Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-031
District Docket No. XIV-2022-0148E

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| In the Matter of | : |
| Daniel M. Dixon | : |
| An Attorney at Law | : |

Decision

Argued: March 16, 2023

Decided: July 3, 2023

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

Respondent appeared pro se.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (the OAE), pursuant to R. 1:20-14(a), following the Supreme Court of Pennsylvania's March 4, 2022 order suspending respondent for one year and one day. The OAE asserted that respondent was

found guilty of having 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 comply with reasonable requests for information); RPC 3.1 (engaging in frivolous litigation); RPC 3.3(a)(1) (making a false statement of material fact to a tribunal); RPC 3.3(a)(4) (offering evidence that the lawyer knows to be false); RPC 4.1(a)(1) (knowingly making a false statement of material fact or law to a third party); RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct, knowingly assisting or inducing another to do so, or doing so through the acts of another); RPC 8.4(b) (committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as a lawyer); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (engaging in conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to grant the motion for reciprocal discipline and conclude that a one-year suspension, with a condition, is the appropriate quantum of discipline for respondent's misconduct.

Respondent earned admission to the New Jersey bar in 2006 and to the Pennsylvania bar in 2007. At the relevant times, he was "of counsel" to Morgan,

Lewis & Bockius, LLP (Morgan Lewis) in Philadelphia, Pennsylvania. Respondent has no prior discipline in New Jersey.

Effective March 4, 2022, the Pennsylvania Supreme Court suspended respondent for one year and one day in connection with his misconduct underlying this matter. Office of Disciplinary Counsel v. Dixon, 2022 Pa. LEXIS 232 (2022).

We now turn to the facts of this matter.

On June 30, 2016, respondent began his employment at Morgan Lewis as a state and local tax attorney. Five months later, on or around November 15, 2016, a partner at Morgan Lewis assigned respondent to represent CSI International, Inc., (CSI) in connection with its appeal of a $176,734.81 sales and use tax assessment to the Pennsylvania Department of Revenue, Board of Appeals (the BOA). On December 13, 2016, respondent filed a petition for reassessment with the BOA, on behalf of CSI, challenging the $176,734.81 tax assessment, pursuant to 72 Pa. C.S. § 9702(a). In CSI's petition for reassessment, respondent requested that the BOA send its decision to his Morgan Lewis e-mail address. On December 15, 2016, the BOA sent respondent a notice, via e-mail, informing him that it had received CSI's petition and that it would issue a decision within six months. On December 18, 2016, respondent provided CSI's general counsel with a copy of the BOA's notice.

On May 9, 2017, respondent appeared for a hearing before the BOA in connection with CSI's petition. That same date, following the hearing, respondent represented to CSI's general counsel that he had appeared at the hearing and that he had "convince[d]" a hearing officer to recommend to a BOA member to reduce CSI's sales tax "to zero" by "excluding[,]" for tax computation purposes, CSI's "additional employee pension payments and workers compensation." Respondent further advised CSI's general counsel that, if the BOA member agreed with the hearing officer, CSI would "just need to pay the $23,016 in use tax (plus interest)[.]"

On June 6, 2017, the BOA sent respondent a copy of its decision, via e-mail, denying CSI's petition in its entirety. In its decision, the BOA informed respondent that any appeal of its decision "must be filed on or before **September 5, 2017** with the Board of Finance and Revenue [(the BFR)]." (Emphasis in original). Upon his receipt of the BOA's e-mail containing its decision, respondent "moved" the BOA's e-mail to an e-mail folder labeled "IN[,]" which served as the "receptacle" for all electronic mail sent to respondent. Respondent, however, failed to notify CSI of the BOA's adverse decision.

On July 17, 2017, the BOA sent respondent an e-mail containing a "corrected" decision, which revised only a minor typographical error regarding CSI's tax assessment number. The BOA's corrected decision again informed

respondent that any appeal of its decision "must be filed on or before **September 5, 2017** with the [BFR.]" (Emphasis in original). Respondent "moved" the BOA's e-mail containing its corrected decision to his "IN" e-mail folder. Thereafter, on July 17, 2017, respondent provided his assistant with a timesheet reflecting that he had billed 0.3 hours reviewing the BOA's corrected decision. Specifically, respondent's time-entry contained the notation "Review decision." Respondent's assistant recorded the 0.3 billable hours in Morgan Lewis's time-entry system and, on or before July 25, 2017, respondent reviewed the time entry, as required by Morgan Lewis timekeeping policy. Respondent, however, failed to notify CSI of the BOA's corrected decision.

On August 9, 2017, CSI's general counsel sent respondent an e-mail inquiring when CSI could expect the BOA's decision. Respondent failed to reply to CSI and, thereafter, failed to file an appeal of the BOA's decisions with the BFR by the deadline of September 5, 2017.

On September 8, 2017, respondent spoke with a BOA employee and arranged for the BOA to send him an additional copy of its July 17, 2017 corrected decision, via e-mail. Following his receipt of the BOA's e-mail, respondent again failed to notify CSI of the BOA's June 6 and July 17, 2017 decisions, or the fact that CSI's deadline to appeal those decisions had expired.

On September 20, 2017, two weeks after respondent failed to appeal the BOA's decision by the September 5 deadline, the Pennsylvania Department of Revenue (the Department) filed a $183,620.58 lien against CSI. On October 10, 2017, the Department notified CSI of the lien.

Meanwhile, on October 10, 2017, CSI's general counsel sent respondent an e-mail inquiring whether he had "[a]ny further news on resolution." Respondent again failed to reply to CSI.

On October 12, 2017, the same day that a CSI executive had informed CSI's general counsel of the Department's $183,620.58 lien, CSI's general counsel sent respondent an e-mail requesting whether "we can do anything to challenge this lien and avoid collection," and noting he "thought" that the Department "was stayed from taking further action" given the pendency of CSI's petition for reassessment before the BOA. Later on October 12, respondent replied to CSI, stating that he would "look into this and get . . . an update . . . tomorrow[,]" without informing CSI that the BOA already had issued decisions denying CSI's petition and that the time to appeal those decisions had expired. CSI's general counsel "thanked" respondent for his reply and expressed his concern regarding how the Department's lien was "even possible give[n] our appeal of the PA tax assessment[.]"

On October 16, 2017, CSI's general counsel sent respondent an e-mail requesting an update on the Department's lien, to which respondent replied that his "call was pushed back until today" and that he would provide an update "ASAP." Respondent, however, failed to provide CSI with any updates.

Three days later, on October 19, 2017, CSI's general counsel sent respondent another e-mail requesting an update on the Department's lien. On October 20, 2017 at 9:17 a.m., respondent sent a reply e-mail, claiming that he was "finally able to connect" with the BFR secretary, whom respondent claimed was "investigating the issue" and would be contacting respondent that same day or by Monday, October 23, 2017. Respondent also represented to CSI that, at the BFR secretary's purported suggestion, respondent was "pulling together some materials . . . that [would] help us fast track resolution of the appeal." In reply, at 10:27 a.m., CSI's general counsel questioned respondent on how to handle Department's outstanding lien, which could affect CSI's line of credit. At 11:38 a.m., respondent replied by claiming that the BRF secretary was "investigating" the Department's lien and would be contacting respondent "ASAP" regarding the "procedures to have it removed as we believed it was issued in error and we are still proceeding with the appeal[,]" which respondent claimed he would "fast track" in order to "eliminate the lien."

