Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-020
District Docket No. XIV-2019-0508E

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| In the Matter of | : |
| Philip J. Morin, III | : |
| An Attorney at Law | : |

Decision

Decided: September 9, 2021

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

This matter was before us on a certification of the record filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with having violated RPC 1.1(a) (gross neglect); RPC 1.2(a) (failure to abide by the client's decision concerning the scope and objectives of representation); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to communicate with the client) (two instances); RPC 3.3(a)(4) (offering evidence the lawyer knows to be false) (two instances); RPC 4.1(a)(1) (false

statement of material fact or law to a third person) (two instances); RPC 8.1(b)[1] (failure to cooperate with disciplinary authorities); RPC 8.4(b) (criminal act that reflects adversely on the honesty, trustworthiness or fitness of the attorney) (three instances); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (eight instances); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

On March 22, 2021, respondent, through counsel, filed a motion to vacate the default in this matter, which we denied on April 22, 2021. For the reasons set forth below, we now determine to impose a three-year suspension, with a condition.

Respondent earned admission to the New Jersey bar in 1994 and to the New York bar in 1998. At the relevant times, he maintained an office for the practice of law in Cranford, New Jersey.

On July 11, 2014, respondent was reprimanded for violating RPC 1.3, RPC 1.4(b), and RPC 8.4(c)). In re Morin, 218 N.J. 163 (2014). In that matter, respondent was assigned by his then-firm, Saul Ewing, LLP, to represent a limited liability corporation in its effort to obtain subdivision approval on an investment property. In the Matter of Philip J. Morin, III, DRB 14-111 (June

[1] Due to respondent's failure to file an answer to the formal ethics complaint, the OAE amended the complaint to include the RPC 8.1(b) charge.

27, 2014). Respondent filed an appeal concerning the denial of that application and a related motion for reconsideration.

Shortly prior to the due date for his appellate brief, respondent's firm terminated him for economic reasons. Following his termination, respondent remained in contact with the client and maintained control over the case.

Due to respondent's failure to file a required brief, the client's appeal was dismissed for lack of prosecution. Respondent then failed to advise either the client or his former firm's partners of the dismissal. Instead, he made misrepresentations to the client, over a two-year period, that the appeal remained pending.

In imposing a reprimand, we considered the following mitigating factors: the appellate brief was due in the midst of respondent's career and personal turmoil, including the loss of his job; he was the sole breadwinner for his family, which included three young children; through his counsel, he provided substantial assistance to the former client's new attorney; he had no history of discipline in his almost twenty years at the bar; and he was active in the community.

Service of process was proper. On November 24, 2020, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to

respondent's office address of record. The certified mail was returned to the OAE on December 9, 2020, however, the regular mail was not returned.

On December 21, 2020, the OAE sent a letter, by certified and regular mail, to respondent's office address, informing him that, unless he filed a verified answer to the complaint within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to charge a willful violation of RPC 8.1(b). On December 26, 2020, the item was "Delivered, Left with Individual." The regular mail was not returned.

On December 30, 2020, respondent transmitted an e-mail to the OAE with a photograph of the postmark of the complaint, and requested an extension until January 6, 2021, "[g]iven that the time to respond fell directly during a major holiday." On January 4, 2021, the OAE granted an extension until January 6, 2021.

As of January 28, 2021, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

We now turn to the allegations of the complaint.

While employed as a partner in the law firm Florio, Perrucci, Steinhardt

& Cappelli, LLC (the Florio law firm), respondent filed an action seeking collection of $132,562.34 in outstanding solid waste management fees on behalf of a client, the Middlesex County Environmental Health Division (the MCEHD). The Superior Court matter was captioned Middlesex County Environmental Health Division v. Horizon Disposal Services and William Mozer, individually; 23 Gibbs, as successor corporation, and Mercer Group International, Docket No. MID-L-4970-15 (MCEHD v. Horizon).

Robert P. Avolio, Esq. represented both defendants in that action. On October 26, 2016, Avolio filed a notice of motion to confirm an arbitration award in the amount of $40,000. Respondent failed to oppose the motion. Consequently, on November 4, 2016, the Superior Court granted the defendants' motion and entered a judgment against the defendants in the amount of $40,000; the judgment was filed on May 10, 2018.

Respondent failed to inform the MCEHD of the $40,000 arbitration award or that a judgment subsequently had been entered, confirming the award. Respondent was aware that the MCEHD would not accept the arbitration award of $40,000 in lieu of the $132,562.34 the defendants actually owed to the public entity.

In January 2017, the law firm of Kelso & Burgess (K&B) undertook the handling of the Middlesex County's Environmental Prosecutor's files, and

Jennifer A. Burgess, Esq. became the primary attorney working on the MCEHD's files. The MCEHD allowed respondent to finish a handful of matters, including MCEHD v. Horizon, but directed him to keep K&B abreast of the status of each case. K&B would, therefore, request updates from respondent for the purpose of updating the MCEHD. On July 7, 2017, respondent sent an e-mail to Burgess, attaching a two-page memorandum in which he described certain legal issues impacting the MCEHD v. Horizon litigation and represented that the "[d]efendants have offered a total of $50,00 in consideration of the risk and costs associated with trial and the potential for liability . . . ." Respondent's representation was false. Respondent also suggested that the MCEHD should accept the offer and sought authorization to make:

> the additional demand that Defendants agree to have a judgment entered for approximately 50 percent of the remaining outstanding fees or $40,000.
>
> * * *
>
> Therefore, while I am recommending that we seek to incorporate a judgment into the settlement, I would not recommend foregoing the settlement if that was a substantial impediment to finalizing a settlement for a payment of $50,000.
>
> [C¶16;Ex3].[2]

[2] "C" refers to the complaint, dated October 19, 2020, and attached as Exhibit A to the OAE's certification of the record. "Ex" refers to the attachments to the complaint.

Unaware of the November 2016 judgment and the falsehood of respondent's July 2017 memorandum, Burgess forwarded respondent's settlement proposal to the MCEHD, covering it with her own July 10, 2017 memorandum recommending its adoption. Burgess also discussed the matter with MCEHD representatives, who granted authority to settle the matter for $50,000 plus the deficiency judgment.

