SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 18-098
District Docket No. XIV-2015-0563E

IN THE MATTER OF	:
LORI J. SKLAR	:
AN ATTORNEY AT LAW	:

Decision

Argued: May 17, 2018

Decided: September 7, 2018

Eugene A. Racz appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se, via telephone.

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

This matter was before us on a motion for reciprocal discipline, filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14, based on discipline imposed on respondent by the Supreme Court of California – specifically, a one-year, stayed suspension and a two-year period of probation, with several conditions, including an actual suspension for the first thirty days of the probationary period. The charges

against respondent arose from a misrepresentation that she made to the Superior Court of California – County of Los Angeles (Los Angeles Superior Court), and her non-compliance with discovery orders regarding her pursuit of attorney fees in a California class action.

The OAE seeks the imposition of a three-month suspension. Respondent asks that we take judicial notice of certain documents, identified below, and argues that the OAE has not demonstrated the need for New Jersey to impose substantially different discipline. Thus, she contends that she should receive only a thirty-day suspension, retroactive to April 21, 2017, the expiration date of the thirty-day suspension imposed by California.

For the reasons set forth below, we determined to grant the motion for reciprocal discipline and impose a three-month prospective suspension on respondent for her violation of New Jersey RPC 3.3(a)(1) (knowingly making a false statement of material fact 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 documents that respondent urged

us to consider by judicial notice did not affect our determination.

Respondent was admitted to the New Jersey bar in 1998. Prior to that date, she had been admitted to the bars of Minnesota (1990), California (1994), and New York (1994). It appears that respondent's law office is in Minnesota, where she resides, and that she has never had an office for the practice of law in New Jersey. She has no history of discipline in this State.

The facts in our decision are taken from three sources. The first is the published opinion of the Court of Appeal of California, Second Appellate District (California Court of Appeal), in the matter captioned Ellis v. Toshiba America Information Systems, Inc., 160 Cal. Rptr. 3d 557 (Cal. Ct. App. 2013), modified on other grounds, Ellis v. Toshiba America Information Systems, Inc., Nos. B220286 and B227078, 2013 Cal. Rptr. 3d Unpub. LEXIS 649 (Cal. Ct. App. August 14, 2013), and modified on other grounds and reh'g denied, Ellis v. Toshiba America Information Systems, Inc., Nos. B220286 and B227078, 2013 Cal. Rptr. 3d Unpub. LEXIS 721 (Cal. Ct. App. September 10,

2013) (Toshiba matter),[1] of which we take judicial notice. The Toshiba matter was a class action lawsuit instituted in behalf of purchasers of Toshiba laptop computers that had a "discharge problem in their covers," which caused the computers to malfunction and shut down.[2]

The second and third sources are the November 16, 2015 decision of the State Bar of California Hearing Department – Los Angeles (Hearing Department) and the October 28, 2016 decision of the State Bar of California Review Department (Review Department), which, upon an independent review of the record, affirmed the Hearing Department's determinations and recommendations. In reaching her decision, the Hearing Department judge relied on the civil court findings in the Toshiba matter and the "corroborating" evidence presented during a four-day disciplinary hearing in the summer of 2015, which was necessitated by respondent's refusal to stipulate to more than just a few facts.

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[1] When the Toshiba matter was instituted, the lead plaintiff was Michael Elihu.

[2] On August 7, 2013, the California Court of Appeal directed the court clerk to send a copy of the opinion to the State Bar of California. 160 Cal. Rptr. 3d at 589. On December 22, 2014, the State Bar filed disciplinary charges against respondent.

In this decision, we note, by citation, those facts that we have taken from the published California Court of Appeal decision in the Toshiba matter.

On February 9, 2005, Caddell & Chapman (C&C), a Texas law firm, and respondent, a sole practitioner doing business as Sklar Law Offices (SLO), filed the Toshiba class action lawsuit in the Los Angeles Superior Court. In November 2005, the parties tentatively settled the merits of the lawsuit. In October 2006, the Superior Court granted preliminary approval of the settlement, followed by final approval in May 2007.

The ethics charges lodged against respondent in California did not arise from her handling of the Toshiba matter. Rather, they stemmed from her pursuit of attorney fees in that case.

According to the California Court of Appeal, in August 2006, respondent filed a motion for preliminary approval of the settlement. 160 Cal. Rptr. 3d at 561. In a declaration attached to the motion, she stated that, in addition to $99,750 in expenses, she would seek legal fees in excess of $24.7 million, which represented twenty-five percent of the $98,975,862 settlement value placed on the Toshiba matter by her then expert. Ibid. Of this amount, $1.125 million was to go to C&C. Ibid. Although Toshiba did not object to C&C's portion of the

fee, it sought discovery on the basis underlying respondent's "exorbitant" request. Ibid.

In October 2006, the Los Angeles Superior Court granted preliminary approval of the settlement. Ibid. The class notice stated that, in addition to litigation expenses, SLO would seek $24,743,965.50 in attorney fees, less the amount awarded to C&C. Id. 562. The class notice also stated that Toshiba would oppose "these requests." Ibid. Thereafter, respondent's entitlement to a $24 million fee became the subject of protracted litigation, which included many discovery disputes. Ibid.

In respect of respondent's attorney fees, she first produced a hard copy of her time records, reflecting that, for a twenty-two month period, she had worked nearly all day (up to 16.75 hours), seven days a week, including holidays. Ibid. Consequently, in October 2006 and January 2007, Toshiba subpoenaed computer data and files related to respondent's time records. Ibid. At the time, respondent's time records were contained in Word files, which she then converted to PDF format, redacted those portions that she claimed were protected from disclosure by the attorney-client and work product privileges, and produced the PDF to Toshiba's counsel. Id. 562-64.

