Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 21-268
District Docket No. IV-2019-0057E

In the Matter of

Mark William Ford

An Attorney at Law

Decision

Argued: March 17, 2022

Decided: June 20, 2022

Andrew Sklar appeared on behalf of the District IV Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a recommendation for a two-month suspension filed by the District IV Ethics Committee (the DEC).[1] The formal ethics complaint charged respondent with having violated RPC 3.1

[1] The duration of that recommended suspension deviated from R. 1:20-15A(a)(3), entitled "Term of Suspension," which provides that "[a]bsent special circumstances, a suspension for a term shall be for a period that is no less than three months and no more than three years."

(commencing a proceeding without a basis in law and fact), RPC 3.3(a)(1) (making a false statement of material fact to a tribunal), and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation).

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

Respondent earned admission to the New Jersey bar in 1983 and to the Pennsylvania bar in 1986. During the relevant timeframe, he maintained a practice, the Law Offices of Mark W. Ford, LLC, in Gloucester City, New Jersey. Respondent has a significant disciplinary history.

In 1997, we reprimanded respondent for his violation of RPC 8.4(c). In the Matter of Mark W. Ford, DRB 96-395 (June 9, 1997), so ordered, 52 N.J. 465 (1998) (Ford I). In that matter, respondent falsely certified at least ten times, in two-week increments, to the Department of Labor, Division of Unemployment, that he was unemployed and available to work, during a period when he was gainfully employed at his own law office (slip op. at 4, 6, 7). He, thus, accepted $7,700 in unemployment benefits to which he was not entitled (slip op. at 2).

Next, in 2002, we admonished respondent for his violation of RPC 1.3 (lacking diligence) and RPC 1.4(a) (failing to communicate). In the Matter of Mark W. Ford, DRB 02-280 (October 22, 2002) (Ford II).

In 2009, we reprimanded respondent, for a second time, for his violation of RPC 1.7(a)(2) (engaging in a concurrent conflict of interest) and RPC 1.16(a)(1) (failing to withdraw from representation). In the Matter of Mark W. Ford, DRB 08-333 (June 26, 2009), so ordered, 200 N.J. 262 (2009) (Ford III).

Subsequently, in 2011, we censured respondent for his violation of RPC 1.15(a) (failing to safeguard funds and committing negligent misappropriation) and RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6). In the Matter of Mark W. Ford, DRB 11-115 (September 27, 2011), so ordered, 208 N.J. 360 (2011) (Ford IV).

Most recently, in 2013, we censured respondent, for a second time, for his violation of RPC 1.4(b) (failing to communicate), RPC 1.4(c) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions), and RPC 1.5(b) (failing to set forth in writing the basis or rate of the fee). In the Matter of Mark W. Ford, DRB 13-110 (November 7, 2013). The Court agreed with us regarding the quantum of discipline and further imposed the condition of a two-year proctorship, which concluded on September 7, 2016. In re Ford, 217 N.J. 251 (2014) (Ford V).

The facts of this matter are largely undisputed, although respondent denied having violated any RPCs.

In March 2019, Margaret Schemelia retained respondent to assist her in connection with a Chapter 13 bankruptcy petition.[2] Specifically, Schemelia sought to modify the mortgage on her residence (the Property) so she could continue living there.

On March 12, 2019, respondent met with Schemelia and her granddaughter, Amy Canning. Respondent reviewed a bankruptcy questionnaire with Schemelia and Canning. He testified, however, that they provided him with sparse information and that, at the end of their meeting, he felt "greatly mystified" and believed that "[he] didn't know what was going on." Respondent also testified that Schemelia claimed that the mortgage on the Property had been paid through March 2019 and, therefore, she believed that there was a tax lien foreclosure proceeding against the Property, rather than a mortgage foreclosure proceeding,[3] because she was delinquent in real estate taxes.

Regina Perfetti, respondent's assistant, also spoke with Canning on March 12, 2019. She testified that Canning told her that (1) she resided with Schemelia,

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[2] A Chapter 13 bankruptcy enables a petitioner with regular income to develop a repayment plan for all or some of their debt. Moreover, it provides the petitioner the opportunity to prevent foreclosure proceedings against their residence. See United States Courts website, "Chapter 13 - Bankruptcy Basics" (visited on June 9, 2022).

