Supreme Court of New Jersey
Disciplinary Review Board
Docket Nos. DRB 21-231 and 21-232
District Docket No. XI-2019-0005E

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| In the Matter of | : |
| Kenneth James Rosellini | : |
| An Attorney at Law | : |

Decision

Argued: January 20, 2022

Decided: April 20, 2022

Isabel K. McGinty appeared on behalf of the Office of Attorney Ethics.

Respondent appeared pro se.

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

These matters were before us, on October 21, 2021, as appeals filed by the grievant and the Office of Attorney Ethics (the OAE) from the determination of the District XI Ethics Committee (the DEC) to dismiss the ethics complaint. We determined to treat the appeals as presentments and bring them on for oral

argument. The formal ethics complaint charged respondent with violations of RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal) and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).[1]

For the reasons set forth below, we determine to impose a three-month suspension, with a condition.

Respondent earned admission to the New Jersey bar in 1998 and to the New York bar in 1999. He is a sole practitioner in Clifton, New Jersey and has no disciplinary history.

Turning to the facts of the instant matter, Linda Doblin and Michael Doblin[2] were married in 1994. Doblin v. Doblin, 2012 N.J. Super. Unpub. LEXIS 1501 (App. Div. 2012). Their son was born in 1996. Id. In 1997, the pair separated, and in August 1998, Michael filed a complaint for divorce. Id. at 2.

The divorce and post-judgment proceedings between the Doblins have been protracted and contentious. The litigation surrounding the couple's three-year-long marriage has lasted more than twenty years, has prompted the issuance of many court orders, and, prior to respondent's involvement in the case, which

[1] The formal ethics complaint also charged respondent with a violation of RPC 8.1(b) (failing to cooperate with disciplinary authorities). However, at the beginning of the November 20, 2020 ethics proceeding, with the consent of respondent, the presenter filed a motion to dismiss that charge, which motion the panel chair granted.

[2] Because the Doblins share a last name, we refer to them by first names for clarity.

commenced in 2016, had resulted in a 2012 unpublished Appellate Division decision. Id. at 2-5.

A summary of the Appellate Division's 2012 findings is helpful in illustrating the claims at issue in respondent's ethics matter. Although Michael filed a complaint for divorce in 1998, the judgment of divorce was not finalized until October 2001. Id. at 2. Following the judgment of divorce, the Doblins agreed to arbitrate their remaining disputes, including alimony and the validity of a prenuptial agreement, which were the most controversial. Id.

On December 31, 2003, the arbitrator issued a determination awarding Linda alimony that was characterized as "permanent," but also subject to review after three years. Id. at 3. The Superior Court confirmed the arbitration award and the subsequent, supplemental arbitration decision, which clarified the arbitrator's decision. Id. at 4.

Nonetheless, the Doblins continued to litigate. In 2005, the Superior Court entered an order modifying Linda's alimony award based on changed circumstances. Id. Then, on December 20, 2006, the Superior Court entered a consent order incorporating a settlement agreement reached by the couple during a December 12, 2006 court appearance. Among other issues, the consent order addressed custody and visitation regarding the Doblins' child. Importantly, paragraph eighteen of the order stated that "the hand written agreement reached

between the parties and annexed hereto is incorporated herein by reference. Any inconsistencies in this Order and the annexed hand written agreement shall be resolved in favor of the hand written agreement."

During her December 12, 2006 Superior Court appearance, Linda testified that she recognized the handwritten settlement agreement; that she and her attorney had reviewed each provision; that she believed the agreement was fair and equitable under the circumstances; that she waived her right to a plenary hearing; and that she chose to enter into the agreement in lieu of a trial. Each of the parties, along with their respective counsel, initialed each of the provisions of the settlement agreement and executed the document as a whole.

Subsequently, in 2007, the parties reinstituted litigation to further address alimony and several other issues. The 2007 litigation resulted in a court order requiring Linda to pay $53,182 in counsel fees. Doblin, 2012 N.J. Super. Unpub. at 4. Linda did not appeal that order. In 2008, Linda filed a motion to enforce litigant's rights, citing Michael's failure to make alimony or child support payments.[3] Id. The Superior Court denied her motion and ordered Linda to pay child support arrears. Id. One year later, in 2009, Linda filed another motion, pursuant to R. 4:50-1, alleging misapplication and misconstruction of law and

[3] Michael had ceased making alimony payments on December 31, 2006, which was the conclusion of the three-year, permanent alimony period the arbitrator granted. Doblin, at 7.

fact, and seeking to enforce litigant's rights and to set aside the 2008 Superior Court order. Id. at 4-5. The Superior Court again denied her motion and Linda later appealed both the 2009 denial and the 2008 order. Id. at 5.

In her appeal, Linda asserted that she was still entitled to alimony. Id. Conversely, Michael argued that alimony had terminated after three years; that Linda's appeal was out of time; that Linda never met her burden of proof to establish an ongoing need for alimony; and that Linda had acted in bad faith throughout the more than ten years of litigation (to that point). Id.

On June 26, 2012, the Appellate Division determined that Linda's untimely motion for reconsideration was filed almost six months after the Superior Court entered the October 2008 order and that her untimely notice of appeal was filed almost ten months after the Superior Court's October 2008 order.[4] Linda's appeal of the Superior Court's June 2009 order was also deemed out of time. Id. at 5-6. The Appellate Division further determined that Linda's arguments regarding alimony were without merit, finding that, after Michael ceased alimony payments, in December 2006, the burden shifted to Linda to demonstrate an ongoing need for alimony. Id. However, for nearly two years after Michael stopped paying alimony, Linda did not raise the issue of ongoing

[4] R. 4:49-2 requires a motion for reconsideration to be filed within twenty days after the issuance of the order and R. 2:4-1(a) requires an appeal from a final judgment to be filed within forty-five days after the entry of the order.

alimony – despite being actively engaged in motion practice during the same period. Id. at 7-12. Thus, the Appellate Division concluded that Linda's appeal was untimely and should be dismissed. Id. at 7. Linda did not appeal the Appellate Division's 2012 decision.

Four years later, sometime in 2016, respondent came to represent Linda, pro bono, in a foreclosure action. While assisting Linda with the foreclosure, at Linda's request, respondent reviewed her divorce proceedings and concluded that, in his view, Linda's signature had been forged on a consent order and that a fraud had been perpetrated upon the Superior Court; he maintained that the fraud invalidated the orders which followed the consent order. Based on these unilateral conclusions and what he termed "new evidence of fraud upon the court," respondent filed a motion, pursuant to R. 4:50-1, to vacate and/or declare void orders that had been entered in the Doblin case.

On June 10, 2016, while appearing before the Superior Court on his motion, the judge asked respondent to explain the basis for the motion to vacate, filed ten years after the proceedings Linda was seeking to disturb. In reply, respondent asserted that Linda suffered from disabilities which had precluded her from timely reviewing the orders.

Counsel for Michael opposed respondent's motion and claimed that respondent was approximately the twenty-third attorney to represent Linda in

the divorce proceedings, and that the December 2006 consent order was entered following negotiations with Linda's then-counsel. Counsel for Michael further asserted that, when he received respondent's motion, he sent him a letter warning that the motion was frivolous and that, if respondent did not withdraw the motion, he intended to seek counsel fees, but that the warning had been to no avail. Consequently, counsel for Michael opposed the motion and filed a cross-motion for the imposition of sanctions, based upon the Superior Court's October 24, 2008 order[5] requiring any future counsel for Linda to pay counsel fees should the court find a motion to be frivolous.

On June 10, 2016, after considering the arguments of counsel, the Superior Court determined that respondent's motion was frivolous because the arguments respondent made had already been "litigated ad nauseam." The judge acknowledged respondent's claim that there had been fraud, but found that respondent:

> has not brought any new facts or information not previously known to [Linda] in making her application. The Court agrees with [Michael] that [Linda's] application here is merely an attempt to relitigate matters that have been previously decided by this Court as well as the Appellate Court – the Appellate Division, as far back as 2008. I'm sorry, 2012 with regard to the Appellate Division decision.

[5] The judge also carried over the same provision in an order he entered on July 13, 2012 in the Doblin litigation.

[R-A at 31-32.][6]

The judge further expressed his doubts that the Superior Court could overturn the prior orders following the Appellate Division's 2012 decision affirming those orders. Having found respondent's motion frivolous, the Superior Court ordered respondent to pay $5,087.50 in counsel fees. Thereafter, respondent appealed the June 10, 2016 Superior Court order denying his motion to vacate and assessing counseling fees against him.

