SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-066
District Docket No. IX-2012-0011E

IN THE MATTER OF	
LARRY S. LOIGMAN	
AN ATTORNEY AT LAW	

Decision

Argued: June 18, 2015

Decided: October 27, 2015

Lawrence H. Shapiro appeared on behalf of the District IX Ethics Committee.

David H. Dugan, III, appeared on behalf of respondent.

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 reprimand filed by special ethics master James A. Paone, II, Esq. Respondent was charged with having violated RPC 3.1 (bringing a frivolous claim), RPC 3.2 (failure to expedite

litigation), RPC 3.3, presumably (a)(1) (false statement of material fact or law to a tribunal), RPC 3.4, presumably (c) (knowingly disobeying an obligation under the rules of a tribunal), RPC 3.7, presumably (a) (lawyer as advocate and witness), RPC 4.1, presumably (a)(1) (false statement of material fact or law to a third person), RPC 7.2, presumably (a) (requiring all advertisements to be "predominantly informational"), and RPC 8.4, presumably (d) (conduct prejudicial to the administration of justice).

The charges stem from respondent's providing legal representation to E.C., a minor, who had accused his Orthodox Jewish parents of child abuse, based on what appears to be their objection to his desire to practice an ultra-orthodox form of Judaism. The essence of the charges is that, without any authority, respondent represented E.C. and interjected himself in a private family matter.

For the reasons set forth below, we determined to impose a reprimand on respondent for his violation of RPC 3.1 and RPC 8.4(d).

Respondent was admitted to the New Jersey bar in 1977. At the relevant times, he maintained an office for the practice of law in Middletown.

In 1981, respondent received a private reprimand[1] for creating an appearance of impropriety "concerning the possible use of [his former] position with the Middletown Police Department for [his] private advantage" and for violating DR 9-101(B) (prohibiting a lawyer from accepting private employment in a matter in which he had substantial responsibility while he was a public employee) in two matters. In the Matter of Larry S. Loigman, DRB 80-177 (March 5, 1981). In one of those matters, respondent filed a civil suit, on behalf of Middletown police officer Robert Oches, alleging defamation and malicious prosecution on the part of Robert Asmar, who had filed a criminal complaint for perjury against Oches.

The nature of respondent's wrongdoing in the 1981 case was summarized in our decision in a 1989 disciplinary matter in which respondent received a reprimand for his continued representation of Oches following the 1981 private reprimand (in addition to his conduct in two other matters). In re Loigman, 117 N.J. 222 (1989). We noted that respondent, who had been employed previously by the police department, "was involved in

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[1] The private reprimand form of discipline has been supplanted by the admonition.

various police investigations relating to [Asmar] and either used or could have used such information in pursuit of the Oches matter" because "[t]he information was acquired solely as a result of respondent's employment" with the police department. In the Matter of Larry S. Loigman, DRB 84-388, 85-342, and 87-157 (February 16, 1989) (slip op. at 2). We described respondent's continued representation of Oches, following the 1981 private reprimand, as the behavior "of a brazen and arrogant attorney," showing "utter disrespect" to the "disciplinary authorities established by the Supreme Court of New Jersey." Id. at 15.

This case is governed by a broad protective order, issued by the District IX Ethics Committee (DEC), which remains in effect. Among other things, the protective order requires that "[a]ll name references to grievant(s) and any witnesses and/or third parties . . . be redacted and their initials substituted and followed by the appropriate descriptive term, such as 'grievant(s)' (with name initials only), and 'witness' (followed by initials of the witness' name)." The record contains many redactions of many names, but, unfortunately, sometimes, without the required substitution of initials.

A disciplinary hearing took place over the course of several days in 2014. The special master received testimony from respondent, E.C.'s mother (R.C. or Mrs. C.), a retired Lakewood Police Department detective (Detective W.A.), and one of E.C's guardians ad litem, D.C. (GAL D.C.).

Mrs. C. testified that E.C. was born on May 2, 1993. He is one of twelve children.

In September 2008, when E.C. was fifteen years old, he and his brother, A.C., went to Israel, where they stayed with their older brother, D.C., and were to remain for three months or so, returning to the United States just before Hanukkah. Instead, Mrs. C. testified, the boys were "wrongfully retained in Israel for over a year," during which time E.C. was brainwashed. Thus, in September 2009, she went to Israel to bring them home.

Mrs. C. asserted that, while the boys were in Israel, Agudath Israel of America (AIA)[2] hired counsel for them, on the claim that they should remain in that country because their

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[2] AIA is described as a "Hareidi Jewish communal organization." www.hareidi.org. According to this website, the AIA represents "many members of the Yeshiva world," as well as "sectors of Hasidic Judaism," all of whom are "commonly known as Hareidim or 'ultra-orthodox' Jews representing Torah Judaism in North America."

parents, Mr. and Mrs. C., home-schooled them, which, the AIA argued, was a form of abuse. The Israeli courts sided with Mr. and Mrs. C., and A.C. returned home voluntarily, in February 2010. The Supreme Court of Israel was required to order E.C. to return home, which he did on March 4, 2010, accompanied by Mrs. C.

According to Mrs. C., on the evening of March 4, 2010, the family was enjoying a pizza party at home, when two Lakewood Police Department (LPD) officers appeared at their door. The officers stated that the LPD had received a report that E.C. had been held a prisoner in his home for the past eighteen months. Mrs. C. showed the officers E.C.'s passport, which proved that he had been in Israel until that morning. E.C. denied having called the police, declined the officers' invitation to leave with them, and assured them that he felt safe. The police officers left.

Later that evening, E.C. went for a walk. He had A.C.'s cell phone with him. "A short while later," Agency[3] representatives arrived at Mr. and Mrs. C.'s home to investigate child abuse allegations concerning E.C. Mr. and Mrs. C. called

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[3] The protective order requires use of the terms "Agency" or "underlying Agency matter," without further identification.

E.C. on the cell phone, but he did not answer it. When they tried again, he had apparently turned it off. The police were called and a K-9 unit began to search for him.

Mrs. C. testified that the search was terminated shortly after it started because, she was told, respondent had called the LPD and assured them that E.C. was safe, adding that the child was not in Lakewood and would not be "sleeping in the county tonight."[4] She was told that respondent stated that he would bring E.C. to the Agency in the morning, although he also claimed not to know E.C.'s whereabouts.

According to Mrs. C., the next morning, that is, March 5, 2010, an Agency worker reported that respondent had appeared alone. At oral argument before us, we were informed that, to this day, E.C.'s parents still have not seen their son.

Respondent detailed his version of what transpired on March 4 and 5, 2010. He testified that, on March 4, 2010, someone from AIA called him, reporting that a young man in Lakewood was involved in a "child abuse situation" and needed legal

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[4] Respondent testified that he did not tell the LPD to terminate the search, as it was not his place to do so. He merely stated that he had seen E.C. a few hours earlier that evening, in Monmouth County.

representation, and asked respondent whether he would be able to handle the matter. Respondent gave the caller a tentative "yes," but cautioned that he would need to talk to the child to obtain some details. The caller said that the young man would be calling respondent. At this point, respondent's communication with AIA about E.C. ceased, consistent with his practice. He was not under contract with AIA and did not report to AIA on this or any other matter referred to him.

E.C. called respondent, claiming that he had "a very serious problem," that is, he was "being abused" in his home and he needed legal representation. E.C. told respondent that the matter was "urgent" because he had just returned home but had fled due to fear of further abuse, which he had endured for "a number of years." Respondent agreed to meet with E.C. later that evening to "give him some advice."

Although respondent did not identify the location, he met with E.C., alone, for about forty-five minutes. One or two other people had transported E.C. to their meeting place, but respondent did not know their identities.

Respondent testified that, at the initial meeting, E.C. stated that he was staying with "some friends" and that he did not want any contact with his parents "or the rest of his

family." To respondent, it was "clear" that E.C. was in fear and that, if he returned home, he would be subject to further abuse. Respondent agreed to represent E.C., on a pro bono basis.

After E.C. left the meeting on the evening of March 4, 2010, respondent, who now considered himself E.C.'s lawyer, called the Agency and informed a caseworker that he had just interviewed E.C., who had "made some allegations about child abuse." The caseworker told him that the Agency was "well aware of the situation of that home," as it had been there "on many previous occasions," including that night.

