Supreme Court of New Jersey
Disciplinary Review Board
Docket Nos. DRB 21-233 and 21-246
District Docket Nos. XIV-2019-0063E and XIV-2019-0064E

In the Matters of	:
Donald M. McHugh	:
and	:
Vincent N. Macri	:
Attorneys at Law	:

Decision

Argued: February 17, 2022

Decided: April 21, 2022

Amanda Figland appeared on behalf of the Office of Attorney Ethics.

Justin P. Walder appeared on behalf of respondent, Donald M. McHugh.

John M. Iaciofano appeared on behalf of respondent, Vincent N. Macri.

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

These matters were before us following two separate disciplinary stipulations entered between the Office of Attorney Ethics (the OAE) and respondents McHugh and Macri. We consolidated the cases for oral argument and disposition because the stipulated facts arise from the same general conduct of these respondents, who previously were law and business partners.

In his disciplinary stipulation, McHugh stipulated to having violated RPC 3.3(a)(1) (making a false statement of material fact to a tribunal); RPC 3.4(c) (two instances – knowingly disobeying an obligation under the rules of a tribunal); RPC 8.1(a) (knowingly making a false statement of material fact to disciplinary authorities); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

In his disciplinary stipulation, Macri stipulated to having violated RPC 3.4(c) and RPC 8.4(d).

For the reasons set forth below, we determine to impose a reprimand on McHugh and an admonition on Macri.

McHugh earned admission to the New Jersey bar in 1973 and retired from the practice of law on June 10, 2021. Macri also earned admission to the New Jersey bar in 1973. Neither respondent has a disciplinary history. At the relevant

times described herein, both respondents practiced law as McHugh & Macri (the Firm), in East Hanover, New Jersey.

The OAE docketed these matters for investigation after the Honorable Robert J. Brennan, P.J.Ch., wrote to the District XA Ethics Committee, on January 14, 2019, to report that McHugh and Macri may have committed misconduct. Thereafter, the matters were routed to the OAE for investigation.

On October 21, 2021, McHugh and the OAE entered into a disciplinary stipulation. Separately, on November 18, 2021, Macri and the OAE entered into a disciplinary stipulation. Those stipulations set forth the following facts in support of McHugh and Macri's admitted ethics violations.

By way of background, McHugh and Macri formed their law partnership by agreement dated January 1, 1979 (the Agreement). The Agreement provided that McHugh and Macri:

> shall at all times during the continuance of the partnership share and divide all gains, profits and increases, and all losses, bad debts, and the like in the following proportions, namely Donald M. McHugh, 50 percent, and Vincent Macri, 50 percent.
>
> [Ex. 1 at 2.][1]

The Agreement also provided that neither McHugh nor Macri would receive a

[1] "Ex." refers to the exhibits to the disciplinary stipulations, which were coextensive through Exhibit 25. McHugh provided three additional exhibits, numbered 25 through 28.

salary for services rendered to the partnership, but rather, the parties maintained:

> drawing accounts and in such proportion to each other as shall be agreed upon by them, said proportion not to exceed a 50/50 basis and said drawing account to include reimbursement for expenses paid by the law partnership also not to exceed a 50/50 basis.
>
> [Ex. 1 at 2-3.]

The Agreement permitted McHugh to continue to devote his time to his role as president of Don McHugh Memorials, Inc.

Additionally, the Agreement stated that "all funds of the partnership shall be deposited in its name in the National Community Bank, in suitable accounts or in such other bank or banks as agreed upon by the parties." Both McHugh and Macri had the authority to sign salary and payroll checks, in addition to checks in payment for goods and services. Thus, McHugh and Macri both had signing authority on the Firm's attorney trust account (ATA) and attorney business account (ABA).

Macri and McHugh also were partners operating as McHugh and Macri Realty (the Realty Partnership), a general partnership they had formed in 1978 for the purpose of owning, leasing, and managing real property. The Realty Partnership operated out of the same physical office as the Firm. Unlike their law partnership, McHugh and Macri had no written agreement governing the Realty Partnership. However, for the entirety of the Realty Partnership's

existence, both parties equally shared in the management, profits, and losses of the entity.

Beginning in 1998, McHugh began staying at his Florida residence each year between the months of January through April or May. Also since 1998, Macri has served as the Firm's managing partner. In that capacity, Macri oversaw the payment of business expenses from the ABA, prepared QuickBooks reports, and handled the Firm's payroll.

Macri used a checkbook maintained at the Firm to issue checks from the ABA. Additionally, Macri's wife, a part-time employee of the Firm, prepared checks for Macri's signature. At the end of each fiscal quarter, an outside accountant prepared a profit and loss statement using the QuickBooks reports Macri generated.