When respondent converted the Word files to PDF format, she deleted the original Word files, including metadata, with the

"Wipe and Delete" program. Id. at 564.[3] Toshiba persisted in its request that she produce a "searchable electronic copy" of her time records. Id. at 563.

On January 26, 2007, the Los Angeles Superior Court held a hearing on respondent's objections to Toshiba's discovery requests. Ibid. The judge asked respondent and her counsel whether they "really" believed that he would award her $24 million in attorney fees without her being deposed and producing any documents. Ibid. The judge described the amount of fees requested as "staggering" and ordered respondent to appear for deposition and to produce electronic time records in "native format . . . or at least something . . . searchable." Ibid.

Respondent then produced a set of Word files of her time records, which were searchable versions of the hard copy records that she had produced previously. Ibid. These Word files contained no metadata, however, because they were generated by converting the PDF files, which had been redacted and contained no metadata, back to Word. Id. at 563-64. At her March 2007 deposition, respondent claimed that she had performed the

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[3] According to the Review Department's decision, respondent's professional liability insurer had suggested that she use the "Wipe and Delete" program to "scrub her computer daily and eliminate metadata."

conversion after entry of the January 26, 2007 order. Id. at 564. She refused Toshiba's lawyer's request that she permit Toshiba's expert to inspect her computers to determine whether any of the deleted Word files and metadata could be recovered. Ibid.

In May 2007, the Los Angeles Superior Court granted final approval of the settlement and entered judgment in the Toshiba matter. Id. at 562. The following month, Toshiba filed a motion for sanctions, asserting that respondent had deleted or destroyed the files and records that the court, on January 26, 2007, had ordered her to produce in native format. Id. at 564. In opposition, respondent argued that she had no obligation to produce metadata and that she did have backups of the original Word time records. Ibid.

On August 15, 2007, the trial judge convened a hearing on Toshiba's motion. Id. at 565. He declined to include metadata within the meaning of "native format," but characterized respondent's practice of wiping and deleting original files of timesheets as the product of "extremely poor judgment." Ibid.

When the judge stated that he would be appointing an expert, of Toshiba's choosing, to search respondent's computer hard drives, her lawyer claimed that the backup of the original Word file was in Minnesota. Ibid. The judge noted respondent's

earlier claim that she had used the Wipe and Delete program on the original Word file, and stated: "I think she's really misleading me. I'm beginning to get very upset with this." Ibid. Respondent claimed that the Word files that she had deleted were on a computer that she "had to return and replace." Ibid.

In addition to the expert chosen by Toshiba, the judge ordered the parties to select a neutral expert to search the backup file and produce "anything that was not privileged." Ibid. The judge reserved decision on the monetary sanctions until after the inspection had taken place. Ibid.

The August 15, 2007 minute order[4] required the neutral expert to search the backup files within thirty days of his or her selection. Id. at 566. Further, within the same period, respondent was ordered to permit Toshiba's expert to search her computer hard drives to recover time record files, including metadata. Ibid.

Respondent filed a motion for reconsideration of the August 15, 2007 order. Ibid. The motion was denied after a hearing on October 2, 2007, as was respondent's ex parte application for a stay. Ibid.

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[4] A minute order is a memorandum, prepared by the court clerk, which reflects the court's ruling(s) made in open court, and is a part of the record of the proceeding.

Meanwhile, respondent's counsel and Toshiba were unable to agree on either a neutral expert or the protocol that would govern Toshiba's expert's inspection of respondent's computer records. Ibid. Significantly, respondent's proposed protocol restricted communications between Toshiba and its expert, ibid., and called for the expert to image her hard drive. Id. at 566 n.7.

In January 2008, the court awarded C&C $1.05 million in attorney fees and $75,000 in costs. Id. at 562. On the 31st of that month, respondent filed an initial fee petition, even though the court-ordered inspections had not yet taken place. Id. 566-67. The petition requested either $24,743,965.50, plus expenses, based on twenty-five percent of the settlement value, or $7,847,362.50, plus $410,383.53 in expenses, under the lodestar/multiplier approach. Id. at 567. No hearing was held. Ibid.

On April 24, 2008, following respondent's refusal to agree to Toshiba's proposed neutral expert or to permit an inspection unless a protective order were entered, the trial court entered a stipulated protective order, which barred the party to whom any electronic information was produced from arguing that the production of such information constituted a waiver of any

claims of privacy, confidentiality, or privilege by the producing party. Ibid.

At a May 8, 2008 status conference, respondent's lawyer suggested that the Los Angeles Superior Court did not have jurisdiction over respondent to make the August 2007 order. Ibid. The judge "reacted angrily," stating

> You're telling me you're not going to obey. You're telling me I don't have jurisdiction. You're telling me the order is wrong. You're telling me all sorts of things, everything other than that you intend to comply.
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> [Ibid.]

When counsel for respondent expressed concern about the disclosure of privileged information, the judge stated that Toshiba's expert could pull only those time records associated with the Toshiba matter. Ibid. The judge also warned that, if electronic records were not disclosed, he would consider the time records previously produced to be "weaker evidence produced when stronger evidence was available." Ibid. Finally, the judge "urged the parties to agree on a protocol for Toshiba's inspection, follow the court's suggestion, or contact the court for assistance." Ibid.

