Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-178
District Docket Nos. XIV-2019-0380E and
I-2021-0903E

In the Matter of	:
Timothy Joseph McIlwain	:
An Attorney at Law	:

Decision

Argued: January 19, 2023

Decided: March 6, 2023

Amanda W. Figland appeared on behalf of the Office of Attorney Ethics

Robert Ramsey appeared on behalf of respondent.

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 three-month suspension filed by the District I Ethics Committee (the DEC). The formal ethics complaint charged respondent with having violated RPC 3.1 (engaging in

frivolous litigation); RPC 7.1(a)(1) (making a false or misleading communication about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (three instances – engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine that a three-month suspension is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 1996 and to the New York bar in 2019. At the relevant times, he maintained a practice of law in Linwood, New Jersey. He has no disciplinary history in New Jersey.

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

In January 2016, respondent and his girlfriend, referred to herein as Jane Doe, began residing together in a New York City apartment, which Doe had leased in her name only. Sometime in 2016, while respondent and Doe were living together in the New York City apartment, Doe gave birth to their biological daughter. In May 2018, Doe and her mother purchased a multi-unit home in Louisville, Kentucky, titled in their names only, with the intention of

having respondent, Doe, and their daughter relocate to that home.

In July 2018, respondent, Doe, and their daughter relocated to the Kentucky property and, shortly thereafter, respondent and Doe hired contractors to renovate the property. During respondent's June 10, 2020 demand interview with the Office of Attorney Ethics (the OAE), he claimed that "a lot of workers" were at the property "during the week[.]" Respondent also claimed that he and Doe had hoped to pay off the costs of the renovation by renting portions of the property during the annual Kentucky Derby held in Louisville.

On August 13, 2018, respondent and Doe's daughter began attending full-time pre-school at a Louisville synagogue. Meanwhile, between May and November 2018, respondent, Doe, and their daughter went on short, periodic vacations to New Jersey, Mexico, and various European countries. Additionally, in September 2018, respondent left Kentucky for a one-week jury trial in Wyoming and, in November 2018, he left Kentucky for two weeks because of a dispute with Doe.

In January 2019, Doe accepted employment as a corporate access manager with a New York and Netherlands based investment banking firm. Although Doe was permitted to work remotely in Kentucky, she was required to attend training sessions in New York for three or four-day periods each week between January 6 and February 7, 2019. Additionally, sometime in January or February 2019,

Doe attended a three-day training session in Amsterdam, Netherlands. During Doe's one-month training period, respondent was responsible for their daughter's care outside of pre-school while Doe was in New York or Amsterdam. Doe's mother and the child's godmother, however, provided significant childcare assistance to respondent during this timeframe.

On or about February 7, 2019, respondent left Kentucky for a New Jersey court appearance. The very next day, respondent and Doe ended their relationship because of his alleged numerous absences from the family. Between February 7 and 24, 2019, respondent did not return to Kentucky and, instead, remained in his Margate, New Jersey residence, without his daughter. On February 10, 2019, Doe instructed respondent to remove his belongings from the Kentucky residence by March 1, 2019.

At the end of February 2019, Doe agreed to allow respondent to pick up their daughter from her Louisville pre-school, on February 27, 2019, while Doe was "on business in New York." Doe, however, permitted respondent to spend time with their daughter for that day only. On February 27, 2019, respondent picked up his daughter from pre-school and took her to his New Jersey residence, without Doe's knowledge or permission.

In her resulting February 28, 2019 submissions to the Jefferson County, Kentucky Circuit Court, Doe claimed that respondent did not inform her that he

had taken their daughter until he was "well outside of Kentucky and on his way to New Jersey." Upon learning that respondent had left Kentucky with their daughter, Doe called the Margate, New Jersey police department, claiming that respondent had kidnapped their daughter.

During the ethics hearing, Doe maintained that respondent had taken their daughter to New Jersey "to terrorize our family and to get jurisdiction in his own home state." Respondent, however, claimed that, before taking his daughter to New Jersey, he had spoken with "several" Kentucky lawyers, one of whom allegedly advised respondent to take such action.

During the June 10, 2020 OAE demand interview, respondent claimed that he had taken his daughter to New Jersey based on his view that the Kentucky residence "was [. . .] a construction site" not suitable for habitation for his daughter, who had a "respiratory problem."

On the night of February 27, 2019, when respondent and his daughter arrived at his New Jersey residence, respondent claimed that several police officers surrounded his house with "guns drawn and camera[s] [. . .] and all that." Respondent learned from the police that Doe intended to file a legal action in Kentucky regarding their child's custody.

On February 28, 2019, Doe, through Kentucky counsel, filed with the Circuit Court of Jefferson County, Kentucky a petition for custody of her

daughter and an emergent motion seeking to compel respondent to immediately return their daughter to Kentucky. In her emergent submissions, Doe expressed her "extreme[] concern[s] about the safety and well[-]being of" her daughter based on respondent's decision to "abscond[] with her to New Jersey" without notice. Doe further alleged that respondent had a history of "pill and alcohol abuse" and feared that respondent would not "properly care[] for" their daughter. Finally, Doe claimed that she had been "the sole caretaker of [her daughter] as well as solely financially responsible for her."

Later on February 28, 2019, Jefferson County Circuit Court Judge Angela Johnson issued an order compelling Doe and respondent to appear, either in person or via telephone, for a March 4, 2019 hearing, at 10:00 a.m., to determine "the best interest of the child."

On February 28, 2019, following the issuance of the Circuit Court's order, Doe's Kentucky attorney sent respondent, via e-mail, a copy of Doe's emergent motion, her petition for custody, and the Circuit Court's order. During the ethics hearing, Doe also claimed that, on February 28, 2019, her Kentucky attorney had "called, e-mailed[,] and faxed" respondent regarding those documents. Respondent, however, asserted that he did not review those documents, claiming that he did not check his e-mail or voicemail messages until "after March 4, [2019]."

Meanwhile, on February 28 and March 1, 2019, respondent went to the Superior Court of New Jersey, Atlantic County, and completed a verified complaint and order to show cause requesting parenting time, joint legal custody, and a court order prohibiting Doe from removing their daughter from New Jersey until a "parenting plan [had] been established." In his submissions to the Superior Court, respondent claimed that Doe had "interrupted" his status as the child's "primary caregiver" between Sundays and Thursdays each week, during which he claimed that Doe "work[ed and] live[d]" in New York. Respondent also requested that the Superior Court prohibit Doe from (1) engaging in "further defamatory remarks" about him on social media; (2) "call[ing] law enforcement claiming [a]bduction;" (3) filing for their daughter's name change; and (4) removing their daughter from Doe's employer provided health insurance plan. Respondent maintained that, if the court denied his requested relief, his daughter would "forever feel unsafe and be unhappy" because she had "been in the community since she was [five] days old."

On March 1, 2019, the Honorable Nancy L. Ridgway, J.S.C., issued an order requiring respondent and Doe to appear for a March 4, 2019 hearing, at 1:30 p.m., regarding respondent's application. In Judge Ridgway's order, she prohibited the parties from removing their daughter from New Jersey, pursuant

to N.J.S.A. 9:2-2,[1] and directed that respondent have temporary custody of his daughter until further order of the court. Judge Ridgway also required respondent to serve Doe with a copy of the order and his emergent application by March 3, 2019.

During the June 2020 OAE demand interview, respondent claimed that, following the issuance of Judge Ridgway's March 1 order, he had contacted Doe and allowed her to travel from New York City to Margate, New Jersey, to visit their daughter at the residence of a woman whom Doe was "comfortable with" and who served as the child's babysitter. Respondent further claimed that, on March 1, 2019, Doe traveled to the residence of the Margate babysitter, who, at respondent's direction, purportedly served Doe with Judge Ridgway's order and respondent's emergent application.

During the ethics hearing, respondent claimed that he had "a video of [Doe] accepting service." Doe testified, however, that respondent failed to serve her or her attorney with his emergent application or Judge Ridgway's order. Instead, Doe claimed that the Margate Police provided her with Judge Ridgway's order prior to the March 4, 2019 hearing scheduled before the

[1] N.J.S.A. 9:2-2 provides, in relevant part, that when the Superior Court of New Jersey has jurisdiction of a minor child who is a "native of [New Jersey]" and whose parents are living separately, the child shall not be removed from New Jersey without the consent of both parents or the issuance of a court order.

Superior Court.

On March 4, 2019, at 10:00 a.m., Doe and her Kentucky attorney appeared, in person, before Judge Johnson in the Jefferson County Circuit Court. Respondent, however, failed to appear for that hearing, either in person or via telephone, which prompted Judge Johnson to "repeatedly" call respondent to elicit his participation. Respondent, however, failed to answer Judge Johnson's telephone calls.

