Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-027
District Docket No. XIV-2022-0162E

In the Matter of

Joshua Louis Thomas

An Attorney at Law

Decision

Argued: March 16, 2023

Decided: July 6, 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 October 1, 2021 order suspending respondent, on consent, for a period of two years.

The OAE asserted that respondent was determined to have violated the equivalents of New Jersey RPC 1.1(a) (three instances – gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.3 (three instances – lack of diligence); RPC 3.1 (frivolous litigation); RPC 3.2 (three instances – failure to expedite litigation); RPC 3.3(a)(1) (two instances – false statement of material fact to a tribunal); RPC 3.4(d) (two instances – failure to comply with discovery requests); RPC 8.4(c) (two instances – conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (three instances – conduct prejudicial to the administration of justice).

For the reasons set forth below, we determine to grant the motion for reciprocal discipline and impose a two-year suspension – the identical discipline imposed in Pennsylvania – with conditions.

Respondent earned admission to the New Jersey bar in 2012 and to the Pennsylvania bar in 2011. During the relevant period, he maintained a practice of law in Chadds Ford, Pennsylvania. He has no prior discipline in New Jersey.

On October 1, 2021, the Pennsylvania Supreme Court granted the joint petition in support of discipline on consent, filed by the Pennsylvania Office of Disciplinary Counsel (the ODC), and suspended respondent for a period of two years. The joint petition was supported by respondent's verified statement and affidavit of consent to this discipline in connection with his misconduct

underlying the instant matter. Office of Disciplinary Counsel v. Thomas, 2021 Pa. LEXIS 3722 (2021). Respondent has no additional public discipline in Pennsylvania.

We now turn to the facts of this matter.

In 2020, the ODC investigated respondent's conduct in connection with two related matters (the Shelton and Jacovetti matters), filed in the United States District Court for the Eastern District of Pennsylvania (the EDPA), and a third, unrelated matter (the Drake matter), filed in the United States District Court for the District of New Jersey (the DNJ).

The first of the three matters, the Shelton matter, originated on August 30, 2018, when James Shelton filed a complaint in the EDPA against FCS Capital LLC (FCS) and FCS managing members Emil Yashayev and Barry Shargel. On October 23, 2018, respondent entered his appearance on behalf of the three defendants.

Thereafter, on November 13, 2018, Shelton filed an amended complaint, adding Jacovetti Law, P.C., and Robert C. Jacovetti (the managing attorney of Jacovetti Law) as defendants. Respondent then entered his appearance on their behalf, as well.

Subsequent to entering his appearance, respondent failed to timely answer the complaint, resulting in the entry of defaults against FCS, Shargel, and

Yashayev on December 16, 2018, and against Jacovetti and Jacovetti Law on December 20, 2018. However, in January 2019, he successfully petitioned to vacate both entries of default. The EDPA noted, among other comments, that "[d]efendants' conduct was not sufficiently culpable to ultimately warrant a default judgment," and that, given the procedural history, including the filing of the amended complaint and several defendants' earlier waiver of service, respondent "arguably misunderstood or miscalculated how much time each of his two sets of clients had to respond to the amended complaint."

Soon after the matter was reinstated, Shelton voluntarily dismissed Jacovetti Law and Jacovetti as defendants, and the matter proceeded against FCS, Yashayev, and Shargel. Respondent timely filed a motion to dismiss (which the court denied), followed by an answer to the complaint.

On an unspecified date, Shelton served discovery requests on respondent's clients, to which respondent failed to timely respond. Consequently, on September 17, 2019, Shelton filed a motion for summary judgment. Respondent failed to timely file opposition to that motion.

Instead, on October 8, 2019 – a week after the deadline to file a response to the motion – respondent requested an extension until October 22 to do so, stating he would not need any additional extensions. On the same date, the EDPA struck Shelton's motion based on technical deficiencies, and Shelton

immediately filed a corrected motion; thus, respondent automatically received an additional two weeks, until October 22, to respond.

Nevertheless, on October 22, 2019, respondent filed another motion for an extension of time to respond, without endeavoring to put forth good cause for needing more time. The EDPA denied the motion, stating, in part, that "[d]efendants' delay in seeking this extension is consistent with their pattern of inattentiveness to this litigation," and noting that the defendants had been "on notice of the issues to be raised and the diligence to be done to prepare a response" to the motion for more than a month.

Subsequently, respondent filed no opposition to the summary judgment motion.

In the interim, respondent also failed to timely file a corporate disclosure statement for FCS, as Fed. R. Civ. P. 7.1(a) requires.[1] On October 24, 2019, he belatedly filed the disclosure statement, in response to an order to show cause.

On December 11, 2019, the trial court granted, in part, Shelton's summary judgment motion. Relevant here, the court entered judgment in favor of Shelton against FCS, Yashayev, and Shargel, in the amount of $27,000.

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[1] Pursuant to Fed. R. Civ. P. 7.1, "[a] nongovernmental corporate party . . . must file a statement that: (A) identifies any parent corporation and any publicly held corporation owning 10% or more of its stock; or (B) states that there is no such corporation" with the party's "first appearance, pleading, petition, motion, response, or other request addressed to the court."

Respondent failed to timely file a motion for reconsideration of the order granting summary judgment, instead filing for reconsideration on January 27, 2020, well beyond the fourteen-day deadline.[2] The trial court denied the motion two days later.

On June 1, 2020, respondent filed a second motion for reconsideration. After the trial court denied that motion, respondent timely filed a notice of appeal. The defendants later retained new counsel and, following consultation with that attorney, withdrew the appeal.

The second of the three matters at issue, the Jacovetti matter, originated on January 9, 2020, when respondent filed a complaint in the EDPA on behalf of plaintiffs Jacovetti Law; Jacovetti; FCS; Shargel; and Yashayev, against defendants Shelton; Final Verdict Solutions; and Dan Boger. The plaintiffs alleged that Shelton and the other defendants had violated the Racketeer Influenced and Corrupt Organizations Act (RICO).

Respondent then failed to timely file corporate disclosure statements for the two corporate parties (FCS and Jacovetti Law), as required by Fed. R. Civ. P. 7.1. Thus, on January 27, 2020, the court ordered him to file these statements, but respondent still did not comply.

[2] As more fully described below, on January 9, 2020, respondent initiated a separate civil suit on defendants' behalf against Shelton and others, alleging violations of the Racketeer Influenced and Corrupt Organizations Act (RICO).

Consequently, on February 14, 2020, the court entered an order to show cause why it should not sanction respondent for failure to comply with its January 27 order. Respondent failed to timely respond to the order to show cause. Instead, three days after his response was due, he filed a motion for an extension of time to respond to the orders, to provide the corporate disclosure statements, and to show cause. The trial court found that he made "no showing of excusable neglect or good cause" for an extension; nevertheless, it allowed him until February 28 to respond.

On February 28, 2020, respondent filed a second motion for extension of time to respond to the orders.

In the interim, the defendants had filed an answer to the complaint and a motion for judgment on the pleadings, pursuant to Fed. R. Civ. P. 12(c). Respondent represented, in his first motion for an extension of time to respond to the orders, that, if permitted, he would file an amended complaint that would address the issues raised in defendants' motion for judgment on the pleadings. He failed, however, to respond to the motion for judgment on the pleadings. Consequently, on February 27, 2020, the court granted that motion and dismissed the claims against Shelton and Final Verdict Solutions, with prejudice. The claims remained as to Boger, on whom respondent still had not

effected service; eventually, those claims also were dismissed, without prejudice, due to failure to effect service.

