time of a violation").

respondent failed to disclose that he had purchased the car from Le, his ownership and operation of the car pre-dated the issuance of the three tickets, and that he had failed to timely register and transfer legal title to his name, as the motor vehicle statute requires. He then refused to say more on the topic.

Although respondent could have informed the Court at any point between issuance of the tickets in February and March 2016 and October 5, 2016 that he was the owner of the vehicle that had been ticketed, either by letter to the court or in person at the hearings, he failed to do so. When Le asked respondent to represent him in the municipal court, respondent agreed to do so, knowing that his financial and personal interests conflicted with those of Le. Respondent, admitted that, in hindsight, he should not have represented Le. Informing the court of the conflict at the onset of the municipal matter would have been simple and proper. Despite his many years of experience in municipal practice, respondent claimed that he "didn't think it would be a problem," and hoped the matter would resolve itself without the conflict being revealed. Respondent disregarded his duty of candor to the court to reveal material facts, such as ownership status of the vehicle in question, instead seeking to resolve the tickets without full disclosure of the truth to the tribunal.

Therefore, we conclude that respondent violated RPC 1.7(a), because he had a personal and financial interest in the outcome of Le's case. We expressly

reject respondent's argument that no conflict occurred because the prosecutor called the conflict to the municipal court's attention at the second court hearing. The belated disclosure in October 2016 did nothing to ameliorate the conflict that had already arisen as a function of respondent's representation of Le, which, if we were to credit respondent's own testimony, began in June 2016. We also note that this argument is at odds with his concession below that he never should have represented Le.

Respondent also violated RPC 3.3(a)(5) and RPC 8.4(c) by failing to disclose to the court that he, and not Le, was the actual owner of the car. Even though respondent revealed the conflict to the prosecutor, he failed to directly inform the court, despite his appearance on behalf of Le before the court in June 2016. Regarding RPC 8.4(d), the failure to disclose ownership led to multiple hearings and a municipal court trial that wasted judicial resources. As noted, respondent let the case proceed from June through October 2016, without making his ownership of the vehicle explicitly known to either the court or prosecutor.

In sum, we find that respondent violated RPC 1.7(a)(2); RPC 1.15(d); RPC 3.3(a)(5); RPC 8.4(c); and RPC 8.4(d). The sole issue that remains for determination is the proper quantum of discipline for respondent's misconduct.

It is well-settled that, absent egregious circumstances or serious economic injury, a reprimand is the appropriate discipline for a conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994). See also, In re Rajan, 237 N.J. 434 (2019) (the attorney engaged in a conflict of interest and an improper business transaction with a client by investing in a hotel development project spearheaded by an existing client; no prior discipline); In re Drachman, 239 N.J. 3 (2019) (the attorney engaged in a conflict of interest by recommending that his clients use a title insurance company in eight, distinct real estate transactions, without disclosing that he was a salaried employee of that company; there was no evidence of serious economic injury to the clients; the attorney also violated RPC 5.5(a)(1) by practicing law while ineligible to do so; no prior discipline); and In re Allegra, 229 N.J. 227 (2017) (the attorney engaged in a conflict of interest by engaging in a sexual relationship with an emotionally vulnerable client; the attorney also engaged in an improper business transaction with the same client by borrowing money from her; respondent promptly repaid all the funds and had no prior discipline).

Recordkeeping irregularities ordinarily are met with an admonition where, as here, they have not caused a negligent misappropriation of clients' funds. See, e.g., In the Matter of Eric Salzman, DRB 15-064 (May 27, 2015) (after an overdraft in the attorney trust account, an OAE demand audit revealed that the

attorney (1) failed to maintain trust or business receipts or disbursements journals, or client ledger cards; (2) made disbursements from the trust account against uncollected funds; (3) withdrew cash from the trust account; (4) failed to properly designate the trust account; and (5) failed to maintain a business account, in violation of RPC 1.15(d) and R. 1:21-6); In the Matter of Leonard S. Miller, DRB 14-178 (September 23, 2014) (after the attorney made electronic transfers from his IOLTA account to cover overdrafts in his attorney business account, a demand audit uncovered several recordkeeping deficiencies: (1) errors in information recorded in client ledgers; (2) lack of fully descriptive client ledgers; (3) lack of running balances for individual clients on the clients' ledgers; (4) failure to promptly remove earned fees from the trust account; and (5) failure to perform monthly three-way reconciliations, in violation of RPC 1.15(d) and R. 1:21-6); and In the Matter of Sebastian Onyi Ibezim, Jr., DRB 13-405 (March 26, 2014) (for a period of six years, the attorney maintained outstanding trust balances for a number of clients, some of whom were unidentified, in violation of RPC 1.15(d) and R. 1:21-6; the attorney was required to place all remaining unidentified funds in trust with the Superior Court).

