SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 17-375
District Docket No. VIII-2014-0045E

IN THE MATTER OF	:
JARRED S. FREEMAN	:
AN ATTORNEY AT LAW	:

Corrected Decision

Argued: February 15, 2018

Decided: April 24, 2018

Allan Marain appeared on behalf of the District VIII Ethics Committee.

Justin T. Loughry appeared on behalf of respondent.

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

This matter was previously before us on September 14, 2017, on a recommendation for an admonition filed by the District VIII Ethics Committee (DEC). At that time, we determined to treat it as a recommendation for greater discipline and to bring the matter on for oral argument.

The seven-count complaint charged respondent with violations of RPC 1.2(a) (failure to abide by a client's decisions concerning the scope and objectives of the representation), RPC

1.4(b) (failure to keep a client reasonably informed about the status of the matter); RPC 3.3(a)(1) (knowingly making a false statement of material fact or law to a tribunal), RPC 4.1(a)(1) (knowingly making a false statement of material fact or law to a third person), RPC 8.1(a) (knowingly making a false statement of material fact in connection with a disciplinary matter) (two counts), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). For the reasons expressed below, we determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 2009 and to the New York bar in 2010. He maintains a law office in Edison, New Jersey. He has no history of discipline in New Jersey.

This matter stems from respondent's representation of grievant Jazaar Redding, through the Office of the Public Defender (OPD) as a pool attorney. Respondent did not notify Redding about a hearing on his petition for post-conviction relief (PCR) before appearing on his behalf and then engaged in a web of lies and misrepresentations to the judge, to the OPD, and to the DEC with regard to his conduct.

Respondent's legal background bears some relevance in this matter. After graduating cum laude from Seton Hall University School of Law, he began his legal career as a law clerk to the Honorable Frederick De Vesa, J.S.C., who, at that time, was the

presiding Middlesex County criminal judge. Thereafter, he worked for Cavanagh and Associates until 2012, when he opened his own practice, which consists almost entirely of criminal cases. Respondent handles many cases for the OPD, as a pool attorney, for which he is paid at the rate of $50 per hour.

In November 2004, Redding, who at the time was twenty-one years old, was charged with second-degree sexual assault and endangering the welfare of a minor after engaging in sexual activity with a fourteen-year-old girl. Redding claimed that, at the time, he believed that she was seventeen or eighteen years old. Although Redding maintained that the conduct was consensual, N.J.S.A. 2C:14-2(c)(4) includes, as sexual assault, an act of sexual penetration where the victim is less than sixteen years old and the actor is at least four years older than the victim.

Redding pleaded guilty to endangering the welfare of a child. In exchange, the prosecutor dismissed the sexual assault charge and recommended a non-custodial sentence. Redding was sentenced to two years of probation and Parole Supervision for Life (PSL), under Megan's Law.[1] Redding was not sentenced to a term of imprisonment, but was required to report to a parole officer and to inform the officer of any changes in his residence

[1] Megan's Law is the common name for the New Jersey Registration and Community Notification Laws at N.J.S.A. 2C:7-1 to -23.

or employment. Because Redding twice violated the terms of his parole, in 2006 and 2010, the Parole Board revoked his supervision for life and imposed a term of incarceration. He was released from prison in March 2013.

In April 2012, while incarcerated on unrelated charges, Redding applied for post-conviction relief (PCR) and sought the assistance of counsel. In his petition, he admitted that he had engaged in sexual activity with a minor, but argued that his conviction should be vacated because he believed that the minor was over eighteen years of age and their relations were consensual, and, due to the ineffective assistance of counsel, he did not understand (1) the significance of the PSL sentence at the time of his plea, (2) the concept of an appeal, or (3) his right to appeal the sentence. His primary goal was to obtain relief from PSL under Megan's Law.

In July 2012, the OPD assigned Redding's PCR matter to respondent. Redding recalled meeting with respondent only once, during his incarceration, possibly via video conference; making arrangements to meet with respondent after his release; and receiving respondent's December 7, 2012 letter, attaching a brief in support of the PCR motion.

On April 4, 2013, soon after his release, Redding and his sister, Queen N. Stewart, Esq., met with respondent at

respondent's Edison office. Redding claimed that, at the time, he lived at a Kent Street, Newark, New Jersey address, as he had for the past ten years, with the exception of earlier periods of incarceration. Stewart confirmed that Redding had always lived at that address with his father and that it was his main residence. She later admitted that, at times, he also stayed with family in Asbury Park and Neptune, New Jersey. Redding claimed that he provided respondent with the Kent Street address and his cell phone number, which periodically was not operational when he failed to pay his bill.

Respondent counselled Redding against pursuing the PCR petition, because, if his conviction were vacated, the authorities could resurrect the sexual assault charge. In that case, respondent advised, Redding would likely be convicted because he had engaged in a strict liability offense and admitted as much in his PCR application. Against respondent's advice, Redding was willing to take the chance, in order to free himself from PSL. According to respondent, he informed Redding of another option – to negotiate with the prosecutor to reduce the charge to one without a PSL component, for which Redding would be required to obtain, and provide to respondent, documentation showing Redding's good moral character and positive contributions to

society. Redding, however, did not recall having such a conversation with respondent.

