No. 24-

IN THE

Supreme Court of the United States

JOSEPH D. LENTO,

Petitioner,

v.

PENNSYLVANIA SUPREME COURT
OFFICE OF DISCIPLINARY COUNSEL,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

The Pennsylvania Supreme Court's Office of Disciplinary Counsel (ODC) issued a 134-page Report, with 496 factual statements, followed by legal conclusions and proposed discipline against Petitioner. The Report contained a plethora of untruths, inaccuracies, and misrepresentations, and the investigation resulting in the Report was guided by an ODC attorney who had personal animus against the Petitioner. In *O'Dell v. Netherland*, 521 U.S. 151 (1997), Mr. Justice Stevens recognized that the "right to rebut the prosecutor's arguments is a 'hallmark of due process'." However, the Pennsylvania Supreme Court refused to permit Petitioner to submit a rebuttal or response to the Report, although it then relied upon the Report with its inaccuracies and misstatements, to suspend Petitioner. This Honorable Court must determine whether Petitioner's suspension as an attorney should be reversed because the Pennsylvania Supreme Court denied Petitioner one of the very hallmarks of due process.

PARTIES TO PROCEEDINGS

Petitioner:

Joseph D. Lento. Esquire

Respondent:

Pennsylvania Supreme Court Office of Disciplinary Counsel

RELATED CASE

Office of Disciplinary Couns. v. Lento, Case No. 3063 DD3, Pennsylvania Supreme Court, 2024 Pa. LEXIS 1750 (11-19-24). Judgment entered on November. 19, 2024.

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Office of Disciplinary Couns. v. Lento, Case No. 3063 DD3, 2024 Pa. LEXIS 1750 (Nov. 19, 2024). 1

OPINION BELOW

The decision of the Pennsylvania Supreme Court suspending Petitioner from the practice of law for five years is *Office of Disciplinary Couns. v. Lento*, Case No. 3063 DD3, 2024 Pa. LEXIS 1750 (Nov. 19, 2024), located in the Appendix at 1a-2a. This is the same decision refusing Petitioner's request to file a response, answer, or rebuttal to the Respondent's Annotated Report And Recommendations Of The Disciplinary Board Of The Supreme Court Of Pennsylvania, Dated July 1, 2024. The Report is located in the Appendix at 3a-306a.

JURISDICTION

The Order improperly accepting the Pennsylvania Disciplinary Board's Report, and suspending the Petitioner from practicing law in Pennsylvania for five years, was entered on November 19, 2024. (App. 1a)

On February 10, 2025, Justice Alito extended the time to file this Petition until March 19, 2025.

This Court has jurisdiction to hear this case pursuant to 28 U.S.C. § 1257, which provides: "Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where . . . any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States." Petitioner's Fourteenth Amendment right to due process was violated by the Pennsylvania Supreme Court's refusal to permit him to rebut the Report (App.

3a) upon which it relied when suspending Petitioner from the practice of law for five years. (App. 1a)

This Petition does not concern the Rule 29 issues.

RELEVANT CONSTITUTIONAL PROVISIONS

Fourteenth Amendment

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; ***nor shall any State deprive any person of life, liberty, or property, without due process of law***; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

Introduction

This Petition seeks to reverse the Pennsylvania Supreme Court's discipline of the Petitioner, a Pennsylvania attorney. The Pennsylvania Supreme Court received a Report from its Disciplinary Board and Office of Disciplinary Counsel on July 2, 2024. (App. 3a) However, the Report is incredibly skewed and biased, and contains a plethora of inaccurate, misleading, imprecise, and plainly incorrect statements. Petitioner sought leave of the Pennsylvania Supreme Court to file a rebuttal to the

Report; however, the Supreme Court denied that request. (App. 314a, 1a) Therefore, contrary to fundamental "due process" principles enshrined in the Fourteenth Amendment, based only on what the "prosecutor" told the Supreme Court, and without Petitioner's version and explanation of the events, the Supreme Court adopted the Report and suspended Petitioner from practicing law for five years. (App. 1a)

Petitioner raised the "due process" issue, i.e., "Fundamental fairness dictates that Movant be able to present this Honorable Court with the conflicting version of the record," at ¶ 10 of Petitioner's Motion to File a Brief or Supplement Petition addressing the Details of ODC's Report. (App. 316a)

The assault on Petitioner's license began long before his recent suspension. In 2012, Office of Disciplinary Counsel (ODC) attorney Harriet Brumberg charged Petitioner with violation of disciplinary rules. During those interactions, Brumberg openly showed her disdain for Petitioner. On one occasion, she questioned Petitioner about his activities *before* even passing the bar exam. Petitioner had been employed by the local probation department while he attended law school at night. Because of stress, especially as the bar exam approached, he requested and was granted FMLA leave. Petitioner effectively resigned and did not return to the probation department when his FMLA leave ended. When Brumberg learned that Petitioner did not return to the probation department at the end of his FMLA leave, she became incensed and chastised him for that behavior. During conversations with Petitioner's counsel in 2012-2013, in Petitioner's presence, Brumberg stated she did "not take

kindly to Mr. Lento" or "warm up to Mr. Lento" and that she and the Board would be seeking its "pound of flesh."

Although Petitioner was always polite toward Ms. Brumberg when in her presence, her facial expressions and attitude demonstrated her disdain for him.

The Disciplinary Board publishes a newsletter identifying all disciplinary actions and their status. After Petitioner was disciplined in 2013, adding insult to injury, the newsletter specifically featured an extensive discussion of Petitioner's matter, clearly intending to publicly humiliate him. Others, with far more severe discipline imposed, were not subjected to this public shaming.

In June 2022, Brumberg and the ODC filed another disciplinary petition against Petitioner. Even though the ODC had multiple attorneys, Ms. Brumberg was once again the prosecutor. (Petitioner does not know whether she lobbied to prosecute Petitioner.) Once again, Brumberg proceeded to extract her "pound of flesh."

With Brumberg investigating and prosecuting what became the June 2022 complaint, the result was a foregone conclusion. After the Pennsylvania Supreme Court disciplined Petitioner, without having the benefit of his side of the story and rebuttal of the ODC's incredibly skewed and biased Report, Brumberg demonstrated that she took her prosecution of Petitioner personally. When informing a former Lento Law Group client of Petitioner's discipline, she wrote: "*I am delighted* to inform you that by Order dated November 19, 2024, effective December 19, 2024, the Supreme Court of Pennsylvania suspended

Joseph D. Lento from the practice of law for five years." (emphasis added)[1] Synonyms to "delighted" include joyous,

1. The Blumberg letter:

Sent via Email—xxxxxxxxxx@gmail.com
Mustafa Ibrahim
XXXXXX Madison Avenue
New York, NY 10029

RE:Office of Disciplinary Counsel v. JOSEPH D. LENTO No. 80 DB 2022
Attorney Registration No. 208824 (Philadelphia)

Dear Mr. Ibrahim:

I am delighted to inform you that by Order dated November 19, 2024, effective December 19, 2024, the Supreme Court of Pennsylvania suspended Joseph D. Lento from the practice of law for five years. (See attached Order, Disciplinary Board Opinion, and news report). Office of Disciplinary Counsel (ODC) will now be closing your complaint without disposition pending Mr. Lento's Petition for Reinstatement. ODC requests that you do not destroy any of your records in your complaint matter and keep us informed if there are new developments as your complaint will be considered should Mr. Lento apply for reinstatement to practice law in the future

In addition, if you have not already done so, you may consider filing a complaint with the New Jersey Office of Attorney Ethics and New York State Grievance Committee, 3rd Division, since Mr. Lento is also a member of the New Jersey and New York state bars.

(See: https://www.njcourts.gov/attorneys/attorney-ethics-and-discipline/file-ethics-grievance; nycourts.gov/ad3/agc) Finally, to the extent that your complaint involved a matter pending in any state or federal court, administrative agency, government office, or school,

joyful, happy, and glad.[2] "Delighted" reflects Brumberg's personal joy in unreasonably investigating and prosecuting Petitioner and personal joy at Petitioner's suspension. It is not a term used by an impartial prosecutor seeking justice.

Disciplinary Hearings And Report

The 2022 disciplinary complaint against the Petitioner contained several claims of alleged misconduct. In the more serious matters, the evidence is clear that Petitioner had only a minor role in the events and that other, more experienced attorneys assigned to the cases, caused the problems identified in the complaint. However, Petitioner was crucified as if he caused the problems himself.

Much of the disciplinary hearing addressed the Red Wine Restaurant lawsuits. These were lawsuits brought in the Eastern District of Pennsylvania (and once in error in the District of New Jersey) on behalf of Mr. Rosario, a gentleman confined to a wheelchair, against the owner of a restaurant and an event promoter because, in violation of federal laws, there were no accommodations to permit Mr. Rosario to access a public event in the lower level of the facility.

> you should notify that entity of Mr. Lento's five-year suspension as it may impact your legal matter.
>
> Thank you for filing your complaint with ODC and your interest in maintaining the integrity of the legal profession.
>
> Sincerely,
> Harriet R. Brumberg Disciplinary Counsel

2. https://www.merriam-webster.com/dictionary/delighted#synonyms

Petitioner was neither a member of the Eastern District of Pennsylvania bar nor experienced in civil law. Therefore, he hired Steven C. Feinstein, Esquire, as an attorney for his law firm. Mr. Feinstein was barred in the EDPA and had close to 40 years of civil litigation experience. Mr. Feinstein was assigned the Rosario file because of his extensive experience. He drafted and filed the complaint and handled all aspects of pre-trial activities. However, Mr. Feinstein handled the case poorly. Most significantly, at the time he left Petitioner's firm, a pre-trial conference had been scheduled before District Judge Eduardo C. Robreno. Mr. Feinstein knew of the conference and specifically informed Petitioner that he would attend/cover the conference as Petitioner's firm had no other attorneys barred in the Eastern District of Pennsylvania. Mr. Feinstein neither informed the Court that he was no longer employed by Petitioner nor did he attend the conference. Judge Robreno was rightfully offended by Mr. Feinstein's disrespect. By Order dated January 13, 2020, Judge Robreno dismissed the Red Wine Restaurant-I case without prejudice and he subsequently referred Mr. Feinstein and Respondent to the Disciplinary Board for further investigation.

While Petitioner had overall management responsibility for his law firm, Mr. Feinstein, who had almost four decades of civil litigation experience, was the primary cause of the Red Wine Restaurant debacle. This file was assigned to him. He knew of the conference. He told Petitioner that he would attend the conference. But he did not. In failing to attend the conference, Mr. Feinstein caused the case to be dismissed and Judge Robreno to refer the matter to the Disciplinary Board.

Even though the Red Wine Restaurant problem and the disrespect shown to Judge Robreno were entirely Mr. Feinstein's fault, Brumberg made a deal with him if he testified against Petitioner. Mr. Feinstein had two reasons to shift the blame from himself to Petitioner and to exaggerate his negative stories about Petitioner and his firm. First, Mr. Feinstein was facing the same discipline as Petitioner, and testifying against Petitioner for Brumberg would encourage Brumberg to make a deal and offer him less severe discipline, if any. Second, Mr. Feinstein made it clear to Petitioner that should the disciplinary hearing result in punishment that could severely damage Petitioner's business, Mr. Feinstein would gladly purchase his law firm—for pennies on the dollar. The more Mr. Feinstein testified against Petitioner, and the more incompetent he made Petitioner appear, the more likely he could "steal" Petitioner's law firm. Despite Mr. Feinstein's motivation to do whatever was necessary to place blame on Petitioner and make Petitioner look as bad as possible, Brumberg used him as her prime witness.

The Report (App. 3a) cites Mr. Feinstein innumerable times. His testimony provided substantial support for the Disciplinary Board's conclusions. When deciding whether to accept the Report and its recommendations, the Pennsylvania Supreme Court reviewed Mr. Feinstein's testimony. However, because the Supreme Court refused to allow Petitioner to file his own document rebutting the Report, explaining the bias contained in it, and the misrepresentations and inaccuracies it contained, it did not understand the context of Mr. Feinstein's testimony, his severe bias, the flaws of his testimony, and why he should not have been believed. Had Petitioner been provided with basic due process, enabling him to respond to the

allegations against him, the Pennsylvania Supreme Court might have rejected the Board's Report and assessed less or no discipline against him.

Another important Brumberg witness was Dr. Joan Feinstein, Esquire. Dr. Feinstein (who is not related to Mr. Feinstein) assumed responsibility for the Red Wine Restaurant case after Mr. Feinstein. She was also admitted in the Eastern District of Pennsylvania. Dr. Feinstein signed, as attorney of record, the refiled complaint. Even though the Petitioner provided Dr. Feinstein and a paralegal specific written instructions to *refile* the complaint in the Eastern District of Pennsylvania, it was filed in the District of New Jersey. When that mistake was recognized, the New Jersey case was promptly dismissed. Then, Dr. Feinstein reviewed the Civil Cover Sheet and complaint and had them refiled in the Eastern District of Pennsylvania. However, Dr. Feinstein failed to observe that the Civil Cover Sheet did not designate that the case was *refiled*. (This failure occurred despite Petitioner's specific written instructions two days earlier.) Accordingly, the case was not sent to Judge Robreno, but to another federal judge. When the error was discovered, the case was transferred to Judge Robreno. Judge Robreno referred Petitioner, Dr. Feinstein (and Mr. Keith Altman) to the Disciplinary Board for the improper re-filing of the complaint. As with Mr. Feinstein, Dr. Feinstein was now subject to discipline. Taking advantage of the situation, in her assault of Petitioner, Brumberg used her as a cooperating witness. Dr. Feinstein had the same motivation as Mr. Feinstein to testify as Brumberg desired; she would receive no or reduced discipline.

Dr. Feinstein's testimony also served as the basis for many of the Disciplinary Board's conclusions. However, because the Supreme Court refused to allow Petitioner to file his own document rebutting the Report, explaining the bias contained in it, and the misrepresentations and inaccuracies it contained, it did not understand the context of Dr. Feinstein's testimony, the flaws of her testimony, and why she should not have been believed. Had Petitioner been provided with basic due process, enabling him to respond to the allegations against him, the Pennsylvania Supreme Court might have rejected the Board's Report and assessed less or no discipline against him.

The Report contained other flaws:

- Demonstrating confusion about even the most basic aspects of Petitioner's firm, it referred to his Philadelphia office as virtual rather than the physical office that it was. (App. 4a-5a)

- Similarly, it failed to recognize that both the Lento Firm and Lento Law Group used the law office management software, CLIO. (App. 5a)

- The Report inaccurately said that Petitioner did not have a clear recollection of client consultation and other conversations. (App. 5a)

- The Report states Petitioner never entered his appearance in cases, while he testified that he only did not enter his appearance in expungement cases. (App. 5a-6a)

- The Report stated that Petitioner's firm only used independent contractors (1099), while in reality, both 1099 and W-2 attorneys were used. (App. 6a)

- While noting that Petitioner was ultimately "responsible" for the firm's legal work, it failed to acknowledge that like all firms, more experienced attorneys required and received less direct supervision. (App. 7a)

- The Report quotes Mr. Feinstein as having recognized shortcomings with Petitioner's firm, and trying to address them with Petitioner, while in fact, no such conversations ever occurred. (App. 10a)

- Ms. Feinstein's testimony suggested that she told Petitioner that she had concerns about how the office was managed and operated, but that he ignored them. Quite the contrary, Petitioner retained private ethics counsel to provide guidance on ethical and operational issues. (App. 13a-15a)

- The Report quoted Petitioner calling Dr. Feinstein a "girl scout," while in fact, Mr. Groff, a paralegal, may have used that term. (App. 15a)

- Brumberg and the Board relied upon the decision in *Commonwealth v. Lutz*, 788 A.2d 993, 1000 (Pa. Super. 2001), even though it was so distinguishable as to have no application to the expungement case about which it was used.

- The Report accused Petitioner of not understanding Pennsylvania expungement law and, therefore, not providing the client with complete and accurate information. However, this was untrue as Petitioner represented 750-1000 expungement cases and had a thorough understanding of the law. This extensive experience was ignored.

- The Report misrepresented the reasons for which Petitioner was hired to represent an expungement client.

- The Report assigned blame to Petitioner for failing to have a Philadelphia Common Pleas Court complaint properly served. In reality, this was Mr. Feinstein's file. Mr. Feinstein was an extremely experienced civil litigator and was responsible for arranging for and overseeing proper service. He knew the service rules, but did not follow them. After this situation, Petitioner established written guidelines for the service of process.

- The Report accused Petitioner of falsely preparing an affidavit in support of another attorney's pro hoc vice admission. The affidavit inadvertently stated that he had not been previously disciplined because the paralegal who prepared it did not know Petitioner's disciplinary history. Significantly, Pennsylvania Rules do not require the discipline history of the sponsoring attorney. Only the attorney seeking pro hoc status must identify prior discipline. Thus, the oversight had no relevance to the motion and did not result in prejudice against any party or the court. However, the Report did

not present this explanation or analysis of the Pennsylvania Rules allowing the Supreme Court to believe that this inadvertent statement was significant when it was not.

- The affidavit of an administrative employee was submitted with respect to the previous matter. Without any evidence, the Report untruthfully stated that Petitioner coerced the employee to provide a false affidavit.

- In another expungement case, the Report suggested that Petitioner accepted a fee for services he knew he could not successfully provide. However, that was inaccurate. Petitioner was not provided with clearly requested details about the client's extensive criminal history and much of Petitioner's time was spent determining that history so he could properly advise the client of her rights, in addition to contemporaneously trying to resolve collateral issues related to the client's extensive criminal history. Quite simply, the client did not provide the information necessary to know what outcome could be achieved for her.

- In a college expulsion appeal, the client was concerned that Petitioner was not going to be able to file her appeal timely. The Report states that Petitioner knew the date and time it was due. However, the Report ignores that the client did not inform Petitioner of the time her appeal was due, the documentation did not clearly specify a time to file the appeal, the client in fact submitted her own appeal (only made known to Petitioner after being

> engaged) thereby negating any deadline whatever the deadline may have been, and further, the client did not pay her fee and was told no work would begin on her file until she did so.

The above are only some of the examples of misrepresentations, incomplete information, and false or misleading statements contained in the Report. The Appendix contains an annotated version of the Report. The bolded text in Times New Roman font contains the rebuttals to the Report that Petitioner would have provided the Pennsylvania Supreme Court had its motion to do so been granted. (App. 3a)

The Pennsylvania Supreme Court Actions

The Report (App. 3a) was submitted to the Pennsylvania Supreme Court on July 2, 2024. Immediately upon reviewing the Report, Petitioner was shocked by how little it reflected the evidence and the truth. While Brumberg's evidence was clearly articulated, Petitioner's was downplayed, misstated, or ignored.

Petitioner filed two documents to address this injustice. First, on July 16, 2024, Petitioner filed a Petition to Review. (App. 332a) Second, and critical to this appeal, on August 27, 2024, Petitioner filed his Motion to File a Brief or Supplement Petition addressing the Details of ODC's Report. (App. 314a) This Motion sought to rebut the biased and misleading Report. The Pennsylvania Supreme Court refused to permit Petitioner to respond to and rebut the Report. (App. 1a) Therefore, when the Pennsylvania Supreme Court reviewed the Report when deciding whether Petitioner should be disciplined, and if

so, the nature of the discipline, the court only had before it the prosecutor's version of the facts and the conclusions the prosecutor believed the facts supported. It assessed a five-year suspension against Petitioner without ever having heard his version of the facts, the rebuttal of the biased Report, and the conclusions that Petitioner believed the correct facts supported.

Despite denying Petitioner the most fundamental due process, the Pennsylvania Supreme Court suspended him for five years from practicing law. (App. 1a)

ARGUMENT

This Court has held, "A State cannot exclude a person from the practice of law . . . in a manner or for reasons that contravene the Due Process or Equal Protection Clause of the Fourteenth Amendment." *Schware v. Bd. Of Bar Exam'rs Of N.M.*, 353 U.S. 232, 238-39 (1957); *Willner v. Comm. on Character & Fitness*, 373 U.S. 96, 102 (1963); *Law Students Civil Rights Research Council, Inc. v. Wadmond*, 401 U.S. 154, 174 (1971) (Douglas, J., dissenting) ("Therefore I think that when a State seeks to deny an applicant admission or to disbar a lawyer, it must proceed according to the most exacting demands of due process of law.); *Willner v. Comm. on Character & Fitness*, 373 U.S. 96, 102 (1963).

In her concurring opinion in *Simmons v. South Carolina*, 512 U.S. 154, 175 (1994), Justice O'Connor emphasized: "[O]ne of the hallmarks of due process in our adversary system is the defendant's ability to meet the State's case against him." Justice Stevens (and three other Justices) wrote dissenting in *O'Dell v. Netherland*,

521 U.S. 151, 171(1997) (emphasis added), "In my view, the right in Simmons—*the right to respond to an inaccurate or misleading argument*—is surely a bedrock procedural element of a full and fair hearing."

This Court has recognized that this "hallmark of due process" applies to attorney disciplinary cases. "Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer. He is accordingly entitled to procedural due process, which includes fair notice of the charge. See *In re Oliver*, 333 U.S. 257, 273. It was said in *Randall v. Brigham*, 7 Wall. 523, 540, that when proceedings for disbarment are 'not taken for matters occurring in open court, in the presence of the judges, notice should be given to the attorney of the charges made *and opportunity afforded him for explanation and defence.* Therefore, one of the conditions this Court considers in determining whether disbarment by a State should be followed by disbarment here is whether 'the state procedure from want of . . . *opportunity to be heard* was wanting in due process." *In re Ruffalo*, 390 U.S. 544, 550-51 (1968) (internal citations omitted; emphasis added).

In *Goldsmith v. United States Bd. of Tax Appeals*, 270 U.S. 117, 123 (1926), this Court specified that due process mandates an "opportunity to answer."

In this case, Petitioner was denied a fundamental hallmark of due process—the opportunity to answer.

When the Pennsylvania Supreme Court decided whether to discipline Petitioner, and if so, the nature and length of discipline, the *only* information it had before it

was the Disciplinary Board/ODC Report. (App. 3a) This is the Report that was incredibly skewed and biased, and contained a plethora of inaccurate, misleading, imprecise, and plainly incorrect statements, only some of which have been previously documented in this Petition. Even though Petitioner sought to file an explanation, defense, response, and rebuttal to that seriously flawed Report, the Pennsylvania Supreme Court *refused the request*. Therefore, Petitioner was suspended from practicing law for five years based solely upon the prosecutor's Report and without any rebuttal from the accused.

Accordingly, Petitioner was suspended without what this Court has called one of "the hallmarks of due process in our adversary system" *Simmons*, 512 U.S. at 175. Petitioner was completely denied "*the right to respond to an inaccurate or misleading argument*— . . . a bedrock procedural element of a full and fair hearing." *O'Dell*, 521 U.S. at 171.

Petitioner recognizes that this matter does not squarely fit within Rule 10. Nonetheless, it presents a compelling reason for this Court to grant certiorari to the Pennsylvania Supreme Court. This Court has clearly and unambiguously held (1) an attorney's right to practice law is protected by "due process" as enshrined in the Fourteenth Amendment; (2) a bed-rock of "due process" is the right to answer, rebut, and defend against the prosecution's allegations; and (3) this right to answer applies to disciplinary proceedings against attorneys. However, despite Petitioner's request to do so, the Pennsylvania Supreme Court denied Petitioner the right to answer, rebut, and defend against the prosecution's allegations contained in their Report. Based solely on

the prosecution's presentation of the case against the Petitioner, despite that presentation (the Report) being incredibly skewed and biased, and containing a plethora of inaccurate, misleading, imprecise, and plainly incorrect statements, the Pennsylvania Supreme Court suspended Petitioner.

Granting certiorari is essential to prevent the due process in attorney disciplinary matters from being an empty promise and reinforcing that the Pennsylvania Supreme Court and, by extension, all states are mandated to provide attorneys facing disciplinary actions with the "due process" rights guaranteed by the Fourteenth Amendment and acknowledged by this Court.

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* A member of the bar of the United States Supreme Court.

CONCLUSION

For the reasons set forth above, Petitioner respectfully requests that this Court grant certiorari to the Pennsylvania Supreme Court so that it can review and reverse Petitioner's unconstitutional suspension from the practice of law for five years.

Respectfully submitted,

LAWRENCE A. KATZ
Counsel of Record
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APPENDIX A — ORDER OF THE UNITED STATES SUPREME COURT OF PENNSYLVANIA, FILED NOVEMBER 19, 2024

IN THE SUPREME COURT OF PENNSYLVANIA

No. 3063 Disciplinary Docket No. 3

No. 80 DB 2022

Attorney Registration No. 208824

(Philadelphia)

OFFICE OF DISCIPLINARY COUNSEL,

Petitioner,

v.

JOSEPH D. LENTO

Respondent.

ORDER

PER CURIAM

AND NOW, this 19th day of November, 2024, upon consideration of the Report and Recommendations of the Disciplinary Board, Respondent's Petition for Review and Application for Relief, the Application for Relief is denied, and Joseph D. Lento is suspended from the Bar of this

Commonwealth for five years. Respondent shall comply with the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(8).

A True Copy Nicole Traini
As Of 11/19/2024

Attest: /s/ Nicole Traini
Chief Clerk
Supreme Court of Pennsylvania

APPENDIX B — RESPONDENT'S ANNOTATED REPORT AND RECOMMENDATIONS OF THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA, DATED JULY 1, 2024

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

No. 80 DB 2022
Attorney Registration No. 208824
(Philadelphia)

OFFICE OF DISCIPLINARY COUNSEL,

Petitioner,

v.

JOSEPH D. LENTO,

Respondent.

NOTE: RESPONDENT'S RESPONSES TO THE ODC REPORT ARE IN BOLDED FONT.

RESPONDENT'S ANNOTATED REPORT AND RECOMMENDATIONS OF THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES OF THE SUPREME COURT OF PENNSYLVANIA:

Appendix B

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. FINDINGS OF FACT

The Board makes the following factual findings:

Background: Respondent, Respondent's Law Firms, Respondent's Employees

1. Respondent, Joseph D. Lento, was born in 1977 and was admitted to practice law in the Commonwealth on October 23, 2008. (Stip B)

2. Pursuant to Pa.R.D.E. 201(a)(1), Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania. (Stip D) Respondent is the managing attorney of the Lento Law Firm located at 1500 Walnut Street, Suite 500, Philadelphia, PA 19102.

a. Respondent is the only employee at Lento Law Firm (NT III, 398); and

b. Respondent's 1500 Walnut Street office is a "virtual office" that "you rent by the hour or the day or the month" and use "when you need an office to see somebody, but it's not there on an everyday basis." (NT II, 39-41)

This is inaccurate. This has always been a physical and not a virtual office.

3. Respondent had a "working relationship" with Keith Altman, Esquire, but Mr. Altman was not an employee of Lento Law Firm. (NT IV, 377)

4. Respondent does not maintain an electronic case management system at the Lento Law Firm, but maintains email files and paper files. (NT III, 397-398)

This is inaccurate. Lento Law Firm and Lento Law Group use the same CLIO case management software and website.

5. Respondent does not take notes when he speaks with clients, but claims he "recollects as needed in a given case to address a matter accordingly." (NT III, 260) That said, Respondent was often unable to recollect conversations with his clients. *See*, *e.g.*, NT III, 260,267, 319; NT IV, 59, 139, 160, 343.

This is inaccurate. Respondent had a clear recollection of the substance of the conversations. There was no reason to expect that in 2023, Respondent would have a perfect recollection of events that, in some cases, occurred five years earlier. Respondent demonstrated an accurate recollection of the events involved in this Report.

6. Respondent intentionally does not enter his appearance in a case where he has been retained, so that he is "not attached on the case." (NT IV, 245, 246)

This is inaccurate. This procedure is limited to expungement matters when the engagement is limited to submitting pleadings and does not include representation for a hearing In other cases, Respondent does enter his appearance in courts where he is barred.

7. Respondent explained that he operates a "pragmatic practice of sorts" (NT IV, 145) and that "in the pragmatic practice of law, certain things may not be done as may be required." *(Id.* at 158)

8. Respondent is also the managing attorney at Lento Law Group, formerly Optimum Law Group (Stip 26), located at 300 Atrium Way, Suite 200, Mt. Laurel, New Jersey 08054. Respondent explained the purpose of Lento Law Group in that he wanted to expand and wanted to take on a role of overseeing other attorneys where other attorneys would handle the legal work. (NT IV, 383,384)

It is accurate that Respondent intended the Lento Law Group to be like other large and medium-sized law firms where a senior partner is not engaged in the day-to-day handling of files, but manages the overall law firm, and speaks with potential new clients.

a. The Lento Law Group is a professional corporation, Respondent is the majority shareholder, and Wayne Pollock, Esquire, is a minority shareholder. (NT V, 60-61)

b. All persons who worked for Lento Law Group were independent contractors and received IRS 1099 forms. (NT IV, 377-378).

Not all persons were 1099 contractors. There were a combination of W-2 and 1099 employees.

c. Respondent's attorneys would "come and go" and Respondent could not recall the names of prior associates employed in 2019. (NT V, 61)

In today's business and legal climate, employees seldom remain at an employer for prolonged periods. Employees will often remain at one job until they see what they perceive as a better opportunity. Respondent testified in 2023 and could not specifically, from memory, recall all the personnel at the firm in 2019.

9. Respondent was responsible for the conduct of the lawyers who worked for Lento Law Group. (NT IV, 384)

Although Respondent was generally responsible for the attorneys in the firm, experienced lawyers were given less oversight than those with less experience. Experienced attorneys were hired and paid a salary commensurate with someone requiring less oversight and capable of being given more independence.

10. Respondent did not have written policies in place for the filing and service of complaints at Lento Law Group until "possibly the spring of 2020." (NT V, 62-63)

11. With respect to filings and motions, Respondent was responsible for:

a. filing of motions and complaints, checking the filings of motions and complaints, and enforcing the policies and procedures of the firm (NT V, 64, 66); and

b. "following the Court Rules and Code of Professional Responsibility [sic], ultimately the conduct of all employees at both the Lento Law Group and the Lento Law Firm." (*Id.* at 67)

Experienced attorneys were hired and paid a salary commensurate with someone requiring less oversight and more independence. Steve Feinstein and Joan Feinstein should have had the experience to file motions and complaints, and checking on the filings, without careful management oversight. There was no reason for Respondent to believe that they were not competent or capable to independently file pleadings, motions, and similar documents.

12. John Edward Groff was a paralegal and the office manager at Optimum, Lento Law Group, and the Lento Law Firm. (**NT** II, 15; NT V, 61)

Mr. Groff was never employed by Lento Law Firm.

13. Mr. Groff had been an office manager at another law firm before becoming Lento Law Group's Office Manager. (Stip 55)

14. The support staff at Lento Law Group consisted of paralegals and secretaries. (NT II, 30)

15. Steven C. Feinstein, Esquire, was an attorney employed by Optimum from April 2019 to November 27, 2019. (NT II, 7-8, 57) Mr. Feinstein was a credible witness

> **Mr. Feinstein had absolutely no credibility as his desire to purchase the Lento firm at a fire sale price was the likely reason for his testimony. Additionally, Feinstein had disciplinary issues and testifying as the ODC desired made it likely that there would be no or very minimal disciplinary punishment against him.**

16. Mr. Feinstein explained that Optimum was a "decentralized office where there was maybe one or two attorneys at a central location and all of the other attorneys affiliated with the firm would work out of whatever offices they worked out of, their homes . . . etc." (NT II, 34)

> **This office structure did not relieve Mr. Feinstein of his ethical and professional obligation to attend scheduled court conferences so long as he was still attorney of record. Furthermore, whether Mr. Feinstein was working in an office or**

remotely, his level of experience suggested that he was competent to perform legal work and handle his cases without direct and micromanagement levels of supervision.