By agreement, the Firm directly paid certain perquisites for McHugh and Macri, including cellular telephone bills; car payments; car repairs; gasoline; health insurance; and Medicare gap coverage for the partners and their spouses. McHugh and Macri also agreed that the Firm would directly pay credit card charges for travel and entertainment (T&E) expenses.

Eventually, in May 2018, McHugh and Macri's relationship irretrievably broke down.

McHugh asserted that, in 2017, contrary to their prior practice operating

the Realty Partnership, Macri and another individual bought a property and sold it for a $65,000 profit, excluding McHugh. Macri failed to deposit the proceeds of the sale in the Firm's ABA.

In 2017, McHugh retaliated. Following his work as an executor on an estate case opened by the Firm, he received a $33,499.93 executor's commission. He did not deposit the commission in the Firm's ABA but, instead, claimed as personal income on his 2017 taxes. Moreover, McHugh did not advise Macri that he had received the executor's commission.

In May 2018, after he reviewed e-mails between McHugh and the Firm's accountant, on which he had been copied, Macri learned that McHugh had not deposited the executor's commission in the Firm's ABA, which Macri viewed as a violation of the Agreement. In turn, McHugh claimed that Macri had paid himself significantly more in T&E expenses and other perquisites, in violation of the Agreement.

Macri admitted that the Firm had paid him more T&E expenses and other perquisites than it had paid to McHugh but contended that McHugh had known, since 1998, that Macri was receiving more than McHugh, and had agreed to the arrangement. Further, Macri claimed that, because McHugh spent four or five months in Florida each year, Macri handled more work and generated more revenue for the Firm, thus, justifying his receipt of more T&E expenses.

In May 2018, following the erosion of their relationship, Macri suggested to McHugh that, if McHugh would retire from the practice of law, Macri would buy out McHugh's fifty-percent interest in the Firm over the next several years.

However, the parties were not able to reach an arrangement. Consequently, on July 26, 2018, Macri filed an order to show cause and verified complaint against McHugh, seeking to dissolve both the Firm and Realty Partnership and to appoint a receiver to wind up their relationship. Macri also sought a court order restraining McHugh from "usurping the assets of McHugh and Macri for his own personal use."

On August 7, 2018, McHugh filed an answer and counterclaim, as well as a motion seeking, among other relief, a credit for the unequal payment of T&E expenses. McHugh claimed that, on May 5, 2018, he and Macri had a dispute over a fee, which consequently "raised [his] suspicions" regarding how Macri had been managing the Firm's financial records. McHugh alleged that, following the fee dispute, he requested and reviewed the annual operating records from the Firm's accountant and was astonished to learn that, over approximately twenty years, the Firm had paid Macri approximately $1 million in T&E expenses, whereas it had only paid McHugh $400,000 in T&E expenses.

On August 24, 2018, Judge Brennan held a hearing on the parties' competing motions and entered an order, seven days later, denying the emergent

relief Macri sought and denying, without prejudice, Macri's request for the appointment of a receiver. The August 31, 2018 order also stated that, "[p]ending the conclusion of this matter, the parties shall maintain the status quo as of June 3, 2018." Neither McHugh nor Macri recalled Judge Brennan explaining, on the record, what he meant by "status quo."

Following Judge Brennan's August 31, 2018 order, Macri continued to disburse weekly draws and monthly distribution payments to himself and McHugh. Macri also continued to pay benefits and T&E expenses for both partners and their spouses. In so doing, Macri continued to pay himself more in T&E expenses and perquisites than he paid McHugh, claiming that he was maintaining the June 3, 2018 "status quo."

Consequently, on October 12, 2018, McHugh filed an order to show cause, primarily seeking to address Macri's unequal T&E payments. On November 1, 2018, Macri filed a cross-motion seeking an order compelling McHugh to comply with prior orders and again seeking the appointment of a receiver. At a November 9, 2018 court hearing, McHugh and Macri jointly requested that the court adjourn their motions and refer them to mediation.

Ten days later, McHugh wrote a $31,800 ABA check, payable to "Fidelity," and, on November 20, 2018, deposited the check in his personal Fidelity account. On the memo line of the check, McHugh wrote "to match

[Macri's] T&E to 9/30/2018." Macri had not authorized McHugh to disburse $31,800 from the ABA. Furthermore, it was not the status quo for the partners to issue checks to equalize disparities in T&E expenses and perquisites paid from the ABA.[2]

On November 22, 2018, Macri discovered that McHugh had taken the $31,800, and McHugh refused to return the funds to the ABA. Consequently, on November 27, 2018, Macri filed a motion to enforce litigant's rights, seeking to address McHugh's taking of the funds.

