Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 20-101
District Docket Nos. XIV-2013-0495E
and XIV-2014-0104E

In the Matter of	:
Steven Resnick	:
An Attorney at Law	:

Decision

Argued: October 15, 2020

Decided: February 25, 2021

Steven J. Zweig appeared on behalf of the Office of Attorney Ethics.

Patrick B. Minter appeared on behalf of respondent.

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

This matter previously was before us on a recommendation for an admonition filed by a special master. On April 16, 2020, we determined to treat the admonition as a recommendation for greater discipline and to bring the matter on for oral argument.

The formal ethics complaint in District Docket No. XIV-2013-0495E charged respondent with violations of RPC 3.1 (asserting an issue with no basis in law or fact) (two counts); RPC 3.2 (failing to expedite litigation and failing to treat with courtesy and consideration all persons involved in the legal process) (three counts); RPC 3.4(e) (in trial, alluding to a matter that the lawyer does not reasonably believe is relevant or supported by admissible evidence); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice) (two counts).

The amended formal ethics complaint in District Docket No. XIV-2014-0104E charged respondent with violations of RPC 3.1 (two counts); RPC 3.2 (two counts); RPC 8.2(a) (making a statement the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications of a judge); and RPC 8.4(d) (two counts).

For the reasons set forth below, we determine to impose a censure.

Respondent earned admission to the New Jersey and New York bars in 1998 and has no disciplinary history. At the relevant times, he was engaged in the practice of law with Budd Larner, P.C. in Short Hills, New Jersey. Currently, respondent is engaged in the practice of law at Zeigler, Zemsky & Resnick, in Livingston, New Jersey.

District Docket No. XIV-2013-0495E (the Segal matter)

Count One

On September 13, 2013, the Office of Attorney Ethics (OAE) received a letter from then-sitting Judge James A. Farber, J.S.C. referring respondent for alleged misconduct committed during his representation of Moses Segal in a custody dispute with Cynthia Lynch. Segal and Lynch previously had resided together in Canada, where they were considered married at common law, and had two children. Segal v. Lynch, 413 N.J. Super. 171, 180-181 (App. Div. 2010) (cert. denied 203 N.J. 96 (2010)). In August 2001, they separated and, in 2003, the Superior Court of Justice in Ontario, Toronto ordered Segal to pay child support. Ibid. In 2005, that same court granted Lynch full custody of the children and an $11,000,000 lump sum payment (Canadian dollars) in child and spousal support, in the form of real property that Segal owned. Ibid. In 2006, Lynch relocated to Morristown, New Jersey. Ibid.

On September 22, 2006, respondent filed a verified complaint on behalf of Segal, in the Superior Court of New Jersey, Morris County, Family Part, seeking parenting time. In a subsequent pleading, Segal sought full custody of the children "until Lynch had undergone intense therapy and it was determined she had the ability to co-parent with plaintiff."

While that matter was pending in family court, respondent filed another complaint in behalf of Segal against Lynch, in the Superior Court of Morris County, Law Division, alleging intentional infliction of emotional distress (IIED) and seeking damages. After the IIED complaint was dismissed, as a matter of law, respondent appealed.

On May 3, 2010, the Appellate Division affirmed the dismissal, ruling that the facts alleged in connection with an IIED claim must be "so outrageous in character and so extreme in degree, as to go beyond all possible bounds of decency, as to be regarded as atrocious and utterly intolerable in a civilized community." Segal v. Lynch, 413 N.J. Super. at 171. Respondent had alleged that, to deprive Segal of his right to maintain a relationship with his children, Lynch had relocated to New Jersey; established a residence with the children without Segal's knowledge or consent; blocked all forms of communications between him and the children; and matriculated the children in a local school district under her surname. Id. at 191. In its opinion, the Appellate Division found that Segal's arguments were "objectively reasonable" and that his complaint "raised profound public policy questions. His legal position on these issues was not facially meritless." Id. at 195.

On June 23, 2010, respondent filed a motion seeking to transfer the family matter to another venue. The same day, Judge Farber, to whom Judge Thomas L. Weisenbeck, P.J.F.P. had assigned the matter, denied the motion.

In late 2010, respondent moved to amend the complaint in the family part to include an IIED claim. On December 3, 2010, Judge Farber denied respondent's motion, determining that the amended allegations did not meet the requirements set forth in the Appellate Division's opinion. Respondent requested interlocutory relief, but it was denied. In connection with that motion, Frances Donahue, counsel for Lynch, sent respondent a R. 1:4-8(b) "safe harbor" letter, asserting that respondent was engaging in frivolous litigation.

On July 7, 2011, respondent once again moved before the court to file an amended complaint, in Segal's behalf, to include a claim for IIED and an additional claim against a therapist, alleging that he intentionally interfered with the relationship between Segal and his son, causing emotional distress. On August 9, 2011, the court denied the motion, finding that the allegations lacked even an "iota of evidence" to satisfy the criteria set forth in the Appellate Division's opinion, and that the motion was specious and filed in bad faith.

The allegations set forth in the second and third motions differed from the allegations in the first motion, because they involved different facts; included both children; referred to a three-year time period, rather than a three-month

period; and included an allegation of constructive kidnapping. On September 2, 2016, the Appellate Division affirmed Judge Farber's determination.

Based on the above facts, the OAE alleged that respondent violated RPC 3.1 by filing multiple motions to amend the complaint to allege IIED and by appealing the denials of the motions, despite knowing that there was no basis in law or fact to do so. Moreover, the OAE claimed that respondent could not have reasonably believed there was a non-frivolous basis in law or fact for filing the motions and appeals. Additionally, the OAE charged that respondent failed to expedite the litigation, in violation of RPC 3.2, and engaged in conduct prejudicial to the administration of justice, in violation of RPC 8.4(d).

Count Two

On October 8, 2013, the OAE received a letter from Judge Weisenbeck referring respondent for alleged misconduct based on statements he submitted to the court during his representation of Segal. Specifically, during the litigation, on October 8, 2009, Donahue filed a motion seeking outstanding counsel fees to be paid by Segal, along with the deposit of an additional $500,000 in an escrow account, for future litigation costs. Subsequently, on December 15, 2009, Donahue filed a motion to be relieved as counsel, citing Lynch's failure to pay

outstanding legal fees of $245,500. Judge Weisenbeck denied Donahue's motion to be relieved as counsel.

On January 19, 2010, respondent submitted a cross-motion and certification, asserting that "it was a fact that defendant and her counsel are perpetrating a fraud upon the Court." Later, in response to Donahue's motion to be relieved as counsel, respondent alleged that Lynch and Donahue were co-conspirators in a "clear and outrageous scam."

At oral argument on the motions, Judge Weisenbeck asked respondent about Segal's certification, which the judge believed contained unsubstantiated and unsupported accusations. Respondent did not take the opportunity to correct the record. In his testimony during the ethics hearing, respondent asserted that Segal would not allow him to withdraw these statements and that he could not act contrary to his client's wishes. Respondent also explained that, when he had accused Lynch and Donahue of "fraud," he meant manipulation, rather than fraud in the legal sense. Respondent admitted, however, that either he or his associate had drafted Segal's certifications and had reviewed them before Segal signed them. During the ethics hearing, respondent testified that he regretted having used the word "fraud" and admitted he should have used the word "manipulation."

Based on the above facts, the OAE alleged that respondent violated RPC 3.2 and RPC 3.4(e) by submitting a certification to the court which contained the unsupported and unsubstantiated allegations that Lynch and Donahue were perpetrating a fraud against the court.

Count Three

On October 19, 2007, respondent filed a motion seeking Judge Weisenbeck's recusal, only to withdraw the motion prior to its return date. On February 8, 2008, respondent filed a second recusal motion, arguing that Judge Weisenbeck was not impartial and had prematurely made findings of fact. On May 23, 2008, Judge Weisenbeck denied the motion, finding that Segal's accompanying certification contained mere speculation.

