Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-164
District Docket No. XIV-2022-0244E

In the Matter of	:
Robert Captain Leite	:
An Attorney at Law	:

Decision

Argued: November 17, 2022

Decided: February 24, 2023

Michael Fogler appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-14(a), following the Supreme Court of Pennsylvania's issuance of a December 17, 2021 order

disbarring respondent, on consent, following his voluntary resignation from the bar in that jurisdiction.

The OAE asserted that, in the Pennsylvania matter, respondent was determined to have violated the equivalents of New Jersey RPC 1.1(a) (three instances – gross neglect); RPC 1.1(b) (three instances – pattern of neglect); RPC 1.2(d) (counsel or assist a client in illegal, criminal, or fraudulent conduct); RPC 1.3 (three instances – lack of diligence); RPC 1.4(b) (two instances – failure to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information); RPC 1.4(c) (two instances – failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); RPC 1.5(b) (two instances – failure to set forth in writing the basis or rate of the legal fee); RPC 1.16(d) (three instances – failure to take reasonably practicable steps to protect a client's interest upon termination of representation); RPC 3.3(a) (1) (false statement of material fact to a tribunal); RPC 4.1(a)(1) (two instances – false statement of material fact or law to a third person – two instances); RPC 4.1(a)(2) (failure to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client); RPC 5.5(a)(1) (forty-five instances – unauthorized practice of law); RPC 8.4(a) (assistance or inducement of another to violate the RPCs, or to do so through

the acts of another); RPC 8.4(b) (commission of a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer in other respects); RPC 8.4(c) (four instances – conduct involving dishonestly, fraud, deceit and misrepresentation); and RPC 8.4(d) (two instances – conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to grant the OAE's motion and conclude that a one-year suspension, with conditions, is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 2012, the New York bar in 2010, and the Pennsylvania bar in 2011. During the relevant period, he maintained a practice of law in Philadelphia, Pennsylvania.

On June 12, 2018, respondent was reprimanded, by consent, for violating RPC 1.4(b); RPC 1.4(c); RPC 1.16(c) (failure to comply with applicable law requiring notice to or permission of a tribunal when terminating representation); and RPC 1.16(d) in connection with his representation of clients in litigation against their mortgage lender. Specifically, respondent failed to respond to a motion to dismiss, resulting in the dismissal of his clients' lawsuit. He then failed to respond to his clients' repeated requests for information. We considered, in mitigation, respondent's lack of prior discipline, his inexperience at the time of the misconduct, and his entry into a disciplinary stipulation. In the

Matter of Robert Captain Leite, DRB 18-074 (May 23, 2018), so ordered, 233 N.J. 460 (2018).

Effective October 5, 2020, the Court declared respondent administratively ineligible to practice law for his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (the Fund), as R. 1:28-2 requires.

Effective October 18, 2021, the Court declared respondent administratively ineligible to practice law for his failure to comply with continuing legal education (CLE) requirements. Respondent remains administratively ineligible, on both bases, to date.

On May 16, 2019, the Supreme Court of New York, Appellate Division, Third Department, suspended respondent for his failure to comply with attorney registration obligations for the last two consecutive biennial registration periods. Matter of Attorneys in Violation of Judiciary Law § 468-a., 172 A.D.3d 1706 (N.Y. App. Div. 2019).

On November 27, 2019, the Supreme Court of New York, Appellate Division, Third Department, censured respondent, on a motion for reciprocal discipline stemming from his 2018 misconduct in New Jersey. Matter of Leite-Young, 177 A.D.3d 1240 (N.Y. App. Div. 2019).

Effective September 11, 2020, the Supreme Court of Pennsylvania declared respondent administratively suspended for his failure to comply with

annual attorney registration obligations in that jurisdiction. In re Admin. Suspension Pursuant to Rule 219 of the Pa Rules of Disciplinary Enf't, No. 53 ID (Pa. August 12, 2020).

We now turn to the facts of this matter.

In 2021, respondent was the subject of the equivalent of nine Pennsylvania disciplinary grievances, which were under investigation by the Pennsylvania Office of Disciplinary Counsel (the ODC) and alleged a wide variety of misconduct. During the course of those investigations, respondent informed the ODC that he suffered from alcoholism and substance abuse and, from January to March 2020, had been working with Lawyers Concerned for Lawyers Pennsylvania (LCLPA)[1] to get "back on track." After the onset of the pandemic, however, respondent began suffering from depression, was hospitalized, and, subsequently, entered an inpatient rehabilitation facility. On February 28, 2021, respondent was released from inpatient rehabilitation and, since that time, has been taking steps toward his continued recovery, including taking anti-depressants, attending group sessions, and undergoing intensive therapy.

[1] LCLPA is an independent, non-profit corporation run by judges and lawyers for the benefit of the Pennsylvania bench and bar. LCLPA provides confidential assistance to lawyers and judges struggling with their mental well-being, including drug and alcohol addiction. See About Us, Lawyers Concerned for Lawyers Pennsylvania, https://www.lclpa.org (last visited February 13, 2023).

Based upon the pendency of the nine disciplinary grievances, respondent's admitted rehabilitation efforts, and his acknowledgement that he was "not fit" to practice law, respondent and the ODC jointly agreed to seek his immediate temporary suspension. Accordingly, on March 18, 2021, respondent and the ODC filed a joint petition for respondent's emergency temporary suspension, pursuant to Pa. R.D.E. 208(f).[2] On April 5, 2021, the Supreme Court of Pennsylvania granted the petition and temporarily suspended respondent from the practice of law. Office of Disciplinary Counsel v. Leite-Young, 2021 Pa. LEXIS 4237 (2021).

Subsequently, on December 1, 2021, respondent filed his voluntary resignation from the Pennsylvania bar, pursuant to Pa. R.D.E. 215.[3] In his supporting verified statement, respondent based his resignation on his inability to successfully defend against three of the nine pending disciplinary grievances. Respondent attached to his resignation those three grievances, dated October 22,

[2] In support of his temporary suspension, respondent acknowledged that the disciplinary complaints alleged his "unauthorized practice of law, abandonment of client matters, mishandling of fees, and failure to refund unearned fees," and that he had failed to answer the ODC's requests for records and his position statement.

[3] Pa. R.D.E. 215, governing discipline by consent, provides that "an attorney who is the subject of an investigation into allegations of misconduct by the attorney may submit a resignation" as long as it is accompanied by a verified statement containing specific acknowledgments set forth by the Rule. The Pennsylvania Rule further provides that, upon the filing of the verified statement, the Supreme Court of Pennsylvania will enter an order disbarring the attorney on consent.

December 10, 2020, and January 21, 2021, as well as the March 16, 2021 joint petition for his temporary suspension. In his resignation, respondent admitted, as Pa. R.D.E. 215(a) requires, that the "material facts upon which the allegations contained in [those three grievances] are based, are true," and that his resignation was submitted "because he [knew] he could not successfully defend against the charges of professional misconduct."

On December 17, 2021, having considered respondent's verified statement of resignation, the Pennsylvania Supreme Court disbarred respondent on consent. Office of Disciplinary Counsel v. Leite-Young, 2021 Pa. LEXIS 4237 (2021). The Pennsylvania Supreme Court's order expressly referenced respondent's verified statement in support of his resignation, wherein he admitted to certain, but not all, pending, charged misconduct; however, the order does not identify the Pennsylvania Rules of Professional Conduct implicated by respondent's admitted misconduct.

Respondent failed to notify the OAE of his temporary suspension, as R. 1:20-14(a)(1) requires. Thus, on June 2, 2021, the OAE notified respondent that it had docketed this matter for investigation and directed respondent to keep the OAE apprised of the disposition of that matter. The record does not indicate whether respondent notified the OAE of his disbarment on consent in Pennsylvania, despite the OAE's request that he do so.

The facts underpinning respondent's misconduct in the three client matters that resulted in his resignation and disbarment in Pennsylvania are as follows.

The David S. Cleary, Sr. Matter

David S. Cleary, Sr. and his estranged wife, Patricia Cleary Goldstein, jointly owned residential real estate located in Philadelphia, Pennsylvania (the Philadelphia property). On May 21, 2009, in connection with a foreclosure action filed by the then-mortgage holder, judgment was entered against Cleary and Goldstein, in the amount of $152,759.32, plus interest, attorneys' fees, and costs.[4]

Nine years later, on April 30, 2018, David Cleary retained respondent to represent him in connection with the mortgage foreclosure judgment. On December 12, 2018, in response to the current mortgage holder's filing of a praecipe to issue a writ of execution for the Philadelphia property, the court scheduled a sheriff's sale for March 5, 2019.[5]

[4] The facts underlying the Cleary matter were derived from the ODC's October 22, 2020 letter to respondent, which facts respondent admitted were true in connection with his resignation from the Pennsylvania bar.

