SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
Docket No. DRB 23-145
District Docket No. XIV-2019-0484E

In the Matter of Evan Jay Krame
An Attorney at Law

Argued
September 21, 2023

Decided
December 19, 2023

Hillary K. Horton appeared on behalf of the
Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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Introduction

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-14(a), following the District of Columbia Court of Appeals' issuance of a November 3, 2022 order suspending respondent for eighteen months.

The OAE asserted that respondent was determined to have violated the equivalents of New Jersey RPC 1.5(a) (unreasonable fee); RPC 1.15(a) (negligent misappropriation); RPC 3.3(a)(1) (false statement of material fact to a tribunal); RPC 3.4(c) (knowing disobedience of an obligation under the rules of a tribunal); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to grant the motion for reciprocal discipline and conclude that a deferred, eighteen-month suspension is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 1982; to the New York and District of Columbia bars in 1983; and to the Maryland bar in 1991. During the relevant times, he maintained law offices in Maryland. Initially

during this period, he worked for the law firm of Miller, Miller & Camby; in 2001, he and another attorney established the law firm of Altman & Krame; and in 2003, he established the law firm of Evan J. Krame, P.C. (later, Krame & Biggin, P.C.).

Respondent has never maintained a practice of law in New Jersey and, to the best of his recollection, has represented only one New Jersey client during his career. Effective April 26, 2012, respondent resigned from the practice of law in New Jersey, without prejudice, pursuant to R. 1:20-22.[1] He has no prior discipline in New Jersey.

Effective October 15, 2019, the District of Columbia Court of Appeals (the D.C. Court of Appeals) suspended respondent on an interim basis (the equivalent of a temporary suspension in New Jersey). On November 3, 2022, the Court of Appeals entered its decision in the matter, suspending respondent for a period of eighteen months. In re Krame, 284 A.3d 745 (D.C. 2022). Subsequently, on a date not specified in the record before us, respondent was reinstated to the District of Columbia bar.

On January 23, 2023, the Maryland Supreme Court imposed reciprocal discipline, in the form of an eighteen-month suspension, retroactive to

[1] Pursuant to R. 1:20-1(a), attorneys who have resigned without prejudice remain subject to the Court's disciplinary jurisdiction for misconduct committed prior to such resignation. The instant misconduct predated respondent's resignation.

November 19, 2021, the effective date of respondent's temporary suspension issued by that court. Atty. Griev. Comm'n of Md. v. Krame, 482 Md. 531 (Md. 2023). On June 21, 2023, the Maryland Supreme Court reinstated respondent to the Maryland bar. In re Krame, 2023 Md. LEXIS 298 (Md. 2023).

On June 2, 2023, the United States Court of Appeals for the District of Columbia Circuit imposed reciprocal discipline, in the form of a prospective eighteen-month suspension, effective on that date. In re Krame, 2023 U.S. App. LEXIS 13831 (D.C. Cir. 2023).

On November 29, 2023, the Supreme Court of New York, Appellate Division, Second Department, imposed reciprocal discipline, in the form of a three-year suspension, effective December 29, 2023. In re Krame, 2023 N.Y. App. Div. LEXIS 6170 (N.Y. App. Div. 2023).

We now turn to the facts of this matter.

Facts

The facts underlying respondent's suspension in the District of Columbia are set forth in the July 23, 2018 Report and Recommendation of the Ad Hoc Hearing Committee of the D.C. Board of Professional Responsibility (the Hearing Committee); the July 31, 2019 Report and Recommendation of the D.C. Board of Professional Responsibility (the D.C. Board); and the November

3, 2022 opinion of the D.C. Court of Appeals, In re Krame, 284 A.3d 745 (D.C. 2022). Additional facts are set forth in In re D.M.B., 979 A.2d 15 (D.C. 2009), wherein the D.C. Court of Appeals affirmed several probate court orders that also pertain to the instant matter.

Since 1997, respondent has worked primarily in the field of special needs trusts. Such trusts "allow beneficiaries to 'maintain their eligibility for need-based government benefits such as Medicaid and Supplemental Security Income (eligibility for which is tied to the applicant's income and assets), while at the same time preserving their own assets to provide for supplemental items or services not covered by government programs.'" Krame, 284 A.3d at 750 n. 1 (quoting D.M.B., 979 A.2d at 16 n.1).

The present matter stemmed primarily from respondent's efforts to advance his contention that he should "be compensated based on a flat percentage of trust assets, typically 1%, determined annually[,]" for his work in administering special needs trusts in the District of Columbia. Id. at 750. At one time, such a compensation structure was "fairly standard" in that jurisdiction. Ibid. However, by 2005, "judges in the Probate Division of the D.C. Superior Court [had] indicated that [respondent] and other trustees should instead be paid on an hourly basis." Ibid.

Respondent's varied efforts to resist that change eventually prompted the investigation underlying the present matter, which involved his conduct in administering three trusts established on behalf of minors with severe disabilities. Ibid. Specifically, the trusts at issue were established in January 1997 for beneficiary Seay (the Seay trust); October 2003 for beneficiary Brown (the Brown trust); and June 2005 for beneficiary Baker (the Baker trust). Ibid.

In connection with the Brown and Baker trusts, the D.C. Court of Appeals ultimately found that respondent violated the District of Columbia's Rules of Professional Conduct (the D.C. Rules) based on actions that he undertook in pursuit of his continuing claim for percentage-based fees. Id. at 765. In connection with the Seay trust, the Court of Appeals found that he engaged in negligent misappropriation. Id. at 768.

The Brown Trust: Representations to the Court Regarding Time Records

The Brown trust instrument included the following compensation provision:

> A Trustee shall be entitled to reasonable compensation for his or her services as Trustee hereunder, consistent with industry standards, which may be expressed as a percentage of Trust assets. All trustee compensation is subject to review by the Superior Court, to be approved if reasonable and modified if unreasonable.

> In considering the reasonableness of fees reported in the accounting by the Trustee, the Court may consider the industry practice and any other factors.
>
> [Krame, 284 A.3d at 755-56.]

In 2004, respondent filed with the probate court his first accounting, specifying services performed during the year and the costs of those services, and calculating his fees as one percent of the trust's assets. Krame, 284 A.3d at 756; D.M.B., 979 A.2d at 17. In March 2005, Judge Ronald P. Wertheim approved respondent's accounting. D.M.B., 979 A.2d at 17.

In December 2005, respondent filed his second accounting, similarly documenting his services and calculating his fees in a manner that "equated to 1% of the trust's assets." Krame, 284 A.3d at 756; D.M.B., 979 A.2d at 17. However, "[b]y that point, the probate division had started moving away from compensating trustees on a percentage basis." Krame, 284 A.3d at 756. Thus, in January 2006, Judge Peter H. Wolf "rejected the accounting and ordered [respondent] to file 'a thorough explanation of the "quarterly fees" . . . so that the court [could] determine their reasonableness.'" Ibid. Judge Wolf further specified that the court would "not compensate [respondent] for the preparation of his response" and "directed [him] not to submit any future request for compensation that includes it." D.M.B., 979 A.2d at 19 n.6.

Respondent filed a memorandum objecting to the order, wherein he

> argu[ed] that "his fees calculated as one percent of the trust assets and paid quarterly were reasonable." He further argued that because "[a] percentage fee was agreed upon by the parties," and because "a percentage fee of one percent was previously approved by [the probate court] when it approved the first accounting," it had "not been necessary to keep detailed time records for" the Brown trust.
>
> [Krame, 284 A.3d at 756.]

By order dated May 9, 2006, Judge Wolf again disapproved respondent's request for compensation based on a one-percent fee. Krame, 284 A.3d at 756; D.M.B., 979 A.2d at 19. He again ordered respondent "to file a petition for compensation . . . with full documentation of time expended and hourly rates." Krame, 284 A.3d at 756.

On June 21, 2006, respondent, through counsel, submitted a verified "Trustee's Explanation of Services" for the period covered by the second accounting. Ibid. Although the document provided an overview of respondent's services during the relevant period, it "did not . . . include any time records because, as [respondent] explained, he had 'not kept time for specific services as trustee in this case.'" Ibid.

> Judge Wolf interpreted that statement to mean that [respondent] could not "provide an hourly statement of services." Without the aid of time records, Judge Wolf resigned himself to determining reasonableness based on a 1% fee, the very compensation structure he had previously rebuffed. From that starting block, Judge Wolf then approved $5,320.41 of [respondent's]

> $6,737.88 request for fees.
>
> [Ibid.]

The subsequent investigation by the District of Columbia's Office of Disciplinary Counsel (the ODC) revealed that, during the relevant period, respondent had, in fact, maintained time records, using the PCLaw billing software. Ibid. Moreover, "those records justified time-based fees of $5,600, not the $6,737.88 [respondent] had sought." Ibid.

