SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-231
District Docket No. XIV-2023-0384E

In the Matter of Clifford R. Lundin
An Attorney at Law

Decided
March 25, 2025

Certification of the Record

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Introduction

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 1.7(a)(2) (two instances – engaging in a concurrent conflict of interest); RPC 1.8(k) (two instances – prohibiting a lawyer employed by a public entity from undertaking the representation of another client if the representation presents a substantial risk that the lawyer's responsibilities to the public entity would limit the lawyer's ability to provide independent advice or diligent and competent representation to either the public entity or the client); RPC 8.1(b) (two instances – failing to cooperate with disciplinary authorities); RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer); and RPC 8.4(c) (four instances – engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation).[1]

For the reasons set forth below, we determine that a censure is the appropriate quantum of discipline for respondent's misconduct.

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

Ethics History

Respondent earned admission to the New Jersey bar in 1984 and has no disciplinary history. During the relevant timeframe, he was publicly employed as District Manager and General Counsel for the Sussex County Soil Conservation District Board of Supervisors (the District Board). He also maintained a part-time, private practice of law in Andover, New Jersey.

Service of Process

Service of process was proper. On August 16, 2024, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's office and home addresses of record, and by electronic mail, to his e-mail address of record. According to the United States Postal Service (USPS) tracking, the certified mail sent to respondent's office address and to his home address were both delivered on August 21, 2024. The regular mail was not returned to the OAE, and the e-mail was delivered, although no delivery notification was sent by the destination server.

On September 6, 2024, the OAE sent a second letter to respondent's office and home addresses of record, by regular mail, and by electronic mail, to his e-mail address of record, 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) by reason of his failure to answer. The regular mail was not returned to the OAE, and the e-mail was delivered, although no delivery notification was sent by the destination server.

As of September 25, 2024, 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.

On November 25, 2024, Chief Counsel to the Board sent respondent a letter, by certified and regular mail, to his office address of record, and by electronic mail, to his e-mail address of record, informing him that this matter was scheduled before us on January 16, 2025, and that any motion to vacate the default (MVD) must be filed by December 16, 2024. According to USPS tracking, the certified mail was delivered. The letter sent by regular mail was not returned to the Office of Board Counsel (the OBC).

Moreover, by notice dated December 2, 2024, the OBC published a notice, in the New Jersey Law Journal, and on the New Jersey Courts website, stating that we would consider this matter on January 16, 2025. The notice informed respondent that, unless he filed a successful MVD by December 16, 2024, his prior failure to answer would remain deemed an admission of the

allegations of the complaint.

Respondent did not file an MVD.

Facts

We now turn to the allegations of the complaint.

Background

On September 10, 2009, the District Board appointed respondent as its District Manager and General Counsel.[2] Prior to his appointment in that role, respondent had served as a District Board member for approximately thirty years.[3]

In connection with his appointment, the District Board established respondent's annual salary at $65,702 "based upon a 35-hour workweek." The District Board also permitted him to "continue his practice [of law] during non-District hours, provided [that] none of his activities conflict[ed] with District actions." Additionally, respondent "agreed not to accept any 'developer' clients

[2] Soil conservation districts function as sub-divisions of the New Jersey Department of Agriculture and are responsible for enforcing the Soil Erosion and Sediment Control Act, N.J.S.A. 4:24-39 to – 55. See N.J.S.A. 4:24-1.

[3] Respondent resigned from his position as a District Board member in connection with his appointment as District Manager and General Counsel.

building in Sussex County." Further, upon his appointment, respondent became a public employee and, thus, was subject to the New Jersey Conflicts of Interest Law, N.J.S.A. 52:13D-12 to -28 (the Conflicts of Interest Law).

From 2010 through 2014, respondent submitted to the District Board certified "outside activity approval request" forms in which he requested District approval for conducting his private practice of law outside of District business hours.[4] Specifically, in each form, respondent indicated that he performed private practice legal work "part time," either during "afternoon" or "evening" hours, on weekdays or on weekends. Additionally, he represented that his outside employment did not "require/cause [him] to have contacts with [New Jersey] state agencies, vendors, consultants, or casino license holders." Finally, he represented that his "employment or business [was not] being performed for or with any other [District] employee(s) or official(s)."

The NJSEC Investigation

In 2015, the New Jersey State Ethics Commission (the NJSEC) commenced an investigation of respondent's use of his District office to operate his private law practice.

[4] Respondent's 2012 and 2015 through 2018 outside activity forms, if any, were not included in the record before us.

The NJSEC's investigation revealed that, between September 2009 and January 2017, respondent, while serving as District Manager and General Counsel, and during District business hours, (1) created and modified legal documents on his state computer in connection with his private law practice, (2) collected legal fees from private clients, and (3) utilized District printers, telephones, and facsimile machines for work related to his private law practice. Additionally, on July 29, 2014 and June 30, 2015, he utilized his District office to conduct two separate real estate closings in connection with his representation of private clients.

