

Supreme Court of New Jersey  
Disciplinary Review Board  
Docket No. DRB 22-210  
District Docket No. XIV-2022-0015E

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In the Matter of  
Tony Chung-Min Hom  
An Attorney at Law

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Decision

Argued: February 16, 2023

Decided: May 3, 2023

Hillary K. Horton appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-14(a), following the United States Patent and Trademark Office’s (USPTO) issuance of a

December 17, 2021 order suspending respondent, on consent, from practicing before the USPTO for two years.

The OAE asserted that, in the USPTO matter, respondent was determined to have violated the equivalents of New Jersey RPC 1.1(a) (engaging in gross neglect); RPC 1.3 (lacking diligence); RPC 1.4(b) (failing to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information); 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 5.3(a) and (b) (failing to supervise nonlawyer staff); RPC 5.5(a)(2) (engaging in the unauthorized practice of law); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to grant the OAE's motion for reciprocal discipline and conclude that a censure is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 1997 and to the New York bar in 1996. During the relevant period, he maintained a practice of law in New York, New York.

Effective June 27, 2022, the Court revoked respondent's license to practice law for failure to pay his annual assessment to the New Jersey Lawyers'

Fund for Client Protection, as R. 1:28-2 requires, for seven consecutive years.<sup>1</sup>

We now turn to the facts of this matter.

Respondent was a registered patent attorney with the USPTO<sup>2</sup> and had routinely practiced before the USPTO in patent and trademark matters. Prior to August 3, 2019, respondent was listed as the attorney of record on approximately 2,000 trademark documents. However, after August 3, 2019, that number significantly increased to more than 13,000 trademark documents.

Notably, effective August 3, 2019, the USPTO implemented a rule change that required all foreign-domiciled trademark applicants, registrants, and parties to be represented by an attorney who was in good standing and licensed to practice law in the United States. 37 C.F.R. § 2.11(a). According to the USPTO, this rule, commonly referred to the “U.S. Counsel Rule,” was necessitated by an increase in the unauthorized practice of law by foreign parties who were not authorized to represent trademark applicants before the USPTO.

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<sup>1</sup> R. 1:28-2(c) provides that an Order of revocation does not preclude the Court from exercising jurisdiction over misconduct that pre-dated the Order.

<sup>2</sup> The USPTO is the federal agency that grants U.S. patents and registers trademarks, consistent with Article I, Section 8, Clause 8, of the U.S. Constitution, directing the legislative branch “[t]o promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries.” U.S. Const. art. I, §3 cl.8. See also U.S. Patent and Trademark Ofc., About Us, <https://www.uspto.gov/about-us>, (last visited April 25, 2023).

The USPTO frequently encountered inaccurate and potentially fraudulent submissions by foreign-domiciled trademark applicants which did not comply with governing U.S. trademark law or rules.<sup>3</sup> As an example, the USPTO referred to instances where foreign applicants had filed trademark applications claiming use of a mark in commerce, a prerequisite to obtaining the registration of a trademark, but frequently supported the use claim with:

mocked-up or digitally altered specimens that indicate the mark may not actually be in use. Many appear to be doing so on the advice, or with the assistance, of foreign individuals and entities who are not authorized to represent trademark applicants before the USPTO. This practice undermines the accuracy and integrity of the U.S. trademark register and its utility as a means for the public to reliably determine whether a chosen mark is available for use or registration and places a significant burden on the trademark examining operation.

[84 Fed. Reg. 31498-31499.]

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<sup>3</sup> The Trademark Act of 1946, also known as the Lanham Act (the Act), provides for a national system of trademark registration, intended to protect the owner of a federally registered trademark against the use of similar marks, particularly if such use is likely to cause consumer confusion. See generally 15 U.S.C. § 1051, et seq. To establish trademark rights, a trademark owner generally must be the first to use the mark in commerce on particular goods or services. Thus, in a trademark application for federal protection, the USPTO will require the trademark applicant to submit a “drawing,” which shows what the trademark is, and a “specimen,” which shows how the trademark will actually be used in commerce with the applicant’s goods or services. 15 U.S.C. § 1127; 37 C.F.R. § 2.56 The Act defines “use in commerce,” as “the bona fide use of the mark in the ordinary course of trade, and not merely to reserve a right in the mark.” 15 U.S.C. § 1127; TMEP 901. A mock-up or representation of how the mark will appear in the sale or advertising of the goods or services is not a proper specimen. See TMEP 904.03(a); 904.04(a). Likewise, material inserted into a package is not a proper specimen TMEP 904.04(c).

