Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-180
District Docket No. XIV-2016-0554E

In the Matter of

Edward C. Malloy

An Attorney at Law

Decision

Argued: September 19, 2019

Decided: December 26, 2019

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

Respondent appeared pro se.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (OAE), pursuant to R. 1:20-14(a), following an order from the Supreme Court of Pennsylvania suspending respondent for five years. Respondent was found guilty of violating the equivalents of New Jersey RPC 1.1(a) (exhibiting gross neglect); RPC 3.1 (asserting an issue with no

basis in law or fact); RPC 3.2 (failing to make reasonable efforts to expedite litigation and to treat with courtesy and consideration all persons involved in the legal process); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal); RPC 3.4(e) (making an allusion to matters that are not relevant or supported by admissible evidence); RPC 4.1(a) (making a false statement of material fact or law to a third person); RPC 8.2(a) (making a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a public legal officer); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to impose a five-year suspension.

Respondent earned admission to the New Jersey bar in 1996 and to the Pennsylvania bar in 1998. He has no prior discipline in New Jersey.

The Disciplinary Board of the Supreme Court of Pennsylvania issued a report, dated April 26, 2016, which the Supreme Court of Pennsylvania adopted in determining to suspend respondent. The facts of the case are as follows.

In 2007, respondent began representing Deborah Hargy in connection with an agreement of sale (AOS) for the purchase of a newly-constructed home in Aston, Pennsylvania. The seller, J&V Developers (J&V), had built the

property. On March 26, 2007, as a condition of the AOS between the parties, Hargy placed a $10,000 earnest-money deposit in escrow with respondent. The AOS provided for a June 30, 2007 closing date, which was postponed until August 1, 2007 by the interested parties, including the dual-agent real estate broker, Dominick Bucci.

The AOS required Hargy to apply for and obtain financing to purchase the property. She neither applied for financing nor timely provided J&V required notice of that failure, after respondent incorrectly advised her that the mortgage pre-approval letters she had obtained fully satisfied her obligations under the AOS.

Prior to closing, J&V was obligated to obtain a Certificate of Occupancy (C.O.) for the property. On July 27, 2007, J&V informed Hargy that it had fulfilled that closing requirement, and the parties completed a pre-closing walkthrough of the property. Closing was then confirmed for August 1, 2007, to be held at Horizon Abstract, a title company owned by Bucci's spouse, Donna Bucci.

According to Hargy, prior to the settlement date, a dispute arose between respondent, Dominick Bucci, and the principals of J&V, John and Vincent D'Annunzio. Moreover, Hargy told Vincent D'Annunzio that respondent "would never be happy" living at the property. By this time, respondent and

Hargy had become romantically involved; in October 2011, they married. Respondent continued to represent Hargy in all legal matters relevant to this matter and counseled her in respect of pro se actions she undertook.

Respondent and Hargy did not attend the August 1, 2007 closing, and, subsequently, failed to notify either J&V or Dominick Bucci that Hargy had no intention to complete the transaction. In September, one month after the failed closing, Dominick Bucci informed respondent that J&V was willing to return the $10,000 deposit to Hargy, in return for her signed release from the AOS, a proposed draft of which J&V had sent to respondent. On September 7, 2007, however, Hargy informed Dominick Bucci that she was pleased that J&V had found another buyer for the property, but demanding that, in return for her execution of the release from the AOS, she be provided not only the $10,000 deposit, but also interest and a $1,414 refund for carpet she had installed at the property.

In response, on September 12, 2007, J&V's counsel, Paul J. Toner, informed respondent that it was J&V's position that Hargy was in material breach of the AOS for failing to apply for a mortgage and for failing to attend the closing, and that J&V, thus, would be retaining Hargy's $10,000 deposit, as liquidated damages, pursuant to the AOS. The next day, after consulting Hargy, respondent e-mailed Toner, claiming that J&V had breached the AOS;

that the AOS was now null and void; and that, if J&V did not comply with Hargy's demands by October 31, 2007, she would file a lawsuit. On September 27, 2007, J&V sold the property to Frank and Bernadette Kovalcheck. Presumably, respondent continued to retain Hargy's $10,000 deposit in trust.