During his April 11, 2016 interview with the NJSEC, respondent claimed that, in connection with his private law practice, he handled real estate matters involving only sales of existing structures that did not require "permitting from the District." Additionally, he maintained that he had an external flash drive in which he stored his legal files. However, he conceded that he had maintained some non-District materials on his state computer, including his (1) son's school essays; (2) Christmas cards related to his candidacy for the Hopatcong Borough Board of Education; (3) school board resolutions and agendas; (4) a resolution for the Lake Musconetcong Regional Planning Board; and (5) various "probate papers" and "real estate documents."

The NJSEC's investigation also revealed that, between September 2009

and July 2014, while serving as District Manager and General Counsel, respondent had represented numerous private clients before various New Jersey state agencies, excluding the Department of Agriculture, in violation of N.J.S.A. 52:13D-16(b) governing conflicts of interest for state employees.[5]

Specifically, between September 2009 and March 2013, respondent continued to represent James Boyce in connection with a fuel oil spill in Sussex County.[6] During that timeframe, according to respondent's billing records, he submitted at least one "application package" to the New Jersey Department of Environmental Protection (the DEP) and to the New Jersey Economic Development Authority (the EDA) on behalf of Boyce. Additionally, he had at least four telephone conversations with DEP personnel in connection with his representation of Boyce. Moreover, he submitted at least three letters and one report to the DEP on behalf of Boyce. Finally, he submitted at least one letter to the EDA on Boyce's behalf.

In addition to his representation of Boyce, respondent represented other private clients before state agencies. Specifically, (1) in 2011, respondent sent a letter to the DEP on behalf of the Lake Musconetcong Regional Planning Board;

[5] N.J.S.A. 52:13D-16(b) expressly prohibits any state officer or employee from representing, negotiating on behalf of, or appearing for any party (other than the State) "in connection with any cause, proceeding, application, or other matter pending before any state agency."

[6] Respondent's representation of Boyce commenced in March 2007, approximately two-and-a-half years before his appointment as District Manager and General Counsel.

(2) in 2012, he sent "a letter and documents" to the Department of Treasury on behalf of the Knollwood Club; (3) in 2013, he filed forms with the Department of Treasury, Division of Taxation, on behalf of "a private client;" (4) in January 2014, he wrote a letter to the Department of Treasury on behalf of a client's estate; and (5) in July 2014, he filed a complaint with the Board of Public Utilities (the BPU) on behalf of the Knollwood Club.

The NJSEC's investigation further uncovered that respondent had performed private legal work on behalf of at least three of the five District Board members.[7]

Specifically, on April 15, 2012, District Board member Fred Hough and his wife Betty Hough retained respondent, on a contingent fee basis, in connection with personal injuries Betty allegedly had sustained in a parking lot after attending a church function in Newton, New Jersey. Three days later, on April 18, 2012, respondent filed, in the Superior Court of New Jersey, Sussex County, Fred and Betty's personal injury lawsuit against the church and the owner of the parking lot. During the representation, respondent drafted motions, pleadings, and arbitration memos during District business hours. Additionally,

[7] On June 26, 2013, all five District Board voted to increase respondent's salary as District Manager and General Counsel by two percent, in addition to a two-percent increase in "total budget expenses" for the 2014 fiscal year. The record before us is unclear whether the District Board granted respondent any subsequent salary increases.

he saved those legal documents on his state computer.[8]

Further, on undisclosed dates, respondent prepared a will and handled a "minor" real estate closing for District Board member Barbara Rosko. Finally, during an undisclosed timeframe, he performed unspecified "legal work" on behalf of District Board member Phillip Deacon.

During his April 2016 interview with the NJSEC, respondent conceded that he had informed the District Board members that his work concerning his private practice of law would take place outside of District business hours:

> [The NJSEC:] Were there any stipulations? So far, I mean did [the District Board members] know that you were also on – I'm assuming the [District Board members] –
>
> [Respondent:] They're absolutely fully aware that I have my law practice, and in fact, they said – the chairman and the vice-chairman can absolutely tell you, they said we know that you have to do things on the side to basically survive at this salary. But you know, we're aware of it. And you know, I said I'm not going to be doing much within the – I will not be doing anything in the office, but I will be doing some work.
>
> [The NJSEC:] Okay. So you told them you wouldn't do anything while you were working at the office?
>
> [Respondent:] Yes.

[8] The outcome of Fred and Betty's Superior Court litigation is unclear based on the record before us. However, according to the metadata extracted from respondent's state computer, his representation of Fred and Betty continued until at least February 2014.