[5] A praecipe is a legal document that requests the court issue a writ or order. The record did not include the underlying litigation documents. An online search of publicly available records provided access to federal bankruptcy filings, but not court records, in connection with the foreclosure proceeding pending in the Philadelphia Court of Common Pleas.

Despite having received notice of the sheriff's sale, respondent neither filed a motion to stay the sheriff's sale nor appeared at the sale. Instead, on March 4, 2019, the eve of the sheriff's sale, respondent filed on Cleary's behalf a Chapter 13 bankruptcy petition in the United States District Court for the Eastern District of Pennsylvania.[6] See In the Matter of David S. Cleary, Sr., Docket No. 19-11344 (Bankr. E.D. Pa.), Voluntary Petition for Individuals Filing for Bankruptcy, ECF No. 1. In support, respondent identified the Philadelphia property, valued at $193,200, as an asset of Cleary's estate. Respondent admitted that he had intentionally done so without Goldstein's knowledge or consent.

On March 5, 2019, Clayton Capital, LLC purchased the Philadelphia property for $150,000.

Subsequently, on March 22, 2019, respondent filed a motion to set aside the sheriff's sale on behalf of Cleary and Goldstein, the latter of whom he did not represent. Respondent served the motion on counsel for Clayton Capital and, in his accompanying March 22, 2019 e-mail, explained that he had filed the motion because Goldstein "was never notified that her husband took the home

[6] A Chapter 13 bankruptcy enables a petitioner with regular income to develop a repayment plan for all or some of their debt. Moreover, it provides the petitioner the opportunity to prevent foreclosure proceedings against their residence. See Chapter 13 - Bankruptcy Basics, United States Courts, https://www.uscourts.gov/services-forms/bankruptcy/bankruptcy-basics/chapter-13-bankruptcy-basics (last visited February 13, 2023).

off the market and put it into Chapter 13 Bankruptcy without her authorization."[7]

Respondent further stated in his e-mail that he did not disclose her ownership interest in the Philadelphia property based upon Cleary's instruction to him:

> Patricia Cleary (Goldstein) was never notified that her husband took the home off the market and put it into Chapter 13 [b]ankruptcy without her authorization. In fact Mr. Cleary told me not to inform her and I never got authorization to place her property into the Chapter 13 [b]ankruptcy and never notified her the house was taken off the market …. Ms. Cleary was never made aware of any sale or bankruptcy until the night before the sheriff sale ….

[7] The information gleaned from the attached e-mail is included here because the OAE relied upon it, and four text messages, in support of its RPC 8.4(b) charge. However, as discussed herein, we accord little weight to these documents. Specifically, respondent's March 22, 2019 e-mail was attached to the ODC's October 22, 2020 letter, along with four text messages purportedly exchanged between respondent and Goldstein. The ODC informed respondent it had received the documents in the course of its investigation and directed respondent, within thirty days, to "please identify the author and the recipient of each of the attached correspondence."

The ODC's letter did not otherwise reference the content or substance of these documents; nor did the ODC expressly or impliedly incorporate these documents, or the substance contained therein, into the factual allegations set forth in the letter, which respondent admitted. The ODC's letter did not address respondent's rationale or motive for not identifying Goldstein's ownership interest in the Philadelphia property on Cleary's Chapter 13 petition. Nor did the letter articulate any financial benefit sought or achieved, on Cleary's or respondent's behalf, by falsely including the full value of the Philadelphia property on Cleary's Chapter 13 petition.

Rather, the ODC's letter simply alleged that respondent had filed the Chapter 13 petition on behalf of Cleary and, without Goldstein's consent, had knowingly and intentionally included the Philadelphia property as an asset.

Respondent continued, stating that he was responsible for the "fraud upon her which was initiated by her estranged husband," and that Goldstein was entitled to $70,000 for her share of the equity in the home. On the same date, respondent forwarded to Goldstein his March 22, 2019 e-mail to counsel for Clayton Capital, stating "I want to work this out without involving the bar but I am currently not insured. I will get you your money no [matter] what I have to do this is on me. I will take out a loan if need be."

According to the OAE, one day later, on March 23, 2019, Goldstein purportedly sent a text message to respondent, stating:

> You put my property in BK w/o my consent, told [Cleary] he could withdraw the bankruptcy to hide his 25000 from trustee, refiled the BK knowing automatic stay would not apply, never filed a request for a stay, did not file until the night before the sheriff sale last minute, did not tell the sheriff/opposing counsel of the BK, did not file the cert of credit counseling, you did not show at the sheriff and you expect me to believe that you are not conspiring with your friends who bought my property at sheriff sale. For christ sake you never told me my property was in bankruptcy that I did not authorize. Now you asking me to let you fix it and not report it. No attorney working for his clients forgets these things.[8]

[8] As stated, we accord little weight to the substance of these text messages because they were not expressly or impliedly incorporated in the ODC's October 22, 2020 letter.

Respondent replied, stating "Yeah I f***** up when I missed that hearing because I had the wrong date."[9]

On July 15, 2019, Clayton Capital filed a complaint in the Court of Common Pleas of Philadelphia County against Cleary, Goldstein, and all unknown tenants and occupants of the Philadelphia property, seeking their eviction, captioned Clayton Capital, LLC v. Cleary, et al, Docket No. 1572 (Court of Common Pleas). On August 12, 2019, respondent entered his appearance in this litigation on behalf of Cleary and all unknown tenants of the property.

On October 2, 2019, two months after having entered his appearance, respondent filed a motion to withdraw as counsel because Cleary had terminated him. In response, the court issued a Rule to Show Cause with a November 26, 2019 hearing date, at which time respondent was ordered to show cause why he should be permitted to withdraw as counsel. Respondent received notice of the hearing. The hearing was rescheduled, for reasons not evident in the record, for

[9] Two additional text messages from respondent to Goldstein were attached to the OBC's October 22, 2020 letter. The first text contained a handwritten notation, "Text from Robert 3/31/20" and reiterated his promise to Goldstein to "fix this," that he was "[t]rying to set aside the sale now," and would get her the equity ($70,000) to which she was entitled "even if I have to pay you something every month myself." Respondent continued, stating that he knew she possessed pictures of his drug use in his office and asked her "not to report it to the bar." The second text message contained a handwritten notation "Text from Robert 7/23/20" and stated he was still trying to ger her money. "I know this is not fair to you and the kids you needs [sic] the money from your house and I am trying to get you something."

January 21, 2020 and, again, respondent was properly noticed.

On January 21, 2020, after respondent failed to appear, the court issued another Rule to Show Cause why respondent should not be sanctioned. The hearing was scheduled for March 17, 2020. Although the record does not disclose the outcome of this hearing, on June 26, 2020, respondent filed a joint stipulation in which he stipulated to his continued representation of Cleary and his status as counsel of record in the Clayton Capital civil case.

On August 12, 2020, the Supreme Court of Pennsylvania administratively suspended respondent, effective September 11, 2020, for his failure to pay the required annual registration fee, in violation of Rule 219 of the Pennsylvania Rules of Disciplinary Enforcement (Pa.R.D.E.). On the same date, Suzanne E. Price, the attorney registrar for the Commonwealth of Pennsylvania, provided respondent with a copy of the suspension order, and informed him that that he was required to comply with Pa. R.D.E. 217and D. Bd. Rule 91.91 –91.99.[10] Respondent admitted that he received Price's letter with the enclosed suspension order.

Following his administrative suspension, respondent failed to notify opposing counsel or the trial judge in the Clayton Capital litigation, and failed

[10] Like R. 1:20-20, Pa. R.D.E. 217 and Pa. D. Bd. Rules 91.91 – 91.99 govern the steps an attorney must take following disbarment; suspension; administrative suspension; or transfer to inactive status.

to file a verified statement of compliance with the Pennsylvania Disciplinary Board, as Pa. R.D.E. 217 requires. Further, respondent failed to withdraw from his representation of Cleary, thereby engaging in the unauthorized practice of law.