Between September 13, 2007 and May 8, 2008, Toner attempted to resolve the $10,000 deposit issue with respondent and Hargy, to no avail. Consequently, on May 8, 2008, Toner filed a lawsuit, in the Delaware County Court of Common Pleas, seeking the release of the $10,000 deposit to J&V. The court set a mandatory arbitration date of February 5, 2009. After the lawsuit was filed, respondent wrote Toner that

> [t]he current position you have created for yourself in military terms is called Vietnam. You cannot win . . . I will relay any offer you want to make to Ms. Hargy . . . Here is my suggestion, go home and ask your wife how much it would take her to go thru all the shit you have put Ms. Hargy thru. Then, triple the number. That would be a [good] start.
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> [DBR6.]

On July 2, 2008, after having asserted that the AOS was null and void, and despite knowing that the property had been sold to the Kovalchecks, respondent filed preliminary objections to the J&V lawsuit, claiming that J&V had "a full, complete[,] and adequate non-statutory remedy at law, its specific performance of the contract – that moots [the Seller's] instant lawsuit," and

stating that Hargy "still awaits delivery of her home." Although Hargy participated in the preparation and filing of the preliminary objections, she was unfamiliar with the term specific performance, and respondent never explained the concept to her.

Beginning in August 2008, respondent and Hargy began a pattern of interference with the Kovalchecks' enjoyment of the property. Specifically, after filing the preliminary objections to the lawsuit, respondent sent a letter to the Kovalchecks, stating that he had requested that the court "award specific performance," which would force them to "relocate" from the property. Respondent's letter upset Mr. Kovalcheck, who feared, for ensuing years, that his family could lose their home, and who became concerned about the safety of his family and himself. Moreover, at the February 5, 2009 arbitration, respondent acted inappropriately and aggressively. On March 7, 2011, respondent went to the Kovalchecks' home to serve them with trial subpoenas to appear in court the next day. Finally, respondent has persisted in mailing to the Kovalchecks information about his and Hargy's ongoing, personal bankruptcy proceedings.

On August 26, 2008, the trial court issued an order overruling Hargy's preliminary objections to J&V's lawsuit. Approximately three weeks later, respondent filed a verified answer with a counterclaim in behalf of Hargy,

seeking a real estate commission in the amount of $7,225, despite the fact that, in March 2007, he had not possessed a real estate license, and, thus, by law, could not have been paid such a commission. As the mandatory arbitration date of February 5, 2009 approached, respondent "continuously and needlessly thwarted without any founded justification, Mr. Toner's reasonable and entirely proper attempt to take [Hargy's] deposition." During the pendency of the lawsuit, respondent continued to mislead Toner into believing that Hargy would appear voluntarily for a deposition. His systematic obstruction resulted in court orders dated February 3, May 26, and July 23, 2009, compelling Hargy's deposition.

At the arbitration, respondent became visibly agitated and threatened the principals of J&V; told the panel that the case was solely about the $1,414 in carpet expenses; and stated that it was Hargy's decision as to whether she would testify. The arbitration panel found in favor of J&V, awarding it the entire $10,000 deposit.

On February 23, 2009, respondent appealed the arbitration award and obtained the trial court's approval to file an amended answer in behalf of Hargy. The amended answer, filed on July 2, 2009, sought $66,061.50 in damages: the $10,000 deposit; the $1,414 carpet cost; respondent's purported legal fees to date; and Hargy's claimed monthly rent to date. Respondent,

however, produced neither a fee agreement with Hargy nor bills for services rendered, since Hargy admittedly paid no legal fees. Moreover, respondent never explained to Hargy that "there was no viable theory that would potentially allow her to recover legal fees."

During a July 22, 2009 hearing before the trial court, respondent refused to withdraw an obsolete summary judgment motion, was unable to support his argument that Hargy was entitled to the $10,000 deposit; blamed Toner for filing excessive motions; and again argued that the case was limited to the $1,414 in carpet costs. The court reminded respondent that Toner had been forced to file multiple motions because Hargy had refused to appear for a deposition. Moreover, the court signaled that it was inclined to grant attorneys' fees to J&V, due to respondent's systematic obstruction of discovery. Respondent continued to blame J&V for breaching the AOS. At the conclusion of the hearing, Hargy's deposition was scheduled for July 28, 2009, in the trial courtroom.

Respondent represented Hargy at her deposition, wherein she testified that respondent and Dominick Bucci had an "under the table" agreement to split the real estate commission; respondent was her attorney in respect of the AOS; Dominick Bucci had told her to apply for a mortgage; she knew J&V

had secured the C.O.; and she had not wished to proceed to purchase the AOS property.

