Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-098
District Docket No. VB-2020-0016E

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| In the Matter of | : |
| Virginia T. Fiocca | : |
| An Attorney at Law | : |

Decision

Argued: September 15, 2022

Decided: November 1, 2022

Christopher Ulysses Warren appeared on behalf of the District VB Ethics Committee.

Respondent waived appearance for oral argument.

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 censure filed by the District VB Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 3.1 (engaging in frivolous litigation); RPC

3.4(d) (making frivolous pretrial discovery requests); RPC 4.4(a) (engaging in conduct that has no substantial purpose other than to embarrass, delay, or burden a third person); 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 that a censure is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 1976 and retired from the practice of law on February 25, 2019. She reactivated her law license on May 5, 2020 and again retired from the practice of law on February 13, 2021, subsequent to the misconduct addressed below. She has no disciplinary history.

On February 10, 2022, respondent entered into a stipulation of facts, admitting that she committed misconduct concerning her handling of the purported creation of a medical practice for her daughter, who was, at the time, attending medical school in Italy. On February 16, 2022, respondent appeared before the DEC for a hearing, in which she was the sole witness to testify.

In December 2019, respondent registered the business name "Cardio Medical Group of Metuchen New Jersey (a nonprofit company of the State of New Jersey)" (the Nonprofit) for her daughter. At that time, respondent and her daughter had resided in Italy for approximately twenty-one years. When

respondent previously lived in New Jersey, she and her daughter resided in South Orange. Neither respondent nor her daughter had any residential or employment ties to Metuchen or Middlesex County, New Jersey.

However, respondent's former brother-in-law, Dr. Larry Cohen, M.D., is a cardiologist in Middlesex County who, from the 1980s through the early 2000s operated a medical practice entitled "Cardio Medical Group of Metuchen PA" (Cardio Medical). Cohen is the grievant in this matter.

On July 29, 2013, the Superior Court, Morris County, Family Division finalized Cohen's divorce from respondent's sister, Theresa Cohen (Theresa).[1] The judgment of divorce incorporated a property settlement agreement (PSA) that fixed Theresa's interest in Cardio Medical at 50% of its value at the time of the divorce.

At some point in 2019, Theresa filed a motion with the family court seeking to vacate the PSA, asserting that Cohen had failed to adequately disclose financial records related to his medical practice. On October 11, 2019, the family court denied the motion.

[1] More than one year after Theresa had filed for divorce, Cohen joined respondent as a third party in the divorce action. Although the record is not entirely clear, the partial transcript respondent provided of a January 11, 2013 hearing appears to suggest that Cohen accused Theresa of diverting hundreds of thousands of dollars in marital funds to respondent.

In December 2019, when respondent registered the Nonprofit business name with the State of New Jersey, her daughter had not graduated from medical school; decided on a medical specialty; or decided whether she wanted to return to New Jersey to practice medicine. Yet, respondent testified before the DEC that her daughter had selected Metuchen, New Jersey as a potential location to begin a medical practice, should she return to New Jersey, because:

> I knew my brother in law [sic] many, many years ago had – had the practice and it was very – very successful and I just thought it was a good place. He and I used to speak about Middlesex County and medical practices and lots of people use – use cardiologists in Middlesex County. We talked about that, he and I.
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> [1T31.][2]

Indeed, respondent conceded that the Nonprofit's practice name was the same as Cardio Medical's "except for the P.A. We did not have the P.A. in there." When a panel member asked respondent the process by which she selected Nonprofit's practice name, respondent stated, "[i]f you look up New Jersey business records and I – I – I – for some reason I put it down. I have no – you know because she was interested. I put it – I put it in search and they said congratulations. It's available if you want it."

[2] "1T" refers to the transcript of the ethics proceeding, dated February 16, 2022.
"HPR" refers to the undated hearing panel report, which the OAE received on June 6, 2022.