[3] Through a tax lien foreclosure, the bidder purchases only the interest on the tax lien certificate. It is different from a mortgage foreclosure, which permits the lender to legally seize the property and resell it to recoup the outstanding mortgage balance.

(2) she had made mortgage payments in January and February 2019, but those payments had been refused by the mortgage company, and (3) eviction proceedings had been initiated. Perfetti prepared Schemelia's bankruptcy petition, identifying Schemelia as the owner of the Property.

At this point, based solely upon Schemelia and Canning's representation that they had paid the mortgage through February or March 2019, respondent claimed a belief that Schemelia had a claim for equitable estoppel[4] against any foreclosure proceedings. Respondent admitted that Schemelia never provided him with proof of the mortgage payments purportedly made through February or March 2019, despite his request for that documentation.

The next day, on March 13, 2019, Canning paid a partial retainer fee and provided respondent with a sheriff's ten-day eviction notice related to the Property. Schemelia's bankruptcy petition was finalized on March 15, 2019 and, on March 16, 2019, Schemelia and respondent executed that petition, which listed Schemelia as the owner of the Property. Respondent described Schemelia and her granddaughter as "rushing" out of a desire to avoid the pending eviction.

[4] Equitable estoppel is a legal principle, founded in the fundamental duty of fair dealing, that prevents someone from taking legal action that conflicts with previous claims or behaviors. See Miller v. Miller, 97 N.J. 154 (1984). Essentially, respondent was prepared to argue that the mortgage holder could not foreclose on the Property after accepting Schemelia's late mortgage payments.

Robert Mallory, Esq., the grievant in the instant matter, represented South Jersey Federal Credit Union (SJFCU), the secured lender of the mortgage on the Property. He testified that, in 2016, Schemelia defaulted on the mortgage, and, consequently, SJFCU commenced foreclosure proceedings.

On March 18, 2019, in response to their telephone call earlier that day, Mallory sent an e-mail to respondent informing him that (1) on November 19, 2018, SJFCU obtained a final judgment of foreclosure and a writ of execution against the Property[5]; (2) on February 6, 2019, a sheriff's sale took place and the ten-day right of redemption had expired;[6] (3) on February 13, 2019, SJFCU filed the writ of possession; (4) on February 22, 2019, the Clerk of the Superior Court executed the writ for possession; and (5) on February 25, 2019, the eviction process commenced.[7] On March 19, 2019, SJFCU received the sheriff's deed to the Property, which it recorded at the Camden County Clerk's Office.

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[5] The final judgment provided that Schemelia was "absolutely barred and foreclosed of and from all equity of redemption of, in and to [the Property] when sold . . . by virtue of th[e] judgment."

[6] During the redemption period, SJFCU received title to the Property for $100, but Schemelia had the opportunity to redeem the Property. Ultimately, Schemelia did not redeem the Property and, after the expiration of the redemption period, the sheriff prepared a deed which transferred title of the Property to SJFCU.

[7] Attached to his March 18, 2019 e-mail, Mallory provided respondent with copies of the November 19, 2019 final judgment and writ of execution and the February 22, 2019 writ of possession. Mallory also testified that the recorded documents were publicly available, and could have been independently obtained by respondent could have found through a simple inquiry.

On March 22, 2019, four days after receipt of Mallory's e-mail, respondent filed Schemelia's Chapter 13 bankruptcy petition, in the form executed a few days prior. Stated differently, respondent filed the bankruptcy petition, and its accompanying Schedule A/B, listing the Property as Schemelia's asset, despite respondent's actual knowledge to the contrary. Moreover, the debt repayment plan respondent filed sought to cure the mortgage arrears on the Property at a rate of $200 per month, and listed SJFCU as having a $96,000 secured claim, despite respondent's knowledge that SJFCU held title to the Property. The certification above respondent's signature to the bankruptcy petition read "I have no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect."

Respondent later admitted that, prior to filing the petition with the bankruptcy court, he knowingly failed to correct Schemelia's bankruptcy petition, despite having received the information provided by Mallory. He specifically testified:

> I knowingly made misstatements to the [bankruptcy court]. As I stated, everything was sworn to, actually, prior to any contrary information coming in. I regret not making the - - the changes . . . .
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> [2T8.][8]

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[8] "2T" refers to the June 30, 2021 hearing transcript.
"PEx." refers to the presenter's exhibits.