Burgess relayed the $50,000 settlement authority to respondent, and further directed him to attempt to obtain a $40,000 deficiency judgment against defendants (representing approximately half of the remaining outstanding solid waste management fees). That amount of the deficiency judgment was understood to be in addition to the $50,000 cash settlement payment.

Thereafter, K&B made periodic calls and sent e-mails to respondent to check on the status of this and other matters. By telephone, respondent falsely advised Burgess that the case had settled for $50,000 plus a consent deficiency judgment against the defendants. Respondent also falsely represented to Burgess that he had received settlement checks from the defendants and that he was mailing them out.

K&B did not receive the promised settlement checks. In a series of ensuing communications, Burgess repeatedly asked respondent where the checks were; in response, he provided months of promises that the payments

would be mailed. Burgess repeatedly conferred with the Middlesex County Counsel's office about next steps.

On April 19, 2018, respondent sent a letter to Burgess enclosing a $30,000 check payable to the MCEHD. The "Re:" portion of the check was blacked out. The lower left portion of the check included the note "HORIZON DISPOSAL -- $30,000 OF $50,000 SETTLEMENT." In his transmittal letter, respondent stated:

> I enclose a check in the amount of $30,000 payable to "Middlesex County Environmental Health Division" from defendants in connection with the settlement of this matter. Unfortunately, I misspoke about whether the checks were "stale" last week as I was not in the office and hadn't looked at them in a while. Unfortunately, the checks were stale.
>
> I contacted his attorney and he provided the $30,000 check this morning and will be providing a replacement for the $20,000 check ASAP. I apologize for the inconvenience but I will provide it as soon as received.
>
> [C¶24;Ex4.]

The origin of the funds differed from the representation in respondent's transmittal letter; in fact, respondent had withdrawn the $30,000 from his personal retirement account and blacked out the "Re:" portion of the check. His purpose in blacking out the explanation was to make the instrument appear consistent with his misrepresentation that the funds had come from the defendants.

On May 1, 2018, respondent sent an e-mail to Burgess in which he made the following false representations:

> Jen, I have a message into Horizon's attorney regarding when to expect the $20K check. As soon as I hear back from him I will let you know.
>
> I'm also sending out the judgment for docketing and will send you a copy for yours and the County's files.
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> [C¶26;Ex5.]

Meanwhile, respondent made a different set of misrepresentations to Avolio, the defendants' counsel, in an effort to extract a cash settlement payment that conformed with his lies to Burgess. Particularly, he indicated that plaintiffs were willing to settle the matter for $20,000 and without entry of a consent deficiency judgment. On May 4, 2018, and with that understanding, the defendants executed a "Settlement Agreement and Release" providing that, upon their payment of $20,000 to the MCEHD, the matter would be settled; the MCEHD was also required to execute and provide a warrant to satisfy the judgment within five days of its receipt of defendants' payment. Avolio then provided to respondent a certified check in the amount of $20,000.

The Settlement Agreement and Release contained two signatures which respondent had forged: that of Joseph DiFilippo, Senior Environmental Health Specialist of the MCEHD, and an unidentified witness to DiFilippo's supposed signature.

On May 7, 2018, respondent sent a letter to Burgess enclosing Avolio's cashier's check on behalf of the defendants, which he purported to submit "in connection with the final payment in the settlement of this [matter]." On May 10, 2018, Burgess transmitted an e-mail to respondent "again requesting a copy of the Judgment for the County . . . Please immediately provide a copy, and then send us a docketed copy upon your receipt of same." On May 11, 2018, respondent transmitted a copy of a "Consent Order for Judgment Against Defendants Horizon Disposal Services and 235 Gibbs Inc." The Consent Order provided, in relevant part, that "Judgment be and is hereby entered against Defendants Horizon Disposal Services and 235 Gibbs, Inc. only in the above captioned matter in the amount of $82,562.34." If it had been legitimate, that amount would have added to the $50,000 received, thus, representing the full $132,562.34 due and owing from the defendants to the plaintiff.

In fact, the Consent Order for Judgment Against Defendants Horizon Disposal Services and 235 Gibbs Inc. was bogus in the following respects:

- Respondent forged Avolio's signature on page two;
- Respondent "cut and pasted" the header from Avolio's November 4, 2016 Order Confirming Arbitration Award and Entering Judgment, so that the Consent Order falsely bore eCourts Transaction ID #LCV2018828122 and appeared to have been filed on May 10, 2018; and
- Respondent lacked authority to enter the conformed signature of "/s/ Hon. Thomas Daniel McCloskey, J.S.C." on page 2.

Still unaware of respondent's prolonged scheme of deception, Burgess's office sent a copy of the "filed" consent judgment to the MCEHD and proceeded to close out K&B's file.

In the eight months following the execution of the Settlement Agreement, Avolio engaged in extensive and unsuccessful efforts to obtain the warrant to satisfy the judgment to which his clients were entitled, as of May 9, 2018, under the terms of the purported Settlement Agreement. On January 14, 2019, Avolio filed a notice of motion seeking an order directing the Clerk of the Superior Court to make entry of the satisfaction of judgment on the docket and providing documentation of the efforts he had taken in the intervening period.

By January 2019, respondent was no longer employed by the Florio law firm for reasons unrelated to this matter. On January 25, 2019 another lawyer forwarded a copy of Avolio's motion to K&B, where it was reviewed by Burgess.

Burgess immediately was alarmed by multiple features of the Settlement Agreement: the date of the signatures; the illegitimate signature of her client's representative, DiFilippo; and the terms of the settlement, which provided for only a $20,000 recovery by her client, and not the full recovery contemplated by the Consent Order with which she had been provided by respondent. Burgess also noted the absence of any reference to the initial, $30,000 payment her client

had received, as well as the disparity between the value of the judgment amount in eCourts and in the "filed" Consent Order.

Subsequent correspondence between Burgess and Avolio established that Avolio had never signed the Consent Order, which Avolio observed to be "inconsistent with the Settlement Agreement executed by the parties on May 4, 2018 and the electronic entries for this case." Burgess thereafter sought and gained an adjournment of Avolio's motion in order to investigate the events underlying the differing documents. After reviewing the Florio firm's file and conferring with Avolio, Burgess determined that: (1) the Transaction ID #LCV2018828122 belonged to the November 4, 2016 order confirming the arbitration award, and not the consent order; (2) the settlement agreement was a falsified document; and (3) the defendants had not made the initial $30,000 payment.