During the subsequent disciplinary hearing, respondent

> testified that his limited time records were incomplete, and that those he had kept did not reflect all of the services he was seeking compensation for in the second fee petition. He also claimed that he made no misrepresentations to Judge Wolf because his statement that he had "not kept time for specific services" was "a completely truthful statement" "for specific services [he] had not kept track" so it "was not an all-inclusive statement." Lastly, he testified that he did not produce his time records because he "was being an advocate for the proposition that . . . [a] percentage fee compensation was appropriate" and had he "presented time records" he would have "conced[ed] the point."
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> [Id. at 757.]

The Hearing Committee credited respondent's "testimony that he did not believe he made any false statements to Judge Wolf because what he said was technically true and concluded that Disciplinary Counsel did not present any

direct or circumstantial evidence to show that [respondent's] statements were intentionally false or inaccurate." Ibid.

The Brown Trust: Noncompliance with Two Court Orders

Respondent continued to "resist[] the probate division's decision to shift from percentage-based to hours-based compensation for trustees" in other ways. Id. at 761. Because he "believed his advocacy in this arena was a service to the beneficiaries of the trusts he was administering, . . . he thought he was entitled to reimbursement for his time in advocating this position." Ibid. Accordingly, despite Judge Wolf's prior order precluding him from seeking litigation-related fees or costs from the trust, respondent twice included such fees or costs in his subsequent petitions. Ibid. First, on November 17, 2006, he billed a $200 litigation filing fee to the trust, which the trust paid. Ibid. Second, on November 22, 2006, he "filed a requested $8,700 worth of fees for advancing the position that he was entitled to be paid on a percentage basis." Ibid.

Judge Wolf disapproved both sums. Krame, 284 A.3d at 761; D.M.B., 979 A.2d at 23. In addition, because the $200 already had been received from the trust, he ordered respondent to "reimburse the filing fee 'forthwith.'"

Krame, 284 A.3d at 761. Nevertheless, more than two-and-a-half years passed before respondent reimbursed the trust for the $200 fee. Ibid.

The Baker Trust: Representations to the Court Regarding Time Records

The original draft of the Baker trust instrument contained the same compensation provision as the Brown trust instrument: that is, it permitted the expression of compensation "as a percentage of Trust assets." Krame, 284 A.3d at 759. However, during a hearing that the probate court conducted before approving the trust's establishment, Judge Franklin Burgess, Jr., stated that "he did not want compensation 'expressed as a percentage' and that it should instead be 'judged on the standard of reasonableness.'" Ibid. Accordingly, the final amended provision, which Judge Burgess approved, stated that a trustee

> shall be entitled to reasonable compensation for his or her services as Trustee hereunder, consistent with industry standards, not to exceed one person (1%) of the trust corpus, determined annually. . . . In considering the reasonableness of fees reported in the accounting by the Trustee, the Court shall consider the custom of the community; the trustee's skill, experience and facilities; the time devoted to trust duties; the amount and character of the trust property; the degree of difficulty, responsibility and risk assumed in administering the trust, including in making discretionary distributions; the nature and costs of services rendered by others; and the quality of the trustee's performance and any special skills in support of that performance.

[Ibid.]

Respondent "understood the cap of 1% as permitting him to calculate his fees at a 1% rate rather than on an hourly basis." Ibid.

In June 2006, respondent filed his first fee petition, seeking $17,264.18 in fees, calculated at one percent of the trust's $1,726,418 value. D.M.B., 979 A.2d at 20; Krame, 284 A.3d at 759. However, Judge Wertheim, who was assigned to oversee the trust at the time, denied the petition and required respondent to provide "accompanying information establishing the reasonableness of such fees." Krame, 284 A.3d at 759.

The D.C. Court of Appeals summarized respondent's written response to Judge Wertheim's order, along with his later testimony regarding this response, as follows:

> [respondent] . . . stat[ed] that he "receives compensation for his services, set by agreement of the parties at one percent (1%) of the trust corpus, per year, payable quarterly." He further stated that, according to his records, "at least 40 hours of service was" performed, for which a 1% fee was "reasonable compensation." [Respondent] later testified before the Hearing Committee that he believed the requested fees were "appropriate compensation for" the work he was doing, and that he was "entitled to take a percentage fee" since the "language of [the] trust allowed for [that]." The Hearing Committee credited this testimony.
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> [Id. at 759-60.]

Subsequently, in September 2006, Judge Wertheim determined that respondent's request was "contrary to Judge Burgess's direction, which [Judge Wertheim] believed to be that 'no fixed percentage was to be used as a standard or measurement of reasonableness.'" Id. at 760. In addition, Judge Wertheim "expressed frustration" at respondent's failure to provide documentation in support of the fee request, specifically noting that respondent offered "no breakdown for the forty hours of service he claimed to have provided." Ibid. Consequently, as summarized by the D.C. Court of Appeals,

> [w]ith no other way to determine the reasonableness of [respondent's] fees, Judge Wertheim divided the total costs requested ($17,264.18) by the number of hours [respondent] claimed to have worked (40), which calculated to a $431.60 hourly rate; a rate that Judge Wertheim found unreasonable. Applying what he thought was a more reasonable hourly rate ($210), Judge Wertheim then approved $8,400 of the requested fees.
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> [Ibid.]

Around the time that respondent submitted his petition for $17,264.18 in fees, he generated a PCLaw document with time records for the services included in the petition. Id. at 759. However, he neither provided these time records with the petition nor informed the court that they existed. Ibid.

According to the PCLaw document, the total for fees and costs came to $12,350.59, or $4,913.59 less than respondent sought in his petition. Ibid.

During the disciplinary proceedings, respondent maintained – and the Hearing Committee credited his account – that the amounts differed because his PCLaw entries did not fully document his work. Ibid.

The Brown and Baker Trusts: D.C. Court of Appeals' Affirmance of Probate Court Orders

Respondent appealed to the D.C. Court of Appeals three orders entered in the Baker and Brown trust matters: "(1) Judge Wolf's disallowance of $1,417.47 worth of requested fees in [respondent's] second accounting for work performed on the [Brown] trust; (2) Judge Wertheim's approval of only $8,400 in fees for work on the [Baker] trust – a reduction from the $17,264.18 [respondent] requested; and (3) Judge Wolf's order prohibiting [respondent] from expensing litigation-related costs." Krame, 284 A.3d at 761 (citing D.M.B., 979 A.2d at 17-21).

In August 2009, the D.C. Court of Appeals issued its decision, affirming each of the challenged orders. D.M.B., 979 A.2d at 22-26.

The Brown and Baker Trusts: Altered and Supplemented Time Entries in Post-Appeal Fee Petitions

During the pendency of his appeal of the probate court's orders in the Brown and Baker trusts, respondent did not file any additional fee requests for his services to those trusts. Krame, 284 A.3d at 761-62. However, he did begin recording his time "more diligently[,]" using PCLaw, in recognition that he could be required to prepare time-based fee petitions if his appeal did not succeed. Id. at 762.

After the D.C. Court of Appeals issued its decision in D.M.B., respondent filed petitions for his outstanding fees for the Brown trust, in December 2009, and for the Baker trust, in January 2010. Ibid. He attached to each petition "a PCLaw-generated document titled 'Pre-Bill' which contained time entries for the work [he] had performed on behalf of the Brown and Baker trusts from 2006 to 2009. Both petitions were approved by the probate court ($43,055.00 in fees for the Brown trust and $47,642.50 in fees for the Baker trust)." Ibid.

Subsequently, the ODC – using a PCLaw audit feature that tracks changes to billing statements – detected the following:

> four of the Pre-Bill time entries submitted in support of the Brown and Baker fee petitions were altered by [respondent] after he lost his appeal in In re D.M.B. The altered entries omitted any reference to work

> [respondent] performed for his litigation-related activities (which [he] was not permitted to receive compensation for per Judge Wolf's then-affirmed order), but offered alternative justifications for the same fees, totaling $860.
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> [Ibid.]

Specifically, as explained by the D.C. Board, respondent "edited four separate time narratives by deleting references to his fee litigation without reducing the corresponding amounts charged." Krame, 284 A.3d at 762. Two of the altered entries appeared in respondent's statement of services in support of his fee petition for the Brown trust, submitted in December 2009; the other two appeared in his statement of services in support of his fee petition for the Baker trust, submitted in January 2010.