(footnote cont'd on next page)

On April 16, 2019, upon receipt of Schemelia's Chapter 13 bankruptcy petition, Mallory filed objections to the petition on behalf of SJFCU. Mallory argued that (1) title to the Property conveyed to SJFCU more than a month prior to Schemelia's bankruptcy petition; (2) on February 22, 2019, the writ of possession for the Property issued; (3) on March 19, 2019, SJFCU recorded the deed transferring title to the Property to it, as lender; and (4) the proposed debt repayment plan had been submitted in bad faith, because respondent knew that his client no longer held title to the Property when he filed the petition. On June 11, 2019, Mallory filed a motion for relief from the automatic stay of the foreclosure proceedings.

Although respondent opposed SJFCU's applications, he did not update Schedule A/B of Schemelia's bankruptcy petition or the debt repayment plan to inform the bankruptcy court that SJFCU, rather than Schemelia, held title to the Property.[9] Indeed, Schemelia's certification in opposition to SJFCU's motion for relief again asserted that she had paid the mortgage on the Property through January or February 2019. On July 10, 2019, SJFCU succeeded on its motion

"HPR" refers to the hearing panel's report, dated September 30, 2021.

[9] The DEC did not charge respondent with having violated RPC 3.3(a)(5) (failing to disclose to a tribunal a material fact knowing that the omission is reasonably certain to mislead the tribunal).

for relief and, on August 1, 2019, the bankruptcy court dismissed Schemelia's Chapter 13 bankruptcy petition.

Based on the above facts, the DEC charged respondent with having violated RPC 3.1. Specifically, the DEC charged respondent with having filed Schemelia's bankruptcy petition, including Schedule A/B and the debt repayment plan, despite having no basis in law or fact to do so, because respondent knew that title to the Property had transferred to SJFCU.

Respondent conceded that the described events occurred, but argued that he had not violated RPC 3.1, maintaining that Schemelia had cognizable claims of equitable estoppel and incapacity. Specifically, respondent argued that Schemelia had a claim of equitable estoppel based upon her representation to him that she had made mortgage payments through February or March 2019.[10] Respondent also argued that Schemelia had a claim to incapacity because she remained under the continued care of a local doctor. However, he subsequently conceded that Schemelia's doctor would not support a claim of her incapacity. Respondent next suggested that Schemelia had a "nervous problem," because she lacked knowledge about her financial affairs. He described Schemelia as "an elderly woman 78 years of age in generally poor health, who was for the most

[10] As noted herein, respondent unsuccessfully asserted this same argument before the bankruptcy court.

part completely bewildered by what was going on and completely surprised by the loss of her long time home and in denial of the facts."[11]

In turn, the DEC argued that respondent's desire to help his elderly client did not justify his misconduct. It further questioned why, if respondent had been so concerned about his client's mental state, he failed to take any steps to confirm the information provided by Schemelia prior to filing her bankruptcy petition.

The DEC also argued that respondent's belief that Schemelia had an equitable interest in the Property was wholly irrelevant, noting that he had not advanced that allegation in the bankruptcy petition but, instead, asserted that Schemelia held title to the Property. Mallory further asserted that, despite respondent's claims of equitable estoppel and incapacity, the bankruptcy courts lack authority to vacate a State foreclosure judgment.[12]

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[11] By the time of the ethics hearing, Schemelia had passed away. The hearing panel denied respondent's request to subpoena Schemelia's medical records. It also denied his request to subpoena Schemelia's financial records from SJFCU. The hearing panel previously had provided respondent with the opportunity to file a formal motion on the issue, which he did not do.

[12] See In re Connors, 497 F.3d 314, 321 (3d Cir. 2007) (holding that "under the unambiguous language of 11 U.S.C. § 1322(c)(1) a Chapter 13 debtor does not have the right to cure a default on a mortgage secured by the debtor's principal residence between the time the residence is sold at a foreclosure sale and the time the deed is delivered." Thus, any claim related to Schemelia's redemption of the Property had to have been made prior to the foreclosure sale, which already had occurred by the time respondent filed the bankruptcy petition.

