Supreme Court of New Jersey
Disciplinary Review Board
Docket No. DRB 23-040
District Docket Nos. XIV-2018-0444E;
XIV-2019-0242E; XA-2020-0900E;
and XA-2020-0901E

In the Matter of	:
Joseph Rakofsky	:
An Attorney at Law	:

Decision

Argued: April 20, 2023

Decided: July 27, 2023

Darrell Felsenstein appeared on behalf of the Office of Attorney Ethics.

Robert Ramsey appeared on behalf of respondent.

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

This matter was before us on a recommendation for a six-month suspension filed by the District XA Ethics Committee (the DEC). Two formal ethics complaints, which were consolidated for a hearing, charged respondent with a variety of violations of the Rules of Professional Conduct.

In the matter docketed as XIV-2018-0444E (the Weber I, Weber II, and Malka matters), the complaint charged respondent with having violated RPC 1.6(a) (failing to maintain confidential client information); RPC 3.1 (three instances – engaging in frivolous litigation); RPC 3.2 (failing to treat all persons involved with the litigation process with courtesy and consideration); RPC 3.3(a)(1) (two instances – making a false statement of material fact or law to a tribunal); RPC 4.1(a)(1) (making a false statement of material fact or law to a third person); RPC 8.4(c) (three instances – engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and RPC 8.4(d) (three instances – engaging in conduct prejudicial to the administration of justice).

In the matter docketed as XIV-2019-0242E (the Duffy matter), the complaint charged respondent with having violated RPC 1.16(d) (failing to protect a client's interests upon termination of representation); RPC 3.3(a)(1) or RPC 3.3(a)(2) (failing to disclose a material fact to a tribunal);[1] RPC 8.4(c); and RPC 8.4(d).

For the reasons set forth below, we determine that a one-year suspension, with conditions, is the appropriate quantum of discipline for the totality of respondent's misconduct.

[1] With respect to this charge, the complaint charged respondent in the alternative.

Respondent earned admission to the New Jersey bar in 2010. During the relevant time, he maintained a practice of law office in Jersey City, New Jersey.

On November 4, 2015, respondent was censured for violating RPC 1.5(b) (failing to communicate in writing the basis or rate of the legal fee); RPC 1.15(d) (failing to comply with the recordkeeping requirements of R. 1:21-6); RPC 7.1(a) (engaging in false or misleading communications about the lawyer, the lawyer's services, or any matter in which the lawyer has or seeks a professional relationship); and RPC 7.5(b) (failing to identify on firm letterhead the jurisdictional limitations on those not licensed to practice in New Jersey). In re Rakofsky, 223 N.J. 349 (2015) (Rakofsky I).

In that matter, respondent, who had virtually no experience when he opened his law firm upon graduation from law school and passing the bar, falsely stated in an advertisement that he was "experienced," in general, and that he had "federal and state trial experience," in particular. He also misrepresented that he had handled significantly more matters than would have been possible in a single year, given their complexity and the limited period involved. In the Matter of Joseph Rakofsky, DRB 15-021 (August 27, 2015) at 13.

Further, respondent's firm letterhead failed to indicate the jurisdictional limitations of two other named attorneys who were not licensed to practice law in New Jersey. Id. at 13. Respondent also failed to provide one client, whom he

previously had not represented, a written fee agreement, and failed to maintain a file for that client, as the Court Rules require. Id. at 17.

We acknowledged that respondent's misconduct ordinarily would be met with an admonition or reprimand, particularly in light of his lack of prior discipline and inexperience at the time of the misconduct. However, in aggravation, we accorded significant weight to the fact that respondent's misrepresentations were not merely exaggerations but, rather, were brazen lies, incapable of substantiation. Id. at 23-24, 25. Respondent had not simply inflated his credentials, he had fabricated them. Id. at 25. Further, we emphasized respondent's disingenuous testimony during the ethics hearing when, despite his acknowledgement that one retainer agreement identified him as the attorney in charge of the case, he testified that it was "not really accurate." Id. at 13.[2] As a condition to his discipline, we required respondent to attend four credit hours of continuing legal education courses in the subjects of attorney ethics and law office management. Id. at 25.

We now turn to the facts of this matter.

On March 2, 2021, prior to the commencement of the ethics hearing in this matter, the OAE and respondent, through his counsel, Robert Ramsey, Esq.,

[2] Chair Gallipoli filed a separate dissent, voting to impose a three-month suspension, finding that respondent had engaged in the unauthorized practice of law, which the OAE had charged, but which was not found by the majority.

entered into two stipulations of fact, with supporting exhibits, with respect to the Weber I, Weber II, Malka, and Duffy matters, adopting most, but not all, of the facts alleged in each complaint. Nevertheless, respondent denied that his conduct violated any Rules of Professional Conduct. On June 27 and 28, 2022, a hearing occurred, focusing on the disputed facts and mitigation.

We separately address each matter.

The Weber I Matter (District Docket No. XIV 2018-0444E – Count One)[3]

In March 2018, Nigel Weber,[4] the grievant, retained respondent to represent him and his company, Consumer Affordability Solutions (CAS), in defense of a civil case pending in the Superior Court of New Jersey, Atlantic County, Special Civil Part, captioned Jones v. Consumer Affordability Solutions, et al., Docket No. ATL-DC-841-18.

[3] The OAE's three count complaint in Docket No. XIV-2018-0444E addressed respondent's misconduct across the Weber I, Weber II, and Malka matters. Specifically, counts one and two pertained to respondent's misconduct in connection with his representation of his client, Nigel Weber, in special civil part litigation, and his subsequent lawsuit for legal fees and damages against Weber. Count three of the OAE's complaint pertained to respondent's conduct toward Dr. Michael Malka, D.D.S., a dentist whom respondent did not know and had met on just one occasion.

[4] Nigel Weber's legal name is Marius Peter Van Zweeden. He used Nigel Weber as a pseudonym for business purposes. During the ethics hearing, Weber testified that, when he contacted respondent, he used his alias rather than his legal name for "privacy purposes." Further, the lawsuit had been filed against "Nigel Weber," his pseudonym.

CAS provided services to homeowners who were in financial distress and facing mortgage delinquency and foreclosure. The plaintiff had paid CAS $1,650 to assist her with her delinquent mortgage, which CAS successfully resolved on the plaintiff's behalf. The plaintiff, however, asserted that the company had defrauded her and sought damages totaling $7,654.[5]

Weber and CAS were both located in California. Weber, thus, sought New Jersey counsel and found respondent via Craigslist. On March 21, 2018, Weber contacted respondent and explained that he wanted to reach an amicable solution with the plaintiff, did not want to engage in extensive litigation, and requested that respondent contact the plaintiff and attempt to negotiate a settlement for $500. Respondent understood that time was of the essence because Weber's answer to the complaint was due that same date.

That same date, March 21, 2018, at 2:57 p.m., respondent sent an invoice to Weber, via PayPal, in the amount of $450, which Weber paid at 3:07 p.m. Within thirty minutes of receiving the payment, at 3:30 p.m. respondent sent an e-mail to the plaintiff, offering to settle the case for $500. Respondent instructed

[5] In her complaint, the plaintiff named additional individual defendants, all of whom were affiliated with CAS, and whom respondent purported to represent, although he admittedly never spoke to any of them.

the plaintiff that she had ninety minutes to accept the offer or suffer the consequences, which respondent described as follows:

> I represent Consumer Affordability Solutions. I will be filing an Answer with Counterclaims today. That means, we will be suing you. In our Answer, we will be alleging you committed Fraud, Extortion, Abuse of Process and a number of Intentional torts, including Interference with Business Contracts.
>
> We are going to be suing for hundreds of thousands of dollars. We are also going to be asking the Court to make you pay for my Client's Attorney fees, which are very substantial.
>
> If you fail to respond to the Answer completely, we will be filing Motions, asking the Court for the appropriate relief. If we win, we will seek to obtain a Judgment against you. In all likelihood, the Judgment will follow you for the rest of your life and will affect your credit and almost any other financial decision you wish to make in your life. It will always be there! You will always owe my Client money and we will ask the Court to garnish any income you receive until it is paid in full.
>
> I called to offer you an opportunity to avoid using Judicial resources and, instead, to settle. **However, because you were rude to me and because of your inability to control yourself, I will no longer agree to speak with you on the phone**. From now on, all communications must be in writing.
>
> If you do not make any mistakes in the litigation, this lawsuit has the potential to last several years. Each time a Court appearance is made, you will likely end up having to pay for Attorney Fees.

> I am no longer willing to spend any more of my time trying to help you avoid a long and very painful and very expensive future.
>
> It is now 3:30 P.M. I stop reading emails at 5 P.M. I am willing to give you 90 minutes to accept our Settlement offer of $500. If I do not receive an acceptance from you, in writing, within 90 minutes, the Settlement offer is off the table and everything I described above will occur.
>
> You made a HUGE mistake suing my Client in the first place with an obviously frivolous lawsuit. It is my intention to make you pay the consequences for that. You will not like it and it is my intention for you to pay dearly.
>
> Kind regards,
> Joe
>
> [1JS¶11;1Ex8 (emphasis in original).] [6]

In his e-mail to the plaintiff, respondent failed to include his last name, a signature block, or the name of his law firm.

Weber testified that he had expected respondent to send the plaintiff a professionally drafted document, on respondent's letterhead, and not the harshly

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[6] "1JS" refers to the parties' March 2, 2021 joint stipulation of facts in the Weber I, Weber II, and Malka matters, and "1Ex" refers to the attached exhibits;
"2JS" refers to the parties' March 2, 2021 joint stipulation of facts in the Duffy matter, and "2Ex" refers to the attached exhibits;
"1T" refers to the transcript of the formal ethics hearing held on June 27, 2022;
"RS" refers to respondent's August 16, 2022 summation brief;
"OAES" refers to the OAE's September 14, 2022 summation brief; and
"HPR" refers to the February 3, 2023 hearing panel report.
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worded e-mail that respondent had sent. Weber also testified that he had not been afforded the opportunity to review the e-mail until it already had been sent to the plaintiff. When Weber told respondent that he found the e-mail unprofessional, respondent replied "well, she should get the message now."

Respondent testified that, in his view, the content of his e-mail to the plaintiff was factually and legally accurate. It was not his intention to "bully her or threaten or cajole her" but, rather, he viewed the letter as "advocacy on behalf of [his] client."

Later that same day, at 5:43 p.m., respondent sent a second invoice to Weber, via PayPal, in the amount of $595, which Weber promptly paid at 6:13 p.m., for a total payment of $1,045. Respondent also sent Weber an e-mail at 5:42 p.m., detailing the services that he and Weber had agreed upon, as follows:

> As described in text messages, this $850 fee includes Phone Conference with Plaintiff, drafting an email to Plaintiff, drafting an answer with counterclaims and one Court Appearance when it is scheduled with the court. If a settlement is to be achieved at that time, Law Firm will draft settlement agreement and execute on behalf of client. In addition, client is responsible for $195, which reflects Court fees to file answer with counterclaims and $20 PayPal fees.
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> [1JS¶14;1Ex11.]

Later that same evening, at 7:45 p.m., respondent filed an answer and counterclaim on behalf of Weber and CAS. Respondent asserted counterclaims

against the plaintiff for fraud; tortious interference; extortion; abuse of process; and breach of contract, accusing the plaintiff of engaging in "extortionate, illegal and greedy demands" and acting in "bad faith." Citing her mortgage delinquency, respondent alleged that plaintiff "engages in a pattern of making false promises and entering into contracts only to violate the contract after services are provided to her."