On June 16, 2008, respondent filed a motion for reconsideration, alleging that Judge Weisenbeck had failed to consider the significance of the evidence presented. Again, Judge Weisenbeck denied the motion, determining that it was a rehashing of the first motion and was filed in bad faith. In April 2009, Judge Weisenbeck became the presiding judge for family matters in Morris and Sussex counties, but continued his responsibilities in the Segal matter.

On February 11, 2010, respondent filed a third recusal motion and an order to show cause seeking a stay of the matter in order to file an appeal. Segal's

accompanying certification accused Judge Weisenbeck of trying to extort millions of dollars from Segal, and of harboring a personal vendetta against him, while also being biased in favor of Lynch. The record does not reveal the outcome of this motion.

On May 5, 2010, respondent filed a fourth recusal motion and a second motion for a stay of the proceedings. Segal's accompanying certification in support of this motion asserted that Judge Weisenbeck improperly had discussed Segal's case with another judge. Additionally, Segal alleged that, on April 30, 2010, Judge Weisenbeck had sent a letter to Judge John F. Malone, P.J.Ch. requesting that certain restraints be placed on property at the center of litigation before Judge Malone, but be lifted, to allow access by Lynch, in the event that she was awarded fees and costs in the family matter before Judge Weisenbeck. The motions were denied.

In that April 30, 2010 letter to Judge Malone, Judge Weisenbeck referred to an order to show cause that Judge Douglas M. Fasciale, P.J.Cv. had entered in litigation captioned as 43 Hawthorne Corp. v. Cynthia Lynch. That order to show cause included a stay of all proceedings in connection with property located in Summit, New Jersey. In the letter to Judge Malone, Judge Weisenbeck explained that Judge B. Theodore Bozonelis, A.J.S.C. had suggested that he write, based on Segal's failure to comply with Judge Weisenbeck's prior order

that both parties provide security for a possible fee award against them. Despite admitting a net worth of $40 million, Segal had refused to comply with that order or with an order to pay an outstanding invoice to a court-appointed parent coordinator. Judge Weisenbeck noted that, after he had issued a bench warrant for Segal's arrest, Segal had fled the jurisdiction.

According to Judge Weisenbeck's letter, although Segal initially testified, during a trial, that he had no ownership interest in the Summit property, Segal's certification annexed to the above-referenced order to show cause contained an admission that he was the beneficial owner of the property. Therefore, Judge Weisenbeck requested that Judge Malone consider either vacating the restraints involving the Morris County matter or transferring the Union County matter to the Family Part of the Morris County Equity Division.

Respondent then filed a motion for leave to file an interlocutory appeal. On May 28, 2010, the motion was granted, and the proceedings were stayed. Simultaneously, Judge Weisenbeck recused himself and, by a June 16, 2010 order of Judge Bozonelis, the Segal matter was reassigned to Judge Farber.

One week later, on June 23, 2010, respondent filed a motion to transfer the matter to Union County, alleging that Judge Weisenbeck's appointment as the presiding judge of the family division would affect Judge Farber's fairness and partiality. Segal's accompanying certification contended that no judge in the

Morris/Sussex vicinage could be impartial, because of Judge Weisenbeck's biases. The motion also requested that Judge Farber enjoin Judge Weisenbeck from any communications with other judges regarding the matter. On July 23, 2010, Judge Farber denied the motion, referring to the allegations as "rank speculation," and finding that the motion was "obnoxious" and had been brought in bad faith.

In turn, on February 9, 2011, respondent filed an order to show cause for Judge Farber's recusal – his fifth such recusal motion– and again requested that the matter be transferred to Union County. In Segal's accompanying certification, he stated that his children were entitled to a judge who would not make decisions based on

> undue influence by the previous judge. . . I don't know whether this Court has been talking to Judge Weisenbeck, has been influenced by the fact he is the presiding Judge of this Court . . . is feeling pressured from Judge Bozonelis, or needs to somehow save face for what the previous court did within the same vicinage.
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> [OAEEx.52.][1]

[1] "1T" refers to the hearing transcript, dated February 26, 2019, and "OAEEx." refers to the presenter's exhibits admitted into evidence in this matter.

On February 10, 2011, Judge Farber denied the motion, finding that "not a scintilla of evidence or truth" had been presented showing that he was biased or had been influenced by Judge Weisenbeck or Judge Bozonelis.

On June 21, 2011, respondent filed a sixth motion in behalf of Segal seeking recusal, or, alternatively, the transfer of the matter to Union County. Segal's accompanying certification feigned sympathy for Judge Farber because he was "being forced to continually handle with [sic] this case at the demand of Judge Bozonelis and Judge Weisenbeck and monitored from above accordingly and may even be forced to treat me harshly." Segal also reasserted the statement from his previous certification that his children deserve an unbiased judge. Respondent testified that the certification, read as a whole and in context, makes clear that this was Segal's belief and that he had "a factual basis in [his] mind" to make these statements.

Specifically, respondent asserted that he advised Segal that there needed to be some basis for his belief if it were to be included in the certification. From Segal's perspective, respondent explained, Judge Bozonelis and Judge Weisenbeck were writing to another sitting judge "bashing my client," while Judge Weisenbeck was seeking to unduly influence that judge enough so that the Appellate Division stayed the case to review these communications. In respondent's opinion, the certification was appropriate.

Finally, on June 22, 2011, Judge Farber denied the motion, stating that no judge had made any demands on him, or had monitored, consulted, or directed him in any way in the Segal matter, and that the accusations were insulting to Judge Weisenbeck and Judge Bozonelis. Additionally, Judge Farber found personally insulting the suggestion that he could be influenced by any such alleged interference.

Eventually, after Judge Faber reviewed the entire matter and all of Judge Weisenbeck's decisions, he determined that Segal was using the case as a form of economic coercion against Lynch. On September 13, 2013, in a lengthy statement of reasons, Judge Farber explicitly found that from the outset of the matter, Segal "took a scorched earth approach to the litigation." His goal was a financial modification; however, short of that, Segal's goal was to "cause Ms. Lynch to spend as much money as possible on attorneys and experts to penalize her and punish her for challenging him." Ibid. Judge Farber went a step further finding that, "[d]ue to plaintiff's overarching bad faith in the proceedings," Lynch was entitled to counsel fees beginning on July 1, 2009 through the conclusion of the matter.

Based on the above facts, the OAE alleged that respondent violated RPC 3.1 by filing multiple motions for recusals and transfers, despite knowing that there was no basis in law or fact for those motions, and that respondent could

not reasonably have believed there was a non-frivolous basis in law or fact for filing the motions. Further, by way of the motions and appeals, respondent failed to expedite the litigation, in violation of RPC 3.2, and engaged in conduct prejudicial to the administration of justice, in violation of RPC 8.4(d).

In connection with the Segal matter, Cary B. Cheifitz, Esq. testified as an expert witness on behalf of respondent. Cheifitz has been a member of the New Jersey bar since 1980. His practice consists solely of family law matters and he is often hired as a mediator, an arbitrator, and an expert witness in family law. Cheifitz is not a certified matrimonial attorney because, as he stated, he is "too lazy to fill out the application." Cheifitz previously had testified as an expert in twenty-five to thirty cases, including legal malpractice matters and ethics proceedings.

Cheifitz opined that respondent's actions did not delay the administration of justice, for a number of reasons. Procedurally, the Segal matter was unusual because it was running on two tracks: the case was being tried at the same time that discovery was being conducted. Motions, therefore, had to be heard on days when there was no trial. Respondent had no input regarding this scheduling. He did not ask for adjournments or delays. The judge had complete control over the calendar. Further, as a litigant, Segal did not wish to delay his matter. They want their cases resolved quickly, especially in a case like this, where a party is

seeking reunification with his children after three years. Every day that passes is another day the parent is irreparably harmed, because the parent cannot make up the lost time.