The Appellate Division considered respondent's arguments and affirmed the Superior Court's findings. Doblin v. Doblin, 2017 N.J. Super. Unpub. LEXIS 1683 (App. Div. 2017). After extensively citing its own 2012 decision, the Appellate Division found that, despite years of active litigation, in 2016, Linda, for the first time, claimed that she never agreed to the December 12, 2006 consent order and that her signature had been forged. Id. at 5. Further, the Appellate Division affirmed the Superior Court's determination that Linda's claims were barred by res judicata, because she failed to allege any new facts either unknown to her or not previously before the court. Id. at 9. Although it

[6] "R-A" refers to the transcript of the Doblin hearing, dated June 10, 2016.
"J" refers to the joint exhibit admitted during the ethics proceeding.
"1T" refers to the transcript of the ethics hearing, dated November 20, 2020.
"HPR" refers to the hearing panel report, dated March 31, 2021.
"HPD" refers to the dissenting opinion attached to the HPR.
"Rb" refers to respondent's December 1, 2021 brief to us.

was satisfied that Linda's claims were barred by res judicata, the Appellate Division nevertheless:

> address[ed] her claims of fraud upon the court to highlight why the trial judge's imposition of counsel fees as a sanction for frivolous litigation was appropriate. [. . .] Here, [Linda] had over a decade to bring the alleged fraud to the court's attention, and in fact litigated numerous issues before the trial court, and in one instance, an appeal before this court, but never asserted this argument. [Linda's] financial circumstances and auditory issues did not prevent her from litigating these matters through counsel over this ten-year period. She does not assert the alleged fraud was only recently discovered, and the eleventh hour conjuring of the claim supports the trial judge's view the claim was without merit. No objective evidence was provided to the trial judge demonstrating her signature on the December 12, 2006 consent order was forged, and the filing of a typewritten version of this order by the trial court does not render the December 20, 2006 order fraudulent.
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> [Id. at 12-13.]

Thus, the Appellate Division found there was no basis to disturb the Superior Court's findings and determined that respondent's motion was "per se frivolous by virtue of the repeated attempts to challenge old orders through different legal argumentation, without the necessary facts to support her claims." Id. at 19.

On August 7, 2017, concurrent to its written decision, the Appellate Division issued an order granting Michael's motion for counsel fees and assessing an additional $2,000 in counsel fees and $200 in costs against

respondent. Respondent subsequently filed a motion for reconsideration of the Appellate Division's order. Thereafter, on September 11, 2017, the Appellate Division denied respondent's motion for reconsideration and ordered respondent to pay $2,000 in counsel fees and $200 in costs within fourteen days of the order.[7]

Following the Appellate Division's decision, respondent petitioned the Court for certification.[8] In a December 13, 2017 Order, the Court denied respondent's petition for certification. Doblin v. Doblin, 231 N.J. 560 (2017). Thereafter, respondent moved for reconsideration. Doblin v. Doblin, 236 N.J. 247 (2019). In a January 11, 2019 Order, the Court denied respondent's motion for reconsideration and granted, in part, Michael's motion for counsel fees and assessed $5,000 in counsel fees against respondent.

Therefore, following the Court's denial of respondent's motion for reconsideration, and after having exhausted all remedies in state court, respondent has been assessed $14,087.50 in counsel fees and sanctions due to

[7] Although it is unclear from the order, it appears the Appellate Division imposed an additional $2,000 sanction against respondent. Thus, as of September 11, 2017, respondent had been assessed a total of $9,087.50 in counsel fees and sanctions for filing the frivolous motion.

[8] In his petition for certification to the Court, respondent reiterated the arguments he made before the Appellate Division – that the Superior Court's order violated his rights under the First Amendment, as well as his due process.

his frivolous litigation. Respondent openly admitted that, as of the date of the disciplinary proceedings, he had not paid any portion of the counsel fees ordered by the Superior Court, the Appellate Division, or the Court.

Following its exploration of that procedural history, and as a result of Michael's grievance, on November 25, 2019, the DEC filed a formal ethics complaint against respondent, alleging that he violated RPC 3.4(c) and RPC 8.4(d) by refusing to comply with the Superior Court's June 10, 2016 order; the Appellate Division's August 7, 2017 order; and the Appellate Division's second order, dated September 11, 2017.[9]

On March 17, 2020, respondent filed a verified answer in which he admitted that he had not complied with the three orders because he believed they are a "fraud upon the court with no basis in law." Therefore, according to respondent, his open refusal to comply with the court orders is not a violation of RPC 3.4(c) or RPC 8.4(d) because, in his view, no valid obligation exists.

Respondent asserted that, following his review of Linda's divorce proceedings, he determined that there was a fraud upon the court which never had been addressed. He asserted his belief that the Superior Court and the

[9] It is unclear why the DEC did not also charge respondent with failing to comply with the Court's January 11, 2019 Order denying certification and imposing counsel fees, which was issued more than ten months before the ethics complaint was filed. Nonetheless, respondent asserted in his verified answer that his refusal to pay the counsel fees ordered by the Court was a part of his ongoing refusal to recognize a valid obligation under the Rules.

Appellate Division improperly applied the doctrine of res judicata to determine that his motion was frivolous, maintaining that he had presented new evidence of a fraud upon the court. Thereafter, he petitioned the Court, which denied his petition and assessed additional counsel fees against him. Respondent claimed, however, that he did not timely receive a copy of the Court's January 11, 2019 Order, a delay which he maintained prejudiced his ability to pursue an appeal with the Supreme Court of the United States.

Respondent argued that the New Jersey courts that had considered his motions had refused to recognize his "meritorious arguments of fraud upon the court" and, instead, issued "sanctions against [him] without due process of law in retaliation for [his] exercising [his] First Amendment Rights as an attorney, acting *pro bona* [sic]." In fact, in his March 17, 2020 verified answer – more than one year after the Court denied his motion for reconsideration and sanctioned him an additional $5,000 – respondent asserted that he was reviewing his legal options and was considering filing either (1) another motion with the Court to vacate the Doblin orders, or (2) a federal civil rights action against the Court for violating his First and Fourteenth Amendment rights.

Thereafter, on May 23, 2020, respondent filed a motion seeking the recusal of two members of the DEC hearing panel – one of the attorney members and the sole public member. Respondent alleged that the attorney member had

previously served as a judicial law clerk to a Superior Court judge who previously had ruled on motions in the Doblin matter. Thus, according to respondent, because that judge's actions were material to the litigation in the Doblin case, the attorney member would be unable to conduct a fair and unbiased hearing in respondent's ethics matter. Similarly, respondent alleged that the public member of the panel would be unable to conduct an impartial hearing due to his position on a bank's advisory board.[10] Respondent claimed that the continued involvement of these two members on the ethics panel:

> call[ed] into question the fairness of these proceedings and the requirements of due process under both the Constitution for the United States of America and the Constitution for the State of New Jersey, particularly when these very proceedings constitute, inter alia, an abuse of process by the 'grievant' [Michael] and a violation of, inter alia, [his] rights of free speech under the First Amendment of the Constitution for the United States of America.
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> [J-9.]

In a letter response, the public member explained that the sole purpose of the bank's advisory board was to promote positive community support and that board members received no insider information concerning the bank's business operations or litigation. Further, he stated that the bank's board of directors had

[10] At the time of the ethics proceeding, respondent represented a client who had filed a lawsuit against the bank.

dissolved the advisory board in approximately 2012 or 2013 and that he had no other involvement with the bank. Thus, the public member asserted his belief there was no reason for him to recuse himself from the panel.

Similarly, in her letter response, the attorney member explained that her clerkship with the Superior Court judge occurred more than two years after the judge had entered an order in the Doblin matter. Further, the clerkship itself occurred about one decade prior to respondent's ethics proceeding, which she asserted did not preclude her from conducting a fair hearing and rendering an impartial decision in the matter.

On August 1, 2020, the DEC panel chair rendered a decision denying respondent's motion to recuse the hearing panel members. He analyzed the merits of the motion using the seven factors set forth in R. 1:12-1, noting that only subsections (e) and (g) applied to the instant matter.[11]

Nonetheless, the panel chair concluded that respondent's assertion that the attorney member or the public member was "interested in the event of the action" seemed "rather farfetched." He found that the attorney member's

[11] R. 1:12-1 is entitled "Cause for Disqualification; On the Court's Motion" and provides seven specific reasons why a judge should be disqualified by the court's own motion and not sit in a particular matter. Pertinent here are section (e) which is "where the judge is interested in the event of the action;" and section (g) which is "when there is any other reason which might prelude a fair and unbiased hearing and judgment, or which might reasonably lead counsel or the parties to believe so."

clerkship occurred ten years ago, and that she had no involvement in the Doblin case. Moreover, the public member's role on an advisory board – that had been disbanded seven years prior – did not render him impartial. Indeed, the panel chair noted that it was not respondent who was suing the bank but, rather, his client. Finally, relying on Racetrack Supermarket LLC v. The Mayor and Township Council of Cherry Hill, 459 N.J. Super. 197 (2018), the panel chair concluded that neither the attorney nor the public member would be biased against respondent. Accordingly, he denied respondent's motion to disqualify the two members.

