SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-049
District Docket No. XIV-2011-0192E

IN THE MATTER OF	
KEITH O. MOSES	
AN ATTORNEY AT LAW	

Decision

Argued: July 18, 2013

Decided: August 16, 2013

Melissa A. Czartoryski 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 recommendation for discipline (three-month suspension) filed by Special Master Edwin H. Stern, P.J.A.D. (ret.). A one-count complaint charged respondent with gross neglect (RPC 1.1(a)), knowingly disobeying an obligation under the rules of a tribunal (RPC 3.4(c)), and

engaging in conduct prejudicial to the administration of justice (RPC 8.4(d)). We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1990. In 2002, he received an admonition for failure to cooperate with an ethics investigation into two grievances against him. In the Matter of Keith O.D. Moses, DRB 02-248 (October 23, 2002). On November 3, 2011, respondent received a reprimand for lack of diligence, failure to communicate with the client, and unilaterally deciding not to pursue the client's claim, without first discussing it with the client. In re Moses, 208 N.J. 361 (2011. On May 29, 2012, respondent was temporarily suspended for failure to pay costs assessed in the disciplinary proceedings that led to his 2011 reprimand. In re Moses, 210 N.J. 481 (2012). He was reinstated on July 19, 2012. In re Moses, 210 N.J. 614 (2012). On April 24, 2013, respondent received a second reprimand, this time for negligent misappropriation, recordkeeping violations, failure to cooperate with the OAE, failure to appear for one demand audit and failure to appear on time for another, and failure to provide documentation evidencing that he had corrected his recordkeeping improprieties, as directed by the OAE. In re Moses, 213 N.J. 497 (2013).

The facts contained in the complaint are largely undisputed. Respondent, however, denied that his actions violated the RPCs. Importantly, although respondent was aware of the date and time of the DEC hearing, he failed to appear at it. Respondent's account of the events in the case is contained in his answer to the ethics complaint and his two post-hearing submissions, which the special master allowed him to file.

This matter arose out of respondent's handling of the conveyance of a row house, located at 12 Ivy Place, Jersey City.

On May 6, 1958, Marianne Coffaro deeded the property to Lucius Turner and his wife, Rosa, and Ella Turner, his mother. The three Turners owned the property as tenants in common.

On May 29, 1990, Ella Turner died intestate, survived by sons Lucius and Virgil Turner and daughters Tollie Mae Turner Draper and Elizabeth Turner Everett. The estate was not formally administered. Upon her death, Ella's interest in the property passed to her heirs.

On June 15, 1990, Lucius Turner died intestate, survived by his wife, Rosa, and their six children: John, Lucius, Jr., Frances, David, Mildred Turner Newton, and Lizzie Turner Kelly. No action was filed to administer Lucius' estate. Upon his death, Lucius' interest in the property passed to his heirs.

In 1998, respondent prepared a will for Rosa Turner, which she executed on April 9, 1998. Paragraph five of the will stated, "I give, devise and bequeath my real property known as 12 Ivy Place, Jersey City to my sister-in-law, Odessa Turner, should he [sic] survive me by 30 days, and if he [sic] shall not survive me then I leave the property to Frances Turner and Mildred Turner or to the survivor of them should she survive me by thirty days."

In the will that respondent prepared for Rosa Turner, he failed to indicate that she held only a partial interest in the property, as a tenant in common. The will erroneously identified Rosa as the sole owner of "my real property."

Rosa Turner died on June 3, 1998, survived by her aforementioned six children and by her sister-in-law, Odessa, widow of Virgil Turner. On June 16, 1998, on behalf of son John Turner, respondent filed an application and received a judgment for probate of Rosa's will.

On April 28, 1999, Odessa died intestate, survived by her three children: Louella Turner McFadden, Wennell Turner, and Robert Turner. Odessa was also survived by the five children of Veronica, a daughter who predeceased her. On June 8, 2001,

respondent filed an application for the administration of the estate of Odessa, on behalf of her daughter Louella McFadden.

