SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 15-193
District Docket Nos. IX-2013-0023E; IX-2013-0024E; IX-2013-0025E; and IX-2013-0026E

IN THE MATTER OF	:
MARC Z. PALFY	:
AN ATTORNEY AT LAW	:

Corrected Decision

Argued: November 19, 2015

Decided: March 30, 2016

Bunce D. Atkinson appeared on behalf of the District IX Ethics Committee.

Respondent waived appearance.

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

This matter was before us on a recommendation for a three-month suspension filed by the District IX Ethics Committee (DEC), in connection with two complaints. The first, a five-count complaint, charged respondent with violations of RPC 1.1 (presumably (a), gross neglect); RPC 1.3 (lack of diligence); RPC 1.4 (presumably (b), failure to communicate with the client); RPC 1.5(b) (failure to communicate in writing the rate or basis of a fee); R. 1:21-1(a) and RPC 5.5 (failure to maintain a bona

fide office); RPC 5.5(a) (practicing law while ineligible); RPC 8.1 (presumably (b), failure to cooperate with ethics authorities); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). The second, also a five-count complaint, charged respondent with violations of RPC 1.1(a); RPC 1.1(b) (pattern of neglect); RPC 1.4, presumably (b); RPC 1.5(a) (unreasonable fee); RPC 1.15(b) (failure to promptly deliver funds to entitled party); RPC 3.3(a)(1) (false statement of material fact or law to a tribunal); RPC 8.4(c); and RPC 8.4(d) (conduct prejudicial to the administration of justice). For the reasons discussed below, we determined to impose a three-year suspension.

Respondent was admitted to the New Jersey bar in 1999. He has a long history of ineligibility to practice law for failure to pay the annual fee to the New Jersey Lawyers' Fund for Client Protection (the Fund). His periods of ineligibility are September 25, 2000 to February 11, 2001; September 24, 2007 to April 21, 2009; and September 27, 2010 to June 23, 2011.

Respondent was temporarily suspended three times for failure to comply with five fee arbitration determinations. In re Palfy, 212 N.J. 331 (2013); In re Palfy, 214 N.J. 105 (2013); and In re Palfy, 214 N.J. 110 (2013).

Subsequently, on November 20, 2014, respondent received a censure for recordkeeping violations and for failing to cooperate with disciplinary authorities. In re Palfy, 220 N.J. 32 (2014). On March 26, 2015, he was suspended for three months for failing to file an affidavit of compliance, as required by R. 1:20-20, for failing to cooperate with disciplinary authorities, and for engaging in conduct prejudicial to the administration of justice. The Court also confirmed that respondent remains suspended until he complies with the fee arbitration determinations and pays the ordered sanctions. In re Palfy, 221 N.J. 208 (2015).

Docket No. IX-2013-0026E (Asadpour, Sherman, Elefante, Lang, and Young)

The Asadpour Matter

Count One of the complaint charged respondent with violations of RPC 1.1(a) and (b), RPC 1.4(a), RPC 1.5(a), RPC 1.15(b), and RPC 8.4(c) and (d).

Sometime in 2011, Noushin and Behzad Asadpour retained respondent to file a bankruptcy petition. The retainer agreement called for a fee of $2,374 ($2,100 fee plus a $274 filing fee). Over the course of the representation, the Asadpours made payments totaling $1,950.

Throughout the course of the representation, the Asadpours experienced significant problems communicating with respondent. Mrs. Asadpour complained that she had met with respondent only several times, including at her house, in front of a bank, at a bar, and at a restaurant, but never at his office. Further, she estimated that ninety-nine percent of her attempts to contact respondent were to no avail because sometimes his telephone was disconnected, and, on other occasions, he simply would not answer calls.

Eventually, Mrs. Asadpour communicated with the bankruptcy court directly and learned that respondent had not yet filed the petition. The clerk provided her with the address for respondent that was on file. After Mrs. Asadpour located a corresponding telephone number, by searching the internet, she called that number and reached a law firm. Although respondent occupied office space at that location, the firm made it clear that he did not work there. On another occasion, Mr. Asadpour drove to that address and happened to encounter respondent in the area. Respondent assured Mr. Asadpour that everything was fine and directed him to bring him another check. The Asadpours delivered another check to respondent the next week.

Respondent admitted that he had met with the Asadpours four or five times, including once at their house, at a Starbucks, at

a Barnes and Noble, and at a diner that happened to have a bar. As to his office location during his representation of the Asadpours, respondent asserted that he used an office in Red Bank or perhaps Shrewsbury, while, at the same time attempting to open his own office in Newark. He added that, regardless of his office location, Mrs. Asadpour had determined all meeting locations. He asserted that the Asadpours telephoned him three to four times per week, sometimes two or three times per day, and sent him forty to fifty text messages.

Respondent's client file contained a single piece of correspondence from him to the Asadpours. In that letter, dated April 11, 2011, respondent asked the Asadpours to communicate with him to schedule an appointment to discuss their concerns about their bankruptcy and payments to the Chapter 13 Trustee, and requested certain information that respondent needed to complete the Chapter 13 plan.

The file also contained a copy of the Chapter 13 petition, dated May 11, 2011, signed by the Asadpours. As previously stated, that petition was not filed until September 23, 2011. According to respondent, this delay was designed to permit the Adadpours to save additional money to fund their Chapter 13 plan and to secure additional part-time employment. Mrs. Asadpour, in turn, claimed that she had urged respondent to file the

bankruptcy petition promptly because Citibank had levied on her checking account.

On the same day that respondent filed a Chapter 13 petition in the Asadpours' behalf, the bankruptcy court sent to respondent a notice that the petition would be dismissed if certain missing documents were not filed by October 7, 2011. One of the missing documents was a certificate of credit counseling. Pursuant to bankruptcy rules, debtors are required to complete credit counseling no more than 180 days prior to the filing of a bankruptcy petition. Respondent had checked the box on the petition form indicating the counseling had been completed, but had not included the certificate. He also failed to complete the form for the disclosure of his fees, as well as the Chapter 13 plan. In a different section of the petition, however, respondent listed his fee as $1,100. Additionally, although a box was checked on the petition indicating that the filing fee was enclosed, it was not. On October 17, 2011, the Asadpour petition was dismissed for respondent's failure to file the required documents.

Respondent explained that the Asadpours had refused to provide information about a second mortgage encumbering their home. Specifically, respondent asserted that the Asadpours had worked out a plan with Wells Fargo regarding their second

mortgage, which, for unknown reasons, they did not want included in their bankruptcy. Without that information, respondent maintained, he could not prepare the Chapter 13 plan and, therefore, the petition would have been dismissed even if he had filed the other required documents. For this reason, he never filed a motion to reinstate the Asadpour petition. Mrs. Asadpour, however, denied having withheld from respondent any information about the second mortgage and denied informing him that she wanted any such information excluded from the bankruptcy.

Respondent admitted that he had made other, albeit minor, mistakes on the petition. In particular, the filing software he used automatically checked a box indicating the filing fee was included, and he had failed to remove the checkmark. Further, although he admitted that he had failed to file the credit counseling certificate and the attorney fee disclosure statement, respondent maintained that these were not significant omissions and that the certificate could have been filed at a later date. Respondent's practice at that time was to wait until he had all the necessary documents and information prior to filing them. He added that, going forward, his practice will be to file the documents separately, as they become available. On October 24, 2011, respondent filed the Asadpours' credit

counseling certificate, which he admitted he had in his possession when he originally filed the petition on September 23, 2011.

Respondent further maintained that he had failed to pay the filing fees within five days, as required by the court's order, because he was having trouble with his credit card at the time. Respondent finally paid the Asadpours' filing fees on October 27, 2011, thirty-four days after the bankruptcy petition was filed.

On October 24, 2011, the same day respondent filed the certificate of credit counseling, the Asadpours sent a letter to Bankruptcy Judge Kaplan, complaining that respondent was not returning their phone calls and that he was no longer at the address they had for him. Respondent admitted that he received the letter electronically from the court because he was still the attorney of record on the matter. He did not contact the judge or reply to the letter, because he decided to let the Asadpours "go elsewhere." Respondent, however, did not file a substitution of attorney. Hence, on October 25, 2011, the court entered an order to show cause why respondent's attorney fees should not be disgorged.