On March 1, 2020, defendants filed a motion for sanctions, pursuant to 28 U.S.C. § 1927 (Section 1927), arguing, among other things, that respondent had filed the litigation "unreasonably and vexatiously."[3] The court scheduled a hearing for March 12, 2020 to address defendants' motion for sanctions and respondent's motion for an extension.

On March 6, 2020, respondent filed the corporate disclosure statements; opposition to the defendants' motion for sanctions; and a motion to re-open the matter and to permit the filing of an amended complaint.

At the March 12, 2020 hearing, the court questioned respondent, under oath, as to why, having filed a corporate disclosure statement for FCS in the Shelton matter only months earlier, he needed so much time to file the FCS statement in the Jacovetti matter; why he had not informed the court of any difficulties encountered in trying to contact FCS; and why, if he was in communication with Jacovetti as frequently as he claimed to be, he did not at least timely file the Jacovetti Law statement. Ultimately, the court concluded

[3] 28 U.S.C. § 1927 provides that "[a]ny attorney or other person admitted to conduct cases in any court of the United States . . . who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorneys' fees reasonably incurred because of such conduct."

that respondent had "intentionally ignored the court's deadlines" in "bad faith" and with "willful disregard for those deadlines." The court outlined sanctions it was considering and provided respondent one week to file a response to the proposed sanctions.

However, the court declined to find the litigation "vexatious" or harmful to the opposing party and, thus, denied defendants' motions for sanctions under Section 1927. It clarified, instead, that it was exercising the court's inherent power to enter the order to show cause based on respondent's failure to file the corporate disclosure statements.

On March 19, 2020, respondent timely filed a response to the proposed sanctions, arguing against their imposition.

On March 27, 2020, the court entered an order imposing a judicial reprimand and sanctions on respondent. In the accompanying memorandum, the court concluded that respondent "willfully disregarded this [c]ourt's [o]rder that he file a Rule 7.1 disclosure statement and that he willfully disregarded the deadline to respond to the [c]ourt's [o]rder to [s]how [c]ause." The court observed that, during the hearing to address the first order to show cause, respondent "was not contrite. To the contrary, he lied to the [c]ourt about the reason for his actions, on the record and under oath." Further, the court explained that, after it "afforded [respondent] the opportunity to respond to the

proposed sanctions in writing," he "finally showed a little bit of contrition;" nevertheless, "given his history, the [c]ourt does not believe it."

Continuing, the court described respondent's "long history of running afoul of courts in the Third Circuit," citing six other matters in which respondent had failed to comply with court orders, follow the Federal Rules of Civil Procedure, or raise meritorious claims; in several cases, respondent had been sanctioned or referred for further disciplinary proceedings. The court explained that it was not sanctioning respondent for his past violations; rather, "the prior sanctions, and [respondent]'s failure to change his ways, demonstrate that harsher sanctions are necessary to make the point" and to "correct or deter similar conduct from [respondent] in the future."

The court ordered respondent to pay, within fourteen days, "a sanction of $50.00 for each day he had failed to comply with the [c]ourt's [o]rder from January 27, 2020 (February 2, 2020 through March 6, 2020) or $1,600.00 to the [c]ourt's registry;" to order, within two days, the transcript from the March 12, 2020 hearing; to provide, within seven days of receiving the transcript, the sanctions order, court's memorandum, and hearing transcript to every disciplinary committee of every state bar and federal court to which he was admitted to practice; within the same timeframe, to provide these documents to the court handling Edwards v. Wells Fargo Bank National Association et al.,

then pending before the DNJ; and, finally, to provide the same documents to his clients.

Respondent timely complied with all the sanction requirements.

On April 27, 2020, the court granted respondent's motion to re-open the Jacovetti matter, and respondent then filed an amended complaint.

Respondent retained counsel, Matthew B. Weisberg, Esq., and, on May 5, 2020, Weisberg filed a motion for reconsideration of the sanctions order. On May 20, 2020, the court denied the motion for reconsideration. In its accompanying memorandum, the court explained that respondent had "willfully disregarded the [c]ourt's [o]rders" and "[t]hen . . . doubled down and lied to the [c]ourt when he had the opportunity to explain his failures." It reiterated that it had considered respondent's history "in determining whether lesser sanctions will have the deterrent effect that they should have," and concluded that, because "lesser sanctions imposed in other cases have not corrected his behavior . . . lesser sanctions would not be effective here."

Also on May 20, 2020, the court denied a motion by defendants Shelton and Final Verdict Solutions to disqualify respondent as attorney of record, based on an apparent error in providing the sanctions order to the correct entities, which respondent had then cured. It found, in addition, that respondent had

informed his clients about the sanctions, as the order required, and therefore, the court declined to "deprive [respondent's] clients of their chosen counsel."

On May 21, 2020, the defendants filed a motion to dismiss the amended complaint, to which respondent timely replied. On September 1, 2020, the court granted the defendants' motion, with prejudice, finding that plaintiffs' amended complaint failed to "allege[] predicate acts to support their RICO claim."

In the third of the three matters at issue, the Drake matter, on July 12, 2018, respondent filed his appearance on behalf of Cary Drake, a plaintiff who, in November 2016, had filed suit pro se against Wells Fargo Bank, Jeremy Doppelt, and Powers Kirn, in the DNJ. Although the suit had been filed more than a year-and-a-half earlier, Drake had never served the defendants with the summons and complaint.

Drake's lawsuit followed the entry, in June 2013, of a judgment for $573,067 against him in connection with a mortgage foreclosure action in the Superior Court of New Jersey, Union County, Chancery Division, "to regain possession of his former home from Wells Fargo Bank . . . or from the successor bidder at a sheriff's sale as well as for other damages he incurred." Jeremy Doppelt Realty Management, LLC, had purchased the home at a sheriff's sale in May 2016. However, several months after Doppelt Realty acquired the home, Drake obtained a report from an expert who opined that mortgage documents

filed in the state court matter had been "produced through forgeries and fraudulent methods."

After entering his appearance on Drake's behalf, in July 2018, respondent sought sixty days to file a second amended complaint. The trial court granted the request, setting a deadline of September 12, 2018 for respondent to file and serve the amended complaint. Respondent timely filed the amended complaint but failed to serve it by the September 12 deadline.

The amended complaint included allegations against Altisource Solutions, Inc. (Altisource), a corporation that was not a party and had not been involved in the underlying mortgage matter. Three months later, on December 12, 2018, without leave of court or consent from opposing counsel, respondent filed a third amended complaint, removing references to Altisource. The third amended complaint contained a footnote stating that respondent was filing it "not for substantive purposes and only to correct some spelling and grammatical errors that were caught after the filing."

Respondent failed to serve the third amended complaint and summons within ninety days. Accordingly, on March 21, 2019, the court issued a notice of call for dismissal, stating the matter would be dismissed on March 29 unless he filed proof of timely service. On March 29, 2019, respondent filed affidavits establishing that service had been effectuated on March 27 and 28.

