

The OAE asserted that respondent was found guilty of having violated the equivalents of New Jersey RPC 1.15(d) (failing to comply with the recordkeeping provisions of R. 1:21-6); RPC 3.1 (engaging in frivolous litigation); RPC 3.4(c) ((knowingly disobeying an obligation under the rules of a tribunal); RPC 4.4(a) (engaging in conduct that has no substantial purpose other than to embarrass, delay, or burden a third person); RPC 8.1(b) (two instances – failing to cooperate with disciplinary authorities); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to grant the motion for reciprocal discipline and to impose a one-year suspension, with a condition.

Respondent earned admission to the New Jersey bar in 1994 and to the Pennsylvania bar in 1993. He maintains an office for the practice of law in Huntingdon Valley, Pennsylvania and has no prior discipline in New Jersey.

On December 12, 2018, the Disciplinary Board of the Supreme Court of Pennsylvania filed a petition instituting formal disciplinary charges against respondent based on two ethics grievances filed against him. The facts of these matters are taken from a Joint Petition in Support of Discipline on Consent

Under Pa.R.D.E. 215(d) executed by respondent and the Pennsylvania Office of Disciplinary Counsel (the ODC).

On October 16, 2017, respondent filed a civil complaint in the Superior Court of New Jersey, Law Division, Atlantic County, captioned Joshua Fenwick, individually and on behalf of Pro-NRG, LLC, a New Jersey Corporation v. Eddie Dukhman, Tania Patrino, Helen Khorosh, Joseph Rasa, Sante Pur Solutions, LLC, Brandon Jacobs, Brayden Enterprises, LLC, and John Doe 1-10, ABC Production Company and Daymond John.

Respondent admitted that the complaint failed to set forth viable claims against defendant Daymond John. Further, respondent was aware that the complaint against John was frivolous, contained no basis in law and fact, and that he had no substantial purpose to file the complaint against John other than to embarrass, delay, or burden him.

After receiving the complaint, Lawrence Fox, Esq., who was New York counsel for defendant John, communicated with respondent via telephone. After Fox explained to respondent the lack of nexus or claim between respondent's clients and John, respondent asked him to put his position in writing. Thus, by letter dated December 4, 2017, Fox detailed the reasons why the complaint failed to state a claim against John and cautioned that John would file a motion to

dismiss if respondent did not amend the complaint to remove John as a defendant by December 8, 2017.

Respondent received the letter and informed Fox that he would discuss the matter with his client at their December 13, 2017 meeting; respondent further agreed to send a stipulation to Fox extending, for forty-five days, John's time to respond to the complaint.

By letter dated December 15, 2017, New Jersey attorney Lisa Steirman Harvey, Esq. informed respondent that she represented John, and requested that respondent execute a stipulation to extend the time to answer the complaint, which she had enclosed with the letter. Respondent failed to acknowledge the letter and ignored subsequent e-mail messages and telephone calls from Harvey inquiring as to the status of the stipulation.

On December 22, 2017, Harvey corresponded with respondent via e-mail and expressed her frustration at respondent's failure to reply to John's requests to be dismissed from the complaint, as well as respondent's failure to execute the stipulation. Harvey further notified respondent of her intention to file a motion to dismiss, assert claims for counsel fees, and seek sanctions for frivolous litigation. Respondent received Harvey's December 22, 2017 correspondence, but failed to reply.

Thereafter, by letter dated January 3, 2018, Harvey notified respondent that her firm would be seeking all relief available against respondent and his client for frivolous litigation, pursuant to R. 1:4-8 and N.J.S.A. § 2A:15-59.1. Respondent received Harvey's January 3, 2018 letter, but failed to reply.

On January 26, 2018, Harvey filed a motion to dismiss the complaint as to defendant John for failure to state a claim upon which relief can be granted. Respondent failed to reply to Harvey's motion.

Therefore, by order dated March 2, 2018, the Honorable Mary J. Siracusa, J.S.C. granted Harvey's motion and (1) dismissed the complaint against John for failure to state a viable claim, and (2) permitted John to file a subsequent application against respondent and his client for frivolous litigation and bad faith dealings, pursuant to R. 1:4-8 and N.J.S.A. § 2A:15-59.1.

