Ethical Concerns in Criminal and General Practice

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About the Speaker

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About the Firm

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Ethical Concerns in Criminal and General Practice

"The principle reason for discipline is to preserve the confidence of the public in the integrity and trustworthiness of lawyers in general." In re Wilson, 81 N.J. 451, 456 (1979).

In 2010, 1,431 grievances were filed against New Jersey attorneys; 160 attorneys were disciplined in the Supreme Court. Defending an ethics complaint – even one that is ultimately dismissed – can take a toll on an attorney both emotionally and financially. Attorneys who practice in matrimonial, criminal and personal injury law, and sole practitioners or those with small firms, are at most risk. All attorneys are at some risk.

General Issues

Confidentiality

Disciplinary officials have a duty to maintain confidentiality during the investigative stage. The grievant does not.

Rule

New Jersey Court Rules R. 1:20-9
(a) Confidentiality by the Director. Prior to the filing and service of a complaint, a disciplinary stipulation waiving the filing of a formal complaint, a motion for final or reciprocal discipline, or the approval of a motion for discipline by consent, the disciplinary matter and all written records gathered and made pursuant to these rules shall be kept confidential by the Director...
(b) Disclosure by Grievant. For grievances pending on, or filed after, October 19, 2005, the grievant may make public statements regarding the disciplinary process, the filing and content of the grievance, and the result, if any, of the grievance. If the grievant makes a public statement, respondent may reply publicly to any matter revealed by the grievant.

Case

Grievants in attorney disciplinary matters are not required to maintain confidentiality with respect to their allegations or the subsequent disciplinary proceedings. (Grievant in attorney discipline matter filed suit challenging constitutionality, on First Amendment grounds, of requirement that attorney grievances be kept confidential. Court held that the rule was unconstitutional violation of free speech.)

Additionally, "although grievants are absolutely immune from suit for filing an ethics complaint or making statements within the context of subsequent disciplinary proceedings, they are not immune for statements made outside the context of a disciplinary matter, such as to the media or in another public forum. See In re Hearing on Immunity for Ethics Complainants, 96 N.J. 669, 674-75 & n. 3, (1984) (explaining that grievant's public defamatory statements are actionable). Accordingly, grievants who falsely smear an attorney in public do so at their peril and may face defamation actions in appropriate cases."
R.M. v. Supreme Court, 185 N.J. 208, 229 (2005).

Cooperation

Attorneys are required to cooperate during all stages of the disciplinary process.

Rule

RPC 8.1 Bar Admission and Disciplinary Matters

[A] lawyer...in connection with a disciplinary matter, shall not...(b) fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by RPC 1.6.

New Jersey Court Rules R. 1:20-3

(g) Investigation. (3) Duty to Cooperate. Every attorney shall cooperate in a disciplinary investigation and reply in writing within ten days of receipt of a request for information. Such reply may include the assertion of any available constitutional right, together with the specific factual and legal basis therefor. Attorneys shall also produce the original of any client or other relevant law office file for inspection and review, if requested, as well as all accounting records required to be maintained in accordance with R. 1:21-6. Where an attorney is unable to provide the requested information in writing within ten days, the attorney shall, within that time, inform the investigator in writing of the reason that the information cannot be so provided and give a date certain when it will be provided.

Case

Attorney's failure to cooperate with disciplinary authorities, regardless of any other ethical infractions, violated RPC 8.1(b) and warranted a reprimand. (Attorney had failed to respond to grievance, and was disciplined even though the balance of the ethics charges against him had been dismissed.)

Matter of Medinets, 154 N.J. 255 (1998).

Communication

The most common complaint made against attorneys is the failure to communicate.

Rule

RPC 1.4 Communication

(a) A lawyer shall fully inform a prospective client of how, when, and where the client may communicate with the lawyer.

(b) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(c) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(d) When a lawyer knows that a client expects assistance not permitted by the Rules of Professional Conduct or other law, the lawyer shall advise the client of the relevant limitations on the lawyer's conduct.