With respect to the allegations concerning the three motions filed to add a claim of IIED, Cheifitz observed that respondent's first motion was the subject of the allegations in the complaint. Cheifitz remarked that the motion went to the Appellate Division and resulted in a "landmark decision" because, for the first time, there was a reported decision outlining a cause of action of IIED in the context of a child custody case.

The two additional motions, according to Cheifitz, had both a factual and legal basis. The Appellate Division's opinion outlined a cause of action and discussed the distinction between degrees of kidnapping. After that opinion was released, respondent was faced with a client who had not seen his children for three years, which is significantly more egregious than the three-month kidnapping discussed in the decision.

Cheifitz also addressed the Donahue application for fees or, alternatively, his motion to be removed as counsel. In Cheifitz's opinion, there was a factual and legal basis for respondent to have submitted the Segal certification, and subsequently, a proper basis for respondent refraining from withdrawing the

language contained therein after Judge Weisenbeck had given him the opportunity to do so.

According to Cheifitz, the application that Donahue submitted put the judge in a very difficult situation, because an attorney's motion to be relieved as counsel in a matrimonial matter is rarely granted. Donahue crafted his motion to put the judge in a position to either award Donahue fees or permit him to withdraw, but the application did not indicate that Donahue's client lacked the ability to pay him. Therefore, "you can reasonably conclude that the application is being made in part to get Mr. Donahue paid, but also to manipulate the court." Cheifitz agreed that the word "fraud" in Segal's certification was not used in a legal context; rather, he asserted, it was used in the context of manipulation.

Further, Cheifitz opined that the recusal and venue change motions also had a legal and factual basis. Cheifitz asserted that it was unusual for a client to be faced with a judge who communicated with another judge, in another county, about litigation that might have been related to the matrimonial matter, without prior notice to the parties before him. Moreover, the client already believed that he was being treated differently than the other party. Once Judge Weisenbeck recused himself, Judge Farber also made the client feel uncomfortable, especially when he determined that Judge Weisenbeck had not acted inappropriately.

On cross examination, Cheifitz acknowledged his awareness that, after Judge Farber reviewed the entire matter and all of Judge Weisenbeck's decisions, Judge Farber determined that Segal was using the case as a form of economic coercion against Lynch.

District Docket No. XIV-2014-0104E (the Hall matter)

Count One

Respondent represented James M. Hall, Esq., in connection with a motion filed on December 10, 2010, by Deborah Hall, James Hall's former wife, for financial contribution to their daughter's college expenses and for other contributions related to their three children.[2] The matter was assigned to Judge Robert A. Kirsch, J.S.C., Superior Court of New Jersey, Union County, Chancery Division, Family Part. On January 24, 2011, through counsel, Hall filed opposition to Deborah's motion and a cross-motion seeking enforcement of the parties' Separation and Property Settlement Agreement (PSA). In his cross-motion, respondent argued that the contractual relief Deborah sought was barred because she had not complied with the terms of the PSA, including not having allowed Hall to participate in the selection process of their daughter's

[2] Hall is an attorney in California. Effective September 15, 2011, he resigned from the New Jersey bar.

college. On the same day, Jamie Von Ellen, Esq., counsel for Deborah, replied to Hall's opposition to her motion and to Hall's cross-motion.

On March 16, 2011, at the conclusion of a case management conference, Judge Kirsch set a two-week deadline for the parties to resolve their dispute. He also ordered Hall to submit a Case Information Statement (CIS), no later than March 30, 2011, if the parties could not resolve the matter. Respondent chose not to file Hall's CIS by March 30, 2011.

Respondent contended that Hall could refuse to contribute to his daughter's college tuition and expenses because there were compliance issues with the PSA. As a result of those compliance violations, his relationship with his daughter changed. Therefore, respondent claimed that Hall was not obligated to contribute to the cost of his daughter's college education; that a CIS was not required, as it would have been if the parties were seeking to modify the amount of contribution, based on a change of financial circumstances; and that the court should hold a plenary hearing regarding the requested relief from each party, and then issue a discovery order followed by a full hearing.

On April 13, 2011, following another teleconference, Judge Kirsch ordered Hall to submit a CIS by April 26, 2011; adjourned the hearing date of April 18, 2011, which created a "domino effect;" and rescheduled the hearing date, for a third time, to April 26, 2011. During the April 13, 2011

teleconference, respondent raised no objection to the order and apologized to the judge. During the ethics hearing, respondent testified that he had apologized because he had not spoken to his client since March 30, 2011, asserting that Hall had "disappeared . . . he was incommunicado."

Nevertheless, by letter dated April 21, 2011, five days before the CIS was due, respondent objected to its production and asked Judge Kirsch to reconsider. Respondent contended that requiring the production of a CIS, prior to a determination that Hall was required to contribute to his daughter's college expenses, would violate Hall's privacy rights.

On April 25, 2011, Judge Kirsch denied the motion for reconsideration, noting that respondent previously had not objected to producing the CIS, and that the PSA addressed the parties' respective financial positions regarding their responsibilities for their daughter's college expenses. The next day, respondent asked for two additional days to comply with the order and to produce the CIS. Judge Kirsch granted Hall an extension until April 28, 2011.

On April 28, 2011, respondent informed the court that Hall "cannot submit his private financial information before the Court has even decided that he would have to provide any discovery under the parties' agreement." Respondent also asserted that the requirement that Hall do so violated Hall's due process and privacy rights and that Hall's current wife objected to disclosure of her

interconnected financial information. Judge Kirsch advised respondent, in writing, that he could redact Hall's wife's information in any public filing.

On May 3, 2011, Judge Kirsch found Hall in violation of his order, and ordered him to submit a CIS and required attachments by May 6, 2011. Judge Kirsch testified that he spent several hours crafting this six-page opinion, due to the extensive review of transcripts and documents required. On May 5, 2011, respondent filed an order to show cause, seeking a stay of the trial court's orders of April 13, April 25, and May 3, 2011, pending a plenary hearing on the underlying motions, or alternatively, an appellate review. Hall's accompanying certification in support of the order to show cause alleged that the terms of the PSA included two conditions precedent to financial contribution for college expenses: each parent was to be meaningfully involved in the college selection process and the child was to apply for all available financial aid. Hall further claimed that, under New Jersey case law, a change in circumstances, such as his estrangement from his child, relieved him of any obligation to contribute to college expenses; that the court had no authority to order the disclosure of financial information of Hall's wife, a California resident; and that producing a CIS before a hearing on the merits would cause him irreparable harm, due to the disclosure of his and his wife's financial circumstances.

On May 9, 2011, Judge Kirsch denied the order to show cause. The next day, respondent filed a motion for leave to appeal and for a stay of the trial court's orders requiring production of a CIS. On May 11, 2011, the Appellate Division denied the motion. On May 16, 2011, respondent petitioned the Court for interlocutory review of the Appellate Division's denial. On the same day, Judge Kirsch issued a Case Management Order requiring Hall to submit a CIS with attachments by May 19, 2011, unless the Court determined otherwise.

On May 17, 2011, the Court remanded the matter to the Appellate Division to address the merits of the stay application. On May 23, 2011, the Appellate Division denied Hall's motions for leave to appeal and for a stay of the trial court's orders to produce a CIS, finding that the terms of the PSA required the exchange of financial information and did not include the conditions precedent that Hall had asserted. Additionally, the Appellate Division determined that Hall's current wife was protected by Judge Kirsch's directive that her financial information could be redacted. Subsequently, on June 15, 2011, the Court denied Hall's motions for leave to appeal the May 23, 2011 Appellate Division decision and for a stay. The Appellate Division also awarded Deborah $7,786.80 in attorneys' fees and costs in connection with the interlocutory action.