Prior to trial, respondent filed additional motions and served a trial subpoena and document demand on Toner, unsuccessfully claiming that he was a fact witness, and alleging that he had personally violated the law in respect of the AOS. The trial was assigned to the President Judge, because the prior judge had been reassigned from the civil division, as part of routine court rotations. A five-day trial ensued, on diverse dates, from July 2010 through March 2011. During the trial, the court "regularly observed that Respondent was not familiar with litigation practice and was unprepared for trial, including using tactics to obstruct or delay the proceeding." On October 29, 2010, the court stopped the trial due to respondent's inappropriate behavior, including finger-pointing, interrupting Toner's questioning of witnesses, chastising witnesses' answers, and lodging baseless accusations that J&V and its counsel were hiding evidence.

On the third day of trial, respondent admitted to the court that he did not know the difference between a motion for non-suit and a motion for directed verdict. Consequently, at the close of J&V's case, he made both motions, which were both denied. It then became apparent that respondent was unfamiliar with Hargy's pleaded defense and counterclaim, and, thus, the trial

court suggested to respondent potential witnesses and potential discovery angles. Respondent also required repeated explanations regarding the Pennsylvania Rules of Evidence, case law to support Hargy's counterclaim, basic concepts such as burden of proof and mitigation of damages, and the prohibition against his serving as Hargy's trial counsel and as a fact witness in the same matter. In addition, respondent failed to explain to Hargy the circumstances under which an attorney can lawfully claim a broker's commission. The court rejected respondent's positions regarding the breach of the AOS and the broker's commission.

On December 6, 2010, despite lacking the trial court's required permission, respondent filed an interlocutory appeal from the denial of the motions for non-suit and directed verdict. These appeals delayed the trial until the appellate court denied them, on March 4, 2011, and remanded the matter for the continuation of the trial.

On March 1, 2011, while the interlocutory appeal was pending, respondent filed a motion for the pro hac vice admission of another attorney to assist with Hargy's case, but was unaware that an accompanying filing fee was required. When the trial court explained the fee, respondent refused to pay it and withdrew the motion. On March 7, 2011, respondent called a witness who had testified during J&V's case-in-chief. The trial court refused to allow

respondent to conduct a line of questioning that had been asked and answered during respondent's prior cross-examination of the same witness. On March 8, 2011, respondent was permitted to testify, and stated that he had represented Hargy because the legal fees in the case would have far exceeded the $1,414 carpet cost.

On March 15, 2011, the trial court entered a verdict in favor of J&V, denied Hargy's counterclaim, and awarded to J&V the entire $10,000 deposit; 6% statutory interest, beginning on August 2, 2007; $9,988 for "extras" installed at the AOS property at Hargy's request; and the $1,414 for carpet that Hargy had installed. Although respondent failed to timely file the post-trial motions required to preserve the issues for appeal, on April 14, 2011, he filed a direct appeal of the verdict. Respondent never explained to Hargy the necessity of timely filing the post-trial motions to preserve her appeal rights.

On May 23, 2011, the appellate court issued an order denying Hargy's appeal as untimely. Yet, respondent proceeded to file a discovery motion against J&V, which was denied on June 13, 2011. Respondent subsequent request for reconsideration was denied on June 23, 2011. Toner then filed, in behalf of J&V, a Praecipe to Enter Judgment on the verdict, for $12,150.

On April 7, 2011, counsel for J&V filed a fee petition against respondent and Hargy, seeking the award of attorneys' fees, pursuant to 42

Pa.C.S.A. § 2503(7), citing "their dilatory, obdurate, vexatious and bad faith" conduct during the litigation. In response, respondent and Hargy continued to file "unwarranted motions," including as pro se defendants, despite the fact that respondent was not a named defendant in the underlying litigation. Moreover, respondent filed a motion to recuse the judge who had presided over the trial, questioning his fitness and character. Specifically, respondent accused the trial judge of having had ex parte communications with J&V's counsel; prejudging the case; making inconsistent rulings; entering a verdict contrary to the evidence; and not knowing relevant Pennsylvania mortgage law.

In conjunction with the motion to recuse, respondent also filed a mandamus action seeking to remove the trial judge from the fee hearing. As part of the mandamus action, respondent also asserted that the prior assigned trial judge – who had been routinely reassigned from the civil division just prior to the commencement of the trial – was not fit to preside over the fee hearing, claiming that she had been "removed" from the case on the eve of trial. The Administrative Office of Pennsylvania Courts (AOCPA) was required to defend the mandamus action. After the AOCPA filed preliminary objections and the trial judge recused himself, respondent withdrew the mandamus action.