As of a June 24, 2008 status conference, which respondent attended, an inspection still had not taken place, and respondent's deposition had not been completed. Ibid. Because

the parties still had not agreed on the neutral expert, the judge said that he would select one, but, in the meantime, he ordered Toshiba's expert's examination to take place on July 22 and 23, 2008, in Minnesota. Id. at 567-68. The California Court of Appeal summarily denied respondent's writ seeking relief from the court-ordered inspection and her continued deposition. Id. at 568.

On Friday, July 18, 2008, counsel for Toshiba proposed to respondent, via e-mail, that, "'[a]s we have discussed in the past, the first step is to make an image of the hard drive(s)' for offsite inspection by the expert at his offices with [respondent] present, if she desired." Ibid. Despite respondent's earlier proposal that the expert image the hard drives, she sent a reply, on Monday, July 21, 2008, which stated:

> "'[K]nowing that it is now your expert's intention to image my hard drives, the inspection will not proceed. Contrary to your false assertion, we have never discussed or contemplated that my hard drives would be imaged, let alone removed off site by any expert,' and the court had not ruled that an image of the hard drive could be taken."
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> [Ibid.]

Based on the above objection and respondent's concern regarding the violation of "privileges and privacy," she refused to permit the inspection to go forward. Id. 568-69.

On September 10, 2008, respondent appeared for a hearing on an order to show cause why she should not be sanctioned for failure to comply with the August 15, 2007 and June 24, 2008 orders regarding the computer inspection. Id. at 569. At the hearing, respondent argued that she had "'substantial justification and good cause'" for refusing to permit the inspection because Toshiba's counsel had rejected her attempt to propose a "'reasonable protocol'" and insisted on imaging the hard drive for inspection elsewhere. Ibid. She requested that, if this were to be the court's order, then the court should enter a written order that she could appeal. Ibid. The court found that respondent had violated the orders, stating that, "'despite all of the statements I made regarding the metadata, and having an expert image Ms. Sklar's hard drive, it just hasn't happened.'" Ibid.

In March 2009, Toshiba filed a motion for monetary sanctions. Ibid. At the April 24, 2009 hearing, the court learned that both Toshiba's expert and the neutral expert still had not conducted their inspections. Ibid. When respondent's lawyer asserted that she was justified in disobeying the court orders because no protocol had been established for the inspections, the judge replied:

> Let me tell you something, the record in this case is one of obfuscation and delay by [respondent]. [¶] [sic] And it constitutes a violation of at least two of my orders.
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> [Id. 570.]

On July 9, 2009, the trial judge presided over a final hearing on Toshiba's sanctions request. Ibid. Respondent's counsel argued that, although respondent was aware of the August 15, 2007 minute order, it was "not sufficiently clear." Ibid. The judge replied: "The minute order suffices." Ibid.

On August 31, 2009, the court imposed a $165,000 sanction on respondent for her misuse of the discovery process, including her failure, "without substantial justification," to comply with the August 15, 2007 and June 24, 2008 orders. Id. at 570-71. Further, the court ruled that respondent had failed to "'meet-and-confer in good faith regarding both of the Court-ordered inspections.'" Id. at 571.

As described above, respondent's multiple representations that she would seek $24 million in attorney fees prompted a nearly three-year effort to gather discovery on the issue of her entitlement to that amount. On October 28, 2009, two months after respondent had been sanctioned for her obstruction of discovery aimed at determining the basis of her claimed entitlement to a $24 million attorney fee, respondent filed another fee petition. Id. at 561. This time, she requested "'up to'" $12,079,534.69, plus $905,752.72 in expenses. Id. at 562, 572.

At the April 5, 2010 hearing on respondent's petition, she disavowed the $24 million figure, in open court, and insisted that

she had never sought more than the "roughly $12 million" fee set forth in her petition. Id. at 572. When the court pressed her about the class notice's reference to a fee of more than $24 million, she claimed that $24 million was the maximum allowable fee, based on the settlement value assigned by her now-former expert and an "'alternative methodology.'" Ibid. According to respondent, her current request of $12+ million was lodestar-based rather than value-based. Ibid. At the California disciplinary proceeding and at argument before us, respondent reiterated the claim that the $24 million was a cap.

The Los Angeles Superior Court judge rejected respondent's assertion that she had never sought $24 million, citing her original request prior to the motion for preliminary approval of the settlement and her first fee petition in January 2008. Id. at 573. He characterized her assertion as "'dissembling and outright distortions,'" thus, damaging her credibility. Id. at 573. In this regard, we note the Hearing Department's observation that, on two occasions – one on August 15, 2007 and the other on April 24, 2009 – respondent's attorney had confirmed to the superior court judge, in respondent's presence, that she was seeking legal fees "[i]n the neighborhood of $24 million" and, later, $22 million.

On June 30, 2010, the Los Angeles Superior Court judge ruled on respondent's fee petition. Ibid. In respect of respondent's

denial that she had ever requested $24 million in fees, the judge observed:

> The Court cannot understand why Ms. Sklar did not simply acknowledge her earlier requests. . . . This behavior leaves the Court in the unfortunate position of doubting her word. . . . [¶] [sic] Second, Ms. Sklar's reduction by over half of the fees [she] originally requested calls into serious question the legitimacy of her numbers. One raises an eyebrow upon learning that work she once said was worth over $23 million now deserves a lodestar of only $3.3 million. Indeed a court would be justified in denying outright [the] fee request for this reason.
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> [Ex.B4.][5]

The superior court judge awarded $176,900 in fees to SLO for work by its staff on the Toshiba matter. Ibid. The court awarded zero fees to respondent, individually. Id. at 562. Respondent appealed the fee determination. Ibid.