After respondent registered the Nonprofit as an entity, she attempted to open a business account on its behalf with Bank of America (BOA). However, BOA would not open the account because Cardio Medical already had an account with the bank.[3] Faced with the bank's refusal, on April 23, 2020, despite her retired status, respondent filed a complaint in the Superior Court of New Jersey, Essex Vicinage, Chancery Division against Cardio Medical[4] on behalf of the Nonprofit.

In her complaint,[5] respondent alleged that the Nonprofit had attempted to open a business account with BOA but was unable to do so because Cardio Medical already had an account with the bank. Respondent further alleged that Cardio Medical was unlawfully using and appropriating the Nonprofit's business name without its permission, causing it great harm and preventing it from operating. Respondent unsuccessfully attempted to serve the complaint on Cardio Medical at 1813 Oak Tree Road, Edison, New Jersey, which was Cardio Medical's former address.

[3] Cohen explained that, approximately twenty years ago, Cardio Medical relocated from Metuchen to Edison, New Jersey.

[4] When she filed the complaint, respondent likely engaged in the unauthorized practice of law, in violation of RPC 5.5(a)(1) (unauthorized practice of law), because she had retired.

[5] A copy of the complaint was not included within the record and is not available on the New Jersey eCourts system.

Thereafter, on May 18, 2020, respondent served a subpoena duces tecum on BOA seeking production of "any and all bank records from any and all accounts in the name of Cardio Medical . . . all statements . . . from January 1, 2017 to December 31, 2017." Respondent attempted to serve Cardio Medical with the subpoena at the same address she unsuccessfully attempted to serve the complaint. Respondent maintained that she served the subpoena upon BOA only to obtain the correct address for Cardio Medical. Respondent denied that her lawsuit and subpoena were related to Theresa's divorce from Cohen, noting that she never represented Theresa in her divorce and the divorce already had been finalized. Respondent also denied that her status as a third party in Theresa's divorce matter had any connection to Nonprofit's lawsuit and her service of the subpoena. Respondent maintained that:

> it didn't – it didn't really – there was – it was no question about it. It was silly. I mean he sued me for money they said that I – my sister sends me. Except it was to do renovations on an apartment. I had every bill so I wasn't in the least bit nervous. It was – and then I – I had a friend of mine help me with legal fees and I got – got them. So I wasn't – I wasn't upset. I actually I thought – I feel – I won.
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> [1T35-1T36.]

Respondent initially did not answer a panel member's question regarding why she did not contact the State of New Jersey's Secretary of State's Office regarding Cardio Medical's name instead of serving a subpoena on BOA for

Cardio Medical's financial records. Respondent stated, "well, I don't know because as far as I know if you look up the name in New Jersey my daughter is the owner. You know what I'm saying?" Eventually, respondent testified "I don't – I don't think – I didn't think about it. Metuchen. I didn't think about it. You know what I mean? I didn't think about it. Because the name was – I hadn't thought about it like that."

Cohen learned of the subpoena three days later, when BOA sent a letter to Cardio Medical advising that the bank had received the subpoena. BOA sent the letter to Cardio Medical's address of over twenty years, 98 James Street, Edison, New Jersey.

After learning of the subpoena, Cohen successfully moved to quash it in Morris County. In his certification in support of his motion to quash, Cohen explained that he had not properly been served with the subpoena and that Cardio Medical was not currently involved in litigation. Cohen asserted that, sometime after the court denied his ex-wife's 2019 motion to vacate the PSA, BOA received a subpoena for Cardio Medical's financial records; however, because he was not properly served with the subpoena, he was unaware of what financial records were sought.

Cohen explained that he had firsthand knowledge of a conversation his attorney had with respondent, who reportedly claimed she had no knowledge of

the subpoena. Cohen maintained that his attorney learned that respondent had filed a lawsuit against Cardio Medical on April 23, 2020.[6] Cohen maintained that, after he learned of the lawsuit, he contacted the court to learn the name of the attorney who filed the complaint.

On July 3, 2020, respondent withdrew her complaint against Cardio Medical.