Fee Agreements

Attorneys preferably should have fee agreements IN WRITING even if they have represented the client in the past.

Rule

RPC 1.5 Fees

(a) A lawyer's fee shall be reasonable. The factors to be considered in determining the reasonableness of a fee include the following:

(1) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(2) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(3) the fee customarily charged in the locality for similar legal services;

(4) the amount involved and the results obtained;

(5) the time limitations imposed by the client or by the circumstances;

(6) the nature and length of the professional relationship with the client;

(7) the experience, reputation, and ability of the lawyer or lawyers performing the services;

(8) whether the fee is fixed or contingent.

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation.

(c) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter in which a contingent fee is prohibited by law or by these rules. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the lawyer shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(d) A lawyer shall not enter into an arrangement for, charge, or collect:

(1) any fee in a domestic relations matter, the payment or amount of which is contingent upon the securing of a divorce or upon the amount of alimony or support, or property settlement in lieu thereof; or

(2) a contingent fee for representing a defendant in a criminal case.

(e) Except as otherwise provided by the Court Rules, a division of fee between lawyers who are not in the same firm may be made only if:

(1) the division is in proportion to the services performed by each lawyer, or, by written agreement with the client, each lawyer assumes joint responsibility for the representation; and

(2) the client is notified of the fee division; and

(3) the client consents to the participation of all the lawyers involved; and

(4) the total fee is reasonable.

Competence

If an attorney takes a case and begins working on it, the attorney must perform the work fully and diligently.

Rule

RPC 1.1 Competence
A lawyer shall not:
(a) Handle or neglect a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence.
(b) Exhibit a pattern of negligence or neglect in the lawyer's handling of legal matters generally.

Declining or Terminating Representation

Attorneys should NEVER threaten a client with the prospect of intentionally "dropping the ball," not working on their case, or refusing to release the client's information or property.

Although attorney could retain client's original file (pursuant to N.J.S.A. 2A:13-5, as a lien for unpaid legal fees), he was required to make a copy of that file and give it to client's new attorney in order to permit client to proceed with his case.
Frenkel v. Frenkel, 252 N.J. Super. 214 (App. Div. 1991).

RPC 1.16 Declining or Terminating Representation
(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

RPC 1.15 Safekeeping Property
(b) Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client, a lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.

Rule

RPC 1.16 Declining or Terminating Representation
(b) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:
(1) withdrawal can be accomplished without material adverse effect on the interests of the client;
(2) the client persists in a course of action involving the lawyer's services that the lawyer reasonably believes is criminal or fraudulent;
(3) the client has used the lawyer's services to perpetrate a crime or fraud;

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;
(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;
(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or
(7) other good cause for withdrawal exists.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.

Conflict of Interest

Always check for potential conflicts prior to accepting representation of a client. ALL WAIVERS SHOULD BE IN WRITING.

Cases

An attorney, upon commencing joint representation of co-clients, should explicitly agree with the clients as to the parameters of sharing confidential information. This "disclosure agreement" should specify what information can be shared amongst which parties.
A. v. B., 158 N.J. 51 (1999).

A private attorney or firm involved in simultaneous representations of codefendants creates a *per se* conflict with presumed prejudice absent a waiver. Furthermore, a codefendant's payment of a defendant's fees creates an impermissible conflict of interest because the defendant may reasonably believe that his access to paid counsel depends on his refusal to cooperate against codefendant.
State v. Norman, 151 N.J. 5 (1997).

The "appearance of impropriety" standard was "too vague to support discipline" and was removed from the RPCs by the New Jersey Supreme Court in 2004.
In re Supreme Court Advisory Committee on Professional Ethics Opinion No. 697, 188 N.J. 549 (2006).