Minutes later, at 11:41 a.m., CSI's general counsel sent respondent an e-mail (1) stating that the Department's lien violated covenants in CSI's loan documents; (2) asking respondent whether the BFR secretary had "concede[d] the lien was issued in error and that they would remove it[;]" (3) informing respondent that CSI was refinancing a loan; and (4) stating that CSI would be issuing an opinion letter in connection with the loan transaction, which letter CSI's general counsel needed to review for accuracy.

At 12:02 p.m., in reply to CSI's inquiry whether the BFR secretary had conceded that the lien was issued in error, respondent stated that "in principle," he "believe[d] the answer [was] yes" and that the BFR secretary was "going to touch base with the appropriate folks at the Department, make sure he had all the facts, and get back to [respondent.]" Respondent further advised CSI's general counsel that he could "attest" that: (1) the "Department . . . errantly issued a lien against [CSI];" (2) respondent had "contacted the appropriate officials" and "we/they are actively working to have the lien removed;" (3) the lien directly related to an "active controversy for which CSI still ha[d] appeal rights;" (4) because CSI still appeal rights, "the lien should not have been issued;" and (5) respondent expected that "the lien w[ould] be removed and the appeal resolved within the next 30 to 45 days."

At 12:27 p.m., CSI's general counsel informed respondent that the lien already had been reported to Dun & Bradstreet, a company that issues corporate credit ratings, and that "THEY NEED[ED] TO MOVE FASTER THAN 30-45 DAYS!!" CSI's general counsel also suggested to respondent that CSI file a lawsuit or a temporary restraining order to remove the lien or prevent its enforcement. At 12:45 p.m., respondent informed CSI that he would attempt to resolve the issue by October 23 or 24, stressing that he would "explain the urgency" and "call in some favors."

Respondent's October 20th e-mails to CSI's general counsel were false and misleading, given that respondent knew, but failed to disclose, that: (1) the BOA had denied CSI's tax reassessment petition on June 6 and July 17, 2017; (2) CSI's time to appeal the BOA's decisions had expired; (3) the Department's lien against CSI was not "errantly issued;" (4) CSI had no "active controversy" for which it had appeal rights; (5) respondent could not "call in some favors" to have the lien withdrawn; and (6) respondent had no basis in law or fact to expect that the lien would be discharged within 30 to 45 days.

On October 30, 2017, CSI's general counsel sent respondent an e-mail requesting whether he had "ANY UPDATE" regarding the Department's lien. Later on October 30, respondent sent CSI's general counsel, via e-mail, a "Board of Finance and Revenue Request for Compromise." Respondent advised CSI's

general counsel that, "if/when" the BFR accepted the "Request for Compromise," it would "immediately have the effect of removing the lien." Respondent requested that CSI's general counsel sign the compromise request and advised him that he would submit it and "speak with Revenue again about this tomorrow."

On October 31, 2017, CSI's general counsel signed the compromise request, sent the signature page to respondent, and questioned respondent regarding "how long it [would] take to get this approved and through." Later on October 31, respondent advised CSI's general counsel that he would "get it out today and send you copies for your records tomorrow." Respondent, however, failed to file the compromise request.

On November 1, 2017, CSI's general counsel sent respondent another e-mail inquiring whether he had filed the compromise request and requesting that respondent "send over copies."

Five days later, on November 6, 2017, respondent replied to CSI's general counsel and attempted to provide him an unfiled copy of CSI's compromise request. Respondent advised CSI's general counsel that he "[a]pologi[zed] if [it] was a duplicate," claiming that he had been "having some trouble with [his] emails bouncing back from last week and this weekend." Later that same date,

CSI's general counsel informed respondent that he had not received the compromise request.

Meanwhile, on November 7, 2017, respondent, without CSI's knowledge, filed an untimely appeal to the BFR attempting to challenge the BOA's June 6, 2017 decision denying CSI's reassessment petition. In his appeal to the BFR, respondent attached a copy of CSI's compromise request along with the BOA's September 8, 2017 e-mail providing respondent with an additional copy of the BOA's July 17, 2017 corrected decision. Respondent misrepresented to the BFR that the "mailing date on the [BOA's] [d]ecision . . . should be September 8, 2017[,]" given that respondent knew that he had received the BOA's decisions on June 6 and July 17, 2016.

On November 21, 2017, CSI's general counsel sent respondent an e-mail requesting an "update" on the Department's lien, emphasizing that CSI wanted to "resolve [it] asap[,] as it is on our [Dun & Bradstreet] report[.]" Later that same day, respondent replied that he would follow up on the matter the next day and provide an update.

Six days later, on November 27, 2017, having received no reply from respondent, CSI's general counsel again questioned whether respondent had "[a]ny update?" On November 29, 2017, respondent informed CSI's general counsel that he had "a call scheduled for tomorrow for another issue," but that

he "should be able to get some answers and update on where we are in the process then."

On December 1, 2017, CSI's general counsel requested that respondent provide another update. On December 4, 2017, respondent replied to CSI's general counsel, claiming that he had "talked with Revenue[,]" that he was "hoping to have the settlement reviewed and submitted for approval by the middle of the month (that's what I was told by the lawyer working on the case)[,]" and that "[t]his would act to remove the lien." However, contrary to respondent's claim, the Department's attorney never had informed respondent that any "settlement" would be "submitted for approval by the middle of the month."

On December 11, 2017, the Department's attorney sent respondent and the BFR secretary an e-mail, acknowledging receipt of respondent's compromise request but noting that the Department was "not interested in comprising this matter." The Department's attorney further requested that the BFR issue a decision "on the merits of the petition." Respondent failed to inform CSI that the Department had rejected its compromise request. Rather, on December 12, 2017, respondent advised CSI's general counsel that there was "a lawyer assigned" to the case and that respondent was "trying to accelerate discussions with him this week."

On December 21, 2017, at 8:02 a.m., the BFR secretary sent respondent and the Department's attorney an e-mail, instructing respondent to contact the Department's attorney "to see if a compromise can be reached" and advising respondent that CSI had filed its appeal of the BOA's decisions on November 7, 2017, more than two months after the September 5, 2017 deadline. The BFR secretary, thus, requested that respondent reply to "this e-mail regarding the late filing issue," as it "may affect the compromise process." Three minutes later, at 8:05 a.m., the Department's attorney replied to the BFR secretary's email, again stating that the Department was "not interested in compromising [the] matter" and requesting that the BFR issue a decision "on the merits." Respondent failed to provide an explanation for his late filing to the BFR secretary and again failed to advise CSI that the Department had rejected its compromise request. Rather, at 1:16 p.m., respondent informed CSI's general counsel that he was "[h]aving another call with [the BFR secretary] tomorrow" and would "revert back with an update as soon as I do."

On January 2, 2018, CSI's general counsel requested another update from respondent, who failed to reply. Two weeks later, on January 15, 2018, CSI's general counsel sent respondent an e-mail, stating "[w]here do we stand? I need to get this resolved – what is the delay?" On January 17, 2018, respondent replied by claiming that he would "be in touch later th[a]t afternoon" and that

CSI should expect "a resolution by the end of the month." Later on January 17, CSI's general counsel again asked respondent, "[w]hat is the delay?"

Meanwhile, on January 18, 2018, at 8:26 a.m., the BFR secretary sent respondent an e-mail, informing him that, because the Department was not interested in pursuing a compromise, the BFR would "soon" consider CSI's appeal "as early as the February hearings." The BFR secretary further required respondent to reply, within seven days, with an explanation for CSI's untimely appeal of the BOA's decisions. Respondent, however, failed to provide the BFR secretary with the required written reply.