Following the 10:00 a.m. Jefferson County Circuit Court hearing, but prior to the 1:30 p.m. hearing scheduled before the Atlantic County Superior Court, Judge Johnson spoke with Judge Ridgway and provided her with Doe's Circuit Court filings.

On March 4, 2019, at 1:30 p.m., respondent appeared in person, pro se, before Judge Ridgway in the Superior Court. Additionally, Doe, her Kentucky attorney, and Judge Johnson appeared, via telephone, for that same hearing. Finally, Doe's New Jersey attorney appeared, in person, for the hearing.

At the outset of the hearing, respondent claimed that Doe "was served[,]" via "hand deliver[y]," with a copy of his emergent application to the Superior Court. Doe's New Jersey attorney, however, claimed that Doe "was duped into coming to New Jersey" from New York under the "representation" that she could "come to a residence where she could retrieve the child." Specifically,

when Doe arrived at that residence, the owner of that property informed her that the child had left with respondent an hour earlier. Consequently, Doe claimed that she left the residence without having "been served with anything."

After determining that the child had continued to remain with respondent in New Jersey, Judge Ridgway explained that she had issued her March 1 order prohibiting the parties from removing the child from New Jersey to avoid "a tug of war over her." Judge Ridgway also noted that she had granted respondent temporary custody of his daughter to avoid any "question[s] about where the child should be during the time period from Friday afternoon until today when we could hear this matter."

Also, during the March 4 hearing, respondent expressed his concerns that Doe's Kentucky residence was "a construction site" with "no place for heat" and a "slate roof" that "leaks." In reply to respondent's concerns, Judge Johnson noted that Kentucky Child Protective Services could conduct a "welfare check" at the residence.

Following respondent's arguments regarding the condition of the Kentucky residence, Judge Ridgway noted that, although respondent "knew" that his daughter "was in pre-school in Kentucky," he failed to obtain "an order from Kentucky authorizing [him] to bring her back here to New Jersey." Judge Ridgway also stated the child had "been regularly in Kentucky" since "at least

August [2018]" and had been "cared for by her grandmother in Kentucky until [respondent] removed her." Judge Ridgway then characterized respondent's "allegations of irreparable harm" to the child as "vague" and that she was "just [. . .] not seeing that."

Based on the child's near continuous presence in Kentucky for the past several months, Judge Ridgway determined to "relinquish jurisdiction to Kentucky" and to give Doe the opportunity to retrieve her daughter. Judge Johnson then noted that Kentucky accepted jurisdiction of the matter and stated it was in the child's best interest "to be returned immediately, as soon as possible, because of the abrupt change in the child's atmosphere."

At the conclusion of the hearing, respondent requested that the court "adjourn" its decision based on his view that it was "putting" his daughter "800 miles from both parents because of some statute" and that he had just "got totally duked."[2] Judge Ridgway, however, did not explicitly address respondent's comments but reiterated that he was required to "turn over" his daughter.

On March 4, 2019, following the hearings before the Jefferson County Circuit Court and the Atlantic County Superior Court, Judges Ridgway and Johnson issued orders requiring respondent to return his daughter to Doe no later

[2] During the ethics hearing, respondent characterized the March 4, 2019 hearing before the Superior Court as "an ambush."

than 4:30 p.m. on March 5, 2019. Additionally, Judge Ridgway dismissed the New Jersey matter and ordered that jurisdiction be relinquished to Kentucky, pursuant to the Uniform Child Custody Jurisdiction and Enforcement Act (the UCCJEA),[3] N.J.S.A. 2A:24-53 to -95 and Ky. Rev. Stat. Ann. § 403.822 to-880. Judge Ridgway also requested that the Jefferson County Circuit Court conduct a welfare check of Doe's Kentucky residence. Finally, Judge Ridgway stated that respondent and Doe would be contacted by the Circuit Court "regarding the next hearing in this matter."

On March 5, 2019, the same day that respondent returned his daughter to Doe, respondent, through Kentucky counsel, filed a notice of motion, in the Jefferson County Circuit Court, seeking "temporary joint custody and a temporary parenting schedule" based on Doe's purported desire to cease communicating with respondent. In his motion filing, respondent never claimed that Kentucky did not have jurisdiction to adjudicate its motion under the UCCJEA.

[3] Both New Jersey and Kentucky have adopted the UCCJEA, legislation which serves "to avoid jurisdictional competition and conflict [. . .] in favor of cooperation with courts of other states [or countries] as necessary to ensure that custody determinations are made in the state that can best decide the case." Sajjad v. Cheema, 428 N.J. Super. 160, 169-70 (App. Div. 2012) (citation omitted) (second alteration in original). See also Ball v. McGowan, 497 S.W.3d 245, 249 (Ky. App. 2016) (noting that the "purpose" of the UCCJEA is "to avoid jurisdictional conflict [. . .] in custody matters" while "promoting uniformity").

On March 25, 2019, Judge Johnson issued an order directing that respondent and Doe have joint custody of their daughter. However, Judge Johnson required the child to "reside primarily with [Doe]" in Kentucky. Judge Johnson also allowed respondent to enjoy parenting time on weekends in Kentucky. However, Judge Johnson prohibited respondent from traveling with his daughter outside of Jefferson County, Kentucky, without a specific order of the Circuit Court.

During the ethics hearing, Doe claimed that, throughout the Kentucky custody matter, respondent "raise[d] arguments" alleging that she was living in New York rather than in Kentucky. Respondent, however, could not recall whether his Kentucky attorney raised any claims regarding the habitability of Doe's Kentucky residence. Nevertheless, respondent acknowledged that his Kentucky attorney had the ability to raise such claims.

On March 25, 2019, three weeks after Judge Ridgway had dismissed respondent's Superior Court custody matter and transferred jurisdiction to Kentucky, respondent returned to the Atlantic County Superior Court and filed a motion (1) requesting a "plenary hearing" in the Superior Court of New Jersey based "on the issues previously decided ex parte[4] and based on fraud and

[4] In his certification in support of his motion, respondent complained that Judges Johnson and Ridgway had an "ex parte telephone conference" prior to the March 4, 2019 hearing at

(footnote cont'd on next page)

misrepresentations;" (2) "[e]nforcing Judge Ridgway's March 4, 2019 [o]rder that request[ed] a welfare check through Child Protective Services;" (3) "[g]ranting immediate lead testing by A+ Homework & Improvements, LLC, located at [. . .] Louisville, Kentucky;" (4) "[g]ranting [an] immediate blood test of [the child] for lead testing;" (5) "[v]acating the March 4, 2019 [o]rder removing [the child] to [. . .] Kentucky;" and (6) "[r]einstating the March 1, 2019 [t]emporary [o]rder wherein [respondent] will have sole custody until [the Kentucky] property can be tested for lead poisoning[.]"

Additionally, respondent requested that the Superior Court grant the following "alternative[]" relief by: (1) "[s]taying the March 4, 2019 [o]rder [. . .] until Kentucky determines which [s]tate is the more appropriate forum," and (2) "instruct[ing Doe] to retract the defamatory posts on social media and statements to law enforcement that were knowingly false."

In his certification in support of his motion, respondent claimed that the Kentucky residence was unsafe for his daughter based on roof leaks throughout the residence. Respondent also argued that Doe had misrepresented to the

---

1:30 p.m. in the Superior Court. However, respondent's certification failed to recognize that Judge Ridgway was statutorily obligated to communicate with Judge Johnson to resolve the emergent custody dispute. See N.J.S.A. 2A:34-68(d) (a New Jersey Court that "has been asked to make a child custody determination [. . .], upon being informed that a child custody proceeding has been commenced in [. . .] a court of a state having jurisdiction under [the UCCJEA], shall immediately communicate with the other court.") (Emphasis added). During the ethics hearing, respondent conceded that he was unaware of that "rule" or whether such discussions between judges of different jurisdictions was "improper."

Kentucky and New Jersey courts that she and the child had lived continuously in Kentucky for more than six months, given that respondent, Doe, and the child had taken vacations away from Kentucky between May and November 2018.