Based upon the same set of facts, the DEC also charged respondent with having made a false statement to a tribunal, in violation of RPC 3.3(a)(1), for his filings in the bankruptcy petition, which represented that Schemelia held title to the Property, despite his knowledge that the representation was false. Respondent admitted that, when he had filed the bankruptcy petition, (1) Schemelia did not hold title to the Property, (2) he knew of the final judgment in foreclosure and the sheriff's sale, and (3) he never corrected Schemelia's petition, including the accompanying Schedule A/B and debt repayment plan. However, respondent argued that he had not made a false statement to the bankruptcy court, because, although he filed the petition on March 22, 2019, he and Schemelia had executed it on March 16, 2019, prior to Mallory's March 18, 2019 e-mail advising that Schemelia no longer held title to the Property. Thus, he argued that his failure to "add" information to the petition after it had been executed did not amount to a knowing misstatement of the facts. Notwithstanding, respondent repeatedly admitted that he had failed to update Schemelia's bankruptcy petition to reflect that she no longer held title to the Property.

Respondent also asserted that the lack of information provided by Schemelia hindered him, but that he felt a sense of urgency to file her bankruptcy petition due to the pending eviction. Respondent stated that he had "[r]arely . . .

experienced a first extensive interview that advised [him] less about what was going on with the debtor's finances and litigation[, such that he] was unable to determine if [the debtor] was even in litigation." He admitted, however, that he had failed to adequately investigate the situation.

In turn, the presenter stressed that, even if respondent's client provided him limited information, Mallory's March 18, 2019 e-mail provided him with sufficient information regarding the foreclosure proceedings against the Property including Schemelia's lack of title to the Property.

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On August 6, 2019, in the United States Bankruptcy Court, District of New Jersey, Mallory filed a motion for sanctions against respondent, under Federal Bankruptcy Rule 9011, entitled "Signing of Papers; Representations to the Court; Sanctions; Verification and Copies of Papers." Mallory's motion was based upon respondent having filed Schemelia's bankruptcy petition which contained statements which he knew or should have known to be false. Specifically, Mallory argued that, based upon his e-mail four days prior, respondent clearly knew that Schemelia no longer held title to the Property when he filed her bankruptcy petition asserting that she still held title. He further argued that the petition filed by respondent improperly sought to modify and cure the default on the mortgage on the Property, when no such options were

available by law, because the redemption period had expired and title to the Property had transferred to SJFCU via a sheriff's deed.

In turn, respondent admitted having received Mallory's March 18, 2019 e-mail advising him that SJFCU held title to the Property. He argued that, based thereon, on March 25, 2019, he wrote to Mallory seeking to negotiate and resolve the bankruptcy petition by obtaining SJFCU's consent to provide Schemelia with the opportunity to modify the mortgage payments and retain the Property. Specifically, respondent proposed that Schemelia be permitted to make payments on the mortgage arrears for the next five years and, if she failed to do so, the previously obtained judgment could be reinstated, and the eviction rescheduled. Mallory characterized respondent's settlement offer as a hypothetical, because SJFCU already held title to the Property.

In further opposition to the motion for sanctions, respondent argued that (1) he had relied upon his client's representation that she had made mortgage payments through February or March 2019, (2) he mistakenly thought he read that the writ of execution had not been recorded until March 22, 2019, and (3) he believed that Schemelia had potential claims under the doctrine of equitable estoppel and incompetency. Notwithstanding those arguments, respondent admitted that (1) title to the Property had transferred from Schemelia to SJFCU, (2) the redemption period had expired, and (3) he knew of the change in

ownership prior to filing Schemelia's bankruptcy petition and debt repayment plan, which represented that Schemelia still held title to the Property.

On September 25, 2019, a judge for the United States Bankruptcy Court found that respondent had filed Schemelia's petition in bad faith and "for an improper purpose;" specifically, that he had filed the petition with the purpose to delay the eviction proceedings under the guise of an attempt to save ownership of the Property. That court found respondent's behavior improper because he knew that his client lacked title to the Property at the time that he filed her bankruptcy petition. It stated:

> given the nature of the debt, the nominal proposed payment plan, the inaccuracies in the Petition, and the fact that title had transferred and the redemption period expired prior to the Petition Date, the Court concludes that the Petition was filed for an improper purpose and without legal or evidentiary support [in violation of] Fed. R. Bankr. P. 9011(b)."
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> [PEx.7,p9.]