In her stipulation, respondent admitted that she violated RPC 3.1 and RPC 3.4(d) because she had no reasonable basis in law or fact to serve BOA with a subpoena seeking an entire year of Cardio Medical's financial records, when she purportedly only desired the address of the medical practice. Respondent further admitted that she had issued the subpoena in bad faith. Additionally, respondent admitted that she violated RPC 4.4(a) because she had no legitimate purpose in seeking Cardio Medical's financial information and, if BOA had produced the information, it would have violated Cohen's legal rights.

Finally, respondent admitted that she violated RPC 8.4(c) and RPC 8.4(d) when she knew, or should have known, that she could not serve Cardio Medical with the subpoena at the 1813 Oak Tree Road, Edison, New Jersey address due to her previous unsuccessful attempt to serve the complaint at the same address.

[6] Cohen was likely unaware of the litigation against Cardio Medical due to respondent's failure to properly serve the complaint.

Moreover, the subpoena respondent issued provided that "failure to appear according to the command of the Subpoena will subject you to a penalty, damages in a civil suit and punishment for contempt of Court," which respondent admitted misused the power of the court and contained deceptive language.

The stipulation cited no aggravating factors. The mitigating factors cited included respondent's good reputation and character; her unblemished disciplinary record; the small likelihood of repeat offenses; her cooperation with ethics authorities; and her retirement from the practice of law.

At the February 16, 2022 hearing, respondent apologized for her misconduct, representing that it would not recur and was a mistake. Respondent asserted that she did not realize that what she was doing was improper.

When a panel member asked why she served the subpoena on BOA, respondent stated that her daughter was about to finish medical school in Italy and was unsure about what medical specialty she wanted to pursue, but that she was thinking about specializing in infectious diseases or something else. Thus, respondent conducted a "search on Cardio Medical Group of Metuchen. So I wanted it – she wanted it in case she decides to practice in – in the U.S. [. . .] so I reserved the name for her." Respondent acknowledged that she was aware that Cohen's medical practice had a similar name.

Respondent elaborated that she served the subpoena on BOA because she wanted to know who owned the account and to procure a mailing address. In response to a panel member's question as to why, if respondent only wanted Cardio Medical's address, she subpoenaed a year of its financial records, respondent testified:

> that was my mistake. I didn't think about it correctly. I didn't – I'm thinking about – I don't know what kind of document would have the name and address of the – of the owner, but I knew probably the – but I knew the bank records would. So that was my mistake. I – I admit it and I apologize. That was wrong.
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> [1T128.]

At the time of the ethics hearing, respondent's daughter was specializing in anesthesiology in Italy.[7] When asked if her daughter had made any effort to become a licensed medical doctor in the United States, respondent stated: "No. Not at this point. No. I don't know if she will. I doubt if she will at this point [. . .] Because she was accepted in a specialization and now she would probably finish that before she would go there."

[7] According to respondent, her daughter was on track to finish medical school in July 2020 but, due to the COVID pandemic, her classes were canceled from March 2020 through September 2020. On March 31, 2021, respondent's daughter graduated from medical school. Based on respondent's testimony at the ethics hearing, her daughter would have started her anesthesiology specialization following her graduation.

Prior to the ethics hearing, the presenter and respondent had submitted letters concerning the appropriate quantum of discipline for respondent's admitted misconduct. The presenter asserted that respondent should be reprimanded or censured for her misconduct and cited the following cases in support, without further explanation: In re Wysoker, 170 N.J. 7 (2001); In re Yaccarino, 117 N.J. 175 (1989); Cavallaro v. Jamco Property Mgt., 334 N.J. Super. 557, 569 (App. Div. 2000); and Mancuso v. Neckles ex. rel. Neckles, 163 N.J. 26, 36-37 (2000).