On January 18, 2018, at 12:47 p.m., respondent, in reply to CSI's general counsel's inquiry regarding the delayed resolution of the matter, informed CSI that (1) "it's just a matter of scheduling and the formal process[,]" (2) he "believe[d] the last monthly [BFR] meeting that would have been able to approve anything was cancelled[,]" and (3) "[t]here's nothing else we need to do." Respondent, however, again failed to disclose the fact that the Department had twice rejected CSI's compromise request and that CSI needed to explain to the BFR why its appeal of the BOA's decisions was untimely.

On February 13, 2018, respondent sent the BFR secretary an e-mail, inquiring whether he could submit "an affidavit from [his] assistant attesting to the fact that we never received the [BOA's] decision, that we requested the

decision multiple times from [a BOA employee], only to finally receive the decision after the [appeal] deadline." Later that same date, the BFR secretary informed respondent that the BFR would accept such an affidavit and that CSI's appeal would "be decided in April."

On February 14, 2018, CSI's general counsel again requested an update from respondent, noting that "it's been almost a month since [the] last progress report." On February 15, 2018, respondent replied to CSI's general counsel, falsely claiming that "[w]e are scheduled for the meeting to have our compromise approved."

On March 2, 2018, the BFR secretary sent respondent an e-mail, inquiring whether respondent intended to submit his proposed affidavit and noting that "[i]t is still the [BFR's] decision regarding jurisdiction." On March 8, 2018, the BFR sent respondent a notice advising him that it had scheduled a hearing in connection with CSI's appeal for April 3, 2018.

On March 13, 2018, respondent submitted two sworn affidavits to the BFR. In the first affidavit, he attested that:

> (1) on or about July 25, 2017, he had asked his administrative assistant if they had "received via U.S. mail or otherwise, a decision from the [BOA]" in connection with CSI's tax reassessment petition;
>
> (2) at that time, he and his assistant "searched both our electronic and paper files and could not locate a decision;"

(3) approximately two weeks later, he and his assistant "[a]gain searched our files, both electronic and paper, and could not locate a copy of the decision;"

(4) on or about August 15, 2017, he asked his assistant to "contact the [BOA] via telephone to inquire about the status of the appeal and [to] request a copy of the decision if one had been issued;"

(5) on or about August 25, 2017, he "again asked [his assistant] to contact the [BOA] via telephone to inquire about the status of the appeal;"

(6) on or about August 29, 2017, respondent's assistant informed him that a BOA employee had contacted her and stated that respondent would need to contact the BOA directly to inquire about the status of the appeal;

(7) on or about August 30, 2017, respondent contacted the BOA and left a voicemail message for the BOA employee, explaining that he had yet to receive a decision;

(8) on or about September 5, 2017, respondent again contacted the BOA to inquire about the decision;

(9) on or about September 8, 2017, respondent spoke with the BOA employee, who provided respondent with the BOA's decision; and

(10) respondent again searched "our electronic and paper file and confirmed that September 8, 2017 was the first time [he] had seen or received the [BOA's decision] in any medium."

[Ex.E¶113.][1]

[1] "Ex." refers to the exhibits appended to the OAE's brief.

In the second affidavit, prepared by respondent and executed by his assistant, the assistant attested that:

> (1) on or about July 25, 2017, at respondent's request, she "searched our electronic and paper files and could not locate" the BOA's decision;
>
> (2) approximately two weeks later, again at respondent's direction, she "searched our files, both electronic and paper, and could not locate a copy of the decision;"
>
> (3) on or about August 15, 2017, at respondent's request, she contacted the BOA, via telephone, and left a voicemail message inquiring about CSI's appeal and requesting a copy of the BOA's decision, if one had been issued, but she received no response;
>
> (4) on or about August 25, 2017, she again contacted the BOA, via telephone, to inquire about the status of CSI's appeal;
>
> (5) on or about August 28, 2017, she received a voicemail message from a BOA employee stating that respondent would need to contact the BOA directly; and
>
> (6) on or about August 29, 2017, she informed respondent that he would need to contact the BOA directly to inquire about the status of CSI's appeal.
>
> [Ex.E¶115.]

Respondent's assistant relied solely on respondent's representations regarding the dates set forth in her affidavit. Additionally, although she had searched Morgan Lewis's paper and electronic files in her attempt to locate the BOA's decisions, she did not search respondent's e-mail messages, given that

she previously had informed respondent that she would "never look at his e-mail account unless he specifically asked her to do so." Respondent's assistant also stated that respondent never requested that she search his e-mail account for the BOA's decisions.

Respondent failed to serve copies of the affidavits on the Department, as 61 Pa. Code § 703.6(a) requires, and failed to inform CSI of the affidavits.

On March 15, 2018, the BFR secretary sent the Department's attorney and respondent an e-mail, attaching copies of respondent's affidavits and requesting that the Department explain how the BOA's decisions were served upon CSI. On March 16, 2018, the Department's attorney replied to the BFR secretary, inquiring whether respondent previously had served the affidavits on the Department. Later that same date, the BFR secretary informed the Department's attorney that, to his knowledge, "the affidavits were not previously provided to the Department," and that "the e-mail [the BFR secretary] received on [March 13, 2018] contained only [the BFR secretary's] e-mail address."

Meanwhile, on March 15, 2018, two days after respondent had filed the affidavits with the BFR, CSI's general counsel sent respondent an e-mail requesting another update.

On March 19, 2018, respondent replied to CSI's general counsel and failed to disclose the fact that CSI was pursuing an untimely appeal of adverse BOA

decisions. Rather, respondent advised that "[w]e'll be attending the meeting I mentioned in a few weeks." Minutes later, CSI's general counsel requested that respondent provide "the specifics on the meeting you referenced." Respondent, however, failed to reply.

On March 23, 2018, the Department's attorney filed with the BFR a letter brief in reply to respondent's affidavits. The Department attached to its brief copies of the BOA's June 6 and July 17, 2017 e-mails, which provided respondent with copies of the BOA's original and corrected decisions. The Department argued to the BFR that, under the "mailbox rule," respondent's affidavits failed to rebut the presumption that he had received the BOA's decisions, in a timely manner, via e-mail.

On April 2, 2018, respondent requested a one-month adjournment of the BFR's hearing in connection with CSI's untimely appeal, claiming that he was "currently investigating the validity of the Department's claims" in its letter brief and "require[d] additional time to properly address and confirm or dispute them." On April 4, 2018, the BFR issued an order granting respondent's adjournment request.

On May 8, 2018, respondent appeared before the BFR, on CSI's behalf and without its knowledge, and again claimed that he had not received the BOA's decisions until after the deadline to appeal had expired. On that same

day, CSI's general counsel sent respondent an e-mail, requesting "the latest update" and emphasizing that "we need to get this resolved."

On May 9, 2018, respondent replied to CSI's general counsel, claiming that he had "talked with the Revenue officials" and would "have written confirmation that our sales tax liability was reduced (barring something unforeseen, of course)." Respondent also told CSI that the "confirmation should come in the form of a [BFR] 'Decision[,]'" which respondent hoped would be issued within the "next week." Respondent, however, failed to disclose to CSI his appearance before the BFR, just one day earlier, regarding its untimely appeal of adverse BOA decisions.

On May 9, 2018, the BFR issued an order dismissing CSI's appeal for lack of jurisdiction.