Respondent asserted that, at this point, he advised Hall that, if he failed to comply with Judge Kirsch's order to produce a CIS, the court could impose

sanctions. Nevertheless, by letter dated June 27, 2011, respondent asked Judge Kirsch to refrain from setting a schedule because Hall's current wife would be seeking an injunction in California in connection with the production of her financial information. Judge Kirsch denied the request. Respondent denied that his letter was a formal request for a stay, claiming that it was intended to inform the court of the actions that Hall and his wife were taking. He testified that he had no knowledge of California law, and had relied on Hall's statement that he and his wife would be exploring options in California.

On July 5, 2011, Judge Kirsch ordered Hall to file a CIS, along with his 2009 and 2010 tax returns, by July 8, 2011. On July 6, 2011, respondent informed Judge Kirsch that he was on vacation until July 25, 2011 and, "[a]ssuming that there are no intervening events, and certainly without any inference being raised that my client agrees, I can have Mr. Hall's C.I.S. by July 29, 2011." Respondent admitted that he had not spoken with Hall prior to sending the July 6, 2011 letter. Hall was granted an extension of the filing deadline to July 12, 2011.

On July 12, 2011, Hall filed a CIS without his 2009 and 2010 tax returns. Respondent also sent a letter to Judge Kirsch explaining that Hall had not yet filed his 2010 tax return and that he would not submit his 2009 tax return, due to the "impossibility" of redacting his wife's income information from the

return. Respondent referred to the delay in filing the CIS from the final orders of mid-June through July 12, 2011 as "just a quick letter and a few days."

Upon the filing of the CIS, Judge Kirsch immediately called for a teleconference for July 14, 2011. After the teleconference, Judge Kirsch issued a pendente lite order finding Hall in violation of litigant's rights for his "deliberate failure to submit a current and complete CIS" and his failure to comply with the court's numerous prior orders. In light of Hall's refusal to fully disclose his financial information, Judge Kirsch imputed to him annual income of $525,000, based on a previous certification, a substantial increase from the roughly $225,000 income Hall had reported in the original PSA. Judge Kirsch required Hall to pay eighty-one percent of his daughter's 2010-2011 college costs, totaling $9,341.73, within seven days of the date of the order. Judge Kirsch testified that, by this point, he was required to devote daily attention to the Hall matter.

On April 10, 2012, subsequent counsel for Hall sought appellate review of all nineteen orders that Judge Kirsch had issued in the case. On March 6, 2014, the Appellate Division ruled that Judge Kirsch appropriately ordered Hall to produce a CIS and that Hall's cross-motion seeking enforcement of the PSA triggered the obligation to file a CIS. In its unpublished decision, the Appellate Division wrote:

[p]laintiff's conduct of the litigation in this case, recounted in detail above, provides ample support for the court's conclusion that plaintiff opposed defendant's application in bad faith. The trial court observed the parties accrued legal fees that totaled over $250,000 — contesting an annual college expense of roughly $12,000 — because of "plaintiff's abuse of the judicial process, bad faith and unreasonable legal and factual positions." The trial court set forth the tortured history in detail. The court grounded its award of fees on the provision in the PSA that entitled the award of fees incurred by a party in successfully enforcing rights under the agreement; and under Rule 4:42-9(a)(1).

We are satisfied that the court fairly analyzed the factors set forth in Rule 5:3-5(c), according to the principles enunciated in Yueh v. Yueh, 329 N.J. Super. 447, 461, 748 A.2d 150 (App. Div. 2000) (stating that "'[W]here one party acts in bad faith, the relative economic position of the parties has little relevance' because the purpose of the award is to protect the innocent party from unnecessary costs and to punish the guilty party." (quoting Kelly v. Kelly, 262 N.J. Super. 303, 307, 620 A.2d 1088 (Ch. Div. 1992))). See also Welch v. Welch, 401 N.J. Super. 438, 447-48, 951 A.2d 248 (Ch. Div. 2008) (noting there is no need to consider financial circumstances and ability to pay where one party acts in bad faith). We discern no abuse of discretion. Platt v. Platt, 384 N.J. Super. 418, 429, 894 A.2d 1221 (App. Div. 2006) (stating that absent a clear abuse of discretion, a trial court's award of fees should not be disturbed).

Finally, we find no merit whatsoever to plaintiff's challenge to the trial judge's impartiality. Plaintiff waged an unrelenting battle against defendant, and the court. The court responded without bias, favor or predisposition. It did so deliberately and cogently, setting forth in clear detail, usually in extensive written opinions, the factual findings and conclusions of law in

> support of its orders. No further comment is required.
>
> [Hall v. Hall, No. A-2451-11T1, 2014 N.J. Super. Unpub. LEXIS 453, at *61-62 (App. Div. Mar. 6, 2014).]

Respondent testified that, based on his previous litigation experience, he believed that Judge Kirsch should have held a plenary hearing prior to issuing an order for production of financial information, and that the appeals were necessary to protect his client's rights. Respondent asserted that he repeatedly advised his client to comply with the court's orders to file the CIS, and that he had filed Hall's CIS and related financial documents with the court immediately upon receipt from the client.

Based on the above facts, the OAE alleged that respondent violated RPC 3.1 by filing multiple appeals of Judge Kirsch's orders requiring Hall to produce a CIS and tax returns, despite knowing that he had no basis in law or fact for doing so, because the PSA and the Court Rules required the production; and that respondent violated RPC 3.1 and RPC 3.2 by requesting a stay of the proceedings, because his client was seeking an injunction in California, despite knowing the California courts had no authority over New Jersey courts.

Count Two

As detailed above, on July 14, 2011, Judge Kirsch entered a pendente lite order which required Hall to pay Deborah $9,300 by July 21, 2011. On July 26, 2011, respondent submitted Hall's forty-five paragraph certification that asked "whether the Court has a personal bias against me through some personal contact with me prior to this matter, through my ex-wife and/or children, through my former firm . . . or through others in the [redacted] area community where the Court resides and where I previously resided"[3] Without filing a motion, respondent submitted the certification, which one of his associates had drafted and which respondent had reviewed before it was filed. Several days letter, respondent submitted a letter to the court, again, without an accompanying motion.

Although Judge Kirsch understood that respondent's letter was seeking a recusal, Judge Kirsch could not consider that request without a motion. Accordingly, he scheduled a teleconference for August 4, 2011, and advised respondent that an application for recusal must be made in a formal motion in compliance with the Court Rules. On August 8, 2011, respondent filed a motion to vacate the pendente lite order and for Judge Kirsch's recusal. In his

[3] Hall's certification made many more accusations against Judge Kirsch but, for the sake of brevity, they are not detailed here.

accompanying certification, Hall once again questioned whether the court was biased against him. Respondent reviewed these documents before he filed them.

Respondent conceded that the arguments in this motion were no different from the arguments made in July 2011. During this time, respondent formed a belief that Judge Kirsch was treating him unfairly, through negative commentary, and that the judge was implying that respondent was the driving force behind Hall's non-compliance.

On August 15, 2011, during oral argument on the recusal motion, respondent stated Hall's concerns on the record, specifically addressing a concern about Judge Kirsch's area of residency and that "there may be some connection with the Lerner David firm." When Judge Kirsch pressed him for more information, respondent admitted that he could not identify anyone associated with Lerner David who was a friend of Judge Kirsch and stated that Hall "would put it in the papers if he had a name. He's asking the Court at this point." Respondent added that Hall questioned whether Judge Kirsch had a connection to someone at a country club or synagogue, which could be a source of bias against Hall.