Based on the foregoing misconduct, the ODC alleged that respondent had violated the following Pennsylvania Rules of Professional Conduct and Rules of Disciplinary Enforcement: Pa. RPC 1.1; Pa. RPC 1.3; Pa. RPC 1.16(a)(1); Pa. RPC 3.3(a)(1); Pa. RPC 4.1(a); Pa. RPC 5.5(a); Pa. RPC 8.4(b); Pa. RPC 8.4(c); and Pa. RPC 8.4(d), Pa. R.D.E. 203(b)(3), Pa. R.D.E. 217(b), (c)(2), (c)(3), (e)(1), and (j)(4)(ii-vi).

Specifically, respondent admitted that he failed to act with competence or diligence by failing to file a motion to stay the sheriff's sale or appearing at the sheriff's sale. Further, respondent admitted that, "[w]ithout Goldstein's knowledge or consent," he "knowingly and intentionally listed [the Philadelphia property] as an asset of Cleary's bankruptcy estate." Respondent also admitted that, by "falsely listing [the Philadelphia property] as Cleary's asset," he "knowingly made a false statement of material fact to a tribunal;" "knowingly made a false statement of material fact to a third person;" "engaged in conduct involving deceit and misrepresentation;" and "engaged in conduct prejudicial to the administration of justice." Respondent further admitted that, by filing a

motion to set aside the sheriff's sale on behalf of Goldstein, whom he did not represent, he engaged in conduct involving deceit and misrepresentation; made a material misrepresentation of fact to a tribunal; made a material misrepresentation to a third party; and engaged in conduct prejudicial to the administration of justice. Finally, respondent admitted that he had engaged in the unauthorized practice of law in connection with his continued representation of Cleary, following his September 11, 2020 administrative suspension.

The Michael and Maurice Wilkins Matter

On May 8, 2020, Catherine Gethers retained respondent to represent her two sons, Michael and Maurice Wilkins, in connection with post-conviction criminal proceedings following their 2015 convictions for murder, kidnapping, and related charges.[11] Gethers agreed to pay respondent $4,250 for the representation, although the terms of the agreement, including the basis or rate of respondent's fee, were not reduced to writing.

On May 8, 2020, Gethers paid respondent $750. As a receipt for the payment, respondent provided her with a "payment statement," signed by him

[11] The facts underlying the Gethers/Wilkins matters were derived from the OBC's January 21, 2021 letter to respondent, which respondent admitted were true in connection with his resignation from the Pennsylvania bar.

and noting that the payment was for representation of Maurice Wilkins in his "criminal matter." Gethers also signed the payment statement. On June 11, 2020, respondent received a $3,500 cashier's check from Gethers with a notation "Maurice and Michael Wilkins." Respondent again provided Gethers with a signed payment statement that, according to the ODC, stated:

> a. Maurice Wilkins, CP-06-CR-0003314-2103, "Legal Representation/-Criminal Matter" for [respondent's] filing a "Motion for New Trial-Counsel misconduct;"
>
> b. Michael Wilkins, "Legal Representation/-Criminal Matter" for [respondent's] filing a "1983 Civil Rights/Lack of Care claim;" and
>
> c. [respondent's] handwritten notation, "paid in full."[12]

Gethers also signed the second payment statement.

Respondent failed to deposit the $3,500 cashier's check in a client trust account to be withdrawn only as fees were earned or expenses incurred, as required by Pennsylvania's Rules of Professional Conduct. Further, respondent failed to obtain Gether's written consent to permit him to deposit the retainer in an account other than a trust account.[13]

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[12] The payment statements were not included as part of the record.

[13] In Pennsylvania, unlike in New Jersey, a lawyer is required to deposit in their trust account any legal fees or expenses that have been paid in advance, "to be withdrawn by the lawyer only as fees are earned and expenses incurred, unless the client gives informed consent,

(footnote cont'd on next page)

Thereafter, respondent did not perform any legal work on behalf of the Wilkins brothers. Respondent failed to file a motion for a new trial on Maurice Wilkins's behalf or a civil rights complaint on Michael Wilkins's behalf. Despite having not prepared or filed the required documents, respondent admittedly told Gethers that he had performed that legal work and that his secretary had filed documents with the court.

Following his September 11, 2020 administrative suspension in Pennsylvania, respondent failed to inform Gethers or the Wilkins brothers that he had been suspended; failed to withdraw from the representations; and failed to refund any unearned portion of the fee.

Subsequently, on November 11, 2020, Maurice Wilkins contacted the court and learned that respondent had not filed a motion for a new trial on his behalf, and that respondent had been administratively suspended. Thereafter, Gethers repeatedly called respondent on his cellular telephone and requested a refund of her money. Respondent failed to return Gether's telephone calls and failed to refund the fee.

On December 12, 2020, respondent disbursed a check, payable to Gethers, in the amount of $2,750, with a handwritten notation "Refund Wilkins." The

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confirmed in writing, to the handling of fees and expenses in a different manner." Pa. RPC 1.15(i).

check was drawn on a Bank of America account, an account respondent had not identified as an operating account on his 2019 – 2020 Pennsylvania administrative change in status form. When Gethers attempted to deposit the check, it was returned for insufficient funds. The bank informed Gethers that respondent had been placed on the "bad check list." Respondent subsequently failed to reply to Gethers' daily telephone calls, in which she requested a refund of the unearned fees.

As a result of the foregoing misconduct, the ODC alleged that respondent had violated the following Pennsylvania Rules of Professional Conduct: Pa. RPC 1.1; Pa. RPC 1.3; Pa. RPC 1.4(a)(3); Pa. RPC 1.4(a)(4); Pa. RPC 1.4(b); Pa. RPC 1.5(b); Pa. RPC 1.15(b); Pa. RPC 1.15(e); Pa. RPC 1.15(i); Pa. RPC 1.16(d); Pa. RPC 5.5(a); Pa. RPC 8.4(c); Pa. R.D.E. 203(b)(3); Pa. R.D.E. 217(a), (c)(2), and (j)(4)(iv)-(vi).

In turn, respondent admitted that he failed to act with competence or diligence by failing to do any work on behalf of the Wilkins brothers, including the filing of a motion for new trial on behalf of Maurice, or a civil rights action on behalf of Michael, as he had agreed to do. Respondent admittedly failed to communicate with Gethers by failing to return her repeated telephone calls. Further, respondent admitted that he failed to provide Gethers with a written fee agreement. Respondent also admitted that he had engaged in deceit and

misrepresentation by (1) falsely informing Gethers that his secretary had filed the requested legal paperwork on behalf of her sons, and (2) falsely telling Maurice and Michael Wilkins he was handling their legal matters and had "filed paperwork for them." Moreover, following his administrative suspension, respondent admittedly failed to inform Gethers, Maurice Wilkins, or Michael Wilkins that he was no longer able to represent them; failed to withdraw from the representation; and failed to refund any unearned portion of his legal fee.

The Roosevelt Pierre Matter

On November 19, 2020, two months after his suspension, respondent, again, engaged in the unauthorized practice of law by agreeing to represent Roosevelt Pierre in connection with Pierre's arrest for aggravated indecent assault without consent and other related charges.[14] That same date, respondent appeared at a Philadelphia police department, in the 35th District, and informed a police officer that he represented Pierre. Despite knowing he was suspended from the practice of law in Pennsylvania, respondent requested to see his client and handed the police officer his 2019 – 2020 attorney registration card and his

[14] The facts underpinning the Pierre matter were derived from the ODC's December 10, 2020 letter to respondent, which facts respondent admitted were true in his resignation from the Pennsylvania bar.

driver's license. The police officer determined that respondent was administratively suspended and prohibited him from meeting with Pierre.

According to the ODC, on August 28, 2019, respondent also falsely identified his New York license as "inactive" rather than "suspended" when he submitted his 2019 – 2020 Pennsylvania administrative change in status form. Respondent's statement was false because his New York law license had been suspended, on May 16, 2019. Further, respondent admitted that he had failed to withdraw his appearance in cases where he was counsel of record and to cease engaging in the practice of law.

Based on the foregoing misconduct, the ODC alleged that respondent had violated the following Pennsylvania Rules of Professional Conduct and Rules of Disciplinary Enforcement: Pa. RPC 4.1(a); Pa. RPC 5.5(a); Pa. RPC 8.4(a); Pa. RPC 8.4(c); Pa. RPC 8.4(d); Pa. R.D.E. 203(b)(3); Pa. R.D.E. 217(a), (b), (c)(2), and (j)(4)(iii-vi).