Respondent told the caseworker that he would meet with the Agency the following day. Although the caseworker stated that the Agency wanted to talk to E.C. directly, respondent replied that he did not know whether he would be able to have E.C. appear because he had no way of contacting him. Nevertheless, respondent offered to "try to facilitate" an interview of E.C.

Later that evening, at about midnight, respondent received a telephone call from the LPD. The caller asked respondent whether he knew where E.C. was. Respondent replied that he knew where E.C. had been a few hours earlier, when he met with him, but he did not know his current location and he did not have a way of reaching E.C.

The caller informed respondent that the LPD believed that E.C. might be "missing" and, therefore, they were conducting a search. Respondent stated that he had met with E.C. in Monmouth County and, therefore, he did not believe that the LPD would find E.C. in Lakewood "or anyplace else in Ocean County" because E.C. planned to leave the area so that his parents could not find him.

Respondent and E.C. devised an unusual method of communication. At their initial meeting, E.C. gave respondent the cell phone that his parents had given to him and asked respondent to return it to them.[5] Respondent, thus, had no way of contacting E.C., who said that he would contact respondent, within the next day or two.

Within a few days of their first meeting, E.C. contacted respondent, told him that he had gotten another cell phone, and gave respondent a telephone number. According to respondent, when he called that number, E.C. would not answer but, instead, would later call respondent. Shortly thereafter, however, E.C. required respondent to call E.C.'s brother, in Israel, who, in

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[5] Respondent placed the items in an envelope and, at some point, gave it to Mr. and Mrs. C.'s attorney.

turn, would call E.C., who would then call respondent. This arrangement sometimes resulted in a lapse of several hours between calls, due to the different time zones. E.C. initiated contact with respondent only on occasion, when "he wanted to know the answer to something."

In addition to respondent's inability to directly contact E.C. by telephone, he "did not have a location" or address for E.C. and, therefore, he could not mail anything to him.

Respondent denied withholding what little information he did have about how to contact E.C. For example, at a July 30, 2010 proceeding, before then Superior Court Judge Marquis D. Jones, Jr., who presided over a number of events in the underlying matters, the judge had asked respondent whether he could get E.C. to the courtroom. Respondent replied that he could, "but not right now," whereupon counsel for Mr. and Mrs. C., Robert Weir, asserted that respondent should not contact E.C. Thus, respondent did not make the call. Further, as early as May 25, 2010, and on several occasions thereafter, the Agency, the law guardian, and respondent had asked Judge Jones to interview E.C., but the judge had declined, stating that he would do so eventually, after "all of the reports had come in."

During another court appearance, Judge Jones required respondent to call E.C.'s brother, whose telephone number was then placed on the record.[6] Thus, respondent claimed, Judge Jones knew not only that respondent did not have a direct number for E.C. but also what respondent had to "go through" to communicate with E.C.

Within a few days of respondent's meeting with the Agency representative, he talked to a Deputy Attorney General (DAG) who handled Ocean County matters for the Agency. Respondent claimed that, "for months and months and months" thereafter, he "probably" communicated with the DAG on a daily basis.

Respondent also heard from E.C., who asked what was happening with the matter. Respondent updated him and informed him that the Agency wanted to talk to him. He also asked E.C. certain questions in order to satisfy himself that E.C. was being "looked after." Respondent stated that E.C. had not expressed any reservations about his living arrangements.

At some point not identified in the record, respondent arranged for a telephone conference call between an LPD police

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[6] Respondent also provided the judge with other telephone numbers that he had for E.C.

officer and E.C., in which E.C. assured the officer that he was "in good hands and was safe and he was happy with where he was." Due to the communication limitations put into place by E.C., respondent was not able to arrange for a similar call between E.C. and the Agency, at that time. Eventually, respondent did arrange a meeting, which took place on April 8, 2010, between E.C. and representatives of the Agency and the Prosecutor's Office.

Respondent did not transport E.C. to the interviews. Although respondent was in the building when they took place, he was not present during, and did not participate in, the interviews because he wanted to avoid becoming a witness to the statements that were made. Respondent's involvement was limited to advising E.C. with respect to whether he had to answer a certain question. He never saw a transcript of the interviews.

According to respondent, E.C. gave the Agency and the Prosecutor's Office enough information to justify the entry of an emergency removal order so that E.C. would not have to return home. At some point, presumably on April 12, 2010, the Agency instituted an abuse and neglect action, against Mr. and Mrs. C.,

in the Superior Court of New Jersey, Ocean County (the first FN matter).[7] The record does not contain a copy of the complaint.

At the disciplinary hearing, Mrs. C. testified that, on the evening of April 8, 2010, the Prosecutor's Office summoned her and her husband (Mr. C) to the police station, where they were informed of E.C.'s allegations against them. Later that evening, Agency workers interviewed E.C.'s siblings, who categorically denied that any abuse had taken place. At that time, Mrs. C. was told to be in court on April 12, 2010.

The nature of the abuse allegedly inflicted upon E.C. was never specifically identified or described. As the case unfolded, however, it became clear that E.C.'s claims of abuse were based on his parents' objections to his desire to observe and practice an ultra-orthodox form of Judaism.[8]

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[7] We have identified this as the first FN matter to distinguish it from the second FN matter that respondent later instituted on E.C.'s behalf, in November 2010.

[8] For example, although the complaint in the second FN matter alleged, generally, that E.C. had suffered "extreme, severe and grievous abuse," both physical and emotional in nature, the specific allegations suggested only that he was not free to "practice the tenets of his religion" and that his parents had engaged in "an unrelenting campaign" against all those who practiced the faith as E.C. did, including his brother who lived in Israel.

At the disciplinary hearing, Mrs. C. testified that respondent, a rabbi, and a community activist had placed E.C. with an unlicensed family, where he stayed from April 8 through 16, 2010. Respondent contradicted her claim, testifying that, because the Agency was unable to find an approved resource home that could accommodate E.C.'s "religious requirements," notably with regard to food, it conducted an emergency investigation of a "suitable family," which included a criminal background check, and placed E.C. with that family on a temporary basis. Respondent was not involved in the investigation and did not know the family. He testified that E.C. stayed with that family for a "short period of time."

Mrs. C. testified that, on April 15 or 16, 2010, respondent gave E.C. permission to attend a yeshiva in Connecticut. Respondent denied Mrs. C.'s claim. He did not know whether the Agency had authorized E.C. to go to Connecticut or how E.C. was aware of that yeshiva. Instead, respondent claimed that E.C. decided that he wanted to go to Connecticut.

According to respondent, he was not involved in the decision, had no contact with the yeshiva, did not authorize E.C.'s attendance at the yeshiva, and did not even know that

E.C. was going there. In his view, E.C.'s decision to attend the Connecticut school was not a violation of any law or regulation.

Respondent testified about the events that took place after E.C. had gone to Connecticut:

> I did learn that he had gone to Connecticut and that thereafter there was some type of order signed [,] totally illegal [,] to have him taken back from Connecticut by some personnel from the State of New Jersey operating outside of their jurisdiction and he was with force and with violence removed from that yeshiva in Connecticut and taken to a resource home, a different resource home in Ocean County and he remained there for some period of time.[9] During that period of time as I testified, his parents knew where he was. They were not allowed at certain points to have contact with him because of the abuse allegation, but they knew where he was. Judge Jones knew where he was and I was not actually allowed to talk to him during that time except on one occasion when there was an appearance set up at the Agency office where he was brought in by their personnel and I was allowed to sit down and talk to him for about a half hour or so to see how he was doing.
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> [4T102-16 to 4T103-10.][10]

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[9] Mrs. C. testified that E.C. was returned to New Jersey on April 21, 2010.

[10] "4T" refers to the transcript of the August 6, 2014 disciplinary hearing.

The "totally illegal" order to which respondent referred was a "multipurpose order" in the first FN matter that Judge Jones entered on April 21, 2010. Among other things, the order directed that E.C. be returned from Connecticut to the State of New Jersey, required respondent to file an application to represent E.C. as his law guardian, and set an April 26, 2010, hearing date.

Pursuant to the terms of Judge Jones' April 21, 2010, order, respondent filed an application to represent E.C. as his law guardian. On April 26, 2010, respondent's request to be E.C.'s law guardian was denied[11] and an attorney with the initials L.W. was appointed instead.[12] Although Judge Jones denied respondent's application, he did appoint respondent as a "friend of the court."[13]

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[11] At a later proceeding, Judge Jones noted that respondent had been barred from representing E.C. due to a conflict of interest with E.C.'s siblings.

[12] Respondent testified that E.C. had an appointed law guardian "[a]t different times."

