

following respondent's January 28, 2016 indefinite suspension in the United States District Court for the Southern District of New York (SDNY), for his violation of the New York equivalent of New Jersey RPC 3.3(a)(1) (false statement of material fact or law to a tribunal); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). The OAE seeks a reprimand or censure. For the reasons stated below, we determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1999 and the New York bar in 2000. He has no history of discipline in New Jersey.

On October 7, 2014, the Honorable Denise L. Cote, U.S.D.J., in the SDNY, issued an order finding good cause that, during the course of his representation of defendants in a trademark infringement suit, respondent had made misrepresentations to the court. A hearing on the matter was scheduled for October 23, 2014. The order detailed the relevant parts of the procedural record. Those facts are as follows.

Summary judgment motions in the trademark infringement litigation were due on September 10, 2014. In a letter, dated September 10, 2014, respondent requested a two-day extension,

citing the need for extensive redactions to his summary judgment papers. On September 10, 2014, the Court granted an extension for redactions only, but ordered that summary judgment motions were still due that same day. Nonetheless, two days later, on September 12, 2014, respondent requested an extension of time to file the defendants' motion. Respondent claimed that both of the firm's paralegals had been sick, making the preparation of the numerous exhibits difficult. Also on September 12, 2014, the plaintiffs wrote to the Court, explaining that they had received respondent's summary judgment papers at the "stroke of midnight of September 10" with only eleven paragraphs. Finally, on September 13, 2014, respondent filed a supplemental statement with twenty-three new paragraphs, a new notice of motion, and a new signed declaration. On September 15, 2014, the Court denied defendants' summary judgment motion for failure to timely file.

Despite the denial, opposition to the plaintiffs' summary judgment motion was due September 29, 2014. On that date, however, respondent requested the Court to grant an extension to October 1, 2014, representing that a computer crash had corrupted some of the necessary files. The Court granted the extension. On October 1, 2014, respondent wrote to the Court to request an additional one-day extension. He claimed that the computer crash warranted a three-day extension all along, but

that he had requested only two additional days because the plaintiffs would not consent to a longer extension. The Court granted the request, but noted the continued failure of the defendants to meet their filing deadlines, and cautioned that future extensions would not be permitted.

On Friday, October 3, 2014, the plaintiffs informed the Court that the defendants had not yet served their opposition papers. On October 6, 2014, respondent represented to the Court that he checked with his paralegal, who "assured" him that the plaintiffs were served by mail on Thursday, October 2, 2014. In response, the Court noted that all documents should have been filed electronically and that the defendants' memorandum of law bore the "legend 'ELECTRONICALLY FILE' on its cover page and include[d] a certificate of service electronically signed by respondent that states the memorandum of law 'was served electronically' upon plaintiffs' counsel."

Also on Monday, October 6, 2014, plaintiffs informed the Court that they had requested an electronic service copy from respondent the prior Thursday evening and Friday morning, but did not receive a response. They further explained that they had "received the mailed copy of the Opposition Papers on October 6 and attach[ed] a copy of the mailing label, which appears to indicate that the Opposition Papers mailed to plaintiffs'

counsel departed Newark Liberty International Airport at 7 a.m. on October 5."

In a reply dated October 7, 2014, respondent represented to the Court that the opposition papers had been mailed on October 2, 2014, and that the only member of his firm familiar with uploading documents into the electronic filing system was unavailable "when service was effected." Respondent explained that the legend and certificate of electronic service he signed was a "copy-and-paste typographical error." Further, concerning the date of the package's departure from Newark, he noted that, "[d]efendants do not control the post office or whatever special routing procedures govern in shipping to Dallas."

That same day, October 7, 2014, Judge Cote issued her order setting forth a hearing date of October 23, 2014, regarding respondent's misconduct, including misrepresentations to the Court and to plaintiffs' counsel. Judge Cote also ordered a file examination.

Two days later, on October 9, 2014, respondent wrote a letter to Judge Cote and to plaintiffs' counsel, apologizing for filing the opposition late, and for misrepresenting that the papers had been mailed on Thursday, October 2, 2014, when they had been mailed on Friday, October 3, 2014. He accepted "full responsibility" for the incident, and claimed to be "shamed and

mortified." He also offered to e-mail his brief and supporting papers to plaintiffs' counsel for a determination of when the submission was completed. Respondent requested that such submission serve to substitute for the "presently ordered file examination" due to his concern that such an examination could potentially jeopardize the attorney-client relationship. He also represented that he would be present at the hearing.