Generally, the discipline imposed on an attorney who makes misrepresentations to a court or exhibits a lack of candor to a tribunal, or both,

ranges from a reprimand to a long-term suspension. See, e.g., In re Marraccini, 221 N.J. 487 (2015) (reprimand imposed on attorney who attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications that had been pre-signed by the manager, who had since died; the attorney was unaware that the manager had died and, upon learning that information, withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); in mitigation, we found that the attorney's actions were motivated by a misguided attempt at efficiency, rather than by dishonesty or personal gain); In re Duke, 207 N.J. 37 (2011) (attorney received a censure for failure to disclose his New York disbarment on a form filed with the Board of Immigration Appeals, a violation of RPC 3.3(a)(5); the attorney also failed to adequately communicate with the client and was guilty of recordkeeping deficiencies; prior reprimand; the attorney's contrition and efforts at rehabilitation justified only a censure); In re Trustan, 202 N.J. 4 (2010) (three-month suspension for attorney who, among other things, submitted to the court a client's case information statement that falsely asserted that the client owned a home, and drafted a false certification for the client, which was submitted to the court in a domestic violence trial; violations of RPC 3.3(a)(1) and (4); other violations included RPC 1.8(a) and (e), RPC 1.9(c), and RPC 8.4(a), (c), and (d)); In re Forrest, 158 N.J. 428 (1999) (six-month suspension

imposed on attorney who, in connection with a personal injury action involving injured spouses, failed to disclose the death of one of his clients to the court, to his adversary, and to an arbitrator, and advised the surviving spouse not to voluntarily reveal the death; violations of RPC 3.3(a)(5), RPC 3.4(a), and RPC 8.4(c); the attorney's motive was to obtain a personal injury settlement); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve; violations of RPC 3.3(a)(1) and (2), RPC 3.5(b), and RPC 8.4(c) and (d); two prior private reprimands [now admonitions]); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who had been involved in an automobile accident and then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing; violations of RPC 3.3(a)(4), RPC 3.4(f), and RPC 8.4(b)-(d)).

Conduct prejudicial to the administration of justice comes in a variety of forms, and the discipline imposed for the misconduct typically results in discipline ranging from a reprimand to a suspension, depending on other factors present, including the existence of other violations, the attorney's ethics history, whether the matter proceeded as a default, the harm to others, and mitigating or aggravating factors. See, e.g., In re Ali, 231 N.J. 165 (2017) (reprimand for attorney who disobeyed court orders by neither appearing in court when ordered to do so nor filing a substitution of attorney, violations of RPC 3.4(c) and RPC 8.4(d); he also lacked diligence (RPC 1.3) and failed to expedite litigation (RPC 3.2) in one client matter and engaged in ex parte communications with a judge, a violation of RPC 3.5(b); in mitigation, we considered respondent's inexperience and unblemished disciplinary history, and the fact that his conduct was limited to a single client matter); In re D'Arienzo, 207 N.J. 31 (2011) (attorney failed to appear in municipal court for a scheduled criminal trial, and thereafter failed to appear at two orders to show cause stemming from his failure to appear at the trial; by scheduling more than one matter for the trial date, the attorney inconvenienced the court, the prosecutor, the complaining witness, and two defendants; in addition, the failure to provide the court with advance notice of his conflicting calendar prevented the judge from scheduling other cases for that date; prior three-month suspension, two admonitions, and failure to learn