Respondent later conceded that Judge Kirsch's religion was not a valid line of inquiry and clarified that he did not personally endorse Hall's speculative allegations of bias. Respondent defended Hall, however, asserting that he was

making "pontifications" rather than statements of affirmative fact, because Hall believed that he was being treated unfairly, but did not know the reasons for that alleged mistreatment. In sum, respondent regretted the inclusion of these "pontifications," because they were not necessary to the application, and admitted that he should have more firmly encouraged Hall to exclude them, but claimed that Hall was a very difficult client.

On August 17, 2011, Judge Kirsch denied the motion for recusal and wrote a twenty-three-page decision, in which he denied any connection to the Halls or their children, or any contact with them outside of the instant litigation. He observed that respondent referred to the judge's memberships at a certain synagogue and country club as possible sources of judicial bias, but Hall's certifications did not contain those assertions. Judge Kirsch testified that he spent at lease twenty hours on the recusal matter alone.

On August 19, 2011, Judge Kirsch denied respondent's motion for a stay of proceedings pending appeal of the August 17, 2011 order denying the recusal motion.[4] On August 24, 2011, respondent filed an emergent application for an interlocutory appeal, which the Appellate Division denied on August 26, 2011. On September 7, 2011, respondent filed with the Court a motion for leave to appeal the trial court's orders and the Appellate Division's denial. On December

[4] The date of respondent's motion for a stay pending appeal is not clear in the record.

8, 2011, the Court denied the motion.

On September 2, 2011, Deborah filed a motion to enforce an order for child support. On September 23, 2011, in opposition to the motion, respondent submitted Hall's certification that again questioned whether the court had a personal relationship with himself, Deborah, or their children through his former law firm or the community in which Judge Kirsch resided. Respondent admitted that he reviewed the certification prior to its filing and that he knew that Judge Kirsch previously had denied those allegations during oral argument on August 15, 2011.

On October 14, 2011, the court heard oral argument on the motion and, on October 18, 2011, issued an opinion and order. Judge Kirsch spent sixteen to eighteen hours drafting this opinion, which represented the fourth time he addressed allegations about his relationships with members at Hall's former law firm and his residency in a particular town.

On October 25, 2011, respondent filed an order to show cause seeking Judge Kirsch's recusal. Hall's accompanying certification accused the court of becoming

> a litigant in this action, as it has lost all sense of unbiased fairness. By affirmatively advocating for the defendant, she does not even need a lawyer as she already has the Court advocating on her behalf. Clearly, defendant is more than willing to ride on this Court's coat tails because this Court has done an excellent job

of representing defendant.

[OAEEx.23.]

On October 27, 2011, Judge Kirsch denied the motion. As of October 27, 2011, Hall still had not submitted to the court his full CIS.

On November 1, 2011, Judge Kirsch held a proof hearing pursuant to Deborah's motion for contribution to their daughter's college education and related expenses. On November 2, 2011, he issued an order striking Hall's pleadings, rendering him in default. The order added $14,156.56 to the child support arrears; ordered Bryan Cave, LLP, Hall's employer, to remit $5,230 to the New Jersey Family Support Payment Center within seventy-two hours; increased the arrears rate from $1,000 per month to $4,001 per month until the arrears were eliminated; and required Hall to pay $5,230 to Seton Hall University for the entire outstanding tuition bill for the fall 2011 semester.

On November 28, 2011, respondent filed a motion to vacate the court's previous orders. Once again, in a supporting certification, Hall asserted that Judge Kirsch had a personal vendetta and cited as evidence the fact that the court had contacted Hall's San Francisco law office. During oral argument, on December 8, 2011, Judge Kirsch denied having contacted Hall's office, and instructed respondent to submit an amended certification from Hall, or, if Hall were unwilling, a separate certification from respondent to correct that assertion.

Subsequently, in a letter dated December 12, 2011, respondent stated that the claim that Judge Kirsch had personally contacted Hall's law firm was not frivolous. Hall's firm "documented that several calls were received from the Union County Courthouse, Family Division." Hence, Hall believed that "either the Court personally called his employer or had someone personally call on the Court's behalf." Respondent failed to submit corrected certifications.

Over the course of these motions and appeals, the courts awarded Deborah attorneys' fees several times, including once from the Appellate Division, because Hall had acted in bad faith in the course of the proceedings.

Judge Kirsch testified that he spent hundreds of hours of his own time on the Hall matter, "on motion after motion, on orders of recusal, on hearing and rehearing, et cetera. Hundreds of hours." When asked why he had declined respondent's request for an interview, Judge Kirsch explained:

> [t]he truth is, sir, I expended hundreds of hours, in my judgment, on frivolous application after frivolous application, one in bad faith after the next, and I did not want to devote one more minute to a case that had taken such a disproportionately sizeable chunk of my judicial time. And of course you can't write these opinions during court hours, so this was three o'clock in the morning, weekends and vacations, almost on a daily basis.
>
> [1T77.]

Based on the above facts, the OAE alleged that respondent violated RPC 3.1 by filing motions and appeals seeking Judge Kirsch's recusal, without any basis in fact or law, and by falsely asserting that Judge Kirsch had contacted Hall's law office; that respondent failed to expedite the litigation and engaged in conduct prejudicial to the administration of justice, in violation of RPC 3.2 and RPC 8.4(d); and that, by filing certifications containing baseless accusations against Judge Kirsch, respondent violated RPC 8.2(a).

Count Three

As stated above, on October 18, 2011, Judge Kirsch found Hall in violation of Deborah's rights, directed him to remit payment for tuition pendente lite, and granted Deborah's motion for payment of child support to be administered through the Probation Division.

Subsequently, on October 28, 2011, Judge Kirsch found Hall in further violation of Deborah's rights by failing to comply with the court's October 18, 2011 order. On November 2, 2011, the judge ordered the pendente lite relief to be reduced to a judgment, as of November 1, 2011, and any child support arrears to be collected through the Probation Division. The court ordered Hall's California law firm to remit an arrears payment to the Probation Division within seventy-two hours of the date of the order.

On November 2, 2011, respondent sent a letter to Von Ellen, Deborah's attorney, stating that, "Hall has directed me to hereby place you, defendant and the law firm on notice that service of the aforementioned Order directly on Mr. Hall's employer by defendant or anyone on her behalf would be actionable for interference with Mr. Hall's economic interests. Please be guided accordingly." Nine days later, on November 11, 2011, respondent sent a letter to the Union Vicinage Probation Division (Probation), stating that "it is Mr. Hall's position that you not engage in any further contact with his employer so as not to cause further friction between Mr. Hall and Bryan Cave, LLP. Unless you provide legal authority to refute the above, then it will be assumed that you concur with same."

During his testimony, respondent denied that these letters had been intended to thwart the court's income-withholding order. He claimed that Hall had explained to him that his job security within his firm was tenuous; that, under standard interstate enforcement procedures, the human resources department of Hall's firm would have received a notice of garnishment, rather than a court order directly ordering the firm to pay; that Hall was concerned that Probation's direct contact with his law firm would cause an issue with his employment; and that the letters were intended to put Probation on notice that it was causing problems and to ask Probation to proceed via normal channels.

Finally, on November 28, 2011, respondent filed a motion to vacate the income-withholding provisions of the trial court's previous orders. Hall's accompanying certification asserted that, "Probation, at the Court's direction, is harassing my employer," and that "[t]hese actions are improper and most likely actionable." On December 8, 2011, while appearing before the court on his motion to vacate, respondent stated that he had instructed Hall's employer to refrain from withholding Hall's income.

Based on the above facts, the OAE alleged that respondent violated RPC 8.4(d) by threatening another attorney with a lawsuit if she served a copy of the court's order on respondent's employer; by interfering with the Union Vicinage Probation Division; and by threatening the trial court with a lawsuit.

