Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-047
District Docket No. XIV-2021-0205E

In the Matter of	:
Edward Harrington Heyburn	:
An Attorney at Law	:

Decision

Argued: June 16, 2022

Decided: September 13, 2022

Michael Fogler appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear despite proper service.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-14(a), following the Supreme Court of Pennsylvania's July 22, 2021 order suspending respondent for three years. The OAE asserted that respondent was found guilty of having

violated the equivalents of New Jersey RPC 3.3(a)(1) (making a false statement of material fact to a tribunal); RPC 8.1(b) (failing to cooperate with disciplinary authorities); RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another); RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to grant the motion for reciprocal discipline and recommend to the Court that respondent be disbarred.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1997. At the relevant times, he maintained a practice of law in East Windsor, New Jersey.

On March 6, 2006, the Pennsylvania Supreme Court transferred respondent to "inactive status"[1] for his failure to comply with Pennsylvania continuing legal education (CLE) requirements. Thereafter, according to the

[1] In Pennsylvania, an attorney may request "inactive status" when he or she, among other circumstances, "is not required by virtue of his or her practice elsewhere to maintain active licensure in [Pennsylvania]." Pa.R.D.E. 219(j). There is no equivalent status in New Jersey.

Pennsylvania Disciplinary Board's April 28, 2021 decision in this matter, respondent was placed "on administrative suspension"[2] in Pennsylvania.

Respondent has an extensive disciplinary history in New Jersey, consisting of four censures and three terms of suspension.

On November 13, 2013, respondent received his first censure for his combined misconduct in two default matters. In re Heyburn, 216 N.J. 161 (2013) (Heyburn I). In the first matter, in September 2007, the Board on Attorney Certification (the BAC) revoked respondent's Court certification as a civil trial attorney following his failure to pay the required annual fee to maintain that certification. Despite the BAC's revocation, respondent continued to use the Court's seal with the words "Certified Attorney" on his letterhead and on his attorney website, until early 2011, in violation of attorney advertising rules.

In the second matter comprising Heyburn I, respondent failed to disclose to his client that her medical malpractice lawsuit had been dismissed following his failure to file the required affidavit of merit, in violation of RPC 1.3 (engaging in a lack of diligence); RPC 1.4(b) and (c) (failing to communicate with a client); and RPC 8.4(c). Thereafter, respondent failed, for several months,

[2] The Pennsylvania Supreme Court may order an attorney's "administrative suspension" when the attorney, among other circumstances, has failed to pay the annual assessment or has failed to comply with Pennsylvania's CLE requirements. Pa.R.D.E. 102(a).

to turn over the client file, despite the client's repeated requests that respondent do so, in violation of RPC 1.15 (failing to safeguard client property). Respondent, moreover, failed to comply with the district ethics committee's repeated requests for his written reply to the grievance, in violation of RPC 8.1(b).

On June 18, 2015, respondent received a second censure for his gross mishandling of a client matter. In re Heyburn, 221 N.J. 631 (2015) (Heyburn II). Specifically, following the May 2011 dismissal of his client's medical malpractice and wrongful death lawsuit, respondent promised his client that he would appeal the dismissal. However, respondent failed to do so and subsequently ignored his client's repeated requests for information regarding the appeal, in violation of RPC 1.1(a) (engaging in gross neglect); RPC 1.3; RPC 1.4(b); and RPC 8.4(c).

On July 9, 2018, respondent received a third censure for negligent misappropriation of client funds and recordkeeping violations. In re Heyburn, 234 N.J. 80 (2018) (Heyburn III). Respondent's negligent misappropriation of client funds occurred between August and September 2015. Thereafter, respondent corrected his recordkeeping deficiencies.

On December 9, 2020, respondent received a fourth censure for failing to promptly deliver funds to a third party, knowingly disobeying an obligation

under the rules of a tribunal, and engaging in conduct prejudicial to the administration of justice. In re Heyburn, 244 N.J. 427 (2020) (Heyburn IV). Specifically, in 2014, respondent, while representing the seller in connection with a commercial real estate transaction, received from the buyer a $25,000 deposit to hold, in escrow, in his attorney trust account (ATA), pending the sale. In January 2015, following respondent's withdrawal as the seller's counsel, the Superior Court of New Jersey issued an order granting respondent's application to transfer the buyer's $25,000 from his ATA to the Superior Court Trust Fund (the SCTF). Thereafter, for nearly four years, until December 2018, respondent failed to deposit those funds with the SCTF, despite being court-ordered to do so, in violation of RPC 1.15(b) (failing to promptly deliver funds to a third party) and RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal). Respondent's failure compelled the buyer's counsel to seek court intervention and, thus, wasted judicial resources, in order to bring respondent into compliance, in violation of RPC 8.4(d).

On January 13, 2022, respondent received a six-month suspension, effective February 10, 2022, for his misconduct in two client matters. In re Heyburn, 249 N.J. 424 (2022) (Heyburn V). In the first matter, respondent allowed his client's personal injury lawsuit to be administratively dismissed for lack of prosecution, following his failure to locate and serve the defendant.

Thereafter, respondent failed to seek reinstatement of his client's complaint; failed, for years, to inform his client that his lawsuit had been dismissed; and misled his client into believing that the complaint remained pending, in violation of RPC 1.1(a); RPC 1.3; RPC 1.4(b) and (c); and RPC 3.2 (failing to expedite litigation). Additionally, respondent failed to file a timely answer to the disciplinary complaint in that matter, in violation of RPC 8.1(b). Respondent's underlying misconduct occurred between May 2015 and November 2018.