In addition, respondent sought punitive damages and other relief on behalf of Weber, CAS, and the other defendants for the "terrible mental anguish" and "[in]ability to work" that they purportedly suffered as a result of the plaintiff's actions. Specifically, respondent asserted:

> As a direct, specific and proximate consequence of Plaintiff's acts, Defendants have suffered terrible mental anguish, has [sic] been unable to sleep, has [sic] been subjected to physical pain as a result of being unable to sleep and has [sic] been unable to participate in the majority of his daily activities. Because Defendants suffered physical pain, mental anguish and a profoundly traumatic emotional injury at the hands of Plaintiff, they have been deprived of the ability to work. In addition, Defendants suffered mental anguish and pain and suffering, for which, they will require physical rehabilitation and psychological treatment for the rest of their lives, to deal with the various traumas associated with his reputation being destroyed due to the intentional acts of Plaintiff. In addition, Defendants have been injured by those acts engaged in heretofore by Plaintiff, which has caused their health and quality of life to be profoundly impaired, has lost their ability to work in a meaningful way and to provide, for

> themselves, the basic necessities that a human being requires for survival now and hereafter.
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> [1JS¶17;1Ex12.]

On March 23, 2018, the parties were notified that the matter was scheduled for a non-jury trial, on May 3, 2018.

On April 28, 2018, respondent called Weber and informed him that an additional payment of $1,000 was required for his continued representation and appearance at trial. Weber, however, refused to pay the additional $1,000 because, based on his view of the parties' agreement, respondent had agreed that the initial payments, totaling $1,045, included a court appearance, which had not yet occurred. When Weber informed respondent he would not pay the additional $1,000, respondent replied "f**k you" to Weber. Weber described this conversation as "hostile," with "a lot of profanity from [respondent's] side, name calling."

Also on April 28, 2018, following the telephone conversation, Weber sent respondent a text message, stating "if this is how you want to play this, I will make a complaint to the state bar and demand my payment back in full." In reply, respondent told Weber to:

> Make a Complaint. You are a fraud. I do not trust you and refuse to represent you, as I can not rely on the truth of any of your statements. I did work. Therefore, you owe me additional money for work. I will be more than HAPPY to sue you. [] Would you like to make a trip to

> New Jersey to try this case in Court? I will sue you for Fraud and will be happy to do it. You owe me money, so pay it. You just started a fight with the wrong guy. You will be bankrupt very quickly. Test me.
>
> [1JS¶24;1Ex14.]

In response, Weber sent respondent a screenshot of their prior text messages wherein respondent acknowledged that the initial fee included a court appearance. Respondent replied to Weber's message, stating:

> That was for one job, now you want additional work. As you already know that payment does not include Trial. I can easily make a Court appearance and save the Trial for second appearance in Court, but you cannot afford it to be drawn out. When you pretend Trial is included for free, that's where you lose. You made your bed and now I'm going to make you lie in it. You now want additional work done, so you must pay additional money, or no Trial for you or your employees.
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> [1JS¶27;1Ex14.]

Two days later, on April 30, 2018, after more text messages had been exchanged, respondent informed Weber that if he did not pay the additional $1,000, he would withdraw from the case and Weber would have to retain new counsel. Thereafter, on the same date at 2:07 p.m., Weber sent an e-mail to respondent, recapping their attorney-client relationship to date, and stating his belief that respondent's attempt to solicit additional fees amounted to a "money grab" by a lawyer with leverage over a client. Nonetheless, Weber offered to

pay respondent an additional $250 if he would settle the case with the plaintiff. If not, Weber requested that respondent refund half of the fees paid to date, or $522, and he would seek new trial counsel. Weber also informed respondent that if the money was not refunded, he would file a fraud claim with PayPal and refer the matter to the OAE.

Almost immediately, respondent replied to Weber's e-mail, stating, in part:

> Rest assured, I will sue you. You asked me to do additional work and I did it. I prepared for Trial like you asked. Now, you don't want to pay. Do you really want an additional lawsuit in New Jersey? You will get one. You are a Fraud and I can easily show that.
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> Final offer is $750 to be paid immediately. If I don't have it in 10 minutes, you are on your own. Plus, you will get a new lawsuit for asking me to perform work for you, which you refused to pay.
>
> [1JS31;1Ex15.]

A few minutes later, Weber replied and informed respondent that he was "no longer my attorney," adding that respondent was in "[b]reach of [c]ontract and your comments last Saturday 'go fuck yourself' are duly noted." Weber demanded a refund in the amount of $522 or he would file a grievance with the OAE. Respondent testified that it was at this point that he believed Weber had terminated his services.

Also on April 30, 2019 at 2:32 p.m., respondent replied to Weber, reiterating that he did not agree that his initial fee was intended to cover a trial, but rather only a court appearance. Further, respondent asserted that Weber had agreed to his "trial rate of $1,500" for which he had received "a $750 credit." Respondent also accused Weber of "[trying] to cheat me, but you failed to think this one through."

Weber denied that he and respondent discussed any trial rate, and respondent failed to reduce to writing any agreement wherein Weber agreed to a trial rate.

Later than same evening, on April 30, 2018, at 6:41 p.m., respondent replied to Weber, this time demanding $10,000 that Weber allegedly owed to him for "[t]rial preparation." Respondent again threated to sue Weber if that fee was not paid. Respondent failed to provide Weber with a bill of services to support his claim that he was entitled to $10,000 for trial preparation.

At 9:33 p.m., in a final effort to resolve the matter with respondent, Weber replied and requested a reduced refund of $450. If respondent declined the offer, Weber stated he would pursue a grievance with the OAE and a claim for fraud with PayPal.

Unbeknownst to Weber, earlier that same day (April 30, 2018), at 2:59 p.m., respondent had sent a letter, via facsimile, to the Honorable James

McClain, J.S.C., representing that he was "unable to represent Consumer Affordability Solutions or any of the other Defendants because of ethical and professional responsibilities." Respondent claimed that the attorney-client privilege prohibited him from disclosing details surrounding the breakdown in their relationship but "[s]uffice it to say, respectfully, there is absolutely no way I could, in good conscience, represent this person or his company at Trial, or in any other capacity." Respondent did not inform the court that he believed Weber had terminated his services earlier that day. Respondent did not serve Weber with a copy of his letter, nor did respondent inform Weber that he had filed the letter seeking to be relieved as Weber's counsel.[7]

The court, in response to respondent's letter, postponed the May 3, 2018 trial date to May 17, 2018. Further, on May 7, 2018, despite the absence of a formal motion, Judge McClain entered an order relieving respondent as counsel.

On May 1, 2018, before he was formally relieved as counsel to Weber, respondent filed a complaint against Weber and CAS, his clients, in the Superior Court of New Jersey, Hudson County, Law Division, captioned Rakofsky v. Consumer Affordability Solutions, et al., Docket No. HUD-L-1678-18.

[7] Weber also testified that respondent had never requested the plaintiff's file from Weber or CAS; had not prepared any witnesses, including any of the defendants, for trial; and had not told Weber to appear for trial. In fact, Weber had no intention of appearing in New Jersey for the scheduled May 3, 2018 trial date.

Respondent's five-count complaint asserted claims for fraud; tortious interference; negligence; intentional infliction of emotional distress; and breach of contract, all stemming from Weber's alleged failure to compensate respondent for his trial preparation. Respondent sought punitive and actual damages.[8]

On May 2, 2018, at 5:44 p.m., after he had filed the complaint against Weber, respondent finally replied to Weber's April 30, 2018 e-mail in which Weber offered to accept a reduced refund of $450, stating "Nope, See you in Court!" A few hours later, at 8:38 p.m., Weber replied to Respondent's e-mail, advising that he had terminated respondent's services and reaffirming his prior communications regarding the terms of the representation. Specifically, Weber stated, in part:

> We do not have a relationship anymore and you were terminated as the attorney to assist us on this case.
>
> You have failed to forward a contract to us, you made up stories that are totally incorrect, in an email you are talking about $10,000 that you claimed is owed to you for supposedly trial preparation, which we never agreed to, because the fees we already paid you were for 1 appearance in court, which per your own comments included a settlement meeting with our client.
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> [1Ex20.]

[8] Respondent's misconduct in connection with having filed this lawsuit against Weber and CAS separately is addressed below.

Subsequently, Weber contacted the plaintiff directly and, on May 7, 2018, settled the special civil part matter for $1,000. On May 10, 2018, the settlement was filed with the Superior Court and the case was dismissed.

Based upon the foregoing, the OAE charged respondent with having violated RPC 3.1, by asserting a claim for mental anguish that was not based in fact; RPC 3.2, by failing to treat Weber and plaintiff Jones with courtesy and consideration; RPC 4.1(a)(1), by making false statements to plaintiff Jones about the purported legal and economic consequences she would suffer if she did not accept Weber's settlement offer; RPC 8.4(c), by asserting a claim for mental anguish that was not based in fact, and inaccurately asserting the consequences she would suffer if she did not accept Weber's settlement offer; and RPC 8.4(d), by asserting a claim for mental anguish that was not based in fact. Although respondent stipulated to the majority of the facts underpinning these charges, he denied having violated the Rules of Professional Conduct.

During the ethics hearing, Weber testified that respondent failed to review a draft of the answer and counterclaim with him. It was only after respondent had filed the answer that he sent a copy to Weber. Weber testified that the answer and counterclaim was inaccurate; it was "too exaggerated" because none of the employees had suffered the "terrible mental anguish" asserted in the counterclaim; and, in fact, the entire claim was inaccurate.

Respondent, for his part, testified that he believed the answer and counterclaim were "appropriate" and that he "was relying on the litigation privilege" which, as he understood it, permitted him to assert allegations that were not "perfectly correct with a hundred percent precision, it just has to be reasonable." Respondent also asserted, contrary to Weber's testimony, that he had discussed the answer and counterclaim with Weber, and that Weber had agreed the allegations were accurate.

When asked to explain the basis for his threat to sue Jones for $100,000 in his e-mail to her, respondent testified that he believed he could sue plaintiff Jones for more than the jurisdictional cap in Special Civil Part by transferring the matter to the Law Division or, alternatively, by waiving any judgment in excess of $15,000.

Respondent also admitted that he said "f**k you" to Weber and agreed it was not "a considerate thing to say." During the hearing, despite having signed a stipulation of facts in which he admitted to saying "f**k you" to Weber, respondent asserted that he was no longer prepared to stipulate to that. Specifically, he testified "I will not deny it, but I will not stipulate to that."

The Weber II Matter (District Docket No. XIV-2018-0444E – Count Two)

As previously stated, on May 1, 2018, respondent filed a complaint against Weber and CAS, in the Superior Court of New Jersey, Hudson County, Law Division, captioned Rakofsky v. Consumer Affordability Solutions, et al., Docket No. HUD-L-1678-18.[9] Prior to filing the lawsuit, respondent admittedly failed to comply with R. 1:20A-6,[10] having not properly served Weber or CAS

[9] According to the eCourts civil case jacket, the case remained open for seven months, from May 1, 2018 until November 29, 2018, when respondent informed the court that the parties had settled the matter. Prior to the dismissal of the complaint, the court addressed respondent's motion for default; Weber's motion to vacate default; and respondent's motion for a proof hearing, which was dismissed as moot as a result of the parties' settlement.

[10] R. 1:20A-6 precludes an attorney from initiating a lawsuit to recover legal fees without first providing notice to the client of the right to pursue fee arbitration. Specifically, the Rule states:

> No lawsuit to recover a fee may be filed until the expiration of the 30 day period herein giving Pre-action Notice to a client; however, this shall not prevent a lawyer from instituting any ancillary legal action. Pre-action Notice shall be given in writing, which shall be sent by certified mail and regular mail to the last known address of the client, or, alternatively, hand delivered to the client, and which shall contain the name, address and telephone number of the current secretary of the Fee Committee in a district where the lawyer maintains an office. If unknown, the appropriate Fee Committee secretary listed in the most current New Jersey Lawyers Diary and Manual shall be sufficient. The notice shall specifically advise the client of the right to request fee arbitration and that the client should immediately call the secretary to request appropriate forms; the notice shall also state that if the client does not promptly communicate with the Fee Committee secretary and file the approved form of request for fee arbitration within 30 days after receiving pre-action notice by the lawyer, the client shall lose the right to initiate fee arbitration. The attorney's complaint shall allege the giving of the notice required by this rule or it

(footnote cont'd on next page)

with the required pre-action notice advising as to the availability of fee arbitration. Respondent also failed to include an affirmative statement in his complaint that he had complied with Rule's pre-action notice requirements, thereby rendering the complaint defective and mandating its dismissal pursuant to R. 1:20A-6.