In support of its proposed rule revision, the USPTO explained that:

in the past few years, the USPTO has seen many instances of unauthorized practice of law (UPL) where foreign parties who are not authorized to represent trademark applicants are improperly representing foreign applicants before the USPTO. As a result, increasing numbers of foreign applicants are likely receiving inaccurate or no information about the legal requirements for trademark registration in the U.S., such as the standards for use of a mark in commerce, who can properly aver to matters and sign for the mark owner, or even who the true owner of the mark is under U.S. law. This practice raises legitimate concerns that affected applications and any resulting registrations are potentially invalid, and thus negatively impacts the integrity of the trademark register.

[Requirement of U.S. Licensed Attorney to Foreign Trademark Applicants and Registrants, 84 Fed. Reg. 4393 (proposed February 15, 2019) (codified at 37 C.F.R. § 11.14).]

Thus, by requiring that all trademark submissions of foreign-domiciled applicants be filed by an attorney licensed in the U.S., the USPTO believed it would “reduce the instances of [unauthorized practice of law] and misconduct” and allow its Office of Enrollment and Discipline (the OED) to “more effectively pursue those who are engaged in the UPL and/or misconduct.” 84 Fed. Reg. at 4395.

Further, by filing a trademark application, an attorney certifies, among other things, that, “[t]o the best of the [practitioner’s] knowledge, information and belief, formed after an inquiry reasonable under the circumstances,” the

allegations and representations in the application have evidentiary support. 37 C.F.R. § 11.18.<sup>4</sup> Trademark applications also contain declarations that are signed under penalty of perjury, upon which the USPTO relies in the course of conducting its examination of the trademark application.

Respondent admitted that, with regard to the thousands of trademark applications he had filed, he “typically received instructions for filing from intermediaries and associates located in China,” and not directly from his clients.<sup>5</sup> The individuals from whom respondent received these instructions were, usually, not attorneys authorized to practice law in the United States. Rather, these nonlawyers “collected information from prospective trademark applicants and would use such information to prepare a draft form of [the] trademark application,” which they provided to respondent. Often, respondent’s electronic signature was affixed to these documents by the nonlawyer intermediaries, contrary to 37 C.F.R. § 2.193(a)(2), (c) and (e).<sup>6</sup>

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<sup>4</sup> Any attorney representing an applicant or registrant, whether domiciled inside or outside the U.S., is required to provide the USPTO with their bar information. 37 C.F.R. §§ 2.17(b)(3); 2.32(a)(4).

<sup>5</sup> The record is comprised of the OAE’s brief and the disciplinary order entered by the USPTO, which recited its factual and legal findings.

<sup>6</sup> The USPTO Trademark Manual of Examining Procedure (the TMEP) also provides straightforward guidance regarding the USPTO’s trademark electronic signature regulations. See TMEP § 611.01(c) (unequivocally requiring that all documents be “personally signed” and stating “[j]ust as signing the name of another person on paper does not serve as the  
(footnote cont'd on next page)

Due, in part, to the time constraints caused by his acceptance of such a large volume of trademark clients over a short period of time, in conjunction with his reliance upon nonlawyer, foreign-domiciled intermediaries to obtain the required information from prospective trademark applicants, respondent admittedly failed to advise or discuss directly with the applicants themselves important legal issues regarding their trademark applications, including the requirements for a proper “specimen” and whether the applicant’s use qualified for “use in commerce.”

Respondent admittedly represented numerous trademark applicants who had hired him to prepare and file a trademark application, on their behalf, and provided respondent with the purported specimen. However, in some instances, the specimens provided to respondent as alleged proof of use “were identical to other specimens for different applicants for different marks that also were filed by [r]espondent – sometimes within days of one another.” Respondent failed, however, to conduct an inquiry reasonable under the circumstances to determine whether the specimens he was submitting to the USPTO properly depicted the mark as used in commerce.

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signature of the person whose name is written, typing the electronic signature of another person is not a valid signature by that person”).