Meanwhile, on May 25, 2018, CSI's general counsel sent respondent an e-mail requesting another update. Respondent, however, failed to reply, despite his receipt of the BFR's May 9 order dismissing CSI's appeal.

On June 7, 2018, CSI's general counsel again requested an update from respondent, pleading that he "need[ed] to get some feedback from [respondent]" and that "this is very frustrating." Four days later, on June 11, 2018, respondent sent CSI's general counsel an e-mail, falsely claiming that the BFR "threw us a curveball" but that the "meeting/hearing" went well and "we expected to receive

full relief." Additionally, respondent falsely advised CSI's general counsel that "documentation we received denied relief on a purported prejudicial defect, that had been dealt with and dispatched as a mistake on the Department's side." Finally, respondent requested to speak with CSI's general counsel regarding "our options to get the relief to which we're entitled as quickly as possible."

Also on June 11, 2018, respondent, CSI's general counsel, and another Morgan Lewis attorney had a telephone conference, during which CSI's general counsel finally learned of what had transpired in connection with CSI's tax assessment matter. Following the conference call, CSI's general counsel contacted the Morgan Lewis attorney who had assigned the matter to respondent and suggested that Morgan Lewis contact its malpractice insurance carrier.

On June 12, 2018, Morgan Lewis's general counsel commenced an internal investigation of respondent's conduct. At the outset of the firm's investigation, respondent informed the general counsel that, on September 7 or 8, 2017, he had received "some tax . . . decisions that had apparently been issued at two points earlier in time, but that he had not received, and that there was an appeal that needed to be made from those decisions." Respondent also informed the general counsel that he "believed the right time for those appeals was . . . [the] first week of November 2017, because he had received them belatedly."

Additionally, although respondent promptly replied to the general counsel's initial inquires, respondent, thereafter, offered "almost no cooperation." Specifically, respondent failed to provide the general counsel with several "pieces of information" that she had requested, including the e-mail addresses for the likely sender of the BOA's decisions, and had "left the office sometime very shortly after he and I had our first call."

On June 13, 2018, following respondent's return to the law office, respondent provided the general counsel with the BOA's purported relevant e-mail address. However, when the general counsel provided that e-mail address to the firm's information technology (IT) department, the department could not find any BOA e-mails from that address. Nevertheless, the IT department "very quickly" discovered the BOA's June 6 and July 17, 2017 e-mails containing its decisions in respondent's e-mail folder labeled "IN." Meanwhile, when the general counsel informed respondent that the IT department was conducting a search of his e-mails, respondent discovered the BOA's June 6 and July 17 e-mails "within minutes." The general counsel, however, noted that respondent previously had informed her that "he had tried on numerous occasions to search for those e-mails."

Upon reviewing the BOA's June 6 and July 17 e-mails and respondent's July 17 timekeeping entry reflecting that he had reviewed the BOA's corrected

decision, the general counsel confronted respondent, who failed to demonstrate any remorse or to reconcile his version of the events with the information set forth in those documents.

On June 15, 2018, Morgan Lewis terminated respondent's employment with the firm. Following respondent's termination, another Morgan Lewis attorney was assigned to handle CSI's matter. On June 19, 2018, the new Morgan Lewis attorney filed with the Pennsylvania Commonwealth Court a petition for review of the BFR's May 9, 2018 order dismissing CSI's appeal for lack of jurisdiction. The Pennsylvania Attorney General's Office, however, informed the new Morgan Lewis attorney that it intended to challenge the Commonwealth Court's jurisdiction to consider CSI's petition for review based upon CSI's failure to timely appeal the BOA's decisions to the BFR.

On January 23, 2019, CSI agreed to the issuance of a judgment against it in the amount of $189,726.46. Additionally, as a consequence of respondent's misconduct, Morgan Lewis agreed to pay the $189,726.46 judgment amount to CSI and to eliminate respondent's $19,291.65 in legal fees in connection with his mishandling of CSI's matter. Finally, Morgan Lewis was forced to expend $54,154 in unbillable time to investigate respondent's misconduct, resolve CSI's matter, and identify and rectify any additional misconduct. During the Pennsylvania ethics hearing, Morgan Lewis's general counsel testified that her

investigation of respondent uncovered other client complaints regarding respondent's "responsiveness[,]" which complaints the general counsel characterized as "poor judgment . . . that would be more risk to the firm than outward facing risk to a client."

On November 10, 2020, the Pennsylvania Office of Disciplinary Counsel (the ODC) filed a petition for discipline against respondent, charging him with having violated multiple Pennsylvania Rules of Professional Conduct in connection with the CSI matter. On November 12, 2020, respondent accepted service of the petition but failed to file an answer, as Pa. R.D.E. 208(b)(3) requires. Because respondent failed to answer the petition, the allegations contained therein were deemed admitted, pursuant to Pa. R.D.E. 208(b)(3).

On March 2, 2021, respondent appeared at the Pennsylvania ethics hearing and expressly declined to dispute the admitted allegations contained in the ODC's petition. In that vein, respondent conceded that he "really [had] no . . . response. The . . . facts are there in black and white." Based on respondent's concession, the Pennsylvania hearing panel chair allowed the ODC and respondent to present evidence only as to the appropriate quantum of discipline.

The ODC presented the testimony of Morgan Lewis's general counsel to demonstrate respondent's lack of remorse, the damage caused to the law firm, and his conduct during the law firm's internal investigation, as described above.

Respondent testified on his own behalf, claiming that "a mistake was made" and that "the appeal deadline was missed." Respondent, however, claimed that he was cooperative with Morgan Lewis's internal investigation and that he had provided "everything" that the general counsel had requested. Respondent also claimed that he had "forgotten" about the BOA's e-mails containing its decisions and that he had "billed time that I didn't recall." In his view, respondent claimed that he did not engage in any dishonesty. Following respondent's remarks, the ODC objected to respondent's testimony as contrary to the admitted facts. The hearing panel chair sustained the objection and, although respondent clarified that he did not "deny" the facts set forth in the ODC's petition, he claimed that he did not "believe" that he "was intentionally concealing information."

Respondent further argued that he "was incapable of admitting" to CSI "that I had done something wrong" and that he had "believed" that "ultimately things were going to be okay, and that was what I was conveying to [CSI]." However, respondent stated that, "looking back, that it is clearly not the case." Respondent also testified that he was unable to "get over the anxiety of losing my job" because of his "mistake" in failing to timely appeal the BOA's decisions. Consequently, in his attempt to fix his "mistake," he "made things worse by ultimately being dishonest. And for that, I have no excuse."

Respondent testified, in mitigation, that he began experiencing depression and anxiety following his 2013 separation from his wife. Respondent also claimed that, for the next few years, he "had been spotty with" his treatment for those conditions. Consequently, when he began his employment with Morgan Lewis, in June 2016, he claimed that he "was in no way prepared" for that responsibility and that he had "oversold" his credentials to "build a state and local tax team."

Following his termination from Morgan Lewis, respondent stated that he "lost all" of his clients and was unable to find employment for almost a year until he joined a smaller firm, which he claimed offered him a better work environment. Respondent further testified that, since 2018, he has "adjusted" his medication, reconciled with his wife, and has become a more competent practitioner.

In the Pennsylvania hearing panel's June 28, 2021 report, it found that the admitted allegations of the ODC's petition for discipline and the testimony of Morgan Lewis's general counsel established each of the charged ethics infractions by a preponderance of the evidence. In recommending at least a two-year suspension, the hearing panel emphasized that respondent's most egregious conduct was his submission of the false affidavits to the BFR, conduct for which respondent lacked contrition and had difficulty accepting responsibility.