In connection with the Brown trust, the altered entries stated:

- **Service date September 7, 2007 – $70 billed for 0.2 hours**

  Initial explanation: "t/c Varrone re: status of appeal, t/c M. Pavlides"

  Changed to: "t/c M. Pavlides re: Seard fraud matter"

- **Service date March 25, 2008 – $175 billed for 0.5 hours**

  Initial explanation: "discuss appeal with Varrone, t/c Latoyia re: Seard, review electrical problem at house"

  Changed to: "t/c Latoyia re: Seard, review electrical problems at house"

In connection with the Baker trust, the altered entries stated:

- **Service date November 29, 2006 – $90 billed for 0.3 hours**

  Initial explanation: "review status of appeal and fee petitions"

  Changed to: "review accounting entries, statements and Fees payable"

- **Service date February 13, 2008 – $525 billed for 1.5 hours**

  Initial explanation: "work on notice and petition for fees"

  Changed to: "work on accounting"

Respondent later testified that each of the four altered entries corresponded to additional compensable work that he had omitted from the original "Pre-Bills" but then discovered upon further review of his records, and, hence, included in place of the deleted litigation-fee entries. Krame, 284 A.3d at 762. The Hearing Committee determined that, although respondent acted recklessly when he altered the records, he "did not intentionally falsify" them. Id. at 762-63. Instead, the Hearing Committee opined, he "sloppily pieced through his records without adequate regard for their accuracy" and "tried to recreate [his time entries] based on his experience and records (however misguided that attempted recreation might have been)[.]" Ibid. His reckless approach resulted in the entries being "baselessly inflat[ed]," albeit not intentionally misleading. Id. at 763-64.

In addition to altering four time entries, respondent "added new charges and services to his time entries" before submitting to the court his outstanding fee requests. Id. at 764. The D.C. Court of Appeals summarized these additions and their import as follows:

> As described by Disciplinary Counsel, "[t]hese additional time charges were for services [respondent] claimed to have completed six months to three years earlier – over 50 additional time charges in Brown and over 40 additional time charges in Baker." The additional time charges increased the fees claimed for the Brown trust by $10,800, which roughly approximated the $10,317.47 in fees Judge Wolf disallowed in [respondent's] various fees requests relating to the Brown trust ($1,417.17 in the second fee petition, $8,700 in the third fee petition, and the order to return a $200 litigation-related expense). They also increased the charged fees for the Baker trust by $8,775, which brought his total request to "about 1% of the original [trust] corpus . . . when annualized" – 1% being the compensation fee [respondent] had requested and been denied in In re D.M.B.
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> [Ibid.]

The D.C. Court of Appeals noted that there was a "lack of detailed record evidence substantiating [respondent's] work on the Brown and Baker trusts during the appeals period." Id. at 765. The Court of Appeals also accepted the Hearing Committee's finding of "implausibility" regarding "several of [respondent's] explanations for how he was able to remember certain services he conducted years earlier." Ibid. Nevertheless, the court

determined, based on the Hearing Committee's credibility determinations, that the supplemental entries were not "intentionally falsified" but, rather, were "recklessly submitted." Ibid.

The Seay Trust: Respondent's Duplicate Fee Disbursements

On January 2, 2002, respondent paid himself $7,178.80 in fees from the Seay trust, after receiving the probate court's approval of his fourth fee petition for services rendered to the trust. Id. at 765. However, eleven months earlier, in February 2001, he already had paid himself for the amount documented in the fourth fee petition when he submitted the petition to the court.[2] Ibid.

Respondent did not discover the duplicate payment until November 2010, when he reviewed his records during the ODC's investigation. Id. at 766. After the erroneous payment came to light, respondent promptly reimbursed the trust in full.[3]

[2] Although respondent's fourth petition requested $7,178.80, or about $88 more than he disbursed to himself in January 2002, the D.C. Court of Appeals found that the difference in the amounts did not affect the disciplinary analysis. Krame, 284 A.3d at 767 n.13.

[3] In February 2013, respondent voluntarily disbursed an additional $2,424.75 to the Seay trust, to cover interest on the improper 2002 payment during the years that elapsed prior to the reimbursement.

Later in 2002, respondent made a second duplicate payment to himself. Specifically, on September 18, 2002, after the probate court approved respondent's fifth fee petition, he disbursed $6,770.38 to himself; however, in February 2002, he already had paid himself in connection with that petition. Id. at 766. In early 2003, about five months after respondent made the duplicate payment, he discovered his error, fully reimbursed the trust, and informed the probate auditor of his mistake. Ibid.

Respondent signed each of the duplicate payment checks described above. Krame, 284 A.3d at 766. He also reviewed and signed the accountings that documented the erroneous payments. Ibid.

During the disciplinary hearing, respondent testified – and the Hearing Committee credited his testimony – that the duplicate payments resulted from the passage of time, in each case, between the date he filed his petition for fees and the date the probate court approved the petition; "'personal and administrative difficulties' at his firm;" and his staff's instructions regarding when disbursements could be made. Id. at 765-66. Regarding why the first duplicate payment, made in January 2002, was not detected until more than eight years later, in November 2010, respondent testified that "because [the payments] fell into separate accounting periods, . . . it wasn't readily apparent in preparing accountings that there had been a double payment." Id. at 766.

District of Columbia Disciplinary Proceedings

The ODC's Investigation and Disciplinary Charges

The ODC commenced is disciplinary investigation in February 2007. However, at respondent's request, through his counsel, the ODC agreed to stay the investigation pending respondent's appeal in the Brown and Baker matters. More than two years later, the ODC resumed its investigation. The discovery process, however, lasted until May 2013, due to the volume of materials requested, motion practice, and extensions of time granted upon respondent's request. Thereafter, between late 2013 and early 2015, respondent and the ODC engaged in discussions and a hearing to address the possibility of a negotiated disposition.

Ultimately, on March 31, 2016, the ODC charged respondent with violating, in his administration of all three trusts, D.C. Rules 1.15(a), 3.3(a)(1), 3.4(c), and 8.4(c) and (d).[4] Further, the ODC charged respondent with

[4] Among the D.C. Rules that respondent was charged with violating, Rules 1.5(a), 3.4(c), and 8.4(c), as well as the relevant portions of Rule 1.15(a) and (c), are identical to New Jersey's corresponding Rules of Professional Conduct, except for minor grammatical differences. D.C. Rule 8.4(d) is substantially the same as RPC 8.4(d) but refers to conduct that "seriously interferes with" the administration of justice rather than conduct "prejudicial to" the same. During the applicable period, before 2007, D.C. Rule 3.3(a)(1) matched RPC 3.3(a)(1) except for the latter's inclusion of the word "material" in its prohibition on "mak[ing] a false statement of material fact or law to a tribunal." Since 2007, the relevant portion of D.C. Rule 3.3(a)(1) has provided that "[a] lawyer shall not knowingly: (1) Make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer[.]"

violating D.C. Rule 1.15(c)[5] (failure to segregate funds in which both the attorney and the third party held an interest) in his administration of the Brown and Baker trusts. Finally, the ODC charged respondent with violating D.C. Rule 1.5(a), as well as additional counts of violating D.C. Rules 3.3(a)(l), 3.4(c), and 8.4(c) and (d), in connection with his preparation and submission of the post-appeal petitions for compensation from the Brown and Baker trusts.

Proceedings Before the Hearing Committee

In December 2016, a ten-day evidentiary hearing took place before the Hearing Committee and, by May 2017, post-hearing briefs had been submitted. During the proceedings, respondent conceded that he had committed two Rule 3.4(c) violations. Specifically, he acknowledged that, in November 2006, contrary to Judge Wolf's May 2006 order, he submitted a fee petition that included charges for fees and costs associated with the fee litigation; further, contrary to Judge Wolf's January 2007 order requiring him to reimburse the trust for the $200 filing fee "forthwith," he knowingly failed to promptly issue the reimbursement. Respondent denied committing all the other charged offenses.

[5] In 2007, midway through the underlying events, subsection (c) of D.C. Rule 1.15 was redesignated as (d); accordingly, the Hearing Committee's report and recommendation refers to the rule as "Rule 1.15(c)/(d)."

On July 23, 2018, the Hearing Committee issued its report and recommendation, finding that the ODC had proven, by clear and convincing evidence, that respondent violated Rule 3.4(c) in the Brown matter in the two respects described above.[6] Further, the committee determined that "four entries in the itemized time records that respondent submitted in his December 15, 2009 and January 8, 2010 fee requests in the Brown and Baker trusts . . . contained false statements that constituted violations of Rules 8.4(c) and 8.4(d), but not Rule 3.3(a)(l)." Specifically, the committee concluded that respondent had "recklessly prepared four inaccurate entries," which were "not supported by available documentation, other information, and/or [his] experience," in violation of Rules 8.4(c) and (d). However, the committee concluded that he had not prepared the inaccurate entries knowingly, and thus, determined that his conduct in this regard did not violate Rule 3.3(a)(1).

A majority of the Hearing Committee concluded that the other charged violations of the D.C. Rules – including all charges related to respondent's handling of the Seay trust – lacked adequate evidentiary support.

[6] The Hearing Committee also concluded that respondent made a false claim in an appellate brief; however, the charged Rule violations based on this alleged misconduct were rejected by the D.C. Board and did not factor into the D.C. Court of Appeals' decision in this matter. Krame, 284 A.3d at 751-52.