Further, although he did not have his client's consent to reveal confidential information pertaining to the financial status of CAS, respondent alleged the following:

> Mr. Weber, at that time, pleaded with Plaintiff to help him in the aforementioned lawsuit, pro bono, and to perform the legal work immediately, lest he, his colleagues, employees or his company be found in default, as he and CAS had already failed to make an "appearance" in the lawsuit. At that time, Mr. Weber stated, in sum or substance, that he (temporarily) had no money, but would have more money in the future and would compensate Plaintiff fairly at some time in the near future, when additional legal work would be required. Mr. Weber, initially, requested only the bare minimum from Plaintiff, in order to protect his, Mr. VanZweeden's and CAS' interests.
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> [1JS¶55;1Ex19¶9.]

Respondent also alleged:

> In an act of compassion, Plaintiff agreed to perform certain tasks, while excluding other tasks. Plaintiff

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shall be dismissed.

> agreed to draft and file an Answer with Counterclaims, as well as participate in a "Settlement Conference" with Ms. Jones and provide a non-Trial Court "Appearance," which as previously-mentioned, would not include a Trial, all for a flat fee of $850 (This work, hereinafter shall be referred to as "Contract #1").
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> [1JS¶56;1Ex19¶10.]

Respondent's fee agreement with Weber was memorialized in a text message he had sent to Weber which stated that the $850 fee included a telephone conference with the plaintiff; an e-mail to the plaintiff; the drafting of an answer with counterclaims; and "one Court Appearance when it is scheduled with the court." Further, if a settlement was reached, respondent agreed that the fee included the drafting of a settlement agreement.

In his complaint, however, respondent asserted, notwithstanding the parties' agreement, that he repeatedly had discussed with Weber that additional fees would be required if the matter proceeded to trial. Indeed, respondent asserted that he had spoken to Weber on the telephone, advised him that respondent would charge $350 per hour, which would need to be paid prior to commencement of any trial preparation. According to respondent's complaint, Weber expressed a desire for respondent's continued representation and agreed to pay his $350 hourly trial preparation rate. Respondent's allegation in this respect, however, not only contradicted the parties' agreed upon representation, but also respondent's previous communication to Weber, in which respondent

claimed that Weber had agreed to his trial rate of $1,500, for which he had received a $750 credit.

Respondent, in his complaint, also asserted that he had given Weber and CAS "many opportunities to pay for such work, but they flatly refused to agree to pay for any portion of it." In contrast to this allegation, however, on April 30, 2018, Weber had offered to pay respondent an additional $250 to settle the case with the plaintiff, rather than the additional $1,000 respondent had demanded at the time. If respondent declined this offer, Weber requested that respondent refund half of the fees paid to date, or $522, and expressed his intent to seek new trial counsel. Later that same day, in a final effort to resolve the matter with respondent, Weber requested a reduced refund of $450.

On the final page of his complaint against Weber, respondent certified "that the foregoing statements made my me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment."

Respondent alleged that his attorney-client relationship with Weber broke down between April 28 and May 1, 2018. During this brief timeframe, respondent alleged that he "suffered terrible mental anguish, has been unable to sleep, has been subjected to physical pain as a result of being unable to sleep and has been unable to participate in the majority of his daily activities." Indeed,

his anguish was so pervasive, respondent alleged he would be unable to work "for the next thirty years," and required physical and psychological treatment "for the rest of his life." Thus, respondent sought the following relief as the result of Weber's alleged tortious behavior:

> As a direct, specific and proximate consequence of DEFENDANTS' fraudulent acts, PLAINTIFF has suffered terrible mental anguish, has been unable to sleep, has been subjected to physical pain as a result of being unable to sleep and has been unable to participate in the majority of his daily activities. Because PLAINTIFF suffered physical pain, mental anguish and a traumatic emotional injury at the hands of CAS, Mr. Weber and Mr. VanZweeden, as well as its agents, he has been deprived of the ability to provide services in interstate or foreign commerce for the next thirty years and earn at least $2,500,000 in income. In addition, PLAINTIFF suffered mental anguish and pain and suffering, for which, it will require physical rehabilitation and psychological treatment for the rest of his life, to deal with the various traumas associated with his injuries due to the intentional or negligent acts of CAS, Mr. Weber and Mr. Van Zweeden, as well as its agents, which will cost approximately $1,000,000. In addition, PLAINTIFF has been injured by those acts engaged in heretofore by CAS, Mr. Weber and Mr. Van Zweeden, as well as its agents, which has caused his health and quality of life to be profoundly impaired, has lost his ability to work in a meaningful way and to provide, for himself, the basic necessities that a human being requires for survival now and hereafter.[11]
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> [1JS¶65;1Ex19¶28,34;38,45,50,51.]

[11] The relief sought by respondent against Weber and CAS was nearly identical to the relief respondent had sought on behalf of Weber and the other defendants in the counterclaim he filed against plaintiff Jones in Weber I.

Respondent admitted that his claim for $1 million in damages against Weber stemmed from Weber's refusal to pay between $1,000 and $10,000 in additional legal fees.

Respondent did not provide an expert opinion or medical report to substantiate his uncorroborated allegations of mental anguish. Nor did respondent express to Weber, at any time, the alleged mental anguish he was suffering due to Weber's failure to pay the additional legal fees he had demanded.

Notably, during the same timeframe respondent allegedly was suffering severe mental distress, he was able to reply to numerous communications from Weber; sent a letter to the trial court withdrawing from the representation; and filed a thirteen-page complaint against Weber.

On November 11, 2018, respondent filed a motion for a proof hearing. On November 25, 2018, Weber, through his newly retained counsel, Raymond Londa, Esq., settled the fee dispute for $2,500. Weber testified that, although he believed respondent's complaint to be "bogus," he heeded Londa's advice that, solely from an economic standpoint, it would be wise to settle the case and move on.

On March 18, 2019, in the course of its investigation, the OAE directed respondent to produce additional information and documents regarding the facts

he had alleged in his complaint against CAS and Weber, including the factual basis for the harm he allegedly sustained. In his April 8, 2019 reply to the OAE, respondent simply reiterated the contents of his complaint and asserted that he sought therapy from a psychologist to help him cope with the traumatic emotional injury. He did not, however, submit any medical proof to support his claims of mental anguish and suffering.

During his January 14, 2019 demand interview with the OAE, respondent asserted that, in addition to his legal fees, he also had sought from Weber the out-of-pocket costs he had incurred, including the cost of a train ticket he had purchased to travel from his home office to the court house for the May 3, 2018 court appearance. Respondent informed the OAE that, although he was unsure of the cost of the ticket, he guessed it to be $200. In fact, however, on April 27, 2018, respondent purchased the train ticket for $77.75 ($9 for insurance and $68.75 for the ticket). Further, the ticket was refundable.

Based upon the foregoing, the OAE charged respondent with having violated RPC 1.6(a), by revealing in his complaint confidential information regarding Weber's and CAS's financial status; RPC 3.1, by asserting a claim for mental anguish that was not based in fact; RPC 3.3(a)(1), by asserting a claim for mental anguish that was not based in fact; RPC 8.4(c), by asserting a claim for mental anguish that was not based in fact, and by misrepresenting to the OAE

the cost of the train ticket; and RPC 8.4(d), by initiating a deficient lawsuit by not complying with the pre-action requirements of R. 1:20A-6, and initiating a claim for mental anguish that was not based in fact. Although respondent stipulated to the majority of the facts underpinning these charges, he denied having violated the Rules of Professional Conduct.

Respondent admitted that he never spoke to Weber about traveling from California to New Jersey for the trial because he knew his client wanted to inexpensively resolve the matter, and that he never spoke to anyone who was going to be a witness at trial. Yet, respondent maintained he had spent over thirty hours preparing for that trial and accumulated $10,000 in fees.

The Malka Matter (District Docket No. XIV-2018-0444E – Count Three)

On April 17, 2018, respondent was traveling by train to a court appearance and stopped at the Linden train station, where he saw an advertisement for Dr. Michael S. Malka, D.D.S., of Linden Dental Group. Respondent, who needed an expert opinion from a dentist in a pending medical malpractice matter, left the train station and went to Dr. Malka's office. Respondent did not have an appointment with Dr. Malka; did not know Dr. Malka prior to this visit; and did not know whether he had previously been qualified as an expert for purposes of litigation. Nevertheless, respondent entered the dental office and asked Dr.

Malka if he would be interested in serving as a dental expert in respondent's medical malpractice case.

Dr. Malka declined respondent's invitation and asked him to leave. Although respondent left the office, he remained outside the building. Dr. Malka then requested that respondent leave the area outside the dental practice and attempted to record respondent with his cellular telephone. Dr. Malka called the police out of concern; however, respondent had left the premises by the time the police arrived. After respondent left the premises, he filed a police report against Dr. Malka for assault.

The very next day, on April 18, 2018, respondent filed a three-count civil complaint against Dr. Malka and his dental practice, in the Superior Court of New Jersey, Union County, captioned Rakofsky v. Dr. Michael S. Malka, et al, Docket No. UNN-L-1363-18, seeking $1 million for the emotional distress he purportedly suffered as a result of Dr. Malka's actions. Specifically, respondent alleged that, after he had exited the dental office, and was "waiting quietly outside," Dr. Malka had followed him and "began filming [respondent] on his cell phone, waiving the phone in [respondent's face]." Respondent also alleged that, while Dr. Malka was filming him, he threatened respondent that he would "send some people" to injure him so "he would never walk again and so he would never work again."

Respondent's three-count complaint asserted claims for civil assault, tortious interference, and intentional infliction of emotional distress. In support of his claim for damages, respondent alleged that he suffered "terrible mental anguish," stating:

> As a direct, specific and proximate consequence of DEFENDANTS' violent acts and threats, PLAINTIFF has suffered terrible mental anguish, has been unable to sleep, has been subjected to physical pain as a result of being unable to sleep and has been unable to participate in the majority of his daily activities. Because PLAINTIFF suffered physical pain, mental anguish and a traumatic emotional injury at the hands of LDG and Dr. Malka, as well as its agents, he has been deprived of the ability to provide services in interstate or foreign commerce for the next thirty years and earn at least $1,000,000 in income. In addition, PLAINTIFF suffered mental anguish and pain and suffering, for which, it will require physical rehabilitation and psychological treatment for the rest of his life, to deal with the various traumas associated with his injuries due to the intentional or negligent acts of LDG and Dr. Malka, as well as its agents, which will cost approximately $1,000,000. In addition, PLAINTIFF has been injured by those acts engaged in heretofore by LDG and Dr. Malka, as well as its agents, which has caused his health and quality of life to be profoundly impaired, has lost his ability to work in a meaningful way and to provide, for himself, the basic necessities that a human being requires for survival now and hereafter.[12]

[12] Respondent's claim is remarkably similar to the claim he asserted on Weber's behalf in his counterclaim against plaintiff Jones in Weber I, as well as respondent's claim for legal fees against Weber, in Weber II.

[1JS¶96;1Ex29.]

Dr. Malka retained Raymond Londa, Esq., to represent him in defense of these claims. On May 30, 2018, less than two months after he had filed his lawsuit for $1 million in damages, respondent settled the matter for $2,300.[13]

Londa testified that Dr. Malka had contacted him on April 20, 2018. Londa explained that he was able to resolve the lawsuit, in which respondent sought $1 million in damages, for $2,300.[14] Londa further explained that, although he and his client believed the complaint lacked any credibility or merit, it was "economically advisable for Dr. Malka to settle the case in order to avoid the escalation of legal fees." Londa also explained that he informed respondent if a settlement promptly had not been reached, he would have filed an answer and counterclaim for frivolous litigation. Respondent replied to Londa by threatening to accept no less than $100,000 in settlement. Nonetheless, he accepted the $2,300 settlement.