During the April 4, 2013 meeting, Stewart gave respondent her business card, containing the address and telephone number of her then employer, the Law Office of Adrienne D. Edward, P.C. Stewart testified that she provided the contact information in case respondent had difficulty getting in touch with Redding. She added her personal cell phone number on the back of the card.

Respondent asserted that, at that meeting, Redding had stated that he "was currently between residences" and would provide respondent with a permanent address upon obtaining one. According to respondent, because Redding's family members would not let him live with them, he was a transient. He claimed that Redding's Kent Street address was no longer valid, and that Redding was living either in Asbury Park or Neptune. Redding denied this claim, stating that he lived with his father and had a working cell phone.

By court order dated May 7, 2013, respondent received notice that Redding's PCR hearing was scheduled for August 2, 2013. Respondent never notified Redding orally of the hearing date. Likewise, nothing in respondent's file reflected that he had communicated the hearing date to either Redding or Stewart.

Respondent conceded that, if a letter had been sent to Redding, a hard copy of it would have been in the file.

According to Redding, he did not contact respondent after their meeting because he was waiting to hear from respondent. Redding did not expect to receive a court date any time soon, because he understood "it would be a waiting process." He testified that, after their initial meeting, he neither heard from respondent nor received any correspondence from him. Between Redding's April 4, 2013 meeting with respondent and the August 4, 2013 PCR hearing, Redding was not incarcerated. His father was available to receive mail on his behalf at the Kent Street address, and he was in contact with Stewart, who could have relayed information to him, had respondent reached out to her.

In turn, respondent explained that he had not contacted Redding because he did not have a valid address, noting that neither Redding nor Stewart had tried to contact him. Indeed, respondent claimed that Redding had instructed him not to mail anything to the Kent Street address because Redding would be residing at another address, which he would later provide.

Redding countered that, despite respondent's claims that he did not have a valid address, his parole officer knew his whereabouts, due to required office visits and monthly "pop-up" visits at his home.

Respondent asserted that he did not contact Redding's parole officer for Redding's contact information, because he did not want to alert the parole officer that he could not locate Redding, lest it lead to a parole violation. Moreover, he claimed, the OPD's policy was to not involve the Parole Board in such matters. Raymond Black, Deputy Public Defender, PCR Unit, who testified in respondent's behalf, confirmed that a call to the Parole Board could initiate a violation of parole investigation. He stated that a good-faith effort to locate the client must be conducted, nevertheless. According to Black, if the client cannot be found, the attorney must notify the court that the attorney could not discuss the petition with the client, and the attorney should move to withdraw the petition.

Respondent claimed that, as the date for the PCR hearing approached, he became concerned that he could not locate Redding. As "a routine occurrence, once, twice a week" he reminded his secretary, Jenny Tobin, to try to contact Redding.[2] He did not try to contact Redding personally, but spoke to Stewart twice at her law office, and called her multiple additional times before the

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[2] Tobin recalled speaking with Redding to schedule the initial meeting, but did not recall any other phone conversation with him thereafter. She maintained that she tried to contact Redding after the meeting, but his phone was disconnected or he had changed his number.

hearing, but no one answered the phone. Stewart denied receiving any phone calls or letters from respondent.

Respondent further asserted that Stewart had instucted him not to e-mail her at the law firm because "her boss would get mad" if she received personal e-mails there. He likewise claimed that Stewart had told him not to leave phone messages, because her employer did not want her engaging in personal matters at work. Stewart denied any office policy prohibiting her from receiving personal calls or e-mails at the office.

Respondent neither asked Stewart for Redding's contact information, nor notified her about the hearing date, despite the fact that she had given respondent her business card, with her personal phone number written on the back. Respondent claimed that he spoke to Stewart during the summer, and, subsequently, to her employer, who informed him that Stewart was no longer with the firm. He maintained that he had no other contact information for Stewart. Respondent also claimed that he had attempted to contact Stewart several times, to no avail. His billing records to the OPD showed a telephone call to Stewart on March 26, 2013, before their April 4, 2013 meeting. He asserted further that he tried to contact Stewart several times after March 26, 2013, but was unable to reach her and did not leave voice mail messages or send e-mails because he did not want to get her in trouble with

her employer. Respondent's bill to the OPD reflected only two calls "with sister" - the above-mentioned March 26, 2013 call and another, on May 6, 2013, each for three-tenths of an hour. Although respondent stated that he had twice conversed with Stewart, she did not recall any such conversations. If she had, she would have relayed the information to her brother.

Edward, Stewart's former employer, testified that Stewart left her employ on good terms and that she had Stewart's contact information. She denied having told Stewart that she was prohibited from accepting personal calls at work. Edward stated that, if respondent had tried to contact Stewart after Stewart was no longer in her employ, Edward would have given Stewart the information. Edward had no recollection of receiving any calls from respondent about Redding.