Further, in 2020, respondent failed to personally enter his electronic signature on many of the more than 7,000 trademark documents he filed with the USPTO, wherein he represented to be the signatory and attorney of record. Respondent also failed to inform his clients of these impermissibly signed trademark documents; nor did he explain to them the potential adverse consequences to their intellectual property rights occasioned by these impermissible signatures. USPTO trademark signature rules require that all signatures be personally entered by the named signatory and that a person electronically signing a document must personally enter any combination of letters, numbers, spaces, and/or punctuation marks that they have adopted as a signature, between two forward slash (/) symbols in the signature block on the electronic submission.

Respondent acknowledged that he did not adequately understand the U.S. Counsel Rule, the USPTO specimen rules, or the USPTO trademark signature rules during his trademark practice. Respondent stated that he now fully understands these rules and requirements and “expresses contrition for his prior lack of understanding.”

On December 17, 2021, the USPTO suspended respondent for two years from practicing before it for having violated its rules of professional conduct.



As the result of a settlement agreement<sup>7</sup> between respondent and the OED, the USPTO determined that respondent's admitted misconduct violated the following USPTO Rules of Professional Conduct:

- 37 C.F.R. § 11.101 (practitioner shall provide competent representation) by not ensuring that he knew and understood the U.S. Counsel Rule, the USPTO specimen rules, and the USPTO trademark signature rules, which resulted in violations of those rules in the course of representing trademark clients;
- 37 C.F.R. § 11.103 (practitioner shall act with reasonable diligence and promptness in representing a client) by failing to take reasonable steps to ensure that his clients' trademark filings were prepared, reviewed, signed and filed in compliance with the U.S. Counsel Rule, the USPTO specimen rules, and the USPTO trademark signature rules;
- 37 C.F.R. § 11.104(a) and (b) (communications with client) by not informing his clients, directly or through any associate, as to the actual or potential adverse consequences of not complying with the U.S. Counsel Rule, the USPTO specimen rules, and the USPTO trademark signatures rules, so that the clients could make informed decisions about their trademark applications and/or issued registrations;
- 37 C.F.R. § 11.503 (b) (responsibilities regarding non-practitioner assistance) by authorizing or otherwise allowing non-practitioners to prepare drafts of trademark documents without adequate supervision to ensure that such documents were being prepared with

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<sup>7</sup> The settlement agreement was not included in the record.

proper specimens;

- 37 C.F.R. § 11.505 (assisting unauthorized practice before the USPTO in trademark matters) by authorizing non-practitioners to communicate with his clients and provide advice to such clients about specimens; and
- 37 C.F.R. § 11.804(d) (conduct prejudicial to the integrity of the U.S. trademark registration system) by (i) not complying with the U.S. Counsel Rule and the USPTO trademark signature rules, and (ii) not complying with 37 C.F.R. § 11.18 by not conducting a reasonable inquiry prior to filing trademark documents filed with the USPTO, with the knowledge that the USPTO would rely on such trademark documents in examining applications and issuing registrations.

[ExA¶33.]<sup>8</sup>

In mitigation, the USPTO considered (1) respondent’s contrition for his admitted lack of understanding of the U.S. Counsel Rule, the USPTO specimen rules, and the USPTO trademark signature rules; (2) his acknowledgement that his misconduct could have had an adverse impact on his clients’ intellectual property rights; and (3) his lack of prior discipline in twenty-four years at the bar.

Thus, effective December 17, 2021, respondent was suspended for two years from practicing before the USPTO. Further, following his reinstatement,

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<sup>8</sup> “ExA” refers to the USPTO’s December 17, 2021 final order of discipline.

respondent agreed to serve a twelve-month probation period. As conditions precedent to his reinstatement, respondent also agreed to provide the OED proof that he had (1) successfully completed eight hours of continuing legal education on ethics and professional responsibility; and (2) thoroughly reviewed the TMEP, including the USPTO's signature requirements and the commentary on the requirements of U.S. attorneys for foreign trademark applicants and registrants.

On January 14, 2022, respondent notified the Office of Board Counsel of his two-year suspension before the USPTO, which notification was forwarded to the OAE, pursuant to R. 1:20-14(a)(1). On January 25, 2022, the OAE docketed this matter and, on July 12, 2022, assigned it to assistant deputy ethics counsel.