[13] According to the eCourts civil case jacket, there was no activity between the filing of respondent's complaint and its subsequent dismissal, with the exception of a track assignment notice.

[14] Although the joint stipulation stated that the parties settled the matter for $5,000, Londa clarified at trial that it had settled for $2,300 plus his attorney's fees. Malka did not testify at the ethics hearing; however, he was interviewed by the OAE and he similarly stated that the matter had settled for under $5,000.

During the ethics hearing, respondent testified that he sought damages for his mental anguish against Dr. Malka "[b]ecause I was unable to sleep that night and I was suffering with mental anguish and I was injured, and it was my right to sue him." Respondent maintained that he was prepared to prove his damages at trial. Respondent also testified that Dr. Malka apologized to him and asked for his forgiveness for acting rudely that day.

During cross-examination, respondent reluctantly admitted that he previously had filed lawsuits on his own behalf against others, including former clients, in which he sought similar damages for pain and suffering, mental anguish, and "the general claim that [he's] used in" seeking a million dollars. Indeed, respondent admitted to having filed a complaint in July 2018 against a former client, stemming from alleged severe traumatic events for which he sought $1 million for his mental anguish; however, when asked to describe what his client had done to cause such trauma, respondent could not recall. Respondent also admitted to having settled another case for $3,000, and not the $1 million he had alleged. Despite his alleged inability to work, respondent admitted that he did not stop working or taking clients after seeing Dr. Malka. He claimed, however, that he "slowed down." Notably, however, respondent had filed a similar claim, alleging the same "terrible mental anguish claim" against an individual named Alok Mallik, on April 16, 2018, two days before he filed

his complaint against Dr. Malka. When asked on cross-examination if, perhaps, he was confused and the alleged "loss of sleep" might have been due to trauma caused by Mallik, rather than Dr. Malka, respondent testified that "the litigation privilege permits me to make mistakes as long as they're reasonable. And at the time I was under the impression that it was the injury I sustained as a result of Dr. Malika's elicit and illegal actions which caused me to file that complaint."

As result of the foregoing, the OAE charged respondent with having violated RPC 3.1 by asserting a claim for mental anguish not based in fact; RPC 3.3(a)(1) by asserting a claim for mental anguish not based in fact; RPC 8.4(c), by asserting a claim for mental anguish not based in fact; and RPC 8.4(d) by filing a complaint that contained claims not based in fact. Although respondent stipulated to most of the facts underlying these charges, he denied having violated the Rules of Professional Conduct.

The Duffy Matter (District Docket No. XIV-2019-0242E)

In 2018, Otis Duffy, the grievant, retained respondent to represent him and his company, Centum Real Estate Group (Centum), in defense of a civil action pending[15] in the Superior Court of New Jersey, Passaic County, Law

[15] The civil litigation arose out of a landlord-tenant matter between ERG-21 and another defendant that had settled. Duffy was named as a defendant based upon actions he took as a

(footnote cont'd on next page)

Division, captioned ERG-21, LLC v. Duffy, et al., Docket No. PAS-L-3758-17.[16]

On January 3, 2019, respondent filed a substitution of counsel, and superseded as counsel for Duffy and Centrum.

On January 7, 2019, respondent and Duffy attended a court hearing, along with Lee M. Levitt, Esq., counsel for the plaintiffs. During the hearing, Duffy and Levitt were involved in an alleged verbal altercation, resulting in Duffy's filing of a criminal complaint against Levitt in the Paterson municipal court, asserting that Levitt had harassed him, in violation of N.J.S.A. 2C:33-4A. Levitt filed a cross-complaint against Duffy on the same basis. Ultimately, both criminal complaints were voluntarily dismissed by the parties.

On February 19, 2019, less than two months after entering his appearance, respondent filed a formal motion to be relieved as Duffy's counsel, asserting that his continued representation of Duffy would be "repugnant." Specifically, respondent certified to the court as follows:

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broker. Duffy filed counterclaims against ERG-21. The case settled with the primary defendants following mediation. Duffy participated in the mediation, but declined to accept the settlement offer, which was a mutual dismissal of all claims against each party.

[16] Duffy had first retained respondent to represent him in connection with another pending civil action. Following a motion by respondent's counsel, Robert Ramsey, Esq., the hearing panel agreed to strike that portion of the record discussing this litigation other than with respect to background and how Duffy met respondent. The OAE did not object to the motion.

> Professional (and ethical) considerations make it impossible for me to continue to represent [Centum and Duffy].
>
> Indeed, it would be so repugnant and offensive to me to continue communicating with [Centum and Duffy] for a single moment longer.
>
> In addition, [respondent] and [Centum and Duffy] disagree with respect to strategy in the instant matter.
>
> [2Ex5.]

Although respondent claimed he had served Duffy with a copy of this motion, the accompanying certification of service does not identify Duffy as a recipient. Further, Duffy testified that he never received a copy of this motion.

On March 18, 2019, the Honorable Thomas F. Brogan, P.J., Ch., denied respondent's motion to withdraw, without prejudice, noting that the motion could be renewed at trial. Although the order did not state the basis for which the motion was denied, respondent testified that it was based upon the proximity of the impending March 25, 2019 trial date.

On March 25, 2019, respondent and Levitt appeared before Judge Brogan for trial call; Duffy, however, did not appear. At 9:47 a.m., respondent sent an e-mail to Duffy, stating:

> As you know, Trial today. As you know you are required to be here.
>
> [2JS¶13;2Ex8.]

Shortly thereafter, Duffy replied:

> I am aware that I have to be there.
> Thanks for letting me know.
> I have put together some exhibits and recordings for the court about the Levitt matter for tonight.
> As you said you are willing to help me as a consultant of sorts, what advice can you offer for this evening?
>
> [2JS¶15;2Ex8.]

Despite his client's absence from trial call, respondent did not attempt to reach him by telephone. Instead, respondent allowed the matter to proceed in his client's absence. Before going on the record, respondent and Levitt conferenced the matter in chambers with Judge Brogan; that conversation was not recorded or reflected on the record.

Thereafter, at approximately 10:15 a.m., respondent and Levitt appeared on the record before Judge Brogan. Levitt, for his part, recounted the procedural history of the case, indicated that respondent was Duffy's third attorney, and that Judge Brogan likely would allow respondent to withdraw as counsel.

Next, respondent proceeded with an oral application for reconsideration of his motion to be relieved as counsel, in view of Duffy's absence. Respondent reiterated that it was "repugnant to me to represent [Duffy] any further." Respondent informed Judge Brogan that Duffy had "made countless threats, countless accusations, heinous innuendo against me, and there's only so much that a person can do."

Judge Brogan asked respondent if Duffy had notice of the trial call, to which respondent stated "[a]bsolutely." Judge Brogan confirmed with respondent that Duffy was not present. Judge Brogan next asked respondent "[w]hen is the last time you spoke to him? Was it a while –." Respondent replied, stating that they "had a lot of discourse over this weekend, but in e-mail, Your Honor." Judge Brogan next asked "did he say he was coming, not coming, or you don't know" referring to the trial call. Respondent replied, "we didn't discuss it."

Thus, Judge Brogan dismissed Duffy's counterclaim and granted a default in favor of ERG-21. At no time during the hearing did respondent inform Judge Brogan that he had e-mailed Duffy shortly before the proceeding to remind him of the trial call.

Respondent did not object on the record to the dismissal of Duffy's counterclaim or the entry of default against Duffy. Further, during an on-the-record exchange between Levitt and Judge Brogan regarding the default, respondent failed to interject or make any attempt to preserve Duffy's rights in the matter. Thereafter, Judge Brogan granted respondent's motion to withdraw as counsel and directed him to submit an order.

Respondent failed to inform the trial court that Duffy had, almost immediately, replied to his e-mail of that morning. Moreover, respondent did

not immediately contact Duffy to advise him of the dismissal of the counterclaim and entry of default. Instead, at 6:26 p.m., on March 25, 2019, respondent informed Duffy, via e-mail, that the trial court had dismissed his counterclaim and relieved respondent as counsel. Twelve minutes later, at 6:38 p.m., Duffy replied stating that respondent had failed to inform him of the court date.

In explanation for not contacting Duffy earlier that day, respondent asserted that "no useful purpose would have been served by contacting Mr. Duffy any earlier. This communication was given in ample time for Mr. Duffy to move before the Court on a pro se basis or with new counsel for the judge to vacate his order."

On March 29, 2019, the trial court entered an order dismissing the counterclaim and entering default judgment against Duffy. On the same date, Duffy filed a pro se motion to vacate the default.[17]

Based upon the foregoing, the OAE charged respondent with having violated RPC 1.16(d) by not lodging an objection to the trial court's decision to dismiss the counterclaim and enter default against Duffy; RPC 3.3(a)(1) or (2) by failing to inform the trial court that he made an effort to contact Duffy prior

[17] According to eCourts, on April 23, 2019, Judge Brogan denied the motion to vacate default, stating that "this applicant has consistently missed court dates." On June 14, 2019, Judge Brogan denied Duffy's motion for reconsideration, among other relief. The last docket entry is a November 6, 2019 letter from Levitt, requesting that the court enter the order it previously submitted, on April 3, 2019, and enter default judgment against Duffy.

to the proceeding, leaving the court with the impression there had been no communication that morning; RPC 8.4(c) by failing to inform the trial court that he made an effort to contact Duffy prior to the proceeding, leaving the court with the impression there had been no communication that morning; and RPC 8.4(d) by failing to object to entry of default, thereby requiring Duffy to file subsequent motion practice to seek to lift the default. Although respondent stipulated to the majority of the facts underpinning these charges, he denied having violated the Rules of Professional Conduct.

Duffy testified at the ethics hearing. He denied receiving a copy of respondent's initial motion to withdraw as counsel. In fact, Duffy denied that respondent ever had advised him that a motion would be forthcoming; nor did respondent advise him of any professional or ethical concerns that he had identified as the basis for his motion to withdraw.

Duffy also testified regarding his failure to appear in court on March 25, 2019, in connection with the civil litigation. First, Duffy explained he was unaware that trial was scheduled to begin that day and that respondent had never informed him of the trial.

> Q: So back up. On March 25th, 2019 you weren't aware that that was the trial date, correct?
>
> A: Absolutely not.
>
> …

> Q: And did you appear in the Superior Court on the day of this – this return for the trial, ERG versus 46 Realty Associates, did you appear that day?
>
> A: I did not.
>
> Q: Why not?
>
> A: I was unaware of it.
>
> Q: Did [respondent] ever tell you that that matter was – was proceeding on March 25 ….?
>
> A: A hundred percent none.
>
> [1T184.]

Next, Duffy explained that, despite having received respondent's e-mail on the morning of March 25, 2019 regarding his appearance in court, he had assumed it was in reference to the municipal court matter which was scheduled later that same day. Duffy acknowledged that, leading up the March 25 trial date in the ERG matter, he had had conversations with respondent but believed respondent had been referring to the municipal court matter because respondent told him he would be "testifying against him."

> Q: Okay. So your understanding was that when [respondent] corresponded with you prior to March 25th, he was telling you that he was gonna appear against you in the municipal court matter?
>
> A: Absolutely.
>
> [1T186.]

Duffy explained that he lived just fifteen or twenty minutes from the Superior Court courthouse and, had respondent called him, he "would have jumped in the car and been there as soon as possible."

Duffy testified that he believed his relationship with respondent broke down based upon an unrelated matter. Specifically, he explained that respondent had drafted a complaint for him, in an unrelated matter, and the two disagreed over the factual allegations contained in the initial draft. Duffy claimed that he significantly edited the draft complaint, and "it made [respondent] irate."