On September 22, 2021, respondent appeared for oral argument before the Disciplinary Board of Pennsylvania and urged the imposition of discipline "far less" than a two-year term of suspension. Although respondent admitted that he had "lied" to CSI and that he had "missed" the deadline to appeal the BOA's decisions, respondent claimed that he did not "remember" receiving the BOA's decisions, via e-mail. Respondent also argued, contrary to the admitted facts, that, although the information contained in the affidavits to the BFR were "false" "in hindsight," the affidavits "were not false in our minds" at the time he and his assistant executed the documents. Respondent also alleged that he was not "dishonest" in connection with Morgan Lewis's internal investigation of his misconduct.

Respondent, however, conceded that, "from the beginning of this matter," he "understood" that his handling of CSI's matter "was inappropriate." Respondent also emphasized that, following his termination from Morgan Lewis, he had been unable to find new employment for almost a year due to his personal and mental health issues. Moreover, since his termination from Morgan Lewis, respondent claimed that he has improved his management of his mental health and has reconciled with wife and other family members. Finally, respondent argued that his misconduct amounted to an "isolated incident[,]" that he has become a more competent attorney, and that he has established himself

in the Delaware County, Pennsylvania community, where he remains employed with a small law firm.

In the Pennsylvania Disciplinary Board's December 8, 2021 decision, it unanimously recommended the imposition of a one-year and one-day suspension for the totality of respondent's misconduct. The Pennsylvania Board found that, for approximately one year after receiving the BOA's adverse decisions, respondent routinely failed to reply to CSI's inquiries regarding the status of its matter and, when he did reply, he made misrepresentations to CSI. Specifically, respondent failed to advise CSI of the BOA's adverse decisions, his failure to timely appeal those decisions to the BFR, and the fact that he later filed an untimely appeal.

Additionally, the Pennsylvania Board found that respondent misrepresented to CSI that the Department's lien had been wrongly issued, despite knowing that the Department had imposed the lien because of his failure to appeal the BOA's decisions. The Pennsylvania Board also observed that respondent falsely advised CSI that its proposed compromise request would soon be approved by the Department, even after the Department's attorney had twice informed respondent that the Department had no interest in compromising CSI's tax lien.

Finally, the Pennsylvania Board emphasized that, rather than acknowledge his failure to timely appeal the BOA's decisions, respondent submitted two false affidavits to the BFR, claiming that he had not received the BOA's decisions until after the time to appeal had expired.

The Pennsylvania Board found that respondent violated Pa. RPC 1.1 by failing to file a timely appeal of the BOA's decisions on behalf of CSI. The Pennsylvania Board further found that respondent violated Pa. RPC 1.4(b), among other Pennsylvania RPCs, by repeatedly failing to reply to CSI's requests for updates and by failing to keep CSI reasonably informed about the status of its matter.

The Pennsylvania Board also found that respondent violated Pa. RPC 3.1, Pa RPC 3.3(a)(1) and (3), and Pa RPC 4.1(a) by making knowingly false statements and "factually baseless" assertions in his affidavits to the BFR in support of his claim that his appeal of the BOA's decisions was timely.

Additionally, the Pennsylvania Board found that respondent violated Pa. RPC 8.4(a) by allowing his assistant to execute a false affidavit to the BFR stating that respondent had not received timely copies of the BOA's decisions. Finally, the Pennsylvania Board found that respondent violated Pa. RPC 8.4(b), (c), and (d) by submitting the false affidavits to the BFR, "making

misrepresentations," and "prejudicing the administration of justice through the provision of false information to the [BFR]."

In recommending the imposition of a one-year and one-day suspension, the Pennsylvania Board applied applicable disciplinary precedent and emphasized that respondent not only provided false affidavits to the BFR, but also neglected CSI's matter and made numerous misrepresentations, spanning more than one year, to "camouflage his neglect." The Pennsylvania Board, thus, stressed that "[r]espondent's serious misconduct require[d] his removal from the practice of law and a reinstatement process to determine his fitness to practice at a future date."

The Pennsylvania Board, however, weighed, in mitigation, respondent's lack of prior discipline, his acknowledgment that his conduct violated the Pennsylvania Rules of Professional Conduct, and his "genuine contrition." The Pennsylvania Board noted that respondent did not attempt to "excuse his actions," but explained that he was "so anxious" about losing his job at Morgan Lewis that he attempted to "fix" his failure to timely appeal the BOA's decisions and "made things worse by his dishonesty." The Pennsylvania Board also gave mitigating weight to respondent's personal struggles and his testimony that he was not prepared to take on his position at Morgan Lewis. The Pennsylvania Board, however, found that respondent's testimony regarding his mental health

did not meet the applicable "mitigation standard" because respondent failed to prove, by clear and convincing evidence, that a psychiatric disorder had caused the underlying conduct.

On March 4, 2022, the Pennsylvania Supreme Court issued an order suspending respondent for one year and one day in connection with his misconduct.

Respondent failed to independently notify the OAE of his Pennsylvania discipline, as R. 1:20-14(a)(1) requires. However, on March 28, 2022, respondent notified the District Ethics Committee (the DEC) presenter, who previously had filed a formal ethics complaint against respondent for the same misconduct underlying this matter, of his Pennsylvania discipline. Thereafter, based on the OAE's decision to pursue a motion for reciprocal discipline, the DEC relinquished jurisdiction of this matter to the OAE. Consequently, although respondent did not independently notify the OAE of his Pennsylvania discipline, he appeared to have a good faith basis to believe that New Jersey disciplinary authorities were aware of his Pennsylvania discipline.

In support of its recommendation for a term of suspension of between one and two years, the OAE emphasized that, for more than a year, respondent intentionally deceived CSI, repeatedly misrepresenting that he properly had pursued its appeal in connection with the Commonwealth's tax assessment. The

OAE noted that, to achieve his deception, respondent filed two false affidavits, one executed by himself and the other by his non-attorney subordinate, in an attempt to deceive the BFR regarding the timeliness of his appeal.

The OAE analogized respondent's misconduct to the attorney in In re Skoller, 186 N.J. 261 (2006), who, as discussed below, received a two-year suspension for engaging in a long campaign of deception while representing his mother in connection with the sale of her New Jersey residence. In Skoller, the attorney misrepresented to the buyers' lawyer that a Florida judgment, which had been docketed against the attorney's mother's residence, was either a "mistake" or had been "vacated." In the Matter of Stephen H. Skoller, DRB 05-129 (Dec. 1, 2005) at 26. The attorney also presented an affidavit of title, signed by his mother, in which the mother falsely stated that the judgment had been vacated. Id. at 23-24. When the parties learned that the judgment had not been vacated, the attorney refused to consent to the release of escrowed funds that had been set aside pending confirmation that the judgment had been vacated. Id. at 28.

The OAE argued that, like Skoller, respondent engaged in a pattern of deception after becoming aware of the BOA's adverse decisions, which he failed to bring to CSI's attention. Rather than acknowledge his failure to timely appeal the BOA's adverse decisions and work with CSI to obtain other available relief,

respondent engaged in a prolonged course of improper conduct, resulting in his termination from Morgan Lewis and severe economic consequences to the law firm. The OAE urged us to balance respondent's lack of prior discipline against the serious nature of his misconduct for which he has displayed no contrition or remorse.