Absent consensus among the members regarding a number of charged violations, "they recommended three different sanctions, ranging from a suspension of six months to eighteen months." Krame, 284 A.3d at 751.

Proceedings Before the D.C. Board

In the subsequent proceedings before the D.C. Board, respondent conceded that he committed the two violations of Rule 3.4(c) described above and, further, "violated Rules 8.4(c) and 8.4(d) when he included dishonest time entries in fee petitions seeking payment from the Brown and Baker trusts."

On July 31, 2019, the D.C. Board issued its report and recommendation in the matter. Therein, it concluded that respondent had "committed two violations of Rule l.15(a), two violations of Rule 3.4(c), six violations of Rules 3.3(a)(l) and 8.4(c), four violations of Rule 8.4(d), and two violations of Rule 1.5(a)." Notably, unlike the Hearing Committee, the D.C. Board determined that respondent committed negligent misappropriation in his handling of the Seay trust.

Based on the totality of respondent's misconduct, the D.C. Board recommended that he be disbarred.

The D.C. Court of Appeals' Decision and Sanction

In November 2022, the D.C. Court of Appeals issued its decision imposing the final disciplinary sanction of an eighteen-month suspension. Krame, 284 A.3d at 750. Addressing the specific allegations of misconduct, the Court of Appeals concluded, in connection with the Brown trust, that "although [respondent's] statement that 'he had not kept time for specific services' was true in one technical sense" – specifically, in the sense that he did not have time records for all services rendered – respondent "violated Rules 3.3(a)(1) and 8.4(c) by not divulging the time records he did have." Id. at 757-58. Consequently, Judge Wolf "reasonably understood that [respondent] did not have the kind of records that would have been useful for a reasonableness inquiry" in reviewing his second fee petition, as reflected in the judge's "stated belief that [respondent] could not 'provide an hourly statement of services,' and from Judge Wolf's lament that the 'total lack of information supplied by [respondent]' meant his review of [respondent's] requested fees would involve an 'appearance of arbitrariness.'" Id. at 757. However, respondent in fact "did have useful time records," which documented the bases for the majority of costs included in the petition. Ibid.

The D.C. Court of Appeals concluded that respondent "simply chose not to provide" his time records "because doing so would have hurt his chances at

obtaining the percentage-based fee that he wanted." Id. at 757-58. Further, respondent's choice not to provide these records, which he knew would aid the court, constituted a material misrepresentation. Id. at 758. The D.C. Court of Appeals rejected the Hearing Committee's conclusion that there was "no . . . evidence" that respondent's "statements were made with an intention to mislead Judge Wolf." Ibid. To the contrary, the court found that, at least by the time Judge Wolf clearly stated "his understanding that respondent could not 'provide an hourly statement of services' putting the court in a quandary due to 'the total lack of information supplied by' [respondent]," respondent's "failure to correct the court's clear misimpression that he had no hourly records cannot be chalked up to good faith, and can only be explained by [his] deliberate and successful design to mislead the court." Ibid.

Applying the same reasoning, the D.C. Court of Appeals determined that respondent violated Rules 3.3(a)(1) and 8.4(c) by not divulging his time entries in the Baker trust to Judge Wertheim. Id. at 760. Specifically, the court concluded that he:

> intentionally misled the court by not disclosing his time records after Judge Wertheim expressed frustration over having no information to calculate the reasonableness of [respondent's] requested fees. It was clear from Judge Wertheim's orders that time records – or really any records – would have aided the court in its reasonableness analysis. [Respondent] had those records but chose not to disclose them, not because he

> believed they would be of no use to the court, but per his own testimony, because he was taking a "righteous stand" and "standing up for a principle" that he was entitled to the 1% compensation he sought.
>
> [Ibid.]

However, the D.C. Court of Appeals observed that, although the ODC also had charged respondent with violating Rule 8.4(d) in both the Brown and Baker matter by failing to disclose his time entries, the ODC subsequently did not take exception to the Hearing Committee's finding that this charge was not supported by clear and convincing evidence. Id. at 757 n.8, 760 n.9. Accordingly, the D.C. Court of Appeals did not consider these charged violations of Rule 8.4(d). Ibid.

In addition, the D.C. Court of Appeals rejected a finding by the D.C. Board that ran afoul of the Hearing Committee's determination that respondent credibly testified that he understood the Baker trust instrument to permit him to collect a flat fee of one percent. Id. at 760-61. Specifically, the court declined to find that respondent had committed additional violations of Rules 3.3(a)(1) and 8.4(c) by stating to Judge Wertheim that "his compensation for the Baker trust was 'set by agreement of the parties at one percent (1%) of the trust corpus, per year, payable quarterly.'" Id. at 761.

Turning next to the charged violations of Rule 3.4(c), the D.C. Court of Appeals noted, preliminarily, that respondent, who "was persistent in resisting

the probate division's decision to shift from percentage-based to hours-based compensation for trustees," "believed his advocacy in this arena was a service to the beneficiaries of the trusts he was administering, and so he thought he was entitled to reimbursement for his time in advocating this position." Ibid. As for the charged violations, the court observed that respondent "concede[d] on appeal" that he "twice refused to obey a court order." Ibid. He committed both violations in connection with the Brown trust: first, by failing to comply with the probate court's order not to include litigation-related fees or costs in his fee petitions; and second, by failing to comply with the order to refund to the trust the $200 filing fee "forthwith" and, instead, doing so more than two-and-a-half years later. Ibid.

The D.C. Court of Appeals next addressed respondent's alteration of four time entries in connection with his fee petitions submitted for the Baker and Brown trusts after the court's affirmance, in D.M.B., of Judge Wolf's and Judge Wertheim's orders relating to his earlier fee petitions in those matters. Id. at 761-62 (citing D.M.B., 979 A.2d at 17-26). The court noted that whereas respondent "concede[d] that he acted recklessly in violation of Rules 8.4(c) and (d) when he altered the four time entries," he denied that this conduct was "intentional" and, thus, also violative of Rules 1.5(a) and 3.3(a)(1). Id. at 763.

Based on respondent's concession and the findings of the Hearing Committee, the D.C. Court of Appeals concluded that respondent's altering of the four time entries violated Rules 8.4(c) and (d), owing to his conduct being reckless, although (in keeping with the Hearing Committee's credibility determinations), he "did not intentionally falsify his time records." Ibid. However, because the Court of Appeals "[could not] say that [respondent] knowingly falsified his time entries, [the court] further conclude[d] that he did not violate Rule 3.3(a)(1)" in connection with the altered entries. Ibid.

Also based on the four amended entries, the D.C. Court of Appeals concluded that respondent had violated Rule 1.5(a) by charging an unreasonable fee when he submitted the Baker and Brown fee petitions with these entries. Ibid. The Court of Appeals observed that "[i]t cannot be reasonable to demand payment for work that an attorney has not in fact done," and that District of Columbia precedent did not require that the demand for such payment be "intentionally false" to constitute a violation of Rule 1.5(a). Ibid. (quoting In re Cleaver-Bascombe, 892 A.2d 396, 403 (D.C. 2006)). The court noted, as well, that both the Hearing Committee and the D.C. Board found respondent's entries to be "baselessly inflat[ed]." Id. at 763-64. Accordingly, the court concluded that "to demand payment for work not done, even if the demand is merely reckless and not intentional, is to demand an

unreasonable fee," and thus, respondent's "recklessly dishonest time entries" violated Rule 1.5(a). Id. at 764.

The D.C. Court of Appeals also found that respondent's supplemental time entries were made recklessly, in violation of D.C. Rule 8.4(c). Id. at 764-65. The court determined, however, that, in light of the Hearing Committee's "crediting of [respondent's] explanation of how he prepared the supplemented time entries," it could not conclude that these entries "were intentionally falsified so as to constitute violations of Rule 3.3(a)(1)[.]" Id. at 765.

Finally, the D.C. Court of Appeals determined that clear and convincing evidence supported a finding that respondent had committed negligent misappropriation from the Seay trust when, in January 2002, he issued a disbursement for $7,178.50 in fees that duplicated a February 2001 disbursement. Id. at 767. The Court of Appeals rejected respondent's contention that the duplicate payment resulted from "an innocent, good faith mistake that did not violate a standard of reasonable care" (and hence, according to respondent, could not constitute a violation of Rule 1.15(a)). Id. at 766-67. To the contrary, the court found that respondent should have noticed that the "single-page sixth accounting . . . showed three legal fees listed as disbursements to himself" in 2002 and that this "should have been an immediate tip-off that something was amiss." Ibid. Further, after respondent

discovered that the third of those payments erroneously duplicated the second, "his failure to investigate" the earlier disbursement, made in the same year, "was at least negligent." Id. at 767.