On April 18, 2019, defendant Powers Kirn filed an answer and a motion to dismiss the third amended complaint. Powers Kirn alleged that respondent's complaint included material "cut and paste from another filing," noting that it referred to cross-plaintiffs, although there were none; two foreclosure actions, whereas there was only one; and "Blue Water" and "US Bank as Trustees" as owners and holders of the debt in dispute, although these entities had not been parties to the state court action.

Also on April 18, 2019, Powers Kirn filed a third-party complaint against respondent, based on his failure to timely serve the second amended complaint; his misstatement, in that complaint, that it was filed only to correct spelling and grammatical errors; and two other allegations regarding respondent's practice that are unrelated to any of the RPC violations underlying this matter.

On an unspecified date, defendant Wells Fargo likewise filed a motion to dismiss the third amended complaint.

Respondent requested and received an extension, until May 31, 2019, to respond to the motions to dismiss and to Powers Kirn's third-party complaint against him. However, respondent failed to file opposition to the motions or to answer the complaint by that date. Thus, on July 3, 2019, Powers Kirn filed a request for entry of default judgment.

On July 7, 2019 – more than five weeks after the May 31 deadline – respondent filed an answer to Powers Kirn's third-party complaint, along with a response to its July 3 request for entry of default. On July 24, 2019, Powers Kirn filed a motion to strike respondent's answer to the third-party complaint.

Thereafter, respondent requested and received a twenty-one-day extension of time to oppose the two motions to dismiss and the motion to strike his answer to the third-party complaint. In compliance with this final extension, on August 29, 2019, he filed opposition to the three motions.

On November 26, 2019, the court dismissed Drake's complaint. As summarized in the joint petition, the court concluded that:

> a) [u]nder Rooker-Feldman, it did not have subject matter jurisdiction to address 12 of the 16 counts as doing so would have required the Court to review and reject the foreclosure judgment;
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> b) [s]ince . . . New Jersey's Entire Controversy Doctrine bars piecemeal litigation, Mr. Drake's claims for violations of the Truth-In-Lending Act and RESPA [the Real Estate Settlement Procedures Act] should have been asserted in the [s]tate [c]ourt [a]ction;
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> c) Mr. Drake's claim under RESPA was time-barred;
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> d) [t]hree counts failed to state a claim on which relief may be granted;
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> e) [t]he RICO Claim in Count One failed to plead predicate RICO acts with particularity and the presence of a RICO enterprise;

> f) [t]he Defamation Claim and Claim for violations under Fair Credit Reporting Act ("FCRA") (Counts Four and Fourteen) failed to plead that a defamatory statement was made to a third party and failed to recognize that there is no private cause of action by an individual for violations under FCRA; and
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> g) Mr. Drake failed to allege that he notified a credit reporting agency of a dispute and anyone regarding him as a consumer.
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> [Joint Petition for Discipline on Consent ¶ 97 (Aug. 11, 2021).]

Also on November 26, 2019, the court dismissed Powers Kirn's third-party complaint against respondent. The record does not document the reasons for the dismissal of that complaint.

On September 25, 2020, the ODC sent respondent a Form DB-7, requesting his statement of position regarding allegations of misconduct in connection with his handling of the Shelton and Jacovetti matters.[4] On November 8, 2020, respondent submitted his answers to the allegations.

Further, on November 23, 2020, the ODC sent respondent a second DB-7, this time requesting his statement of position regarding allegations of misconduct in connection with his handling of the Drake matter. Although the

[4] A form DB-7 (Request for Statement of Respondent's Position) is used by the district offices of Pennsylvania's Office of Disciplinary Counsel to notify an attorney of allegations of misconduct and to seek the attorney's response to the allegations. See Pa. Disciplinary Bd. R. 87.7(b).

record does not include respondent's answer, he presumably submitted one, insofar as the ODC did not charge him with failure to respond to a DB-7, in violation of Pa. R.D.E. 203(b)(7).

On August 11, 2021, the ODC and respondent filed with the Pennsylvania Disciplinary Board a joint petition in support of discipline on consent, recommending a two-year suspension, pursuant to Pa. R.D.E. 215(d).[5] In respondent's accompanying verification and affidavit, he "acknowledge[d] that the material facts set forth in the Joint Petition are true." Within the petition, respondent admitted that his conduct violated the following Pennsylvania Rules of Professional Conduct: Pa. RPC 1.1; Pa. RPC 1.3; Pa. RPC 3.1; Pa. RPC 3.2; Pa. RPC 8.4(c); and Pa. RPC 8.4(d).

In mitigation, the parties noted that respondent admitted engaging in misconduct and violating the charged Rules of Professional Conduct; cooperated with the ODC; was "remorseful for his misconduct and understands that he should be disciplined with a sanction that requires him to establish his fitness prior to being re-instated to the practice of law;" timely reported the formal

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[5] Pa. R.D.E. 215(d), governing discipline on consent, provides that "[a]t any stage of a disciplinary investigation or proceeding, a respondent-attorney and Disciplinary Counsel may file a joint Petition in Support of Discipline on Consent. The Petition shall include the specific factual allegations that the attorney admits he or she committed, the specific Rules of Professional Conduct and Rules of Disciplinary Enforcement allegedly violated and a specific recommendation for discipline." The petition also must be accompanied by an affidavit "stating that the attorney consents to the recommended discipline" and containing other specific acknowledgments set forth by the Rule.

reprimand in the Jacovetti matter to the ODC; subsequently, “made changes in the operation of his firm” by “hir[ing] a paralegal/administrative assistant to assist him in keeping track of deadlines and calendaring court appearances” and “accept[ed] fewer representations, which he limits to practice[] areas with which he is most familiar;” and, finally, “acknowledge[d] that, if he is reinstated in the future, he should not practice law as a sole practitioner.”

On October 1, 2021, based on the recommendation of a three-member panel of the Pennsylvania Disciplinary Board, the Pennsylvania Supreme Court granted the joint petition and suspended respondent, on consent, for a period of two years. Office of Disciplinary Counsel v. Thomas, 2021 Pa. LEXIS 3722 (2021).

Contrary to Rule 1:20-14(a)(1), respondent failed to promptly notify the OAE of his Pennsylvania suspension.

By letter dated April 8, 2022, the Honorable Margaret Goodzeit, P.J.Ch., Superior Court of New Jersey, Chancery Division, Somerset, Hunterdon, and Warren Counties, informed the Office of Board Counsel (OBC) that respondent had appeared before her on April 7 and, further, that she had learned he was suspended from the practice of law in Pennsylvania. The OBC forwarded Judge Goodzeit’s correspondence to the OAE.

By letter dated June 6, 2022, the OAE informed respondent that it had become aware of his suspension from the practice of law in Pennsylvania and, accordingly, had docketed the matter for investigation.

Subsequently, on February 7, 2023, the OAE filed the present motion for reciprocal discipline.

The OAE urged us, in its written submission and during oral argument, to find that, in the Shelton, Jacovetti, and Drake matters, respondent violated RPC 1.1(a); RPC 1.3; RPC 3.2; and RPC 8.4(d); in addition, he violated RPC 1.1(b) by grossly neglecting the three matters; moreover, in the Drake matter, he violated RPC 3.1; further, in the Jacovetti and Drake matters, he violated RPC 3.3(a)(1) and RPC 8.4(c); and finally, in the Shelton and Jacovetti matters, he violated RPC 3.4(d).