Specifically, respondent admitted he had failed to withdraw his appearance in cases where he was counsel of record and failed to disengage from the practice of law. Respondent admittedly engaged in conduct involving fraud, deceit, and misrepresentation by telling the police officer he was Pierre's attorney when he knew he was administratively suspended and unable to represent him. Respondent admitted he had attempted to engage in the

authorized practice of law. Further, respondent's conduct was prejudicial to the administration of justice because he attempted to deceive police in order to gain access to a person in custody; the police devoted time checking his credentials prior to discovering his license had been suspended, thus, unnecessarily expended law enforcement resources.

The OAE urged us, in its written submission and during oral argument, to find that respondent's misconduct in Pennsylvania, to which he unequivocally admitted, violated the equivalents of New Jersey RPC 1.1(a) (three instances); RPC 1.1(b) (three instances); RPC 1.2(d); RPC 1.3 (three instances); RPC 1.4(b) (two instances); RPC 1.4(c) (two instances); RPC 1.5(b) (two instances); RPC 1.16(d) (three instances); RPC 3.3(a)(1); RPC 4.1(a)(1) (two instances); RPC 4.1(a)(2); RPC 5.5(a)(1) (forty-five instances); RPC 8.4(a); RPC 8.4(b); RPC 8.4(c) (four instances); and RPC 8.4(d) (two instances).

Specifically, the OAE asserted that respondent had engaged in gross neglect (RPC 1.1(a)) and failed to act with diligence (RPC 1.3) in the Cleary matter by failing to file a motion to stay the sheriff's sale or to appear at the sale. Respondent further violated these Rules in the Gethers/Wilkins matters by failing to perform any legal work on behalf of either Maurice or Michael Wilkins. The OAE charged respondent with three instances of having violated each Rule. Further, by committing gross neglect in three separate client matters,

the OAE asserted respondent had engaged in a pattern of neglect, in violation of RPC 1.1(b).

Respondent violated RPC 1.2(d), according to the OAE, by listing the Philadelphia property as Cleary's asset on the Chapter 13 petition at Cleary's directive, knowing this to be false. By doing so, respondent "assisted his client in the foregoing criminal/fraudulent conduct and/or the preparation of a written instrument in violation of RPC 1.2(d)."

Respondent failed to communicate and made false communications, in violation of RPC 1.4(b) and RPC 1.4(c), in the Gethers/Wilkins matters, by falsely stating that his secretary had filed the requested legal work; falsely informing Gethers he was handling her sons' matters; and failing to return Gethers repeated telephone calls. The OAE charged respondent with two instances of having violated each Rule. The OAE also asserted that respondent twice violated RPC 1.5(b) by failing to communicate the basis of his legal fee in writing "to the clients in Gethers or Wilkins."[15]

The OAE asserted that respondent violated RPC 1.16(d) by failing to refund to Gethers the unearned portion of his legal fee. Further, the OAE claimed

[15] Repeatedly in its brief, the OAE refers to the Gethers and Wilkins matters as if they are separate client matters. To be clear, Gethers retained respondent to represent her sons, Michael and Maurice Wilkins, who were incarcerated. Thus, although the scope of that representation contemplated respondent separately representing each Wilkins brother, it is not clear why the OAE asserted that respondent violated RPC 1.5(b) twice.

respondent further violated this Rule by abandoning and failing to protect his clients' interests in the "Goldstein, Gethers, and Wilkins" matters.

Respondent violated RPC 3.3(a)(1), according to the OAE, by filing Cleary's Chapter 13 bankruptcy petition and falsely stating that the Philadelphia property was an asset of the bankrupt estate, without Goldstein's knowledge or consent. According to the OAE, respondent's misconduct in this respect also violated RPC 4.1(a)(1) and RPC 4.1(a)(2), which prohibits a lawyer from knowingly making a false statement of material fact to a third person, although the OAE does not identify the third person to whom the false statement was made in this respect. The OAE asserted that respondent separately violated RPC 4.1(a)(1) when, in the Pierre matter, he misrepresented to the police officer his status as an attorney in good standing.

The OAE also charged respondent with having engaged in the unauthorized practice of law in forty-five instances, in violation of RPC 5.5(a)(1). In support, the OAE relied, in part, upon the ODC's February 11, 2021 Rule to Show Cause and its attachments.[16]

[16] As discussed below, the ODC's February 11, 2021 Rule to Show Cause and its attachments were not included as part of respondent's resignation from the Pennsylvania bar. Although the Pennsylvania Disciplinary Board, in response to the ODC's petition, issued an order to show cause why respondent should not be placed on temporary suspension, respondent consented to his temporary suspension prior to any substantive ruling on the petition. Thus, the factual allegations contained in the ODC's February 11, 2021 Rule to Show Cause were never adjudicated, stipulated to, or otherwise resolved. Although some of the same

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Respondent violated RPC 8.4(a), the OAE asserted, when he attempted to engage in the unauthorized practice of law in the Pierre matter by attempting to meet with his client who was in custody, despite his administrative suspension.

The OAE charged respondent with having violated RPC 8.4(b) by intentionally listing the Philadelphia property on Cleary's bankruptcy petition without Goldstein's knowledge or consent. According to the OAE, this misconduct constituted the federal crime of bankruptcy fraud, pursuant to 18 U.S.C. 157. Specifically, the OAE alleged:

> Respondent knew Ms. Goldstein owned half of the subject property but was instructed not to tell her anything about the bankruptcy by Mr. Cleary who was supplying Respondent with illicit drugs during the relevant period. This fraud also somehow set up the purchasing entity, with whom Respondent was colluding, to purchase the subject property at the Sheriff's Sale. While criminal fraud requires proof of "fraudulent intent," Respondent acknowledged this intent and the other elements of the subject fraud pursuant to his unconditional resignation, confirming the false listing would not have been possible without his deceit and misrepresentation. The proof, elicited from Respondent's own admissions, reveals that Respondent joined and participated in bankruptcy fraud in violation of 18 U.S.C. 157 and/or 18 U.S.C. 371.
>
> [OAEb22.][17]

allegations were included in the ODC's letters, to which respondent admitted, the specific instances of his unauthorized practice of law were not among his admissions.

[17] "OAEb" refers to the OAE's September 26, 2022 brief in support of its motion for reciprocal discipline.

Next, the OAE asserted respondent violated RPC 8.4(c) when, in the Gethers/Wilkins matters, he misrepresented to Gethers that his secretary had filed "the requested legal motions for her sons" and, further, when he told the Wilkins brothers that he had filed paperwork in furtherance of their claims. Respondent again violated this Rule when, in the Pierre matter, he attempted to meet with his client, despite knowing he was administratively suspended at the time. Respondent violated this Rule two additional instances, according to the OAE, in the Cleary matter, by falsely stating on the bankruptcy petition that the Philadelphia property was an asset of the Cleary estate and, further, when he filed a motion to set aside the sheriff's sale on Goldstein's behalf, despite not representing her.

Last, the OAE asserted that respondent engaged in misconduct prejudicial to the administration of justice, in violation of RPC 8.4(d), when he attempted to gain access to Pierre, who was in custody, despite his suspended status. His misconduct required law enforcement to unnecessarily expend resources to confirm his standing with the bar. Respondent again violated this Rule when he attempted to solicit, as a condition of settlement of an underlying dispute in the Cleary matter, that Goldstein not file an ethics grievance against him.

The OAE acknowledged that the majority of respondent's misconduct, when viewed in isolation, ordinarily would be met with discipline ranging from

an admonition to a term of suspension. In determining that respondent's misconduct warranted disbarment, however, the OAE focused on what it characterized as respondent's most egregious behavior – namely, having committed the crime of bankruptcy fraud and having abandoned clients.

In support of disbarment for his violation of RPC 8.4(b), premised upon having committed bankruptcy fraud, the OAE cited disciplinary precedent in which attorneys convicted of crimes involving financial crimes and fraud received discipline ranging from a lengthy term of suspension to disbarment.

The OAE also cited cases, including In re Quatrella, 237 N.J. 402 (2019), and In re Marino, 217 N.J. 351 (2014), where attorneys were disbarred for crimes evidencing a lack of moral fiber, which the OAE asserted was akin to respondent's misconduct in this matter.