Respondent also testified. He explained that he filed the motion to be relieved as counsel because he had determined that "Otis Duffy was a coked up, drug induced maniac, a dangerous maniac who was constantly coked up, or on some type of chemical, and he was completely out of his mind." Continuing, respondent described Duffy as "a cauldron of anger which is likely to erupt at any moment" and "a machine gun." Respondent also asserted that Duffy had "published a playbook" on social media on "how to handle lawyers threatening you," attaching respondent's photograph and denigrating him. For these reasons, respondent asserted he was unable to continue acting as his counsel.

With regard to the March 25 trial date, respondent confirmed that he had exchanged e-mails with Duffy the preceding weekend and the main topic of discussion was the impending trial. Respondent maintained that he made it clear

to Duffy that he had court that morning but admitted that he had not produced any document to corroborate that he had informed Duffy his appearance in court was required.

Respondent claimed that, during the unrecorded conference in chambers, he "tried very hard to – to adjourn the trial" but "was shut down in the chambers." He explained that there was no doubt in his mind the judge was going to rule against Duffy "but what I was trying to do was to make sure [the judge] didn't get angry enough to order a judgment and then to make that judgment for a large amount of money. That's what I was trying to avoid."

Respondent insisted he had disclosed to Judge Brogan, in chambers, that he had sent an e-mail to Duffy that morning. Further, when asked why he did not object to the dismissal of Duffy's counterclaim and entry of default on the record he stated it was because, by that point, he had been relieved as counsel.

In his August 16, 2022 summation brief, respondent asserted that the OAE had failed to sustain its burden of proof with regard to all charges and urged the dismissal of the complaint.

As a preliminary matter, respondent maintained that Weber had engaged in "lies, deception, fraud and outright perjury" during his cross-examination, and emphasized the fact Weber had been dishonest about his real name. According to respondent, Weber, who was the OAE's primary witness, lacked

all semblance of credibility and, thus, his testimony should be accorded little weight.

Concerning the Weber I matter, respondent denied having violated RPC 3.1 when he filed the counterclaim on Weber's behalf seeking relief for "mental anguish" because, according to him, the Court Rules do not require "prima facie proof of the veracity of allegations in a civil complaint. Rather, this is a matter that is judged within the context of trial." Further, respondent asserted that N.J.S.A. 2A:15-59 and R. 1:4-8(b), which govern frivolous pleadings, were inapplicable because no party in interest had ever alleged his pleadings were frivolous. Further, respondent asserted that N.J.S.A. 2A:15-59 only applies to non-prevailing parties and respondent "was the prevailing party." Further,

> It appears that the position of the OAE on this Count is that the filing of the lawsuit in this matter was not frivolous, but rather the allegation of the harm alleged to have been suffered by the plaintiff. However, no party to the litigation, no judge or witness has ever challenged these allegations in an adversarial proceeding.
>
> [RSp5.]

Relying upon Loigman v. Township of Middletown, 185 N.J. 566, 580 (2006), respondent asserted he was entitled to absolute immunity pursuant to "the litigation privilege," a common law defense which "protects an attorney from civil liability arising from words he has uttered in the course of judicial

proceedings." Although he acknowledged the "litigation privilege" had some limitations within attorney discipline, respondent maintained that the Court had not yet announced that it never applies in attorney discipline. See In re Giannini, 212 N.J. 479, 483 (2012) (litigation privilege does not apply in cases involving recklessness, perjury, and slander).

Next, respondent denied violating RPC 3.2 in respect of his treatment toward Weber or Jones. Jones was not called as a witness and, thus, the OAE's only evidence to support the claim that he failed to treat her with courtesy and consideration was the e-mail he sent to her demanding a settlement. In the absence of evidence of her reaction to respondent's e-mail, respondent maintained that the OAE had failed to sustain its burden of proof. Although the OAE also charged respondent with having violated this Rule in connection with his treatment of Weber, respondent maintained that Weber was not credible and, thus, his testimony should be accorded no weight.

Likewise, respondent argued that the OAE failed to establish a violation of RPC 4.1(a)(1) because the purported falsity in his statements in his e-mail to Jones were not affirmatively proven at the ethics hearing. Instead, the OAE asked the DEC to find the statements to be materially false on their face. "No evidence has been introduced to support the OAE allegation of technical falsity in the statements." Next, respondent urged that RPC 8.4(c) and RPC 8.4(d)

charges "are lesser-included offenses of the other violations" and, thus, should be dismissed on the same bases.

Next, with regard to his lawsuit against Weber for legal fees (the Weber II matter), respondent maintained that the OAE failed to sustain its clear and convincing burden of proof on all charges. Respondent asserted that RPC 1.6(d)(2) permits an attorney to reveal confidential information "to establish a claim or defense on behalf of the lawyer in a controversy between a lawyer and the client," and it was "incumbent for the OAE at the hearing to disprove this exception by clear and convincing evidence." The OAE, according to respondent, failed to do so.

In defense of the charges pursuant to RPC 3.1; RPC 3.3(a)(1); and RPC 8.4(c), respondent relied upon the same arguments it raised in defense of Weber I. Although respondent admitted to having failed to provide Weber with the required pre-action notice by not serving it via certified mail as the Court Rules require, he claimed to have provided notice. "Whether that omission constitutes a violation of RPC 8.4(d) under the facts of this case, is a matter for the panel to determine." He urged, however, that this omission does not constitute a violation of the Rules of Professional Conduct, in any event.

With respect to the Malka matter, respondent argued that the OAE had failed to sustain its burden of proof with regard to RPC 3.1; RPC 3.3(a)(1); RPC 8.4(c); and RPC 8.4(d), asserting the same arguments articulated above.

In the Duffy matter, respondent claimed that the OAE failed to establish a violation pursuant to RPC 1.16(d). Respondent asserted that the evidence established Duffy to be "hostile, combative, and potentially violent, threatening and vindictive." Further, respondent maintained the evidence established that he had gone to great lengths "in advocating his client's position with the Superior Court judge while in chambers," including raising an "argument related to the dismissal of the counterclaim and default against Duffy."

Next, respondent asserted that the OAE failed to established respondent's violation of RPC 3.3(a)(1) or (2) because, absent testimony from the judge or his law clerk, his testimony concerning the arguments he advanced on Duffy's behalf, in chambers, was not refuted. Because the OAE's charges pursuant to RPC 8.4(c) and RPC 8.4(d) were based upon the same facts, respondent asserted that those charges must, too, be dismissed.

In turn, the OAE argued in its September 14, 2022 summation brief that respondent had violated all the charged RPCs. In the Weber I matter, the OAE rejected respondent's wholesale reliance upon the "litigation privilege," asserting that R. 1:4-8 expressly provides that, when an attorney affixes his

signature to a pleading, he is certifying that he has read the pleading and, to the best of his knowledge formed after an inquiry reasonable under the circumstances, that the factual allegations have evidentiary support. Here, the evidence established that respondent filed the answer and counterclaim against Jones, on Weber's and the other defendants' behalf, without having conducted any investigation before asserting a claim for damages stemming from his clients' mental anguish, loss of sleep, and inability to work.

Indeed, the evidence established that respondent reviewed no supporting documentation and failed to speak with any of the defendants, other than Weber, who testified that he suffered no mental anguish.

The evidence further established that respondent had "filed the exact same claim in multiple personal matters" and "is somewhat of a serial filer, alleging emotional distress in all sorts of personal matters," only to settle them "for a small amount or [dismiss] the matters entirely."[18] Thus, according to the OAE, respondent filed a frivolous pleading, in violation of RPC 3.1.

[18] According to eCourts, between April 16, 2018 and June 14, 2020, respondent filed at least eight separate civil actions on his own behalf against myriad defendants, including his lawsuits against Weber and Malka. For instance, respondent filed an civil action against an major airline for purportedly canceling his plane ticket and against a ticketing agent who assaulted him while he attempted to obtain a new ticket; a hotel after a hotel employee purportedly entered his room while he was undressed; and a former employer (where he was employed for just two months) who purportedly made false statements to a tribunal about respondent, had mishandled client matters, and engaged in discriminatory behavior toward respondent. Respondent also sued three clients, including his lawsuit against Weber, for legal

(footnote cont'd on next page)

Respondent violated RPC 3.2 when, during a conversation with Weber, he replied "f**k you" in response to Weber's refusal to pay him additional fees. Respondent continued to mistreat Weber, in violation of the Rules of Professional Conduct by replying to Weber's text message, calling Weber "a fraud," and stating that he would be "happy to sue" him, and that he would put him in bankruptcy. Again, in a subsequent text message, respondent lacked courtesy and consideration when he stated "When you pretend Trial is included for free, that's where you lose. You made your bed and now I'm going to make you lie in it."

In connection with his lawsuit for fees against Weber (the Weber II matter), the OAE claimed that respondent again violated RPC 3.1 by asserting claims for his alleged emotional distress and inability to work due to Weber's refusal to pay his alleged outstanding legal fees. Despite his allegation that the mental anguish was so pervasive he could no longer work, "[t]his was proven untrue by Respondent's own hearing testimony, wherein he admitted to continuing to work." Further, respondent admitted his claim was alleged without the benefit of a medical opinion.

fees. In each complaint, respondent alleged the same severe mental anguish and inability to work that he asserted in the Weber I, Weber II, and Malka matters.

Further, respondent violated RPC 1.6(a) by revealing his client's financial status in his complaint against Weber and CAS, without their consent.

Concerning the Malka matter, the OAE asserted that the evidence clearly and convincingly established that respondent violated RPC 3.1, RPC 3.3(a)(1); RPC 8.4(c); and RPC 8.4(d) by filing a lawsuit against Dr. Malka, seeking $1 million for emotional distress caused by events that had occurred the previous day.

Last, with respect to the Duffy matter, the OAE emphasized that respondent's self-serving testimony regarding what allegedly had transpired in chambers did not negate his subsequent, abject failure to protect his client's interests, on the record. Instead, respondent "chose to instead disparage Grievant, throwing around wild accusations of drug use and the like." Not only were these accusations, according to the OAE, made without any basis, they "would not excuse [his] failure to protect his client in any event." To the contrary, Duffy testified "quite credibly about an attorney who abandoned his client, and failed to protect him."

For the totality of his misconduct, the OAE urged the imposition of a three or six-month term of suspension, with conditions.[19] Citing disciplinary precedent discussed below, the OAE asserted that the discipline imposed on

[19] The OAE did not indicate what conditions may be appropriate.

attorneys who violate RPC 3.1 and RPC 8.4(d) typically ranges from an admonition to a term of suspension; however, the OAE concluded that respondent's misconduct was most similar to the attorney in In re Yacavino, 184 N.J. 389 (2005), who received a six-month suspension.

In further support of a suspension, the OAE analogized respondent's misconduct to attorneys who had threatened to file criminal charges in connection with their legal fee (RPC 3.4(g)). See, e.g., In re McDermott, 142 N.J. 634 (1995) (reprimand for attorney who filed criminal charges for theft of services against a client and her parents after the client stopped payment on a check for the legal fee); In re Ledingham, 189 N.J. 298 (2007) (three-month suspension for attorney who threatened criminal charges against a client in an effort to collect an excessive fee); In re Dworkin, 16 N.J. 455 (1954) (one-year suspension for attorney who wrote a letter threatening criminal prosecution against an individual who forged an endorsement on a government check, unless the individual paid the amount of the claim against him and the legal fee that the attorney would originally receive; the Court found that the attorney resorted to "coercive tactics of threatening a criminal action to effect a civil settlement").[20]

[20] The OAE also likened respondent's conduct to that of attorneys who abandoned their clients, thereby warranting a term of suspension.

The OAE emphasized that respondent had engaged in a pattern of utilizing threats in connection with third parties, clients, and pleadings in an effort to intimidate them for purposes of an advantage in litigation.

> Respondent resorted to these tactics not only for his client's benefit but more egregiously for his own personal financial gain against the same client, while still representing him, and against a dentist who did not know Respondent but for Respondent's decision to show up at his office and refuse to leave.
>
> [OAESp26.]