At oral argument before us, respondent declined to contest the majority of the facts underlying his Pennsylvania discipline. However, just as he argued to the Pennsylvania Disciplinary Board, respondent claimed that, although the affidavits he had filed with the BFR were false in "hindsight[,]" he did not knowingly engage in any deception to the BFR because, at the time he filed the affidavits, he had forgotten about his contemporaneous receipt of the BOA's June 6 and July 17 decisions. Nevertheless, respondent conceded that he had lied to CSI and had engaged in "dismissive" conduct in connection with its repeated inquiries.

When asked why he had engaged in deception towards CSI, respondent claimed that he feared losing his employment at Morgan Lewis if he told CSI the truth. Respondent also alleged that, during the timeframe underlying his misconduct, he was undergoing marital problems and depression. However, respondent noted that, since his termination from Morgan Lewis, he has engaged in therapy, reconciled with his wife, and accepted the consequences of his

discipline in Pennsylvania. Respondent also expressed his willingness to notify the OAE of his continued treatment for his mental health issues.

Finally, respondent urged the imposition of discipline in the form of "probation" or "supervised practice" given his views regarding the length of the disciplinary process he has undergone in New Jersey.[2]

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

In Pennsylvania, the standard of proof in attorney disciplinary proceedings is that the "[e]vidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof . . . is clear and satisfactory." Office of Disciplinary Counsel v. Kissel, 442 A.2d 217

[2] As respondent acknowledged during oral argument, our Court Rules contain no time restrictions in attorney disciplinary matters. See In the Matter of George N. Pappas, DRB 22-023 (August 5, 2022) at 18 (noting that, despite the aspirational time goals of R. 1:20-8, there is no statute of limitations in attorney discipline matters), so ordered, __ N.J. __ (2023).

(Pa. 1982) (quoting In re Berland, 328 A.2d 471 (Pa. 1974)). Moreover, "[t]he conduct may be proven solely by circumstantial evidence." Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981) (citations omitted). In this matter, respondent failed to file an answer to the ODC's petition for discipline, despite accepting service of same, and, thus, the allegations contained therein were deemed admitted, pursuant to Pa. R.D.E. 208(b)(3). Moreover, at the outset of the Pennsylvania ethics hearing, respondent expressly declined to dispute the admitted allegations contained in the ODC's petition.

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 disciplinary matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the unethical conduct established warrants substantially different discipline.

We conclude that none of the above subsections apply to this case. As discussed below, respondent's gross mishandling of CSI's tax assessment matter and his prolonged campaign of deception to CSI and to Pennsylvania tax authorities supports the imposition of nearly identical discipline – a one-year suspension in New Jersey.[3]

Here, respondent violated RPC 1.1 and RPC 1.3 by failing to file a timely appeal of the BOA's decisions denying CSI's petition for reassessment.

Specifically, on June 6 and July 17, 2017, the BOA sent respondent its original and corrected decisions denying CSI's petition in its entirety and advising respondent that any appeal of its decisions to the BFR must be filed on or before September 5, 2017. The BOA transmitted its decisions to respondent via e-mail, in accordance with his specific request, in CSI's December 13, 2016 petition, that any decision be sent to his Morgan Lewis e-mail address. Respondent "moved" both the BOA's June 6 and July 17 e-mails to his "IN" e-mail folder, which served as the "receptacle" for all electronic mail sent to him,

[3] In Pennsylvania, an attorney who is suspended for more than one year cannot resume practice until the Pennsylvania Supreme Court issues an order restoring the attorney to practice, following the attorney's petition for reinstatement and a hearing in which the attorney must prove, by clear and convincing evidence, that he has the requisite moral qualifications and competency to resume practice. See Pa. R.D.E. 218. By contrast, in New Jersey, all attorneys who receive disciplinary terms of suspension, regardless of their duration, are required to file a petition for reinstatement. See R. 1:20-21.

and, on July 17, respondent provided his assistant with a timesheet reflecting that he had billed 0.3 hours reviewing the BOA's corrected decision. Thereafter, on or before July 25, 2017, respondent reviewed that billing entry, as Morgan Lewis timekeeping policy required. Approximately two weeks later, on August 9, 2017, CSI's general counsel sent respondent an e-mail inquiring when CSI could expect the BOA's decision. Respondent, however, failed to reply.

Within the span of two months, between June 6 and August 9, 2017, respondent received multiple notices from the BOA transmitting its decisions; entered at least one billing entry reflecting his review of the BOA's corrected decision; conducted at least one subsequent review of that billing entry; and received notice from CSI inquiring about the BOA's decisions. Nevertheless, despite being acutely aware of the BOA's adverse decisions, respondent failed to appeal those decisions to the BFR until November 7, 2017, more than two months after the September 5, 2017 deadline. Respondent's failure to timely appeal the BOA's decisions resulted in a $183,620.58 tax lien against CSI, which affected CSI's credit rating, violated covenants in its loan documents, and jeopardized its ability to refinance a loan.

Respondent's misconduct, however, did not end there. He also violated RPC 1.4(b) and RPC 8.4(c) by not only failing, for nearly a year, to keep CSI reasonably informed of the significant developments of its matter, but also by

engaging in a prolonged course of deception towards CSI in attempt to conceal his neglect of its matter. Specifically, respondent failed to reply to CSI's numerous requests for status updates and, when he did reply, he repeatedly misrepresented the validity of the Department's lien, falsely claimed that the resolution of the Department's lien was proceeding apace, and provided generic responses to CSI's requests for specific information to prevent CSI from learning the true status of its matter.

Respondent's deception resulted in significant harm to CSI when, in October 2017, more than a month after respondent failed to appeal the BOA's decisions by the September 5 deadline, CSI discovered the Department's lien and queried respondent how the lien was "even possible give[n] our appeal of the PA tax assessment[.]" Thereafter, rather than inform CSI of the BOA's adverse decisions, respondent falsely advised CSI that the BFR would be contacting him regarding the "procedures to have [the lien] removed" because it was "issued in error" in light of CSI's pending "appeal" of the Department's tax assessment. Based on CSI's general counsel's intent to submit an opinion letter in connection with the refinancing of CSI's loan, the general counsel sought clarification from respondent regarding whether the BFR specifically had conceded that the Department had issued the lien in error and would have it removed. Respondent, in reply, falsely advised the general counsel that he could

"attest" that: the Department "errantly" had issued the lien"; that the appropriate Department officials were "actively working to have the lien removed"; and that the lien would be "removed" and the matter resolved "within the next 30 to 45 days." Although the record is unclear whether the general counsel ultimately issued his opinion letter, respondent's conduct had the potential to cause CSI to provide false information in connection with the refinancing of its loan.

Additionally, on November 7, 2017, respondent, without CSI's knowledge, filed an untimely appeal of the BOA's decisions with the BFR. At the same time, respondent also filed with the BFR CSI's proposed comprise request, attempting to persuade the Department to remove its lien. Although the Department's attorney twice informed respondent, in December 2017, that the Department had no interested in pursuing a compromise with CSI, respondent continued to mislead CSI, between January and March 2018, that the delayed resolution of its matter was merely "just a matter of scheduling and the formal process[,]" that CSI was "scheduled for the meeting to have our compromise approved[,]" and that there was "nothing else we need to do."