In his brief in support of his motion, respondent claimed that, in issuing the March 4, 2019 order, Judge Ridgway "relied on [Doe's] misrepresentations about respondent, which diverted [Judge Ridgway] from the issue of temporary emergency because [the child] should not be required to be in an unsafe place before the proper tests are conducted." Respondent also argued that Judge Ridgway took "the word of [Doe] without even giving a 22-year member of the Atlantic County bar a right to a hearing or notice of the allegations prior to the hearing[,] [w]herein [Doe] defamed [respondent], who was taking his daughter to a safer home." Respondent further alleged that, during the March 4, 2019 hearing, his safety concerns had "gone ignored with no opportunity to [reply], which is a major due process problem and clearly reversable error. Even terrorist[s] and non-citizens eventually got a hearing. See Hamdi v. Rumsfeld, 124 S. Ct. 2633 (2004)."[5] Respondent failed to serve Doe or her New Jersey or Kentucky attorneys with a copy of his motion.

[5] The United States Supreme Court held in Hamdi that "enemy combatants" held in detention in the United States "be given a meaningful opportunity to contest the factual basis for that detention before a neutral decisionmaker." 542 U.S. 507, 509 (2004).

Also on March 25, 2019, respondent filed in the Atlantic County Superior Court a twelve-count "first amended complaint[,]" which named himself and his daughter as plaintiffs and which named Doe as the defendant. In counts one through five of his amended complaint, respondent alleged that Doe had engaged in negligence and "reckless and wonton conduct" in connection with her "common law and statutory duties" as a "landlord," by allowing their daughter to contract "mold and lead poisoning at [the Kentucky] residence." Respondent also claimed that Doe had committed a "breach of contract" and a "breach of warranty of habitability" by exposing their daughter to mold and lead, in violation of the terms of a purported lease. In counts six through ten, respondent alleged various legal theories based on Doe's purported failure to provide promised "revenue and housing" after he had invested significant sums in the Kentucky residence. In count eleven, respondent alleged that DOE had engaged in an "abuse of process" by contacting the Margate police department on February 27, 2019, in order to "falsely accuse[]" him of "taking [their] daughter without [Doe's] knowledge or without warning." Finally, in count twelve, respondent alleged that Doe had defamed him by falsely claiming, on social media websites, that respondent had "committed a crime" by taking his daughter

from Kentucky to New Jersey. Respondent requested that the "Tevis"[6] claims alleged in his complaint be transferred from the Chancery Division, Family Part, to the Law Division, Civil Part of the Superior Court.

Respondent failed to serve Doe or her New Jersey or Kentucky attorneys with a copy of his amended complaint. Additionally, respondent failed to secure either Doe's written consent or leave from the Superior Court to file his amended complaint, as R. 4:9-1 requires. Moreover, respondent's amended complaint contained no accompanying documents demonstrating that his daughter had suffered from mold or lead poisoning or that Doe had served as the "landlord" of respondent and their daughter while they had resided together in the Kentucky residence.

During the June 2020 OAE demand interview, respondent maintained that his allegations against Doe for failing to repair the property were valid as "negligence by the landlord[,] [b]ecause" he and Doe "were not married." Moreover, despite the Court's holding in Tevis and Orban – that all claims relating to the same transactional circumstances be joined in a single action – respondent argued that his "defamation" and "breach of contract" claims

[6] In Tevis v. Tevis, 79 N.J. 422 (1979), the Court "required parties to join marital tort claims to [matrimonial] proceedings pending in the Chancery Division, Family Part." Brennan v. Orban, 145 N.J. 282, 293 (1996). In Orban, the Court held that, even in "family actions[,]" "[t]he entire controversy doctrine requires that all claims between parties arising out of or relating to the same transactional circumstances . . . . be joined in a single action." Id. at 290 (third alteration in original).

"should have been transferred to the Law Division" because "they are not family law stuff." Finally, when the OAE queried respondent regarding why he had not asserted his claims in Kentucky after Judge Ridgway had dismissed the New Jersey custody matter and relinquished jurisdiction, respondent maintained that the New Jersey matter had not been "closed" because no New Jersey hearing had been conducted to address his March 25, 2019 motion.

Also on March 25, 2019, respondent issued subpoenas, via regular and certified mail, which were captioned under the Atlantic County Superior Court matter that Judge Ridgway had dismissed on March 4, 2019, to (1) Doe's then current employer; (2) Doe's former employer; and (3) the property management company that owned the New York City apartment that Doe had leased.

In his subpoena to Doe's former employer, respondent sought, among other documents, "[a]ll records [. . .] showing any and all payments of any nature whatsoever and by any means [. . .] to [Doe], including but not limited to any and all commissions[;] compensation[;] loans[;] advances[;] sign on bonus[es]; expense reimbursement[s]; 1099 income[;] business income[;] employee compensation[; and] all income reportable for tax purposes."

In his subpoena to Doe's then current employer, respondent sought the same financial records as in his subpoena to Doe's former employer, plus records demonstrating Doe's "work schedules, previous [and] future travel

plans, [and] transportation bookings via airplane or car service[,] either domestic [or] foreign[,] (i.e., Amsterdam) from September 1, 2018 to present." Additionally, among other records, respondent sought "[a]ll e[-]mails, text messages[,] and correspondence[] from [Doe] to" the CEO of her then current employer from "January 1, 2019 to March 18, 2019."

In his subpoena to Doe's property management company, respondent sought all leases and "lease renewals" that that the company had executed with Doe, including correspondence regarding "offers and counter-offers to month rent increase[s] or decrease[s] from the original lease terms." Further, although the company never employed Doe, respondent sought financial records regarding Doe's purported compensation that she had received from that entity.

Additionally, respondent's subpoenas directed the entities to "attend and give testimony" at his law office on April 23, 2019 at 10:00 a.m. Further, respondent issued each of the subpoenas under his name and the name of the Acting Clerk of the Superior Court. See R. 1:9-1 (allowing a subpoena to be issued by "an attorney or party in the name of the [C]lerk [of the Superior Court])." Finally, respondent's subpoenas warned the entities that their "[f]ailure to appear to the command of this subpoena [would] subject [them] to a penalty, damages in a civil suit[,] and punishment for contempt of court."

During the ethics hearing, respondent conceded that, at the time had he had issued the subpoenas, the Superior Court had issued no case management order scheduling discovery. Respondent further conceded that he had failed to review R. 5:5-7(c), which requires the Superior Court, in non-dissolution matters "that cannot be heard in a summary manner[,]" to issue a case management order "fixing[,]" among other things, "a schedule for discovery." Rather, respondent admitted that he did not "research the family law" and "just relied on civil litigation, typical civil litigation" in the hope of "get[ting] the discovery" and proving that Doe was "living and working in New York." In that vein, respondent maintained that he had "follow[ed] the Court Rules" when he had issued the subpoenas because he "was asking for a hearing and we needed discovery for the hearing." Nevertheless, respondent conceded that he had failed to follow the proper procedures for serving the subpoenas in New York.[7] Finally, respondent admitted that he had failed to serve the subpoenas on Doe's New Jersey attorney, as R. 4:14-7(c) requires.

[7] In New York, pursuant to the Uniform Interstate Depositions and Discovery Act, a "subpoena issued under the authority of a court of record of a [foreign state]" "must" be submitted "to the county clerk in the county in which discovery is sought to be conducted in [New York]." See N.Y. C.L.P.R. § 3119(a) and (b). Thereafter, the New York County Clerk "shall promptly issue a subpoena for service upon the person to which the out-of-state subpoena is directed." See N.Y. C.L.P.R. § 3119(b). A New Jersey subpoena issued "in accordance with R. 4:14-17 [. . .] will be enforced in accordance with the procedures of the foreign state." Catalina Marketing Corp. v. Hudyman, 459 N.J. Super. 613, 618 (App. Div. 2019) (citing Pressler & Verniero, cmt. 1 on R. 4:11-5).

During the June 2020 OAE demand interview, respondent maintained that his subpoenas represented "a proper request for discovery" because Judge Ridgway's March 4, 2019 order dismissing the New Jersey matter and transferring jurisdiction to Kentucky was based "on false premises, on hearsay[,] and on [. . .] fraud." Respondent also claimed that the subpoenas sought information regarding Doe's compensation from her employers in order "to decide child support."

Following respondent's issuance of the subpoenas, Doe's supervisor from her then current employer advised her that he had received the subpoena "through the mail." Thereafter, Doe spoke with her New Jersey attorney, who arranged for respondent to provide him with the three subpoenas, via e-mail. Between March 26, and 29, 2019, Doe's New Jersey attorney sent respondent and each of the subpoenaed entities letters, directing the entities not to reply to the subpoenas because there was no active New Jersey matter under which the subpoenas could properly have been issued. Additionally, Doe's New Jersey attorney noted that the subpoenas were not properly served on each of the entities or on Doe or her attorneys. Further, Doe's New Jersey attorney stated that the subpoenas were "overly broad and unduly burdensome[,]" sought "proprietary information[,]" and sought information that was not "likely to lead to the discovery of relevant information[.]" Finally, Doe's New Jersey attorney

stated that he would file "a motion to quash" if respondent did not "voluntarily withdraw the improper subpoena[s]."