Specifically, the OAE alleged that respondent's handling of each of the three matters evidenced gross neglect and failure to diligently pursue his clients' interests, in violation of RPC 1.1(a) and RPC 1.3. In addition, noting that respondent had grossly neglected three distinct client matters, the OAE concluded that his conduct evidenced a pattern of neglect, in violation of RPC 1.1(b).

Moreover, the OAE argued that, in the Drake matter, respondent filed a frivolous pleading, in violation of RPC 3.1. It highlighted, first, that the

complaint "was merely a copy-paste of numerous other complaints," as evidenced by its reference to a defendant who was not a party to the matter; cross-plaintiffs who did not exist; two foreclosure actions, when there was only one; and entities that were never involved. Further, analogizing the Drake complaint to the frivolous complaint filed by the attorney in In re Harris, 182 N.J. 594 (2005), the OAE urged that respondent, like Harris, "filed a [c]omplaint that was legally unreasonable" and "without factual foundation." In the Matter of E. Lorraine Harris, DRB 04-069 (May 25, 2004) (recommending reprimand), disbarment ordered, In re Harris, 182 N.J. 594 (2005) (imposing disbarment for totality of misconduct in this matter and four others and weighing attorney's extensive disciplinary history). The OAE reasoned that the district court's dismissal of the Drake complaint was based on "a myriad of issues[,] a reasonable inquiry into which would have revealed the pleading was unsupported."

In addition, the OAE argued that respondent failed to expedite litigation, thereby violating RPC 3.2, by failing to provide discovery in the Shelton matter; failing to file documents requested by the court and repeatedly requesting extensions in all three matters; and filing a frivolous pleading in the Drake matter.

In addition to charging respondent with the above violations, which correspond to the Pennsylvania RPC violations enumerated in the joint petition submitted to the Pennsylvania Disciplinary Board, the OAE also charged respondent with violating RPC 3.3(a)(1) and RPC 3.4(d).[6]

The OAE argued that, contrary to RPC 3.3(a)(1), respondent "knowingly made a false statement of material fact or law" in the Jacovetti matter. There, the court determined "to not be credible" his "claim that he did not file corporate disclosure statements because he was waiting for information from his client," noting that he had previously filed a corporate disclosure statement for the same client only a few months earlier in the Shelton matter and did not explain why he needed more information. The OAE further argued that he made false statements pertaining to the third amended complaint in the Drake matter.

The OAE also argued that respondent violated RPC 3.4(d) "[b]y failing to make reasonably diligent efforts to comply with discovery in the Shelton and Jacovetti matters," and, in addition, by failing to comply, in the Jacovetti matter, with the district court's January 27, 2020 order requiring him to provide the corporate disclosure statements for FCS and Jacovetti Law.

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[6] The ODC did not charge respondent with the Pennsylvania equivalent of RPC 3.3(a)(1). That rule – Pa. RPC 3.3(a)(1) – provides that "[a] lawyer shall not knowingly: . . . make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer[.]" Pennsylvania does not have an RPC that is equivalent to RPC 3.4(d).

The OAE further argued that respondent's "express misrepresentations" to the court concerning the corporate disclosure statement in the Jacovetti matter and the third amended complaint in the Drake matter – coupled with his filing of the Drake action – evidenced bad faith and intentional misrepresentation, in violation of RPC 8.4(c).[7]

Finally, the OAE asserted that respondent violated RPC 8.4(d) by causing a waste of judicial resources through filing frivolous litigation, engaging in delay, and lacking diligence, "caus[ing] an undue burden on the opposing attorneys and the [c]ourt who were forced to file and hear numerous motions to combat [r]espondent's inaction."

Although respondent was suspended for a period of two years, on consent, in Pennsylvania, the OAE urged that "New Jersey discipline warrants substantially different discipline" under Rule 1:20-14(a)(4)(e), and asserted that, in accordance with New Jersey precedent, his misconduct warranted the imposition of an eighteen-month suspension.

In particular, the OAE highlighted In the Matter of Rachel H. Nash, DRB 17-235 (December 27, 2017), so ordered, 232 N.J. 362 (2018), in which an

[7] Although the OAE's brief refers to "the corporate disclosure statement in the Shelton matter," it is clear, from both the record and the OAE's cross-reference to the charged RPC 3.3(a)(1) violations, that the OAE intended to refer to the corporate disclosure statement in the Jacovetti matter.

attorney received a two-year suspension for misconduct that included making meritless motions; undertaking a fraudulent property transfer; failing to expedite litigation; knowingly disobeying obligations to the court; casting aspersions on the court and opposing counsel; fabricating documents; and wasting significant judicial resources in three matters spanning more than a decade. The OAE also cited In re Smith, 250 N.J. 44 (2022), noting that the attorney in that matter received a one-year suspension for misconduct touching on the same RPC violations, although not as extensive as the misconduct addressed in Nash.

The OAE, recognizing that respondent's misconduct was less egregious than Nash's, and weighing Smith as well, concluded that respondent's conduct in violation of RPC 3.1; RPC 3.2; RPC 3.3; RPC 3.4(d); RPC 8.4(c); and RPC 8.4(d) warranted the imposition of a one-year suspension. The OAE further recommended expanding the term of suspension by six months based on respondent's gross neglect and lack of diligence in three matters.

Accordingly, the OAE argued that respondent should receive an eighteen-month suspension.

The OAE argued, in aggravation, that respondent failed to notify the OAE of his Pennsylvania discipline, as Rule 1:20-14(a)(1) requires. In the OAE's view, this omission was "particularly egregious" because respondent "continued to practice in New Jersey . . . in affront to the rule's intended safeguards."

In mitigation, the OAE noted that respondent had no disciplinary history. The OAE further noted that he cooperated with Pennsylvania disciplinary authorities and "voiced his contrition" in connection with the Pennsylvania disciplinary matter.

The OAE also requested that, "on reinstatement to practice and until the further Order of the Court, [r]espondent not be permitted to practice as a sole practitioner and . . . , in addition, practice under the supervision of a practicing attorney approved by the OAE." During oral argument, the OAE proposed that these conditions be imposed for two years, subject to further Order of the Court.

In respondent's brief to us, he argued that the motion for reciprocal discipline should be denied and asserted that he did not engage in "direct violations of the RPC [sic], including 1.1(a), 1.1(b), 1.3, 3.1, 3.2, 3.3[,] 3.4(d)[,] 8.4(c) or 8.4(d)."

Respondent did, however, admit that he had made "numerous mistakes." He claimed that, after the sanctions were imposed in Pennsylvania, he made significant changes; he also highlighted his ongoing practice in New Jersey. Although he acknowledged that other sanctions had been entered against him after he was disciplined in Pennsylvania, he described these sanctions as stemming from earlier cases and issues. Moreover, he argued that, in the present

matter, "the sanctions, if any, [should] be through 16 months from October 31, 2021, so they would now be complete."

In contrast to his written submission, during respondent's oral argument before us, he candidly acknowledged and apologized for his misconduct and violations of the RPCs. Expressing regret for the harms that resulted from his actions, he stated he had made a significant mistake by leaving his prior employment at a law firm and going "out on my own unprepared."