With the application for the administration, Louella submitted an affidavit prepared by respondent, containing a valuation of Odessa's sole asset, the Ivy Place property, which had an estimated value of $85,000. The McFadden affidavit did not indicate that Odessa's interest was only a partial interest and that her mother-in-law, Ella, and Ella's heirs also held an interest in the property.

On June 8, 2001, Louella was appointed administratrix of Odessa's estate.

Respondent prepared a deed, which was executed, on July 11, 2001, by John Turner, "executor of the Will of Rosa Turner, surviving joint tenant of the joint tenancy between Lucius Turner and Rosa Turner, his wife and Ella Turner, his mother, all deceased." The deed purported to convey the entire Ivy Place property to Odessa's estate.

According to the formal ethics complaint, the July 11, 2001 deed was "improper," inasmuch as there was no joint tenancy among Lucius, Rosa, and Ella Turner. They were tenants in common. Respondent neither admitted nor denied this allegation of the complaint.

Two months later, respondent prepared another deed, which was executed, on September 8, 2001, by Louella McFadden, "as administrator of the Estate of Odessa Turner, deceased." The deed purportedly conveyed the Ivy Place property to "Wesley McFadden, residing at 12 Ivy Place . . . with respect to nineteen-twentieths (19/20) and Ed Turner, a minor under the age of eighteen years residing at 80 North Munn Street, East Orange, New Jersey c/o Wennell Turner with respect to one twentieth (1/20), as tenants in common."

As to several of the following facts alleged in the complaint, respondent's answer stated simply that he did not have sufficient information to form a response. Again, because respondent failed to appear at the DEC hearing, his answer is the primary source of his version of the events.

Respondent's September 8, 2001 deed failed to disclose the interests of Ella Turner and her heirs in the property. Moreover, although the deed to Odessa's estate referenced a joint tenancy, the deed to Wesley McFadden and Ed Turner referenced a tenancy in common. According to the complaint, this indicated that respondent and the Turner/McFadden family clients were aware, or should have been aware, of the distinction between joint tenancy and a tenancy in common. Here,

too, respondent's answer stated that he had insufficient information to reply to this allegation.

Thereafter, a series of transfers produced deeds that contained inaccurate information, because they were based on respondent's earlier deeds. Specifically, on December 6, 2002, Wesley McFadden and Ed Turner executed a deed for the sale of the property to Twin Property Management, Inc., c/o Margaret Fair, for $85,000. Although respondent did not prepare the deed, it was inaccurate because it was based on his September 8, 2001 deed.

On June 13, 2003, Twin Property Management, Inc. transferred the property to David J. Hedgeman for $255,000, with an inaccurate deed, based on the inaccurate McFadden/Turner deed of December 6, 2002.

On January 11, 2006, Hedgeman sold the property to Alexia McKenzie for $420,000. The deed was inaccurate, having been based on the inaccurate June 13, 2003 deed.

On December 12, 2006, McKenzie sold the property to Ashley Bruce for $485,000. The deed prepared for the transaction was inaccurate, as it was based on the inaccurate January 11, 2006 deed.

In 2007, U.S. National Bank Association (USB) initiated foreclosure proceedings against Ashley Bruce. On June 25, 2009, USB purchased the property, at a sheriff's sale, for $100.

On July 31, 2009, Raymond R. Siberine, the attorney for First American Title Insurance Company (FA), sent respondent a letter concerning title issues on the property and requested that respondent provide him with the information that had led respondent to conclude that there was a joint tenancy among Lucius, Rosa, and Ella Turner.

On August 14, 2009, USB filed a motion to vacate the sheriff sale, due to the bank's concerns about the degree to which Ashley Bruce held an interest in the property.