from similar mistakes justified a censure); In re DeClemente, 201 N.J. 4 (2010) (three-month suspension for attorney who arranged three loans to a judge in connection with his own business, failed to disclose to opposing counsel his financial relationship with the judge and failed to ask the judge to recuse himself, made multiple misrepresentations to the client, engaged in an improper business transaction with the client, and engaged in a conflict of interest; no prior discipline); In re Block, 201 N.J. 159 (2010) (six-month suspension where attorney violated a court order that he had drafted by failing to transport his client from prison to a drug treatment facility, instead leaving the client at a church while he made a court appearance in an unrelated case; the client fled and encountered more problems while on the run; the attorney also failed to file the affidavit required by R. 1:20-20; failed to cooperate with disciplinary authorities; failed to provide clients with writings setting forth the basis or rate of the fees; lacked diligence, engaged in gross neglect, and failed to turn over a client's file; prior reprimand and one-year suspension); and In re Bentivegna, 185 N.J. 244 (2005) (motion for reciprocal discipline; two-year suspension for attorney who was guilty of making misrepresentations to an adversary, negotiating a settlement without authority, filing bankruptcy petitions without authority to do so and without notifying her clients, signing clients' names to documents, making misrepresentations in pleadings filed with the court, and

violating a bankruptcy rule prohibiting the payment of fees before paying filing fees; the attorney also was guilty of conduct prejudicial to the administration of justice, gross neglect, failure to abide by the client's decision concerning the objectives of the representation, failure to communicate with clients, excessive fee, false statement of material fact to a tribunal, and misrepresentations; no prior discipline).

In this case, respondent's prolonged failure to disclose his ownership of the vehicle to the municipal court is the crux of his misconduct. Respondent failed to disclose a material fact to the court by his silence and, at his disciplinary hearing, sought to shift his duty to the prosecutor, indicating that the prosecutor "could have" disclosed the information to the court in fulfillment of respondent's own non-delegable duty to correct a material misapprehension by the court. Respondent's argument concerning the prosecutor's potential and actual disclosure is beside the point. Independent of how the prosecutor might have executed his own duties, respondent here failed in his personal obligation to inform the court of his ownership of the vehicle. Had he done so, at least two court hearings could have been avoided, saving both court and prosecutorial resources.

The impacts of the misrepresentation were potentially severe and were only averted through the alert reactions of the judge and prosecutor. Particularly,

the prosecutor reported the conflict when respondent would not do so. In our view, respondent also attempted to induce Le to pay the fines. In order to do this, Le would have falsely admitted guilt. Ultimately, Judge Lozier refused to take Le's guilty plea. Setting aside the professionalism of the prosecutor and judge, respondent's concealment of the conflict of interest needlessly exposed Le – his supposed client – to liability for the motor vehicle offenses.

Respondent's prolonged course of misrepresentation to the municipal court as described above leads us to determine that, in the aggregate, a censure is the baseline of discipline necessary to protect the public and preserve the public's confidence in the bar.

In crafting the appropriate quantum of discipline, however, we also must weigh, in aggravation, respondent's extensive disciplinary history – three reprimands and a censure. The Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such situations, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system).

Moreover, respondent clearly has failed to learn from his past mistakes, as this matter represents the third matter in which he will have been found to have made misrepresentations to a court. In this case, the misrepresentations

were prolonged, and were designed to shield respondent from personal culpability. Such behavior is reprehensible and must be met with a stern rebuke.

As proffered mitigation, respondent submitted letters conveying that he has a good reputation for character, honesty, and competence. Considering respondent's demonstrated penchant for dishonesty towards courts, we accord those letters little weight.

On balance, considering respondent's repeated dishonesty toward courts, as exacerbated by his disciplinary history as a whole, we determine to impose a six-month suspension.

Chair Clark and Member Singer voted for a three-month suspension. Member Boyer voted for a censure.

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: _____
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Mark H. Jaffe
Docket No. DRB 20-302

Argued: March 18, 2021

Decided: July 27, 2021

Disposition: Six-Month Suspension

| ***Members*** | Six-Month Suspension | Three-Month Suspension | Censure |
|---|---|---|---|
| Clark | | X | |
| Gallipoli | X | | |
| Boyer | | | X |
| Hoberman | X | | |
| Joseph | X | | |
| Petrou | X | | |
| Rivera | X | | |
| Singer | | X | |
| Zmirich | X | | |
| Total: | 6 | 2 | 1 |

Johanna Barba Jones
Chief Counsel