Respondent neither submitted a reply to the order to show cause nor appeared on its return date, November 22, 2011. Thus,

on November 28, 2011, Judge Kaplan ordered respondent to disgorge his $2,000 fee within ten days of the order. Respondent characterized his failure to appear on the order to show cause as both inconsequential and beneficial to the Asadpours, claiming that he had intended to refund the $2,000 and that, if he had appeared and contested the proposed action, they would have received less.

Subsequent to the court's issuance of the order to show cause, but prior to its return date, the Asadpours filed a pro se motion to reinstate their petition. They also sent another letter to Judge Kaplan, which respondent failed to acknowledge. A hearing on the motion to reinstate was scheduled for November 7, 2011. Because respondent was still the attorney of record, his appearance at that hearing was required. However, respondent failed to appear at the hearing, believing he had been fired.

Because respondent had not refunded his fee to them, as he had been ordered, the Asadpours again wrote to Judge Kaplan on December 6, 2011, seeking stiffer penalties against respondent. Again, respondent failed to reply. Hence, on January 12, 2012, Judge Kaplan held respondent in contempt of court and directed payment of a $100 daily fine until he complied will all orders. Once again, respondent ignored the court's order.

Respondent eventually refunded the $2,000 fee to the Asadpours in February 2013 – more than a year after the court's order and several years after disciplinary proceedings were instituted. He attributed the delay to his lack of funds because, due to personal problems, his practice had suffered.

Respondent admitted that he still has not addressed Judge Kaplan's order requiring him to pay a fine of $100 per day until he disgorges his fees, claiming that he had explained to Judge Kaplan that he was awaiting the resolution of his disciplinary matters before addressing the orders in the bankruptcy matter. He stated that it was his intention to file a motion for relief from the order imposing sanctions after the disciplinary matters are complete and "see where the chips fall with the amount I owe."

Ultimately, the Asadpours retained another attorney to complete their bankruptcy.

The DEC determined that respondent engaged in gross neglect by delaying the filing of the Asadpours' bankruptcy petition; by filing an incomplete bankruptcy petition; by failing to reply to the court's notice to file missing documents, thereby allowing the petition to be dismissed; by failing to appear in court; and by failing to reply to the court's order to show cause and order to disgorge fees.

The DEC also determined that respondent's failure to inform the Asadpours of how to communicate with him, and his failure to keep them adequately and accurately informed about the status of their case violated RPC 1.4(a), (b), and (c). Although the DEC recognized that the complaint had not specifically charged a violation of RPC 1.4(b) or (c), but rather only a violation of RPC 1.4, it concluded that the detailed facts supporting violation of those subsections were elicited and borne out by the testimony of the witnesses.

In addition, the DEC found that respondent violated RPC 1.15(b) (failure to promptly deliver funds to third parties) by his failure to pay the required filing fee to the bankruptcy court for the Asadpours' petition. The DEC also found that respondent failed to disclose the attorney fees the Asadpours had paid him, failed to comply with the court's order to disgorge those fees, and failed to comply with the court's order holding him in contempt, but did not refer to any specific RPC violations in this regard. Finally, the DEC found that respondent's gross neglect, when combined with other acts of neglect, constituted a pattern of neglect, in violation of RPC 1.1(b). The DEC did not address the RPC 1.5(a) charge.

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

Respondent allowed the Asadpours' bankruptcy petition to be dismissed, based on his failure to file required documents, even after receiving notice from the court about the missing documents. Moreover, after his clients complained to Judge Kaplan, respondent failed to take any action, deciding to let the Asadpours "go elsewhere." Finally, not only did respondent fail to file a motion to reinstate the Asadpours' bankruptcy petition, he failed to appear at the hearing on his clients' pro se reinstatement motion. Respondent, thus, was guilty of gross neglect, in violation of RPC 1.1(a). Additionally, by his failure to keep his clients informed about the status of their case and his failure to reply to their communications, respondent violated RPC 1.4(b).[1]

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[1] Although the complaint mistakenly referred to RPC 1.4(a), it clearly gave respondent notice that he was charged with "failure to keep his client[s]" informed about the status of their case.

Respondent's delay in paying the bankruptcy petition filing fee, and his failure to comply with the court order to disgorge his fees and the court order holding him in contempt constituted a violation of RPC 8.4(d). Moreover, respondent further wasted judicial resources by filing a deficient bankruptcy petition and ignoring all court attempts to obtain compliance, resulting in the entry of an order to show cause. He compounded this behavior by failing to appear on the return date of the order to show cause.

Finally, respondent's conduct in this matter, combined with the acts of neglect in the client matters detailed below, demonstrates a pattern of neglect, in violation of RPC 1.1(b).

Although the complaint alleged that respondent's fee was unreasonable, the record contains no evidence that, if respondent had performed the services for which he had been retained, his fee would have been unreasonable. His failure to perform those services, while violative of other RPCs, does not render the fee unreasonable. Thus, we determined to dismiss the charged violation of RPC 1.5(a).

In addition, the complaint charged that respondent's failure to submit the filing fee to the court constituted a failure to promptly deliver funds a third party is entitled to receive. That rule, however, is inapplicable to these facts.

Rather, RPC 1.15(b) addresses circumstances whereby an attorney receives funds, such as settlement proceeds, and fails to deliver them to parties who have an interest in those funds, for example, health care providers with medical liens. It cannot be said that the bankruptcy court had an interest in the filing fees that the Asadpours had paid to respondent. Thus, we determined to dismiss the charged violation of RPC 1.15(b) in this respect.

Finally, the complaint alleged that respondent made a misrepresentation by failing to disclose his receipt of fees and costs from the Asadpours. The evidence, however, established that, on one part of the petition, respondent disclosed his fee, albeit an incorrect amount ($1,100, rather than $2,100). Because the record contains no evidence to support a conclusion that respondent knowingly misrepresented the amount or receipt of a fee, we determined to dismiss the charged violation of RPC 8.4(c)

The Sherman matter

Count Two of the complaint charged respondent with violations of RPC 1.1(a) and (b), RPC 3.3(a)(1), and RPC 8.4(c) and (d).

Irving and Donna Sherman retained respondent to represent them in a bankruptcy matter, first meeting with him on November

25, 2010. Respondent's records indicate that he received a payment of $900 from the Shermans for legal services in April 2011. On June 21, 2011, respondent filed a bankruptcy petition on the Shermans behalf. Respondent acknowledged that, as of September 27, 2010, he was ineligible to practice law for failure to pay his annual fee to the Fund and was not reinstated until June 23, 2011.[2]

The signature page on the bankruptcy petition bears a date of March 26, 2011. Respondent admitted that he obtained the Shermans' signatures on a blank petition, prior to preparing the petition itself. Respondent saw no impropriety in this practice of obtaining his clients' signatures on a document, under penalty of perjury, in the absence of the preparation of that document. He maintained that he would have obtained new signatures if the information to be included in the petition had been updated prior to its submission to the court. The Shermans, however, did not re-sign the petition, despite inconsistencies between it and the Shermans' circumstances at the time.

Respondent failed to disclose his receipt of the $900 fee that the Shermans had paid at the time the petition was filed, a

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[2] The complaint did not charge respondent with practicing law while ineligible, a violation of RPC 5.5(a).

disclosure required by bankruptcy rules. Respondent attributed this omission to inadvertence. Additionally, he left blank the section of the bankruptcy petition requiring disclosure of attorney compensation paid within the prior year. Respondent claimed that he intentionally left blank the section of the petition addressing the full amount of his legal fee because he was waiting to receive his fee in full.

Respondent filed the petition without required documents, including the credit counseling certificates for the Shermans and without having paid the $299 filing fee.

Although the Shermans owned a home, respondent listed no property on Schedule A of the bankruptcy petition, requiring disclosure of debtors' real estate. Respondent initially claimed that he believed that the Shermans rented their home, but later conceded that he was obligated to investigate the issue and report truthful information on the petition. Notwithstanding his belief that the Shermans rented their home, respondent could not explain his failure to include any information on Schedule G of the petition, which requires disclosure of unexpired leases.