In her pre-hearing submission, respondent argued that In re Pennington, 242 N.J. 137 (2020), supported the imposition of an admonition in this case. Respondent asserted that, in examining Pennington's violation of RPC 1.1(a) (gross neglect) and RPC 1.3 (lack of diligence),[8] the Court looked to the number of client matters involved; harm to clients; the attorney's disciplinary history; and the presence of aggravating and mitigating factors to determine the appropriate discipline.

Respondent also cited In re Forrest, 158 N.J. 428 (1999) (attorney suspended for six months for violating RPC 3.3(a)(5); RPC 3.4(a); and RPC 8.4(c); the Court viewed, in aggravation, that the conduct was "not an isolated incident but occurred over a period of at least nine months; the attorney engaged

[8] Respondent was not charged with violating either of these RPCs.

in a continuing course of dishonesty, deceit, and misrepresentation"); In re Berkowitz, 136 N.J. 134 (1994) (attorney reprimanded for engaging in a conflict of interest); In the Matter of Stephanie Frangos Hagan, DRB 19-051 (April 30, 2019) (attorney admonished for engaging in a conflict of interest). Respondent attempted to distinguish her misconduct from the misconduct addressed in In re Resnick, 240 N.J. 1 (2021), because Resnick's motion practice was vexatious and frivolous, and represented a pattern of misconduct over several years, which included repeated attacks on judges.

Ultimately, respondent argued that (1) her misconduct was an isolated incident; (2) Cohen had not been harmed; (3) there was little likelihood of repeat offenses because respondent resides in Italy and is not actively practicing law; and (4) she fully cooperated with the ethics investigation, admitted her wrongdoing, and had an unblemished disciplinary record.

After reviewing the stipulation of facts, the evidence, and the testimony, the DEC concluded that respondent had violated RPC 3.1; RPC 3.4(d); RPC 4.4(a); RPC 8.4(c); and RPC 8.4(d).

The DEC accepted as true the uncontested allegations set forth in the stipulation. It found that, although respondent purportedly created the Nonprofit for the benefit of her daughter, her daughter had no connection to Metuchen or Middlesex County, New Jersey, and was unsure about what medical specialty

she was going to pursue upon graduation from medical school.

The DEC further found that respondent served BOA with a subpoena seeking the entirety of Cardio Medical's 2017 financial records without having first pursued any investigation with the office of the New Jersey Secretary of State.

In mitigation, the DEC determined that respondent had been practicing law for nearly forty years without incident and her misconduct arose from one incident that was not likely to be repeated. Furthermore, Cohen did not suffer economic harm and respondent cooperated with disciplinary authorities.[9]

Nevertheless, the DEC noted that it was:

> extremely troubled by the lack of a clear explanation that justifiably supports (1) Respondent's filing of the lawsuit against [Cardio Medical]; (2) the service of a subpoena on the bank; (3) the failure to pursue the purportedly desired information through other available means, including by making searches of information available from the Secretary of State's Office or from [Cohen] who she knew previously operated a Cardio Group of Metuchen medical practice; and (4) the formation of a medical practice corporate entity, whose name includes a designated specialty for a medical student who had not even selected that specialty as her career path and was not yet licensed.
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> [HPR,p11.]

[9] Attorneys are required to cooperate with disciplinary authorities or face temporary suspension for failure to do so. See R. 1:20-3(g)(3). Thus, we assigned minimal weight to respondent's cooperation.

Accordingly, the DEC found that "the totality of circumstances herein strongly suggests to the Panel a lack of candor by the Respondent which is disconcerting." Indeed, "respondent's inability to provide credible responses to the Panel's questioning at the hearing suggests an intent to hide the truth, or to be less than forthcoming. The explanations provided by Respondent for her conduct simply make no sense."

Thus, the DEC recommended that respondent receive a censure for her admitted misconduct.

Neither the presenter nor respondent provided us with a submission for consideration.

During oral argument before us, the presenter agreed with the DEC's recommendation of a censure. Additionally, the presenter informed us that he had spoken with Cohen, who informed him that he had expended $5,000 in legal fees to quash respondent's subpoena of his financial records.

