Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 19-371
District Docket No. XIV-2017-0132E

In the Matter of

Marshall L. Williams

An Attorney at Law

Decision

Decided: June 30, 2020

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

This matter originally was before us on a recommendation for an admonition filed by the District IV Ethics Committee (DEC), which we determined to treat as a recommendation for greater discipline, pursuant to R. 1:20-15(f)(4). Following oral argument at our February 16, 2017 session, we

remanded the matter to the Office of Attorney Ethics (OAE) for further proceedings.

The matter now is before us on a certification of the record filed by the OAE, pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information); RPC 3.2 (failure to expedite litigation); RPC 3.3(a)(1) (false statement of material fact to a tribunal); RPC 3.4(c) (disobey an obligation under the rules of a tribunal); RPC 3.4(d) (failure to make reasonably diligent efforts to comply with legally proper discovery requests by an opposing party); RPC 5.5(a)(1) and R. 1:21-1A(a)(3 (unauthorized practice of law – failure to maintain liability insurance while practicing as a professional corporation); RPC 7.1(a) (false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement); RPC 8.1(b) (failure to cooperate with disciplinary authorities); RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

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

Respondent was admitted to the New Jersey bar in 1984 and to the Pennsylvania and District of Columbia bars in 1983. At the relevant times, he maintained an office for the practice of law in Philadelphia, Pennsylvania.

Respondent has no disciplinary history in New Jersey. Since 1985, he has been suspended in the District of Columbia for failure to pay required fees. Since September 12, 2016, he also has been ineligible to practice law in New Jersey for failure to pay his annual assessment to the New Jersey Lawyers' Fund for Client Protection. Previously, respondent was similarly ineligible in New Jersey from September 21, 1998 through September 10, 2002; from September 25, 2006 through April 13, 2007; and from September 26, 2011 through August 3, 2015. Since November 21, 2016, respondent also has been ineligible to practice law due to his failure to comply with continuing legal education requirements.

On May 10, 2013, the United States District Court for the District of New Jersey (DNJ) suspended respondent from the practice of law for ninety days. As a condition of that discipline, the DNJ ordered respondent to pay, within nine months, a $10,000 sanction to the law firm of Peckar & Abramson. The order

provided that, if respondent failed to comply with that condition, he would be suspended for an additional two years. In the Matter of Marshall L. Williams, No. 8:11-mc-00-147-JLL (May 10, 2013). On March 14, 2014, because respondent failed to timely pay the sanction, the DNJ imposed the additional two-year suspension. In the Matter of Marshall L. Williams, No. 8:11-mc-00-147-JLL (March 14, 2014). On May 2, 2016, the DNJ denied respondent's motion to vacate and set aside his suspension. In the Matter of Marshall L. Williams, No. 8:11-mc-00-147-JLL (May 2, 2016).

On January 15, 2014, the United States District Court for the Eastern District of Pennsylvania (E.D.Pa.) suspended respondent for two years for his conduct in the Kwabena Ajarko v. Thomas Jefferson University Hospital, Inc. litigation, his conduct before that court's disciplinary panel, and his failure to comply with that jurisdiction's equivalent to RPC 1.4(c). In the Matter of Marshall L. Williams, No. 13-137 (January 15, 2014).

On February 12, 2015, respondent was suspended from the practice of law in the Commonwealth of Pennsylvania, "consistent with the orders of the [DNJ] dated May 10, 2013 and March 14, 2014." In the Matter of Marshall Lavell Williams, 2015 Pa. Lexis 325 (February 12, 2015).

Service of process was proper. On February 15, 2019, the OAE sent a copy of the formal ethics complaint, by certified and regular mail, to respondent's home address of record. On March 19, 2019, both the certified and regular mail were returned marked "Return To Sender No Such Number Unable To Forward Return To Sender."

On April 4, 2019, the OAE discovered that, on January 17, 2019, the property listed as respondent's home address of record had been sold. That same date, the OAE sent an address information request to the Postmaster of the West Park Post Office in Philadelphia, Pennsylvania, but received no response. Thus, on August 12 and August 23, 2019, the OAE published disciplinary notices in the New Jersey Law Journal and The Legal Intelligencer, respectively, stating that a formal ethics complaint had been filed against respondent. Those notices informed respondent that, unless he filed an answer to the complaint within twenty-one days of the date of publication of the notices, his failure to answer would be deemed an admission of the allegations of the complaint.