The OAE urged us, in its written submission and during oral argument, to find that respondent's misconduct before the USPTO, to which he unequivocally admitted, violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.4(c); RPC 5.3(a) and (b); RPC 5.5(a)(2); and RPC 8.4(d). The OAE asserted that, based upon New Jersey disciplinary precedent discussed below, a censure was warranted for respondent's misconduct. In mitigation, the OAE referred to respondent's cooperation with the USPTO's investigation, his agreement to settle the disciplinary matter, thereby conserving judicial resources, and that he reported

the discipline to the New Jersey disciplinary authorities.

Respondent did not submit a reply to the OAE's motion for reciprocal discipline. However, on January 9, 2023, he sent an e-mail to the OAE inquiring whether anything was required of him in response to the motion and asking as to the effect of a censure. In response, the OAE attached to its e-mail our scheduling letter, informing respondent that the scheduling letter explained his options. The OAE further offered that "[f]inal discipline of a [c]ensure or under will not prevent you from practicing law in New Jersey," but that such discipline "will be public and eventually available on the DRB's website." To our knowledge, respondent did not reply to the OAE's e-mail.

Following our review of the record, we determine to grant the motion for reciprocal discipline. Pursuant to R. 1:20-14(a)(5), "a final adjudication in another court, agency or tribunal, that an attorney admitted to practice in this state . . . is guilty of unethical conduct in another jurisdiction . . . shall establish conclusively the facts on which it rests for purposes of a disciplinary proceeding in this state." Thus, with respect to motions for reciprocal discipline, "[t]he sole issue to be determined . . . shall be the extent of final discipline to be imposed." R. 1:20-14(b)(3).

Like the Court, the USPTO has the "exclusive authority to establish qualifications for admitting persons to practice before it, and to suspend or

exclude them from practicing before it.” Kroll v. Finnerty, 242 F.3d 1359, 1364 (Fed. Cir. 2001). Also, like New Jersey, the USPTO applies the clear and convincing standard of proof to disciplinary proceedings before it. 37 C.F.R. § 11.49. Notably, in respondent’s USPTO disciplinary proceeding, he admitted to the facts underpinning the charged misconduct and consented to his two-year suspension.

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

The Board shall recommend the imposition of the identical action or discipline unless the respondent demonstrates, or the Board finds on the face of the record on which the discipline in another jurisdiction was predicated that it clearly appears that:

- (A) the disciplinary or disability order of the foreign jurisdiction was not entered;
- (B) the disciplinary or disability order of the foreign jurisdiction does not apply to the respondent;
- (C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;
- (D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or
- (E) the unethical conduct established warrants substantially different discipline.

In our view, subsection (E) applies in this matter because the unethical conduct established by this record warrants substantially different discipline in New Jersey. Specifically, pursuant to New Jersey disciplinary precedent, respondent's violations of the Rules of Professional Conduct warrant the imposition of a censure and not the identical discipline, a two-year suspension, as imposed by the USPTO.

Here, we determine that the record contains clear and convincing evidence that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.4(c); RPC 5.3(a); RPC 5.3(b); RPC 5.5(a)(2); and RPC 8.4(d).

RPC 1.1(a) prohibits a lawyer from handling a client matter in a way that constitutes gross neglect. Likewise, RPC 1.3 requires a lawyer to "act with reasonable diligence and promptness in representing a client." Respondent admittedly violated both Rules by filing countless trademark applications, prepared by nonlawyers on behalf of foreign-domiciled trademark applicants, without first reviewing the applications to confirm compliance with governing trademark law or the USPTO rules and requirements. Further, respondent allowed nonlawyers to apply his electronic signature to trademark documents, in violation of the governing USPTO's trademark signature regulations, thereby jeopardizing the integrity of the filing. As counsel of record, respondent blindly filed documents on his clients' behalf, without conferring with his clients or

verifying the accuracy or integrity of the application, including the specimen and its intended use in commerce. Respondent's failure to take reasonable steps to ensure that his clients' trademark filings were prepared, reviewed, signed, and filed in compliance with the U.S. Counsel Rule, the USPTO specimen rules, and the USPTO trademark signature rules constitutes gross neglect and a lack of diligence.