On November 4, 2014, Judge Cote began the first of two sanctions hearings: one "with respect to the conduct of the defendants in this case," and a second "with respect to the conduct of defense counsel." On November 5, 2014, the first hearing concluded, and Judge Cote began the second hearing on respondent's alleged falsification of the filing date of the opposition papers. During that hearing, Judge Cote noted that respondent admitted that he did not mail the defendants' opposition papers on October 2, 2014; rather, they were mailed on October 3, 2014.

Respondent admitted at the hearing that he was the principal author of the opposition papers; that he had not completed the opposition papers until late in the afternoon of October 3, 2014; that his assertion in his letter of October 6, 2014 that he had checked with his paralegal and was assured that the papers had been mailed on October 2, 2014 was untrue; and

that he indicated falsely, in his October 7, 2014 letter, that the plaintiffs' claims regarding his late filing were untrue. Respondent's paralegal, Tim Rhee, testified that he mailed the documents between 5:30 and 6:30 p.m., on October 3, 2014.

On November 6, 2014, Judge Cote ordered respondent to pay a \$10,000 fine to the Clerk of Court for the SDNY, by November 14, 2014, as a sanction for the series of misrepresentations made to the Court. Judge Cote additionally referred the matter to the Committee on Admissions and Grievances for the SDNY (the Committee) and ordered respondent to provide a copy of her order to the disciplinary committees of each bar where he was licensed to practice law.

On December 12, 2014, upon request, respondent was given permission to pay the fine in monthly installments of \$1,000, and the court ordered him to make his first two payments by January 5, 2015, or show cause, on January 29, 2015, why he could not.

On January 14, 2015, the Honorable P. Kevin Castel, U.S.D.J., the Committee Chair, issued an order to show cause why respondent should not be disciplined, based on his conduct before Judge Cote. The order noted that respondent's conduct appeared to violate the following New York Rules of Professional Conduct: RPC 3.3(a) (false statements to a tribunal); RPC 8.4(c)

(conduct involving dishonesty, fraud, deceit or misrepresentation); RPC 8.4(d) (conduct prejudicial to the administration of justice); and RPC 8.4(h) (conduct that adversely reflects on the lawyer's fitness as a lawyer). Respondent was provided twenty days from the date of the order to file a written response.

In the meantime, respondent requested that his payments be lowered to \$500 and that his first two payments be accepted a few days late. At a January 29, 2015 hearing, Judge Cote reduced respondent's payments to \$500, and required him to remit each payment to the "Clerk of Court for the Southern District of New York" on the first of each month. That same day, respondent made a single payment of \$1,500, representing payment for the months of December 2014, January 2015, and February 2015. From March through September 2015, respondent submitted his payments late, despite the Court's reminders. He ceased payments after September 2015, and did not apply to the Court to reduce or postpone his payments.

On July 16, 2015, Judge Castel issued a second order to show cause, based on respondent's failure to respond to the January 14, 2015 order. The order declared that respondent's failure to respond to the first order to show cause constituted separate grounds for discipline for violating New York RPC

3.4(c) (lawyer shall not disregard the ruling of a tribunal). Respondent was ordered to respond in writing prior to July 30, 2015.

Four days later, on July 20, 2015, Judge Cote issued an order reaffirming her previous order of January 29, 2015. Then, on December 1, 2015, Judge Cote apprised the Committee that respondent had not timely complied with the Court's orders of November 6, 2014, January 29, 2015, and July 20, 2015.

On January 8, 2016, Judge Castel suspended respondent indefinitely for his failure to comply with his orders of January 14 and July 16, 2015. As part of any motion for reinstatement, respondent was required to explain his failure to respond to the January 14 and July 16, 2015 orders, and provide proof that he was current on the payment schedule for the \$10,000 fine, as required by Judge Cote's January 29 and July 20, 2015 orders. Importantly, the court found that it had been established by "clear and convincing evidence that [r]espondent violated Rule 3.4(c) when he failed to respond to the July 16 [2015] Order."

On February 7, 2016, respondent wrote a letter to Judge Castel "in lieu of a more formal submission in support of his motion for reinstatement." Respondent claimed that he had not received the January 14 or July 16, 2015 orders to show cause.