On March 22, 2018, Harvey filed a motion for counsel fees and sanctions against respondent and his client based on frivolous litigation and bad faith, pursuant to R. 1:4-8 and N.J.S.A. § 2A:15-59.1. On April 9, 2018, four days after it was due, respondent filed opposition to the motion.

By order dated April 13, 2018, Judge Siracusa granted Harvey's motion; found respondent in violation of the frivolous litigation statute; determined to sanction respondent; ordered respondent to pay Harvey \$3,500 to cover a portion of attorneys' fees and other expenses incurred as a result of the frivolous

litigation; and explained that the court had imposed the sanction to “deter repetition of [respondent’s] conduct.”

On June 5, 2018, Harvey filed a motion to enter judgment, to which respondent failed to reply. On July 6, 2018, Judge Siracusa entered an order finding respondent in contempt of court for violating the April 13, 2018 order. Judge Siracusa ordered respondent to pay the \$3,500 within ten days, reduced to judgment the sanctions against respondent, and directed respondent to pay John’s attorneys’ fees and costs of \$1,332.50 within ten days.

Respondent was served with the July 6, 2018 order but, as of the date of the Joint Petition, had failed to pay any sanctions, counsel fees, or costs in connection with the order.¹

On June 27, 2018, the ODC sent a DB-7 Request for Statement of Respondent’s Position (DB-7) to respondent by certified mail, which respondent received on July 2, 2018.² When respondent failed to reply to the DB-7, the ODC cautioned him, by letter dated August 3, 2018, that the ODC could seek discipline against him for a violation of Pa.R.D.E. 203(b). Respondent received the August 3, 2018 letter, but failed to reply.

¹ As of the date of oral argument in this matter, April 15, 2021, respondent had not yet paid the sanctions.

² In Pennsylvania, a DB-7 warns an attorney of a possible violation of the RPCs and requires an explanation of the violations alleged. It is, thus, akin to a New Jersey request to reply to an ethics grievance.

Respondent stipulated in the Joint Petition that his conduct violated New Jersey RPC 3.1; RPC 4.4(a); RPC 8.4(d); as well as Pa.R.D.E. 203(b)(7) (failure to respond, without good cause, to disciplinary counsel's request under Disciplinary Board Rule § 87.7(b) for a statement of the respondent's position), which is the equivalent of New Jersey RPC 8.1(b).

On December 18, 2013, respondent deposited \$372,061.53 belonging to Joseph J. Spinelli, III in his attorney trust account at PNC Bank (PNC ATA). From December 2013 through October 2015, he held the funds in his PNC ATA. Although required to do so, respondent failed to identify his PNC ATA in connection with his Pennsylvania Attorney Annual Fee forms filed from 2014 through 2017.

On May 9, 2014, Spinelli passed away in Montgomery County, Pennsylvania. On December 11, 2014, respondent made an electronic disbursement from his PNC ATA in the amount of \$26,367.57 to a recipient not set forth in the record.

On March 19, 2015, respondent filed, in Montgomery County, a petition for probate and grant of letters for the Estate of Spinelli.

On April 6, 2015, respondent deposited a check from TD Bank, in the amount of \$77,000, in his PNC ATA.

At some point, respondent provided a check to the executor of the Spinelli estate, in the amount of \$204,484.58, drawn on his PNC ATA. On September 24, 2015, the check was presented to PNC; however, respondent's PNC ATA balance was only \$6,770.57 and, thus, was insufficient to cover the check.³

Based on the above, by letter dated October 7, 2015, the Pennsylvania Lawyers' Fund for Client Security (the PA Fund) requested that respondent provide an explanation and documentation concerning the shortfall in his PNC ATA. Respondent received the October 7, 2015 letter, but failed to reply. The PA Fund sent respondent a second letter, dated October 23, 2015, and cautioned respondent that, if he failed to reply, it would refer the matter to the ODC. Again, respondent received the October 23, 2015 letter, but failed to reply.