In the second Heyburn V matter, respondent failed, for several months, to file his notice of appearance in connection with his client's previously filed pro se federal employment discrimination lawsuit. During that timeframe, however, respondent misrepresented to his client that he had done so. Additionally, respondent failed to appear at a scheduled hearing and failed to file an amended complaint, which resulted in the dismissal of the complaint with prejudice. Finally, respondent failed to inform his client of these adverse developments in his case, in violation of RPC 1.3 and RPC 1.4(b) and (c). Respondent's misconduct in that matter occurred between January and November 2017.

Also on January 13, 2022, respondent received a one-year suspension, consecutive to the six-month suspension imposed in Heyburn V, for similar misconduct in connection with his mishandling of an uncontested divorce matter. In re Heyburn, 249 N.J. 423 (2022) (Heyburn VI). In that matter,

respondent failed to file his client's divorce complaint within the time provided by the Court Rules, resulting in the dismissal of the client's complaint, without prejudice. Thereafter, respondent failed, for months, to properly re-file his client's divorce complaint. Compounding matters, respondent repeatedly provided his client with false information regarding the filing and service of the complaint, in violation of RPC 1.3; RPC 1.4(b) and (c); and RPC 3.2. Respondent's misconduct caused his client's uncontested divorce matter to linger for more than two years, when it should have taken no more than a few months to one year. Respondent's misconduct in Heyburn VI occurred between August 2016 and November 2018.

On June 14, 2022, we determined that a two-year suspension, consecutive to the terms of suspension the Court imposed in Heyburn V and Heyburn VI, was the appropriate quantum of discipline for respondent's mishandling of his client's third-party liability lawsuit. In the Matter of Edward Harrington Heyburn, DRB 21-266 (Heyburn VII). In that matter, in March 2011, respondent filed a third-party liability lawsuit on behalf of his client, in the Superior Court of New Jersey; however, he failed to properly serve the defendant and, consequently, in fall 2011, the Superior Court administratively dismissed the matter. Thereafter, respondent failed to reinstate the matter and lied to his client, for years, regarding the status of the matter, claiming that it was "pending" and

"doing well," when it had already been dismissed, in violation of RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 3.2; and RPC 8.4(c). In April 2019, respondent finally told his client the truth regarding the status of his matter. However, by that time, the statute of limitations on his client's claim had run, which permanently extinguished his client's potential cause of action. In addition to a two-year suspension, we determined that, upon respondent's reinstatement, he should be required to practice under the supervision of a proctor for a period of no less than two years. Our decision in Heyburn VII is pending with the Court.

Meanwhile, on June 22, 2021, the Pennsylvania Supreme Court suspended respondent for three years in connection with his misconduct underlying this matter. Office of Disciplinary Counsel v. Heyburn, 2021 Pa. LEXIS 2706 (2021). Respondent has no additional public discipline in Pennsylvania.

The facts of this matter are uncontested.

In February 2011, the Gage Fiore law firm filed a medical malpractice lawsuit, on behalf of Susan Dogan, in the Court of Common Pleas of Monroe County, Pennsylvania. Gage Fiore maintained its law office in Lawrenceville, New Jersey, and Anthony R. Fiore served as one of the firm's partners. In 2015, Fiore assumed responsibility for the Dogan matter.

Between January 2016 and 2018, respondent served as an "of counsel" attorney to the Gage Fiore law firm and as "co-counsel" with Fiore in approximately fifteen New Jersey matters.

In December 2017, respondent agreed to serve as Fiore's "co-counsel" in the Dogan matter. In January 2018, Fiore's paralegal prepared a draft motion for respondent's pro hac vice admission in Pennsylvania for the Dogan matter. Prior to preparing the draft motion, Fiore's paralegal consulted with respondent, who provided the paralegal with a sample motion.

Following the paralegal's preparation of the draft motion, respondent reviewed the entire motion for accuracy and informed Fiore and his paralegal that its contents were "true and correct." However, the motion to the Monroe County Court of Common Pleas and the related submissions to the Pennsylvania Interest on Lawyers Trust Account (IOLTA) Board contained significant misrepresentations that respondent failed to correct.

First, respondent sent the Pennsylvania IOLTA Board a "pro hac vice submission form[,]" which contained the following requirement:

> Use this form if you are an attorney who is qualified to practice in another state or in a foreign jurisdiction, **is not admitted to practice law in Pennsylvania**, and is seeking to be specially admitted to the Bar of the Commonwealth of Pennsylvania in order to appear before a Pennsylvania court in connection with a particular case.

[Ex.Bpp.4-5¶¶17-18 (emphasis in original)].

The form further required respondent to "[l]ist all foreign, state[,] and federal jurisdictions in which [he had] been qualified, licensed[,] or admitted to practice law and [was] active in good standing[.]" Despite his admission to the Pennsylvania bar, respondent improperly completed the form and listed New Jersey as his sole jurisdiction of admission. Respondent, thus, not only concealed from the Pennsylvania IOLTA Board his Pennsylvania bar admission, but also his continuing ineligibility to practice law in that jurisdiction.

Second, in Fiore's January 2018 statement of reasons in support of the pro hac vice motion, he certified, based on respondent's "representations" to him and his paralegal, that respondent had "never been the subject of any disciplinary proceedings." At the time of the January 2018 pro hac vice motion, however, the Court had censured respondent twice, in Heyburn I and II, and we had determined to impose a censure on him a third time, in Heyburn III, mere weeks beforehand. See In the Matter of Edward Harrington Heyburn, DRB 17-198 (December 6, 2017). In the Pennsylvania Disciplinary Board's April 28, 2021 opinion, it found that Fiore and his paralegal were unaware of both respondent's plenary admission in Pennsylvania and his New Jersey disciplinary history.