Addressing the Drake matter only, respondent argued that he had sought to expedite that case as much as possible and, further, that the judge "didn't necessarily find it had been frivolous." However, he stressed that, beyond those two assertions, he could not defend the actions documented in the record; reiterated that what he had done was wrong; and did not seek to present his misconduct as anything other than "absolutely incorrect."

Following our review of the record, we determine to grant the OAE's motion for reciprocal discipline. Pursuant to Rule 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, 219 (Pa. 1982) (quoting Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730, 732 (Pa. 1981)). Moreover, "[t]he conduct may be proven solely by circumstantial evidence." Ibid. (quoting Grigsby, 425 A.2d at 732).

In the context of a motion for reciprocal discipline, the Court's review "involves 'a limited inquiry, substantially derived from and reliant on the foreign jurisdiction's disciplinary proceedings.'" In re Barrett, 238 N.J. 517, 522 (2019) (quoting In re Sigman, 220 N.J. 141, 153 (2014)). Nevertheless, clear and convincing evidence must support each of our findings that respondent violated the New Jersey Rules. See Barrett, 238 N.J. at 521; In re Pena, 164 N.J. 222 (2000).

Notably, in this matter, respondent admitted to the material facts and the violations of the Pennsylvania RPCs that formed the bases for his consent to his two-year suspension. However, the Pennsylvania petition does not specify which RPC violations stem from each client's matter.

Reciprocal discipline proceedings in New Jersey are governed by Rule 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.

In our view, none of the above subsections apply to this case. Rather, based on New Jersey disciplinary precedent, we determine to follow the presumption set forth in Rule 1:20-14(a)(4), to grant the OAE's motion for reciprocal discipline, and to recommend the imposition of the identical discipline imposed by Pennsylvania – a two-year suspension.

Pennsylvania disciplinary authorities comprehensively reviewed the facts; further, in the Jacovetti matter, the EDPA issued detailed findings; and the ODC

and respondent entered into a joint petition wherein respondent admitted his misconduct. Moreover, respondent consented to a two-year suspension in Pennsylvania. As the Court observed in Sigman, 220 N.J. at 154, the "application of discipline identical to that imposed by the foreign jurisdiction . . . promotes the imposition of consistent sanctions for the misconduct of an attorney admitted to practice in multiple states."

Specifically, the record contains clear and convincing evidence that respondent violated the following Rules:

- RPC 1.1(a); RPC 1.1(b); RPC 1.3; RPC 3.2; and RPC 8.4(d) in the Shelton, Jacovetti, and Drake matters;
- RPC 3.1 in the Drake matter;
- RPC 3.3(a)(1) in the Jacovetti and Drake matters;
- RPC 3.4(d) in the Shelton matter; and
- RPC 8.4(c) in the Jacovetti and Drake matters.

However, we determine to dismiss the charge that respondent violated RPC 3.4(d) in connection with the Jacovetti matter.

Respondent's admitted misconduct clearly established, in each of the three client matters, violations of RPC 1.1(a); RPC 1.3; and RPC 3.2. In the Shelton matter, after the litigation was reinstated in January 2019, respondent failed to respond to discovery requests, then failed to file opposition to the resulting

motion for summary judgment; the trial court thus granted the motion, unopposed, and entered a $27,000 judgment against his clients. Respondent subsequently failed to timely file a motion for reconsideration of that order and judgment. Moreover, following his receipt of the opposing parties' discovery requests in 2019, his repeated non-compliance with deadlines contributed to delays that persisted at least until June 2020 (the final date noted in the joint petition's description of the Shelton matter).

In the Jacovetti matter, respondent's negligence, failure to act with reasonable diligence, and engagement in conduct delaying litigation became evident within a month after he filed the complaint without disclosure statements for his two corporate clients. When the court then ordered him to file the statements, he failed to timely do so; failed to respond to the resulting order to show cause; failed to timely respond to two defendants' motion for judgment on the pleadings; and failed even to timely request extensions. As a result, the court granted the unopposed motion for judgment and entered an order dismissing his clients' claims against Shelton and Final Verdict Solutions. Although the court, two months later, granted respondent's motion to re-open the matter, his conduct resulted in needless delays, motion practice, and sanctions proceedings that extended from January until July 2020.

In the Drake matter, the plaintiff was pro se until July 2018, more than five years after the June 2013 entry of judgment in the mortgage foreclosure action against him in the Union County Chancery Division. Thus, respondent was not to blame for Drake's actions or inaction during this time, including his initiation of the matter in federal rather than state court; failure to notify a credit reporting agency, as required before filing a FCRA claim in court; and delay in raising the RESPA claim, which the court later determined to be time-barred.

But starting in September 2018, with the first pleading filed by respondent, he clearly and repeatedly demonstrated gross negligence and a profound lack of diligence, as he apparently failed to research Drake's claims or the applicable law, even on the fundamental issue of which court had subject matter jurisdiction. Moreover, he displayed alarming indifference towards accuracy in his filings: to cite just two examples, the second amended complaint included allegations against a "defendant" who was not even a party to the litigation; and the third amended complaint named, as owners and holders of the debt in dispute, two entities that were never parties to the state court action. Prolonging the litigation by many months, he failed to timely serve both the second and the third amended complaints on the opposing parties; missed multiple other deadlines; and repeatedly delayed filing answers or opposition to defendants' motions.

In addition to the violations of RPC 1.1(a), RPC 1.3, and RPC 3.2 in each of the matters, we find that respondent's mishandling of these three matters established a pattern of neglect, in violation of RPC 1.1(b).

Moreover, respondent engaged in frivolous litigation, in violation of RPC 3.1. That Rule provides that "[a] lawyer shall not bring or defend a proceeding, nor assert or controvert an issue therein unless the lawyer knows or reasonably believes that there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law, or the establishment of new law."

As noted by the OAE, our decision in Harris, DRB 04-069 at 15-19, is instructive. There, respondent filed a federal complaint asserting two issues that lacked foundation in law and fact. First, notwithstanding the fact that her client had not been employed by defendants, she asserted a claim under the Opposition Clause of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-3(a), which applies only when an employee seeks redress from an employer. Second, although the defendants (PSE&G and a PSE&G employee) were not state actors, she asserted a claim under 42 U.S.C. § 1983, which provides for claims against entities or individuals acting "under color of state law." In addition, before being eligible to file a complaint in federal court, her client first needed to file an employment discrimination complaint with the Equal Employment Opportunity Commission;

however, her client had not done so. We concluded that "respondent's belief in the legal sufficiency of the case was not reasonable," and, accordingly, that she had violated RPC 3.1.

Here, the court in the Drake matter determined that twelve of the sixteen counts of the complaint fell outside the scope of its subject matter jurisdiction, as constrained by the Rooker-Feldman doctrine. As interpreted in the Third Circuit, this doctrine applies where "(1) the federal plaintiff lost in state court; (2) the plaintiff 'complain[s] of injuries caused by [the] state-court judgments'; (3) those judgments were rendered before the federal suit was filed; and (4) the plaintiff is inviting the district court to review and reject the state judgments." Great Western Mining & Mineral Co. v. Fox Rothschild LLP, 615 F.3d 159, 166 (3d Cir. 2010) (quoting Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 544 U.S. 280, 284 (2005)). Most of the issues raised by respondent previously had been litigated in the state court action, resulting in a judgment against Drake, yet respondent nevertheless sought to have the district court review and reject that judgment. Had respondent researched the scope and limits of federal jurisdiction to review a state foreclosure action, he could not have "reasonably believe[d] that there [was] a basis in law" to pursue each of the twelve counts that the district court rejected under the Rooker-Feldman doctrine.