When confronted with the fruits of Burgess's file review, respondent confessed his misconduct to the Florio firm's managing partner.

The MCEHD and the Florio firm subsequently entered into a settlement, under which the Florio firm agreed to pay the MCEHD $40,000 in return for a release of liability. The same agreement contemplated that the MCEHD would provide a consent order to Avolio in MCEHD v. Horizon, agreeing to discharge the actual judgment lien of record in the amount of $40,000. The Florio firm

made the payment to the MCEHD, and the parties entered into a consent order discharging the judgment, which was properly signed and entered, on March 14, 2019, by the Honorable James F. Hyland, J.S.C.

Respondent's initial misrepresentation, as exacerbated by his subsequent deception and cover-ups, prolonged the litigation and caused respondent's former firm to expend $40,000 to make the MCEHD whole and to perfect the settlement with the defendants, who had acted in good faith.

Based on the above facts, the complaint charged respondent with having violated RPC 1.1(a); RPC 1.2(a); RPC 1.3; RPC 1.4(b) (two instances); RPC 3.3(a)(4) (two instances); RPC 4.1(a)(1) (two instances); RPC 8.4(b) (three instances); RPC 8.4(c) (eight instances); RPC 8.1(b); and RPC 8.4(d).

As stated previously, on March 22, 2021, through counsel, respondent filed a motion to vacate the default (MVD) accompanied by a legal brief, his own certification, and a proposed answer to the ethics complaint. In order to vacate a default, a respondent must satisfy a two-pronged test. First, a respondent must offer a reasonable explanation for the failure to answer the ethics complaint. Second, a respondent must assert a meritorious defense to the underlying charges. We denied the MVD for the following reasons.

Regarding the first prong, respondent introduced the same concept of "personal turmoil" that he had utilized in connection with his 2014 discipline.

Many of the issues raised in that section of his brief – divorce; childcare; depression; anxiety; an eating disorder; and insomnia – all date between April 2016 and June 2018. They, therefore, predated his failure to respond to the complaint and are irrelevant the first prong of the MVD test.

In a section entitled "Issues related to Default," respondent's counsel provided multiple additional explanations. First, he asserted that respondent "failed to file a responsive pleading because he did not have the funds to retain an attorney and did not comprehend of the consequences in agreeing to a proposed consent order." Respondent's alleged failure of comprehension is incredible, given his direct personal experience of resolving a prior discipline by consent, with the aid of the same disciplinary counsel, only seven years ago. Respondent's other explanations included his need to terminate an aide for his mother, who suffers from advanced Alzheimer's disease, and to prepare her home for her return, and his need to actively supervise his child, who has Down's Syndrome, during virtual schooling. Respondent contends that these factors, combined with undocumented mental health issues, overwhelmed him and caused his failure to timely answer the complaint.

We noted that respondent's explanations of "personal turmoil" and the financial pressures of being the sole breadwinner for his special needs family are similar to, and were considered during, his prior disciplinary matter.

Respondent was not unfamiliar with the disciplinary system and, thus, was acutely aware of the need to answer the complaint. Although we were not unsympathetic to the many pressures upon respondent, we concluded that they neither individually, nor in combination, satisfied the first prong of the MVD test.

We also found that respondent failed to satisfy the second prong of the standard to vacate an MVD, under which a respondent must assert a meritorious defense to the underlying charges. Respondent did not do so here. Rather, his proposed answer admitted nearly every fact of consequence, and explicitly admitted violation of every RPC except RPC 8.4(b). Regarding those charges, which implicate Fifth Amendment considerations, respondent admitted the underlying facts of significance, but disputed that his actions violated the enumerated criminal offenses of N.J.S.A. 2C:21-1a(1) to -1a(3) (forgery); N.J.S.A. 2C:21-4a (falsifying or tampering with records); N.J.S.A. 2C:21-16 (securing documents by deception); N.J.S.A. 2C:28-3b(1) and -3b(3) (unsworn falsifications to authorities); and N.J.S.A. 2C:28-7a(2) (tampering with public records or information). Both respondent's brief and his proffered answer fell far short of the "meritorious defenses" required to prevail in an MVD.

Indeed, rather than asserting meritorious defenses, respondent sought "to vacate the default so that he may present mitigating circumstances which existed

at the time of his conduct." He then enumerated a series of undocumented mental health challenges without proffering documentation or explanation of any causal connection between those disorders and the allegations of unethical behavior. He also described financial pressures resulting from his divorce, and his duty to actively care for his youngest child, who has Down's Syndrome.

Respondent explained that, although "ill-conceived and lacking in sophistication," his actions were inexplicably "motivated to maintain his employment" to satisfy his financial obligations. He, thus, admitted committing misconduct for his own pecuniary benefit.

Overall, counsel described the mitigating factors proffered by respondent as a "constellation of circumstances" which "resulted in a panicked decision to mislead and misrepresent his client, his adversary and the court." In the event the default were vacated, counsel indicated that he would "seek to present a psychiatric forensic report which will address [respondent's] mindset at the time of the conduct, his mindset at the present date, whether he is at risk to repeat his complained of actions, and the remedial actions he must take to ensure that he does not repeat his mistakes." Finally, respondent indicated that he "has taken proactive steps to address his mental health issues through the assistance of a forensic psychiatrist."

We concluded that respondent's proffered justifications fall short of the second meritorious defense prong required to vacate a default. It is well settled that mental illness serves as a defense only where the illness reduces the mental state of the attorney beyond that required to establish the charged violations of the Rules of Professional Conduct. Our Court has explained that such a defense is not established where, as here, a respondent does not:

> furnish any basis grounded in firmly established medical facts for a legal excuse or justification for respondent's [misconduct]. There has been no demonstration by competent medical proofs that respondent suffered a loss of competency, comprehension or will of a magnitude that could excuse egregious misconduct that was clearly knowing, volitional and purposeful.
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> [In re Jacob, 95 N.J. 132, 137 (1984).]

Nor has respondent argued that he is afflicted by "[a] mental illness that impairs the mind and deprives [him] of the ability to act purposely or knowingly, or to appreciate the nature and quality of the act he was doing, or to distinguish between right and wrong." In re Cozzarelli, 225 N.J. 16, 31 (2016). In fact, to the contrary, respondent admits the repeated, premeditated, and deceptive nature of his misconduct, and the only disputed "facts" in the proposed answer are whether his undisputed conduct also violated the New Jersey Criminal Code.