On August 7, 2013, the California Court of Appeal upheld both the denial of respondent's petition for attorney fees and the $165,000 sanction. Id. at 562.[6]

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[5] "Ex.B" refers to the Review Department's opinion, dated October 28, 2016. The Review Department's decision quoted the above language from the superior court judge's opinion.

[6] Although the Court of Appeal reversed the order awarding fees for work done by SLO staff, that was for the purpose of correcting the amount to reflect work performed by a member of

(Footnote cont'd on next page)

In respect of the fee petition, the Court of Appeal found that respondent had requested over $24 million in attorney fees. Id. at 581. Further, the court agreed with the trial judge's observation that the total fee requested by respondent was a "'moving target,'" thus "'casting doubt on her entitlement to fees.'" Id. at 584. In respect of the sanction, the Court of Appeal found that there was "no question" that respondent had disobeyed the August 2007 and June 2008 orders. Id. at 579.

Respondent's petition for rehearing was denied. Id. at 589. On August 14 and September 10, 2013, the Court of Appeal's opinion was modified to read as published at 160 Cal. Rptr. 3d 557. Ibid.

On November 26, 2013, the Supreme Court of California (California Supreme Court) denied respondent's petition for review and request for "depublication" of the August 7, 2013 Court of Appeal decision. Ellis v. Toshiba America Information Systems, Inc., Nos. B220286 and B227078, 2013 Cal. Rptr. 3d Unpub. LEXIS 9592 (Cal. 2013). Undeterred, respondent filed a petition for a writ of certiorari with the Supreme Court of the United States (U.S. Supreme Court), which was denied. Ellis v. Toshiba America Information Systems, Inc., Nos. B220286 and B227078, 2013 Cal.

(Footnote cont'd)

SLO's staff and to determine whether SLO should be awarded costs up to $114,900. 160 Cal. Rptr. 3d at 588-89.

Rptr. 3d Unpub. LEXIS 9592, cert. denied sub nom. Sklar v. Toshiba America Information Systems, Inc., ___ U.S. ___, 134 S. Ct. 2692 (2014). The U.S. Supreme Court also denied respondent's petition for a rehearing. Sklar v. Toshiba America Information Systems, Inc., ___ U.S. ___, 135 S. Ct. 25 (2014).

As stated previously, on August 7, 2013, the California Court of Appeal referred respondent's conduct in the Toshiba matter to the State Bar of California. On December 22, 2014, the State Bar filed three disciplinary charges against respondent, alleging violations of sections 6068(d), 6103, and 6106 of The State Bar Act, which is codified at Chapter 4 of Division 3 (Professions and Vocations Generally) of the California Business & Professions Code (BPC).

BPC § 6068(d) imposes a duty on attorneys to "[e]mploy, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law." BPC § 6103 authorizes the imposition of a suspension or disbarment on an attorney who willfully disobeys or violates a court order requiring the attorney to "do or forbear an act connected with or in the course of his [or her] profession." Finally, BPC § 6106 authorizes the imposition of a suspension or disbarment on an attorney who commits "any act

involving moral turpitude, dishonesty or corruption, whether the act is committed in the course of his [or her] relations as an attorney or otherwise, and whether the act is a felony or misdemeanor or not."

The violations of BPC § 6068(d) and BPC § 6106 were based on respondent's April 5, 2010 denial, in open court, that she had ever asked the court to award her $24,743,965.50 in attorney fees when, to the contrary, in August 2006, she had approved a class notice stating that she would seek attorney fees in that amount, and, in February 2008, she filed a declaration requesting attorney fees of either $7,847,362.52 or $24,743,965.50.

The violation of BPC § 6103 was based on respondent's failure to comply with the superior court's August 15, 2007 and June 24, 2008 orders, requiring her to "make her computer hard drive available for inspection by Toshiba."

At the conclusion of the four-day disciplinary hearing, the hearing judge determined that respondent had violated BPC § 6068(d), by "falsely and intentionally representing in open court that she had never sought fees in excess of $12 million." The judge did not find that respondent had violated BPC § 6106, however, because BPC § 6068(d) was the more applicable section. The hearing judge concluded that respondent had violated BPC §

6103, "by knowingly and intentionally disobeying" the August 15, 2007 and June 24, 2008 orders.

In aggravation, the Hearing Department cited respondent's multiple acts of misconduct and her "lack of insight and understanding" of her wrongdoing. In mitigation, the Hearing Department noted respondent's unblemished disciplinary history, and gave "significant weight" to her good character, as attested to by fourteen witnesses.

The Hearing Department made several recommendations regarding discipline, which were adopted by the Review Department and the California Supreme Court. These recommendations included a one-year, stayed suspension; a two-year period of probation, with the first thirty days to comprise an actual thirty-day suspension; and attendance at the State Bar's Ethics School and passing the test administered on the completion of the program, in addition to taking and passing the Multistate Professional Responsibility Examination (MPRE).