Where attorney had sexual relationship with defendant's mother, and where attorney had pressured defendant's mother into encouraging defendant to accept plea deal and plead guilty, defendant was entitled to withdraw his guilty plea due to attorney's conflict of interest.
State v. Lasane, 371 N.J. Super. 151 (App. Div. 2004).

A defense attorney representing a criminal defendant, who the State may call as a material witness in the case against that defendant, need not be disqualified as counsel, especially where his testimony is of marginal probative value.
State v. Williams, 2011 WL 6412140 (App. Div. Unpub. Dec. 22, 2011).

Rule

RPC 1.7 Conflict of Interest: General Rule

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) 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, a former client, or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) each affected client gives informed consent, confirmed in writing, after full disclosure and consultation, provided, however, that a public entity cannot consent to any such representation. When the lawyer represents multiple clients in a single matter, the consultation shall include an explanation of the common representation and the advantages and risks involved;

(2) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(3) the representation is not prohibited by law; and

(4) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal.

RPC 1.9 Duties to Former Clients

(a) A lawyer who has represented a client in a matter shall not thereafter represent another client in the same or a substantially related matter in which that client's interests are materially adverse to the interests of the former client unless the former client gives informed consent confirmed in writing.

(b) A lawyer shall not knowingly represent a person in the same or a substantially related matter in which a firm with which the lawyer formerly was associated had previously represented a client.

(1) whose interests are materially adverse to that person; and

(2) about whom the lawyer, while at the former firm, had personally acquired information protected by RPC 1.6 and RPC 1.9(c) that is material to the matter unless the former client gives informed consent, confirmed in writing. Notwithstanding the other provisions of this paragraph, neither consent shall be sought from the client nor screening pursuant to RPC 1.10 permitted in any matter in which the attorney had sole or primary responsibility for the matter in the previous firm.

(c) A lawyer who has formerly represented a client in a matter or whose present or former firm has formerly represented a client in a matter shall not thereafter:

(1) use information relating to the representation to the disadvantage of the former client except as these Rules would permit or require with respect to a client, or when the information has become generally known; or

(2) reveal information relating to the representation except as these Rules would permit or require with respect to a client.

(d) A public entity cannot consent to a representation otherwise prohibited by this Rule.

Attorney-Client Privilege

New Jersey Rules of Evidence R. 504
(2) Exceptions. Such [lawyer-client] privilege shall not extend (a) to a communication in the course of legal service sought or obtained in aid of the commission of a crime or a fraud.

"In deciding whether the 'crime or fraud' exception applies, the relevant factor to consider is whether the client consulted with the attorney in order (1) to aid the client 'in the commission of any crime'; (2) to enable the client 'to avoid any criminal investigation or proceeding pending at the time the advice was given'; or (3) to assist the client to 'avoid lawful process in any proceeding pending at the time the advice was given.'"
Matter of Nackson, 114 N.J. 527, 535 (1989) (citations omitted).

Although location of client, as communicated by client to attorney, is covered by lawyer-client privilege, that privilege can be pierced upon court order if the court determines the public's interest in the information outweighs the client's expectation of confidentiality.
Matter of Nackson, 114 N.J. 527 (1989).

Business Transactions

Attorneys should avoid business transactions with clients including borrowing money from clients.

Rule

RPC 1.8 Conflict of Interest: Current Clients: Specific Rules
(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:

(1) the transaction and terms in which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be understood by the client;

(2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel of the client's choice concerning the transaction; and

(3) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction.

Truthfulness

As officers of the court, attorneys should be honest with all parties and with the court at all times.

RPC 3.3 Candor Toward the Tribunal
(a) A lawyer shall not knowingly:

(1) make a false statement of material fact or law to a tribunal;

(2) fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting an illegal, criminal or fraudulent act by the client;
(3) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel;
(4) offer evidence that the lawyer knows to be false. If a lawyer has offered material evidence and comes to know of its falsity, the lawyer shall take reasonable remedial measures; or
(5) fail to disclose to the tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal, except that it shall not be a breach of this rule if the disclosure is protected by a recognized privilege or is otherwise prohibited by law.