Three months later, on November 6, 2020, pursuant to R. 4:46-1, respondent filed a motion for summary judgment.[12] In his motion, respondent restated his view of the Doblin matrimonial case and confirmed that he had not complied with the orders of the Superior Court, the Appellate Division, or the Court because (1) the orders were "fraud[s] upon the court, with no basis in law," and (2) his belief that the Superior Court and the Appellate Division failed to address his arguments that a fraud had been committed in the Doblin case. Thus, respondent asserted a belief the DEC had no basis in law or fact to file an ethics complaint against him alleging that he violated RPC 3.4(c) and RPC

[12] As described below, pursuant to R. 1:20-5(d), motions for summary judgment are not a form of relief available in ethics proceedings.

8.4(d). Respondent further asserted that his conduct fell within the "exception" to RPC 3.4(c) because his First Amendment rights were violated in the Doblin case. Moreover, he claimed that the ethics proceeding violated his First Amendment rights, claiming that Michael and the DEC had engaged in an abuse of process and committed a fraud upon the court in retaliation against him for asserting that the actions of Michael, Michael's attorney, and the Superior Court were "unlawful, fraudulent, and designed to chill freedom of speech." Finally, twenty-two months after the Court denied his motion for reconsideration, respondent reiterated his intention to file a civil rights action in federal court.

In opposition to respondent's motion for summary judgment, the presenter argued that respondent was attempting an impermissible collateral attack on prior court decisions. The presenter asserted that the DEC's role was to determine whether respondent committed misconduct, not to retry cases already decided by the New Jersey courts, including the Court. The presenter requested that respondent's motion for summary judgment be denied because respondent admitted that he did not pay the court-ordered sanctions and, thus, had violated RPC 3.4(c) and RPC 8.4(d).

Concurrently, on November 11, 2020, based on respondent's exhaustion of all his legal remedies regarding his argument of fraud upon the court in the Doblin matter, the presenter filed a motion in limine, seeking to limit the issues

presented to whether respondent's refusal to pay the court-ordered sanctions violated RPC 3.4(c) and RPC 8.4(d), and moving to dismiss the RPC 8.1(b) allegation.

The presenter further asserted that respondent's threatened federal district court action was not viable, because a federal district court lacks jurisdiction to review a state court judgment under the Rooker-Feldman doctrine,[13] Kramer v. New Jersey Supreme Court, 1997 U.S. Dist. LEXIS 9731 (July 1, 1997), and Vincenti v. Hymerling, 1997 WL 235126 (D.N.J. May 6, 1997), and that the panel should be precluded from any reference to the merits of the underlying Doblin litigation since respondent had exhausted his state remedies.

In opposition to the presenter's motion in limine, respondent again asserted that his refusal to comply with the court orders directing him to pay counsel fees was premised upon his belief that the orders were invalid due to the fraud perpetrated upon the court. Respondent argued that the Rooker-Feldman doctrine was inapplicable because it prohibited a federal district court from collaterally attacking a state court judgment, and the DEC, not a federal district court, was hearing the ethics matter. Likewise, respondent asserted that

[13] The Rooker-Feldman doctrine is based upon a statutory provision that grants the Supreme Court of the United States jurisdiction to review the decisions of a state's highest court for compliance with the Constitution. However, because the jurisdiction is reserved exclusively to the Supreme Court of the United States, it is not proper for a federal district court to exercise jurisdiction over a case that is the functional equivalent of an appeal from a state court judgment. Rooker v. Fidelity Trust Co., 263 U.S. 413, 415-16 (1923).

collateral estoppel prevented the hearing panel from relying upon the state court decisions because he never contemplated:

> that the matters under consideration in *Doblin v. Doblin* would be used against him in ethics proceedings, as no Rules of Professional conduct [sic] were referenced in the proceedings, and the Respondent asserts that the judgments themselves are the result of fraud upon the court – which should have resulted in sanctions against those perpetrating the fraud, not Respondent.
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> [J-11.]

Thus, respondent argued that, because the Superior Court in the Doblin case never made a finding that he violated RPC 3.4(c) or RPC 8.4(d),[14] "the panel here may not conclude that the issues for such a finding were fully litigated in those courts."[15] Therefore, respondent contended, there "is no doctrine that bars the [hearing] panel from questioning or reviewing the court decisions in *Doblin v. Doblin* as they relate to the allegations in the within [disciplinary] matter," because ethics proceedings operate under the clear and convincing standard of proof.

[14] Although it is true the Superior Court never made a finding that respondent violated RPC 3.4(c) or RPC 8.4(d), it did make a finding that respondent had filed a frivolous motion. RPC 3.1 (meritorious claims) prohibits an attorney from filing frivolous actions.

[15] In fact, the Court has exclusive jurisdiction over attorney disciplinary matters, which it has chosen to delegate as described in R. 1:20-1 to -23. N.J. Const. Art. VI, § 2, ¶3 ("[t]he Supreme Court shall have jurisdiction over the admission to the practice of law and the discipline of persons admitted").

On November 16, 2020 the panel chair issued a written determination denying respondent's motion for summary judgment. The panel chair acknowledged that permitting respondent to file a motion for summary judgment had been an error, because R. 1:20-5(d) only permits motion to dismiss to address the legal sufficiency of a complaint; at the conclusion of the presenter's case in chief; and if an essential witness becomes unavailable or newly discovered evidence forecloses the ability of the presenter to prove the allegations of the complaint by clear and convincing evidence. Nevertheless, he felt it was appropriate under the circumstances to issue an opinion ruling on respondent's summary judgment motion because all parties had operated as if the motion for summary judgment was permitted. Hence, the panel chair determined that the complaint was legally sufficient, regardless of whether respondent would ultimately be found in violation of the Rules of Professional Conduct. He again rejected respondent's attempt to seek review of the court decisions in the Doblin matter within the ethics proceeding. After acknowledging respondent's admission that he failed to comply with multiple New Jersey court orders, the panel chair stated that respondent's "excuse for his failure to comply with the orders of the Courts, is not a matter of law, but raises a question of fact that cannot be decided on this motion." Thus, he concluded that, were a summary judgment permissible in ethics proceedings, respondent's

motion would have been denied due to the existence of factual issues requiring a hearing.

Accordingly, the matter proceeded to a hearing, which was held on November 20, 2020. At the outset of the hearing, the panel chair granted the presenter's motion in limine, ruling that the DEC lacked authority to review the propriety of the various court's decisions in the Doblin matter. However, in granting the presenter's motion, the panel chair articulated his belief that "respondent should have an opportunity to make [his record] so that the DRB and/or the Supreme Court have a chance to make a decision" regarding review of the Doblin decisions.

In addition to arguing what he previously had briefed in the motion practice leading up to the proceeding, during his testimony, respondent asserted that his refusal to comply with the courts' orders was:

> an open refusal based on assertion that no valid obligation exists. That's all the rule says I have to assert. It actually doesn't say anything about anything else. It doesn't say anything – ruling I have to obtain or even any proceeding I have to be pursuing in order for – in order for the rule not to apply to my professional conduct.
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> [1T33.]

Respondent maintained that the conduct of the New Jersey courts in connection with the Doblin matter had been in violation of his First Amendment rights.

Respondent further testified that, although he is not an expert in handwriting analysis, he did not hire an expert in connection the Doblin litigation because the court did not have the original documents in question, and by "objectively looking at the signatures," he could tell they were forged. Thus, even though respondent's assertion of forgery was based upon his own assessment, and Linda's statement – notwithstanding her statements under oath on December 12, 2006, that she agreed to the terms of the settlement agreement and consent order – respondent had filed a motion to vacate the prior orders. Respondent claimed that, even though he had reviewed the previous orders in the Doblin litigation and was aware that Linda was prohibited from relitigating issues that had already been decided by the Superior Court, such as the consent order, it was his "professional opinion" that an objective fact-finder would not conclude that Linda had agreed to the terms of the settlement agreement. Thus, respondent maintained that the motion he filed was not in contravention of the prior orders, since he determined that he was putting forth new evidence and arguments that the Superior Court previously had not considered.

Respondent conceded, however, that the Superior Court's order was the law of the case. Notwithstanding his concession, respondent asserted that the Appellate Division failed to make proper legal findings. Consequently, respondent argued that he had not exhausted his appeals and believed he may

have the ability to petition the Supreme Court of the United States for review of the state court decisions, even though such review would be untimely. Further, he asserted his belief that he could file a federal complaint against Michael and Michael's counsel for "injunctive relief" for violating his First Amendment rights. Respondent did not state with particularity what he would seek to enjoin. Nevertheless, respondent asserted that if such a federal claim were successful, and he received financial compensation, he would use the financial compensation to pay the tiered sanctions issued against him in connection with the Doblin litigation. Respondent testified that, at the time of the ethics proceeding, he did not plan to file a motion to vacate the Superior Court's order.

With respect to RPC 3.4(c), respondent argued that he did not violate the Rule because of his assertion that there was no valid obligation requiring him to pay the court-ordered counsel fees. Respondent contended that the Rule did not dictate the manner in which he must assert that he was under no valid obligation to comply with an order:

> whether [he] could do it within the fact in the federal court or by not paying it or anything. If I'm asserting that no valid – no valid obligation exists, and I'm making that assertion. So I think it would be – it would be very vague interpretation if they – if they were to now put on that – that that's not the case.
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> [1T109.]