Of the remaining four claims, three were pled without requisite bases in facts. First, in asserting the RICO claim, the court found respondent "fail[ed] . . . to plead the presence of a RICO enterprise."

Second, in asserting the defamation claim, respondent ignored the fact that Drake himself acknowledged that the allegedly defamatory statements had been made to him. Thus, he failed to satisfy the element of "communica[tion] to another person." See Davis v. N.J. Dep't of Corr., 2018 U.S. Dist. LEXIS 148985 at *25 (D.N.J. Aug. 31, 2018) (noting that a defamation claim requires "that defendants made a false and defamatory statement concerning [plaintiff] . . . to another person").

Third, in asserting the FCRA claim, respondent ignored a prerequisite for that claim: namely, that the consumer "first inform the credit agency that s/he disputes . . . information" in the credit agency's file. Cortez v. Trans Union, LLC, 617 F.3d 688, 714 (3d Cir. 2010) (citing 15 U.S.C. § 1681i(a)(1)). It is this notice of dispute that then imposes on the credit agency an obligation to reinvestigate the information and respond appropriately. Ibid. Here, however, Drake "did not allege that he notified a credit reporting agency of a dispute as to a statement regarding him as a consumer."

Thus, the RICO, defamation, and FCRA claims in the Drake complaint lacked reasonable bases in fact and law.

Finally, the court dismissed a sixteenth claim in that complaint on grounds that it was barred by New Jersey's entire controversy doctrine, and so should have been asserted in the state court action. There is not enough information in the record to determine whether respondent could have reasonably believed that this specific count had a basis in law and fact.

Respondent's emphasis on the fact that the court did not declare the Drake complaint to be frivolous misses the mark. For one, respondent unequivocally admitted, in the joint petition for discipline on consent, that he violated Pa. RPC 3.1, which prohibits "bring[ing] or defend[ing] a proceeding or assert[ing] or controvert[ing] an issue therein, unless there is a basis in law and fact for doing so that is not frivolous[.]"

Moreover, in the disciplinary context, the standard is not whether a trial court has declared an issue "frivolous," but whether the attorney asserted an issue that the attorney could not reasonably believe to have basis in law and fact. RPC 3.1; See In re Loigman, 224 N.J. 271 (2016) (determining that attorney violated RPC 3.1 by filing a complaint alleging child abuse based on the failure or refusal of the child's parents to allow him to practice or to accommodate the requirements of his religion, where the plain language of the statutory definition of "child abuse or neglect" did not encompass such parental conduct). There clearly were no grounds for respondent to reasonably believe that these counts

– or the counts dismissed for lack of jurisdiction under the Rooker-Feldman doctrine – had requisite foundations in law and fact.

The charged violations of RPC 3.3(a)(1) in the Jacovetti and Drake matters are likewise supported by clear and convincing evidence. In the Jacovetti matter, the court determined that respondent lied about the reasons for his failure to timely file the corporate disclosure statements.[8] In the Drake matter, respondent made substantive changes in the third amended complaint yet represented to the court that he filed it "not for substantive purposes" but "only to correct some spelling and grammatical errors that were caught after filing."

The OAE also charged respondent with violating RPC 3.4(d) in both the Shelton and Jacovetti matters. Respondent clearly violated that Rule in the Shelton matter by failing to respond to plaintiff's discovery requests. However, in the Jacovetti matter, respondent's failure to provide the court with corporate disclosure statements for FCS and Jacovetti Law was not a discovery violation; instead, as the court stated during the March 12, 2020 hearing, respondent's conduct violated the procedural requirement to provide these documents to the court. Compare Fed. R. Civ. P. 7.1 (requiring a corporate party to file a

[8] The OAE did not charge respondent with violating RPC 3.4(c) (knowing violation of the rules of a tribunal). Accordingly, we are precluded from finding a violation under that Rule. See R. 1:20-4(b) (providing that the complaint shall "specify[] the ethical rules alleged to have been violated"). However, respondent's repeated failures to comply with court orders further supports our finding that he engaged in conduct prejudicial to the administration of justice (RPC 8.4(d)), as discussed below.

disclosure statement with its first appearance or filing), with Fed. R. Civ. P. 37 (addressing a party's failure to comply with discovery requests). Thus, we determine to dismiss the charge that respondent violated RPC 3.4(d) in the Jacovetti matter.

The record clearly and convincingly establishes that respondent engaged in conduct involving "dishonesty, fraud, deceit or misrepresentation," in violation of RPC 8.4(c), in both the Drake and the Jacovetti matters. In Jacovetti, he misrepresented the reasons for failing to timely provide the corporate disclosure statements and, in response to further questioning from the court, "doubled down" on his dishonest statements. In the Drake matter, respondent misrepresented the import of the third amended complaint by claiming it served only to correct spelling and grammatical errors, when in fact it removed Altisource as a defendant.

Finally, in all three matters, respondent prejudiced the administration of justice, in violation of RPC 8.4(d). In the Shelton matter, his failure to respond to opposing counsel's discovery requests and to comply with court deadlines needlessly wasted the court's resources on resulting motion practice. Moreover, in the Jacovetti matter, his failure to file corporate disclosure statements gave rise to months of proceedings on an order to show cause, several motions, and the imposition of sanctions. In addition, in the Drake matter, respondent

unnecessarily took up the court's time when his repeated failure to timely serve the complaint precipitated additional motion practice. Worse, most if not all the issues in the Drake complaint diverted the court's resources toward addressing baseless claims.

In sum, we determine to grant the motion for reciprocal discipline and find that, in all three matters, respondent violated RPC 1.1(a); RPC 1.1(b); RPC 1.3; RPC 3.2; and RPC 8.4(d). Further, he violated RPC 3.1 in the Drake matter; RPC 3.3(a)(1) in the Jacovetti and Drake matters; RPC 3.4(d) in the Shelton matter; and RPC 8.4(c) in the Jacovetti and Drake matters. We determine to dismiss the charge that respondent violated RPC 3.4(d) in the Jacovetti matter.