He asserted that the first order had been served on Capehart & Scatchard, a firm with which he had no association. Although he admitted that the orders also were served on the firm he was associated with, the Song Law Firm, he alleged that he never received them due to internal problems with the sorting and delivering of mail at that firm. In respect of his delinquent payments, respondent said, "I am including a copy of the check for my February 2016 payment which brings me current." Respondent further claimed that he had asked Judge Cote to further reduce his monthly payments, and was waiting for a response.

On March 28, 2016, the United States District Court for the Eastern District of New York (EDNY) reciprocally suspended respondent, based on the January 8, 2015 order from the SDNY.

* * *

The OAE argues that respondent should receive either a reprimand or censure. He was indefinitely suspended in the SDNY "following an ethics proceeding in which he was adjudicated responsible for violations of the following New York Rules of Professional Conduct:"

1. N.Y. RPC 3.3(a) equivalent to N.J. RPC 3.3(a)(1);
2. N.Y. RPC 3.4(c) equivalent to N.J. RPC 3.4(c);
3. N.Y. RPC 8.4(c) equivalent to N.J. RPC 8.4(c);
4. N.Y. RPC 8.4(d) equivalent to N.J. RPC 8.4(d); and
5. N.Y. RPC 8.4(h) no N.J. RPC equivalent.

The OAE asserts that, where lack of candor to a tribunal is the primary offense, attorneys have received discipline ranging from an admonition to a long-term suspension, depending on the presence of other ethics violations, the attorney's disciplinary history, and consideration of mitigating factors, citing In re Manns, 171 N.J. 145 (2002) (attorney reprimanded for misleading the court, in a certification in support of a motion to reinstate a complaint, as to the date the attorney learned about the dismissal; other ethics violations involved) and In re Hummel, 204 N.J. 32 (2010) (attorney censured in a default matter for making a misrepresentation in a motion to vacate a default judgment; other violations included gross neglect, lack of diligence, and failure to communicate with a client; no prior disciplinary record).

In respect of knowingly disobeying an obligation to a tribunal, the OAE relies on In re Gellene, 203 N.J. 443 (2010), In the Matter of Alfred V. Gellene, DRB 10-026 (May 26, 2010). There, the attorney received a reprimand for knowingly disobeying an obligation under the rules of a tribunal and engaging in conduct prejudicial to the administration of justice. Among other violations, Gellene failed to properly pursue three appeals on behalf of two clients. In one case, Gellene was designated by the New Jersey Public Defender's Office to represent a criminal

defendant on appeal. Although Gellene obtained an extension for the filing of his brief, he failed to file it by the due date, resulting in the issuance of an order to show cause from the Appellate Division. Gellene appeared for the hearing on the order to show cause, but failed to file the brief after receiving another extension. He did not appear on a second order to show cause.

In mitigation, the OAE notes that respondent has no disciplinary history in New Jersey. Further, he purportedly wrote to the OAE, on June 22, 2016, to inform it of his January 2016 discipline, as required by R. 1:20-14(a)(1). The OAE did not receive the letter, however, until respondent enclosed a copy of it with his July 11, 2016 correspondence. Respondent sent that correspondence to the OAE in reply to a June 21, 2016 letter, notifying him that an ethics case had been docketed in New Jersey.

* * *

In his September 20, 2017 reply to the motion for reciprocal discipline, respondent argues that he was denied due process in the SDNY. Specifically, he relies on the petition he submitted in opposition to the reciprocal discipline petition filed by the Departmental Disciplinary Committee of the New York Supreme Court, Appellate Division, First Judicial Department. Respondent

also submitted a copy of the Order by the Appellate Division, dated November 30, 2016, dismissing that petition for reciprocal discipline.²

In his opposition, respondent admits not only the underlying facts leading to his sanction by Judge Cote, but also the facts on which Judge Castel based an indefinite suspension. Respondent argues, however, that the suspension in the SDNY was issued without notice because he was never properly served with Judge Castel's two orders to show cause, as detailed above. Respondent claims that he learned about those orders only when he received the notice of his suspension.