On November 30, 2018, Judge Brennan issued an order adjourning the parties' motions, re-listing the matters for January 11, 2019, and setting a December 31, 2018 deadline for the parties to attempt to resolve their differences through mediation. Judge Brennan's order further provided:

> that while plaintiff Macri and defendant McHugh remain engaged in the effort to mediate their disputes, all expenses of the McHugh & Macri law firm incurred in the regular course of essential day-to-day business activities of the firm are to be paid out of the McHugh & Macri business account in accordance with the status quo of the firm as it existed as of June 3, 2018, including partner draw, which is to remain within the status quo of 6/3/2018. However, there shall be no payments to [plaintiff or defendant] for any alleged business-related expense (including "T & E") from firm funds. This order prohibits <u>any</u> payment to [plaintiff or defendant] from firm funds other than draws per above;

[2] Although McHugh sought equalization of T&E expenses during the litigation to dissolve the law firm, his claim was never settled or adjudicated.

> this includes payments to third parties for expenses allegedly incurred by either [plaintiff or defendant]. This provision shall remain in effect until further order of the court.
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> [Ex. 11.]

Because Judge Brennan signed the November 30, 2018 order outside of the presence of the parties and mailed a copy to McHugh and Macri, neither respondent was immediately aware of the terms of the order. Therefore, at the end of November and early in December 2018, before he had received and reviewed Judge Brennan's order, Macri paid T&E expenses for both partners from the Firm's ABA, including car payments; $1,433.94 for McHugh's American Express credit card bill; a Verizon Wireless bill; and a $1,000 check to Diane Macri.

Thereafter, on December 14, 2018, McHugh provided Macri with a list of ABA checks that he wanted Macri to issue. Included on the list was a request that Macri re-issue a $9,625 check to Donatella Verrico in settlement of a malpractice claim, a $2,500 check to M&M Realty for the appraisal of two units, and two separate $186.87 checks to refund unearned portions of legal fees.

On December 17, 2018, McHugh and Macri, along with their respective counsel, attended a full-day mediation session with the Honorable Eugene D. Serpentelli, J.S.C. (Ret.). Following the mediation, counsel for Macri prepared a document titled "Terms of mediation settlement," which was signed by

McHugh, Macri, their attorneys, and Judge Serpentelli. Among other terms, the settlement agreement stated that all expenses already paid by the Firm, as of December 17, 2018, would not be "subject to any further examination or review." McHugh also agreed to retire from the Firm on December 31, 2018. At the mediation, Macri's counsel agreed to prepare the closing papers for the settlement.

Also at the mediation, McHugh again asked Macri to issue ABA checks to Verrico and to M&M Realty. Macri did not immediately issue the ABA checks because he wanted to investigate the circumstances of the Verrico check. Macri also told McHugh that he objected to paying the appraisal fee to M&M Realty.

On December 17, 2018, when McHugh returned home following the mediation, he accessed the Firm's ABA account online and, unbeknownst to Macri, initiated three wire transfers to his personal checking account: $2,500 for the appraisal fee to M&M Realty; $9,625 to pay Verrico; and $3,075 to pay his American Express credit card bill. This represented the first time McHugh had accessed the Firm's ABA online and made electronic transfers from the account.

The next day, Macri discovered that McHugh had electronically transferred $15,200 from the Firm's ABA. In turn, Macri issued himself a $25,000 ABA check as a distribution and issued a second, $15,200 ABA check

to the new law firm he had created, Macri & Associates, LLC. The memo line for the $15,200 check stated, "equalization for 3 wire transfers." Macri asserted that the $25,000 check was the usual monthly distribution he paid himself and McHugh. Macri further asserted that, after consulting with his attorney, he made these payments to himself and his new law firm to protect the Firm's ABA from McHugh. Macri also asserted that the payments to himself would ensure he could pay Firm bills, employee payroll, and bonuses, because he did not believe Judge Brennan would find the transfers to be a violation of the court orders.

On December 19, 2018, McHugh and Macri spoke about the ABA transfers McHugh made immediately following the mediation. The same date, McHugh wired $9,625 and $2,500 from his personal account back to the Firm's ABA but did not return the $3,075 he had used to pay his American Express credit card bill.

Later, on December 27, 2018, McHugh discovered Macri's December 18, 2018 transfers of $15,200 and $25,000 from the Firm's ABA to Macri and to Macri's new law firm. The next day, McHugh sent an e-mail to Macri, demanding that he return the $40,200 to the Firm's ABA that day. When McHugh and Macri spoke, that day, about the payments each of them had made, Macri advised McHugh that he would give McHugh credit for the $40,200 he had removed from the ABA in connection with the parties' settlement. However,

Macri did not agree to return the funds to the Firm's ABA. Accordingly, McHugh was not willing to finalize the settlement with Macri and did not respond to the closing documents.