[Ex.19pp.31-32.][9]

Following his interview with the NJSEC, respondent continued to operate his private practice of law during District business hours. Two years later, in April 2018, he retired from his position as District Manager and General Counsel.

Proceedings Before the Office of Administrative Law

On October 17, 2017, following its investigation, the NJSEC filed an administrative complaint against respondent, alleging that he violated at least three provisions of the Conflicts of Interest Law. Specifically, throughout his District employment, he represented numerous private parties before state agencies, in violation of N.J.S.A. 52:13D-16(b). Additionally, respondent both (1) provided legal services to at least three District Board members, in an attempt to secure unwarranted advantages for himself, and (2) misused state resources, time, and office equipment to operate his private law practice, in violation of N.J.S.A. 52:13D-23(e)(3) and (7).[10]

[9] "Ex." refers to exhibits appended to the formal ethics complaint.

[10] N.J.S.A. 52:13D-23(e)(3) prohibits a state employee or officer from attempting "to use his official position to secure unwarranted privileges or advantages for himself or others." Similarly, N.J.S.A. 52:13D-23(e)(7) prohibits a state employee or officer from "knowingly act[ing] in any way that might reasonably be expected to create an impression or suspicion among the public having knowledge of his acts that he may be engaged in conduct violative of his trust as a state officer or employee."

On January 29, 2018, the NJSEC transmitted the matter to the Office of Administrative Law (the OAL) as a contested case. On March 27, 2019, the NJSEC, through the Office of the Attorney General, filed a motion for partial summary decision requesting that the OAL adjudicate respondent guilty of having violated the Conflicts of Interest Law. Respondent filed no opposition to the motion and did not appear for oral argument.

On May 27, 2020, the OAL issued an order granting the partial summary decision motion. Thereafter, on October 2, 2020, the NJSEC filed a brief with the OAL requesting that it impose a $22,500 total civil penalty for respondent's violations of the Conflicts of Interest Law, pursuant to N.J.S.A. 52:13D-21(i).[11] Respondent filed no opposition to the NJSEC's proposed civil penalty.

On March 12, 2021, the OAL issued a decision imposing the requested $22,500 civil penalty. In its decision, the OAL found that respondent:

> misused state resources on a daily basis. [Respondent] routinely used state vehicles, offices, computers, printers, telephones, [facsimile] machines, and office supplies to conduct his private law practice and for other non-state purposes. A search of [respondent's] state computer revealed nearly 2,000 files containing numerous documents, most if not all of which are either personal documents or documents related to

[11] Generally, N.J.S.A. 52:13D-21(i) requires that any state officer or employee found guilty of violating the Conflicts of Interest Law "shall be fined not less than $500 and not more than $10,000." The NJSEC calculated its proposed $22,500 penalty by multiplying a $500 base penalty for each of respondent's twenty-five distinct acts in violation of the Conflicts of Interest Law, plus an additional $10,000 penalty.

> [respondent's] secondary employment. Metadata . . . indicates that many of the files saved on the computer were created and/or opened by [respondent] during various times of the workday and contained several personal documents.
>
> [Ex.4p.5.]

In the OAL's view, respondent's conduct represented "an egregious example of a continuous and ongoing misuse of state resources for matters unrelated to state business."

The OAL concluded that respondent violated N.J.S.A. 52:13D-16(b) by representing twenty-two "private citizens and organizations in legal matters before various state agencies." Additionally, the OAL found that respondent violated N.J.S.A. 52:13D-23(e)(3) and (7) by operating his private law practice during District business hours, resulting in a misuse of state resources to further his private legal business. The OAL also observed that respondent further violated N.J.S.A. 52:13D-23(e)(3) and (7) by performing legal work for at least three District Board members responsible for his appointment and salary increases.

On April 20, 2021, having received no objections to the OAL's March 12, 2021 decision, the NJSEC issued an order adopting that decision "as the final decision in this matter."

Approximately two-and-a-half years later, on August 31, 2023, the OAL

filed an ethics grievance with the OAE based on respondent's violations of the Conflicts of Interest Law.

The OAE's Investigation

On November 14, 2023, the OAE sent respondent a letter, by certified and regular mail, to his office address of record, and by electronic mail, to his e-mail address of record, directing him to submit a detailed written reply to the ethics grievance by December 7. The certified mail was delivered successfully on November 28, 2023. The regular and electronic mail were not returned to the OAE. Respondent, however, failed to reply.

On January 12, 2024, the OAE sent respondent a second letter, by certified, regular, and electronic mail, again directing that he submit a written reply to the ethics grievance by January 26. The certified mail was delivered successfully on January 20, 2024. The regular and electronic mail were not returned. Respondent again failed to reply.