17. While Mr. Feinstein was employed at Optimum, he:

a. observed "there was a high turnover with regard to attorneys" (NT II, 22);

b. did not know where the other attorneys were admitted to practice law *(id);*

c. received his assignments from Mr. Groff "99 percent of the time" (*id.* at 23);

d. had "no idea" who reviewed his completed legal work *(id);*

e. did not know if anyone reviewed his completed legal work *(id);*

f. received edits from another attorney on his legal work on only one occasion *(id.* at 43-44);

g. never gave his legal work to Respondent for review *(id* at 23, 137);

h. had never been asked by Respondent to review Mr. Feinstein's legal work *(id);* and

i. "[n]o, not once" received feedback from Respondent about Mr. Feinstein's legal work. *(Id.)*

> **Mr. Feinstein was an attorney with approximately 34 years of experience in civil law. In contrast, Respondent had limited civil law experience. Mr. Feinstein was hired because of his experience and with the expectation that he had the knowledge, skill and experience to manage the civil cases assigned to him. Furthermore, there were meetings, including at points in time, weekly Zoom conferences and telephone calls for all staff where workload, legal issues, etc. were discussed. Mr. Feinstein never articulated concerns with any of the above at office meetings.**

18. While Mr. Feinstein was employed at Optimum:

a. he would give his legal work to the support staff or Mr. Groff for proofreading and editing before filing (NT II, 30-31);

b. the support staff was responsible for obtaining the process servers *(id.* at 31);

c. he was not always told when there were changes in the support staff to whom he would give his work, resulting in Mr. Feinstein's sending work to the email address of a secretary who had been terminated *(id.* at 31-32);

d. there was an online case management system known as CLIO. However, Mr. Feinstein had not received any training on how to use it; attorneys were responsible for uploading documents for their cases; and the support staff would save final documents *(id.* at 33);

e. there were occasions when documents were not uploaded to CLIO and Mr. Feinstein had to go to court without a file *(id.* at 38); and

f. Mr. Feinstein had never been to Optimum's New Jersey office and did not know if there were hard copies of files maintained at that office. *(Id.* at 39)

19. While Mr. Feinstein was employed at Optimum, he alerted Respondent to ethical issues regarding the firm's operation, including:

a. in ***Mitchell v. Wawa*,** Mr. Feinstein advised Respondent that Optimum had failed to inform the client (Mitchell) that her case had been referred to Optimum from another attorney and obtain Mitchell's consent to the referral (NT II, 25-27);

b. in ***United States v. Anna Molina*,** after Mr. Feinstein discovered that Respondent had been communicating with the Assistant U.S. Attorney about Ms. Molina's case, Mr. Feinstein warned Respondent "that he cannot touch anything in the Eastern District at all" *(id.* at 28); and

c. concerns about the way "the clients were being represented, the fact that paperwork wasn't being done properly in terms of transferring files . . . and there were very lax, in my opinion, ethical standards." *(Id.* at 125)

Reliance upon Mr. Feinstein's testimony as the basis for the ODC's recommendations was absurd. Mr. Feinstein had no credibility as his desire to purchase the Lento firm at a fire sale price was the likely reason for his testimony.

20. Mr. Feinstein was not promised any favorable treatment or perceived he would receive any favorable treatment for his cooperation with Office of Disciplinary Counsel and testimony at Respondent's disciplinary hearing. (NT II, 122)

This statement is unreliable and self-serving,

21. Joan A. Feinstein, Esquire, a psychologist, and an attorney with a related interest in disability matters (ODC-42/Bates 345, p. 25) (Stip 52), was employed as a consultant at Optimum/Lento Law Group from approximately late 2018 to December 2021. Mr. Feinstein and Ms. Feinstein are not related.

22. During Ms. Feinstein's employment, she had some concerns about how the practice was being operated and asked Respondent to meet with outside counsel and express those concerns. (NT II, 222-223)

Respondent had independently retained an ethics counsel to advise on issues as early as 2019 to avoid any ethical issues with his firm.

23. Ms. Feinstein's concerns included: she "was being asked to do things under pressure"; the "management was by crisis"; she was "getting information on a need-to know instead of the whole picture"; and Mr. Groff "could get very nasty." *(Id.* at 223)

24. On May 29, 2020, Ms. Feinstein, Respondent, and Respondent's father had a consultation with outside counsel about the management of Optimum, during which time (NT II, 224):

a. Respondent and his father went to the office of outside counsel and first met privately with counsel *(id.);*

b. Ms. Feinstein subsequently joined the consult by telephone *(id.);*

c. Ms. Feinstein and Respondent did not discuss any specific case *(id.* at 226); and

d. there was a discussion concerning how to better manage Respondent's law firm. *(Id.* at 227)

This is an example of Respondent proactively seeking to operate his firms in the most efficient and ethical manner. It also provided Ms. Feinstein with an opportunity to address

her concerns and receive a professional opinion as to their validity.

25. Ms. Feinstein continued to have concerns after the May 29, 2020 meeting about the operation of Respondent's law firm and discussed her continuing concerns with Respondent (NT II, 245), during which time, Respondent said Ms. Feinstein:

a. was "repetitive" and he "had things under control" *(id.* at 245); and

b. was being a "Girl Scout" and "neurotic." *(Id.)*

This statement was not made by Respondent, but by Mr. Groff.

26. By emails to Respondent with a copy to Mr. Altman dated August 22 and 24, 2020 (ODC-137/Bates 951), Ms. Feinstein memorialized her concerns about Respondent's law firm, including:

a. the expectation that she would sign things without being given an opportunity to discuss whether she was willing to take on a particular matter;

b. her role at Lento Law Group was unclear;

c. being ridiculed;

d. stating she cannot jump and do things hastily if there is a crisis; and

e. not being paid for her services.

Ms. Feinstein was encouraged to address any organizational or ethical matter with the retained ethics counsel. There are no records that she ever did so. These issues were never timely raised with Respondent.

27. Ms. Feinstein was not promised any favorable treatment or perceived she would receive any favorable treatment for her cooperation with Office of Disciplinary Counsel and testimony at Respondent's disciplinary hearing.

This is a self-serving statement.

28. Ms. Feinstein cooperated with Office of Disciplinary Counsel because "[i]t's the right thing to do. I wanted to come and tell what happened." (NT II, 280)

This is a self-serving statement.

Respondent's Misconduct

John Gardner Matter

29. On December 21, 2016, John Gardner was arrested and charged with (Stip 1):

a. Disorderly Conduct, (Summary), 18 Pa.C.S.A. § 5503(a)(4);

b. Recklessly Endangering Another Person, (M-2), 18 Pa.C.S.A. § 2705;

c. Marijuana-Small Amount, (M), 35 Pa.C.S.A. § 780-113(a)(31)(i); and

d. Use/Possession of Drug Paraphernalia, (M), 35 Pa.C.S.A. § 780-113(a)(32).

30. Pursuant to a negotiated guilty plea, on January 25, 2017, Mr. Gardner agreed to plead guilty to Disorderly Conduct and the Luzerne County District Attorney's Office agreed to dismiss the pending misdemeanor charges. (ODC3/Bates 133, Stip 2)

31. Mr. Gardner testified that in August 2018, he did a Google search, Respondent's name "popped up," and Mr. Gardner contacted Respondent about expunging his criminal record. (**NT** I, 125)

32. During Mr. Gardner's telephone conversation with Respondent, Mr. Gardner told Respondent what had occurred on December 21, 2016, and that he wanted (**NT** I, 126):

a. "it expunged";

b. his criminal "record, everything that happened that day to be gone off [his] record like that day never happened"; and

c. "all the charges" expunged, including his summary conviction and the misdemeanor charges that were withdrawn as part of his guilty plea.

33. While Mr. Gardner was on the telephone with Respondent, Respondent reviewed Mr. Gardner's criminal record and read all the charges. (NT I, 127-128)

34. In response to Mr. Gardner's request for Respondent to expunge Mr. Gardner's entire criminal record, Respondent advised that (NT I, 129):

a. "Absolutely he could do it, that he could get rid of everything";

b. It would take "six to nine months on the long-side"; and

c. "[I]t's something he can handle and he can take care of for" Mr. Gardner.

35. Title 18 Pa.C.S.A. § 9122(b)(3)(i) provides, in pertinent part, that criminal history record information may be expunged when "an individual who is the subject of the information petitions the court for the expungement of a summary offense and has been free of arrest or prosecution for five years following the conviction for that offense." (ODC-5/Bates138, Stip 5) (The Expungement Statute)

36. In *Commonwealth v. Lutz*, 788 A.2d 993, 1000 (Pa. Super. 2001), the Superior Court quoting from the trial court, wrote that "where charges are dismissed pursuant to a plea agreement, those charges are not eligible for expungement, as to destroy them would obscure the true circumstances under which the [defendant] has been convicted." *Accord Commonwealth v. Troyer*, 262 A.3d 543 (Pa. Super. 2021); *Commonwealth v. Hanna*, 964 A.2d 923 (Pa. Super. 2009).

37. When Mr. Gardner finished his conversation with Respondent, it was Mr. Gardner's understanding that Respondent could expunge his entire criminal record. (NT I, 130)

38. Respondent failed to explain to Mr. Gardner that the Expungement Statute has a five-year waiting period to expunge summary convictions and Mr. Gardner would have to wait until January 2022 to expunge his entire criminal record. (NT I, 129)

39. Respondent testified that he did not know about *Commonwealth v. Lutz*, (NT III, 284-285, 288)

40. Thereafter, on August 14, 2018 (Stip 4):

a. Respondent gave Mr. Gardner an Engagement Letter for "an expungement of the applicable charges" for a fee of $1,500 plus filing fees and costs (ODC-4/Bates 136);

b. Mr. Gardner signed the Engagement Letter; and

c. Respondent received $1,500 for the representation.

41. Respondent's Engagement Letter failed to define "applicable charges" or state that Mr. Gardner's summary conviction was not an "applicable charge" and could not be expunged. (NT III, 263, 264, 273, 380-381)

42. Mr. Gardner understood that "applicable charges" in the Engagement Letter referred to "[e]verything that happened that day he [Respondent] was to get rid of' (NT I, 134), including Mr. Gardner's summary conviction. *(Id.* at 135)

43. Respondent failed to:

a. act with the competence necessary for the representation as 18 Pa.C.S.A. § 9122(b)(3)(i) provides that Mr. Gardner would not be eligible to apply for expungement of his summary Disorderly Conduct conviction until 2022;

b. undertake any research to determine whether Mr. Gardner's misdemeanor charges could be expunged as they were withdrawn as part of a guilty plea (NT III, 272);

c. explain to Mr. Gardner, to the extent necessary for Mr. Gardner to make an informed decision regarding the representation, that Respondent could not expunge Mr. Gardner's summary

Disorderly Conduct conviction in 2018 as Pennsylvania's Expungement Statute required an individual to be free of arrest or prosecution for five years following the summary conviction (18 Pa.C.S.A. § 9122(b)(3)(i)) (NT I, 129);

d. explain to Mr. Gardner that the case law in Pennsylvania prohibited the expungement of charges that were withdrawn as part of a guilty plea agreement prior to five years from the date of conviction associated with the withdrawn charges (NT III, 288); and

e. act with the diligence necessary for the representation in that Respondent failed to promptly ascertain that since Mr. Gardner was convicted in 2017, Mr. Gardner must wait until 2022 before he would be eligible to have his criminal conviction expunged.

44. Respondent failed to recognize his wrongdoing and blamed "the attorneys at Dilworth that put this unfortunate idea into [Mr. Gardner's] head that we were doing something that could not be done with the summary offense." (NT III, 276)

45. Had Respondent informed Mr. Gardner at the outset of the representation that the Expungement Statute in fact required Mr. Gardner to wait five years from the date of his conviction, Mr. Gardner testified that he would have:

a. "absolutely not" retained Respondent (NT I, 129); and

b. waited until 2022 to expunge his entire criminal record as he had "no choice." *(Id.* at 130).

46. Respondent was not a credible witness. In the Gardner matter, he testified that Mr. Gardner elected to proceed with the expungement of his three withdrawn misdemeanor charges knowing that his summary disorderly conduct conviction could not be expunged until 2022 (NT III, 255-257). This is not credible.

47. In Respondent's Answer to the Petition for Discipline (ODC-2, ,i 9/Bates 77) Respondent falsely stated (NT 1, 133-134):

a. "Mr. Gardner did not seek to expunge his Disorderly Conduct Charge";

b. "Mr. Gardner did not seek to expunge his Disorderly Conduct Charge because he knew that he did not qualify"; and

c. "Mr. Gardner opted to proceed knowing that the underlying summary offense could not be expunged while the underlying misdemeanors could potentially be expunged."

48. From time to time after Respondent was retained, Mr. Gardner, Mrs. Gardner, and Respondent exchanged emails. (Stip 6)

49. Respondent informed Mr. Gardner that Respondent was handling his legal matter. (Stip 7)

50. On October 17, 2018, Respondent filed a Petition for Expungement Pursuant to Pa.R.Crim.P. 790 in the Court of Common Pleas of Luzerne County (ODC-6/Bates 141) seeking to expunge Mr. Gardner's arrest on the following charges, all of which had been dismissed: Recklessly Endangering Another Person; Marijuana-Small Amount; and Use/Possession of Drug Paraphernalia. *Commonwealth v. John E. Gardner*, CP-40-MD-0001427-2018. (ODC-7/Bates 149, Stip 8)

51. Respondent never filed this Petition for Expungement as Mr. Gardner's attorney, but rather filed it as a Pro Se petition, and further failed to:

a. have Mr. Gardner review the Expungement Petition before it was filed (NT III, 302);

b. provide Mr. Gardner with a copy of the Expungement Petition before or after it was filed (NT I, 136; NT III, 300);

c. obtain Mr. Gardner's permission to sign his name to the Petition *(id.* at 137, NT III, 302); and

d. enter his appearance in Mr. Gardner's legal matter. *(Id.* at 306)

52. On December 10, 2018, Deputy District Attorney Chester F. Dudick, Jr., Luzerne County, submitted the

Commonwealth's Response to the Expungement Petition, objecting to the expungement "as any dismissal of charges was in consideration for a guilty plea and thus defendant was not entitled to expungement." (ODC-8/Bates 151, Stip 9) (*See Commonwealth v. Lutz)*

53. By email to Tara Gardner, wife of Mr. Gardner, sent at 5:50 a.m. on December 21, 2018 (ODC-9/Bates 152), Respondent advised that (Stip 10):

a. the Commonwealth had objected to the Expungement Petition;

b. Respondent was attaching the Commonwealth's response;

c. Respondent could challenge the Commonwealth's response by filing a formal motion with the Court and having a contested hearing on the motion; and

d. Mr. Gardner should let Respondent know how he wished to proceed.

54. Respondent wrote that the DA's "argument is disingenuous" and "may/most likely can be defeated." (ODC-9; Bates 000152)

55. Respondent's email was deceitful in that after receiving the DA's objections, Respondent failed to undertake any research to determine the legal basis for the objections and ascertain the likelihood that a contested hearing would be successful. (NT III, 314-315, 328-29, 340)

56. Mr. Gardner had received the DA's response, "skimmed it," "didn't' read through it," and "didn't really care" (NT I, 139) as he understood that the remedy to challenge the DA's objection was to go to court and have a hearing in front of a judge. *(Id.* at 140)

57. By responsive email to Respondent sent the following day at 4:04 p.m., Mr. Gardner wrote that he "would like to proceed" and to let him know the "next step." (ODC-9/Bates 152, Stip 11)

58. Mr. Gardner promptly replied to Respondent's email with the expectation that Respondent would act promptly on his case. (NT I, 141)

59. On or before January 21, 2019, Respondent spoke to Mr. Gardner regarding seeking a hearing to challenge the District Attorney's Office's objection to the expungement and Mr. Gardner authorized payment of Respondent's $7,500 fee to handle the expungement. (ODC-10/Bates 153, ODC-11/Bates 155)

60. During Respondent's conversation with Mr. Gardner about the DA's objection, Respondent failed to explain that he had only sought an expungement of the dismissed misdemeanor charges and had not sought an expungement of Mr. Gardner's summary conviction. (NT I, 139-140)

61. Had Respondent informed Mr. Gardner that he could not expunge his disorderly conduct charge because the expungement statute had a five-year waiting period,

Mr. Gardner would not have paid Respondent an additional $7,500 to file an appeal. (**NT** I, 142-143)

62. By email sent at 8:55 p.m. on March 20, 2019, Respondent contacted Deputy District Attorney Chester F. Dudick, Jr., about Mr. Gardner's "partial expungement/ redaction of certain charges." (ODC-12/Bates 155, Stip 13)

63. By emails to Mrs. Gardner sent on March 26 and April 9, 2019, Respondent asked Mr. Gardner to explain "the exact reasons why [Mr. Gardner's] current record is causing issues for you/exact issues caused." (ODC-13/ Bates 156, Stip 14)

64. Mr. Gardner testified that he understood his "current record" to be everything that "happened that day," his entire record, both the summary as well as misdemeanors. (NT I, 146-147)

65. Respondent did not explain to Mr. Gardner that he wanted the exact reasons that Mr. Gardner's criminal record was "causing issues" so that Respondent could use these issues in negotiating with the District Attorney's Office. (NT I, 173, 175-176)

66. On April 16, 2019, Mr. Gardner sent an email to Respondent explaining that Mr. Gardner sought expungement because he: (1) wanted to travel to Canada to fish with his children as his father had done with him; (2) would like to buy his son his first hunting rifle as they had both completed the hunter safety course at the Game Commission; and (3) had done nothing wrong. (ODC-15/ Bates 160)

67. By email to Mrs. Gardner sent at 7:40 p.m. on April 9, 2019 (ODC13/Bates 156), Respondent attached his Engagement Letter (ODC-14/Bates 158), that due to "oversight," he had omitted from his prior email. (NT III, 380)

68. Respondent's Engagement Letter provided that (Stip 15):

a. Respondent had agreed to represent Mr. Gardner "in connection with seeking a hearing to request that the applicable charges be expunged from [his] criminal record";

b. Respondent's fee for legal services was $7,500; and

c. Mr. Gardner had paid Respondent's fee in full.

69. Respondent's Letter of Engagement failed to define "applicable charges" so that Mr. Gardner could make an informed decision regarding the scope of representation. (NT III, 380)

70. Mr. Gardner thought that "applicable charges" in the Engagement Letter included "[a]ll the charges from that day, everything, [to] make that day go away." (NT I, 145; *see also*, NT I, 170)

71. Respondent's Engagement Letter failed to explain that Respondent would not be seeking to expunge Mr. Gardner's summary conviction. (ODC-14/Bates 158)

72. In Respondent's email exchanges with Mr. Gardner, Respondent failed to apprise Mr. Gardner that he would not be seeking an expungement of Mr. Gardner's Disorderly Conduct conviction. (NT I, 146)

73. After Respondent did not acknowledge his receipt of Mr. Gardner's two emails providing the reasons for wanting his "current record" expunged (NT I, 149), at 4:23 p.m. on April 24, 2019, Mr. Gardner inquired whether Respondent had received his earlier email. (ODC-15/Bates 160)

74. By responsive email to Mr. Gardner sent at 8:21 p.m. on April 24, 2019, Respondent advised Mr. Gardner that he would "continue to work on things" and to "let [Respondent] know if [Mr. Gardner] has any question or concerns in the meantime." (ODC-15/Bates 160, Stip 17)

75. Respondent did not undertake any legal research to ascertain why Mr. Gardner's criminal record prevented Mr. Gardner from travelling to Canada and buying a gun for his son. (NT III, 390-391)

76. Respondent did not communicate further with Mr. Gardner about his legal matter. (Stip 18)

77. Mr. Gardner became concerned that his expungement matter "wasn't progressing," he "wasn't hearing any news" from Respondent, so he decided it was time to "bring in some help." (NT I, 150)

Appendix B

78. On or before May 29, 2019, Mr. Gardner contacted Thomas Biemer, Esquire, from the law firm of Dilworth Paxson, to handle his expungement matter. (NT I, 150)

79. During Mr. Gardner's first conversation with Mr. Biemer about seeking an expungement of his criminal record (NT I, 154):

a. Mr. Gardner explained to Mr. Biemer what "had happened" on the day of his arrest, what he "was trying to do," that Mr. Gardner had "hired an attorney" who "was working on it (his expungement)," and Mr. Gardner was concerned "something is wrong" (NT I, 151);

b. Mr. Gardner asked Mr. Biemer to "join the team," "check up on" Respondent, and "see what was going on"(id.);

c. Mr. Biemer then "got all the charges" against Mr. Gardner and "figured out everything that happened that day" *(id.);* and

d. Mr. Biemer advised Mr. Gardner that he would "help" him expunge his criminal record, "but [Mr. Gardner would] have to wait five years." *(Id.* At 151-152)

80. Mr. Gardner's conversation with Mr. Biemer was the "very first time" that Mr. Gardner learned he would have to wait five years from the date of his summary conviction, until January 2022, to expunge his criminal record. (NT I, 152-153)

81. After Mr. Gardner learned that Respondent had failed to tell him that he must wait five years from the date of his conviction to expunge his criminal conviction, Mr. Gardner relayed that he was "very mad":

> [b]ecause he felt used, lied to. I felt like he stole my money. I mean it couldn't have been any clearer from the beginning what I wanted and what we agreed to and I paid him a lot of money to do it, and then I come to find out from this other attorney that it can't even be done. I mean it's ridiculous.

(NT I, 152)

82. Mr. Gardner's criminal trial counsel had never informed Mr. Gardner that he must wait five years after his guilty plea to expunge his criminal record. (NT I, 160)

83. Mr. Gardner did not retain his criminal trial counsel to file an Expungement Petition because Mr. Gardner wanted to hire someone who specialized in expungements. (NT I, 167)

84. On May 29, 2019, Mr. Biemer informed Respondent that Mr. Gardner had retained him to handle his expungement matter. (Stip 19)

85. By email to Mr. Biemer sent at 5:56 p.m. on May 29, 2019, Respondent advised that he was involved in ongoing negotiations with the Luzerne County District Attorney's Office about Mr. Gardner's expungement, attached a copy

of the Commonwealth's December 10, 2018 response to the Expungement Petition, and attached a draft Petition to Redact. (ODC-16/Bates 161, Stip 20)

86. Respondent's draft Petition to Redact contained numerous mistakes, including incorrect date of guilty plea, charges that were withdrawn, disposition date of charges, and date of draft petition. (Bates 162, 163, 164; NT IV, 12-16)

87. Although Respondent knew that Mr. Gardner had retained another lawyer to handle his legal matter, Respondent did not promptly refund the unearned portion of his $9,000 legal fee upon Mr. Gardner's termination of Respondent's representation.

88. On September 24, 2020, Mr. Gardner filed a Statement of Claim with the Pennsylvania Lawyers Fund for Client Security (Fund). (ODC-18/Bates 172, Stip 23)

89. Mr. Gardner wrote in his Statement of Claim (ODC-18/Bates 172) that:

a. Respondent "was hired to get my prior conviction expunged, but the conviction was too recent to be expunged, which should have been obvious from my first consultation" **(112);** and

b. "I learned of my loss when my current counsel . . . informed me that I was ineligible for expungement at this point in time, and even a basic amount of research into the issue would have revealed this."

90. Mr. Gardner explained that he had filed a Claim "[b]ecause it wasn't right. In my opinion, he [Respondent] was not being honest." (NT I, 154)

91. The Fund notified Respondent of Mr. Gardner's Statement of Claim. (Stip **24)**

a. By letter to Mr. Gardner dated June 28, 2021, Respondent enclosed a check written from the Operating Account of Lento Law LLC and Joseph D. Lento, Esq., to James Gardner, in the amount of $3,500, with the notation "partial refund" in the memorandum portion of the check. (ODC-19/Bates 178, Stip 25)

92. Respondent failed to possess the competence necessary for the representation in that he did not know:

a. whether the Pennsylvania expungement statute permits partial expungement or partial redactions (NT 111, 231);

b. did not know whether he had ever done a partial expungement or redaction in Luzerne County *(id.);*

c. did not know until the Luzerne County D.A.'s Office objected to the expungement of Mr. Gardner's criminal record that Mr. Gardner's misdemeanor charges were withdrawn as part of a guilty plea agreement *(id.* At 251);

d. was not aware of *Commonwealth v. Lutz*, which prohibits the expungement of charges withdrawn

as part of a guilty plea agreement *(id.* At 284, 288); and

e. failed to do any legal research to determine whether there was a legal basis for the D.A. Office's objection. *(Id.* At 314, 328, 350-341)

93. Respondent denied that he mishandled Mr. Gardner's legal matter. (NT III, 34-35)[1]

RESPONDENT'S COUNTER-POSITION ON THE GARDNER MATTER

On December 21, 2016, John C. Gardner, Sr. ("Mr. Gardner"), was arrested and charged with:

a. Disorderly Conduct, (Summary), 18 Pa.C.S.A. § 5503(a)(4);

b. Recklessly Endangering Another Person, (M-2), 18 Pa.C.S.A. § 2705;v

c. Marijuana-Small Amount, (M), 35 Pa.C.S.A. § 780-113(a)(31)(i); and

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1. There is no credible evidence to support Respondent's testimony that he "has successfully resolved matters dealing with the expungement in favor of clients in such situations," or that if he had, that it was done lawfully. Respondent had a duty to fully inform his client of the of law as it applied to his case. The evidence is clear that he failed to do so

d. Use/Possession of Drug Paraphernalia, (M), 35 Pa.C.S.A. § 780-113(a)(32).

***See* January 20, 2023 Joint Stipulations of Fact and Law ("Joint Stipulations") at ¶ 1.**

Pursuant to a negotiated guilty plea, on January 25, 2017, Mr. Gardner pleaded guilty to Disorderly Conduct and the Luzerne County District Attorney's Office agreed to dismiss the pending misdemeanor charges. *Significantly, this occurred at the District Court level making Commonwealth v. Lutz, 788 A.2d 993, 1000 (Pa. Super. 2001) distinguishable and the ODC's reliance upon it was wrong.* All discussion in the Report of *Lutz* and Respondent's familiarity with it was inappropriate and should not be the basis for any recommendation. It should be stricken from the report in its entirety. *See* Joint Stipulations at ¶ 2; *see also* ODC-3.

In August 2018, Mr. Gardner called Respondent's law firm and inquired about "expungement issues." *See* 1/25/2023 Tr. at 8:2-8. Respondent and Mr. Gardner discussed Mr. Gardner's criminal charges and related expungement issues, including, the five-year waiting period relating to summary offenses. 1/25/2023 Tr. at 11:20-12:23. *See also* ODC-117 (Respondent's Verified Statement of Position in Response to DB-7A Request at ¶ 4 wherein Respondent stated, " . . . at the commencement of the representation, Respondent fully and completely explained to Mr. Gardner all information that he needed to make an informed decision. This included a discussion of the issues

presented by Mr. Gardner's summary disorderly conduct conviction.").

Thereafter, on August 14, 2018, Respondent gave Mr. Gardner an engagement letter for "an expungement of the applicable charges" for a fee of $1,500.00 plus filing fees and costs, and Mr. Gardner signed the engagement letter, and Respondent was paid $1,500.00. *See* Joint Stipulations at ¶ 4; *see also* ODC-4.

Respondent's fee agreement included the phrase "applicable charges" to memorialize his scope of engagement, i.e., Mr. Gardner hired Respondent to seek an expungement of three misdemeanor offenses; Respondent was not hired to seek an expungement of the single summary offense. *See* 1/25/2023 Tr. at 15:23-16:24, *see also* ODC-4 (ODC-000136). Before Mr. Gardner accepted the terms of engagement, Respondent provided Mr. Gardner with the requisite information that allowed Mr. Gardner to make an informed decision concerning the representation. *See* 1/25/2023 Tr. at 11:20-13:8, 17:1-15, 18:19-20:4, 34:15-35:11; *see also* ODC-117 at ¶ 4 (ODC-000841).

Title 18 Pa.C.S.A. § 9122(b)(3)(i) provides, in pertinent part, that criminal history record information may be expunged when "an individual who is the subject of the information petitions the court for the expungement of a summary offense and has been free of arrest or prosecution for five years following the conviction for that offense." *See* Joint Stipulations at ¶ 5. Mr. Gardner knew that the summary offense could not be expunged

since the five-year waiting period had yet to expire. *See* 1/25/2023 Tr. at 12:24-13:8, 17:1-15, 34:15-35:11.

On October 17, 2018, Respondent filed a Petition for Expungement Pursuant to Pa.R.Crim.P. 790 in the Court of Common Pleas of Luzerne County seeking to expunge Mr. Gardner's arrest on the following charges, all of which had been dismissed: Recklessly Endangering Another Person; Marijuana-Small Amount; and Use/ Possession of Drug Paraphernalia. *Commonwealth v. John E. Gardner*, CP-40-MD-0001427-2018; *see* ODC-7; *see also* Joint Stipulations at ¶ 8. The charges for which expungement was sought included all of the charges that Respondent previously advised Mr. Gardner may qualify for expungement. *See* 1/25/2023 Tr. at 11:20-13:8; *see also* ODC-117 at ¶ 5 (ODC-000841).

Respondent's efforts regarding Mr. Gardner's expungement matter were consistent with the efforts Mr. Gardner's prior counsel, Peter John Moses, explained to and took on Mr. Gardner's behalf. Namely, Mr. Moses sought to expunge the same charges that Respondent sought to expunge. *Compare* D-2 *with* ODC-6; s*ee also* 1/25/2023 Tr. at 236:4-17; *see* 1/23/2023 Tr. at 160:2-161:2 (Mr. Gardner confirmed that he and Mr. Moses discussed expungement issues, "[Mr. Moses] told me if I plead guilty to the disorderly conduct everything else will go away, will make that day go away and then you can get your record expunged, it would only take a couple of months, and that's the quickest way to make this whole thing go away."); *see also* 1/25/2023 Tr. at 342:8-16..

In practice, Respondent has successfully resolved expungement matters where the underlying charges were dismissed in exchange for a plea. *See* 1/25/2023 Tr. At 313:3-314:10, 317:24-319:10. The advice and recommendation provided by Respondent was based upon his handling of 750-1000 expungement and record relief cases over the course of 15 years. Contrary to the ODC, Respondent was completely familiar with the expungement statute and process, the practical application of the statute and process, and used that knowledge and experience to explain all options to Mr. Gardner so that Mr. Gardener could make informed decisions.

Respondent was not hired to seek an expungement of the summary offense. *See* 1/25/2023 Tr. at 18:12-19:3. Respondent explained to Mr. Gardner that he did not qualify for a summary offense expungement since the five-year waiting period had yet to lapse. *See* 1/25/2023 Tr. At 18:12-19:3. Before Mr. Gardner decided to hire Respondent, Respondent explained to Mr. Gardner that he did not qualify for a summary offense expungement. *See* 1/25/2023 Tr. at 18:12-19:3. Mr. Gardner knew that, as of when he hired Respondent, Mr. Gardner could not have his summary offense expunged. *See* 1/25/2023 Tr. at 18:12-19:3, *see also* 1/25/2023 Tr. At 19:4-20:4 (explaining how Respondent counseled Mr. Gardner with respect to the five year waiting period).

On December 10, 2018, Deputy District Attorney Chester F. Dudick, Jr., Luzerne County ("Mr. Dudick"), submitted the Commonwealth's Response to the

Expungement Petition, objecting to the expungement "as any dismissal of charges was in consideration for a guilty plea and thus defendant was not entitled to expungement." *See* Joint Stipulations at ¶ 9; *see also* ODC-8. The Commonwealth's response is a standardized form that details multiple bases upon which the Commonwealth may object to an expungement petition. *Id.* Included therein is an objection that reads, "the Commonwealth *OBJECTS* to the instant expungement of one or more summary offense(s) as defendant has not been free from arrest or prosecution for five (5) years following conviction. . . ." *Id.* (emphasis in original). *Importantly, the Commonwealth's response does not "check" that particular basis. Id.*

By email to Tara Gardner, wife of Mr. Gardner ("Mrs. Gardner"), sent at 5:50 a.m. on December 21, 2018, Respondent advised that: the Commonwealth had objected to the Expungement Petition; Respondent was attaching the Commonwealth's response; Respondent could challenge the Commonwealth's response by filing a formal motion with the Court and having a contested hearing on the motion; and Mr. Gardner should let Respondent know how he wished to proceed. *See* Joint Stipulations at ¶ 10; *see also* ODC-9.