The D.C. Court of Appeals determined that, whereas a "reasonably diligent attorney," "[h]aving already been put on notice of one duplicate payment in that very same year . . . should have taken the five minutes to review the fifth accounting to make sure he had not made the same error before," respondent failed to even "glance[] back" at the prior year's account and, thus, did not discover the duplicate disbursement until years later. Ibid. Accentuating respondent's contentions that his office had been in "turmoil" and undergoing "administrative difficulties" when the duplicate disbursements were made, the court found that these circumstances should cause an attorney "to be especially diligent in ensuring that one substantial accounting error is, in fact, just the one." Id. at 768. The court concluded that respondent's "unreasonably delayed detection turned what could have been a non-culpable mistake into negligent misappropriation." Ibid.

The D.C. Court of Appeals declined to resolve the parties' dispute as to whether respondent could be found to have violated Rule 1.15(a) even if the "duplicate payments were an honest mistake made entirely by [his] staff." Id.

at 766-67. Thus, the court made no determination regarding the alleged rule violation based on the second duplicate disbursement.

In "substantial mitigati[on]," the D.C. Court of Appeals weighed respondent's

> otherwise unblemished record; his cooperation with Disciplinary Counsel's investigation; his long history of serving the disabled and elderly communities; the significant time [respondent] has devoted to the profession, including his service on the steering committee of the [D.C.] Bar's Estates, Trusts, and Probate Section; and the amicus brief that over a dozen of [his] longstanding clients filed on his behalf, attesting to his valuable services, professionalism, upstanding character, and ethical conduct.
>
> [Id. at 769.]

In aggravation, the court weighed "the number of Rule violations committed here, some of which were the product of intentional conduct meant to mislead the probate court and circumvent its orders[.]" Ibid. The court also emphasized "the vulnerability of the trust beneficiaries [respondent] was serving as trustee for." Ibid.

The Parties' Submissions to the Board

The OAE docketed the present matter in September 2019, soon after the D.C. Board issued its report and recommendation in the matter.[7] Following the issuance of the D.C. Court of Appeals decision, in November 2022, the OAE filed the instant motion.

In its written submission to us, the OAE noted that the D.C. Rules violated by respondent are identical or substantially similar to their New Jersey counterparts: RPC 1.5(a); RPC 1.15(a); RPC 3.3(a)(1); RPC 3.4(c); RPC 8.4(c); and RPC 8.4(d). Specifically, the OAE argued that respondent misled the probate court in the Baker and Brown matters such that the judges believed he did not keep time records for the services he had performed; failed to abide by court orders not to bill for litigation-related work and to return the $200 filing fee to the Brown trust "forthwith;" negligently misappropriated funds from the Seay trust; and charged an unreasonable fee by seeking payment for work not done. However, the OAE did not set forth factual bases for charging respondent with prejudicing the administration of justice, in violation of RPC 8.4(d).

[7] Although the OAE asserted that, contrary to R. 1:20-14(a)(1), respondent failed promptly to notify the OAE of his discipline in the District of Columbia, the record does not make clear the applicable time period during which respondent allegedly violated this Rule.

The OAE asserted that, based upon New Jersey disciplinary precedent, respondent's misconduct warranted a one-year or eighteen-month suspension, similar to the discipline imposed by the D.C. Court of Appeals. Specifically, the OAE cited relevant precedent establishing that an attorney's misrepresentation or lack of candor to a tribunal is met with discipline ranging from a reprimand to a long-term suspension. Further, it pointed out that a reprimand is typically imposed on an attorney who fails to obey a court order, and that negligent misappropriation also typically warrants a reprimand. Finally, the OAE observed that a single incident of charging an unreasonable fee ordinarily warrants an admonition, but that a reprimand is required where the fees are so excessive as to evidence an intent to overreach.

In recommending a one-year or eighteen-month term of suspension, the OAE argued that respondent's misrepresentations alone warranted discipline greater than the censures or short terms of suspension received by the attorneys in In re Bradley, __ N.J. __ (2022) (censure); In re Clayman, 186 N.J. 73 (2006) (censure); In re Trustan, 202 N.J. 4 (2010) (three-month suspension); and In re Forrest, 158 N.J. 428 (1999) (six-month suspension). More specifically, the OAE asserted that respondent's misconduct was self-serving and that, unlike the attorneys in Bradley, Clayman, Trustan, and Forrest, he made misrepresentations "not to secure a more favorable result for a client, but

instead to obtain a more favorable result for himself." The OAE further asserted that "[h]is dishonesty in no way benefitted any of the [trusts'] beneficiaries, all of whom were vulnerable and dependent."

In mitigation, the OAE noted respondent's lack of disciplinary history; his cooperation with the ODC's investigation; his long history of serving individuals with disabilities and older adults; his service on D.C. bar committees; and an "amicus brief that over a dozen of [respondent's] longstanding clients filed on his behalf, attesting to his valuable services, professionalism, upstanding character, and ethical conduct" (quoting Krame, 284 A.3d at 769).

In aggravation, the OAE highlighted that the beneficiaries of the Seay, Brown, and Baker trusts were vulnerable to respondent's "hubris and attempted over-reach." Further, although the trusts were financially whole by the conclusion of the D.C. proceedings, the OAE posited that respondent "was willing to endanger the financial wellness of his clients in order to pursue a legal argument in which he had become unreasonably vested." The OAE also underscored respondent's failure to report his D.C. discipline to New Jersey disciplinary authorities. Finally, the OAE argued that "there is no indication that respondent is contrite or remorseful."

In respondent's brief to us, he argued that the motion for reciprocal discipline should be denied for two reasons. First, he claimed that the misconduct for which he was disciplined by the District of Columbia does not constitute misconduct in New Jersey. Second, he urged that the imposition of reciprocal discipline would not further the aims of protecting the public and preserving confidence in the bar.

Emphasizing that the investigation into his conduct began in 2007, he argued that "[t]he thirteen-year disciplinary process belie[d] the concept of Due Process" and was "an affront to a fair judicial proceeding that is both sufficiently expeditious and consistent with the law." Further, he asserted that the conduct of the evidentiary hearing in 2016, regarding events that took place as early as 2002, prejudiced his matter. For one, a "staff member whose testimony was central to the matter" had died in 2014; for another, the passage of time since the events at issue "impaired his ability to relate with precision his explanation of events occurring 14 years" before he testified.[8]

He asserted that, whereas the District of Columbia "has been utterly dismissive of laches in disciplinary matters," courts in New Jersey "have acknowledged laches in the context of a complaint against an attorney," citing

[8] In a light most favorable to respondent, his constitutional arguments are reserved for the Court. See R. 1:20-4(e) ("All constitutional questions shall be held for consideration by the Supreme Court as part of its review of any final decision of the Board.").

Lippincott v. Estate of Coles, 2005 N.J. Super. Unpub. LEXIS 170 (App. Div. Dec. 19, 2005). Moreover, he characterized his three-year temporary suspension in the District of Columbia as "draconian," given that the D.C. Court of Appeals ultimately imposed only an eighteen-month suspension. Thus, he added, he had been "promptly reinstated" to the D.C. bar after the D.C. Court of Appeals issued its November 2022 decision.

Respondent also asserted that he "performed a great public service in undertaking the trustee role" for special needs trusts. Moreover, he highlighted his service as co-chair of the Estates, Trusts and Probate Section of the D.C. bar and as president of Shared Horizons, a non-profit organization managing a pooled special needs trust; his conduct of an award-winning pro bono project; and his participation in the Special Needs Alliance, the Academy of Special Needs Planners, and the National Association of Elder Law Attorneys.

Respondent argued that, between 2003 and 2009, when the underlying conduct occurred, the District of Columbia had "no specific law regarding the payment of Trustee fees" for special needs trusts. Before 2003, several judges had ordered him "not to file petitions for fees," including Judge Wolf, who later determined respondent "must file petitions for fees in special needs trust cases and demanded that [respondent] create time records" (emphasis in original). He asserted that in reliance on precedent and the trust documents

themselves, he had "kept only informal track of time expended as Trustee," not "complete and detailed time records." In 2009, after losing his appeal from the probate court's orders, D.M.B., 979 A.2d at 15, he then "attempted to create time records" based on his records, calendars, notes, letters, emails, and other documentation. Subsequently, he reviewed these time entries, "adjusting them and correcting errors."

Respondent argued that, because he "had no choice but to reconstruct time records after losing the appeal, there was no better method than to reconstruct time and adjust the records as necessary;" that no law prohibited the reconstruction of time records; and that "time records are not the typical method of compensation for fiduciaries such as trustees." He also contended that D.C. disciplinary authorities, in finding that he had recklessly adjusted the time records, ignored reductions made in his time entries and only highlighted entries showing an increase in time.

Respondent also contended that, to date, he had identified no basis in New Jersey law to find a disciplinary violation based on his "petitioning for fees for work done in pursuit of the payment of fees," which he claimed was supported by "a valid argument that 'fees for fees' can be substantiated where the fee system applied is unclear or the fees claimed were unfairly challenged."