Despite the prior Superior Court, Appellate Division, and Supreme Court actions, respondent maintained that the issue of fraud in the Doblin litigation had not been decided by the New Jersey State courts. He further argued that the clear and convincing evidence standard applicable to ethics proceedings rendered rulings in the Doblin case non-binding upon the DEC. Going further, respondent argued that the hearing panel could not make "the determination for me as to whether or not I can assert that no valid obligation exists. That's a right I have under the Constitution under the law of due process. And even the rule itself says I have that right to make the assertion." When asked by the hearing panel whether the Appellate Division assessed the fraud allegations he made in his motion, respondent testified that, if there was "an appeal pending, you still have an order that's enforceable without a stay in place, that you're not abiding by it. And I'm asserting that I still have rights and authority to, you know, to then now bring a Civil Rights case [. . .] I can't vacate the order that way, but I might be able to get relief."

Moreover, respondent argued that RPC 3.4(c) was intended to address violations of the Court Rules, such as discovery obligations, and was not intended to address compliance with court orders. Nevertheless, respondent conceded that RPC 3.4(c) violations have been sustained on the basis of an attorney's failure to comply with court orders.

Michael also testified during the ethics proceeding. During respondent's cross examination, Michael told respondent that it was his opinion that respondent continued to litigate a frivolous case and that was why respondent had been ordered to pay counsel fees.

On March 31, 2021, the DEC majority issued its report recommending that the ethics complaint filed against respondent be dismissed; the public member issued a written dissent. The DEC majority first noted that, following the November 20, 2020 ethics hearing, respondent had served the DEC with a motion to expand the record to include the complaint he filed, on December 22, 2020, in the United States District Court for the District of New Jersey, wherein he challenged the constitutionality of the New Jersey courts' decisions in the Doblin matter. That complaint is discussed, in detail, below. Additionally, respondent sought a stay of the ethics proceeding pending the outcome of his federal lawsuit.

The DEC denied respondent's motion to expand the record, finding that it was not appropriate to re-open the record for evidence or testimony regarding the federal lawsuit, which was ongoing. Additionally, after determining that dismissal of the complaint was appropriate, the DEC determined respondent's motion for a stay to be moot. Nonetheless, the DEC majority opined that respondent should be permitted, in federal court, to make his record regarding

the DEC's jurisdiction to review the actions of the judiciary, notwithstanding respondent's admitted refusal to comply with the Doblin orders. In so doing, the DEC noted that respondent is a seasoned practitioner who argued that, under the specific circumstances of this matter, his actions were exempt from RPC 3.4(c) and that, with respect to RPC 8.4(d), his conduct was in furtherance of the administration of justice, not prejudicial to it.

Additionally, the DEC determined that, during the "horrendous divorce proceeding[s] [. . .] wherein no single issue raised in the proceeding was sufficiently unimportant not to be litigated by the parties," on October 24, 2008, the Superior Court ordered that if, in the future, the court found that Linda filed a frivolous application, counsel fees would be assessed against her attorney. Although respondent's representation of Linda was competent and diligent, "a total review of the matter, including the federal court complaint," raised concerns regarding respondent's judgment and "whether his frustrations with the result of his efforts, has gotten the better of him." Nevertheless, the DEC positioned the issue remaining for its determination to be "to what extent did Respondent's failure to pay the penalties imposed upon him by the courts, constitute violations of RPC 3.4(c) and 8.4(d)."

The DEC considered, as a predicate issue, the matter of its own jurisdiction. It noted that respondent, as an attorney licensed to practice law in

New Jersey who had a legally sufficient ethics complaint filed against him, clearly was subject to the jurisdiction of the DEC. However, throughout respondent's submissions in the ethics proceeding, it appeared he sought from the DEC a determination that the decisions of the Superior Court, Appellate Division, and New Jersey Supreme Court were erroneous and, therefore, no discipline was warranted. After conducting its own research, the DEC found no definitive decision regarding the type of collateral attack mounted by respondent. However, it acknowledged that the District Court in Kramer had previously rejected a similar collateral attack. The DEC rejected respondent's attempt to seek a review of the state court decisions in the ethics proceeding, finding that the issue before the panel was limited to whether respondent violated any RPCs.

Still, the DEC disagreed with the presenter's recommendation for an admonition. In so doing, it noted that:

> in some aspects of the court proceedings which Respondent instituted in the Bergen County Family Part, and the positions he has taken in the Ethics Proceedings raise some serious questions of the judgment he has exercised in those proceedings. There is, however, nothing before us to indicate that the court proceedings were initiated for any malevolent or venal purpose. [. . .] While the Panel did not agree with many of his arguments, he is entitled to pursue them.
>
> [HPR at 22.]

Consequently, the DEC concluded that, based on the record before it, respondent had not violated RPC 3.4(c) or RPC 8.4(d). In so finding, the DEC determined that, following the filing of his federal complaint, respondent was "continuing to pursue his claims in this matter and particularly the claims that he asserted in the family court matter to demonstrate that in fact his conduct was not frivolous and should not have been subject to sanction. The majority of the Panel believes he should be afforded the opportunity to do so."

Writing in dissent, the public member found that respondent not only had violated RPC 3.4(c) and RPC 8.4(d), but that respondent's continued refusal to comply with four separate orders was troubling. Specifically, he wrote:

> as the Public Member of our Panel, I feel that I must point out that a great majority of the American public would not have the same ability or the wherewithal to commit acts of civil disobedience against the Court, and not suffer any repercussions. I believe that attorneys should not benefit by that privilege.
>
> [HPD at 3.]

The public member worried that postponing the imposition of discipline to await the conclusion of respondent's federal lawsuit "would only give consent to [respondent's] abuse of privilege." He noted, however, that he could not determine whether respondent's "passionate pursuit of the law is for the benefit of his clients or for the benefit of his ego, as it appears that he finds it difficult to accept any decisions that he does not agree with." Consequently, the public

member found that discipline not only was warranted in the matter, but that it should be enhanced because respondent has persisted in his pursuit of his exhausted fraud claim.

As noted above, on December 22, 2020, one month after the ethics hearing, but prior to the DEC issuing its decision and dissent, respondent filed a complaint for injunctive and declaratory relief in the United States District Court for the District of New Jersey against members of the New Jersey judiciary who issued opinions in the Doblin matter; a member of the New Jersey Department of Children and Families (DCF); the DEC; the panel chair; and the DEC investigator.[16]

Respondent alleged that he sought to exercise his First Amendment rights by advocating for Linda "in order to safeguard against the institutional degradation of the judiciary in the State of New Jersey caused by fraud upon the court, and will continue to do so, until his liberty is lost in the pursuit, because

[16] After months of threatening to file a lawsuit against DEC members involved in the investigation and prosecution of the ethics complaint against him, in his federal complaint, respondent failed to respect the civil immunity which is afforded to the volunteers who staff New Jersey's ethics and fee arbitration committees. R. 1:20-7(e) ("Members of the Office of Attorney Ethics, the Disciplinary Review Board, Disciplinary Oversight Committee, Ethics Committees, Fee Committees, their secretaries, special ethics masters and their lawfully appointed designees and staff, shall be absolutely immune from suit, whether legal or equitable in nature, based on their respective conduct in performing their official duties. The Supreme Court shall request the Attorney General to represent disciplinary authorities in all civil or criminal litigation in state or federal courts").

justice matters." Respondent claimed that, in response to his attempt to uncover the fraud upon the court, the New Jersey judiciary "acted in complicity with that fraud and abuse of process by concealing it from the public" and, in the process, abused its power by ordering respondent to pay counsel fees.

In his federal action, respondent further contended that any finding by the DEC that he violated RPC 3.4(c) or RPC 8.4(d) as a result of his refusal to comply with New Jersey court orders would be unconstitutional. Additionally, respondent argued that R. 1:20-15(h) is unconstitutional because it violates due process by requiring the DEC and Board to "act without regard for the Constitution, and restricts their ability to take action in compliance with the Constitution." Further, he alleged that the unconstitutional actions of the judiciary and the DEC, in particular, "were done for the sole purpose of suppressing [respondent's] rights of free speech under the First Amendment, in order to conceal from the public the rampant fraud upon the court currently existing." Nevertheless, respondent claimed that his federal court action is not intended to challenge the state court judgments, but rather, the "underlying policy that governed the subject orders and proceedings against him [because] they are based upon a fraud upon the court, and abdication of the duty to uphold the U.S. Constitution."

On June 25, 2021, respondent filed a "Request for Default Against the Defendant Michael Doblin" based on Michael's failure to answer the complaint. On June 28, 2021, default was entered against Michael. Thereafter, on July 7, 2021, respondent filed a "Request for Entry of Final Judgment by Default Against the Defendant Michael Doblin Pursuant to F.R.C.P. 54 and F.R.C.P. 55(b)(1)." Hence, on July 14, 2021, with Michael still not having engaged in the matter, default judgment was entered against him, in favor of respondent, for $13,811.02.