* * *

At our November 16, 2017 session, respondent appeared before us and reasserted his due process argument. Specifically, respondent represented that, on February 7, 2016, he filed a motion for reconsideration of the discipline imposed in the SDNY, based on his claim that he had not received the two orders to show cause on which the discipline was based. By letter, dated November 20, 2017, we requested that the OAE supplement the record with an updated status of respondent's motion for reconsideration pending before Judge Castel in the SDNY, and, as

² The order provides no detail as to the reasons underlying the dismissal.

previously noted, carried the matter pending receipt of that information.

On January 9, 2018, the OAE informed us that, on January 8, 2018, the SDNY Grievances Committee issued an opinion and order in respondent's matter.³

In its order, the Committee noted that it had reviewed "the entirety of the submission of respondent." Among other points of mitigation, it considered the fact that respondent had already paid substantial sanctions imposed by Judge Cote as a result of his misconduct.

Additionally, the Committee considered aggravating circumstances as well, including that respondent committed multiple violations of the New York Rules of Professional Conduct and the Court's Local Civil Rules. Further, and more seriously, respondent had a dishonest and selfish motive when he knowingly lied to the court about the date that he mailed opposition papers to the plaintiff's summary judgment motion. When his adversary accused him of lying, respondent "doubled down" and lied a second time, accusing his adversary of making

³ During argument before us on November 16, 2017, Deputy Ethics Counsel Hillary Horton informed us that the SDNY was treating respondent's motion for reconsideration as a petition or motion for reinstatement. The SDNY's January 8, 2018 opinion and order appear to dispose of respondent's application.

baseless allegations when he knew that his adversary's statements were truthful. Moreover, respondent failed to respond to the orders to show cause that were issued by the Committee.

Therefore, the Committee concluded that the protection of the public and of the judicial system would be best served by suspending respondent for a period of two years. The Committee, however, imposed the suspension nunc pro tunc, to January 8, 2016.

Respondent once again appeared before us at our March 15, 2018 session and continued to assert that he had been deprived of due process in the SDNY. He also indicated that he would be pursuing reinstatement in the SDNY as soon as possible.

* * *

On review of the full record, we determined to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), another jurisdiction's finding of misconduct shall establish conclusively the facts on which it rests for purposes of disciplinary proceedings. Therefore, we adopt the findings of the Committee and determine that respondent violated New Jersey RPC 3.3(a)(1).

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

The Board shall recommend the imposition of the identical action or discipline unless

the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(E) the unethical conduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (D). We specifically reject respondent's argument that he was deprived of due process in the SDNY. Indeed, respondent participated in a plenary hearing before Judge Cote. Although the grievance committee initially served its Order to Show Cause on respondent at an erroneous address, it later cured that defect by serving respondent at his law firm. Thus, respondent clearly was given notice and opportunity to be heard. That said, subsection (E), however, applies in this case because respondent's unethical

conduct warrants substantially different discipline in New Jersey than he received in the SDNY. Specifically, his ethics violations, for which he was indefinitely suspended in the SDNY, would result in a censure in New Jersey.

At the outset, we address several unique procedural issues with the OAE's motion. Judge Cote's order of October 7, 2014 sets forth a factual landscape riddled with conduct that might support the various RPC violations that the OAE states respondent was "adjudicated responsible for" after an ethics proceeding. Judge Cote's order, however, provides that, based on the record, there is good cause to believe that respondent made misrepresentations to the court. Two days after that order, respondent admitted the misrepresentations, and then made similar admissions at a hearing on November 5, 2014.

Based on respondent's admissions, Judge Cote fined him \$10,000 and referred his conduct to the Committee for a disciplinary investigation. This referral was not an adjudication as to whether respondent had violated the Rules of Professional Conduct.

Once the Committee accepted the matter, its chair, Judge Castel, issued an order, on January 14, 2015, requiring respondent to show cause why he should not be disciplined, based on his conduct, as reported in Judge Cote's October 7, 2014

"sanctions" order. Respondent failed to answer the January 14, 2015 order.

In turn, on July 16, 2015, the Committee served respondent with a second order to show cause, putting him on notice that his failure to respond to the January 14, 2015 order constituted separate grounds for discipline under RPC 3.4(c). Respondent was ordered to submit a written reply as to why he should not be disciplined. He failed to do so.

Hence, on January 8, 2016, the Committee issued an order, suspending respondent indefinitely, for having violated RPC 3.4(c) by failing to respond to the July 16, 2015 order.⁴ That is the only misconduct that has been adjudicated. The other RPC violations that the OAE cites, as of our November 2017 session, had never been brought to an ethics hearing and no final discipline had been issued. Accordingly, those alleged violations could not, at that time, be the subject of discipline based on a motion for reciprocal discipline.

