SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 24-281
District Docket Nos. XIV-2020-0463E and IIB-2022-900E

In the Matter of Gilberto M. Garcia
An Attorney at Law

Argued
February 20, 2025

Decided
May 28, 2025

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

Respondent waived oral argument.

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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 recommendation for a three-month suspension filed by the District IIB Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 3.3(a)(1) (three instances – knowingly making a false statement of material fact to a tribunal); RPC 8.1(a) (three instances – knowingly making a false statement of material fact in a disciplinary matter); RPC 8.4(c) (three instances – engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (three instances – engaging in conduct prejudicial to the administration of justice).

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

Ethics History

Respondent earned admission to the New Jersey bar in 1987. During the relevant timeframe, he maintained a practice of law in Maywood, New Jersey. He has prior discipline.

Garcia I

In 2001, the Court reprimanded respondent for engaging in a conflict of interest by representing both a husband and a wife in litigation, while simultaneously representing the husband in divorce proceedings. In re Garcia, 167 N.J. 1 (2001) (Garcia I). He later represented the wife, pro bono, in several matters, and used privileged information against the husband. Respondent also engaged in an impermissible fee-sharing arrangement with the husband, who was not an attorney. In the Matter of Gilberto M. Garcia, DRB 00-042 (June 12, 2000). As a condition to his discipline, the Court required respondent to complete eight hours of continuing legal education in professional responsibility, and to submit proof of his compliance to the Office of Attorney Ethics (the OAE).

Garcia II

On September 15, 2020, the Court censured respondent for having violated RPC 1.5(b) (failing to set forth, in writing, the basis or rate of the legal fee) and RPC 7.1(a) (making a false statement or misleading communication about the lawyer or the lawyer's services). In re Garcia, 244 N.J. 198 (2020) (Garcia II). As discussed below, the facts of Garcia II inform the misconduct alleged in the instant matter. In the Matter of Gilberto M. Garcia, DRB 19-238

(January 23, 2020). Specifically, the testimony respondent provided during the ethics hearing underlying Garcia II, as well as at the Order to Show Cause before the Court, revealed conflicting information, and, ultimately, resulted in the OAE's filing of a formal ethics complaint in the instant matter.

Facts

The Facts Underlying Garcia II

The facts underlying Garcia II are as follows. On December 11, 2012, Ganesh Ramsaran (Ganesh) reported that his wife, Jennifer Ramsaran (Jennifer),[1] was missing.[2] In the Matter of Gilberto M. Garcia, DRB 19-238 at 2. The Ramsarans resided in New York. Five months later, on May 17, 2013, Ganesh was arrested in connection with his wife's disappearance and death. On May 23, 2013, he was indicted for second-degree murder. Ibid.

Following his indictment, Ganesh retained F. Stanton Ackerman, Esq., an attorney admitted in New York, as his defense counsel. Id. at 3. On November 26, 2013, notwithstanding Ackerman's representation, Ganesh's father, Mangra

[1] Because the Ramsarans share a surname, this memorandum will refer to the parties by their first names to avoid any confusion. No disrespect is intended by the informality.

[2] "1T" refers to the transcript of the ethics hearing dated November 19, 2018.
"2T' refers to the transcript of the Order to Show Cause hearing dated September 14, 2020.
"3T" refers to the transcript of the 440 Motion hearing dated October 14, 2020.
"5T" refers to the transcript of the ethics hearing dated April 16, 2024.
"OAES" refers to the OAE's summation, dated July 17, 2024.

"Sam" Ramsaran (Sam) met with respondent to discuss the case. Sam ultimately hired respondent to conduct a cellular antenna location data analysis (cellular analysis). Id. at 5.

Subsequent to his hiring, respondent began communicating with Ackerman about the case. Ibid. Ackerman had retained multiple expert witnesses, including a forensic pathologist, a blood splatter expert, and a DNA expert. Ackerman also had identified the need for an information technology expert to assist in Ganesh's defense. The Ramsarans, however, were unable to pay the fees for the experts recommended by Ackerman to defend Ganesh. Id. at 3.

Eventually, Ganesh retained respondent to represent him in the murder trial. Id. at 7. Respondent was not admitted to the New York bar; however, his wife was admitted in that jurisdiction. Therefore, respondent's wife filed a pro hac vice motion to allow respondent to represent Ganesh. In support of the motion, respondent's wife represented that "Gilbert M. Garcia states that he concentrates in the fields of . . . civil and criminal litigation in both state and federal court." Id. at 8-9.

Following the criminal trial, the jury found Ganesh guilty of second-degree murder. Id. at 10. Ganesh retained appellate counsel to challenge his conviction by filing a motion to vacate judgment pursuant to New York C.P.L.

§ 440.10(1) (the 440 Motion).[3] Also following the trial, Sam filed an ethics grievance against respondent.

The Garcia II Ethics Hearing and the Court's Order to Show Cause

During the November 19, 2018 ethics hearing underling Garcia II, respondent appeared pro se and testified regarding Sam's allegations of misconduct. Specifically, Sam's grievance concerned two aspects of respondent's misconduct: (1) his failure to provide Ganesh with a written retainer agreement, and (2) his misrepresentation regarding his experience as a criminal defense attorney. Id. at 14.

At the Garcia II ethics hearing, respondent testified that his only criminal trial experience consisted of beginning a trial in the Southern District of New York in 1995. However, he then wrote a letter to the judge overseeing the matter and informed him that he felt incompetent and requested that he be permitted to withdraw as counsel.

Sam also testified during the Garcia II ethics hearing. Relevant to the instant matter, Sam testified that respondent never showed him the cellular

[3] New York C.P.L. § 440.10(1) provides that: "At any time after the entry of a judgment, the court in which it was entered may, upon motion of the defendant, vacate such judgment" if the defendant can satisfy one of twelve criteria. It is substantially similar to a post-conviction relief petition in New Jersey. Pursuant to R. 3:22-2, a petition for post-conviction relief is cognizable if a defendant can satisfy one of five criteria.

analysis because respondent had said that Ackerman would not know how to use it. In reply to Sam's testimony, respondent stated that he had "the report in my briefcase of my report on the antenna on the satellite and your son's report. Would you like me to introduce it in evidence here?" Sam indicated that it would not make a difference to him since he was not present for conversations respondent had with Ganesh. Respondent did not introduce the cellular analysis into evidence.