In cases where attorneys have mishandled multiple client matters, the Court generally has imposed suspensions ranging from three months to one year. See, e.g., In re Gonzalez, 241 N.J. 526 (2020) (three-month suspension for attorney's violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b) and (c) (failure to communicate with a client) in three matters; RPC 3.2 and RPC 3.4(d) in one matter; RPC 5.3(a) (failure to supervise nonlawyer staff) in six matters; RPC 8.1(a) and (b) (false statement of material fact in a disciplinary matter and failure to cooperate with disciplinary authorities); in one matter, the attorney provided fabricated documents to the OAE, in violation of RPC 8.4(c); in addition, he negligently misappropriated funds, commingled funds, and failed to adhere to

record keeping requirements, violating RPC 1.15(a) and (d); in aggravation, one client's case was dismissed with prejudice, and the attorney had disregarded the OAE's suggestion that he terminate the employment of a nonlawyer after he became aware of her repeated misconduct; in mitigation, the attorney had no prior discipline in twenty-two years at the bar); In re Pinnock, 236 N.J. 96 (2018) (three-month suspension for attorney whose misconduct spanned ten client matters; in nine matters, the attorney engaged in gross neglect, lacked diligence, and failed to communicate with clients; in four matters, she engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation; in aggravation, the attorney caused significant harm to her clients; in mitigation, she suffered from serious physical and mental health issues; prior reprimand); In re Tyler, 235 N.J. 323 (2018) (six-month suspension for attorney who engaged in misconduct in five client matters, violating RPC 1.1 (a) and (b), RPC 1.3, RPC 1.4(b), and RPC 1.5(b) (failure to set forth in writing the basis or rate of the attorney's fee); the attorney also engaged in conduct involving dishonesty, fraud, deceit, or misrepresentation by misrepresenting, to four clients, the status of their matters, violating RPC 8:4(c); two prior reprimands for similar misconduct); In re Suarez-Silverio, 226 N.J. 547 (2016) (one-year suspension for attorney who, over thirteen years, mishandled twenty-three client matters before the Third Circuit Court of Appeals, many of which ended by procedural termination; the

attorney also disobeyed court orders and made a misrepresentation to the court clerk, which enhanced the otherwise appropriate six-month suspension; prior admonition and reprimand for similar misconduct).

Generally, the discipline imposed on an attorney who makes misrepresentations to a court or exhibits a lack of candor to a tribunal, or both, ranges from a reprimand to a long-term suspension. See, e.g., In re Vaccaro, 245 N.J. 492 (2021) (reprimand for an attorney who misrepresented to the court, in an immigration matter, that he had no knowledge of his client's other counsel or his client's counseling, a violation of RPC 3.3(a)(1)); In re Vena, 227 N.J. 390 (2017) (default; reprimand for an attorney who submitted pleadings on behalf of a former client who had terminated the attorney's representation months earlier; the attorney also failed to communicate with the client and to cooperate with disciplinary authorities; in mitigation, the attorney had an unblemished career in more than forty-five years at the bar); In re Bakhos, 239 N.J. 526 (2019) (censure imposed on attorney who, in one of three client matters, misrepresented to the court that he had authority from his client to resolve the litigation by dismissing it and submitting the matter to binding arbitration, and by failing to notify the court and his adversaries that he did not have such authority, violations of RPC 3.3(a)(1) and (5) (failure to disclose a material fact to a tribunal, knowing that the omission is reasonably certain to mislead the

tribunal); these false statements to the court, along with his misrepresentations to his supervising attorney, also violated RPC 8.4(c); the attorney's misrepresentation to the court resulted in the cancellation of a scheduled jury trial and dismissal of a medical malpractice case in favor of binding arbitration and, thus, constituted a violation of RPC 8.4(d); in another client matter, the attorney falsely represented to the court that he was still working with his client on finalizing his client's discovery responses, even though he had not yet made his client aware of the pending requests, in violation of RPC 3.3(a)(1) and RPC 8.4(c); further, he wasted judicial resources, in violation of RPC 8.4(d), by his failure to comply with discovery, even in the face of court orders that he do so, resulting in the striking of his client's answer and the entry of a default against his client, along with the subsequent motions to vacate that default; the attorney also exhibited gross neglect, a pattern of neglect, and lack of diligence, and failed to communicate with the client in three matters; in mitigation, the attorney cooperated with disciplinary authorities, acknowledged his wrongdoing, and sought to alleviate any damage to his clients); In re Allen, 250 N.J. 113 (2022) (three-month suspension imposed on attorney who, in an attempt to avoid temporary suspension, engaged in dishonest conduct by sending a client a check from an account with insufficient funds; he also made misrepresentations to us and to the OAE, claiming to have settled a fee arbitration matter when he had

not; the attorney also committed recordkeeping violations and engaged in the unauthorized practice of law by practicing without professional liability insurance; prior admonition and censure); In re Forrest, 158 N.J. 428 (1999) (six-month suspension imposed on an attorney who, in connection with a personal injury action involving injured spouses, failed to disclose the death of one of his clients to the court, his adversary, and an arbitrator, and advised the surviving spouse not to voluntarily reveal the death; the attorney's motive was to obtain a personal injury settlement); In re Moras, 220 N.J. 351 (2015) (default; one-year suspension imposed on attorney who exhibited gross neglect, lacked diligence, and failed to communicate with the client in one matter, misled a bankruptcy court in another matter by failing to disclose on his client's bankruptcy petition that she was to inherit property, and failed to cooperate with the ethics investigation in both matters; extensive disciplinary history consisting of two reprimands, a three-month suspension, and a six-month suspension); In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust agreement required that at least $500,000 of the escrow funds remain

in reserve); In re Bernstein, 249 N.J.357 (2022) (two-year suspension imposed, on a motion for reciprocal discipline, on an attorney who violated RPC 3.3(a)(1) and RPC 8.4(c) by making misrepresentations of facts to a Virginia federal court regarding his prior discipline and lawsuits pending against him for legal malpractice; at least one client was substantially harmed by the attorney's misconduct); In re Heyburn, __ N.J. __ (2022), 2022 N.J. LEXIS 1111 (three-year suspension imposed, on a motion for reciprocal discipline, on an attorney who violated RPC 8.4(c) by making multiple misrepresentations on an application for pro hac vice admission in Pennsylvania, at a time he was ineligible to practice in that jurisdiction; in so doing, he engaged in conduct prejudicial to the administration of justice by preventing the court from having full opportunity to assess his fitness for pro hac vice admission; the attorney also engaged another attorney in carrying out his deception; extensive disciplinary history consisting of four censures and three terms of suspension, many involving deceptive behavior).

Attorneys who have filed frivolous litigation have received discipline ranging from reprimands to suspensions, including in matters where their conduct prejudiced the administration of justice. See, e.g., Loigman, 224 N.J. 271 (reprimand for attorney who, following the dismissal of an abuse and neglect complaint filed by a state agency, filed a second abuse and neglect

complaint, on behalf of the same child; the attorney did not serve the complaint, which listed no named defendants and which generally alleged that the child suffered “extreme” abuse because the child’s parents were unwilling to accommodate the child’s desire to practice a particular form of Judaism; the attorney also filed a notice of claim, pursuant to the New Jersey Tort Claims Act, alleging that the child had been the victim of repeated, unspecified acts of abuse by his parents, against which the Ocean County Prosecutor had failed to protect him; we determined that, as a matter of law, the parent’s refusal to accommodate the child’s religious preferences did not constitute abuse; we also found that the attorney’s failure to name the parents as defendants and to serve them with the complaint was a clear attempt to deny the parents due process; although the attorney did not repeatedly file the same actions in defiance of court orders or engage in other serious misconduct, the attorney continued to exhibit “a measure of hubris” in connection with his representation); In re Giannini, 212 N.J. 479 (2012) (censure for attorney who made numerous unprovoked, inflammatory, and fictitious statements about various judges and parties in post-judgment pleadings that the attorney had filed on behalf of his sister; the attorney also made repeated, frivolous discovery requests to judges who had no nexus to the litigation; the attorney further made knowingly false, outrageous statements in his post-judgment pleadings by alluding to matters that were either