The fact that Respondent forwarded Mr. Gardner the Commonwealth's response evidences the fact that Respondent had previously disclosed the issue relating to the summary offense to Mr. Gardner and further, that Mr. Gardner always knew that Respondent was not seeking to expunge that particular

charge. Had Respondent attempted to hide this issue, clearly he would not have forwarded Mr. Gardner the Commonwealth's response. *See* ODC-8, *see also* ODC-117 at ¶ 8(a) (ODC-000841-42). Mr. Gardner acknowledged that the Commonwealth did not assert an objection relating to the five-year waiting period. *See* 1/23/2023 Tr. 171:24-172:16.

By responsive email to Respondent sent at 4:04 p.m. on December 22, 2018, Mr. Gardner wrote that he "would like to proceed" and to let him know the "next step." *See* Joint Stipulations at ¶ 11; *see also* ODC-9. Respondent conducted a telephone conference with Mr. Gardner in January 2019 and explained a potential course of conduct. *See* ODC-115 (Verified DB-7 Response) at ¶ 6 (ODC-000828).

Respondent subsequently forwarded Mr. Gardner a fee agreement reflecting that Mr. Gardner had already paid the fee. *See* ODC-14 (fee agreement—ODC-000158). In calculating the fee, Respondent considered the amount of time he anticipated would be required to prosecute the matter, including preparing documents for submission, conferences with the assistant district attorney, preparing for the hearing, traveling to/from Luzerne County and attending the hearing. *See* 1/25/2023 Tr. at 26:6-18. Before sending the fee agreement, Respondent performed work in accordance with the scope of representation including: (1) drafting a Petition to Redact/Partially Expunge Criminal Record and (2) contacting the district attorney's office. *See* ODC-16 (ODC-000-162-69); *see also* Joint

Stipulations at ¶ 20; *see also*, 1/25/2023 Tr. 26:22-28:6; *see also* 1/26/2023 Tr. 12:8-13:3.

By email sent at 8:55 p.m. on March 20, 2019, Respondent contacted Mr. Dudick, about Mr. Gardener's "partial expungement/redaction of certain charges." *See* ODC-12; *see also* Joint Stipulation at ¶ 13. *Before March 26, 2019, Respondent spoke with Mr. Dudick regarding Mr. Gardner's matter and, based on what he was told, understood that Mr. Dudick would reconsider the Commonwealth's position "if he could be convinced that Mr. Gardner was deserving of the request for relief."* *See* 1/25/2023 Tr. 28:4-12. By email to Mrs. Gardner sent on March 26, 2019, Respondent asked Mr. Gardner to explain "the exact reasons why [Mr. Gardner's] current record is causing issues for you/exact issues caused." *See* Joint Stipulation at ¶ 14. Having received no response, Respondent sent a follow up email on April 9, 2019. *Id.*

On April 24, 2019, Respondent confirmed that he received Mr. Gardner's stated reasons for the requested expungement. *See* Joint Stipulation ¶ 17. Respondent attempted to inform Mr. Dudick of Mr. Gardner's stated reasons for the requested relief but was unable to connect before Mr. Gardner obtained other counsel to handle the matter. *See* 1/25/2023 Tr. at 29:13-30:12.

On or before May 29, 2019, Mr. Gardner retained Thomas Biemer, Esq. ("Mr. Biemer"), to handle his expungement matter; and on May 29, 2019, Mr. Biemer informed Respondent that Mr. Gardner had retained

him to handle his expungement matter. *See* Joint Stipulations at ¶ 19. On May 29, 2019, Respondent spoke with Mr. Biemer about the status of Mr. Gardner's matter. *See* 1/25/2023 Tr. at 31:15-33:18. Respondent informed Mr. Biemer that he would email him the petition he previously prepared. *See id*. at 33:3-18. By email to Mr. Biemer sent at 5:56 p.m. on May 29, 2019, Respondent advised that he was involved in ongoing negotiations with the Luzerne County District Attorney's Office about Mr. Gardner's expungement, attached a copy of the Commonwealth's December 10, 2018 response to the Expungement Petition, and attached a draft Petition to Redact. *See* Joint Stipulation at ¶ 20.

Mr. Gardner's new counsel prepared a complaint with the Pennsylvania Lawyers Fund for Client Security for Mr. Gardner's signature. *See* 1/23/2023 Tr. at 176:13-20. Mr. Gardner did not request Respondent refund any portion of the fee before filing the complaint with the Pennsylvania Lawyers Fund for Client Security. In fact, Mr. Gardner never articulated any concerns about Respondent's representation or the fees paid for that representation. *See* 1/23/2023 at 179:6-9. Respondent tendered Mr. Gardner a partial refund and the Pennsylvania Lawyers Fund for Client Security closed the matter. *See* Joint Stipulation at ¶ 25; *see also* 1/25/2023 Tr. at 34:12-14. Had Mr. Gardner truly believed that he was entitled to a larger refund of his fee, he could have objected to the "Fund" closing the matter. However, he did not. Thus. Mr. Gardner's credibility is seriously questionable.

Appendix B

The ODC skewed and misrepresented the evidence to reach the recommendation it desired to present because of the personal animus against Respondent by ODC Counsel Harriet Brumberg.

Conduct Before Judge Robreno

***Red Wine Restaurant* Case**

94. Mr. Eduardo Rosario retained Respondent's law firm to represent him in a claim against Red Wine Restaurant. (NT V, 123)

95. On or before May 8, 2019, Mr. Groff assigned Mr. Feinstein to handle Mr. Rosario's legal matter and requested that Mr. Feinstein draft a civil complaint on behalf of Mr. Rosario under the Americans with Disability Act of 1990, as amended, 42 U.S.C. § 12101 et seq. (ADA). (NT II, 41-42) Mr. Feinstein testified that he was directed to sue the property owner and promoter and was given a sample complaint.

96. After reviewing the ADA, Mr. Feinstein concluded it was "expansive." (NT II, 42)

97. Mr. Feinstein drafted a complaint (Stip 29):

a. on behalf of Mr. Rosario, who requires a wheelchair at all times;

b. against Alex Torres Productions, Inc., a Florida-based promoter that provides entertainers to various venues;

c. against La Guira, Inc. d/b/a Red Wine Restaurant, a restaurant that sold Mr. Rosario a ticket to a comedy show promoted by Alex Torres Productions, Inc.; and

d. that alleged Defendants failed to make Red Wine Restaurant accessible to a person in a wheelchair.

98. After drafting the complaint, Mr. Feinstein sent it to Optimum for filing and service. (NT II, 42-43)

99. Mr. Feinstein did not know whether anyone at Optimum reviewed the complaint after it was drafted. (NT II, 43)

100. Respondent did not know if Mr. Feinstein conducted any independent research before drafting the complaint and did not review the complaint prior to Optimum filing it. (NT III, 43)

101. As the managing attorney at Optimum with direct supervisory authority over Mr. Feinstein, Respondent failed to make reasonable efforts to ensure that Mr. Feinstein had reasonably concluded that there was a legally supportable basis for bringing a claim under the ADA against Alex Torres Production, Inc.

102. On May 20, 2019, Optimum filed a civil complaint in the EDPA. *(Red Wine Restaurant* case) (ODC-20/Bates 182, Stip 31):

a. The EDPA docketed the *Red Wine Restaurant* case at No. 2:19-2222-ER (E.D.PA) (ODC-21/ Bates 201); and

b. Mr. Feinstein subsequently entered his appearance on behalf of Mr. Rosario.

103. After the civil complaint was filed, notices from the federal district court in the *Red Wine Restaurant* case were sent to various emails addresses: Mr. Feinstein at two different email addresses; Mr. Groff at the Optimum Court Notices (Notices) email address; and a secretary employed by the Respondent. (NT II, 45-46)

104. The Notices mailbox was monitored by Mr. Groff and court notices were placed on the law firm's calendar. (NT V, 125) Respondent also had access to the Notices email. (NT V, 151-152)

105. Red Wine Restaurant failed to file an answer to the complaint and Alex Torres Productions did not comply with discovery requests. (ODC-22/Bates 205, 23, Stip 33)

106. On October 31, 2019, the Honorable Eduardo C. Robreno scheduled a pretrial conference in the *Red Wine Restaurant* case for 10:00 a.m. on December 20, 2019. (ODC-24/Bates 207, Stip 34)

107. The EDPA sent notice of the December 20, 2019 prehearing conference to the email addresses of Optimum and its employees. (Stip 35)

108. Optimum and employees of Optimum received notice from the EDPA of the December 20, 2019 pretrial conference and should have put the pretrial conference on the firm's calendar. (NT V, 126-127)

109. Although Respondent received notice of the pretrial conference, Respondent failed to put the conference date on his calendar, did not confirm that it was on the firm's calendar (NT V, 152), and does not "know or believe" it was on the firm's calendar. *(Id.* at 154)

110. By email dated October 31, 2019, Mr. Feinstein forwarded the EDPA's notice to Ms. Jones (ODC-24, p. 2/Bates 208); by email dated November 12, 2019, Mr. Feinstein advised Mr. Groff of the December 20, 2019 pretrial conference. (ODC-31, p. 2/Bates 259)

111. When Mr. Feinstein received notice of the December 20, 2019 prehearing conference, he did not put it on his personal calendar "[b]ecause [he] knew it was on Optimum's calendar." (NT II, 56)

112. On November 27, 2019, Mr. Feinstein ceased his employment at Optimum. (NT II, 57)

113. By email sent by Respondent to Mr. Feinstein at 11:14 a.m. on November 27, 2019 (ODC-25/Bates 209), Respondent instructed (Stip 38):

a. Mr. Feinstein "not to act on behalf of Optimum"; and

b. Mr. Haislip [at Optimum] to "Suspend all [computer access] credentials until [Mr. Feinstein] meets with us."

114. After Mr. Feinstein left his employment at Optimum, Mr. Feinstein:

a. was locked out of Optimum's calendar, documents, and CLIO system (NT II, 82);

b. was blocked from access to his Optimum email account and online case management system, which included Mr. Feinstein's case management calendar with court notices. (Stip 40); and

c. was instructed "on two separate occasions, 'do not talk to our clients' and 'do not do any work on any files.'"(NT II, 57)

115. By reply email from Mr. Feinstein sent at 12:03 p.m. on November 27, 2019, to Respondent and copied to the following at optimumlawgroup.com: tmorphew; dhaislip; and jedwards (ODC-25/Bates 209), Mr. Feinstein wrote (Stip 39/Bates 209):

a. "Please remove me from the Optimum website immediately"; and

b. "substitute my appearance in any case that is filed in my name. have changed my credentials for the EDPA and Philadelphia."

116. Mr. Feinstein reasonably believed that Respondent would substitute Mr. Feinstein's appearance on Optimum's cases, as "[t]hey were their [Optimum's] clients." (**NT** II, 59)

117. Mr. Feinstein made "two subsequent requests to [Respondent and Optimum to] substitute" his appearance on all Optimum's cases (NT II, 77-81)—on December 19, 2019 (ODC-26/Bates 210), and again on December 26, 2019 (ODC-28/Bates 230).

118. At the time Mr. Feinstein requested that Optimum substitute his appearance, Mr. Feinstein was not aware that Respondent's law firm had no other attorneys admitted to practice in the United States District Court for the Eastern District of Pennsylvania. (**NT** II, 89)

119. In Respondent's Answer to the Petition for Discipline, ***I*** 88 (ODC-2/Bates 84), Respondent falsely stated:

a. "to his knowledge, Mr. Feinstein sent a single notice to Respondent's firm on November 27, 2019 that related to the filing of substitution of counsel," and

b. Mr. Feinstein was aware that "Respondent's firm had no attorneys admitted to the United States District Court for the Eastern District of Pennsylvania."

120. Mr. Feinstein did not immediately file a withdrawal of appearance "since they [Optimum] were representing the client and [he] wasn't." (NT II, 65)

121. By email dated December 19, 2019, from Mr. Feinstein to Respondent, JEdwards, and Conrad Benedetto, Esquire, Mr. Feinstein wrote: "Please substitute my appearance in all of the Optimum cases. If I am held accountable on files in which I am no longer representing the clients or have access to the files, I will hold Optimum responsible." (ODC-26/Bates 210, Stip 41)

122. Respondent received Mr. Feinstein's email and knew that Mr. Feinstein requested that Optimum file substitutions of appearance on all of Mr. Feinstein's cases that originated with Optimum. As the managing attorney, it was Respondent's duty, after firing Mr. Feinstein, to ensure that each client matter that Mr. Feinstein was working on was reassigned and that all deadlines and hearings would be covered. Respondent's DB-7 Answer (ODC-111, , T16/Bates 791), in which Respondent writes he "was not aware of that December 20, 2019 conference," is evidence that he mismanaged the practice. Furthermore, under the circumstances, it is not credible.

123. Optimum employees Mr. Groff, Terri Morphew, and David Haislip received Mr. Feinstein's email and knew or should have known that Mr. Feinstein requested that Optimum file substitutions of appearance on all of Mr. Feinstein's cases that originated with Optimum.

124. After Mr. Feinstein left Optimum, Respondent failed to take any action to protect Mr. Rosario's interest in the *Red Wine Restaurant* case, such as ensuring Mr. Feinstein's court dates were placed on the law firm's calendar, arranging for Mr. Feinsteinto appear, getting another lawyer in the firm admitted to the EDPA, finding substitute counsel to attend the December 20, 2019 prehearing conference, contacting Judge Robreno before the hearing to alert him to the situation, requesting a continuance to obtain substitute counsel, or making a limited appearance at the prehearing conference to explain Respondent's efforts to find substitute counsel. (NT V, 130, 155-156, 162, 166, 171)

125. Respondent falsely testified that "Mr. Feinstein had indicated that he would be in attendance at the December 20th court date on more than one occasion to Ms. Terri Morphew and Mr. Groff." (NT V, 130). No credible evidence was offered to support this claim. Moreover, Respondent's testimony:

a. is inconsistent with Mr. Feinstein's testimony, and is not confirmed in writing by either Respondent's law firm or Mr. Feinstein (id. at 130-131, 162);

b. is inconsistent with Mr. Feinstein's emails to substitute his appearance on all his cases;

c. is contrary to Respondent's November 27, 2019 instruction, which Respondent had not retracted in writing or verbally to Mr. Feinstein *(id.* at 135-138);

d. is inconsistent with Respondent's DB-7 Answer; and

e. is not credible.

126. At 10:28 a.m. on December 20, 2019, a pretrial conference was held before Judge Robreno, during which time defendant Alex Torres appeared *pro se* and Mr. Feinstein did not appear to represent Mr. Rosario. (ODC-27/Bates 211, Stip 45)

127. Mr. Feinstein explained that he did not attend the prehearing conference because he was instructed by Respondent's office "'do not touch my files How can I go? And what happens if something I say prejudiced the plaintiff's case at the Rule 16 Conference, and what's my exposure with regard to that? He's not my client, Counselor." (NT II, 160-161)

128. When Mr. Feinstein failed to appear to represent Mr. Rosario, Judge Robreno called Mr. Feinstein on the telephone and had a telephonic prehearing conference, during which time (Stip 46):

a. Mr. Feinstein stated that he had instructed Respondent and other Optimum employees to substitute his appearance in all his cases (ODC-27/Bates 211, p. 4);

b. Judge Robreno found it was "troublesome" that Mr. Feinstein did not do any research concerning whether Mr. Rosario could sue the promoter *(id.* at pp. 8-9; *see also* pp. 17-18);

c. Judge Robreno noted that it was an unfair burden on Mr. Torres to have driven from Florida and there was no one in the courtroom to represent the plaintiff *(id.* at p. 16); and

d. Judge Robreno stated that he would dismiss the *Red Wine Restaurant* case without prejudice for failure to prosecute and the Court would retain jurisdiction to consider the imposition of sanctions. *(Id.* at pp. 8, 16)

129. Respondent did not advise Mr. Rosario, in writing, that his case had been dismissed. (NT V, 175)

130. Promptly after the prehearing conference, Mr. Feinstein notified Respondent what occurred before Judge Robreno. (NT II, 84-85; Bates 254)

131. Respondent failed to promptly file a substitution of Mr. Feinstein's appearance. (NT II, 85)

132. By email from Mr. Feinstein on December 26, 2019, to Respondent, Mr. Groff, and Mr. Haislip, Mr. Feinstein wrote: "Again, I need you to have someone substitute for my appearance." (ODC-28)

133. By Order dated January 13, 2020 (ODC-29/Bates 232), Judge Robreno (Stip 48):

a. dismissed the *Red Wine Restaurant I* case without prejudice for failure to prosecute *(id.* at n. 2);

b. stated that "[i]f the complaint is refiled, it shall include legal authority for the proposition that a promoter may be held liable under the circumstances presented in this case" *(id.* at p. 1, n. 2);

c. retained jurisdiction over the case for 90 days to consider referring Respondent for disciplinary action *(id.* at pp. 1-2); and

d. issued a Rule to Show Cause against Respondent, Mr. Feinstein, and Optimum as to why sanctions should not be imposed. *(Id.* at p. 2)

134. On February 6, 2020, Mr. Feinstein filed a response to the Court's Rule to Show Cause Order (ODC-30/Bates 234, Stip 49) and withdrew his appearance. (NT II, 86)

135. On February 10, 2020, Respondent filed an answer to the Court's Rule to Show Cause Order (ODC-31/Bates 258); in Respondent's Answer, Respondent wrote, "[i]f Optimum Law Group and Mr. Lento decide to refile the Complaint, they will provide a legal basis to justify why they believe there would be a viable cause of action. If after reviewing the law, they conclude there is not, then no further Complaint will be filed." *(Id.* at p. 6, ,i 5) (Stip 50)

136. By Order dated February 11, 2020 (ODC-32/Bates 267), Judge Robreno (Stip 51):

a. found that it appeared the *Red Wine Restaurant* case was filed "without research or investigation"; and

b. referred Respondent's handling of the *Red Wine Restaurant* case to the Disciplinary Board for investigation, and if necessary, prosecution.

137. Respondent argues, at page 49 of his Memorandum, that "the genesis of the Rule violations [in the Robreno matters] stem from Steven Feinstein's failure to appear at a December 20, 2019 pretrial conference." In fact these Rule violations stem directly from Respondent's own conduct and failures as described in this Report, which he refuses to accept to this day.

RESPONDENT'S COUNTER-POSITION ON THE FEDERAL RED WINE RESTAURANT CASE

Respondent was the managing attorney of Optimum Law Group ("Optimum"), which was headquartered at 3000 Atrium Way, Suite 200, Mt. Laurel, NJ 08054. Optimum subsequently changed its name to Lento Law Group ("LLG") At the relevant time, Respondent was *not* admitted to practice law in the United States District Court for the Eastern District of Pennsylvania ("EDPA"). *See* Joint Stipulations at ¶ 27.

Prior to delving into the facts of this specific matter, it is important to provide some background information on the attorney who appeared in, and handled, this case since Mr. Lento was not licensed

to practice in the EDPA and therefore was not the handling attorney. That attorney was Steven Feinstein, Esq. ("Mr. Feinstein").

In or around April 2019, Respondent's firm hired Mr. Feinstein, who was a practicing Pennsylvania lawyer having over thirty (30) years of experience. *See* 1/24/2023 Tr. at 7:16-8:2 and 1/25/2023 Tr. at 43:18-24. Mr. Feinstein's lengthy career in litigating Pennsylvania civil matters, including his experience in the EDPA, was a reason why he was hired. *See* 1/25/2023 Tr. at 44:1-6. At all relevant times, Mr. Feinstein was licensed to practice in the EDPA. *See* 1/24/2023 Tr. at 6:17-23. As of April 2019, aside from Mr. Feinstein, Respondent's firm did not employ any lawyers that were licensed to practice in the EDPA. *See* 1/25/2023 Tr. at 48:19-49:8.

Regarding his disciplinary history, in 2012, Mr. Feinstein was suspended from the practice of law in Pennsylvania for one year and a day but he was subsequently reinstated in 2014. *See* 1/24/2023 Tr. at 8:3-9:18. *See* 1/24/2023 Tr. At 127:20-24. This is important because the Board's decision relied heavily on Mr. Feinstein's testimony when it found Mr. Lento violated RPCs 1.1, 1.3, 5.1(c)(1)-(2), 5.3(a) and 8.4(d). However, Mr. Lento rebutted his testimony. Since Mr. Feinstein was facing ethical charges on the same matters, he obviously had incentive to shift blame to Mr. Lento thereby harming his credibility. Furthermore, Mr. Feinstein had another incentive for presenting untruthful and misleading testimony to the ODC—Mr. Feinstein was hoping to purchase Mr. Lento's legal

practice for pennies on the dollar if Respondent was *suspended or* disbarred.

Moving to the specifics of this matter. Keith Altman, Esq. ("Mr. Altman") is barred in California and Michigan and worked with Respondent in the past. *See* 1/25/2023 Tr. at 37:21-38:6. Mr. Altman referred cases to Respondent's firm. *See id*. at 38:7-9. In the spring of 2019, Mr. Altman referred Respondent's firm a matter involving Eduardo Rosario ("Mr. Rosario"). *See* 1/25/2023 Tr. at 38:13-39:7. Mr. Rosario, an individual confined to a wheelchair, was unable to access a restaurant that was hosting an event. *See* 1/25/2023 Tr. at 35:21-36:6. Before the case was referred to Respondent's firm, Mr. Altman vetted the merits of the case. *See* 1/25/2023 Tr. at 36:11-16. Another lawyer, Conrad Benedetto, Esq. ("Mr. Benedetto") may have also vetted the case before it was referred to Respondent's law firm. *See* 1/25/2023 Tr. at 36:11-16; *see also* 1/24/2023 Tr. at 153:22-154:5 (Mr. Feinstein confirming that Mr. Benedetto vetted the underlying litigation).

After the case came to Respondent's firm, Respondent assigned the matter to Mr. Feinstein. *See* 1/25/2023 Tr. at 40:13-41:6. Mr. Feinstein received the file that included "notes" and a "sample complaint." *See* 1/24/2023 Tr. at 42: 5-17. Mr. Feinstein reviewed the American with Disabilities Act statute and believed "there was a good faith basis" to sue the promoter of the event that was being held at the restaurant. *See* 1/24/2023 Tr. at 42:18-43:2, 154:18-155:1. Mr. Feinstein

drafted a complaint on behalf of Mr. Rosario against (1) Alex Torres Productions, Inc., which is a Florida-based promoter that provides entertainers to various venues; and (2) La Guira, Inc. d/b/a Red Wine Restaurant, which is a restaurant that sold Mr. Rosario a ticket to a comedy show promoted by Alex Torres Productions (collectively, "Defendants"). *See* Joint Stipulations at ¶ 29. The complaint alleged Defendants failed to make Red Wine Restaurant accessible to a person in a wheelchair. *Id.* Respondent reasonably relied on Mr. Feinstein, a practitioner with over 30 years of civil litigation experience, to prepare the complaint and therefore, Respondent (who is not barred in the EDPA) did not review the pleading Mr. Feinstein prepared. *See* 1/25/2023 Tr. at 43:18-44:6.

On May 20, 2019, Mr. Feinstein, with the assistance of Optimum, filed the civil complaint in the EDPA (the "*Red Wine Restaurant I* case"). *See* ODC-20. The EDPA docketed the *Red Wine Restaurant* case at No. 2:19-2222-ER (E.D.PA) and Mr. Feinstein subsequently entered his appearance on behalf of Mr. Rosario. *See* ODC-21; *see also* Joint Stipulations at ¶ 31. From on or about May 20, 2019 through at least December 20, 2019, Mr. Feinstein was Mr. Rosario's only attorney of record. *See* 1/24/2023 Tr. at 155:12-16.

Red Wine Restaurant failed to file an answer to the complaint and Alex Torres Productions did not comply with discovery requests. *See* Joint Stipulations at ¶ 33. On October 31, 2019, the Honorable Eduardo C. Robreno scheduled a pretrial conference in the *Red*

Wine Restaurant I **case for 10:00 a.m. on December 20, 2019.** ***See*** **Joint Stipulations at ¶ 34. The EDPA sent the October 31, 2019 notice of the December 20, 2019 pretrial conference to Mr. Feinstein's work and personal email addresses.** ***See*** **1/24/2023 Tr. at 7-11;** ***see also*** **ODC-24 (ODC-000207). As the attorney of record, Mr. Feinstein was responsible for calendaring the December 20, 2019 pretrial conference.** ***See*** **1/25/2023 Tr. at 49:17-23.**

In November 2019, Respondent terminated Mr. Feinstein due to performance issues. ***See*** **1/25/2023 Tr. at 44:7-45:1. After he no longer worked for Respondent's law firm, Mr. Feinstein changed his filing credentials with,** ***inter alia*****, the EDPA.** ***See*** **1/24/2023 Tr. at 155:17-156:3. Thus, the fact that Mr. Feinstein no longer worked for Respondent's law firm did not impede Mr. Feinstein from receiving ECF notices sent in the** ***Red Wine Restaurant I*** **case.** ***See*** **1/24/2023 Tr. at 59:24-62:24. Rather, by changing his credentials, Mr. Feinstein ensured that he would still receive ECF notices that were filed in any of his cases, including the** ***Red Wine Restaurant I*** **case.** ***See*** **1/24/2023 Tr. at 59:24-62:24.**

After Mr. Feinstein's termination, and before December 20, 2019, Respondent's firm did not employ any attorney admitted in the EDPA. ***See*** **1/25/2023 Tr. 53:21-54:4. As of November and December 2019, no attorney from Respondent's law firm could enter his/her appearance on behalf of Mr. Rosario, notwithstanding any request from Mr. Feinstein that substitute counsel do so.** ***See*** **1/25/2023 Tr. at 51:17-52:7, 53:21-54:4. Respondent understood, based on what he**

was told, that Mr. Feinstein would attend the December 20, 2019 pretrial conference. *See* 1/25/2023 Tr. at 51:2-16. Mr. Feinstein did not receive any ECF notices advising him that another attorney entered an appearance on Mr. Rosario's behalf prior to the December 20, 2019 pretrial conference. *See* 1/24/2023 Tr. at 156:4-12. Mr. Feinstein did not attempt to contact the Court prior to the December 20, 2019, pretrial conference to address the fact that he no longer worked at Respondent's law firm and that a continuance was necessary until a new counsel could enter their appearance. *See* 1/24/2023 Tr. at 156:13-17.

At 10:28 a.m. on December 20, 2019, a pretrial conference was held before Judge Robreno, where defendant Alex Torres appeared *pro se* but Mr. Rosario's attorney of record, Mr. Feinstein, did not. *See* Joint Stipulations at ¶ 45. When Mr. Feinstein failed to appear, Judge Robreno called him on the telephone to conduct the hearing. *See* Joint Stipulations at ¶ 46. Judge Robreno confirmed that Mr. Feinstein was required to appear for the conference notwithstanding any request he may have made regarding substitute counsel entering an appearance on Mr. Rosario's behalf. *See* ODC-27 at 7:8-20 (ODC-000217). Specifically, the following exchange took place between Judge Robreno and Mr. Feinstein on the record:

> **THE COURT: Okay. Okay. Well, this—Mr. Feinstein, I—I hope to say is a learning lesson. When your name is on the complaint until your relief from that obligation, you are the lawyer of record. You can't tell—**

> **MR. FEINSTEIN: You're right sir, I was—I was not careful, I should have taken care of that.**
>
> **THE COURT: Yeah.**
>
> **MR. FEINSTEIN: I apologize.**
>
> **THE COURT: *Because you can't just tell somebody else, you know, I'm out of here you take care of it and rely upon that because we rely on the lawyer of record—***
>
> **MR. FEINSTEIN: Yes.**

***Id.* (emphasis added).**

By Order dated January 13, 2020, Judge Robreno dismissed the *Red Wine Restaurant I* case without prejudice and he subsequently referred Mr. Feinstein and Respondent to the Disciplinary Board for further investigation. *See* Joint Stipulations at ¶ 48(a); *see also* ODC-32 (ODC-000268).

At no time contemporaneous with these events did Mr. Feinstein ever inform Respondent that he had not appeared at the conference or of the conversation with Judge Robreno Mr. Feinstein never contemporaneously informed Respondent that Judge Robreno intended to refer the matter to the ODC.

On January 8, 2020, Mr. Feinstein filed a lawsuit against Respondent. *See* 1/24/2023 Tr. at 163:17-19. In

response, Respondent filed Preliminary Objections. Mr. Feinstein did not respond to the Preliminary Objections. Instead, he filed an amended complaint rendering the objections moot. Respondent again filed objections to the amended complaint and Mr. Feinstein, again, filed an amended complaint. Mr. Feinstein engaged in this conduct, i.e., filing an amended complaint in response to objections, nine times. *See* 1/24/2023 Tr. at 166:5-167:6. While Mr. Feinstein's lawsuit against Respondent was pending, Mr. Feinstein attempted to use Respondent's ongoing disciplinary issues against him in order to take over Respondent's practice. *See* 1/24/2023 Tr. at 168:2-183:8. Specifically, Mr. Feinstein testified to sending Respondent a letter that stated: "[a]ssuming that Lento Law actually has a decent portfolio of cases, which must be verified, I would be willing to get a partner licensed in New Jesey and take over Lento Law." *Id.* Mr. Feinstein further admitted that he "anticipated that there was a distinct possibility that [Respondent] was going to be subject to disciplinary proceedings . . . [and] would have to give up his firm . . . [and] it was [his] belief that the firm owed [him] a substantial amount of money . . . that it would be a win-win." *Id.* Reliance upon Mr. Feinstein's testimony as the basis for the ODC's recommendations was *absurd*. Mr. Feinstein had no absolutely credibility as his desire to purchase the Lento firm at a fire sale price was the likely reason he failed to appear at Judge Robreno's conference, failed to inform Respondent of his failure to appear and conversation with Judge Robreno, and failed to inform Respondent of Judge Robreno's intention to file disciplinary charges. Mr. Feinstein's own disciplinary

problems were further motivation for him to testify as ODC and its biased counsel, Harriet Brumberg, desired.

***Red Wine Restaurant NJ* Case**

138. Ms. Feinstein is "a counseling psychologist with an active practice seeing kids and families." (NT II, 189)

139. Ms. Feinstein received her Ph.D. in psychology in 1985 and her law degree in 1995. (NT II, 189)

a. Ms. Feinstein explained she decided to go to law school because "a lot of mental health problems are entangled with some legal problems, and I felt I could be a better advocate." *(id.* at 189-190); and

b. Ms. Feinstein never intended to be a practicing lawyer. *(Id.* at 190)

140. Ms. Feinstein is not an experienced attorney and did not:

a. know how to draft legal documents (NT II, 190);

b. know how to complete coversheets for documents to be filed in federal court *(id.);*

c. ever act as a trial lawyer in state or federal court *(id.* at 190-191); and

d. do legal work for any law firm. *(Id.* at 191)

141. Keith Altman, Esquire, is an attorney licensed to practice law in California and Michigan, who assisted Respondent on assorted legal matters. (Stip 54)

142. In late 2018, Respondent contacted Ms. Feinstein about being a consultant on mental health issues at his law firm. (NT II, 192)

a. Ms. Feinstein told both Respondent and Mr. Groff that she does not "practice law in any capacity" and has no experience going to court and preparing documents. *(Id.* at 195)

143. Ms. Feinstein agreed to be a consultant on matters at Optimum (ODC-42, p. 25); Ms. Feinstein did not:

a. meet with clients regarding legal matters (NT II, 195);

b. represent clients in court *(id.* at 195-196);

c. handle any legal cases *(id.);* and

d. ever get paid for any legal work. *(Id.)*

144. Respondent testified that "[t]hrough the winter/spring/summer of 2020, [Ms. Feinstein] would be involved in . . . trying to settle certain cases, lesser personal injury cases, talking to adjusters, in addition to more run-of-the-mill kind of matters, custody, criminal." (NT III, 61) Respondent's testimony about Ms. Feinstein's involvement in legal matters during that time is not credible.