During the Garcia II ethics hearing, the presenter questioned respondent about the cellular analysis. Respondent represented that he had prepared a cellular analysis and, when asked how he conducted it, he explained "without discussing the results, I went approximately three times, followed the trip alleged by the prosecutor of Mr. Ramsaran's whereabouts on the day of the death of Mrs. Ramsaran." Respondent stated that he had obtained cellular site records from Ganesh at the jail. In reply to the presenter's inquiry as to whether he had provided the cellular analysis to Ganesh, respondent testified "yes, of course. We both prepared it. We both went over it step by step." Respondent denied having provided the report to Ackerman or having discussed it with him, explaining "we should not go into the reasons why I didn't. I don't think it's relevant to the proceedings. And it's attorney/client privilege and very significant."

Respondent testified that he had told Sam that his $100,000 legal fee would not include costs for experts. Rather, respondent, in consultation with Ganesh, decided against retaining experts and had determined instead to "concentrate on disproving the [prosecution's] expert's reports, statements based on cross-examination." The following colloquy occurred:

> Presenter: Did you consult with any experts – defense experts before making that determination?
>
> Respondent: Only the defense experts chosen by Mr. Ackerman.
>
> Presenter: Okay. So Mr. Ackerman had previously retained experts?
>
> Respondent: Yes.
>
> Presenter: And you – you consulted with those experts?
>
> Respondent: I called two of them. One of them I believe was in Tampa, yes.
>
> Presenter: What type of experts were they?
>
> Respondent: I believe it was the – there was a – there was an issue related to the blood, and that was the expert that I was most concerned with.
>
> Presenter: Okay. What – what issue specifically related to the blood?
>
> Respondent: I don't want to say.
>
> Presenter: Well, you could say what type of expert. Was it a DNA expert?

> Respondent: It was a DNA expert.
>
> Presenter: Okay. Was it a blood spatter [sic] expert?
>
> Respondent: Correct.
>
> Presenter: Well, which one?
>
> Respondent: It was a DNA expert who would – taking into consideration blood in several – several places in the apartment.
>
> [1T138-139.]

Later in the hearing, when explaining how he had used the $100,000 legal fee he charged Ganesh, respondent testified that he "did a pretty decent job at the trial. Our experts would have said the opposite [of the State's experts], but we were able to do that on cross-examination." Due to respondent's testimony that his $100,000 legal fee, and Sam's subsequent payments to him totaling $21,500, were not intended to cover the cost of expert consultation, it is not clear how the experts were compensated.

Ganesh also testified during the ethics hearing. Respondent did not cross-examine him, and instead, asserted that "everything he said so far is nothing but a lie." However, upon questioning from the hearing panel, Ganesh testified that he wanted respondent to "explain what actions he did to perform [the cellular analysis]? Because if he was to study cell phone antenna travels, I'd love to know what he did or any reports created." Ganesh was then asked "were you

ever provided with a report from [respondent] related to cell phone or satellite activity?" In reply, Ganesh testified "Never. Not from Garcia. What we did receive under discovery was from the [district attorney], but nothing ever from Mr. Garcia." A hearing panel member asked Ganesh if respondent had discussed his cellular analysis findings with him, which Ganesh denied, explaining:

> [i]n fact, I kept asking, Where is the cell phone report? Where is the information? Because from the DA, the ones that they provided, we can match it up, we can double check everything, we can verify. And none was ever provided.
>
> . . .
>
> Never have I ever seen this report. There was none created that I ever saw because he never provided it. Plus, one was never provided at trial. Never submitted any information. And I would love to know where this report is, or if he even provided it to you folks.
>
> [1T193.]

On January 23, 2020, we issued our decision in Garcia II, in which we recommended a censure for respondent's misconduct. In reaching our decision, we found, in part, that respondent had "made egregious misrepresentations – indeed, outright lies – in order to induce Sam and Ganesh to discharge Ackerman's experienced defense team and to retain him, inflating both his trial and criminal law experience, and failing to make clear that he had no experience

practicing law in New York." In the Matter of Gilberto M. Garcia, DRB 19-238 at 17.

On July 2, 2020, the Court issued an Order to Show Cause directing respondent to appear before it on September 14, 2020, to demonstrate why he should not be disbarred or otherwise disciplined for his misconduct.

Accordingly, on September 14, 2020, respondent appeared before the Court on the Order to Show Cause, and, in reply to the Court's questioning, asserted that he "did not in any circumstance at any given time enhance my murder trial experience, because there is none." When asked why he would undertake representation of Ganesh, despite Ackerman having already developed a legal strategy after consulting with experts, respondent stated the case "fell in [his] lap" and that Ganesh was not happy that Ackerman had told him he was "going to get convicted because of several issues."

The Court also questioned respondent regarding his pro hac vice motion. Specifically, the Court asked respondent whether, "at any time during that application was it made known to the [criminal court] that you had never handled a murder trial before and you had one criminal trial in your background?" Respondent replied:

> No, your Honor, I do not believe that that was an issue. Although, your Honor, later on during an argument on one of the motions, the Judge did, in fact, question and said to me, 'You know, you told me you don't have the

> experience but that I should trust that you can do this.' And we had a discussion about it. And it was never brought up again. But no, there was no outright misrepresentation.[4]
>
> [2T10.]

The Court issued its Order censuring respondent the following day. In re Garcia, 244 N.J. 198 (2020).

The 440 Motion Hearing

On October 14, 2020, one month after having appeared before the Court on its Order to Show Cause, respondent appeared before the Honorable Frank B. Revoir, Jr., during Ganesh's 440 Motion hearing. Ganesh was represented by J. David Hammond, Esq.