The OAE emphasized that respondent's misconduct, as evidenced by his unconditional resignation, exhibited the aggravating factors enumerated by the Court in In re Goldberg, 142 N.J. 557, 567 (1995), mandating his disbarment. Specifically, the OAE asserted that:

> Pursuant to his unconditional resignation, Respondent confirmed he coordinated the fraud with the purchasing entity and Mr. Cleary for at least one year at Ms. Goldstein's expense, for the benefit of at least the illicit drugs Mr. Cleary was providing, which would have been impossible without his legal skills, satisfying the enumerated Goldberg factors and warranting disbarment. Respondent's misconduct involved all the

> aggravating factors enumerated by the Court in Goldberg and, thus, warrants his disbarment. Respondent intentionally abused both his position of trust and his status as an attorney to perpetrate the protracted fraudulent scheme for his own, personal benefit.
>
> [OAEb45.]

Further, citing In re Moore, 143 N.J. 415 (1996), the OAE argued that disbarment was warranted by virtue of respondent's "pattern of accepting legal fees from clients and failing to provide the promised services" (OAEb45-48). The OAE contended that respondent's failure to return the unearned portion of his fee to Gethers was akin to theft. See also In re Cohen, 120 N.J. 304 (1990).

In aggravation, the OAE stated that respondent's prior New Jersey discipline, for which he received a reprimand, "parallels the misconduct" in the instant matter and, citing In re Kantor, 180 N.J. 226 (2004), urged enhanced discipline. In further aggravation, respondent failed to notify the OAE of his Pennsylvania discipline. In mitigation, the OAE noted respondent's efforts to address his addiction, but stated "the concerns raised by this case are greater than whether Respondent is capable of rehabilitation."

On November 15, 2022, respondent filed a belated objection to the OAE's motion, asserting that the OAE's motion was "rampant with false and calculated misstatements." By way example, respondent stated he never represented Goldstein, despite the OAE's allegation to the contrary. Similarly, he never

represented Gethers; only her two sons. Respondent also claimed that the OAE's motion sought more drastic punishment than what was meted out in Pennsylvania because, unlike New Jersey, his disbarment in Pennsylvania was not permanent.

During oral argument before us, respondent candidly admitted to his professional failures and misconduct. He urged us, however, to impose discipline less than disbarment. Although respondent readily admitted that the New Jersey reciprocal proceedings were premised upon his consent to disbarment in Pennsylvania, he emphasized that, unlike New Jersey, disbarment in Pennsylvania is not permanent. With the benefit of hindsight, respondent stated he should have taken more time to consider the long-lasting effects that his consent to disbarment in Pennsylvania would have; however, at the time, he believed himself deserving of discipline and his primary focus was on his recovery. Respondent also informed us that he has been in contact with Gethers and has taken affirmative steps to begin making her financially whole.

Based upon his continued sobriety and contrition, respondent urged us to impose a term of suspension. He emphasized that he has taken the disciplinary proceedings seriously and, as such, never sought to rectify his administrative ineligibility status in this state, pending resolution of all disciplinary proceedings. Respondent represented that he has learned from his mistakes and,

in the future, would like to return to the practice of law. Respondent suggested an indefinite suspension, rather than disbarment, as an appropriate sanction for his misconduct.

Following our review of the record, we determine to grant the OAE's motion for reciprocal discipline and to recommend the imposition of discipline for some of the Rules of Professional Conduct identified by the OAE.

Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

In Pennsylvania, the standard of proof in attorney disciplinary proceedings is that the "[e]vidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof . . . is clear and satisfactory." Office of Disciplinary Counsel v. Kissel, 442 A.2d 217 (Pa. 1982) (citing In re Berland, 328 A.2d 471 (Pa. 1974)). Moreover, "[t]he conduct may be proven solely by circumstantial evidence." Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981) (citations omitted).

Notably, in Pennsylvania, in connection with his resignation, respondent admitted both certain facts and his misconduct, and consented to his disbarment.

Reciprocal discipline proceedings in New Jersey are governed by R. 1:20-14(a)(4), which provides in pertinent part:

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
>
> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
>
> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

In our view, subsection (E) applies in this matter because the unethical conduct established by this record warrants substantially different discipline. Specifically, pursuant to New Jersey disciplinary precedent, respondent's myriad violations of the Rules of Professional Conduct, although serious, warrant the imposition of a term of suspension, and not a permanent bar on his

ability to practice law in New Jersey.

As a threshold issue, in his verified resignation and resulting disbarment, respondent only admitted to the facts underlying three of the nine pending grievances against him. Moreover, the Court has made clear that it will evaluate our decision to grant a motion for reciprocal discipline under R. 1:20-16(c) to determine whether clear and convincing evidence supports each ethics violation upon which we recommend discipline. In re Barrett, 238 N.J. 517, 521-522 (2019). In so doing, the Court in Barrett characterized reciprocal discipline as "the process by which New Jersey applies its ethics rules to an attorney admitted in New Jersey, following the imposition of discipline in an ethics proceeding conducted by a sister jurisdiction." Id. at 522 (quoting In re Sigman, 220 N.J. 141, 153 (2014)). Our review, like that of the Court, therefore "involves 'a limited inquiry, substantially derived from and reliant on the foreign jurisdiction's disciplinary proceedings.'" Ibid.

Consistent with that body of law, we have, on some occasions, declined to find particular Rules of Professional Conduct charged by the OAE in motions. See, e.g., In the Matter of Richard C. Gordon, DRB 20-209 (April 1, 2021), at 19-20 (granting the OAE's motion for reciprocal discipline but declining to find a violation pursuant to RPC 8.4(d) where the underlying facts did not support the charge), so ordered, 249 N.J. 15 (2021); In the Matter of Amanda J.

Iannuzzelli, DRB 20-129 (April 1, 2021), at 27 (granting the OAE's motion for reciprocal discipline but declining to find violations pursuant to RPC 3.1 or RPC 1.16(a)(2) based upon insufficient evidence in the record), so ordered, 249 N.J. 12 (2021) (imposing three-year suspension rather than disbarment); In the Matter of Steven Jeffrey Kwestel, DRB 20-016 (December 9, 2020), at 9 (granting the OAE's motion for reciprocal discipline but declining to find violations pursuant to RPC 1.1(a), RPC 5.3(c)(1), and RPC 8.4(c) due to the absence of factual support in the record), so ordered, 245 N.J. 493 (2021); In the Matter of Joseph Vaccaro, DRB 20-012 (December 9, 2020), at 7 (granting the OAE's motion for reciprocal discipline but declining to find violations pursuant to RPC 1.1(a) or RPC 8.4(d) based upon insufficient evidence in the record), so ordered, 245 N.J. 492 (2021).

Here, we determine that the record contains clear and convincing evidence to support some, but not all, of the violations charged by the OAE. Specifically, we conclude that respondent violated RPC 1.1(a) (three instances); RPC 1.1(b); RPC 1.3 (three instances); RPC 1.4(b); RPC 1.4(c); RPC 1.5(b); RPC 1.16(d); RPC 4.1(a)(1); RPC 5.5(a)(1) (three instances); RPC 8.4(c) (three instances); and RPC 8.4(d). We determine, however, that our "limited inquiry, substantially derived from and reliant on" Pennsylvania's disciplinary proceedings, leaves us unable to conclude that respondent violated RPC 1.2(d); RPC 3.3(a)(1); RPC

4.1(a)(2); RPC 8.4(a); and RPC 8.4(b), as the OAE alleged. We, therefore, decline to find those violations.

Specifically, in the Cleary matter, Cleary retained respondent to represent him in connection with a foreclosure judgment regarding the Philadelphia property. Despite having received notice of the impending sheriff's sale of the property, respondent admittedly failed to file a motion to stay the sale. Respondent also failed to appear at the sale on his client's behalf and, ultimately, the property was sold. Respondent, thus, committed gross neglect and lacked diligence, in violation of RPC 1.1(a) and RPC 1.3.

Rather than address the sheriff's sale, respondent filed for Chapter 13 protection on Cleary's behalf, in the United States District Court for the Eastern District of Pennsylvania. Despite knowing that the Philadelphia property was jointly owned by Cleary and his estranged wife, Goldstein, respondent admitted that he intentionally listed the property as an asset of Cleary's bankruptcy estate, without Goldstein's knowledge or consent. As he admitted to us during oral argument, respondent's dishonest attempt to structure the bankruptcy petition in this manner, at his client's insistence, deprived Goldstein of information to which she was entitled. Thus, we conclude that the evidence clearly and convincingly establishes that respondent acted with dishonesty, in violation of RPC 8.4(c). Further, his misconduct was prejudicial to the administration of

justice, in violation of RPC 8.4(d).