[13] The record does not include a copy of the April 26, 2012 order.

Respondent explained that, as a friend of the court, his role was to relay E.C.'s wishes to the court and to tell the court what he thought was in E.C.'s "best interest on a kind of advisory capacity." He claimed that, during the time he served in that role, he was not representing E.C. as his lawyer.

In turn, Mrs. C., who was present when Judge Jones appointed respondent a friend of the court, understood that his role was to assist the court in understanding Orthodox Jewry, including E.C.'s religious requests. According to Mrs. C., however, respondent took on the role of an attorney, by speaking on behalf of E.C., for example, and requesting that Mr. and Mrs. C. undergo psychological evaluations, which Judge Jones refused.

On May 2, 2010, E.C. turned seventeen.

On July 30, 2010, Judge Jones entered an order, which, among other things, dismissed the abuse and neglect litigation in the first FN matter, based on the contents of a July 13, 2010, letter from the Agency (presumably),[14] stating that "the allegations against the defendants are unfounded" and "a fact finding hearing shall not take place." According to respondent,

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[14] The name of the letter's author is redacted but not replaced with initials or the even the name "Agency."

although the litigation aspect of the case was dismissed, the matter remained open for the purpose of "providing services for reunification including but not limited to family therapy." The order also relieved respondent as a friend of the court and transferred legal custody of E.C. to his parents, with certain conditions.

According to respondent, at the conclusion of the July 30, 2010, proceeding, an Agency representative called the resource home where E.C. was then residing and reported that the complaint had been dismissed and that Judge Jones wanted to meet with E.C. Without speaking to respondent, E.C. decided to "leave the area and not come to court."

Respondent claimed that, because the July 30, 2010, order had relieved him as friend of the court, he had no further responsibility to the court or to E.C. or to "anybody else in connection with this case." Yet, respondent continued to communicate with E.C. and continued to participate in the first FN matter, because he was "the attorney for E.C. in connection generally with the litigation."

Specifically, respondent stated that, after the July 30, 2010, order was entered, he represented E.C. in "other matters that came up." First, after discussing E.C.'s options with him

and obtaining his consent, respondent filed a complaint, in Monmouth County, on August 3, 2010, seeking E.C.'s emancipation (the FD action). He chose Monmouth County, where his office was located, because E.C. had "no connection to Ocean County," as he was not living in that county and had no intention of residing there.

The complaint was the first pleading that respondent filed on E.C.'s behalf. As stated previously, E.C. was seventeen at the time.

The emancipation complaint is not a part of the record. Both Mrs. C. and respondent testified, however, that the complaint named no defendants and, according to Mrs. C., was never served on Mr. and Mrs. C., who only learned of it from an Agency worker.[15]

On August 9, 2010, Judge Jones entered an order re-opening the first FN matter, which was venued in Ocean County, assigning the Office of the Public Defender as E.C.'s law guardian, directing "[w]homsoever should have information or knowledge as to [E.C.]'s whereabouts . . . to immediately disclose it to the

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[15] Respondent claimed that he could not recall whether the complaint was served on Mr. and Mrs. C.

Court," requiring the surrender of E.C.'s passport, and referring the issue of E.C.'s emancipation to mediation. The record does not reflect the reason that Judge Jones re-opened the first FN matter, although it presumably was related to the filing of the emancipation action, as the August 9 order made a specific reference to that case.

Respondent denied having received a copy of the August 9, 2010, order contemporaneously with its entry, although it came into his possession at some later point.

On August 13, 2010, the Honorable Michael A. Guadagno, J.S.C., Monmouth County, sua sponte, determined to transfer the emancipation matter to Ocean County on several grounds, including the doctrine of forum non conveniens. The decision was embodied in an order entered five days later, on August 18, 2010. Respondent testified that, after the transfer of the emancipation action to Ocean County, no law guardian was appointed for E.C. in that matter.

Meanwhile, three days after Judge Guadagno's August 13, 2010, decision to transfer the emancipation matter to Ocean County, but before the entry of the August 18, 2010, order, respondent filed an emergent application, under the FD docket number, with Ocean County Assignment Judge Vincent J. Grasso.

The application requested Judge Grasso to either hear the case or transfer it to another venue for disposition.

According to respondent, when he appeared on the emergent application, Judge Grasso said that he wanted to talk to E.C. before September 1, 2010. Respondent contacted D.C., E.C.'s brother in Israel. D.C. then contacted E.C., who contacted respondent. E.C. agreed to meet with Judge Grasso, so that he could tell the judge what had happened and why "he had to leave on a number of occasions" and why he did not believe that Judge Jones "had any understanding of what the case was about and why he was not willing to speak again to people from the Agency and so forth."

On September 1, 2010, Judge Grasso conducted an in camera interview of E.C., who also met, individually, with his law guardian in the first FN matter.[16] According to respondent, after Judge Grasso had completed his interview, he stated that E.C. was "free to go," because, as far as he could tell, "everything is okay" and "[w]e'll put it on the record." In respondent's view, if either the law guardian or Judge Grasso had had "any

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[16] Respondent testified that "somehow [E.C.] managed to get to Ocean County," where respondent picked him up and transported him to the courthouse.

problems whatsoever," some action would have been taken and the judge would not have told E.C. that he was "free to go."

On September 2, 2010, Judge Grasso called all involved in the case into the courtroom and announced that, based on the law guardian's and his interviews of E.C., "there were no concerns about his health or welfare." Following the September 2, 2010, courtroom conference, Judge Grasso entered two orders in the first FN matter. The first order, entered on September 13, 2010, required the LPD to remove from its website a notice identifying E.C. as a "missing child" and to "notify the authors of any and all publishers of blogs, web sites or any other notifications on the Internet, and any other media, such as newspapers or flyers, to remove information about the minor, foster home locations, and any other information about the child." The order also required "the authors of any and all publishers of blogs, web sites or any other notifications on the Internet, and newspapers or other media sources" to remove the stated information.

According to respondent, the order was prompted by the Attorney General's complaint that the Prosecutor's Office had released "personal identifying information" about E.C. and the resource home where he had been residing. Respondent's testimony prompted the presenter to question him about a post on

www.thelakewoodscoop.com. In that post, respondent was quoted as saying, among other things, that E.C. was "safe, healthy, and living in a frum[17] environment." The post concluded with the following statement: "Anyone who is considering providing information to any government agency about this case should seek the advice of an appropriate halachic[18] authority."

Respondent stated that, from time to time, he had provided information to someone on the blog's staff and that nothing in the post that was attributed to him was "glaringly inaccurate." He also reasoned that, because the blog post was dated several months after the entry of the September 13, 2010, order, the post could not have been the impetus for the entry of the order.

The second order, entered on September 15, 2010, directed, among other things, that E.C. be returned to Ocean County and placed with a third-party family no later than September 16, 2010. The order reflected respondent's appearance in court as E.C.'s counsel in the FD matter. Nevertheless, the order required respondent "to make the necessary arrangements to

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[17] "Frum" is Yiddish for "religious," that is, observant of Jewish religious law.

[18] "Halachic" is Jewish religious law governing the everyday behavior of observant Jews.

insure this placement," even though, respondent pointed out, he did not represent E.C. in the first FN matter, but only in the FD case.

The September 15, 2010, order also required E.C. to be evaluated by a court-appointed psychologist and scheduled a status conference for October 7, 2010, at which time the court would consider any party's application challenging respondent's representation of E.C. Finally, E.C. and all parties were ordered to appear for mediation on September 17, 2010, and were prohibited from communicating with the press or media "or anyone not involved with this matter [while] the litigation is on-going."

Respondent testified that, even though he did not represent E.C. in the first FN matter, he "mandate[d] all this information to E.C.," as was his practice any time there was any activity with the case. E.C. determined, however, that he would not go to the third-party family and he would not see the psychologist.

Neither E.C. nor respondent appeared for the September 17, 2010, mediation. The record does not reflect the reason for respondent's non-appearance. Thereafter, Judge Grasso told respondent to have E.C. in court on Monday, September 20, 2010. Although respondent appeared on that date, E.C. did not.

On September 21, 2010, Judge Grasso issued an order, in the first FN matter, requiring respondent to "communicate with [E.C.] to insure that he presents himself to the [third-party family's] home by 3:00 p.m. on Tuesday, September 21, 2010. If E.C. failed to appear at the home, the court would consider an application to issue a warrant to transport E.C. to an Ocean County shelter.