Later in his testimony, respondent recalled that the Shermans owned their home, that their mortgage payment was $2,150 per month, and that he had been aware of their mortgage, having had evidence of it in his file. Although he observed that

Schedule G, thus, was accurate, because the Shermans did not have a lease, he acknowledged that Schedule A was incorrect, because it omitted their real estate, and that Schedule D was incorrect, because it failed to disclose the Shermans' mortgagee as a creditor. Respondent further conceded that, although he knew of the Shermans' other assets, such as bank accounts, clothing, and a vehicle, he failed to disclose them as well, claiming that he had time to correct these deficiencies at a later date.

On June 22, 2011, as a result of the deficiencies in the Shermans' petition, the court issued a notice of missing documents providing that the case would be dismissed if the documents were not filed by July 5, 2011. Respondent did not file the missing documents. Thus, on July 7, 2011, the case was dismissed.

On August 12, 2011, respondent filed a notice of motion to reinstate the petition, attaching a certification signed by Irving Sherman and prepared by respondent. The certification stated that the missing document, the credit counseling certificate, had since been filed. The certification incorrectly stated that the petition had been dismissed on August 5, rather than July 5, 2011. Respondent also paid the filing fee on the

same day, almost two months after he originally filed the bankruptcy petition.

Respondent admitted that, although the certification he prepared and Sherman signed represented that the credit counseling certificates had been filed, in fact, they had not been filed. He maintained that procedures for reinstating petitions varied among bankruptcy judges, and that some judges allow cases to be reopened before the documents were actually filed. He conceded, however, that he "should have worded it differently." He further asserted that the incorrect dismissal date contained in Irving's certification was the result of a mistake.

The return date for the motion to reinstate was August 29, 2011. Respondent did not file the certificates of credit counseling until March 6, 2012, seven months after he prepared a certification, signed by his client, representing that, as of August 12, 2011, those certificates had been filed. Additionally, respondent was unable to produce a certification bearing Irving's original signature and admitted that he has no proof that Irving actually read the certification.

On September 13, 2011, the court entered an order denying the motion to reinstate the case.

On September 28, 2011, respondent filed a second motion to reinstate the Shermans' bankruptcy petition, supported by a certification, again signed by Irving and again indicating that the certificate of credit counseling had been filed. On October 18, 2011, the court denied the motion. As of that date, the credit counseling certificates still had not been filed.

Respondent claimed that he had sent the certificates of credit counseling by e-mail to the clerk because he was having problems uploading them to the court's web page. He further claimed that he immediately contacted the court after his motion was denied to explain that he had submitted these documents. He was unable to provide proof in support of these contentions.

On December 4, 2011, respondent filed a third motion to reinstate the case, attaching a certification by Irving. As in the other motions, the certification represented that the credit counselling certificates had been filed, although they were not filed until March 6, 2012, more than three months later. Respondent insisted that he believed that he could submit the documents to the court only after the case was reopened. On March 2, 2012, after the passage of eight months and three motions, the court entered an order reopening the case.

The DEC determined that, by his failure to file all documents required for a bankruptcy petition and his failure to

reply to the court's notice of missing documents, resulting in the dismissal of the Sherman case, respondent violated RPC 1.1(a). Further, the DEC found that respondent made a false statement of material fact to the bankruptcy court, in violation of RPC 3.3(a)(1), by filing a certification that misrepresented that the missing documents had been filed. Finally, the DEC determined that respondent engaged in a pattern of neglect, in violation of RPC 1.1(b).

The DEC found that respondent's conduct did not rise to the level of a violation of RPC 8.4(c) or (d), determining that his actions were "careless and/or unintentional."

* * *

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent was guilty of unethical conduct in the Sherman matter is supported by clear and convincing evidence.

Respondent was guilty of gross neglect when he failed to file required documents with the bankruptcy petition, and failed to reply to the court's notice of missing documents, resulting in the dismissal of his clients' case, in violation of RPC

1.1(a). In addition, respondent's conduct, when combined with other acts of gross negligence, violated RPC 1.1(b).

Further, respondent filed a bankruptcy petition that contained numerous misrepresentations. Specifically, he omitted assets that the Shermans owned, omitted their mortgage debt, and failed to disclose the fees they had paid him. In addition, respondent filed a motion to reinstate the case, supported by a certification he had himself prepared for his clients' signatures, misrepresenting that the missing documents had been filed. He did so on three separate occasions. Although the DEC found only a violation of RPC 3.3(a)(1) in this respect, in our view, respondent's multiple misrepresentations to the court, through a certification he had himself prepared for his clients' signatures, also violated RPC 8.4(c). Indeed, respondent admitted that he knew the information to be false when he prepared the certification and submitted it to the court. His after-the-fact justification for these blatant misrepresentations does not vitiate respondent's knowledge of their falsity in the first instance.[3]

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[3] We note that RPC 3.3(a)(1), of which the DEC found respondent guilty for the same conduct, also contains a "knowing" component, further supporting an additional finding of a violation of RPC 8.4(c).

We also do not agree with the DEC's determination that respondent did not violate RPC 8.4(d). From the very inception, respondent filed pleadings he knew to be incomplete and inaccurate. When he was given an opportunity to cure those defects, respondent filed multiple motions that perpetuated the inaccuracies and deficiencies, each time requiring court resources to consider and then reject those motions. Thus, by his actions, respondent clearly engaged in conduct prejudicial to the administration of justice, in violation of RPC 8.4(d). The complaint also charged a violation of RPC 8.4(d) based on respondent's failure to submit the filing fee with the original petition. It appears that respondent submitted the filing fee with his first motion to reinstate. No evidence was offered to establish that the court expended significant resources to obtain the filing fee. For that reason, we do not find a violation of RPC 8.4(d) as it relates to respondent's failure to submit the filing fee with his original petition.

The Elefante Matter

Count Three of the complaint charged respondent with violations of RPC 1.1(a) and (b), RPC 3.3(a)(1), and RPC 8.4(c) and (d).

In April 2011, respondent agreed to represent Edward Elefante in a Chapter 7 bankruptcy petition for a $2,000 fee,

plus $299 for the filing fee. Elefante paid respondent in installments of $600, $1,600, and $100 on unknown dates. On December 5, 2011, respondent filed a Chapter 7 petition in Elefante's behalf. The petition, however, was incomplete and contained inaccuracies. Specifically, respondent did not submit a filing fee or a credit counseling certificate with the petition. In addition, the petition failed to disclose respondent's attorney fee on the attorney disclosure statement, and contained a checkmark in a box marked "none" next to a question about payments made on behalf of the debtor to the attorney. Elefante testified that, although he could not recall the total amount, he certainly had paid some legal fees to respondent prior to the filing of the petition. Additionally, documents within the petition listed a vehicle belonging to Elefante's wife, a 1996 Cadillac DTS, even though she was not a party to the petition, but failed to list Elefante's vehicle, a 1995 Ford.

On December 5, 2011, the court issued a notice of missing documents, indicating that the case would be dismissed if the documents were not filed by December 19, 2011. On December 21, 2011, the case was dismissed for failure to file the missing documents.

On January 18, 2012, forty-four days after the filing of the petition, respondent submitted both the filing fee and a motion to reinstate the case. Although the certification in support of the motion bears the electronic signature of Edward Elefante, the certification purports to be that of Stephanie Beaudry, another client unrelated to the Elefante matter. The certification stated that the missing certificate of credit counseling had been filed and that the case had been dismissed on January 7, 2012, rather than December 21, 2011. Respondent eventually filed the certificate of credit counseling on February 3, 2012. The certificate was dated November 6, 2011, prior to the date respondent originally filed the petition. On February 8, 2012, the court entered an order reinstating the case.

Elefante denied having signed the Chapter 7 petition or the individual debtor statement of compliance with credit counseling. He further denied having signed the certification in support of the January 18, 2012 motion to reinstate his bankruptcy petition, insisting that he would not have done so because it purported to be a certification of Stephanie Beaudry. Elefante acknowledged that his signature appeared on some documents, such as the summary of schedules, but denied having signed other documents purporting to bear his signature.

Respondent insisted that Elefante had signed the certification and that Elefante lied to the DEC when he testified to the contrary. He claimed that the absence of the required original copy in his file resulted from the document having been misplaced or misfiled. He explained that he had "cut and pasted" the Elefante certification from the certification of former client Stephanie Beaudry, but that he had forgotten to change the name. Respondent further contended that the error was not significant and would not result in the dismissal of a case. Although respondent admitted that he was careless, he denied an intent to mislead the court. He further acknowledged other errors throughout the certification, such as the wrong date for the dismissal of the original petition and the representation that the certificate of credit counseling had been filed when, in fact, it had not been filed until after the motion had been submitted. Finally, he remarked that Elefante's bankruptcy ultimately was successful.