As of October 4, 2019, respondent had not filed an answer to the complaint, and the time within which he was required to do so had expired. Accordingly, the OAE certified this matter to us as a default.

We now turn to the allegations of the complaint.

On July 10, 2017, following our remand for further investigation, the OAE sent a letter to respondent's home address, by certified and regular mail, seeking a written reply to our concerns, by July 26, 2017. The certified mail receipt was returned, although it was unsigned, and the regular mail was not returned. Respondent did not reply.

On August 31, 2017, the OAE sent a second letter to the same address, by certified and regular mail, seeking a response by September 15, 2017. Neither mailing was returned to the OAE. On September 25, 2017, an OAE investigator left a voicemail message on respondent's cellular phone. On October 12, 2017, OAE disciplinary counsel left a second voicemail message warning respondent that, if he failed to cooperate, the OAE would proceed without his input. Respondent failed to reply to the letter or the phone messages.

In respect of the client matter underlying the complaint, on November 30, 2007, Francienna Grant retained respondent in connection with her pending civil complaint against Omni Health Systems of New Jersey, docketed in the Superior Court of New Jersey, Cumberland County. On January 16, 2008, respondent filed a complaint in the DNJ against Omni, and the federal case was assigned to the Honorable Renee Bumb, U.S.D.J., and the Honorable Ann Marie Donio, U.S.M.J.

Thereafter, counsel for the defendants filed an answer to the federal complaint and, on June 13, 2008, removed the pending Superior Court action to federal court where it, too, was assigned to Judge Bumb and Judge Donio. The Superior Court action was dismissed, without prejudice.

Subsequently, on January 9, 2009, Judge Bumb granted respondent's motion to remove the Superior Court action back to Cumberland County. Because that matter had been dismissed, without prejudice, respondent was required to move for its reinstatement to active status. He failed to do so, but the federal action proceeded.

On February 6, 2009, counsel for Omni Health moved for summary judgment in the DNJ. On March 18, 2009, respondent opposed that motion, and filed a motion to amend the complaint. On March 24, 2009, with both parties appearing, Judge Bumb denied the motion for summary judgment and questioned respondent about the factual predicate to amend the complaint. Respondent had no answer to the court's inquiry.

In turn, Judge Bumb issued an Order to Show Cause why sanctions should not be imposed for respondent's attempt to amend the complaint to include new, unsupported allegations. Although the deadline for respondent's reply was April 10, 2009, he filed it on April 25, 2009, two weeks later. Ultimately, upon

its own investigation, the court determined that the new claims were permissible and that sanctions against respondent were not warranted.

At a June 29, 2009 conference, Judge Bumb directed that the depositions of the three defendants take place on August 18 and 19, 2009, and that Grant's deposition take place on August 24 and 25, 2009.

On August 13, 2009, the defendants applied for an Order to Show Cause to compel discovery, award sanctions, preclude evidence, and dismiss claims for failure to prosecute, asserting that respondent had failed to produce discovery due on August 1, 2009, thereby impeding the defendants' ability to conduct the upcoming depositions. Despite having received two extensions to file his reply to the order to show cause application, respondent failed to do so.

Therefore, on September 24, 2009, Judge Bumb issued a forty-four-page opinion and corresponding order criticizing respondent's conduct throughout the course of the matter. Specifically, the opinion noted that:

> The Court then addressed [respondent's] complete failure to comply with Judge Donio's Scheduling Order regarding discovery deadlines and warned him not to miss any more deadlines. . . .
>
> I cannot be any clearer on this record that there have been so many numerous instances of unprofessionalism, of missed deadlines, of flagrant disregard of this Court's Orders that I can't begin to count them.