On October 28, 2016, the Review Department affirmed the Hearing Department's findings on all counts and in all respects. According to the Review Department, between August 2006 and April 2009, respondent made "repeated representations" to the Los Angeles Superior Court that she was seeking between $22 million

and $24 million in attorneys' fees. The Review Department summarized those incidents as follows:

> 1. On August 14, 2006, Sklar filed a declaration, under penalty of perjury, in support of the Motion for Preliminary Approval of the Settlement. In an attached exhibit, she stated: "Sklar has offered evidence that the benefit of the settlement is $98,975,862 and believes that a reasonable fee for Class Counsel is 25% of that benefit [$24,743,965.50]. Sklar will seek legal fees in that amount, to be apportioned between her and C&C by the Court." In the same document, C&C listed its portion as $1,125,000;
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> 2. On October 16, 2006, the Class Notice stated: "Sklar Law Offices will ask the Court for attorneys' fees in the amount of $24,743,965.50, less whatever the Court awards [C&C] for its attorneys' fees.";
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> 3. On August 15, 2007, Sklar was present in court when the judge asked her attorney: "Is [Sklar] claiming $24 million?" and her attorney answered: "In the neighborhood of $24 million; that's correct.";
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> 4. On February 1, 2008, Sklar filed her fee petition, requesting "an award of fees under [either] the lodestar/multiplier approach in the amount of $7,847,362.50 ($6,578,350 + $1,269,012.50) plus $410,383.53 in expenses; or $25% of the value of settlement totaling $24,743,965.50 plus expenses."; and
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> 5. On April 24, 2009, Sklar was present in court when the judge asked her attorney: "Is she asking for $22 million dollars?" and her attorney answered: "That's my understanding."
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> [Ex.B3.]

The Review Department affirmed the Hearing Department's conclusion that respondent had violated BPC § 6068(d) when she "falsely and intentionally represent[ed] to the superior court judge that she had never sought fees in excess of $12 million." Although the Review Department acknowledged that respondent may have later modified her $24 million request, the record was "replete" with examples of her requesting more than $12 million, including in the February 1, 2008 fee petition. Accordingly, "she was not being truthful when she told the superior court judge that she never requested more than $12 million."

The Review Department, citing California law, agreed with the Hearing Department's dismissal of the BPC § 6106 charge as duplicative of the BPC § 6068(d) charge. Finally, the Review Department upheld the BPC § 6103 determination, based on respondent's refusal to comply with the Los Angeles Superior Court's August 15, 2007 and June 24, 2008 orders requiring her to permit Toshiba's expert to inspect her computer records.

In respect of the discovery orders, the Review Department rejected, as meritless, respondent's claims that the orders were never properly signed or served, and that no protocols were in place to protect from disclosure of confidential and privileged information. First, the August 2007 and June 2008 written minute orders were a part of the trial record, and respondent had treated

them as valid orders when she sought reconsideration and appellate review of their terms. Moreover, the Review Department noted that the stipulated protective order had addressed respondent's confidentiality and privilege concerns.

Respondent raised a number of evidentiary and constitutional challenges before the Review Department. She also claimed that counsel for Toshiba, the trial judge, and other participants in the Toshiba matter had displayed bias and other unethical conduct, which included perjury and tampering with evidence.

The Review Department rejected all of respondent's challenges, and adopted the Hearing Department's recommendations. On March 22, 2017, the California Supreme Court entered an order, imposing the discipline and conditions that the Review Department had recommended.[7]

On October 2, 2017, the U.S. Supreme Court denied respondent's petition for a writ of certiorari. Lori Jo Sklar v. State Bar of California, No. 17-5004 (October 2, 2017). On November 27, 2017, the U.S. Supreme Court denied respondent's petition for a rehearing.

On an unidentified date, respondent notified the OAE of the discipline imposed on her in California.

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[7] In respondent's brief, she informed us that she has complied with the ethics school and MPRE requirements.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline.

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

> The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
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> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
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> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
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> (E) the unethical conduct established warrants substantially different discipline.

Subsection (E) applies in this matter because the unethical conduct warrants substantially different discipline. Respondent's conduct in California does not warrant a stayed one-year suspension, a thirty-day suspension, or a period of probation. Instead, a three-month prospective suspension is the appropriate measure of discipline for her ethics infractions.

"[A] final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." R. 1:20-14(a)(5). Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

Like New Jersey, the standard of proof in California attorney disciplinary matters is "clear and convincing evidence." See Rule 5.103 of the Rules of Procedure of the State Bar of California.

In this case, BPC § 6068(d) (seeking to mislead a judge by an artifice or false statement of fact) is akin to New Jersey RPC 3.3(a)(1) (knowingly making a false statement of material fact to a tribunal) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). Respondent violated both RPCs when she denied to the Los Angeles Superior Court judge that she had requested $24 million in attorney fees.

We acknowledge respondent's argument to us that the $24 million figure represented a cap, not an actual request, and, therefore, she did not make a misrepresentation to the court when she denied that she had ever sought more than $12 million

in fees. She raised this same issue in both the California state and disciplinary courts, to no avail.

The Los Angeles Superior Court judge found that respondent did, in fact, state, on a number of occasions, that she intended to seek a $24 million attorney fee in the Toshiba matter. His finding was upheld by the California Court of Appeal and the California Supreme Court. The Hearing and Review Departments found that that clear and convincing evidence established that respondent stated, on a number of occasions, that she intended to seek $24 million in attorney fees. The California Supreme Court upheld that determination as well. Further, respondent failed in her attempts to have the U.S. Supreme Court review the civil and disciplinary decisions of the California high court.

For the above reasons, we are bound by the finding that, prior to respondent's submission of the October 2009 fee petition seeking up to $12 million, she had repeatedly stated to the superior court judge that she was seeking as much as $24 million in attorney fees. Her subsequent denial of this fact, in open court, was a violation of RPC 3.3(a)(1) and RPC 8.4(c).