On August 19, 2009, Siberine sent respondent a letter, memorializing telephone conversations they had on August 5, 9 and 13, 2009. During those calls, respondent had promised Siberine to retrieve the file from storage. In his answer, respondent stated that his files and property, which had been stored "at U-Haul," had been confiscated and sold for nonpayment of storage fees. In addition, respondent claimed, the file was "over seven years old, presumably referring to an attorney's duty to preserve client property for a period of seven years.

N.J. Advisory Committee on Professional Ethics Op. 692 (Suppl.), 170 N.J.L.J. 343 (October 28, 2002).

When respondent did not comply with Siberine's request, Siberine again wrote to him, on September 4, 2009, this time memorializing an August 25, 2009 telephone conversation, during which respondent advised him that he had retrieved the client file from storage and would make it available for Siberine's review.

Thereafter, respondent and Siberine scheduled a meeting for August 31, 2009, at respondent's office, so that Siberine could review the file. When Siberine arrived at the appointed time, respondent was not there. Respondent had not called ahead to say that he would not be available at the meeting. Siberine called respondent for an explanation on September 1, 2, and 3, 2009, but respondent failed to return those calls. Again, in his answer, respondent claimed to have had insufficient information to reply to the relevant allegation of the complaint.

On September 11, 2009, the court vacated the June 25, 2009 sale, pending resolution of the title issues.

On October 8, 2009, Karen A. Ermel, the attorney for the heirs of Ella Turner, advised Siberine that she had been retained to represent the heirs regarding their claimed fifty-

percent ownership in the property, as tenants in common with Ashley Bruce.

On March 4, 2010, Siberine filed a complaint on behalf of FA, the title company, in Hudson County Superior Court, Chancery Division, in order to quiet title. The defendants included respondent, John Turner, Louella McFadden, Wesley McFadden, Ed Turner, and the heirs of Ella Turner.

According to the ethics complaint, respondent failed to answer FA's complaint. In his verified answer, respondent claimed to have filed an answer to FA's complaint, but the record before us contains no such answer.

About a month later, on April 22, 2010, Ermel, too, filed a complaint, in Hudson County, against Wennell Turner, Ashley Bruce, and U.S. Bank. On June 24, 2010, Siberine filed an answer to Ermel's complaint.

On July 28, 2010, Ermel filed a cross-claim against respondent, asserting that his negligent preparation of deeds for the property caused the claimants to suffer significant loss.

According to the ethics complaint, respondent failed to answer Ermel's complaint, an allegation that respondent denied. The record before us contains no answer by respondent.

On August 27, 2010, the Honorable Thomas P. Olivieri, P.J. Ch., entered an order compelling respondent to provide plaintiff FA and defendant USB with answers to interrogatories and to produce written responses to earlier requests for production of documents, within twenty days. Respondent conceded that he did not do so.

On September 20, 2010, Judge Olivieri ordered respondent to pay FA and USB's attorney fees and costs ($980) by October 11, 2010. Respondent admittedly did not do so.

Respondent's answer conceded several more allegations contained in the ethics complaint, as follows:

On September 20, 2010, Ermel filed a request for the entry of default against respondent, but respondent failed to file a response. Therefore, on October 15, 2010, Judge Olivieri entered an order finding respondent in violation of the court's August 27, 2010 order and directing him to comply with it no later than November 8, 2010. Respondent did not do so.

On November 8, 2010, Judge Olivieri entered an order to compel respondent to pay FA and USB's attorney fees and costs ($1,645) by November 30, 2010, but respondent failed to do so.

On November 30, 2010, Siberine sought the entry of default against respondent and filed a second motion to enforce

litigant's rights on behalf of FA. Respondent filed no responsive papers.

On December 17, 2010, respondent filed a Chapter 7 bankruptcy petition in New York, seeking to discharge the FA and USB claims against him. FA responded by filing a motion for relief from the automatic stay provisions of the bankruptcy code. On February 22, 2011, the bankruptcy court granted FA relief from the stay, thus permitting it to proceed with the state court litigation. Thereafter, on March 25, 2011, FA filed a complaint in the bankruptcy court, objecting to the discharge of its debt.