Elefante admitted that, at the bankruptcy hearing before the trustee, when asked whether the contents of the documents that he submitted were true and accurate, he had answered in the affirmative. Although he had reviewed the documents, he denied that he had read every word. Respondent claimed that Elefante's testimony bolstered his contention that Elefante had signed the

petition, as he had acknowledged his signature at the hearing before the trustee. Hence, according to respondent, Elefante lied either to the trustee or to the DEC.

Respondent admitted that, in this matter, too, he had failed to remove the check from the box indicating that the filing fee for the petition was attached. As previously noted, respondent finally paid the filing fee on January 18, 2012, twenty-eight days after the order was entered requiring the fees to be filed within seven days.

The DEC determined that respondent's filing of an incomplete bankruptcy petition and his failure to reply to the notice of missing documents, resulting in the dismissal of the case, constituted a violation of RPC 1.1(a) and a pattern of neglect, when combined with other misconduct. Further, the DEC found that, by filing a certification in the Elefante case misrepresenting that all missing documents had been filed and by misrepresenting on the bankruptcy petition the amount of fees received by him, respondent violated RPC 3.3(a)(1). The DEC again dismissed the charged violations of RPC 8.4 (c) and (d).

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Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of

unethical conduct in the Elefante matter is supported by clear and convincing evidence.

Respondent's filing of a certification in support of a motion to reinstate the case, falsely stating that all missing documents had been filed, along with his misrepresentation on his fee disclosure statement constitute violations of RPC 3.3(a)(1)and RPC 8.4(c).

Although respondent filed an incomplete bankruptcy petition and failed to reply to the notice of missing documents, resulting in the dismissal of the case, the petition was reinstated about seven weeks after its dismissal. The bankruptcy matter then appeared to proceed in the normal course, resulting in the discharge of Elefante's debts. Thus, although respondent's conduct certainly amounts to simple neglect, there is no clear and convincing evidence of gross neglect. Nevertheless, respondent's simple neglect of the Elefante petition contributes to a finding of a pattern of neglect, a violation of RPC 1.1(b). Moreover, once again, respondent's neglectful conduct in filing a deficient petition and ignoring a notice to cure, requiring the court's action to dismiss and then reinstate the petition, wasted judicial resources and constituted a violation of RPC 8.4(d).

The Lang Matter

Count Four of the complaint charged respondent with violations of RPC 1.1(a) and (b), RPC 3.3(a)(1), and RPC 8.4(c) and (d).

In September 2010, Patricia Lang retained respondent to file a Chapter 13 bankruptcy petition in her behalf. The copy of the retainer agreement in respondent's file is undated and bears Lang's signature, but not that of respondent. Respondent's fee was $3,200 plus a $274 filing fee. The retainer agreement is marked "paid in full."

Lang was $14,000 in arrears on her mortgage and had $49,000 in other debt, but wanted to save her home. At the time, she anticipated receiving a large workers' compensation settlement.

On December 10, 2010, respondent filed a Chapter 13 petition in Lang's behalf. The petition failed to disclose respondent's attorney fee. The petition also was missing the Chapter 13 plan, a creditors list, a credit counseling certificate, and a statement of monthly income. Here, too, respondent had checked the box indicating that the filing fee was attached, but did not include that payment. The court issued a notice of deficiency, requiring the missing documents to be filed by December 27, 2010, failing which the petition would be dismissed. Respondent did not file the noted documents and, on

December 29, 2010, the petition was dismissed. The dismissal order required payment of any outstanding dues and fees within seven days. Respondent failed to pay the filing fee until January 13, 2011.

On January 28, 2011, respondent filed a motion seeking to reinstate the case, supported by Lang's certification stating that her case had been dismissed for failure to submit the credit counseling certificate and a Chapter 13 plan, and that the missing documents had been submitted. The certification also asserted that she had attended her first meeting of creditors (341-a meeting). As of January 28, 2011, however, Lang had not attended a 341-a meeting, as one had yet to be scheduled, and the missing documents had not been filed.

Respondent maintained that these errors were the result of his practice of using the same motion forms repeatedly. He typically would pull a motion from another matter that he had handled and then "cut and paste" where necessary, failing to delete certain sections from this particular certification. Respondent admitted that he should have phrased parts of the certification differently. Specifically, the certification stated that the petition had been dismissed for missing two documents when, in fact, it was missing five, and misrepresented that the missing documents had been filed. In total, three of

the five paragraphs that comprised Lang's certification were substantively inaccurate. Further, respondent could not produce Lang's original signature on the certification, and had no proof that she ever saw the document. Yet, he claimed that he had reviewed this certification with Lang before she signed the document attesting to its accuracy.

On February 7, 2011, the Chapter 13 trustee objected to the motion to reinstate the petition, on the basis that Lang was not current with her Chapter 13 plan payments. In reply to the trustee's objection, respondent requested a hearing to explain why payments had not been made and to propose a repayment schedule. Respondent could not recall whether he had attended the February 23, 2011 motion hearing, admitting that, if he had not, he lacked diligence, and if he had, he practiced law while ineligible.[4] On March 24, 2011, the court denied the reinstatement motion.

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[4] Although respondent's representation of Lang was in federal court, L.Civ.R. 101.1(b) of the United States District Court for the District of New Jersey provides that a "New Jersey lawyer deemed ineligible to practice law by order of the New Jersey Supreme Court entered pursuant to New Jersey Court Rule 1:28-2(a) shall not be eligible to practice law in this Court during the period of such ineligibility." Having been placed on the ineligible list by order of the Supreme Court, respondent, thus, was ineligible to practice law in the New Jersey District Court, including the bankruptcy court.

On April 19, 2011, respondent filed a second motion to reinstate the case, attaching an exact duplicate of Lang's certification from the first reinstatement motion and, thus containing all of the same errors and misrepresentations. On May 18, 2011, the Chapter 13 trustee opposed the motion. Nevertheless, the case was reinstated on June 15, 2011. However, the court again dismissed the case on July 11, 2011, based on respondent's failure to file the missing documents.

On August 12, 2011, respondent filed a third motion to reinstate the petition, attaching Lang's certification containing the erroneous statement that the matter had been dismissed on August 5, 2005, when it had been dismissed on July 11, 2011. When confronted with this error, respondent simply replied, "semantics." As in the other motions, respondent failed to produce an original certification with Lang's signature.

The certification also misrepresented that the dismissal resulted from Lang's failure to attend her 341-a meeting, when, in fact, the matter had been dismissed for failure to file missing documents. Yet, respondent insisted that, at that time, he believed that he could not file the missing documents until the case was reinstated. In addition, the certification misrepresented that Lang "modified [her] plan to include the arrears and bring my Chapter 13 plan current. The plan as

modified has been filed with the court." In fact, respondent had not even filed the original Chapter 13 plan, much less a modified plan. Respondent admitted both that he had prepared the certification and that he knew it was inaccurate when he did so.

This third motion to reinstate the case was continuously carried through most of the remainder of 2011. On December 2, 2011, one year after the original petition was filed, respondent submitted the Chapter 13 plan. On December 6, 2011, the court granted the motion and reinstated the case. Thereafter, on December 20, 2011, the court again dismissed Lang's case for failure to file the other missing documents, specifically the attorney fee disclosure and the certificate of credit counseling.

On January 18, 2012, respondent filed a fourth motion to reinstate the case with Lang's supporting certification, stating that although the case had been dismissed on January 7, 2012 for missing a certificate of credit counseling, it had been filed. Once again, the dismissal date was incorrect, as the matter had been most recently dismissed on December 20, 2011. Respondent denied any inconsistency, noting that, he wrote that the case had been dismissed "[o]n or about" January 7, 2012. As of January 18, 2012, the credit counseling certificate had not been filed, although it had been e-mailed to the court clerk on

January 13, 2012. Finally, on February 7, 2012, respondent filed the credit counseling certificate, which was dated December 1, 2010.