We also rejected respondent's subtle characterization of his activity in this matter as a single "panicked decision." As detailed below, this case presents a

protracted deception in which respondent made many separate, escalating decisions to fabricate, forge, and deceive.

Accordingly, we determined to deny respondent's MVD and entered a letter decision to that effect on April 22, 2021.

Moving to our review of the record, respondent's failure to file an answer to the complaint is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. See R. 1:20-4(f)(1). Notwithstanding that Rule, each charge in the complaint must be supported by sufficient facts for us to determine that unethical conduct has occurred. We find that the facts recited in the complaint support most of the charges of unethical conduct.

In this case, respondent took no action in response to an October 2016 notice of motion to confirm the arbitration award and its subsequent November 2016 entry as a judgment at less than a third of the value that his client, the MCEHD, had authorized. To conceal his inaction, respondent created two bifurcated paths of deception, one to deceive the MCEHD and its other lawyer, Burgess, and one to deceive his adversary and the adversary's clients.

On the one hand, between July 2017 and May 2018, respondent supported verbal lies to Burgess by creating a legal brief to document a fictitious settlement offer, falsely represented that he was in receipt of settlement funds, and

eventually presented an altered $30,000 cashier's check with the false representation that it was a portion of the settlement funds. In May 2018, to continue to deceive the MCEHD and Burgess, respondent fabricated a Consent Order for Judgment memorializing the terms which the MCEHD and Burgess expected; forged defendants' counsel's signature; applied a false header making that Consent Order appear as if it was filed in eCourts; and forged Judge McCloskey's conformed signature thereon.

On the other hand, also in May 2018, respondent lied to his adversary, Avolio, about the MCEHD's settlement offer; fabricated a separate "Settlement Agreement and Release" with different terms than those he presented to the MCEHD; applied the forged signatures of both an MCEHD official and a witness; and elicited the defendant's representative and counsel's signature thereon. Thereafter, he failed to provide the warrant to satisfy the judgment required by the Settlement Agreement and Release, causing Avolio to expend eight months of effort, peaking in a January 2019 motion practice, to appropriately discharge the judgment in March 2019.

Through these actions, respondent violated RPC 1.1(a) and RPC 1.3 by failing to oppose the adverse October 19, 2016 motion to confirm the $40,000 arbitration award or to file a motion for reconsideration of the November 4, 2016 order after it was entered. The MCEHD, a public entity, was seeking to recover

$132,562.34 in outstanding solid waste management fees. Respondent was acutely aware that the MCEHD would not accept any amount short of the total the defendants owed. Respondent's utter inaction greatly prejudiced the MCEHD's interests and constituted gross neglect and lack of diligence.

Rather than admit to the client and his co-counsel that he had made a series of egregious omissions, respondent commenced a prolonged scheme of deception in a futile attempt to conceal his misconduct. In that vein, he subsequently violated RPC 1.2(a) by agreeing, in May of 2018, to settle the matter on the MCEHD's behalf for $20,000 and without the entry of the deficiency judgment, without the client's knowledge and directly contrary to the MCEHD's settlement instructions, as related to him by Burgess.

Further, respondent twice violated RPC 1.4(b) by (1) failing to inform the MCEHD that the October 19, 2016 arbitration award had been made and that the November 4, 2016 judgment had been entered, in the amount of $40,000; and (2) failing to respond to Burgess and the MCEHD in a timely fashion during their 2018 attempts to extract the settlement checks that respondent had represented existed.

RPC 4.1 is entitled "Truthfulness in Statements to Others" and provides in paragraph (a)(1) that, "[i]n representing a client a lawyer shall not knowingly: (1) make a false statement of material fact or law to a third person[.]"

Respondent twice violated that Rule by: (1) misrepresenting to Avolio, counsel to the defendants, that the MCEHD was willing to settle the matter for $20,000 and without entry of any consent to deficiency judgment; and (2) forging DiFilippo's signature and that of the fictitious witness upon the May 4, 2018 Settlement Agreement and Release and presenting it as a valid document for signature to Avolio.

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. See 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).

Here, respondent violated RPC 8.4(b) by three actions which violated five different criminal statutes. First, respondent violated N.J.S.A. 2C:28-3(b)(1), which is entitled "unsworn falsification to authorities" and provides: "[a] person commits a disorderly persons offense if, with purpose to mislead a public servant in performing his function, he: (1) Makes any written false statement which he does not believe to be true[.]" Respondent violated N.J.S.A. 2C:28-3(b)(1) by presenting his April 19, 2018 letter and the accompanying altered $30,000 certified check with the false representation that the funds had

come from the defendants' attorney, Avolio. Respondent's purpose in doing so was to cause the MCEHD, a public entity, to authorize a fictitious settlement. Respondent thereby violated RPC 8.4(b).

Respondent's second violation of RPC 8.4(b) arose from his forgery of the Settlement Agreement and Release, to which he applied two fictious signatures: that of DiFilippo, Senior Environmental Health Specialist of the MCEHD, and of a "witness," and upon which he induced Avolio and William B. Mozer's May 4, 2018 signatures on behalf of the defendants. Those acts violated New Jersey's forgery statute, which provides in relevant part:

> a. Forgery. **A person is guilty of forgery if, with purpose to defraud** or injure **anyone**, or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, **the actor**:
>
> (1) Alters or changes any writing of another without his authorization;
>
> (2) **Makes, completes**, executes, authenticates, **issues or transfers any writing so that it purports to be the act of another who did not authorize that act or of a fictitious person,** or to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when no such original existed; or
>
> (3) **Utters any writing which he knows to be forged in a manner specified in paragraph (1) or (2).**
>
> [N.J.S.A. 2C:21-1(a)(1) to -1(a)(3) (emphasis added)].

Similarly, N.J.S.A. 2C:21-16 is entitled "securing execution of documents

by deception," and provides that "[a] person commits a crime of the fourth degree if by deception as to the contents of the instrument, he causes or induces another to execute any instrument affecting, purporting to affect, or likely to affect the pecuniary interest of any person." Respondent's presentation to Avolio clearly violated RPC 8.4(b) in those respects.