Respondent so informed E.C., who did not comply with the order. As far as respondent knew, E.C. remained where he had been staying and declared that he would not return to Lakewood or Ocean County, whether or not he was ordered to do so.

At about this time, presumably, Mr. and Mrs. C.'s lawyer filed a motion to disqualify respondent as E.C.'s attorney. Although the record does not include a copy of the motion, it does contain a copy of an October 6, 2010, letter from respondent to Judge Grasso, in opposition to the motion to disqualify and in support of respondent's motion to vacate those provisions in any court order that had placed E.C. in the custody of his parents' designee, S.L., who, presumably, was a member of the "third-party family" and one of Mr. and Mrs. C.'s "very close friends."

On October 7, 2010, Judge Grasso entered two orders. The first, an order for emergent relief, entered under the FD docket number, placed E.C. in the custody of his parents until further order and directed that the motion for respondent's disqualification would be "addressed" on November 5, 2010, at which time a case management conference was to be conducted. The order provided that, if E.C. failed to appear for the conference, the emancipation action could be dismissed.

The second order, entered in the first FN matter, continued Mr. and Mrs. C.'s legal custody of E.C., but stayed the disposition of the matter, pending the return date for the emancipation matter.

Respondent testified that, although the October 7 orders did not require him to communicate with E.C., he did. Consequently, on October 28, 2010, respondent wrote to Judge Grasso, requesting that E.C. not be detained or apprehended if he appeared in court on November 5, 2010, when the case management conference was to take place.

Judge Jones, not Judge Grasso, presided over the November 5, 2010, case management conference. Neither respondent nor E.C. appeared. On November 12, 2010, Judge Jones entered an order in the first FN action memorializing various determinations,

including the finding that E.C. "is currently missing," apparently based on E.C.'s failure to report to the third-party home. The order further required E.C.'s placement in an Ocean County shelter on his location until the court could address his permanent location.

The November 12, 2010 order also stated that the "motion . . . seeking emancipation," under the FD docket number, was "denied for reasons stated on the record." The transcript of the hearing conducted by Judge Jones, on November 5, 2010, shows that he dismissed the "motion for emancipation" because E.C. did not appear.

Respondent testified that he never filed a "motion for emancipation" in the FD action. Moreover, the order denying that "motion" was entered in the first FN action, which had been dismissed in July, rather than in the FD action, which remained pending.[19] Although respondent was correct in his claim that an order dismissing the emancipation action was never entered in the emancipation matter, he appealed the dismissal to the

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[19] Respondent's testimony is inaccurate. Respondent himself had testified that the first FN matter was never completely dismissed. Moreover, the case was re-opened upon entry of the August 9, 2010, order.

Appellate Division and then sought summary disposition, hoping that would resolve the case quickly. The motion for summary disposition was denied and E.C. turned eighteen before the appeal was decided, rendering the emancipation issue moot. Thus, "it was unnecessary to pursue the appeal," which was, presumably, voluntarily dismissed.

The transcript of the November 5, 2010, proceeding reflects the following rulings of Judge Jones:

> And I'll issue an order for law enforcement to actively look for this child.
>
> The Court's efforts have been thwarted at every turn in trying to locate this child. It is totally unacceptable to this Court. I want the child produced. And I want him found.
>
> [Ex.P24p.41.21-Ex.P24p.51.2.]

Judge Jones continued:

> I think Mr. Loigman has a conflict of interest. And I'm withdrawing him on any level as an attorney. I think it's a straight conflict of interest. And I even question the ability since in New Jersey the age of majority to contract with anyone is 18 years of age. This child is not 18. So I don't even know how he could even contract to have an attorney. He simply cannot.
>
> [Ex.P24p.41.10 to 17.]

In Judge Jones' view, the conflict of interest stemmed from respondent's "thrusting himself into the case to such an extent

that he has become a fact witness." Indeed, the judge considered respondent's testimony to be the primary evidence in the case. Accordingly, Judge Jones ruled that RPC 3.7 required that respondent be barred from representing E.C. This ruling, however, was not included in the November 12, 2010, order, which was silent on the issue.

Respondent learned of the November 12, 2010, order from the DAG with whom he had been in "constant contact" and ordered a transcript of the November 5, 2010, proceeding. Respondent testified that he placed no credence in Judge Jones' decision to disqualify him from representing E.C., stating that Judge Jones "never ordered it." Indeed, respondent asserted, no judge and no order, including the November 12, 2010 order, had barred him from representing E.C. He explained:

> To say that there is a denial of something based on the record below or based on the records or based on comments placed on the record or whatever is not an order relieving someone as an attorney or prohibiting them from serving as an attorney and there was never – I just want to emphasize that there was never an order entered to say that I could not represent E.C. and you have the order in front of you and it is clear from looking at that order.
>
> [4T63-13 to 22.]

According to respondent, the issue of his ability to represent E.C. was raised formally only in the Appellate Division, after Mr. and Mrs. C. had appealed an August 1, 2012, order vacating a warrant for E.C.'s arrest and requested respondent's disqualification. He claimed that their motion to disqualify him was denied.

On November 16, 2010, four days after the emancipation action was dismissed, respondent filed an abuse and neglect complaint (the second FN matter) on behalf of E.C., in Ocean County.[20] He did not serve the complaint because, he claimed, the statute assigned that duty to the clerk's office. Further, respondent did not believe that anyone had ever been served with the complaint. Indeed, the complaint shows that no defendant was even named in the action.

The complaint in the second FN matter alleged, generally, that E.C. had suffered "extreme, severe and grievous abuse," both physical and emotional in nature. The specific allegations suggested that he was not free to "practice the tenets of his

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[20] N.J.S.A. 9:6-8.34 grants "[a]ny person having knowledge or information of a nature which convinces him that a child is abused or neglected" the right to file a complaint, pursuant to N.J.S.A. 9:6-8.33, alleging "facts sufficient to establish that a child is an abused or neglected child."

religion" and that his parents had engaged in "an unrelenting campaign" against all those who practiced the faith as he did, including his brother who lived in Israel. The remaining allegations were directed at the Agency and the various judges, who allegedly had denied E.C. his right to legal representation, among other things.

Eventually, mediation was scheduled for December 8, 2010, presumably in the first FN matter, but E.C. did not appear because Mr. and Mrs. C. would not agree to the conditions respondent required in order for respondent to be willing to attempt to produce E.C. at the mediation. The mediation went forward, on December 8, 2010, without E.C. According to Mrs. C., Judge Jones ordered respondent to appear before him, on December 16, 2010, for a contempt hearing because respondent was aware of the August 9, 2010, order requiring anyone with knowledge of E.C.'s whereabouts to so inform the court, which he had not done.

The date for what Mrs. C. described as a contempt hearing was moved to December 20, 2010. She testified that, when respondent was asked, at the hearing, how he knew that, as of November 19, 2010, E.C. was "safe and living in a frum environment," respondent referred to Judge Grasso's August 31 interview of E.C. The problem with this answer, in Mrs. C.'s

view, was that, on September 23, 2010, Judge Grasso had returned E.C. to missing person status.[21] Moreover, respondent told Judge Jones that that he did not know where E.C. was as of December 20, 2010, but, on that same date, he filed an appeal and represented that E.C. was living with another family, out of state, without Agency supervision. Mrs. C. did not identify the decision that was appealed.

According to respondent, Judge Jones conducted a case management review on December 20, 2010. Respondent appeared, with his own counsel, attorney Andrew Maze, pursuant to an order to show cause. At the disciplinary hearing, respondent testified that the judge asked him whether he had "certain information" about E.C. Through Maze, respondent answered that he did not have "that information."

On December 20, 2010, Judge Jones entered two orders. The first dismissed the second FN matter, "as there were no named defendants." The second order, which was entered in the first FN matter, provided that E.C. was to continue under the care and supervision of the Agency. To respondent's knowledge, however,

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[21] The record does not contain an order dated September 23, 2010, or any other evidence that corroborates Mrs. C.'s claim.

E.C. was not physically under the Agency's care on December 20, 2010. Further, although the order provided that law enforcement "shall actively look for the child" and, once he was located, return him to his parents "immediately," respondent testified that he did not understand the meaning of this provision but that, in any event, he did not believe that E.C. was returned to his parents.