Following a de novo review of the record, we determine that the DEC's finding that respondent violated RPC 3.1; RPC 3.4(d); RPC 4.4(a); RPC 8.4(c); and RPC 8.4(d) is fully supported by clear and convincing evidence.

Specifically, respondent violated RPC 3.1 by filing a frivolous lawsuit against Cardio Medical. Respondent registered the Nonprofit entity, parroting Cardio Medical's name, without the "P.A." at the end. Thus, the evidence is

uncontroverted that respondent knew, or reasonably should have known, that Cardio Medical was the owner of the BOA account. Nevertheless, respondent filed a lawsuit against Cardio Medical alleging that the entity, which she knew to have been Cohen's medical practice for at least twenty years and was subject to Cohen's PSA with her sister, was unlawfully using and appropriating the Nonprofit's business name, which caused the Nonprofit great harm and prevented it from operating its business.

Furthermore, respondent had no basis in law or fact to use the lawsuit to issue a subpoena seeking a year's worth of financial records from Cardio Medical. Her statements that she only issued the subpoena to learn the correct address of Cardio Medical defy common sense. A subpoena was not necessary for this purpose and respondent failed to offer any plausible explanation for issuing one.

Additionally, at the time respondent filed her lawsuit, the Nonprofit could not have been operating at all, because its purported sole practitioner had not yet graduated from medical school, chosen a specialty, or decided whether she wanted to return to the United States to practice medicine. Thus, there is no question that respondent's lawsuit against Cardio Medical was frivolous and without a basis in law or fact.

Indeed, respondent's lawsuit and subpoena also violated RPC 4.4(a) because they had no substantial purpose other than to burden Cardio Medical and, by extension, Cohen. Also, if BOA had produced the subpoenaed information, it would have resulted in respondent obtaining the financial records of Cardio Medical in violation of the legal rights of Cohen or Cardio Medical regarding the prior divorce proceedings, by providing Theresa with information the family court already had ruled that she was not entitled to receive.

We cannot ignore respondent's timing or decision to obtain the name of a cardiology practice for her daughter – who had not yet graduated from medical school or decided if she wanted to become a cardiologist – which came less than three months after Theresa unsuccessfully moved to vacate the PSA on the grounds that that Cohen had failed to adequately disclose his medical practice's finances.

The DEC correctly found that respondent's testimony that she only sought Cardio Medical's financial records to obtain its address was at best, not credible and, at worst, an attempt to hide the truth via perjury. In either situation, respondent's frivolous request for Cardio Medical's financial records clearly violated RPC 3.4(d).

Finally, respondent knew that she failed to properly serve the complaint on Cardio Medical at its Edison, New Jersey address. Thus, when she

deceptively included a threat of sanctions within the subpoena she attempted to serve on Cardio Medical, at the same defunct address, respondent violated RPC 8.4(c). Moreover, respondent's admitted bad faith behavior violated RPC 8.4(d).

In sum, we find that respondent violated RPC 3.1; RPC 3.4(d); RPC 4.4(a); RPC 8.4(c); and RPC 8.4(d). The sole issue remaining for our determination is the appropriate quantum of discipline to recommend for respondent's misconduct.

Suspensions have been imposed on attorneys who filed frivolous litigation and engaged in conduct prejudicial to the administration of justice. See, e.g., In re Rheinstein, __ N.J. __ (2022), 2022 N.J. LEXIS 514 (one-year suspension imposed, on a motion for reciprocal discipline, in a matter concerning a construction loan agreement; the attorney filed a motion to vacate and revise the judgments that had been entered prior to his involvement in the matter; during the hearing on the motion, the attorney interjected irrelevant accusations against his adversary's client and, thereafter, began sending threatening and erratic e-mails to opposing counsel; the attorney also began filing multiple frivolous motions in different venues, which the Maryland court found to be "vexatious" conduct); In re Shearin, 166 N.J. 558 (2001) (Shearin I) (one-year suspension imposed, in a reciprocal discipline matter, where the attorney filed two frivolous lawsuits in a property dispute between rival churches; a court had ruled in favor