Respondent's third violation of RPC 8.4(b) arose from his creation of the fabricated and forged Consent Order which purported to be signed on April 13, 2018 and entered May 10, 2018. Respondent's composition of that false document, application of a false transaction number to its top, and forgery of both Avolio's signature and Judge McCloskey's conformed signature violated N.J.S.A. 2C:21-1(a)(1) and -1(a)(3) (forgery, quoted above) and N.J.S.A. 2C:28-3 (unsworn falsification to authorities, quoted above). His conduct also violated N.J.S.A. 2C:21-4(a) ("a person commits a crime of the fourth degree if he falsifies, destroys, removes, conceals any writing or record, or utters any writing or record knowing that it contains a false statement or information, with purpose to deceive or injure anyone or to conceal any wrongdoing"); and N.J.S.A. 2C:28-7(a)(2), which is entitled "tampering with public records or information" and provides that

> a person commits an offense if he:
>
> (1) Knowingly makes a false entry in, or false alteration of, any record, document or thing belonging to, or

> received or kept by, the government for information or record, or required by law to be kept by others for information of the government; [or]
>
> (2) Makes, presents, offers for filing, or uses any record, document or thing knowing it to be false, and with purpose that it be taken as a genuine part of information or records referred to in paragraph (1)…[.]

Respondent fabricated a Superior Court document out of portions of a legitimate one and presented same to government contractors so that it would be perceived as a settlement with a government entity. Respondent's conduct thereby violated RPC 8.4(b) a third time.

Respondent violated RPC 8.1(b) by failing to timely file an answer to the complaint despite receiving an extension of time in which to do so.

Respondent's eight separate deceptions to cover up his initial negligent act violated RPC 8.4(c): (1) on July 7, 2017, respondent falsely represented to the MCEHD and Burgess that defendants had made a $50,000 settlement offer; (2) after the MCEHD had granted settlement authority, respondent falsely advised Burgess by telephone that the matter had actually settled; (3) respondent advised Burgess that he had received settlement checks from the defendants and that he was mailing those checks to her; (4) on April 19, 2018, respondent misrepresented to Burgess that the $30,000 check came the from defendants rather than from his personal retirement account; (5) on May 1, 2018, respondent falsely told Burgess that he had obtained a consent deficiency judgment from

the defendants; (6) respondent concurrently misrepresented to Avolio that the MCEHD was willing to settle for $20,000, and without the entry of a consent deficiency judgment; (7) respondent prepared the Settlement Agreement and Release, upon which he forged both a public official's signature and that of a witness, and presented same to Avolio and the defendant's principal for their May 4, 2018 signature; and (8) on May 11, 2018, respondent transmitted the fabricated and forged document to Burgess, as counsel to the MCEHD, falsely representing it to be filed both on its face and through his accompanying e-mail indicating that "[o]nce I receive the docketed copy I will forward."

Finally, respondent clearly violated RPC 8.4(d). His protracted deceptions prolonged the MCEHD v. Horizon litigation by necessitating that Avolio file a warrant to satisfy the judgment, which was adjourned in order for the two attorneys to determine how they and their clients had been deceived. Further, respondent's former firm was forced to compensate the MCEHD in the amount of $40,000, in order to enable the public entity to willingly enter into a consent order discharging the actual judgment lien of record. See In re Zuvich, 237 N.J. 253 (2019) (in which the Court disbarred an attorney for knowing misappropriation but also found that the attorney had violated RPC 8.4(d) in that respondent's fraud "resulted in the unnecessary expenditure of judicial resources and constituted conduct prejudicial to the administration of justice" where the

client's insurance company was required to file multiple motions to enforce a fraudulent settlement).

By contrast, the complaint does not contain clear and convincing evidence of the two asserted RPC 3.3(a)(4) violations, which were alleged to have been established by respondent's (1) forgery of DiFilippo's signature and that of the fictitious witness upon the May 4, 2018 Settlement Agreement and Release; and (2) preparation of the false Settlement Agreement and Release, upon which he forged both a public official's signature and that of a witness, and to which Avolio and the defendant's principals applied their signatures on May 4, 2018.

Although reprehensible and unethical, the record does not support the required element that respondent's misrepresentations were made to a tribunal. RPC 1.0(n) provides:

> "Tribunal" denotes a court, an arbitrator in an arbitration proceeding or a legislative body, administrative agency or other body acting in an adjudicative capacity. A legislative body, administrative agency or other body acts in an adjudicative capacity when a neutral official, after the presentation of evidence or legal argument by a party or parties, will render a binding legal judgment directly affecting a party's interests in a particular matter.

Certainly, in In re Forrest, 158 N.J. 428, 434-435 (1999) the Court observed that "[m]isrepresentation of a material fact to an adversary or a tribunal in the name

of 'zealous representation' never has been nor ever will be a permissible litigation tactic[.]" However, in no case have we or the Court found a violation of RPC 3.3(a)(4) for a misrepresentation to opposing counsel. Nor have we found such a violation because the document containing the misrepresentation might – or should – have been filed with a tribunal thereafter. In short, while it is true that "[l]awyers have an obligation of candor to each other…which includes a duty of disclosure . . . to opposing counsel" a violation of that duty was sufficiently addressed by the RPC 8.4(c) and RPC 4.1(a)(1) charges.

In sum, we find that respondent violated RPC 1.1(a); RPC 1.2(a); RPC 1.3; RPC 1.4(b) (two instances); RPC 4.1(a)(1) (two instances); RPC 8.4(b) (three instances); RPC 8.4(c) (eight instances); RPC 8.1(b); and RPC 8.4(d). We determine to dismiss the RPC 3.3(a)(4) charge (two instances), because respondent made the involved misrepresentations not to any tribunal, but rather, to the client, supervising counsel, and his adversary. The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

The level of discipline imposed in cases involving the commission of a crime depends on numerous factors, including the "nature and severity of the crime, whether the crime is related to the practice of law, and any mitigating factors such as respondent's reputation . . . prior trustworthy conduct, and

general good conduct." In re Lunetta, 118 N.J. 443, 445-46 (1989). Though uncharged, respondent's criminal behavior was severe, touched directly upon the practice of law, and impacted the administration of justice.