(b) The duties stated in paragraph (a) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by RPC 1.6.
(c) A lawyer may refuse to offer evidence that the lawyer reasonably believes is false.
(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all relevant facts known to the lawyer that should be disclosed to permit the tribunal to make an informed decision, whether or not the facts are adverse.

Attorney's failure to disclose material facts to tribunal, where those facts would have prevented the tribunal from being misled, was excused because attorney reasonably believed that his duties to his client prevented the disclosure of those facts. (Defense attorney failed to disclose to municipal court that defendant was facing serious indictable charges in addition to traffic tickets from the same incident. Attorney failed to disclose existence of other charges, or possible double jeopardy issues, to municipal court prior to its acceptance of guilty plea. Attorney believed that his duties to his client and the client's Sixth Amendment right to counsel compelled him to withhold the information.)
In re Seelig, 180 N.J. 234 (2004).

ADDITIONAL CONCERNS

Sexual Relationships with Clients

There is no specific Rule of Professional Conduct prohibiting sex with a client, however, generally such activity should be avoided.

Rule

RPC 8.4
It is professional misconduct for a lawyer to...(d) engage in conduct that is prejudicial to the administration of justice.

American Bar Association (ABA) Model RPC 1.8
(j) A lawyer shall not have sexual relations with a client unless a consensual sexual relationship existed between them when the client-lawyer relationship commenced.

Cases

Attorney who made unwanted sexual advances toward several clients, including unsolicited touching, was suspended for three (3) years for violating RPC 8.4(d). (Attorney was indicted for multiple counts of attempted aggravated sexual assault, criminal sexual contact, and criminal coercion against several clients. He had fondled several clients' breasts and groins in professional settings on different occasions. Court noted that in this case, there was a "sordid picture of betrayal of trust by an attorney who sexually preyed on vulnerable clients." Court held that predatory sexual conduct of clients by attorneys "is grossly incompatible with the standards of professionalism expected of attorneys" and cautioned that "[a]ttorneys who sexually molest their clients will be subject to severe disciplinary sanctions.")
In re Gallo, 178 N.J. 115 (2000).

Attorney who offered discounted legal fees to several clients in exchange for sexual favors was suspended for one (1) year. (Attorney had asked out one female bankruptcy client and made sexual advances toward her, had told one client he would accommodate her fees if she met him at a hotel for a few hours, and had told a third client that he would accommodate her fees if she danced for him in a bathing suit. All three clients understood these exchanges to be solicitations by the attorney to discount legal fees in exchange for sexual favors. Majority voted for one year suspension. Minority, finding that attorney was "incapable of exercising the fitness of character required of an attorney at law" because he had "exploited [his clients'] vulnerability and violated their trust," voted for disbarment.)
In re Witherspoon, 203 N.J. 343 (2010).

Structuring Monetary Transactions to Avoid the Reporting Requirements

Attorneys who structure monetary transactions to avoid reporting requirements run the risk of being criminally prosecuted and being suspended from the practice for an extended time.

Federal Statutes

31 U.S.C. 5313
(a) When a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes by regulation, the institution and any other participant in the transaction the Secretary may prescribe shall file a report on the transaction at the time and in the way the Secretary prescribes. A participant acting for another person shall make the report as the agent or bailee of the person and identify the person for whom the transaction is being made.

31 U.S.C. 5324(a)(3)
(a) Domestic coin and currency transactions involving financial institutions.--No person shall, for the purpose of evading the reporting requirements of section 5313(a) or 5325 or any regulation prescribed under any such section, the reporting or recordkeeping requirements imposed by any order issued under section 5326, or the recordkeeping

requirements imposed by any regulation prescribed under section 21 of the Federal Deposit Insurance Act or section 123 of Public Law 91-508--
(3) structure or assist in structuring, or attempt to structure or assist in structuring, any transaction with one or more domestic financial institutions.