Meanwhile, on March 26, 2019, Doe's New Jersey attorney sent respondent a letter, notifying him that he had engaged in "frivolous litigation[,]" pursuant to R. 1:4-8, by issuing improper, "ex parte" subpoenas. Specifically, Doe's New Jersey attorney asserted that respondent had no authority to issue the subpoenas in connection with the New Jersey custody matter, which Judge Ridgway previously had dismissed in connection with the transfer to Kentucky. Moreover, Doe's New Jersey attorney advised respondent that he had failed to properly serve the subpoenas on each of the New York entities or on Doe or her attorneys. Additionally, Doe's New Jersey attorney stated that he had learned of respondent's March 25, 2019 Superior Court motion, which Doe's New Jersey attorney maintained was also frivolous based on Judge Ridgway's March 4, 2019 order relinquishing jurisdiction to Kentucky. Consequently, Doe's New Jersey attorney demanded that respondent provide him with his March 25, 2019 Superior Court filings and warned that, unless respondent "withdr[e]w[,] with prejudice" the subpoenas and the Superior Court filings within twenty-eight days, Doe would file a motion for sanctions. See R. 1:4-8(b) (noting that an application for sanctions "shall not be filed" without proof of a written demand affording the alleged offending party twenty-eight days to withdraw the

"offending paper").

Following the frivolous litigation letter, respondent provided Doe's New Jersey attorney with a copy of his March 25, 2019 motion; however, he failed to provide Doe's attorney with a copy of his March 25 twelve-count amended complaint. Additionally, respondent refused to withdraw his subpoenas, claiming, at the ethics hearing, that he still "wanted that information."

On April 5, 2019, Doe's New Jersey attorney filed opposition to respondent's March 25, 2019 motion. In her opposition, Doe argued that, on March 4, 2019, Judge Ridgway properly had relinquished jurisdiction of the matter to Kentucky pursuant to the UCCJEA. Additionally, Doe maintained that the renovations to the Kentucky residence recently had been completed and had not caused significant disruptions to the child's daily routine. Doe further alleged that the Kentucky residence contained no lead or mold, as determined by a contractor, and that respondent had raised no such safety concerns while he had lived at the residence, between July 2018 and February 2019, while renovations were ongoing. Doe further provided an April 1, 2019 letter from her daughter's pediatrician, who claimed that the child had exhibited no signs of lead poisoning or other "environmental related illnesses." Additionally, Doe claimed that, in February 2019, she had completed her employment training and was no longer required to spend "three [to] four days a week in New York City."

Finally, Doe represented that her daughter remained a "full time participant in pre-school in Kentucky."

Also on April 5, 2019, Doe's New Jersey attorney filed a cross-motion requesting that the Superior Court (1) "quash[] respondent's three subpoenas; (2) prohibit respondent from contacting Doe's "boss and employer;" (3) award Doe counsel fees and costs; and (4) impose "sanctions" on respondent. Specifically, Doe sought to quash the subpoenas because there was no pending New Jersey matter under which respondent could properly have issued the subpoenas. Doe also claimed that respondent had "discovered the cellular telephone number" of her then current employer's chief financial officer (CFO) and had called the CFO, along with her "boss[,]" "with the intent to harass [and] jeopardize [her] employment." Finally, Doe claimed that respondent's actions amounted to "bad faith" and "entitle[d]" her to attorney's fees, costs, and sanctions.

Meanwhile, on April 22, 2019, respondent sent a letter to Doe's property management company, demanding that it comply with his March 25 subpoena. In his letter, respondent referenced a lawsuit entitled "McIlwain v. [Property Management Company], et. al.[,]" a purported legal action which, according to Doe's New Jersey attorney, respondent "contrived" in order to conceal his actions from Doe and the Superior Court and to "intimidate" Doe's property

management company "into compliance with a defective subpoena." In support of his theory, Doe's New Jersey attorney claimed that respondent failed to serve his April 22 letter on Doe, who only discovered the letter after she had received it from her property management company.

On July 16, 2019, Judge Ridgway issued an order and a decision directing that her March 4, 2019 order transferring jurisdiction to Kentucky "remain in full force and effect." Additionally, Judge Ridgway found that respondent's subpoenas were "not attached to any pending actions in [the Superior Court] and are therefore invalid." Finally, Judge Ridgway ordered respondent to pay Doe $1,000 in attorney's fees.[8]

In Judge Ridgway's accompanying written decision, she noted that the child's "state of residency [was] not in dispute" because respondent and Doe had agreed that their daughter had resided in Kentucky since at least August 2018. In that vein, Judge Ridgway found that Kentucky continued to have "a proper jurisdictional claim under" N.J.SA. 2A:34-65 and Ky. Rev. Stat. Ann. § 403.822 (a), both of which confer upon a state jurisdiction to render an "initial" custody determination only if the state "was the home state of the child within

[8] During the ethics hearing, respondent maintained that he had paid Doe the required $1,000 sanction. Doe testified, however, that she had incurred a total of $6,109 in legal fees in connection with her opposition to respondent's March 25, 2019 motion and her April 5, 2019 cross motion.

six months before the commencement of the proceeding."[9] Judge Ridgway also rejected respondent's arguments that Doe and the child's periodic vacations during that six-month period divested Kentucky of jurisdiction. See N.J.S.A. 2A:34-54 and Ky. Rev. Stat. Ann. § 403-800 (noting that "[a] period of temporary absence of [the parent or the child] is part of the [six-month] period").

Additionally, Judge Ridgway determined that, although the Superior Court had the authority to exercise "temporary emergency jurisdiction" while the child was in New Jersey between February 27 and March 4, 2019, the Superior Court "was barred from exercising jurisdiction in this matter beyond emergency circumstances." See N.J.S.A. 2A:34-68 (conferring upon a New Jersey court "temporary emergency jurisdiction if the child is present in [New Jersey] and [. . .] has been abandoned or it is necessary in an emergency to protect the child because the child [. . .] is subjected to or threatened with mistreatment or abuse"), and N.J.S.A. 2A:34-70 (noting that a New Jersey court "may not exercise its jurisdiction [. . .] if at the time of the commencement of the proceeding[,] a proceeding concerning the custody of the child has been commenced in a court of another state having jurisdiction substantially in conformity with [the UCCJEA]"). Consistent with the principles of the

[9] Both N.J.S.A. 2A:34-54 and Ky. Rev. Stat. Ann. § 403-800 define "home state" as "the state in which a child lived with a parent or a person acting as a parent for at least six (6) consecutive months immediately before the commencement of the custody proceeding."

UCCJEA, Judge Ridgway observed that, at the March 4, 2019 Superior Court hearing, she and Judge Johnson properly determined that the matter would be returned to Kentucky "to proceed as regularly scheduled."

Additionally, Judge Ridgway dismissed respondent's March 25, 2019 first amended complaint because the Superior Court lacked jurisdiction to decide those claims, which should have been brought before the Jefferson County Circuit Court.

Finally, Judge Ridgway found that respondent's actions "amounted to bad faith." Specifically, Judge Ridgway observed that respondent had:

> continued to send subpoenas which are frivolous, [had] alleged untrue facts and issues as a basis for his claims for custody, and [had] continued to purse this action, knowing that [the Superior Court had] no jurisdiction over the minor child. These actions alone are enough [. . .] to impose attorney's fees on [respondent].
>
> [P-19p.8.][10]

Finally, Judge Ridgway emphasized that respondent was:

> a licensed member of the New Jersey bar and has knowledge of the proper process and protocol for court actions[.] [I]t is therefore apparent that some of his actions regarding his attempts to obtain discovery without a valid subpoena, and his threats regarding same, can be considered that [respondent had] acted in a manner that does not comport with good faith.

[10] "P" refers to the OAE's exhibits before the DEC hearing panel.

[P-19p.8.]

On August 26, 2019, respondent appealed Judge Ridgway's March 4 and July 16, 2019 orders to the Appellate Division. In his appellate case information statement, respondent argued, among other things, that the UCCJEA "violates the Constitution of the United States if it permits the child of two (2) custodial parents to be raised by the non-custodial [. . .] grandmother, who lives 800 miles away from where both parents live."

