Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 22-191
District Docket Nos. XIV-2019-0071E
and XA-2020-0905E

In the Matter of	:
William P. Munday	:
An Attorney at Law	:

Corrected Decision

Argued: January 19, 2023

Decided: March 24, 2023

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

John C. Whipple appeared on behalf of respondent.

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

This matter previously was before us on a recommendation for an admonition filed by the District XA Ethics Committee (the DEC). On October 20, 2022, we determined to treat the admonition as a recommendation for greater discipline, pursuant to R. 1:20-15(f)(4), and to bring the matter on for oral

argument.

The formal ethics complaint charged respondent with having violated RPC 1.4(a) (failing to inform a prospective client of how, when, and where the client may communicate with the attorney); RPC 1.4(b) (failing to communicate with a client); RPC 1.4(c) (failing to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); RPC 1.5(b) (failing to set forth in writing the basis or rate of the legal fee); RPC 3.1 (engaging in frivolous litigation); RPC 3.3(a)(1) (three instances – making a false statement of material fact to a tribunal); RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct); RPC 8.4(c) (three instances – 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 1980 and has no prior discipline. At the relevant times, he practiced law as a partner at McCusker, Anselmi, Rosen & Carvelli, P.C. (the Firm).

The facts of this matter are largely undisputed, although respondent denied having engaged in any acts of deception.

Sebastian Lentini is the franchise owner of several McDonald's restaurants in northern New Jersey. Sebastian employs his son, Darren Lentini, to assist him in the management of their family's business interests.

In February 2012, Sebastian first retained the Firm in connection with ongoing litigation concerning an IHOP restaurant located next to one of his McDonald's restaurants. Thereafter, Sebastian retained the Firm in connection with several other unrelated business litigation matters. Meanwhile, Darren separately retained the Firm to assist him with several personal legal matters. One of respondent's law partners primarily represented Darren and Sebastian in connection with all those matters. During Darren's June 27, 2019 interview with the OAE, he claimed that, at some point, each of those matters had "resolved."

In October 2014, Passaic Industrial Properties, LLC (Passaic Properties), applied to the City of Passaic Zoning Board of Adjustment for variances and a site plan approval for the construction of a new McDonald's restaurant and other retail space in Passaic, New Jersey. The Lentinis were concerned that Passaic Properties' new McDonald's restaurant would draw customers away from their family's nearby McDonald's restaurant. Following Passaic Properties' application to the Board of Adjustment, Darren asked respondent's law partner

whether the Firm could represent his family in connection with their opposition to the development project.

On November 10, 2014, respondent's law partner requested that respondent, who had substantial experience in zoning matters, consult with the Lentinis. Thereafter, respondent spoke with Darren, who stated that he and Sebastian wanted to anonymously oppose the development project because, in their view, their public objection to the development project could damage their relationship with the McDonald's Corporation. Respondent advised Darren that his family's proposed objection to the development project was "very unlikely" to succeed, given that the area in question "was badly in need of redevelopment." Nevertheless, respondent informed Darren that, if he and Sebastian wanted to anonymously object to the development project, Darren could retain the Firm, pay for the representation, and find other individuals from the City of Passaic who were willing to serve as objectors to the development project. Respondent, however, offered no instructions to Darren regarding how to locate potential objectors[1] or what to advise them, other than that they must be willing to have

[1] "New Jersey's courts have long taken a liberal approach to standing in zoning cases." Cherokee LCP Land, LLC v. City of Linden Planning Bd., 234 N.J. 403, 416 (2018). Indeed, the Municipal Land Use Law (the MLUL) allows "[a]ny interested party" the right to contest a board of adjustment decision "approving an application for development." Id. at 416 (citing N.J.S.A. 40:55D-17(a)). Under the MLUL, an interested party is "any person, whether residing within or without the municipality, whose right to use, acquire, or enjoy the property is or may be affected by any action taken under [the MLUL] . . . ." N.J.S.A. 40:55D-4.

their names publicly disclosed to the Board of Adjustment as "objector[s]." Darren agreed to respondent's suggestion and began to look for individuals in Passaic who were willing to object to the development project.

Prior to the Board of Adjustment's January 13, 2015 session, Darren told respondent that F.B, the owner of a cafe "that was pretty close" to the development site, had agreed that his name could be disclosed to the Board as an objector. Darren advised respondent that F.B. was "concerned" about "the competition" his cafe could face from the proposed McDonald's restaurant. Respondent, however, failed to contact F.B. to verify Darren's statements, discuss the potential representation, or explain to F.B. his role as an objector.

During the Board of Adjustment's January 13, 2015 session, respondent introduced himself as an attorney of the Firm and claimed that he was "here on the application" of Passaic Properties. Thereafter, respondent argued that Passaic Properties had failed to adequately notify the community of its proposed development project. Following respondent's arguments, the following exchange occurred:

> [Counsel for Passaic Properties]: . . . Mr. Chairman. Could we just get on the record who [respondent] represents or what property owner?
>
> Respondent: Fair enough. It was kind of an oversight . . . . I represent [F.B.].

[Counsel for Passaic Properties]: And is there a – is he a property owner?

Respondent: He's the owner of – interesting. I apologize. I don't have the property. He's the owner of . . . Café. **But I've been – I've been contacted by a couple of other folks who are considering also being – retaining us.** So –

Acting [Board of Adjustment] Chairman: Right. But are you representing them right now?

Respondent: Not right now. No.

Acting [Board of Adjustment] Chairman: Okay. So . . . to make sure that your client is, indeed, an interested party as the law would allow[,] [w]here is the – does anybody know where the cafe –

. . . .

Respondent: I have to – I have to get the exact address. But my understanding is it's 500, 600 feet from the property, something like that.

[(P-3, SubEx.Dpp.28-29) (emphasis added).][2]

In reply to respondent's claim that he represented F.B., counsel for Passaic Properties noted that F.B. may not have had standing to object to the development project because his cafe was more than two hundred feet away

[2] "P" refers to the OAE's exhibits.
"SubEx." refers to the sub-exhibits appended to the OAE's exhibits.
"R" refers to respondent's exhibits.

from the proposed development site.[3] The Board of Adjustment, thus, required both parties to submit briefs regarding whether respondent was "representing an interested party as defined the law."

During the ethics hearing, respondent conceded that no one other than Darren had contacted him or the Firm about objecting to the development project. In that vein, respondent admitted that he had relied solely on Darren regarding F.B.'s "consent[] to our representing him" and his alleged opposition to the development project. Moreover, respondent claimed that his statement to the Board of Adjustment – that he "had been contacted by a couple of other folks who [were] considering . . . retaining [the Firm]" was meant to convey that he had been "contact[ed] through Darren." Respondent, however, conceded that, at the time of the Board of Adjustment's January 2015 session, Darren had provided no additional named objectors other than F.B. Nevertheless, respondent claimed that, during his initial November 2014 conversation with Darren, he understood that Darren "was going to get names of . . . objectors, plural."

[3] N.J.S.A. 44:55D-12 generally requires that all property owners within two hundred feet of the proposed development site be given notice of the application for development. Such property owners generally have a special interest in the proceeding. See McNamara v. Saddle River Borough, 64 N.J. Super. 426, 430-31 (App. Div. 1960). Nevertheless, individuals who own property more than two hundred feet away from the proposed development site are not precluded from participation, provided that they qualify as an "interested party" under the MLUL. See Cherokee LCP Land, 234 N.J. at 419.

Following the Board of Adjustment's January 2015 session, respondent advised Darren that the Firm could present a "stronger" objection to the development project if Darren could locate objectors who lived or worked within two hundred feet of the proposed development site.

On March 10, 2015, Darren sent respondent's law partner the following e-mail with the subject line "[p]lease forward to [respondent][:]"

> Bill
> [E.L.]
> [X X X] [S]treet [X X X]
> Passaic NJ
>
> [M.L.]
> [X X X] [S]treet [X X X]
> Passaic.
>
> [(R-1).][4]

The e-mail contained no other information. Later on March 10, respondent's law partner forwarded the e-mail to respondent.