By letter dated December 7, 2015, the ODC directed respondent to produce copies of all required records for his PNC ATA, as mandated by Pa. RPC 1.15(c). By cover letter dated December 31, 2015, respondent sent the ODC partial and incomplete bank records for his PNC ATA.

On January 8, 2016, the ODC informed respondent that the documents he had provided were insufficient. That same day, respondent submitted additional, but still incomplete, documentation. Again, on February 17, 2016, the ODC

³ It is not clear from the record whether the check to the Spinelli estate was presented and dishonored.

informed respondent that the records remained incomplete, and requested that he provide all required records for his PNC ATA.

On March 4 and March 17, 2016, respondent provided additional documentation. Thereafter, on April 13, 2016, an ODC auditor contacted respondent by telephone and identified the records that respondent had yet to supply concerning his PNC ATA, including: nine of the eighteen payments respondent issued, three deposited items, and records of three withdrawals. On May 4, 2016, the ODC auditor followed up with respondent via telephone and inquired about the status of the documents he had requested on April 13. Respondent represented to the ODC auditor that he would deliver the requested documents by May 9, 2016. However, respondent failed to deliver the documents, and subpoenas ultimately were issued to PNC Bank and to respondent.

The subpoena commanded respondent to appear at the ODC's office on August 18, 2016, with records for his PNC ATA, including records of the December 11, 2014, \$26,367.57 electronic disbursement from his PNC ATA, plus deposit slips and records of the source for the April 6, 2015 deposit of \$77,000, and an October 7, 2015 deposit of \$6,800. Respondent appeared pursuant to the subpoena, however, he failed to provide any documentation in connection with the transactions under scrutiny.

On October 12, 2018, the ODC issued a DB-7, which cautioned respondent that his failure to reply without good cause would be grounds for discipline under Pa.R.D.E. 203(b)(7), and further warned respondent that the ODC may seek to impose such discipline. The ODC sent the DB-7 to respondent via certified mail, which respondent received on October 15, 2018. Respondent failed to reply to the DB-7.

Although the formal complaint charged respondent with a violation of Pa. RPC 8.4(c) in connection with the Spinelli matter, which rule is equivalent to New Jersey RPC 8.4(c), that charge was not included in the Joint Petition, and therefore, respondent did not stipulate to it. Respondent stipulated in the Joint Petition that his conduct violated Pa. RPC 1.15(c); Pa.R.D.E. 219(d)(iii) (for conduct prior to April 12, 2016); Pa.R.D.E. 219(d)(1)(iii) (for conduct after April 12, 2016); and Pa.R.D.E. 203(b)(7).

On April 29, 2019, respondent and the ODC filed the Joint Petition. Respondent admitted the facts set forth above and stipulated that his misconduct in the two matters constituted violations of the Pennsylvania Rules of Professional Conduct, the Pennsylvania Rules of Disciplinary Enforcement, and the New Jersey Rules of Professional Conduct. In connection with the Fox matter, respondent stipulated to violating New Jersey RPC 3.1; RPC 4.4(a), and RPC 8.4(d), as well as Pa.R.D.E. 203(b)(7). In the Spinelli matter, respondent

stipulated to violating Pa. RPC 1.15(c) (equivalent to New Jersey RPC 1.15(d) and R. 1:21-6(c)(1)); Pa.R.D.E. 219(d)(1)(iii) (equivalent to R. 1:20-1(b) and R. 1:21-6(a)(2)); and Pa.R.D.E. 203(b)(7) (equivalent to New Jersey RPC 8.1(b)).

In the Joint Petition, respondent and the ODC cited several mitigating factors including respondent's lack of disciplinary history in over twenty-five years as a member of the bar, respondent's admission of misconduct and consent to the term of suspension, and respondent's cooperation with the ODC's investigation and remorse for his misconduct.

On June 20, 2019, the Supreme Court of Pennsylvania granted the Joint Petition and suspended respondent for one year and one day. By letter dated July 12, 2019, respondent reported his Pennsylvania suspension to the OAE. He remains suspended in Pennsylvania.