Approximately one week later, on January 3, 2019, McHugh filed opposition to Macri's November 27, 2018 motion. In his supporting certification, McHugh asserted that Macri had violated the court's orders, on December 18, 2018, by disbursing from the Firm's ABA $15,200 to Macri & Associates and $25,000 to his personal account. McHugh also admitted that he paid his $3,075 American Express credit card bill using Firm funds, but falsely claimed that (1) he incurred all of the charges prior to November 30, 2018, and (2) Macri had refused to pay the charges.[3] Additionally, McHugh failed to disclose to the court that he and Macri had executed a settlement agreement following the December 17, 2018 mediation.

The next day, Macri's counsel informed the court that the parties had executed a settlement agreement and that Macri had returned the $40,200 to the Firm's ABA.

On January 7, 2019, Macri filed a reply certification, asserting that

[3] McHugh's misrepresentation was the result of his failure to verify that all the charges made on the credit card pre-dated November 30, 2018, rather than an attempt to deliberately mislead the court. Thus, in his stipulation, McHugh admitted that he misrepresented to the court and the OAE the status of his credit card charges but characterized the misrepresentation as "partial." Therefore, we credit McHugh's admission that he was guilty of misrepresentation.

McHugh improperly had transferred $15,200 to his personal account immediately after the December 17, 2018 mediation. Macri's reply certification was supposed to be "filed under seal," since it referenced the terms of the parties' settlement; however, no formal motion to seal the record had been filed. Consequently, at the January 11, 2019 court hearing, Judge Brennan did not consider Macri's January 7, 2019 reply certification.

Also at the hearing, Judge Brennan found that McHugh had violated the court's August 31, 2018 order by transferring $31,800 to his Fidelity account on November 20, 2018. In so finding, Judge Brennan stated that:

> it appears [McHugh] took it upon himself to execute a self-help remedy and award funds to himself, despite the absence of any adjudication by the Court as to the propriety of [Macri's] travel and entertainment expenses and [McHugh's] right to these funds.
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> [Ex.23,p42.]

Judge Brennan found that McHugh's transfer of $31,800 from the ABA to his personal account was not the status quo and ordered him to return the funds to the Firm's ABA no later than January 14, 2019. In compliance with the court's January 11, 2019 order, McHugh returned the $31,800 to the Firm's ABA, on January 14, 2019.

Judge Brennan also found that Macri's December 18, 2018 disbursements from the Firm's ABA to his personal accounts had violated the court's August

31 and November 30, 2018 orders, because it was not the status quo for Macri to transfer funds to his new law firm, and the parties historically had consulted each other prior to taking a distribution. Although Judge Brennan observed that Macri already had returned the funds, he nevertheless ordered the funds to be returned to the ABA no later than January 14, 2019.

Furthermore, the court found that:

> this application arises out of [Macri's] discovery and allegations that [McHugh] wrote a check in the amount of $31,800 out of the firm business account payable to [McHugh's] personal investment account. [McHugh] appears to have written this check in an attempt to match travel and entertainment expenses incurred by [Macri].
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> [Ex. 23 at 37.]

Therefore, the court found that McHugh's actions were a measure of self-help, despite the absence of any court order.

Additionally, the court informed the parties that he was going to refer their misconduct to the District Ethics Committee. Judge Brennan stated that he was concerned that his orders "seem to have no impact on the parties. So I'm concerned, they're lawyers. They're not everyday litigants. The parties are attorneys. They should know better." Judge Brennan memorialized his findings in a January 11, 2019 order.

On February 15, 2019, the parties formally entered into a settlement

agreement, and the civil litigation was dismissed following the entry of a stipulation of dismissal filed on February 21, 2019.

When questioned by the OAE regarding the two checks Macri issued to himself and his new law firm, totaling $40,200, Macri advised the OAE that, in hindsight, he would have done things differently. Specifically, Macri told the OAE that he would have used his personal funds to pay expenses for the Firm instead of transferring funds from the Firm's ABA to his personal accounts.

Based on the foregoing facts, Macri admitted that he violated RPC 3.4(c) and RPC 8.4(d) by knowingly violating the Superior Court's August 31 and November, 30, 2018 orders by transferring $40,200 in Firm funds to himself and his new law firm.

When questioned by the OAE regarding his disbursement of funds from the Firm's ABA, McHugh denied that his transfer of $31,800 from the ABA to his personal account was a mistake and denied that he would have done things differently if given the chance. McHugh also asserted that his transfers of $2,500 to M&M Realty for the appraisal fee and $3,075 for payment of his American Express credit card bill were not violations of the Superior Court's orders. Rather, McHugh falsely told the OAE that the $3,075 was used to pay for

charges incurred prior to November 30, 2018.[4] However, the credit card bill represented charges made between October 13, 2018, and December 15, 2018. Additionally, on December 4, 2018, Macri had issued a $1,433.94 check from the Firm's ABA to pay a portion of McHugh's American Express credit card bill.