Next, respondent violated RPC 1.4(b) and RPC 1.4(c) by failing to inform his clients, directly or indirectly, that he had not substantively reviewed their trademark submissions. Nor did respondent inform his clients of the actual or potential adverse consequences associated with his failure to comply with the U.S. Counsel Rule, the USPTO specimen rules, or the USPTO's trademark signature rules. Thus, he failed to keep his clients reasonably informed or to explain the matter in a way that would permit his clients to make informed decisions concerning their trademark applications.

Next, in violation of RPC 5.3(a) and (b), respondent admitted that he had completely abdicated his supervisory responsibilities over the nonlawyer intermediaries who were facilitating the communications with respondent's clients and preparing the trademark applications and supporting paperwork. Thus, he failed to undertake any reasonable effort to ensure that the conduct of the nonlawyers intermediaries were compatible with his own professional

obligations, including the USPTO's recently adopted U.S. Counsel Rule.

Respondent also admitted that he repeatedly violated RPC 5.5(a)(2), which prohibits an attorney from assisting a nonlawyer in the unauthorized practice of law. Respondent interacted with nonlawyers as intermediaries between himself and his foreign-domiciled clients. He allowed those individuals to prepare trademark documents for filing with the USPTO and permitted them to affix his electronic signature. Further, respondent permitted the foreign-domiciled nonlawyer intermediaries to provide legal advice to his clients regarding the statutory requirements for a specimen.

Last, respondent engaged in conduct prejudicial to the administration of justice, in violation of RPC 8.4(d), through his repeated failure to comply with the U.S. Counsel Rule, the USPTO trademark signature rules, and the reasonable inquiry requirement prior to filing trademark documents with the USPTO, with knowledge the USPTO would rely upon such trademark documents in examining the applications.

In sum, we grant the motion for reciprocal discipline and find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 1.4(c); RPC 5.3(a); RPC 5.3(b); RPC 5.5(a)(2); and RPC 8.4(d). The sole issue left for our determination is the proper quantum of discipline for respondent's misconduct.



Based on New Jersey disciplinary precedent, respondent's most egregious conduct was his pervasive assistance of foreign-domiciled nonlawyers in the practice of law. A New Jersey attorney who assists nonlawyers in the practice of law, fails to supervise nonlawyers, or allows a person who pays the attorney to direct their professional judgment, typically receives discipline ranging from a reprimand to a term of suspension, depending on the severity of the conduct and the presence of other violations or aggravating factors. See, e.g., In re Kingett, 247 N.J. 2021 (reprimand for attorney who violated RPC 5.3(a), RPC 5.4(c) (permitting a person who recommends, employs, or pays the attorney to render legal services for another to direct or regulate the attorney's professional judgment in rendering legal services); RPC 1.4(c), and RPC 1.7(a) (engaging in a conflict of interest); the attorney represented approximately 200 clients who were referred to him by a corporation formed to provide estate planning; that corporation gathered information from clients, which it provided to respondent when the clients were referred; the clients signed a retainer agreement with a limited scope of representation; the attorney drafted the pleadings, but admittedly had limited discussions with the clients; the attorney did not witness the clients' execution of the prepared documents; no prior discipline); In re Bevacqua, 174 N.J. 296 (2002) (reprimand for attorney who assigned an unlicensed lawyer to prepare a client for a deposition and to appear on the

client's behalf; the attorney also engaged in gross neglect, a pattern of neglect, and lack of diligence; mitigating factors included the attorney's lack of disciplinary history, inexperience, and, notably, the misconduct resulted from poor judgment, rather than venality); In re Gottesman, 126 N.J. 376 (1991) (reprimand for attorney who aided in the unauthorized practice of law by allowing a paralegal to advise clients on the merits of claims, permitting the paralegal to exercise sole discretion in formulating settlement offers, and sharing legal fees with the paralegal; no prior discipline in seventeen years at the bar); In re Inocencio, 231 N.J. 233 (2017) (censure for attorney who violated RPC 1.15(d) (failing to comply with recordkeeping requirements); RPC 5.5(a)(2); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation); the attorney permitted a nonlawyer to operate her escrow account, which "masqueraded" as her trust account; the attorney also permitted the nonlawyer to perform attorney tasks, including the preparation and filing of a deed; no prior discipline; in aggravation, we considered that the misconduct took place over a prolonged period of time); In re DeSantiago-Keene, 250 N.J. 185 (2022) (three-month suspension for attorney who permitted his client to establish his eCourts account, which granted her complete control over it; the client was able to illegally practice law by signing and filing documents under her attorney's name, in violation of RPC 5.5(a)(2); the attorney also engaged in