> In this Court's view, the record cannot be any clearer that [respondent] has devoted very little time to the substance of this case. Rather than working to file relevant papers on time and serve complete discovery responses in compliance with the many scheduling orders, he has chosen to waste what little time he has spent in this case on things like fabricating excuses for his unprofessional conduct and crafting tart responses to defense counsel, which do not impress this Court. His oral and written responses, as documented in the record, are consistently unproductive, inaccurate, obnoxious and inappropriate. They serve no purpose other than to annoy defense counsel, showcase [respondent's] unprofessionalism, and waste this Court's time. . . . This type of contemptuous dilatory behavior cannot go unpunished. . . .
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> Although the record reflects that Plaintiff herself likely had some involvement in the discovery misconduct, the vast majority of failures in this case are more fairly attributable to [respondent]. . . . Perhaps the burden of paying Defendants' attorney's fees will finally put an end to [respondent's] practice of flouting this Court's orders and help him internalize the consequences of flagrantly ignoring the rules of procedure as well as the rules of professional conduct.
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> [C,Ex.27.][1]

Judge Bumb additionally observed:

> In this case, it is unclear as to what extent Plaintiff herself is to blame for the delays in responding to discovery requests and failures to follow Court Orders. There are some instances that suggest Plaintiff may have been involved in dilatory and other improper

[1] "C" refers to the formal ethics complaint, dated February 14, 2019.

> tactics. For example, the record shows that Plaintiff disclosed her worker's compensation claim for the first time at her depositions in late August 2009, despite the opportunity to do so in her February 2009 written responses.
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> [C,Ex.27.]

Judge Bumb did not dismiss Grant's complaint, but imposed sanctions on respondent, requiring him "to pay Defendants' attorney's fees in connection with each and every motion Defendants were forced to file as well as each and every appearance Defendants were forced to make in response to [respondent's] failures to comply with the Court's Orders." She then directed the defendants to file a fee application, by October 23, 2009, and set the final discovery deadline for the same date. Finally, Judge Bumb ordered respondent to certify to the court, by October 23, 2009, that he had served a copy of the opinion and accompanying order on Grant, and to submit a certification from Grant, confirming that she had received them. Respondent did not forward the court's order and opinion to Grant for almost an entire month.

On October 23, 2009, respondent sent Grant, by certified mail, a letter dated October 21, 2009, enclosing a "zip drive," with instructions to download the order and to return the "zip drive" to him, as it contained family matters. Respondent also informed Grant that she was required to certify receipt of the

order, but failed to inform her of the necessity of filing a certification with the court. Grant did not receive respondent's certified letter until October 27, 2009, four days after the date respondent was required to submit to Judge Bumb a certification from Grant confirming her receipt of the opinion and order.

Also on October 23, 2009, respondent filed his response to the discovery deadline along with a certification representing that "a true and correct copy of the (sic) Honorable Renee M. Bumb of September 24, 2009 was sent to plaintiff by mail at her request rather than by electronic means, on October 23, 2009."

On October 26, 2009, Judge Bumb dismissed Grant's complaint, with prejudice, citing respondent's failure to comply with her September 24, 2009 order. She noted that, on October 23, 2009, a few minutes before midnight, respondent had filed a "Response to Items Shown on Page 33 of the Court Order Dated September 24, 2009," with an accompanying certification. Judge Bumb found that respondent had failed to provide discovery in accordance with the court's prior order and that,

> [t]he failure to file [Grant]'s certification by the deadline of October 23, 2009, is in direct violation of the Court's Order and thus, warrants dismissal in and of itself. It is apparent that [respondent's] deliberate decision to wait until the very last day, October 23, 2009, to mail the Opinion and Order to [Grant], knowing that counsel would be unable to obtain [Grant]'s certification as ordered, is alone evidence of

> [respondent]'s willful failure to comply with the Court's Order.
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> [C¶112-113;Ex.33.]

By letter dated November 28, 2009, Grant complained to respondent that she had sought a "case status since 10/09." Specifically, Grant wanted to "know what the status of my case is since our last conversation when you were to be reviewing the zip drive documents sent from the judge 10/24/09." In a subsequent letter on March 5, 2010, Grant requested to be "kept abreast of any activity" in her case as she had "not received or signed off on any court documents in months to a year." Nothing in the record shows if, how, or when respondent replied to either letter.

One month later, on May 4, 2010, Judge Bumb granted Omni's motion for attorneys' fees and ordered respondent to pay $13,410 to Omni's counsel. Respondent appealed that order to the United States Court of Appeals for the Third Circuit (the Third Circuit).