of one church and enjoined the attorney's client/church from interfering with the other's use of the property; the attorney then violated the injunction by filing lawsuits and seeking rulings on matters already adjudicated; she also misrepresented the identity of her client to the court, failed to expedite litigation, submitted false evidence, counseled or assisted her client in conduct that she knew was illegal, criminal, or fraudulent, and made inappropriate and offensive statements about the trial judge); In re Garcia, 195 N.J. 164 (2008) (fifteen-month suspension imposed, in a reciprocal discipline matter, where the attorney filed several frivolous lawsuits and lacked candor to a tribunal; after her husband, with whom she practiced law, was suspended from the practice of law, the attorney aided him in the improper practice of law and used firm letterhead including his name 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 real property investments, which were in foreclosure at the time; the ownership of SSR was vested in his then-wife; four days after forming SSR, the attorney filed a barebones Chapter 11 bankruptcy petition, ostensibly to reorganize SSR, but actually to stay the foreclosure proceedings pending in state court; fewer than two months into the Chapter 11 proceeding,

the bankruptcy court dismissed the petition as a bad faith filing and lifted the automatic stay, allowing the matters to proceed in state court; four weeks later, the attorney filed a second bankruptcy petition for SSR, which again stayed the foreclosure proceeding; the bankruptcy court immediately dismissed that petition as a bad faith filing and imposed more than $11,000 in sanctions on the attorney; violations of RPC 3.1, RPC 8.4(c), and RPC 8.4(d); in aggravation, the attorney had a prior two-year suspension for unrelated conduct); In re Shearin, 172 N.J. 560 (2002) (Shearin II) (three-year suspension imposed on attorney who previously had received a one-year suspension for misconduct concerning her 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 she made disparaging statements about the mental health of a judge).

Attorneys who have asserted a frivolous issue in a proceeding have received discipline ranging from an admonition to a censure. See, e.g., In the Matter of Samuel A. Malat, DRB 05-315 (March 17, 2006) (admonition for attorney who asserted state law claims that did not comply with the New Jersey

Tort Claims Act after the court already had sanctioned the attorney in another suit for asserting state law claims that were frivolous for the same reason; prior reprimand and two three-month suspensions); In the Matter of Alan Wasserman, DRB 94-228 (October 5, 1994) (attorney admonished for filing a frivolous action against his former clients seeking the collection of an $89,000 fee, without first attempting to collect a $62,000 fee awarded to the clients in a civil suit; after the attorney's collection suit was dismissed, he filed another one, this time against the insurance carriers; no prior discipline); In re Silverman, 179 N.J. 364 (2004) (reprimand imposed on attorney who agreed to represent a client free of charge and who, after the client rejected a settlement offer that would have included a portion of the attorney's legal fee, sued the client for the collection of the fee, alleging breach of contract; no prior discipline); In re Hallett, 167 N.J. 610 (2001) (reprimand for attorney who filed a frivolous notice of appeal knowing that it would be "kicked back;" the attorney also failed to communicate with the client and failed to prepare a written fee agreement; no prior discipline); In re Kimm, 191 N.J. 552 (2007) (censure for attorney who filed a "contrived" treble damage RICO and consumer fraud suit in the Law Division with the sole purpose to coerce his adversary into withdrawing her Chancery Division action; no prior discipline); In re Giannini, 212 N.J. 479 (2012) (attorney censured for various instances of "unprovoked, inflammatory,

disparaging, and fictitious statements" about various judges and parties in pleadings that the attorney filed on behalf of his sister; the attorney also made frivolous discovery requests and alluded to matters that were either irrelevant or unsupported by admissible evidence, when he made outrageous statements in his pleadings knowing them to be untrue; no prior discipline).