145. While acting as a consultant at Optimum, Ms. Feinstein:

a. "tried to report to Joe (Respondent), but I was often directed to John (Groff)" because Respondent would say, "I really don't want to hear that. You have to go to John" (NT II, 196; *see also* NT II, 197, 199);

b. would get her assignments from Mr. Groff *(id.);*

c. did not "know that anybody really reviewed" her assignments" *(id.);* and

d. was "not usually" asked any questions by Respondent about an assignment. *(Id.)*

146. When Ms. Feinstein spoke to Respondent, it was about "personal things," such as him going to the gym and women he might be dating. (NT II, 200)

147. Respondent told Ms. Feinstein that "he'd like to step back from the everyday practice of law." *(Id.* at 201)

148. After Mr. Feinstein left Optimum, Respondent requested the assistance of three other attorneys to handle the ***Red Wine*** case, including offering $20,000 to $30,000 to his "ethics" counsel (D-15, p. 2), but all refused. (NT V, 183-186)

149. In late December 2019 or early January 2020, Mr. Groff asked Ms. Feinstein if she was a member of the

United States District Court for the Eastern District of Pennsylvania (EDPA), Ms. Feinstein stated that she was not admitted, Mr. Groff asked if Ms. Feinstein could get admitted, Ms. Feinstein agreed to apply, and the EDPA admitted Ms. Feinstein. (NT II, 206)

150. After Ms. Feinstein was admitted to the EDPA, Mr. Groff asked Ms. Feinstein to sign documents for two cases, one of which was the *Red Wine Restaurant* case. (NT II, 206-207)

151. At the time Ms. Feinstein was asked to sign for the *Red Wine Restaurant* case, Ms. Feinstein had never worked on an ADA matter, had never completed a Cover Sheet for a federal case; had never filed a federal civil complaint, and had never signed a *Pro Hae Vice* application (NT II, 207). Ms. Feinstein:

a. explained her concerns that she had "no experience" to Mr. Groff *(id.* at 208); and

b. Mr. Groff replied that he would find a "substitute" for Ms. Feinstein and her "involvement was just to sign the signature page, minimal involvement." (/d.)

152. On or before March 24, 2020, Respondent and Ms. Feinstein discussed complainant Alex Torres's legal matter (ODC-42, p. 25/Bates 345), during which time (Stip 56):

a. Respondent asked Ms. Feinstein whether she "would be involved in the case" *(id.* at 26/Bates 346);

b. Respondent explained that she "would have a minimal role and they would bring in another attorney at some point" *(id.);* and

c. Under those circumstances, Ms. Feinstein agreed to sign the complaint prepared by Respondent's law firm. (/d.)

153. Ms. Feinstein agreed to help with the *Red Wine Restaurant* case because Respondent was her "friend," "a lot of attorneys walked out" of Respondent's firm, and it would be "harmful" to Respondent if she did not sign. (NT II, 210-211)

154. Respondent testified that Ms. Feinstein's testimony was "inaccurate" and that Ms. Feinstein's involvement in the case "was not simply for her to sign the complaint and just that would be the extent of it." (NT V, 194-195) In contrast, Ms. Feinstein testified that her role was to sign-off on the complaint and that two other attorneys would come in and do the day-to-day work. (NT II, 301) Respondent's testimony regarding Ms. Feinstein's involvement in the *Red Wine Restaurant* case is not credible.

155. At the time Ms. Feinstein agreed to help with the *Red Wine Restaurant* case, Respondent failed to inform Ms. Feinstein:

a. of the legal and procedural background of the case (NT II, 212), including that the *Red Wine Restaurant* case had been previously filed *(id.* at 225-227);

b. that Mr. Feinstein had been previously assigned to the case *(id.* at 292);

c. that the *Red Wine Restaurant* case had been dismissed because Mr. Feinstein failed to appear for the prehearing conference *(id.* at 211);

d. there was a prior Order in the case by a judge *(id.* at 212); and

e. the judge had referred Respondent to Office of Disciplinary Counsel *(id.* at 226-227).

156. As set forth in ODC-33/Bates 271 on March 24 2020 Mr. Groff and Mr. Altman exchanged emails, with copies to Ms. Feinstein and Ms. Morphew, about filing a com in the *Red Wine Restaurant* matter. (Stip 57)

a. If the exchanged emails had attached a copy of the complaint, Respondent failed to include the attachment as an exhibit. (NT II, 297-299)

157. The foregoing emails do not request Ms. Feinstein to review, revise, or approve the *Red Wine Restaurant* complaint, which had been previously filed, but only requested Ms. Feinstein to sponsor Mr. Altman's *Pro Hae Vice* application. (NT II, 214-215, 218)

158. On May 15, 2020, Ms. Feinstein signed the signature page of a civil complaint identical to the civil complaint dismissed by Judge Robreno in the *Red Wine Restaurant* case. (ODC-34/Bates 273, Stip 58) Ms. Feinstein could not identify her signature on the complaint at the hearing. (NT II, 234)

159. At the time that Ms. Feinstein was asked to sign the civil complaint (ODC-34/Bates 273), Ms. Feinstein was only given the signature page of the complaint (NT II, 235); she had never seen the complaint prior to Office of Disciplinary Counsel showing it to her. *(Id.* at 236-237) At the time that Ms. Feinstein was asked to sign the signature page, Ms. Feinstein believed she was only "holding a place in the Eastern District until another local attorney could be found." (NT II, 235)

160. On June 4, 2020, Respondent's office mistakenly filed the civil complaint signed by Ms. Feinstein in the United States District Court for the District of New Jersey (the *Red Wine Restaurant NJ* case). (ODC-35/ Bates 289, Stip 59)

a. The caption of the case identified the court as "In the United States Court for the Eastern District of Pennsylvania"; and

b. The District of New Jersey docketed the *Red Wine Restaurant NJ* complaint at No. 1:20-cv-06824-RMB-JS.

161. Respondent failed to review the civil complaint before it was filed. (NT V, 216)

162. Later that same day, the Clerk's Office entered a Quality Control message (ODC-35/Bates 289) informing Respondent that the complaint (Stip 60):

a. "contains an improper signature" and to "PLEASE RESUBMIT THE DOCUMENT WITH A PROPER ELECTRONIC SIGNATURE" (capital letters in original); and

b. contained "deficiencies," including: (1) the "Caption, Party Information is to be entered in CAPITAL LETTERS"; and (2) "Defendants added to the docket do not reflect the alias information listed in the caption of the complaint."

163. On June 8, 2020, Respondent's office filed a "Voluntary Stipulation of Dismissal Without Prejudice" with the Clerk's office (ODC-36/Bates 291), which (Stip 61):

a. requested that the *Red Wine Restaurant NJ* complaint be dismissed without prejudice because the complaint "was filed in error and should have been filed in the Eastern District of Pennsylvania";

b. failed to contain any signature on the signature line; and

c. contained the name "Denise Stone, paralegal to Joseph Lento, Esquire," under the blank signature line.

164. On June 9, 2020, the Clerk's Office entered a Quality Control message that stated the notice of voluntary dismissal "submitted by JOSEPH D. LENTO on 6/8/2020 did not contain a proper electronic signature" and requested that Respondent resubmit the signature page with the correct electronic signature. (ODC-35/ Bates 289, Stip 62)

165. On June 9, 2020, Respondent signed and filed a "Notice of Dismissal Without Prejudice" requesting that the *Red Wine Restaurant NJ* complaint be dismissed without prejudice because the complaint "was filed in error and should have been filed in the Eastern District of Pennsylvania." (Stip 63)

166. On June 9, 2020, the District Court of New Jersey terminated the *Red Wine Restaurant NJ* case. (Stip 64)

167. On June 15, 2020, Respondent filed a letter with the Clerk (ODC-38/Bates 293) that stated (Stip 65):

a. on June 4, 2020, Respondent's "secretary erroneously filed a complaint" in the United States District Court, District of New Jersey;

b. admitted that the "complaint should have been filed in the United States District Court for the Eastern District of Pennsylvania"; and

c. requested that his law "firm be refunded $400 for the incorrect filing" in the *Red Wine Restaurant NJ* case.

168. In response, on June 15, 2020, the Clerk entered a Quality Control message advising that Respondent's letter "was submitted incorrectly" and instructing Respondent to resubmit a letter using the Application for Refund of Fees. (ODC-35/Bates 289, Stip 66)

169. Subsequently on June 15, 2020, Respondent submitted the correct application for a refund to the Clerk's Office. (Stip 67)

a. On June 26, 2020, the Clerk's Office signed an order refunding Respondent's filing fee.

170. Respondent admitted that he and his support staff made multiple mistakes in the filing of the Red Wine Restaurant NJ case. (NT V, 197, 199, 200, 202, 204)

RESPONDENT'S COUNTER-POSITION ON THE STATE RED WINE RESTAURANT

On June 2, 2020, Respondent provided his paralegal and Dr. Feinstein, *inter alia*, with specific instructions pertaining to refiling the complaint. *See* 1/25/2023 Tr. at 80:9-22, 84:1-10; *see also* D-21.

On June 4, 2020, the very paralegal to whom Respondent gave specific filing instructions two days earlier, mistakenly filed the civil complaint signed by Dr.

Appendix B

Feinstein in the United States District Court, District of New Jersey (the "*Red Wine Restaurant NJ* case"). *See* Joint Stipulations at ¶ 59. After receiving notice that the complaint contained various filing errors, Respondent's law firm took steps to voluntarily dismiss the case without prejudice. *See* Joint Stipulations at ¶¶ 60-61. On June 9, 2020, the District Court of New Jersey terminated the *Red Wine Restaurant NJ* case. *See* Joint Stipulations at ¶ 64.

***Red Wine Restaurant II* Case**

171. On June 19, 2020, Respondent's office filed a civil complaint (ODC-39/Bates 316) with a Civil Cover Sheet (JS 44), Designation Form, and Case Management Track Designation Form in the EDPA. (Stip 74)

a. The EDPA docketed the civil complaint, hereinafter the *Red Wine Restaurant II* case, at No. 20-2966. (ODC-41/Bates 340)

172. The civil complaint was:

a. identical to the civil complaint dismissed by Judge Robreno in the *Red Wine Restaurant* case (Stip 70); and

b. failed to include any "legal authority for the proposition that a promoter may be held liable under the circumstances presented in this case," as was specifically ordered by Judge Robreno on January 13, 2020.

173. Respondent knew about all the previous mistakes in the filing of the *Red Wine Restaurant I* and *Red Wine Restaurant NJ* cases. (NT V, 219)

174. Respondent failed to review the complaint filed on June 19, 2020 in the *Red Wine Restaurant II* case before it was filed. (NT V, 214, 216, 220) The failure of the complaint to contain legal authority "only came to [Respondent's] attention at a later point in time." *(Id.* at 214)

175. Local Federal Rule of Civil Procedure 40.1(b)(3) requires counsel at the time of filing a civil action to "indicate on the appropriate form whether the case is related to any other pending or within one (1) year previously terminated action of this court." (ODC-40/Bates 335, Stip 72)

176. Local Federal Rule of Civil Procedure 40.1(c)(1) provides, in pertinent part, that "[i]f the fact of the relationship is indicated on the appropriate form at the time of filing, the assignment clerk shall assign the case to the same judge to whom the earlier numbered related case is assigned." (ODC-40/Bates 335, Stip 73)

177. On the Civil Cover Sheet (JS 44) prepared by Respondent's legal assistant, Ms. Stone, Ms. Stone (Stip 75):

a. in Section V., "Origin," placed an X in the box indicating that the *Red Wine Restaurant II* case was an "Original Proceeding";

b. did not make any mark next to the box "Reinstated or Reopened"; and

c. left blank Section VIII, "Related Case(s) if any."

178. The initial "J," purporting to be Ms. Feinstein's signature, appeared on the attorney signature line of the Civil Cover Sheet. (Stip 76)

179. Ms. Feinstein (NT II, 238):

a. was not asked by anyone to complete the Civil Cover Sheet;

b. did not review the Cover Sheet after it was completed;

c. could not identify her signature/initials on the signature line; and

d. did not authorize anyone to put her signature/initials on the signature line.

180. On the Designation Form (Bates 318) prepared by Ms. Stone, Ms. Stone incorrectly marked "No" in answer to Question 2 inquiring, "Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?" (Stip 77)

181. The initial "J," purporting to be Ms. Feinstein's signature, was placed on the attorney signature line of

the Designation Form certifying "that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in the court." (Stip78)

182. Ms. Feinstein did not authorize anyone to put her signature/initials on the signature line of the Designation Form. (NT II, 239)

183. As a result of the information contained on the Designation Form, on or before June 26, 2020, the Clerk's Office assigned the *Red Wine Restaurant II* case to the Honorable Mitchell S. Goldberg. (Stip 79)

184. On the Case Management Track Designation Form (Bate 319) prepared by Ms. Stone, Ms. Feinstein did not (NT II, 240):

a. write the date, Ms. Feinstein's email address at Lento Law Group telephone number, and fax number; and

b. authorize anyone to sign her name/initial to the Case Management Form.

185. Ms. Feinstein was unable to identify her signature/initial on the signature page of the *Red Wine Restaurant II* civil complaint (Bate 334) and recalled signing only a "placeholder" document in the case. (NT II, 241)

186. At the time Ms. Feinstein was asked to sign the signature page, Ms. Feinstein was given no information, from any source, that the *Red Wine Restaurant* complaint had been filed previously. (NT II, 230-231)

187. In Respondent's Answer to the PFD (ODC-2, ,r 72(b)/Bates 089), Respondent wrote: (1) "Respondent had multiple conversations with Ms. Feinstein during which they discussed the prior dismissal" of the *Red Wine Restaurant* case; (2) "at all pertinent times, Ms. Feinstein was aware of and knew about the dismissal" of the *Red Wine Restaurant* case; and (3) "Ms. Feinstein consulted with an attorney to determine whether re-filing *[Red Wine Restaurant* case] would raise any ethical concerns." These Petition for Discipline Answers by Respondent are false. (NT II, 229)

188. Other than signing the signature page of a document, Ms. Feinstein was not asked to do any legal work on the *Red Wine Restaurant II* case. (NT II, 245)

189. Respondent was the managing attorney at Lento Law Group, P.C., with direct supervisory authority over Ms. Feinstein and his nonlawyer assistants. (Stip 80)

190. As the managing partner at Lento Law Group, P.C., with direct supervisory authority over Ms. Feinstein and his nonlawyer assistants, Respondent's failure to inform Ms. Feinstein and Ms. Stone about Judge Robreno's prior dismissal of the complaint in the *Red Wine Restaurant* case resulted in Ms. Stone's completing and Ms. Feinstein's (or someone else) initialing of incorrect

forms and the EDPA's assignment of the *Red Wine Restaurant I* case to Judge Goldberg.

191. Even though Respondent knew there were issues with the *Red Wine Restaurant I* complaint, Respondent failed to review the *Red Wine Restaurant* complaint before it was filed in New Jersey and refiled in the EDPA. (NT III, 67-68; **NT** V, 214, 216, 220)

192. At the time the *Red Wine Restaurant II* case was filed, Mr. Altman and Respondent were discussing Mr. Altman becoming an associate "with the Lento Law Group on a fairly systematic basis." (ODC-42/Bates 345, p. 9, Stip 81)

193. In or around March 2020, Lento Law Group contacted Mr. Altman about being co-counsel with Ms. Feinstein in representing Mr. Rosario in the *Red Wine Restaurant II* case (Stip 82)

194. Ms. Feinstein had never done a *Pro Hae Vice* application and had some concerns about signing Mr. Altman's *Pro Hae Vice* application without first interviewing Mr. Altman. (NT II, 220) Local Rule of Civil Procedure in the U.S. Court for the Eastern District of Pennsylvania 83.5.2 (b) requires that the sponsor attest, under the penalty of perjury, to personal knowledge (or after reasonable inquiry) that the *Pro Hae Vice* applicant's private and personal character is good.

195. When Ms. Feinstein told Respondent that she wanted to interview Mr. Altman before signing the

application, Respondent told Ms. Feinstein, "[I]t wasn't necessary and I worry too much." (NT II, 221)

196. Ms. Feinstein then sought the advice of counsel regarding her request to interview Mr. Altman. (NT II, 221-222) Respondent was aware that Ms. Feinstein had consulted with counsel and "he would tease [her] about it." *(Id.* at 222)

197. Ms. Feinstein interviewed Mr. Altman, during which time (NT 11, 230-231):

a. Mr. Altman never told Ms. Feinstein that the *Red Wine Restaurant* case had been previously filed *(id.* at 230);

b. Mr. Altman explained that Ms. Feinstein's role would be limited to her signing the signature page of the complaint until the firm could find substitute counsel *(id.* at 232); and

c. there was no expectation that Ms. Feinstein would provide any legal assistance. *(Id.* at 232)

198. After completing the interview, Ms. Feinstein was satisfied that she could sponsor his *Pro Hae Vice* application. (NT II, 220, 232-233)

199. On June 26, 2020, Respondent's office filed Ms. Feinstein's application for Mr. Altman's *Pro Hae Vice* admission (ODC-136/Bates 946), which Judge Goldberg granted the same day. (Stip 83) Ms. Feinstein did not sign the *Pro Hae Vice* admission form. (NT II, 244)

200. On August 20, 2020, Mr. Altman filed a Request for Default against Alex Torres Productions, Inc., for failure to appear, plead, or otherwise defend. (Stip 84) The Court granted Mr. Altman's request the same day.

201. On November 5, 2020, Judge Goldberg referred the *Red Wine Restaurant II* case to Magistrate Judge David R. Strawbridge for settlement purposes. (Stip 5) On July 21, 2021, in accordance with Local Civil Rule 40.1(c)(2), the Clerk of Court ordered that the *Red Wine Restaurant II* case be "directly reassigned from the calendar of the Honorable Mitchell S. Goldberg, to the calendar of the Honorable Eduardo C. Robreno, as related to" the *Red Wine Restaurant* case. (ODC-43/Bates 389, Stip 86)

202. By Order dated September 30, 2021 (ODC-44/Bates 390), Judge Robreno (Stip 87):

a. held that "in light of the multiple irregularities present in this case," Mr. Altman and Ms. Feinstein must show cause why they "should not be sanctioned for their: (1) failure to accurately certify that there were no related cases in violation of RPC 3.3(a); and (2) failure to provide authority in the complaint regarding promoter liability as ordered by the Court on January 13, 2020" in the *Red Wine Restaurant* case;

b. instructed Ms. Feinstein and Mr. Altman to file a response to the Rule to Show Cause no later than October 25, 2021; and

c. ordered that the Rule was "answerable *in person*" (underlining in original) in his courtroom on November 10, 2021.

203. By text message dated October 4, 2021, from Respondent to Ms. Feinstein and Mr. Altman, Respondent requested a three-way telephone conversation with Ms. Feinstein and Mr. Altman. (ODC-138)

204. Ms. Feinstein subsequently spoke to Respondent and Mr. Altman (NT II, 259), during which time:

a. Ms. Feinstein was advised that there was a problem with the filing of the *Red Wine Restaurant* complaint *(id.);*

b. Mr. Altman minimized what had occurred and stated its "not a big deal" *(id.* at 260);

c. Mr. Altman explained that the problem was the secretary had checked the wrong box and filed the complaint in New Jersey, but New Jersey rejected the complaint and refunded the money *(id.* at 261);

d. Respondent complained that he has "bad luck with these things," such as the "Disciplinary Board, judges coming on him," claimed that he

was "unjustly accused in 2013," and "very upset that it became reciprocal in Jersey" *(id.* a 263-264); and

e. Ms. Feinstein was told she was asking too many questions, which caused her to become upset. *(Id.* at 260).

205. Ms. Feinstein was never told by Respondent (NT II, 262) that:

a. the *Red Wine Restaurant* case was originally dismissed in the Eastern District of Pennsylvania *(id.);*

b. the court ordered that if the case was re-filed, it must include legal authority on promoter liability (id.); and

c. there was a prior complaint filed before the same judge who would be conducting the conference. *(Id.* at 265)

206. Ms. Feinstein was told that the Court had ordered an Answer to be filed by October 25, 2021, and Mr. Altman would be responsible for writing the Answer. (**NT** II, 265)

207. Mr. Altman did not discuss the proposed Answer with Ms. Feinstein or give Ms. Feinstein the Answer to review. (**NT** II, 266)

208. By text message dated October 23, 2021 (ODC-138, pp. 4-5/Bates 955-956), Mr. Altman informed Ms. Feinstein that she needed to be in federal court on November 10, 2021. **(NT 11,** 267) At the time Ms. Feinstein was told she needed to be in court, Ms. Feinstein still had not told that *Red Wine Restaurant* case had been dismissed by Judge Robreno. *(Id.* at 269)

209. On the morning of November 10, 2021, Respondent scheduled a meeting with Ms. Feinstein, Mr. Altman, and Ms. Stone at Respondent's Philadelphia law office "to prepare [their] testimony in front of Judge Robreno" at the Rule to Show Cause hearing (NT II, 270), during which time:

a. Ms. Feinstein, Mr. Altman, and Ms. Stone went to Respondent's office to meet with Respondent *(id.* at 271);

b. Respondent contacted Ms. Stone and said that he would not be meeting with them *(id.);* and

c. Respondent also spoke to Ms. Feinstein and informed her that he would not be attending the scheduled meeting or appearing at the Rule to Show Cause hearing. *(Id.* at 271-272).

210. Respondent did not provide counsel to represent his employees and others whom he supervised at the Rule to Show Cause hearing. (NT II, 272)

211. At 2:00 p.m. on November 10, 2021, a Show Cause hearing was held before Judge Robreno, at which Mr. Altman, Ms. Feinstein, and John J. Griffin, Esquire, counsel for defendant La Guira, Inc., were in attendance. (ODC-42/Bates 345, Stip 88)

212. During the November 10, 2021 hearing (ODC-42/Bates 345, Stip 89):

a. Judge Robreno explained the "relatedness rule" that required Ms. Feinstein to identify that the *Red Wine Restaurant II* case was related to the *Red Wine Restaurant* case that Judge Robreno had dismissed on January 13, 2020 (ODC-42/Bates 345, p. 13);

b. Mr. Altman stated that "the individuals who were involved in actually preparing and filing the instant case *[Red Wine Restaurant II* case] were just unaware that it *[Red Wine Restaurant* case] had been filed before" *(id* at p. 14) and there was a "lapse of time and change of personnel" *(id.* a 16);

c. Mr. Altman acknowledged that the *Red Wine Restaurant* case was "accidentally filed in the District of New Jersey" *(id.* at 13);

d. Mr. Altman revealed that the first time he had heard about Judge Robreno's January 13, 2020 Order was when he was before Judge Goldberg *(id.* at 19);

e. Mr. Altman blamed the Lento Law Group and Ms. Feinstein for preparing an incorrect Civil Docket Sheet and incorrect Designation Form filed with the complaint *(id.* at 21);

f. Ms. Feinstein admitted she had never met Mr. Rosario and had "relied on the firm's judgment" when she signed the complaint *(id.* at 26);

g. Mr. Altman noted that "the firm itself, somebody knew the case was being refiled, but somehow that message did not get to the people who actually executed it months later" *(id.* at 29);

h. Judge Robreno stated that "there is no question at all that serious violations of both our local rules and perhaps the Rules of Professional Conduct were implicated in this case," he was "pretty troubled that no one seems to . . . take responsibility and take charge," and "[m]aybe this Lento Firm may be the one" *(id.* at 31); and

1. Mr. Altman agreed that "clearly, the firm is responsible for no communicating to the people that had to execute." *(Id.* at 32).

213. The Rule to Show Cause hearing was the first time Ms. Feinstein heard that:

a. she had signed the same complaint that had previously been dismissed by Judge Robreno (NT II, 273); and

b. Judge Robreno had entered an order that if the *Red Wine Restaurant* case was ever refiled, it must include law of promoter liability. *(Id.* at 272)

214. On November 16, 2021, Mr. Altman filed a Response to Order to Show Cause alleging that when the *Red Wine Restaurant II* case was filed, "neither the paralegal who prepared the documents nor the attorney who signed the documents was aware the case had been previously filed." (ODC-45/Bates 392, Stip 90)

215. By Order dated November 23, 2021 (ODC-46/Bates 404), Judge Robreno held (Stip 91):

a. The Lento Law Group and Ms. Feinstein are barred from further representation of Mr. Rosario (ODC-46/Bates 404, p. 2);

b. Mr. Altman's *pro hac vice* status is revoked *(id.);*

c. the default judgment entered against Alex Torres Production, Inc., is stricken *(id.* at 3);

d. Ms. Feinstein, Mr. Altman, Respondent, and the Lento Law Group are referred to the Pennsylvania Disciplinary Board *(id.);*

e. Respondent has supervisory or managerial authority over Lento Law Group *(id.* at 4); and

f. "the conduct of Joan Feinstein, Keith Altman, Joseph Lento, and the Lento Law Group may

> constitute violations of Pennsylvania Rules of Professional Conduct 1.1, 1.3, 3.1, 3.3, 4.1, or 5.1." *(Id.* at p. 4**)**

216. Respondent received a copy of Judge Robreno's November 23, 2021 Order. (Stip 92)

217. After Ms. Feinstein received a copy of the Order referring her to ODC for possible RPC violations, she felt "horrible" and called Respondent (NT II, 276); during Ms. Feinstein's conversation with Respondent:

a. Ms. Feinstein explained she was "upset," was "trying to help a friend," and "was just disappointed" *(id.);* and

b. Respondent failed to take any responsibility for what had occurred and blamed Mr. Altman. *(Id.* at 277)

218. Although Ms. Feinstein had agreed to be removed from the case at the Rule to Show Cause hearing, Ms. Feinstein did not know how to remove herself. (NT II, 277)

219. When Ms. Feinstein contacted Respondent for assistance in getting removed, Respondent told her to contact Mr. Groff, who told Ms. Feinstein she was "an idiot" and the judge had removed her. (NT II, 278)

220. Ms. Feinstein then contacted outside counsel who taught her how to go on PACER and "to make sure that everything was off." (NT, II, 278)

221. On December 22, 2021, Mr. Altman filed a Notice of Appeal of Judge Robreno's November 23, 2021 Order imposing sanctions to the Third Circuit Court of Appeals. (Stip 93) The Third Circuit docketed the appeal at No. 21-3337. (ODC-47/Bates 408) The Third Circuit Court of Appeals subsequently dismissed the appeal, see page 20, paragraph 138 of Respondent's Memorandum.

222. On May 3, 2022, Mr. Altman filed Concise Summary of the Case identifying the issues to be raised on appeal. (ODC-48/Bates 412, Stip 94)

223. Respondent admitted that in the *Red Wine Restaurant* cases, he failed to:

a. properly supervise his employees in their handling of the pleadings (**NT** V, 222); and

b. have safeguards in place to prevent all the mistakes that had occurred *(Id.* at 223)

224. In answer to counsel's prompting Respondent, "[d]o you express any remorse o regret with respect to the mistakes that were made in connection with the Rosario litigation, Respondent stated he regretted "the mistakes that were made" and that Judge Robreno's and the District Court of NJ's "time and resources were unnecessarily used to address these issues. (NT III, 134) Respondent failed to express any remorse or recognition of the harm his reckless conduct inflicted on his client, his colleagues, and the profession.

Appendix B

RESPONDENT'S COUNTER-POSITION ON THE FEDERAL RED WINE RESTAURANT CASE II

Prior to getting to the specific facts of the continuation of this matter, it is important to note one other attorney who became involved in this matter. As stated above, once Mr. Feinstein was terminated, Mr. Lento's firm was without an attorney licensed to practice in the EDPA. Joan A. Feinstein, Esquire ("Dr. Feinstein"), who has no relation to Mr. Feinstein. Dr. Feinstein is a psychologist and an attorney with an interest in disability matters became associated with Optimum in the summer of 2019.[1] *See* Joint Stipulations at ¶ 52. Ultimately, Judge Robreno referred Dr. Feinstein to Office of Disciplinary Counsel based on her "conduct in the Red Wine case." *See* 1/24/2023 Tr. at 279:9-13. Dr. Feinstein admitted that she served as a cooperating witness on Office of Disciplinary Counsel's behalf. *See* 1/24/2023 Tr. at 279:14-17. This is important because the Board's decision relied heavily on her testimony when it found Mr. Lento violated RPCs 1.1, 1.3 and 8.4(d). However, Mr. Lento rebutted her testimony. Since she was facing ethical charges on the same matter, she obviously had strong incentive to shift blame to Mr. Lento thereby harming her credibility.

As discussed, *supra*, Mr. Altman is an attorney licensed to practice law in California and Michigan, who assisted Respondent on assorted legal matters

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1. **Joan A. Feinstein is not related to Mr. Rosario's prior counsel, Steven C. Feinstein.**

and, in the past, referred matters to Respondent's firm. *See* Joint Stipulations at ¶ 54; *see also* 1/25/2023 Tr. at 38:7-9. John Groff ("Mr. Groff") was an office manager at another law firm before becoming Optimum's and then Lento Law Group's Office Manager. *See* Joint Stipulations at ¶ 55.

In February 2020, Respondent told Dr. Feinstein that Judge Robreno referred him to Office of Disciplinary Counsel for issues relating to the *Red Wine Restaurant I* case. *See* 1/25/2023 Tr. at 58:3-59:4. Respondent specifically told Dr. Feinstein that Judge Robreno dismissed the *Red Wine Restaurant I* case without prejudice because Mr. Feinstain failed to appear at a December 2019 court conference. *See* 1/25/2023 Tr. at 59:5-18; *see also* D-14; *see also* 1/24/2023 at 293:1-294:5 (confirming that Respondent complained to Dr. Feinstein about multiple problems concerning Steven Feinstein (the complaints went "on and on and on") and also, that the complaints "probably" included Steven Feinstein's failure to appear at a court date). Respondent explained these issues to Dr. Feinstein because "it was also considered through the course that [Respondent's firm] would ask her to become licensed in the Eastern District of Pennsylvania and become involved in the Rosario case at a point in time." *See* 1/25/2023 Tr. at 58:13-21.

Respondent's professional relationship with Dr. Feinstein dates back to 2009. *See* 1/25/2023 Tr. at 60:12-16. In early 2020, Respondent considered having Dr. Feinstein serve as "local counsel" in the *Red Wine*

Restaurant **matter with the understanding that Mr. Altman, following *pro hac vice* admission, would serve as the "lead attorney" on the case. *See* 1/25/2023 Tr. at 59:19-60:2. Dr. Feinstein "expressed an interest in being involved in the case. . . ." *See* 1/25/2023 Tr. at 60:7-9.**

On March 13, 2020, President Trump declared a national emergency stemming from COVID-19. *See* 1/25/2023 Tr. at 68:15-69:9. On March 24, 2020, Mr. Groff and Mr. Altman exchanged emails, with copies to Dr. Feinstein and Terri Morphew, a paralegal for the firm, about re-filing a complaint in the *Red Wine Restaurant* matter. *See* ODC-33 (ODC-000271-272). Specifically, Mr. Groff 's email stated in pertinent part: "[h]ere is the file and *previously filed complaint.* Please review, revise and approve . . . " (emphasis added). *Id.* This email provides objective, indisputable evidence that Mr. Altman and Dr. Feinstein both knew of the prior filing. In March, April, May and June 2020, Respondent held Zoom meetings every Wednesday to discuss work matters, including the *Red Wine Restaurant* litigation. *See* 1/25/2023 Tr. at 68:15-69:9, 71:21-72:9. Mr. Altman and Dr. Feinstein, *inter alia*, participated in the Zoom meetings. *See* 1/25/2023 Tr. at 68:15-69:9, 71:21-72:9. Therefore, Mr. Groff's email coupled with the firm's weekly meetings demonstrate that these attorneys were fully aware of the prior dismissal. Thus, Dr. Feinstein and Mr. Altman testimony to the contrary is false and damages their credibility.

Mr. Altman reviewed the complaint and approved its filing. *See* 1/25/2023 Tr. at 72:17-24; *see also* ODC-33 (ODC-000272). At the disciplinary hearing, Dr.

Feinstein conceded that Mr. Altman was requested to review the complaint and that Mr. Altman approved the *Rosario* complaint being filed. *See* 1/24/2023 Tr. at 214-4-11 and 218:2-6, 302:11-21. In connection with Mr. Altman's *pro hac vice* application, Dr. Feinstein interviewed Mr. Altman and was satisfied that he was sufficiently competent and proficient. *See* 1/24/2023 Tr. at 219:20-220:9. Dr. Feinstein intended to rely on Mr. Altman's review of and approval of the complaint being filed. *See* 1/24/2023 Tr. at 302:11-21.