During the hearing, Hammond asked respondent "did you ever consult with any experts or retain any experts?" Respondent stated he had not. When Hammond pointed out that, during Garcia II, he testified that he had consulted with experts, respondent explained: "I was wrong. I was under the mistaken belief that I had reached out. I did not. And I know the reason why I did not." Respondent explained that he and Ganesh had decided that, instead of proving

[4] In the pro hac vice motion respondent's wife filed with the New York court, she wrote that respondent had experience in criminal and civil litigation, the accuracy of which respondent confirmed.

their circumstantial case via expert testimony, they would "work very hard and try to demonstrate that during the trial on cross-examination of these experts" that Ganesh could not be linked to Jennifer's death.

Furthermore, when Hammond questioned respondent about his statement to the hearing panel that his experts would have testified contrary to the prosecution's experts regarding cellular telephone location, respondent testified that he did not know what he meant by the statement, only that he "was defending myself" and believed the statement when he made it. When Hammond clarified that not only did respondent fail to consult with experts, but he did not even contact them, respondent testified that there was no telephone call and that he did not know why he said he had contacted them. In fact, to keep costs in the case low, in lieu of speaking with experts, respondent made the determination that he would learn about forensic science by reading articles on the Internet.

Both of the experts that Ackerman had consulted provided affidavits in support of the 440 Motion hearing stating that they never heard from or spoke with respondent.

During the 440 Motion hearing, respondent testified that he did not have Ganesh's file because he "gave it negligently on my part without making copies

and you refused to give it back, claiming it was your client's property."[5] Nevertheless, throughout the 440 Motion hearing, respondent referenced the retainer agreement Ganesh had signed. He also testified that the agreement was in the box containing Ganesh's file that he had sent to Hammond. However, Hammond informed Judge Revoir, during the hearing, that he looked through all the documents that respondent had produced and there was no retainer agreement.

After respondent described his process of preparing the cellular analysis with Ganesh, Hammond asked about respondent's references to the report during the Garcia II ethics hearing, "knowing no one has ever seen that report." Respondent testified:

> I don't have it. He kept it. I didn't want to – I had concerns that I should not have and I said it in the reported [sic] I believe, if I remember correctly. I don't want to go – I don't want to go there because I did not want this information to be out there.
>
> [3T34.]

[5] In a July 23, 2019 e-mail, Hammond advised respondent that he would reimburse reasonable costs associated with delivering the file to his office, but informed respondent that "since Mr. Ramsaran is entitled to the documents we request, the cost of any copies you retain must be borne by your office. You are entitled to retain a copy of Mr. Ramsaran's file, but not at his expense." Hammond informed respondent that New York State Bar Association Ethics Opinion 1142 (determining it is well-established law in New York that former clients are entitled to their files, and the attorney must deliver the file upon request; the attorney is permitted to retain a copy of the file, but the "lawyer must bear the costs of making that copy") supported his contention. See NYSBA Comm. on Professional Ethics, Formal Op. 1142, (2018). Hammond attached a copy of the Opinion to his e-mail and invited respondent to engage in "some cursory research." The next day, respondent replied to Hammond to inform him "the original file is ready for you to pick up."

When asked to clarify whether, during the ethics hearing in Garcia II, he possessed a self-prepared report, respondent clarified "made by me, no. I have that report that we made together, yes."

When Hammond confronted respondent with his statement to the Court during the Order to Show Cause hearing about his conversation with Judge Revoir, and asked respondent whether the conversation took place, respondent explained:

> It's my understanding – I wholeheartedly believe that that was the case. Judge Revoir says that it was not. I believe Judge Revoir. However, during one of the hearings that I wanted to waive, I think there was an admonition I should not have waived from the court, that I should not waive this hearing, and this is what I recall. I recall it. Obviously, I'm wrong.
>
> [3T83.]

The OAE's Investigation Underlying the Instant Matter

On November 6, 2020, Hammond sent an e-mail to the OAE alleging that respondent's testimony during the 440 Motion hearing contained multiple misrepresentations. Specifically, Hammond highlighted three areas in which he believed respondent made misrepresentations concerning Ganesh's case. First, Hammond believed respondent had lied about consulting with any experts. Next, he asserted that respondent had lied about his conversations with Judge Revoir. Last, he claimed that respondent's reference to a completed cellular analysis was

"demonstrably false." Consequently, the OAE docketed the matter for investigation.

In the course of its investigation, the OAE interviewed respondent about his conflicting testimony. During a March 23, 2021 interview, respondent explained that "all the answers" he was going to provide in the interview related to his "imposter dreams of being able to do certain things which I believe I did but I should not have." Respondent stated "with that in mind as I said in my written presentation to you I am guilty. The only question is whether you believe, not me, I'm not defending myself anymore because as a result of my character I'm dealing with my fate." According to respondent, he was nervous and "blurted" out that he spoke with the experts with whom Ackerman had consulted, even though he "never spoke to the experts."

Respondent testified that he did not have his records to help him because he made "another huge mistake" when he "panicked when the ethics complaint was filed and I sent my file to them. I didn't make copies. It's on me. It's my fault."[6]

Respondent denied lying intentionally, instead attributing his misrepresentation to a faulty memory and that "in [his] heart [he] believed it."

[6] On July 30, 2019, respondent sent Hammond his file. Hammond filed his grievance with the OAE approximately three months later. Sam filed his ethics grievance against respondent more than one year before respondent sent his file to Hammond.

Indeed, even during his interview with the OAE, respondent maintained that, in his "heart and on my mind I continued to believe that at some point I'm – I always believed it was on the record. I made a statement that was perhaps legally inappropriate."

Finally, with respect to the cellular analysis, respondent testified "there was no report" because he "did not create a report."

Ultimately, prior to the commencement of the ethics hearing in this matter, respondent sent an e-mail to the OAE stating he would admit to the allegations against him but wished to have an opportunity to "explain the issues to the Panel for its consideration." On July 21, 2023, respondent entered a joint stipulation of facts with the OAE.