In aggravation, the OAE noted that respondent had exhibited hostility toward ethical standards; a lack of candor toward disciplinary authorities; and a lack of remorse. Thus, for the totality of his misconduct, the OAE urged a three or six-month suspension.

The DEC found, by clear and convincing evidence, that respondent violated RPC 1.6(a); RPC 1.16(d); RPC 3.1; RPC 3.2; RPC 8.4(c); and RPC 8.4(d). The DEC determined, however that the OAE had failed to prove, by clear and convincing evidence, that respondent violated RPC 3.3(a)(1) or (2), or RPC 4.1(a)(1).

In particular, the DEC concluded that respondent violated RPC 1.6(a) by disclosing, in his lawsuit for legal fees against Weber that (1) Weber "had no money;" (2) Weber's company, CAS, was the subject of customer complaints from "innocent victims" and the complaints "were based on false statements"

by Weber; and (3) respondent agreed to perform only certain tasks in defending Jones' lawsuit. These statements were harmful to Weber, who did not consent to the disclosure of such confidential information. Further, the DEC rejected respondent's assertion that disclosure was permitted because he was embroiled in litigation against his client for fees. Although it is true respondent had commenced litigation against Weber for his purported outstanding legal fees, the DEC concluded "it could not have reasonably been believed to be necessary to include in Respondent's complaint seeking payment of amounts owed, particularly while Respondent was still representing Weber in defense of claims filed by Jones."

Next, the DEC determined respondent violated RPC 1.16(d) by failing to protect Duffy's interest on the record during the March 25, 2019 hearing. Although respondent testified to his off-the-record statements to Judge Brogan and his belief that placing additional information on the record would not have made any difference, the DEC did not find respondent to be a credible witness.

> The Hearing Panel also did not find Respondent's testimony to be credible when he testified that he argued in Judge Brogan's chambers that the hearing should be adjourned and that he was "under the impression we were on the record when we were in chambers."
>
> [HPRp18.]

The DEC also emphasized that respondent made no attempt to contact his

client after leaving Judge Brogan's chambers and before going on the record. Nor did respondent contact his client immediately after the court entered default against him. "It would have been simple for Respondent to call or text his client regarding the hearing. It also would have been simple to seek an adjournment of the hearing on the record. Respondent did neither of those things and his conduct violated RPC 1.16(d)."

With respect to RPC 3.1, the DEC determined respondent violated this Rule in several respects. First, via the counterclaim he filed on behalf of Weber, CAS, and its employees, wherein he asserting they had "suffered terrible mental anguish," were "unable to sleep, ha[d] been subjected to physical pain," and were unable to participate in the majority of "daily activities" and "deprived of the ability to work." Weber testified that these allegations were false, and the DEC noted it found Weber to be credible on this point.

Respondent again violated this Rule in his lawsuit against Weber and his lawsuit against Dr. Malka when, in each action, he asserted nearly identical claims for mental anguish. Respondent admittedly had filed seven lawsuits against various defendants asserting the same or similar allegations of mental anguish, pain and suffering. Further, his assertion that he was unable to work was belied by the fact that respondent was indisputably working during the same timeframe.

The DEC rejected respondent's argument that, as a prevailing party, he could not be found to have engaged in frivolous litigation, pursuant to Sjogren, Inc. v. Caterina Ins., 244 N.J. Super. 369, 378 (Ch. Div. 1990) (finding that attorney actions can be the basis for discipline despite settlement). Further, the DEC rejected respondent's misplaced reliance upon the "litigation privilege," stating that the privilege "is not a license for an attorney to make statements in litigation without regard to whether those statements are accurate or are made in good faith." Further, the DEC noted that the Court expressly has stated that the litigation privilege does not immunize an attorney from disciplinary action for violations of the RPCs, citing Loigman, 185 N.J. at 586-87.

The DEC concluded respondent violated RPC 3.2 when he said "f**k you" to his client, in reply to his client stating he would not pay the additional legal fee respondent had demanded, and when he used belligerent language in his e-mail to Jones, his adversary.

> Respondent sent that e-mail to Linda Jones the same day he was retained by Weber and within 30 minutes of receiving the initial payment from Weber. The tone of the e-mail was threatening and the threat to sue for hundreds of thousands of dollars, knowing that the claims were in Special Civil Part (with a $15,000 jurisdictional limit), was unfounded.
>
> [HPRp21.]

The DEC determined that respondent had engaged in dishonest conduct,

in violation of RPC 8.4(c) by asserting frivolous claims in his counterclaim against Jones, his lawsuit for fees against Weber, and his lawsuit against Dr. Malka. The DEC concluded, however, that respondent had not separately violated this Rule via his interactions with the trial court in the Duffy matter, or with respect to his representation to the OAE regarding the cost of the train ticket, as the OAE had charged.

The DEC concluded that respondent violated RPC 8.4(d) by virtue of the same misconduct for which it concluded respondent had violated RPC 3.1 and RPC 3.2.

However, the DEC concluded that the OAE did not establish, by clear and convincing evidence, that respondent had violated RPC 3.3(a)(1) or (2) by failing to advise the trial court that he had communicated, via e-mail, with his client prior to the commenced of the court hearing, thereby leaving the impression that there was no communication between respondent and Duffy on the day of the hearing. In the absence of any evidence to refute respondent's testimony that he informed Judge Brogan, in chambers, that he had e-mailed Duffy prior to the proceeding, the DEC was unable to conclude respondent had made a false statement to the tribunal or had failed to disclose a material fact to the tribunal.

Likewise, the DEC concluded that the OAE failed to establish that respondent violated RPC 4.1(a)(1), which prohibits a lawyer from making false statements of material facts or law to a third person, by making inaccurate threats in his e-mail to Jones. Although the DEC concluded that the tone of respondent's e-mail to Jones lacked courtesy and consideration, violative of RPC 3.2, it determined that the OAE had not demonstrated that respondent's e-mail to Jones contained false statements of material fact or law.

In determining the quantum of discipline, the DEC emphasized:

> Particularly alarming is Respondent's apparent disregard for professional norms of courtesy and consideration and honesty that should be the hallmarks of the legal profession. Respondent repeatedly made allegations in lawsuits on behalf of himself or his clients that had little or no basis in fact and he repeatedly disrespected clients and adversaries and utilized his professional standing and the threat of the courts to bully them and cajole them for his own financial gain.
>
> [HPRp24.]

Citing In re Yacavino, 184 N.J. 389, upon which the OAE had relied, the DEC determined that a term of suspension was required for respondent's "pattern of threatening communications and frivolous pleadings" against third parties, clients, and former clients. Like the attorney in Yacavino, respondent "filed frivolous claims," "engaged in conduct prejudicial to the administration of justice," and made "extortionate requests for damages premised on

unsubstantiated and unsupported claims of mental anguish" in an effort to intimidate others into paying him. Unlike Yacavino, however, respondent was not related to the other parties in lawsuit and has prior discipline.

In view of respondent's prior discipline and lack of remorse, the DEC recommended a six-month term of suspension for the totality of his misconduct.

In his written submission and during oral argument before us, respondent, through his counsel, accepted the DEC's findings of misconduct but asserted that the recommended six-month suspension was "excessive, punitive and inconsistent with well-established disciplinary precedent" addressing similar misconduct. Instead, respondent urged imposition of a censure, citing In the Matter of Samuel A. Malat, DRB 05-315 (March 17, 2006) (admonition); In the Matter of Alan Wasserman, DRB 94-228 (October 5, 1994) (admonition); In re Silverman, 179 N.J. 364 (2004) (reprimand); In re Kimm, 191 N.J. 552 (2007) (censure).

Respondent maintained that his misconduct was "a far cry from the outrageous and prolonged campaign carried out in In re Yacavino," upon which the DEC relied to support a suspension. Unlike the misconduct addressed in Yacavino, respondent asserted that the litigation he filed "did not waste the court's time or squander untold weeks of judicial resources." Further, unlike here, the conduct in Yacavino "revealed shocking attacks on the judiciary in

general and the judges hearing his cases." Moreover, the attorney in Yacavino had been sanctioned by the trial court for pursuing frivolous claims, whereas no court "ever made a finding that [respondent's] claims were without merit or frivolous during the course of litigation."

In response to our questioning at oral argument, respondent acknowledged that a finding of frivolity by a tribunal was not required for us to find that he violated the Rules of Professional Conduct. Further, although respondent had maintained that he had been the "prevailing party," he admitted to us during oral argument that the Malka matter settled for a nuisance value.

Moreover, respondent maintained that he had relied, in good faith, on the "litigation privilege." Respondent also urged us to consider the fact that his claims for injuries on his own and his clients' behalf were not elements of the asserted causes of action. Rather, had he prevailed, he would have had to establish damages during a proof hearing and, thus, "his pleadings harmed no one and worked no discernible prejudice to the adjudication of the cases where the damages were alleged." Respondent asserted that his misconduct was more akin to the attorney in In re Kimm, 191 N.J. 552, who was censured for filing a frivolous lawsuit against an individual as a tactic intended solely to coerce that individual into withdrawing a separate lawsuit, in violation of RPC 3.1 and RPC 8.4(d).

For the remainder of his misconduct, respondent asserted that precedent supported discipline less than a term of suspension. Specifically, attorneys who reveal client information without their client's consent usually receive reprimands, citing In re Lord, 220 N.J. 339 (2015); In re Chatarpaul, 175 N.J. 102 (2003); and In re Hopkins, 170 N.J. 251 (2001). Likewise, reprimands are imposed when an attorney fails to treat his client with courtesy and consideration. See In re Geller, 177 N.J. 505 (2003).

Respondent urged us to consider the following facts in mitigation. In connection with his violation of RPC 1.16(d), respondent asserted his belief that his representation of Duffy had concluded by virtue of his in-chambers conference with the trial judge. Further, he contacted his former client that evening, affording his client the opportunity to file a motion to vacate the default and, thus, there was no palpable detriment to the client.

For his discourteous treatment of Weber, respondent urged us to consider that Weber "was shown by way of his testimony at trial to be a fraudster, a con man and a shameless, inveterate liar." Respondent defended his actions, stating:

> Clients and attorneys frequently become embroiled in heated disputes and no doubt, on occasion, engage in harsh, inappropriate language. The same applies to the language used in Respondent's email to Ms. Linda Jones. His legal posturing and purported threats were a component of what he perceived to be aggressive advocacy on behalf of a client. No proof was introduced

> at the hearing before the panel to rebut or otherwise demonstrate that the assertions in the Jones email were legally inaccurate or not potentially permitted under New Jersey law.
>
> [RBpp8-9.]

Respondent, through his counsel, argued that he had exercised "bad judgment" when he visited the dental office, uninvited, to solicit Malka's interest in serving as an expert witness. Further, in response to our questioning, respondent denied any pattern of deception when his instant misconduct is viewed in connection with his misconduct in Rakofsky I. Instead, respondent attributed his misconduct to his inexperience. For the totality of his misconduct, respondent maintained that a censure was the appropriate quantum of discipline.

In turn, during oral argument before us, the OAE reiterated the points set forth in its written summation to the DEC. The OAE maintained that a period of suspension was warranted for respondent's misconduct and agreed with the DEC's recommendation that respondent receive a six-month suspension. The OAE emphasized, in aggravation, that respondent had filed multiple frivolous claims; acted against the interests of his clients; and did not demonstrate remorse but, rather, outright arrogance.

* * *

Following our de novo review of the record, we find that the DEC's determination that respondent violated RPC 1.6(a); RPC 1.16(d); RPC 3.1 (three

instances); RPC 3.2; RPC 8.4(c) (three instances); and RPC 8.4(d) (four instances) is supported by clear and convincing evidence. We also determine that the DEC correctly concluded that the evidence did not clearly and convincingly establish respondent's violation of RPC 3.3(a)(2) and RPC 4.4(a)(1).