In May 2020, Respondent, Dr. Feinstein, and Mr. Altman, *inter alia* participated in multiple Zoom meetings during which the *Rosario* litigation was discussed including the fact that the case needed to be re-filed in lieu of the prior dismissal. *See* 1/25/2023 Tr. at 85:22-87:16. On May 15, 2020, Dr. Feinstein signed the signature page of a civil complaint. *See* Joint Stipulations at ¶ 58. It is axiomatic that attorneys who sign pleadings are responsible for them just as Judge Robreno advised Dr. Feinstein previously on the record. Accordingly, the Board should have found Mr. Altman and Dr. Feinstein were made aware of the prior filing or, at least, it was reasonable to believe they did their due diligence prior to signing.

On May 29, 2020 Respondent met with his prior ethics counsel to discuss submitting a response to Office of Disciplinary Counsel's DB-7 Request for Statement of Respondent's Position stemming from Judge Robreno's referral. *See* 1/25/2023 Tr. at 102:15-103:23. Dr. Feinstein participated in that meeting by

telephone. *See* 1/25/2023 Tr. at 102:20-22; *see also* D-18. During the May 29, 2020 meeting, Respondent, his prior ethics counsel, and Dr. Feinstein discussed: (1) Judge Robreno's previous dismissal of the *Red Wine Restaurant I* case and (2) their intention to refile the complaint in the EDPA. *See* 1/25/2023 Tr. at 104:21, 115:21-116:21. Respondent's prior ethics counsel also served as Dr. Feinstein's ethics counsel until February 2021. *See* 1/25/2023 Tr. at 104:22-24. On June 2, 2020, Respondent provided his paralegal and Dr. Feinstein, *inter alia*, with specific instructions pertaining to refiling the complaint. *See* 1/25/2023 Tr. at 80:9-22, 84:1-10; *see also* D-21.

On June 4, 2020, the very paralegal to whom Respondent gave specific filing instructions two days earlier, mistakenly filed the civil complaint signed by Dr. Feinstein in the United States District Court, District of New Jersey (the "*Red Wine Restaurant NJ* case"). *See* Joint Stipulations at ¶ 59. After receiving notice that the complaint contained various filing errors, Respondent's law firm took steps to voluntarily dismiss the case without prejudice. *See* Joint Stipulations at ¶¶ 60-61. On June 9, 2020, the District Court of New Jersey terminated the *Red Wine Restaurant NJ* case. *See* Joint Stipulations at ¶ 64.

Respondent was the managing attorney at Lento Law Group, P.C., with direct supervisory authority over Dr. Feinstein and his nonlawyer assistants. *See* Joint Stipulations at ¶¶ 68, 71. On June 19, 2020, the

civil complaint was filed in the EDPA by Respondent's law office and docketed at No. 20-2966. (the "*Red Wine Restaurant II* case"). *See Joint Stipulations at ¶ 71.* The Civil Cover Sheet attached to the complaint inadvertently did not correctly identify the prior case and, as a result, the matter was assigned to Judge Mitchell S. Goldberg ("Judge Goldberg") rather than Judge Robereno. *See* Joint Stipulations at ¶¶ 75-79.

At the time the *Red Wine Restaurant II* case was filed, Mr. Altman and Respondent were discussing Mr. Altman entering into an associate "relationship with the Lento Law Group on a fairly systematic basis." *See* Joint Stipulations at ¶ 81. In or around March 2020, Lento Law Group contacted Mr. Altman about being co-counsel with Dr. Feinstein in representing Mr. Rosario. *See* Joint Stipulations at ¶ 82. On June 26, 2020, Respondent's office filed Dr. Feinstein's application for Mr. Altman's *pro hac vice* admission, which Judge Goldberg granted the same day. *See* Joint Stipulations at ¶ 83.

On August 20, 2020, Mr. Altman filed a Request for Default against Alex Torres Productions, Inc., for Alex Torres Productions, Inc.'s failure to appear, plead, or otherwise defend. *See* Joint Stipulations at ¶ 84. The Court granted Mr. Altman's request the same day. *Id.*

On November 5, 2020, Judge Goldberg referred the *Red Wine Restaurant II* case to Magistrate Judge David R. Strawbridge for settlement purposes. *See* Joint Stipulations at ¶ 85. On July 21, 2021, in accordance with

Local Civil Rule 40.1(c)(2), the Clerk of Court ordered that the *Red Wine Restaurant II* case be "directly reassigned from the calendar of the Honorable Mitchell S. Goldberg, to the calendar of the Honorable Eduardo C. Robreno, as related to" the *Red Wine Restaurant I* case. *See* Joint Stipulations at ¶ 86.

By Order dated September 30, 2021, Judge Robreno issued a Rule to Show Cause, answerable in person, against Mr. Altman and Dr. Feinstein to show cause why they should not be sanctioned. *See* Joint Stipulations at ¶ 87. The Court did not enter the Rule to Show Cause against Respondent. *See* ODC-44 (ODC-000390-391). On November 10, 2021, a Show Cause hearing was held before Judge Robreno, at which Mr. Altman, Dr. Feinstein, and John J. Griffin, Esquire, counsel for defendant La Guira, Inc., were in attendance. *See* Joint Stipulations at ¶ 88.

By Order dated November 23, 2021, Judge Robreno, *inter alia*, barred the Lento Law Group and Dr. Feinstein from representing Mr. Rosario and revoked Mr. Altman's *pro hac vice* status. *See* Joint Stipulations at ¶ 91. Respondent received a copy of Judge Robreno's November 23, 2021 Order. *See* Joint Stipulations at ¶ 92.

At the disciplinary hearing, Respondent acknowledged that mistakes were made with respect to the complaints that were filed in the *Red Wine Restaurant* litigation and expressed remorse as relating to these mistakes. *See* 1/25/2023 Tr. at 134:5-135:6.

Respondent further apologized for wasting Judge Robreno's and the District Court's time and resources. *See* 1/25/2023 Tr. at 134:5-135:6.

On December 22, 2021, Mr. Altman filed a Notice of Appeal of Judge Robreno's November 23, 2021 Order imposing sanctions to the Third Circuit Court of Appeals. *See* Joint Stipulations at ¶ 93. The Third Circuit docketed the appeal at No. 21-3337. *Id.* On May 3, 2022, Mr. Altman filed Concise Summary of the Case identifying the issues to be raised on appeal. *See* Joint Stipulations at ¶ 94. On March 17, 2023, the Third Circuit Court of Appeals dismissed the appeal and denied Mr. Altman's motion for a "certificate of appealability."[2]

The sanctions imposed in the Red Wine Restaurant II case resulted from handling attorney Joan Feinstein's accidental failure to identify the previous related lawsuit on the civil cover form and the accidental failure of handling attorney Joan Feinstein and Keith Altman to include the case authority ordered by Judge Robreno at the time he dismissed Red Wine I. They were mistakes not made by Respondent, but by other experienced lawyers to whom the case was assigned and who signed the documents.

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2. **A copy of the Third Circuit's Order dated March 17, 2023 is attached and marked as Exhibit "A".**

Appendix B

The Watsons Matter

225. On or before July 31, 2019, Optimum assigned Mr. Feinstein to represent Conrad J. Benedetto in a breach of contract, confession of judgment, and unjust enrichment matter. (Stip 95)

a. Mr. Benedetto had retained Respondent's law firm and Mr. Benedetto was Respondent's client. (**NT** V, 58); and

b. "Mr. Feinstein was an associate with the [] Optimum Law Group" and Respondent was the "supervising and managing attorney" for the firm. (*Id.* at 59)

226. Mr. Feinstein testified that he drafted a civil complaint (NT II, 92; ODC-49/Bates 419 Stip 96):

a. on behalf of Plaintiff, Mr. Benedetto;

b. against Defendants, Raheem Watson, and Christy Laverne Watson (the Watsons); and

c. alleging that Plaintiff loaned $10,000 to Defendant Raheem Watson pursuant to a promissory note and Defendant Raheem Watson had not made any payments in accordance with the terms of the promissory note.

227. After Mr. Feinstein drafted the complaint, he gave the complaint to one of the secretaries for filing. (NT II, 92)

228. No other attorney reviewed the complaint before it was filed. (NT V, 71)

229. Mr. Feinstein did not give the complaint to Respondent to review because "I don't know that Mr. Lento does anything at the firm, so it would have been useless to ask him to review it." (NT 11, 137)

230. Mr. Feinstein was not involved in filing the complaint, service of the complaint, or uploading documents from the case into the CLIO system. (NT II, 92-93)

231. On July 31, 2019, Optimum filed the complaint in the Court of Common Pleas of Philadelphia County (First Judicial District). *Benedetto v. Watson et al.*, No. 190704102. (ODC-50/Bates 424, Stip 97)

232. Although Respondent's law firm had a case management system, after investigation, Respondent was unable to determine who filed the complaint (NT V, 73, 76) and who made the arrangements to have the complaint served on the defendants. *(Id.* at 79-80)

a. Respondent's law firm had a "general problem" of employees not entering information into the case management system. (NT V, 77)

b. As the supervising lawyer, it was Respondent's responsibility to review the case management system and determine that his employees were doing things in a timely and proper manner. *(Id.*, 86)

233. On or before August 6, 2019, Optimum retained the services of Russell R. D'Alonzo to make service of process of the civil complaint on the Watsons.

234. At 6:55 p.m. on August 6, 2019, Mr. D'Alonzo made service of process of the civil complaint by handing a copy of the complaint to Makayla Daniels, the Watsons' daughter, at 1013 Pennsylvania Avenue, Havertown, PA 19083. (ODC-51/Bates432, Stip 99)

235. Pa.R.Civ.P. 400.1 provides that in an action commenced in the First Judicial District, service of original process shall be made (Stip 100):

a. in the First Judicial District, by the sheriff or a competent adult, Pa.R.Civ.P. 400.1(a)(1); and

b. in any county other than the First Judicial District by the sheriff of the other county who is deputized by the sheriff of the First Judicial District, Pa.R.Civ.P. 400.1(a)(2).

236. The Watsons did not reside in the First Judicial District. (Stip 101) The Watsons resided in Delaware County.

237. Russell R. D'Alonzo is not the sheriff of Delaware County. (Stip 102)

238. As the managing attorney at Optimum with managerial authority over lawyers and nonlawyer assistants, Respondent failed to make reasonable efforts

to ensure that employees of Respondent's law firm acted with competence and have policies and procedures in place to ensure that service of original process of a complaint that had been filed in the First Judicial District against residents of Delaware County wasserved by the Delaware County sheriff who had been deputized by the sheriff of the First Judicial District. (PFD ,r 106 and PFD Answer ,r 106; NT V, 81-82)

239. On August 12, 2019, Optimum filed Affidavits of Service establishing proof of service of the complaint on the Watsons, albeit not service in the manner authorized by Pa.R.Civ.P. 400.1. (Stip 104)

240. The Watsons did not file an answer to the complaint within 30 days of service. (Stip 105)

241. Mr. Groff instructed Mr. Feinstein to draft a Praecipe to Enter a Default Judgment (Praecipe) against the Watsons. (NT II, 106-107, 137)

242. At the time Mr. Groff instructed Mr. Feinstein to draft the Praecipe, Mr. Feinstein "asked him [Mr. Groff] if a 10-day notice was sent, and he [Mr. Groff] said 'yes.'" (NT II, 106, 107)

243. The clerical staff was responsible for sending out the 10-day notice. (NT V, 90-91) Neither a copy of the 10-day notice or confirmation of its mailing to the Watsons was uploaded to the CLIO system. (NT V, 92-93)

244. By email to JEdwards and LJones on October

23, 2019, Mr. Feinstein attached a draft Praecipe to Enter Default Judgment (Praecipe) and wrote: "Here is the default judgment, anything in red has to be changed to reflect the correct date, the docket number has to be put in and this should be good to go." (ODC-52/Bates 434, Stip 106)

245. Mr. Feinstein sent the email with the draft Praecipe to Mr. Groff and Ms. Jones and "highlighted certain areas of the draft because the dates were wrong, so I wanted to make sure that those were corrected to the correct date and to put the correct docket number on the corrected docket." (NT II, 104)

246. The date that the Notice of Intent to Take Default Judgment was sent was one of the dates that Mr. Feinstein highlighted to be corrected as the draft Praecipe (D-26) date is April 24, 2018. (NT 101-102, 109-112)

247. By email exchange between Mr. Feinstein and Ms. Jones on October 28, 2019 (ODC-53/Bates 435, Stip 107):

a. at 4:13 p.m., Ms. Jones wrote: I am working on getting this filed today. I do not see Notice of Intent to Default that is Exhibit B. Can you please let me know where I can find this so we can file this?; and

b. at 4:16 p.m., Mr. Feinstein replied: I have no idea. John said it was sent."

248. Mr. Feinstein stated that (NT II, 107):

a. a 10-day notice was not uploaded onto the CLIO system; and

b. Mr. Feinstein was not given the praecipe to proofread after Ms. Jones typed it, added the dates, and finalized the pleading.

249. At 1:59 p.m. on October 29, 2019, Optimum filed a Certification of Service stating that copies of Notice of Intent to Take Default judgment were mailed to the Watsons on September 11, 2019. (ODC-54/Bates 0437)

250. The Praecipe to Enter Default Judgment (Praecipe) against the Watsons (Stip 109):

a. stated the Notice of Intent was mailed to the Watsons, via first class mail postage prepaid, on October 28, 2019;

b. attached as Exhibit Ban untiled "Important Notice," dated September 11 2019, informing the Watsons that they had failed to enter a written appearance and unless they act within 10 days from the date of the Notice a judgment may be entered against them; and

c. affixed the signature of Mr. Feinstein.

251. The Praecipe contained contradictions regarding the date the 10-day notice was mailed to the Watsons. (NT V, 98)

a. If Optimum had mailed the Notice of Intent on September 11, 2019, then Optimum's Praecipe wrongly stated that the Notice of Intent was mailed to the Watsons on October 28, 2019.

252. At 2:06 p.m. on October 29, 2019, the Praecipe against the Watsons was filed. (ODC 55/Bates 438, Stip 111)

253. Mr. Feinstein did not review the Praecipe before it was filed. (NT II, 107)

254. As the managing attorney at Optimum with managerial authority over lawyers and nonlawyer assistants, Respondent failed to ensure that documents prepared on behalf of an attorney are reviewed and proofread by an attorney prior to filing with the Court.

255. On October 29, 2019, the Court granted the Praecipe and entered a Judgment by Default against the Watsons. (Stip 113)

256. On November 11, 2019, the Watsons filed a Petition to Strike Entry of Default Judgment (Petition) (ODC-56/Bates 451, Stip 114):

a. admitting that the Watsons had been personally served with the Complaint on August 12, 2019;

b. admitting that on November 1, 2019, the Watsons received notice via certified mail that Plaintiff had requested a judgment by default on October 29, 2019;

c. alleging that prior to November 1, 2019, the Watsons had not received any other notices of intent to take default for failing to file an answer to the Complaint;

d. noting that the Praecipe is dated and signed on October 28, 2019;

e. explaining that Pa.R.Civ.P. 237.1(2) states, in pertinent part, that:

> [N]o judgment by default for failure to plead shall be entered by the prothonotary unless the praecipe for entry includes a certificate that a written notice of intention to file the praecipe was mailed or delivered . . . at least ten [1O] days prior to the date of the filing of the praecipe to the party against whomjudgment is to be entered and to the party's attorney of record, if any.;

f. alleging that Plaintiff and Mr. Feinstein "have perpetrated a fraud on this court" by having the Court issue an "unjust default judgment against Defendants"; and

g. requesting that Plaintiff's Praecipe for Entry of Default be stricken.

257. By Order docketed on December 5, 2019, the Honorable Edward C. Wright issued a Rule to Show Cause as to why the relief requested in the Watsons' Petition should not be granted, scheduled a Rule Returnable

Hearing for January 9, 2020, and ordered that any written response to the Petition should be filed no later than 5 days before the January 9, 2020 hearing. (Stip 115)

258. Mr. Feinstein received the Petition to Strike and was "mortified by what was filed over [his] name." (NT II, 113)

259. By email sent on December 19, 2019, from Mr. Feinstein to Respondent, JEdwards and Mr. Benedetto (ODC-26/Bates 210), Mr. Feinstein (Stip 116):

a. attached the Rule to Show Cause that was served on him by certified mail that day;

b. requested that someone substitute their appearance "per the letter I got from Joe Lento to immediately stop any work on Optimum cases"; and

c. reminded the email recipients to substitute his appearance in all Optimum cases.

260. Respondent received notice of the January 9, 2020 hearing. (NT V, 101-102; ODC-26/Bates 210)

261. Although Mr. Benedetto was a client of Respondent's law firm (NT V, 100), Respondent failed to act with the competence and diligence necessary for the representation and filed a substitution of appearance for Mr. Feinstein. (NT II, 114)

262. On January 2, 2020, Mr. Feinstein filed Plaintiff's Response to Defendants' Petition to Strike Default Judgment (ODC-57/Bates 468, Stip 117):

a. claiming that the Praecipe to Enter Default Judgment, which states that the Notice of Intent to Take Default was mailed on October 28, 2019, "appear to be a clerical error";

b. alleging that the Notice of Intent to Take Default Judgment was mailed on September 11, 2019;

c. attaching a Certificate of Service for Notice of Intent to Take Default Judgment that was filed on October 29, 2019; and

d. failing to attach any proof that a Notice of Intent to Take Default Judgment was mailed on September 11, 2019, such as a: mail receipt; copy of envelope to the Watsons; Affidavit from the individual(s) who drafted the Notice of Intent addressed the envelope to the Watsons, placed the Notice of Intent in an envelope, and mailed the Notice of Intent; certificate of service filed on or about September 11, 2019; or cover letter for Notice of Intent.

263. Mr. Feinstein explained that he filed the Response because he had "waited a period of time to see if [Respondent was] going to answer the petition . . . So when it got to January and they still had not entered their appearance and a response to the petition had to be filed,

I didn't want to have any concerns-I didn't want to have a rerun of what happened in the Eastern District by not responding to the motion." (**NT** II, 114-115; *see also* NT 11, 116-117)

264. Mr. Feinstein obtained Mr. Benedetto's authorization to file the Response. (**NT** II, 117)

265. By email exchange dated January 3, 2020, between Mr. Feinstein and JEdwards (Mr. Groff) (ODC-58/Bates 478, Stip 118):

a. JEdwards inquired whether Mr. Feinstein was taking the Watsons' matter on behalf of Conrad or should Optimum substitute Mr. Feinstein's appearance;

b. Mr. Feinstein replied:

1. "You failed to substitute anyone in for my appearance. As a favor to Conrad I filed a response"; and

ii. "I have not agreed to handle the case for Conrad, but I was not going to commit malpractice."

266. On January 9, 2020, Judge Wright held a Rule Returnable Hearing on the Watsons' Petition to Strike (ODC-59/Bates 480), during which time (Stip 119):

a. Mr. Watson was in attendance;

b. Mr. Watson provided the Court with green card receipts showing that Optimum had notice of the Rule Returnable Hearing;

c. Mr. Watson explained that he did not receive the required 10-day Notice of Intent to Take Default Action that Optimum purportedly had sent on September 11, 2019, until Optimum mailed the Praecipe on October 28 2019; and

d. requested that the default judgment entered against the Watsons be stricken.

267. Although Mr. Benedetto did not discharge Respondent's law firm and Respondent did not withdraw from the representation, no one from Respondent's law firm appeared to represent Mr. Benedetto. (NT V, 105-106, 110) Respondent failed to act with the competence and diligence necessary for the representation and assign another attorney to substitute his appearance for Mr. Feinstein and attend the January 9, 2020 hearing. *(Id.* at 114)

268. By Order docketed on January 10, 2020, Judge Wright granted Defendants' Petition to Strike Default Judgment. (ODC-50/Bates 424, Stip 120)

269. Respondent admitted that his supervisory and managerial duties in his handling of the Watsons matter fell below the standards mandated by the Rules of Professional Conduct. (NT V, 121-122)

Appendix B

RESPONDENT'S COUNTER-POSITION ON THE WATSON MATTER

On or before July 31, 2019, Respondent assigned Mr. Feinstein to represent Mr. Benedetto in a very simple breach of contract, confession of judgment, and unjust enrichment matter. *See* Joint Stipulations at ¶ 95; *see also* 1.25.2023 Tr. at 118:5-12. Mr. Feinstein drafted a civil complaint on behalf of Plaintiff, Mr. Benedetto, against Defendants, Raheem Watson and Christy Laverne Watson (the "Watsons"), challenging that Mr. Benedetto loaned $10,000.00 to Raheem Watson pursuant to a promissory note and Raheem Watson had not made any payments in accordance with the terms of the promissory note. *See* Joint Stipulations at ¶ 96.

On July 31, 2019, the complaint was filed in the Court of Common Pleas of Philadelphia County (First Judicial District): *Benedetto v. Watson et al.*, No. 190704102 (the "*Watson* case"). *See* ODC-50. Mr. Feinstein, the attorney assigned to handle the matter, was responsible for ensuring the Complaint was properly served on the Defendants. *See* 1/25/2023 Tr. at 119:15-22; *see also* 1/27/2023 Tr. at 68:2-11. Respondent did not give Mr. Feinstein directions regarding how to effectuate service of the Complaint. *See* 1/25/2023 Tr. at 119:23-120:8. Mr. Feinstein had been practicing for 34 years and was hired because of his experience level. *See id.* As such, Respondent reasonably deferred to Mr. Feinstein "to do the job that he was tasked to do." *See id.* Mr. Feinstein, as the attorney assigned to the case, was duty bound to "follow through on what [was] required to handle the case." *See id.*

At the disciplinary hearing, Mr. Feinstein *admitted* that he was aware the action was pending in Philadelphia and that the defendants resided in Delaware County. *See* 1/24/2023 Tr. at 152:18-23. Mr. Feinstein further *admitted* that he knew how service should be properly effectuated. *See* 1/24/2023 Tr. at 153:2-4. Finally, Mr. Feinstein *admitted* that he did not give any instructions to his support staff regarding how service should be effectuated. *See* 1/24/2023 Tr. at 153:5-10.

At 6:55 p.m. on August 6, 2019, Russell R. D'Alonzo made service of process of the civil complaint by handing a copy of the complaint to Makayla Daniels, the Watsons' daughter, at 1013 Pennsylvania Avenue, Havertown, PA 19083. *See* ODC-51. Such manner of service did not comply with the Pennsylvania Rules of Civil Procedure. Since learning of the improper service issue, Respondent discussed this issue with office personnel to ensure that this type of mistake does not occur again. *See* 1/25/2023 Tr. at 120:24-121:18. Although Respondent is not required to have written policies in place for the filing and service of complaints, he has had one in place since about the Spring of 2020. *See* 1/27/2023 Tr at 62:11-63:11.

The Watsons did not file an answer to the complaint within 30 days of service. *See* Joint Stipulations at ¶ 105. Since the Watsons did not file an answer to the complaint, Mr. Feinstein prepared a Praecipe to Enter Default Judgment. *See* Joint Stipulations at ¶ 106; *see also* 1/25/2023 Tr. at 128:19-129:3. By email to JEdwards and LJones on October 23, 2019, Mr.

Feinstein attached a draft Praecipe to Enter Default Judgment ("Praecipe") and wrote: "Here is the default judgment, anything in red has to be changed to reflect the correct date, the docket number has to be put in *and this should be good to go.*" (emphasis added). *See id.; see also* ODC-52. Mr. Feinstein *admitted* that he did not request the document be returned to him after the changes were made. *See* 1/24/2023 Tr. at 141:20-23. Rather, Mr. Feinstein *admitted* that he merely advised office personnel that, once the changes are made, the document "should be good to go." *See* 1/24/2023 Tr. at 141:24-142:2. Mr. Feinstein did not send the pleading to Respondent for Respondent's review because Mr. Feinstein was very experienced and handling the case. *See* 1/24/2023 Tr. at 142:3-143:5. Mr. Feinstein was the attorney of record in the matter. *See* 1/24/2023 Tr. at 143:7-11.

By email exchange between Mr. Feinstein and Ms. Jones on October 28, 2019 at 4:13 p.m., Ms. Jones wrote: "I am working on getting this filed today. I do not see Notice of Intent to Default that is Exhibit B. Can you please let me know where I can find this so we can file this?" *See* Joint Stipulations at ¶ 107; *see also* ODC-53. Three minutes later, at 4:16 p.m., Mr. Feinstein replied: "I have no idea. John said it was sent." *See id.*

A Praecipe against the Watsons stated the Notice of Intent was mailed to the Watsons, via first class mail, postage prepaid, on October 28, 2019; attached as Exhibit B an unfiled "Important Notice," dated September 11, 2019, informing the Watsons that they

had failed to enter a written appearance and unless they act within 10 days from the date of the Notice, a judgment may be entered against them; and affixed the signature of Mr. Feinstein. Mr. Feinstein stated that the law firm had his authority to sign his name. *See* 1/24/2023 Tr. at 107:21-23. At 2:06 p.m. on October 29, 2019, the Praecipe against the Watsons was filed. *See* ODC-55.

On October 29, 2019, the Court granted the Praecipe and entered a Judgment by Default against the Watsons. *See* Joint Stipulations at ¶ 113. On November 11, 2019, the Watsons filed a Petition to Strike Entry of Default Judgment ("Petition"). *See* ODC-56. By Order docketed on December 5, 2019, the Honorable Edward C. Wright issued a Rule to Show Cause as to why the relief requested in the Watsons' Petition should not be granted, scheduled a Rule Returnable Hearing for January 9, 2020, and ordered that any written response to the Petition should be filed no later than five (5) days before the January 9, 2020 hearing. *See* ODC-50.

On January 2, 2020, Mr. Feinstein, plaintiff's attorney of record, filed Plaintiff's Response to Defendants' Petition to Strike Default Judgment. *See* ODC-57. On January 9, 2020, Judge Wright held a Rule Returnable Hearing on the Watsons' Petition. *See* ODC-59. By Order docketed on January 10, 2020, Judge Wright granted the Watsons' Petition. *See* ODC-50.

Respondent acknowledged that his conduct relating to his supervisory and/or managerial duties fell below

the standards mandated by the Pennsylvania Rules of Professional Conduct. *See* 1/27/2023 Tr. at 121:4-17. Respondent apologized and expressed remorse for not fulfilling his managerial responsibilities, *See id.*, and for not using better efforts to ensure against the improperly served complaint in the *Watson* case. *See* 1/27/2023 Tr. at 121:18-122:2.

Neither the plaintiff nor defendant sustained any significant damage as a result of these events.

American Club of Beijing Matter

270. On September 13, 2019, Mr. Feinstein filed a civil complaint on behalf of American Club of Beijing and against Board of Governors AME in the Court of Common Pleas of Philadelphia County. *American Club of Beijing v. Board of Governors AME*, No. 19091807. (American Club (ODC-60/Bates 489, Stip 121)

271. On January 7, 2020, Respondent filed a Praecipe for Entry of Appearance on behalf of American Club. (ODC-61/Bates 500, Stip 122)

272. On January 8, 2020, Mr. Feinstein filed a Withdrawal of Appearance on behalf of American Club. (ODC-61/Bates 500, Stip 123)

273. By email dated April 3, 2020, from Ms. Stone to Mr. Groff with a "cc" to Respondent, Ms. Stone (D-29):

a. attached a draft *Pro Hae Vice* motion for the admission of Anthony Scordo, which was to be signed and verified by Respondent; and

b. explained that she would re-type the motion, but "need[ed] the corrections first. . "

274. Respondent received the draft *Pro Hae Vice* motion from Ms. Stone. (NT III, 137)

275. Respondent failed to act with reasonable diligence and review and correct the *Pro Hae Vice* motion after it was received. (NT III, 137; NT V, 12, 13, 14)

276. On May 19, 2020, the Honorable Gary Glazer transferred *American Club* to Commerce Court. (Stip 124)

277. On May 27, 2020, Ms. Stone filed a Motion for *Pro Hae Vice* Admission to Commerce Court (Motion). (ODC-62/Bates 515, Stip 125)

278. The Motion (Stip 126):

a. states that Respondent moves for the *pro hac vice* admission of Anthony Scordo, Esquire, an attorney in good standing in New Jersey and an associate at Lento Law Group, P.C.;

b. contains the signature of Joseph D. Lento and is dated May 26, 2020; and

c. attaches Verification of Joseph D. Lento, Esquire, In Support of Motion for Admission *Pro Hae Vice* (Verification).

279. The Verification, which Respondent signed and dated May 26, 2020, stated Respondent (Stip 127):

a. declares, "under penalty of perjury that the foregoing is true and correct";

b. "understand[s] that false statements made herein are subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities";

c. is the President of Lento Law Group, P.C. (i-11); and

d. is "a member in good standing of the Pennsylvania Bar, I presently am not and have never been, the subject of any disbarment or suspension proceeding before this or any Court" (i-1 3).

280. Respondent's Verification was incorrect in that (Stip 128):

a. by Order dated July 17, 2013, the Pennsylvania Supreme Court granted the Joint Petition in Support of Discipline on Consent and suspended Respondent from the practice of law for one year, followed by a one-year period of probation with conditions;

b. by Order dated April 26, 2017, the Supreme Court of New Jersey entered an Order of reciprocal discipline suspending Respondent from the practice of law;

c. by Order dated September 13, 2013, the Eastern District of Pennsylvania entered an Order of reciprocal discipline suspendingRespondent from the practice of law for one year, effective thirty days from the date of its Order; and

d. Respondent has not been granted reinstatement to the practice of law in the Eastern District of Pennsylvania.

281. Respondent testified that he did not know the requirements for filing a *Pro Hae Vice* motion until the summer of 2022. (NT V,11) Respondent failed to possess the competence necessary for the representation.

282. On June 1, 2020, Defendants William L. Rosoff, Timothy P. Stratford, and James M. Zimmerman (Defendants) filed a Response and New Matter in Opposition to Plaintiff's Motion for Admission *Pro Hae Vice* (Response). (ODC-63/Bates 531, Stip 129)

283. The Response (Stip 130):

a. alleges that Respondent misstated his disciplinary history as the Pennsylvania Supreme Court suspended Respondent from the practice of law for one year, followed by a one-year period of probation with conditions;

b. alleges that as a result of Respondent's misstatement and other reasons set forth in the Defendants' Response, good cause exists to deny Respondent's Motion; and

c. requests that, pursuant to the Court's inherent powers to govern the conduct of attorneys, the Court enter a Rule to Show Cause as to why sanctions should not be imposed.

c

284. Although Respondent did not know the legal requirements for filing a *Pro Hae Vice* motion and failed to correct the false statements in the draft motion that was sent to him for review (NT V, 11, 13), Respondent requested that Ms. Stone "send a letter informing all necessary parties that it (the motion) was a clerical error." (D-30) Respondent reasoned that "[i]t was deemed [to] be the appropriate way to address the matter." (NT V, 22)

285. On June 4, 2020, Respondent filed a Praecipe to Attach Certification of Denise Stone and the Certification of Denise Stone (Certification). (ODC-64/Bates 599, Stip 131)

286. Ms. Stone's Certification stated that she (Stip 132):

a. was a paralegal at Lento Law Group, P.C.;

b. "inadvertently stated that Joseph Lento, Esquire has 'never' been the subject of 'any' suspension proceedings in 'any' Court";

c. had filed the Motion;

d. apologized for her mistake; and

e. requested permission to withdraw the Motion and file a "corrected" motion.