On June 14, 2010, Grant and respondent appeared for a court-mandated mediation with Third Circuit court personnel.[2] On August 16, 2010, in a letter to respondent memorializing a telephonic message she had left with him a month

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[2] It is unclear from the record why this mediation occurred, since Grant's complaint against Omni had been dismissed with prejudice.

earlier, Grant requested from him copies of a deposition transcript and other documents. In an August 24, 2010 reply, respondent stated that he previously had explained that he could not return her file while her case was pending. Instead, he mailed her a copy of her deposition transcript and asked her to contact him if she wished to accept $25,000 to settle her claim.

One week later, on September 1, 2010, Grant once again requested updates on her appeal, stated that she still had not received any information regarding the specific information she had requested at the mediation session, in June 2010, and noted that she had been asking for "THE PAPERWORK FROM JUDGE BUMB, GIVING THE REASON/REASONS FOR DISMISSING MY CASE. (I inferred from the federal mediator's presentation that part of the reason for my case dismissal could have been related to documents, from [J]udge Bumb that you provided me on a zip drive and I received October 27, 2009)."

On May 5, 2011, the Third Circuit affirmed Judge Bumb's orders of September 24 and October 26, 2009, and of May 4, 2010.

In July 2011, Grant left several messages for respondent, but he did not return her calls. In a letter to Grant dated July 21, 2011, respondent acknowledged receiving telephone messages from her earlier in the month and asserted a presumption that they related "to the balance of the file." Complaining

that he was short-staffed, he assured Grant that he was preparing the paperwork for her and would provide it no later than the second week of August. In response, on July 28, 2011, Grant claimed that she and respondent had not spoken since the June 2010 federal mediation, and that she "had been both waiting for the information that I have been asking for and waiting for the appeals process to be laid out to me, so I can make decisions." Grant followed that letter with another, to Judge Bumb, on August 17, 2011, seeking the judge's assistance and explaining that she has been requesting case information and "an explanation/reason you gave halting my case that resulted in my case going to appeals, for over a year, and [respondent] continues to refuse to give me requested information."

On August 29, 2011, respondent replied to Grant's July 28, 2011 letter, referring to it as "Your Letter Received on or About August 22, 2011." After reminding Grant (as he did in almost every communication) that her messages were left after business hours or on weekends, he stated, "As you already know on or about May 4, 2011, the Third Circuit affirmed Judge Bumb's decision to dismiss your case before her in view of the Superior Court, Cumberland County case." Grant's response letter, dated September 6, 2011, pointed out that, "[a]gain, your facts are incorrect and you continue to not provide requested

information." Grant further wrote that she had "no idea as to my case status since the court appointed mediation of June 14, 2010. I was to have been awaiting the mediator's report. I have not received that either. In the [August 29, 2011] letter, you state a May 4, 2011 judgment. I guess I am left to assume that this information is also included in the many things you have not made me aware . . . ."

In what appears to be the last communication from respondent to Grant, a letter dated September 9, 2011, he acknowledged Grant's September 6, 2011 letter "in which it appears that you claim that I did not inform you of the reasons for the dismissal of your referenced civil right case . . ."

Respondent further stated:

> [o]n a number of occasions, from different individuals and by different methods the reasons for dismissal of the referenced case were explained to you in detail. For examples, on June 14, 2010, I and Penny Conly Ellison, with the Third Circuit Appellate Mediation Program explained those reasons in great detail. Notwithstanding those explanations, you rejected defendants' offer to settle. Also, on July 29, 2009, at the settlement conference Judge Bumb explained to you her thoughts on your claims of damages in view of your pre-law suit [sic] employment history and your post-law suit [sic] employment history. Your pre-complaint litigation history including your pending worker's compensation claim about which I did not know about [sic] until August 24 and 25th, 2009 was also a factor, it appears alone [sic] with your lack of compensatory

> damages because you admitted that you never received professional treatment for emotional pain and suffering despite my counsel; and, because you admitted that you had plans to leave defendants' employment to start your own business soon before you were allegedly wrongfully terminated. That your lost business opportunity was the bases [sic] or for your $250,000.00 demand to settle. Judge Bumb, I think, believed that you did not certify receipt of her opinion that she ordered me to serve you .... Lastly, it appears that Judge Bumb knew that you could pursue your case that was on hold in Cumberland County Superior Court after the federal case was closed. . . .
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> I trust the foregoing addresses the referenced letter.
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> [C¶136;Ex.49.]