Once the trial judge recused himself, the fee hearing was held on March 26, 2012. Respondent repeatedly claimed that the trial judge had wronged respondent and Hargy, that he did not know the law, and that somebody needs to "wake [him] up." The fee hearing judge determined that the date Hargy was finally deposed would serve as the "bright line" date for the award of any attorneys' fees, because that was the date that Hargy admitted that the requested remedy of specific performance of the AOS was not meritorious. Respondent stipulated, in Hargy's presence, that the hourly rates that J&V's counsel had charged J&V were reasonable, alleviating the need for expert testimony on that issue.

At the conclusion of the hearing, the court awarded $63,486.05 in fees and costs to J&V's counsel. That award was reduced to a judgment against respondent and Hargy. Respondent then filed contempt motions and briefs against J&V's counsel, which included unsupported allegations that J&V's counsel had lied about the real estate commission exception for attorneys and that J&V's counsel had made misrepresentations during the fee hearing. He also asserted that J&V's counsel should be disciplined for misrepresenting to the courts that Hargy had breached the AOS. On May 14, 2014, the fee court denied the contempt motions and sanctioned respondent and Hargy $1,000. Their subsequent appeal was quashed, and their appeal of the fee award also

was denied. On June 24, 2014, the Supreme Court of Pennsylvania denied their final appeal.

As of the date that discipline was rendered in Pennsylvania, respondent and Hargy had made no payment toward J&V's counsel's judgment for attorneys' fees. When counsel sought to enforce the judgment, respondent and Hargy each filed bankruptcy petitions.

On September 16, 2008, during the AOS litigation, respondent had filed a separate action to eject the Kovalchecks from the property. On August 26, 2009, in conjunction with his fifth amendment to the AOS litigation documents, respondent added other defendants to the ejectment action, including J&V, the title company, and Donna Bucci. In March and April 2010, the court assigned to the ejectment action dismissed the case as to all the defendants, except the title company and Donna Bucci. During the pendency of the ejectment case, respondent sent multiple e-mails that asserted allegations without factual or legal merit. For example, in one e-mail, he claimed that Donna Bucci was "the victim of her husband's idiocy;" in another, he wrote "[p]igs get fed, hogs get slaughtered. Just ask that piece of sausage[,] Toner." Ultimately, in September 2014, respondent withdrew the action in its entirety.

In November 2012, respondent filed with the Pennsylvania Office of Disciplinary Counsel (the PODC) a professional misconduct complaint against

counsel for J&V, alleging that counsel had committed misconduct during the AOS litigation. In December 2012, the PODC dismissed the complaint for lack of merit.

Also in December 2012, respondent filed a lawsuit against J&V's counsel, alleging abuse of process. Specifically, in the complaint, Hargy accused the attorneys of trying to "execute on a money judgment when they know or reasonably should know they have supplied the court with material misstatements" relating to the fee hearing litigation. The purpose of the renewed legal actions was to hinder J&V's and its counsel's collection efforts against respondent and Hargy. On July 23, 2013, the court dismissed the abuse of process action, with prejudice. Respondent appealed that decision, which was affirmed.

On March 11, 2013, undeterred, respondent filed a professional malpractice action against Dominick Bucci. On October 17, 2014, Bucci prevailed on a summary judgment motion. Respondent appealed and lost.

As previously noted, after losing the AOS litigation, both respondent and Hargy filed for bankruptcy protection. On January 8, 2015, respondent communicated, via e-mail, with J&V's bankruptcy counsel, suggesting that he was bankruptcy counsel for Hargy. Respondent's e-mail, however, predated his January 14, 2015 admission to Federal Bankruptcy Court, and his formal

entry of appearance in Hargy's bankruptcy. On January 16, 2015, respondent sent to J&V's bankruptcy counsel a Rule 9011 "Safe Harbor" notice, which stated that respondent potentially would be seeking sanctions against the attorney, based merely on the creditor claim filed against respondent for the attorneys' fees owed pursuant to the fee hearing.

In March 2014, despite the verdict in the AOS litigation, respondent and Hargy filed a writ of summons action against J&V, Dominick Bucci, and the title company for fraud, deceit, civil conspiracy, estoppel by deed, and other claims. As of the date of the Pennsylvania disciplinary hearing, no complaint had been filed. On July 27, 2015, respondent and Hargy withdrew the writ.