On March 29, 2012, the court entered an order reinstating Lang's bankruptcy case. This order was in response to a motion filed by the trustee to reinstate the case because Lang did not make post-petition mortgage payments. Although a hearing for the confirmation of the debtor's plan was scheduled for June 27, 2012, the court subsequently entered an order dismissing the case on July 5, 2012, based again on respondent's failure to file required documents. On October 12, 2012, the Lang matter was closed and respondent took no action to reinstate it.

Respondent explained his general approach to missing documents in bankruptcy petitions, stating that, instead of "going back," he prefers to "do it all at once." He reasoned that, if he filed a certificate of credit counseling, but failed to submit a plan, the petition still would be dismissed. He continued to argue that the Lang petition would have been dismissed in any event, because he still did not have the required paperwork to complete a Chapter 13 plan. He claimed that he repeatedly requested these documents from Lang, to no avail.

Respondent further maintained that he has been doing Chapter 13 cases for fifteen years and that, in his experience, it is not unusual for a trustee to entertain cases with missing documents or for debtors to routinely fail to produce the proper paperwork. According to respondent, cases typically are adjourned to permit the debtor to obtain the documents.

Respondent claimed that the biggest hurdle in the Lang matter was her worker's compensation claim because Lang never provided the required documents. Further, he explained, he had not listed the claim in the petition because, if he does not have the documents, "I'm not putting it in there."

The DEC determined that respondent's failure to file all required pleadings with the Lang bankruptcy petition, and his failure to file the missing documents, resulting in the dismissal of the client's case was a violation of RPC 1.1(a), as well as RPC 1.1(b), when considered with other acts of neglect. Further, the DEC found that respondent violated RPC 3.3(a)(1) by filing motions to reinstate the Lang case with certifications containing misrepresentations and by failing to disclose the actual amount of attorney fees that Lang had paid to him. The DEC again dismissed the RPC 8.4(c) and (d) violations.

* * *

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct in the Lang matter is fully supported by clear and convincing evidence.

Respondent's filing of an incomplete bankruptcy petition and his subsequent failure to reply to the notice of missing documents, resulting in the dismissal of the case, constitutes gross neglect, a violation of RPC 1.1(a). Respondent's neglect is exacerbated by the fact that he allowed the Lang matter to languish for one year and ten months before it ultimately was dismissed permanently. In the interim, respondent filed multiple deficient and misleading motions to reinstate Lang's petition, causing a significant waste of judicial resources, a violation of RPC 8.4(d). Further, respondent violated RPC 3.3(a)(1) and RPC 8.4(c) by filing a certification to reinstate the case, knowingly and falsely stating that all missing documents had been filed, and by his misrepresentation on his fee disclosure statement.

The Young Matter

Count Five of the complaint charged respondent with violations of RPC 1.1(a) and (b), RPC 3.3(a)(1), and RPC 8.4(c) and (d).

On August 1, 2011, Diane Young retained respondent to represent her in a Chapter 13 bankruptcy matter. Young was behind on her Wells Fargo mortgage and wanted to file a bankruptcy petition to delay foreclosure long enough to refinance. Young agreed to pay respondent $2,000 plus $274 for the filing fee. In early August 2011, Young made two separate payments to respondent, one for $1,000 and the other for $1,699, for a total of $2,699.

On December 2, 2011, respondent filed a Chapter 13 petition in Young's behalf. The petition, however, was incomplete. It was missing the credit counseling certificate, schedules A through J, the summary of schedules, the statistical summary of liabilities, a statement of financial affairs, the disclosure of attorney compensation, a statement of current monthly income, and the Chapter 13 plan. The petition falsely stated that the filing fee had been paid. The Court issued a notice of missing documents on December 2, 2011, requiring the missing documents to be filed by December 16, 2011. On December 21, 2011, the court issued an order dismissing the case based on respondent's failure to file the missing documents and requiring the payment of all outstanding fees within seven days.

On January 18, 2012, respondent paid the filing fee and filed a motion to reinstate the Young case. Attached was a

certification signed by Young, falsely stating that the case had been dismissed on or about January 17, 2012 (rather than December 21, 2011) for missing a certificate of credit counseling, which had now been filed. As noted, however, the original filing lacked virtually every portion of the petition, except for the initial three pages and the matrix of creditors. Respondent did not file any of the missing documents with the motion to reinstate.

At the DEC hearing, respondent was asked to compare Young's certification with that of another client, Patricia Lang. Respondent acknowledged that the same mistakes and omissions appeared on each of the documents, including the same minor typographical errors, and that the only difference was the debtor's name. Respondent again explained the errors as the result of "cutting and pasting" from other motions. He denied having made misrepresentations to the court or trying to mislead it in any way.

On February 9, 2012, respondent filed some of the missing documents, including the disclosure of compensation of attorney, the credit counseling certificate (completed on August 8, 2011), the summary of schedules, the statistical summary of certain liabilities and related data, schedules A through J, the declaration concerning the debtor's schedules, and the statement

of financial affairs, containing Young's signature. The certification itself contained Young's electronic signature. The petition was reinstated on that date.

The disclosure of attorney compensation that respondent submitted to the court stated that he had received $2,100. The Young retainer agreement, however, called for a $2,100 fee, plus a $274 filing fee, and, as of August 8, 2011, respondent had actually received a total of $2,699 from Young. Respondent offered no explanation for this discrepancy.

In addition, the bankruptcy petition's schedule A did not list Young's real property, but the Wells Fargo mortgage encumbering Young's home was listed on Schedule B. Respondent had previously represented Young in another matter and was aware that she owned real estate. He maintained, however, that the exclusion of the real property was inconsequential because the mortgage was listed and the creditor was notified of the petition. Respondent acknowledged that these inconsistencies reflected a lack of diligence on his part.[5]

After Young's matter was reinstated, the Chapter 13 plan was scheduled to last fifty-four months. On July 19, 2012,

[5] The complaint did not charge respondent with a lack of diligence, except in the Sudol matter, as seen below.

Young's plan was confirmed. Respondent thereafter collected an additional fee from Young to assist her in obtaining the mortgage refinance with Wells Fargo. Although he claimed that he sent one or two letters and made a few telephone calls, it was clear that Wells Fargo was unwilling to proceed with the refinance.

In a February 13, 2013 letter to Judge Lyons, Young asked for a full refund of the fees paid to respondent, stating that respondent had told her that she had a court date set for December 18, 2012, but that, when she contacted the court, she was told there had been no activity on her matter since July 3, 2012. She expressed her feeling that respondent had treated her like a fool and robbed her of a chance to get a home modification loan, which would have paid for her bankruptcy and lowered her interest rate.

On February 26, 2013, Judge Lyons informed Young that he had reached out to respondent for a reply, but had received none, and that he would treat her letter as a motion to refund the $1,300 she had paid in connection with a loan modification and the $2,500 she had paid at the inception of the bankruptcy. A hearing was scheduled for March 19, 2013.

Respondent admitted that, although he was aware of Young's motion, he did not oppose it because he planned to refund her

fees. On March 19, 2013, the court ordered respondent to refund $3,800 to Young within ten days. Respondent failed to do so. As of the date of the DEC hearing, respondent still had not refunded any fees to Young, as the court ordered.

The DEC determined that respondent's failure to file a complete bankruptcy petition and to reply to the notice of missing documents, resulting in the dismissal of Young's bankruptcy case, constituted a violation of RPC 1.1(a) and RPC 1.1(b), when combined with other acts of neglect. Further, the DEC found that respondent violated RPC 3.3(a)(1) by filing a certification falsely stating that all missing documents had been filed, misrepresenting in the certification the documents required to be filed to comply with the court's notice, and misrepresenting the amount of his fee as $2,100, rather than $2,699. Again, the DEC did not find a violation of RPC 8.4(c) or (d).

* * *

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct in the Young matter is clear and convincing supported by evidence. We do not agree, however, with all the DEC's findings.

Specifically, the gross neglect charge and finding had been based on respondent's filing of an incomplete bankruptcy petition and his subsequent failure to respond to the notice of missing documents, resulting in the dismissal of Young's case. As in the Elefante matter above, however, the petition was reinstated approximately seven weeks after the dismissal and there was no clear and convincing evidence to establish that respondent neglected the matter thereafter. We therefore, determined to dismiss the RPC 1.1(a) charge. Respondent's simple neglect of the Young case, however, contributed to a pattern of neglect, a violation of RPC 1.1(b). Moreover, respondent's filing of a certification to reinstate the case, falsely stating that all missing documents had been filed, along with his misrepresentation on the fee disclosure statement, constitute violations of RPC 3.3(a)(1), RPC 8.4(c), and RPC 8.4(d).