In connection with the Hall matter, Mark Sobel, Esq. testified as an expert witness in behalf of respondent. Sobel has been a New Jersey practicing attorney since 1978, focusing on family law. He is a certified matrimonial lawyer with more than fifty trials completed. Sobel has testified previously as an expert in matrimonial law and has been qualified by the Superior Court of New Jersey as an expert in family and matrimonial law. The special master accepted Sobel as an expert witness and admitted his expert report as an exhibit.

As to count one of the complaint, alleging that respondent's position regarding the CIS and the ensuing appeals were frivolous and impermissibly

delayed the trial court action, Sobel testified that he believed there was both a factual and legal basis for respondent's positions. He observed that the parties' PSA contained terms regarding parental interaction with the child selecting a college, required the child to apply for all applicable grants and scholarships, and contemplated an analysis of each parent's financial circumstances to assess their respective college contribution obligations.

In his January 24, 2011 cross-motion, respondent argued on behalf of Hall that the contractual relief Deborah sought in her motion was barred, because she had not complied with the terms of the PSA. Moreover, respondent asserted that Deborah had not included Hall in the selection process of her daughter's college. Therefore, according to Sobel, this, coupled with Hall's claims of alienation, supported the claim of relief Hall was seeking.

According to Sobel, notwithstanding the provisions of a judgment, the law provides that any alienation between a parent and a child will alter, and perhaps eliminate, a parent's obligation to contribute to a child's college education. When asked whether he knew of any case law that authorizes a party to disregard a court's order to produce a CIS, he replied, "not exactly." Although he admitted that a litigant generally is required to comply with a court order, he claimed that there could be exceptions to that rule.

Sobel explained that, typically, under Lepis v. Lepis, 83 N.J. 139 (1980), only after a court finds that there has been a change in the parties' financial circumstances does a court require a party to file a CIS for comparison to the original CIS. In Sobel's opinion, because the court did not make a finding of a change in circumstances, Hall was not required to file a CIS.

Next, Sobel asserted that respondent also had a factual and legal basis to file the recusal motions underlying the allegations of count two of the complaint. Sobel pointed out that, because the judge never scheduled a return date for Hall's January 24, 2011 cross-motion, he did not have the opportunity to testify or to argue the merits of his motion that neither party had complied with the PSA. Sobel opined that, although the judge might not have been biased, the appearance of bias or partiality must be considered in such an application.

With respect to count three of the complaint, Sobel opined that the letters that respondent sent to Von Ellen and to Probation were appropriate under the facts of the case.

In mitigation, respondent submitted thirteen character letters. He also detailed his community service, including sitting on three different Early Settlement Panels over the prior fifteen years, and on a "Blue Ribbon Panel" that attempts to settle high-conflict family matters. In addition, respondent served on a district ethics committee as an investigator and, later, as a special

master in one matter.

Further, respondent sits on the Foundation Board and the Humanities Board for Montclair State University; annually funds the cost of tuition for one year for a law student; is a regular continuing legal education lecturer; taught classes for five years at Montclair State University; and provides pro bono services for victims through New Jersey's Battered Women's Shelter.

The special master dismissed count one of the complaint addressing the Segal matter, finding that the OAE had failed to prove that respondent violated RPC 3.1 because, based on the Appellate Division's opinion, respondent's filing was not frivolous. Further, respondent's subsequent filings involved different facts and the OAE failed to establish that they were frivolous or filed in bad faith. Therefore, the special master found that the OAE failed to establish a violation of RPC 3.1, RPC 3.2, or RPC 8.4(d), and dismissed count one in its entirety.

With respect to the second count, the special master determined that respondent violated RPC 3.2. Specifically, the special master remarked that, because respondent was the "gatekeeper," Segal's alleged insistence on retaining the offending language accusing another attorney of fraud was not relevant. According to the special master, respondent's baseless accusation of fraud constituted a failure to treat others with courtesy. Similarly, the special

master determined that respondent violated RPC 3.4(e), because he accused Donahue and Lynch of engaging in a scam and fraud without any supportable evidence.

Finally, as to count three, the special master determined that respondent's multiple motions seeking recusals and venue transfers violated RPC 3.1, because respondent knew there was no basis in law or fact for these filings. According to the special master, it appeared that respondent "was placating his wealthy client," rather than acting in accordance with the Court Rules or the RPCs. However, the special master found that respondent's May 5, 2010 request for recusal, which led to an interlocutory appeal, did not rise to the level of an ethics violation.

The special master also determined that respondent violated RPC 3.2 by proceeding in bad faith with motions that delayed the litigation. Similar to the Appellate Division, the special master characterized respondent's handling of this matter as "unreasonable, relentless and overwhelming."

Finally, the special master determined that, because both Judge Weisenbeck and Judge Farber testified that they had heavy caseloads and were handling full dockets, the OAE failed to prove that the amount of time that the judges spent addressing respondent's motions constituted conduct prejudicial to

the administration of justice. Therefore, the special master dismissed the RPC 8.4(d) charge in count three.

As to count one of the complaint addressing the Hall matter, the special master determined that respondent violated RPC 3.1 and RPC 3.2 in connection with the request for a stay of proceedings while Hall's wife started an action in the California court system. The special master found that respondent's assertion of a possible California action as a basis for a stay request, without any knowledge or reasonable belief that such an action actually had been filed, or could have any legal effect on the New Jersey court proceedings, clearly violated RPC 3.1 and RPC 3.2.

The special master found, however, that the OAE had not proven that respondent's positions concerning the production of the CIS and tax returns violated RPC 3.1 or RPC 3.2. The special master found credible respondent's expert, who testified that respondent had a factual and legal basis to make these arguments. Further, he found credible respondent's testimony regarding his previous litigation experience, and his testimony that (1) he advised his client to comply with the court's orders; and (2) he submitted documents immediately upon receipt from the client. The special master did not, however, square his finding in this regard with the 2014 Appellate Division determination.

With respect to count two, the special master determined that respondent violated RPC 8.2(a) by endorsing Hall's certifications, which contained baseless accusations against a sitting judge. The multitude of accusations regarding Judge Kirsch's friends, residence, and membership at clubs or synagogues were devoid of any factual support. Nonetheless, respondent incorporated Hall's accusations into his own certifications and writings, as well as his statements at oral argument. The special master did not find a violation of RPC 8.4(d), determining that this violation was subsumed by RPC 8.2(a).

The special master further determined that respondent's filing of numerous motions for recusal and appeals violated RPC 3.1 and RPC 3.2. The special master remarked that, as a basis for the motions, respondent made allegations that he knew or should have known could not be proven or had any basis in fact.

Finally, the special master dismissed the RPC 8.4(d) charge in count three, finding that the OAE failed to show how respondent's threats of litigation against opposing counsel, the Probation Division, and the trial court "needlessly consumed Judge Kirsch's time and thereby wasted judicial resources."

In sum, the special master found three violations of RPC 3.1; four violations of RPC 3.2; one violation of RPC 3.4(e); and one violation of RPC 8.2(a). The special master dismissed one alleged violation of RPC 3.1; one

alleged violation of RPC 3.2; and four alleged violations of RPC 8.4(d). For the totality of respondent's misconduct, the special master recommended an admonition, after considering the gravity of the offenses in both complaints balanced against thirteen letters of good character submitted on behalf of respondent and his previously unblemished disciplinary history.

On March 27, 2020, respondent, through counsel, submitted a brief to us, in which he accepted the recommendation of the special master. Respondent agreed with the special master's determination to dismiss count one in connection with the Segal matter, asserting that he had advanced good faith arguments in support of his legal positions and, in each subsequent filing, had added facts and circumstances as they developed.