One month later, on February 22, 2024, the OAE hand-delivered its previous correspondence directly to respondent. On May 6, 2024, following his failure to reply, the OAE sent him a final letter, by certified, regular, and electronic mail, directing that he appear for a May 13, 2024 demand interview. The regular and electronic mail were not returned to the OAE. However, the

certified mail could not be delivered because no authorized recipient was available to receive that letter. Respondent failed to appear for the demand interview.

The Formal Ethics Complaint

Based on its view that respondent's concurrent representation of the District – a public entity – and (1) Fred and Betty Hough and (2) James Boyce would materially limit his ability to provide diligent and competent representation to both the District and those private clients, the OAE charged respondent with having violated both RPC 1.7(a)(2) (two instances) and RPC 1.8(k) (two instances).

Moreover, based on his decision to operate his private practice of law during District business hours, without authorization, the OAE charged respondent with having violated RPC 8.4(b) by committing official misconduct, in violation of N.J.S.A. 2C:30-2.[12] Specifically, the OAE alleged that, between September 2009 and January 2017, respondent utilized District office space; computers; printers; and facsimile machines to generate and modify legal documents and to conduct real estate closings in connection with his private

[12] Official misconduct is a second-degree crime. However, if the value of the improperly obtained benefit is $200 or less, it is a third-degree crime. N.J.S.A. 2C:30-2. The OAE did not specify the degree of its official misconduct charge.

practice of law.

Further, on each of his certified outside activity forms submitted between 2010 and 2014, respondent misrepresented that his private practice of law neither involved performing any outside work for District officials nor "require[d]/cause[d]" him to have any contacts with New Jersey state agencies. Given that respondent was, in fact, performing such private practice legal work before state agencies and for certain District Board members, the OAE charged him with having violated RPC 8.4(c) (four instances).

Additionally, based on his failure to cooperate with the OAE's disciplinary investigation, spanning from November 2023 through May 2024, the OAE charged respondent with having violated RPC 8.1(b). Finally, based on his failure to file an answer to the formal ethics complaint, the OAE charged him with having committed a second violation of RPC 8.1(b).

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following our review of the record in this matter, we determine that the facts set forth in the formal ethics complaint support some, but not all, of the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they

provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Notwithstanding that Rule, we must determine whether each charge in the complaint is supported by sufficient facts for us to determine that unethical conduct has occurred. See In re Pena, 164 N.J. 222 (2000) (noting that the Court's "obligation in an attorney disciplinary proceeding is to conduct an independent review of the record, R. 1:20-16(c), and determine whether the ethical violations found by the [Board] have been established by clear and convincing evidence"); see also R. 1:20-4(b) (entitled "Contents of Complaint" and requiring, among other notice pleading requirements, that a complaint "shall set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct").

Specifically, the record before us clearly and convincingly establishes respondent's violation of RPC 8.1(b) (two instances) and RPC 8.4(c) (four instances). By contrast, however, we determine to dismiss the RPC 1.7(a)(2), RPC 1.8(k), and RPC 8.4(b) charges. Each violation is separately addressed below.

RPC 8.4(c)

Respondent violated RPC 8.4(c), which prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation,

by making misrepresentations to his client – the District Board – in his certified outside activity approval request forms spanning 2010 through 2014. Specifically, in each form, respondent requested permission from the District Board to conduct his private practice of law outside of District business hours. Moreover, he informed the District Board that his outside employment did not "require/cause" him "to have contacts with [New Jersey] state agencies." Further, he represented to the District Board that his private practice of law was not "being performed for or with any other [District] employee(s) or official(s)."

However, as the NJSEC and the OAL observed, respondent "routinely" performed legal work related to his private law practice during District business hours, contrary to his certified statements in his outside activity request forms. Moreover, during his April 2016 interview with the NJSEC, he conceded that, although the District Board members were aware that he operated a private practice of law, he had informed those members that he would not perform private legal work during business hours. However, following his interview with the NJSEC, respondent continued to engage in unauthorized legal work for an additional two years, until his April 2018 retirement from his position as District Manager and General Counsel.

Respondent's outside activity request forms further misrepresented that his private practice of law would not require him to have any contacts with New

Jersey state agencies. However, as the NJSEC and the OAL observed, between September 2009 and July 2014, he represented numerous private clients before various state agencies, excluding the Department of Agriculture. Indeed, his representation of Boyce before the DEP and the EDA commenced in March 2007, two-and-a-half years before his appointment as District Manager and General Counsel and continued until March 2013. Further, in 2011, respondent sent a letter to the DEP in connection with his representation of the Lake Musconetcong Regional Planning Board. Additionally, in 2012, respondent sent written materials to the Department of Treasury and, in 2014, filed a complaint with the BPU in connection with his representation of the Knollwood Club. Finally, in 2013 and 2014, he filed written submissions, on behalf of two private clients, with the Department of Treasury. Contrary to his certified statements in his outside activity request forms, respondent's private practice of law routinely required him to engage with state agencies on behalf of clients.