During the ethics hearing, respondent claimed that he understood E.L. and M.L. to be objectors to Passaic Properties' development project and possible employees of Darren.[5] Respondent, however, did not attempt to contact E.L. or

[4] We have redacted the addresses of the two individuals to protect their privacy.

[5] During the ethics hearing, respondent's law partner claimed that Darren had informed him that E.L. and M.L. were employees of one of Sebastian's McDonald's restaurants. However, during Darren's June 27, 2019 interview with the OAE, he alleged that neither E.L. nor M.L. were employed by any of Sebastian's McDonald's restaurants.

M.L. to discuss the potential representation. Additionally, prior to the Board of Adjustment's March 19, 2015 session, respondent could not recall having any discussions with Darren regarding E.L. or M.L. During respondent's August 2019 interview with the OAE, respondent stated that Darren was neither "a big talker," nor "concerned about a lot of details," given that he would communicate in phrases such as "good, yes, okay, do that."

On March 19, 2015, respondent appeared a second time before the Board of Adjustment. At the outset of the session, respondent stated that he represented F.B. and that "I was just recently contacted by an [E.L.] and [M.L.,] who are residents of . . . Street." When asked by the Acting Board of Adjustment Chairmen whether respondent was "officially" representing E.L. and M.L., respondent replied that "[t]hey have not officially retained us yet, but they – we're in the process."

During the ethics hearing, respondent conceded that he neither had spoken with nor attempted to contact E.L. or M.L. Nevertheless, he denied that he had misled the Board of Adjustment because, in his view, he "was contacted by them through Darren[.]" During his August 1, 2019 interview with the OAE, respondent claimed that he may have been "waiting" for "more confirmation from . . . Darren" before he could represent to the Board of Adjustment that E.L. and M.L. were his clients.

On April 23, 2015, respondent appeared for his third session before the Board of Adjustment and stated that he represented F.B., E.L., and M.L.[6] During that session, counsel for Passaic Properties took contemporaneous notes, which reflected that respondent had revealed E.L. and M.L.'s respective addresses, which were identical to the addresses that Darren had provided to respondent in his March 10, 2015 e-mail, except that M.L.'s street number differed by three digits. During the ethics hearing, respondent maintained that, prior to the April 2015 Board of Adjustment session, he "believe[d]" that he had formed an attorney-client relationship with E.L. and M.L. based solely on Darren's "representation that they had consented to our representing them."

On May 19, 2015, respondent appeared for his fourth Board of Adjustment session and entered his appearance "on behalf of the objectors."

Following the May 2015 Board of Adjustment session, respondent became concerned that the Board was close to approving Passaic Properties' application and that Darren did not want his name disclosed in a court action to challenge that decision. Consequently, respondent told Darren that F.B., E.L., and M.L. each needed to execute and return "engagement letters" to the Firm. During his

[6] Due to technical problems with the Board of Adjustment's recording system, the relevant portions of respondent's statements could not be transcribed. However, the parties stipulated to the relevant contents of respondent's statements at that Board session.

August 1, 2019 interview with the OAE, respondent claimed that he did not "think it was" necessary to have F.B., E.L., and M.L. each execute a retainer agreement while Passaic Properties' application was pending before the Board of Adjustment; however, in his view, "going to court was a different issue."

On May 20, 2015, respondent sent Darren an e-mail containing the proposed retainer agreement, which respondent purposely dated January 15, 2015, in order to "cover" the entire "period of time . . . we were before the [B]oard [of Adjustment.]" The retainer agreement stated that "we have been asked to represent [the objectors] in connection with opposition to [Passaic Properties'] application. This is to confirm that representation." The retainer agreement further identified Darren as the "paying party." The retainer agreement, however, failed to specify the law firm or the attorney who would be conducting the potential representation. In that vein, the retainer agreement also failed to provide the objectors with the firm's contact information. Moreover, the agreement was not on the Firm's letterhead.[7] Respondent instructed Darren to sign the agreement and to "get the three clients to sign and return to me before the next meeting on June 2."

[7] During the ethics hearing, respondent explained that such information may have been omitted from the proposed retainer agreement based on his view that Darren previously had told each of the objectors "what we were doing and who we were." However, during his August 2019 interview with the OAE, respondent had noted that the retainer agreement was "odd" and could not explain why the Firm's letterhead was omitted.

Unbeknownst to respondent, Darren disregarded respondent's instructions and did not request that F.B., E.L., or M.L. execute the retainer agreement. Respondent, however, failed to follow up with Darren regarding whether F.B., E.L., or M.L. each had received and executed the retainer agreement. During his August 1, 2019 interview with the OAE, respondent claimed that he had "sort of lost track of it" and that "[i]t was a mistake on [his] part."

On June 2 and 16, 2015, respondent, without having received an executed copy of the retainer agreement, appeared for his final sessions before the Board of Adjustment and entered his appearances "on behalf of the objectors." Two months later, on August 11, 2015, the Board of Adjustment issued a formal resolution approving Passaic Properties' site plan application and variances for the construction of the McDonald's restaurant and other retail space. Thereafter, Darren requested that respondent challenge the Board of Adjustment's resolution in the Superior Court.

On September 24, 2015, respondent, without ever having had a single communication with F.B., E.L., or M.L., filed a complaint in lieu of prerogative writ, solely on their behalf, in the Superior Court. The complaint sought to void the Board of Adjustment's decision to approve the site plan application and variances based on Passaic Properties' alleged failure to adequately notify the community of the development project. The complaint further alleged that

"[p]laintiffs . . . [E.L.] and . . . [M.L.] are residents of Passaic, residing within [two hundred] feet of" the development site. Additionally, the complaint asserted that "[p]laintiff . . . [F.B.] operates a business [in] . . . Clifton New Jersey." Among other legal theories, the complaint alleged that Passaic Properties and the Board of Adjustment engaged in arbitrary, capricious, and unreasonable behavior that "adversely affected" F.B., E.L., and M.L.'s "interests." Finally, respondent executed a certification stating that he had "certif[ied] that the foregoing statements made by me are true. If any of the foregoing statements made by me are willfully false[,] I am subject to punishment."

Prior to filing the complaint, respondent had no discussions with Darren regarding the requested relief. In his stipulation and during the ethics hearing, respondent admitted that he did not independently verify the facts alleged in the complaint but, rather, had relied solely on Darren's prior representations regarding F.B., E.L., and M.L.'s alleged willingness to participate in the representation and to oppose the development project. Specifically, respondent accepted Darren's uncorroborated statement that F.B. was "concerned" that his cafe could face competition from the proposed McDonald's restaurant. Additionally, respondent conceded that Darren offered no information regarding why E.L. or M.L. objected to the development project. Respondent maintained,

however, that E.L. and M.L. were "doing [Darren] a favor . . . because it was [Darren] whose interests we were really representing as our client."

On November 9, 2015, Passaic Properties filed an answer, which alleged that respondent's complaint was "frivolous[,] pursuant to R. 1:4-8(a)[,]" citing both F.B.'s and E.L.'s sworn statements that they had neither retained the Firm nor opposed the development project.