In its motion papers, the OAE asserted that a six-month to one-year suspension was the appropriate quantum of reciprocal discipline for the totality of respondent's misconduct. In support of its position, the OAE cited In the Matter of Rachel H. Nash, DRB 17-235 (December 27, 2017), so ordered 232 N.J. 362 (2018), discussed in detail below. In this case, the OAE suggested that a six-month to one-year suspension would be appropriate, based on respondent's admitted misconduct. The OAE also requested that respondent, as a condition

of reinstatement, be required to produce the outstanding financial records in connection with the Spinelli matter to the OAE and the Pennsylvania ODC.

The OAE noted, in mitigation, that respondent has no disciplinary history. In aggravation, the OAE emphasized that respondent has failed to pay any sanctions or attorneys' fees, as ordered in Judge Siracusa's April 13 and July 6, 2018 orders, and has not fully complied with the ODC's directives to produce financial records.

Following a review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3). In Pennsylvania, the standard of proof in attorney disciplinary matters is that the "[e]vidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof . . . is clear and satisfactory." Office of Disciplinary Counsel v. Kissel, 442 A. 2d 217 (Pa. 1982) (citing In re Berland, 328 A.2d 471 (Pa. 1974)). Moreover, "[t]he conduct

may be proven solely by circumstantial evidence.” Office of Disciplinary Counsel v. Grigsby, 425 A. 2d 730 (Pa. 1981) (citations omitted).

We note that, in his Pennsylvania proceedings, respondent stipulated to his ethics violations and the quantum of discipline to be imposed in that jurisdiction.

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

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

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

impose a one-year suspension, substantially the same quantum of discipline imposed in Pennsylvania.

Specifically, in the Fox matter, respondent violated RPC 3.1 and RPC 8.4(d) by filing frivolous litigation against defendant John in the Atlantic County civil complaint, despite knowing that he did not have viable claims against John. Although John's counsel warned respondent that they would be moving to dismiss John as a defendant from the complaint and provided respondent with numerous opportunities to remove John from the action, respondent failed to do so, and caused an undue burden on John and his attorneys. Moreover, because of respondent's inaction, Harvey was forced to file numerous motions, which unduly burdened the judge and the court system and delayed the administration of justice. The motion to dismiss, the entry of the judgment, and the contempt of court order expended, unnecessarily, the resources of the court.

In the Fox matter, the OAE further charged respondent with having violated RPC 3.4(c). We determine that the facts set forth in the record support this charge. By order dated April 13, 2018, Judge Siracusa ordered respondent to pay Harvey \$3,500 to cover a portion of attorneys' fees as a direct result of respondent's violation of New Jersey Rules and statutes. Judgment was entered against respondent on June 5, 2018, and respondent was found in contempt of court by order dated July 6, 2018. However, as of the date this motion was filed,

respondent has failed to comply with the judge's orders. By failing to adhere to Judge Siracusa's orders, respondent violated RPC 3.4(c).

Finally, in the Fox matter, respondent violated RPC 8.1(b) by failing to reply to the DB-7 sent by the ODC concerning Fox's grievance.

In the Spinelli matter, respondent violated RPC 1.15(d) by mismanaging his PNC ATA account, which resulted in a deficiency that caused the account to be overdrawn. The original Spinelli deposit of \$372,061.53 was made in respondent's PNC ATA in December 2013. When, in September 2015, respondent issued to the executor of the Spinelli estate a check for \$204,484.58 drawn on his PNC ATA, the balance of the account was only \$6,770.57 – woefully insufficient to cover the check. Clearly, respondent mismanaged the funds he was required to hold for the estate. The current record begs the question of what respondent did with the Spinelli funds, and whether a knowing misappropriation occurred.

However, in the Spinelli matter, respondent did not stipulate to violating RPC 8.4(c), and, in our view, the record lacks clear and convincing evidence to support such a finding. Based on the record before us, there are no facts to support, by clear and convincing evidence, a charge of dishonesty, fraud, deceit, or misrepresentation. Rather, the current record supports findings against respondent concerning his PNC ATA stemming from negligence and

miscalculations, as evidenced by the RPC 1.15(d) charge. To date, respondent has not been charged with knowing misappropriation. Therefore, we determine to dismiss this charge.