Based on the foregoing facts, McHugh admitted that he violated RPC 3.3(a)(1) by falsely representing to the court, in his January 3, 2019 certification, that (1) he had disbursed $3,075 from the Firm's ABA to his personal account to pay off credit card charges made prior to November 30, 2018, and (2) Macri had refused to pay the bill; RPC 3.4(c) by knowingly violating the court's August 31, 2018 order by transferring $31,800 to his personal Fidelity account, $2,500 to himself to pay M&M Realty, and $3,075 to himself to pay his credit card bill; RPC 8.1(a) by falsely representing to the OAE that he had transferred $3,075 from the Firm's ABA to his personal account to pay for credit card charges incurred prior to November 30, 2018; RPC 8.4(c) for his misrepresentations to Macri surrounding the amount of the executor commission he received and for failing to deposit the commission in the Firm's ABA; and RPC 8.4(d) for engaging in conduct prejudicial to the administration of justice

[4] Again, prior to his misrepresentation to the OAE, McHugh misrepresented in his January 3, 2019 certification to the court that he had incurred expenses on his credit card prior to November 30, 2018, and that Macri had refused to pay the outstanding charges.

via his violations of two court orders.

The OAE observed that "funds of the partnership" was not explained or defined within the Agreement. Thus, based on applicable disciplinary precedent discussed below, it concluded that McHugh did not commit knowing misappropriation because his taking of the Firm's funds occurred in connection with an ongoing business dispute, which dispute included the Realty Partnership.

Neither stipulation cited aggravating factors. In mitigation, the OAE noted that neither McHugh nor Macri has a disciplinary history, and that each respondent entered into a disciplinary stipulation, thus saving the OAE "valuable resources." See In the Matter of John E. Maziarz, DRB 18-251 (January 9, 2019) at 12.

The OAE recommended the imposition of a censure for McHugh's misconduct. At oral argument before us, the OAE reiterated its position that it did not believe that McHugh's misconduct constituted knowing misappropriation of Firm funds because his decision to withhold earned fees was a part of a larger dispute with Macri that had been "brewing for years." The OAE stressed that the significant mitigating factors warranted the imposition of a censure.

McHugh did not provide a submission for our consideration. However, at

oral argument before us, McHugh stressed that he had practiced law for more than forty years with no ethics infractions. McHugh asserted that his business dispute with Macri did not result in any harm to clients and was a part of a dispute over a partnership agreement from 1979. Additionally, in contradiction to his stipulation, wherein his admitted that he misled the Superior Court, during oral argument before us, McHugh disavowed his earlier admission.

Regarding mitigation, McHugh argued that he was a recipient of a New Jersey State Bar Association distinguished service award from the elder and disability law section and had chaired the elder and disability law committee.

The OAE recommended the imposition of a reprimand for Macri's misconduct. At oral argument before us, the OAE maintained that Macri's misconduct was unlike McHugh's because Macri did not misrepresent the status of his credit card charges to the Superior Court and the OAE.

In his submission to us, Macri argued that the many mitigating factors present should weigh in favor of no discipline being imposed for his admitted violations of RPC 3.4(c) and RPC 8.4(d). At oral argument before us, Macri contended that this matter was "extremely contextual" and presented a "bizarre set of circumstances."

Macri contended that there were "understandable explanations" for his RPC violations which arose in the context of the dissolution of his former law

partnership with McHugh. Specifically, Macri asserted that the financial transfers he made from the Firm's ABA to his own accounts were done to protect the Firm's financial position. Macri further stressed that his misconduct occurred within the context of the breakdown of his professional and personal relationship with McHugh.

Macri argued that, after McHugh wrote the $31,800 check to his personal bank account, Macri appropriately responded by filing a motion with the court, which was adjourned to permit mediation. Nevertheless, after learning that McHugh again transferred funds to his personal account, rather than file a motion with the court, Macri decided to issue himself checks from the Firm's ABA. Macri argued that he "correctly believed" that he had an enforceable settlement agreement that permitted him to write the checks.

Macri urged us to consider that his misconduct was in reaction, "within the shortest possible time," after the parties signed the December 17, 2018 settlement agreement, to McHugh's decision to engage in self-help to better his personal position. Indeed, Macri contended that, but for his own self-help following the mediation, he had "played by the rules," and "did nothing inappropriate" in the dissolution of the Firm. Macri claimed that the Superior Court erred in including him in the ethics referral because, had the court read his January 7, 2019 reply certification, it would have known that, by writing

checks to himself after the mediation, and in reaction to McHugh, Macri was preserving, not changing, the status quo. Macri argued that his actions post-mediation were on the advice of counsel,[5] and under the belief that the settlement agreement was legally enforceable despite the same-day repudiation of the agreement by McHugh. Thus, Macri asserted, he acted to protect his "successor firm's assets and his personal assets from further harm."