Specifically, during F.B.'s October 16, 2015 transcribed interview with a representative of Passaic Properties, he stated that he never had heard of respondent or the Firm and that he never had authorized anyone to use his name in opposition to the development project. Although F.B. confirmed that he owned the nearby cafe, he claimed that he did not oppose the construction of the McDonald's restaurant because, in his view, it was "much better to be [sic] more competition, more busy."[8]

Additionally, during E.L.'s October 26, 2015 transcribed interview with a representative of Passaic Properties, she claimed that she neither had heard of respondent nor the Firm. E.L. also stated that, in the "fall or in the summer" of 2014, "two men" "knocked on [her] door . . . and . . . emphasized that a McDonald's and a 7-11 were going to be built. And it was going to bring gangs

[8] On May 28, 2020, the OAE successfully contacted and briefly spoke with F.B., who indicated that his October 16, 2015 statement was "accurate."

and a lot of violence to the neighborhood." E.L. described the men as "very persistent" and that they had "asked" for her name. E.L., however, denied that she authorized anyone to oppose the development project on her behalf.[9]

Finally, Passaic Properties noted that it could not locate M.L., whose address respondent did not specify in his complaint. However, based on the address that respondent had provided during the March 2015 Board of Adjustment session, Passaic Properties investigated and determined that the address was a pharmacy and not a residential address. Moreover, based on respondent's assertion, during the April 2015 Board of Adjustment session, that M.L. resided at a similar address with a different street number, Passaic Properties contacted the landlord for that address. In the landlord's November 2, 2015 affidavit, he claimed that, since he had acquired ownership of that address, in 2006, no individual named M.L. ever had resided in any of his apartments.[10]

During the ethics hearing, respondent claimed that he had received Passaic Properties' November 9, 2015 answer but did not read the portion of the answer that alleged that he had engaged in frivolous litigation.

[9] During its investigation, the OAE was unable to contact E.L.

[10] The OAE was unable to contact M.L. and found no record that he had lived at either of his purported addresses.

On December 11, 2015, Passaic Properties filed a summary judgment motion to dismiss respondent's complaint, citing F.B. and E.L.'s statements that they had neither heard of nor retained respondent or the Firm to oppose the development project. Moreover, Passaic Properties argued that M.L., whose whereabouts remained unknown, had no standing to object to the development project without disclosing his address.

On December 14, 2015, respondent informed Darren and his law partner of the summary judgment motion. In his e-mail to Darren enclosing the motion, respondent noted that "two of your three named plaintiffs have talked to [Passaic Properties] and said that they never authorized us to file the action on their behalf. Also . . . the third person doesn't live at the address you gave us. We need to talk about this right away."

Later on December 14, 2015, respondent's law partner called Darren, who insisted that F.B., E.L., and M.L. had "definitely agreed" that the Firm could use their names to object to the development project. Darren also alleged that "his friend, Christina Gervasi," had spoken with each of the alleged objectors and was willing to "sign an affidavit indicating that each of them [had] authorized the actions we took at a third party's expense."

Following respondent's law partner's discussion with Darren, respondent called Gervasi, who expressed her reluctance to sign Darren's proposed

affidavit. Based on respondent's conversation with Gervasi, he became convinced that the content of Darren's proposed affidavit "was likely to be false."

On December 18, 2015, respondent's law partner sent Darren an e-mail, claiming that, based on Gervasi's statements to respondent, it did not appear that F.B., E.L., or M.L. had "authorized anything to be filed." Respondent's law partner advised Darren that the Firm could not "proceed with the lawsuit" unless Darren was willing to serve as the plaintiff. Minutes later, Darren replied to respondent's law partner and authorized the firm to withdraw the complaint.

On December 23, 2015, respondent sent a proposed stipulation of dismissal to Passaic Properties' counsel. Later that day, counsel for Passaic Properties sent respondent a reply e-mail, noting that Passaic Properties did not consent to the dismissal of respondent's complaint.

On December 29, 2015, respondent sent Passaic Properties' counsel a follow up e-mail, again requesting whether Passaic Properties would authorize the dismissal of respondent's complaint. Respondent asserted that, if Passaic Properties would not consent, he would oppose Passaic Properties' motion for summary judgment. Hours later, counsel for Passaic Properties replied to respondent and stated it would not consent to the dismissal of respondent's

complaint because Passaic Properties specifically wished to avoid waiving any claims against the Firm for filing frivolous litigation.

Later on December 29, 2015, based on Darren's insistence that F.B., E.L., and M.L. each had agreed to serve as objectors, respondent sent Darren three proposed affidavits for F.B., E.L., and M.L.'s respective signatures. Each of the affidavits contained the following statements:

> While I never spoke with [respondent] or anyone at the [Firm], I did authorize Christina Gervasi to have a firm represent me as an objector with a third party paying the costs of the firm in front of the Passaic Board of Adjustment and in filing a legal action in [c]ourt challenging the action of the Passaic Board of Adjustment with respect to the application of [Passaic Properties] concerning property at . . . Passaic.
> [P-10.]

Additionally, the proposed affidavits for F.B. and E.L. stated that "when I was questioned by [the representative of Passaic Properties in October 2015], I had forgotten about by [sic] discussions with Christina Gervasi." In respondent's e-mail to Darren, he cautioned that F.B., E.L., and M.L. should execute the affidavits in front of a notary public and that they should not sign the affidavits "because they are asked, but because it is true."

On January 6, 2016, Darren and Gervasi spoke with E.L. and F.B., both of whom refused to sign the affidavit. Also on January 6, 2016, Darren sent respondent an e-mail requesting M.L.'s address. In reply, respondent provided

Darren with the same address which Darren previously had provided to respondent, in March 2015. Respondent then attempted to call M.L. "through a series of phone numbers," none of which were "operable or still in service[.]"

On January 26, 2016, Passaic Properties filed with the Superior Court additional transcribed statements of F.B. and E.L. in connection with their January 6 encounters with Darren and Gervasi.

In F.B.'s January 8, 2016 transcribed interview with the representative of Passaic Properties, he stated that, on January 6, a woman and a man had entered his cafe and requested that he "sign some papers" based on his purported prior representation that he did not "want a McDonald's next to [him]." F.B. claimed that he could not recall whether he had any prior encounters with the man and the woman and that he had "a lot of customers" coming into his cafe. F.B., however, told the man and woman that he never had stated "I don't want a McDonald's." F.B. also maintained that, although the man kept "pushing me like couple [sic] times, please do it because she's going to be a liar to the court," F.B. declined to sign "the papers."

In E.L.'s January 8, 2016 transcribed interview, she stated that, on January 6, a woman had visited her apartment building and claimed that they had a prior conversation. E.L. also maintained that the woman told her that "a man" with whom E.L. previously had spoken was "outside." E.L. then claimed that the

woman told her "you only have to sign a paper here." E.L. alleged that the woman "really wanted [her] to sign the paper, like it was mandatory." E.L., however, declined to sign "the paper."

On January 29, 2016, respondent appeared for oral argument before the Honorable Ernest M. Caposela, J.S.C., in connection with Passaic Properties' summary judgment motion. During oral argument, respondent entered his appearance "for the plaintiffs" and declined to oppose the motion. Judge Caposela then noted that there were "some unusual aspects to this" case and queried respondent whether he had "filed this action when, in fact, you didn't represent the plaintiffs[?]" In response to the Judge's question, the following exchange occurred:

> Respondent: Your Honor . . . our main client, who engaged us, did not want to be named in the action and didn't want to appear before the Board of Adjustment. When he – when they did that they had indicated that they had gotten some plaintiffs – were some objectors initially – that they . . . wanted to object to the application before the Board and that they were going to fund the objection, and then ultimately fund the litigation. Subsequently –
>
> Judge Caposela: Who . . . is that? Like you –
>
> Respondent: That is . . . an existing client of ours, who did not want to be disclosed.
>
> Judge Caposela: Okay. So they said we have some people who are willing to be named as plaintiffs in this lawsuit –

> . . . .
>
> Judge Caposela: . . . [D]o they even have standing as objectors, or were they just citizens of the City of Passaic
>
> . . . .
>
> Respondent: Our client?
>
> Judge Caposela: No, these folks here.
>
> Respondent: These folks, yes, they are within . . . 200 feet of the application. [F.B.] is not within 200 feet of the application and is not a resident. He has a business that's – I don't recall exactly how far he is away, but he had – he's on the same road, and . . . initially they indicated that this complaint had to do with traffic issues on . . . the project.
>
> [P-12pp.4-6.]

At the conclusion of argument, Judge Caposela dismissed respondent's complaint, with prejudice, subject to Passaic Properties' right to pursue legal fees and costs. Following the dismissal of the complaint, respondent unsuccessfully attempted to negotiate a settlement agreement with Passaic Properties regarding its claim for legal fees.