Meanwhile, on January 7, 2020, respondent and Doe attended a mediation session before a retired Kentucky judge in connection with the ongoing Kentucky custody litigation. Following the mediation session, respondent and Doe executed a "mediation agreement and order" which allowed respondent four hours of supervised parenting time each week in Kentucky. Further, the mediation agreement required respondent to pay $955 per month in childcare costs. The agreement also noted that Kentucky would continue to serve as the child's "home state" and that Kentucky would have "sole jurisdiction over all litigation concerning [the child]." Finally, the agreement required Doe to "withdraw" her New York and New Jersey ethics grievances "within forty-eight (48) hours."[11]

[11] On June 10, 2019, Doe filed her New Jersey ethics grievance, claiming that respondent had filed "fraudulent subpoenas" and a "baseless first amended complaint." Doe's New York ethics grievance is not included in the record before us.

During the ethics hearing, Doe stated that she became aware of respondent's desire to require her to withdraw her ethics grievances after respondent's Kentucky attorney "came running" into the mediation room and "demand[ing] that we [. . .] add that line to the media[tion] agreement, otherwise [respondent] wouldn't sign it." Doe maintained that she "needed to sign" the agreement "in order to protect [her] daughter."

During the June 2020 OAE demand interview, respondent claimed that he could not recall who originally had decided to include the provision requiring Doe to withdraw her ethics grievances. Respondent, however, conceded that he had "advocate[d]" for its inclusion and that he "was glad about it" being "in there."

During the ethics hearing, respondent clarified that he had "meant to" advise the OAE, during the demand interview, that he had "agreed" with the inclusion of the provision in the mediation agreement but that he did not "advocate" for its inclusion. Respondent also claimed that he was unaware that requiring Doe to withdraw her ethics grievances constituted misconduct.

On January 8, 2020, the day after respondent and Doe executed the mediation agreement, Doe sent the OAE an e-mail requesting that her ethics grievance "be withdrawn."

Following the execution of the mediation agreement, respondent determined that his appeal before the Appellate Division "became irrelevant at that point." Nevertheless, respondent refused to withdraw his appeal and instead maintained that he had "amended" his appeal "to take out the stuff with the daughter" and to pursue only his "claims" against Doe. The Appellate Division record before us, however, does not demonstrate that respondent amended his notice of appeal or his appellate case information statement following the execution of the January 8, 2020 mediation agreement.

On February 3, 2020, after receiving at least two extensions totaling seventy-five days to file his appellate brief, respondent filed with the Appellate Division a motion requesting that it accept for filing his deficient brief, which he had submitted almost one month after the Appellate Division's most recent January 8, 2020 deadline. Thereafter, although the Appellate Division afforded respondent the opportunity to correct his deficient brief, respondent failed to do so. Consequently, on February 26, 2020, the Honorable Carmen J. Messano, P.J.A.D., issued an order dismissing respondent's appeal based on his "repeated failures to comply with the Court Rules."

On May 29, 2020, respondent sent his Kentucky attorney a letter, on his law firm letterhead, enclosing a check made payable to Doe for child support and expressing his preference that his attorney oppose his daughter's enrollment

at a daycare for the upcoming school year. Respondent's letterhead listed only a Kentucky address as the location of his law firm's office. Additionally, respondent listed the notation "Kentucky | New York | New Jersey" on the bottom of his letter.

During the ethics hearing, respondent admitted that he had never been admitted to the Kentucky bar. Respondent, however, maintained he had sent letter with the Kentucky address and the Kentucky notation as "a bad joke" to his lawyer. Specifically, respondent claimed that he "used to joke that I'm gonna come to Kentucky and become a family lawyer. And it was a laugh, because obviously I was very bad at it in New Jersey[.]" Respondent also claimed that his lawyer had "forwarded" his May 29, 2020 letter to Doe "without reading it."

During the June 2020 demand interview, respondent claimed that he had relocated his personal residence to the same Kentucky address listed in his May 29, 2020 letter. Respondent also noted that he was "applying" for admission to the Kentucky bar.

In July 2020, the OAE contacted the Kentucky Bar Association to determine whether respondent was admitted to practice in that jurisdiction. In reply to the OAE's inquiry, the Kentucky Bar Association confirmed that respondent had never held plenary or pro hac vice admission in that jurisdiction.

On October 8, 2020, respondent sent the OAE a letter claiming that he did "not believe anything [was] inaccurate" in his May 29, 2020 letter to his attorney. Respondent also claimed that he was practicing law in Kentucky with an attorney who had been licensed to practice in that jurisdiction since 2015. Finally, respondent stated that, although he was not licensed to practice law in Kentucky, he had "begun the application process to become admitted by motion."

In his verified answer and through his testimony at the ethics hearing, respondent admitted to most of the underlying facts of this matter but denied having violated most of the charged RPCs.

Specifically, respondent denied having violated RPC 3.1, RPC 8.4(c), and RPC 8.4(d), as alleged in the formal ethics complaint, by filing an amended Superior Court complaint and issuing three subpoenas under the purported authority of an active New Jersey custody matter, which had been dismissed for lack of jurisdiction, pursuant to the UCCJEA. Rather, respondent maintained that his filing of the amended Superior Court complaint and his issuance of the three subpoenas was justified based on his view that he had a "good faith basis" to seek the "modification or reversal of" the UCCJEA, which he maintained was "a bad law" that "should be changed." In that vein, respondent claimed that there was "no way" that the UCCJEA was "intended for [his daughter] to be raised

800 miles away from both parents. And if that is the law, that should not be the law."

Respondent also argued that he had "the right to" issue the subpoenas and to file the amended Superior Court complaint because, in his view, the New Jersey custody matter "was still pending" following Judge Ridgway's March 4, 2019 "interlocutory" order relinquishing jurisdiction to Kentucky. Respondent, thus, maintained that the Superior Court "still had jurisdiction on the grounds that the best interests of the child were [still] in question." Finally, although respondent conceded that the information he sought via his New Jersey subpoenas could have been sought through discovery in connection with the Kentucky custody litigation, he argued that "whether we got the discovery in New Jersey or Kentucky, you know, it's still the same discovery."

Additionally, respondent denied having violated RPC 8.4(d) in connection with his appeal of Judge Ridgway's March 4 and July 16, 2019 orders. Respondent, however, conceded that he "probably should have" withdrawn his appeal after he and Doe executed the January 7, 2020 Kentucky mediation agreement, which provided that Kentucky would serve as the "sole jurisdiction" regarding the custody litigation. Respondent also conceded that he had failed to comply with the Court Rules governing appeals by "failing to rectify the issues"

in his deficient appellate briefs. Nevertheless, respondent maintained that his conduct did not "reach the level of an RPC violation."

Respondent, however, admitted having violated RPC 8.4(d) by executing the Kentucky mediation agreement, which required Doe to withdraw her New York and New Jersey ethics grievances.

Finally, respondent denied having violated RPC 7.1(a)(1) by sending his Kentucky attorney a letter, on his law firm letterhead, which maintained that his law firm address was in Kentucky and which contained the notation "Kentucky | New York | New Jersey" on the bottom of the letter. Although respondent conceded that he never had been admitted to the Kentucky bar, he claimed that his actions amounted to a "one-time joke" and that there was "no way" that anyone "would have taken this seriously."

Although respondent did not urge the imposition of a specific quantum of discipline, he emphasized that his custody dispute was a personal, "extremely emotionally charged" family law matter, an area of law in which he had little expertise.

The OAE urged to the DEC to recommend the imposition of at least a censure based primarily on respondent's violations of RPC 3.1, RPC 8.4(c), and RPC 8.4(d).

Specifically, the OAE argued that respondent violated RPC 3.1, RPC 8.4(c), and RPC 8.4(d) by improperly issuing three subpoenas and by filing an amended Superior Court complaint in connection with a New Jersey custody matter that had been dismissed for lack of jurisdiction. The OAE emphasized that respondent knew that he had no legal basis to amend his complaint or to issue the subpoenas. The OAE stressed that respondent's actions were dishonest and resulted in a waste of judicial resources.

Additionally, the OAE argued that respondent violated RPC 8.4(d) by failing to withdraw his appeal of Judge Ridgway's March 4 and July 16, 2019 orders after he executed the January 7, 2020 Kentucky mediation agreement, which provided that Kentucky had "sole jurisdiction" of the custody matter. The OAE maintained that respondent compounded his misconduct by repeatedly failing to correct his deficient appellate brief and by failing to adhere to the Appellate Division's briefing deadlines, which resulted in the dismissal of his appeal based on his "repeated failures to comply with the Court Rules."

Further, the OAE argued that respondent violated RPC 8.4(d) by executing the Kentucky mediation agreement, which required Doe to withdraw her ethics grievances.