conduct prejudicial to the administration of justice and committed recordkeeping deficiencies; prior censure); In re Munier, 246 N.J. 459 (2021) (three-month suspension imposed on an attorney for failing to supervise nonlawyer staff; fee sharing with nonlawyer; forming a partnership with a nonlawyer; and assisting in the unauthorized practice of law; the attorney also violated RPC 1.1(a); RPC 1.3; RPC 1.4(b) and (c); RPC 1.5(a) (collecting an unreasonable fee); RPC 1.16(d) (failing to protect a client's interests upon termination of representation); RPC 8.4(b) (committing a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects); and RPC 8.4(c); the attorney shared an office with a loan modification company, the CEO of which was not licensed to practice in New Jersey; the loan modification advertised for business using the attorney's name, without his input; the attorney had clients complete forms, but then transferred the case to the loan modification company for handling; thereafter, the attorney only got involved in the matters if the clients needed a loan modification agreement to be reviewed to determine if it was fair and affordable or to defend clients in foreclosure matters; the company submitted information to lenders on behalf of clients and the attorney failed to supervise the nonlawyers working for the company; we noted that a censure was the baseline quantum of discipline for the attorney's misconduct, but determined to enhance discipline based upon the

attorney's prior discipline for similar misconduct); In re Frank, 232 N.J. 325 (2018) (one-year suspension, in a default matter, for an attorney who formed a partnership with a nonlawyer and assisted the nonlawyer in the unauthorized practice of law; the nonlawyer performed functions of an attorney in bankruptcy and loan modifications; specifically, the nonlawyer interviewed clients; prepared and signed letters and pleadings in the attorney's name; explained legal issues to clients; and negotiated with lenders; the attorney also violated RPC 1.1(a); RPC 1.5(b) (failing to memorialize the rate or basis of the fee); RPC 1.15(d); RPC 7.1(a)(2) (making a false or misleading communication about the lawyer or the lawyer's services); RPC 7.5(a) and (c) (misleading firm letterhead); RPC 8.1(b) (failing to cooperate with disciplinary authorities); and RPC 8.4(a); discipline was enhanced, in part, based upon the attorney's failure to cooperate with the OAE).

The remainder of respondent's RPC violations are typically met with discipline ranging from an admonition to a censure.

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in an admonition or a reprimand, depending on the number of client matters involved; the gravity of the offenses; the harm to the clients; the presence of additional violations; and the attorney's disciplinary history. See, e.g., In the Matter of Esther Maria Alvarez, DRB 19-

190 (September 20, 2019) (admonition for attorney who had been retained to obtain a divorce for her client but, for the next nine months, failed to take any steps to pursue the matter, and failed to reply to all but one of the client's requests for information about the status of her case, violations of RPC 1.1(a) and RPC 1.4(b); in another matter, the attorney agreed to seek a default judgment, but waited more than eighteen months to file the necessary papers with the court; although the attorney obtained a default judgment, the court later vacated it due to the passage of time, which precluded a determination on the merits; violations of RPC 1.1(a) and RPC 1.3; no disciplinary history); In re Barron, 2022 N.J. LEXIS 660 (2022) (reprimand for attorney who engaged in gross neglect in one client matter; lacked diligence in three client matters; failed to communicate in three client matters; and failed to set forth the basis or rate of his fee in one client matter (RPC 1.5(b))); we weighed the quantity of the attorney's ethics violations, and the harm caused to multiple clients, which included allowing a costly default judgment to be entered against two clients; and failing to oppose summary judgment motions, resulting in the dismissal of another client's case; in mitigation, we considered his cooperation, his nearly unblemished career in more than forty years at the bar, and his testimony concerning his mental health condition).