Next, the bankruptcy court considered whether respondent had failed to conduct a proper inquiry into the status of the title of the Property or had intentionally and falsely listed the Property as an asset in Schemelia's petition. Despite its earlier finding, the court determined that respondent had failed to conduct a reasonable inquiry but had not committed an intentional act of deception. The bankruptcy court found respondent's opposition to SJFCU's

motion for relief equally lacking in factual and legal grounds, but determined it, too, to be the result of his failure to conduct a reasonable inquiry. Pursuant to Federal Bankruptcy Rule 9011, the court imposed a $1,750 sanction upon respondent, payable to SJFCU, representing its legal fees.[13]

In the ethics complaint, the DEC further charged respondent with having violated RPC 8.4(c) by misrepresenting in the bankruptcy petition that Schemelia held title to the Property. As outlined above, respondent testified that he "knowingly made misstatements to the [bankruptcy] Court." Respondent, however, denied having been sanctioned by the bankruptcy court for misrepresentation. Although respondent admitted that he was sanctioned by the bankruptcy court, he maintained that he was sanctioned for his failure to conduct a reasonable inquiry.

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[13] At oral argument before us, respondent confirmed that he did not appeal the sanction. Additionally, it should be noted that respondent previously was sanctioned under Federal Bankruptcy Rule 9011. In 2012, in connection with his filing of a Chapter 13 bankruptcy petition on behalf of a client, the bankruptcy court determined that "when one considers the circumstances of the debtor's bankruptcy, it becomes clear that the petition was filed for no other purpose than to delay the eviction proceedings . . . and to prolong the opportunity of the debtor and her family to remain in the Property for as long as possible without meaningful means to reorganize in a Chapter 13 case. The indicia of bad faith are numerous." The court further stated that "[t]he inaccuracies and inconsistencies outlined . . . in the schedules submitted with the petition serve to compound the impression that the filing was thrown together by counsel with little attention paid to the accuracy or bona fides of the information presented. . . . [R]espondent ignored the information that he either had in his possession or that was readily available to him that would have clearly demonstrated that the debtor's Chapter 13 case could not succeed." In connection with that matter, the court imposed a $10,000 sanction.

Respondent noted that bankruptcy petitions include a section for the debtor to incorporate alleged claims. He argued that, if Schemelia's bankruptcy petition had properly been filed, alleging a claim of interest – rather than ownership – in the Property, SJFCU still would have had to file objections. Thus, he appeared to suggest that the misinformation contained in Schemelia's bankruptcy petition caused no harm to SJFCU, because SJFCU would have had to take the same action if the petition had been properly pled.

Additionally, of note, at the ethics hearing, Mallory testified that he had filed the ethics grievance underlying this matter because he believed that respondent exhibited behavior detrimental to the public's perception of the bar. Respondent objected to Mallory's testimony in this regard, calling it "irrelevant" and "a waste of time."

In his brief to the hearing panel, respondent denied having violated any RPCs. Respondent continued to argue that Schemelia had pressured him to promptly file her bankruptcy petition but had provided him with sparse information about the status of the Property. However, he again admitted that, on March 18, 2019, Mallory informed him of the conclusion of the mortgage foreclosure against the Property. He again admitted that, despite being informed that Schemelia no longer held title to the Property, he failed to update her petition to reflect the facts known to him prior to filing the petition. However,

he characterized his failure to update Schemelia's bankruptcy petition as an oversight, rather than misconduct warranting discipline.

Respondent further maintained that he had acted in good faith and sought to negotiate with SJFCU, as evidenced by his March 25, 2019 correspondence to Mallory. He continued to maintain that he had a good faith belief that Schemelia had a claim to equitable estoppel based on her alleged payment of the mortgage and his belief of her mental incapacity. He stated that "[c]learly, the initial [bankruptcy filing] did not mislead S.J. Federal Credit Union."

The presenter, in his brief to the hearing panel, reiterated the knowing character of respondent's misrepresentation that Schemelia held title to the Property when he filed her bankruptcy petition, in violation of RPC 3.3(a)(1) and RPC 8.4(c). The presenter noted that it was undisputed that Schemelia's petition, including Schedule A/B and the debt repayment plan, listed her as the owner of the Property, and that respondent knew that to be false when he filed the petition. The presenter further argued that respondent compounded his misconduct by opposing SJFCU's motion for relief from the automatic stay and continuing to assert Schemelia's ownership of the Property. The presenter argued that this conduct also violated RPC 3.1, because respondent knew the facts represented in Schemelia's bankruptcy petition were false.

Following a two-day hearing, the hearing panel found that respondent had violated RPC 3.1, RPC 3.3(a)(1), and RPC 8.4(c). The panel emphasized that respondent repeatedly admitted that he knew that Schemelia no longer held title to the Property when he filed her bankruptcy petition, which represented otherwise.