Finally, in respondent's January 2018 verification in support of the pro hac vice motion, he certified that he was "not and [had] never been, the subject

of any disbarment or suspension proceeding before this or any Court." However, respondent's verification, as of January 2018, was only partially true[3] because it failed to comply with Pa.R.C.P. 1012.1(c)(1)(i), which requires all candidates for pro hac vice admission to state, in their verifications, whether they have "ever been suspended, disbarred, **or otherwise disciplined**" and to "provide a description of the circumstances for each occurrence of suspension, disbarment[,] **or other disciplinary action**[.]" (Emphasis added). Moreover, Pa.R.C.P. 1012.1(c)(1)(ii) requires pro hac vice admission candidates to state, in their verification, all jurisdictions in which they have been admitted to practice law and whether they were "subject to any disciplinary proceedings" in those jurisdictions.

In respondent's January 2018 verification, he failed to disclose his plenary admission and ineligibility to practice in Pennsylvania and limited his discussion of his disciplinary history to matters resulting in suspensions or disbarment, of which none yet existed. Respondent, thus, knowingly failed to disclose the Court's censures in Heyburn I and II and our censure in Heyburn III, despite being required, by Pennsylvania court rule, to disclose his entire

[3] In January 2018, neither we nor the Court had imposed a term of suspension in Heyburn I, II, or III. However, a minority block of Members voted to impose a three-month suspension in each of those cases

disciplinary history.[4] Respondent executed his verification "under penalty of perjury" and with the "understand[ing] that false statements made herein are subject to the penalties of 18 Pa.C.S.A. 4904[5] relating to unsworn falsification to atuhorities [sic]."

On January 19, 2018, Fiore filed the motion for respondent's pro hac vice admission, wherein he verified that, "[a]fter reasonable investigation, [he] believed that [respondent was] reputable and competent." That same date, the Pennsylvania IOLTA Board sent Fiore a letter, noting that respondent had utilized an outdated pro hac vice "submission form" and failed to pay the correct fee.

On January 22, 2018, Monroe County Court of Common Pleas President Judge Margherita Patti-Worthington issued an order denying Fiore's motion for

[4] Although Pa.R.C.P. 1012.1(c)(1)(ii) also required respondent to disclose all pending disciplinary proceedings, at the time of the January 2018 pro hac vice motion, the OAE had not yet docketed Heyburn IV for investigation. Although the OAE docketed Heyburn V for investigation on December 22, 2017, accessible records do not reflect whether respondent was aware of that matter at the time of the pro hac vice motion.

[5] 18 Pa.C.S.A. 4094(a) provides that a person commits a second-degree misdemeanor if, "with intent to mislead a public servant in performing his official function, he [. . .] makes any written false statement he does not believe to be true[.]"

Similarly, 18 Pa.C.S.A. 4094(b) provides that a person commits a third-degree misdemeanor "if he makes a written false statement which he does not believe to be true, on or pursuant to a form bearing notice, authorized by law, to the effect that false statements made therein are punishable."

respondent's pro hac vice admission because it failed to provide the required IOLTA fee certification, as 204 Pa. Code. § 81.505(a) requires.

On January 23, 2018, respondent submitted to the Pennsylvania IOLTA Board the correct fee and the most current pro hac vice submission form. Similar to respondent's initial pro hac vice submission form, the most current form was intended only for attorneys not previously admitted to practice in Pennsylvania, and it required that respondent list all jurisdictions in which he was admitted to practice in active, good standing. Respondent, however, again listed New Jersey as his sole jurisdiction of admission and again concealed his Pennsylvania bar admission and ineligibility to practice in that jurisdiction.

On January 31, 2018, Fiore filed a second motion for respondent's pro hac vice admission, which contained "identical" allegations and the same verifications as in the January 19 motion, but which included the correct IOLTA fee certification, indicating that respondent had paid the required fee. On February 1, 2018, President Judge Patti-Worthington granted Fiore's motion and admitted respondent to the Pennsylvania bar, pro hac vice, for the Dogan matter.

On September 30, 2019, trial commenced in the Dogan matter before Monroe County Judge Jennifer Harlacher Sigbum. Respondent and Fiore both appeared for trial, where respondent conducted the direct examination of Dogan and her medical expert and the cross-examination of the defendant and its

medical expert. During the course of the trial, Judge Sigbum learned of respondent's censures in Heyburn I, II, and III.

On October 3, 2019, following the conclusion of the trial, Judge Sigbum reviewed Fiore's January 31, 2018 pro hac vice motion and discovered not only respondent's misrepresentations regarding his disciplinary history, but also his failure to disclose his plenary admission and ineligibility to practice in Pennsylvania. Consequently, on October 4, 2019, Judge Sigbum filed an ethics grievance for respondent's deceptive conduct with the Pennsylvania Disciplinary Board.

On December 3, 2019, the Pennsylvania Office of Disciplinary Counsel (the ODC) sent respondent a letter, via certified mail, advising him of the ethics grievance and directing that he provide a written reply to the allegations. Although the certified mail was delivered on December 5, 2019, respondent failed to reply.

On January 7, 2020, the ODC sent respondent a second letter, advising him that it had not received the required written reply to the grievance and that his failure to reply could result in the imposition of discipline, based on his violation of Pa.R.D.E. 203(b)(7).[6] Respondent, however, again failed to reply.

[6] Pa.R.D.E. 203(b)(7) provides that a "[f]ailure by a respondent-attorney without good cause to [reply] to [the Pennsylvania ODC's] request [. . .] for a statement of the respondent
(footnote cont'd on next page)

On April 13, 2020, the ODC filed a "[p]etition for [d]iscipline" against respondent for his misconduct underlying the pro hac vice motion and for his failure to provide a written reply to the grievance. On May 1, 2020, respondent filed an "[a]cceptance of [s]ervice] of the [p]etition for [d]iscipline[,]" however, he failed to file an answer.