The second December 20, 2010, order also provided that "[a]ny additional contempt proceedings will be prosecuted by the Ocean County Prosecutor's Office." Respondent testified that he did not know what the statement meant. He explained: "There was a lot that Judge Jones put into orders that I didn't really understand." Respondent did not understand why the judge used the term "additional," noting that he was not aware that there had been a prior contempt proceeding.[22]

Finally, the second order appointed GAL D.C., a non-practicing attorney, as E.C.'s guardian ad litem and required all parties, including respondent, to "cooperate with the

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[22] Respondent testified that Judge Jones had made a referral to the Ocean and Monmouth County Prosecutor's Offices for the investigation of contempt charges against respondent. According to respondent, both offices determined that there was no basis for any charges.

Guardian Ad Litem including any discovery requests regarding the minor child." Yet, respondent testified, there was no matter pending. Respondent had appeared on December 20, 2010, only in response to the order to show cause. Thus, he considered the second order to be of "no consequence."

After the entry of the December 20, 2010 orders, respondent continued to represent E.C. "with various other matters." On March 31, 2011, he wrote a letter to Judge Jones. That letter is not a part of the record. Judge Jones replied to the letter on April 5, 2011, but respondent testified that "it was not possible" for him to "somehow understand what it was that the judge was trying to say" in the letter. Judge Jones' letter reads as follows:

> Dear Mr. Loigman:
>
> I am writing in response to your March 31, 2001 [sic] letter, in which you request this court to return the subject minor's passport.
>
> In the first instance, you once again hold yourself out as the minor's attorney notwithstanding the court's appointment of a law guardian, and its previous ruling that you lacked the capacity to do so. In fact, it is the court's understanding that this issue is currently under appeal. Accordingly, there is no basis for your request.

> Additionally, despite the fact that the child remains under the care of the [REDACTED] with legal custody to his biological parents, and the child has not been produced and remains missing, you continue to make unfounded and improper demands on behalf of the child.
>
> More importantly, despite previous orders of this court to produce the child and your insistence of not having any knowledge of the whereabouts of the child, nor knowledge of how the child could be produced before this court and returned to his parents, you now request the child's passport. Once again this is indicative of your lack of candor with this court and your refusal to follow court orders in this matter.
>
> While this matter remains on appeal, your current request in addition to your lack of candor to this court is improper.
>
> [Ex.P27.]

At this time, E.C. was still seventeen years old and respondent did not know whether the authorities were looking for him, as they were not in touch with respondent. According to respondent, he "conveyed to [E.C.] the contents of every order that came to [his] attention" and "told him what his responsibilities and obligations were under those orders."

Judge Jones' letter prompted respondent to file a replevin action, sometime in the spring of 2011, for the purpose of

obtaining "certain personalty which was believed to be in the parent's [sic] home," including E.C.'s passport.

On April 7, 2011, respondent filed a notice of claim under the New Jersey Tort Claims Act, with the Tort and Contract Unit of the New Jersey Department of Treasury. According to the notice, E.C. was the victim of repeated unspecified acts of abuse by his parents, against which the Ocean County prosecutor had failed to protect him, and his constitutional rights were violated when "armed officers" from the Department of Human Services and Personnel from "[REDACTED]" assaulted E.C. in Connecticut and forcibly returned him to New Jersey pursuant to an invalid and unlawful order. The notice identified [REDACTED], the Department of Human Services, the Ocean County prosecutor, the Office of the Public Defender, Judge Jones, and "[o]thers now unknown" as the state agencies and employees who had harmed E.C. The injuries sustained by E.C. were the psychological trauma caused by the unlawful arrest and his inability to "pursue academic studies or maintain a normal life for almost a year after being forced to flee from the state."

On May 2, 2011, E.C. turned eighteen.

On November 1, 2011, Judge Jones entered an order in the first FN matter providing that custody of E.C. would continue

with his parents, but that the "child is currently missing." The order restrained E.C. from leaving the state or the country and authorized "[a]ny law enforcement agency" to prevent him from doing so. Finally, the order stated that "[t]he Court continues to request that the appropriate Division of the Attorney General's Office investigate "the admission by Larry Loigman that he is aware [REDACTED] has left Ocean County."

On February 1, 2012, Judge Steven F. Nemeth denied Mr. and Mrs. C.'s motion for summary judgment in the replevin action, which was eventually voluntarily dismissed because, respondent claimed, "[w]e got enough information to obtain the new passport and there was no need to go forward." The February 2012 order also directed respondent to "adhere to the August 9, 2010 court order . . . whereby within the next thirty days [respondent] must disclose to the Honorable Judge Jones all information pertaining to the whereabouts & all his contact with the missing [REDACTED] ward [REDACTED]."

A proceeding took place on February 16, 2012, at which respondent was not present, and, on May 30, 2012, according to respondent, Judge Jones ordered E.C.'s "arrest," at Mr. and Mrs. C.'s request. By this point, E.C. was now nineteen years old. The next day, on May 31, 2012, respondent filed with Judge

Grasso a verified complaint seeking the issuance of a writ of habeas corpus and "other relief."

On June 8, 2012, Judge Grasso transferred the habeas corpus matter to the Honorable Patricia B. Roe, J.S.C., who vacated the order for E.C.'s arrest, on August 1, 2012. E.C.'s parents individually appealed Judge Roe's order, but both appeals were voluntarily dismissed. Mrs. C. testified that Mr. and Mrs. C. had withdrawn their appeals on the belief that there were other ways that they could help their son, such as by filing a grievance against respondent.

At the disciplinary hearing, respondent called retired LPD Detective W.A. as a witness. Detective W.A. testified that, initially, E.C. was considered "[a] missing run away child," as there was no evidence suggesting that he had been kidnapped.

Detective W.A. asserted that, after respondent was "declared" E.C.'s attorney, all attempts at contacting E.C. were made through him. If respondent had questions about the case, he called Detective W.A. As an example of how their relationship worked, Detective W.A. pointed to respondent's cooperation with him in having E.C. produced so that the LPD would be satisfied that E.C. was safe. Thus, although respondent did not provide

the LPD with information regarding E.C.'s whereabouts, "the child was produced."

Detective W.A. testified that respondent never tried to tell the LPD how to conduct its investigation or attempted to thwart it. He did not behave differently from any other lawyer who was protecting his client.

According to Detective W.A., if there had been any evidence that respondent had done anything criminal or illegal in his involvement with E.C. and the police investigation, he would have called the Prosecutor's Office and filed a complaint. Although Detective W.A. had raised some issues with the Prosecutor's Office, he was told that respondent's actions were "perfectly legitimate."

GAL D.C., Mr. and Mrs. C.'s neighbor, testified that he was an attorney who never practiced law but had a non-legal career. According to GAL D.C., he was "[v]ery minimally" involved in the E.C. matter.

GAL D.C. testified that, sometime in 2012, Judge Jones called him at home, asked him whether he knew Mr. and Mrs. C. and was aware of their "situation," and requested that he meet with the Judge to see if GAL D.C. could assist him with the case. When they met, GAL D.C. told Judge Jones that he was Mr.

and Mrs. C.'s neighbor, that he was active in the community, that he knew "some of the players," such as respondent (by name only), a particular rabbi, and E.C.'s brother D.C., and that he was more than willing to assist in the matter. Judge Jones asked him whether he could "play a role in finding" E.C. or "finding out some knowledge about him." GAL D.C. told Judge Jones that he would try and agreed to serve as guardian ad litem.

GAL D.C.'s task, as he understood it, was to obtain information about E.C.'s whereabouts. He had "hours of discussion" with Mr. and Mrs. C. and talked to a number of other people whom, he believed, would be aware of E.C.'s whereabouts. All denied having any such knowledge. Others, such as respondent, refused to talk to him, and E.C.'s brother, D.C., could not be contacted.

At some point, GAL D.C. told Judge Jones that he did not believe he had the "ability to add anything to this case." Consequently, Judge Jones relieved him of the GAL position.

Although the presenter elicited Mrs. C.'s view about how respondent had violated the charged RPCs, we did not consider that testimony in making our determination. Rather, we based our determination on the facts developed in the record as a whole.

Presumably, the RPC 7.2 charge was based on the November 19, 2010, post that appeared at www.lakewoodscoop.com. In this regard, only respondent testified. He asserted that he does not advertise, other than in local directories, in calendars, and in publications of "various charitable organizations." He pointed out that the November 2010 post was not an advertisement, but rather a blogger's post reporting on a conversation that he had had with respondent following an Ocean County Prosecutor's Office press release about E.C. The post contained no address or telephone number for respondent's office and made no claim that respondent was available to represent anyone in "cases like this or any other type."