irrelevant or unsupported by admissible evidence; finally, the attorney improperly attempted to compel his adversary and her counsel to withdraw their ethics grievance against him; the attorney displayed an "arrogant failure" to recognize his wrongdoing, given that he had "doubled down" on his baseless views of the New Jersey judiciary and of the disciplinary system in his brief to us); In re Yacavino, 184 N.J. 389 (2005) (six-month suspension imposed on attorney who was a plaintiff in four civil actions arising out of family and business disputes between him and his wife's relatives; he violated RPC 8.4(d), by filing multiple complaints that re-asserted claims that already had been dismissed, thus taxing the court's resources; the attorney also violated RPC 3.1 and RPC 3.2, by repeatedly filing the same claims after the court had dismissed them on their merits; mitigating factors included the attorney's unblemished forty-year career, the fact that he obtained summary judgment on some claims, the claims' "emotionally-charged" nature, the absence of harm to the client, his perception that the court had denied him critical discovery, and the fact that he was motivated not by venality but by the belief that he was right); In re Rheinstein, __ N.J. __ (2022), 2022 N.J. LEXIS 514 (one-year suspension imposed, on a motion for reciprocal discipline, in a matter concerning a construction loan agreement; the attorney filed a motion to vacate and revise the judgments that had been entered prior to his involvement in the matter; during

the hearing on the motion, the attorney interjected irrelevant accusations against his adversary's client and, thereafter, began sending threatening and erratic e-mails to opposing counsel; the attorney also began filing multiple frivolous motions in different venues, which the Maryland court found to be "vexatious" conduct); In re Garcia, 195 N.J. 164 (2008) (fifteen-month suspension imposed, in a reciprocal discipline matter, where the attorney filed several frivolous lawsuits and lacked candor to a tribunal; after her husband, with whom she practiced law, was suspended from the practice of law, the attorney aided him in the improper practice of law and used firm letterhead including his name during his suspension; the attorney also made false and reckless allegations about judges' qualifications in court matters); In re Nash, 232 N.J. 362 (2018) (two-year suspension imposed, in reciprocal discipline matter, on attorney who, over many years, engaged in a course of contempt and defiance of court orders in three civil actions in New York, filed four meritless motions, fabricated documents, and cast aspersions on the trial judge and opposing counsel; violations of RPC 3.1, RPC 3.2 (failure to treat with courtesy and consideration all persons involved in the legal process), RPC 3.4(c), RPC 4.4(a) (conduct that has no substantial purpose other than to embarrass, delay, or burden a third person), RPC 8.4(c), and RPC 8.4(d); in determining to impose a two-year suspension – the same discipline imposed in the New York disciplinary

proceedings – we observed that her "contumacious and fraudulent conduct . . . demanded the dedication of substantial judicial resources over a period of ten years" and was "out of the bounds of human decency and professionalism").

For purposes of determining the quantum of discipline, the most significant features of respondent's misconduct are his misrepresentations to the court; his assertion of issues that lacked bases in fact and law; and the prolonged waste of court resources on proceedings stemming from the above, as well as from his neglect of even the most basic requirements of representation, such as effectuating service on opposing parties and otherwise following applicable rules of procedure.

The OAE correctly analogizes this matter to Nash, while recognizing that respondent's misconduct was not as severe as the prolonged and injurious behavior that warranted a two-year suspension in that matter. Likewise, the OAE noted the Court's decision in In re Smith, where the Court imposed a one-year suspension based on the attorney's filing of frivolous litigation and conduct prejudicial to the administration of justice, among other violations.

Unlike respondent, Smith also engaged in conduct that had no substantial purpose other than to embarrass, delay, or burden a third person; failed to cooperate with disciplinary authorities; and, in a separate client matter, mismanaged funds he was required to hold in his attorney trust account, in

violation of RPC 1.15(d). However, in the instant matter, the totality of respondent's misconduct was at least as serious as Smith's, in that respondent, unlike Smith, engaged in gross neglect and a pattern of neglect, lacked diligence, delayed litigation, and made false statements of material fact to two tribunals.

To craft the appropriate discipline in this case, we also consider aggravating and mitigating factors. In mitigation, respondent has had no disciplinary history in New Jersey in his eleven years at the bar; however, we accord this minimal weight, given his longstanding, well-documented failure, "time and time again," to "respect and adhere to the rules and orders of the courts before which" he appeared, as the district court stated in its sanction memorandum in the Jacovetti matter.

In further mitigation, respondent stipulated to the facts and misconduct at issue and cooperated with Pennsylvania disciplinary authorities. Moreover, he has expressed remorse and, during the Pennsylvania proceedings, acknowledged that he should be required to establish his fitness before being reinstated to the practice of law and that, if he were reinstated in the future, he should not practice law as a sole practitioner.

In aggravation, and offsetting respondent's cooperation with the ODC, respondent not only failed to notify the OAE of his Pennsylvania discipline but also continued to practice law in New Jersey in the interim, casting into doubt

the sincerity of his representation to Pennsylvania authorities that he recognized the need to establish his fitness to practice law. His brief in this matter acknowledged his continued practice in New Jersey, while offering no explanation of his failure to inform New Jersey disciplinary authorities of his Pennsylvania suspension. During the eight-month span between the October 2021 entry of the Pennsylvania order of suspension, and the OAE's June 2022 letter to respondent, informing him that it had become aware of that suspension – while he ignored his obligation to inform the OAE of the Pennsylvania order – he represented clients in matters pending before the U.S. Court of Appeals for the Third Circuit; represented plaintiffs in two DNJ cases; and, in state court, sought to file two matters with the Appellate Division, and initiated or continued his representation of parties in at least half a dozen matters before the trial courts.

Also in aggravation, although respondent has no disciplinary history in New Jersey, he does have – as described in the March 2020 federal court order imposing sanctions – "a long history of running afoul of courts in the Third Circuit." Although his candor during oral argument, his acceptance of responsibility for his misconduct, and his stated intention to improve his practice are commendable, we are also mindful that his written submission to us was at

odds with his oral presentation, as well as with the joint petition that he entered into with the ODC.

On balance, we conclude that the aggravating factors outweigh the mitigating factors. Based on the foregoing, and recognizing the careful consideration given to shaping appropriate disciplinary measures by the Pennsylvania disciplinary authorities, following upon the EDPA's scrutiny of his pattern of infractions, we find no reason to impose different discipline in New Jersey than that imposed in Pennsylvania – a two-year suspension.

As a condition following reinstatement, because "[r]espondent acknowledge[d] that, if he is reinstated in the future, he should not practice law as a sole practitioner" in conjunction with his Pennsylvania discipline, we also recommend – as the OAE urged –that, for at least two years and until further Order of the Court, respondent should be precluded from practicing law as a sole practitioner. See In re Ali, 242 N.J. 518 (2020) (upon reinstatement and until further Order of the Court, the attorney was precluded from practicing law as a sole practitioner).

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 Joshua Louis Thomas
Docket No. DRB 23-027

Argued: March 16, 2023

Decided: July 6, 2023

Disposition: Two-year suspension

Members	Two-year suspension	Absent
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