Finally, the OAE argued that respondent violated RPC 7.1(a)(1) by utilizing a law firm letterhead with only a Kentucky address and the notation

"Kentucky | New York | New Jersey[,]" which falsely suggested that respondent had earned admission to the Kentucky bar.

In support of its recommendation for at least a censure, the OAE emphasized that respondent had continued to defend his frivolous legal theories regarding the UCCJEA. In that vein, the OAE highlighted that respondent had demonstrated "a troubling lack of remorse" and had refused to recognize the severity of his misconduct. The OAE also noted that respondent unilaterally removed his child from Kentucky, without first contacting Doe, which created the need for emergent custody hearings in two jurisdictions and which forced Doe to incur excessive legal fees after respondent baselessly refused to accept Judge Ridgway's jurisdictional ruling. The OAE also argued that respondent is not entitled to mitigation simply because his misconduct occurred in connection with his own custody dispute, particularly when his actions were designed to "cut corners, save money[,] and aggravate [Doe]."

The DEC found that respondent violated RPC 3.1, RPC 8.4(c), and RPC 8.4(d) by improperly filing an amended Superior Court complaint and by issuing three subpoenas following the dismissal of the New Jersey custody matter. The DEC observed that Judge Ridgway's March 4, 2019 jurisdictional ruling constituted a final resolution of the New Jersey matter. Rather than accept that final jurisdictional ruling, respondent (1) filed an amended complaint, without

leave of the Superior Court or the consent of Doe, (2) issued three subpoenas on a matter that was no longer active, and (3) failed to withdraw his submissions after Doe's New Jersey attorney had notified respondent that his filings were frivolous. The DEC found that, although the well-settled principles of the UCCJEA were "clearly explained to [. . .] respondent[,]" he remained dismissive of the UCCJEA and refused to proceed with his claims in Kentucky.

The DEC also found that respondent violated RPC 8.4(d) by executing the Kentucky mediation agreement, which required Doe to dismiss her New York and New Jersey ethics grievances. The DEC emphasized that the resolution of litigation cannot be conditioned on the withdrawal of an ethics grievance.

Additionally, the DEC found that respondent violated RPC 7.1(a)(1) by sending his Kentucky attorney a letter which implied that respondent was admitted to the Kentucky bar and that he had maintained an office for the practice of law in that jurisdiction. Although respondent dismissed his actions as a "joke," the DEC found that respondent's behavior represented a "continued [. . .] course of dishonesty and misrepresentation."

The DEC, however, did not find, by clear and convincing evidence, that respondent violated RPC 8.4(d) in connection with his appeal of Judge Ridgway's orders. The DEC observed that respondent's appeal was not, by itself, improper, and that judicial resources "were not wasted on [the] appeal."

In recommending the imposition of a three-month suspension, the DEC weighed, in aggravation, "the continuous nature of [respondent's] actions and his failure to heed [the] warnings of" Doe's New Jersey attorney and Judge Ridgway regarding the propriety of his behavior. The DEC also found that respondent had failed to demonstrate any remorse and had issued the improper subpoenas to "frustrate" Doe.

Nevertheless, the DEC weighed, in mitigation, respondent's lack of prior discipline, his cooperation with disciplinary authorities, and the fact that he had committed the misconduct in connection with his own custody matter.

At oral argument before us, the OAE again urged the imposition of at least a censure based on the same reasons expressed in its brief to the DEC. The OAE also noted that, although respondent's misconduct did not result in any "angry outbursts" during the custody litigation, respondent displayed an arrogant failure to recognize his wrongdoing and continued to "double down" on his misguided legal positions regarding the UCCJEA.

In turn, at oral argument and in his November 30, 2022 brief to us, respondent urged the imposition of a censure without specifically admitting or denying that he had violated the charged RPCs. Rather, respondent urged, as mitigation, the fact that his conduct occurred in the context of his own emotionally charged child custody dispute in which he was representing himself.

Respondent argued that the "highly charged emotional atmosphere" of the underlying custody litigation "blinded him to his legal and ethical obligations." Respondent also conceded that his "biggest mistake was representing himself" because of his minimal experience in handling family law matters. In respondent's view, if he had retained counsel to represent him in connection with his custody dispute, the RPC violations, as found by the DEC, "would never have occurred."

However, when asked whether he had any remorse for his actions, including his decision to unilaterally remove his daughter from Kentucky, respondent insisted that he had done nothing wrong, and that any contrition was unnecessary in light of his decision to contest the charged RPCs.

Respondent analogized his conduct to the reprimanded attorney in In re Geller, 177 N.J. 505 (2003), who, as detailed below, made personal attacks against almost everyone involved in his child custody dispute. In Geller, we found, as mitigation, the fact that the attorney's misconduct was confined to an emotionally charged custody matter in which the attorney had represented himself.

Additionally, although he admitted having violated RPC 8.4(d) by executing the Kentucky mediation agreement, respondent alleged that he was

unaware that requiring Doe to withdraw her New York and New Jersey ethics grievances, as a condition to that agreement, constituted misconduct.

Finally, respondent again characterized, as a "joke[,]" his May 29, 2020 letter, to his Kentucky attorney, which contained respondent's law firm letterhead with the notation "Kentucky | New York | New Jersey" and which listed only a Kentucky address as the location of his law firm. Respondent argued that he did not intend to "expose[]" anyone to his "joke" letter, which, in his view, did not result in any deception to the public.

Following a de novo review of the record, we determine that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Specifically, respondent violated RPC 3.1, RPC 8.4(c), and RPC 8.4(d) by improperly filing an amended Superior Court complaint and issuing three subpoenas in connection with a New Jersey custody matter which he knew had been dismissed for lack of jurisdiction pursuant to the UCCJEA.

"The UCCJEA governs the determination of subject matter jurisdiction in interstate, as well as international, custody disputes." Sajjad v. Cheema, 428 N.J. Super. 160, 170 (App. Div. 2012). To avoid interjurisdictional conflict, the UCCJEA "prioritizes the use of the child's 'home state' as the exclusive basis for jurisdiction of a custody determination, regardless of the residency of the

parents." Id. at 171 (citations omitted). Pursuant to the UCCJEA, a child's "home state" is defined as "the state in which a child has lived with a parent or a person acting as a parent for at least six consecutive months immediately before the commencement of a child custody proceeding." N.J.S.A. 2A:34-54 and Ky. Rev. Stat. Ann. § 403-800. Additionally, "[a] period of temporary absence of any of the mentioned persons is part of the [six-month] period." Ibid.

Here, on February 28, 2019, the day after respondent had taken his child from Kentucky to New Jersey without Doe's knowledge or permission, respondent filed, in the Superior Court of New Jersey, a verified complaint and order to show cause requesting parenting time, joint legal custody, and an order prohibiting Doe from removing their daughter from New Jersey. The very same day, Doe filed, in the Circuit Court of Jefferson County, Kentucky, a petition for custody of her daughter and an emergent motion seeking her daughter's immediate return to Kentucky.

On March 4, 2019, following a hearing in the Superior Court of New Jersey, in which respondent, Doe and her counsel, and the Jefferson County Circuit Court judge participated, Judge Ridgway issued an order dismissing the New Jersey matter and relinquishing jurisdiction to Kentucky, pursuant to the UCCJEA, based on the fact that the child had been residing in Kentucky for at least six months.

Rather than abide by Judge Ridgway's jurisdictional ruling, respondent filed an amended Superior Court complaint, on behalf of himself and his daughter, under the same docket number that Judge Ridgway had dismissed. Respondent's amended complaint alleged, in substantial part, questionable tort and contract claims against Doe, in her purported capacity as the "landlord" of respondent and their daughter while they had resided together in the Kentucky residence. Respondent, however, failed to secure Doe's consent or the leave of the Superior Court before filing his amended complaint, as R. 4:9-1 requires. Moreover, respondent failed to serve the amended complaint on Doe, as R. 5:4-2(b) requires.

On the same day that respondent filed his amended Superior Court complaint, he improperly issued subpoenas to Doe's current and former employers and to the property management company of Doe's New York City apartment, seeking information regarding her income, travel schedules, and apartment leases. Respondent issued the subpoenas under the caption of the New Jersey custody matter that Judge Ridgway had dismissed for lack of jurisdiction. Respondent's subpoenas also threatened the entities with "damages in a civil suit" and "contempt of court" if they did not comply. Additionally, just as respondent failed to serve Doe with his amended complaint, respondent also failed to serve Doe with his subpoenas, as R. 4:14-7(c) requires.

Respondent's amended complaint and subpoenas lacked a colorable basis in law and fact because Judge Ridgway previously had determined, pursuant to the clear standards set forth in the UCCJEA, that New Jersey lacked jurisdiction to adjudicate the custody dispute.