287. Respondent testified that he did not know who prepared Ms. Stone's Certification or how it was prepared. (NT V, 25, 26)

288. On June 15, 2020, Defendants filed a Praecipe to Supplement and Response to Ms. Stone's Certification requesting the denial of the *Pro Hae Vice* Motion and the award of sanctions. (ODC-65/Bates 603, Stip 133)

289. In support of its request, Defendants allege, among other reasons, that (Stip 134):

a. Respondent's signed Verification "egregiously misstated Mr. Lento's disciplinary history" (p. 1);

b. Ms. Stone's Certification compounds Respondent's misconduct because he failed to properly supervise Ms. Stone and review the Certification before it was filed (pp. 3-4); and

c. Mr. Scordo was not a member of the Pennsylvania Bar at the time he co-signed the Complaint in *American Club* as "Attorney for Plaintiff seeking admission *Pro Hae Vice.*" (p. 5)

290. On June 26, 2020, Respondent filed a response to Defendants' Response (ODC-66/Bates 619) alleging, in pertinent part, that (Stip 135):

a. "[i]t is highly unlikely that such a minor issue relating to [Respondent's] disciplinary record would result in the denial of *Pro Hae Vice* admission of Mr. Scordo" (p. 2);

b. Respondent "never attempted to hide" his disciplinary record (p. 4); and

c. Respondent's paralegal's error "was a mere oversight." (p. 5)

291. By Order dated July 14, 2020 (ODC-67/Bates 633), the Honorable Ramy I. Djerassi ordered that Respondent's motion for Mr. Scordo's *pro hac vice* admission be denied (Stip 136):

> without prejudice to a refiling that complies in all respects with applicable rules under Pa.R.Civ.P. 1012.1 and disclosure of movant's disciplinary history. The proposing attorney shall sign the motion and verification.

292. Judge Djerassi's order placed Respondent on notice to comply with Pa.R.Civ.P. 1012.1, disclose his disciplinary history, and to sign the motion and verification. (NT V, 31)

293. Respondent and Ms. Stone drafted the Second Motion for Admission *Pro Hae Vice.* **(NT V,** 31)

294. By email exchange between Respondent and Mr. Scordo on August 11, 2020 (ODC-68/Bates 634), with the subject line "Pro Hae" (Stip 137):

a. Respondent wrote at 8:12 a.m.: "Anthony, would you agree the one with just the PA consent suspension is sufficient? No need to get into NJ or Eastern District reciprocal right?;

b. Mr. Scordo wrote at 9:42 a.m.: "Joe, With these clowns on the other side, it might be worth just putting in a short one-sentence reference as part of the same paragraph without going into detail;

c. Respondent wrote at 10:23 a.m., "Is this one OK? I basically put that NJ initially recommended a reprimand (Attorney Ethics and NJ DB) but NJ Supreme Court basically was like we're just going to retro reciprocal because it took them 4 years to get around to it. NJ basically said I got farked in PA with the suspension but was going to just do the reciprocal"; and

d. Mr. Scordo wrote at 10:24 a.m.: "Looks fine."

295. Respondent also spoke to Mr. Groff, who was not a lawyer, to determine which draft of the Second Motion was most appropriate to file. (NT V, 38; D-71)

296. By Order dated August 13, 2020, Judge Djerassi sustained Defendants' Preliminary Objections, which had been filed on May 11, 2020, and dismissed the Complaint against Defendants (Stip 138)

297. On August 14, 2020, Respondent filed a second Motion for Admission *Pro Hae Vice* and attached a Verification of Joseph D. Lento, Esquire, In Support of Motion for Admission *Pro Hae Vice* (Second Verification). (ODC-69/Bates 635, Stip 139)

298. In the Second Verification, Respondent states (Stip 140):

a. "under penalty of perjury that the foregoing is true and correct";

b. Respondent "understand[s] that false statements made herein are subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities";

c. Respondent is the President of Lento Law Group, P.C. m1);

d. Respondent's law license was suspended for one-year in Pennsylvania and Respondent was reciprocally disciplined in New Jersey (,I 3);

e. "I presently am not the subject of any disbarment or suspension proceedings before this or any Court" (,I 3); and

f. "I believe that Anthony Scordo, Esquire is reputable and competent (,I 6)."

299. Respondent signed the Motion as Joseph D. Lento. (Stip 141)

300. Respondent's Second Verification did not (Stip 142):

a. include Respondent's disciplinary history in the United States District Court for the Eastern District of Pennsylvania **(1J** 3(a));

b. comply with Pa.R.Civ.P. 1012.1(b), in that it failed to state that the information required by IOLTA regulations had been provided to the IOLTA Board **(1J** 4(a)); and

c. comply with Pa.R.Civ.P. 1012.1(d)(2)(iii), in that it failed to state that any proceeds from a settlement will be handled in accordance with RPC 1.15. **(,I** 4(b)).

301. Respondent admitted that his Second Motion failed to fully disclose Respondent's disciplinary history (NT V, 32) and comply with Judge Djerassi's order. *(Id.* at 33

302. Respondent also failed to disclose his suspension from the EDPA on his Pennsylvania annual attorney registration statements from 2015-2021. (ODC-122-128/ Bates 917-925) (NT V, 48)

a. Respondent continued to file false attorney registration statements after Judge Djerassi dismissed his false *Pro Hae Vice* motions (NT V, 50); and

b. Respondent explained that it was his "misunderstanding" of the attorney registration statement and Respondent not doing his "diligence in understanding" the question. (NT V, 49)

303. Respondent knew that his first motion had failed to comply with Pa.R.Civ.P. 1012.1 and Respondent testified that his failure to comply with Pa.R.Civ.P. 1012.1 in his Second Motion "was an error and oversight."[2] (NT V, 51-52)

304. On August 23, 2020, Defendants attempted to file a Response to Plaintiff's Second Motion for Admission

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2. Respondent contends that he did not intentionally intend to deceive the Court in the *American Club* matter. The evidence is that Respondent was not candid to the Court in his second verification, and chose to not fully disclose his disciplinary record. Respondent asked his colleague *before* he filed the second verification whether there was a "need" to be fully candid to the Court, and reference his *ongoing* suspension in the Eastern District of PA in his sworn verification. He chose to not fully disclose.

Pro Hae Vice (Second Response), but the Prothonotary's office rejected the filing as Defendants had been dismissed from the *American Club* case. (Stip 143)

305. By email to Judge Djerassi dated August 26, 2020, with a copy to Respondent (ODC-70/Bates 650), Defendants stated that they (Stip 144):

a. had attempted to file their Second Response, but it was rejected by the Prothonotary;

b. viewed Respondent's Second Motion as being noncompliant with the Court's July 13, 2020 Order in that Respondent failed to disclose his full disciplinary record and comply with Pa.R.Civ.P. 1012.1;

c. "believe[d] we are duty bound to bring this matter to the Court's attention"; and

d. attached Defendants' Second Response.

306. In pertinent part, the Second Response alleged Respondent's Second Motion failed to (Stip 145):

a. include Respondent's disciplinary history in the Eastern District of Pennsylvania (**1J** 3(a));

b. comply with Pa.R.Civ.P. 1012.1(b), in that it failed to state that the information required by IOLTA regulations had been provided to the IOLTA Board (**1J** 4(a)); and

c. comply with Pa.R.Civ.P. "1012.1(d)(2)(iii)," in that it failed to state any proceeds from a settlement would be handled in accordance with RPC 1.15 (**1J** 4(b)).

307. Judge Djerassi, by Order docketed on September 1, 2020 (ODC-71/Bates 663), ruled that upon consideration of the Second Response to Plaintiff's Second Motion for Admission *Pro Hae Vice*, that within twenty days, Respondent should (Stip 146):

a. either file a written reply explaining why the Court should not deny with prejudice Respondent's Second Motion for Mr. Scordo's *pro hac vice* admission; or

b. file a praecipe before the twentieth day of its Order, withdrawing Respondent's Second Motion and seek the assistance of another Pennsylvania attorney to move for Mr. Scordo's admission.

308. Judge Djerassi also "encouraged [Respondent] to exercise caution" as "Rules of Professional Responsibility may be implicated here and full disclosure is the essence of a successful *pro hac vice* application." (Stip 147)

309. On September 18, 2020, Respondent withdrew his appearance on behalf of American Club of Beijing. (Stip 148)

310. Having failed twice to file a correct *Pro Hae Vice* motion and having twice failed to fully disclose his

disciplinary hearing, Respondent assigned Scott Wiggins, Esquire, an associate with Lento Law Group, P.C., to do so. **(NT V,** 52)

311. As the supervising attorney for Mr. Wiggins, Respondent failed to explain to Mr. Wiggins "what would be needed to make sure that [the *Pro Hae Vice* motion] was done in full compliance." (NT V, 54)

312. On September 22, 2020, Mr. Wiggins filed a Motion for Admission *Pro Hae Vice* seeking to admit Mr. Scordo to handle *American Club.* (ODC-72/Bates 664, Stip 149)

313. Mr. Wiggins' Motion for Admission *Pro Hae Vice* failed to comply with Pa.R.Civ.P. 1012.1(b)(1)(i), (c)(1)(i) and (ii), and (d)(2)(i) and (iii). (Stip 150)

314. By Order dated October 19, 2020, Judge Djerassi, pursuant to Pa.R.Civ.P. 1012.1(e)(7) and (8), denied Mr. Wiggins' Motion for failing to comply with Pa.R.Civ.P. 1012.1(b)(1)(i), (c)(1)(i) and (ii), and (d)(2)(i) and (iii). (ODC-73/Bates 681, Stip 151)

315. Respondent testified that he was "mistaken" in his first filing, he "was trying in good faith" in the second filing, and "the ball was dropped" in the third filing. (NT III, 146)

316. Respondent admitted that his conduct in handling the *Pro Hae Vice* applications demonstrated a lack of competence in violation of RPC 1.1. (NT V, 55-56)

317. Respondent admitted that as the managing partner of Lento Law Group, P.C., with supervisory authority over his law firm's attorneys and support staff, Respondent violated RPC 5.1 and RPC 5.3 when he failed to make reasonable efforts to ensure that his law firm's employees acted with competence in drafting and filing motions. **(NT V,** 56)

318. Respondent admitted that the totality of his conduct in handling the *Pro Hae Vice* admission of Mr. Scordo was prejudicial to the administration of justice in violation of RPC 8.4(d) in that it needlessly expended the limited time and resources of the court system. (NT V, 57)

319. While Respondent admitted his misconduct, his testimony in certain key respects is not credible, and Respondent failed to express sincere remorse for his misconduct and recognize that his misconduct had a negative impact on the public and profession.

RESPONDENT'S COUNTER-POSITION ON THE AMERICAN CLUB OF BEIJING MATTER

On September 13, 2019, Mr. Feinstein filed a civil complaint on behalf of American Club of Beijing and against Board of Governors AME in the Court of Common Pleas of 19091807. (The "*American Club* case"). *See id.*

On January 7, 2020, Respondent filed a Praecipe for Entry of Appearance on behalf of American Club of Beijing. *See* ODC-61. On January 8, 2020, Mr.

Feinstein filed a Withdrawal of Appearance on behalf of American Club of Beijing. *See id.* On May 19, 2020, the Honorable Gary Glazer transferred the *American Club* case to Commerce Court. See Joint Stipulations at ¶ 124.

On May 27, 2020, Respondent's paralegal, Denise Stone, filed a Motion for *Pro Hac Vice* for Anthony Scordo, Esq. ("Mr. Scordo")'s Admission to Commerce Court with Mr. Lento as the sponsoring attorney (the "Motion"). *See* ODC-62. Before May 27, 2020, Respondent directed his paralegal to prepare the Motion. *See* 1.27.2023 Tr. at 5:20-6:5. Respondent's paralegal was not aware of Respondent's disciplinary history. *See* 1.27.2023 Tr. at 7:10-17. A copy of the draft Motion was emailed to Respondent before it was filed. *See* 1/25/2023 Tr. at 137:6-8; *see also* D-29. It was emailed to Respondent on April 3, 2020, shortly after a national emergency was declared as a result of the COVID pandemic. *See* 1/25/2023 Tr. at 138:14-20; *see also* D-29. Respondent did not review the draft Motion before it was filed, but significantly also did not instruct his paralegal to file the Motion. *See 1/25/2023 Tr. at 139:2-7.* Rather, the Motion was filed due to a miscommunication. Respondent's office manager believed that Respondent had reviewed and approved the draft Motion for filing and therefore, instructed Respondent's paralegal to file Motion. *See* 1/25/2023 Tr. at 139:8-18. The Motion moved for the *pro hac vice* admission of Mr. Scordo, an attorney in good standing in New Jersey and an associate at Lento Law Group, P.C.

The Motion did not accurately detail Respondent's disciplinary history. However, it is important to recognize that Pennsylvania *does not require the Motion to contain the sponsor's disciplinary history*, but only that of the attorney seeking pro hac admission. Pa.R.C.P. 1012.1(c)(2)[3] Even though Respondent was not required to include his own disciplinary status in the Motion, upon the advice of counsel, he acknowledged that he should have paid better attention to his paralegal's drafting of the Motion and recognized that the mistakes contained in the filing were "100% [his] fault." *See* 1/27/2023 Tr. at 12:6-14:8.

On June 1, 2020, Defendants William L. Rosoff, Timothy P. Stratford, and James M. Zimmerman (collectively, "Defendants") filed a Response and New Matter in Opposition to Plaintiff's Motion for Admission *Pro Hac Vice* (the "Response"). *See* ODC-63. The Response informed the Court that Respondent's disciplinary history, as referenced in the Motion, was incorrect because Respondent was previously

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3. **(2) The sponsor shall submit a verified statement-2(i) stating that after reasonable investigation, he or she reasonably believes the candidate to be a reputable and competent attorney and is in a position to recommend the candidate's admission, (ii) setting forth the number of cases in all courts of record in this Commonwealth in which he or she is acting as the sponsor of a candidate for admission pro hac vice, and (iii) stating that the proceeds from the settlement of a cause of action in which the candidate is granted admission pro hac vice shall be received, held, distributed and accounted for in accordance with Rule 1.15 of the Pennsylvania Rules of Professional Conduct, including the IOLTA provisions thereof, if applicable.**

disciplined in Pennsylvania. *See* Joint Stipulations at ¶ 130. Following the parties' additional submissions, by Order dated July 14, 2020, the Honorable Ramy I. Djerassi ordered that Respondent's Motion be denied without prejudice. *See* ODC-67.

Concerned about responding as required, Respondent sought counsel from three lawyers with respect to what disciplinary information he needed to include in any subsequent *pro hac vice* submission. *See* 1/25/2023 Tr. at 142:22-143:15. Despite the unambiguous language of Pa.R.C.P. 1012.1(c)(2), based upon what he was told, it was Respondent's understanding that any subsequent *pro hac vice* submission should include Respondent's Pennsylvania and New Jersey disciplinary history. *See* 1/25/2023 Tr. at 143:16-144:11. Respondent did not believe any subsequent *pro hac vice* submission needed to include any information regarding his standing in the EDPA. *see also* 1/27/2023 Tr. at 43:14-44:10. This is because reciprocal discipline was imposed by the EDPA—discipline imposed for the same conduct as the state court discipline. Therefore, this was not additional wrongdoing, and the court had notice of the misconduct that resulted in the EDPA reciprocal discipline. Additionally, only "state bars" discipline was sought and that was provided.

Further evidence of Respondent's good faith efforts to properly disclose his prior discipline, by email exchange between Respondent and Mr. Scordo on August 11, 2020 (ODC-68), with the subject line "Pro Hac": Respondent wrote at 8:12 a.m.: "Anthony, would

you agree the one with just the PA consent suspension is sufficient? No need to get into NJ or Eastern District reciprocal right?" *See* Joint Stipulations at ¶ 137; *see also* ODC-68. That same day, Mr. Scordo wrote at 9:42 a.m.: "Joe, With these clowns on the other side, it might be worth just putting in a short one-sentence reference as part of the same paragraph without going into detail." *See id.* Respondent later wrote at 10:23 a.m., "Is this one OK? I basically put that NJ initially recommended a reprimand (Attorney Ethics and NJ DB) but NJ Supreme Court basically was like we're just going to retro reciprocal because it took them 4 years to get around to it. NJ basically said I got farked in PA with the suspension but was going to just do the reciprocal." *See id.* Mr. Scordo responded at 10:24 a.m.: "Looks fine." *See id.*

On August 14, 2020, Respondent filed a second Motion for Admission *Pro Hac Vice* and attached a Verification of Joseph D. Lento, Esquire, In Support of Motion for Admission *Pro Hac Vice* (the "Second Motion"). *See* ODC-69. In the Second Motion, despite the clear language of Pa.R.C.P. 1012.1(c)(2), Respondent followed the advice he had been given and identified his Pennsylvania and New Jersey disciplinary history. *See* Joint Stipulations at ¶ 140. The Court received opposition to the Second Motion and on September 1, 2020, the Court directed that Respondent should: either file a written reply why the Court should not deny with prejudice Respondent's Second Motion for Mr. Scordo's *pro hac vice* admission; or file a praecipe before the twentieth day of its Order, withdrawing

Respondent's Second Motion and seek the assistance of another Pennsylvania attorney to move for Mr. Scordo's admission. *See* ODC-71.

On September 18, 2020, Respondent withdrew his appearance on behalf of American Club of Beijing. *See* ODC-72. On September 22, 2020, Scott Wiggins, Esq. ("Mr. Wiggins"), an associate with Lento Law Group, P.C., filed a Motion for Admission *Pro Hac Vice* seeking to admit Mr. Scordo to handle *American Club.* Mr. Wiggins' Motion for Admission *Pro Hac Vice* failed to comply with Pa.R.Civ.P. 1012.1(b)(1)(i), (c)(1)(i) and (ii), and (d)(2)(i) and (iii). By Order dated October 19, 2020, Judge Djerassi, pursuant to Pa.R.Civ.P. 1012.1(e)(7) and (8), denied Mr. Wiggins' Motion for failing to comply with Pa.R.Civ.P. 1012.1(b)(1)(i), (c)(1)(i) and (ii), and (d)(2)(i) and (iii). *See* ODC-73.

Despite Respondent's clearly articulated obligations under PA.R.C.P. 1012..1 which did not require him, as sponsoring counsel to identify his discipline history, he expressed regret and remorse for the manner in which he and his firm handled the *pro hac vice* applications of Mr. Scordo. *See* 1/25/2023 Tr. at 145:20-146:11. Respondent apologized to the Court, Judge Djerassi, and defense counsel in the matter. *See id.* Respondent accepted responsibility for the second and third *pro hac vice* applications' deficiencies. *See* 1/27/2023 Tr. at 51:11-52:1, 53:19-54:11. Respondent admitted that his conduct in the *American Club* case violated the following Pennsylvania Rules of Professional Conduct: 1.1, 5.1 and 5.3 and was prejudicial to the administration of justice. *See* 1/27/2023 Tr. at 55:23-57:5.

Appendix B

Renee Dougalas Matter

320. Renee Dougalas is a "recovering pharmacist" (NT I, 24) with an active pharmacy license in Texas and an inactive pharmacy license in Pennsylvania. (NT I, 22, 31)

321. Ms. Dougalas currently practices at a sterile compounding pharmacy and at an independent pharmacy, works with a doctor platform managing the pharmacies that dispense for them, and owns a compliance company that ensures pharmacies stay compliant with state laws and helps them through pharmacy audits and credentialling. (NT I, 22-23)

322. Ms. Dougalas is a recovering drug addict who over 20 years ago stole her daughter's father's prescription pad, forged prescriptions for Vicodin (a Schedule Ill controlled substance at that time, which is now Schedule II), and "wrote and falsified controlled substance prescriptions." (NT I, 27)

323. Renee Dougalas (Stip 154):

a. was convicted in the following criminal matters in Pennsylvania (ODC74/Bates 683):

1. *Commonwealth v. Renee Douga/as*, No. CP-40-CR-0001221-1995 (on 9/25/1996, convicted of Knowing Possession of a Controlled Substance **(M),** 35 Pa.C.S. § 780-113(a)(16));

2. *Commonwealth v. Renee Douga/as*, No. CP-40-CR-0002286-1996 (on 1/30/1997, convicted of Acquisition of a Controlled Substance by Misrepresentation (F), 35 Pa.C.S. § 780-113(a)(12) (two counts); and Knowing Possession of a Controlled Substance (M (two counts)); and

3. *Commonwealth v. Renee Douga/as*, No. CP-40-CR-0002631-1998 (on March 31, 1998, convicted of Acquisition of a Controlled Substance by Misrepresentation (F), 35 Pa.C.S.A. § 780-113(a)(12) (eleven counts).

b. had an inactive criminal case docketed at MJ-1102-CR-000005-1999 charging purchase of drug-free urine (M) in violation of 18 Pa.C.S.A. § 7509(a); and

c. had a disposed case docketed at CP-40-MD-0001614-1999, under the Uniform Criminal Extraditions Act, 42 Pa.C.S.A. § 1921 (S).

324. On June 25, 1999, Ms. Dougalas was convicted in the following criminal matter in New Jersey: (ODC-75/Bates 702, Stip 155)

a. *State of New Jersey v. Renee Douga/as*, Indictment No. 99-06-0558 (Mercer County, New Jersey) of Eluding Police, NJ 2C:29-2b (3rd degree), and Possession Controlled Substances, NJ 2C:35-10a(1) (3rd degree).

325. In 2004, Ms. Dougalas entered drug treatment and attained her sobriety (NT I, 29); thereafter, Ms. Dougalas petitioned for reinstatement of her pharmacy license in Pennsylvania, had a hearing, and was granted reinstatement in 2010. *(Id.)*

326. Ms. Dougalas subsequently relocated to Texas (NT I, 21) and decided she wanted to expunge or seal her criminal records in Pennsylvania and New Jersey. (Stip 156)

327. Ms. Dougalas had done some legal research and "felt that [she] needed some good legal advice about the Clean Slate Act and if there was anything [she] could do about old felonies." (NT I, 91)

328. On February 19, 2020, Ms. Dougalas left a message on a Clean Slate lawyer website (NT 1, 33, 95; ODC-76/Bates 703):

a. explaining that she had criminal convictions that were "20 plus years old";

b. stating that she wanted "to apply for clean slate"; and

c. inquiring whether Respondent could "help" her.

329. At the time Ms. Dougalas left the message, she:

a. "absolutely knew the difference between a felony and a misdemeanor conviction" (NT I, 34);

b. "absolutely knew [she] had thirteen felony convictions" *(id.);*

c. knew how to use the Unified Judicial System portal to obtain a record of her convictions *(id.);* and

d. knew she had written a prescription for Vicodin, which was then a Schedule Ill controlled drug. *(Id.)*

330. Respondent called Ms. Dougalas in response to the message she had left on the website, during which time, Ms. Dougalas advised Respondent she:

a. had "felony and misdemeanor convictions" (NT I, 96, 97);

b. was considering a real estate license and her felony convictions come up as a background issue *(id.* at 35);

c. had researched the difference between New Jersey and Pennsylvania Clean Slate laws *(id.);*

d. had contacted New Jersey and was told she could file the expungement papers herself *(id.);*

e. was "confused" whether she qualified in Pennsylvania "because of the time span." *(id.);*

f. explained that her "main concern was the felony convictions because they follow [her] around anywhere" *(id.* at 36); and

g. wanted to know if she qualified for Clean Slate to clean up her record. (/d.)

331. The Clean Slate Limited Access Act (Clean Slate Act), 18 Pa.C.S. § 9122.2 *et. seq.* (ODC-81/Bates 711), provides for granting limited access to criminal history record information for some misdemeanor convictions, summary offenses, pardons, and dispositions other than convictions. (Stip 165)

332. Section 9122.3 of the Clean Slate Act (ODC-82/ Bates 713) lists exceptions to granting limited access to criminal records as follows (Stip 166):

(a) Limited access for records under section 9122.2(a) (1) (relating to clean slate limited access) shall not be granted for any of the following:

(1) An individual who at any time has been convicted of:

(i) a felony;

(ii) two or more offenses punishable by imprisonment of more than two years;

(iii) four or more offenses punishable by imprisonment of one or more years.

333. While on the telephone with Respondent, Ms. Dougalas sent Respondent the dockets from her Pennsylvania and New Jersey cases. (NT I, 36-38); *See* ODC-77/Bates 704-705, ODC-78/Bates 706, ODC-130/Bates 933; ODC-131/Bates 934)

334. Respondent did not take any notes of his conversation with Ms. Dougalas. (NT IV, 55)

335. Respondent failed to recall:

a. looking at Ms. Dougalas' criminal dockets (NT IV, 166, 185);

b. asking Ms. Dougalas the schedule of the drug for which she was convicted of forging prescriptions *(id.* at 64, 68);

c. asking Ms. Dougalas if she had any felony convictions. *(id.* at 58, 59, 61, 105, 139, 160, 161); and

d. Ms. Dougalas informing Respondent of her felony convictions. *(Id.* at 62,63,66, 101,106)

336. Respondent's testimony that he did not communicate with Ms. Dougalas regarding the felony convictions is not credible, given that the reason for the retention concerned the extent of her criminal record.

337. In Respondent's Answer to the Petition for Discipline, Respondent:

a. falsely claimed that Ms. Dougalas had never informed him that she had felony convictions that were over 20-years old (ODC-2, ,I161(A)/Bates 108) (NT I, 53); and

b. falsely claimed that during the initial call, Ms. Dougalas did not advise Respondent she had any prior felony convictions (ODC-2, ,i 161(G)/ Bates109). (NT I, 54)

338. Ms. Dougalas credibly testified that all of Respondent's Petition for Discipline Answers in which Respondent claims that Ms. Dougalas never informed him that she had prior felony convictions are "not true." (NT I, 55)

339. At no time during Respondent's conversation with Ms. Dougalas, did Respondent:

a. inform Ms. Dougalas that her felony convictions could not be sealed (**NT** I, 41); and

b. explain to Ms. Dougalas that the Clean Slate Act prohibited the sealing of her felony convictions. *(Id.* at 42)

340. Respondent advised Ms. Dougalas that his total legal fee would be $5,500 plus filing fees (Stip 158(f)).

341. Ms. Dougalas agreed to have Respondent represent her and emailed Respondent all her contact information. (Stip 158(g))

342. Had Respondent informed Ms. Dougalas that the Clean Slate Act prohibited the sealing of Ms. Dougalas' thirteen felony convictions, Ms. Dougalas would not have continued her conversation about retaining Respondent because "if it's still there, it still follows me. It's a bad investment. Why would I do it?" (**NT** I, 42)

343. Ms. Dougalas reiterated that had Respondent informed her that her felony convictions did not "qualify for anything," it would have been the "[e]nd of the conversation right there." (**NT** I, 113)

344. The criminal dockets revealed that Ms. Dougalas was arrested and held over for trial on felony charges. (ODC-133/Bates 936-37)

345. Respondent knew the criminal dockets he received from Ms. Dougalas did not contain the grading for all her convictions. (NT III, 164)

346. Respondent failed to possess the competence necessary for the representation in that:

a. Respondent was only concerned about the inactive case on the dockets and not concerned about Ms. Dougalas' ungraded convictions (NT IV, 154, 157); and

b. prior to December 2020, Respondent failed to read Ms. Dougalas' criminal dockets in detail. *(Id.* at 200)

347. Although Respondent knew the criminal dockets that he received from Ms. Dougalas did not contain the grading for all her convictions, by email to Ms. Dougalas sent at 5:59 p.m. EST on February 19, 2020, Respondent wrote explaining his scope of work and fee (ODC-78/Bates 706, D-38, Stip 160); Respondent wrote that:

a. he would "be seeking a record sealing of the 3 applicable cases in Luzerne County and an expungement of the 2 applicable cases in Luzerne County";

b. he would "also be seeking an expungement of the applicable New Jersey case";

c. Respondent's reduced fee would be $5,500, plus fees and costs; and

d. Respondent would get started working with an initial payment of $2,500 and the balance paid over the course of the next several weeks.

348. "[B]ased upon the dockets that [Ms. Dougalas] sent [Respondent]," Ms. Dougalas assumed that "three applicable" and "two applicable" referred to her misdemeanor and felony cases. (NT I, 57)

349. At 6:19 p.m. EST on February 19, 2020, Ms. Dougalas attached her PA dockets again and replied: "Atty Lento please see attached. Isn't it PA: 4 CP and 2 MJ cases." (ODC-78/Bates 706, 130/Bates 932, Stip 161) At 7:46 a.m. on February 20, 2020, Respondent confirmed, "I understand." (ODC-79/Bates 707)

350. On February 20, 2020, at 6:18 a.m. EST, Respondent sent an email to Ms. Dougalas that (Stip 162):

a. requested Ms. Dougalas to provide him with a detailed autobiography and character letters so that Respondent "can provide positive information and character letters to the Luzerne County District Attorney's Office/Mercer County Prosecutor's Office in an effort to get them to agree to our request" (ODC-79/Bates 707); and

b. attached an Engagement Letter for Ms. Dougalas to sign, date, and return to Respondent's office. (ODC-80/Bates 709)

351. Respondent's Engagement Letter (ODC-80/Bates 709) provided:

a. Respondent would "be seeking a record sealing of the 3 applicable Luzerne County, PA cases, and expungement of the 2 applicable Luzerne County PA cases, and an expungement of the Mercer County, **NJ** case";

b. noted that Ms. Dougalas' case docketed at MJ-11102-CR-0000005- 1999 was listed as "inactive" and Respondent needed to follow up on this case;

c. Respondent's legal fee was $5,500 plus filing fees and costs; and

d. Respondent received $2,500 from Ms. Dougalas as of the date of the Engagement Letter.

352. The five cases that Respondent referenced in his email included all the felony and misdemeanor convictions that Ms. Dougalas was seeking to seal under the Clean Slate Act, including thirteen felonies. (**NT** I, 60, 62)

353. Later that same day, Respondent and Ms. Dougalas signed and dated Respondent's Engagement Letter. (Stip 164)

354. Respondent's Engagement Letter acknowledged Ms. Dougalas' payment of $2,500 and provided that the balance of the fee was to be paid upon the request of the Lento Law Firm. (**NT** I, 64)

355. Nowhere in Respondent's email or Engagement Letter did Respondent write that he cannot seal Ms. Dougalas' thirteen felony convictions. (NT I, 62)

356. Respondent failed to inform Ms. Dougalas that "he cannot do anything about [her] felony convictions until a year later approximately." (NT I, 62)

357. Ms. Dougalas would not have agreed to pay Respondent $5,500 if she knew that her felony convictions could not be sealed and "could have put the money somewhere else." (NT I, 63)

358. By email to Respondent sent at 4:07 p.m. on February 20, 2020, Ms. Dougalas provided Respondent with most of the information and documents that Respondent had requested in his morning email, including her "autobiography." (ODC-83/Bates 714, Stip 167)

359. Ms. Dougalas provided Respondent with all the information he had requested within four days of Respondent's request. (NT I, 65)

360. By email to Ms. Dougalas sent at 6:14 a.m. on March 24, 2020, Respondent advised Ms. Dougalas that her New Jersey expungement was almost complete. (Stip 168)

361. From time to time thereafter, Ms. Dougalas wrote emails to Respondent inquiring about the status of all her legal matters. (ODC-84/Bates 719-725) *See*, *e.g.*, emails sent at (Stip 169):

a. 10:37 a.m. on May 15, 2020;

b. 1:24 p.m. on July 20, 2020;

c. 11:15 a.m. on August 21, 2020;

d. 12:46 p.m. on September 4, 2020;

e. 10:08 a.m. on October 16, 2020;

f. 6:12 p.m. on December 4, 2020; and

g. 12:56 p.m. on January 25, 2021.

362. At no time during the foregoing email correspondence did Respondent inform Ms. Dougalas that her Luzerne County felony convictions were not eligible for Clean Slate limited access as they were listed as specific exceptions under the Act. (Stip 170)

363. Except for Ms. Dougalas' inactive Luzerne County case, Respondent did not raise any concerns about sealing Ms. Dougalas' criminal records. (NT I, 70)

364. At no time after Respondent's initial conversation with Ms. Dougalas, did Respondent inform Ms. Dougalas that:

a. her criminal dockets were unclear regarding the grading of her offenses (NT I, 67, 100); and

b. he needed to obtain the State Police records because the grading of her convictions was not clear. *(Id.* at 67, 100)

365. Respondent's "attorney helper," Marco J. Capone, Esquire, advised Respondent on March 18, 2020, that Ms. Dougalas' convictions were so old he could not ascertain the grading of her convictions and complete the petitions for expungement. (D-39, -40, -41; NT III, 176; NT IV, 205),

366. After receiving Mr. Capone's email, Respondent did not ask Ms. Dougalas if she had any information about the grading of her convictions as "it wasn't a question in his mind." (NT IV, 210)

367. Respondent did not order the State Police records to ascertain the grading of Ms. Dougalas' convictions until mid to late October 2020. (NT III, 183; NT IV, 119, 212-213)

a. Respondent failed to act with reasonable diligence and promptly obtain the State Police records.

b. Respondent failed to possess the competence necessary for the representation and do anything prior to October 2020 to ascertain the grading of Ms. Dougalas' convictions.