On April 12, 2011, Judge Olivieri entered a default judgment in favor of FA, ordering respondent to pay FA $141,140.662 in attorney fees and costs. The order required respondent to produce, within twenty days, all documents supporting the statements in the deed that stated that Lucius Turner, Rose Turner, and Ella Turner held title to the property as joint tenants. Respondent was also ordered to produce any documentation supporting his conclusion that the conveyance was for one-hundred percent of the property, not just the partial interest that they owned as tenants in common.

Respondent did not produce the documentation required by the order, prompting Judge Olivieri to enter an amended order for final judgment against respondent. The total award for attorney fees and costs ballooned to $185,295.14.

Respondent's answer to the ethics complaint admitted that he received all of the legal documents (presumably, in both the bankruptcy and state court litigation) "giving rise" to the court orders referred to in the ethics complaint. He denied, however, that he intentionally failed to participate in the litigation or to comply with court orders, for which he had been charged with having violated RPC 3.4(c) and RPC 8.4(d):

> Respondent brought an action in Eastern District of New York in bankruptcy Court and subsequently when Siberine filed an adversarial proceeding against respondent, he responded to the allegations and is currently vigorously pursuing the defense of this action. The jurisdiction of this matter is no longer in New Jersey Superior court since respondent filed for bankruptcy in the District court.
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> [A¶53.][1]

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[1] "A" refers to respondent's answer to the formal ethics complaint.

Likewise, respondent denied that his actions amounted to gross neglect:

> Siberine has sought to punish respondent in the adversarial proceeding alleging fraud, of which there is clearly no evidence in this matter and now uses this proceeding to further punish respondent by distracting him from the pending and pressing adversarial proceedings in United States District Court. The errors committed by respondent do not constitute gross negligence and therefore there is no basis for this proceeding to be treated as a violation of RPC 1.1(a).
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> [A¶54-¶55.]

Siberine was the sole witness to testify at the hearing before the special master. According to Siberine, nothing in the 1958 deed indicated a joint tenancy among the Turners. He believed that respondent had intentionally cut corners, when preparing the 2001 deeds and, in the process, had committed a fraud:

> Simple terms, the 1958 deed did not establish a joint tenancy. There's no deed establishing a joint tenancy. The 2001 deeds that he prepared indicated, at least to me, that he was aware or should have been aware of the differences between a joint tenancy and tenancy in common. I mean, that's not rocket science, that's basic real estate hornbook law. And if you look at the caption, if there is no joint tenancy, and Ella Turner had a half interest in the property, and you've got three pages of heirs identified, the only way that they could have conveyed out the interest

> of all of those heirs, it's almost an impossibility. You have to get all of those heirs to sign off on the conveyance, and it's hard to get -- as more people that you have involved in a transaction, the harder it is to get everybody to agree to do something. And, also, the amount of the conveyance was about a little under $31,000. So to get all of these people to sign off on a deed of conveyance for little or no money, in my view, would have been unlikely. And based upon past experience that I've had in similar matters, it's hard to get everyone to agree to convey for certain dollar amounts. Somebody may say I don't care what cousin Joe gets, whether he's getting $1,000, I want $2,000. Bottom line, it's an impossibility. So, in my view, a way to avoid that difficulty, I believe what they did is created a ruse of a joint tenancy, and indicated that Rosa was the surviving joint tenant, and on that basis, conveyed out all -- asserted to convey out all of the property, basically cut out all of those many heirs.
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> [T22.][2]

In fact, Judge Olivieri, in his April 12, 2011 order, found that respondent had committed a fraud upon the court and had engaged in a fraudulent conveyance of real property.

Respondent was not charged, in this disciplinary matter, with having engaged in fraudulent conduct. As seen below, the

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[2] "T" refers to the transcript of the December 3, 2012 hearing before the special master.

OAE presenter specifically stated, at the ethics hearing, that it was not pursuing any claim of fraud by respondent.