Finally, with respect to the statement in the post that "[a]nyone who is considering providing information to any government agency about this case should seek the advice of an appropriate halachic authority," respondent did not know whether that was included based on something that he had said or was simply by the author's choosing. Nevertheless, statements like that "frequently" appear in publications within the Lakewood Orthodox Jewish community, in order to foster its cooperation with law enforcement.

Respondent insisted that he complied with "all ethical obligations" in the underlying matters. He explained:

> [E.C. and I] had an ongoing discussion that started that first night when I met with him and went on throughout the course of the underlying case as to what it was that I was allowed to disclose and he emphasized and reiterated repeatedly that I was not to give any information to anyone about certain things that he had told me and he specifically said that he was not going to tell me certain things because even though he had been assured by me that this information was privileged, he was still afraid that somehow the information would slip out, that I would say something that I shouldn't say or somehow inadvertently disclose something.
>
> He was extremely anxious about the possibility that he would have to be returned to the scene of the abuse and he did not entrust me with any information that would lead me to be able to point to where he was staying or with whom he was staying or any information along those lines.
>
> So, he told me that he was not going to tell me who the people were that he was staying with or what their address was or what city they were in or what state they were in. I figured out that he was probably in the United States because when he had to come, for example, to see Judge Grasso he was able to get there in fairly short order, but I didn't know what state he was in or any further information other than the fact that he was obviously someplace within a few hours of travel and I believe I told Judge Grasso that.
>
> [5T11-15 to 5T12-17;5T13-9 to 5T15-17.]

Thus, respondent continued:

I did everything that I was required to do. I followed the instructions of the court. I provided information to the court. I provided timely filings to the court. I appeared in court when I was required to do so and I represented my client vigorously and within the bounds of the law and of the ethical scriptures [sic] that apply to these cases.

There seems to be a theme throughout the complaint that I had some particular knowledge which I did not have and there is absolutely no proof that I had that knowledge and there couldn't be any proof because I did not know. I did not know where E.C. was and it was not my obligation — it was not my obligation generally under the law and it was not my obligation under any of the orders that were entered to go and search for him. That was the job of the various law enforcement agencies to the extent they wanted to do so. I provided them with all of the information that I was able to provide.

As I said E.C. was very careful not to give me too much information. So, I couldn't tell them that he was at 123 Main Street in Sayreville because I didn't know that the house number was number 123. I didn't know that it was Main Street and that I didn't know it was Sayreville and that I didn't know it was New Jersey. I didn't know what state it was, what city it was and I believe that he moved around several times. I had no knowledge of that and it was not my job to be the FBI, the State Police, the prosecutor's office, the police department, the sheriff's department and everybody else to go look for him.

My need was to be able to have contact with him, to represent him and I had that contact and I did not have any obligation under these rules or under any order to go beyond that.

Judge Jones required that anybody who had knowledge about his whereabouts was to disclose that and I complied 100 percent with that because I had no knowledge of his whereabouts other than on those dates when, for example, he appeared before Judge Grasso and he was in the adoption room with Judge Grasso and during the time that he was in the custody of the agency at the resource home I knew exactly [sic] home he was at. He was at the resource home or he was at least supposed to be. I didn't know. I didn't go there. That's the extent of my knowledge.

I don't know any case that imposed upon a lawyer a duty to track down a client. I do know of cases that say that if a lawyer is asked about a client's address, there are certain circumstances under which he should not reveal that, but we never got to that stage because I didn't know.

So, every one of these allegations in here which really has that theme running through it that somehow I interfered with proceedings or whatever because I didn't tell them where my client was, I don't know of any lawyer that's ever been told to go out and look for your client. Take the day off and take your car and drive around and see if you can find him. I didn't have the first clue as to where I would drive around to find him.

[5T21-11 to 5T23-6.]

Although the formal ethics complaint did not charge respondent with failure to cooperate with disciplinary authorities, the hearing addressed that issue.

On August 2, 2012, the presenter requested that respondent produce his client file. The following day, respondent denied the request, citing the confidentiality of child abuse proceedings and records, as well as the attorney-client privilege afforded E.C.

On September 19, 2012, the presenter wrote to respondent, expressing his disagreement with respondent's position and directing respondent to "at the very least" prepare a privilege log. Respondent refused, choosing instead to provide "a complete inventory" of his file to the then DEC secretary, by letter dated October 22, 2012.

Respondent testified that he had written to the DEC secretary, instead of the presenter, because, at the time, he had requested the presenter's recusal because of comments that, in respondent's view, "demonstrated an unwillingness to investigate this case in an impartial manner."

The special master found that respondent "knew that E.C. was a minor," who, as such, "did not have the capacity to contract with [respondent] for representation independently."

Moreover, respondent knew that he could have sought appointment as counsel for E.C., but "he never took advantage" of that process. Thus, the special master concluded, respondent violated RPC 3.3(a)(1) and RPC 8.4(d) by "knowingly represent[ing] to tribunals, investigative bodies and law enforcement authorities that he was the attorney for E.C., when in fact it was legally impossible for him to be E.C.'s attorney."

The special master dismissed the following charges: RPC 3.1, RPC 3.2, RPC 3.4, RPC 3.7, presumably (a), and RPC 4.1, presumably (a). In his view, the evidence did not clearly and convincingly establish that respondent knew of E.C.'s whereabouts. Consequently, "proving [respondent's] knowing failure to disclose that information to be a violation of a court order [was] impossible . . . ."

Finally, although respondent was not charged with having violated RPC 8.1(b), the special master concluded that he had failed to cooperate with the DEC by refusing to produce his original file to the presenter. The special master considered respondent's failure to cooperate an aggravating factor in deciding the form of discipline to recommend.

For respondent's violation of RPC 3.3(a)(1) and RPC 8.4(d), the special master believed that an admonition was the

appropriate measure of discipline, given respondent's "sincerity in his belief that he was doing what was appropriate under the circumstances," which the special master considered to mitigate his misconduct. Due to respondent's failure to cooperate, however, the special master enhanced the admonition to a reprimand.

Following a de novo review of the record, we are satisfied that the special master's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

In his argument before us, the presenter urged the imposition of a censure. In seeking a censure, presenter did not challenge the special master's finding that respondent violated only two of the eight RPCs charged in the formal ethics complaint. Rather, the presenter disputed only the special master's failure to consider respondent's ethics history in determining the recommended measure of discipline for those infractions.

Because our review is de novo, we will analyze all of the charged RPC violations.

This case is difficult to assess for a number of reasons. First, the complaint contains multiple allegations, followed by a list of the RPCs that respondent had allegedly violated,

without specifically connecting the individual RPC violations to the facts alleged.

Second, there are several references in the testimony below to orders and letters that are not in the record, making it difficult to ascertain exactly what happened at times and impossible to verify the accuracy of the witnesses' testimony regarding the contents of those documents.

Finally, the record below did not definitively identify the nature of the alleged abuse E.C. suffered, which we considered an important factor in reaching some of our determinations in respect of our specific findings of misconduct. Therefore, we were required to deduce the nature of the alleged abuse from the limited documents contained in the record and from the testimony.

The complaint issued in the first FN matter is not a part of the record. Although there are general references to abuse, in our view, the "abuse" appears to have been based on E.C.'s parents' objection to the form of Judaism that he sought to observe and practice and, perhaps, to their refusal to allow him to do so in their home. Several facts support our view.

First, after the Agency had completed its investigation, it concluded that the allegations of abuse were unfounded and,

therefore, the abuse and neglect case was dismissed. Second, respondent was careful to characterize the abuse as nothing more than "abuse," omitting any descriptive adjective, such as "physical" or "verbal." His testimony provided no details, not even vague references to actions that would constitute those types of abuse, such as hitting or yelling.

Rather, in seeking E.C.'s emancipation, respondent made only passing references to "abuse," while specifically pointing out that the case involved E.C.'s "right to observe and practice his religious beliefs" and that, due to "this terrible situation," E.C. was "unable to attend school or live in a normal manner." Further, the complaint in the second FN matter, which respondent drafted, alleged only that Mr. and Mrs. C.'s "unrelenting campaign" was to alienate E.C. from his brother in Israel, as well as to destroy the reputation of rabbis, other Jewish leaders, and members of the Jewish Community and, therefore, there were "profound, intense and irreconcilable differences between plaintiff and his parents."

Finally, the only specifics regarding the nature of the alleged abuse were provided by Mrs. C., who testified that the AIA considered home-schooling to be a form of abuse.