Precedent supports imposition of a lengthy suspension for violations of RPC 8.1(b) involving forgery and fabrication of false documents. 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 card 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); In re Frost, 156 N.J. 416 (1998) (two-year suspension for attorney who prepared misleading closing documents, including the note and mortgage, the Fannie Mae affidavit, the affidavit of title, and the settlement statement; the attorney also breached an escrow agreement and failed to honor closing instructions; the attorney's ethics history included two private reprimands, a three-month suspension, and a six-month suspension); In re Cresci, 237 N.J. 210 (2019) (disbarment for respondent convicted of fourth-degree uttering a false document, arising from his forgery of his client's signature on settlement documents; respondent also practiced while suspended; in aggravation, he had a substantial disciplinary history).

Respondent lied to clients, adversaries, and supervising counsel to conceal

his mishandling of this legal matter; for such misconduct attorneys have received discipline ranging from a short-term suspension to disbarment. See, e.g., In re Brent, 240 N.J. 222 (2019) (three-month suspension for attorney for misconduct in three matters; in one, he was retained to pursue a breach of contract matter; the matter was dismissed with the attorney's consent, but the attorney never informed the client of that dismissal, instead embarking on a five-year course of misrepresenting that the litigation was proceeding apace and that he was engaged in settlement negotiations, and fabricating a general release and release of deed which were presented to the clients but which they did not sign; the three-month suspension was justified by the lack of any disciplinary history, ready admission of wrongdoing, and absence of any history of deceitful conduct); In re Smith, 228 N.J. 22 (2016) (three-month suspension for attorney who fabricated an order and forged a judge's signature, to mislead the client that a motion for summary judgment had been granted against the client; the attorney also made misrepresentations to the client and a misrepresentation to the court, conduct prejudicial to the administration of justice; violations of RPC 1.2(a), RPC 1.3, RPC 1.4(b) and (c) also found); In re Brollesy, 217 N.J. 307 (2014) (three-month suspension for attorney who misled his client, a Swedish pharmaceutical company, that he had obtained visa approval for one of the company's top executives to begin working in the United States; although the

attorney had filed an initial application for the visa, he took no further action and failed to keep the client informed about the status of the case; in order to conceal his inaction, the attorney lied to the client, fabricated a letter from the United States Embassy, and forged the signature of a fictitious United States Consul, in violation of RPC 8.4(c); the attorney also violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b); mitigation included the attorney's twenty years at the bar without prior discipline and his ready admission of wrongdoing by entering into a disciplinary stipulation); In re Yates, 212 N.J. 188 (2012) (three-month suspension for attorney who, after a client's personal injury matter had been assigned to him, neglected to file a complaint prior to the expiration of the statute of limitations; when the attorney realized what had happened, he panicked and hid the information from the firm and from the client for nearly a year; the attorney fabricated a settlement agreement, which falsely stated that a complaint had been filed on a date that preceded the firm's representation of the client, and misrepresented that the defendant had filed an answer and had agreed to settle the matter for $600,000; about six weeks later, the attorney confessed his misconduct to the client; the attorney violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.4(c)); In re Kasdan, 115 N.J. 472 (1989) (three-month suspension for misconduct in six matters, including numerous misrepresentations to a client that a complaint had been filed and preparation

and delivery of a false pleading to the client; in another case, the attorney hid from the client that the case was dismissed due to her failure to answer interrogatories; she then repeatedly misrepresented the status of the case and fabricated trial dates to mislead the client; in two other cases, a real estate closing and a custody matter, the attorney ignored the clients' numerous requests for information; in two other real estate matters, she engaged in gross neglect when closing title without securing payment of the purchase price from her clients; she also knowingly delivered to the seller's attorney a trust account check that turned out to be drawn against insufficient funds); In re Bosies, 138 N.J. 169 (1994) (six-month suspension for misconduct in four matters; in one matter, for a period of five months, the attorney engaged in an elaborate scheme to mislead his clients that, although he had subpoenaed a witness, the witness was not cooperating; to "stall" the client the attorney prepared a motion for sanctions against the witness, which he showed the client but never file with the court; he then informed the client that the judge had declined to impose sanctions; thereafter, the attorney traveled three hours with his client to a non-existent deposition, feigned surprise when the witness did not appear, and then traveled to the courthouse purportedly to advise the judge of the witness' failure to appear at the deposition; the attorney was also found guilty of a pattern of neglect, lack of diligence, failure to communicate with clients, failure to abide

by discovery deadlines contained in a court order, failure to abide by the clients' decisions concerning the representation, and a pattern of misrepresentations; although the attorney's conduct involved only four matters, the six-month suspension was predicated on his pattern of deceit); In re McElroy, 241 N.J. 358 (2020) (one-year suspension for sole practitioner who violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 8.1(b), and RPC 8.4(c); attorney failed to advise the client of the dismissal of his case, and deceived him as to the status of the matter for years, amplifying the deception by presenting fabricated settlement documents which the client signed, ultimately securing a personal loan which he falsely presented as settlement proceeds; attorney was spared disbarment because of his absence of an ethics history and because the harm to the client was not as severe as in other cases); In re Morell, 180 N.J. 153 (2004) (Morell I) (reciprocal discipline matter; one-year suspension for attorney who, over the course of several months, told elaborate lies to his clients about the status of their personal injury cases; he also fabricated documents, including a court notice and release; in another case, he led his creditor client to believe, for a period of several months, that he had located the debtor's assets); In re Weingart, 127 N.J. 1 (1992) (two-year suspension, all but six months suspended; the attorney lied to his client about the status of the case and prepared and submitted to his client, to the Office of the Attorney General, and to the Administrative Office of the

Courts a fictitious complaint to mislead the client that a lawsuit had been filed; the attorney was also found guilty of lack of diligence, failure to communicate, dishonesty and misrepresentation, and conduct prejudicial to the administration of justice); In re Alterman, 126 N.J. 410 (1991) (two-year suspension for attorney who got in over his head during his successive employment with two multi-member law firms and neglected several matters; to cover up his inaction, the attorney lied to his clients that the cases were proceeding apace, fabricated documents to mislead his supervisors and the clients that the matters were progressing normally, and misrepresented to a judge that he had authority to settle a suit on behalf of a client; in the last instance, when confronted by his superiors, the attorney denied rumors that the matter had been settled and also denied knowledge of the draft settlement agreement; he finally admitted his misconduct when his superiors were about to telephone his adversary; he was also found guilty of failure to withdraw from or to decline representation, practicing law while ineligible, and failure to cooperate with disciplinary authorities by not filing an answer to an ethics complaint; in mitigation, the attorney testified that his work was unsupervised and that he suffered from psychological illness; although we found a causal link between the attorney acts of misconduct and his psychological problems, we determined that the abominable nature of his behavior merited a two-year suspension); In re Penn,