Docket Nos. IX-2013-0023E (Elzomor); IX-2013-0024E (Sudol); and IX-2013-0025E (Kenny))

These matters were originally submitted to us on September 5, 2013, but were administratively dismissed as procedurally deficient. Specifically, the DEC had filed a non-conforming hearing panel report. Thus, the matters were remanded to the DEC

to correct the procedural deficiencies and/or for further proceedings.

Brad Batcha, Esq., who was the original investigator in these matters and who filed the formal ethics complaint against respondent, did not present these matters to the DEC, but rather was called as a witness.

The Elzomor Matter

The complaint charged respondent with violations of RPC 5.5(a) (practicing law while ineligible) and RPC 8.1(b)(failure to cooperate with disciplinary authorities). On January 10, 2011, Batcha sent a letter to respondent requesting a reply to the ethics grievance filed by Hazem Elzomor. In February 2011, Batcha spoke with respondent by telephone and again asked for a formal response. Although Batcha sent another letter to respondent on March 11, 2011, he received no reply.

Batcha testified that the docket entries he reviewed for the Elzomor bankruptcy handled by respondent reveal that the original petition was filed on September 20, 2009; a 341-a meeting was held on August 6, 2010; several miscellaneous docket entries were made in the fall of 2010; and the matter was closed on January 1, 2011.

The Sudol Matter

The complaint charged respondent with gross neglect, lack of diligence, failure to communicate with a client, failure to set forth in writing the basis or rate of his fee, failure to maintain a bona fide office,[6] practicing law while ineligible, and failure to cooperate with disciplinary authorities.

In August 2008, respondent settled a personal injury matter in behalf of Raymond Sudol. Sudol again retained respondent the following month, in September 2008, to file a Chapter 13 bankruptcy petition. Respondent filed the petition on March 19, 2009.

On January 10, 2011, Batcha directed respondent to reply to an ethics grievance that Sudol had filed against him. Respondent did not reply. On March 11, 2010, Batcha sent respondent a second request. Although respondent contacted Batcha by telephone, he did not submit a formal response to the grievance.

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[6] Until September 1, 2013, RPC 5.5(a) required attorneys to maintain a bona fide office, which R. 1:21-1(a) defined as a "place where clients are met, files are kept, the telephone is answered, mail is received and the attorney or a responsible person acting on the attorney's behalf can be reached in person and by telephone during normal business hours to answer questions posed by the courts, clients or adversaries and to ensure that competent advice from the attorney can be obtained within a reasonable period of time." R. 1:21-1(a) provided that failure to maintain a bona fide office "shall be deemed" a violation of RPC 5.5(a) (unauthorized practice of law).

During the investigation, Batcha discovered that respondent's letterhead listed a post office box as his office address. Sudol had told Batcha that he never met with respondent at an office, but, rather, at several different locations. Respondent's listing in the New Jersey Lawyer's Diary did not contain an office address.

The Kenny Matter

The complaint charged respondent with failure to maintain a bona fide office, practicing law while ineligible, failure to cooperate with disciplinary authorities, and conduct involving dishonesty, fraud, deceit, or misrepresentation.

Respondent represented Felicia Kenny in a bankruptcy matter. He filed three petitions in her behalf on May 27, June 17, and October 8, 2009. On May 4, 2010, Batcha directed respondent to reply to an ethics grievance that Kenny had filed. Respondent failed to reply. In response to Batcha's subsequent June 3, 2010 letter, respondent faxed a three-page letter that failed to provide the information requested.

On July 21, 2010, Batcha requested a complete copy of respondent's client file for the Kenny matter. After Batcha sent a second request on August 19, 2010, respondent provided a copy of his Kenny file on September 13, 2010.

After receiving the Kenny file, Batcha asked respondent for the original signature pages for the bankruptcy petitions filed electronically. Although respondent's failure to reply necessitated a second request, Batcha eventually received an original signature page for only one of the Kenny petitions.

Respondent insisted that he had cooperated with Batcha during his investigation of the Kenny, Sudol, and Elzomor matters, indicating that they had several telephone conversations.

In the Elzomor, Sudol, and Kenny matters, the DEC determined that respondent failed to maintain a bona fide office as required by the rules at that time. His only address was a post office box in Freehold, New Jersey. The DEC noted that respondent similarly failed to maintain a physical office during his representation of clients Asadpour, Sherman, Elefante, Lang, and Young, although the complaint in those matters did not charge him with that misconduct.

The DEC further found that respondent had practiced law while ineligible during the years 2008 and 2010, when he represented these clients

Additionally, the DEC determined that respondent failed to cooperate with the disciplinary investigation in these three matters based on his failure to submit a reply to all three

grievances or to provide the documents requested by the investigator, ignoring the investigator's several requests.

The DEC did not address the charges in the Sudol matter alleging that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4, and RPC 1.5(b). The DEC also did not address the charged violation of RPC 8.4(c), which had been based on an allegation that respondent had filed bankruptcy petitions without having original documents signed by his client.

* * *

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct in the Elzomor, Sudol, and Kenny matters is fully supported by clear and convincing evidence.

In Elzomor, respondent violated RPC 8.1(b) by failing to submit a formal response to the grievance, despite Batcha's multiple requests that he do so. We do not agree, however, with the DEC's conclusion that respondent was guilty of practicing law while ineligible during the period that he represented Elzomor. Respondent was ineligible beginning September 27, 2010. The various entries on the docket after this date appear to be administrative in nature and do not suggest any affirmative action on respondent's part during that time. Rather, all entries appear to be related to non-activity in the matter, such

as a failure to file documents by a stated deadline. Thus, because there is no evidence of any action on respondent's part in this matter during this period of ineligibility, we determined to dismiss that charge.

In Sudol, respondent violated RPC 8.1(b) by failing to submit a formal response to the grievance, despite Batcha's multiple requests that he do so. In addition, respondent clearly violated RPC 5.5(a)(1), based both on his ineligible status in September 2008, when he filed Sudol's bankruptcy petition, and on his failure to maintain a bona fide office in accordance with Rule 1:21-1(a) in effect at that time. While it is true, as noted earlier, that respondent was not charged with this misconduct in the matters under docket number IX-2013-0026E, the testimony offered in those matters, particularly by the Asadpours, made it clear that respondent's failure to maintain a bona fide office severely limited his clients' ability to communicate with him.

As noted, the DEC did not specifically address the charged violations of RPC 1.1(a), RPC 1.3, RPC 1.4, and RPC 1.5(b). However, we are able to discern no evidence that respondent neglected Sudol's matter or otherwise lacked diligence in his efforts to represent his client; that he failed to communicate with Sudol; or that he failed to set forth, in writing, the

basis or rate of his fee. We, therefore, determined to dismiss those charges.

In Kenny, respondent violated RPC 5.5(a)(1), based both on his ineligible status on October 8, 2009, when he filed Kenny's bankruptcy petition, and on his failure to maintain a bona fide office in accordance with the requirements of Rule 1:21-1(a) in effect at that time.

Respondent also is guilty of violating RPC 8.1(b), based on his failure to fully cooperate with Batcha's investigation. Batcha essentially had to coax respondent's cooperation in his investigation, and then was only partially successful in obtaining from respondent the information he needed and had requested. We view respondent's marginal and begrudging cooperation as no less disruptive and frustrating than a complete failure to cooperate. Indeed, in some ways, partial cooperation can be more disruptive to a full and fair investigation, as it forces the investigator to proceed in a piecemeal and disjointed fashion. Certainly, this is not the "full, candid, and complete disclosure" contemplated by the Rules and the supporting case law. See, In re Gavel, 22 N.J. 248, 263 (1956).