On November 2, 2020, respondent and the ODC executed a disciplinary stipulation, wherein respondent admitted to the facts underlying his misconduct and acknowledged that he had violated Pa. RPC 3.3(a)(1);[7] Pa. RPC 8.4(a); Pa. RPC 8.4(b); Pa. RPC 8.4(d); and Pa. R.D.E. 203(b)(7).[8]

On November 4, 2020, respondent testified as the sole witness at the Pennsylvania ethics hearing. During the hearing, he claimed that he "was unfamiliar with the process of being admitted pro hac vice" and did not

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attorney's position [. . .] shall be grounds for discipline[.]"

[7] In New Jersey, RPC 3.3(a)(5) expressly prohibits an attorney from failing "to disclose a material fact knowing that the omission is reasonably certain to mislead the tribunal[.]" Although RPC 3.3(a)(5) appropriately captures the crux of respondent's deception in this matter, the Pennsylvania RPCs do not contain an equivalent rule. Indeed, RPC 3.3(a)(5) "has no analogue in the American Bar Association ([the] ABA) Model Rules of Professional Conduct[.]" In re Seelig, 180 N.J. 234, 246 (2004). Despite the absence of a Pennsylvania equivalent to RPC 3.3(a)(5), "the comments to the ABA Model Rule [3.3] expressly state that '[t]here are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation.'" Id. at 250 (citation omitted). In New Jersey, "RPC 3.3(a)(5) codifies the ABA comment[.]" Ibid.

[8] The stipulated Pennsylvania RPCs are equivalent to the respective New Jersey RPCs. Pa. R.D.E. 203(b)(7) is most similar to New Jersey RPC 8.1(b) and R. 1:20-3(g)(3), which collectively, prohibit a lawyer from failing to cooperate in a disciplinary investigation and require a lawyer to reply, in writing, within ten days of receipt of a request for information.

"consider [himself to be] a Pennsylvania attorney because [his] registration had lapsed for so many years." Respondent further stated that he never had discussed his disciplinary history with Fiore, rationalizing that "if you Google my name[,] it immediately comes up. So I just assumed that anybody who Googled me knew." Respondent, however, admitted that he reviewed the draft pro hac vice documents "way too quickly" and claimed that he "was doing three things at once and did not fully understand" his obligation "to report [his] prior ethic[s] violations[.]" Additionally, respondent maintained his unsupported view that, at the time of the pro hac vice motion, he only needed to report "any current[,] ongoing investigations." Respondent, however, conceded that he should have disclosed all of his "prior [ethics] violations[.]"

Further, although respondent noted that he "did not intend to mislead the court[,]" he acknowledged that his conduct had, in fact, "misle[d] the court." In that vein, respondent stated that he had "to take full responsibility" and offered "no defense" for his actions. Respondent also offered no defense for his failure to reply to the December 2019 ethics grievance, but he attributed his failure to file an answer to the ODC's April 2020 petition for discipline to poor health.[9]

[9] Respondent provided no medical documentation to support his claim.

At the conclusion of the hearing, respondent apologized for his misconduct, claimed that he was "embarrassed[,]" and maintained that, as an attorney who had been practicing for twenty-three years, he "kn[e]w better."

In the ODC's December 4, 2020 brief to the Pennsylvania disciplinary hearing panel, it urged the imposition of a one-year and one-day suspension, based on respondent's significant New Jersey disciplinary history, which he had concealed from the Pennsylvania IOLTA Board and the Monroe County Court of Common Pleas in connection with the two pro hac vice motions. In that vein, the ODC argued that respondent obtained pro hac vice admission "under false pretenses." The ODC noted that, although respondent initially had failed to cooperate, he eventually stipulated to his misconduct and apologized for his actions.

In the Pennsylvania disciplinary hearing panel's January 13, 2021 decision, it adopted the ODC's arguments and, likewise, unanimously recommended the imposition of a one-year and one-day suspension.

In the Pennsylvania Disciplinary Board's April 28, 2021 decision, it unanimously recommended to the Pennsylvania Supreme Court that respondent be suspended for eighteen months for his violations of Pa. RPC 3.3(a)(1); Pa. RPC 8.4(a); Pa. RPC 8.4(b); Pa. RPC 8.4(c); Pa. RPC 8.4(d); and Pa.R.D.E. 203(b)(7). In its decision, the Pennsylvania Board found that respondent

intentionally had concealed his plenary admission in Pennsylvania and his extensive prior discipline in New Jersey, in order to obtain pro hac vice admission in Pennsylvania to try a medical malpractice matter. The Pennsylvania Board found that, although respondent knew that the pro hac vice documents "contained falsities," he failed to correct the documents and allowed them to be filed with both the Monroe County Court and the Pennsylvania IOLTA Board. The Pennsylvania Board characterized respondent's "deceptive conduct" as "serious[,]" particularly because respondent had a second opportunity to provide truthful information to the Monroe County Court and to the Pennsylvania IOLTA Board. However, rather than correct his prior misrepresentations, respondent chose to provide those entities with the same false information.

The Pennsylvania Board found that respondent's explanations for his "dishonest conduct were not expansive and were not particularly credible." In that vein, the Pennsylvania Board emphasized that a court "should not have to 'Google' a [pro hac vice] applicant's name to determine [his] disciplinary history." The Pennsylvania Board found respondent's explanation that "he did not consider himself a Pennsylvania attorney because 'his registration had lapsed'" unconvincing, given that respondent never "sought clarification on his status in Pennsylvania."