368. Ms. Dougalas had been making periodic payments to Respondent, and prior to July 20, 2020, Ms. Dougalas had not received any bills or correspondence from Respondent about money owed. (NT I, 169)

369. Respondent's Letter of Engagement provides that payment of the balance of his legal fee is due upon request. (ODC-80/Bates 709) Prior to July 20, 2020, Respondent did not make any requests for payment of the balance of his fee. (NT I, 69)

370. After learning on July 20, 2020, that Respondent was waiting for payment of the balance of his fee, Ms. Dougalas promptly paid the balance. (NT I, 69-70)

371. Respondent admitted that he did not request the balance of Ms. Dougalas' legal fee until Ms. Dougalas inquired about the status of her case. (NT III, 181)

372. Respondent's Petition For Discipline Answer, ,i 157 (ODC-2/Bates 107) and testimony (NT III, 77), claiming that Respondent's receipt of Ms. Dougalas' background check information was delayed because Ms. Dougalas did not timely pay his fee, is false.

373. By emails to Assistant District Attorney Chester Dudick, Luzerne County, on September 28, and October 19, 2020 (ODC-85/Bates 726), Respondent (Stip 171):

a. advised that Respondent was working on "several expungements/record sealings" for Ms. Dougalas;

b. explained that "[a]ccording to my research, 3 would be eligible for record sealing and 2 would be eligible for an expungement"; and

c. noted that the matter docketed at MJ-11102-CR-1999 was listed as "inactive" and inquired whether the District Attorney's office would automatically object if Respondent moved for expungement/sealing of the closed cases because of the unresolved inactive matter.

374. Respondent failed to act with the competence necessary for the representation when he contacted the District Attorney's Office without first ascertaining the grading of Ms. Dougalas' convictions and "operating under the impression that they don't involve felonies." (NT IV, 223-224)

375. By email to Ms. Dougalas sent at 6:20 a.m. on October 19, 2020, Respondent wrote (ODC-86/Bates 728):

a. the New Jersey expungement is proceeding through the process and he anticipates a hearing date to be scheduled shortly; and

b. he had been trying to contact the District Attorney's Office regarding resolving the outstanding "inactive" criminal matter, which will impact the expungements of the other Luzerne County criminal cases.

376. Respondent received the Pennsylvania State Police Background Check in December 2020. (NT IV, 234)

377. Respondent's receipt of the Background Check' was the first time Respondent "saw confirmation that [Ms. Dougalas] had felony convictions." (NT IV, 234)

378. By email to Ms. Dougalas sent at 7:02 a.m. on January 28, 2021 (ODC-87/Bates 729), Respondent wrote that (Stip 173):

a. the New Jersey expungement should be finalized shortly;

b. "[o]nce the Pennsylvania process is complete, [Respondent] anticipate[s] the final result being":

1. record sealing for one misdemeanor charge;

2. expungement of one summary offense;

3. a record sealing for one misdemeanor charge;

4. "a felony charge that was not able to be addressed";

5. "There is also one other case which had 11 felon chares which was not able to be addressed" because Respondent "could not have these charges sealed or expunged"; and

6. an inactive case that Respondent has been trying to have closed.

c. Ms. Dougalas' "record will be significantly cleaned up once everything is complete, but there will be remaining charges which cannot be sealed or expunged"; and

d. it "may be worth considering a pardon" of Ms. Dougalas' felony convictions after Respondent resolved the inactive case.

379. Respondent did not have Ms. Dougalas' State Police Background Check at the time he drafted the email to Ms. Dougalas, having purportedly mailed the Background Check to the Luzerne County Clerk's Office. (NT IV, 261)

a. Respondent failed to possess the competence necessary for the representation and keep a copy of the Background Check for his files; and

b. Respondent failed to communicate with Ms. Dougalas and send her a copy of her Background Check and his purported filing with Luzerne County.

380. Upon receiving Respondent's January 28, 2021 email, Ms. Dougalas felt:

a. "lied to and gritted"; (NT I, 72);

b. "[i]t's kind of comical" to assert her record was going to be significantly cleared up when by getting "rid of two misdemeanors sitting over

there, but you have thirteen felonies staring me in the face" *(id.* at 73);

c. "violated" (id. at 77); and

d. that Respondent's receipt of $5,500 "hurt [her] and [her] family" when she was going through a "really bad, expensive divorce." *(Id.)*

381. By emails to Respondent on the morning of January 28, 2021 (ODC-88/Bates 730), Ms. Dougalas wrote at (Stip 174):

a. 7:48 a.m., "why can't the other felonies be addressed in cases 3 and 4? In reading clean slate if your record is clear over 10 years with no new charge you qualify. Doesn't seem worth the money to do this if things are still left on";

b. 8:24 a.m., that "[i]f I had known I could not do anything with the pa felony convictions I would not have gone through this process or spent the money. Cleaned up record is just as bad as the original record"; and

c. 8:55 a.m., that over one year ago when Respondent called her, Ms. Dougalas "made clear about [her] felonies in PA and **NJ," "**sent you [Respondent] the dockets the same day," Respondent "never disclosed in the initial consult that nothing could be done with felonies in PA" and had she "known that," she "never would have moved forward,"

"as a client I made my goals clear to clean up my entire record," and her retaining Respondent was "clearly" a "waste of [her] money."

382. Thereafter, by emails to Mr. Altman (ODC-89/Bates 732), Respondent:

a. forwarded Ms. Dougalas' emails and wrote at 9:59 a.m. on January 28, 2021, "this is not accurate but..";

b. sent at 8:15 a.m. on January 29, 2021, Respondent's draft response to Ms. Dougalas; and

c. asked Mr. Altman to review Respondent's draft response, which Respondent finalized and sent on February 8, 2021.

383. Eleven days later, on February 8, 2021, Respondent wrote at 8:00 a.m. (ODC-89/Bates 732):

a. "[a]t no time do I ever state that felonies (or misdemeanors) can be expunged"; and

b. "[b]y the nature of what we were in part prospectively seeking, namely, a record sealing of applicable cases, there would arguably be no fundamental relief because sealed records still exist and must be disclosed as applicable."

384. At 10:36 a.m. on February 8, 2021, Ms. Dougalas replied (ODC-78/Bates 706, last email at bottom of page and continued on ODC-90/Bates 734 top of page):

a. during Respondent's initial telephone conversation with her, she "told you [Respondent] about [her] past situations and the resultant FELONIES and misdemeanors that resulted therefrom";

b. "[w]hile on the telephone [she] emailed you [Respondent]" the dockets" that "clearly outlined" her charges;

c. had Respondent "told" Ms. Dougalas that "'I cannot expunge or seal the Felony charges in PA,'" then Ms. Dougalas "would never have engaged" Respondent's legal services; and

d. "[n]ot until one year later" did Respondent inform her that she "cannot seal/expunge" her felonies in Pennsylvania.

385. On March 22, 2021, Respondent filed a Petition for Expungement with attached Background Check on behalf of Ms. Dougalas. (NT IV, 237)

386. Respondent failed to: review the Petition with Ms. Dougalas prior to its filing; advise Ms. Dougalas that he had filed a Petition; keep Ms. Dougalas informed about the status of her case; keep a copy of the Petition and Background Check in his office files; and provide Ms. Dougalas with a copy of the filed Petition and Background Check. (NT IV, 250-251)

387. On March 24, 2021, Ms. Dougalas sent an email to Respondent requesting a copy of the New Jersey

filing Respondent claimed to have made on behalf of Ms. Dougalas, a receipt from New Jersey for the filing, and a refund of Respondent's unearned fee for Respondent's handling the "sealing" of her Luzerne County felony convictions. (ODC-90/Bates 734, Stip 177)

388. Respondent failed to send Ms. Dougalas copies of: correspondence with the Luzerne County District Attorney's office; drafts of pleadings; copies of pleadings he filed on her behalf in Pennsylvania; and Ms. Dougalas' PA State Police criminal records. (NT I, 78-79, 81; NT IV, 294)

389. Respondent sent Ms. Dougalas a copy of her New Jersey records in the spring of 2021. (**NT** I, 80; **NT** IV, 219)

390. By email to Respondent at 8:24 a.m. on May 14, 2021, Ms. Dougalas (ODC-91/Bates 735):

a. reiterated her request for a refund;

b. requested "a copy of any document and notes on [her] case";

c. advised that New Jersey had forwarded her what she "need[s] to handle everything on [her] own";

d. reminded Respondent that at her initial consult, Respondent "never said I cannot do anything about my [her] felonies";

e. explained that had Respondent given her "an honest consult I would not have engaged [him]. That is the heart of the matter"; and

f. informed Respondent that she had filed a complaint with the PA Bar association.

391. Upon the termination of the representation, Respondent failed to comply with Ms. Dougalas' request for a surrender of her documents and client file. (**NT** I, 81)

392. On the advice of Ms. Dougalas' attorney in Texas (**NT** I, 85), Ms. Dougalas filed a complaint with Office of Disciplinary Counsel because she "was an honest client, put all her cards on the table, and I should have been advised on day one that I did not qualify for anything because of my felonies. . . . Because if he did it to me, he's doing it to other people too." *(Id.* at 86)

393. On June 16, 2021, Ms. Dougalas filed a Statement of Claim with the Fund. (ODC-92/Bates 736, Stip 180)

394. In her Statement of Claim, Ms. Dougalas wrote she had a telephone consultation with Respondent about her "20 yr old felony & misdemeanors" and "wanted to see if I could expunge/seal. He said I could on all." (Stip 181)

395. On June 23, 2021, the Fund advised Respondent that Ms. Dougalas had filed a Statement of Claim with the Fund; by letter to Ms. Dougalas dated July 7, 2021, Respondent enclosed a $5,500 check written from the operating account of Lento Law Firm, LLC and Joseph D.

Lento, Esq., to Ms. Dougalas, with the notation "refund" in the memo portion of the check; following receipt of Respondent's letter, the Fund closed Ms. Dougalas' claim. (Stip 182)

396. Although Respondent testified that he had filed pleadings on behalf of Ms. Dougalas (NT III, 186), Respondent failed to introduce any exhibits to support his testimony. (NT III, 186, 188)

397. Respondent claimed it was "ludicrous" to question his handling of Ms. Dougalas' legal matter. (NT 111, 190)

398. Respondent failed to recognize his wrongdoing in his handling of Ms. Dougalas' legal matter.

399. Respondent failed to express remorse for the harm his misconduct inflicted on Ms. Dougalas, the public, and the legal profession.

RESPONDENT'S COUNTER-POSITION ON THE DOUGALAS MATTER

Renee Dougalas' ("Ms. Dougalas") criminal history includes multiple criminal offenses in Pennsylvania and New Jersey dating back nearly thirty years. *See* Joint Stipulations at ¶¶ 154-155. Ms. Dougalas, a licensed pharmacist, relocated to Texas and decided she wanted to expunge or seal her criminal records in Pennsylvania and New Jersey. *See* Joint Stipulations at ¶ 156. On February 19, 2020, Ms. Dougalas submitted a New Form Submission after she accessed Respondent's website,

www.josephlento.com/luzerne-county-expungements-and-record-sealing. *See* 1/25/2023 Tr. at 146:24-148:24. According to Respondent, this webpage contains clear and specific provisions regarding Luzerne County expungement and record sealing eligibility (and lack *therof*). *See* 1/25/2023 Tr. at 146:24-148:24. Ms. Dougalas confirmed that, before she contacted Respondent, she researched Pennsylvania's and New Jersey's clean slate and expungement programs. *See* 1/23/2023 Tr. at 88:18-89:7. The New Form Submission Ms. Dougalas submitted read:

> **Hello my name is Renee Dougalas. I moved to TX 5 years ago. I was a PA resident prior. I am a pharmacist and became addicted which led to *convictions*. My *convictions* are 20 plus years old. I would like to apply for clean slate. As a healthcare worker, even though I am sober 16 years, my convictions follow me. Can you help? Living in TX makes it hard for me to do this. Let alone know the correct forms to use. Thanks Renee.**

***See* ODC-76 (ODC-000703) (emphasis added).**

The New Form Submission does not reveal that Ms. Dougalas' criminal history included "felonies." In response to her submission, Respondent called Ms. Dougalas. *See* 1/25/2023 Tr. at 161:8-162:11. During the call, they discussed her criminal record and Respondent explained to her expungement and record sealing eligibility requirements including,

specifically, the limitations that pertain to felonies and misdemeanors. *See* 1/25/2023 Tr. at 161:8-162:11. During the call, Ms. Dougalas did not inform Respondent that her criminal history included felonies nor did she inform Respondent that her convictions related to Schedule II and Schedule III substances. *See* 1/25/2023 Tr. at 163:11-14; *see also* 1/26/2023 Tr. at 55:13-24, 59:13-17, 61:20-62:4, 65:23-66:6, and 103:18-104:5. Regardless, during the call, Respondent did inform Ms. Dougalas that felonies could not be expunged or sealed. *See* 1/25/2023 Tr. at 163:15-22; *see also* 1/26/2023 Tr. at 69:18-70:7. Ms. Dougalas informed Respondent during the call that she "was looking to basically clean up her record." *See* 1/25/2023 Tr. at 161:13-23.

Ms. Dougalas confirmed that she contacted Respondent because she wanted to know "[does she] qualify *for anything* . . . [Does she] qualify to clean up my record 20 years later *for anything* in Pennsylvania." *See* 1/23/2023 Tr. at 93:11-15 (emphasis added).

While initially speaking to Ms. Dougalas, Respondent accessed public records pertaining to her criminal history using her name/date of birth that she provided and noticed that her history included a matter listed as "inactive." *See* 1/25/2023 Tr. at 165:14-166:23; *see also* 1/26/2023 Tr. at 91:8-22, 93:19-94:24; *see* ODC-131 (ODC-000934). While still on the phone with Ms. Dougalas, Respondent informed her that the case marked "inactive" was concerning. *See* 1/25/2023 Tr. at 165:14-169:23. Respondent was concerned that the inactive case may result in the Luzerne County

District Attorney's Office refusing to consider any petitions relating to Ms. Dougalas' other criminal convictions. *See* 1/26/2023 Tr. at 170:23-171:9; *see also* D-46 (Respondent's September 28, 2020 and October 19, 2020 email correspondence to ADA Dudick). Respondent was also concerned because, given the case's inactive status, a bench warrant may have been issued for Ms. Dougalas' arrest. *See* 1/26/2023 Tr. at 170:23-171:9.

Thereafter, by email to Ms. Dougalas sent at 5:59 p.m. EST on February 19, 2020, Respondent detailed his scope of work and fee. *See* ODC-78; D-38. On February 20, 2020, at 6:18 a.m. EST, Respondent sent an email to Ms. Douglas that: requested information from Ms. Dougalas; and attached an Engagement Letter for Ms. Dougalas to sign, date, and return to Respondent's office. *See* D-33; ODC-80.

In the Engagement Letter, Respondent memorialized his concern relating to the inactive case. *See* ODC-80. Namely, with respect to the inactive case, Respondent informed Ms. Dougalas that he would need to determine why it is marked as such. *Id*. Later that same day, Respondent and Ms. Dougalas signed and dated Respondent's Engagement Letter. *See* Joint Stipulations at ¶ 164.

After the initial telephone conference, Respondent reviewed dockets pertaining to Ms. Dougalas' criminal history. *See* 1/25/2023 Tr. at 163:23-164:8. The materials Respondent reviewed did not identify the final disposition regarding the gradation of the charges

and therefore, "certain critical information" was "not available per the dockets." *See* 1/25/2023 Tr. at 164:9-165:7, 174:1-10, 174:20-176:17; *see also* D-40 (attorney Capone confirming that information needed to prepare the expungement petitions was missing "since the cases [were] so old. . . ."); *see also* 1/26/2023 Tr. 202:1-205:24. Absent the missing information, Respondent was not able to determine from his review of the dockets whether Ms. Dougalas' criminal history included felony convictions. *See* 1/25/2023 Tr. at 165:8-13.

During the first few weeks of March 2020, Respondent communicated with Luzerne County court personnel and District Attorney personnel and the detective associated with Ms. Dougalas' inactive case. *See* 1/25/2023 Tr. at 172:5-173:24. In March 2020, Respondent also emailed Ms. Dougalas about the New Jersey expungement. *See* 1/26/2023 Tr. at 213:15-214:3. Respondent informed Douglas of his conversations and that the detective said the inactive case is not closed despite Douglas' claim to him otherwise.

During March, April, May, June, and July 2020, Ms. Dougalas carried a balance on the fee she agreed to pay Respondent to secure his services. *See* 1/25/2023 Tr. at 178:11-13. Prior to July, Respondent did not request Ms. Dougalas pay the owed balance because, given the ongoing COVID pandemic and since there were no emergent court proceedings scheduled, he did not want to pressure her to make any payment. Instead, he intended to wait for Ms. Dougalas to initiate payment discussions concerning the money owed. *See*

1/25/2023 Tr. at 178:14-182:23. The Fee Agreement clearly informed Douglas that nothing would be filed on her behalf unless the fee was paid in full.

Ms. Dougalas contacted Respondent for an update regarding her matters in July 2020 and Respondent reminded her (as the fee agreement clearly informed her) that she needed to satisfy the outstanding balance before he could "proceed further." *See* 1/25/2023 Tr. at 181:9-18. As of July 2020, Respondent had not received Ms. Dougalas's Pennsylvania State Police criminal background check. *See* 1/25/2023 Tr. at 183:13-24. (Given the discrepancy about the status of the inactive criminal matter, and the fact that Douglas had not yet paid her fee, it would have been premature to obtain the background check as it expires by law for purposes seeking record relief within a designated time after its release.)

After she paid balance at the end of July 2020, upon it completion by Respondent in September 2020, Respondent mailed a Petition to Superior Court in New Jersey to address Ms. Dougalas' New Jersey criminal history. The Petition was time-stamped as being filed on October 19, 2020. *See* 1/26/2023 Tr. at 218:16-20. Respondent provided Ms. Dougalas a copy of the New Jersey filing during the spring of 2021. *See* 1/26/2023 Tr. at 219:12-18.

In October 2020, Respondent advised Ms. Dougalas that he was still working to determine whether the inactive case would trigger the District Attorney's

Office to issue a blanket objection to all petitions. *See* ODC-86 (ODC-000728). Respondent ordered the Pennsylvania State Police background check after he obtained Mr. Dudick's verbal confirmation putting Respondent's concerns about the inactive case at ease. *See* 1/25/2023 Tr. at 183:13-24. Respondent received the Pennsylvania State Police background check in December 2020. *See* 1/25/2023 Tr. at 183:13-24. Upon review, Respondent learned, for the first time, that Ms. Dougalas' criminal history included prior felony convictions. *See* 1/25/2023 Tr. at 184:1-8.

After learning that Ms. Dougalas' criminal history included prior felony convictions, Respondent prepared pleadings on her behalf to address the prior convictions and/or charges for which relief was potentially available. *See* 1/25/2023 Tr. at 184:9-16. After reviewing the Pennsylvania State Police background check, Respondent emailed Ms. Dougalas and informed her about what relief potentially existed in light of her prior felony convictions and her record generally. *See* D-49.

In January 2021, Respondent sent the Luzerne County Court of Common Pleas the Petitions addressing Ms. Dougalas' prior convictions for which relief was potentially available. *See* 1/26/2023 Tr. at 236:7-18. The Petitions were returned to Respondent because the filing fee he sent along with the Petitions was too high. Thereafter, the Petitions were resubmitted and filed on March 22, 2021. *See* 1/26/2023 Tr. at 236:19-237:12; *see also* 1/26/2023 Tr. at 247:1-11.

On June 16, 2021, Ms. Dougalas filed a Statement of Claim with the Fund. *See* ODC-92. By letter to Ms. Dougalas dated July 7, 2021, Respondent reimbursed Ms. Dougalas' entire fee and the Fund subsequently closed her claim. *See* Joint Stipulations at ¶ 182. Respondent returned Douglas' fee even though his efforts on her behalf were far beyond the scope of the Fee Agreement and he did his best possible for her given the details of her criminal background.

La'Slondi Copelin Matter

400. Respondent maintained a website address that as of August 16, 2021, advertised ODC-93/Bates 743) that Respondent (Stip 183):

a. "represents students and others in disciplinary cases and other proceedings at colleges and universities across the United States";

b. "helped countless students professors and others in academia at more than a thousand colleges and universities across the United States";

c. is "admitted pro hac vice as needed nationwide;" and

d. is licensed in Pennsylvania, New Jersey, and New York.

401. Ms. La'Slondi Copelin, a resident of Georgia, had an associate degree from Georgia State University (GSU)

and had decided to return to school to obtain a four-year degree. (NT I, 184)

402. On or before February 4, 2021, Ms. Copelin, received a letter notifying her that she would be expelled from GSU. (NT I, 185; Stip 184)

403. The letter advised Ms. Copelin that she had 10 days to write an appeal to the GSU college president. (NT I, 185)

404. Ms. Copelin called GSU and was "advised" that her letter "needed to be done by end of business day" on February 9, 2021. (NT I, 226)

a. The GSU student handbook defines a "business day" as any day that the Office of the Dean of Students is open. (NT IV, 313)

405. Ms. Copelin wanted to file an appeal, but did not want to handle the appeal herself, and decided that she needed an attorney to handle the appeal "[b]ecause it needed to be litigated. It was out of my hands, so-and I had tried initially, so I felt that I needed to go ahead and escalate it to someone of counsel who is familiar with the process." (NT I, 185)

406. Ms. Copelin had discussed the pending expulsion matter with her family and friends, who likewise advised Ms. Copelin that she needed a lawyer. (NT I, 186)

407. Ms. Copelin did some research, "Googled 'school discipline attorneys,' and his [Respondent's] name popped up (NT I, 186); Ms. Copelin did not contact any attorneys other than Respondent to handle her matter. *(Id.)*

408. On February 4, 2021:

a. prior to 10:01 a.m. Ms. Copelin contacted Respondent regarding her pending GSU expulsion;

b. at 10:01 a.m., Respondent sent a text message to Ms. Copelin that (ODC-95/Bates 751-752):

1. acknowledged receipt of Ms. Copelin's inquiry and stated that he would be available by telephone after 10:15 a.m. (Bates 751); was signed as follows (Bates 752):

Attorney Joseph D. Lento Lento
Law Firm
Helping Clients Nationwide

Additional Information:
StudentDisciplineDefense.com

c. at 11:27 a.m., Ms. Copelin replied that she had a break at 1:00 p.m., could call Respondent then, and in the meantime would send Respondent information to look at to see "what's going on." (Bates 753).

409. Ms. Copelin sent Respondent "everything that she had received from the school so he could be prepared for the phone consultation," including the expulsion letter and university rules. (NT I, 189)

410. Respondent spoke with Ms. Copelin at 1:00 p.m. on February 4, 2021, during which time:

a. Ms. Copelin told Respondent she wanted a lawyer (NT I, 189);

b. Respondent stated that he "helps students nationwide," has "helped plenty of students in Georgia," and "he can take on this case and get it done" *(id.* at 190);

c. Ms. Copelin told Respondent about her February 9, 2021 deadline *(id.)* and that the deadline was "by end of business day" on February 9, 2021 *(id.* at 226);

d. Respondent reassured Ms. Copelin not to worry and "[w]e always get things done in the 11th hour" *(id.* at 190);

e. Respondent failed to inform Ms. Copelin that he was not licensed to practice law in Georgia: failed to explain his limitations because he was not licensed to practice law in Georgia, and never informed her that he could only act as her "advisor" *(id.);* and

f. Respondent failed to inform Ms. Copelin that he intended to "ghostwrite" a letter for her. *(Id.* at 191)

411. Respondent also negotiated a $350 telephone consultation fee with Ms. Copelin (Stip 185)

412. Thereafter, at 4:15 p.m. on February 4, 2021, Respondent sent Ms. Copelin (Stip 186):

a. an email requesting information related to her school discipline case (ODC-96/Bates 754); and

b. a consultation agreement between the Lento Law Firm and Ms. Copelin charging a $350 consultation fee. (ODC-97/Bates 756)

c. Respondent charged his $350 fee to Ms. Copelin's credit card.

413. Respondent's email (ODC-96/Bates 755) was signed: Joseph

D. Lento, Esquire
Attorney & Counselor at Law Lento
Law Firm
Helping Clients Nationwide

414. On February 5, 2021 (Stip 187):

a. Ms. Copelin returned a signed consultation agreement that was written on Lento Law Firm stationery (ODC-97/Bates 756); and

b. Respondent requested that Ms. Copelin call him at 1:45 p.m. the following day to discuss her case. (ODC-98/Bates 758)

415. On February 6, 2021, Respondent had a telephone consultation with Ms. Copelin about her school discipline matter. (Stip 188)

416. During the telephone consultation:

a. Keith Altman, Esquire, spoke with Ms. Copelin first about her legal matter in Georgia (NT I, 191);

b. Mr. Altman identified himself "[a]s an attorney who worked for Mr. Lento" *(id.* at 192);

c. Respondent joined the call approximately 15 minutes later and the total consult lasted approximately 30 minutes *(id.);*

d. Ms. Copelin explained she did not want to handle the case herself and needed a lawyer to handle it *(id.* at 192-193);

e. Ms. Copelin advised that the deadline was close of business on February 9, 2021, and Respondent and Mr. Altman agreed that they could submit a response by close of business on February 9th *(id.* at 193, 244);

f. Ms. Copelin agreed to retain Respondent *(id* at 195);

g. Ms. Copelin negotiated a $7,500 fee for Respondent's representation, Respondent having initially requested a $15,000 fee claiming he was giving her a break from $30,000 *(id.);*

h. Respondent agreed to send Ms. Copelin a retainer agreement with an "itemization of what the $7,500 is going to" cover and the "breakdown of" the payments *(id.* at 195); and

1. Respondent explained that his fee could be more if Ms. Copelin needed him to go to court. *(Id.* at 196)

417. During the consultation, Respondent and Mr. Altman failed to inform Ms. Copelin that they could not act as her attorney in Georgia and she could only hire Respondent as an "advisor". (NT I, 193, 196, 197, 230)

418. Respondent's testimony that he informed Ms. Copelin that he would be her "advisor" and "ghostwrite" a letter for her appeal (NT IV, 311) is not credible.

419. Respondent explained that he charged a $7,500 fee to ghostwrite a letter because "[t]here were approximately 100 pages of documentation as part of the case . . . and being expelled from school can have a lifetime of consequences." (NT IV, 318)

420. Ms. Copelin would not have agreed to pay $7,500 to Respondent if she knew that he could not provide her with legal representation in Georgia. (NT I, 197)

421. Respondent attempted to charge an excessive fee.

422. Respondent informed Ms. Copelin that he was bringing in Mr. Altman to work on her case, but failed to inform Ms. Copelin that Mr. Altman was not licensed to practice law in Georgia. (NT I, 198)

423. Ms. Copelin testified that Respondent's Answer to the Petition for Discipline, in which:

a. Respondent denies that Ms. Copelin told him she needed an attorney to handle her school discipline case (ODC-2, 1[188(a)/Bates 118), is "a total fabrication." (NT I, 199); and

b. Respondent claims that during his multiple conversations with Ms. Copelin, he made it clear that he was serving as an advisor (ODC-2, 1[209(b)/Bates 125), "is not true." *(Id.)*

424. Ms. Copelin's testimony, that a conversation regarding Respondent being an advisor "never came up," was unequivocal and credible. *(See* NT I, 199)

425. By email to Ms. Copelin dated February 7, 2021, sent at 7:30 a.m. (ODC-99/Bates 759), Respondent (Stip 190):

a. explained that "[w]e can proceed with a payment of $2,500 at this time" and that Ms. Copelin was to make payment of $2,500 on February 14, 2021, and $2,500 on March 7, 2021;

b. inquired whether Ms. Copelin would "prefer [Respondent] using the card on file?"; and

c. stated if Ms. Copelin agreed to proceed, then Respondent's "office can process the payment today and Keith [Altman, Esquire] and I can proceed."

426. During Respondent's conversation with Ms. Copelin on February 7, 2021, Respondent agreed to send her a retainer agreement. (NT I, 200)

427. Respondent failed to send Ms. Copelin a fee agreement on February 7, 2021. (Stip 191)

428. By text message to Respondent sent at 3:37 p.m. on February 7, 2021, Ms. Copelin inquired as to "attorney Keith's last name?" (ODC-1 OD/Bates 760, Stip 192)

429. By email to Respondent dated February 8, 2021, sent at 7:09 a.m., Ms. Copelin (Stip 193; ODC-101/Bates 761):

a. inquired as to the realistic odds of what would happen;

b. explained that she would leave school voluntarily to not have the expulsion documented on her transcript; and

c. requested that Respondent "call so [she] can remit payment."

430. By email to Ms. Copelin dated February 8, 2021, sent at 7:49 a.m. (ODC-101/Bates 761), Respondent replied (Stip 194):

a. it was impossible to provide odds of success, but if Respondent were involved, the "chances of a better outcome increase, if not significantly increase";

b. it would be difficult to avoid a transcript notation, "so the only viable option is to try to maneuver for a suspension or less and go back to school"; and

c. that his "colleague's name is attorney Keith Altman."

431. Respondent did not call Ms. Copelin to obtain her payment information. (Stip 196; NT I, 202-203) Respondent claimed that "I don't call clients, as a matter of practice, to collect money." (NT III, 201)

432. To the extent Respondent does not call back clients to obtain payment information, Respondent failed to communicate with Ms. Copelin and send an email or text message to Ms. Copelin requesting that she call him back with her payment information.

433. Respondent did not inform Ms. Copelin that he:

a. would not begin working on her letter until he had received payment; (NT IV, 332); and

b. would not represent her until she made payment. *(Id.* at 341)

434. Respondent failed to send a retainer agreement as Ms. Copelin had requested. (NT I, 203)

435. When Ms. Copelin did not hear back from Respondent on February 8, 2021, as "the deadline was approaching, [Ms. Copelin] took it upon [her]self to go ahead and write" a letter to the college president and "to plead [her] case." (NT I, 203)

436. Ms. Copelin sent the letter she had written directly to the college president. (NT I, 203; *see also* NT I, 240-241)

437. At 9:51 a.m. on February 9, 2021, Ms. Copelin called Respondent's office, during which time:

a. Ms. Copelin informed Respondent that she had written and sent her own letter to the GSU president (NT I, 204, 210);

b. Ms. Copelin explained that she was still willing to pay Respondent's fee to represent her *(id.* at 204-205);

c. Ms. Copelin gave Respondent her credit card information to charge the first $2,500 installment of his fee (ODC-102);

d. Respondent agreed to send a fee agreement to Ms. Copelin (Stip 197); and

e. Respondent told Ms. Copelin "don't worry, he'll get" a letter to the college president by close of business on February 9, 2021. (NT I, 206)

438. At 10:51 a.m. on February 9, 2021, Respondent charged $2,500 to Ms. Copelin's credit card. (ODC-102/ Bates 762, Stip 198)

439. Respondent did not call GSU to confirm the hours and the time for close of business. (NT IV, 314)

440. Ms. Copelin explained that although she had written a letter to the college president herself, she wanted Respondent to *also* write a letter on her behalf "[b]ecause I was still giving him an opportunity to represent me. Because I still had a shot, and it was a stronger shot if I had representation than just my letter." (NT I, 204)

441. Ms. Copelin stated that she was "agreeing to pay for the representation" as Respondent "was my attorney. He was going to represent me throughout this whole ordeal." (NT I, 205)

442. Prior to accepting payment from Ms. Copelin, Respondent failed to inform Ms. Copelin that he was not licensed to practice law in Georgia and could not represent her as an attorney. (NT I, 205)

443. Prior to accepting payment from Ms. Copelin, Respondent failed to inform Ms. Copelin that she was hiring him only to act as an "advisor." (NT I, 190, 196, 216)

444. The GSU Code of Conduct provides that an "advisor" may not advocate or participate directly during the investigation and hearing process. (NT IV, 387)

445. Ms. Copelin would not have agreed to pay Respondent's $7,500 fee if she knew that Respondent was not representing her as an attorney "[b]ecause [she] never looked for anybody other than an attorney. So I wasn't looking for an advisor." (NT I, 205)

446. Ms. Copelin's testimony, that she "paid for counsel to represent" her, Is credible and unequivocal. (NT I, 230)

447. Respondent failed to provide Ms. Copelin with a written fee agreement that set forth the basis and rate of his legal fee.