Although not directly on point, the misconduct in Kimm is most analogous to the within misconduct. Just as Kimm filed a "contrived" lawsuit in order to coerce his adversary into withdrawing an unrelated Chancery Division action, here, too, respondent filed frivolous litigation in an attempt to gain an advantage in an unrelated Superior Court matter.

Mere months after Theresa unsuccessfully sought to modify her PSA based on allegations surrounding Cardio Medical's finances, respondent intentionally selected virtually the same business name for her daughter's speculative practice of medicine in the United States. Thereafter, respondent filed suit against Cardio Medical and issued a subpoena seeking its financial information, under the guise that she desired only the entity's address. Shortly after Cohen filed a motion to quash the subpoena, respondent withdrew her complaint against Cardio Medical.

Based upon applicable precedent, a censure is warranted for the totality of respondent's misconduct. However, to craft the appropriate discipline in this case, we also considered mitigating and aggravating factors.

In aggravation, despite her stipulation to her misconduct, respondent's testimony during the ethics hearing was evasive and incredible. Respondent offered no rational explanation for her decision to select a business name similar to Cardio Medical's or her subsequent lawsuit against it. The lawsuit alleged that Cardio Medical caused great harm to the Nonprofit, when the Nonprofit had no business at all.

Additionally, respondent filed the lawsuit when she did not have an active license to practice law.[10] We were particularly troubled that respondent injected her daughter into what appears to be a retaliatory scheme against her former brother-in-law. In further aggravation, Cohen had to incur counsel fees in order to quash respondent's frivolous subpoena.

In mitigation, respondent has more than forty years at the bar with no ethics infractions, a factor to which we gave significant weight. Furthermore, respondent's misconduct arose out of a single series of events not likely to be

[10] Although the DEC did not charge respondent with violating RPC 5.5(a)(1), we consider respondent's uncharged misconduct in aggravation. See In re Steiert, 201 N.J. 119 (2010) (evidence of unethical conduct contained in the record can be considered in aggravation, even though such unethical conduct was not charged in the formal ethics complaint).

repeated. Finally, we assigned some weight to respondent's retirement; however, we are mindful that she previously had retired, only to reactivate her license to file the frivolous litigation against Cardio Medical.

Thus, on balance, and consistent with disciplinary precedent, we recommend the imposition of a censure as the appropriate quantum of discipline necessary to protect the public and preserve confidence in the bar.

Members Hoberman and Petrou voted to recommend the imposition of a three-month suspension.

Member Petrou determined that the stratagem employed by respondent to obtain inherently confidential financial information constituted a highly egregious abuse of her privileges as a member of the New Jersey bar that can only be remedied by a suspension, with reinstatement conditioned upon restitution of the counsel fees Dr. Cohen incurred to quash the illegitimate subpoena. Member Petrou concluded that a suspension was warranted because of 1) the potential risk to her student-daughter by embroiling her in a fraudulent scheme; 2) her deliberate, detailed planning of the formation of an entity whose sole purpose was to support the filing of a complaint and issuance of a subpoena to secure confidential information; 3) the opening of a bank account at the same financial institution that served Dr. Cohen's practice; 4) service upon Dr. Cohen at an address she knew to be invalid, such that only the bank's due diligence

prevented an improper disclosure of financial information regarding his medical practice; and 5) respondent's complete lack of candor to ethics authorities.

Chair Gallipoli was recused.

Member Joseph was absent.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

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

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Virginia T. Fiocca
Docket No. DRB 22-098

Argued: September 15, 2022

Decided: November 1, 2022

Disposition: Censure

| ***Members*** | Censure | Three-Month Suspension | Recused | Absent |
|---|---|---|---|---|
| Gallipoli | | | X | |
| Boyer | X | | | |
| Campelo | X | | | |
| Hoberman | | X | | |
| Joseph | | | | X |
| Menaker | X | | | |
| Petrou | | X | | |
| Rivera | X | | | |
| Singer | X | | | |
| Total: | 5 | 2 | 1 | 1 |

**/s/ Timothy M. Ellis**
Timothy M. Ellis
Acting Chief Counsel