Specifically, in the Weber I matter, respondent engaged in frivolous litigation, in violation of RPC 3.1, which 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.

Respondent asserted a counterclaim on behalf of Weber, CAS, and the other defendants that contained false allegations and lacked foundation in law and fact. The counterclaim alleged that the defendants had "suffered terrible mental anguish," were "unable to sleep," "ha[d] been subjected to physical pain," and were unable to participate in the majority of "daily activities" and, thus, were "deprived of the ability to work." Respondent had no reasonable basis in law or fact for asserting such claims in defense of plaintiff's Jones' complaint which, notably, sought damages totaling less than $8,000. Respondent openly admitted that, prior to filing the frivolous pleading, he did not interview Weber

or any of the other defendants regarding their alleged "mental anguish" and failed to review any corroborating documentation, medical or otherwise. Indeed, Weber himself testified that he did not suffer any mental anguish as a result of the plaintiff's conduct and that the claim was inaccurate. Thus, respondent did not have, nor could he have had, a reasonable belief based upon law or fact to support such a claim for relief. Respondent, thus, violated RPC 3.1. By filing such a frivolous pleading with the court, respondent also wasted judicial resources, in violation of RPC 8.4(d).

Respondent's misconduct in this respect also was violative of RPC 8.4(c), which prohibits an attorney from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. It is not axiomatic that a frivolous pleading, violative of RPC 3.1, is also violative of RPC 8.4(c). Indeed, it is well-settled that a violation of RPC 8.4(c) requires intent. See In the Matter of Ty Hyderally, DRB 11-016 (July 12, 2011). Here, however, we conclude that respondent violated this Rule by filing a counterclaim for damages arising from the defendants purported "terrible mental anguish" when he had absolutely no reasonable basis in law or fact to do so. In fact, his client testified that the claim was false. Moreover, as detailed above, the evidence clearly and convincingly establishes that, in other civil lawsuits, including but not limited to the Weber II and Malka matters, respondent repeatedly filed nearly identical claims for

extraordinary damages on his own behalf, premised on unsubstantiated and unsupported claims of mental anguish. Absent a reasonable basis in law or fact to support these outrageous claims of mental anguish and damages, we conclude that respondent intentionally asserted this claim in an attempt to intimidate the other party into settling the lawsuit. Respondent's conduct in this respect was, thus, dishonest and violative of RPC 8.4(c).

We reject respondent's arguments that, because no court declared his claims to be frivolous, he cannot be found to have violated RPC 3.1. 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 or fact. See In re Loigman, 224 N.J. 271 (2016).

Respondent's attempted reliance on the "litigation privilege" also is misplaced. That privilege is based on the long-standing law in New Jersey that protects an attorney from civil liability arising from words he or she has uttered in the course of judicial proceedings. See Loigman, 185 N.J. at 579. The privilege is based upon the public policy that persons should be permitted to "speak and write freely without the restraint of fear of an ensuing defamation action." MacNaughton v. Harmelech, 2018 N.J. Super. Unpub. LEXIS 127, * 3-4 (App. Div. 2018) (citations omitted). The privilege does not, however,

immunize an attorney from disciplinary sanctions under the Rules of Professional Conduct. Loigman, 185 N.J. at 586-587.

Next, respondent violated RPC 3.2, which requires a lawyer to treat with courtesy and consideration all persons involved in the legal process. The Court has opined that attorneys who lack "'civility, good manners and common courtesy . . . tarnish[] the entire image of what the bar stands for."' In re McLaughlin, 144 N.J. 133, 154 (1996) (quoting In re Vincenti, 114 N.J. 275, 282 (1985)). Lawyers must, therefore, "display a courteous and respectful attitude not only towards the court but towards opposing counsel, parties in the case, witnesses, court officers, clerks - in short, towards everyone and anyone who has anything to do with the legal process." In re Vincenti, 114 N.J. at 285. "Vilification, intimidation, abuse and threats have no place in the legal arsenal." In re Mezzacca, 67 N.J. 387, 389-90 (1975).

Respondent violated this Rule when he replied "f**k you" to Weber, his client, because Weber objected to respondent's attempt to collect additional legal fees. Respondent violated this Rule a second time by sending the settlement demand e-mail to Jones, threatening to sue her for "hundreds of thousands of dollars," asserting that a judgment would follow her around for the rest of her life, and demanding a response within ninety minutes or she would "pay the consequences." Although respondent asserted that this e-mail was

merely a litigation tactic, we conclude it was not zealous advocacy but, rather, reflected attempted intimidation and an utter lack of civility, which the Rule prohibits.

Contrary to the DEC, however, we determine that respondent's e-mail to Jones, though unprofessional and discourteous, did not separately violate RPC 4.1(a)(1). RPC 4.1(a) provides that a lawyer shall not "knowingly make a false statement of material fact or law to a third person." In our view, this record lacks clear and convincing evidence to support this charge.

In the Weber II matter, respondent violated RPC 1.6(a), which prohibits a lawyer from revealing information relating to the representation of a client unless the client consents after consultation. Respondent violated this Rule by revealing confidential information in his complaint for legal fees against Weber and CAS. Specifically, respondent filed suit against his then client, and included the following confidential information concerning Weber and CAS: that Weber "had no money;" that CAS was the subject to customer complaints from "innocent victims" and were "based on false statements;" information concerning the scope of their fee agreement; and information regarding the scope of respondent's representation of Weber and CAS.

Although the Rules permit an attorney to disclose such information to the extent the lawyer reasonably believes necessary to "establish a claim or defense

on behalf of the lawyer in a controversy between the lawyer and client," the information disclosed was unnecessary to assert respondent's claim for fees. Moreover, respondent had not served respondent with the pre-action notice required by R. 1:20A-6 and, thus, the complaint was defective on its face.

Next, respondent violated RPC 3.1 and RPC 8.4(c) by asserting, as he had done in Weber I, a claim for mental anguish on his own behalf stemming from Weber's failure to pay his outstanding legal bills. Respondent admitted that his claim for $1 million supposedly was premised on mental anguish he suffered as the result of Weber and CAS purportedly owing him between $1,000 and $10,000 in legal fees. Further, he admitted that his claim for damages was not supported by medical documentation.

Respondent also engaged in conduct prejudicial to the administration of justice, in violation of RPC 8.4(d), by filing a defective lawsuit stemming from his failure to serve the pre-action notice required by R. 1:20A-6. Further, according to the Court's public database, the case remained open for seven months – from May 1, 2018 until November 29, 2018 – when respondent informed the court that the parties had settled the matter. Prior to the dismissal of the complaint, the court had addressed respondent's motion for default; Weber's motion to vacate the default; and respondent's motion for a proof

hearing, which ultimately was dismissed as moot as a result of the parties' settlement. According, judicial resources were needlessly wasted.

We determine, however, that respondent did not separately violate RPC 3.3(a)(1), as the OAE charged, by asserting a frivolous claim for damages against Weber. Respondent's misconduct in this respect is fully addressed by the more specific charges pursuant to RPC 3.1 and RPC 8.4(c). Further, the evidence does not clearly and convincing demonstrate that respondent intentionally misrepresented the cost of his train ticket to the OAE during his demand interview and, thus, he did violate RPC 3.3(a)(1) in this respect, either.

In the Malka matter, respondent violated RPC 3.1 and RPC 8.4(c) by asserting, as he had done in the Weber I and Weber II matters, a nearly identical claim for the purported "terrible mental anguish" he sustained following his unwelcome and bizarre visit to Dr. Malka's office. Incredulously, respondent asserted this baseless claim within twenty-four hours of the purported traumatic event, asserting that Dr. Malka's actions had left respondent "unable to sleep;" "unable to participate in the majority of activities;" requiring "physical rehabilitation and psychological treatment for the rest of his life," to deal with the various traumas; and claiming all of this had left him unable "to work in a meaningful way." These claims were asserted without any medical corroboration and lacked any basis in fact or law. By filing this baseless

complaint with the Superior Court and, subsequently, having to dismiss it upon reaching a $2,300 settlement, respondent wasted judicial resources, in violation of RPC 8.4(d).

We determine, however, that respondent did not separately violate RPC 3.3(a)(1), as the OAE charged, by asserting a frivolous claim for damages against Malka. Respondent's misconduct in this respect is fully addressed by the more specific charges pursuant to RPC 3.1 and RPC 8.4(c).

In the Duffy matter, respondent violated RPC 1.16(d), which requires an attorney, upon termination of representation, to "take steps to the extent reasonably practicable to protect a client's interests." Here, respondent failed to protect his client's interests by failing to request, on the record, an adjournment of the trial date or object to entry of default against his client. Instead, respondent remained silent during the court proceeding, other than renewing his own motion to be relieved as counsel. In response to cross-examination during the ethics hearing, respondent testified that he believed his obligation to his client had terminated because the court had relieved him as counsel. Although respondent testified that he had informed the court, in chambers, that the hearing should be adjourned and had assumed they were on-the-record, we, like the DEC, reject respondent's testimony as incredible in this respect.

Further, as the DEC emphasized in its report, respondent made no attempt to call or text his client to advise him what had transpired in Judge Brogan's chambers. Instead, he waited until nearly 7:00 p.m. that evening to notify his client that the matter had been dismissed and default had been entered against him.

As a result of respondent's misconduct, Duffy was forced to file a pro se motion to vacate the judgment, requiring opposing counsel and the court to consider the motion. In this respect, respondent's actions wasted judicial resources, in violation of RPC 8.4(d).

The record does not, however, support the charge that respondent violated RPC 3.3(a), which prohibits a lawyer knowingly (1) making a false statement of material fact or law to a tribunal; or (2) failing to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting an illegal, criminal or fraudulent act by the client. The OAE asserted that respondent had violated either subset of the Rule by failing to inform the trial court that he had sent an e-mail to Duffy just prior to the commencement of the proceeding. As the DEC correctly concluded, the only testimony on this point was respondent's uncontroverted testimony that he informed the judge, while in chambers, that he had sent an e-mail to his client earlier that morning. In the absence of additional evidence, the charge cannot be sustained. For the same reason, the record does

not clearly and convincingly support a finding that respondent violated RPC 8.4(c).

In sum, we find that respondent violated RPC 1.6(a); RPC 1.16(d); RPC 3.1 (three instances); RPC 3.2; RPC 8.4(c) (three instances); and RPC 8.4(d) (four instances). We determine to dismiss the charges pursuant to RPC 3.3(a)(1); RPC 3.3(a)(2) and RPC 4.1(a)(1).

Respondent's most serious misconduct was his serial filing of frivolous claims; his waste of judicial resources; and his discourteous conduct toward his client and adversary.

Attorneys who have asserted a frivolous issue in a proceeding, resulting in prejudice to the administration of justice, have received censures. See e.g., In re Fiocca, __ N.J. __ (2023), 2023 N.J. LEXIS 636 (the attorney registered a nonprofit company in substantially the same business name as her former brother-in-law's cardiology practice and, months later, filed a frivolous lawsuit against the cardiology practice alleging that the entity, which the attorney knew to have been her brother-in-law's medical practice for at least twenty years and was the subject of a property settlement agreement, was unlawfully using the nonprofit's business name; additionally, the attorney issued a frivolous subpoena merely to obtain the correct address of the cardiology practice; in determining that a censure was the appropriate quantum of discipline, we

weighed, in aggravation, the attorney's evasive and incredible testimony during the ethics hearing, her failure to provide a rational explanation for her decision to select a business name similar to that of the cardiology practice or her lawsuit against it, and her decision to inject her daughter into what appeared to be a retaliatory scheme against her former brother-in-law; in mitigation, the attorney had no prior discipline in her more than forty-year career at the bar); In re Giannini, 212 N.J. 479 (2012) (attorney censured for numerous instances of "unprovoked, inflammatory, disparaging, and fictitious statements" about various judges and parties in pleadings that the attorney had filed on behalf of his sister; the attorney also made frivolous discovery requests, and made knowingly false, outrageous statements in his pleadings by alluding to matters that were either irrelevant or unsupported by admissible evidence; finally, the attorney improperly attempted to compel his adversary to withdraw their ethics grievance against him; in aggravation, the attorney displayed an "arrogant failure" to recognize his wrongdoing, given that he had "doubled down" on his baseless views of the New Jersey judiciary and of the disciplinary system in his brief to us; no prior discipline); In re Kimm, 191 N.J. 552 (censure for attorney who filed a "contrived" treble damage RICO and consumer fraud lawsuit in the Law Division with the sole purpose to coerce his adversary into withdrawing her Chancery Division action; no prior discipline).