In summary, respondent argued that "[a]ll the matters under consideration arose from the confusion created by the [probate c]ourt" and reflected his "attempts to navigate the changing landscape of trustee compensation for special needs trusts."

Regarding the duplicate payments from the Seay trust, respondent asserted that, although the second payment "was reported in an accounting to the [c]ourt and said account was shared with the family of the beneficiary of the Seay Trust," "[n]either the court auditors nor the family objected to that particular payment of fees." He acknowledged that "[s]adly, this duplicate payment of fees did not come to light until years later at which time [he] promptly replaced the fees into the Trust account." He highlighted the difference between his conduct and that of "attorneys who have converted funds surreptitiously," emphasizing that he disbursed the funds "with permission and notice." Moreover, he argued that – as set forth in the amici brief filed on his behalf by members of the District of Columbia Bar – "[m]istakes made in reliance upon well-trained and reliable staff are not ethic[s] violations." Further, he asserted that "New Jersey [c]ourts have recognized 'honest mistakes' and 'mistaken reliance' in many contexts," citing In re Rogers, 126 N.J. 345 (1991), and In re Perskie, 207 N.J. 275 (2011).

Respondent also objected to the OAE's characterization of his conduct as "self-serving," stating, instead, that he was "always an advocate for fair compensation for trustees based upon a consistent approach by the [D.C.] [c]ourt." He further countered that the OAE, in contending that he was seeking a favorable result for himself rather than for a client, failed to recognize that "[a]n attorney can well serve their clients and still be an advocate[] to be paid a reasonable fee," and that "[s]tatements about fees are almost always self-serving" – but that does not make them a basis for a suspension.

In addition, responded disagreed with the OAE's assertion that the trust beneficiaries were "vulnerable to Respondent's hubris and attempted over-reach." He maintained, rather, that "[o]ver-reach is seen in the actions of Judges Wolf and Wertheim[]," whom he claimed, "engaged in rule making contrary to District of Columbia Law" and, "contrary to legal precedent . . . attempted to expand an order in one unpublished case to become a rule, applicable to every similar case before [the D.C. probate] court."[9] He asserted that he sought "to have the [D.C.] Superior Court recognize the precedent set and legal uncertainty" regarding trustee fees, amidst circumstances that,

[9] The order referred to by respondent was entered by Judge Wertheim in In re Beal, 2005 D.C. Super. LEXIS 3 (May 11, 2005). Respondent's description of the probate court's allegedly improper reliance on this single order does not comport with the D.C. Court of Appeals' published decision in D.M.B., 979 A.2d at 18 n.5.

ultimately, "created a backlash such that few professionals are willing to serve as trustee" of special needs trusts.

In addition, respondent maintained that there was no evidence that the trusts' beneficiaries suffered harm or would have suffered harm through the payment of legal fees in keeping with prior D.C. practice. Moreover, no "trust beneficiary, family of trust beneficiary, or client . . . complained that [his] fees were excessive or unreasonable."

Respondent emphasized that the primary purpose of attorney discipline is to protect the public, not punish the transgressing attorney. He asserted that "the public is unlikely to suffer any harm from [his] continued practice of law," because this case stemmed from issues specific to the laws of the District of Columbia, "a sanction in New Jersey is not likely to deter any ethically compromised conduct by trustees;" and New Jersey "should not be beholden to a deeply flawed disciplinary system in the District of Columbia."

In mitigation, respondent cited that he has practiced law for more than forty years, his age, and his otherwise unblemished record. He stated that he "acted out of confusion and frustration because of the District of Columbia's failure to establish a clear path to payment of trustee fees in special needs trusts." Moreover, he "was a public advocate to set out a structure for the payment of trustee fees" and "served on an ad hoc committee of the District of

Columbia Bar to propose legislation regarding special needs trusts and trustee fees."

Toward further mitigation, respondent stated that "suspension is tantamount to disbarment because of the likelihood that [he] would have difficulty in resuming his practice." He also highlighted, both in mitigation and in support of his argument that he posed no risk to the public, that his underlying conduct "occurred well over thirteen years ago;" that fourteen of his clients had submitted an amici brief "citing his significant contributions to the community and the hardship that would ensue to them and others if his license were suspended;" that the Hearing Committee factfinders, who were the ones who heard the testimony and made credibility determinations, "only recommended at most a 12-month executed suspension;" and that no finding was ever made, in the course of the D.C. proceedings, that he "is a current danger or threat to the public."

Analysis and Discipline

Following our review of the record, we determine to grant the OAE's motion for reciprocal discipline. 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 the District of Columbia, as in New Jersey, "the burden of proving the [disciplinary] charges rests with Bar Counsel[,] and factual findings must be supported by clear and convincing evidence." In re Anderson, 778 A.2d 330, 335 (2001) (quoting In re Williams, 464 A.2d 115, 119 (D.C. 1983)) (alterations in original); see also In re Mitchell, 727 A.2d 308, 313 (D.C. 1999) ("It is Bar Counsel's burden to establish by clear and convincing evidence that respondent violated the Rules of Professional Conduct.").

In the context of a motion for reciprocal discipline, the Court's review "involves 'a limited inquiry, substantially derived from and reliant on the foreign jurisdiction's disciplinary proceedings.'" In re Barrett, 238 N.J. 517, 522 (2019) (quoting In re Sigman, 220 N.J. 141, 153 (2014)). Nevertheless, clear and convincing evidence must support each of our findings that respondent violated the New Jersey Rules of Professional Conduct. See Barrett, 238 N.J. at 521; In re Pena, 164 N.J. 222 (2000).

Reciprocal discipline proceedings in New Jersey are governed by Rule 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 disciplinary 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, none of the above subsections apply to this case. Rather, we determine to follow the presumption set forth in Rule 1:20-14(a)(4), to grant the OAE's motion for reciprocal discipline, and to recommend the imposition of the identical discipline imposed by the District of Columbia – an eighteen-month suspension. Because respondent resigned from the New Jersey bar in 2012, we further determine that his term of suspension should be deferred until such time as he seeks to practice law in New Jersey.

As the Court observed in Sigman, 220 N.J. at 154, the "application of discipline identical to that imposed by the foreign jurisdiction . . . promotes the

imposition of consistent sanctions for the misconduct of an attorney admitted to practice in multiple states." Here, we have the benefit of an especially robust examination and analysis of the underlying circumstances – namely, the District of Columbia disciplinary authorities comprehensively reviewed the facts and had opportunity to benefit from respondent's testimony firsthand; the D.C. Court of Appeals issued detailed findings of fact and law in Krame; and previously, in the published decision in D.M.B., the D.C. Court of Appeals addressed and rejected certain of respondent's contentions regarding the probate courts' orders in the Brown and Baker trust matters.

Due Process Argument

As a threshold issue, in respect of respondent's claims that the District of Columbia proceedings violated his due process rights, these arguments are constitutional in nature and, therefore, reserved for the Court's determination, pursuant to R. 1:20-4(e)(5).

However, we wish to comment on the substance of respondent's constitutional claims, for the Court's consideration within its sole discretion. In our view, his bare allegations lack support in the record. Respondent's written submission to us did not describe any deficiency in "notice or opportunity to be heard." See R. 1:20-14(a)(4)(D). In addition, the procedural

history set forth in the Hearing Committee's report did not document any undue delay.

Regarding alleged prejudice from the passage of time before the evidentiary hearing, respondent, in his submission to us, failed to identify the witness who died or the significance of that witness's testimony, nor did he draw a link between his diminished recollection of any specific facts and the D.C. disciplinary authorities' conclusions. He likewise failed to explain how laches applies to the instant matter, which timely proceeded to us upon motion of the OAE following the November 2022 decision by the D.C. Court of Appeals. Finally, respondent did not articulate how his three-year interim suspension in the District of Columbia, pending the outcome of proceedings that imposed an eighteen-month suspension (a far lesser sanction than the D.C. Board's then-pending recommendation of disbarment), has bearing on the appropriate quantum of discipline in New Jersey.

Violations of the Rules of Professional Conduct

Turning to the alleged violations, we determine that the record contains clear and convincing evidence that respondent engaged in unethical conduct in the Brown and Baker matters, in violation of RPC 1.5(a); RPC 3.3(a)(1); and RPC 3.4(c); and, based on his misrepresentation that he lacked timekeeping

records, RPC 8.4(c). In addition, the record contains clear and convincing evidence that he engaged in unethical conduct in the Seay matter, in violation of RPC 1.15(a). We determine to dismiss, however, the allegations that respondent separately violated RPC 8.4(c) by altering four time entries and his submission of supplemented time entries, conduct that the District of Columbia deemed reckless but not intentional. We also determine to dismiss the RPC 8.4(d) charge, which was not sufficiently set forth, for purposes of pleading, in the OAE's motion or motion brief.