Respondent, however, claimed that he properly had issued his subpoenas and filed his amended complaint because the New Jersey custody matter "was still pending" following Judge Ridgway's March 4, 2019 order dismissing the matter for lack of jurisdiction. In respondent's view, Judge Ridgway's order was merely "interlocutory" because she had yet to consider the best interest of the child. Additionally, respondent attempted to justify his frivolous filings based on his view that he had a "good faith basis" to seek the "modification or reversal of" the UCCJEA, which he maintained was "a bad law."

In our view, however, respondent's arguments are premised on a fundamental misunderstanding of the UCCJEA and basic appellate principles. Specifically, Judge Ridgway's March 4, 2019 order was not "interlocutory," given that it had completely dismissed the New Jersey custody matter, transferred jurisdiction to Kentucky, and left no unresolved issues to be decided in New Jersey. See Grow v. Chokshi, 403 N.J. Super. 443, 457-58 (App. Div. 2008) (noting that a final order for purposes of appeal "adjudicates all issues as to all parties"). Additionally, although Judge Ridgway's March 4, 2019 order

did not specifically address the merits of the underlying custody dispute, it is well settled that such an analysis would have been inappropriate in connection with a UCCJEA jurisdictional determination. See Poluhovich v. Pellerano, 373 N.J. Super. 319, 366 (App. Div. 2004) (noting that "the UCCJEA was not intended to invite an analysis of the merits of a custody dispute when determining jurisdiction"), certif. denied, 183 N.J. 212 (2005). In that vein, although respondent maintained that the UCCJEA was "a bad law" because it allowed his daughter "to be raised 800 miles away from both parents[,]" respondent failed to recognize the UCCJEA was enacted to resolve jurisdictional conflicts rather than to resolve the merits of an underlying custody dispute.

Respondent, thus, had no reasonable, good faith basis to issue his subpoenas or to file his amended Superior Court complaint after Judge Ridgway had dismissed the New Jersey custody dispute and relinquished jurisdiction to Kentucky. Additionally, respondent's actions resulted in a waste of judicial resources and forced Doe to incur unnecessary, excessive legal fees to oppose respondent's frivolous submissions. Finally, respondent engaged in multiple acts of deception in connection with his submissions. He not only failed to serve Doe with either his complaint or his subpoenas, but he also carefully crafted his subpoenas to conceal the fact that the New Jersey custody matter under which the subpoenas were captioned already had been dismissed.

Respondent also violated RPC 8.4(d) by failing to withdraw his appeal of Judge Ridgway's March 4 and July 16, 2019 jurisdictional orders following his execution of the January 7, 2020 Kentucky mediation agreement, which provided that Kentucky had "sole jurisdiction" to adjudicate the custody dispute. Although respondent conceded that the execution of the mediation agreement rendered his appeal "irrelevant[,]" respondent refused to withdraw his appeal. Rather, respondent continued to request extensions to file his appellate brief and, on at least two occasions, filed deficient appellate briefs, which he ultimately failed to correct. On February 26, 2020, the Appellate Division finally dismissed respondent's appeal based on its finding that he had "repeated[ly] fail[ed] to comply with the Court Rules." Respondent's failure to withdraw his appeal and his "repeated failures" to comply with the Court Rules governing appeals, thus, resulted in a further waste of judicial resources.

Additionally, respondent violated RPC 8.4(d) by executing the Kentucky mediation agreement requiring Doe to withdraw her New York and New Jersey ethics grievances within forty-eight hours. The day after Doe and respondent had executed the agreement, Doe sent the OAE an e-mail, attempting to withdraw her ethics grievance. Attorneys who negotiate the dismissal of an ethics grievance commit a violation of RPC 8.4(d), as a matter of law. See In re Allen, 221 N.J. 298 (2015) (the attorney requested that his client withdraw the

ethics grievance in exchange for a refund of the retainer), and A.C.P.E. Opinion 721, 204 N.J.L.J. 928 (June 27, 2011) (determining that the negotiation of an ethics grievance constituted a per se violation of RPC 8.4(d) because it "thwarts the disciplinary system from serving its principal purpose" – protection of the public and preserving confidence in the bar).

However, we conclude that there is insufficient evidence to find, by clear and convincing evidence, that respondent violated RPC 7.1(a)(1), as alleged in the complaint, by misrepresenting his ability to practice law in Kentucky. Although respondent's May 29, 2020 letter contained his law firm letterhead, which listed only a Kentucky address, and which contained the notation "Kentucky | New York | New Jersey" on the bottom of the letter, it appears that the letter was intended only as a confidential correspondence directed solely to his Kentucky attorney. Specifically, respondent's letter not only enclosed a child support check for Doe, but it also expressed respondent's preference that his attorney oppose his daughter's enrollment at a daycare for the upcoming school year. Although we find no humor in respondent's correspondence, despite his characterization of his letter as a "joke[,]" based on these unique facts, and the confidential nature of respondent's letter, we find that the record lacks clear and convincing evidence that respondent unethically misrepresented his ability to practice law in Kentucky.

In sum, we find that respondent violated RPC 3.1, RPC 8.4(c), and RPC 8.4(d) (three instances). We dismiss the charge that respondent violated RPC 7.1(a)(1). The sole issue left for our determination is the appropriate quantum of discipline for the totality of respondent's misconduct.

Attorneys who have asserted a frivolous issue in a proceeding, resulting in prejudice to the administration of justice, have received censures. See In re Giannini, 212 N.J. 479 (2012) (attorney made numerous "unprovoked, inflammatory, disparaging, and fictitious statements" about various judges and parties in post-judgment pleadings that the attorney had filed on behalf of his sister; the attorney also made repeated, frivolous discovery requests to judges who had no nexus to the litigation whatsoever; the attorney further made knowingly false, outrageous statements in his post-judgment pleadings by alluding to matters that were either irrelevant or unsupported by admissible evidence; finally, the attorney improperly attempted to compel his adversary and her counsel to withdraw their ethics grievance against him; in aggravation, the attorney displayed an "arrogant failure" to recognize his wrongdoing, given that he had "doubled down" on his baseless views of the New Jersey judiciary and of the disciplinary system in his brief to us).

The quantum of discipline is enhanced, however, when attorneys repeatedly file frivolous litigation, engage in threatening or vexatious behavior,

or commit other serious ethics infractions. See, e.g., In re Yacavino, 184 N.J. 389 (2005) (six-month suspension for attorney who was a plaintiff in four civil actions arising out of family and business disputes between him and his wife's relatives; following the dismissal of his original complaint, he filed at least three successive complaints that re-asserted the same dismissed claims that previously had been adjudicated on the merits, thus, taxing the court's resources; a Superior Court judge found that the attorney's actions regarding his fourth and final complaint amounted to a bad faith attempt to harass the defendants; the attorney also sent the Superior Court judge almost one-hundred letters containing insulting and disrespectful language directed at the judge and accusing her of a possible "cover-up;" in aggravation, the attorney refused to acknowledge the magnitude of his misconduct and the immense waste of resources suffered by both the judiciary and the defendants, who were forced to deal with the attorney's prolonged and incessant lawsuits; mitigating factors included the attorney's unblemished forty-year career, the "emotionally-charged" nature of the claims, the fact that he obtained summary judgment on some of his claims, the absence of harm to the client, his perception that the trial court had denied him critical discovery, and the fact that he was not motivated by venality but, rather, by a belief that he was right), and In re Rheinstein, 2022 N.J. LEXIS 514 (2022) (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).

Respondent, however, committed additional misconduct. When an attorney attempts to influence a client to withdraw a grievance, discipline ranging from an admonition to a censure typically is imposed. See, e.g., In the Matter of R. Tyler Tomlinson, DRB 01-284 (November 2, 2001) (admonition for attorney who improperly conditioned the resolution of a collection case on the dismissal of an ethics grievance filed by the client's parents); In re Mella, 153 N.J. 35 (1998) (reprimand for attorney who communicated with the grievant in an improper attempt to have the grievance dismissed in exchange for a fee refund; the attorney also was guilty of lack of diligence and failure to communicate with clients); In re Allen, 221 N.J. 298 (2015) (censure for who attorney who improperly sought to persuade his client to withdraw an ethics grievance in exchange for a refund of attorney's fees or continued work on the client's matter, without additional fees; the attorney provided legal services to

the client only after the client had filed an ethics grievance against him; the attorney also failed to keep the client reasonably informed about the status of the matter; in aggravation, we noted the attorney's lack of contrition or remorse and his prior admonition).