In respect of respondent's failure to comply with the August 2007 and June 2008 orders, BPC § 6103 (willfully disobeying or violating a court order) is equivalent to New Jersey RPC 3.4(c) (knowingly disobeying an obligation under the

rules of a tribunal) and RPC 8.4(d) (conduct prejudicial to the administration of justice).[8] Respondent violated both RPCs when she defied two court orders, entered in two different years, granting Toshiba's expert the authority to search her computer backup files, to ascertain the actual amount of time that she had devoted to the Toshiba matter. Indeed, respondent's outright refusal to comply with either order, in connection with Toshiba's expert's inspection, resulted in the imposition of a $165,000 sanction for misuse of the discovery process.

For the same reasons that we accept the finding that respondent denied, in open court, that she had sought $24 million attorney fees in the Toshiba matter, we accept the findings that she violated the August 2007 and June 2008 orders. She pursued her claim to the contrary all the way to the U.S. Supreme Court, in both the civil and disciplinary matters, and lost. In this regard, we emphasize that respondent was disciplined in California for refusing to permit Toshiba's expert to carry out the court-ordered inspection on July 22 and 23, 2008. She was not disciplined in connection with the neutral expert's inspection.

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[8] No New Jersey RPC is equivalent to BPC § 6106 (acts of moral turpitude, dishonesty, or corruption). Regardless, the Review Department upheld the dismissal of the charge as duplicative.

In the matter now before us, respondent vociferously challenges the determination that she violated the August 2007 and June 2008 orders. Her most serious claim is that she was denied due process under the Fourteenth Amendment to the United States Constitution in the California disciplinary matters. Specifically, she asserts that, ultimately, she was disciplined in California based on issues related to the neutral expert's inspection, not Toshiba's.

Respondent's brief is not a model of clarity and contains many factual assertions without citations to the record. Other supporting citations are references to respondent's testimony about an issue. Oral argument before us did not clarify her position. Nevertheless, we discern that her due process claims are based on the following arguments:

- That, at the disciplinary hearing, Office of the Chief Trial Counsel (OCTC) prosecuted respondent based on her refusal to permit Toshiba's expert to create an image of computer hard drives, but, when it became obvious that the Los Angeles Superior Court had never directed the creation of an image by Toshiba's expert, OCTC changed tack on appeal and argued that respondent had violated the orders as they pertained to the neutral expert's inspection;

- That altered records were used at the hearing; and

- That either Toshiba or OCTC, or both, concealed an order, entered on August 29,

> 2008, which superseded the August 2007 and June 2008 orders, and, further, would have exonerated respondent on the issue of the neutral expert's inspection.

At the outset, we note that, based on our review of the decisions of both the Hearing and Review Departments, it is clear that respondent was disciplined in California for her refusal to permit Toshiba's expert to perform the hard drive inspection on July 22 and 23, 2008, in violation of the August 2007 and June 2008 orders. Although the Review Department's decision refers to the superior court judge's ruling, in August 2007, that the parties select a neutral expert and also that respondent had objected to the manner in which the inspection was to take place, the Review Department proceeds to discuss the court's order, on June 24, 2008, that the inspection take place on July 22 and 23, 2008. The only inspection ordered to take place on those dates was that of Toshiba's expert. Indeed, at the time of the June 2008 order, the parties still had not agreed on a neutral expert, which prompted the judge to assume the task of selecting one.

Further, the Review Department decision quotes the superior court judge's holding that respondent had disobeyed the August 2007 order that "she allow Toshiba's expert to search her hard drive," and, subsequently, the June 2008 order "setting the inspection for July 22 and 23, 2008." Finally, in the Review Department's analysis of the Hearing Department judge's findings,

which the Review Department upheld, the Review Department refers to respondent's admission that she "intentionally did not allow the inspection."

Based on the above facts, it is clear that, despite a few sentences regarding the neutral expert's inspection in the Review Department's decision, the Review Department was well aware that the issue before it was respondent's refusal to permit Toshiba's expert to conduct the inspection of the computer hard drives and that the Review Department affirmed the Hearing Department's determination that respondent should be disciplined for that conduct, which was unrelated to the inspection by a neutral expert. For this reason, we will not address respondent's other arguments on this issue, including the alleged concealment of the August 29, 2008 order.[9]

We also pass on respondent's assertion that, at the disciplinary hearing, OCTC relied on records that had been altered and orders that had never been served (e.g., the August 2007 and June 2008 minute orders). In respect of the August 15, 2007 and June 24, 2008 minute orders, we note the Review Department's observation, in its decision, that respondent had

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[9] The August 29, 2008 order, which was entered after respondent's refusal to permit Toshiba's expert's inspection, directed that the inspection "proceed forthwith," and addressed certain aspects of how the inspection was to take place.

no reservation about relying on the minute orders when she sought to appeal them in the Toshiba matter. In respect of the settlement agreement and release, it appears that she raised the issue below, to no avail.

In summary, respondent violated RPC 3.3(a)(1) and RPC 8.4(c) when, despite her repeated representations to the superior court judge in the Toshiba matter that she intended to seek $24 million in attorney fees, she subsequently denied that she had ever sought that amount, claiming instead that she had never sought more than $12 million. Respondent also violated RPC 3.4(c) and RPC 8.4(d) when she failed to comply with the August 15, 2007 and June 24, 2008 orders, entered in the Toshiba matter, by refusing to permit Toshiba's expert to conduct a court-ordered inspection of computer hard drives.