On August 2, 2013, respondent appeared for the PCR hearing, before the Honorable Joseph W. Oxley, J.S.C., Superior Court of New Jersey, Monmouth County, Law Division, Criminal Part. Redding, who was not aware of the hearing, did not attend. Judge Oxley noted that, although Redding had filed the petition pro se, he failed to appear. When the judge inquired about respondent's efforts to contact Redding, the following exchange took place:

> THE COURT: Defendant has failed to show up for a petition that he originally filed pro se.

> Counsel, have you tried to contact him, and if so, what . . . efforts have you made?
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> [RESPONDENT]: [m]y office has written him letters and . . . made multiple phone calls. However, every number I do have right now is off and not working. I will relay this information to him via letter. The letters have not been returned.
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> So it appears that, based upon his inactivity, he does not wish to pursue the petition.
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> [Ex.C14 at 3-15 to 3-25.]

The judge stated further that, because Redding was on lifetime monitoring, he could not "disappear." Respondent then replied:

> [J]ust for the record, I did advise him that . . . his conduct . . . the initial charge restrict [sic] liability and that basically that it's probably in his benefit not to pursue the petition. I did advise him of this. He wanted to still proceed last I spoke with him. We did have a meeting in my office. And that was really the last meaningful communication that we had.
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> [Ex.C14-4.]

At the DEC hearing, respondent acknowledged that his reply to the judge should have been more clear. He had intended to convey to the judge that respondent and Redding were "previously communicating by letters"; he had only "nonworking phone numbers" for Redding; his last meaningful communication with Redding was at his office; and he did not have a current address

for Redding, which Redding had promised to provide. Respondent added that he thought the court was asking the general question of whether he and Redding had made contact at all, and not the specific question of whether he tried to make contact with Redding about the hearing date.

Respondent later claimed that his statement to the judge meant that he would write to Redding at the "defunct addresses just to have something in the file." Respondent denied having told the judge that he sent Redding a letter notifying him of the court date. He stated, "I said we sent him letters, we made calls. I was trying to basically characterize the communication with him, and I do [sic] tell the judge my last meaningful communication with him was at that office meeting. I never said to him I sent him a letter with the date." He added, "I, in no ways [sic], wanted to reflect that we were able to communicate with Mr. Redding the date via letter because we actually didn't have a good address."

Despite informing the judge that he would relay to Redding that his PCR petition had been dismissed, respondent admitted that he failed to do so, claiming he had no contact information.

Respondent's OPD file[3] consists of one December 7, 2012 letter enclosing the PCR brief, sent to Redding at the prison, and multiple copies of the same letter to Redding (one undated, two dated April 4, 2013), without Redding's address, which respondent purportedly handed to Redding during their meeting and which explained the consequences of pursuing a PCR motion. Respondent also testified that he made multiple telephone calls to all the phone numbers in Redding's file, despite respondent's prior testimony that Stewart's number was the only telephone contact he had for Redding.

Judge Oxley did not reach the merits of Redding's petition, instead ruling, "in light of the fact that defendant has failed to grace us with his presence . . . I'm going to dismiss this petition with prejudice."

As to the dismissal of the PCR petition, respondent's reply to the grievance stated that, when he had appeared on Redding's behalf, he asked the judge to dismiss the petition, without prejudice, or to permit him to withdraw it prior to the hearing. The judge, however, denied his request, because "Redding remained on the street" and did not attempt to contact him or the court. At the DEC hearing,

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[3] At the conclusion of respondent's representation of Redding, and pursuant to OPD policy, respondent returned Redding's original client file to the OPD, along with the forms respondent had completed. Return of the original file was a prerequisite to payment for services.

respondent explained that his office had called the judge's chambers and had tried "very hard to move the date or withdraw the petition," but the judge refused. He "believe[d]" that it was his secretary who had called the judge's chambers and that he might have called as well. Subsequently, however, respondent testified that he had called the judge's chambers before the hearing and was told that the court would not adjourn the matter or permit him to withdraw it. Respondent acknowledged that he did not place his request on the record at the hearing.[4] Further, he conceded that his time records did not reflect any calls to the judge prior to the hearing.

Tobin recalled having attempted to telephone Redding, more than once, to no avail, but did not recall trying to call Stewart when she was unable to reach Redding. She explained that, during the relevant period, any letters to Redding would have been on the office's computer hard drive with a copy placed in the file. On July 30, 2013, four days before the PCR hearing, respondent sent the following e-mail to Tobin: "On Friday, it appears that there is a conflict. Let's see if we can get in touch with Redding. If we can't

[4] We note that Exhibit C14, the transcript of the August 2, 2013 hearing relative to the PCR motion, also contains pages four and five of Redding's sentencing transcript.

I suggest withdrawing the PCR."[5] Tobin did not recall communicating with the court.

Respondent maintained that his actions had not prejudiced Redding because the judge did not rule on the merits of the case, and, therefore, Redding could re-litigate the issue.