Unreasonable Fees (Brown and Baker)

The D.C. Court of Appeals determined that, in the Brown and Baker trusts, respondent recklessly altered four time entries and consequently, "demand[ed] payment for work not done." Krame, 284 A.3d at 763-64. It is axiomatic that an attorney cannot reasonably bill hourly increments for tasks that the attorney did not undertake. Moreover, under New Jersey law, RPC 1.5(a) may be violated even if an unreasonable fee results from a mistake in calculating the attorney's fees or expenses, rather than from an intent to overcharge the client. See, e.g., In the Matter of Royce W. Smith, DRB 21-021 (September 23, 2021) at 12. Thus, the determination by the Court of Appeals that respondent, by recklessly altering four time entries, ended up billing the

Baker and Brown trusts for work not done, amply supports a finding that he charged unreasonable fees, in violation of RPC 1.5(a).

Although respondent's brief to us was less than clear in its assertions regarding the altered entries, he seemingly argued that he was unfairly disciplined for reasonable and necessary revisions to and reconstructions of time records and, perhaps, for using a method other than contemporaneous hourly time records. He also seemed to dispute the finding by the D.C. Court of Appeals that he recklessly adjusted time records, at least in part on grounds that disciplinary authorities ignored reductions made in his entries.

Respondent's contentions miss the mark. He conceded during earlier proceedings that he recklessly had altered the four time entries. Moreover, because this matter comes before us by way of a motion for reciprocal discipline, the factual findings of the D.C. Court of Appeals are conclusively established.

False Statements of Material Fact to a Tribunal (Brown and Baker)

The evidence of respondent's purposeful failure to disclose his timekeeping records to Judge Wertheim (in the Baker matter) and to Judge Wolf (in the Brown matter) also clearly establishes, in both matters, violations of RPC 3.3(a)(1) and RPC 8.4(c).

RPC 3.3(a)(1) provides that an attorney "shall not knowingly: (1) make a false statement of material fact . . . to a tribunal." Here, when the judges requested that respondent provide time entries to support his fee petitions, he falsely stated that he did not have such records. The judges' subsequent orders memorialized their misimpression that respondent lacked time records, as well as the material effect that respondent's non-disclosure had on the judges' review of his fee petitions.

By the same conduct, respondent also engaged in misrepresentation, in violation of RPC 8.4(c).

Noncompliance with Court Orders (Brown)

Turning to RPC 3.4(c), respondent conceded during the proceedings before the D.C. Court of Appeals that, regarding the Brown trust, he disobeyed the court's orders in two respects. First, contrary to an order from the court that barred him from charging the trust for fees and costs related to his effort to be paid on a percentage basis, he nevertheless included such fees and costs in a fee petition. Second, contrary to an order requiring him to reimburse the trust for a $200 filing fee "forthwith," he did not return the funds for more than two-and-a-half years.

In respondent's written submission to us, he omitted any mention of his past concession that he violated court orders. Instead, he asserted that there was "a valid argument that 'fees for fees' can be substantiated in circumstances where the fee system applied is unclear or the fees claimed were unfairly challenged," and that he had found no basis, under New Jersey law, to find that he committed a disciplinary infraction by seeking such fees. Respondent's reiteration of his 2006 disagreement with Judge Wolf's orders obfuscates the facts of his admitted misconduct.

Once issued, the probate court's orders were to be followed. By choosing to disregard the orders, respondent violated RPC 3.4(c).

Negligent Misappropriation (Seay)

Finally, clear and convincing evidence also supports a finding that respondent negligently misappropriated funds from the Seay trust in connection with the first of the two duplicate payments. Specifically, respondent issued a payment of $7,178.80 from the Seay trust in January 2002, for work for which he had already received payment in February 2001. He then failed to discover the duplicate disbursement until 2010.

The D.C. Court of Appeals rejected respondent's contention that this was not an ethics violation but a mistake, made in reliance on his staff.

Instead, the Court of Appeals found that respondent failed to make even a minimal effort to review the January 2002 disbursement, whereas a reasonably diligent attorney, upon discovering a later duplicate disbursement in the same year, would have verified that the earlier payment was not similarly erroneous (especially if the attorney's office had been in turmoil at the time). Krame, 284 A.3d at 767-68. Moreover, the court reached this determination after weighing the amici brief that respondent submitted to us, authored by members of the D.C. bar who argued that his conduct did not constitute negligent misappropriation under that jurisdiction's law.

Similar to respondent's misplaced arguments regarding the altered time entries, his argument that he bears no responsibility for the duplicate disbursement in the Seay matter is at odds with factual determinations of the D.C. Court of Appeals, which are controlling here. That court's careful, detailed findings of fact clearly and convincingly support the RPC 1.15(a) charge of negligent misappropriation.

Dismissal of RPC 8.4(c) Charge Based on Time Entries

Pursuant to New Jersey disciplinary precedent, we determine to dismiss the alleged violations of RPC 8.4(c) based on respondent's reckless alteration and supplementation of time entries in the December 2009 fee petition in

Brown and the January 2010 fee petition in Baker. Under District of Columbia precedent, reckless conduct can suffice to establish a violation of Rule 8.4(c). In re Krame, 284 A.2d at 762. In contrast, in New Jersey, "a violation of RPC 8.4(c) requires intent." In the Matter of Richard J. Pepsny, DRB 21-142 (December 21, 2021) at 31 (citing In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011)). Consequently, although respondent undoubtedly acted unprofessionally both by altering four time entries and adding new entries, we are precluded from finding that these acts violated RPC 8.4(c), because the record does not support the finding that he undertook this conduct with the requisite intent to deceive.

Dismissal of RPC 8.4(d) Charge

Finally, the D.C. Court of Appeals found that respondent violated Rule 8.4(d) because he conceded that his reckless alteration of four time entries violated that rule, along with Rule 8.4(c).[10] Krame, 284 A.3d at 763. However, the OAE's motion and supporting brief, which serve as the charging documents in the instant matter, did not set forth the OAE's theory of how respondent's alteration of four time entries rose to the level of wasting judicial

[10] During the proceedings before the D.C. Court of Appeals, the ODC did not assert that respondent violated Rule 8.4(d) on any grounds other than the four altered time entries. Krame, 284 A.3d at 757 n.8, 760 n.9, 764 n.10.

resources or otherwise violating RPC 8.4(d). Thus, the OAE's documents did not satisfy the pleading requirements of Rule 1:20-4(b) (requiring that a disciplinary complaint "set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct, specifying the ethical rules alleged to have been violated"), in conformity with In re Roberson, 194 N.J. 557 (2008).

Accordingly, we determine to dismiss the charge that respondent violated RPC 8.4(d).

In sum, we determine to grant the motion for reciprocal discipline and find that, in both the Brown and Baker matters, respondent violated RPC 1.5(a); RPC 3.3(a)(1); and RPC 8.4(c) (based on his misrepresentation that he lacked time records); in addition, in the Brown matter, he violated RPC 3.4(c); and further, in the Seay matter, he violated RPC 1.15(a). However, for the reasons previously detailed, we determine to dismiss the charge that respondent violated RPC 8.4(d), as well as the additional charged violations of RPC 8.4(c), which were based on his alteration of four time entries and submission of supplemented time entries.

Quantum of Discipline

Precedent Involving Misrepresentations or Lack of Candor to a Tribunal

The discipline imposed on attorneys who make misrepresentations to a court or exhibit a lack of candor to a tribunal, or both, ranges from an admonition to a long-term suspension. See, e.g., In the Matter of George P. Helfrich, Jr., DRB 15-410 (February 24, 2016) (admonition for attorney who failed to notify his client and witnesses of a pending trial date; thereafter, he appeared at two trial dates, but failed to inform the trial judge and his adversary that he had not informed his client or the witnesses of the trial date; significant mitigation considered); In re Vaccaro, 245 N.J. 492 (2021) (on motion for reciprocal discipline, reprimand for attorney who lied to a judge, during a juvenile delinquency hearing, that he had no knowledge of his client's other lawyer or his client's counseling in connection with his client's immigration matter; violations of RPC 3.3(a)(1) and RPC 8.4(c)); In re Bradley, __ N.J. __ (2022), 2022 N.J. LEXIS 1166 (censure for defense attorney who made misrepresentations to a municipal court in the course of representing his client in two DWI matters on the same date; in the first proceeding, which took place in the Berlin municipal court, his client entered a guilty plea to DWI as a first offender; in the second proceeding, which took place in the Stratford municipal court, the attorney misrepresented that his