Therefore, Macri contended that he should not be disciplined for his misconduct. Instead, Macri urged us to dismiss the ethics complaint against him because the facts of this matter "are so unique."

In mitigation, Macri argued that he cooperated with the OAE's investigation; demonstrated contrition and remorse; no client was injured as a result of his misconduct; the funds were returned to the Firm's ABA; the misconduct occurred in a short window of time and as a reaction to McHugh's unauthorized withdrawal of Firm funds; and the misconduct was unlikely to occur again.

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[5] Macri included a certification from his counsel in the dissolution action, Louis A. Modugno, Esq., stating that, because a Settlement Term Sheet had been signed by the parties, their counsel, and Judge Serpentelli, he believed the agreement was enforceable pursuant to the Court's holding in Willingboro Mall, Ltd. v. 240/242 Franklin Avenue, LLC, 215 N.J. 242 (2013) (holding that a signed settlement agreement reached by the parties in mediation is binding and enforceable). Modugno asserted that, although Macri & Associates, LLC was an entity Macri created in June 2018, it was not a functioning law firm in December 2018 and had no expenses of its own; thus, Macri's transfer of funds in December 2018 was not done for any purpose other than to meet the expenses of the Firm.

Following a review of the record, we are satisfied that the stipulated facts clearly and convincingly support the finding that McHugh and Macri committed all the stipulated unethical conduct.

Specifically, as McHugh admitted, he partially misrepresented to the court and to the OAE the status of his credit card charges when discussing his transfer of $3,075 from the Firm's ABA to his personal account, in violation of RPC 3.3(a)(1), RPC 8.1(a), and RPC 8.4(c). McHugh also admitted that he violated the Superior Court's August 31 and November 30, 2018 orders by transferring $31,800 in Firm funds to his personal Fidelity account, and later transferring a total of $5,575 in Firm funds to another personal account, in violation of RPC 3.4(c) and RPC 8.4(d). The record supports these admissions.

In turn, Macri admitted that he violated RPC 3.4(c) and RPC 8.4(d) by knowingly violating the Superior Court's August 31 and November 30, 2018 orders by transferring from the Firm's ABA $25,000 to himself and $15,200 to his new law firm. The record supports these admissions.

We reject Macri's belated defense, submitted to us following his provident entry of admissions to misconduct – that he actually committed no misconduct because he was only enforcing the terms of the settlement agreement reached in mediation. Macri, as an officer of the court, agreed with disciplinary authorities to enter into a stipulation and admitted that he violated the Rules of Professional

Conduct. We are troubled by the fact that, during oral argument before us, he attempted to nullify the admissions he made within his stipulation by stating he committed no misconduct, and we, thus, determine to hold Macri to the admissions he made within his disciplinary stipulation.

First, in his stipulation, Macri admitted that, despite having reached that settlement agreement, he knowingly violated the Superior Court's orders, which remained effective. Second, as Macri clearly knows, given his extensive experience as an attorney, had he desired to argue that the settlement agreement justified his actions, he should have moved to enforce the settlement agreement prior to disbursing any Firm funds. He should not have simply ignored standing court orders and exercised self-help, including for his new business endeavor. Until the settlement was approved by the court and the pending civil litigation was dismissed, both respondents were duty-bound to obey the Superior Court's standing orders or to formally seek relief from them. Thus, Macri's defense is meritless and conveniently ignores the fact that he could have gone back to the trial court, as he previously had done in other motions, to seek to enforce the settlement or modify the existing orders.

We agree with the OAE's conclusion that McHugh's and Macri's improper disbursements of law firm funds did not constitute knowing misappropriation. It is well-settled that theories of knowing misappropriation

have been rejected where, as here, attorneys have been engaged in business disputes with their law firms. See, e.g., In re Bromberg, 152 N.J. 382 (1998) (reprimand for attorney who reasonably believed that he was a partner in the firm by virtue of an agreement he had entered; because he had not been paid any salary during one month and his partner had unilaterally breached their letter-agreement, he believed he was advancing to himself funds to which he was entitled, when he intercepted two checks from a client, payable to the firm); In re Glick, 172 N.J. 319 (2002) (reprimand for an attorney who, from the inception of his association with the firm, disagreed with his share of the firm's profits; over a three-year period, he deposited checks payable to him, for his services as an arbitrator, into his personal account; he retained his fees as a form of self-help as compensation for what he perceived was the firm's failure to properly calculate his profit share); In re Spector, 178 N.J. 261 (2004) (reprimand for attorney who remained at a firm while in the process of forming his own firm; he was under the impression that the prior firm had failed to comply with its employment agreement and that it intended to cheat him; he, therefore, retained fees that he had earned while still at the prior firm, intending to hold them in escrow but, through a miscommunication with his new partner, some of the fees were deposited in the business account and were spent); In re Nelson, 181 N.J. 323 (2004) (reprimand for attorney who took funds from his law firm while in

the midst of a partnership dispute; the attorney had learned that legal malpractice suits had been filed against the firm and had been concealed from him, that the firm had made improper payments of referral fees to other attorneys, that one of the partners had been trying to "steal" his clients to receive credit for generating the legal fees paid by the clients, and the law firm had failed to address the issue of the use of law firm funds for the payment of certain questionable expenditures).