Finally, our recent decision in In the Matter of Virginia T. Fiocca, DRB 22-098 (November 1, 2022) provides relevant guidance in this matter.

In Fiocca, an attorney registered a nonprofit company in substantially the same business name as her former brother-in-law's cardiology practice. Id. at 2-3. Approximately three months later, the attorney's sister unsuccessfully filed a motion to vacate the property settlement agreement of her prior divorce judgment, claiming that her husband had failed to adequately disclose his cardiology practice's finances. Id. at 16. Months later, the attorney filed a Superior Court complaint against her former brother-in-law's cardiology practice, alleging that her nonprofit company could not open a business bank account at the same bank that the cardiology practice had an account. Id. at 5. The attorney failed to properly serve the complaint on the cardiology practice. Id. at 16.

Following the filing of the lawsuit, the attorney served a subpoena on the bank, without properly serving the cardiology practice, seeking production of a year's worth of the cardiology practice's financial records. Id. at 6. The attorney

claimed that she sought the records to obtain only the address of the cardiology practice. Id. at 8. The brother-in-law learned of the subpoena from the bank and thereafter, successfully moved to quash it. Id. at 7. Thereafter, the attorney withdrew her complaint against the cardiology practice. Id. at 21.

We found that the attorney violated RPC 3.1 by filing a frivolous lawsuit against the cardiology practice alleging that the entity, which the attorney knew to have been her brother-in-law's medical practice for at least twenty years and was the subject of a property settlement agreement, was unlawfully using the nonprofit's business name. Id. at 15. Additionally, we found that the attorney had no basis to issue the subpoena merely to obtain the correct address of the cardiology practice. Id. at 15. Finally, at the time the attorney filed her lawsuit, the nonprofit could not have been operating, given that the attorney's daughter, who was the nonprofit's purported sole owner, had not yet graduated from medical school or had decided whether she wanted to practice medicine in the United States. Id. at 15.

In determining that a censure was the appropriate quantum of discipline, we weighed, in aggravation, the attorney's evasive and incredible testimony during the ethics hearing, her failure to provide a rational explanation for her decision to select a business name similar to that of the cardiology practice or her lawsuit against it, and her decision to inject her daughter into what appeared

to be a retaliatory scheme against her former brother-in-law. Id. at 22. In mitigation, the attorney had no prior discipline in her more than forty-year career at the bar. Ibid. Our decision in that matter is pending with the Court.

Here, respondent's multiple frivolous filings are similar to, though arguably more egregious than, Fiocca's frivolous course of conduct. Like Fiocca, respondent filed a frivolous amended complaint and improperly issued three subpoenas in an improper attempt to litigate his custody dispute in New Jersey. Although respondent knew that Judge Ridgway had dismissed his New Jersey custody complaint and had relinquished jurisdiction of the matter to Kentucky, as the UCCJEA required, respondent refused to accept Judge Ridgway's clear jurisdictional ruling. Rather, respondent issued the subpoenas, containing the caption of the dismissed New Jersey custody matter, to Doe's New York City employers and to the property management company of her New York City apartment. Respondent's subpoenas sought information regarding Doe's income, travel arrangements, and apartment leases. The subpoenas also threatened the entities with penalties, including "contempt of court[,]" if they chose not to comply.

As Judge Ridgway determined, respondent issued the subpoenas in bad faith because he knew that the Superior Court had no jurisdiction to adjudicate the custody dispute. Moreover, as the DEC correctly determined, respondent's

issuance of the subpoenas appeared to be motivated by nothing more than his desire to "frustrate" Doe in connection with their custody dispute.

Unlike Fiocca, however, who eventually withdrew her frivolous complaint after the Superior Court had quashed her frivolous subpoena, respondent refused to withdraw his subpoenas even after Doe's New Jersey attorney had confronted him regarding their lack of merit. Specifically, following Doe's April 5, 2019 motion to quash the subpoenas as frivolous, and before Judge Ridgway had ruled upon that motion, respondent sent Doe's property management company an April 22, 2019 letter, again demanding that it comply with his subpoena. Worse still, in apparent attempt to intimidate the property management company into compliance with his frivolous subpoena, respondent's letter falsely stated that the property management company was a party to a non-existent lawsuit in which respondent was the plaintiff.

Also, like Fiocca, who failed to properly serve the cardiology practice with her complaint and subpoena, respondent failed, at almost every juncture, to serve Doe with his filings. Specifically, respondent failed to serve Doe with his April 22, 2019 letter to her property management company demanding that it comply with his frivolous subpoenas. Respondent also failed to serve Doe with his March 25, 2019 (1) amended complaint, (2) motion seeking various forms of injunctive relief, and (3) subpoenas. Indeed, Doe only learned of the

subpoenas after she had been contacted about them by her then current employer. Additionally, after Doe's New Jersey attorney independently discovered the existence of respondent's March 25 motion, he specifically requested that respondent provide him with a copy of his March 25 filings. Respondent, however, provided only a copy of his March 25 motion, without providing a copy of his amended complaint.

Moreover, respondent engaged in bad faith behavior in connection with his attempt to serve Doe with his February 28 and March 1, 2019 initial custody pleadings. Respondent claimed that, on March 1, 2019, the child's Margate, New Jersey babysitter properly had served Doe with those filings. By contrast, Doe alleged that she refused to accept service of those documents from the babysitter after she had traveled from New York City to the babysitter's residence, at respondent's invitation, to pick up her daughter, who was not present when Doe arrived and whom respondent unilaterally had removed from Kentucky just days earlier. Respondent, thus, appeared to have lured Doe from New York City to Margate, under false pretenses, in order to attempt service of his initial pleadings.

Additionally, like the censured attorney in Giannini, respondent improperly compelled Doe to withdraw her ethics grievances as part of their Kentucky custody mediation agreement. Also, like Giannini, respondent has

displayed an arrogant failure to acknowledge the gravity of his misconduct. Respondent has continued to (1) criticize the UCCJEA for his predicament, (2) claim that he was "ambush[ed" at the March 4, 2019 jurisdictional hearing before the Superior Court, and (3) refuse to demonstrate any remorse for his actions. Moreover, respondent has failed to acknowledge the seriousness of his decision to unilaterally remove his two or three-year-old daughter from Kentucky, where she had been residing with Doe and her mother and had been attending full-time pre-school. Respondent's actions generated the need for two emergency custody proceedings in two different jurisdictions and forced Doe to retain multiple attorneys in order to secure the return of her daughter.

Respondent's actions, however, are not as severe as the attorney in Yacavino, who received a six-month suspension for filing at least three successive complaints that re-asserted the same dismissed claims that previously had been adjudicated on the merits. Also, unlike Yacavino, who sent a Superior Court judge almost one-hundred letters containing insulting and disrespectful language and accusing the judge of a "cover up[,]" respondent did not display any excessively discourteous or vexatious behavior in connection with this matter.

In mitigation, like the attorneys in Fiocca and Yacavino, who both enjoyed otherwise unblemished careers at the bar of approximately forty years,

respondent has had no prior discipline in his twenty-seven-year career at the bar. Finally, we acknowledge, based on past precedent, that respondent's misconduct occurred in connection with an emotionally charged custody matter in which he was representing himself. See In re Geller, 177 N.J. 505 (2003) (reprimand for attorney who filed baseless motions accusing two judges of bias against him; the attorney also made personal attacks against almost everyone in the matter and failed to comply with court orders; in mitigation, we considered that the attorney's actions were limited to an emotional child custody matter in which the attorney represented himself). However, we accord minimal weight to this factor, given that respondent's refusal to appreciate the seriousness of his misconduct has persisted well after the conclusion of the emotionally charged custody proceedings.

On balance, weighing respondent's multiple frivolous submissions and his refusal to accept responsibility for his misconduct against his otherwise unblemished twenty-seven-year career at the bar, we determine that a three-month suspension is the appropriate quantum of discipline to protect the public and to preserve confidence in the bar.

Chair Gallipoli and Members Menaker and Rivera voted to further sustain the RPC 7.1(a)(1) charge, finding that respondent's May 29, 2020 correspondence gave the false impression that he was admitted to the Kentucky

bar when, in fact, he held no such bar admission.

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 Timothy Joseph McIlwain
Docket No. DRB 22-178

Argued: January 19, 2023

Decided: March 6, 2023

Disposition: Three-month suspension

Members	Three-month suspension	Absent
Gallipoli	X	
Boyer	X	
Campelo	X	
Hoberman	X	
Joseph		X
Menaker	X	
Petrou	X	
Rivera	X	
Rodriguez	X	
Total:	8	1

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