Thereafter, respondent closed Redding's file and returned it to the OPD. The file contained a form captioned "Notice of Right to Appeal Post Conviction Relief." A signature on this form was intended as an acknowledgement that the attorney had informed the client of the client's right to appeal a PCR denial. Respondent signed Redding's name on the signature line, adding the initials "POA," even though Redding had not granted him a power-of-attorney. The form indicated that Redding did not want to proceed with an appeal, thereby ending his right to pursue the matter. Respondent never gave the form to Redding or discussed it with him. Instead, he checked the box, indicating "I do not wish any further action on my case." Respondent filled out the document to close out the file. The following exchange took place between the presenter and respondent regarding his signature of Redding's name with the initials "POA":

Q. You intended it to be recognized as POA?

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[5] The DEC hearing transcript spells the secretary's name as "Tobin," while respondent's e-mail to her is addressed to Jenny "Tobon."

A. Yes.

Q. In fact, that's not his signature?

A. No. That's why I wrote POA.

. . . .

Q. Mr. Redding never told you that you could write his signature, did he?

A. Mr. Redding failed to communicate with me since the in-office meeting. So no.

Q. And he never gave you a power of attorney, did he?

A. Not a formal power of attorney.

Q. Did he ever give you a piece of paper that said power of attorney?

A. No. There's no formal power of attorney.

Q. There's no power of attorney at all, was there?

A. No, I was his legal counsel, though.

Q. Okay. And he never told you that he would like no further action on his case, did he?

A. He never told me anything after that office meeting because he disappeared.

[1T140-2 to 140-25.][6]

Respondent testified that he had not intended to forge Redding's signature. Rather, he believed that adding "POA" would

[6] 1T refers to the January 25, 2017 DEC hearing transcript.

indicate that it was the attorney who had signed the document.[7] Specifically, respondent maintained that he mistakenly believed that "an attorney may sign any document on behalf of his client without authorization or consent;" that it was an acceptable procedure when the whereabouts of the client are unknown; and his intent was to communicate to the OPD that no appeal could be taken because the client was missing. Respondent admitted that he never asked Black for advice about what to do when he could not contact Redding.

Black testified that the OPD conducts yearly public defender training courses, as well as specific training on PCRs. He explained that an attorney may complete the Notice of Right to Appeal form only if the attorney verbally communicated with the client because, often, the client learns of the denial of PCR while in prison or when the client is not present with the attorney. If the attorney fills out the form for the client, the attorney must note that the client verbally instructed that the appeal should (or should not) be filed.

By letter dated January 20, 2014, Redding wrote to the OPD to check on the status of his PCR petition and to inquire about the date of his court appearance. He remarked that he had seen

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[7] The initials were inserted in tiny handwriting, such that they are virtually illegible. Indeed, the presenter interpreted them as either "PLA" or "DLA."

respondent only once since his release, and requested a new attorney familiar with PSL and Megan's Law cases.[8] Three months later, on March 25, 2014, Black e-mailed respondent that Redding had written to the OPD about his petition. Black inquired about respondent's communications with Redding concerning his court date, as the case had been dismissed with prejudice based on Redding's failure to appear.[9] Approximately fifteen minutes later, respondent replied:

> Hey yes we even met at my office we followed up and he never contacted us. He was supposed to get all this supplemental info together in attempts to remove him from CSL [sic]. I believe it was a statutory rape charge. He fell off and never followed up after our meeting and all his numbers were not working. His sister is an attorney and did not follow up either.
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> [Ex.C-25).

Ten minutes later, respondent sent a second e-mail stating, "Client knew about the date forever, he was on the street as well." Respondent claimed that he made that statement before he reviewed the file. Although he admitted that he had not provided

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[8] At that time, Redding was housed at a drug treatment facility, which he was ordered to attend for a ninety-day period as a condition of his parole.

[9] According to Black, if a PCR was dismissed with prejudice, but the court had not reached the merits of the case, the court would treat a re-filed PCR as a first PCR. If that did not occur, the OPD could decide whether to file an appeal.

Redding with notice of the hearing, respondent, nevertheless, believed Redding knew about the date.

Relying on respondent's false statements, that Redding was "well informed of the hearing date," but failed to appear for it, as well as the signed Notice of Right to Appeal, indicating that Redding did not wish to appeal the denial of the PCR, the OPD denied Redding's request for further assistance.

After the OPD informed Redding that his petition had been denied, he discovered that his signature had been inserted on the Notice of Right to Appeal, and asked his sister for assistance. Stewart filed another PCR petition, which was denied.

As to the notice of appeal form, Black explained that, once the ethics complaint was filed against respondent, Black began looking into the matter. Redding had requested a copy of his file, which contained the form on which respondent had signed Redding's name. Black saw the form with the "very tiny" letters, which were difficult to discern as "POA." Black conceded that, if he had reviewed the form when it was filed, he would have had no way of knowing that it was not Redding's signature. Respondent later confessed to Black that Redding had not signed the form, and that respondent had signed it "as power of attorney." Black testified that the OPD does not have powers-of-attorney for their

criminal defendants and believed that respondent did not "completely" understand the concept of a POA.

During the course of the DEC's investigation, respondent told the investigator that he had asked the court to adjourn the PCR hearing, but his request had been denied. As noted previously, the hearing transcript contained no such request.