Finally, in the Spinelli matter, respondent violated RPC 8.1(b) by failing to reply to the DB-7 sent by the ODC concerning the grievance and failing to provide documentation requested by the ODC on more than one occasion.

In sum, we find that respondent violated RPC 1.15(d); RPC 3.1; RPC 3.4(c); RPC 4.4(a); RPC 8.1(b) (two instances); and RPC 8.4(d). We determine to dismiss the RPC 8.4(c) allegation charged in the Spinelli matter. The sole issue left for determination is the proper quantum of discipline for respondent's violations.

Suspensions have been imposed on attorneys who have filed frivolous litigation and engaged in conduct prejudicial to the administration of justice, including when the attorney additionally violated RPC 3.2, RPC 3.4(c), and RPC 8.2(a). See, e.g., In re Shearin, 166 N.J. 558 (2001) (Shearin I) (one-year suspension imposed, in a reciprocal discipline matter, where the attorney filed two frivolous lawsuits in a property dispute between rival churches; a court had ruled in favor of one church and enjoined the attorney's client/church from interfering with the other's use of the property; the attorney then violated the injunction by filing the lawsuits and seeking rulings on matters already

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

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

Generally, a reprimand is imposed for recordkeeping deficiencies that result in the negligent misappropriation of client funds. See, e.g., In re Mitnick, 231 N.J. 133 (2017) (as the result of poor recordkeeping practices, the attorney negligently misappropriated client funds held in his trust account; violations of RPC 1.15(a), and RPC 1.15(d); significant mitigation included the attorney's lack of prior discipline in a thirty-five-year legal career) and In re Rihacek, 230

N.J. 458 (2017) (attorney was guilty of negligent misappropriation of client funds held in his trust account, various recordkeeping violations, and charging mildly excessive fees in two matters; no prior discipline in thirty-five years).

For violations of RPC 4.4(a), the quantum of discipline has ranged from an admonition to a censure. See, e.g., In the Matter of Beverly Giscombe, DRB 19-326 (February 24, 2020) (admonition for violation of RPC 3.2 (failure to treat with courtesy and consideration all persons involved in the legal process) and RPC 4.4(a) for respondent who walked out of courtroom after the clerk gave her a future court date she could not attend, and respondent called her a “fat a- -”) and In the Matter of Eric Andrew Feldhake, DRB 14-177 (December 12, 2014), so ordered, 222 N.J. 10 (2015) (censure for violating RPC 1.4(d) (failure to advise a client of the limitations of the lawyer’s conduct, when a client expects assistance not permitted by the Rules), RPC 4.4(a), and RPC 8.4(d) for the improper issuance of a subpoena with the purpose of circumventing a judge’s order).

Admonitions typically are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In the Matter of Michael C. Dawson, DRB 15-242 (October 20, 2015) (attorney failed to reply to repeated requests for information from the district ethics committee investigator regarding his representation of a client in three criminal

defense matters, a violation of RPC 8.1(b)); In re Gleason, 220 N.J. 350 (2015) (attorney failed to file an answer to the formal ethics complaint and ignored the district ethics committee investigator's multiple attempts to obtain a copy of his client's file, a violation of RPC 8.1(b)); the attorney also failed to inform his client that a planning board had dismissed his land use application, a violation of RPC 1.4(b)); and In the Matter of Raymond A. Oliver, DRB 12-232 (November 27, 2012) (attorney failed to submit a written, formal reply to the grievance and a copy of the filed pleadings in the underlying case, despite repeated assurances that he would do so, a violation of RPC 8.1(b)).