Here, the record clearly reflects that both respondents' improper disbursements of Firm funds occurred, as in Nelson and Bromberg, when they were embroiled in a business dispute. We conclude that neither McHugh nor Macri had the requisite mens rea to knowingly misappropriate funds from the Firm. Instead, each viewed himself as the victim of the other's conduct – McHugh saw an injustice in the discrepancies of T&E payments and Macri saw himself as the revenue-generator of the Firm due to McHugh's part-time residence in Florida. Each party believed he was entitled to the funds as a result of his self-serving interpretation of the Agreement.

In sum, we find that McHugh violated RPC 3.3(a)(1); RPC 3.4(c) (two instances); RPC 8.1(a); RPC 8.4(c); and RPC 8.4(d). Similarly, we find that Macri violated RPC 3.4(c) and RPC 8.4(d). The sole issue left for us to

determine is the appropriate quantum of discipline for the misconduct committed by each.

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 Vaccaro, 245 N.J. 492 (2021) (reprimand for an attorney who misrepresented to the court, in an immigration matter, that he had no knowledge of his client's other counsel or his client's counseling, a violation of RPC 3.3(a)(1)); In re Schiff, 217 N.J. 524 (2014) (reprimand for attorney who filed inaccurate certifications of proof in connection with default judgments; specifically, at the attorney's direction, his staff prepared signed, but undated, certifications of proof in anticipation of defaults; thereafter, when staff applied for default judgments, at the attorney's direction, they completed the certifications, added factual information, and stamped the date; although the attorney made sure that all credits and debits reflected in the certification were accurate, the signatory did not certify to the changes, after signing, a practice of which the attorney was aware and directed; the attorney was found guilty of lack of candor to a tribunal and failure to supervise nonlawyer employees, in addition to RPC 8.4(a) and RPC 8.4(c)).

Ordinarily, a reprimand is imposed on an attorney who fails to obey court orders, even if the infraction is accompanied by other, non-serious violations. In

re Ali, 231 N.J. 165 (2017) (attorney disobeyed court orders by failing to appear when ordered to do so and by failing to file 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 his inexperience, unblemished disciplinary history, and the fact that his conduct was limited to a single client matter); In re Cerza, 220 N.J. 215 (2015) (attorney failed to comply with a bankruptcy court's order compelling him to comply with a subpoena, which resulted in the entry of a default judgment against him; violations of RPC 3.4(c) and RPC 8.4(d); he also failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b); prior admonition for recordkeeping violations and failure to promptly satisfy tax liens in connection with two client matters, even though he had escrowed funds for that purpose); In re Gellene, 203 N.J. 443 (2010) (attorney was guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney also was guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors considered were the attorney's financial problems, his battle

with depression, and significant family problems; his ethics history included two private reprimands and an admonition).

Generally, in matters involving misrepresentations to ethics authorities, the discipline ranges from a reprimand to a term of suspension, depending on the gravity of the offense, the presence of other unethical conduct, and aggravating or mitigating factors. See, e.g., In re DeSeno, 205 N.J. 91 (2011) (reprimand for attorney who misrepresented to the district ethics committee the filing date of a complaint on the client's behalf; the attorney also failed to adequately communicate with the client and failed to cooperate with the investigation of the grievance; prior reprimand); In re Otlowski, 220 N.J. 217 (2015) (censure for attorney who made misrepresentations to the OAE and to a client's lender by claiming that funds belonging to the lender, which had been deposited into the attorney's trust account, were frozen by a court order; to the contrary, they had been disbursed to various parties); In re Brown, 217 N.J. 614 (2014) (three-month suspension, in a default matter, for an attorney who made false statements to a disciplinary authority; failed to keep a client reasonably informed about the status of the matter; charged an unreasonable fee; failed to promptly turn over funds; failed to segregate disputed funds; failed to comply with the recordkeeping rule; and failed to cooperate with disciplinary authorities).

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.