Respondent maintained that, "when he told the investigator that he asked for an adjournment he did not mean that he asked for the adjournment on the record." Instead, he meant that "he or his administrative assistant" called the court's chambers prior to the hearing to request an adjournment, but it was denied and the judge would not permit him to withdraw the petition. Respondent did not memorialize that conversation in a letter. He could not support this position with telephone records, notes to the file, messages from his secretary, or a subsequent renewal of the request for an adjournment on the record.

In mitigation, respondent testified that he performs community service. He is a member of the Benevolent and Protective Order of Elks, "started" volunteering for the Disabled American Veterans, and coaches the Perth Amboy Charter Mock Trial Team. In addition, Black testified that he found respondent to be truthful and hardworking. Character witnesses Andrew Seewald,

Esq., and Michael Cennimo, Esq., respondent's associate, testified that respondent is law-abiding, honest, and diligent.

The presenter's letter-brief to the DEC highlighted respondent's "cavalcade of excuses" for his conduct in the matter, beginning with his signing Redding's name on the notice of right to appeal form, and underscoring that he had written "POA" in such tiny letters that no one would have been alerted to the fact that someone other than Redding had signed the form. The presenter questioned respondent's contention that he had misunderstood the concept of a power-of-attorney, particularly since he is a cum laude law school graduate, noting that nothing in the core law school courses indicates that a lawyer has the authority to sign a client's rights away, as long as the signature is preceded by "POA."

The presenter argued further that respondent's excuses spanned the original representation, the PCR hearing, the investigation, and the DEC hearing itself. As the presenter noted, "excuses can carry a lawyer only so far. Ultimately excuses become so numerous that, like a house of cards, they collapse on their own weight."

Respondent's counsel argued in his letter-brief that respondent's failure to communicate with Redding was not

respondent's fault, as he and his office had made efforts, although unsuccessfully, to communicate with Redding.

As to lack of candor to the tribunal, counsel argued that the dialogue between respondent and the judge was not clear; the judge did not specifically inquire whether respondent had communicated to Redding the date of the hearing; and, therefore, the transcript did not clearly establish a straightforward misrepresentation. Rather, respondent was trying to "lay out the general history of communication or attempts at communication, to indicate that in fact he had had some course of meaningful communication with Mr. Redding."

In respect of respondent's signing Redding's name on the appeal form, counsel argued that the evidence did not support a finding of a misrepresentation on respondent's part, given his mistaken belief that he had a power-of-attorney, via his role as Redding's attorney. Counsel attributed respondent's misstatements to the DEC to his faulty recollection of the events, absent having the benefit of the hearing transcript or OPD file.

The DEC did not find respondent's testimony to be entirely truthful, citing several examples. Specifically, the DEC noted, respondent never tried to reach Redding at the Kent Street address and, therefore, had no basis to conclude that Redding "had gone missing;" his testimony that Stewart asked not to be

contacted at work was controverted by both Stewart and her former employer, and the fact that Stewart had provided respondent with her business card; and he denied making a misrepresentation to the court when he stated that either he or his office had made multiple attempts to contact Redding via letters and phone calls, and, instead, characterized the statement as a misinterpretation of the court's question.

The DEC also found that respondent made inconsistent statements by (1) informing the court that he would relay information to Redding, in a letter, relating to the court proceedings, because the letters to Redding had not been returned; and (2) alleging that he did not have a valid address or telephone number for Redding and, therefore, was unable to inform him about the date of the hearing. Likewise, respondent claimed both that he (1) called the judge's chambers to request an adjournment; and (2) requested an adjournment during the proceedings. The DEC determined that respondent's testimony that he misunderstood questions posed to him simply lacked credibility and that the judge had relied on respondent's misstatements when he determined to dismiss the PCR with prejudice.

The DEC found that respondent violated RPC 1.2(a) (failing to abide by a client's decisions concerning the scope and objectives of the representation), by substituting his own

judgment for that of Redding's when he unilaterally completed the form stating that Redding did not wish to appeal the denial of his PCR. Redding never granted respondent a power-of-attorney to take any action on his behalf, and respondent never communicated with Redding after the hearing to inform him of that option.

The DEC found that respondent violated RPC 1.4(b) by failing to inform Redding about the status of his PCR petition or of the hearing. After respondent discovered that Redding's phone had been disconnected, he failed to send him a letter at the address listed on the PCR; to contact Redding's sister to help locate him; or to enlist the OPD's assistance. The DEC found that, because respondent never contacted Redding after the hearing, he clearly had not informed Redding of his right to appeal.

The DEC also determined that respondent knowingly made false statements of material fact to a tribunal (RPC 3.3(a)(1)) when, in response to the court's question concerning his efforts to locate Redding, he replied that his office had made multiple phone calls and written him letters, and the letters had not been returned. The DEC found that respondent's testimony that he misunderstood the court's question and thought that the court was asking a "general question" lacked credibility. The DEC pointed out that respondent's testimony that, after the hearing he would

write to Redding, contradicted his inability to contact Redding for lack of a valid address.

The DEC underscored the fact that the court relied on respondent's representation in dismissing the PCR with prejudice. Thereafter, respondent failed to call or write to Redding to inform him about the outcome of his petition, as he represented to the court he would.