Since then, however, as noted above, the SDNY has adjudicated the matter fully and determined that, for his violations of the New York equivalents of New Jersey RPC

⁴ This interim action appears to be analogous to our temporary suspension imposed pursuant to R. 1:20-3(g)(3) on the basis of a respondent's failure to cooperate with a disciplinary investigation.

3.3(a)(1); RPC 3.4(c); RPC 8.4(c); and RPC 8.4(d), respondent should be suspended for two years.

We, too, find that the record supports a finding of these violations. Specifically, respondent lied to the court on at least two occasions regarding the reasons for needing an extension of time to file an answer to his adversary's summary judgment motion and about the dates he mailed his opposition papers. In so doing, respondent violated RPC 3.3(a)(1) and RPC 8.4(c). These misrepresentations caused delays and wasted judicial resources, a violation of RPC 8.4(d).

Finally, respondent violated RPC 3.4(c) when he failed to respond to the Committee's order to show cause, dated July 16, 2015.

Attorneys who 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 payoff 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); In re Mason, 197 N.J. 1 (2008); (with information gathered during the representation of Marx Toys, the attorney switched sides to represent a competing entity; he 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 repeatedly disregarded several court orders requiring him to satisfy financial obligations to his former secretary, an elderly cancer survivor, who had sued him successfully for employment discrimination; the attorney had refused to allow her to return to work after her recovery from cancer surgery, because the medical condition had disfigured her face); and In re Carlin, 176 N.J. 266 (2003) (attorney failed to comply with two court orders and with mandatory trust and business recordkeeping requirements; gross neglect, lack of diligence, failure to communicate with the client, and failure to promptly deliver funds to a third person also found).

Lack of candor to a tribunal has resulted in discipline ranging from an admonition to a long-term suspension. See, e.g., In the Matter of George P. Helfrich, Jr., DRB 15-410 (February 24, 2016) (admonition imposed on attorney who failed to notify his client and witnesses of a pending trial date, a violation of RPC 1.4(b); thereafter, he appeared at two trial dates but failed to inform the trial judge and his adversary that he had not informed his client or the witnesses of the trial date; consequently, they were unavailable for trial, a violation of RPC 3.3(b) and RPC 3.4(c); at the next trial date, the attorney finally informed the court and his adversary that his client, the witnesses, and his own law firm were unaware that a trial had commenced, resulting in a mistrial; on the same day, the attorney informed his law firm of the offense; in aggravation, we found that, prior to the attorney's admission of wrongdoing, judicial resources had been wasted when the court impaneled a jury and commenced trial; in mitigation, we noted that this was the attorney's first ethics infraction in his thirty-eight year legal career; he suffered from anxiety and high blood pressure at the time of his actions; the client suffered no pecuniary loss because the firm had reimbursed fees and costs; his law firm had demoted him from shareholder to hourly employee, resulting in significantly lower earnings on his part; and he was remorseful and working hard to regain the trust of the court, his

adversaries, and the members of his firm); In the Matter of Robin K. Lord, DRB 01-250 (September 24, 2001) (admonition for attorney who, the day after having made a misrepresentation to the court, brought it to the court's attention; attorney had represented a client in a municipal court matter and permitted him to use an alias, without disclosing it to the court, the next day, she informed the court of the client's real name); In re Marraccini, 221 N.J. 487 (2015) (reprimand imposed on attorney, who had attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications that had been pre-signed by the manager, who then died; the attorney was unaware that the manager had died and, upon learning that information, withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); mitigation considered); In re Schiff, 217 N.J. 524 (2014) (reprimand for attorney who filed inaccurate certifications of proof in connection with default judgments; specifically, at the attorney's direction, his staff prepared signed, but undated, certifications of proof in anticipation of defaults; thereafter, when staff applied for a default judgment, at the attorney's direction, staff completed the certifications, added factual information, and stamped the date; although the attorney made sure that all credits and debits reflected in the certification were accurate, the signatory did not certify to the