On May 8, 2018, the same date that respondent appeared before the BFR, without CSI's knowledge, in connection with CSI's untimely appeal, respondent continued to mislead CSI by claiming that he had spoken with the relevant "revenue officials" and that CSI would "have written confirmation" that its tax

liability would be "reduced (barring something unforeseen, of course)." Finally, on June 11, 2018, more than a month after the BFR had denied CSI's appeal of the BOA's decisions for lack of jurisdiction, respondent, in a further attempt to conceal his misconduct, informed CSI that the BFR had "thr[own] us a curveball" and had denied CSI's requested "relief" based on a "purported prejudicial defect" caused by the Department, rather than by respondent's failure to timely appeal the BOA's decisions.

Respondent's acts of deception were not confined to his communications with CSI. Specifically, respondent violated RPC 3.1(a)(1) and (4), along with RPC 8.4(c), by submitting two false affidavits to the BFR in connection with its request that he explain the untimely circumstances of CSI's appeal.

In the first affidavit, respondent attested that, on July 25, 2017 – a mere eight days after he had received the BOA's July 17 corrected decision, billed 0.3 hours reviewing that decision, and reviewed that timekeeping entry on or before July 25 – he queried his assistant whether his office had received any decision from the BOA. Thereafter, on July 25 and on or around August 8, 2017, respondent and his assistant conducted multiple searches of his paper and electronic records but could not locate any BOA decision. Respondent further attested that, between August 15 and September 5, 2017, he and his assistant made multiple attempts to contact the BOA regarding the status of its decision.

Finally, respondent attested that it was not until he spoke with a BOA employee, on September 8, 2017, three days after the September 5, 2017 deadline, that he was finally able to first receive a copy of the BOA's decision "in any medium." In the second affidavit, prepared by respondent but executed by his assistant, the assistant detailed her efforts to search respondent's records for the BOA's decisions and her attempts to contact the BOA, via telephone.

Respondent's first affidavit, however, concealed the fact that the BOA previously had transmitted its decisions to respondent, on June 6 and July 17, 2017, via e-mail, in accordance with respondent's express instructions. Respondent further concealed the fact that he contemporaneously had "moved" the BOA's e-mails to a different e-mail folder and had billed 0.3 hours reviewing the BOA's July 17 corrected decision. Moreover, respondent appeared to carefully craft the second affidavit based on his knowledge that his assistant would never have searched his Morgan Lewis e-mail account, where the BOA's decisions were located, without his express permission, which he never provided.

Respondent's claim that he did not knowingly engage in any deception to the BFR in connection with his affidavits is not only contrary to the admitted facts contained in the ODC's petition and the findings of the Pennsylvania Disciplinary Board, but also lacks any semblance of credibility considering that

he reviewed the BOA's July 17 corrected decision just days before his purported July 25 inquiry to his assistant regarding whether his office had received any decision from the BOA.

In addition to filing the false affidavits, respondent engaged in further deception, in his November 7, 2017 e-mail to the BFR filing CSI's untimely appeal, in which filing he falsely asserted that the "mailing date" of the BOA's decisions "should be September 8, 2017." Moreover, respondent compounded his deception, at the May 8, 2018 hearing before the BFR, where he again falsely represented that he did not receive the BOA's decisions until after September 5, 2017.

Similarly, respondent violated RPC 8.4(a) by directing his assistant to execute one of the false affidavits that he had prepared for submission to the BFR. Respondent's deception, achieved through the acts of his assistant, is consistent with applicable disciplinary precedent for sustaining RPC 8.4(a) charges. See In the Matter of Stuart L. Lundy, DRB 20-227 (April 28, 2021) at 11 (declining to find a violation of RPC 8.4(a) except where the attorney has, through the acts of another, violated or attempted to violate the RPCs, or where the attorney directly has attempted but failed to violate the RPCs), so ordered, 249 N.J. 101 (2021).

Finally, respondent violated RPC 8.4(d) by forcing the BFR to consider his deceptive claims in connection with the timeliness of CSI's appeal, which resulted in a waste of government resources, including at least one hearing before the BFR.

However, we determine to dismiss the remaining RPC charges.

Regarding the RPC 8.4(b) charge, the OAE's motion brief, as the charging document in reciprocal discipline proceedings, did not identify any criminal statute which respondent is alleged to have violated. Likewise, the Pennsylvania disciplinary record contains no reference to any criminal statute. Because the record is unclear what specific criminal act respondent is alleged to have committed, we determine to the dismiss the RPC 8.4(b) charge. See In the Matter of Jeffery M. Adams, DRB 16-319 (May 4, 2017) (dismissing an RPC 8.4(b) charge because the complaint neither identified a violation of a specific criminal statute nor contained any facts on which to base a specific finding that the attorney had committed a criminal act), so ordered, 230 N.J. 391 (2017).

Regarding the RPC 4.1(a) charge, there is insufficient evidence to prove that respondent knowingly made a false statement of material fact to a third party. Despite respondent's repeated acts of deception towards his client, CSI, and towards the BFR, the tribunal which considered CSI's untimely appeal, the

record is unclear whether respondent engaged in any acts of deception towards third parties, including the Department's attorney.

Specifically, although respondent filed the false affidavits with the BFR regarding the purported date in which he first received the BOA's decisions, respondent failed to serve the affidavits on the Department, as 61 Pa. Code § 703.6(a) requires. Rather, the BFR secretary separately provided the Department's attorney with respondent's false affidavits, in reply to which the Department's attorney provided the BFR with the BOA's June 6 and July 17 e-mails to respondent containing its decisions.

Moreover, neither the OAE nor the Pennsylvania disciplinary record specifically identified which third-party respondent purportedly made a knowing misrepresentation. Consequently, we determine to dismiss the RPC 4.1(a) charge.

Finally, regarding the RPC 3.1 charge, although respondent's false affidavits to the BFR lacked any good faith basis in fact, respondent's deception to that tribunal is more precisely encapsulated by the RPC 3.3(a)(1) and (4) and RPC 8.4(c) charges. Consequently, we determine to dismiss the RPC 3.1 charge as duplicative.

In sum, we find that respondent violated RPC 1.1(a); RPC 1.3; RPC 1.4(b); RPC 3.3(a)(1) and (4); RPC 8.4(a); RPC 8.4(c); and RPC 8.4(d). We

determine to dismiss the allegations that respondent violated RPC 3.1; RPC 4.1(a); and RPC 8.4(b). The sole issue left for our determination is the appropriate quantum of discipline for respondent's misconduct.

Misrepresentations to a client generally result in a reprimand, even when accompanied by other, non-serious ethics infractions. In re Kasdan, 115 N.J. 472, 488 (1989). However, more egregious acts of deception have resulted in terms of suspension, even when the attorney has a non-serious ethics history. See, e.g., 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; the federal judge promptly recognized the attorney's deception, which resulted in no direct impact on the administration of justice or harm to his adversary; however, when the OAE commenced its investigation, the attorney refused to admit his misconduct until he was "completely cornered" by the OAE; prior reprimand); In re Franco, 227