client had no prior DWI convictions, bolstered the reliability of his client's driver's abstract (which had not been updated) while knowing it was inaccurate, and allowed the Stratford court to improperly sentence his client as a first-time offender; violations of RPC 3.3(a)(5) (failure to disclose a material fact to a tribunal, knowing that the omission is reasonably certain to mislead the tribunal), RPC 8.4(c), and RPC 8.4(d)); In re Alexander, 243 N.J. 288 (2020) (three-month suspension for attorney who gave false testimony before a hearing officer and a Superior Court judge in connection with a domestic violence matter; the attorney filed a false domestic violence complaint against his paramour, leading to the issuance of a temporary restraining order in the attorney's favor; thereafter, during a two-day Superior Court hearing, the attorney's paramour presented an audio recording of the alleged incident, which contradicted the attorney's testimony; although the judge allowed the attorney the opportunity to withdraw his false testimony, the attorney refused to do so; the attorney also misrepresented the nature of his testimony to the OAE; violations of RPC 3.1, RPC 3.3(a)(1), RPC 8.1(a) (false statement of material fact in a disciplinary matter), RPC 8.4(c), and RPC 8.4(d), among other RPCs; the attorney had no prior discipline in his twelve-year career at the bar); In re DeClement, 241 N.J. 253 (2020) (six-month suspension for attorney who, in an attempt to secure a swift dismissal of a federal lawsuit,

misrepresented in a certification, under penalty of perjury, that earlier state court litigation had settled, despite knowing that it merely had been dismissed without prejudice; to support his deception, the attorney then omitted, in his submissions to the federal judge, critical portions of the state court record; the attorney continued to misrepresent to the judge and, later, to the OAE, the status of the state court matter; violations of RPC 3.1, RPC 3.3(a)(1); RPC 8.1(a), and RPC 8.4(c), among other RPCs; in aggravation, the attorney did not cease his acts of deception until he was "completely cornered" by the OAE; prior reprimand); In re Mavroudis, 254 N.J. 124 (2023) (one-year suspension for attorney who, following entry of a judgment against him in a civil matter, was prohibited by court order from removing, transferring, or otherwise disposing of personal property in his home; nevertheless, the attorney made arrangements for the removal and sale of a valuable painting; he also misrepresented to the court that he had not had an opportunity to review the court's orders and a Sheriff's inventory of his property, misrepresented during a deposition the value of artwork in his home, and misrepresented during the ethics investigation that the painting was removed only to be photographed; violations of RPC 3.3(a)(1), RPC 3.4(c), RPC 8.1(a), and RPC 8.4(b)-(d); in aggravation, the attorney demonstrated an "utter lack of remorse for his misconduct;" in significant mitigation, he had no prior discipline in forty-eight

years at the bar, he had been "invaluable" in helping his church implement procedures to protect against sexual abuse of children, and his misconduct had occurred almost ten years earlier); In re Bernstein, 249 N.J.357 (2022) (on motion for reciprocal discipline, two-year suspension for attorney who violated RPC 3.3(a)(1) and RPC 8.4(c) by making misrepresentations of facts to a Virginia federal court regarding his prior discipline and lawsuits pending against him for legal malpractice; at least one client was substantially harmed by the attorney's misconduct); In re Heyburn, __ N.J. __ (2022), 2022 N.J. LEXIS 1111 (on motion for reciprocal discipline, three-year suspension for attorney who violated RPC 8.4(c) by making multiple misrepresentations on an application for pro hac vice admission in Pennsylvania, at a time he was ineligible to practice in that jurisdiction; in so doing, he engaged in conduct prejudicial to the administration of justice by preventing the court from having full opportunity to assess his fitness for pro hac vice admission; the attorney also engaged another attorney in carrying out his deception; extensive disciplinary history consisting of four censures and three terms of suspension, many involving deceptive behavior).

Precedent Involving Failure to Comply with Court Orders

Ordinarily, a reprimand is imposed on an attorney who fails to obey court orders, even if the infraction is accompanied by other, non-serious violations. See In re Ali, 231 N.J. 165 (2017) (the attorney disobeyed court orders by failing to appear when ordered to do so and by failing to file a substitution of attorney, violations of RPC 3.4(c) and RPC 8.4(d); he also lacked diligence (RPC 1.3) and failed to expedite litigation (RPC 3.2) in one client matter and engaged in ex parte communications with a judge, a violation of RPC 3.5(b); in mitigation, we considered his inexperience, unblemished disciplinary history, and the fact that his conduct was limited to a single client matter), and In re Cerza, 220 N.J. 215 (2015) (the attorney failed to comply with a bankruptcy court's order compelling him to comply with a subpoena, which resulted in the entry of a default judgment against him; violations of RPC 3.4(c) and RPC 8.4(d); he also failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b); prior admonition).

Precedent Involving Negligent Misappropriation and Excessive Fees

Respondent's negligent misappropriation from the Seay trust and his mildly excessive charges based on recklessly altering four time entries in the Brown and Baker matters are on a par with the misconduct that warranted a

reprimand in In re Rihacek, 230 N.J. 458 (2017). There, the attorney negligently misappropriated client funds held in his trust account and charged mildly excessive fees in two matters. He also committed various recordkeeping violations and charged an improper contingent fee without providing the client with an accurate settlement statement. However, in mitigation, he had no prior discipline in thirty-five years at the bar.

In our view, for purposes of determining the quantum of discipline, the most significant features of respondent's misconduct are his lack of candor to Judge Wertheim and to Judge Wolf regarding the fact that he had kept time records, coupled with his disregard of two orders issued by Judge Wolf. Respondent engaged in multiple acts of misconduct, committed in two matters over a number of years, in a sustained effort to elicit the probate court's acquiescence to his quest to continue earning percentage-based fees for his administration of special needs trusts.

Under New Jersey precedent, respondent's multiple misrepresentations to the probate court, coupled with his defiance of court orders, would alone warrant a suspension. Moreover, compounding the above misconduct, respondent charged excessive fees in the Brown and Baker matters, and committed negligent misappropriation in his handling of the Seay trust.

In crafting the appropriate discipline, we also consider relevant aggravating and mitigating factors.

In mitigation, as concluded by the D.C. Hearing Committee, the record contained "no evidence of any financial or other prejudice to the Seay, Baker and Brown trust beneficiaries or their guardians." Moreover, the D.C. Court of Appeals concluded that respondent believed that his persistent advocacy, aimed at "resisting the probate division's decision to shift from percentage-based to hours-based compensation for trustees[,]" "was a service to the beneficiaries of the trusts he was administering." Krame, 284 A.3d at 761. In addition, he has provided significant services to individuals with disabilities and to older adults; cooperated with the ODC; and submitted an amicus brief by clients who attested to his "valuable services, professionalism, upstanding character, and ethical conduct." Id. at 769. Further, he has had no disciplinary history in New Jersey in more than forty years at the bar (albeit with extremely limited contacts with our jurisdiction), and the District of Columbia disciplinary matter underlying the instant motion appears to have been his only prior, public discipline in any jurisdiction (excluding other jurisdictions' imposition of reciprocal discipline based on the same underlying matter). Finally, substantial time has passed since he committed the misconduct at issue.

In aggravation, we remain deeply troubled that respondent, in his brief to us, re-asserted arguments about trustees' compensation in the District of Columbia that the D.C. Court of Appeals' rejected in its 2009 published decision in D.M.B. Moreover, respondent's submission to us offered no indication of contrition. In the past, he had acknowledged to the District of Columbia disciplinary authorities that he committed unethical conduct when he disobeyed the probate court's orders in two respects and, further, submitted recklessly altered time entries in support of his petitions for fees from the Brown and Baker trusts. In contrast, his submission to us obfuscated relevant facts, sought to shift blame to Judge Wolf and Judge Wertheim, and suggested an alarming rejection of the comprehensive decision issued by the D.C. Court of Appeals in Krame. Finally, we weigh in aggravation – as did the D.C. Court of Appeals – "the vulnerability of the trust beneficiaries [that respondent] was serving as trustee for." Krame, 284 A.3d at 769.

Conclusion

Considering the presumption set forth in R. 1:20-14(a)(4), we find no reason to disturb the eighteen-month suspension determination made by the District of Columbia, which engaged in a firsthand review of respondent's misconduct. The District of Columbia – which carefully reviewed the entire record and was far better positioned to evaluate respondent's actions and

arguments in the context of that jurisdiction's laws governing special needs trusts – was convinced that an eighteen-month suspension was appropriate. Respondent has not presented us with reason upon which to deviate from that quantum. The suspension should be deferred and imposed if and when respondent seeks reinstatement to the practice of law in New Jersey.

Member Boyer voted to impose a one-year deferred suspension.

Members Joseph and Rivera were 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
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Evan Jay Krame
Docket No. DRB 23-145

Argued: September 21, 2023

Decided: December 19, 2023

Disposition: Eighteen-month suspension

Members	Eighteen-month suspension	One-year suspension	Absent
Gallipoli	X		
Boyer		X	
Campelo	X		
Hoberman	X		
Joseph			X
Menaker	X		
Petrou	X		
Rivera			X
Rodriguez	X		
Total:	6	1	2

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