Despite respondent's failure to appear at the ethics hearing, he was permitted to file an undated, post-hearing "Memorandum of Issues" (MOI), attached to a December 3, 2012 email to the special master. The MOI stated, in part:

> The facts of the matter here are not in dispute. There is no disagreement that respondent, on the instruction of a client prepared a will transferring property to her heirs. There is no question that a deed followed that will and that the said deed was prepared in accordance with the instructions in the will. The said deed and will were both prepared by respondent before information that the grantor/testator did not have the right to dispose of 100% of the property was available. However, by the time that respondent could become aware of the error, the property had passed from hand to hand. The title company which researched the matter determined that several heirs had been omitted from the deed and that the error in making the transfer was the respondent's.
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> Respondent, however, received no interest or financial gain from the transactions and the subsequent proceeding. Yet, the title company, First American successfully obtained a default judgment against respondent before the superior court [sic] of Hudson County. The judgment is in excess of $140,000 and is accompanied by a finding of fraudulent conduct by respondent against the heirs who were disenfranchised and the Probate Court of Hudson county [sic]. Respondent attempted to vacate the judgment but the attempt was not

> properly finalized. However, there is no evidence that the testator or respondent deliberately misled any other persons or acted in a manner to willfully harm any party or to achieve financial or other gains.
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> [MOI,1-2.]

Respondent's absence from the ethics hearing presented a procedural "wrinkle" for the special master, which he addressed during a colloquy with the presenter:

> JUDGE STERN: I do not want to interrupt you, although I guess that's exactly what I'm doing, and you may proceed any way you want. But from our phone conversations, my understanding is that what I anticipate to be the testimony from Mr. Siberine is not contested, and that the defense is that the respondent believed that the bankruptcy proceedings [stayed] any obligation on his part to appear or respond to any of the orders in state court. We might be able to get a stipulation if he were here. But in the absence of his presence, I guess you have to go through it very methodically.
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> MS. CZARTORYSKI [Presenter]: The reason I am is I didn't want to just start with the bankruptcy because Mr. Moses took the position on the phone that what he did was not gross negligence, as we charged, that it was simple negligence, and, therefore, he shouldn't be disciplined for that. Mr. Siberine, actually, is taking the position that Mr. Moses engaged in fraud when he prepared these documents, but that's not something we're going forward in terms of attorney discipline and ethics.
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> [T12-10 to T13-6.]

The special master requested that the parties present post-hearing briefs on the distinction between negligence and gross neglect and whether respondent's conduct constituted gross neglect.

The presenter submitted a January 11, 2012, brief, in which she argued that respondent was guilty of gross neglect for having failed to prepare a correct deed:

> Concerning the subject of gross negligence versus negligence, gross negligence and negligence differ in a matter of degree, "and the differences cannot always be stated with mathematical precision." Stuyvesant Assoc. v. Doe, 221 *N.J. Super* 340, 344 (Ch. Div. 1987). The difference "must be determined by the finders of fact." Id. (citing Edwards v. Our Lady of Lourdes Hosp., 217 *N.J. Super*. 448, 462 (App. Div 1987)). Furthermore, "[n]egligence differs from gross negligence only in degree, not in kind." Monaghan v. Holy Trinity Church, 275 *N.J. Super*. 594, 599 (App. Div. 1994) (citing Prosser and Keeton, *The Law of Torts 08* 34 at 212 (5th ed. 1984)).
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> An attorney in a disciplinary matter was found to have been grossly negligent for failure to conduct title searches before filing mortgages on properties to secure loans between two clients. Had the attorney done so, he so [sic] would have discovered that the recipient of the loan proceeds did not own the properties intended to secure the loans and was defrauding the other client. In the Matter of Anthony J. La Russo, 212 N.J. 107 [sic] (2012). "Respondent's failure to timely record the mortgages and notes and to order title searches

> to ensure that Fuentes was the rightful owner of the properties that were used as collateral for the loans was reckless at best." La Russo, DRB 12-062 (July 18, 2012) at 11.
>
> [OAEb1-2.][3]