N.J. 155 (2016) (one-year suspension for attorney who assisted his client in securing a $350,000 short-term loan under false pretenses; to delay his clients' obligation to repay the loan, the attorney violated his fiduciary duties as an escrow agent and purposely omitted material facts from his subsequent communications with the lender; in an attempt to avoid all discipline and civil liability, the attorney engaged in a scheme of self-serving deceit and lied, while under oath, during the disciplinary proceedings; the attorney showed no remorse and refused to accept responsibility for his misconduct; prior three-month suspension); In re Skoller, 186 N.J. 261 (2006) (two-year suspension for attorney who, while representing his mother in the sale of her residence, misrepresented to the buyers' lawyer that a Florida judgment docketed against the residence was either a "mistake" or had been "vacated;" the attorney continued his deception when, shortly after closing, he became definitively aware of a Florida appellate court's decision upholding the judgment, but never informed the buyers' lawyer; when the buyers' lawyer and the lawyer for the judgment creditor learned that the Florida judgment had, in fact, been affirmed on appeal, the attorney, who could no longer rely upon his misrepresentations, refused to consent to the release of escrowed funds that had been set aside pending confirmation that the judgment had been vacated; the attorney's refusal forced the buyers to file an order to show cause, in reply to which the attorney

filed a meritless opposition; although the attorney was forced to pay the buyers' counsel fees, the buyers were forced to file a subsequent motion to recover their fees; no prior discipline; however, the attorney failed to appear for an Order to Show Cause issued by the Court); In re McWhirk, 250 N.J. 176 (2022) (four-year suspension, in a reciprocal discipline matter, for attorney who committed serious misconduct spanning eleven client matters; the attorney misrepresented to numerous clients and to his own law firm that he had filed petitions and pleadings when he had failed to do so; in one matter, the attorney fabricated a court order, which included a forged judge's signature, purporting to award $25,000 to the client; in another matter, the attorney fabricated a sheriff's sale distribution sheet indicating that substantial funds would be paid to the client; the attorney used his own personal funds, in amounts ranging from $10,000 to $424,000, to perpetuate his misrepresentations to clients that he had achieved successful outcomes in their matters; in mitigation, we accorded significant weight to the nexus between the attorney's mental health issues and the misconduct under scrutiny; no prior discipline).

Here, respondent's prolonged campaign of deception toward CSI and the BFR bears some similarities to DeClement's multiple, brazen misrepresentations to a federal judge, which resulted in a six-month suspension. In DeClement, the attorney filed a false certification and selectively omitted

critical portions of a state court record to a federal judge in order to secure the swift dismissal of his adversary's lawsuit.

Similarly, respondent, in a misguided effort to salvage his mishandling of CSI's tax assessment appeal, filed two false affidavits with the BFR in an attempt to induce the agency into believing his false claims that he had not received the BOA's decisions until September 8, 2017, three days after the appeal deadline. Respondent failed to serve the affidavits on the Department's attorney, who, within days of receiving the affidavits from the BFR secretary, filed a letter brief with the BFR enclosing the BOA's June 6 and July 17 e-mails to respondent transmitting its contemporaneously issued decisions. Thereafter, during respondent's May 8, 2018 appearance before the BFR, he again claimed, contrary to the evidence provided by the Department's attorney, that he had not received the BOA's decisions until after the deadline to appeal had expired.

However, unlike the attorney in DeClement, whose deception was promptly recognized by the federal judge and which resulted in no ultimate harm to his adversary or to the administration of justice, respondent's conduct resulted in significant financial harm to both CSI and Morgan Lewis. Specifically, respondent's failure to timely appeal the BOA's decisions resulted in a $183,620.58 tax lien against CSI, which damaged its credit rating, contravened

covenants in its loan documents, and jeopardized its ability to successfully refinance a loan.

When CSI independently discovered the lien and confronted respondent regarding how the Department's actions were "even possible[,]" given its belief that its tax assessment appeal was still pending, respondent refused to concede the truth that the Department had issued its lien based on his failure to timely appeal the BOA's decisions. Rather, respondent, for months, continued to deceive CSI, falsely claiming that the lien had been issued by mistake; that CSI's proposed compromise to remove the lien would be approved by the Department, despite its express rejection of CSI's proposal; and that the delayed resolution of the lien was "just a matter of scheduling and the formal process[.]" More egregiously, respondent embroiled CSI's general counsel, an innocent party, in his scheme of deception by stating that he could "attest[,]" in connection with CSI's loan refinancing, that the Department had issued the lien by mistake and that CSI expected the lien to be "removed" within "30 to 45 days."

On June 11, 2018, during a conference call with respondent and another Morgan Lewis attorney, and more than a month after the BFR had denied CSI's untimely appeal of the BOA's decisions for lack of jurisdiction, CSI finally learned the truth of what had transpired in connection with its tax assessment appeal. The very next day, Morgan Lewis commenced its internal investigation

of respondent, who continued to press his false claims to the firm's general counsel regarding the dates in which he received the BOA's decisions. However, apart from promptly replying to the general counsel's initial inquires, respondent, thereafter, offered almost no cooperation. Indeed, it was not until "minutes" after the general counsel had informed respondent that the firm's IT department was conducting a search of his e-mails did respondent claim to finally have discovered the BOA's June 6 and July 17 e-mails.

Following Morgan Lewis's internal investigation and respondent's termination from the law firm, the newly assigned Morgan Lewis attorney was unable to salvage CSI's tax assessment matter, which forced CSI to agree to the issuance of a $189,726.46 judgement against it. However, to remedy respondent's misconduct, Morgan Lewis agreed to pay the entire judgment amount to CSI, eliminate respondent's $19,291.65 legal fee, and expend $54,154 in unbillable time to investigate respondent and rectify his actions, resulting in significant financial harm to the law firm.

Finally, during the Pennsylvania disciplinary proceedings, respondent failed to file an answer to the ODC's disciplinary petition and, at the outset of the ethics hearing, declined to challenge the admitted facts in the ODC's petition. Nevertheless, at oral argument before the Pennsylvania Disciplinary Board and before us, respondent refused to accept that he had engaged in any

knowing acts deception at the time he had submitted the false affidavits to the BFR.

In mitigation, however, unlike the attorney in Skoller, who received a two-year suspension for engaging in a prolonged course of deception and contumacious behavior to ensure that his mother received sale proceeds properly owed to a judgment creditor, respondent's conduct did not appear to have been motivated by any improper pecuniary gain. Rather, respondent's actions appear to have been motivated by his desire to preserve, at all costs, his employment at Morgan Lewis, where, as he admitted, he "was in no way" equipped to handle the responsibilities of that position. Moreover, in Skoller, we recommended that the attorney receive a one-year suspension, but the Court imposed a two-year suspension, finding additional RPC violations not found by us, and emphasizing the attorney's failure to appear at the Order to Show Cause. Finally, respondent has had no prior discipline in his seventeen-year career at the bar.

On balance, consistent with New Jersey disciplinary precedent, and considering respondent's prolonged and egregious acts of deception towards CSI and the BFR, the significant financial harm to Morgan Lewis, and the serious, collateral economic consequences to CSI, we determine that a reciprocal one-year suspension is the appropriate quantum of discipline necessary to protect the public and to preserve confidence in the bar.

Additionally, based on respondent's invocation of his mental health issues as a direct contributing factor to his misconduct, we require that respondent provide to the OAE, prior to reinstatement, proof of fitness to practice law, as attested by a medical doctor approved by the OAE.

Chair Gallipoli voted for a two-year suspension with the same condition.

Members Campelo and Hoberman were 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 Daniel M. Dixon
Docket No. DRB 23-031

Argued: March 16, 2023

Decided: July 3, 2023

Disposition: One-year suspension

| ***Members*** | One-year suspension | Two-year suspension | Absent |
|---|---|---|---|
| Gallipoli | | X | |
| Boyer | X | | |
| Campelo | | | X |
| Hoberman | | | X |
| Joseph | X | | |
| Menaker | X | | |
| Petrou | X | | |
| Rivera | X | | |
| Rodriguez | X | | |
| Total: | 6 | 1 | 2 |

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