On October 3, 2011, the Clerk of the DNJ referred respondent's conduct in the Grant matter to Donald A. Robinson, Esq. for an investigation, a report, and a recommendation. On March 27, 2012, Robinson recommended the issuance of a formal Order to Show Cause and complaint against respondent for alleged violations of RPC 1.1, RPC 1.3, RPC 3.3, RPC 3.4(c), RPC 3.4(d), and RPC 8.4.[3] On June 1, 2012, the court issued the order to show cause, returnable August 1, 2012, and a formal ethics complaint containing the aforementioned allegations. On August 10, 2012, respondent filed his answer to the complaint.

[3] The DNJ employs and enforces the New Jersey Rules of Professional Conduct.

On January 20, 2013, respondent appeared for a hearing before the Honorable Jose L. Linares, U.S.D.J. (Chief Judge, now retired). Respondent and Robinson reached an agreement whereby they would recommend to the full court that respondent receive a ninety-day suspension; submit letters of apology to the court, court personnel, and opposing counsel; complete numerous continuing legal education courses; and pay a $10,000 sanction to opposing counsel's law firm within nine months. They further agreed that the discipline would be enhanced to a two-year suspension if respondent failed to timely pay the sanction.

On February 20, 2013, Robinson notified Judge Linares that respondent had revoked his consent and objected to the requirement that he pay the $10,000 sanction within nine months. By letter dated February 26, 2013, to Judge Linares, respondent attempted to withdraw his agreement to pay the sanction and requested dismissal of the complaint. On March 30, 2013, Judge Linares denied respondent's request to withdraw his consent and submitted the previously agreed upon recommendation for discipline to the full court, which adopted it. On May 10, 2013, the Chief Judge for the DNJ, the Honorable Jerome B. Simandle, U.S.D.J., issued an order imposing the stipulated terms of discipline.

On March 14, 2014, the DNJ granted respondent's request for an extension of time to pay the $10,000 sanction, setting a deadline of May 10, 2014 for respondent to pay the entire balance, plus seven percent interest on the unpaid balance, retroactive to May 10, 2013. The same two-year suspension enhancement applied if respondent fail to comply. Respondent paid the full sanction on November 14, 2014, six months after the deadline. One week later, on November 21, 2014, he filed a motion to vacate the March 14, 2014 order.

On October 6, 2014, based on respondent's original ninety-day suspension in the DNJ, the Third Circuit also suspended respondent, by consent, for ninety days.

During the same period, on January 15, 2014, the Chief Judge of the E.D.Pa. suspended respondent for two years, effective immediately, for his misconduct in the Grant matter, and referred three matters to the Disciplinary Board of the Supreme Court of Pennsylvania (Pa.DB): respondent's conduct in the Ajarko v. Thomas Jefferson Univ. Hospital, Inc., (E.D.Pa.) litigation; his conduct before the three-judge panel during the E.D.Pa. disciplinary process; and his failure to maintain malpractice insurance.[4]

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[4] The three-judge panel noted that respondent's conduct in the Ajarko matter, as well as his conduct in E.D.Pa.'s disciplinary process, was "disturbingly similar" to that in the Grant matter. The complaint did not address these facts.

Thereafter, on February 12, 2015, the Supreme Court of Pennsylvania issued an order suspending respondent for two years. He remains suspended to date in Pennsylvania.

Considering his two-year suspension in E.D.Pa., on April 6, 2016, the Third Circuit amended its prior decision and suspended respondent for two years, retroactive to January 15, 2014, the date of his suspension in the E.D.Pa.

Finally, on May 2, 2016, the DNJ denied respondent's November 21, 2014 motion to vacate the court's March 14, 2014 order. The DNJ affirmed the self-executing two-year suspension in the March 14, 2014 order, for respondent's failure to pay the sanction on time, despite having received an extension. The DNJ ordered that respondent would be eligible to apply for reinstatement on May 10, 2016.

During the relevant time frame, respondent's letterhead reflected that he was "ADMITTED IN PA, NJ AND DC."[5] As set forth above, respondent has been suspended from the practice of law in Washington, D.C. since 1985; yet, he continued to use letterhead identifying himself as licensed in that jurisdiction.