As noted earlier, the DEC did not make any findings in respect of the charged violation of RPC 8.4(c), which had been

based on respondent's alleged failure to maintain original signed bankruptcy petitions in his file (he had produced only one petition with his client's original signature, as opposed to three separate signatures for the three petitions he had filed). Although the complaint characterized this conduct as "fraud," the complaint did not allege, and no evidence was adduced, to establish any nefarious conduct on respondent's part in this regard, such as, for example, a claim that respondent forged his client's signature or that he filed the petition without his client's knowledge or consent. For these reasons, we determined to dismiss that charge.

* * *

Respondent offered significant and comprehensive testimony at the DEC hearing in respect of mitigation. Specifically, respondent testified that, during the period these ethics issues arose, he was experiencing several hardships in his personal life. In 2010, doctors diagnosed him with high blood pressure. Despite multiple efforts, however, they were unable to find the proper combination of medicine to improve his condition. At some point, because of their ineffectiveness, respondent decided to stop taking all medication.

Additionally, since respondent's younger sister was twenty-eight, she has suffered from ALS, which causes her organs to

shut down. At the time of these ethics matters, she was forty-six years old and her disease was progressing. She was in and out of the hospital regularly, requiring respondent to spend a great deal of time traveling to and from Philadelphia, where his sister resides.

Further, respondent has a very young son with a woman from the Dominican Republic. During the time these matters arose, she had filed a motion for sole custody and permission to return to the Dominican Republic with their son. Although, respondent explained, he had been dealing with custody issues since the day his son was born, this escalation was particularly distressing.

Respondent admitted that he performed legal work during periods of his ineligibility to practice, adding that his eligibility had lapsed as a result of his inattention. Although he conceded that he should have been more vigilant, he claimed that he paid his fee, along with any additional penalties, as soon as his ineligibility was brought to his attention. Respondent further admitted that he "must have known" of his ineligibility at the time that he practiced law while in ineligible status.

As to respondent's office situation at the time he represented the clients in these matters, respondent testified that he had an office in Shrewsbury, New Jersey, at the Law

Offices of Jonathan Marshal. At some point, he decided to open an office in Newark, New Jersey, stopped using the office with Marshall, and began to meet people at the offices of Frank Wilton. At that time, he had a telephone line at an office on Park Avenue in Newark. Eventually, he leased office space in Freehold, and obtained a post office box, rather than receive mail at all the prior office locations. Respondent also acknowledged that he was not an attorney of record at the offices of Marshall or Wilton, and that he leased the Freehold office space only after the initiation of these ethics investigations and Batcha informed him that he was in violation of the rules. Respondent admitted he did not have a bona fide office during the Sudol and Kenny representations.

The DEC considered, in further mitigation, respondent's limited disciplinary history,[7] his showing of contrition and remorse, and the lack of injury to the clients. Specifically, the DEC noted, most of the bankruptcy discharges were obtained, and monies were returned to clients.

The DEC determined that, although a six-month suspension ordinarily would be the appropriate quantum of discipline, the

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[7] The DEC referred only to respondent's censure and was likely unaware of the three-month suspension he received shortly before the hearing panel report was issued.

above mitigation served to reduce the discipline to a three-month suspension. The DEC found respondent to be an experienced bankruptcy attorney who, throughout the proceedings, demonstrated a working knowledge of bankruptcy practice and procedure, but was, nevertheless, concerned that respondent's personal problems could again adversely impact his practice of law. Thus, the DEC recommended that, prior to reinstatement, respondent be required to attend an ethics course, or courses, totaling four hours, and that, following reinstatement, he practice under a proctorship for a period of one year.

* * *

We come now to the appropriate discipline for respondent's serious and pervasive misconduct. In sum, in eight client matters, respondent is guilty of three instances of gross neglect, a pattern of neglect, four instances of lack of candor toward a tribunal, two instances of knowingly practicing while ineligible, two instances of failing to maintain a bona fide office, four instances of misrepresentation, and five instances of conduct prejudicial to the administration of justice.

Respondent repeatedly failed to file complete bankruptcy petitions in behalf of his clients and then allowed the petitions to be dismissed, only to subsequently move to reinstate them while again failing to file the missing documents

and misrepresenting that he had done so. That cycle continued repeatedly, wasting valuable judicial resources. Inexplicably, respondent was often in possession of the very same documents that were missing, such as certificates of credit counseling, and yet, he repeatedly failed to file them. Respondent also routinely failed to file the attorney disclosure form, information that was always available to him and that required no client input. Clearly, respondent had organizational issues. Nevertheless, his clients were entitled to competent representation, regardless of respondent's personal problems or business challenges.

Attorneys who mishandle multiple client matters generally have received suspensions of either six months or one year. See, e.g., In re LaVergne, 168 N.J. 410 (2001) (six-month suspension for attorney who mishandled eight client matters; the attorney exhibited lack of diligence in six of them, failed to communicate with clients in five, grossly neglected four, and failed to turn over the file upon termination of the representation in three; in addition, in one of the matters the attorney failed to notify medical providers that the cases had been settled and failed to pay their bills; in one other matter, the attorney misrepresented the status of the case to the client; the attorney was also guilty of a pattern of neglect and

recordkeeping violations); In re Pollan, 143 N.J. 305 (1996) (attorney suspended for six months for misconduct in seven matters, including gross neglect, pattern of neglect, failure to communicate with clients, failure to deliver a client's file, misrepresentation, recordkeeping improprieties, and failure to cooperate with ethics authorities; clinical depression alleged); In re Chamish, 128 N.J. 110 (1992) (six-month suspension imposed for misconduct in six matters, including failure to communicate with clients and lack of diligence; in one of the matters, the attorney represented both driver and passenger in a motor vehicle case and then filed suit on behalf of the driver through the unauthorized use of another attorney's name and forgery of the attorney's signature on the complaint); In re Brown, 167 N.J. 611 (2001) (one-year suspension for attorney who, as an associate in a law firm, mishandled twenty to thirty files by failing to conduct discovery, to file pleadings, motions and legal briefs, and to generally prepare for trials; the attorney also misrepresented the status of cases to his supervisors and misrepresented his whereabouts, when questioned by his supervisors, to conceal the status of matters entrusted to him; the disciplinary matter proceeded as a default; the attorney had a prior reprimand); and In re Marum, 157 N.J. 625 (1999) (attorney suspended for one year for serious misconduct in

eleven matters, including lack of diligence, gross neglect, failure to communicate with clients, failure to explain the matter to clients in detail to allow them to make informed decisions about the representation, misrepresentation to clients and to his law partners, which included entering a fictitious trial date on the firm's trial diary, and pattern of neglect; the attorney also lied to three clients that their matters had been settled and paid the "settlements" with his own funds; the attorney's misconduct spanned a period of eleven years; in aggravation, the attorney had two prior admonitions, failed to recognize his mistakes, and blamed clients and courts for his misconduct).

Here, respondent also practiced law despite knowing he was ineligible to do so, a violation that ordinarily results in the imposition of a reprimand. See, e.g., In re Moskowitz, 215 N.J. 636 (2013) (attorney practiced law knowing that he was ineligible to do so); In re Jay, 210 N.J. 214 (2012) (attorney was aware of ineligibility and practiced law nevertheless; prior three-month suspension for possession of cocaine and marijuana); and In re (Queen) Payton, 207 N.J. 31 (2011) (attorney who practiced law while ineligible was aware of her ineligibility and had received an admonition for the same violation).

In addition, respondent failed to maintain a bona fide office, as required by R. 1:21-1, in effect at the time of these matters. Failure to maintain a bona fide office generally has resulted in a reprimand. See, e.g., In re Servin, 164 N.J. 366 (2000) (reprimand for failure to maintain a bona fide office for four years; prior private reprimand for recordkeeping violations and for commingling of personal and client funds in the attorney's trust account); In re Chen, 142 N.J. 479 (1995) (reprimand for failure to maintain a bona fide office and failure to communicate with the client); and In re Kasson, 141 N.J. 83 (1995) (reprimand for failure to maintain a bona fide office).

Attorneys who, like respondent, have failed to obey court orders have been reprimanded. See, e.g., In re Cerza, 220 N.J. 215 (2015) (attorney failed to obey a bankruptcy court's order compelling him to comply with a subpoena, which resulted in a default judgment against him; violations of RPC 3.4(c) and RPC 8.4(d); the attorney also violated RPC 1.15(b) in a related real estate transaction when he disbursed a $100 survey refund to the wrong party, failed to refund the difference between the estimated recording costs and the actual recording costs, and failed to disburse the mortgage pay-off overpayment, which had been returned to him and held in his trust account for more than

five years after the closing; prior admonition for recordkeeping violations and failure to promptly satisfy tax liens in connection with two client matters, even though he had escrowed funds for that purpose).