The Ethics Proceedings

The Ethics Hearing

During the ethics hearing in this matter, respondent, Hammond, the OAE investigator, and Judge Revoir testified.

Judge Revoir testified that the case against Ganesh was complicated and "purely circumstantial" because there were no eyewitnesses to Jennifer's death. However, Judge Revoir denied having a conversation with respondent about his lack of criminal defense work, explaining that "I don't ever recall ever

questioning, even in my head, his competency as an attorney while the case was going on, much less had a conversation." Respondent, who appeared pro se, did not cross-examine Judge Revoir. Instead, respondent told Judge Revoir that it was good to see him and that "with all my heart I have always had enormous respect for you, and it continues."

During Hammond's testimony, he explained that Ganesh's case was complex and involved forensic evidence, which required expert testimony from multiple witnesses, including in the field of cellular analysis. Indeed, Hammond had retained an expert to conduct a "Historical Cell Site Analysis," whose conclusion was contrary to respondent's position. Hammond, thus, asserted that respondent's claim that his cellular analysis was harmful to Ganesh's case was "demonstrably false." Hammond stated there are many technical aspects to a cellular analysis that are "beyond pretty much any attorney's capability." Respondent did not cross-examine Hammond. He also did not request that the hearing panel issue a subpoena compelling Hammond to turn over Ganesh's file.

Respondent denied that he intentionally misrepresented information during Garcia II, and blamed "pressure, [his] lack of memory, [his] loose tongue." However, even after hearing Judge Revoir's testimony, and declining to cross-examine him regarding his recollection of their conversations,

respondent testified "deep down in my heart, even today as we speak, I feel very strongly that I had that conversation with Judge Revoir."

Respondent testified that he "reached out" to the experts but maintained that he never said he spoke with them. However, he then "made an admission at the 440 Hearing. That's my fault. All of this is my fault . . . I am telling you that I did not lie intentionally."

Nevertheless, when asked whether he believed that contacting someone and consulting with someone are two different things, respondent testified:

> in my world, yes. That's the – that's what I explained before, that's exactly what I explained before. However – however, I said at the 440 Hearing that I lied. I'm simply explaining what happened. What you're asking me: Are you correct? Yes. However, I need to say to you I did not say I consulted them, I called two of them. One of them I believe was in Tampa, yes. But that's what it says.
>
> [5T99-100.]

Respondent clarified that, with respect to his testimony during the 440 Motion hearing concerning contacting the experts, he lied about lying.

When confronted with his testimony during the 440 Motion hearing that he never reached out to the experts, respondent testified before the hearing panel that "I reached out to them." He described his testimony at the 440 Motion hearing as a mistake.

Respondent conceded that, during Garcia II, he could have testified that he did not remember what he did or did not do in Ganesh's case but expressed that he was "terrible at that. And the record shows it. I am awful at that. Why? Because I believe that I will be more credible if I answer. And – and I'm gonna tell you – I'm gonna tell you, when I answer, it's something I believe." With respect to the stipulation he entered, respondent explained: "a lie is a lie. Is it an intentional lie? It is not the truth. I did not – I said I consulted with them and then I said I didn't. . . I said I reached out to them and then I said I didn't."

Additionally, respondent asserted that Hammond made a "great case" because the signed retainer, which was at issue in Garcia II, was in the file that respondent provided to him, but that Hammond "refused to give it to me."[7]

Finally, with respect to his e-mail to the hearing panel chair that he was admitting to the allegations of the formal ethics complaint, respondent testified that he had "admitted to lying enough already, and I am not doing it anymore, especially when I haven't done it. That's the reason why I wrote this email; I wanted to get this resolved."

[7] Respondent still had his file at the time of his testimony before the DEC in Garcia II.

The Parties' Written Summations to the Hearing Panel

In his written summation to the hearing panel, respondent argued that he did not intend to misrepresent any information, but rather, his "memory failed" him. Respondent reiterated that he had "contacted the experts' offices," had a "conversation with Judge Revoir," and did a "drawing of [his] study of" Jennifer's cellular telephone, which he characterized as the cellular analysis. Respondent denied having prepared a report for Ganesh's cellular telephone since Ganesh did not have the telephone with him the day of Jennifer's death. Respondent claimed to have been mistaken about preparing two reports. Indeed, respondent attributed his mistake to not having his file but argued he "recently realized" he did not prepare a report for Ganesh's cellular telephone.

Respondent denied that his colloquy with the presenter in Garcia II constituted an assertion that he spoke with the experts. Instead, respondent contended that he merely stated that he had attempted to "initiate contact, which is significantly different from claiming to have engaged in substantive consultations."

Additionally, respondent denied having made false statements in Garcia II, and asserted that his statements were based on his memory and what he believed at the time and were not intended to deceive the hearing panel.

Further, respondent contended that his statement to the Court that he had a conversation with Judge Revoir was "correct. . . It was the additional and voluntary statement regarding my conversation with the Judge that is alleged to be false." Respondent argued that because his "inaccurate recollection" did not "materially affect the outcome of the proceedings," he did not violate RPC 8.1(a).

Moreover, with respect to the allegation that his misrepresentations violated RPC 8.4(c), respondent "acknowledge[d] the mistake of not having the full file to properly answer the issues as they arose. This oversight was due to the haste of the situation and was not an intentional act of misrepresentation." Respondent lamented the "pain of being called dishonest during these proceedings" and expressed that he has "paid the price to likely be the only lawyer in history to have undertaken a murder case and try without no criminal trial experience."

Finally, respondent argued that "the inaccuracies in [his] statements" were not prejudicial to the administration of justice because they were due to "memory lapses and the urgency of the situation."

Consequently, respondent requested that the hearing panel dismiss the complaint against him. He asserted that, because his misrepresentations were the result of his faulty memory, he lacked the requisite intent to deceive.

Additionally, respondent rhetorically questioned what his motivation would have been to misrepresent information about the cellular analysis, his conversation with experts, and his conversation with Judge Revoir.