On February 16, 2016, Passaic Properties filed, in the Superior Court, a lawsuit against respondent, his law partner, and the Firm, alleging that they unlawfully had interfered with the development project through a "series of sham appearances, oppositions, and litigation without any bona fide clients with

legal standing to object." Among other legal theories, Passaic Properties sought damages based on alleged "tortious interference" by respondent, his law partner, and the Firm with Passaic Properties' "development agreement" with the McDonald's Corporation to construct a McDonald's restaurant. During that lawsuit, although Darren prohibited the Firm from disclosing his involvement in the underlying matter, the Superior Court ordered that Darren's name and contact information be disclosed to Passaic Properties.

On May 3, 2017, Passaic Properties filed a separate lawsuit against Darren and Gervasi alleging similar legal theories. Five months later, on October 27, 2017, the Superior Court consolidated Passaic Properties' lawsuits. On April 26, 2018, Passaic Properties successfully amended its complaint to include Sebastian as a defendant, based on his alleged conspiracy with the Firm to file frivolous litigation.

In fall 2018, respondent and the other defendants filed motions to dismiss Passaic Properties' complaint. On January 22, 2019, the Honorable Bruno Mongiardo, J.S.C., issued an order dismissing Passaic Properties' complaint in its entirety, with prejudice, based on Passaic Properties' alleged discovery violations and its delay in naming Sebastian as a defendant. Judge Mongiardo also noted that Passaic Properties' delayed construction of its McDonald's

restaurant likely was caused by environmental contamination of the construction site, rather than by the acts of the defendants.

On February 15, 2019, Passaic Properties appealed Judge Mongiardo's order dismissing its complaint. On February 25, 2020, the Appellate Division issued an opinion affirming the dismissal of Passaic Properties' complaint against Sebastian and reversing the dismissal of the complaint against respondent; his law partner; the Firm; Darren; and Gervasi. In its opinion, the Appellate Division noted that the dismissal of the complaint for discovery violations was an excessive measure. Additionally, the Appellate Division observed that the trial court did not adequately consider Passaic Properties' claims of tortious interference in connection with its "legal fees incurred as a result of defendants' baseless objections at the Board hearings and filing sham litigation."

On September 16, 2020, following additional motions to dismiss filed by respondent and the other defendants, Judge Mongiardo issued an order dismissing only the portion of Passaic Properties' complaint seeking damages for "lost profits."

On April 1, 2021, the parties executed a confidential settlement agreement, which dismissed all of Passaic Properties' claims.

In respondent's verified answer and submissions to the DEC, he admitted most of the facts underlying this matter but denied having committed any misconduct.

Specifically, although respondent admitted that he "may have used the . . . wrong word here or there," he denied having violated RPC 3.3 or "RPC 8.4," based on his view that he did not "knowingly" engage in any deception toward the Board of Adjustment or the Superior Court. Respondent argued that he had acted in "good faith" based solely on Darren's representations that F.B., E.L., and M.L. each "had authorized the firm's representation of them." In that vein, during the ethics hearing, respondent alleged that he had an "eminently reasonable" "belief in what [Darren] was communicating to [him] about the status" of F.B., E.L., and M.L. "and their willingness to be objectors to this project[.]"

Respondent also maintained that he had no reason to doubt Darren's assertions that F.B., a cafe owner, did not welcome competition from a nearby McDonald's restaurant. Regarding E.L. and M.L., respondent claimed that it "made sense" to him that Darren "went to a couple of his employees . . . and asked them to do him a favor by being the face of the application." Respondent, thus, stated that he was willing to rely on Darren's representations because he "was a long-term client of the firm . . . [a]nd, frankly, this may sound strange,

but in . . . my world, clients don't lie to you." Respondent claimed that he "never thought, until [he] saw [Passaic Properties' December 11, 2015] summary judgment motion, that there was any chance that these three had not authorized us to . . . file on their behalf." Nevertheless, respondent conceded that his "biggest mistake" "was relying on the truthfulness of [Darren], a longstanding firm client."

In support of his position that he did not violate either RPC 3.3 or RPC 8.4, respondent analogized his behavior to that of the attorney in In re Hyderally, 208 N.J. 453 (2011), whom the Court found did not clearly and convincingly violate RPC 8.4(c).

In that matter, following the attorney's request that a website designer create a website for his law practice, the website designer included the New Jersey Board of Attorney Certification emblem, in order to make the website "attractive and appealing," even though the attorney was not a certified civil trial lawyer. Id. at 455-57; In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011) at 3. The attorney was unaware of the emblem's placement on his website and, upon being told of its presence, had it removed immediately. Hyderally, 208 N.J. at 456. The attorney did not include the emblem on his letterhead or business cards, and he did not tell anyone that he was a certified civil trial attorney. Ibid. The Court, thus, found no clear and convincing evidence

demonstrating that the attorney either knowingly included the emblem on his website or approved of its continued presence. Id. at 461.

Respondent argued that, like the attorney in Hyderally, he did not know that F.B., E.L., or M.L. had not consented to his representation. He asserted that, upon reviewing Passaic Properties' December 2015 summary judgment motion, he took prompt "steps to ameliorate and remedy the situation," including attempting to obtain certifications from the three purported clients and then attempting to withdraw the complaint.

Additionally, respondent argued that he did not violate RPC 1.5(b) because he did not charge F.B., E.L., or M.L. any legal fees. Moreover, he maintained that his attorney-client relationship with Darren was governed by an existing retainer agreement.[11]

Respondent further argued that did not violate "RPC 1.4" because he communicated the scope of the representation to Darren, whom respondent "believed . . . had provided that information to" F.B., E.L., and M.L. Respondent also maintained his unsupported belief that Darren was responsible "to keep [F.B., E.L., and M.L.] advised of the status of [the] proceeding[.]"

[11] The formal ethics complaint did not charge respondent with having violated RPC 1.5(b) by failing to set forth, in writing, the basis or rate of his fee in connection with his representation of Darren. Rather, the RPC 1.5(b) charge was based solely on respondent's alleged failure to do so in connection with his purported representation of F.B., E.L., and M.L.

Finally, respondent maintained that he did not violate either RPC 3.1 or RPC 8.4(d) because he had a "good faith basis in fact to support" his filing of the Superior Court complaint on behalf of F.B., E.L., and M.L.

The DEC found that respondent violated RPC 1.4(a), (b), and (c) by failing to establish a direct line of communication with F.B., E.L., and M.L. The DEC observed that it was unreasonable for respondent to rely solely on Darren to establish an attorney-client relationship with F.B., E.L., and M.L. The DEC, thus, found that respondent improperly had delegated to Darren his duty to communicate with his purported clients.

Similarly, the DEC found that respondent further violated RPC 1.4(b) by failing to communicate with F.B., E.L., or M.L. regarding the purported representation. The DEC explained that it was improper for respondent to assume that Darren would fulfill respondent's duty to communicate with F.B., E.L., and M.L., particularly when respondent altogether failed to communicate with the group as a whole. Likewise, the DEC found that respondent further violated RPC 1.4(c) by failing to take any steps to ensure that F.B., E.L., and M.L. understood the scope of the purported representation.

Additionally, the DEC found that respondent violated RPC 1.5(b) by failing to set forth in writing the basis or rate of his fee in connection with his purported representation of F.B., E.L., and M.L. Respondent argued that such a

writing was unnecessary because Darren was paying for the entire representation and respondent did not request any legal fees from F.B., E.L., or M.L. The DEC, however, found that respondent was not relieved of his obligation to put the terms of his purported fee arrangement in writing.

The DEC did not find, by clear and convincing evidence, that respondent violated RPC 3.1; RPC 3.3(a)(1); RPC 8.4(c); or RPC 8.4(d). Although the DEC emphasized that respondent's handling of the purported representation left "much to be desired," the DEC did not find clear and convincing evidence that respondent knew, at the time he had appeared before the Board of Adjustment or when he had drafted the complaint in lieu of prerogative writ, that F.B., E.L., and M.L. had not agreed to the representation. Specifically, although respondent did not independently verify any of Darren's assertions regarding the three alleged objectors, the DEC found that respondent's basis for trusting Darren was not unreasonable. The DEC emphasized that Darren was an established client of the Firm, that E.L. and M.L. were purported employees of Sebastian's McDonald's restaurants, and that F.B. had a reasonable business interest in objecting to the construction of a nearby McDonald's restaurant.