If correct, our conclusion as to what the underlying abuse case was really about and the dismissal of the first FN action explains why, despite the suggestion that respondent was an officious intermeddler, no one involved in the various aspects of the litigation was concerned enough to do anything about it, other than Mrs. C. and Judge Jones. Significantly, neither the DAG nor E.C.'s law guardian(s), nor even E.C.'s various guardians ad litem, objected to, or attempted to bar, respondent's participation in the first FN matter. Judge Grasso demonstrated no disapproval of respondent's participation in any of the proceedings involving E.C. We believe that the reasons are clear.

First, for all intents and purposes, E.C. had run away from home. Second, although a minor, E.C. was just shy of seventeen -- an age at which he could make a rational decision not to live with his family. Third, for most of the time, E.C. was living with people who welcomed him into their homes and provided him with the necessities of life, leading Judge Grasso to conclude that "there were no concerns about his health or welfare." Fourth, and most importantly, respondent was the only person who could communicate with E.C., which, under the circumstances, benefited all parties, to the extent that everyone, including

E.C.'s parents, knew that he was not missing or, worse, the victim of foul play.

We recognize that none of this is any comfort to E.C.'s parents, who lost all contact with their son, who evaded and avoided all attempts on the part of the State to force him to return home. Moreover, the fact that respondent's participation in the underlying litigation, however irregular, may have benefitted the parties, does not mean that he acted ethically. To the contrary, respondent did engage in unethical conduct, though not that specifically found by the special master.

The presenter and the special master placed great weight on E.C.'s inability, while he was under age eighteen, to contract with respondent to provide him with legal representation. Indeed, this was the foundation of the special master's decision. We cannot accept the proposition that it was legally impossible for respondent to represent E.C.

Although N.J.S.A. 9:17B-1a provides that an individual is not granted the right to contract until the age of eighteen, a contract entered into by a minor is not void, but rather, voidable, as respondent's counsel points out in his brief. N.J.S.A. 9:17B-1d. See also Notaro v. Notaro, 38 N.J. Super. 311, 314 (Ch. Div. 1955) ("an infant's contract is voidable at

his election"). For example, in the case of a promissory note given by an underage person, the minor's incapacity to contract "constitute[s] a bar to his liability unless he ratifies the obligation upon the attainder of full age." Bancredit, Inc. v. Bethea, 65 N.J. Super. 538, 547 (App. Div. 1961) (citing Notaro with approval).

"No formal act is necessary to constitute ratification." Notaro, supra, 38 N.J. Super. at 315. Rather, "[a]ny conduct" on the part of the minor, once he or she has reached the age of majority, that establishes the former minor's decision "that the transaction shall not be impeached is sufficient for this purpose." Ibid.

Based on the above, it is clear that a minor does not have the legal capacity to enter into a contract.[23] Equally clear, however, is the principle that a contract with a minor is not void ab initio. Rather, it is voidable, at the minor's election. Thus, respondent's assertion that his agreement to provide legal services to E.C. was merely voidable is accurate. Further, his assertion is correct that, prior to and after E.C. reached age

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[23] There are statutory exceptions to this principle, none of which are applicable here.

eighteen, E.C. did nothing to disaffirm their agreement. Thus, we dismiss all charges based on the perceived impossibility of respondent's representation of E.C., namely, it would appear, RPC 3.3(a)(1), RPC 4.1(a)(1), and RPC 8.4(d). The analysis does not end here, however.

The contract for legal services between respondent and E.C. involved issues of child abuse and custody. As respondent's counsel notes, a child is entitled to legal representation in matters involving these issues. N.J.S.A. 9:6-8.21d and N.J.S.A. 9:6-8.23. The latter statute requires the appointment of a law guardian for a minor who is the subject of an abuse and neglect proceeding. A law guardian is an attorney who represents minors in alleged cases of child abuse or neglect and in termination of parental rights proceedings. N.J.S.A. 9:6-8.21d.

Respondent filed a motion to be appointed E.C.'s law guardian, but that motion was denied. L.W., an attorney with the Office of the Public Defender, was appointed instead. Thus, although E.C. had counsel in the first FN matter, respondent was still permitted to participate as a friend of the court.

The complaint charged respondent with having violated RPC 3.3(a)(1), RPC 3.4(c), RPC 4.1(a)(1), and RPC 8.4(d), presumably based on his alleged refusal to disclose the whereabouts of

E.C., his address, and telephone number. However, the record lacks any evidence that respondent knew where E.C. was residing (when he was not living in a resource home) or that respondent had a direct method of contacting him.

Moreover, the record clearly demonstrates that respondent did whatever he could to facilitate E.C.'s participation in and cooperation with the proceedings, but that he could not force E.C. to do anything. Further, nothing in the record refutes respondent's testimony that he had provided to Judge Jones the various phone numbers used to contact and communicate with E.C. Thus, respondent cannot be found to have violated any RPCs based on his alleged refusal to reveal E.C.'s whereabouts to the LPD, to the Agency, or to any judge.

We view respondent's conduct, after July 30, 2010, when the litigation aspect of the first FN matter was dismissed on the merits, in a different light. After E.C. learned of the July 30, 2010, order, he ran away from the Agency-sanctioned resource home to a home that suited him. Respondent then began to actively represent him in other proceedings. As stated above, this was not a legal impossibility and, therefore, respondent's claims that he represented E.C. did not violate any RPC.

On August 3, 2010, respondent filed the emancipation complaint. He was able to do so, as E.C.'s lawyer. The complaint, however, did not name any defendant(s), and it was never served on E.C.'s parents. It appears that, based on this conduct, respondent was charged with having violated RPC 3.1, RPC 3.2, RPC 3.3(a)(1), and RPC 4.1(a)(1). These RPCs miss the mark.

On the surface, E.C.'s claim for emancipation was not frivolous. He was seventeen, his parents objected to the form of Judaism he wanted to practice, and he sought to be freed from their control so that he could do so without interference. Such is the purpose of a claim for emancipation.

Further, respondent's failure to name any defendants or to serve the complaint did not render the claim itself frivolous. Yet, by filing the complaint, without naming any defendants and without serving it on E.C.'s parents, respondent prejudiced the administration of justice, a violation of RPC 8.4(d), because Mr. and Mrs. C. were denied notice of the action and, thus, the opportunity to be heard. It matters not that they eventually learned, through other means, that the complaint had been filed.

We do not agree with respondent's counsel's position that respondent was not charged with having violated RPC 8.4(d) based on the filing of the emancipation complaint. The formal ethics

complaint alleged that respondent had "engaged in a course of conduct to frustrate, disobey, and ignore court orders," a violation of RPC 3.3, presumably (a)(1), RPC 4.1, presumably (a)(1), and RPC 8.4, presumably (d). We conclude that the emancipation action was a valid mechanism for achieving respondent's goal of preventing E.C.'s return to Mr. and Mrs. C.'s home. Unfortunately, respondent did not honor the fundamental principles of due process, that is, notice and the opportunity to be heard, by failing to serve the emancipation complaint on Mr. and Mrs. C. Judicial resources were wasted on this action, including a hearing at which respondent and E.C. failed to appear.

We also find that there was nothing frivolous about the replevin action, the purpose of which was to secure the return of E.C.'s passport, or even the voluntary dismissal of that action after E.C. was able to obtain another passport.

Similarly, the habeas corpus matter was not frivolous. At the time, E.C. was nineteen years old and under threat of arrest for not abiding by orders entered in matters that related to him when he was a minor. Because a minor is not automatically deemed emancipated on reaching the age of majority, respondent's filing

of the habeas corpus action represented a reasonable attempt to address a difficult issue.