In its written summation to the hearing panel, the OAE argued that, although respondent did not admit to having violated RPC 3.3(a)(1); RPC 8.1(a); RPC 8.4(c); or RPC 8.4(d), his factual admissions to the conduct clearly and convincingly established his violations of the charged Rules of Professional Conduct.

Specifically, the OAE asserted that the experts' affidavits, confirming that they did not know respondent and had not been contacted by respondent, proved that respondent's statement during the ethics proceeding in Garcia II was false, in violation of RPC 3.3(a)(1). Additionally, the OAE contended that respondent's statements that he created the cellular analysis, that Ganesh maintained the cellular analysis, that he had the report in his briefcase during the Garcia II ethics hearing, and that the cellular analysis was in a box and not his briefcase could not all be true and, thus, he violated the Rule. Finally, the OAE argued that respondent's admission in the joint stipulation, as well as his concession that he believed Judge Revoir's testimony that they never had a conversation concerning his criminal defense experience, constituted clear and convincing evidence that he violated RPC 3.3(a)(1).

Furthermore, the OAE contended that respondent's false statements with respect to consulting with experts, preparing a cellular analysis, and having a conversation with Judge Revoir about his experience also violated RPC 8.1(a), RPC 8.4(c), and RPC 8.4(d).

For respondent's unethical conduct, the OAE urged the imposition of a three- or six-month suspension. The OAE analogized respondent's misconduct to that of the attorney in In re DeClement, 241 N.J. 253 (2020), discussed below, because, like DeClement, he made multiple misrepresentations to the DEC and the Court in connection with Garcia II.

Similarly, the OAE analogized respondent's unethical conduct to that of the attorney in In re Jaffe, 250 N.J. 179 (2022) (three-month suspension for an attorney who appeared in municipal court on behalf of his client who had received two parking tickets; the attorney failed to disclose to the judge that he had purchased the car from his client, registered the car in his own name, and insured the car, and that the parking tickets should have been issued to him, and not his client). Like respondent, the attorney's misrepresentations in Jaffe were made to the court for "self-serving purposes." The OAE alleged that respondent's misrepresentations were made to create the appearance that he was competent to handle Ganesh's murder trial and was working diligently on his behalf, thus, properly earning the legal fee he charged. However, the OAE

asserted that respondent's false statements were self-serving because he did not consult with any experts, did not know how to conduct a cellular analysis, and did not have a conversation with Judge Revoir about his criminal defense experience.

The OAE argued that respondent's characterization of his misrepresentations as unintentional belied the record because, according to the OAE, respondent understood he could simply answer a question under oath by stating he did not recall, yet chose to provide answers to questions:

> in a failed attempt to cover up his lack of adequate preparation for a murder trial he was ill equipped to defend. Respondent knew he was derelict in his efforts to contact any expert witnesses. Respondent knew he had no expert cellular antenna location data analysis report . . . in his briefcase at the time of the [DEC] hearing because he never actually created one.
>
> [OAES,pp31-32.]

In aggravation, the OAE cited respondent's disciplinary history. In further aggravation, the OAE contended that respondent failed to demonstrate remorse or accept accountability for his unethical conduct.

The OAE asserted there are no mitigating factors to consider.

The Hearing Panel's Findings

The hearing panel found, by clear and convincing evidence, that respondent violated RPC 3.3(a)(1); RPC 8.1(a); RPC 8.4(c); and RPC 8.4(d).

Specifically, the hearing panel found that, during his testimony before it, respondent was unable to provide reasonable explanations for his prior inconsistent testimony other than to state he was nervous.

With respect to RPC 3.3(a)(1), the hearing panel concluded that there was no question that respondent made false statements to the DEC and to the Court in connection with Garcia II. The hearing panel noted that respondent's testimony – that he had contacted the two experts that Ackerman previously had contacted for Ganesh's defense – was false. During Garcia II, he testified that he had "called two of them. One of them I believe was in Tampa." He described one of the experts as a DNA expert and a blood splatter expert. However, during the 440 Motion hearing, he testified that he did not consult with or retain any experts and, further, that his testimony before the hearing panel in Garcia II was based on his "mistaken belief." In connection with the OAE's investigation in the instant matter, respondent conceded he had lied and did not know why he had done so.

Next, the hearing panel concluded that respondent's September 14, 2020 statement to the Court concerning his purported conversation with Judge Revoir

about his criminal experience also was false. Specifically, during respondent's subsequent testimony in the 440 Motion hearing, he did not dispute Judge Revoir's denial that any such conversation occurred.

Finally, while questioning Sam during the Garcia II ethics hearing, respondent postured that he had the cellular analysis in his briefcase. However, during the subsequent 440 Motion hearing, respondent testified that he did not, in fact, have the report because Ganesh had kept it. Then, during the April 16, 2024 ethics hearing underlying the instant matter, he introduced a drawing, which he referred to as the cellular analysis, and, in his written summation, conceded he did not prepare the drawing for Ganesh's cellular telephone at all.

According to the hearing panel, the pertinent question was whether respondent's false statements were material and made knowingly.[8] It concluded they were. Specifically, respondent's misrepresentations in Garcia II were material because they struck at the heart of the misconduct alleged in that matter – whether he misrepresented his criminal defense experience to the Ramsarans and whether he provided Ganesh with a written retainer agreement. The hearing panel concluded that respondent misrepresented the work he performed in the murder trial to refute the argument that he had improperly represented Ganesh.

[8] Although the hearing panel did not cite In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011) (finding that a violation of RPC 8.4(c) requires intent), it correctly noted that it could not find an RPC 8.4(c) violation in the absence of an intent to deceive.

For example, respondent attributed his contradictory testimony concerning the cellular analysis to faulty memory; however, the cellular analysis was the very matter for which Ganesh initially retained him. Yet, according to the hearing panel, he could not provide consistent testimony regarding how or even whether he prepared the cellular analysis. The panel found that it was "wholly incredible that [r]espondent was unaware he had never created the report when making a statement that it was in his briefcase during questioning of his former client, who had retained him to create that very report."