The DEC found that respondent could have done more to "educate himself about the [o]bjectors" and that it was unreasonable to accept Darren's information "at face value[.]" Nevertheless, the DEC did not find clear and

convincing evidence that respondent had the requisite knowing intent to deceive the Board of Adjustment or the Superior Court.

Finally, the DEC did not find, by clear and convincing evidence, that respondent violated RPC 8.4(a) by attempting to violate RPC 8.4(c). As alleged in the complaint, the OAE asserted that respondent attempted to violate RPC 8.4(c) when, on May 20, 2015, he sent Darren F.B., E.L., and M.L.'s proposed retainer agreement, which respondent intentionally dated January 15, 2015. The DEC found that respondent did not have a clear intent to deceive anyone "by dating the agreement as of January 15 2015," which "correspond[ed] roughly with the date the [F]irm began" to purportedly represent F.B. before the Board of Adjustment.

For respondent's violations of RPC 1.4(a), (b), and (c) and RPC 1.5(b), the DEC recommended the imposition of an admonition, emphasizing his lack of prior discipline in his more than forty-year career at the bar.

At oral argument and in the OAE's September 14, 2022 brief to us, it urged the imposition of a reprimand for what it described as respondent's repeated acts of deception.

Specifically, the OAE argued that respondent violated RPC 3.3(a)(1) and RPC 8.4(c) by repeatedly and falsely claiming to the Board of Adjustment that F.B., E.L., and M.L. each had agreed to be formal objectors and were clients of

the Firm. The OAE maintained that respondent had no reasonable basis to believe that the three purported objectors were his clients, given that respondent neither had spoken to the purported objectors nor obtained from them an executed copy of the proposed retainer agreement. The OAE also emphasized that respondent offered no specific instructions to Darren regarding what to advise the potential objectors concerning the scope of the potential attorney-client relationship. Additionally, the OAE noted that respondent falsely advised the Board of Adjustment, during its January and March 2015 sessions, that respondent personally had been "contacted" by other individuals, including E.L. and M.L., who were "considering" retaining the Firm.

The OAE further argued that respondent violated RPC 3.1 and RPC 8.4(d), along with two additional instances of RPC 3.3(a)(1) and RPC 8.4(c), by filing the Superior Court complaint in lieu of prerogative writ, in which he falsely claimed that F.B., E.L., and M.L. were his clients whose interests would be "adversely affected" by the development project. The OAE noted that, although respondent may have believed, based solely on Darren's assertions, that F.B., E.L., and M.L. each had opposed the development project, respondent had no reason to believe that these individuals were his clients, given that respondent never received any executed retainer agreement from the purported objectors

through Darren. The OAE also noted that respondent's complaint falsely alleged that M.L. resided within two-hundred feet of the proposed development site.

Finally, the OAE did not object to the DEC's recommendation that the RPC 8.4(a) charge be dismissed.

The OAE analogized respondent's misconduct to the reprimanded attorney in In re Marraccini, 221 N.J. 487 (2015), who, as detailed below, filed multiple eviction complaints with pre-signed verifications from a property manager who had since passed away. When Marraccini learned of the property manager's death, he withdrew all the eviction complaints. Like Marraccini, the OAE argued that, even if respondent did not purposely mislead the Superior Court, he still filed a complaint in lieu of prerogative writ on behalf of three individuals whom he knew were not his clients.

At oral argument and in respondent's November 28, 2022 brief to us, he urged us to adopt the DEC's decision in its entirety and to impose an admonition based on his view that he violated only RPC 1.4(a), (b), and (c) and RPC 1.5(b).

Respondent again denied that he had engaged in any knowing acts of deception and noted that "[h]is mistakes are of the type regularly, although regrettably, missed by practicing attorneys." In respondent's view, his misrepresentations to the Board of Adjustment and to the Superior Court resulted from his "error in failing to confirm" F.B., E.L., and M.L.'s

"representation by the [F]irm, [and] not the result of any intentional conduct." Additionally, respondent argued that his December 2015 e-mails to Darren and his law partner, following his review of Passaic Properties' summary judgment motion, "evidence[d] his surprise at first learning" that F.B., E.L., and M.L. "had perhaps not consented to the representation." Respondent further claimed that his decision to backdate the May 2015 proposed retainer agreement to January 15, 2015 – the date respondent alleged that his purported representation of F.B., E.L., and M.L. had commenced – further demonstrated that he did make any knowing false statements to the Board of Adjustment or to the Superior Court.

Additionally, respondent speculated that F.B., E.L., and M.L. "could" have decided to object to the development project but then "later decided they no longer wanted to" (emphasis in original). Respondent further speculated that F.B., E.L., and M.L.'s purported decision to initially participate as objectors to the development project was "a definite possibility" in light of E.L.'s October 2015 admission to Passaic Properties that, in the "fall or summer" of 2014, "two men" had approached her and discussed the construction of a nearby McDonald's restaurant.

Respondent urged us to find that his behavior was "more analogous" to that of attorneys who have been admonished for committing recordkeeping infractions or lacking diligence. Respondent also urged, as mitigation, his lack

of prior discipline in his forty-three-year career at the bar; the isolated nature of the incident, which did not result in any personal gain for him and which, in his view, is unlikely to recur; and the lack of injury to any clients, given that the OAE had commenced its investigation of this matter following a New Jersey Law Journal article rather than an ethics grievance filed by a client.

Following a review of the record, we respectfully part ways from the DEC's finding that respondent did not knowingly misrepresent the nature of his purported attorney-client relationships with F.B., E.L., and M.L. We, thus, determine that there is clear and convincing evidence that respondent violated RPC 3.3(a)(1) (three instances); RPC 3.1; RPC 8.4(c) (three instances); and RPC 8.4(d). Additionally, we determine that respondent violated RPC 8.4(a) by attempting to violate RPC 8.4(c) when, in May 2015, he sent Darren a proposed retainer agreement for F.B., E.L., and M.L., which respondent purposely had dated January 15, 2015.

However, because respondent never formed the requisite attorney-client relationships with F.B., E.L., and M.L., we determine to dismiss the charges that respondent violated RPC 1.4(a), (b), and (c), and RPC 1.5(b), all of which require the existence of an attorney-client relationship to sustain such misconduct.

RPC 3.3(a)(1) prohibits an attorney from knowingly making a false statement of material fact or law to a tribunal. In New Jersey, zoning boards of adjustment have long been described as "tribunals" that perform "quasi-judicial, not ministerial, functions." See Centennial Land & Development Co. v. Medford, 165 N.J. Super. 220, 225 (Law Div. 1979).

Similarly, RPC 8.4(c) prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. It is well-settled that a violation of RPC 8.4(c) requires intent. See In the Matter of Ty Hyderally, DRB 11-016.

During his January, March, and April 2015 appearances before the Board of Adjustment, respondent violated RPC 3.3(a)(1) and RPC 8.4(c) by claiming that he represented F.B., E.L., and M.L., even though respondent could not reasonably have inferred that such attorney-client relationships existed.

"At its most basic, [the attorney-client relationship] begins with the reliance by a nonlawyer on the professional skills of a lawyer who is conscious of that reliance and, in some fashion, manifests an acceptance of responsibility for it." Kevin H. Michels, New Jersey Attorney Ethics: The Law of New Jersey Lawyering, 257 (2018) (emphasis added) (citing In re Palmieri, 76 N.J. 51, 58, 60 (1978)). In that vein, "there must be some act, some word, some identifiable manifestation that the reliance on the attorney is in his professional capacity."

Palmieri, 76 N.J. at 60.