Cases

Attorney's act of structuring financial transaction to avoid federal reporting requirements resulted in five (5) year suspension. (Attorney was allegedly involved with organized crime, and arranged to have numerous cash deposits made to different bank accounts in amounts less than $10,000 to avoid reporting requirements.)
In re Bronson, 204 N.J. 173 (2010).

Attorney's act of structuring financial transaction to avoid federal reporting requirements resulted in two (2) year suspension. (Attorney assisted in a money laundering scheme involving stolen corporate checks. Although attorney did not know the checks were stolen, he did structure the deposits to avoid federal reporting requirements.)
In re Khoudary, 167 N.J. 593 (2001).

Attorney's act of structuring financial transaction to avoid federal reporting requirements resulted in eighteen (18) month suspension. (Attorney received cash payment from client of more than $100,000, which attorney then deposited in different bank accounts in amounts less than $10,000 per transaction. Attorney never filed required federal paperwork indicating receipt of large cash payment.)
Matter of Chung, 147 N.J. 559 (1997).

Attorney's act of structuring financial transaction to avoid federal reporting requirements resulted in three (3) year suspension. (Attorney loaned $40,000 in cash out of his trust account. Attorney received partial loan repayment of $34,000 in cash, which he split up into amounts less than $10,000 and deposited in multiple accounts to avoid reporting requirements.)
In re Hausman, 177 N.J. 602 (2003).

The principal reason for attorney discipline is to maintain the public's trust in lawyers, generally; it is not intended as punitive. (Attorney failed to turn over $20,000 from the proceeds of a real estate sale to his client, and in another instance forged a client's endorsement on a check not meant for him and deposited it into his account. Attorney also had a history of lying to clients, disregarding their interests, and counseling them to commit fraud. His multiple, serious ethical transgressions required nothing short of disbarment.)
In re Wilson, 81 N.J. 451 (1979).

Attorney's misuse of escrow funds, amounting at least to serious negligence and possibly malfeasance, required one (1) year suspension. This case extended the rule from Wilson, *supra*, regarding discipline for the misuse of client funds. (Attorney's financial recordkeeping was extremely poor, and he misused client funds for other purposes. Due to the state of his records, he may not have been aware that he was doing so.)
Matter of Hollendonner, 102 N.J. 21 (1985).

Criminal Convictions

Attorneys convicted of a crime face discipline. If an attorney is convicted of a crime, the criminal conviction is conclusive evidence of guilt in the ethics proceedings. Even in the absence of a criminal conviction, discipline can be imposed for the alleged criminal conduct.

Rules

RPC 8.4
It is professional misconduct for a lawyer to...
(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;
(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

New Jersey Court Rules R. 1:20-13
(c) Final Discipline. (1) Conclusive Evidence. In any disciplinary proceeding instituted against an attorney based on criminal or quasi-criminal conduct, the conduct shall be deemed to be conclusively established by any of the following: a certified copy of a judgment of conviction, the transcript of a plea of guilty to a crime or disorderly persons offense, whether the plea results either in a judgment of conviction or admission to a diversionary program, a plea of no contest, or nolo contendere, or the transcript of the plea.

Case

Attorney's misconduct in counseling parties as to the best route to bribe witnesses to secure dismissal of criminal charges violated RPC 8.4(b-d), was proven by clear and convincing evidence (notwithstanding acquittal of criminal charges to beyond a reasonable doubt standard), and required disbarment. (Attorney's client was involved in altercation resulting in criminal charges. Attorney counseled client to make payment to friend of officer, for forwarding to officer, to change his report to make prosecution of the charges impossible.) Matter of Rigolosi, 107 N.J. 192 (1987).

Levels of Discipline

Admonition, Reprimand, Censure, Suspension, and Disbarment.

The lowest level of discipline is an admonition. The ultimate penalty is disbarment. In New Jersey, disbarment is permanent. Crimes that will most likely result in disbarment include; bribery of an official, child pornography, some thefts, and use of runners.