In his undated reply brief, respondent argued that he was guilty only of simple negligence in his preparation of the deeds, not gross neglect:

> With respect to the preparation of a deed, the attorney must examine all previous deeds and ensure that the new deed reflects that the previous owner is the current grantor and that the grantors and grantees are correctly accounted for. Further, the attorney ensures that the legal description fits the old deed and is accurate and that any consideration is duly noted in the newly executed document. An error in any such deed is subject to correction at any time after the execution by the issuance of a corrective deed. Indeed, utilizing the services of a title company or title examiner will provide certain guarantees to the attorney in this regard, but is rarely necessary.
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> . . . .
>
> The United States Supreme Court set forth the standard of liability in an action for legal malpractice as follows: When a person adopts the legal profession, and assumes to exercise its duties in behalf of another for hire, he

[3] "OAEb" refers to the OAE's brief to the special master.

must be understood as promising to employ a reasonable degree of care and skill in the performance of such duties; and if injury results to the client from a want of such a degree of reasonable care and skill, the attorney may be held to respond in damages to the extent of the injury sustained. Continuing, the Court declared:

> . . but it must not be understood that an attorney is liable for every mistake that may occur in practice, or that he may be held responsible to his client for every error of judgment in the conduct of his client's cause. Instead of that, the rule is that if he acts with a proper degree of skill, and with reasonable care and to the best of his knowledge, he will not be held responsible. See 100 U.S. 195 (1879) at 198 [sic].

As each attorney asked to prepare a deed knows, there are few clients who would pay for a title search and many clients are quite cognizant of the range of legal fees and filing fees because they shop for the best bargain in an attorney. In contrast, during a sale or purchase involving a mortgage, the bank requires a title search and the parties have no means of avoiding the charges since they are made part of the transaction and are not legal fees to the attorney. Your respondent applied basic title search as a means of cutting costs and expediting the transfers of the deeds prepared in cases which did not require a mortgage. This points to the exercise of due care and adequate diligence, notwithstanding which an error could be made.

Accordingly, it is respectfully submitted that the charges of gross negligence are not borne out by the facts and that the respondent

> exercised reasonable care and should not be punished for his actions.
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> [Undated letter-brief from respondent to the special master, 2-3.]

Respondent also argued, in his undated MOI, that he was not required to comply with Judge Olivieri's court orders or, as he put it, "to contest the default proceeding." He added that, nevertheless, he had contested the default proceeding:

> Presenter argues that it is respondent's obligation to contest the default proceeding. Respondent did this in two manners, first by filing an answer in the Superior court [sic] proceeding and then by filing a bankruptcy proceeding. However, First American successfully sought to be excepted from the debt. Respondent argues that the option to seek to vacate the default which followed the bankruptcy court removal of the stay based [sic] still exists. Bankruptcy Rule 9024 incorporates Federal Rule of Civil Procedure 60(b) which provides as follows (b) Grounds for Relief from a Final Judgment, Order, or Proceeding. On motion and just terms, the court may relieve a party or its legal representative from a final judgment, order, or proceeding for the following reasons:
> * mistake, inadvertence, surprise, or excusable neglect;
> * newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
> * fraud (whether previously called intrinsic or extrinsic), or misconduct by an opposing party;
> * the judgment is void;
> * the judgment has been satisfied, released or discharged; it is based on an earlier judgment

> that has been reversed or vacated; or applying it prospectively is not longer [sic] equitable[.]
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> [MOI,2.]

After considering the parties' briefs on the issue of gross neglect, the special master determined that respondent was not guilty of violating RPC 1.1(a). He reasoned that "there is no record developed or precedent cited with respect to the obligation of an attorney in preparing a will, or even drafting a deed, to check title of property conveyed, and nothing specific is cited for the proposition that respondent's conduct constitutes 'gross negligence' much less 'fraud'."