Stated differently, an attorney-client relationship is formed when "the prospective client requests the lawyer to undertake the representation, the lawyer agrees to do so[,] and preliminary conversations are held between the attorney and client regarding the case[.]" Herbert v. Haytaian, 292 N.J. Super. 426, 436 (App. Div. 1996). The relationship can begin absent an express agreement, a bill for services rendered, and the actual provision of legal services. Ibid. The relationship may be inferred from the conduct of the attorney and client or by surrounding circumstances. Palmierei, 76 N.J. at 58-59. It must, nonetheless, be "an aware, consensual relationship." Id. at 58.

During the January, March, and April 2015 Board of Adjustment sessions, respondent claimed that he represented F.B., the owner of a cafe. Additionally, during the April 2015 Board of Adjustment session, respondent claimed that he also represented E.L. and M.L., two purported residential tenants who lived within two-hundred feet of the proposed development site.

Respondent argued that it was reasonable for him to have assumed that he served as counsel for F.B., E.L., and M.L. based solely on Darren's representations that each of those individuals purportedly had consented to the representation. In support of his theory, respondent maintained that it "made sense" that F.B., as a nearby cafe owner, would have objected to the construction

of a McDonald's restaurant, and that E.L. and M.L., who purportedly worked for one of Sebastian's McDonald's restaurants, would have agreed to do Darren "a favor" by serving as objectors.

Respondent, however, knew that F.B., E.L., and M.L. had not manifested any form of acceptance of an aware, consensual attorney-client relationship. Indeed, respondent failed to communicate a single word to his supposed clients throughout the entirety of the purported representation. Similarly, respondent never received any communication from his purported clients, either directly or through Darren, which indicated a conscious understanding of the purported representation. Respondent, moreover, admitted that he did not provide Darren with any guidance regarding what to advise prospective objectors regarding the representation, other than their willingness to have their names disclosed to the Board of Adjustment as objectors.

Based solely on that minimal guidance, it was unreasonable for respondent to have assumed that Darren, a nonlawyer, could have explained the nature of an attorney-client relationship to F.B., a community member and cafe owner, and to E.L. and M.L., who supposedly were employees of one of Sebastian's McDonald's restaurants. Unsurprisingly, during F.B.'s and E.L.'s October 2015 transcribed interviews, both claimed that they neither had heard of respondent or the Firm nor authorized anyone to oppose the development project on their

behalf. Far from describing a consensual attorney-relationship, E.L. instead alleged that, in the fall or summer of 2014, two "very persistent" men had approached her, described the potential criminal activity that the McDonald's restaurant could bring to her neighborhood, and requested that she provide her name.

Had respondent performed even the most basic due diligence that was required of him, he readily could have determined whether F.B., E.L., and M.L. had opposed the development project or consented to an attorney-client relationship. Indeed, had respondent conducted a basic internet search of one of M.L.'s purported residential addresses, he would have discovered, as did Passaic Properties, that the alleged residential address of his supposed client was a pharmacy. Respondent, however, failed to even attempt to contact F.B., despite knowing that he owned the nearby cafe, or E.L. or M.L., who were purportedly employed by Sebastian, the Firm's long-time client. Instead, respondent improperly delegated to Darren the responsibility of creating and maintaining an attorney-client relationship with the purported clients and then relied solely on Darren's unsupported assertions in connection with his statements to the Board of Adjustment.

It is well-settled that, under certain circumstances, an attorney's wholesale reliance on the representations of a client is improper. See In the Matter of

Annette P. Alfano, DRB 18-220 (December 12, 2018) (the attorney agreed to serve as the escrow agent for $40,000 that a third party had advanced to the client; the attorney agreed to hold the funds in escrow and disburse them to the third-party upon the closing of title to a real estate transaction; the attorney, without seeking authorization from the third-party or confirmation that the business arrangement between the client and the third-party had been modified, disbursed the entire $40,000 to various parties, pursuant to the client's instructions, for the benefit of the client; we determined that the attorney's wholesale reliance on the representations of her client was reckless), so ordered, 238 N.J. 239 (2019), and In re Dilieto 142 N.J. 492 (1995) (holding that "it is not enough simply to follow a client's instructions" and that "[w]hen the circumstances dictate that other reasonable inquiry be conducted, there can be no good faith reliance on what the client says").

Here, respondent's wholesale reliance on Darren regarding the existence of the attorney-client relationships was unreasonable, particularly when respondent knew that F.B. was a complete stranger to Darren and that, at best, E.L. and M.L. were employees of one of Sebastian's McDonald's restaurants. Respondent's failure to take any steps to determine the existence of the purported attorney-client relationships, thus, constituted impermissible "willful

blindness." In attorney disciplinary matters, the Court has equated "willful blindness" to knowledge:

> The concept arises in a situation where the party is aware of the highly probable existence of a material fact but does not satisfy himself that it does not in fact exist. Such cases should be viewed as acting knowingly and not merely as recklessly. The proposition that willful blindness satisfies for a requirement of knowledge is established in our cases.
>
> [In re Skevin, 104 N.J. 476, 486 (1986) (citations omitted).]

Finally, although respondent argued that his behavior was similar to that of the attorney in Hyderally, whom the Court determined did not knowingly engage in deception, that case is clearly distinguishable from the instant matter. As noted above, in Hyderally, unbeknownst to the attorney, his website designer included the New Jersey Board of Attorney Certification emblem on the attorney's website. Hyderally, 208 N.J. at 455. The attorney did not otherwise hold himself out as a certified civil trial attorney and, upon being told of its presence, had it removed immediately. Id. at 456.

Unlike the attorney in Hyderally, who had no reason to know of the emblem's presence on his website, respondent knew that neither F.B., E.L., nor M.L. ever had manifested any intent to form an attorney-client relationship. Respondent also knew that he had delegated to Darren the task of creating and maintaining the purported attorney-client relationships. Rather than attempt to

contact F.B., E.L., and M.L. to determine whether the individuals had consented to the representation, respondent refused to take any steps to confirm Darren's unsupported allegations. Instead, respondent continued to misrepresent to the Board of Adjustment his attorney-client relationships with the three individuals while remaining willfully blind to the significant likelihood that no such relationships existed.

Respondent's deception before the Board of Adjustment, however, did not end there. Specifically, during the January 2015 Board of Adjustment session, respondent claimed that, in addition to representing F.B., he had "been contacted by a couple of other folks who are considering also retaining us." Respondent, however, knew that, at the time of the January 2015 Board of Adjustment session, no one other than Darren had contacted him or the Firm about objecting to the development project. Moreover, respondent admitted that Darren had provided no other potential objectors than F.B. Respondent, thus, knowingly misrepresented to the Board of Adjustment that he had been contacted by other individuals who were considering retaining the Firm.

Additionally, during the March 2015 Board of Adjustment session, respondent claimed that he had "just recently [been] contacted by an [E.L.] and [M.L.,]" who had "not officially retained [the Firm] yet, but they – we're in the process." At the time of the March 2015 Board session, respondent's knowledge

of E.L. and M.L. was limited to Darren's March 10, 2015 e-mail to respondent's partner, which provided only E.L.'s and M.L.'s names and purported addresses, without any further information. Additionally, respondent admitted, during the ethics hearing, that he could not recall having any discussions with Darren regarding E.L. and M.L. prior to the March 2015 Board session. Nevertheless, based solely on Darren's limited March 2015 e-mail, respondent knowingly misrepresented to the Board of Adjustment that he himself had been contacted by E.L. and M.L. and that both individuals were in the process of formally retaining the Firm.

Respondent also violated RPC 3.1 and a second instance of both RPC 3.3(a)(1) and RPC 8.4(c) by filing on behalf of F.B., E.L., and M.L. – three individuals whom respondent knew never had retained the Firm – a Superior Court complaint in lieu of prerogative writ challenging the Board of Adjustment's resolution.