Rules

RPC 5.4 Professional Independence of a Lawyer
(a) A lawyer or law firm shall not share legal fees with a non-lawyer, except that...(4) a lawyer or law firm may include non-lawyer employees in a compensation or retirement plan, even though the plan is based in whole or in part on a profit-sharing arrangement.

Attorney's use of "runners" to solicit business, combined with other unethical activities, required disbarment. (Attorney extensively used the services of runners, who personally visited accident victims shortly after they returned home from the hospital and gave them

the attorney's business card and other information. Attorney also loaned money to clients at various times, failed to communicate with clients, and represented clients with adverse interests. Court determined that attorney's multiple serious ethical breaches mandated disbarment as opposed to three (3) year suspension originally proposed.)
In re Pejarowski, 156 N.J. 509 (1998).

Knowing Misappropriation of Client and Escrow Funds

The one violation that will end an attorney's career, if proven, is the knowing misappropriation of client trust or escrow funds.

Case

Intentional misappropriation of client funds requires the strictest available discipline, disbarment, be enforced virtually automatically. (Attorney failed to turn over $20,000 from the proceeds of a real estate sale to his client, and in another instance forged a client's endorsement on a check not meant for him and deposited it into his account. Attorney also had a history of lying to clients, disregarding their interests, and counseling them to commit fraud. His multiple, serious ethical transgressions required nothing short of disbarment.)
In re Wilson, 81 N.J. 451 (1979).

Attorney's misuse of escrow funds, amounting at least to serious negligence and possibly malfeasance, required one (1) year suspension. This case extended the rule from Wilson, *supra*, regarding discipline for the misuse of client funds. (Attorney's financial recordkeeping was extremely poor, and he misused client funds for other purposes. Due to the state of his records, he may not have been aware that he was doing so.)
Matter of Hollendonner, 102 N.J. 21 (1985).

Where attorney accepted retainer payments but did not actually commence representation due to significant personal problems, yet had since reformed his behavior and repaid the funds, a four (4) year suspension was adequate discipline. (Attorney accepted retainer to file appeal of murder conviction but never filed such an appeal. He also failed to prosecute several civil lawsuits for which he been retained and timely file paperwork in several probate matters. Attorney claimed he was overwhelmed with other trials at the time of these incidents and was drinking heavily. He did not appear to have misappropriated the funds purposefully, but rather out of negligence by not competently representing his clients. Attorney had made voluntary restitution to the victim clients.)
Matter of Noonan, 102 N.J. 157 (1986).

Discipline for Misconduct Outside the Practice of Law

Attorneys are expected to demonstrate a high level of personal and professional conduct. Any misbehavior, including activities unrelated to the practice of law including failure to pay personal income tax or acts of domestic violence could lead to professional discipline.

Cases

Attorney's misconduct in failing to file and pay his personal tax return warranted a six (6) month suspension. (Attorney had not filed personal income tax returns for twelve (12) years,

and was only forced to do so when that fact was revealed during his divorce proceedings. He claimed he had encountered various financial difficulties which made repayment impossible, and that by not filing returns, he was trying to avoid actively evading tax laws.)
In re Vecchione, 159 N.J. 507 (1999).

Attorney's misconduct in failing to file and pay his personal tax return warranted a three (3) month suspension. (Attorney did not file income tax returns for six (6) years, instead filing for automatic extensions each year and submitting no additional paperwork or payments. OAE was notified after New Jersey Attorney General's Office represented the Department of Taxation in a suit against him for the unpaid taxes.)
In re McEnroe, 172 N.J. 324 (2002).

Attorney's misconduct in committing acts of domestic violence warranted a reprimand. (Attorney was convicted of simple assault for having punched his wife in the face, injuring her. Although he was reprimanded, the court cautioned that from that point forward, attorneys committing acts of domestic violence would ordinarily face suspension.)
Matter of Magid, 139 N.J. 449 (1995).