The following additional findings of fact were made in the Disciplinary Board Report and adopted by the Supreme Court of Pennsylvania:

- Toner and Mr. Kovalcheck were credible and provided reliable testimony;
- Respondent did not take seriously discovery orders, verdicts, or final adjudications;
- Multiple Delaware County Court of Common Pleas jurists gave respondent the opportunity to correct his behavior, and he repeatedly failed to do so;

- The record is bereft of evidence that respondent counseled Hargy, his client and eventual spouse, to accept the decisions of the Pennsylvania Superior Court and Supreme Court of Pennsylvania; and
- Respondent had not accepted responsibility for his misconduct (with the exception of RPC 1.1, for which he admitted he "blew these procedural rules . . . [to his] wife's detriment"), failed to appreciate the impact of his misconduct on both the court system and the legal profession, and had shown no remorse.

[DBR23-24.]

The Supreme Court of Pennsylvania determined that respondent was guilty of multiple violations of each of the New Jersey RPCs cited above, noting that he had stipulated to having violated RPC 1.1(a), had produced only Hargy as a witness, and had waived his opportunity to testify. The court found that respondent's "ignorance of the law and incompetence are common threads throughout his representation of [Hargy]," and that he caused Hargy to lose the opportunity to purchase the property; to lose her $10,000 earnest money deposit; to become a party to eight lawsuits; and to become jointly and severally liable for more than $64,000 in judgments.

Specifically, the court determined that respondent's general lack of knowledge and competence to conduct litigation, evidenced by his numerous,

baseless pleadings, motions, and appeals, culminating in his failure to preserve Hargy's right to appeal the AOS litigation outcome, violated RPC 1.1(a).

Next, the court found that respondent's numerous frivolous filings, combined with his pervasive, bad faith efforts, violated RPC 3.1, RPC 3.2, and RPC 3.4(c) "by relentlessly abusing the judicial system during and following the [AOS] litigation," noting that every one of his actions was rejected by the Pennsylvania courts.

In respect of RPC 8.2(a), the court determined that respondent had "needlessly and baselessly impugned the integrity of two judges" during the course of his baseless court proceedings, and had sued the Court Administrator of Delaware County in an improper forum, merely for conducting his requisite duties.

Finally, the court determined that respondent's violations of RPC 8.4(d) were evidenced by his "multiple, meritless litigations that are emblematic of both his excessive and misplaced zeal and his inability to accept the rulings of the Pennsylvania courts."

In mitigation, the court cited respondent's lack of prior discipline and his community service. The court, however, cited the following aggravating factors:

> Respondent's actions were not isolated nor relegated to a short period of time. Rather, his misconduct

> spanned years. Respondent has continued to display an unrepentant attitude even though no court has yet to agree with his interpretation of the law and facts. The record is devoid of evidence that Respondent has advised his client to accept the court's appellate decisions. His unwavering belief that his version of events is correct has propelled the baseless lawsuits, motions, pleadings and other claims over what Respondent has admitted is his quest to recover his client's $1,414.00 expenditure for carpeting. Our analysis of Respondent's behavior leads us to conclude that his ultimate interest is to frustrate [J&V's] ability to be granted appropriate relief through the legal system. The record contains no assurance that Respondent intends to cease his relentless, overzealous prosecution of his claims.
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> [DBR29.]

The Supreme Court of Pennsylvania agreed with the recommendation of the PODC and the Disciplinary Board of the Supreme Court of Pennsylvania, and, determining that respondent would likely pose a danger to the public if he were allowed to continue to practice law, imposed a five-year suspension. Moreover, the court noted that, rather than argue for a lesser sanction, respondent's post-hearing brief "comprised both an attack on the [PODC] and a misplaced attempt to re-litigate the previous rulings and remedy the purported wrongs brought upon him and his client."

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "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." 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).

In Pennsylvania, the standard of proof in attorney disciplinary matters is that the "[e]vidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof . . . is clear and satisfactory." Office of Disciplinary Counsel v. Kissel, 442 A. 2d 217 (Pa. 1982) (citing In re Berland, 328 A.2d 471 (Pa. 1974)). Moreover, "[t]he conduct may be proven solely by circumstantial evidence." Office of Disciplinary Counsel v. Grigsby, 425 A. 2d 730 (Pa. 1981) (citations omitted).

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;

> (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.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E). We, thus, determine to impose discipline identical to that imposed in Pennsylvania.

Specifically, respondent committed ethics violations as follows.