Prior to filing the complaint, respondent failed to attempt any communication with F.B., E.L., and M.L. to determine whether they had consented to being the only named plaintiffs in the lawsuit. Moreover, in May 2015, four months before respondent had filed the lawsuit, he sent Darren a proposed retainer agreement for F.B., E.L., and M.L.'s respective signatures. Respondent, however, never received from Darren the executed retainer

agreement. Although respondent claimed, in his August 2019 interview with the OAE, that he did not "think it was" necessary to have F.B., E.L., and M.L. each execute the retainer agreement while the matter was pending before the Board of Adjustment, in his view, "going to court was a different issue." Despite respondent's tacit acknowledgment of the importance of confirming the representation of his supposed clients, he failed to follow up with Darren regarding the status of the agreement, claiming that he had "sort of lost track of it" and that "[i]t was a mistake on [his] part."

Based on these circumstances, respondent knew that none of his purported clients had manifested any intent to enter an aware, consensual attorney-client relationship. Nevertheless, rather than conduct any due diligence to determine whether F.B., E.L., and M.L. had consented to serving as the only named plaintiffs, respondent, based solely on Darren's unsupported claims, proceeded to file the deceptive and factually frivolous lawsuit, purportedly on their behalf.

Finally, respondent committed a third violation of both RPC 3.3(a)(1) and RPC 8.4(c) by misrepresenting, in the complaint in lieu of prerogative writ, (1) that M.L. had resided within two-hundred feet of the proposed development site; (2) that F.B. and E.L. each had opposed the development project; and (3) that F.B., E.L., and M.L.'s respective interests were adversely affected by the actions of Passaic Properties and the Board of Adjustment.

As discussed above, had respondent conducted the required due diligence regarding the facts alleged in the complaint, which he certified as true, respondent would have discovered that M.L. did not reside within two-hundred feet of the proposed development site at either of the purported addresses provided by Darren. Instead, respondent would have discovered that the first address was a pharmacy while the landlord for the second address had no record of M.L. ever living at the property.

Moreover, had respondent attempted to contact F.B. and E.L., he would have determined, as did Passaic Properties, that F.B. and E.L. did not oppose the development project and that F.B. had welcomed the construction of the McDonald's restaurant. Further, during the ethics hearing, respondent admitted that Darren had provided him no information to suggest that E.L. and M.L.'s respective interests were adversely affected by the development project. Rather, respondent maintained that E.L. and M.L., as alleged employees of Sebastian's McDonald's restaurant, were simply "doing [Darren] a favor."

Respondent's multiple appearances before the Board of Adjustment and the Superior Court, on behalf of his three non-clients, also resulted in an enormous waste of judicial resources, in violation of RPC 8.4(d). Specifically, respondent's sham appearances resulted in several Board sessions, which delayed the Board's consideration of Passaic Properties' application and which

forced the Board to address whether respondent's purported clients had standing to object to the development project under the MLUL. Respondent further wasted judicial resources by filing, on behalf of the three non-clients, a frivolous Superior Court complaint in lieu of prerogative writ, which resulted in Passaic Properties' summary judgment motion and a court appearance to address respondent's deception.[12]

Finally, respondent violated RPC 8.4(a) by attempting to violate RPC 8.4(c) by knowingly falsifying the date of F.B., E.L., and M.L.'s proposed retainer agreement.

Historically, we have declined to sustain RPC 8.4(a) charges except where the attorney has, through the acts of another, violated or attempted to violate the RPCs, or where the attorney himself has attempted, but failed, to violate the RPCs. In the Matter of Stuart L. Lundy, DRB 20-227 (April 28, 2021) (dismissing an RPC 8.4(a) charge as superfluous based on the attorney's mere violation of other, more specific RPCs), so ordered, 349 N.J. 101 (2021).

In In re LaVan, 238 N.J. 474 (2019), the attorney, in response to her adversary's motion to compel discovery, produced a fee agreement signed by

[12] Although respondent's frivolous complaint in lieu of prerogative writ resulted in years of additional litigation, the record is unclear regarding whether the protracted nature of that ligation was the result of external factors, such as alleged environmental contamination of the construction site or Passaic Properties' alleged discovery violations. We, thus, limit our finding in this regard.

her client. The attorney admitted that she failed to disclose to the federal court and to her adversary that the fee agreement she had produced had been executed in February 2013, but "backdated" to August 2, 2012. In the Matter of Julie Anna LaVan, DRB 18-232 (December 27, 2018) at 7. The attorney explained that, after she could not locate the agreement, she reprinted it from her computer and arranged for her client to sign it to "recreate what was already existing." Ibid. Noting that the backdating of documents is a serious ethics offense, we determined the attorney's conduct in respect of the fee agreement constituted a misrepresentation, and, thus, violated RPC 8.4(a) and (c). Ibid. (citing In re Kornfeld, 207 N.J. 29 (2011)).

Like the attorney in LaVan, respondent attempted to violate RPC 8.4(c) when, on May 20, 2015, he sent Darren an e-mail containing F.B., E.L., and M.L.'s proposed retainer agreement, which he purposedly dated January 15, 2015, in order to "cover" the entire period of the purported representation. Darren, however, disregarded respondent's instructions to have F.B., E.L., and M.L. review and sign the proposed agreement. Based on these circumstances, respondent attempted to engage in deception by falsifying the date of the proposed retainer agreement, which F.B., E.L., and M.L., ultimately, did not execute.

Finally, we determine to dismiss the charges that respondent violated RPC 1.4(a), (b), and (c), and RPC 1.5(b).

In the formal ethics complaint, the OAE alleged that respondent violated RPC 1.4(a), (b), and (c) by failing to advise F.B., E.L., and M.L. of their involvement as clients in the representation, which advice would have allowed them to make an informed decision about serving as objectors. Additionally, the OAE alleged that respondent violated RPC 1.5(b) by failing to set forth in writing the basis or rate of his legal fee in connection with his representation of F.B., E.L., and M.L.

Here, respondent completely failed to conduct the required due diligence to determine whether F.B., E.L., and M.L. wished to be represented by the Firm and to have their names publicly disclosed as objectors before the Board of Adjustment and, subsequently, to be named plaintiffs before the Superior Court. However, the fact remains that none of these individuals ever had an attorney-client relationship with respondent.

By their express terms, RPC 1.4 and RPC 1.5(b) respectively govern an attorney's obligations to communicate with clients and to set forth in writing to the client the basis or rate of the legal fee. Because respondent never had an attorney-client relationship with F.B., E.L., and M.L., RPC 1.4(a), (b), and (c),

and RPC 1.5 (b) are inapplicable to these facts. The dismissal of these charges, however, in no way lessens the gravity of respondent's misconduct.

In sum, we find that respondent violated RPC 3.1; RPC 3.3(a)(1) (three instances); RPC 8.4(a); RPC 8.4(c) (three instances); and RPC 8.4(d). We dismiss the charges that respondent violated RPC 1.4(a), (b), and (c), and RPC 1.5(b), given the lack of an actual attorney-client relationship with the purported objectors. The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Generally, the discipline imposed on attorneys who make misrepresentations to a court, or who exhibit a lack of candor to a tribunal, or both, ranges from a reprimand to a long-term suspension, including if their conduct results in the filing of frivolous litigation or the prejudicial administration of justice. See, e.g., In re Vaccaro, 245 N.J. 492 (2021) (reprimand for attorney, in a reciprocal discipline matter, who lied to a judge, during a juvenile delinquency hearing, that he had no knowledge of his client's other lawyer or his client's counseling in connection with his client's immigration matter; violations of RPC 3.3(a)(1) and RPC 8.4(c)); In re Marraccini, 221 N.J. 487 (2015) (reprimand for attorney who attached to approximately fifty eviction complaints, filed on behalf of a property management company, verifications that had been pre-signed by the manager,