Finally, in connection with at least his 2013 outside activity request form, respondent misrepresented to the District Board that his private practice of law was not "being performed for or with any other [District] employee(s) or official(s)." In fact, between April 2012 and at least February 2014, respondent continuously represented Fred – a District Board member – and Fred's spouse

in connection with a private personal injury lawsuit.[13] Although respondent also performed unspecified "legal work" for District Board member Deacon, and prepared a will and handled a "minor" real estate closing for District Board member Rosko, the timeframe of those matters is unclear based on the record before us.

RPC 8.1(b)

Next, respondent violated RPC 8.1(b), which requires an attorney to "respond to a lawful demand for information from . . . [a] disciplinary authority." Similarly, R. 1:20-3(g)(3) requires "[e]very attorney [to] cooperate in a disciplinary investigation and reply in writing within ten days of receipt of a request for information." Respondent violated this Rule in two respects.

First, between November 2023 and May 2024, respondent altogether failed to cooperate with the OAE's disciplinary investigation concerning his conduct underlying this matter. Specifically, on November 14, 2023 and January 12, 2024, the OAE sent respondent letters directing that he submit a detailed written reply to the OAL's ethics grievance. On February 22, 2024, following his failure to reply despite proper service, the OAE hand-delivered those letters

[13] Respondent executed his 2014 outside activity approval request form in November 2014, several months after he appeared to have stopped performing legal work on behalf of Fred and his spouse.

directly to respondent, who, again, failed to comply. Finally, he failed to appear for the OAE's May 13, 2024 scheduled demand interview.

Respondent violated RPC 8.1(b) a second time by failing to file an answer to the formal ethics complaint, despite proper notice, allowing this matter to proceed as a default.

RPC 1.7(a) and RPC 1.8(k)

We conclude, however, that the record lacks clear and convincing evidence to support the charged violations pursuant to RPC 1.7(a) and RPC 1.8(k).

Specifically, RPC 1.7(a) prohibits a lawyer from representing a client if the representation involves a concurrent conflict of interest. Under the Rule, a concurrent conflict of interest exists not only if "the representation of one client will be directly adverse to another client," but also if "there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client . . . or by a personal interest of the lawyer."

Similarly, RPC 1.8(k) prohibits a lawyer employed by a public entity from undertaking the representation of another client if the representation presents a substantial risk that the lawyer's responsibilities to the public entity would limit

the lawyer's ability to provide competent representation to either the public entity or the client. "Given the special nature of public entities and the unique issues arising from their representation, however, 'a public entity cannot consent to any such [dual] representation.'" In re Supreme Court Advisory Committee on Professional Ethics Opinion No. 697, 188 N.J. 549, 559 (2006) (alteration in original) (quoting RPC 1.7(b)(1)).

In In re Opinion No. 17-2012 of Advisory Committee on Professional Ethics, 220 N.J. 468 (2014), the Court noted that the "mere possibility of subsequent harm does not" constitute "a significant risk of material limitation" required to sustain an RPC 1.7(a)(2) charge. Id. at 478 (citing Model Rules of Prof'l Conduct R. 1.7, cmt. 8 (2013)). Rather, "there must be a significant risk that a lawyer's ability to consider, recommend[,] or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests." Ibid. (citation omitted). To identify whether a "significant risk" exists, "the critical questions are the likelihood that a difference in interests will arise, and if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client." Id. at 478-49 (citation omitted).

Additionally, in 2004, the Court "[e]liminated the 'appearance of

impropriety' language from the Rules of Professional Conduct." Supreme Court Advisory Committee on Professional Conduct Ethics Opinion No. 697, 188 N.J. at 526 (alteration in original). In connection with the 2004 amendments to the Rules of Professional Conduct, the Court "explained that the shift in emphasis from the 'appearance of impropriety' rule to the standard set forth in new RPC 1.8(k) was to 'place[] an obligation on lawyers for public entities to assess whether client representation would present a substantial risk to the lawyer's responsibilities to the public entity.'" Id. at 563 (citations omitted).

Applying these principles, we determine that there is insufficient evidence to clearly and convincingly establish that respondent's concurrent representation of the District and the Houghs resulted in a qualifying conflict of interest. Specifically, in 2012, District Board member Fred Hough and his wife, Betty, retained respondent to file a personal injury lawsuit against a church and the owner of a parking lot in which Betty allegedly fell and sustained injuries after attending a church function.