Respondent stipulated to having violated RPC 1.1(a) for failing to preserve Hargy's appeal rights following the AOS litigation. In addition to his procedural failings, respondent violated RPC 1.1(a) via his gross incompetence in advising Hargy that she did not need to apply for mortgage financing to avoid breaching the AOS, and via his blatant inability to litigate the case, evidenced by his fatally flawed litigation strategies and lack of knowledge and preparation during the trial. As set forth in the record, respondent did not know the difference between various motions, was unfamiliar with the defense and counterclaim he had filed in Hargy's behalf, and required explanations of basic legal concepts, including the applicable rules of evidence, burdens of proof, mitigation of damages, and relevant case law. Respondent, thus, committed

multiple, egregious violations of RPC 1.1(a) throughout the various court proceedings, resulting in more than $64,000 in judgments, to his client's detriment.

Next, respondent's numerous frivolous filings, combined with his systematic, bad faith efforts to obstruct and frustrate the court and J&V, violated RPC 3.1, RPC 3.2, RPC 3.4(c) and (e), and RPC 8.4(d), and constituted reckless abuse of the judicial system before, during, and following the AOS litigation. We cannot over-emphasize the fact that he lost every action he filed in behalf of himself and Hargy; yet, he could not be dissuaded from continuing to argue that Hargy had been wronged by both J&V and the Pennsylvania courts.

In respect of RPC 8.2(a), respondent "needlessly and baselessly impugned the integrity of two judges" during the course of his frivolous, scorched-earth campaign to frustrate J&V's judgment collection efforts and obfuscate the relevant facts and legal issues.

In sum, respondent violated the equivalents of New Jersey RPC 1.1(a) (committing gross neglect); RPC 3.1 (asserting an issue with no basis in law or fact); RPC 3.2 (failing to make reasonable efforts to expedite litigation and to treat with courtesy and consideration all persons involved in the legal process); RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal);

RPC 3.4(e) (making an allusion to matters that are not relevant or supported by admissible evidence); RPC 4.1(a) (making a false statement of material fact or law to a third person); RPC 8.2(a) (making a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a public legal officer); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

The only remaining issue for our determination is the appropriate quantum of discipline to be imposed for respondent's misconduct.

Respondent is guilty of numerous violations of RPC 3.1 and RPC 8.4(d). Suspensions have been imposed on attorneys who have filed frivolous litigation and engaged in conduct prejudicial to the administration of justice, including when the attorney additionally violated RPC 3.2, RPC 3.4(c), and RPC 8.2(a). See, e.g., In re Shearin, 166 N.J. 558 (2001) (Shearin I) (one-year suspension imposed, in a reciprocal discipline matter, where the attorney filed two frivolous lawsuits in a property dispute between rival churches; a court had ruled in favor of one church and enjoined the attorney's client/church from interfering with the other's use of the property; the attorney then violated the injunction by filing the lawsuits and seeking rulings on matters already adjudicated; she also misrepresented the identity of her client to the court, failed to expedite litigation, submitted false evidence, counseled or assisted her

client in conduct that she knew was illegal, criminal, or fraudulent, and made inappropriate and offensive statements about the trial judge); In re Garcia, 195 N.J. 164 (2008) (fifteen-month suspension imposed in a reciprocal discipline matter, where the attorney filed several frivolous lawsuits and lacked candor to a tribunal; after her husband, with whom she practiced law, was suspended from the practice of law, the attorney aided him in the improper practice of law and used firm letterhead with his name on it during his suspension; the attorney also lacked candor to a tribunal and made false and reckless allegations about judges' qualifications in court matters); In re Khoudary, 213 N.J. 593 (2013) (two-year suspension imposed for misconduct in a bankruptcy matter; the attorney formed a corporate entity, SSR, to hold his investments in several assignments of mortgage and a default judgment for three tracts of land, investments that were in foreclosure at the time; the ownership of SSR was vested in his then-wife; four days after forming SSR, the attorney filed a "barebones" Chapter 11 bankruptcy petition, ostensibly to reorganize SSR, but actually to stay the foreclosure proceedings pending in state court; fewer than two months into the Chapter 11 proceeding, the bankruptcy court dismissed the petition as a bad faith filing and lifted the automatic stay, allowing the matters to proceed in state court; four weeks later, the attorney filed a second bankruptcy petition for SSR, which again stayed the foreclosure proceeding;

the bankruptcy court immediately dismissed that petition as a bad faith filing and imposed more than $11,000 in sanctions against the attorney; violations of RPC 3.1, RPC 8.4(c), and RPC 8.4(d); in aggravation, the attorney had a prior two-year suspension for unrelated conduct); and In re Shearin, 172 N.J. 560 (2002) (Shearin II) (three-year suspension imposed on attorney who had previously received a one-year suspension for misconduct surrounding a church representation; the attorney sought the same relief as in prior unsuccessful lawsuits against her client's rival church, regarding a property dispute; the attorney burdened the resources of two federal courts, defendants, and others in the legal system with the frivolous filings; she knowingly disobeyed a court order that expressly enjoined her and the client from interfering with the rival church's use of the property, and made disparaging statements about the mental health of a judge).