172 N.J. 38 (2002) (three-year suspension in a default matter for attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, in order to placate the client, the attorney lied that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible); In re Meyers, 126 N.J. 409 (1992) (three-year suspension for attorney who prepared and presented to his client a fictitious divorce judgment in order to conceal his failure to file a complaint for divorce for about two years; he then failed to file a motion to vacate default after the husband filed a complaint for divorce; failed to inform his client that the husband had filed a complaint for divorce; lied to the client that the husband's action was just a re-examination of equitable distribution and that he had missed the trial date due to a calendar error; left the client to believe that she had been divorced for those two years and that all issues attendant to the divorce had been resolved; the attorney then asked his client to misrepresent to the court that the phony divorce judgment had been merely a draft and misrepresented to a court intake officer that the fabricated divorce judgment had been a mere draft and that his client had misunderstood its significance; the attorney also made other misrepresentations to his client and covered up the divorce action filed by the husband; as a result of the attorney's gross neglect,

the client lost her interest in the husband's pension and the ability to claim the couple's son for tax purposes); In re Yacavino, 100 N.J. 50 (1985) (three-year suspension for attorney who prepared and presented to his clients two fictitious orders of adoption to conceal his neglect in failing to advance an uncomplicated adoption matter for nineteen months; the attorney misrepresented the status of the matter to his clients on several occasions; in mitigation, the Court considered the absence of any purpose of self-enrichment, the aberrational character of the attorney's behavior, and his prompt and full cooperation with law enforcement and disciplinary matters); In re Morell, 184 N.J. 299 (2005) (Morell II) (disbarment, in a default matter, for attorney who, after he had neglected to file a medical malpractice complaint, misled the client about the status of the case for four years, culminating in the false claim that a $1 million settlement offer had been made, which the client accepted and then signed a release that the attorney had fabricated).

Here, respondent's misconduct most closely resembles that of McElroy, which analyzed Morell I, Morell II and Yates in depth.

In Yates, the attorney worked for the law offices of William J. Courtney, LLC. In the Matter of Mark G. Yates, DRB 12-003 (June 15, 2012) (slip op. at 2). In April 2008, Magdi Gadalla hired the firm to represent him. Ibid. When Yates reviewed the file, in January 2010, for the purpose of drafting a complaint,

he discovered that the statute of limitations had expired in December 2009. Id. at 3. Instead of telling Courtney and taking remedial action, Yates panicked and concealed what had happened from Courtney and Gadalla for the rest of the year. Ibid.

In late 2010, Gadalla asked Yates about the status of the case. Ibid. Yates misrepresented that the complaint had been filed in 2004, which was prior to the firm's representation of Gadalla, and that the hospital had filed an answer and had agreed to settle the matter for $600,000. Ibid. Yates fabricated a settlement agreement, which Gadalla signed. Ibid.

For the next six weeks, Gadalla repeatedly asked Yates about the status of the settlement monies. Ibid. Yates repeatedly misrepresented that the hospital's check was in the mail. Id. at 3-4. Finally, the client and his wife appeared at the office, at which point, Yates admitted that he had "screwed up" and directed them to talk to Courtney. Id. at 4.

In addition to finding that Yates had violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b), we found that he had engaged in a cover-up, which included a series of lies to his client, ultimately leading to the fabrication of the $600,000 settlement agreement, which was followed by another series of lies when the client questioned when he would receive the settlement funds. Id. at 5-6.

In imposing a censure, we balanced Yates's unblemished career of more

than thirty years and his admission of wrongdoing against his deceit, which led the client to believe that he would be receiving hundreds of thousands of dollars. Id. at 12. The Court imposed a three-month suspension. In re Yates, 212 N.J. 188.

In Morell I, the attorney represented a married couple in a personal injury action arising from a car accident. In the Matter of Philip M. Morell, DRB 03-316 (February 18, 2004) (slip op. at 2). Between June and December 1997, he led the clients to believe that their case, which had been dismissed, was restored to the trial calendar, even though the motion had not been decided. Id. at 2-3. Thereafter, he falsely represented that he was awaiting a trial date and that negotiations and conferences were ongoing. He also falsely stated that the case was scheduled for trial in early December 1997 and provided them with a fabricated court notice. Finally, he misrepresented that the defendants' insurance carriers had offered to settle the case for $200,000. Ibid. When the case was restored to the trial calendar, the attorney altered the decision by obscuring the date so that his clients would not discover his earlier misrepresentation.

In another matter, Morell represented a creditor in his attempt to collect on a judgment. In 1996, he misrepresented to the client that he had located the debtor's assets. Three months later, he confessed that he had not located assets.

Emphasizing Morell's "elaborate lies" and the fabricated and altered documents, we imposed a one-year suspension.

Morell's conduct involved a time span of months rather than years. Moreover, his misrepresentations involved two different clients, but, in neither case, did he lead his clients to believe that their case had actually settled or provide them with a fabricated release.

Respondent's conduct is strikingly similar to that of the attorney in Morell II, which, like this case, was a default. There, Morell agreed to represent a young professional baseball player in a medical malpractice case against a doctor and hospital for career-ending damages caused by surgeries to repair four herniated discs in his lower back, which he had sustained in an automobile accident. In the Matter of Philip M. Morell, DRB 04-245 (October 26, 2004) (slip op. at 2). Morell never filed a lawsuit and, for the following four years, misrepresented the status of the case to his client. Morell claimed that the lawsuit had been filed, that experts had been retained, and that, after meeting with representatives from one of the defendant's insurance carriers, he believed that the case was worth $10 million.

Thereafter, Morell reported to his client that the insurance carrier had offered a $250,000 settlement, which his client rejected. Later, he claimed that

the carrier had increased its offer to $700,000 but suggested that he could obtain a higher settlement.

Finally, Morell obtained his client's approval to settle the case for $1.1 million. Because no such offer had been made, Morrell fabricated a settlement release, which his client signed. Morrell told his client that he could now purchase the car of his dreams. The client borrowed money from his father and purchased a Lexus.