Similarly, the hearing panel found that the first time respondent mentioned a conversation with Judge Revoir regarding his criminal defense work was in reply to the Court's questioning during the Order to Show Cause hearing. The panel concluded that respondent's statement was "invented by respondent to aid himself in that proceeding." Likewise, respondent's testimony surrounding his contact with the experts was done to make it appear as though "he had done more work than he had in Ganesh's defense."

In rejecting respondent's assertion that his lies were unintentional, the hearing panel credited respondent's concession that he had provided testimony surrounding events to which he purportedly had no recollection because he "believe[d] that [he] would be more credible if [he] answer[ed]." In the hearing panel's view, respondent's position regarding his own credibility demonstrated

that he was willing to give "the answers he did because he believed they would help him in a moment of high stress, without regard to their truth."

Having found that respondent intentionally provided false testimony in connection with Garcia II, in violation of RPC 3.3(a)(1) and RPC 8.1(a), the hearing panel concluded that respondent's misrepresentations also violated RPC 8.4(c) and RPC 8.4(d).

The hearing panel did not identify any mitigating factors.

In aggravation, the hearing panel accorded significant weight to respondent's 2020 censure in Garcia II because it, too, involved false statements; however, it accorded minimal weight to respondent's 2001 reprimand based on its remoteness. The panel also rejected the OAE's argument that respondent lacked remorse for his misconduct, finding instead that he had admitted that his statements were untrue and entered into a joint stipulation.

Accordingly, the hearing panel recommended the imposition of a three-month suspension "based on the findings of three separate knowing misrepresentations proven in this matter, made during an earlier disciplinary proceeding and with the intent to minimize the consequences of those proceedings."

The Parties' Positions Before the Board

In his January 8, 2025 written submission to us, respondent stated that he was not appealing the hearing panel's determination but asserted that he felt "strongly about the facts that I do not believe I lied, much less intended to lie," and had nothing to gain by lying. He again asserted that he had contacted the experts, but did not speak with them, and emphasized that he "wholeheartedly" believed that he had the conversation with Judge Revoir, as he had described in his earlier testimony.

Ultimately, respondent praised the work of the hearing panel, expressed his respect for its hard work as well as the professionalism of the OAE, and maintained that he accepted the panel's findings.

The OAE did not submit a brief for our consideration. However, during oral argument before us, the OAE reiterated its position that respondent violated RPC 3.3(a)(1) by making a false statement of material fact to a tribunal when he testified, during the Garcia II ethics hearing, that he had consulted with experts when, in fact, he had not done so. Respondent violated RPC 3.3(a)(1) a second time by falsely stating, during the Garcia II hearing, that he had a copy of the cellular analysis in his briefcase when he did not. Last, respondent violated RPC 3.3(a)(1) a third time by representing to the Court he had a conversation with Judge Revoir that did not occur. The OAE alleged that the false statements

respondent made concerning the experts, the cellular analysis, and the conversation with Judge Revoir also violated RPC 8.1(a) and RPC 8.4(c). Finally, the OAE alleged that respondent's misrepresentations to the DEC and the Court violated RPC 8.4(d).

Analysis and Discipline

Violations of the Rules of Professional Conduct

Following a de novo review of the record, we are satisfied that the DEC's determination that respondent violated RPC 3.3(a)(1) (two instances); RPC 8.1(a) (two instances); RPC 8.4(c) (two instances); and RPC 8.4(d) (two instances), is supported by clear and convincing evidence. However, we respectfully part company with the DEC's determination that respondent separately violated each of these Rules of Professional Conduct by virtue of his statements to the Court concerning his conversation with Judge Revoir.

RPC 3.3(a)(1) prohibits an attorney from knowingly making a false statement of material fact or law to a tribunal, and RPC 8.1(a) prohibits an attorney from knowingly making a false statement of material fact to disciplinary authorities. RPC 8.4(c) prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation, and RPC

8.4(d) prohibits an attorney from engaging in conduct prejudicial to the administration of justice.

Here, there is no question that respondent made false statements to multiple tribunals in an effort to appear, as he put it, "more credible." His shifting narrative surrounding his representation of Ganesh, depending on the forum and the hearing's purpose, cannot be countenanced. In our view, respondent's statements in Garcia II and in the instant matter demonstrate that he has a propensity to disregard facts to create the appearance that his conduct was above reproach.

However, in order to find that respondent's misrepresentations violated the Rules of Professional Conduct, we must first find that respondent intentionally made the statements at issue, knowing them to be false. In the Matter of Ty Hyderally, DRB 11-016.

The OAE alleged that respondent made three intentionally false statements, in violation of the charged RPCs. First, the OAE alleged that respondent had lied to the DEC about his purported communication with experts in connection with Ganesh's criminal case. Next, the OAE alleged that respondent had lied about having a copy of the cellular analysis in his briefcase during the Garcia II ethics hearing when, in fact, he did not. And, last, the OAE alleged that respondent's statement to the Court during the Order to Show Cause,

in response to the Court's questioning and concerning a conversation he purportedly had with Judge Revoir about his criminal defense experience, was false. The OAE did not allege that respondent's testimony at the 440 Motion hearing intentionally was deceptive. Thus, the OAE's theory of its case rests not on documentary evidence, but, rather, on the testimony respondent provided during his disciplinary matters. Consequently, we must parse respondent's statements carefully to determine whether, when he testified before the DEC and the Court, he possessed the requisite intent to deceive.

Based on the record before us, we have no trouble concluding that respondent's statements concerning his contact with experts were intentionally false. The record demonstrates that, at a minimum, during his testimony before the DEC in Garcia II, respondent affirmatively stated that he had contacted the experts. However, under oath during the 440 Motion hearing in the criminal matter, respondent testified that he did not contact the experts. Yet, his testimony in the instant matter, and in his written submission to us, he pivoted, yet again, now claiming that he did, indeed, contact the experts.