changes, after signing, a practice of which the attorney was aware and directed; the attorney was found guilty of lack of candor to a tribunal and failure to supervise nonlawyer employees); In re Hummel, 204 N.J. 32 (2010) (censure in a default matter for gross neglect, lack of diligence, failure to communicate with the client, and misrepresentation in a motion filed with the court; the attorney had no disciplinary record); In re Duke, 207 N.J. 37 (2011) (censure for attorney who failed to disclose his New York disbarment on a form filed with the Board Of Immigration Appeals; the attorney also failed to adequately communicate with the client and was guilty of recordkeeping deficiencies; prior reprimand; the attorney's contrition and efforts at rehabilitation justified only a censure); In re Monahan, 201 N.J. 2 (2010) (attorney censured for submitting two certifications to a federal district court in support of a motion to extend the time within which to file an appeal; the attorney misrepresented that, when the appeal was due to be filed, he was seriously ill and confined to his home on bed rest and, therefore, either unable to work or unable to prepare and file the appeal; the attorney also practiced law while ineligible to do so for failure to pay the attorney annual assessment); In re Trustan, 202 N.J. 4 (2010) (three-month suspension for attorney who, among other things, submitted to the court a client's case information statement that 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 re Perez, 193 N.J. 483 (2008) (on motion for final discipline, three-month suspension for attorney guilty of false swearing; the attorney, then the Jersey City Chief Municipal Prosecutor, lied under oath at a domestic violence hearing that he had not asked the municipal prosecutor to request a bail increase for the person charged with assaulting him); In re Stuart, 192 N.J. 441 (2007) (three-month suspension for assistant district attorney in New York who, during the prosecution of a homicide case, misrepresented to the court that he did not know the whereabouts of a witness; in fact, the attorney had made contact with the witness four days earlier; compelling mitigation justified only a three-month suspension); In re Hasbrouck, 186 N.J. 72 (2006) (attorney suspended for three months for, among other serious improprieties, failing to disclose to a judge his difficulties in following the judge's exact instructions about the deposit of a \$600,000 check in an escrow account for the benefit of the parties to a matrimonial action; instead of opening an escrow account, the attorney placed the check under his desk blotter, where it remained for eight months); In re Forrest, 158 N.J. 428 (1999) (attorney who failed to disclose the death of his client to the court, to his

adversary, and to an arbitrator was suspended for six months; the attorney's motive was to obtain a personal injury settlement); In re Telson, 138 N.J. 47 (1994) (after an attorney concealed a judge's docket entry dismissing his client's divorce complaint, the attorney obtained a divorce judgment from another judge, without disclosing that the first judge had denied the request; the attorney then denied his conduct to a third judge, only to admit to this judge, one week later, that he had lied because he was scared; the attorney was suspended for six months); In re Moras, 220 N.J. 351 (2015) (default; one-year suspension imposed on attorney who exhibited gross neglect and a lack of diligence and failed to communicate with the client in one matter, misled a bankruptcy court in another matter by failing to disclose on his client's bankruptcy petition that she was to inherit property, and failed to cooperate with the ethics investigation in both matters; extensive disciplinary history consisting of two reprimands, a three-month suspension, and a six-month suspension); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, 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); and In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who had been involved in an automobile accident and then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing).

Here, respondent made multiple misrepresentations to the court regarding the timing of his filings. In Schiff, the attorney received a reprimand for filing misleading certifications in connection with default judgment motions. Hence, here, the starting point for discipline is a reprimand. Respondent also wasted judicial resources and failed to appear or otherwise reply to an order to show cause not once, but twice. These additional infractions enhance the appropriate quantum of discipline to a censure. See, e.g., In re Kivler, 193 N.J. 332, 343-44 (2008) (discipline enhanced based on attorney's failure to appear in response to an Order to Show Cause; the Court noted that such orders were "neither a suggestion nor an invitation that an attorney is privileged to accept or reject as he or she wishes.")

In mitigation, respondent has no history of discipline. Therefore, based on the foregoing, we determine to impose a censure.

Vice-Chair Baugh and Members Gallipoli, Rivera, and Zmirich voted to impose 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: 
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Howard Z. Myerowitz
Docket No. DRB 17-312

Argued: March 15, 2018

Decided: April 24, 2018

Disposition: Censure

<i>Members</i>	Censure	Three-month Suspension
Frost	X	
Baugh		X
Boyer	X	
Clark	X	
Gallipoli		X
Hoberman	X	
Rivera		X
Singer	X	
Zmirich		X
Total:	5	4



Ellen A. Brodsky
Chief Counsel