With the exception of Michael and Michael's counsel in the Doblin matter, the defendants in respondent's federal case filed motions to dismiss the complaint. On October 14, 2021, the federal court dismissed the complaint as to those defendants. In so doing, the federal court found that respondent lacked standing to pursue his claims for injunctive and declaratory relief against the judicial defendants, who were entitled to immunity. The federal court acknowledged that respondent sought declaratory and injunctive relief due to the New Jersey judiciary's application of res judicata and the imposition of sanctions pursuant to R. 1:4-8 but noted that, in respondent's pleading, he did not ask the federal court to "declare invalid or enjoin either the sanctions against him or any order issued in the Divorce Action." Even if he had, the federal court rejected respondent's attempt to establish standing since, under the Rooker-

Feldman doctrine, the federal court lacked jurisdiction to entertain "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." See Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005).

The federal court found that respondent did not satisfy his burden of going forward on an injunction by failing to allege any facts that would suggest that he would face future sanctions under similar circumstances. See Edelglass v. New Jersey, 2015 U.S. Dist. LEXIS 5320 at *33 (D.N.J. Jan. 16, 2015), aff'd sub nom., and Allen v. DeBello, 861 F.3d 433 (3rd. Cir. 2017) ("standing to seek [an] injunction depends on whether [plaintiff] is likely to suffer future injury from the behavior sought to be enjoined"). The federal court also found no merit to respondent's arguments that the New Jersey judiciary violated a "policy" by applying res judicata in its analysis of respondent's motion to vacate because "a review of the Appellate Division's ruling on the Motion to Vacate makes clear that, despite Plaintiff's characterization of events, the court did not blindly apply res judicata to 'bar . . . review of a court decision based upon fraud upon the court' or to impose sanctions on Plaintiff simply for 'seeking such review.'"

Additionally, the federal court found that, although respondent "ostensibly has standing" to pursue a claim against the DEC, the panel chair, and the DEC investigator, it concluded that abstention was appropriate, pursuant to Younger v. Harris, 401 U.S. 37 (1971). The federal court further found that, "fatal" to respondent's position was that an aggrieved party in an ethics action may petition the New Jersey Supreme Court for immediate, interlocutory review upon a showing of irreparable harm, something respondent failed to do in his ethics matter. See also R. 1:20-16(f)(1).

Therefore, finding that Younger abstention was warranted under Middlesex Cty. Ethics Comm. v. Garden State Bar Ass'n, 457 U.S. 423, 433-36 (1982), the federal court abstained to the extent respondent asserted claims against the DEC, the panel chair, and the DEC investigator. Accordingly, the federal court dismissed respondent's complaint against the disciplinary agency members and the DCF staff member, without prejudice, for lack of subject matter jurisdiction and on the principles of abstention.[17]

Nonetheless, on October 28, 2021, respondent filed a motion for reconsideration of the October 14, 2021 order granting the defendants' motion

[17] With respect to the DCF staff member, the federal court found that respondent did not allege any claims directly against her. Rather, the federal court found that respondent appeared to name the DCF staff member as a defendant "for the sole purpose of obtaining discovery that would 'expose' other defendants."

to dismiss. Respondent did not allege any new facts, but rather, alleged that the federal court improperly adopted the findings of the New Jersey state courts and erred in its application of relevant case law. With respect to the federal court's decision to abstain from asserting jurisdiction over the ethics defendants, respondent alleged that the court failed to acknowledge the principles of law that were upheld in Canatella v. State of California, 304 F.3d 843, 852-53 (9th Cir. 2002).

Finally, on November 30, 2021, Michael filed a motion to vacate the final judgment by default against him and to dismiss respondent's complaint. Essentially, Michael argued that respondent did not effectuate proper service and that the entry of the default judgment was not proper; that Michael's failure to respond was excusable given his serious medical conditions; that respondent failed to state a claim upon which relief may be granted; and that respondent's claims were barred by applicable statutes of limitation.

As of the date of his decision, the federal court has not yet decided respondent's motion for reconsideration or Michael's motion to vacate.

In his brief to us, respondent persisted in his assertions that, after analyzing Linda's signature on multiple documents, he concluded that Linda's signature was "clearly" forged on the memorandum of settlement during her divorce proceedings and that, according to Bank of New York Mellon v.

Corradetti, 466 N.J. Super. 185 (App. Div. 2020), rev'd and remanded, 245 N.J. 136 (2021), he was not required to produce a handwriting expert due to the objective evidence of forgery. Therefore, he argued that to discipline him for arguing that the court's multiple decisions were based upon a fraud is a violation of his First Amendment rights and due process and "any application of the New Jersey Rules of Professional Conduct to the contrary is Unconstitutional."

Furthermore, respondent asserted that the issue of fraud in the Doblin matter was "pending" in federal court and urged us to adopt the hearing panel's majority decision to dismiss the ethics complaint without prejudice until his federal case has concluded so that he could continue to assert standing in that case.

In defense of the RPC allegations against him, respondent asserted that the orders for counsel fees were based upon the attempts of Michael, Michael's attorney, and the judges overseeing the Doblin case to "stifle Respondent's rights of free speech," that he had not prejudiced the administration of justice, and that his "open refusal to pay the judgment is based on an assertion that no valid obligation exists."

With respect to our ability, or that of the hearing panel to consider constitutional questions, respondent asserted that R. 1:20-4(e) asks us, along with members of the hearing panel, to disregard the Constitution in ethics

proceedings. According to respondent, because the directive to disregard the Constitution is embodied in a Rule, he believed the Rule itself was an unconstitutional deprivation of the opportunity to challenge the constitutionality of that same Rule.[18] However, respondent also argued that the Court had no authority under the federal Constitution to issue such a Rule.

Respondent concluded by asserting that he did not violate the Rules of Professional Conduct because he was under no valid obligation to pay the court-ordered counsel fees. Respondent added that he now believed:

> he no longer [has] to qualify this with the word 'valid', because he now lawfully, and in accordance with due process afforded to [Michael], obtained a final judgment by default against him in the United States District Court of the State of New Jersey for his abuse of process and violation of Respondent's rights of free speech under the Constitution for the State of New Jersey which is more than a complete offset of the attorney's fees judgments for which the OAE asserts Respondent has violated rules of professional conduct [sic] in failing to pay.
>
> [Rb18-19.]

Thus, respondent argued that, notwithstanding Michael's November 30, 2021 motion to vacate default, we must take judicial notice of the default judgment

[18] Although respondent stated in his verified answer that the entirety of the ethics complaint violated his First Amendment rights, respondent first raised his argument that R. 1:20-4(e) itself was unconstitutional in his brief to us, prior to oral argument.

as proof that Michael violated his "rights of free speech under the New Jersey Constitution," and that the federal default judgment against Michael is "the law of the case in the within ethics proceedings under the doctrine of *Res Judicata*."

In its submission to us, the OAE argued that respondent has been obligated to comply with the Doblin orders for over five years and has failed to do so, conduct which violates RPC 3.4(c) and RPC 8.4(d). The OAE contended that the open refusal exception to RPC 3.4(c) could not reasonably be read to allow an attorney to assert, without more, that they openly refuse to comply with an order of the court. Rather, the OAE asserted that respondent's refusal to comply with the Doblin orders, despite failing at every appellate level, is tantamount to respondent unilaterally determining the orders are null, which is a function of our court system, which has found that the Doblin orders are, in fact, valid.

The OAE emphasized that, although respondent entered the Doblin litigation in 2016, he was still bound by the October 2008 Superior Court order that required Linda's future counsel to pay sanctions in the event he or she filed a frivolous motion. Thus, when the Superior Court, in 2016, found that he filed frivolous litigation, and imposed sanctions against him, respondent was on notice that he was obligated to comply with the order. Respondent, instead, chose to test the validity of the Superior Court's order and has failed at each level of appeal.

The OAE posited that the concern expressed by the public member in his dissent demonstrates that the OAE's fear is warranted, because permitting respondent to merely assert that he refuses to comply with an order of the court without more would send a message to the public that simply because the Rules of Professional Conduct exist, an attorney's refusal to abide by court orders would be treated differently than a non-attorney's refusal to abide by court orders.

The OAE also asserted that the hearing panel misconstrued R. 1:20-4(e) (all constitutional questions shall be held for consideration by the Court) in dismissing the complaint and determining that respondent should be afforded the ability to pursue his claims in federal court. Nevertheless, the OAE argued that, notwithstanding respondent's constitutional challenges to the Doblin orders, we need not reach those arguments because the Doblin orders clearly require respondent to pay sanctions because of the Superior Court's finding that his motion was frivolous; that respondent failed his tests of the validity of the orders; and the length of time of his noncompliance all weigh heavily in proving clearly and convincingly that he has violated and continues to violate the Rules of Professional Conduct.