Respondent also engaged in the unauthorized practice of law, in violation of RPC 5.5(a)(1) when, following his September 11, 2020 administrative suspension in Pennsylvania, he continued to represent Cleary in the Clayton Capital litigation in the Philadelphia Court of Common Pleas.

However, the Pennsylvania record, upon which we rely, does not provide clear and conclusive evidence that respondent's admitted misconduct further violated RPC 1.2(d); RPC 3.3(a)(1); RPC 4.1(a)(1); RPC 4.1(a)(2); or RPC 8.4(b).

RPC 3.3(a)(1) prohibits an attorney from knowingly making a false statement of material fact or law to a tribunal. Although the OAE asserted that respondent violated this Rule by "falsely listing the subject property as Cleary's asset," it is not clear to us what provision of the bankruptcy code or bankruptcy procedure respondent ran afoul of when he identified the jointly owned property as an asset of the bankruptcy estate. To the contrary, the bankruptcy petition directed respondent to disclose all property in which Cleary held any legal or equitable interest, which he did by listing the Philadelphia property and its value. Further, in response to the petition's question "[w]ho has an interest in the property?," respondent replied by checking the box indicating "[a]t least one of the debtors and another."

Respondent's dishonest attempt to structure the petition, at the insistence of his client, in a way that was potentially harmful to Cleary's interest does not, in our view, rise to a lack of candor toward the tribunal. The OAE, in response to our questioning at oral argument, was unable to provide us with any further explanation to support its charge in this respect. Thus, on the limited record before us, we are unable to conclude that respondent violated RPC 3.3(a)(1) by identifying the Philadelphia property as an asset of the bankruptcy estate. Further, respondent's bare admission, by virtue of his resignation from the Pennsylvania bar, that he knowingly made a false statement of material fact or law to a tribunal, is insufficient to support a violation this Rule in our jurisdiction.

Similarly, RPC 4.1(a)(1) provides that a lawyer shall not knowingly "make a false statement of material fact to a third person." RPC 4.1(a)(2) provides that a lawyer shall not knowingly "fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client." Again, respondent's admission that he knowingly made a false statement of material fact to a third person in this respect, standing alone, is insufficient to support a violation pursuant to either subsection of the New Jersey Rule.

Next, we determine that the Pennsylvania record does not establish, by

clear and convincing evidence, that respondent violated RPC 8.4(b). That Rule prohibits an attorney from committing "a criminal act that reflects adversely on a lawyer's honesty, trustworthiness or fitness as a lawyer." Although a violation of this Rule may be found even in the absence of a criminal conviction, the evidence must nonetheless establish, clearly and convincingly, that respondent's misconduct constituted a criminal offense. See In re Gallo, 178 N.J. 115, 121 (2003) (the scope of disciplinary review is not restricted, even though the attorney was neither charged with nor convicted of a crime); In re McEnroe, 172 N.J. 324 (2002) (the attorney was found to have violated RPC 8.4(b), despite not having been charged with or found guilty of a criminal offense).

The OAE asserted that respondent's act of listing the Philadelphia property as an assert of Cleary's bankruptcy estate, without the knowledge or consent of Goldstein, who jointly owned the property, constituted a federal crime of bankruptcy fraud, contrary to 18 U.S.C. § 157. The limited evidence, however, does not support the OAE's charge in this respect.[18]

[18] The OAE asserted, in the alternative, that respondent's false statement constituted a conspiracy to commit bankruptcy fraud. 18 U.S.C. § 371, governing conspiracies to defraud the United States, provides:

> If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined under this title or imprisoned not

(footnote cont'd on next page)

18 U.S.C. § 157, governing bankruptcy fraud, provides, in relevant part:

> A person who, having devised or intending to devise a scheme or artifice to defraud and for the purpose of executing or concealing such a scheme or artifice or attempting to do so—
>
> (1) files a petition under title 11, including a fraudulent involuntary petition under section 303 of such title [11 USCS § 303];
>
> (2) files a document in a proceeding under title 11; or
>
> (3) makes a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding under title 11, at any time before or after the filing of the petition, or in relation to a proceeding falsely asserted to be pending under such title, shall be fined under this title, imprisoned not more than 5 years, or both.

Model criminal jury instructions explain the elements of this crime as follows:

> First, the defendant devised or intended to devise a scheme or plan to defraud;
>
> Second, the defendant acted with the intent to defraud;
>
> Third, the defendant's act was material; that is, it had a natural tendency to influence, or was capable of influencing the acts of an identifiable person, entity, or group; and
>
> Fourth, the defendant [filed a petition] [filed a

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more than five years, or both.

The OAE's allegation in this respect fails because the record evidence does not establish the crime of bankruptcy fraud.

> document in a proceeding] [made a false or fraudulent representation, claim, or promise concerning or in relation to a proceeding] under a Title 11 bankruptcy proceeding to carry out or attempt to carry out an essential part of the scheme.
>
> [Manual of Model Criminal Jury Instructions for the District Courts of the Ninth Circuit, 15.46 (2022).][19]

Thus, consistent with the plain language of the criminal statute, as elucidated by the model jury charge, respondent's act must have been material and made in furtherance of a fraudulent scheme. Here, there is no evidence to reach that conclusion. Rather, as we already have stated, the record evidence concerning respondent's misconduct with respect to the bankruptcy petition is limited to the factual allegations set forth in the ODC's October 22, 2020 letter, to which respondent admitted.

Those scant factual allegations do not address any "scheme to defraud" or explain how respondent's inclusion of the Philadelphia property on the bankruptcy petition furthered this scheme. Nor did the ODC assert or identify any motive, financial or otherwise, for respondent's misrepresentation on the bankruptcy petition. Simply put, respondent's admission that he intentionally listed the Philadelphia property as Cleary's asset without Goldstein's knowledge or consent, without more, is insufficient to establish a crime, contrary to 18

[19] The model jury instructions for the Third Circuit do not include an instruction for the crime of bankruptcy fraud, contrary to 18 U.S.C. § 157.

U.S.C. § 157. Likewise, his admission that, by making a "false listing" he "knowingly made a false statement of material fact to a tribunal," similarly does not elevate his misconduct to a criminal offense.

Although the OAE ascribes motive to respondent's actions based upon text messages and an e-mail that were attached to the ODC's October 22, 2020 letter, suggesting that respondent intended to somehow steer the sale of the property, we accord no weight to these documents. We will not hesitate to consider information beyond an attorney's admission of wrongdoing, in order to understand the "nature and context" of their misconduct. Indeed, the integrity of our review requires a "complete evaluation of the evidence." In re Gallo, 178 N.J. at 119. However, the evidence must be independent, objective, and reliable in order for us to accord it any weight. See In the Matter of John J. Collins, DRB 15-140 (December 15, 2015) (where, on a motion for final discipline, we declined to consider certain facts related to the assault for which the attorney had pleaded guilty, despite the OAE's urging, because the facts were not elicited as part of the attorney's guilty plea and "such a finding would be based solely on hearsay provided by the victims, with no independent corroboration from the police investigation"), so ordered, 226 N.J. 514 (2016).

Here, the record does not clearly indicate that respondent admitted to any of the factual allegations contained in the text messages, some of which he did

not author. Nor does the record clearly indicate that the documents upon which the OAE relies were authenticated. Further, we are not convinced that these documents, even if we were to consider them, would clearly and convincingly establish the elements required for the crime of bankruptcy fraud. Accordingly, we determine that respondent did not violate RPC 8.4(b). Based upon the same rationale, we determine respondent did not violate RPC 1.2(d), which prohibits a lawyer from "assisting a client in conduct that the lawyer knows is illegal, criminal or fraudulent."

As a final matter, we also conclude that respondent did not separately violate RPC 8.4(d), as the OAE charged, by attempting to dissuade Goldstein from filing an ethics grievance. Respondent did not admit to this misconduct in connection with the Pennsylvania disciplinary proceedings. Although a text message attached to the ODC's October 22, 2020 DB-7 letter, purportedly from respondent to Goldstein, stated "David said he gave you pictures of the drug use in my office and I am asking you not to report it to the bar," this text message was neither authenticated nor expressly incorporated in the ODC's factual allegations of misconduct, to which respondent admitted. The Pennsylvania record does not otherwise support this charge.