Disrespectful or insulting conduct to persons involved in the legal process leads to a broad spectrum of discipline, ranging from an admonition to disbarment, depending on the presence of other ethics violations. See, e.g., In re Gahles, 182 N.J. 311 (2005) (admonition for attorney who, during oral argument on a custody motion, called the other party "crazy," "a con artist," "a fraud," "a person who cries out for assault," and a person who belongs in a "loony bin;" in mitigation, it was considered that the attorney's statements

were not made to intimidate the party but, rather, to acquaint the new judge on the case with what the attorney perceived to be the party's outrageous behavior in the course of the litigation); In the Matter of Alfred T. Sanderson, DRB 01-412 (February 11, 2002) (admonition for attorney who, in the course of representing a client charged with driving while intoxicated, made discourteous and disrespectful communications to the municipal court judge and to the municipal court administrator; in a letter to the judge, the attorney wrote: "How fortunate I am to deal with you. I lose a motion I haven't had [sic] made. Frankly, I am sick and tired of your pro-prosecution cant;" the letter continued, "It is not lost on me that in 1996 your little court convicted 41% of the persons accused of DWI in Salem County. The explanation for this abnormality should even occur to you."); In re Murray, 221 N.J. 299 (2015) (reciprocal discipline matter; reprimand for attorney who, in three separate court-appointed pro bono matters in Delaware over a two-year period, behaved discourteously toward the judge and repeatedly attempted to avoid pro bono court appointments there); In re Ziegler, 199 N.J. 123 (2009) (reprimand imposed on attorney who told the wife of a client in a domestic relations matter that she should be "cut up into little pieces . . . put in a box and sent back to India;" and in a letter to his adversary, accused the wife of being an "unmitigated liar" and threatened that he would prove it and have her punished

for perjury; the attorney also threatened his adversary with a "Battle Royale" and ethics charges; mitigating factors included the attorney's unblemished forty-year ethics history, his recognition that his conduct had been intemperate, and the passage of seven years from the time of the misconduct until the imposition of discipline); In re Geller, 177 N.J. 505 (2003) (reprimand imposed on attorney who filed baseless motions accusing two judges of bias against him; failed to expedite litigation and to treat judges with courtesy (characterizing one judge's orders as "horse***t," and, in a deposition, referring to two judges as "corrupt" and labeling one of them "short, ugly and insecure"), his adversary ("a thief"), the opposing party ("a moron," who "lies like a rug"); failed to comply with court orders (at times defiantly) and with the disciplinary special master's direction not to contact a judge; used means intended to delay, embarrass or burden third parties; made serious charges against two judges without any reasonable basis; made a discriminatory remark about a judge; and titled a certification filed with the court "Fraud in Freehold"; in mitigation, the attorney's conduct occurred in the course of his own child-custody case, the attorney had an unblemished twenty-two-year career, was held in high regard personally and professionally, and was involved in legal and community activities); In re Arenstein, 170 N.J. 186 (2001) (reprimand imposed on attorney who, during a matrimonial deposition,

physically removed the court reporter's hands from her transcribing machine when she did not accede to his demand that she stop typing; the reporter alleged that the attorney's behavior amounted to an assault; no charges were ever brought and the reporter was unharmed); In re Supino, 182 N.J. 530 (2005) (attorney suspended for three months after he exhibited rude and intimidating behavior in the course of litigation and threatened the other party (his former wife), court personnel, police officers, and judges; other violations included RPC 3.4(g), RPC 3.5(c), and RPC 8.4(d)); In re Rifai, 204 N.J. 592 (2011) (three-month suspension imposed on an attorney who called a municipal prosecutor an "idiot," among other things; intentionally bumped into an investigating officer during a break in a trial; repeatedly obtained postponements of the trial, once based on a false claim of a motor vehicle accident; and was "extremely uncooperative and belligerent" with the ethics committee investigator; the attorney had been reprimanded on two prior occasions); In re Stolz, 219 N.J. 123 (2014) (three-month suspension for attorney who made "sarcastic," "wildly inappropriate," and "discriminatory" comments to his adversary, such as "Did you get beat up in school a lot . . . because you whine like a little girl"; "Why don't you grow a pair?"; "What's that girlie email you have. Hotbox.com or something?"; "Why would I want to touch a f!% like you?"; the attorney also lied to the court and to his adversary