With respect to count two, respondent regretted the inclusion of strong language in Segal's certifications accusing opposing counsel of committing "fraud." Respondent conceded that, in hindsight, he should have counseled his client to use more appropriate language in his certification. Nevertheless, respondent disputed the finding of a violation of RPC 3.4(e) (in trial, alluding to a matter that the lawyer does not reasonably believe is relevant or supported by admissible evidence), arguing that the language at issue was contained in a certification, and was not introduced during a trial. In support, respondent cites In the Matter of Sharon Hall, DRB 00-229 (April 11, 2001) (slip op. at 43)

(dismissing the RPC 3.4(e) allegations where statements were contained in a certification to the Appellate Division, not at trial).

Respondent was satisfied with the special master's determination, in connection with count three, that respondent's multiple motions seeking recusals and venue transfers violated RPC 3.1. Respondent maintained that the denial of these applications did not render them frivolous or violative of the RPCs. With the benefit of hindsight, however, respondent conceded he should have countered his client's directives and adjusted the content of the certifications. He claimed that, although his actions might have been misguided, they were a good faith effort to secure a fair hearing for his client.

In connection with the Hall matter, respondent agreed with the special master's dismissal of count one in connection with the filing of Hall's CIS. Respondent contended that his positions were factually and legally sound; that he had instructed his client to follow the orders of the court; and that respondent had filed documents with the court promptly upon receipt from his client. Respondent once again conceded, however, that, with the benefit of hindsight, he recognized that the letter regarding his client seeking recourse in California should have been worded differently. Nevertheless, respondent disagreed with the special master's determination that he had violated RPC 3.1 and RPC 3.2.

Respondent's intention was for the letter to be informative and not declaratory or to be read as seeking some type of affirmative relief.

As to the allegations of count two in the Hall matter, regarding the recusal motions and the subsequent interlocutory appeals, respondent asserted that his client was an attorney who knew his rights and that respondent filed the recusal motions in his behalf, based on Hall's belief that he was being treated unfairly. Respondent noted that the special master agreed that there were good faith bases for filing the motions, but that the failure to remove particular language from the certifications, and not the filing of the motions themselves, violated the RPCs. Respondent recognized that his client's "pontifications" were improper and asserted that he has learned to be a more forceful "gatekeeper." He accepted an admonition in connection with this misconduct.

Finally, respondent agreed with the special master's determination, in count three of the Hall complaint, that he had not violated RPC 8.4(d) in connection with his letter addressing the manner in which Hall's child support should be paid.

In mitigation, respondent reiterated the factors previously presented, adding that he should have made better efforts to limit the contents of his client's certifications. He asserted, however, that his conduct was not dishonest and caused no harm to a client. "The allegations surround the inability of a younger

attorney to stand up to his strong-willed attorney-clients who were fighting to maintain their parental rights."

Finally, respondent pointed out that these events occurred over a decade ago. The ethics proceedings themselves have taken six years. Although he acknowledged the necessity of the process for the system, respondent asserted that it has come at great cost to him, both personally and professionally.

Following a de novo review of the record, we are satisfied that the facts contained in the record clearly and convincingly support the finding that respondent's conduct was unethical. We determine, however, that the special master's dismissal of several alleged violations was incorrect. In our view, the special master overlooked significant portions of this record and failed to appreciate the gravity of respondent's pattern of misconduct in two separate client matters. Respondent's serious misconduct establishes that an admonition falls well short of the mark.

In count one of the Segal matter, respondent's initial conduct was not unethical. Specifically, although the Appellate Division affirmed Judge Farber's dismissal of the IIED complaint, the court's opinion found that respondent's arguments were "objectively reasonable" and that his position was not "facially meritless." The Appellate Division decision also, apparently for the first time, outlined the standard for the evaluation of an IIED claim in connection with a

child custody matter. Based on those standards, respondent filed a motion to amend the IIED complaint which, in turn, the trial court denied as failing to meet the requirements set forth in the Appellate Division's decision. Neither of these filings, thus, equate to unethical conduct.

In December 2010, seven months after the Appellate Division's decision, respondent filed a motion for leave to amend the family part complaint with a charge of IIED. The motion was denied. Seven months later, in July 2011, respondent again sought leave to amend the complaint to include a charge of IIED, and to bring a claim against a therapist for emotional distress for interfering with Segal's relationship with his son. The court found that the motion was brought without "an iota of evidence," was specious, and was filed in bad faith. The Appellate Division affirmed the motion's denial.

Respondent has argued that these motions were brought in good faith. As evidence, he pointed to the fact that each motion contained new facts, based on occurrences over the course of many months between motions. Although each subsequent motions contained additional facts not contained in previous motions, the court opined that the last motion had been brought in bad faith without any evidence. The court also commented that the motions did not align with the Appellate Division's written opinion. The gravity of this conduct is exacerbated by Judge Farber's finding that the overarching bad faith during the

entirety of the proceedings was due to Segal using the matter as a form of economic coercion, evidenced by Judge Farber having awarded a substantial amount of counsel fees to Lynch.

Therefore, in connection with count one of the Segal matter, we find that respondent filed frivolous pleadings and engaged in conduct prejudicial to the administration of justice, in violation of RPC 3.1 and RPC 8.4(d).

Whether respondent also failed to expedite litigation is questionable. Typically, failure to expedite litigation applies to an attorney's action or inaction that delays a proceeding, such as failing to comply with discovery requests. Here, respondent's frivolous motions arguably delayed litigation. Additionally, as stated, once the matters concluded, Judge Farber determined that Segal used the entire litigation as economic coercion against Lynch. Respondent was a party to this misconduct. He asserted that he was simply following his client's wishes, but that is not a defense. An attorney is the gatekeeper and respondent knew or should have known that these motions were frivolous and specious. Based on the totality of his misconduct in the Segal matter, it is difficult to believe that Segal was driving the bus and respondent was just a victim along for the ride.

This matter, however, was a high-conflict case with multiple tracks in multiple courts. It is impossible to account for how much this misconduct could have related to a failure to expedite the litigation, because it occurred alongside

seemingly never-ending motion practice by both parties. Indeed, respondent's motion practice wasted judicial resources, implicating conduct prejudicial to the administration of justice, rather than failure to expedite litigation. Therefore, although we find that, in connection with count one, respondent violated RPC 3.1 and RPC 8.4(d), we determine to dismiss the alleged violation of RPC 3.2 for lack of clear and convincing evidence.

With respect to count two in Segal, both in respondent's reply to Donahue's motion to be relieved as counsel and in respondent's cross-motion, he accused Lynch and Donahue of conspiring to commit a fraud on the court. Respondent attempted to excuse his behavior by asserting that his client insisted on this language. Making matters worse, respondent tried to justify the word "fraud" by denying that it was meant in the legal sense, asserting that it was a synonym for "manipulation." That defense does not pass muster. Respondent's accusations against Lynch and Donahue in this regard, having no foundation in fact, constitute failure to treat all persons involved in the legal process with courtesy and consideration, as well as alluding to a matter not relevant or supported by evidence, in violation of RPC 3.2 and RPC 3.4(e).

Respondent asserted that his language, although regretful, occurred in a certification and not during trial as RPC 3.4(e) requires. In support, he cites our decision in In the Matter of Sharon Hall, DRB 00-229 (April 11, 2001); In re

Hall, 170 N.J. 400 (2002). In that case, although we found egregious violations of many of the same RPCs at issue here, we dismissed the RPC 3.4(e) charge, because the offensive language was contained in a certification to the Appellate Division and, thus, did not occur "in trial."

In In re Geller, 177 N.J. 505 (2003), however, we found an RPC 3.4(e) violation based on language contained in a certification at the trial court level. In finding the violation, we rejected Geller's argument that the conduct did not occur during a trial. In the Matter of Larry S. Geller, DRB 02-467 (May 20, 2003) (slip op. at 35 and 41)

Here, as in Geller, because the certification was submitted to the trial court, not the Appellate Division, it satisfies the "in trial" element of the RPC. Therefore, we find violations of RPC 3.2 and RPC 3.4(e) in connection with count three of the Segal matter.