We now address the appropriate quantum of discipline to impose on respondent for the above ethics infractions. Generally, the discipline imposed on an attorney who makes misrepresentations to a court or exhibits a lack of candor to a tribunal, or both, ranges from a reprimand to a long-term suspension. See, e.g., In re Marraccini, 221 N.J. 487 (2015) (reprimand imposed on attorney who attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications that had been pre-signed by the manager, who had since 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); in mitigation, we found that respondent's actions were motivated by a misguided attempt at efficiency, rather than by dishonesty or personal gain); 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 default judgments, at the attorney's direction, they 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 addition to RPC 8.4(a) and RPC 8.4(c)); 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, but falsely reported that he had been alcohol-free during a period within which he had been convicted of driving while intoxicated, a violation of

RPC 8.4(c); in mitigation, after the false certification was submitted, the attorney sought the advice of counsel, came forward, and admitted his transgressions); In re Duke, 207 N.J. 37 (2011) (attorney received a censure for failure to disclose his New York disbarment on a form filed with the Board of Immigration Appeals, a violation of RPC 3.3(a)(5); 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, a violation of RPC 3.3(a)(1); the attorney also practiced law 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 bankruptcy court to conceal information detrimental to the client's Chapter 13 bankruptcy petition; in mitigation, we observed that, although the attorney had made a number of misrepresentations in the 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 requirement of the bankruptcy rules, rather than permit what had been the "common practice" of bankruptcy attorneys under the previous trustee; violations of RPC 3.3(a)(1), (2), and (5); RPC 4.1(a)(1) and (2); and RPC 8.4(c) and (d); in mitigation, the attorney also had an unblemished disciplinary record, was not motivated by personal gain, and did not act out of venality); 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; violations of RPC 3.3(a)(1) and (4); other violations included RPC 1.8(a) and (e), RPC 1.9(c), and RPC 8.4(a), (c), and (d)); 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; violations of N.J.S.A. 2C:28-2a and RPC 8.4(b)); 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; violations of RPC 8.4(c) and (d); compelling mitigation justified only a three-month suspension); In re Forrest, 158 N.J. 428 (1999) (six-month suspension imposed on attorney who, in connection with a personal injury action involving injured spouses, failed to disclose the death of one of his clients to the court, to his adversary, and to an arbitrator, and advised the surviving spouse not to voluntarily reveal the death; violation of RPC 3.3(a)(5), RPC 3.4(a), and RPC 8.4(c); 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 afraid; the attorney was suspended for six months; violation of RPC 3.3(a)(1) and (5) and RPC 8.4(c) and (d)); 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; violation of RPC 3.3(a)(1) and (2), RPC 3.5(b), and RPC 8.4(c) and (d); two prior private reprimands [now admonitions]); 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; violations of RPC 3.3(a)(4), RPC 3.4(f), and RPC 8.4(b)-(d)).

If the court was not actually deceived by the attorney's dishonesty, or compelling mitigation is present, an admonition may be imposed. See, e.g., In the Matter of Jean S. Lidon, DRB 11-254 (October 27, 2011) (admonition imposed on attorney who failed to disclose to the court and to the adversary in her own matrimonial matter that she had redacted a letter produced during discovery, a violation of RPC 3.4(a)); In the Matter of Richard S. Diamond, DRB 07-230 (November 15, 2007) (admonition for attorney who filed certifications with the family court making numerous references to attached psychological/medical

records, which were actually mere billing records from the client's medical provider; although the court was not misled by the mischaracterization of the documents, the conduct nevertheless violated RPC 3.3(a)(1); in mitigation, this was the attorney's first encounter with the disciplinary system in his twenty-year career); and In the Matter of Lawrence J. McGivney, DRB 01-060 (March 18, 2002) (admonition for attorney who improperly signed the name of his superior, an assistant prosecutor, to an affidavit in support of an emergent wiretap application moments before its review by the court, knowing that the court might be misled by his action; in mitigation, we considered that the superior had authorized the application, that the attorney was motivated by the pressure of the moment, and that he brought his impropriety to the court's attention one day after it had occurred; violation of RPC 3.3(a)(5)).

In our view, a censure would be in order for respondent's violation of RPC 3.3(a)(1) and RPC 8.4(c), standing alone. Unlike the reprimand cases, respondent's misrepresentation was not a matter of formality, such as the submission of updated pre-signed certifications that, although accurate, were not signed after the changes (Schiff); she has never admitted wrongdoing (McLaughlin); and, though mitigating evidence weighs

in her favor, it is insufficient to overcome the severity of her misconduct (Marraccini).

The two censure cases, Monahan and Clayman, involve direct misrepresentations to a court. Although there was no excuse for Monahan's misrepresentations, Clayman's were the result of a longstanding practice in a New Jersey bankruptcy court, which, although tolerated by the previous trustee, became strictly enforced under the new trustee.

Given that respondent made a single misrepresentation, we do not believe that a suspension would be warranted, based solely on her violation of RPC 3.3(a) and RPC 8.4(c). Although the judge did not rely on respondent's statement, which was an outright lie, an admonition would be inappropriate because her misrepresentation was in the form of a disavowal of prior statements to the court that resulted in a tremendous waste of judicial resources, which cannot be countenanced by the imposition of an admonition. Thus, we consider a censure to be appropriate for the misrepresentation, standing alone.