Here, the most troubling aspect of respondent's behavior is his willingness to make misrepresentations to the court. There is no evidence that he acted with venality or for self-gain. Nonetheless, a pattern of behavior emerges whereby respondent regularly made misrepresentations to the bankruptcy court about documents having been filed, when they were not, and then making misrepresentations within those documents when they were eventually filed. Although respondent attempted to justify his misrepresentation by claiming his belief that the case had to be reinstated before he could file missing documents, his argument becomes disingenuous in light of the repeated notices he received from the court, advising that his petitions would be dismissed and/or his reinstatement motions denied if he failed to file the required documents. Additionally, respondent regularly misrepresented his fees on the required disclosure statements.

Finally, attorneys who make a misrepresentation to a court, under oath, are subject to a broad range of discipline. See, e.g., In the Matter of Richard S. Diamond, DRB 07-230 (November

15, 2007) (admonition imposed on attorney, who, in a matrimonial matter, filed with the court certifications making numerous references to "attached" psychological and medical records, when the attachments were merely billing records from the client's insurance provider; in mitigation, this was the attorney's first encounter with the disciplinary system in a twenty-year career); In re McLaughlin, 179 N.J. 314 (2004) (reprimand imposed on attorney, who had been required by the New Jersey Board of Bar Examiners to submit quarterly certifications attesting to his abstinence from alcohol, falsely reported that he had been alcohol-free during a period within which he had been convicted of driving while intoxicated; in mitigation, after the false certification was submitted, the attorney sought the advice of counsel, and admitted his transgressions); In re Manns, 171 N.J. 145 (2002) (reprimand for attorney who misled the court in a certification in support of a motion to reinstate a complaint as to the date the attorney learned that the complaint had been dismissed; the attorney also exhibited gross neglect and lack of diligence, failed to expedite litigation, and failed to communicate with the client; although the attorney had received a prior reprimand for pattern of neglect, lack of diligence, and failure to communicate with the client, we noted that the conduct in both matters had occurred during the same time frame

and that the misconduct in the second matter may have resulted from the attorney's poor office procedures); In re Monahan, 201 N.J. 2 (2010) (censure imposed on attorney for making misrepresentations in two certifications submitted to a federal court in support of a motion to extend the time within which an appeal could be filed; the attorney falsely represented that, when the appeal was due to be filed, he was ill and confined to his bed, and, therefore, was either unable to work or unable to prepare and file the appeal; the attorney also practiced while ineligible); In re Clayman, 186 N.J. 73 (2006) (censure imposed on attorney who misrepresented the financial condition of a bankruptcy client in filings with the United States Bankruptcy Court in order to conceal information detrimental to his client's Chapter 13 bankruptcy petition; in mitigation, we observed that, although the attorney had made a number of misrepresentations in the bankruptcy petition, he was one of the first attorneys to be reported for his misconduct by a new Chapter 13 trustee who had elected to enforce the strict requirements of the bankruptcy rules, rather than permit what had been the "common practice" of bankruptcy attorneys under the previous trustee; we also noted that the attorney had an unblemished disciplinary history, was not motivated by personal gain, and had not acted out of venality); In re Trustan, 202

N.J. 4 (2010) (three-month suspension imposed on attorney who submitted to the court a client's case information statement, which falsely asserted that the client owned a home, and drafted a false certification for the client, which was submitted to the court in a domestic violence trial; in addition, the attorney entered into an improper business relationship with her client and, after their attorney-client relationship had ended, she attempted to inflict harm on her former client by seeking to assist her client's former husband in obtaining custody of their children, in exchange for the withdrawal of his grievance); In re Perez, 193 N.J. 483 (2008) (on motion for final discipline, the attorney was suspended for three months for false swearing; the attorney, then Jersey City Chief Municipal Prosecutor, lied under oath at a domestic violence hearing that he had not asked that the municipal prosecutor request a bail increase for the person charged with assaulting him); In re Chasar, 182 N.J. 459 (2005) (three-month suspension for attorney who, in her own divorce proceedings, filed with the court a false certification in which she denied having made cash payments to her employees; she also filed a certification on behalf of her secretary, in which the secretary falsely claimed not to have received cash payments; we rejected, as mitigation, the attorney's claims that the litigation was contentious, that she was using steroids,

painkillers, and sleeping pills as the result of a neck injury, and that her former husband had wrongfully denied her visitation with their children for a three-month period); and In re Cillo, 155 N.J. 599 (1998) (one-year suspension where, after falsely certifying to a judge that a case had been settled and that no other attorney would be appearing for a conference, the attorney obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve; two prior private reprimands in two matters for failure to communicate with a client and for entering into an improper business relationship with a client).

Had respondent's misconduct been limited to his mishandling of eight client matters, a six-month suspension might have been appropriate. Here, however, respondent was guilty of numerous other ethics infractions. By far, respondent's most serious violations were his multiple and routine misrepresentations to the court. When confronted with these serious transgressions, respondent cavalierly described them as "inconsequential," "insignificant" or a matter of semantics, demonstrating an

ongoing failure to appreciate the substantial negative impact that his conduct has had on his clients and on the courts.

Equally disturbing is respondent's blatant disregard of multiple court orders. The court ordered respondent to disgorge his fees to the Asadpours. He ignored that order, resulting in an order holding him in contempt. He finally repaid the Asadpours fifteen months after he was initially ordered to do so, but has yet to address the daily fines the court imposed for the time he remained in contempt of the court's order. The court also ordered respondent to disgorge his $3,800 fee to his client, Young. He still has not complied with that order, which was entered three years ago, on March 19, 2013.

There are several aggravating and mitigating factors to consider. In aggravation, respondent has a disciplinary history. In 2014, he received a censure for recordkeeping violations and for failing to cooperate with disciplinary authorities. Most recently in 2015, he was suspended for three months for failing to file an affidavit of compliance as required by R. 1:20-20, for failing to cooperate with disciplinary authorities, and for conduct prejudicial to the administration of justice. We see a theme in respondent's ethics history that continues to date. Even after having been twice disciplined for misconduct that included a failure to cooperate with the Court's attorney

disciplinary system, as well as for a disregard of Court orders and for the orderly administration of justice, respondent persists in this same conduct. Clearly, he either has not learned from his prior mistakes or he simply refuses to take personal responsibility for his misconduct and to then learn from it. Either way, we view this failure, as well as respondent's cavalier attitude toward the effects of his misconduct on his clients and on the administration of justice, to undercut the DEC's finding that respondent was, in any way, contrite.

We note that respondent has offered significant mitigation. Specifically, he suffered from medical issues at the relevant times, was under extreme duress at the prospect of losing custody of his son and having him taken out of the country, and was faced with the dire medical circumstances of his sister. These circumstances, no doubt, caused some disruption in respondent's personal and professional life. Still, we believe a long-term suspension is required to protect his clients, the courts, and the public at large.

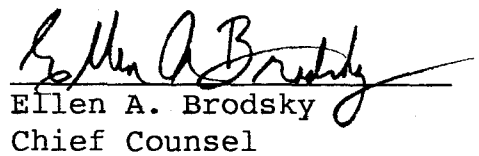
Thus, based on the foregoing, we determine to impose a three-year suspension. In addition, prior to reinstatement, respondent must comply with all outstanding court orders, including the prior fee arbitration orders, the order requiring

disgorgement of fees, and the contempt order. Moreover, on reinstatement, in light of the significant organizational and personal issues affecting his practice, respondent is to practice under the supervision of an attorney approved by the Office of Attorney Ethics for a period of two years.

Member Zmirich did not participate.

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

Disciplinary Review Board
Bonnie C. Frost, Chair

By: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Marc Z. Palfy
Docket No. DRB 15-193

Argued: November 19, 2015

Decided: March 30, 2016

Disposition: Three-year suspension

Members	Disbar	Three-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh		X				
Clark		X				
Gallipoli		X				
Hoberman		X				
Rivera		X				
Singer		X				
Zmirich						X
Total:		7				1

Ellen A. Brodsky
Chief Counsel