The panel considered, in aggravation, respondent's significant disciplinary history. More specifically, the panel noted that:

> [t]he most troubling aspect of Respondent's behavior is his willingness to make misrepresentations not only to clients but also to the court and public agencies. While, there is no evidence that he acted for self-gain other than to secure his fee, nonetheless, a pattern of behavior emerges whereby Respondent has made misrepresentations to the Bankruptcy Court about material facts to be considered by the court in the documents he filed. Moreover, Respondent failed to correct these misrepresentations even when given the opportunity when the motion to lift the stay had been filed.
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> [HPR,p8.]

The panel found that respondent should be subjected to enhanced discipline and recommended a two-month suspension. In support of enhanced discipline, the panel cited disciplinary precedent which is discussed below.

In his brief to us, respondent opposed the hearing panel's recommendation of a two-month suspension and continued to deny having violated any RPCs.

Respondent reiterated both his admissions and his contention that his "oversight" had not violated any RPCs.

Respondent also requested that we consider, in mitigation, that (1) "no harm was caused by [his] failure to update and correct" Schemelia's bankruptcy pleadings, and (2) SJFCU was not harmed by Schemelia's bankruptcy petition, because SJFCU would have had to take the same action if the petition had been properly pled.

Following a de novo review of the record, we determine that the DEC's finding that respondent's conduct was unethical is supported by clear and convincing evidence. It is undisputed that respondent filed Schemelia's bankruptcy petition, with the accompanying Schedule A/B and debt repayment plan, falsely asserting that Schemelia held title to the Property. It also is undisputed that respondent knew that title to the Property previously had transferred to SJFCU, via the foreclosure action. Thus, when respondent filed Schemelia's bankruptcy petition asserting that she held title to the Property, he knew that representation to be false. Consequently, he violated RPC 3.3(a)(1), which prohibits a lawyer from making a knowingly false statement of material fact to a tribunal.

A violation of RPC 8.4(c) requires intent. See, e.g., In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011). Here, respondent argued that the

contents of the petition did not constitute a misrepresentation, because he and Schemelia had signed the document before he became aware that title to the Property had transferred. That argument is unpersuasive. Indeed, respondent had actual notice, four days prior to filing Schemelia's bankruptcy petition, that she lacked title to the Property and that her redemption period had ended. Yet, he still filed the petition as executed – misrepresenting to the bankruptcy court that Schemelia held title to the Property. Moreover, respondent admitted having made the misrepresentations, stating, under oath, "I knowingly made misstatements to the" bankruptcy court. Thus, we decline to adopt the bankruptcy court's determination that respondent's misconduct resulted from his failure to diligently inquire as whether Schemelia held title, and find that it instead constituted a knowing misrepresentation in violation of RPC 8.4(c).

Respondent's attempt to blame his misconduct on Schemelia and Canning, asserting that they had provided him with limited information, also is meritless. Regardless of any information provided, or not provided, by Schemelia and Canning, Mallory provided respondent with information and documentation that SJFCU held title to the Property and the redemption period had passed on March 18, 2019. Despite having received this information, respondent filed Schemelia's false bankruptcy petition, misrepresenting to the court that she held title to the Property. Respondent compounded his misconduct by failing to

correct that misrepresentation when he opposed SJFCU's motion for relief from the automatic stay. Respondent's behavior fell well short of both the standard of care and veracity required of New Jersey attorneys.

Additionally, the bankruptcy court determined that respondent had filed Schemelia's petition in bad faith and for an improper purpose – to delay Schemelia's eviction. We agree. Thus, respondent violated RPC 3.1 when he filed the bankruptcy petition, asserting her ownership in the Property, which had no basis in law or fact.

In sum, we find that respondent violated RPC 3.1, RPC 3.3(a)(1), and RPC 8.4(c). The sole issue left for us to determine is the appropriate quantum of discipline for respondent's misconduct.

Terms of suspension have been imposed on attorneys who file frivolous litigation and engage in additional misconduct. See, e.g., In re Shearin, 166 N.J. 558 (2001) (Shearin I) (one-year suspension imposed, in a reciprocal discipline matter, on attorney who 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, on attorney who 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,[14] 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

[14] A "barebones" petition, filed without the required schedules and financial statements, does not comply with the bankruptcy rules.