that he had not received the certification in support of a motion filed by the adversary; aggravating factors were the attorney's lack of early recognition of and regret for his actions; violations of RPC 3.3(a)(1), RPC 3.3(a)(5), RPC 4.1(a), RPC 8.4(a), and RPC 8.4(d); no prior discipline); In re Van Syoc, 216 N.J. 427 (2014) (six-month suspension imposed on attorney who, during a deposition, called opposing counsel "stupid" and a "bush league lawyer;" the attorney also impugned the integrity of the trial judge, by stating that he was in the defense's pocket, a violation of RPC 8.2(a); we found several aggravating factors, including the attorney's disciplinary history, which included an admonition and a reprimand; the absence of remorse; and the fact that his misconduct occurred in the presence of his two clients, who, as plaintiffs in the very matter in which their lawyer had accused the judge of being in the pocket of the defense, were at risk of losing confidence in the legal system); In re Vincenti, 92 N.J. 591 (1983) (Vincenti I) (one-year suspension for attorney who displayed a pattern of abuse, intimidation, and contempt toward judges, witnesses, opposing counsel, and other attorneys; the attorney engaged in intentional behavior that included insults, vulgar profanities, and physical intimidation consisting of, among other things, poking his finger in another attorney's chest and bumping the attorney with his stomach and then his shoulder); and In re Vincenti, 152 N.J. 253 (1998) (Vincenti II) (disbarment

for attorney described by the Court as an "arrogant bully," "ethically bankrupt," and a "renegade attorney;" this was the attorney's fifth encounter with the disciplinary system).

Based on New Jersey disciplinary precedent, the totality of respondent's misconduct warrants a significant term of suspension. Like the attorney in Shearin I, who received a one-year suspension, respondent repeatedly filed frivolous lawsuits and other legal actions in a property dispute. Despite consistently adverse rulings and denials of all appeals, he continued to attempt to relitigate the matter. Moreover, he made false, inappropriate, and offensive statements about two judges. Additionally, like the attorneys in Stolz, Van Syoc, and the Vincenti matters, respondent, during the various legal actions, compounded his misconduct by engaging in a pattern of abuse, contempt, and intentionally inappropriate behavior toward judges, opposing counsel, witnesses, and innocent third parties (the Kovalchecks) conduct worthy of a lengthy term of suspension on its own.

In crafting the appropriate discipline to be imposed, we also consider relevant aggravating and mitigating factors. In aggravation, respondent's misconduct spanned years, and was relentless, despite his pattern of losing at every turn and repeated efforts by judges to curb his behavior. It is clear from the record that his only goal was to systematically attempt to obstruct and

frustrate J&V's and its counsel's efforts to execute the judgments they had lawfully secured. Moreover, respondent has shown no remorse, and as the Supreme Court of Pennsylvania noted, there is no "assurance that respondent intends to cease his relentless, overzealous prosecution of his claims."

We assign significant weight to the fact that respondent's misconduct also resulted in severe economic harm to Hargy, who, after breaching the contract, was offered a release from the AOS for the cost of the carpet, only $1,414, but, due to respondent's gross incompetence and baseless, scorched-earth approach to litigation, became jointly and severally liable for more than $64,000 in judgments.

The only mitigation we consider is respondent's lack of prior discipline. Accordingly, we determine to impose a five-year suspension, the same discipline imposed in Pennsylvania.

Chair Clark and Member Petrou voted to impose a two-year term of suspension. Member Boyer 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
Bruce W. Clark, Chair

By: Ellen A. Brodsky
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ed C. Malloy
Docket No. DRB 19-180

Argued: September 19, 2019

Decided: December 26, 2019

Disposition: Five-Year Suspension

Members	Five-Year Suspension	Two-Year Suspension	Recused	Did Not Participate
Clark		X		
Gallipoli	X			
Boyer				X
Hoberman	X			
Joseph	X			
Petrou		X		
Rivera	X			
Singer	X			
Zmirich	X			
Total:	6	2	0	1

Ellen A. Brodsky
Chief Counsel