Additionally, in 1997, respondent established a professional corporation for his law practice. In 2012, he certified to Pennsylvania authorities that he

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[5] During 2011 and 2012, respondent sent eight letters to the OAE using this improper letterhead.

carried required malpractice insurance. On March 27, 2013, the Clerk's Office of the Supreme Court of New Jersey confirmed that respondent had not filed a certificate of insurance with that office. The complaint, therefore, charged that respondent failed to maintain the requisite malpractice insurance to practice law as a professional corporation in New Jersey.

We find that the facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer to the complaint is deemed an admission that the allegations are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

We determine that respondent violated RPC 1.1(a) and RPC 1.3, in numerous instances, during his representation of Grant. On January 9, 2009, Judge Bumb granted respondent's motion to remand to Superior Court the Omni matter previously filed in Cumberland County. Because the Superior Court matter had been dismissed, without prejudice, respondent was required to file a motion to reinstate it. He failed to do so.

Additionally, during the prosecution of Grant's federal matter against Omni, respondent filed a response to an Order to Show Cause two weeks late, failed to turn over discovery to opposing counsel by the court-imposed

deadline, and failed to file opposition to a second Order to Show Cause, despite having received two extensions to do so.

More significantly, however, Judge Bumb ordered respondent to file two certifications with the Court by October 23, 2009: one confirming that he had provided Grant with a copy of Judge Bumb's September 24, 2009 opinion and order, and another, from Grant, confirming that she received a copy of the September 24, 2009 opinion and order from respondent. On the eve of the deadline, respondent sent a letter to Grant with the order, but failed to explain to Grant that she was required to file a certification. He then filed his own certification with the court, representing that he had sent the September 24, 2009 order to Grant. Respondent also filed his response to the discovery deadline on the same day.

Respondent's conduct during his representation of Grant, thus, violated RPC 1.1(a) and RPC 1.3.

As stated above, respondent failed to inform Grant of the certification that Judge Bumb required from her. Furthermore, he repeatedly ignored and obfuscated Grant's requests for information, updates, and explanations; failed to return her telephone calls; and failed to return paperwork to Grant, despite her requests. In so doing, respondent violated RPC 1.4(b).

Moreover, respondent violated RPC 3.2 by failing to comply with discovery deadlines, failing to comply with court orders, and engaging in other disruptive conduct that resulted in Judge Bumb's order dismissing Grant's complaint against Omni, with prejudice.

In so doing, respondent also violated RPC 3.3(a)(1), RPC 3.4(c), and RPC 3.4(d). He repeatedly misrepresented to the court his reasons for failing to comply with various court orders and deadlines. In her September 24, 2009 opinion and order, Judge Bumb refers to respondent's "fabricated" excuses and "blatantly false" certification. Respondent's dilatory misconduct in this regard violated RPC 3.3(a)(1).

Furthermore, by knowingly and flagrantly disregarding these court orders, respondent violated RPC 3.4(c). He failed to answer an Order to Show Cause, despite having received two extensions to do so; he failed to file Grant's certification by the deadline of October 23, 2009, in direct violation of Judge Bumb's order; and waited until the very last day to provide Judge

Bumb's opinion and order to Grant. Judge Bumb characterized respondent's behavior as a "willful failure to comply with the Court's Order."[6]

Further, by blatantly failing to comply with proper discovery requests of opposing counsel, resulting in the imposition of a $13,410 sanction by the court, respondent violated RPC 3.4(d).

More seriously, respondent violated RPC 8.4(c). Instead of properly, honestly, and accurately explaining to Grant, upon her several requests for him to do so, the reasons for the dismissal of her complaint with prejudice, respondent made misrepresentations in order to conceal the consequences of his utter lack of diligence and professionalism.

Specifically, respondent failed to explain to Grant that Judge Bumb had dismissed the complaint for respondent's failure to comply with the court's order, and that the Third Circuit had affirmed Judge Bumb's judgment and orders, such that Grant's case was over, as of May 5, 2011. As previously stated, on October 26, 2009, Judge Bumb dismissed Grant's complaint, with prejudice,

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[6] Judge Bumb's September 24, 2009 opinion sets forth multiple instances of respondent's failures to abide by the court's orders, his repeated failures to comply with deadlines, and his many other instances of unprofessional, and often unethical, conduct. Most of these facts, however, are not included in the complaint. The list of missed deadlines and other instances of misconduct are not discussed here because they are overly repetitive and would not result in a recommendation for enhanced discipline.

finding that respondent had not complied with the September 24, 2009 order to produce all outstanding discovery. That order puts the blame for the dismissal squarely at the feet of respondent. A single sentence from the order makes that clear:

> Although the record reflects that Plaintiff herself likely had some involvement in the discovery misconduct, the vast majority of failures in this case are more fairly attributable to [respondent].