Although the representation involved a District Board member and his spouse in litigation before the Sussex County Superior Court – the same County in which the District is located – that limited nexus does not clearly and convincingly establish that a significant risk existed that respondent's concurrent representation of the District and Fred and Betty was materially

limited by his responsibilities to either client. Indeed, the record before us contains no evidence that either the church or the owner of the parking lot had any matters pending before the District or that the interests of the defendants, or those of Fred and Betty, were in conflict with the District.

Respondent clearly violated the terms of his employment with the District by drafting documents related to his private representation of Fred and Betty during District business hours. However, it is unclear how much time respondent spent on Fred and Betty's matter during District business hours or whether such legal work during those hours materially limited his responsibilities to the District.

Additionally, in June 2013, Fred, in his capacity as a District Board member, voted to increase the District's budget by two percent, including a two-percent increase of respondent's salary as District Manager and General Counsel. However, on this record, Fred's status as a District Board member did not appear to limit respondent's ability to provide diligent representation either to Fred or Betty, in connection with their private personal injury lawsuit, or to the District. Significantly, the record is devoid of any evidence that Fred's vote to increase the District's budget, along with respondent's salary, was contingent on the outcome of the personal injury litigation. Although the appearance of impropriety may implicate the Conflicts of Interest Law governing public

employees, it is no longer a basis to sustain a conflict of interest under the Rules of Professional Conduct governing attorneys.

On this record, given that the interests of those involved in Fred and Betty's private personal injury lawsuit did not appear to conflict with those of the District, we determine that there is insufficient evidence to clearly and convincingly establish a conflict of interest.

Similarly, we find that there is no clear and convincing evidence that respondent's concurrent representation of Boyce and the District resulted in a conflict of interest. Specifically, between his September 2009 appointment as District Manager and General Counsel and March 2013, respondent continued to represent Boyce in connection with a fuel oil spill that had occurred in Sussex County in or before March 2007. According to respondent's billing records, between September 2009 and March 2013, he submitted at least one "application package" to the DEP and to the EDA on behalf of Boyce. Additionally, during that same timeframe, respondent had several telephone conversations with DEP personnel, sent at least three letters and one report to the DEP, and sent one letter to the EDA on Boyce's behalf.

As the NJSEC and the OAL determined, respondent's representation of private clients before state agencies violated N.J.S.A. 52:13D-16(b) of the Conflicts of Interest Law. Nevertheless, the record before us does not clearly

and convincingly establish that his responsibilities to Boyce and the District materially limited his ability to provide diligent representation to either client. Specifically, the nature of respondent's correspondence, application packages, and communications with the DEP and the EDA are unclear based on the record before us. Moreover, although the 2007 oil spill in Sussex County might, conceivably, have been subject to the regulation of the District – a sub-division of the Department of Agriculture – the record before us contains no evidence that either the District or the Department of Agriculture had any involvement in Boyce's matter. Additionally, it is unclear whether respondent had performed any private legal work on Boyce's behalf during District business hours.

Given the lack of clear and convincing evidence that respondent engaged in any qualifying conflicts of interest in connection with his concurrent representation of the District, Boyce, and the Houghs, we determine to dismiss the RPC 1.7(a)(2) and RPC 1.8(k) charges.

RPC 8.4(b)

Next, we determine to dismiss the charged violation of RPC 8.4(b), which prohibits a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer. It is well-settled that we may find a violation of RPC 8.4(b) even in the absence of any formal criminal

convictions. See In re Nazmiyal, 235 N.J. 222 (2018) (although an attorney was not charged with, or convicted of, violating New Jersey law surrounding the practice of debt adjustment, the attorney was found to have violated RPC 8.4(b)), and In re McEnroe, 172 N.J. 324 (2002) (the attorney was found to have violated RPC 8.4(b), despite not having been charged with or found guilty of a criminal offense).

The OAE alleged that respondent committed official misconduct, in violation of N.J.S.A. 2C:30-2, by utilizing District office space and equipment to conduct his private law practice, including creating legal documents and conducting private real estate closings, without authorization, during District business hours. A public employee commits official misconduct when, "with the purpose to obtain a benefit or deprive another of a benefit," the employee "commit[s] an act relating to but constituting an unauthorized exercise of [their] office," and "knowing that such act was unauthorized or that [they were] committing such act in an unauthorized manner." State v. Saavedra, 222 N.J. 39, 58 (2015) (citations omitted).

"The official misconduct statute is aimed at preventing 'the abuse of government power for personal benefit.'" State v. Decree, 343 N.J. Super. 410, 418 (App. Div. 2001) (quoting State v. Vickery, 275 N.J. Super. 648, 651 (Law Div. 1994)), certif. denied, 170 N.J. 388 (2001). However, "[n]ot every offense

committed by a public official involves official misconduct." State v. Kueny, 411 N.J. Super. 392, 407 (App. Div. 2010) (citation omitted). "[T]he misconduct must somehow relate to the wrongdoer's public office. There must be a relationship between the misconduct and [the] public office of the wrongdoer, and the wrongdoer must rely upon his or her status as a public official to gain a benefit or deprive another." Ibid.