With regard to the remaining charges, knowing disobeyance of an obligation under the rules of a tribunal (RPC 3.4(c)) and conduct prejudicial to the administration of justice (RPC 8.4(d)), the special master found "overwhelming" evidence of those violations, proven "beyond the 'clear and convincing' evidence standard." The special master concluded that respondent may have believed that he had no obligation to reply to the state court litigation because of the filing of the bankruptcy petition, but that did not excuse his failure to advise the state court and others involved in the proceedings of the pendency of the bankruptcy matter.

The special master took note of respondent's argument in the MOI, in which he claimed to have

> contested the default proceeding 'first by filing an answer in the Superior Court proceeding and then by filing a bankruptcy proceeding.' He claims that he can still move to vacate the default because the stay was lifted and that he can also appeal the judgment in the state court decision. There is no indication in the record that he has done either long after the stay was lifted.
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> [SMR,9.][4]

The special master concluded that respondent had an "obligation to take action after the stay was lifted." Respondent was "not merely a party defendant in the case" and by ignoring "court orders and directions [was] disrespectful to the court and the others involved" in the case. Further, respondent "remained an officer of the court as his own attorney, and his conduct both derailed and delayed the proceedings. The record contains no proof of any endeavor to vacate the default judgment or belatedly appeal the judgment to this day."

The special master found respondent guilty of having violated RPC 3.4(c) and RPC 8.4(d).

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[4] "SMR" refers to the special master's report.

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

In April 1998, respondent prepared a will for Rosa Turner that included language that, when she died, she would "give, devise and bequeath my real property known as 12 Ivy Place" to her sister-in-law, Odessa. Respondent should have used language that conveyed Rosa's partial interest, not language that would convey the entire property. According to respondent, it was a simple error on his part, due to his reliance on information from the testatrix herself. Respondent did not order a title search or do any in-depth analysis of the title.

Rosa died in June 1998. Respondent filed an application for the probate of her will on behalf of her son, John Turner.

After Odessa's passing in 1999, Odessa's daughter, Louella McFadden, retained respondent to file an application for administration of Odessa's estate. On July 11, 2001, respondent prepared a deed into the estate of Odessa Turner, asserting a joint tenancy among Lucius, Rosa and Ella Turner, when they were actually tenants in common. Finally, on September 8, 2001, respondent prepared a deed purporting to convey the entirety of

the 12 Ivy Place property to Wesley McFadden (19/20^{ths}) and Ed Turner (1/20th).

The errors contained in the deeds that respondent prepared wreaked havoc on the title, as it passed through several more buyers thereafter. It took years for FA (the title company) and USB (the foreclosing bank) to straighten it out. Respondent was of little help in clearing the clouds that his errors placed on the title to 12 Ivy Place.

With regard to the gross neglect charge against respondent, it appears to us that he acted on his clients' wishes. There is no evidence that he ignored their various requests for action. To the contrary, from April 1998 to at least September 2001, he was active in the preparation of documents on behalf of various Turner and McFadden family members. Not one client complained that he had neglected the matter.

To the extent that the parties briefed the issue of gross neglect versus simple neglect, we agree with the special master that the evidence presented below establishes, at most, simple neglect on respondent's part. Therefore, we dismiss the RPC 1.1(a) charge.

Unquestionably, however, respondent ignored five orders for documents from Judge Olivieri, before a sixth order of final

judgment was entered against him. Respondent's excuse that he need not comply is baseless. It should be remembered that respondent filed his bankruptcy petition on December 17, 2010. Four of Judge Olivieri's orders preceded that date. Once the automatic stay provisions of the bankruptcy code went into effect, on December 17, 2010, no entity, including FA, USB and the heirs that Ermel represented, could take any action to collect its debt.

Siberine, on FA and USB's behalf, complied with the strictures of the bankruptcy stay and sought stay relief, which was granted on February 22, 2011. From that day forward, Siberine was free to proceed with the litigation, as if there had been no bankruptcy.