In addition, the DEC found that respondent knowingly made a false statement of material fact to a third person (RPC 4.1(1)(1)), that is, the OPD. The DEC determined that checking the box that Redding did not "wish any further action on [his] case" and signing Redding's name "POA," implied that respondent fully advised Redding of his right to appeal the decision. Because respondent never contacted Redding, he could not have advised him of his rights.

Additionally, respondent made a knowing misrepresentation to the OPD Deputy Director, by e-mailing him that the "[c]lient knew about the date forever he was on the street as well."

The DEC remarked that respondent's explanation for signing Redding's name POA missed the point. He falsified Redding's signature on a document he knew was inaccurate. He misrepresented to the OPD that he had advised Redding of his right to appeal, knowing full well that he had not done so, and misrepresented

that Redding wanted no further action, even though he had said "[nothing of] the sort."

The DEC rejected respondent's testimony that, by signing the Notice of Right to Appeal form, he was trying to communicate to the OPD that his client was missing and, therefore, no appeal could be taken. Here, the DEC noted respondent should have written 'client is missing' and signed his own name. The DEC concluded that, more likely, respondent executed the notice to close the file so that he could get paid, and to avoid alerting the OPD that he had failed to make reasonable efforts to locate the client.

The DEC also found that respondent made several misrepresentations to ethics authorities, in violation of RPC 8.1(a), as follows: (1) he claimed that he asked the court for an adjournment of the PCR hearing, but the hearing transcript contained no such request; (2) he told the investigator that, when he made the statement, he meant that "he or his assistant" called the court's chambers before the hearing to request the adjournment, but he could provide no such proof; (3) he made a similar misrepresentation in writing, but characterized it as an "inadvertent error" because he did not have his file available when he wrote the letter; and (4) respondent's testimony was contradicted by the testimony of other witnesses.

The DEC found a violation of RPC 8.4(c) for respondent's signing Redding's name as the "power-of-attorney," notwithstanding respondent's assertions that he (1) did not understand the term, (2) believed that all attorneys have a power-of-attorney, and (3) was not trying to misrepresent that Redding signed the form.

The DEC considered mitigating circumstances: (1) respondent's relative inexperience at the time (he had been practicing law for approximately four years); (2) the lack of significant harm to Redding; and (3) witnesses' testimony attesting to respondent's good character and abilities.

The DEC found, as aggravating factors, that some of respondent's sworn testimony was at odds with the "incontrovertible" evidence to the contrary; that the matter began as a simple, correctible oversight; and that respondent's lack of candor after the fact was far worse than his original mistake. The DEC determined that respondent's lack of candor reflected poor judgment; that he failed to take responsibility for his conduct; and that he did not show remorse.

The DEC found clear and convincing evidence that respondent violated RPC 1.2(a), RPC 1.4(b), RPC 3.3(a)(1), RPC 4.1(a)(1), RPC 8.1(a), and RPC 8.4(c). The DEC recommended an admonition, without further explanation.

In his brief to us, respondent's counsel argued that, because the parole supervision notes made no reference to telephone contact with Redding, the notes corroborated Tobin's testimony that she had difficulty reaching him because his phone was never working. Counsel further argued that respondent's actions on Redding's behalf did not equate to a failure to carry out his client's wishes (RPC 1.2(a)); that respondent's and his secretary's efforts to notify Redding or his sister of the hearing did not amount to a failure to communicate (RPC 1.4(b)); that the evidence was "less than crystal clear" that respondent made misrepresentations to the court – rather, he was simply trying to "lay out the general history of communication or attempts at communication" with Redding (RPC 3.3(a)(1)); that respondent did not make a misrepresentation to the OPD when signing Redding's name and adding "POA" on the right to appeal form but, instead, showed his inexperience (RPC 4.1(a)(1) and RPC 8.4(c)); and that respondent did not make misrepresentations to the investigator by alleging that he sought an adjournment and requested a dismissal without prejudice, as he did not have the benefit of the PCR transcript (RPC 8.1(a)).

Counsel argued that respondent's failure to document his actions and that his shortcomings in connection with the PCR petition should not result in a finding of any ethics violations.

At the hearing before us, the presenter maintained that an admonition was sufficient discipline. He argued that respondent was misguided in his efforts to protect the public. He was inexperienced and required the guidance of a mentor. Respondent's counsel joined in that sentiment, pointing out that respondent was an "unseasoned" lawyer at the time of the conduct at issue.

* * *

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

At the outset, we note that neither respondent's nor Redding's testimony was entirely credible. Nevertheless, the DEC properly found respondent guilty of all of the above violations. It is undeniable that respondent took actions contrary to his client's wishes by asserting that Redding did not wish to appeal the court's determination. Prior thereto, he failed to notify Redding of his upcoming hearing. Afterwards, he failed to inform him of the outcome. During the course of the representation, respondent made misrepresentations to the court and to the OPD. He lied to the court about his efforts to contact Redding, which ultimately negatively impacted Redding's ability to pursue an

appeal. Because the judge believed that Redding knew about the hearing, but simply failed to appear, he dismissed the case with prejudice. Thereafter, for the same reason, and because the OPD believed that Redding had signed the appeal form and checked the box stating that he did not wish to pursue an appeal, the OPD denied his request for new counsel. Then, during the course of the investigation, respondent made multiple misrepresentations to the DEC investigator and, made misrepresentations during the course of the DEC hearing. When those misrepresentations were brought to respondent's attention, he attempted to explain them by claiming that his comments had been misinterpreted or he did not have the benefit of Redding's file.