There is the matter of the second FN action, however, which was filed by respondent instead of the Agency. Although respondent had the right to file that complaint, the claim was frivolous. New Jersey law as to what constitutes an abused child is clear. N.J.S.A. 9:6-8.9 defines an abused child as follows:

> "Abused child" means a child under the age of 18 years whose parent, guardian, or other person having his custody and control:
>
> a. Inflicts or allows to be inflicted upon such child physical injury by other than accidental means which causes or creates a substantial risk of death, or serious or protracted disfigurement, or protracted impairment of physical or emotional health or protracted loss or impairment of the function of any bodily organ;
>
> b. Creates or allows to be created a substantial or ongoing risk of physical injury to such child by other than accidental means which would be likely to cause death or serious or protracted disfigurement, or protracted loss or impairment of the function of any bodily organ; or
>
> c. Commits or allows to be committed an act of sexual abuse against the child;
>
> d. Or a child whose physical, mental, or emotional condition has been impaired or is in imminent danger of becoming impaired as the result of the failure of his parent

> or guardian, or such other person having his custody and control, to exercise a minimum degree of care (1) in supplying the child with adequate food, clothing, shelter, education, medical or surgical care though financially able to do so or though offered financial or other reasonable means to do so, or (2) in providing the child with proper supervision or guardianship, by unreasonably inflicting or allowing to be inflicted harm, or substantial risk thereof, including the infliction of excessive corporal punishment or using excessive physical restraint under circumstances which do not indicate that the child's behavior is harmful to himself, others or property; or by any other act of a similarly serious nature requiring the aid of the court;
>
> e. Or a child who has been willfully abandoned by his parent or guardian, or such other person having his custody and control;
>
> f. Or a child who is in an institution as defined in section 1 of P.L.1974, c. 119 (C. 9:6-8.21) and (1) has been so placed inappropriately for a continued period of time with the knowledge that the placement has resulted and may continue to result in harm to the child's mental or physical well-being or (2) has been willfully isolated from ordinary social contact under circumstances which indicate emotional or social deprivation.
>
> A child shall not be considered abused pursuant to subsection f. of this section if the acts or omissions described therein occur in a day school as defined in section 1 of P.L.1974, c. 119 (C. 9:6-8.21).

Based on the plain language of the above statute, as a matter of law, E.C.'s parents' failure or refusal to allow him

to practice or to accommodate the requirements of his religion did not render E.C. an abused child. Thus, respondent violated RPC 3.1 in instituting the second FN matter and he violated RPC 8.4(d) by failing to name the obvious defendants, E.C.'s parents, and serving them with the complaint, a clear attempt by respondent to deny them due process.

Similarly, we find that respondent's filing of the Tort Claims Act notice was frivolous. The allegations of abuse were determined to be unfounded. The allegations of "abuse," even if true, were not abuse, as a matter of law. E.C. was removed from Connecticut and returned to New Jersey under court order, not an ultra vires act on the part of government officials. Respondent, thus, again violated RPC 3.1 and RPC 8.4(d).

The issue of respondent's disqualification by Judge Jones on the ground that he had become a material witness presumably forms the basis for the RPC 3.7(a) charge. Yet, the portions of the transcript of the November 5, 2010, hearing reproduced in the record do not provide the basis for Judge Jones' determination that respondent had become a material witness.

There is a suggestion that Judge Jones' ruling was based on the belief that respondent knew where E.C. was located, but there is no evidence to support that finding. In the absence of

any hint as to how respondent had become a material witness, the record lacks clear and convincing evidence to sustain a finding that respondent violated RPC 3.7(a). Moreover, respondent was disqualified from representing E.C. in a case that was dismissed. This had no bearing on his ability to represent E.C. in other matters.

As to the failure-to-expedite litigation charge, nothing in the record supports a finding that respondent improperly interfered with the flow of the various cases. Thus, we dismiss that charge.

Finally, with respect to respondent's failure to turn over his file to the DEC, prior to the entry of the protective order in this matter, we note that he was not charged with having violated RPC 8.1(b). The DEC did not amend or seek leave to amend the complaint to include that charge. Thus, we cannot find that he violated the rule.

To conclude, respondent violated RPC 3.1 and RPC 8.4(d) by filing the second FN matter and the Tort Claims Act notice. He further violated RPC 8.4(d) by failing to name any defendant in the emancipation complaint and by failing to serve Mr. and Mrs. C. with a copy of that pleading, as well as the complaint in the second FN matter.

There remains for determination the appropriate quantum of discipline to impose on respondent for his violations of RPC 3.1 and RPC 8.4(d).

In cases involving violations of RPC 3.1 and RPC 8.4(d), the discipline imposed has ranged from an admonition to a suspension. See, e.g., In the Matter of Samuel A. Malat, DRB 05-315 (March 17, 2006) (admonition imposed on attorney who asserted frivolous state law claims (whistleblower) in one matter after having been sanctioned in another matter for asserting the same claims, which had already been deemed frivolous by the court; we found the attorney's conduct careless, rather than intentional; prior ethics history included two three-month suspensions and a reprimand); In the Matter of Alan Wasserman, DRB 94-228 (October 5, 1994) (admonition imposed on attorney with no disciplinary history who filed two frivolous lawsuits against former clients: one for fees, without first having advised the clients of their right to fee arbitration and, after that suit was dismissed, another suit for the same fees, albeit against insurance carriers, without notice to the former clients and without naming them as parties); In re Silverman, 179 N.J. 364 (2004) (reprimand imposed on attorney who, after his client had properly revoked a settlement in a "lemon law" case, sued the client for legal fees,

even though the settlement included legal fees and the client had been told that she would not be required to pay them; aggravating factors included the location of the suit (filed in Pennsylvania, even though the client lived in New Jersey and the car was purchased there) and the amount of damages sought); In re Kimm, 191 N.J. 552 (2007) (censure imposed on attorney who, in an effort to force the plaintiff to withdraw her claims in a Chancery Division suit, filed a civil RICO action against her, in violation of RPC 3.1 and RPC 8.4(d)); and In re Yacavino, 184 N.J. 389 (2005) (attorney suspended for six months for, among other things, repeatedly filing the same frivolous claims after the court dismissed them on the merits, failing to expedite litigation, and engaging in conduct prejudicial to the administration of justice by taxing the court's resources).

In determining the appropriate measure of discipline to impose in this case, we cannot overlook the importance, in our system of justice, of the zealous advocate. A lawyer must be free to bring to bear, in relation to his or her client's cause, all the creativity and vigor that he or she can muster. At the same time, however, the advocate's zeal is and must be tempered and circumscribed by the limits imposed by the Rules of Professional Conduct. The line between "zealous advocacy" and frivolous

pursuit of an action, claim, or defense may not always be a bright one and there may be close cases. This is not a close case, however.

There was no basis for the second FN matter. Mr. and Mrs. C.'s failure or refusal to accommodate E.C.'s desire to practice a particular form of Judaism, in their home, is not, even arguably, a form of child abuse under N.J.S.A. 9:6-8.9. For the same reason, the Tort Claims Act notice, which rested on the allegation that E.C. was not protected from his parents' abuse, was without basis.

In our view, the record does not support a finding that respondent's conduct was careless, as was Malat's. Every action taken by respondent was intentional and designed to free his client from the control of his parents. Although respondent filed the frivolous claims with intention, he did not exhibit the recalcitrance of the attorney in Yacavino, who repeatedly filed the same actions in defiance of court orders prohibiting him from doing so and engaged in other serious misconduct, such as presenting or threatening to present criminal charges to obtain an improper advantage in a civil matter. Given the highly-charged nature of the underlying litigation, the absence of any indication of venality on respondent's part, and what the special

master described as respondent's sincere belief that his conduct was within the bounds of propriety, a reprimand would not be inappropriate for his misconduct. There is, however, respondent's ethics history, which the special master did not consider in determining the recommended discipline.

We recognize that respondent's 1981 private reprimand was issued only four years after he was admitted to the bar. Yet, he not only ignored the lesson of that first disciplinary matter, but also openly defied our determination that his representation of Oches was unethical. By 1989, when he was reprimanded for continuing to represent Oches, despite the private reprimand, respondent had been practicing law for twelve years. He was hardly a neophyte, and his arrogance was duly noted by us. Likewise, respondent continues to exhibit a measure of hubris in his representation.

Certainly, the twenty-one years between the 1989 reprimand and respondent's conduct in representing E.C. is a significant passage of time, and, thus, we choose not to enhance the reprimand to a censure. We caution respondent, however, to exercise circumspection in his representation of future clients. However zealous and well-intentioned respondent may be, his lack

of discretion has cost the judicial system an enormous amount of resources over the years.

Members Gallipoli and Zmirich voted to impose a censure. Member Singer voted to impose an admonition. Member Rivera did not participate.

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
Bonnie C. Frost, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Larry S. Loigman
Docket No. DRB 15-066

Argued: June 18, 2015

Decided: October 27, 2015

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Censure	Admonition	Did not participate
Frost			X			
Baugh			X			
Clark			X			
Gallipoli				X		
Hoberman			X			
Rivera						X
Singer					X	
Zmirich				X		
Total:			4	2	1	1

Ellen A. Brodsky
Chief Counsel