Finally, the Pennsylvania Board found that respondent failed to offer a reasonable explanation for his failure to answer the petition for discipline or to reply to the ethics grievance. Although respondent eventually stipulated to his misconduct and apologized for his actions, the Pennsylvania Board found that "the seriousness of [r]espondent's deceitful misconduct, his prior discipline in New Jersey[,] and his failure to [reply] to [the Pennsylvania ODC] outweigh[ed] his eleventh hour acts of cooperation and contrition."

On June 22, 2021, the Pennsylvania Supreme Court issued an order suspending respondent for three years. Office of Disciplinary Counsel v. Heyburn, 2021 Pa. LEXIS 2706 (2021). Pennsylvania Chief Justice Baer and Justice Dougherty dissented, noting that they would have suspended respondent for five years. Ibid.

Following the imposition of his three-year suspension in Pennsylvania, respondent failed to notify the OAE of his discipline, as R. 1:20-14(a)(1) requires.

In support of its recommendation for disbarment, the OAE likened respondent's misconduct to that of the attorney in In re Bernardino, 198 N.J. 377 (2009), who, as discussed below, received a three-year suspension for failing to disclose, in his application to practice before the United States Patent and Trademark Office (the USPTO), that he was under criminal and disciplinary

investigation for conduct concerning his former employer. The OAE argued that, like Bernardino, who repeatedly misled the USPTO regarding the disciplinary investigation and who failed to provide "complete information and documentation" regarding his outstanding federal taxes, respondent "deliberately" concealed his plenary admission in Pennsylvania and his prior discipline in New Jersey in order to obtain pro hac vice admission in Pennsylvania.

Additionally, like the attorney in In re Kantor, 180 N.J. 226 (2004), who was disbarred for abandoning his practice and clients, in a default matter, after having received a reprimand in 2000 and a three-month suspension in 2003, the OAE maintained that respondent's significant disciplinary history warrants the ultimate sanction of disbarment. The OAE emphasized that, despite his prior experiences with the disciplinary system, respondent has failed to learn from his past mistakes, poses a "clear danger to his clients[,]" and has demonstrated a "striking inability to abide by the Rules of Professional Conduct[.]" Thus, based on the principle of progressive discipline, the OAE urged us not to afford respondent "any more chances to misbehave" and to recommend to the Court that he be disbarred.

Respondent neither submitted a brief for our consideration nor appeared for oral argument, despite having received proper notice.

Following our review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state [. . .] is guilty of unethical conduct in another jurisdiction [. . .] shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined [. . .] shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

In Pennsylvania, the standard of proof in attorney disciplinary proceedings is that the "[e]vidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof . . . is clear and satisfactory." Office of Disciplinary Counsel v. Kissel, 442 A.2d 217 (Pa. 1982) (second alteration in original) (quoting In re Berland, 328 A.2d 471 (Pa. 1974)). Moreover, "[t]he conduct may be proven solely by circumstantial evidence." Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981) (citations omitted). Notably, in this matter, respondent stipulated to his misconduct.

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

> The Board shall recommend the imposition of the identical action or discipline unless the respondent

> demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:
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> (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
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> (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
>
> (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
>
> (D) the procedure followed in the foreign disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
>
> (E) the unethical conduct established warrants substantially different discipline.

Subsection (E) applies in this matter because the unethical conduct warrants substantially different discipline. Specifically, based upon New Jersey's disciplinary precedent, respondent's egregious deception in connection with his applications for pro hac vice admission in Pennsylvania, as exacerbated by his refusal to cooperate with Pennsylvania disciplinary authorities and his extensive disciplinary history for dishonest conduct, warrants his disbarment in New Jersey.

As the Pennsylvania Disciplinary Board found, and as respondent stipulated, respondent violated RPC 8.4(c) by failing to disclose, in his January 2018 pro hac vice applications to the Pennsylvania IOLTA Board and to the

Monroe County Court of Common Pleas, his plenary admission and ineligibility to practice in Pennsylvania and his prior censures in Heyburn I, II, and III.

In furtherance of his deception, respondent submitted to the Pennsylvania IOLTA Board a form intended to be used exclusively by attorneys not admitted to practice in Pennsylvania. He thereby concealed his Pennsylvania admission and circumvented his ineligibility to practice in that jurisdiction. Respondent's deception, however, did not end there. Specifically, in his verification in support of the pro hac vice motions to the Monroe County Court, respondent stated, under penalty of perjury, that he was "not, and [had] never been, the subject of any disbarment or suspension proceeding before this or any Court." Respondent's statement was only partially true, however, because, although he had not yet been suspended or faced disbarment, he had been censured three times. Respondent, thus, failed to comply with Pa.R.C.P. 1012.1(c)(1)(i), which required him to disclose, in his verification, whether he had "ever been suspended, disbarred, **or otherwise disciplined.**" (emphasis added). Rather than disclose his entire disciplinary history, respondent carefully evaded the requirements of Pa.R.C.P. 1012.1(c)(1)(i) by limiting his discussion of his disciplinary history to proceedings resulting in suspension or disbarment, of which none yet existed, and omitting any reference to his three censures.

RPC 3.3(a)(1) prohibits a lawyer from knowingly making "a false statement of material fact or law to a tribunal." RPC 8.4(a) further prohibits a lawyer from "violat[ing] or attempt[ing] to violate the Rules of Professional Conduct, knowingly assist[ing] or induc[ing] another to do so, or doing so through the acts of another." However, we have, historically, declined to sustain RPC 8.4(a) charges "except where the attorney has, through the acts of another, violated or attempted to violate the RPCs, or where the attorney himself has attempted, but failed, to violate the RPCs." In the Matter of Stuart R. Lundy, DRB 20-227 (April 28, 2021) at 11 (dismissing an RPC 8.4(a) charge as superfluous based on the attorney's mere violation of other, more specific RPCs), so ordered, 249 N.J. 101 (2021).