who had since died; the attorney was unaware that the manager had died and, upon learning that information, withdrew all complaints; violations of RPC 3.3(a), RPC 8.4(c), and RPC 8.4(d); in mitigation, the attorney's actions were motivated by a misguided attempt at efficiency, rather than by dishonesty or personal gain); In re Myerowitz, 235 N.J. 416 (2018) (censure for attorney who lied to the court on at least two occasions regarding the reasons for needing an extension of time to file an answer to his adversary's summary judgment motion and about the dates he mailed his opposition papers, thus, causing delays and wasting judicial resources; violations of RPC 3.3(a)(1) and RPC 8.4(c) and (d); the attorney also failed to reply to an order to show cause, in violation of RPC 3.4(c) (disobeying the rules of a tribunal)); In re Alexander, 243 N.J. 288 (2020) (three-month suspension for attorney who gave false testimony before a hearing officer and a Superior Court judge in connection with a domestic violence matter; the attorney filed a false domestic violence complaint against his live-in girlfriend, leading to the issuance of a temporary restraining order in the attorney's favor; thereafter, during a two-day Superior Court hearing, the attorney's girlfriend presented an audio recording of the alleged incident, which contradicted the attorney's testimony; although the judge allowed the attorney the opportunity to review the evidence and withdraw his false testimony, the attorney refused to do so; instead, the attorney presented an audio-visual

recording of the incident, which again contradicted his version of events; the attorney also misrepresented the nature of his testimony to the OAE; violations of RPC 3.1, RPC 3.3(a)(1), RPC 8.1(a) (knowingly making a false statement of material fact in a disciplinary matter), RPC 8.4(c), and RPC 8.4(d), among other RPCs; the attorney had no prior discipline in his twelve-year career at the bar); In re DeClement, 241 N.J. 253 (2020) (six-month suspension for attorney who, in an attempt to secure a swift dismissal of a federal lawsuit, made multiple, brazen misrepresentations to a federal judge; specifically, the attorney misrepresented, in a certification under penalty of perjury to the federal judge, that earlier state court litigation had settled, despite knowing that it merely had been dismissed without prejudice; to support his deception, the attorney omitted, in his submissions to the federal judge, critical portions of the state court record; the attorney then continued to misrepresent to the federal judge and, later, to the OAE, the status of the state court matter; violations of RPC 3.1, RPC 3.3(a)(1); RPC 8.1(a), and RPC 8.4(c), among other RPCs; in aggravation the attorney did not cease his acts of deception until he was "completely cornered" by the OAE; the attorney received a 2013 reprimand for unrelated misconduct); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order

dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain in reserve; violations of RPC 3.3(a)(1) and (2) (failing to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting in an illegal, criminal, or fraudulent act); RPC 3.5(b) (ex parte communication); and RPC 8.4(c) and (d)).

In rare instances, lack of candor to a tribunal can result in an admonition, if compelling mitigation is present. For example, in In the Matter of William T. Haggerty, DRB 18-067 (May 24, 2018), the attorney, who served as a municipal prosecutor, failed to notify the municipal court of the fact that his brother served as a high-ranking official of a business that had filed a criminal complaint before the municipal court. During trial, a witness for the business revealed the attorney's relationship, which led the municipal court to declare an immediate mistrial. Despite the attorney's lack of candor, in imposing an admonition, the Board considered that the attorney had an otherwise unblemished forty-two-year legal career.

In addition, in In the Matter of George P. Helfrich, Jr., DRB 15-410 (February 24, 2016), although the attorney made a misrepresentation to the court, he subsequently rectified his falsification and suffered serious

consequences from his misconduct. Specifically, the attorney had prepared for trial, but failed to notify the requisite defense witnesses of the trial date. Although jury selection had been completed and the attorney appeared for two days of trial, he did not inform the trial judge that his client and witnesses were unaware of, or unavailable for, trial. Finally, on the third day of trial, the attorney notified the court and his adversary that neither his client, their witnesses, nor his own law firm were aware that the trial had begun. The judge then immediately declared a mistrial.

After the attorney notified his law firm, the firm stripped him of his shareholder status and suspended him for an undisclosed period. Additionally, the attorney went through mediation and reimbursed the plaintiff for legal fees and costs. Neither the plaintiff nor defendant, however, suffered pecuniary losses.

In imposing only an admonition, we considered that it was the attorney's first ethics infraction in his thirty-eight years at the bar; he was demoted by his law firm, resulting in significantly lower earnings; and he was remorseful and working hard to regain the trust of all those affected by his conduct.

Finally, we imposed an admonition in In the Matter of Robin K. Lord, DRB 01-250 (September 24, 2001). There, the day after the attorney had misrepresented her client's real name to the municipal court, she advised the

court of her client's true identity. In imposing only an admonition, we noted that, had the attorney not promptly advised the municipal court, her discipline would have been more severe.

Unlike the admonished attorneys in Haggerty and Lord and the reprimanded attorney in Vaccaro, whose acts of deception were each confined to a single court proceeding, respondent, during multiple Board of Adjustment sessions that spanned several months, repeatedly misrepresented the existence of his attorney-client relationships with F.B., E.L., and M.L. Thereafter, respondent, without ever having received a single communication from F.B., E.L., or M.L., filed a factually frivolous Superior Court complaint in lieu of prerogative writ, solely on their behalf, which again misrepresented his attorney-client relationships with the individuals. Moreover, despite respondent's certification that the statements in his complaint were true, respondent misrepresented that F.B. and E.L. had objected to the development project and that M.L. had resided within two-hundred feet of the proposed development site. Given that respondent knew that F.B. was a complete stranger to Darren and that E.L. and M.L. were purportedly employees of one of Sebastian's McDonald's restaurants, it was wholly unreasonable for respondent to rely solely on Darren's uncorroborated allegations in drafting and filing the complaint and in presuming the existence of the attorney-client relationships.

Additionally, unlike the reprimanded attorney in Marraccini, who had no reason to know that the property manager who had pre-signed the verifications had passed away, respondent knew that neither F.B., E.L., nor M.L. ever had manifested any acceptance of an attorney-client relationship. Indeed, at the time respondent filed the complaint in lieu of prerogative writ, he knew that he had not received an executed version of the proposed retainer agreement, which he previously had sent to Darren for F.B., E.L., and M.L.'s respective signatures. Had respondent conducted the required, basic due diligence to confirm whether F.B., E.L., and M.L. objected to the development project and consented to the attorney-client relationship, the prolonged deception to multiple tribunals and the enormous waste of judicial resources could have been avoided.

Nevertheless, respondent's misconduct was not as severe as the attorneys in Alexander and DeClement, who received short terms of suspension in part because of their refusal to acknowledge their acts of dishonesty, even after being confronted with overwhelming evidence of their deception. By contrast, after respondent reviewed Passaic Properties' summary judgment motion, he attempted to secure the dismissal of his complaint and, when Passaic Properties would not consent, he instructed to Darren to speak with F.B., E.L., and M.L. regarding their willingness to sign affidavits indicating that they had intended to serve as clients in opposing the development project. To avoid any deception

on Darren's part, respondent instructed Darren that F.B., E.L., and M.L. should execute the affidavits in front of a notary public and that they should not sign the affidavits "because they are asked, but because it is true." Following F.B. and E.L.'s refusal to sign the affidavits and Darren's inability to locate M.L., respondent declined to oppose the summary judgment motion.

Finally, unlike DeClement, who had a prior reprimand, and Alexander, who had no prior discipline in his relatively short twelve-year career at the bar, the instant matter represents respondent's first brush with the disciplinary system in his forty-three-year career at the bar.

On balance, weighing the duration of respondent's repeated acts of deception against his otherwise unblemished forty-three-year legal career, we determine that a censure is the appropriate quantum of discipline to protect the public and to preserve confidence in the bar.

Chair Gallipoli and Members Campelo and Rivera voted for a three-month suspension, according significant aggravating weight to the egregiousness of respondent's repeated acts of deception to the Board of Adjustment and to the Superior Court, despite his expertise in municipal land use law.

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 William P. Munday
Docket No. DRB 22-191

Argued: January 19, 2023

Decided: March 24, 2023

Disposition: Censure

Members	Censure	Three-Month Suspension	Absent
Gallipoli		X	
Boyer	X		
Campelo		X	
Hoberman	X		
Joseph			X
Menaker	X		
Petrou	X		
Rivera		X	
Rodriguez	X		
Total:	5	3	1

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