Respondent's counsel argued that respondent was an unseasoned lawyer. Respondent's conduct, however, did not require "seasoning." Youth and inexperience may explain or mitigate the effects of mistakes made during the course of a representation, such as respondent's failure to more aggressively attempt to communicate with his client. However, youth and inexperience, or the lack of a mentor, do not excuse multiple misrepresentations to the court, to the OPD, to the DEC investigator, and to the DEC hearing panel. At a minimum, respondent could have reached out to Deputy Public Defender Black for guidance. Truthfulness is a character trait, not something to be learned, but something that

should be rooted in one's personality. Thus, respondent's repeated misrepresentations require discipline much greater than an admonition.

In a flagrant misrepresentation to the DEC, respondent claimed that, even though he had not requested an adjournment or a dismissal without prejudice on the record, either he or his secretary had attempted to do so before the hearing. Had that been the case, then his statement to the judge, that Redding's absence on the date of the hearing signaled his lack of interest in pursuing the matter, is inconsistent with an adjournment request. Moreover, strikingly relevant was Black's testimony that, if a public defender could not find his or her client, the public defender was required to notify the court and to move to withdraw the motion.

A parsing of respondent's testimony leads to the inescapable conclusion that, when called upon to explain his misconduct, he offered one contradictory explanation after another. Respondent's assertion that he tried to contact Redding or his sister as "a routine occurrence, once, twice a week" is simply not supported by the record. The only evidence that any attempt may have been made was a July 30, 2013 e-mail to respondent's secretary sent four days before the hearing, in which he recognized a conflict,

and asked his secretary to attempt to communicate with Redding, failing which he "suggested" withdrawal of the PCR.

In addition, respondent's explanation for adding the initials "POA" before signing Redding's name strains credulity. The initials were barely legible. As Black noted, no one reviewing the form could have known that Redding had not signed it. As a cum laude law school graduate and former law clerk to the presiding judge, sitting in the criminal division, respondent should have known that his actions in this regard were improper. Although respondent could have indicated on the form that he was unable to find Redding and signed his own name, to do so would have revealed his lack of effort to locate the client and would have amounted to a misrepresentation. As the DEC remarked, respondent most likely wanted to close out the file and receive payment from the OPD for his services. Thus, like the DEC, we consider respondent's testimony simply unbelievable.

There remains the appropriate discipline for respondent's violations of RPC 1.2(a), RPC 1.4(b), RPC 3.3(a), RPC 4.1(a), RPC 8.1(a), and RPC 8.4(c). Clearly, respondent's most serious misconduct was his dishonesty.

Lack of candor to a tribunal can result in an admonition (the level of discipline that the DEC recommended), if compelling mitigating factors are present. For example, in In the Matter of

George P. Helfrich, Jr., DRB 15-410 (February 24, 2016), although the attorney made a misrepresentation to the court, he subsequently rectified his falsification and suffered serious consequences from his wrongdoing. The client suffered no harm.

More specifically, Helfrich had prepared for trial, but failed to notify the requisite defense witnesses of the trial date. Although jury selection had been completed and the attorney appeared for two days of trial, he did not inform the trial judge that his client and witnesses were not aware of or available for trial. Finally, on the third day of trial, the attorney notified the court and his adversary that neither his client, their witnesses, nor his own law firm were aware that the trial had begun. The judge immediately declared a mistrial.

After the attorney notified his law firm, the firm stripped him of his shareholder status and suspended him for an undisclosed period. Additionally, the attorney went through mediation, and reimbursed the plaintiff for legal fees and costs. Neither the plaintiff nor defendant suffered pecuniary losses. Upon the attorney's reinstatement, his legal work was monitored by senior partners.

In imposing only an admonition, we considered that it was the attorney's first ethics infraction in his thirty-eight years at the bar; he was demoted by his law firm, resulting in significantly

lower earnings; and he was remorseful and was working hard to regain the trust of all those affected by his conduct.

An admonition was also imposed in In the Matter of Robin K. Lord, DRB 01-250 (September 24, 2001). The day after the attorney made a misrepresentation to the court, she brought it to the court's attention. She had represented a client in municipal court and permitted him to use an alias, without disclosing that fact to the court. The following day, she informed the court of her client's real name.

In these cases, the client was not harmed by the attorneys' misrepresentations to the court. The same cannot be said in this matter. Although Redding may not have fared better with a more attentive attorney, he lost that opportunity when his case was dismissed with prejudice and when the OPD denied his request for new counsel. Thus, clearly, discipline greater than an admonition is warranted in this matter.