For the next four months, Morell continued to misrepresent the status of the case, even telling the attorney for the workers' compensation carrier that he had obtained a $1.4 million settlement. He also told his client that he had received the monies, which he would wire to his client immediately. Id. at 4. Several days later, when the money did not appear, Morell admitted that he had not filed suit and that "his story was a fabrication."

When Morell was served with the ethics complaint, he filed an unverified answer and, ultimately, defaulted. We determined that he had violated RPC 1.1(a), RPC 1.3, and RPC 1.4(a), now (b). Id. at 5. Given the default and Morell's "outrageous contravention of the facts, about every aspect of a litigation that existed only in [his] head," even going so far as to fabricate the settlement authorization and direct his client to buy a car, we voted to impose a two-year suspension.

The Court disbarred Morell. Morell (II), 184 N.J. at 306. Prior to doing so, the Court had provided Morell with the opportunity to challenge our determination or to seek vacation of the default, but Morell did nothing.

The Court noted that Morell had received a prior diversion for lack of fairness to opposing counsel and failure to expedite litigation, to diligently prosecute a claim, and to comply with his adversary's discovery request. Moreover, he had received a one-year suspension for the conduct described in Morell I.

Most recently, the Court imposed the one-year suspension that we recommended in McElroy. McElroy was charged with violating RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 8.1(b), and RPC 8.4(c), and, thereafter, defaulted like the respondent here. McElroy was retained in 2002 to represent client Dennis Bielski in a personal injury case, which respondent's firm filed. In the Matter of Edward McElroy, DRB 19-095 (October 17, 2019) (slip op. at 3). The Court ordered that Bielski submit to an independent medical examination, about which McElroy never told him. Ibid. As a result, Bielski's case was dismissed, with prejudice. McElroy did not tell his firm or the client about the 2007 dismissal of the case for the ensuing ten years.

In that time, McElroy made repeated verbal misrepresentations to Bielski that the settlement was underway, going so far as to travel to Florida to meet

with Bielski and present a fabricated release and settlement statement, which the client then signed. When, two months later, the client sought to receive the funds, respondent obtained a $425,000 personal loan which he presented to Bielski as the "net settlement proceeds." After being terminated by his firm, McElroy confessed his misconduct to the OAE. Thereafter, he defaulted.

In imposing a one-year suspension in McElroy, we noted the duration of the misconduct and the misrepresentations to the client, as exacerbated by the default. In mitigation and in averting disbarment, we noted McElroy's thirteen years of practice, the absence of any disciplinary history, and the level of harm to the client, which we considered less severe than that in Morell II.

Synthesizing the foregoing, the minimum quantum of discipline for respondent's egregious deception and fabrication is a one-year term of suspension. Particularly, we note that respondent caused direct financial harm to the MCEHD, a public entity, which sought to secure a judgment for the full amount the defendants owed and did not authorize respondent to settle for less. Additionally, respondent caused indirect financial harm to Avolio and Burgess, who consumed time and resources unraveling his parallel schemes to conceal the uncontested entry of the arbitrator's order.

Although the duration of the two-year deception impacting a $132,562.34 suit may not have been as lasting as that in McElroy (10 years) nor the settlement

as large as that in Morell II ($1.4M), respondent's conduct was comparable to that of McElroy, and his conduct exhibited similar ethical failings.

Respondent's RPC 8.4(d) violation might have justified a censure in the absence of the more severe charges. However, it is impossible to separate the needless expenditure of judicial resources and the corruption of public confidence in eCourts documents from the balance of respondent's unethical conduct. Absent respondent's misconduct, MCEHD v. Horizon would have been resolved years earlier, Avolio's January 2019 motion practice to enter a satisfaction of judgment would have been unnecessary, and there would have been no need for the March 2019 settlements unwinding respondent's prior deceptions.

We, thus, consider the one-year suspensions imposed in McElroy and Morell I as starting points for our analysis. All of respondent's other violations provide for lesser discipline which would be subsumed into the quantum of discipline for the more severe RPC 8.4(b); RPC 8.4(c); and RPC 8.4(d) charges. However, in crafting the appropriate discipline, we also consider aggravating and mitigating factors.

The default record before us contains no evidence which we view in mitigation.

By contrast, we weigh several factors in aggravation. First, we approach the quantum of discipline mindful that "a respondent's default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted).

Second, this case is a recurrence of both respondent's client neglect and protracted deception in an attempt to conceal that neglect. In re Morin, 218 N.J. 163 (2014); In re Kelly, 120 N.J. 679, 689 (1990) (noting that the attorney's misconduct was "not a single aberrant, even compulsive act" but was rather "[a] pattern of misconduct [that] permeated" the representation); In re Forrest, 158 N.J. 428, 438 (1999) (attorney suspended for six months for violations of RPC 3.3(a)(5); RPC 3.4(a); and RPC 8.4(c), in which the Court viewed in aggravation that the conduct was "not an isolated incident but occurred over a period of at least nine months. Respondent engaged in a continuing course of dishonesty, deceit, and misrepresentation").

Third, as respondent admitted in his MVD, his premeditated dishonesty was designed to preserve his employment. He, therefore, committed ethics violations in furtherance of his own pecuniary benefit. In re Pena, 162 N.J. 15, 26 (1999) (observing in aggravation that "[a]lthough no economic harm occurred to respondent's clients, he acted for his own pecuniary benefit").

On balance, we determine that the aggravating factors support a three-year suspension as the quantum of discipline necessary to protect the public and preserve confidence in the bar. Given respondent's repeated invocation of his mental health as an explanation for misconduct, we also require respondent to provide the OAE, prior to reinstatement, with proof of fitness to practice law as attested by a medical professional approved by the OAE.

Chair Gallipoli and Member Joseph voted to recommend to the Court that respondent be disbarred. 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 Philip J. Morin, III
Docket No. DRB 21-020

Decided: September 9, 2021

Disposition: Three-Year Suspension

| ***Members*** | Three-Year Suspension | Disbar | Absent |
|---|---|---|---|
| Gallipoli | | X | |
| Singer | X | | |
| Boyer | X | | |
| Campelo | | | X |
| Hoberman | X | | |
| Joseph | | X | |
| Menaker | X | | |
| Petrou | X | | |
| Rivera | X | | |
| Total: | 6 | 2 | 1 |

Johanna Barba Jones
Chief Counsel