In the Gethers/Wilkins matters, respondent accepted a $4,250 fee from Gethers to represent her sons, Michael and Maurice Wilkins, who were both

incarcerated. Respondent admittedly failed to memorialize the terms of the fee agreement in writing, as RPC 1.5(b) requires. After accepting the representation, respondent failed to perform any work in furtherance of his representation of Michael or Maurice, despite having agreed to file a motion for new trial on behalf of Maurice, and a civil rights/lack of care claim on behalf of Michael. In this respect, respondent violated RPC 1.1(a) and RPC 1.3. We conclude that respondent engaged in a pattern of neglect, in violation of RPC 1.1(b), by having grossly neglected three separate client matters, namely, the Cleary, the Michael Wilkins, and the Maurice Wilkins matters.

Respondent violated RPC 1.4(b) and RPC 1.4(c) by failing to keep Gethers or her sons "reasonably informed about the status of [their] matter[s]" and by failing to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Respondent admittedly failed to return Gethers' numerous telephone calls seeking status updates on behalf of her sons. Moreover, subsequent to her discovery that respondent had been administratively suspended, respondent failed to return Gethers' telephone calls, in which she requested for a refund of the legal fee. Further, respondent informed his clients that he was handling their matters and had filed paperwork on their behalf, despite having done no legal work in furtherance of the representation. Respondent also misrepresented to Gethers

that his secretary had filed the requested legal motions on behalf of her sons, and assured Maurice Wilkins and Michael Wilkins that he had "filed paperwork for them," despite knowing these statements to be false. Respondent violated RPC 8.4(c) in this respect.

RPC 1.16(d) requires that an attorney refund "any advance payment of fee that has not been earned or incurred." Here, respondent violated this Rule by admittedly failing to refund to Gethers any portion of the fee, despite having performed no legal work. Although the OAE asserted respondent separately violated this Rule by abandoning his clients in the Cleary and Gether/Wilkins matters, we will, ordinarily, restrict findings of client abandonment, in violation of RPC 1.16(d), to matters where the attorney has physically abandoned their law practice, or otherwise cannot be located. See, e.g., In the Matter of George R. Saponaro, DRB 20-207 (April 1, 2021) (attorney abandoned his law practice and could not be located), so ordered, 249 N.J. 352 (2022)).

Respondent also engaged in the unauthorized practice of law, in violation of RPC 5.5(a)(1) when, following his September 11, 2020 administrative suspension in Pennsylvania, he failed to notify Gethers or the Wilkins brothers that he could no longer practice law in Pennsylvania, and failed to withdraw from the representation.

Two months after respondent was administratively suspended from practicing law in Pennsylvania, Pierre retained him in connection with a criminal matter. Despite his ineligibility, respondent accepted the representation, went to the police station where Pierre was in custody, and requested to see him. Respondent, thus, violated RPC 5.5(a)(1) by engaging in the unauthorized practice of law.

Respondent presented to the police officer his 2019-2020 attorney registration card and driver's license, misrepresenting his status as an attorney in good standing in order to gain access to his client. Respondent, thus, knowingly made a false statement of material fact to a third person, in violation of RPC 4.1(a)(1) and RPC 8.4(c).

The Pennsylvania record, however, lacks clear and conclusive evidence that respondent violated RPC 8.4(a). That Rule prohibits an attorney from violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another. Here, the RPC 8.4(a) violation appears to be based on respondent's violation of other, more specific RPCs – a theory we historically have rejected. Moreover, it would be superfluous to find a violation of RPC 8.4(a) when we are able to find more specific violations for respondent's unauthorized practice of law. Likewise, the record does not support a violation pursuant to RPC 8.4(d), which

prohibits an attorney from engaging in conduct prejudicial to the administration of justice. Although respondent's actions required law enforcement to expend resources confirming his standing with the bar, a violation pursuant to this Rule has generally been found only when an attorney's misconduct adversely effects a court or other legal proceeding. Accordingly, we determine that the record does not support a violation of RPC 8.4(a) or RPC 8.4(d).

In sum, we grant the motion for reciprocal discipline and find that respondent violated RPC 1.1(a) (Cleary and Gethers/Wilkins matters); RPC 1.1(b) (Cleary and Gethers/Wilkins matters); RPC 1.3 (Cleary and Gethers/Wilkins matter); RPC 1.4(b) (Gethers/Wilkins matter); RPC 1.4(c) (Gethers/Wilkins matters); RPC 1.5(b) (Gethers/Wilkins matter); RPC 1.16(d) (Gethers/Wilkins matter); RPC 4.1(a)(1) (Pierre matter); RPC 5.5(a)(1) (Cleary, Gethers/Wilkins, and Pierre matters); RPC 8.4(c) (Cleary, Gethers/Wilkins, and Pierre matters); and RPC 8.4(d) (Cleary matter). The sole issue left for our determination is the proper quantum of discipline for respondent's misconduct.

Respondent's most serious misconduct was his dishonest intent in listing the Philadelphia property as an asset of the bankruptcy estate, as directed by his client, without the knowledge or consent of the joint owner of the property, in violation of RPC 8.4(c) and RPC 8.4(d). The quantum of discipline for conduct involving dishonesty, fraud, deceit or misrepresentation in similar

circumstances has ranged from a censure to a term of suspension. See, e.g., In re Clayman, 186 N.J. 73 (2006) (censure for an attorney who misrepresented the financial condition of a bankruptcy client in filings with the bankruptcy court to conceal information detrimental to the client's Chapter 13 bankruptcy petition, in an effort to secure a more favorable outcome than his client was entitled to under the law; in mitigation, we observed that, although the attorney had made a number of misrepresentations in the petition, he was one of the first attorneys to be reported for his misconduct by a new Chapter 13 trustee who had elected to enforce the strict requirement of the bankruptcy rules, rather than permit what had been the "common practice" of bankruptcy attorneys under the previous trustee; violations of RPC 3.3(a)(1), (2) and (5) (failing to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting in an illegal, criminal, or fraudulent act); RPC 4.1(a)(1) and (2); and RPC 8.4(c) and (d); in mitigation, the attorney also had an unblemished disciplinary record, was not motivated by personal gain, and did not act out of venality); In re DeClemente, 201 N.J. 4 (2010) (three-month suspension for attorney who arranged three loans to a judge in connection with his own business, failed to disclose to opposing counsel his financial relationship with the judge and failed to ask the judge to recuse himself, made multiple misrepresentations to his clients, including failing to disclose his role as the lender and the landlord to the transaction (RPC 8.4(c)),

engaged in an improper business transaction with the clients (RPC 1.8(a)), and engaged in a conflict of interest (RPC 1.7(a)); no prior discipline); In re Bentivegna, 185 N.J. 244 (2005) (motion for reciprocal discipline; two-year suspension for attorney who made misrepresentations to an adversary, negotiated a settlement without authority, filed bankruptcy petitions without authority to do so and without notifying her clients, signed clients' names to documents, make misrepresentations in pleadings filed with the court, and violated a bankruptcy rule prohibiting the payment of fees before paying filing fees; the attorney also committed conduct prejudicial to the administration of justice, gross neglect, failure to abide by the client's decision concerning the objectives of the representation, failure to communicate with clients, excessive fee, false statement of material fact to a tribunal, and misrepresentations; no prior discipline).

The remainder of respondent's RPC violations are typically met with discipline ranging from an admonition to a censure.

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in an admonition or a reprimand, depending on the number of client matters involved; the gravity of the offenses; the harm to the clients; the presence of additional violations; and the attorney's disciplinary history. See, e.g., In the Matter of Esther Maria Alvarez, DRB 19-

190 (September 20, 2019) (admonition for attorney who had been retained to obtain a divorce for her client but, for the next nine months, failed to take any steps to pursue the matter, and failed to reply to all but one of the client's requests for information about the status of her case, violations of RPC 1.1(a) and RPC 1.4(b); in another matter, the attorney agreed to seek a default judgment, but waited more than eighteen months to file the necessary papers with the court; although the attorney obtained a default judgment, the court later vacated it due to the passage of time, which precluded a determination on the merits; violations of RPC 1.1(a) and RPC 1.3; no disciplinary history); In re Barron, __ N.J. __ (2022), 2022 N.J. LEXIS 660 (2022) (reprimand for attorney who engaged in gross neglect in one client matter; lacked diligence in three client matters; failed to communicate in three client matters; and failed to set forth the basis or rate of his fee in one client matter (RPC 1.5(b)); we weighed the quantity of the attorney's ethics violations, and the harm caused to multiple clients, which included allowing a costly default judgment to be entered against two clients; and failing to oppose summary judgment motions, resulting in the dismissal of another client's case; in mitigation, we considered his cooperation, his nearly unblemished career in more than forty years at the bar, and his testimony concerning his mental health condition).