Here, respondent's RPC 8.4(a) charge was not grounded exclusively upon his violations of other, more specific RPCs. Rather, respondent violated RPC 3.3(a)(1) and RPC 8.4(a) by inducing Fiore to file the false pro hac vice motions, on his behalf, with the Monroe County Court. Specifically, respondent advised Fiore that the pro hac vice motions were "true and correct[,]" even though respondent, as a Pennsylvania attorney who was ineligible to practice in that jurisdiction, would have been ineligible for pro hac vice admission. Moreover, respondent's verification in support of the motions concealed his disciplinary history, via a carefully crafted statement, while Fiore's statement of reasons in

support of the motions falsely alleged that respondent had "never been the subject of any disciplinary proceedings." Although respondent was well-aware of his Pennsylvania plenary admission and extensive New Jersey disciplinary history and knew that Fiore's statement was false, he failed to disclose the truth to Fiore and allowed Fiore to file the deceptive motions anyway.

Compounding matters, respondent's deception concealed critical information from the Monroe County Court regarding his fitness for pro hac vice admission. See Pa.R.C.P. 1012.1(e)(4) (allowing a court to deny a motion for pro hac vice admission because "the candidate is not competent or ethically fit to practice law"). To achieve his deception, respondent concealed his Pennsylvania plenary admission and carefully crafted his half-true statement in his verification that he had "not, and [had] never been, the subject of any disbarment or suspension proceeding before this or any Court[,]" in order to (1) limit his discussion of his disciplinary history, (2) omit any reference to his censures in Heyburn I, II, and III, and (3) mislead the Monroe County Court regarding his fitness for pro hac vice admission. The effect of respondent's deception gave the appearance to the Monroe County Court that respondent was a New Jersey attorney with no disciplinary history when, in fact, he was ineligible to practice in Pennsylvania and had already been censured three times in our jurisdiction. Respondent, thus, committed conduct prejudicial to the

administration of justice by purposefully denying the Monroe County Court the opportunity to properly assess his fitness for pro hac vice admission, in violation RPC 8.4(d).

Further, respondent violated RPC 8.1(b) by failing to file the required written reply to Judge Sigbum's October 2019 ethics grievance, despite the ODC's repeated requests that he do so. Respondent further violated RPC 8.1(b) by failing to file an answer to the ODC's April 2020 petition for discipline.

Finally, we determine to dismiss the allegation that respondent violated RPC 8.4(b). Pursuant to that Rule, it is misconduct for an attorney to "commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer." Although the Pennsylvania Disciplinary Board found, as fact, that respondent's verifications in support of the pro hac vice motions were made "under penalty of perjury" and with the "understand[ing] that false statements made herein are subject to the penalties of 18 Pa.C.S.A. 4904[,]" neither the OAE nor the Pennsylvania disciplinary record specifically established a nexus between that criminal statute and RPC 8.4(b).

We have observed that the OAE's motion brief is the equivalent of a charging document in a R. 1:20-14 motion for reciprocal discipline. In the Matter of Hercules Pappas, DRB 20-288 (July 27, 2021) at 22, so ordered, 250 N.J. 118 (2022). Here, although the OAE's motion brief charged respondent

with having violated RPC 8.4(b), it failed to identify a specific criminal act that respondent was alleged to have committed. See In the Matter of Jeffery M. Adams, DRB 16-319 (May 4, 2017) (dismissing an RPC 8.4(b) charge because the complaint neither identified a violation of a specific criminal statute nor contained any facts on which to base a specific finding that the attorney had committed a criminal act), so ordered, 230 N.J. 391 (2017).

Moreover, even if the OAE had established such a nexus between 18 Pa.C.S.A. 4904 and RPC 8.4(b), respondent's misconduct did not clearly and convincingly violate that statute. Specifically, a violation of 18 Pa.C.S.A. 4904 requires, among other things, that an individual make a "written **false** statement which he does not believe to be true" (emphasis added). Although respondent's statement in his verification that he had not been "the subject of any suspension or disbarment proceeding" was, by design, a grossly misleading half-truth, it was not, technically, false. In attorney disciplinary matters, "'[t]here are circumstances where a failure to make a disclosure is the equivalent of an affirmative misrepresentation.'" Seelig, 180 N.J. at 250 (2004) (quoting Model Rules of Prof'l Conduct R. 3.3 cmt.3) (alteration in original). Although a failure to disclose may constitute an affirmative misrepresentation for purposes of an RPC 3.3 violation, we decline to apply that principle in determining whether respondent violated 18 Pa.C.S.A. 4904, particularly where, as here, the OAE has

not explained its theory regarding the RPC 8.4(b) allegation. Consequently, we determine to dismiss the RPC 8.4(b) charge.

In sum, we determine to grant the motion for reciprocal discipline and find that respondent violated RPC 3.3(a)(1);[10] RPC 8.1(b); RPC 8.4(a); RPC 8.4(c); and RPC 8.4(d). We determine to dismiss the charge that respondent violated RPC 8.4(b). The sole issue left for us to determine is the proper quantum of discipline for respondent's misconduct.

The discipline for conduct involving false statements in connection with bar admissions ranges from a reprimand to a suspension, depending on the severity of the misconduct and the presence of other Rule violations or aggravating factors. See In re Thyne, 214 N.J. 107 (2013) (reprimand for an attorney who failed to disclose in his application for admission to the United States Court of Appeals for the Second Circuit that he was no longer in good standing in Minnesota; the attorney also failed to disclose a pending OAE investigation for dishonest conduct; the attorney knowingly withheld the details of the OAE investigation because, in his view, it was irrelevant to his admission to the Second Circuit; the attorney had no prior discipline); In re Duke, 207 N.J.