At oral argument, respondent requested that we impose any term of suspension retroactively to the date that he reported his Pennsylvania misconduct to the OAE – July 12, 2019. He based this request on the representation that he voluntarily ceased practicing law in New Jersey when he entered into the consent order to the one-year-and-one-day suspension in Pennsylvania and reported his Pennsylvania discipline to the OAE. At the time of oral argument, respondent indicated that he was current with his administrative requirements to practice law in New Jersey, and that, although his future plans do not include managing a firm, he hopes to apply to be general counsel for the title insurance company that employs him.

When asked if he would be willing to provide to the OAE his financial records, respondent answered that he had “turned everything over that [he] had to the Pennsylvania . . . Board,” that he had been unable to recreate his records, due to his poor recordkeeping, and that he has no other records to provide to the OAE.

Here, respondent’s misconduct in the Fox matter alone warrants a term of suspension. Respondent’s refusal to remove John as a defendant from the civil action, when respondent knew that the claims against him were frivolous, combined with his refusal to obey Judge Siracusa’s orders, including an order finding him in contempt of court, are similar to the misconduct of the attorney in Nash, cited by the OAE.

Nash, who was admitted to the New Jersey bar in 2000 and had no prior New Jersey discipline, received a two-year suspension for violations of RPC 3.1; RPC 3.2 (failure to treat with courtesy and consideration all persons involved in the legal process); RPC 3.4(c); RPC 4.4(a); RPC 8.4(c); and RPC 8.4(d), notably similar to the charges against respondent in this case. In that case, Nash’s misconduct occurred over three civil actions in New York, and “involved contumacious and fraudulent conduct that demanded the dedication of substantial judicial resources over a period of ten years.” Nash, DRB 17-235 (slip op. 22). Nash filed four meritless motions, fabricated documents, and cast

aspersions on the trial judge and opposing counsel. Nash, DRB 17-235 (slip op. 26, 32). We described Nash's behavior as follows: "Respondent behaved outrageously. Although she was inexperienced at the time, her conduct was so out of the bounds of human decency and professionalism that we cannot allow her inexperience to excuse or otherwise mitigate that conduct." Nash, DRB 17-235 (slip op 32).

Although respondent's misconduct is not as egregious as that addressed in Nash, we find that a suspension is warranted. In the aggregate, the two matters in Pennsylvania include serious misconduct, and both include respondent's failure to comply with disciplinary investigations into his misconduct and financial records.

On balance, we determine to impose a one-year suspension. We deny respondent's request that the suspension be retroactive. His claimed voluntary withdrawal from the practice of law in Pennsylvania and New Jersey does not provide a basis to impose his suspension retroactively, and to do so would amount to no meaningful sanction on respondent, in New Jersey, for his misconduct. See In re Asbell, 135 N.J. 446, 459 (1994) (noting that respondent's voluntary suspension was not pursuant to Court order, and, therefore, would not be considered a mitigating factor in the disciplinary proceeding) (citing In re Farr, 115 N.J. 231, 238 (1989) (noting that if respondent seeks to assert, as a

mitigating factor to the imposition of discipline, that he has been serving a suspension, the suspension must have been imposed by Court order, and not through the voluntary action of respondent, because in cases of a voluntary suspension, the Court is unable to assess and supervise the suspension)).

Additionally, as requested by the OAE, we must address respondent's failure to provide enumerated financial records regarding his PNC ATA. Specifically, we impose a condition on respondent that, as a condition precedent to any reinstatement petition, he first provide to the OAE any documentation and/or financial records that he provided to Pennsylvania's ODC, and any further documentation the OAE directs him to produce. The OAE requires respondent's full cooperation to determine whether the misappropriation of entrusted funds occurred.

Member Campelo was absent.

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
Hon. Maurice J. Gallipoli, A.J.S.C. (Ret.),
Chair

By: /s/ Timothy M. Ellis
Timothy M. Ellis
Acting Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Brian J. Smith
Docket No. DRB 20-318

Argued: April 15, 2021

Decided: July 28, 2021

Disposition: One-Year Suspension

<i>Members</i>	One-Year Suspension	Absent
Gallipoli	X	
Singer	X	
Boyer	X	
Campelo		X
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Total:	8	1

/s/ Timothy M. Ellis

Timothy M. Ellis
Acting Chief Counsel