Standing alone, respondent's violation of RPC 1.5(b) would merit an admonition. See, e.g., In the Matter of Peter M. Halden, DRB 19-382 (February 24, 2020) (attorney failed to set forth in writing the basis or rate of the legal fee, and failed to abide by the client's decisions concerning the scope of the representation; violations of RPC 1.5(b) and RPC 1.2(a); no prior discipline); In the Matter of Kenyatta K. Stewart, DRB 19-228 (October 22, 2019) (attorney failed to set forth in writing the basis or rate of the legal fee, and engaged in a concurrent conflict of interest; no prior discipline).

Likewise, an admonition is the appropriate sanction for respondent's failure to promptly refund the unearned portion of a fee. See, e.g., In re Gourvitz, 200 N.J. 261 (2009); In the Matter of Larissa A. Pelc, DRB 05-165 (July 28, 2005); In the Matter of Stephen D. Landfield, DRB 03-137 (July 3, 2003).

When an attorney practices law while ineligible, and is aware of the ineligibility, either a reprimand or a censure will result, depending on the existence and nature of aggravating factors. See, e.g., In re Perez, 240 N.J. 173 (2019) (reprimand for attorney who, while serving as an attorney for sellers in a real estate transaction, was notified by the buyers' counsel that he was ineligible to practice law; the attorney reassured the buyers' counsel that he would send proof of eligibility, which he did not do in the ensuing week, during which he continued to participate in correspondence, document review, and the provision

of a rider related to the transaction; no prior discipline); In re D'Arienzo, 217 N.J. 151 (2014) (censure imposed where the attorney's failure to ensure that payment was sent to the New Jersey Lawyers' Fund for Client Protection was deemed "akin to knowledge on his part;" in aggravation, the attorney had an extensive disciplinary history, which included a 2013 reprimand, also for practicing while ineligible).

Misrepresentations to clients require a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand still may be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Dwyer, 223 N.J. 240 (2015) (attorney made a misrepresentation by silence to his client, failing to inform her, despite ample opportunity to do so, that her complaint had been dismissed, a violation of RPC 8.4(c); the complaint was dismissed because the attorney had failed to serve interrogatory answers and ignored court orders compelling service of the answers, violations of RPC 1.1(a), RPC 1.3, and RPC 3.2; the attorney also violated RPC 1.4(b) by his complete failure to reply to his client's requests for information or to otherwise communicate with her; the attorney never informed his client that a motion to compel discovery had been filed, that the court had entered an order granting the motion, or that the court had dismissed her complaint for failure to serve the interrogatory answers and to comply with the court's order, violations of RPC 1.4(c)); In re Ruffolo, 220

N.J. 353 (2015) (knowing that the complaint had been dismissed, the attorney assured the client that his matter was proceeding apace, and that he should expect a monetary award in the near future; both statements were false, in violation of RPC 8.4(c); the attorney also exhibited gross neglect and a lack of diligence by allowing his client's case to be dismissed, not working on it after filing the initial claim, and failing to take any steps to prevent its dismissal or ensure its reinstatement thereafter, violations of RPC 1.1(a) and RPC 1.3; the attorney also violated RPC 1.4(b) by failing to promptly reply to the client's requests for status updates).

Likewise, reprimands have been imposed for attorneys who made misrepresentations to third parties. See, e.g., In re Walcott, 217 N.J. 367 (2014) (attorney misrepresented to a third party, in writing, that he was holding $2,000 in escrow from his client as collateral for a settlement agreement; violations of RPC 4.4(a)(1) and RPC 8.4(c)); In re Chatterjee, 217 N.J. 55 (2014) (attorney misrepresented to her employer, for five years, that she had taken steps to pass the Pennsylvania bar examination, a condition of her employment; she also requested, received, but ultimately returned, reimbursement from the employer for payment of the annual fee required of Pennsylvania attorneys; compelling mitigation).

In our view, respondent's misconduct in the Cleary matter, alone, warrants at least a three-month suspension. Like the attorney in Clayman, who received a censure for misrepresentations to a bankruptcy court, respondent knowingly misrepresented the true nature of Cleary's assets in the Chapter 13 bankruptcy petition. Respondent admitted that, by listing of the Philadelphia property as Cleary's asset without identifying the co-owner's interest in the property or notifying her of the bankruptcy, he knowingly engaged in deceitful conduct and conduct prejudicial to the administration of justice. However, unlike the attorney in Clayman, respondent's misconduct did not follow a change in enforcement to a previously pervasive practice among the bankruptcy bar, a fact we accorded weight in mitigation. See Clayman, DRB 05-278 at 21, 24 (we noted, in mitigation, that respondent "appear[ed] to have been among the first attorneys in the local bankruptcy bar to experience changes in the U.S. Trustee's Office and the resultant strict requirements of a new chapter 13 trustee"). Further, unlike the attorney in Clayman, whose misconduct was limited to bankruptcy filings on behalf of one client, respondent's misconduct was not limited to the Cleary bankruptcy petition. Rather, respondent's misconduct was pervasive, diverse, and affected multiple client matters. Thus, respondent's misconduct requires discipline more severe than the censure imposed in Clayman.

On the other hand, respondent's misconduct is not as severe as that of the attorney in Bentivegna, who, on a motion for reciprocal discipline, received a two-year suspension for her diverse misconduct across four bankruptcy matters. Bentivegna made misrepresentations to the tribunal and third parties in connection with her handing of four bankruptcy matters, namely, by signing her clients' names to court filings, without their knowledge or consent. Like respondent, Bentivegna engaged in additional misconduct, including committing gross neglect, failing to communicate with her clients, charging an excessive fee, and engaging in conduct prejudicial to the administration of justice. However, unlike respondent, Bentivegna made misrepresentations to the tribunal across four client matters. In the Matter of Bentivegna, DRB 05-120, at 12-13.

Bentivegna's misconduct in this respect wasted judicial resources because, in at least one client matter, opposing counsel was required to engage in motion practice to enforce a settlement that respondent had not been authorized to enter. Further, we accorded weight, in aggravation, to Bentivegna's lack of remorse and her failure to understand the seriousness of her misconduct – circumstances not present in the instant matter. Id. at 15. To the contrary, respondent expressed sincere remorse and contrition to us during oral argument.

Based upon the above-cited precedent, and Clayman and Bentivegna in particular, the totality of respondent's severe and diverse misconduct could be met with discipline ranging from a three-month to an eighteen-month term of suspension. Respondent's utter failure to advance his client's interests in the Wilkins matters, failure to refund the unearned portion of the legal fee, practicing law despite knowing he was suspended, and his multiple acts of deceit and misrepresentation to his clients and a third party, warrants at least a one-year term of suspension. In crafting the appropriate discipline, we considered mitigating and aggravating factors.

In mitigation, respondent has expressed sincere contrition and remorse for his wrongdoing. In re Kasdan, 115 N.J. at 491.

In aggravation, respondent failed to notify the OAE of his temporary suspension and eventual disbarment in Pennsylvania. In the Matter of Joseph J. Ashton, III, DRB 21-031 (October 28, 2021), at 29 (failure to report out-of-state suspension acts as an aggravating factor in New Jersey), so ordered, __ N.J. __ (2022), 2022 N.J. LEXIS 462 (2022).

Due to the serious and diverse nature of respondent's misconduct, spanning three client matters, as aggravated by respondent's failure to notify the OAE of the Pennsylvania disciplinary proceeding, we determine that a one-year

suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

As condition precedents to his reinstatement, respondent is required to provide to the OAE (1) proof of his continued treatment for drug and alcohol addiction, and (2) proof of his fitness to practice law, as attested to by a medical doctor approved by the OAE.

Member Hoberman was absent.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Robert Captain Leite
Docket No. DRB 22-164

Argued: November 17, 2022

Decided: February 24, 2023

Disposition: One-Year Suspension

Members	One-Year Suspension	Absent
Gallipoli	X	
Boyer	X	
Campelo	X	
Hoberman		X
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Total:	7	1

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