Similarly, by repeatedly seeking Judge Weisenbeck's recusal and, subsequently, Judge Farber's recusal, respondent acted in bad faith. Further, Judge Farber found Segal's accompanying certifications, to which respondent also certified, to be "obnoxious" and filled with "rank speculation." Respondent participated in hurling serious allegations against several judges, when he knew or should have known that his accusations had no basis in law or fact. Although one or two of these motions might be tolerated as part of the legal process and

zealous advocacy, the sheer volume of these motions – seven motions for recusal, including the motion for reconsideration – and the subsequent appeals, in this context, is offensive and a waste of judicial resources.

Therefore, respondent again violated RPC 3.1, RPC 3.2, and RPC 8.4(d). Although respondent's conduct could be deemed a violation of RPC 8.2(a) (false statements concerning the qualifications of a judge), the complaint did not charge respondent with a violation of that Rule in connection with the Segal matter. Therefore, we did not find such a violation.

In the Hall matter, as detailed in count one, respondent repeatedly filed motions and appeals of Judge Kirsch's order requiring Hall to file a CIS in connection with the motion that his former wife Deborah filed for contributions to their daughter's college expenses. Respondent knew or should have known that his filings were baseless. It became glaringly obvious that both the Court Rules and the PSA required Hall to submit a CIS. Respondent's misconduct in this regard was sufficiently egregious that we find that he was complicit in his client's attempt to undermine Deborah's rights and harass her through vexatious litigation. Arguments to the contrary by respondent and his expert are baseless, simply relitigate the matter, and are belied by the determinations by Judge Kirsch, and more significantly, the Appellate Division, as detailed above.

Further, respondent's endorsement of the position that the matter should be stayed pending Hall's inquiry with the California courts regarding an injunction against the New Jersey court was without merit in fact or law. He admitted having no knowledge of California law, and that he was not aware of any action instituted in California, but only his client's suggestion that they were going to consider it. This was merely the continuation of a pattern of delay and obfuscation by Hall through respondent. Respondent's misconduct in this regard further violated RPC 3.1 and RPC 3.2.

As to count two, respondent repeatedly filed motions and appeals seeking Judge Kirsch's recusal, without any legitimate basis. Respondent again engaged in rank speculation by questioning Judge Kirsch's motives, connections, and biases. Respondent further made misrepresentations that Judge Kirsch had contacted Hall's law office in San Francisco. The voluminous and baseless motions and appeals violated RPC 3.1, RPC 3.2, and RPC 8.4(d). Further, by filing certifications containing baseless and reckless accusations against Judge Kirsch, respondent violated RPC 8.2(a).

Finally, regarding count three, respondent sent letters and filed a motion and certification threatening opposing counsel, a representative of Probation, and the court with lawsuits based on their attempts to enforce the court's orders. This behavior by respondent is indicative of a pattern of rude, disrespectful, and

professionally disgraceful conduct during litigation. Rule 5:7-4A provides that all child support orders must be paid via income-withholding through the Probation Division, unless the parties agree otherwise, or the court finds good cause for an alternate arrangement. Respondent alleged no factual or legal basis for Hall's child support payments to be excluded from this mandatory Rule. Instead, respondent threatened his adversary and a Probation Division employee, instructed Hall's employer to disregard the court order to withhold child support from Hall's income, and filed a frivolous motion to vacate the income-withholding order. In this regard, respondent's conduct wasted judicial resources, yet another violation of RPC 8.4(d).

In sum, we find that respondent violated RPC 3.1 (four counts); RPC 3.2 (four counts); RPC 3.4(e); RPC 8.2(a); and RPC 8.4(d) (four counts). We determine to dismiss the charge that he violated RPC 3.2 in connection with count one of the Segal matter. The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct

This matter is remarkably similar to In re Geller, 177 N.J. 505 (2003), where a reprimand was imposed on an attorney who filed baseless motions accusing two judges of bias against him; failed to expedite litigation and to treat all persons in the litigation process 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," called his adversary a thief, and stated that the opposing party was "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;" violations of RPC 3.1, RPC 3.2, RPC 3.4(c), RPC 3.4(e), RPC 8.2(a), and RPC 8.4(d). 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.

Geller involved similar misconduct, most of the same RPC violations, and also arose in the midst of child custody litigation. In some instances, Geller's misconduct was more egregious than the instant matter. In mitigation, however, we considered that Geller was admitted to the bar in 1980 and had no disciplinary history. His actions were limited to an emotional child custody and visitation matter in which he represented himself, and in the ethics matter stemming from that case. There were no complaints about his representation of any clients. In the Matter of Larry S. Geller, DRB 02-467 (May 20, 2003) (slip op. at 47).

Although it is debatable whether respondent's misconduct was more or less egregious than Geller's, respondent's misconduct did not occur in an emotional matter involving his own family where he appeared as a pro se litigant. Rather, respondent was representing clients in matters where he should have been more emotionally detached than Geller. In other words, he should have been the "gatekeeper."

Additionally, a closer look at respondent's overall pattern of misconduct and his baseless, scorched-earth approach to litigation, on behalf of his clients, to obfuscate their financial obligations in matrimonial matters, is at a minimum, disturbing. Here, two clients, residing outside of New Jersey, were using New Jersey courts to obfuscate their responsibilities or to otherwise frustrate or coerce their former spouses, all with respondent's assistance.

Moreover, the grievances in this matter were not filed by angry, disgruntled clients or adversaries embroiled in matrimonial litigation, seeking revenge or some sort of remuneration from an attorney involved in the process. Similar to Geller, the judges handling these matters referred respondent to the OAE, and, years later, testified against respondent at his disciplinary hearing. Further, Judge Farber determined, in the Segal matter, that Segal was using the litigation as economic coercion against Lynch, and the Appellate Division issued a harsh opinion in the Hall matter. Respondent bears responsibility in all

of that.

In more egregious cases, suspensions have been imposed on attorneys who have filed frivolous litigation and engaged in conduct prejudicial to the administration of justice. 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).

These cases, however, tend to deal with frivolous lawsuits, which is not the case here. Rather, respondent was involved in otherwise legitimate cases in which he engaged in frivolous and vexatious motion practice. Therefore, based on the totality of the violations and the pattern of misconduct, especially the repeated attacks on judges in order to manipulate and delay, the baseline discipline for respondent's misconduct lies between a censure and short-term suspension.

In mitigation, respondent offered his community service as well as thirteen character letters. Moreover, he has an otherwise unblemished record in twenty-two years at the bar. Furthermore, a significant amount of time has lapsed since the misconduct occurred.

Although respondent's misconduct is serious, the aforementioned mitigation, including the passage of time, is sufficient to keep the appropriate discipline to a censure.

Vice-Chair Gallipoli and Members Joseph and Zmirich voted for a three-month suspension. Member Hoberman was recused.

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: 
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

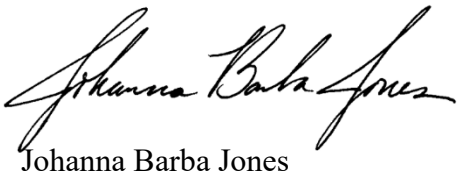
In the Matter of Steven Resnick
Docket No. DRB 20-101

Argued: October 15, 2020

Decided: February 25, 2021

Disposition: Censure

Members	Censure	Three-Month Suspension	Recused	Did Not Participate
Clark	X			
Gallipoli		X		
Boyer	X			
Hoberman			X	
Joseph		X		
Petrou	X			
Rivera	X			
Singer	X			
Zmirich		X		
Total:	5	3	1	0



Johanna Barba Jones
Chief Counsel