Additionally, the OAE petitioned us to issue a protective order in this matter, pursuant to R. 1:20-7(h). The OAE argued that the record was replete

with personal information concerning the Doblins, their son, and the issues surrounding custody and visitation in the Doblin litigation, for which there was no need for public disclosure. The OAE argued that public dissemination of the issues in the Doblin litigation was not necessary for the public to be fully informed of respondent's misconduct. The OAE stressed that it was not requesting that the information concerning the Doblins' family life be removed from the record; rather, the OAE requested that we issue a protective order or otherwise seal the part of the record the OAE identified as containing confidential information. The OAE provided a non-exhaustive list of twenty-two items which it argued should be sealed from public dissemination. Respondent took no position regarding the protective order.

During oral argument before us, respondent acknowledged that the Court denied his petition for review and issued a sanction against him for filing frivolous litigation in the Doblin matter. Respondent admitted that, in the federal case, he was not requesting that the federal court vacate the Doblin orders; instead, respondent claimed he was challenging the constitutionality of the procedural mechanism that the Superior Court and Appellate Division used to find that, under the doctrine of res judicata, his motion was frivolous. Respondent maintained his argument that the New Jersey courts refused to review his application; his allegations of fraud; and what he characterized as the

"objective evidence" that Linda's signature had been forged.

Additionally, respondent asserted that his primary purpose in the federal litigation was to reverse the sanctions the New Jersey state courts issued against him. Respondent explained that, should he succeed in federal court, he would use the judgment to return to the New Jersey Superior Court to again challenge the Doblin orders.

When asked under what circumstances he would comply with the orders, respondent stated that he would comply with the Doblin orders once the Supreme Court of the United States of America ruled against him; only then would he consider his legal remedies exhausted. Respondent reiterated that he must continue to assert that the Doblin orders are invalid so that he can maintain standing in his federal case. Indeed, respondent stated that his understanding of RPC 3.4(c) was that there need be an open refusal of noncompliance, along with an adversarial action pending. Respondent asserted that, by virtue of the federal lawsuit he filed, he has satisfied the requirement that there be an adversarial action.

Importantly, during oral argument before us, respondent conceded that an assertion under the open refusal exception to RPC 3.4(c) must be "objectively reasonable."

* * *

Following a de novo review of the record, we find that, contrary to the DEC's majority determination, the facts in the record clearly and convincingly support the finding that respondent violated both RPC 3.4(c) and RPC 8.4(d). Specifically, in 2016, the Superior Court found that respondent's motion to vacate orders entered in the Doblin litigation based upon allegations of fraud was frivolous and, pursuant to an October 2008 order previously entered in the litigation, ordered respondent to pay counsel fees. The Superior Court denied respondent's request for a stay of the order and respondent appealed the decision.

In 2017, the Appellate Division issued two separate orders affirming the Superior Court's determination to impose sanctions against respondent. In fact, the Appellate Division, in affirming the Superior Court, imposed an additional $4,000 in sanctions and $400 in costs against respondent and ordered him to comply within fourteen days.

Finally, respondent petitioned the Court for certification. Not only did the Court deny respondent's petition for certification, it denied respondent's motion for reconsideration and granted Michael's motion for additional sanctions. Thus, on January 11, 2019, the Court ordered respondent to pay an additional $5,000 as a sanction for filing frivolous litigation in the Doblin matter. New Jersey courts at every level have considered respondent's arguments of fraud in the

Doblin litigation, rejected them, and issued four separate orders requiring respondent to pay a total of $14,087.50 in sanctions for filing frivolous litigation. Despite being rebuked by every court in this state and exhausting his legal remedies, respondent has, over the course of five years, refused to comply with four separate court orders and has failed to pay the sanctions imposed upon him. Respondent's misconduct clearly violates RPC 3.4(c) and RPC 8.4(d).

Respondent has invoked a claimed exception to RPC 3.4(c).[19] According to respondent, he merely is required to assert that he is under no valid obligation to comply with a court order, regardless of context or facts. Respondent also argued that RPC 3.4(c) is intended only to address Rules such as discovery obligations because the plain language of the Rule states "rules of a tribunal."[20] We reject both aspects of respondent's defense.

RPC 3.4(c) has existed in its current form since the 1984 revisions recommended by the Debevoise Committee. The previous Disciplinary Rule 7-

[19] In its entirety, RPC 3.4(c) states that a lawyer shall not: "knowingly disobey an obligation under the rules of a tribunal except for an open refusal based on an assertion that no valid obligation exists" (emphasis added). This "exception" to the Rule rarely has been examined in proceedings before us, however, in the instant matter, it forms the basis for a significant portion of respondent's defense.

[20] We reject respondent's argument that RPC 3.4(c) is intended only to address Rules such as discovery obligations because the plain language of the Rule states "rules of a tribunal," which necessarily includes the ability of a judge, under R. 1:4-8 (frivolous litigation), to impose sanctions against an attorney after finding a filing is frivolous, which the Superior Court did in the Doblin litigation.

106(a) provided: "A lawyer shall not disregard or advise his client to disregard a standing rule of a tribunal or a ruling of a tribunal made in the course of a proceeding, but he may take appropriate steps in good faith to test the validity of such a rule or ruling." The Debevoise Committee viewed RPC 3.4(c) as "substantially similar" to its predecessor and recommended the adoption of the updated language of the model RPC.[21] Kevin H. Michels, New Jersey Attorney Ethics, Appx. D, 1375 (Gann 2022) (Report of the Debevoise Committee); see also id. at Appx. A2, p. 1323 (Commentary upon 1984 Rules of Professional Conduct). We, thus, conclude that the requirement of "good faith" was preserved in the current version of RPC 3.4(c). That is, the drafters of both the current and previous versions of the RPC intended to allow an attorney time to exercise a valid right to appeal a court order or otherwise challenge a particular Rule, without the specter of an ethics violation chilling their willingness to do so.

However, we have not directly addressed any instances where the exception to RPC 3.4(c) was at issue. In In re Vincenti, 152 N.J. 253 (1998), the special master commented that Vincenti could not credibly assert that he was not obligated to abide by the court order. We did not address Vincenti's assertion in our decision.

[21] Of course, we may explore the RPC drafters' intent and other "extrinsic sources" such as its underlying purpose and history to determine its meaning. First Resolution Inv. Corp. v. Seker, 171 N.J. 502, 512 (2002).

In In re Roper, 230 N.J. 379 (2017), the attorney argued that the order she violated (a sealing order) eventually was reversed. She knew, however, that the sealing order was in effect when she, nevertheless, sent sealed documents to another person. We dismissed the RPC 3.4(c) charge for lack of clear and convincing evidence, based on unsubstantiated testimony regarding what documents had actually been sent and who had possession of the documents under seal. We never addressed the issue of whether a violation of RPC 3.4(c) could be found even though the then-effective sealing order ultimately was reversed.

Other jurisdictions that have a similar "valid obligation" exception to RPC 3.4(c) have universally concluded that, for a respondent to assert that they need not comply with a court order, they must offer evidence demonstrating they possess a "good faith belief" that they are under no valid obligation to comply with an order of the court.[22]

For example, the Colorado Supreme Court found that, although its Rule also did not define the RPC 3.4(c) exception:

> commentators suggest that such a refusal is premised on 'good faith and open noncompliance in order to test an order's validity.' 'An open refusal permits the . . . court to assess the attorney's argument and allows opposing counsel to take action to protect her client

[22] While non-binding, precedents in other states interpreting similar rules may be considered "guideposts and persuasive authority." Lewis v. Harris, 188 N.J. 415, 436 (2006).

> from the opposing attorney's noncompliance.' Under the open refusal exception, a lawyer cannot 'unilaterally and surreptitiously flout a court order.'
>
> [People v. Brown, 461 P.3d 683, 695-696 (Colo. 2019).]

In that matter, the attorney, among other serious misconduct, including knowing misappropriation, intentionally disobeyed a bankruptcy court's order to turn over disputed funds, which also prejudiced the administration of justice. Id.

In another Colorado case, which is strikingly similar to the instant matter, an attorney in a divorce action filed frivolous and groundless motions, causing unnecessary delays that slowed the progress of the divorce. People v. Efe, 475 P.3d 620 (Colo. 2020). The trial court imposed a personal sanction against the attorney, ordering the attorney to pay the opposing party's counsel fees. The attorney refused to comply with the order until he was held in contempt, arrested, and jailed.

The Colorado Supreme Court suspended the attorney for one year and one day, finding that the valid obligation exception to Colorado's RPC 3.4(c) "has been read to require a respondent to prove that she or he refused to comply with the order in good faith and based on open noncompliance in order to test the order's validity." See also, Chapman v. Pacific Tel. & Tel. Co., 613 F.2d 193, 197 (9th Cir. 1979) (finding that, after a court denied a writ of prohibition, the lawyer was required either to seek further review in the Supreme Court of the

United States or to comply with the court's order under protest, preserving the issue for a subsequent appeal); In re Pokorny, 453 N.W.2d 345, 347 (Minn. 1990) (suggesting that a failure to appeal or otherwise challenge a judgment reflects lack of a good faith belief that no obligation existed to comply with that judgment); In re Ford, 128 P.3d 178, 181 (Alaska 2006) (finding that a lawyer did not "openly refuse" to comply with a court's order, where the lawyer knew he was disobeying a valid order yet did not challenge the order, seek a stay, or request an expedited ruling from the appellate court); Attorney Grievance Comm'n of Md. v. Levin, 69 A.3d 451 (Md. 2013) (finding that the proper course of action for a lawyer who thought an order was invalid was to raise objections with the court); In re Jones, 338 P.3d 842 (Wash. 2014) (rejecting as inapplicable the open refusal exception because the lawyer failed to raise an assertion openly challenging the validity of a particular obligation). Compare Rosellini v. U.S. Bankr. Court, 790 Fed. Appx. 293, 295 (2019) (finding that the bankruptcy court's decision to impose sanctions on Rosellini – respondent in the instant matter – for failing to comply with the court's orders was appropriate even without a finding that he acted in bad faith).