[10] Although respondent's misconduct would also have violated RPC 3.3(a)(5), based on his failure to disclosure his Pennsylvania plenary admission and ineligibility and his censures in Heyburn I, II, and III, in connection with his pro hac vice motions, the OAE did not assert in its motion that respondent had violated that RPC. Thus, we cannot independently find that respondent violated RPC 3.3(a)(5).

37 (2011) (censure for an attorney who failed to disclose to the Board of Immigration Appeals that he had been disbarred in New York, deposited his fee in his personal bank account, rather than in his business or trust account, failed to communicate with his client by not providing the client with copies of his submissions to the Board of Immigration Appeals, and failed to return his client's numerous phone calls; the attorney had a prior reprimand for negligent misappropriation and recordkeeping infractions); In re Broderick, 2022 N.J. LEXIS 184 (February 25, 2022) (one-year suspension for an attorney, in a reciprocal discipline matter, who, in his application for admission to the Washington State bar, failed to disclose (1) that he had filed bankruptcy petitions, (2) that he had been subject to ethics investigations in Washington D.C., (3) that he had been a party in a federal civil lawsuit, (4) that sanctions had been imposed on him for discovery violations, and (5) that the Oregon Department of Consumer Services had investigated his company; the attorney made similar misrepresentations in his application for admission to the California bar; additionally, in his correspondence with Washington D.C. disciplinary authorities, the attorney failed to disclose his unethical conduct in Connecticut; in imposing a one-year suspension, we weighed, in aggravation, the attorney's numerous false answers on two state bar applications, which appeared to be intentional, and his prior censure for his violation of RPC

1.17(c)(2) (improper sale of a law office)); In re Bernstein, 249 N.J. 357 (2022) (two-year suspension, in a reciprocal discipline matter, for an attorney who concealed, in two pro hac vice applications to the United States District Court for the Eastern District of Virginia (the EDVA), the fact that: (1) in 2015, the Supreme Court of Florida had reprimanded him for a myriad of ethics violations, (2) in 2016, just two months before his pro hac vice applications to the EDVA, the United States District Court for the District of Kansas had admonished him for his failure to adequately disclose his Florida reprimand, and (3) two clients had filed civil malpractice lawsuits against him; despite his testimony before the EDVA that he did not see the question regarding prior discipline, the attorney offered contradictory testimony at the ethics hearing that he did, in fact, see the question, and that his paralegal was altering the form to allow him to answer the question; in a separate matter, the attorney misrepresented to his client that he was a "national" attorney who could represent his client in a post-conviction relief proceeding in Alabama, where he was not licensed to practice law; the attorney incompetently handled the representation, foreclosing his client's ability to obtain future post-conviction relief; the attorney had no prior discipline; although we recommended that the attorney be disbarred for the totality of his misconduct, the Court imposed a two-year suspension); In re Bernardino, 198 N.J. 377 (2009) (three-year suspension, in a reciprocal

discipline matter, for an attorney who failed to disclose in his application to practice before the USPTO that he was under criminal and disciplinary investigation for conduct with respect to his former employer, who had terminated him for dishonest conduct; the attorney also failed to provide complete information and documentation regarding an outstanding tax liability to the federal government; the attorney actively misled the USPTO, on four successive occasions, spanning eight months, regarding the status of the disciplinary investigation and the tax matter; the attorney had a prior one-year suspension).

Here, respondent's misconduct is most similar to the attorney in Bernstein, who received a two-year suspension. Like Bernstein, who concealed his disciplinary history in two pro hac vice applications to the same federal court, respondent directed the filing of two Pennsylvania pro hac vice applications, which he had carefully crafted to conceal his extensive disciplinary history, his plenary admission in Pennsylvania, and his ongoing ineligibility to practice in that jurisdiction. Respondent's deception, thus, not only allowed him to obtain pro hac vice admission in Pennsylvania under false pretenses, but also to circumvent his ineligibility to practice in that jurisdiction in order to serve as co-counsel in a medical malpractice matter. Unlike Bernstein, however, whose misconduct permanently extinguished his client's ability to obtain post-

conviction relief, the Monroe County Court did not discover respondent's deception until after Dogan's matter had been fully tried on the merits. Thus, respondent's misconduct arguably resulted in no harm to Dogan.

Respondent's disciplinary history, however, is far more egregious than that of the attorney in Bernstein, who had no disciplinary history in New Jersey, a 2015 reprimand from the Florida Supreme Court, and a 2016 admonition from the United States District Court for the District of Kansas.

By contrast, this matter represents respondent's eighth disciplinary matter before us in less than ten years. During that timeframe, respondent has engaged in deceptive conduct in numerous client matters, failed to fulfill his obligations towards both his clients and state and federal courts, and failed to adequately cooperate with disciplinary authorities. Respondent clearly has failed to utilize his extensive experiences with the disciplinary system as a foundation for reform. See In re Zeitler, 182 N.J. 389, 398 (2005) ("[d]espite having received numerous opportunities to reform himself, [the attorney had] continued to display his disregard, indeed contempt, for our disciplinary rules and our ethics system"). Indeed, respondent's misconduct in this matter demonstrates his continued disregard towards not only his duty of candor, but also his obligation to cooperate with disciplinary authorities.

The Court has signaled an inclination toward progressive discipline and stern treatment of repeat offenders. In such scenarios, enhanced discipline is appropriate. See In re Kantor, 180 N.J. 226 (2004) (disbarment for abandonment of clients and repeated failure to cooperate with the disciplinary system). Respondent's four censures and three terms of suspension, many of which involved deceptive behavior, clearly warrant enhanced discipline.