Ordinarily, a reprimand is imposed on an attorney who fails to obey court orders, even if the infraction is accompanied by other, non-serious violations. See, e.g., In re Ali, 231 N.J. 165 (2017) (attorney disobeyed court orders by failing to appear when ordered to do so and by failing to file a substitution of

attorney, violations of RPC 3.4(c) and RPC 8.4(d); he also lacked diligence (RPC 1.3) and failed to expedite litigation (RPC 3.2) in one client matter and engaged in ex parte communications with a judge, a violation of RPC 3.5(b); in mitigation, we considered his inexperience, unblemished disciplinary history, and the fact that his conduct was limited to a single client matter); In re Cerza, 220 N.J. 215 (2015) (attorney failed to comply with a bankruptcy court's order compelling him to comply with a subpoena, which resulted in the entry of a default judgment against him; violations of RPC 3.4(c) and RPC 8.4(d); he also failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b); prior admonition 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); and In re Gellene, 203 N.J. 443 (2010) (attorney was guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney was also guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors

considered were the attorney's financial problems, his battle with depression, and significant family problems; his ethics history included two private reprimands and an admonition). But see In the Matter of KayKay E. Davis-Daniels, DRB 05-218 (September 22, 2005) (admonition for attorney who, as personal representative in a South Carolina estate matter, failed to respond to numerous deadlines set by the court for filing an inventory and failed to appear or to explain her non-appearance to the court in a hearing scheduled for her to explain why she had not performed her duties, a violation of RPC 8.4(d); she also violated RPC 1.16 by failing to withdraw from the representation when her physical condition materially impaired her ability to properly represent the client; compelling mitigating factors considered).

If the attorney has an extensive ethics history, has engaged in similar conduct in the past, or has committed multiple ethics infractions, a censure may be imposed. See, e.g., In re D'Arienzo, 207 N.J. 31 (2011) (due to the attorney's poor judgment in the management of his calendar, he failed to appear for a scheduled criminal trial and, thereafter, at two orders to show cause stemming from his failure to appear, a violation of RPC 8.4(d); ethics history consisted of two admonitions and a three-month suspension for similar conduct),

and In re LeBlanc, 188 N.J. 480 (2006) (the attorney's misconduct in three client matters included conduct prejudicial to the administration of justice for failure to appear at a fee arbitration hearing, failure to abide by a court order directing the attorney to produce information, gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client, failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation, charging an unreasonable fee, failure to promptly remit funds to a third party, failure to expedite litigation, failure to cooperate with disciplinary authorities, and failure to comply with the rule prohibiting non-refundable retainers in family law matters; multiple mitigating factors taken into consideration).

Here, a reprimand would be appropriate for respondent's refusal to comply with the two court orders requiring an inspection of her time records, standing alone. This is especially so in light of several cases in which the attorneys had committed additional RPC violations (Ali and Gellene) and/or had disciplinary histories (Cerza and Gellene).

Although, as discussed below, respondent's conduct is mitigated by certain facts, that mitigation pales in comparison to that identified in the Davis-Daniels case, which included the

attorney's decision not to charge a fee but, rather, to use her limited personal funds for expenditures, most of which remained unreimbursed. Therefore, an admonition would be inappropriate in this case.

Thus, standing alone, a reprimand would be the minimum measure of discipline for respondent's disregard of two court orders. In addition, as previously stated, a censure would be in order for respondent's misrepresentation, standing alone. Those violations, however, do not represent the full extent of respondent's misconduct.

Rather, respondent's misconduct in California involved contumacious conduct that demanded the dedication of substantial judicial resources over the seven-year period between August 15, 2007, when the court ordered that an expert selected by Toshiba review her computer hard drive to recover time record files, including metadata, and November 26, 2013, when the California Supreme Court denied her petition for review of the $165,000 sanction imposed as a result of her failure to comply with that order and the June 24, 2008 order. For years, respondent maintained the position that she would be seeking $24 million in fees for the Toshiba matter. Her insistence led the court to order discovery on the subject. Yet, respondent fought every effort to examine her time records and every order entered in

that regard, and, in the end, disavowed her claim to $24 million, seeking $12 million instead.

Respondent's persistence in advancing a claim that she would later retract and her recalcitrance, as demonstrated by her refusal to comply with the court's discovery orders, warrant enhancement of what would have been a censure to a three-month suspension. However, we consider aggravating and mitigating factors prior to imposing the appropriate discipline.

In aggravation, the Review Department cited respondent's multiple acts of misconduct and her "lack of insight and recognition" of her wrongdoing. In our view, the Review Department's reference to respondent's lack of insight and lack of recognition is overly generous. Respondent fought her losing battle to the end, both in the California courts and within the California disciplinary system, often by simply ignoring the court's orders. In the process, she wasted substantial financial and temporal resources of the courts and her adversary.

In mitigation, at the time respondent's conduct began, she had been a member of the California bar for more than twenty years and had no history of discipline in that state. Moreover, despite her behavior in the Toshiba matter, respondent presented fourteen witnesses to attest to her good character.

In our view, the mitigating factors are insufficient to overcome the necessity of a suspension, given the reckless manner in which respondent handled the time records issue.

We, therefore, determine to grant the motion for reciprocal discipline and impose a three-month prospective suspension on respondent for her violation of RPC 3.3(a)(1), RPC 3.4(c), and RPC 8.4(c) and (d).

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 Lori Jo Sklar
Docket No. DRB 18-098

Argued: May 17, 2018

Decided: September 7, 2018

Disposition: Three-month Prospective Suspension

Members	Three-month Prospective Suspension	Recused	Did Not Participate
Frost	X		
Clark	X		
Boyer	X		
Gallipoli	X		
Hoberman	X		
Joseph	X		
Rivera	X		
Singer	X		
Zmirich	X		
Total:	9	0	0

Ellen A. Brodsky
Chief Counsel