In Kueny, the Appellate Division reversed an indictment charging a police officer with three-degree official misconduct for his fraudulent use of a person's credit card. Id. at 408. In reversing the defendant's conviction for official misconduct, the Appellate Division observed that "[t]he defendant in this case simply did not use his status as a police officer to commit the crime of fraudulent use of a credit card." Ibid.

Official misconduct often occurs when public officials leverage the privileges of their office to obtain improper benefits. See e.g., State v. Bullock, 136 N.J. 149, 157 (1994) (a suspended state trooper displayed his state police identification card to a municipal policeman and falsely alleged that he was a state trooper; the Court observed that the state trooper's abuse of his position "relat[ed] to his job as a state trooper"); State v. Bryant, 257 N.J. Super. 63 (App. Div. 1992) (a supervisor of an Atlantic City landlord-tenant affairs office accepted bribes in exchange for unauthorized rent increases); State v. Parker,

124 N.J. 628 (1991) (a public school teacher exhibited sexually explicit magazines to her students, had the students make cut-outs from those magazines, and then discussed her sexual proclivities and those of others with her students; the Court observed that those unauthorized acts "were performed in the course of the exercise of her official function as a teacher").

The NJSEC imposed a $22,500 civil penalty against respondent for his violations of the Conflicts of Interest Law by (1) representing private parties before state agencies, (2) providing private legal services for at least three District Board members, and (3) misusing State resources by operating his private practice of law from his District office, during District business hours. However, violations of the Conflicts of Interest Law, "standing alone, [do] not set forth a basis for criminal liability under the official misconduct statute." State v. Thompson, 402 N.J. Super. 177, 201 (App. Div. 2008). Although the Conflicts of Interest Law "requires the various subparts of the government to create codes of ethics in conformity with general standards, it does not assign levels of culpability to particular conduct." Ibid.

Here, respondent's unauthorized use of District office space and equipment, during District business hours, to generate private legal documents and, on at least two occasions, conduct private real estate closings, does not clearly and convincingly rise to the level of criminal official misconduct. Unlike

public officials who have abused the privileges of their office to obtain improper benefits, respondent did not appear to have leveraged his status as District Manager and General Counsel to engage in unauthorized legal work. Rather, he violated the terms of his District employment by performing private legal work with state computers and office space during District business hours. Although respondent misused District time and resources, there is no clear nexus between that misconduct and the privileges of his public office. Consequently, consistent with criminal jurisprudence requiring a "relationship between the misconduct and [the] public office of the wrongdoer," we dismiss the RPC 8.4(b) charge for lack of clear and convincing evidence.

In sum, we find that respondent violated RPC 8.1(b) (two instances) and RPC 8.4(c) (four instances). We determine to dismiss the charged violations of RPC 1.7(a)(2) (two instances), RPC 1.8(k) (two instances), and RPC 8.4(b). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

Respondent repeatedly misrepresented the scope of his private law practice to the District, his public employer and client. No reported New Jersey disciplinary cases have addressed misrepresentations to a public employer client

where an attorney attempted to conceal the extent of his outside private practice of law. However, generally, attorneys who engage in misrepresentations to their employers or clients (or both) have received reprimands or censures, depending on the presence of aggravating or mitigating factors. See, e.g., In re Hartwyk, 231 N.J. 21 (2017) (reprimand for an attorney who, while serving as in-house counsel for a government agency, misrepresented to his supervisor and to his agency client that an outside law firm retained by the agency would be providing its services at a fifteen percent discount; no evidence of harm to the agency; compelling mitigation considered, including the attorney's numerous character letters that we described as "truly exceptional"); In re Chatterjee, 217 N.J. 55 (2014) (reprimand for an attorney who misrepresented to her employer, for five years, that she had taken steps to pass the Pennsylvania bar examination, a condition of her employment; she also requested, received, but ultimately returned, reimbursement from the employer for payment of the annual fee required of Pennsylvania attorneys; compelling mitigation considered, including her youth, inexperience, and the fact that her employment did not involve the practice of law); In re Prothro, 208 N.J. 340 (2011) (censure for an attorney who twice submitted self-prepared law school transcripts misstating his grades to his first employer, submitted a falsified copy of his law school transcript to his second employer, and made a misrepresentation to the disciplinary investigator

that he did not provide an altered transcript to his first employer).