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) (conduct prejudicial to the administration of justice); in aggravation, the attorney had a prior two-year suspension for unrelated conduct); 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 representation of a church; 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).

The discipline imposed on attorneys who make misrepresentations to a court or exhibit a lack of candor to a tribunal, or both, ranges from a reprimand to a long-term suspension. See, e.g., In re Marraccini, 221 N.J. 487 (2015) (reprimand imposed on an attorney who attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications

that had been pre-signed by the manager, who had since died; the attorney was unaware that the manager had died and, upon learning that information, withdrew all the affected complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); in mitigation, we found that the attorney's actions were motivated by a misguided attempt at efficiency, rather than by dishonesty or personal gain); In re Clayman, 186 N.J. 73 (2006) (censure imposed on attorney who misrepresented the financial condition of a bankruptcy client in filings with the bankruptcy court to conceal information detrimental to the client's Chapter 13 bankruptcy petition, in an effort to secure a more favorable outcome than his client was entitled to under the law; in mitigation, we observed that, although the attorney had made a number of misrepresentations in the petition, he was one of the first attorneys to be reported for his misconduct by a new Chapter 13 trustee who had elected to enforce the strict requirement of the bankruptcy rules, rather than permit what had been the "common practice" of bankruptcy attorneys under the previous trustee; violations of RPC 3.3(a)(1), (2) and (5) (failing to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting in an illegal, criminal, or fraudulent act); RPC 4.1(a)(1) and (2) (false statement of material fact or law to a third person); and RPC 8.4(c) and (d); in mitigation, the attorney also had an unblemished disciplinary record, was not motivated by personal gain, and did not act out of venality); In re Trustan, 202

N.J. 4 (2010) (three-month suspension imposed on an attorney who, among other things, submitted to the court a client's case information statement that falsely asserted that the client owned a home, and drafted a false certification for the client, which was submitted to the court in a domestic violence trial; violations of RPC 3.3(a)(1) and (4) (offering evidence the lawyer knows to be false); other violations included RPC 1.8(a) (improper business transaction with a client) and RPC 1.8(e) (providing financial assistance to a client in connection with pending or contemplated litigation), RPC 1.9(c) (duty of confidentiality to former client), and RPC 8.4(a), (c), and (d)); In re Forrest, 158 N.J. 428 (1999) (six-month suspension imposed on attorney who, in connection with a personal injury action involving injured spouses, failed to disclose the death of one of his clients to the court, to his adversary, and to an arbitrator, and advised the surviving spouse not to voluntarily reveal the death; violations of RPC 3.3(a)(5), RPC 3.4(a) (fairness to opposing party and counsel), and RPC 8.4(c); the attorney's motive was to obtain a personal injury settlement); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required

that at least $500,000 of the escrow funds remain in reserve; violation of RPC 3.3(a)(1) and (2), RPC 3.5(b) (improper ex parte communication), and RPC 8.4(c) and (d); two prior private reprimands (now admonitions)); In re Bernstein, 249 N.J.357 (2022), (two-year suspension imposed, on a motion for reciprocal discipline, on an attorney who violated RPC 3.3(a)(1) and RPC 8.4(c) when he made misrepresentations of facts to a Virginia federal court regarding his prior discipline and lawsuits pending against him for legal malpractice; attorney also violated RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(b); RPC 1.4(c); 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 1.5(a) (unreasonable fee); RPC 4.1(a)(1); RPC 5.5(a)(1) (unauthorized practice of law); RPC 8.4(b); and RPC 8.4(d); at least one client was substantially harmed by the attorney's misconduct); In re Kornreich, 149 N.J. 346 (1997) (three-year suspension for attorney who had been involved in an automobile accident and then misrepresented to the police, to her lawyer, and to a municipal court judge that her babysitter had been operating her vehicle; the attorney also presented false evidence in an attempt to falsely accuse the babysitter of her own wrongdoing; violations of RPC 3.3(a)(4) (offering evidence that the lawyer knows to be false), RPC 3.4(f) (improper requests that

a person other than a client refrain from voluntarily giving relevant information to another party), and RPC 8.4(b)-(d)).