Based on the foregoing cases, we interpret New Jersey RPC 3.4(c) as follows. If, in an ethics proceeding, an attorney invokes the open refusal exception to RPC 3.4(c) as a defense to an allegation that the attorney has failed

to comply with a court's order in violation of that Rule, the trier of fact must assess whether that attorney has made some showing of the following four elements: (1) the attorney openly refused to comply with an obligation under the rules of a tribunal; (2) the open refusal was based upon the assertion that no valid obligation existed; (3) that the assertion was made in good faith, from the subjective perspective of the attorney; and (4) that the assertion was an objectively reasonable attempt to test the legal validity of the legal obligation. Because the open refusal exception is offered as a defense to an allegation that an attorney violated RPC 3.4(c), the burden of proof shall be on the attorney, consistent with R. 1:20-6(c)(2)(C), to satisfy all four elements.

Thus, under the open refusal exception, a lawyer cannot unilaterally and surreptitiously flout a court order. In such a case, the lawyer shall be required to have either sought further appellate review or to comply with the court's order under protest while preserving the issue for a subsequent appeal. A failure to appeal or otherwise challenge a judgment shall reflect lack of a good faith belief that no obligation existed to comply with that judgment.

To be clear, we are not adopting a new rule that would somehow require only a prospective application and allow respondent to evade discipline in the instant matter. Rather, we are articulating what a reasonable reading of the

existing R. 3.4(c) would lead any attorney to understand about its safe harbor provision.

In that spirit, we do not hesitate to impose discipline in the instant matter. Respondent has unabashedly refused to comply with any of the New Jersey court orders entered in the Doblin litigation and has stated his refusal to comply with the orders was based upon his belief that they are invalid. However, respondent's own statements, both at the ethics proceeding and in his federal filings, make it clear that he lacks a good faith belief that the orders he has refused to comply with are invalid. Respondent also agrees with us that an open refusal to comply with a court order must be "objectively reasonable." Here, respondent's persistent refusal to comply with the Doblin orders is not an objectively reasonable attempt to test the legal validity of the Doblin orders.

Specifically, in the federal matter, respondent did not request that the federal court vacate the Doblin sanction orders; in any event, such a remedy is barred by the Rooker-Feldman doctrine. Nor has respondent requested that the New Jersey courts vacate the Doblin sanction orders following the Court's denial of his motion for reconsideration nearly three years ago (after waiting more than two years following receipt of the Court's denial of his motion for reconsideration to take any action at all in the Doblin case).

Respondent has exhausted the legal remedies available to him to challenge the four New Jersey court orders at issue. What remains is only his personal disagreement with the courts' determinations underlying the orders. Thus, his opinion alone cannot form a good faith – or objectively reasonable – belief that the orders themselves are invalid or that he is not obligated to comply with them. Respondent simply cannot demonstrate that he subjectively held a good faith belief that the Doblin orders were invalid. Respondent conceded, in his federal filing, that he needed to continue his open refusal to comply with the orders in order to have standing in the federal case. Moreover, respondent himself implicitly admitted the Doblin orders are valid by unequivocally stating that, if he were to receive a monetary award from Michael in the federal matter, he would use such an award to pay the court-ordered sanctions in the New Jersey matters. If respondent genuinely believed the Doblin orders were invalid, he would not have explained, two separate times, how he intended to pay the sanctions.

Moreover, the specific constitutional challenges respondent raised during the ethics proceeding were challenges to the orders entered in the Doblin litigation, not constitutional challenges to the ethics proceeding. Respondent attempted to conflate the two, and repeatedly argued that the Doblin orders

violated his rights under the First and Fourteenth Amendment.[23] It was not until respondent filed a complaint in federal court that he raised a constitutional challenge to R. 1:20-15(h) itself. Notably, R. 1:20-16(f)(1) offers respondent the means to file a motion for leave to appeal to seek interlocutory review of a constitutional challenge to the ethics proceeding in this jurisdiction, but he failed to do so.

As a result, we doubt that respondent has properly raised a constitutional challenge within the ethics proceeding. Even if we were to construe respondent's claims that, because the Doblin orders violated his rights under the First and Fourteenth Amendments, that the whole of the ethics proceeding also violated his constitutional rights, there were two avenues for respondent to pursue those challenges.

First, under R. 1:20-16(f)(1), respondent could have sought interlocutory relief from the Court. He did not, despite his active motion practice within the ethics proceeding, including an impermissible motion for summary judgment. Second, under R. 1:20-16(f)(2), if respondent properly had raised a constitutional challenge to the ethics proceeding – rather than pursue a collateral

[23] Respondent's argument that the Doblin orders violated his rights under the Fourteenth Amendment arises from his argument that the orders violated his rights under the First Amendment, and the First Amendment is applicable to the States by operation of the Fourteenth Amendment.

attack on orders already upheld by the Court – it would have been preserved for the Court. Therefore, whether respondent properly raised a constitutional challenge to the proceeding before the DEC is a matter for the Court to decide.

Second, R. 1:20-15(h) provides respondent the ability to raise constitutional claims for the Court's consideration on the merits. Therefore, under the New Jersey Rules, the DEC was empowered to assess the evidence in the ethics matter and should have proceeded to make a determination on the merits of the presenter's case, especially given respondent's failure to mount a constitutional challenge within the ethics proceeding. If it were not so, any invocation of a constitutional right could be used to arrest disciplinary proceedings. That clearly was not the drafters' intention. Instead, the Rules contemplate issue preservation following a plenary hearing.

Although it is the sole province of the Court to decide constitutional questions in disciplinary matters, we wish to comment on the substance of respondent's constitutional claims for the Court's consideration within its sole discretion. R. 1:20-4(e)(5) ("[a]ll constitutional questions shall be held for consideration by the Supreme Court as part of its review of any final decision of the Board"); R. 1:20-16(f)(2) ("In any case in which a constitutional challenge to the proceedings has been properly raised below and preserved pending review of the merits of the disciplinary matter by the Supreme Court, the aggrieved

party may seek the review of the Court by proceeding in accordance with the applicable provisions of paragraph (b) of this rule"). See also R. 1:20-16(b) ("In all matters other than those in which disbarment has been recommended, the Board's decision shall become final on the entry of an appropriate Order by the Clerk of the Supreme Court").

Particularly, the record below demonstrates clearly and convincingly that respondent had no substantive constitutional defense to his violations of the Rules of Professional Conduct arising from his defiance of the three New Jersey court orders imposing counsel fees against him. We find no reason to separately address respondent's argument that the Doblin orders also violated the Fourteenth Amendment, because that argument appears to arise exclusively from the fact that the First Amendment is applicable to the States by operation of the Fourteenth Amendment, which none dispute. See generally, McKelvey v. Pierce, 173 N.J. 26, 39 (2002).

The Court previously has addressed a First Amendment defense raised in a disciplinary proceeding. In In re Felmeister, 95 N.J. 431 (1984), the Court considered an ethics proceeding arising from one law firm's decision to deliberately violate DR 2-101(D), which prohibited radio advertising. The Court previously had written to the Advisory Committee on Professional Ethics (ACPE), expressing the two partners' view of the unconstitutionality of the

Disciplinary Rule, and invited the Committee's opinion on an advertisement that the law firm had purchased, which would run one month later. Rather than await the ACPE's disposition of the Court's request for its opinion, the attorneys funded the advertisement and allowed it to air.

The Court commented on the comparatively low value of the asserted First Amendment right adhering to commercial speech, and determined that the Amendment could not be used as a shield against an ensuing disciplinary action, observing:

> Despite being fully aware of the Rule and its meaning, the respondents intentionally violated it. We do not view their actions as being substantially different from those of individuals who violate a court order and then seek to raise the unconstitutionality of the injunction as a defense to prosecution for the violation. Unconstitutionality is not a defense.
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> * * *
>
> [J]udicial remedies of review were clearly established so that an acceptable method to challenge the restriction of conduct was available. Under these circumstances it is not unreasonable to expect attorneys to abide by the Rule and, if desired, to challenge it through an appropriate judicial procedure.
>
> * * *
>
> As officers of the Court, attorneys have a peculiar position with respect to the judicial process and compliance with the expressed or stated law. Respect for the law should be more than a platitude. It would be anomalous indeed to permit attorneys unnecessarily to

> flout regulations of this Court governing their conduct. The respondents' motions for dismissal are therefore denied, and the matters remanded for further proceedings to the District VII Ethics Committee.
>
> [In re Felmeister, 95 N.J. 431, 445-448 (1984) (internal citations omitted).]