Harsher discipline, was imposed in cases where the attorneys' lack of candor to a tribunal was accompanied by additional aggravating factors. See, e.g., In re Manns, 171 N.J. 145 (2002) (attorney reprimanded for misleading the court, in a certification in support of a motion to reinstate the complaint, as to the date the attorney learned of the dismissal of the complaint; the attorney also lacked diligence in the case, failed to expedite

litigation, and failed to properly communicate with the client; prior reprimand); In re Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failure to disclose to a court his representation of a client in a prior lawsuit, when that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); In re Whitmore, 117 N.J. 472 (1990) (reprimand imposed on a municipal prosecutor who failed to disclose to the court that a police officer, whose testimony was critical to the prosecution of a DWI charge, had intentionally left the courtroom before the case was called, resulting in the dismissal of the charge); 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 Hummel, 204 N.J. 32 (2010) (attorney censured 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 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 Perez, 193 N.J. 483 (2008) (on a motion for final discipline, three-month suspension for attorney guilty of false swearing; the attorney, the Jersey City Chief Municipal Prosecutor at the time, 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 Coffee, 174 N.J. 292 (2002) (motion for reciprocal discipline; three-month suspension imposed for attorney's submission of a false affidavit of financial information in his own divorce case, followed by his misrepresentation at a hearing that he had no assets other than those identified in the affidavit); In re Forrest, 158 N.J. 428 (1999) (six-month suspension for attorney who failed to disclose the death of his client to the court, to his adversary, and to an

arbitrator; the attorney's motive was to obtain a personal injury settlement); In re Telson, 138 N.J. 47 (1994) (six-month suspension for attorney who 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); 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).

Generally, in matters involving misrepresentations to ethics authorities, the discipline has ranged from a reprimand to a term of suspension, depending on the gravity of the offense, the presence of other unethical conduct, and aggravating or mitigating factors. See, e.g., In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who created a phony arbitration award to mislead his partner and then lied to the Office of Attorney Ethics (OAE) about the arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his numerous professional achievements, and his pro bono contributions); In re Otlowski, 220 N.J. 217 (2015) (censure for attorney who made misrepresentations to the OAE and to his client's lender that funds deposited in his trust account had been frozen by a court order when he had disbursed the funds to various parties, and also made misrepresentations on an application for professional liability insurance; mitigating factors included the passage of time, the absence of a disciplinary history in the

attorney's lengthy career, and his public service and charitable activities); In re Corbett, 202 N.J. 463 (2010) (censure for attorney who negligently misappropriated client funds and misrepresented to the OAE that she had repaid the amounts misappropriated when she had not done so for another two months; prior admonition and reprimand); In re Brown, 217 N.J. 614 (2014) (three-month suspension in a default for attorney who failed to keep a client reasonably informed about the status of the matter; charged an unreasonable fee; failed to promptly turn over funds; failed to keep funds separate over which the lawyer and another claimed an interest until the dispute over their respective interests was resolved; failed to comply with the recordkeeping rule; made false statements to a disciplinary authority; and failed to cooperate with disciplinary authorities); In re Bar-Nadav, 174 N.J. 537 (2002) (three-month suspension for attorney who submitted two fictitious letters to the district ethics committee in an attempt to justify his failure to file a divorce complaint on behalf of a client; he also filed a motion on behalf of another client after his representation had ended; and failed to communicate with both clients); In re Rinaldi, 149 N.J. 22 (1997) (three-month suspension for attorney who did not diligently pursue a matter, made misrepresentations to the client about the status of the matter, and submitted three fictitious letters to the ethics

committee in an attempt to show that he had worked on the matter); In re Katsios, 185 N.J. 424 (2006) (two-year suspension for attorney who improperly released escrow funds to his cousin, a party to the escrow agreement, and then falsified bank records and trust account reconciliations to mislead the ethics investigator that the funds had remained in escrow); In re Silberberg, 144 N.J. 215 (1996) (two-year suspension for attorney who, in a real estate closing, allowed the buyer to sign the name of the co-borrower; the attorney then witnessed and notarized the "signature" of the co-borrower; the attorney stipulated that he knew, at the time, that the co-borrower was deceased; after the filing of the ethics grievance against him, the attorney falsely stated that the co-borrower had attended the closing; on another occasion, the attorney sent a false seven-page certification to the ethics committee in order to cover up his improprieties); and In re Penn, 172 N.J. 38 (2002) (three-year suspension imposed on attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, in order to placate the client, the attorney lied that the case had been successfully concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible).

Here, respondent has failed to accept responsibility for his wrongdoing and has expressed no remorse for his conduct. For the totality of his misconduct, including respondent's multiple misrepresentations to the court, to the OPD, and to ethics authorities; his failure to communicate with his client; and his failure to abide by his client's decisions regarding the scope of the representation, we determine to impose a three-month suspension.

Vice-Chair Baugh and Member Gallipoli 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
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Jarred S. Freeman
Docket No. DRB 17-375

Argued: February 15, 2018

Decided: April 24, 2018

Disposition: Three-month Suspension

Members	Three-month Suspension	Did not participate
Frost	X	
Baugh		X
Boyer	X	
Clark	X	
Gallipoli		X
Hoberman	X	
Rivera	X	
Singer	X	
Zmirich	X	
Total:	7	2

Ellen A. Brodsky
Chief Counsel