Across three proceedings in two different states, respondent has provided contradictory testimony. However, respondent has not affirmatively testified that he had conversations with the experts. Even though he vaguely testified in Garcia II that his experts would have provided testimony to counter that of the

State's experts, we cannot determine whether those statements were based on conversations with the experts, conversations with Ganesh, information Ackerman provided to him, or respondent's mere opinion. However, during the 440 Motion hearing, the experts both corroborated, through their affidavits, that respondent did not contact them, rendering his testimony in Garcia II false. Therefore, on this record, we find, by clear and convincing evidence, that respondent's statements about contacting the experts constituted an intentional misrepresentation, in violation of RPC 3.3(a)(1); RPC 8.1(a); RPC 8.4(c); and RPC 8.4(d).

Similarly, the record reflects that, when respondent stated during the ethics hearing in Garcia II that the cellular analysis was in his briefcase, the statement was intentionally false because he knew, as his later testimony established, that he never prepared a cellular analysis. Further, as respondent testified, the drawing – which is what respondent referred to as a cellular analysis – was in Ganesh's possession at the time of the hearing underlying Garcia II, and, therefore, could not have been in his briefcase. Thus, respondent separately violated the charged RPCs in this respect.

We cannot conclude, however, that respondent's statement to the Court concerning his purported conversation with Judge Revoir regarding his criminal defense experience was an intentional misrepresentation. To be sure, Judge

Revoir testified that he did not have that conversation with respondent. However, respondent has not waivered in his belief that the conversation occurred. Respondent's concession that he respects Judge Revoir's testimony about the purported conversation is not an admission that it did not occur and, in our view, does not establish, by clear and convincing evidence, respondent's intent to deceive the Court, as RPC 8.4(c) requires. Therefore, we dismiss the allegations that respondent violated RPC 3.3(a)(1); RPC 8.1(a); RPC 8.4(c); and RPC 8.4(d) in connection with his statements to the Court concerning a conversation with Judge Revoir.

In sum, we find that respondent violated RPC 3.3(a)(1) (two instances); RPC 8.1(a) (two instances); RPC 8.4(c) (two instances); and RPC 8.4(d) (two instances). We determine to dismiss, for lack of clear and convincing evidence, the charges that respondent separately violated RPC 3.3(a)(1); RPC 8.1(a); RPC 8.4(c); and RPC 8.4(d) in connection with his statements to the Court. The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Quantum of Discipline

The discipline imposed on attorneys who make misrepresentations to a court, or exhibit a lack of candor to a tribunal, or both, ranges from an

admonition to a significant term of suspension. See, e.g., In the Matter of George P. Helfrich, Jr., DRB 15-410 (February 24, 2016) (admonition for an attorney who failed to notify his client and witnesses of a pending trial date; thereafter, he appeared at two trial dates, but failed to inform the trial judge and his adversary that he had not informed his client or the witnesses of the trial date; significant mitigation); In re Vaccaro, 245 N.J. 492 (2021) (reprimand for an attorney, in a reciprocal discipline matter, who lied to a judge, during a juvenile delinquency hearing, claiming that he had no knowledge of his client's other lawyer or his client's counseling in connection with his client's immigration matter; violations of RPC 3.3(a)(1) and RPC 8.4(c)); In re Myerowitz, 235 N.J. 416 (2018) (censure for an attorney who lied to the court on, at least two occasions, regarding the reasons needed for an extension of time to file an answer to his adversary's summary judgment motion and about the dates he mailed his opposition papers, thus, causing delays and wasting judicial resources; violations of RPC 3.3(a)(1) and RPC 8.4(c) and (d); the attorney also failed to reply to an order to show cause, in violation of RPC 3.4(c) (disobeying the rules of a tribunal)); In re Gonzalez, 256 N.J. 509 (2024) (three-month suspension for an attorney who intentionally misrepresented to the DEC, the OAE, and us that he terminated his wife's employment at his law firm after blaming her for his firm's recordkeeping irregularities, knowing his omission

would mislead disciplinary authorities; the attorney had prior discipline); In re Alexander, 243 N.J. 288 (2020) (three-month suspension for an attorney who gave false testimony before a hearing officer and a Superior Court judge in connection with a domestic violence matter; the attorney filed a false domestic violence complaint against his paramour, leading to the issuance of a temporary restraining order in the attorney's favor; thereafter, during a two-day Superior Court hearing, the attorney's paramour presented an audio recording of the alleged incident, which contradicted the attorney's testimony; although the judge allowed the attorney the opportunity to review the evidence and withdraw his false testimony, the attorney refused to do so; instead, the attorney presented an audio-visual recording of the incident, which again contradicted his version of events; the attorney also misrepresented the nature of his testimony to the OAE; violations of RPC 3.1; RPC 3.3(a)(1); RPC 8.1(a); RPC 8.4 (c) and (d), among other RPCs; in mitigation, the attorney had no prior discipline in his twelve-year career at the bar); In re DeClement, 241 N.J. 253 (six-month suspension for an attorney who, in an attempt to secure a swift dismissal of a federal lawsuit, made multiple misrepresentations to a federal judge; specifically, the attorney misrepresented, in a certification, that earlier state court litigation had settled, despite knowing that it merely had been dismissed without prejudice; to support his deception, the attorney omitted, in his

submissions to the federal judge, critical portions of the state court record; the attorney then continued to misrepresent to the federal judge, and, later, to the OAE, the status of the state court matter; violations of RPC 3.1 (engaging in frivolous litigation); RPC 3.3(a)(1); RPC 8.1(a); and RPC 8.4(c); among other RPCs; in aggravation, the attorney did not cease his acts of deception until he was "completely cornered" by the OAE; prior reprimand).