Here, both McHugh and Macri admitted to violating Judge Brennan's November 30, 2018 order when, following the December 2018 mediation, both respondents improperly transferred Firm funds to their respective personal accounts. Whether Macri transferred Firm funds in retaliation for McHugh's post-mediation transfer is irrelevant – it does not justify his own misconduct. Standing alone, each respondent's violation of court orders explicitly prohibiting payments for any business-related expenses would not warrant more than a reprimand.

Although not directly on point because it did not involve a prohibition on the use of Firm funds, the attorney's conduct in Ali involved the court's intervention and orders compelling Ali's presence in court. The court had requested that Ali file a notice of appearance in a matrimonial case. After he failed to do so, the court ordered Ali to file a substitution of attorney. After Ali failed to appear for several scheduled court hearings, the court issued an order

requiring Ali to appear in court. The client then retained new counsel; Ali still failed to appear in court as directed. Ali received a reprimand.

Here, as in Ali, the Superior Court directed McHugh and Macri to engage in certain actions – chief among them, maintain the status quo regarding Firm's funds. Knowing that the court had issued orders to that effect, McHugh and Macri decided to ignore the court and instead, engaged in their own self-help. Thus, the baseline discipline for McHugh's and Macri's violations of RPC 3.4(c) and RPC 8.4(d), standing alone, is a reprimand.

However, McHugh not only violated the court's November 30, 2018 order, he also violated the court's August 31, 2018 order by writing a $31,800 ABA check payable to Fidelity and depositing the funds in his personal account in order to match Macri's T&E expenses. Furthermore, he partially misrepresented to the court the status of his credit card charges by failing to verify the dates all the charges were made. Not learning from his mistake, McHugh made the same misrepresentation to the OAE. Considering McHugh's additional, deceitful misconduct, we view a censure as the baseline discipline for the totality of his violations. However, we are obligated to weigh the impact of aggravating and mitigating factors.

Thus, with respect to aggravation, as stated in the stipulations, after Judge Brennan reported the parties' misconduct to the District Ethics Committee, the

actions of McHugh and Macri diverged. Macri initially acknowledged his poor decision making and expressed to the OAE that he would have done things differently. During oral argument before us, however, Macri attempted to disavow that prior contrite approach. Specifically, he asserted that he committed no misconduct because his actions were in response to McHugh's misconduct. Therefore, we find the juxtaposition between the contrition Macri expressed in his stipulation, and his later repudiation of misconduct during oral argument, to be an aggravating factor.

In respect to McHugh, not only did he express that he would repeat his misconduct if given the chance, but he admitted he violated RPC 8.4(c) when he partially misrepresented to the OAE the nature of the charges on his American Express credit card bill – as he did to the Superior Court during the underlying litigation. Moreover, despite his stipulation that he violated the Rules of Professional Conduct, McHugh, too, argued that he committed no misconduct, which we find to be an additional aggravating factor.

In mitigation, both respondents' misconduct arose during the dissolution of their decades-long law and realty partnerships and is therefore unlikely to recur. Furthermore, no client funds were impacted and no clients were harmed.

In additional mitigation, both McHugh and Macri have been practicing law for forty-eight years with no prior ethics infractions. However, the duration

of that practice cuts both ways. Like Judge Brennan, we would have expected that two attorneys who have practiced without incident for decades would not have been tempted to blatantly subvert the language and intention of the Superior Court's orders in the manner that each did. Nevertheless, we give great weight to the nearly fifty years McHugh and Macri practiced law without incident.

Moreover, it seems unlikely that heightened discipline of these two attorneys is necessary to advance the protective or reputational purposes of the disciplinary system. See In re Principato, 139 N.J. 456, 460 (1995) (citations omitted) ("[t]he primary purpose of discipline is not to punish the attorney but to preserve the confidence of the public in the bar").

Thus, we determine that, despite the serious nature of the respondents' misconduct, the strong mitigating factors justify the imposition of a reprimand upon McHugh and an admonition on Macri.

In the McHugh matter, Members Campelo, Menaker, and Petrou voted to impose a censure.

In the Macri matter, Chair Gallipoli voted for a reprimand.

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 Donald M. McHugh
Docket No. DRB 21-233

Argued: February 17, 2022

Decided: April 21, 2022

Disposition: Reprimand

Members	Reprimand	Censure	Absent
Gallipoli	X		
Singer	X		
Boyer	X		
Campelo		X	
Hoberman			X
Joseph	X		
Menaker		X	
Petrou		X	
Rivera	X		
Total:	5	3	1

Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Vincent N. Macri
Docket No. DRB 21-246

Argued: February 17, 2022

Decided: April 21, 2022

Disposition: Admonition

Members	Admonition	Reprimand	Absent
Gallipoli		X	
Singer	X		
Boyer	X		
Campelo	X		
Hoberman			X
Joseph	X		
Menaker	X		
Petrou	X		
Rivera	X		
Total:	7	1	1

Johanna Barba Jones
Chief Counsel