The OAE correctly observed that respondent's needless consumption of judicial resources, in violation of RPC 8.4(d), in conjunction with his other ethical violations, necessitates a censure. See In the Matter of Philip J. Morin, III, DRB 21-020 (September 9, 2021), at 42 (we recognized that the attorney's violation pursuant to RPC 8.4(d), absent the more serious charges, could have been met with a censure), so ordered, 250 N.J. 184 (2022); In re D'Arienzo, 207 N.J. 31 (2011) (censure for an attorney who failed to appear in municipal court for a scheduled criminal trial, and thereafter failed to appear at two orders to show cause stemming from his failure to appear at the trial; by scheduling more than one matter for the trial date, the attorney inconvenienced the court, the prosecutor, the complaining witness, and two defendants; in addition, the failure to provide the court with advance notice of his conflicting calendar prevented the judge from scheduling other cases for that date; prior three-month suspension, two admonitions, and failure to learn from similar mistakes justified a censure); In re LeBlanc, 188 N.J. 480 (2006) (censure for an attorney whose misconduct in three client matters included conduct prejudicial to the administration of justice for failing to appear at a fee arbitration hearing, failing to abide by a court order requiring him to produce information, and other ethics violations; mitigation included, among other things, the attorney's recognition and stipulation of his wrongdoing, his belief that his paralegal had handled post-

closing steps, and a lack of intent to disregard his obligation to cooperate with ethics authorities; no prior discipline).

Respondent's rampant practice of assisting foreign-domiciled nonlawyers in the practice of law is similar to, albeit far more pervasive than, the attorney in Inocencio, who was censured for her violations of RPC 1.15(d); RPC 5.5(a)(2); and RPC 8.4(c). In Inocencio, the attorney had involved herself with a nonlawyer associate who sold "transitional mortgage refinancing" and conducted short sales. In the Matter of Erika J. Inocencio, DRB 16-218 (April 19, 2017) at 3. The attorney permitted the associate to operate an escrow account, which masqueraded as her trust account, and permitted him to perform attorney tasks, such as drafting deeds, without supervision, in violation of RPC 5.5(a)(2). Once she learned about the escrow account, she failed to take any corrective action to close the bogus account. Id. at 15. We further determined that Inocencio had violated RPC 1.15(d) by declaring the associate's escrow account as her attorney trust account and by failing to obtain her own attorney trust and business accounts. Id. at 13. She also violated RPC 8.4(c) by listing the associate's escrow account as her attorney trust account on her 2013 and 2014 attorney registration statements. Id. at 14. In fact, she thereafter participated in nine to fourteen more real estate transactions with this associate, who continued to use her name.

In determining to impose a censure, we considered that the attorney had essentially given the associate “the keys” to her client trust account, and that the misconduct had taken place over a significant period of time (one year). Id. at 21-22. In mitigation, like respondent, Inocencio had no prior discipline.

Here, respondent’s misconduct impacted thousands of the filings he submitted to the USPTO and, in this respect, is more egregious than the attorney in Inocencio. Moreover, in addition to admittedly assisting foreign-domiciled individuals to engage in the unauthorized practice of law, he engaged in the very conduct that the recently codified U.S. Counsel Rule was intended to deter, thereby jeopardizing the integrity of the U.S. trademark registration system. In this respect, respondent’s misconduct is more severe than that of the attorney in Inocencio and, thus, could be met with more severe discipline than was meted out in that case.

Based upon the above-cited precedent, and Inocencio in particular, the totality of respondent’s misconduct could be met with a short term of suspension.

In crafting the appropriate discipline, we also considered aggravating and mitigating factors.

There is no aggravation to consider.



In mitigation, respondent accepted responsibility for his misconduct; expressed contrition; cooperated with the USPTO's investigation; and consented to the imposition of discipline. Although respondent has an unblemished career in his twenty-five years at the bar, a factor we ordinarily accord significant weight, we accord little weight to this fact in view of respondent's administrative ineligibility to practice law in New Jersey for the last seven years.

On balance, we determine that the mitigation in this case supports a censure as the quantum of discipline necessary to protect the public and preserve confidence in the bar.

Chair Gallipoli and Member Campelo voted to impose a three-month suspension.

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 Tony Chung-Min Hom  
Docket No. DRB 22-210

Argued: February 16, 2023

Decided: May 3, 2023

Disposition: Censure

<i>Members</i>	Censure	Three-month suspension
Gallipoli		X
Boyer	X	
Campelo		X
Hoberman	X	
Joseph	X	
Menaker	X	
Petrou	X	
Rivera	X	
Rodriguez	X	
Total:	7	2

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