Yet, in an August 29, 2011 letter to Grant in response to her request for an explanation for the complaint's dismissal, three months after the Third Circuit affirmed all Judge Bumb's orders, respondent asserted that Judge Bumb dismissed the case "in view of the Superior Court, Cumberland County case." Thereafter, on September 9, 2011, in response to another letter from Grant, asking for an explanation of the dismissal, respondent stated:

> [T]he reasons for dismissal of the referenced case were explained to you in great detail. For examples, [sic] on June 14, 2010, I and Penny Conly Ellison, with the Third Circuit Appellate Mediation Program explained those reasons in great detail. Notwithstanding those explanations, you rejected defendant's offer to settle. Also, on July 29, 2009, at the settlement conference, Judge Bumb explained to you her thoughts on your claims of damages in view of your pre-law suit [sic] employment history and your post-law suit [sic] employment history. Your pre-complaint litigation history including your pending worker's compensation claim about which I did [sic] know about until August

> 24 and 25th, 2009 was also a factor, it appears alone with your lack of compensatory damages because you admitted that you never received professional treatment for emotional pain and suffering despite my counsel; and, because you admitted that you had plans to leave defendants' employment to start your own business soon before you were allegedly wrongfully terminated. That your lost business opportunity was the bases [sic] for your $250,000.00 demand to settle. Judge Bumb, I think, believed that you did not certify receipt of her opinion that she ordered me to serve you .... Lastly, it appears that Judge Bumb knew that you could pursue your case that was on hold in Cumberland County Superior Court after the federal case was closed.

The record also contains proof that respondent's misconduct wasted the court's time and resources, requiring Judge Bumb to repeatedly address respondent's behavior, in violation of RPC 8.4(d).

Further, respondent admitted that he operated his law firm in New Jersey as a professional corporation, without maintaining required professional liability insurance. He, thus, violated RPC 5.5(a)(1) and R. 1:21-1A(a)(3).

Additionally, respondent falsely indicated on his letterhead that he was eligible to practice in the District of Columbia. Although respondent previously was licensed to practice law in that jurisdiction, he has been suspended from the practice of law in that jurisdiction since 1985. By holding himself out as an attorney eligible to practice law in the District of Columbia, he made false and

misleading communications about himself and his services, in violation of RPC 7.1(a).

Finally, in March 2017, the OAE investigated the issues we raised in our remand. Despite having cooperated in the former matter, respondent failed to reply to any of the OAE's communications in the new matter, including letters requesting that he provide information in writing and telephone calls from disciplinary investigators and ethics counsel. Respondent's failure to cooperate with the OAE's investigation violated RPC 8.1(b).

In sum, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 3.2; RPC 3.3(a)(1); RPC 3.4(c); RPC 3.4(d); RPC 5.5(a)(1); RPC 7.1(a); RPC 8.1(b); RPC 8.4(c); and RPC 8.4(d). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

In a matter with several comparable RPC violations, an attorney received a reprimand. In In re Braverman, 220 N.J. 25 (2014), the attorney failed to inform his client that the complaints filed in her behalf, in two personal injury actions, had been dismissed, thereby misleading her, by his silence, into believing that both cases remained pending, a violation of RPC 8.4(c). In the Matter of Fred R. Braverman, DRB 14-030 (July 24, 2014)(slip op. at 7). Here, however, respondent's misrepresentations were made repeatedly and were not

by silence, but, rather, were affirmative, blatant, and self-serving. Like respondent, Braverman violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 3.2, and RPC 8.1(b). We determined that the attorney's unblemished thirty-four years at the bar were outweighed by his inaction, which left the client with no legal recourse. Id.

Here, in aggravation, because of respondent's misconduct, Grant was left with no legal recourse to pursue her claims. As noted, his misrepresentations were more serious in nature and in kind than Braverman's. Therefore, although Braverman received a reprimand, the baseline for respondent's misconduct should be a censure. Respondent, however, lacks the thirty-four-year unblemished career that Braverman had, and he committed additional misconduct.