Based on disciplinary precedent, the totality of respondent's misconduct warrants a term of suspension. Like the attorney in Clayman, who received a censure, respondent made unjustifiable misrepresentations in a bankruptcy petition to secure a more favorable outcome for a client. However, unlike Clayman, respondent's misconduct does not follow a change in enforcement to a previously pervasive practice. Compare Clayman, DRB 05-278 at 21, 24 (commenting in mitigation that respondent "appear[ed] to have been among the first attorneys in the local bankruptcy bar to experience changes in the U.S. Trustee's Office and the resultant strict requirements of a new chapter 13 trustee").[15] Rather, respondent's misconduct was a knowing misrepresentation designed to improperly assist a client and to delay the bankruptcy proceedings Moreover, it was the second time he had employed such a deceptive tactic and received corresponding, court-imposed sanctions as a consequence.

Indeed, respondent's conduct is most similar to that of the attorney in Khoudary, who received a two-year suspension. Just like Khoudary, respondent filed a bankruptcy petition that contained knowingly false statements, the

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[15] In Clayman, we exclusively considered those enforcement changes in mitigation; the change in bankruptcy enforcement and the pervasiveness of the prior practice was "irrelevant" to our conclusion that Clayman had committed misconduct. Clayman, DRB 05-278 at 21.

bankruptcy court determined that he had filed the petition for the improper purpose of delaying other proceedings, and he subsequently compounded that misconduct. The attorney in Khoudary, however, had a prior two-year suspension following his federal conviction for improperly structuring a transaction. Respondent has a significant disciplinary history, but not as egregious a history as Khoudary.

In crafting the appropriate discipline, however, we also consider aggravating and mitigating factors. In limited mitigation, respondent's misconduct was not for financial gain.

In aggravation, respondent has failed to show any remorse for his misconduct. Rather, respondent consistently has maintained both before the DEC and this Board that he has not committed misconduct and caused no harm. He also repeatedly sought to deflect blame for his misconduct to his elderly client. Thus, in our view, it is clear that respondent has failed to appreciate the gravity of his misconduct.

In further aggravation, this matter represents respondent's sixth disciplinary matter. As outlined above, respondent has experienced progressive discipline ranging from an admonition to a censure, and his second censure included a two-year proctorship which concluded in September 2016. Indeed, in

Ford IV, we noted that respondent had exhibited "a propensity to violate the Rules of Professional Conduct."

Also, as outlined above, in even further aggravation, this disciplinary matter represents respondent's second RPC 8.4(c) violation. The underlying matter represents respondent's second sanction for having filed a bankruptcy petition for an improper purpose. Here, just as in the 2012 bankruptcy matter, respondent ignored information that clearly demonstrated that the debtor's Chapter 13 petition could not proceed.

It is clear that respondent has not learned, despite his prior discipline, the importance of true and accurate filings; nor has he been reformed by his two-year proctorship. In connection with this proceeding, respondent even went so far as to state that Mallory's stated reason for filing the grievance – the public's perception of the bar - was "irrelevant" and "a waste of time." Respondent has proven, once again, that he cannot be trusted to act in accordance with the high standards required of attorneys and that he continues to pose a danger to the public. Thus, a significant term of suspension is the appropriate quantum of discipline to protect the public and its confidence in the bar.

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

Although respondent has had a prior proctorship, in our view, he should

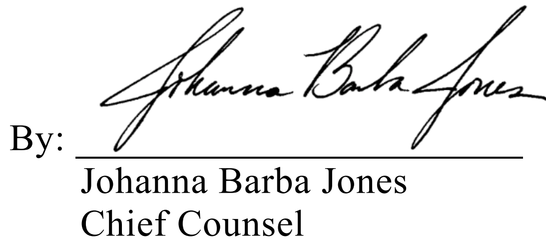
not practice without a second term of supervision. Therefore, upon his return to the practice of law, we also require respondent to practice under the supervision of a practicing attorney, approved by the Office of Attorney Ethics, for a period of two years.

Chair Gallipoli and Member Rivera voted to impose a two-year suspension, with the same condition.

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: ________________________
Johanna Barba Jones
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Mark William Ford
Docket No. DRB 21-268

Argued: March 17, 2022

Decided: June 20, 2022

Disposition: One-year suspension

Members	One-year suspension	Two-year suspension	Absent
Gallipoli		X	
Singer	X		
Boyer	X		
Campelo			X
Hoberman	X		
Joseph	X		
Menaker	X		
Petrou	X		
Rivera		X	
Total:	6	2	1

Johanna Barba Jones
Chief Counsel