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 Purvin, 248 N.J. 223 (2021) (reprimand for an attorney who misrepresented to the OAE that he had taken the necessary measures to correct his recordkeeping deficiencies discovered during a random audit; one month later, when the OAE requested proof of his corrective measures, the attorney admitted his misrepresentation, but noted that he since had taken the necessary corrective action; no prior discipline); In re Otlowski, 220 N.J. 217 (2015) (censure for an 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 in the attorney's trust account, were frozen by a court order; to the contrary, they had been disbursed to various parties; no prior discipline); In re Allen, 250 N.J. 113 (2022) (three-month suspension for an

attorney who misrepresented to the OAE and to us that he had reached a settlement with a client, knowing he had not, in violation of RPC 3.3(a)(1) and RPC 8.4(c); the attorney also committed recordkeeping violations, failed to maintain required professional liability insurance, and did not produce a number of records requested by the OAE during its investigation, prior admonition and censure); In re Freeman, 235 N.J. 90 (2018) (three-month suspension for attorney performing pool work for the Office of the Public Defender (OPD); the attorney failed to communicate with his client about an upcoming hearing on a petition for post-conviction relief; the attorney appeared at the hearing without the client, took actions that were contrary to the client's wishes, and made misrepresentations to the court and the OPD; those statements would later negatively impact the client's ability to pursue an appeal; during the ethics investigation, the attorney lied to the DEC investigator, and later to the hearing panel; violations of RPC 1.2(a) (failing to abide by the client's decision regarding the scope of the representation); RPC 1.4(b) (failing to communicate with a client); RPC 3.3(a)(1); RPC 4.1(a) (false statement of material fact or law to a third person); RPC 8.1(a); and RPC 8.4(c)); In re Clausen, 231 N.J. 193 (2017) (three-year suspension, in a default matter, for an attorney who, in connection with a voluntary bankruptcy petition, made multiple misrepresentations, under penalty of perjury, regarding his debt and his

creditors, in an attempt to manipulate the bankruptcy code for his personal benefit, violations of RPC 3.3(a)(1) and (5); RPC 8.4(c) and (d); in connection with an earlier disciplinary matter involving his mishandling of a client's case, he made misrepresentations to us regarding the status of payments made to the client, in an attempt to mitigate the discipline imposed on him, violations of RPC 3.3(a)(1) and (5) and RPC 8.4(c); he also made multiple misrepresentations during an OAE demand audit and committed violations of RPC 1.15(a) and (d); prior censure and two prior reprimands).

Respondent's misconduct is most analogous to the misconduct we addressed in Alexander and DeClement.

In Alexander, the attorney gave false testimony to a hearing officer, and then to a Superior Court judge in a domestic violence matter. Even after two days of trial, and the presentation of evidence contradicting his own testimony, the attorney was unable to acknowledge his misrepresentations, and, in fact, presented more evidence that misrepresented the facts surrounding the underlying incident. Similarly, in the instant matter, during the Garcia II disciplinary hearing, respondent misrepresented two critical aspects of his representation of Ganesh – possession of the cellular analysis and consultations with experts to disprove the State's circumstantial case against Ganesh – in an effort to justify his poor representation of his client. Worse, respondent has had

three opportunities to provide truthful information and, similar to the attorney in Alexander, cannot bring himself to do so.

Likewise, in DeClement, the attorney knowingly misrepresented the status of a case to the trial court and to the OAE. Eventually, the attorney ceased his deceptive behavior. Here, not only has respondent knowingly misrepresented information about the cellular analysis and experts, but he also continues to provide conflicting information, which leaves us to speculate which version of respondent's testimony is the truth – the testimony he provided in the New York hearing concerning his effectiveness as Ganesh's counsel or the testimony he provided in his two attorney disciplinary matters concerning his representation of Ganesh. Also, like DeClement, respondent's misrepresentations were motivated by a self-serving desire to appear as though he was capable of defending Ganesh at the murder trial.

Based on the foregoing disciplinary precedent, Alexander and DeClement in particular, we conclude that the baseline discipline for respondent's misconduct is a three-month suspension. However, to craft the appropriate discipline in this case, we also consider mitigating and aggravating factors.

There are no mitigating factors for our consideration.

In aggravation, respondent has a disciplinary history including a 2020 censure in connection with Garcia II that involved providing false statements.

We, thus, accord weight to respondent's perpetuation of dishonesty surrounding his representation of Ganesh, but do not, as a matter of progressive discipline, enhance the discipline based on disciplinary history alone. Nevertheless, less than one month before he testified at the 440 Motion hearing, the Court censured respondent for his false statements to Ganesh, so he should have been acutely aware of his duty to accurately testify in that hearing, something he chose to ignore, a factor we accord great weight.

Additionally, we consider, in aggravation, that respondent's dishonesty occurred in two jurisdictions and not just before disciplinary authorities. See In re Steiert, 201 N.J. 119 (2014) (evidence of unethical conduct contained in the record can be considered in aggravation, even though such unethical conduct was not charged in the formal ethics complaint).

In further aggravation, we determine that respondent's statement to the Court regarding his conversation with Judge Revoir, although not an intentional misrepresentation, was made recklessly in a self-serving attempt to mitigate any discipline he received in that matter.

Finally, although respondent stipulated to the facts underlying the ethics complaint in this matter, he has not demonstrated genuine remorse for his false statements and misrepresentations. Rather, he inexplicably has blamed Hammond's refusal to turn over Ganesh's file as the reason he was forced to

rely on his faulty memory. Not only does such a position ignore the fact that his misrepresentations occurred during Garcia II, when he still possessed his file, but it was respondent's choice not to copy the file before he turned it over to Hammond. In our view, respondent has demonstrated an inability to appreciate the consequences of his own actions.

Conclusion

On balance, when considering the totality of respondent's misconduct in this matter, we determine that a six-month suspension is the appropriate quantum of discipline necessary to protect the public and to preserve confidence in the bar.

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 Gilberto M. Garcia
Docket No. DRB 24-281

Argued: February 20, 2025

Decided: May 28, 2025

Disposition: Six-Month Suspension

Members	Six-Month Suspension	Absent
Cuff	X	
Boyer	X	
Campelo	X	
Hoberman		X
Menaker	X	
Modu	X	
Petrou		X
Rodriguez	X	
Spencer	X	
Total:	7	2

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