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 in 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 the attorney's actions were motivated by a misguided attempt at efficiency, rather than by dishonesty or personal gain); 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 Trustan, 202 N.J. 4 (2010) (three-month suspension for attorney who 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 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 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; violations 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),(c), and (d)).

Like the attorney in Monahan, respondent made misrepresentations to the court in order to justify and excuse his failure to meet deadlines or otherwise comply with court orders. Monahan made misrepresentations in two

certifications. Respondent's misconduct occurred on numerous occasions, as Judge Bumb explained in her opinions. Monahan received a censure for his misrepresentations to the tribunal and for practicing while ineligible. Because respondent's misconduct is more severe than Monahan's, standing alone, his violations of RPC 3.3(a)(1) would result in a censure. Instead, this misconduct serves to enhance the baseline discipline from a censure to a three-month suspension.

Additionally, respondent practiced law as a professional corporation without the requisite malpractice insurance. Typically, this conduct is met with an admonition. See In re Lindner, 239 N.J. 528 (2019) (default; for a three-year period, attorney practiced law as a limited liability corporation without maintaining professional liability insurance) and In the Matter of F. Gerald Fitzpatrick, DRB 99-046 (April 21, 1999) (attorney practiced law in a professional corporation for a six-year period, without the required malpractice insurance).

Moreover, respondent listed Washington, D.C. on his letterhead as a jurisdiction in which he is licensed to practice law, despite his suspension there since 1985 for having failed to pay his fees. RPC 7.1(a)(1) typically applies to representations made on an attorney's letterhead or sign. In other words, the rule

applies to general misrepresentations made to "the world," rather than specific misrepresentations made to individual clients and third parties, which are governed by RPC 8.4(c). See In the Matter of Howard R. Rabin, DRB 15-244 (October 20, 2015) (slip op. at 7) and In the Matter of Nicholas R. Manzi, DRB 11-047 (August 1, 2011) (slip op. at 10).

The use of a misleading letterhead ordinarily results in an admonition. See, e.g., In the Matter of Raymond A. Oliver, DRB 09-368 (May 24, 2010) (attorney used letterhead that identified three attorneys as "of counsel," despite the absence of a professional relationship with them, a violation of RPC 7.1(a) and RPC 7.5(a); attorney also violated RPC 8.4(d) because two of those attorneys were sitting judges, which easily could have created a perception that he had improper influence with the judiciary; we noted other improprieties); In the Matter of Paul L. Abramo, DRB 08-209 (October 20, 2008) (attorney used firm letterhead that contained the name of an attorney after he was no longer associated with the firm, violations of RPC 7.5(c) and N.J. Advisory Committee on Professional Ethics Opinion 215, 94 N.J.L.J. 600 (1971)); and In the Matter of Carlos A. Rendo, DRB 08-040 (May 19, 2008) (attorney used letterhead that failed to identify that a lawyer was admitted to practice law only in New York; a violation of RPC 7.1(a) and RPC 7.5(a)).

Hence, the additional discipline otherwise imposed for using misleading letterhead and practicing without the requisite malpractice insurance further enhances respondent's discipline to a six-month suspension.

In aggravation, respondent's misconduct caused serious harm to his client. Grant initially filed a complaint against Omni in 2006, and respondent assumed the representation in 2007. Grant's case was dismissed, with prejudice, in 2009, and the dismissal was affirmed on appeal in 2010. Respondent also failed to revive the State matter in Cumberland County. The record lacks specificity about whether Grant could or did revive that matter on her own. Nevertheless, Grant suffered significant and possibly irreparable harm as a direct result of respondent's misconduct. Therefore, an additional enhancement to a one-year suspension is appropriate.

Finally, the default status of this matter must also be considered. "[A] respondent's default or failure to cooperate with the investigative authorities acts as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332, 342 (2008) (citations omitted). Based on respondent's default, the appropriate discipline is even further enhanced to a two-year suspension.

Therefore, we determine that a two-year suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Vice-Chair Gallipoli and Members Joseph and Petrou 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

For. By:_____
Ellen A. Brodsky
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Marshall L. Williams
Docket No. DRB 19-371

Decided: June 30, 2020

Disposition: Two-Year Suspension

Members	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	0	3

For: Ellen A. Brodsky
Chief Counsel