Additionally, respondent altogether failed to cooperate with the OAE's disciplinary investigation of his conduct. Admonitions typically are imposed for failure to cooperate with disciplinary authorities when, as here, the attorney has no ethics history. See In the Matter of Giovanni DePierro, DRB 21-190 (January 24, 2022) (the attorney failed to reply to letters from the district ethics committee investigator concerning a matter in which he failed to communicate with a client; additionally, the attorney failed to set forth, in writing, the basis or rate of his legal fee in two other client matters; further, the attorney failed to protect a fourth client's interests upon termination of the representation; in mitigation, we weighed the attorney's otherwise unblemished twenty-year career at the bar and the passage of at least eight years since the conclusion of the misconduct), and In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (the attorney failed to reply to repeated requests for information from the district ethics committee investigator regarding his representation of a client in three criminal defense matters).

However, in default matters involving only an attorney's failure to cooperate, the quantum of discipline is enhanced to a reprimand, provided there are no serious aggravating factors. See In re Diehl, 257 N.J. 490 (2024) (following an overdraft in the attorney's trust account, the OAE, for ten months,

repeatedly directed the attorney to explain the overdraft and provide relevant financial records; although he acknowledged the OAE's investigation and intermittently communicated with OAE staff, the attorney failed to cooperate, resulting in his temporary suspension; no prior discipline), and In re Cromer, __ N.J. __ (2022), 2022 N.J. LEXIS 740 (the attorney failed to adequately cooperate with an OAE investigation of an ethics grievance concerning his purported improper decision, as general counsel to a private company, to engage five fraudulent contractors on the company's behalf; although the attorney provided a partial response to one of the OAE's letters, he thereafter refused to reply to the OAE's correspondence, resulting in his temporary suspension; no prior discipline).

In our view, respondent's misconduct bears some resemblance to that of the reprimanded attorney in Hartwyk, who, while acting as in-house counsel to a public entity, engaged in a misrepresentation to his employer and client. Similarly, respondent, while acting as General Counsel to the District, misrepresented the scope of his private practice of law. However, unlike Hartwyk, who appeared to have made only a single misrepresentation to his employer and client, respondent, for years, lied to the District, in multiple certified outside activity approval request forms, regarding (1) the hours in which he operated his private law practice, (2) whether he represented any

District Board members as private clients, and (3) whether he had any "contact" with New Jersey state agencies in connection with his law practice.

Following the NJSEC's imposition of a significant civil penalty, respondent refused, for six months, to cooperate with the OAE's good faith efforts to investigate his conduct. However, unlike the reprimanded attorneys in Diehl and Cromer, who both violated only a single instance of RPC 8.1(b) without having been charged with any additional infractions in their respective default matters, respondent also engaged in a prolonged pattern of misrepresentations to his employer.

Based upon the foregoing disciplinary precedent, respondent's misconduct could be met with a reprimand or a censure. To craft the appropriate discipline in this case, however, we also consider mitigating and aggravating factors.

In mitigation, like the reprimanded attorneys in Diehl and Cromer, respondent has no prior formal discipline in his more than forty-year career at the bar, a factor that we and Court consistently have accorded considerable weight. See In re Convery, 166 N.J. 298, 308 (2001). Moreover, like the attorney in Hartwyk, the record before us contains no evidence that respondent's misrepresentations to the District resulted in any ultimate harm to that agency.

In aggravation, like Diehl and Cromer, respondent allowed this mater to

proceed as a default, an aggravating factor that results in enhanced discipline. See In re Kivler, 193 N.J. 332, 342 (2008) (an attorney's "default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced").

In further aggravation, although the impact of his deception to the District is unclear based on the limited record before us, the fact remains that respondent, in his capacity as a government attorney, repeatedly lied to his public employer client regarding the operation of his private practice of law. See In re Ten Broeck, 242 N.J. 152 (2020) (noting that the quantum of discipline "typically is enhanced" when the attorney is a public servant at the time of the misconduct). Indeed, even after the NJSEC informed respondent of his impropriety, he continued, for an additional two years, until April 2018, to engage in unauthorized legal work, demonstrating his indifference to the restrictions imposed on his public employment.

Conclusion

On balance, weighing respondent's multiple acts of deception committed while acting as a public official against his otherwise unblemished forty-year career, we determine that a censure is the appropriate quantum of discipline

necessary to protect the public and preserve confidence in the bar.

Member Petrou voted to recommend the imposition of a three-month suspension, having accorded substantial aggravating weight to respondent's decision to repeatedly conceal his protracted and blatant violation of the clear terms of his public employment from the District Board.

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. Mary Catherine Cuff, P.J.A.D. (Ret.),
Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Clifford R. Lundin
Docket No. DRB 24-231

Decided: March 25, 2025

Disposition: Censure

Members	Censure	Three-Month Suspension	Absent
Cuff	X		
Boyer	X		
Campelo			X
Hoberman	X		
Menaker	X		
Modu	X		
Petrou		X	
Rodriguez	X		
Spencer	X		
Total:	7	1	1

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