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

rather, by a belief that he was right); 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 to 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) (on a motion for reciprocal discipline, fifteen-month suspension imposed on an attorney who had 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 lacked candor to a tribunal and made false and reckless allegations about judges' qualifications in court matters); In re Nash, 232 N.J. 362 (2018) (on motion for reciprocal discipline, two-year suspension imposed 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, RPC 3.4(c) (knowingly disobeying an obligation under the rules of a tribunal), 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 the attorney's "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").

Disrespectful or insulting conduct to persons involved in the legal process leads to a broad spectrum of discipline, ranging from an admonition to disbarment, depending on the presence of other ethics violations. See, e.g., In re Gahles, 182 N.J. 311 (2005) (admonition for attorney who, during oral argument on a custody motion, called the other party "crazy," "a con artist," "a fraud," "a person who cries out for assault," and a person who belongs in a "loony bin;" in mitigation, the attorney's statements were not made to intimidate the party); In re Romanowksi, 252 N.J. 415 (2022) (reprimand for attorney who, in a contentious divorce proceeding, called his client a "moron;" a "ridiculous person;" told her to "shut up;" stated that she and her ex-husband deserved one another; and threatened to withdraw as her counsel if she did not pay outstanding fees; mitigating factors included the attorney's unblemished forty-years at the

bar, recognition that his conduct had been intemperate, and the passage of seven years from the time of the misconduct until the imposition of discipline); In re Bailey, 249 N.J. 49 (2021) (censure for an attorney who had engaged in offensive and threatening behavior in two separate matters; in the first matter, the attorney intruded into an arbitration hearing taking place in his law office, began taking photographs, and then stated "[t]his will be in the newspaper when I put this in there after we kick you're [sic] a**es. You should be ashamed of yourself for kicking people out of a building and you have to live with yourself;" in the second matter, the attorney threatened arrest for federal crimes to gain an improper advantage in a civil matter, which involved an individual who had purportedly created a defamatory website; when the individual asked for an explanation for his purported arrest, the attorney replied, "[o]h, you have no idea what you just got into, buddy, you have no idea. Welcome to my world. Now you're my b***h"; in mitigation, we considered the attorney's lack of prior discipline in twenty-six years at the bar, his character letters, and his history of charitable ventures); In re Rifai, 204 N.J. 592 (2011) (three-month suspension imposed on an attorney who called a municipal prosecutor an "idiot," among other things; intentionally bumped into an investigating officer during a break in a trial; repeatedly obtained postponements of the trial, one based on a false claim of a motor vehicle accident; and was "extremely uncooperative and

belligerent" with the ethics committee investigator; the attorney had been reprimanded on two prior occasions); In re Van Syoc, 216 N.J. 427 (2014) (six-month suspension imposed on attorney who, during a deposition, called opposing counsel "stupid" and a "bush league lawyer;" the attorney also impugned the integrity of the trial judge by stating that the judge was in the defense's pocket, a violation of RPC 8.2(a); we found several aggravating factors, including the attorney's disciplinary history, which included an admonition and a reprimand; the absence of remorse; and the fact that his misconduct occurred in the presence of his two clients, who, as plaintiffs in the very matter in which their lawyer had accused the judge of being in the pocket of the defense, were at risk of losing confidence in the legal system); In re Vincenti, 92 N.J. 591 (1983) (Vincenti I) (one-year suspension for attorney who displayed a pattern of abuse, intimidation, and contempt toward judges, witnesses, opposing counsel, and other attorneys; the attorney engaged in intentional behavior that included insults, vulgar profanities, and physical intimidation consisting of, among other things, poking his finger in another attorney's chest and bumping the attorney with his stomach and then his shoulder); In re Vincenti, 152 N.J. 253 (Vincenti II) (disbarment for attorney described by the Court as an "arrogant bully," "ethically bankrupt," and a

"renegade attorney;" this matter constituted the attorney's fifth encounter with the disciplinary system).

The OAE and DEC correctly analogized respondent's misconduct to that of the attorney in In re Yacavino, who received a six-month suspension for, among other things, filing frivolous claims and engaging in conduct prejudicial to the administration of justice, which unnecessarily taxed court resources. In Yacavino, the attorney was involved in five lawsuits arising out of family and business disputes between him and his wife's relatives. In the Matter of Vincent M. Yacavino, DRB 04-426 (April 21, 2005) at 3. Yacavino, who represented himself, was a plaintiff in four of the actions and a defendant in the fifth. Ibid. We concluded that Yacavino had violated RPC 3.1 when, in two of the matters, he "repeatedly filed the same claims after the court dismissed them on the merits and, in the fifth matter, asserted claims that had been dismissed previously in the third and fourth matters. Id. at 31, 33-34. Moreover, we determined that Yacavino's multiple complaints had "taxed the court's resources" because they re-asserted the same claims that already had been dismissed. Id. at 37-38. Further, Yacavino also sent the Superior Court judge almost one hundred letters containing insulting and disrespectful language directed at the judge and accusing her of a possible "cover-up."

Here, respondent's multiple frivolous filings are quite similar to Yacavino's course of conduct. Like Yacavino, respondent filed multiple pleadings that asserted frivolous claims for damages, including severe mental distress, that were utterly without merit and, certainly with respect to the Weber II matter, wasted judicial resources. Further, like Yacavino, who had committed additional misconduct by sending a judge letters containing insulting and disrespectful language, respondent also engaged in additional misconduct, including telling his client to "f**k off" and sending a threatening and demeaning e-mail to Jones. Further, in the Duffy matter, he failed to protect his client's interests and, in the Weber II matter, revealed confidential client information.

Unlike Yacavino, however, who had filed the same frivolous claims despite the court having already dismissed the original complaint, no court had ever declared respondent's claims to be frivolous or lacking in merit. Further, Yacavino's frivolous filings wasted significant judicial resources, whereas here, with the exception of Weber II, respondent's cases settled soon after they were filed. In this limited respect, respondent's misconduct could be viewed as less egregious than that of Yacavino.

In determining to impose a six-month suspension on Yacavino, however, we considered several mitigating factors that are not present here. Unlike

respondent, who was censured for his outrageous misrepresentations underpinning Rakofsky I, Yacavino had an unblemished career with forty-years at the bar, a mitigating factor which we accorded significant weight. Further, we considered the "emotionally-charged" nature of Yacavino's claims, that he had not been motivated by venality, but instead a belief that he was right; and that no client had been harmed. Respondent, on the other hand, was motivated by personal gain and, unlike Yacavino, his misconduct harmed his client and the individuals he sued. In our view, respondent filed the complaints and counterclaim, notwithstanding their contrived and frivolous nature, to coerce favorable outcomes.

Based on the above precedent, and the Yacavino matter in particular, we conclude that a six-month suspension is the baseline for the totality of respondent's misconduct. To craft the appropriate discipline, however, we also consider mitigating and aggravating factors.

There is no mitigation to consider.

In aggravation, this matter represents respondent's second brush with the disciplinary system, having been censured in 2015 in Rakofsky I.

In further aggravation, respondent has demonstrated a disturbing trend of dishonest conduct that has continued since his 2015 discipline in Rakofsky I. In re Forrest, 158 N.J. 428, 438 (1999) (considering, in aggravation, that the

attorney had engaged in a continuing course of dishonesty, deceit, and misrepresentation). In Rakofsky I, respondent not only fabricated his credentials as a lawyer in an advertisement, but he also continued to lie during his testimony before the hearing panel. In determining that a censure was the appropriate quantum of discipline for misconduct that typically is met with an admonition or reprimand, we weighed, in aggravation, that respondent's misrepresentations and lies were so flagrant that they militated against a lessen sanction.

Despite his heightened awareness of his duty of candor, respondent has continued to engage in an alarming pattern of dishonesty – albeit in a different forum than attorney advertising. Here, respondent engaged in a dishonest, scorched-earth scheme – a cottage industry of sorts – whereby he threatened legal action and severe consequences, without any factual or legal basis for doing so, if his adversaries did not immediately capitulate to his frivolous demands and agree to settlements. Worse, he repeatedly filed pleadings asserting nearly identical false claims of extraordinary damages on his own behalf, as well as his client's behalf, that lacked any basis in fact or law. We view respondent's repeated inclusion of such outrageous and utterly baseline claims as deceitful and dishonest, character traits that are the antithesis of what we expect from members of the bar. See In re Matthews, 94 N.J. 59, 77 (1983) (attorneys are expected to hold themselves in the highest regard and must "possess a certain

set of traits -- honesty and truthfulness, trustworthiness and reliability, and a professional commitment to the judicial process and the administration of justice").

We are particularly alarmed by respondent's outrageous claim of severe emotional distress, following his bizarre impromptu visit to a dentist, with whom he did not have an appointment and had never met, purportedly to solicit the dentist's interest in serving as an expert witness. When the dentist rightfully asked him to leave the dental office, respondent refused. Then, the next day, respondent filed a civil lawsuit for damages against the dentist, seeking $1 million for respondent's purported mental anguish, inability to sleep, and inability to work for the next thirty years.

Respondent's baseless claim for damages against the dentist was nearly identical to the frivolous claims he asserted in his lawsuit for legal fees (which he admitted were no more than $10,000) that he had filed against his client; and in the answer and counterclaim he filed on his client's behalf, in an action pending in the Superior Court of New Jersey, Special Civil Part. Further, respondent admitted during the ethics hearing, and our review of publicly available court records confirmed, that he had filed substantially similar claims for mental anguish in at least six other lawsuits that he filed in the Superior Court on his own behalf, including against his own clients.

We also consider, in aggravation, respondent's failure to accept responsibility for his misconduct. Despite admitting most of the facts supporting the OAE's charges, he continued, throughout the ethics hearing, to deny having committed any misconduct. Instead, respondent blamed others, including his own clients, for his current predicament.

In our view, respondent's misconduct, exacerbated by compelling aggravating factors, requires a lengthy term of suspension. In arriving at our conclusion, we cannot overemphasize the importance, in our system of justice, of a zealous advocate. An advocate's zeal, however, must be tempered and circumscribed by the limits set forth by the Rules of Professional Conduct. Although the line between zealous advocacy and the frivolous pursuit of a claim or defense may not always be a bright one, we do not view the instant matter as a close call. Respondent repeatedly crossed that line by filing extraordinary claims for damages, unsupported in fact or law, for no legitimate purpose but instead to force the hand of his adversary.

On balance, we determine that a one-year suspension is the quantum of discipline necessary to protect the public and preserve confidence in the bar.

We also require, as conditions precedent to his reinstatement, that respondent (1) demonstrate his fitness to practice law, as attested to by a medical

doctor approved by the OAE, and (2) complete an OAE-approved continuing education course in legal ethics and professionalism.

Vice-Chair Boyer and Member Rodriguez voted to impose a six-month suspension, with the same conditions.

Members Petrou and Rivera 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 Joseph Rakofsky
Docket No. DRB 23-040

Argued: April 20, 2023

Decided: July 27, 2023

Disposition: One-year suspension

Members	One-year suspension	Six-month suspension	Absent
Gallipoli	X		
Boyer		X	
Campelo	X		
Hoberman	X		
Joseph	X		
Menaker	X		
Petrou			X
Rivera			X
Rodriquez		X	
Total:	5	2	2

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