By the same token, from that day forward, respondent had a renewed duty (the same duty he had to comply with the four pre-bankruptcy petition orders entered against him) to the Superior Court, to his adversaries, and to the others involved in the litigation to comply with the entirety of Judge Olivieri's orders, all of which were properly obtained, either before the bankruptcy or after relief from the bankruptcy stay was granted.

The special master made mention of respondent's argument that he still might be able to take some action in the bankruptcy matter. Even if true, it is of no moment. In real-world terms, respondent has done nothing, in any venue, to unravel the mess he created. He never complied with the first order of Judge Olivieri, let alone the numerous others that followed closely behind it. For all of it, we find respondent guilty of having violated RPC 3.4(c) and RPC 8.4(d).

Attorneys who violate court orders have generally received a reprimand, even if that infraction is accompanied by other, non-serious violations. See, e.g., In re Mason, 197 N.J. 1 (2008) (attorney engaged in conduct prejudicial to the administration of justice; with information gathered during the representation of Marx Toys, the attorney switched sides to represent a competing entity; the attorney was found guilty of having violated a court order entered after the switch, directing him "not [to] perform any legal work which involves Marx Toys and [not make] any disclosures regarding Marx;" conflict of interest also found); In re Gourvitz, 185 N.J. 243 (2005) (attorney engaged in conduct prejudicial to the administration of justice by repeatedly disregarding several court orders requiring him to satisfy financial obligations to

his former secretary, an elderly cancer survivor who sued him successfully for employment discrimination); In re Carlin, 176 N.J. 266 (2003) (attorney failed to comply with two court orders; he also failed to comply with mandatory trust and business recordkeeping requirements and was found guilty of gross neglect, the attorney was also found guilty of lack of diligence, failure to communicate and failure to deliver funds to a third person); and In re Malfara, 157 N.J. 635 (1999) (attorney failed to honor a bankruptcy judge's order to reimburse the client $500 for the retainer given in a case where he failed to appear at two court hearings, forcing the client to represent himself; the attorney was also found guilty of gross neglect and failure to cooperate with ethics authorities during the investigation of the matter). But see In re Davis-Daniels, DRB 05-218 (September 22, 2005) (admonition for attorney who, as personal representative in an estate matter in South Carolina, failed to respond to numerous deadlines set by the court for filing an inventory and failed to appear or to explain her non-appearance to the court in a hearing scheduled for her to explain why she had not performed her duties; violation of RPC 1.16 also found for the attorney's failure to withdraw from the representation when her physical condition materially impaired

her ability to properly represent the client; compelling mitigating factors considered).

In aggravation, we considered respondent's prior discipline, a 2002 admonition, a 2011 reprimand, and a 2013 reprimand, in addition to his failure to appear at the hearing before the special master. Pursuant to R. 1:20-6(c)(2)(D), a respondent's "appearance at all hearings is mandatory."

There are no mitigating factors to consider.

According to precedent, without more, a reprimand would suffice for respondent's misbehavior. However, the aggravating factors require enhancement of that sanction to a censure.

We agree with the special master that, based on respondent's own statement that he suffered from depression, respondent should be required to provide proof of fitness to practice law, within ninety days of the date of the Court order, as attested by a mental health professional approved by the OAE. In addition, for a period of two years, respondent is to practice under the supervision of a proctor approved by the OAE.

Member Baugh recused herself. Member Gallipoli voted for a three-month suspension.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and

actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Bonnie C. Frost, Chair

By: _____
for Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Keith O. Moses
Docket No. DRB 13-049

Argued: July 18, 2013

Decided: August 16, 2013

Disposition: Censure

Members	Disbar	Three-month Suspension	Censure	Dismiss	Disqualified	Did not participate
Frost			X			
Baugh			X			X
Clark						
Doremus			X			
Gallipoli		X				
Yamner			X			
Zmirich			X			
Total:		1	5			1

Julianne K. DeCore
Chief Counsel