The same logic applies to the instant matter. Just as the First Amendment did not protect Felmeister's derogation of a disciplinary Rule, it likewise does not protect respondent's defiance of the orders of the Superior Court, the Appellate Division, and the Court.

Consistently, in 2018, the Supreme Court of Washington rejected a similar argument posed by one of its attorneys in a disciplinary case:

> Cottingham seeks dismissal of the disciplinary charges, arguing that the First Amendment right to petition for redress to the courts protects his pursuit to change the trial court's decision. It is true, as Cottingham contends, that "disciplinary rules governing the legal profession cannot punish activity protected by the First Amendment, and [the] First Amendment protection survives even when the attorney violates a disciplinary rule he swore to obey when admitted to the practice of law." Gentile v. State Bar of Nev., 501 U.S. 1030, 1054, 111 S. Ct. 2720, 115 L. Ed. 2d 888 (1991).
>
> However, "'baseless litigation is not immunized by the First Amendment Right to Petition.'" In re Yelverton, 105 A.3d 413, 421 n.8 (D.C. 2014) (quoting In re Ditton, 980 A.2d 1170, 1173 n.3 (D.C. 2009)). Once a respondent is "made aware that his motions were frivolous, their repeated assertion … [is] no longer in good faith and could be subject to reasonable sanction in order to enforce well-established standards of

> professional conduct." Id.; see also Bill Johnson's Rests., Inc. v. Nat'l Labor Relations Bd., 461 U.S. 731, 743, 103 S. Ct. 2161, 76 L. Ed. 2d 277 (1983) ("baseless litigation is not immunized by the First Amendment right to petition").
>
> Here, Cottingham's initial lawsuit against the Morgans was not frivolous; there was a legitimate dispute, and it was proper to seek resolution in the court. However, Cottingham's frequent pleadings containing baseless, repetitive arguments were frivolous. The hearing officer appropriately found by a clear preponderance of the evidence that Cottingham knowingly, intentionally, and repeatedly engaged in frivolous litigation. The Board adopted these findings.
>
> The First Amendment does not protect frivolous litigation. Thus, while Cottingham is correct that attorney discipline rules may not prohibit or punish activity protected by the First Amendment, that protection is inapplicable here.
>
> [In re Disciplinary Proceeding Against Cottingham, 423 P.3d 818, 826 (Wash. 2018).]

See also In re Paul, 353 S.E.2d 254, 260 (N.C. App. 1987) (in which the Court of Appeals of North Carolina rejected an appeal of a disbarment ordered entered in response to respondent's solicitation of a man to disrupt a trial and violation of a gag order, rejecting respondent's claim that those actions were protected by the First Amendment).

Overall, respondent has demonstrated no good faith belief or cogent argument why he was not required to comply with the applicable orders. Importantly, after the Court denied his motion for reconsideration and issued

what amounted to a fourth order, which imposed $5,000 in sanctions against him, respondent neither sought further review nor complied with any Doblin orders. Then, after going through most of the ethics process and repeatedly threatening the DEC members with a federal lawsuit, upon the conclusion of his ethics hearing below but prior to the DEC's determination, respondent filed an action in federal court seeking injunctive and declaratory relief. Notably, he did not seek an order from the federal court vacating the Doblin orders. Hence, the evidence clearly and convincingly demonstrates that respondent refused to comply with a valid, final order of a New Jersey court after he had exhausted all his legal remedies.

We part company with the DEC's finding that that respondent's misconduct did not violate RPC 3.4(c) or RPC 8.4(d) because it was not "malevolent or venal." Neither malevolence nor venality is required to prove either form of misconduct. It follows that we respectfully disagree with the DEC's finding that respondent should have further opportunity to pursue his claims in federal court, notwithstanding its concurrent finding that his conduct raised "serious questions of judgment," including his "frustrations with the result of his efforts has gotten the better of him." Attorney frustration can never excuse a violation of the Rules of Professional Conduct.

We find compelling the dissenting public member's observation that respondent's misconduct demonstrates an inability to accept any decisions with which he disagrees. Moreover, we give great weight to the public member's opinion that respondent's refusal to comply with three court orders should not be tolerated merely because he is an attorney, because that is not a right afforded to members of the public, whom the ethics system is charged with protecting. That position is echoed by our own public Members.

Indeed, the concern of the DEC's public member that deferral of discipline pending the outcome of respondent's federal lawsuit "would only give consent to [respondent's] abuse of privilege" is well-taken, especially since respondent has demonstrated no valid reason not to comply with the Court's orders. Respondent purported to ignore a commonsense interpretation of RPC 3.4(c) and instead, used what he determined to be vague language to shield his noncompliance with four court orders – a shield which, however ineffective, could only be posited by a member of the bar.

In sum, we find that respondent violated RPC 3.4(c) and RPC 8.4(d). The sole issue remaining for determination is the appropriate quantum of discipline for respondent's misconduct.

Ordinarily, a reprimand is imposed on an attorney who fails to obey court orders, even if the infraction is accompanied by other, non-serious violations. In

re Ali, 231 N.J. 165 (2017) (attorney disobeyed court orders by failing to appear when ordered to do so and by failing to file a substitution of attorney, violations of RPC 3.4(c) and RPC 8.4(d); he also lacked diligence (RPC 1.3) and failed to expedite litigation (RPC 3.2) in one client matter and engaged in ex parte communications with a judge, a violation of RPC 3.5(b); in mitigation, we considered his inexperience, unblemished disciplinary history, and limitation of his conduct to a single client matter); In re Cerza, 220 N.J. 215 (2015) (attorney failed to comply with a bankruptcy court's order compelling him to comply with a subpoena, which resulted in the entry of a default judgment against him; violations of RPC 3.4(c) and RPC 8.4(d); he also failed to promptly turn over funds to a client or third person, violations of RPC 1.3 and RPC 1.15(b); prior admonition for recordkeeping violations and failure to promptly satisfy tax liens in connection with two client matters, even though he had escrowed funds for that purpose); In re Gellene, 203 N.J. 443 (2010) (attorney was guilty of conduct prejudicial to the administration of justice and knowingly disobeying an obligation under the rules of a tribunal for failing to appear on the return date of an appellate court's order to show cause and failing to notify the court that he would not appear; the attorney was also guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; mitigating factors considered were the attorney's financial problems, his battle with

depression, and significant family problems; his ethics history included two private reprimands and an admonition).

Here, respondent's misconduct is worse than the misconduct addressed in the reprimand cases because, for five years, he has openly refused to comply with valid court orders without a good faith reason. Respondent tested the validity of the Superior Court's order when he appealed to the Appellate Division and then to the Court. He failed in those tests. Yet, respondent continues to "unilaterally and surreptitiously flout the orders," while lacking any good faith or objectively reasonable belief that the orders are invalid. Rather, he simply disagrees with the Court's analysis of his arguments.

In significant aggravation, respondent not only failed to comply with the court orders charged in the complaint, but also failed to comply with the Court's December 13, 2017 and January 11, 2019 Orders denying his petition for review and imposing further sanctions after denying his motion for reconsideration. Indeed, after the Court denied his motion for reconsideration, respondent continued his refusal to comply with the Doblin orders but took no legal action to challenge the validity of those orders – if any legal options truly remained – for two years. Moreover, he only took action in the Doblin case after the commencement of the disciplinary proceeding against him. Furthermore, in an unrelated action, the United States Bankruptcy Court also sanctioned respondent

$1,000 for failing to comply with court orders, evidencing that the instant case is part of a broader pattern noted by the DEC public member's observation that respondent "finds it difficult to accept any decisions that he does not agree with."

In mitigation, respondent has been practicing law for twenty-three years with no ethics infractions.

Thus, considering respondent's extended misconduct, and after balancing the significant aggravating and minimal mitigating factors present in this case, we determine that a three-month suspension, with the added condition that respondent satisfy the sanctions orders against him prior to reinstatement, is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Vice-Chair Singer, and Members Boyer, Joseph, and Menaker voted to impose a censure with the same condition.

Finally, we unanimously grant the OAE's unopposed motion for a protective order in this matter. The record is replete with references to confidential material concerning the Doblins and their son. Further public disclosure of that information serves no public interest when it is respondent's admitted refusal to comply with court orders that is the subject of the disciplinary proceeding.

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: 
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Kenneth James Rosellini
Docket No. DRB 21-231 and DRB 21-232

Argued: January 20, 2022

Decided: April 20, 2022

Disposition: Three-Month Suspension

| ***Members*** | Three-Month Suspension | Censure |
|---|---|---|
| Gallipoli | X | |
| Singer | | X |
| Boyer | | X |
| Campelo | X | |
| Hoberman | X | |
| Joseph | | X |
| Menaker | | X |
| Petrou | X | |
| Rivera | X | |
| Total: | 5 | 4 |

Johanna Barba Jones
Chief Counsel