At this point in our analysis, given respondent's protracted disciplinary history, we normally would compare the timeline of respondent's misconduct in the instant matter to the timeline of his misconduct in his prior matters, in order to determine whether additional discipline is even appropriate. See generally, In re Milara, 241 N.J. 27 (2020), and In re Isa, 239 N.J. 2 (2019) (no additional discipline imposed on attorneys whose misconduct, although unethical, did not warrant further discipline, given the close temporal nexus and similarity of misconduct with the attorneys' prior discipline).

However, in this case, respondent's misconduct is substantively distinguishable from his prior matters. He also violated a fundamental obligation of every attorney who seeks bar admission. Specifically, rather than attempt to cure his ineligibility to practice in Pennsylvania, respondent defied the rules for attorney bar admission by seeking pro hac vice admission in Pennsylvania, in two successive applications, wherein he failed to disclose his own disciplinary

history and ineligibility to practice in that jurisdiction. Respondent's excuse that he concealed his disciplinary history because it could have been uncovered by an internet search ignores the fact that, as an officer of the court, he was obligated to affirmatively disclose that required information to allow the Monroe County Court to properly assess his fitness for pro hac vice admission. Additionally, respondent's view that he did not consider himself to be a Pennsylvania attorney because his "registration had lapsed for so many years" is further evidence of his disdain for the rules governing attorney bar admission, given that he altogether failed to seek clarification from the Pennsylvania judiciary regarding the status of his license.

Respondent's egregious deception, coupled with his extensive disciplinary history for deceptive misconduct, thus, places him over the threshold of disbarment. See In re Lowden, 248 N.J. 508 (2021) (disbarment for attorney who failed to comply with R. 1:20-20 following two temporary suspensions and a six-month term of suspension; the attorney had a significant disciplinary history, including a reprimand, a censure, two temporary suspensions for failing to comply with fee arbitration committee determinations, a six-month suspension in a default matter, and a two-year suspension in two consolidated default matters; in finding that the attorney reached the "tipping point" of disbarment, we observed that the attorney's egregious ethics history

demonstrated a repeated and deep disdain for not only the disciplinary system, but also for her clients).

In determining that disbarment is appropriate for the totality of respondent's misconduct, we also considered In the Matter of Marc D'Arienzo, DRB 16-345 (May 25, 2017) at 26-27, where we stated:

> Given the contemptible set of facts present in these combined matters, we must consider the ultimate question of whether the protection of the public requires respondent's disbarment. When the totality of respondent's behavior in all matters, past and present, is examined, we find ample proof that [. . .] no amount of redemption, counseling, or education will overcome his penchant for disregarding ethics rules. As the Court held in another matter, "[n]othing in the record inspires confidence that if respondent were to return to practice [from his current suspension] that his conduct would improve. Given his lengthy disciplinary history and the absence of any hope for improvement, we expect that his assault on the Rules of Professional Conduct would continue." In re Vincenti, 152 N.J. 253, 254 (1998). Similarly, we determine that, based on his extensive record of misconduct and demonstrable refusal to learn from his mistakes, there is no evidence that respondent can return to practice and improve his conduct. Accordingly, we recommend respondent's disbarment.

The Court agreed with our recommendation and disbarred D'Arienzo. In re D'Arienzo, 232 N.J. 275 (2018).

Like the disbarred attorneys in Lowden and D'Arienzo, the imposition of extensive prior discipline has not convinced respondent to reform his behavior. Rather, in this eighth disciplinary matter, respondent engaged in a protracted

scheme to deceive the Pennsylvania judiciary regarding his eligibility for pro hac vice admission and, thereafter, repeatedly thumbed his nose at Pennsylvania disciplinary authorities, who, for several months, attempted to elicit his required participation in the disciplinary process. Respondent, thus, has demonstrated a complete disregard for the ethics rules and the disciplinary systems of multiple jurisdictions, despite his heightened awareness of his duty of candor and of his obligation to cooperate with disciplinary authorities. As respondent himself conceded during the Pennsylvania ethics hearing, as an attorney with twenty-five years of experience at the bar who repeatedly had been censured for similar infractions, he "kn[e]w better."

Finally, respondent failed to appear for oral argument before us, despite proper notice, or to reply, in any way, to the allegations made against him, demonstrating not only an indifference towards maintaining his law license, but also for the attorney disciplinary system primarily designed to protect the public. As we observed in D'Arienzo, nothing in this record inspires confidence that, if respondent were to return to practice from his current terms of suspension, his conduct would improve. To the contrary, if allowed to return to practice, we fully expect that his assault on the Rules of Professional Conduct would persist. Consequently, respondent represents a clear danger to the public and is simply "[in]capable of meeting the standards that must guide all members of the

profession." In re Cammarano, 219 N.J. 415, 421 (2014) (citing In re Harris, 182 N.J. 594, 609 (2005)). Thus, considering respondent's failure to learn from his past mistakes, his significant disciplinary history, and his unabated penchant for deception, we determine to recommend to the Court that respondent be disbarred in order to effectively protect the public and to preserve confidence in the bar.

Vice-Chair Boyer and Members Campelo and Petrou voted for a three-year suspension, consecutive to the two-year term of suspension we imposed in DRB 21-266 (Heyburn VII).

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 Edward Harrington Heyburn
Docket No. DRB 22-047

Argued: June 16, 2022

Decided: September 13, 2022

Disposition: Disbar

Members	Disbar	Three-Year Suspension
Gallipoli	X	
Boyer		X
Campelo		X
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou		X
Rivera	X	
Singer	X	
Total:	6	3

Johanna Barba Jones
Chief Counsel