448. By email exchange between Mr. Altman and Ms. Copelin on February 9, 2021 (Stip 199):

a. at 10:32 a.m., Mr. Altman inquired whether Ms. Copelin had submitted a written response to the President of GSU (D-63);

b. at 5:10 p.m., Mr. Altman asked Ms. Copelin if she had sent a "letter to the president already?" (ODC-103/Bates 763);

c. at 5:46 p.m., Ms. Copelin replied that she sent a letter to "his secretary or whoever the admin person." *(id.);*

d. at 6:00 p.m., Mr. Altman stated that he would "create an additional document from" him *(id.);*

e. at 7:30 p.m., Mr. Altman requested that Ms. Copelin review his letter to the president so he could send it out (id.); and

f. Ms. Copelin only had time to review the letter for grammar and spelling. *(Id.* at 211-212)

449. Ms. Copelin explained that she was unable to promptly respond to Mr. Altman's email sent at 10:32 a.m. because she was at work and not permitted to have her personal email account on her work computer. (NT I, 207, 210)

450. At 8:05 p.m. on February 9, 2021, Mr. Altman sent an email (ODC-104/Bates 766) with an attached letter to GSU President Becker from Respondent (ODC-105/Bates 767, Stip 200):

a. the text of the email stated that it was from "Keith Altman, The Law Office of Keith Altman" and that Mr. Altman is licensed in California and Michigan; and

b. the attached letter was on stationery with letterhead from "Lento Law Firm" and signed by Respondent with a footnote indicating Respondent is "[l]icensed in New York, New Jersey, and Pennsylvania."

451. In the text of the letter, Respondent argued that Ms. Copelin should not be expelled because (Stip 201):

a. it would "impose a punishment so severe that she will not have an opportunity to earn a degree";

b. expulsion "does not serve any useful purpose and appears to be retribution";

c. "no rationale was provided [as] to why expulsion was the most appropriate disciplinary option";

d. Respondent's review of GSU "policies shows no guidelines for the imposition of such a severe sanction";

e. an expulsion "appears to be arbitrary and capricious" and "seems disproportionate to [Ms. Copelin's] misconduct"; and

f. a suspension is "an adequate consequence of [Ms. Copelin's] actions."

452. By email to Ms. Copelin sent at 8:06 p.m. on February 9, 2021, Mr. Altman wrote "Forgot to copy you" and attached a copy of his letter to President Becker. (ODC-104/Bates 766, Stip 204)

a. Respondent's letter to GSU:was written on stationery from Lento Law Firm that states Respondent is licensed to practice law in Pennsylvania, New Jersey, and New York;

b. included Respondent's email address of joseph@StudentDisciplineDefense.com;

c. put forth legal and substantive arguments as to why Ms. Copelin should be suspended and not expelled from GSU;

d. was signed "Joseph Lento, Esq."; and

e. added a "cc" of Respondent's letter to "Keith Altman, Esq."

453. Respondent's:

a. law firm website advertises that Respondent practices education law and provides student discipline defense (Stip 208);

b. email correspondence with Ms. Copelin on February 6, 7, 8, and 9, 2021, omits the fact that Respondent was being retained, for a fee of $7,500, as a non-legal "advisor" for Ms. Copelin's school disciplinary matter;

c. correspondence to President Becker does not identify himself and Mr. Altman as acting as an "advisor" to Ms. Copelin (NT IV, 369-370); and

d. correspondence to President Becker does not contain any disclaimer that Respondent is not representing Ms. Copelin in his legal capacity when Respondent's correspondence is written

on his law firm's legal stationery, makes legal arguments, and is signed by Respondent with the title "Esq." (**NT** IV, 370).

454. Neither Respondent nor Mr. Altman are licensed to practice law in Georgia. (Stip 202)

455. Respondent engaged in the unauthorized practice of law in Georgia (GA RPC 5.5(a)) by:

a. taking a fee from Ms. Copelin for providing legal advice, writing a letter on his law firm stationery advocating on her behalf to GSU and depositing the fee in his law firm business operating account (NT IV, 374); and

b. "bring[ing] [his] expertise to the table regarding the matter and help[ing] accordingly." (NT III, 206)

456. Respondent agreed that his negotiating on behalf of a student with a university outside of the appeal process "could be" providing legal services. (NT IV, 395-396)

457. Ms. Copelin had not realized that Respondent and Mr. Altman were not members of the Georgia Bar prior to Ms. Copelin's receipt of the letter Respondent and Mr. Altman sent to the GSU college president, wherein Respondent had a footnote setting forth his bar membership and Mr. Altman's signature line set forth his bar membership. (NT I, 213)

458. Ms. Copelin explained that when she read the letter to the GSU president, she:

a. was "confused" because Respondent stated that he practiced "nationwide" and "Georgia wasn't listed" (NT I, 214);

b. was concerned that if GSU would "see the signature, they know these people can't even represent" her *(id.* at 215); and

c. felt it "wasn't honest and they wrote something on [her] behalf and they weren't legally able to represent" her. *(Id.)*

459. By email to Respondent and Mr. Altman sent at 11:29 p.m. on February 9, 2021 (ODC-106, Bates 769), Ms. Copelin replied that:

a. time was "of the essence" and Respondent's "letter was not sent timely";

b. Respondent failed to copy Ms. Copelin on the letter sent to GSU;

c. Respondent failed to advise Ms. Copelin that the letter could not be sent before the end of the business day;

d. Respondent and Mr. Altman were not licensed to practice law in Georgia and

e. Respondent failed to send a retainer agreement as Ms. Copelin had requested and Respondent had repeatedly agreed to do.

460. By reply email to Ms. Copelin with a "cc" to Mr. Altman, sent at 8:37 a.m. on February 10, 2021 (ODC-107/ Bates 771), Respondent:

a. alleged that "we are disturbed by your tone";

b. claimed the letter to President Becker was sent timely because if the letter "was due at a specific time, they would have needed to specify the time";

c. blamed Ms. Copelin for waiting "most of the two calendar weeks until [she] reached out to" Respondent;

d. stated that "[w]e did everything we could given the fact that we were only officially retained yesterday";

e. wrote that Respondent's "support of [Ms. Copelin] was not intended to be in a legal capacity at this time. It was as an advisor which you are allowed under the policies of the university";

f. asserted that "there was insufficient time to get [Ms. Copelin] the retainer yesterday"; and

g. informed Ms. Copelin that Respondent would only charge her for the first $2,500 because

Respondent "completed the letter in support of [her] appeal on an expedited basis."

461. Respondent's letter of February 10, 2021, was "the first time" that Respondent told Ms. Copelin that he would be acting only as Ms. Copelin's "advisor." (NT I, 216) Ms. Copelin felt that Respondent "was dishonest and that [she] should have been advised before he had taken [her] money." *(Id.)*

462. By email reply to Respondent sent at 3:18 p.m. on February 10, 2021 (ODC-107/Bates 770), Ms. Copelin (Stip 209):

a. rejected Respondent's claim that he was not hired as Ms. Copelin's attorney because: Ms. Copelin found Respondent's name listed on an internet website as an "education lawyer"; Ms. Copelin called Respondent "for representation"; Respondent contacted GSU on behalf of Ms. Copelin in his "legal capacity"; and if Respondent was not acting in his "legal capacity," then "why would [Respondent] be contacting [her] school writing a letter on [her] behalf past business hours?";

b. explained that she "would never agree to pay $2500 just for a letter"; and

c. advised that she did not authorize payment of $2,500 and instructed Respondent not to charge her credit card.

463. Respondent did not promptly reply to Ms. Copelin's email. (NT I, 217)

464. Thirteen days later, on February 23, 2021, Respondent replied to Ms. Copelin's email and blamed her for what had occurred, claiming (ODC-108/Bates 772):

a. Ms. Copelin "did not retain [Respondent] until the morning that [her] appeal was due-February 9th";

b. Respondent's "original intent" was to ghostwrite an appeal to be submitted by Ms. Copelin as if she had written it but redrafted the letter under Mr. Altman's and Respondent's name only after Respondent learned that Ms. Copelin had already sent a letter under her name;

c. that Ms. Copelin was "undoubtedly aware" that neither Mr. Altman and Respondent were members of the Georgia Bar and she "never raised any concerns or issues";

d. Ms. Copelin's raising the issue of Respondent's and Mr. Altman's unauthorized practice of law "after the fact smacks of bad faith"; and

e. Respondent was willing to refund $1,000 of the $2,500 charged "in the spirit of good faith."

465. Respondent's February 23, 2021 email was the first time Ms. Copelin learned that Respondent had

intended to "ghostwrite" a letter on her behalf and that she "had never heard of such a thing. I did not call a ghostwriter. I did not call Ghostbusters. So I had no idea what he was referring to." (NT I, 217)

466. Ms. Copelin would not have agreed to pay Respondent $2,500 to ghostwrite a letter for her. (NT I, 217-218) Ms. Copelin explained that "initially, I had written a letter in my name and consulted with counsel so that they can go ahead and take this in a legal representation way." *(Id.* at 218)

467. Ms. Copelin rejected Respondent's offer of a $1,000 refund. (Stip 211)

468. Ms. Copelin then filed a complaint with Office of Disciplinary Counsel because she had informed Respondent that she "didn't have the money to spare initially . . . he took advantage of the situation. He preyed upon [her] urgency . . . he just took my money and just blew me off." (NT I, 220)

469. On June 4, 2021, Ms. Copelin filed a Statement of Claim with the Fund alleging that Respondent was "hired as student discipline attorney" and "sent a letter to my school after deadline." (ODC-109/Bates 774, Stip 212)

470. Ms. Copelin explained that she filed a Statement of Claim "because somebody was stealing my money off of false pretenses." (NT I, 223)

471. On June 11, 2021, Kathy Peifer Morgan, Executive Director and Counsel of the Fund, notified Respondent that Ms. Copelin had filed a Statement of Claim with the Fund; on July 7, 2021, Respondent wrote a letter to Ms. Copelin and enclosed a $2,500 check to Ms. Copelin, written from the operating account of Lento Law Firm, LLC and Joseph D. Lento, Esq., with the notation "client refund" in the memo portion of the check; after receipt of notice of Respondent's refund to Ms. Copelin, the Fund dismissed Ms. Copelin's claim against Respondent. (Stip 213)

RESPONDENT'S COUNTER-POSITION ON THE COPELIN MATTER

Student disciplinary matters at the collegiate level are non-adversarial *See* 3/8/2023 Tr. at 93:13-94:15.

Respondent maintains a website address at

https://www.studentdisciplinedefense.com/; on August 16, 2021, the website informed (ODC-93) that Respondent: "represents students and others in disciplinary cases and other proceedings at colleges and universities across the United States"; "helped countless students, professors, and others in academia at more than a thousand colleges and universities across the United States"; is "admitted pro hac vice as needed nationwide;" and is licensed in Pennsylvania, New Jersey, and New York. *See* Joint Stipulations at ¶ 183. Respondent has maintained that website since 2016 and, since that time, it has never identified or

advertised Respondent as being barred in Georgia. *See* 1/25/2023 Tr. at 194:4-15. Respondent confirmed that, since 2012, he has assisted thousands of students in disciplinary matters. *See* 1/25/2023 Tr. at 195:7-13.

On or before February 4, 2021, Ms. La'Slondi Copelin, a student at Georgia State University ("GSU"), had received notice that she would be expelled from GSU. *See* Joint Stipulations at ¶ 184. Ms. Copelin's potential expulsion stemmed from three separate claims of academic dishonesty, including plagiarism and cheating. *See* 1/23/2023 Tr. at 223:20-224:3; *see also* 1/26/2023 Tr. at 307:19-23. On or before 10:01 a.m. on February 4, 2021, Ms. Copelin contacted Respondent regarding her pending GSU expulsion. *See* ODC-95. Thereafter, Respondent and Ms. Copelin spoke on the phone and Respondent explained that he could provide her an initial consultation for $350.00. *See* 1/26/2023 Tr. at 308:16-24.

Thereafter, at 4:15 p.m. on February 4, 2021, Respondent sent Ms. Copelin: an email requesting information related to her school discipline case; and a consultation agreement between the Lento Law Firm and Ms. Copelin charging a $350 consultation fee. *See* ODC-96; ODC-97. Respondent charged his $350.00 fee to Ms. Copelin's credit card. The consultation agreement confirmed that Respondent was being engaged as an "*advisor*" and not an attorney. *See* ODC-97 (ODC-000757) wherein the consultation agreement states, "as applicable, [Respondent's] work is as a client's *advisor* and is not the practice of law unless admitted

pro hac vice. . . .” The consultation agreement identifies Respondent’s bar admissions as Pennsylvania, New Jersey, and New York. *See* ODC-97 (emphasis added).

On February 5, 2021, Ms. Copelin returned a signed consultation agreement, thus agreeing that Respondent would serve as an *advisor* and not an attorney. *See* D-57, Ms. Copelin’s executed signature page; *see also* 1/23/2023 Tr. 233:14-16). That same day, Respondent requested that Ms. Copelin call him at 1:45 p.m. the following day to discuss her case. *See* ODC-98.

On February 6, 2021, Respondent and Keith Altman had a telephone consultation with Ms. Copelin about her school discipline matter and they discussed potential next steps should Ms. Copelin want to hire Respondent. *See* Joint Stipulations at ¶ 188; *see also*, 1/25/2023 Tr. at 197:4-18. During the initial consultation, Respondent explained that they would be serving as her *advisor* under the school’s policy and that they “would not be serving in an attorney role.” *See* 1/25/2023 Tr. at 198:6-18. At that time, Respondent and Mr. Altman informed Ms. Copelin that, if hired, they would prepare a letter on her behalf for her to directly submit in defense of the disciplinary matter, i.e., they would ghost write a letter on her behalf. *See* 1/25/2023 Tr. at 202:4-203:7. The scope of representation did not include Respondent, or any member of his firm, appearing before any court or tribunal. *See* 1/25/2023 Tr. at 206:18-23. The scope of representation did not include Respondent, or any member of his firm, filing a legal action in any court or tribunal on Ms. Copelin’s behalf. *See id*. Respondent

never intended to, nor did he, represent Ms. Copelin in any Georgia court or administrative law proceeding. *See* 1/25/2023 Tr. at 207:5-17. Respondent's role was limited to assisting with the school disciplinary process. *See* 1/25/2023 Tr. at 207:5-17.

Ms. Copelin never informed Respondent that her response needed to be filed by 5:00 p.m. on the tenth business day. *See* 1/25/2023 Tr. at 197:19-198:5; *see also* 1/26/2023 Tr. at 312:16-313:4, 317:3-16. Aside from Ms. Copelin testifying as to a 5:00 p.m. deadline, there is no evidence of record supporting the contention that the response needed to be submitted by 5:00 p.m. on the tenth business day. *See* 1/26/2023 Tr. at 313:10-18, 316:10-13. (Respondent testified that he does not recall seeing "business day" as a defined term in the GSU Student Code of Conduct and, significantly, Office of Disciplinary Counsel did not introduce any such defined term into evidence.). The Pennsylvania Office of Disciplinary Counsel's "say so" was and is insufficient to support a finding that the GSU Student Code of Conduct contained the purported 5:00 p.m. deadline. As of February 6, 2021, Respondent did not agree to assist Ms. Copelin. *See* 1/25/2023 Tr. at 198:19-21.

Responding to an inquiry to Copeland, he emailed Ms. Copelin on February 7, 2021, at 7:30 a.m., Respondent: explained that "[w]e can proceed with a payment of $2,500 at this time" and that Ms. Copelin was to make payment of $2,500 on February 14, 2021, and $2,500 on March 7, 2021; inquired whether Ms. Copelin would "prefer [Respondent] using the card

on file?"; and stated if Ms. Copelin agreed to proceed, then Respondent's "office can process the payment today and Keith [Altman, Esquire] and I can proceed." *See* Joint Stipulations at ¶ 190; *see also* ODC-99. As of February 7, 2021, Ms. Copelin was attempting to negotiate Respondent's fee. *See* 1/25/2023 Tr. at 200:3-16. By text message to Respondent sent at 3:37 p.m. on February 7, 2021, Ms. Copelin inquired as to "attorney Keith's last name?" *See* ODC-100.

By email to Respondent dated February 8, 2021, sent at 7:09 a.m., Ms. Copelin: wrote, "just so I am clear, please provide realistic odds what can or cannot happen . . . "; explained "what I would like is whether I am suspended or not, not to have transcript documented. I will leave voluntarily if it's not documented."; and requested that Respondent "call so [she] can remit payment." *See* Joint Stipulations at ¶ 193 and ODC-101 (ODC-000761).

Respondent did not call Ms. Copelin on February 8, 2021 because he understood her email to reflect that she was still considering whether to hire his services given that she requested "realistic odds" of what might happen. *See* 1/25/2023 Tr. at 201:7-22; *see also* ODC-101. Moreover, as a policy, Respondent does not call individuals to request payment. *See* 1/25/2023 Tr. at 201:7-22. By email to Ms. Copelin dated February 8, 2021, sent at 7:49 a.m., Respondent replied: it was impossible to provide odds of success, but if Respondent were involved, the "chances of a better outcome increase, if not significantly increase"; it would be

difficult to avoid a transcript notation, "so the only viable option is to try to maneuver for a suspension or less and go back to school"; and that his "colleague's name is attorney Keith Altman." *See* Joint Stipulations at ¶ 194; *see also* ODC-101. Respondent's email confirms that there was no professional relationship between him and Ms. Copelin as of February 8, 2021. *See* ODC-101 (ODC-000761) (wherein Respondent writes, in part, "[i]f we get involved,. . . ." The use of the word "if" plainly illustrates that Ms. Copelin had yet to secure his services.).

Around 9:51 a.m. on February 9, 2021, Ms. Copelin called Respondent's office, during which time she authorized payment, and at 10:31 a.m. the payment was charged to Ms. Copelin's credit card. *See* 1/25/2023 Tr. at 201:23-202:3; *see also* ODC-102 (ODC-000762). That morning, Ms. Copelin advised Respondent, for the first time, that she already submitted a response to the school. *See* 1/25/2023 Tr. at 203:12-204:6; *see also* 1/26/2023 Tr. at 351:1-352:7. Since Ms. Copelin submitted her own letter, the planned strategy, i.e., drafting a ghost letter, was amended such that a letter would be sent to the school under Respondent's name. *See* 1/25/2023 Tr. at 204:7-15. By email exchange between Mr. Altman and Ms. Copelin on February 9, 2021: at 10:32 a.m., Mr. Altman inquired whether Ms. Copelin had already submitted a written response to the President of GSU; hearing no response, at 5:10 p.m., Mr. Altman asked Ms. Copelin if she had sent a "letter to the president already?"; at 5:46 p.m., Ms. Copelin replied that she sent a letter to "his secretary or who ever the

admin person."; at 6:00 p.m., Mr. Altman stated that he would "create an additional document from" him; and at 7:30 p.m., Mr. Altman requested that Ms. Copelin review his letter to the president so he could send it out. *See* ODC-103, D-63. At 8:05 p.m. on February 9, 2021, Mr. Altman sent an email with an attached letter to GSU President Becker from Respondent: the text of the email stated that it was from "Keith Altman, The Law Office of Keith Altman" and that Mr. Altman is licensed in California and Michigan; and the attached letter was on stationary with letterhead from "Lento Law Firm" and signed by Respondent with a footnote indicating Respondent is "[l]icensed in New York, New Jersey, and Pennsylvania." *See* ODC-104, ODC-105. The foregoing makes clear that neither Respondent nor Mr. Altman purported to be licensed Georgia attorneys.

In the text of the letter, Respondent stated multiple reasons why Ms. Copelin should not be expelled. *See* ODC-105 (ODC-000767-68). Ms. Copelin agreed that the letter could be sent on her behalf before Mr. Altman forwarded the letter to the university. *See* 1/26/2023 Tr. at 372:24-373:19. Since time was of the essence, a written fee agreement was not provided to Ms. Copelin on February 9, 2021. *See* ODC-121 (Respondent's Verified DB-7 Response in the Dougalas and Copelin matters).

Ms. Copelin filed a Statement of Claim with the Pennsylvania Lawyers Fund for Client Security. *See* ODC-109. Under a letter dated July 7, 2021, Respondent tendered Ms. Copelin a complete refund and the Fund subsequently dismissed Ms. Copelin's claim. *See* Joint

Appendix B

Stipulations at ¶ 213. Respondent tendered the refund even though substantial efforts had been expended on Copeland's behalf.

The Disciplinary Proceeding at No. 80 DB 2022

472. On June 3, 2022, Office of Disciplinary Counsel ("Petitioner") filed a Petition for Discipline against Respondent and charged him with violations of the Rules of Professional Conduct related to the six client matters set forth above.

473. On July 18, 2022, Respondent filed an Answer to the Petition.

474. Due to the anticipated length of the disciplinary hearing, by Order dated August 25, 2022, the Board Chair appointed former Board Member Stewart L. Cohen, Esquire, as Special Master, pursuant to Pa.R.D.E. 206(d), to conduct the hearing and submit a report to the Board.

475. The Special Master held prehearing conferences on November 1, 2022 and January 13, 2023.

476. The disciplinary hearing commenced on January 23, 2023. Petitioner entered exhibits ODC-1 through ODC-136 and 138, into evidence without objection. Petitioner also introduced the parties' Joint Stipulations into evidence. Respondent introduced exhibits, D1 through D-73 into evidence, with the exception of D-6 (last page), D-11, D-28, D-35, D-54, D-55, and D-74. Petitioner called three witnesses: Respondent's former clients Renee Dougalas, John Gardner, and La'Slondi Copelin.

477. Ms. Dougalas, Mr. Gardner, and Ms. Copelin credibly testified.

478. The hearing continued on January 24, 2023. Petitioner presented the testimony of two of Respondent's former employees, Joan Feinstein and Steven Feinstein. Ms. Feinstein and Mr. Feinstein credibly testified.

479. On January 25, 26, and 27, 2023, Respondent testified on his own behalf. Respondent called no additional witnesses.

480. Thereafter, the Special Master found that Petitioner had established at least one violation of the Rules of Professional Conduct.

481. The hearing resumed on March 6, 2023 and March 8, 2023, for the introduction of evidence pursuant to Disciplinary Board Rule§ 89.151(b).

Aggravating factors

482. Respondent has a record of attorney discipline in Pennsylvania, New Jersey, and the United States District Court, Eastern District of Pennsylvania (EDPA):

a. (P-1/002) *Office of Disciplinary Counsel v. Joseph D. Lento*, **No.** 5 DB 2013 (S. Ct. Order 7/17/2013) (on consent) Respondent received a one-year suspension and a consecutive one-year term of probation with a practice monitor for violating RPG 5.4(a), 7.3(a), 8.4(a), 8.4(c), and 8.4(d);

b. (P-2/025) *In the Matter of Joseph D. Lento, An Attorney at Law*, No. D-13 September Term 2016, NJ Supreme Court Order (4/26/2017 (reciprocal one-year suspension); and

c. (P-3/0028) *In the Matter* of *Joseph D. Lento*, No. 2:13-mc-00195-PD (EDPA) (reciprocal one-year suspension; and reinstatement petition withdrawn).

483. In the Pennsylvania suspension matter, Respondent's misconduct involved his wrongful attempts to solicit client referrals by requesting court employees to enter into a "mutually beneficial business arrangement" and refer potential clients to him.

484. Respondent's conduct in the instant matter betrayed the trust of his clients, who he deceived to retain him to handle their legal matters. (NT I, 109, 141, 152-153, 154-155, 170, 216-218, 220-221, 244-247).

485. Respondent failed to recognize or accept any wrongdoing in his handling of the Gardner Dougalas and Copelin matters

486. Respondent failed to express sincere remorse and recognize the harm his misconduct inflicted on his clients, his former employees, and the legal profession.

487. Respondent failed to accept responsibility and blamed his employees, his clients and other attorneys for his misconduct. (NT II, 277; NT III, 276; NT V. 22, 27, 34-35, 38; 43-44, 46-47; D-30, -71).

488. From 2015 until 2022, Respondent submitted false PA Attorney Annual Fee forms omitting his suspension in the EDPA. ODC-122/Bates 917 through ODC 128/Bates 925.

489. Respondent gave evasive answers to questions and his testimony is not credible. (NT III, 218, 219, 229, 230-233, 238, 249, 250, 253, 256-258, 262-264, 268, 319-321, 380-381, 388-392; NT V, 23-24, 28-29).

Mitigating Factors

490. At the hearing on March 6, 2023, Respondent presented the testimony of four character witnesses: Liam Riley, Esquire; Patricia M. Hoban, Esquire; Jason D. Schiffer, Esquire; and Walter J. McHugh, Esquire. At the hearing on March 8, 2023, Respondent presented the testimony of five additional character witnesses: David **M.** Simon, Esquire; Gary Garant, Esquire; Soleiman Raie, Esquire; Michael Canavan, Esquire; and Jeremy-Evan Alva, Esquire.

491. Respondent's character witnesses all testified that Respondent had a good reputation for being truthful, honest and law-abiding.

492. However, Respondent's character witnesses:

> a. had no recent contacts with Respondent professionally or personally (Hoban, NT VI, 62, 77; Schiffer, NT VI, 89-90; Garant, NT VII, 40, 44);

b. had limited professional contacts with Respondent over the years (Hoban, NTVI, 63-64; McHugh, NTVI, 110; Canavan, NTVI I, 103-106, 108);

c. did not know that Respondent had a record of attorney discipline (Schiffer, NT VI, 93; Garant, NT VII, 46-47, Canavan, NT VII, 107);

d. did not know the facts of Respondent's misconduct that resulted in Respondent's having a record of attorney discipline (Riley, NT VI, 39; Schiffer, NT VI, 93; Simon, NT VII, 16-17; Canavan, NT VII, 117);

e. did not know the current disciplinary charges against Respondent (Hoban, NT VI, 71-74; Canavan, NT VI I, 111-116);

f. agreed that an attorney who takes money from clients for work that cannot be done, files false pleadings, and disregards court orders would be a danger to the public (Hoban, NT VI, 79-80; Schiffer, NT VI, 99; McHugh, NT VI, 123-124; Raie, NT VII, 82).

493. Respondent admitted his wrongdoing in failing to supervise his employees in the matters of Red Wine Restaurant (NT V, 222, 223), American Club (NT V, 56), and Watsons (NT V, 121-122).

Appendix B

The Procedural History Below

494. On June 12, 2023, Petitioner submitted a post-hearing brief to the Special Master. Petitioner requested that the Special Master conclude that Respondent violated all of the rules charged in the Petition for Discipline, and recommend to the Board that he be suspended for a period of four years.

495. On August 11, 2023, Respondent submitted a post-hearing brief to the Special Master. Respondent requested that the Special Master conclude that Petitioner did not meet its burden on all of the charged rule violations and recommend a sanction of a public reprimand with one year of probation and a practice monitor. In the event that the Special Master concluded that Respondent violated all of the charged rule violations, Respondent requested that the appropriate sanction fall between a public reprimand and a one year suspension.

496. By Report filed on September 18, 2023, the Special Master concluded that Petitioner met its burden as to all rule violations charged in the Petition for Discipline.[3] The Special Master recommended that the Board impose a suspension for four years.

497. On November 7, 2023, Respondent filed a Brief on Exceptions and requested oral argument before the Board. Respondent requests that the Board either dismiss

3. The Report states 47 rule violations; by the Board's count, there are 48 violations.

the Petition for Discipline, or in the alternative, reduce the Special Master's recommended sanction by at least 30 months, which would result in in an 18 month or less period of suspension.

498. On December 19, 2023, Petitioner filed a Brief Opposing Exceptions. Petitioner requests that the Board adopt the Special Master's recommended discipline of a four year suspension.

499. A three-member panel of the Board held oral argument on March 19, 2024.

500. The Board adjudicated this matter at the meeting on April 10, 2024.

RESPONDENT'S COUNTER-POSITION ON PRIOR DISCIPLINARY PROCEEDINGS

In or around 2013, Respondent was disciplined in Pennsylvania. Thereafter, the EDPA and New Jersey entered reciprocal discipline. Accordingly, we note that the disciplinary history stems from the same Pennsylvania case from *almost 13 years ago.* Since that time, Respondent has had no discipline imposed against him. Moreover, the misconduct in that matter stemmed from an allegation of fee sharing and advertising which is not at issue here. Accordingly, this should not be viewed as an aggravating factor.

Appendix B

CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPG 1.1 (5 counts) (Gardner, Robreno—Red Wine Restaurant, American Club, Dougalas, Copelin)—A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.

2. RPC 1.2(a) (2 counts) (Dougalas, Copelin)—A lawyer shall abide by a client's decisions concerning the objectives of representation and as required by Rule 1.4, shall consult with the client as to how they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

3. RPC 1.3 (5 counts) Gardner, Robreno—Red Wine Restaurant, American Club, Dougalas, Copelin) -A lawyer shall act with reasonable diligence and promptness in representing a client.

4. RPC 1.4(a)(3) (2 counts) (Dougalas, Copelin)—A lawyer shall keep the client reasonably informed about the status of the matter.

5. RPC 1.4(a)(4) (Dougalas)—A lawyer shall promptly comply with reasonable requests for information.

6. RPC 1.4(b) (2 counts) (Gardner, Dougalas) -A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

7. RPC 1.5(a) (2 counts) (Gardner, Copelin)—A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

8. RPC 1.16(d) (3 counts) (Gardner, Dougalas, Copelin)—Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

9. RPC 5.1(a) (3 counts) (Robreno-Red Wine Restaurant, Watsons, American Club)—A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

10. RPC 5.1(b) (Robreno-Red Wine Restaurant)—A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.

11. RPC 5.1(c)(1) (Robreno—Red Wine Restaurant)—A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved.

12. RPC 5.1(c)(2) (Robreno-Red Wine Restaurant)—A lawyer shall be responsible for another lawyer's violation of the Rules of Professional Conduct if the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

13. RPC 5.3(a) (3 counts) (Robreno-Red Wine Restaurant, Watsons, American Club)—A partner and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer.

14. RPC 5.3(c)(1) (2 counts) (Robreno-Red Wine Restaurant, American Club)—A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if the lawyer orders or, with the knowledge of the specific conduct, ratifies the conduct involved.

15. RPC 5.3(c)(2) (Robreno-Red Wine Restaurant)—A lawyer shall be responsible for conduct of such a person that would be a violation of the Rules of Professional Conduct if engaged in by a lawyer if the lawyer is a partner or has comparable managerial authority in the law firm in which the person is employed, or has direct supervisory authority over the person, and in either case knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

16. RPC 5.5(a) (Copelin)—A lawyer shall not practice law in a jurisdiction in violation of the regulation

of the legal profession in that jurisdiction, or assist another in doing so.

17. RPC 8.1(a) (American Club)—An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not knowingly make a false statement of material fact.

18. RPC 8.4(a) (5 counts) (Gardner, Robreno-Red Wine Restaurant, Watsons, American Club, Copelin)—It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

19. RPC 8.4(c) (4 counts) (Gardner, American Club, Dougalas, Copelin)—It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

20. RPC 8.4(d) (3 counts) (Robreno-Red Wine Restaurant, Watsons, American Club)—It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

111. DISCUSSION

This matter is before the Board on review of the Special Master's Report, wherein the Master concluded

that Respondent violated multiple Rules of Professional Conduct in six matters over the course of two and a half years, and recommended that Respondent be suspended for a period of four years. Respondent raises exceptions to the Report and recommendation and a Board panel heard argument on the issues.

Respondent's exceptions

The crux of Respondent's exceptions is that Petitioner failed to meet its burden on some of the rule violations charged in the Gardner, Red Wine Restaurant, Watsons, and American Club matters[4], and all of the rule violations charged in the Dougalas and Copelin matters. Respondent contends that since his "testimony directly contradicted the vast majority of the allegations contained within the Petition and the proofs offered in support of its allegations were largely dependent on the Complainants' testimony," Petitioner failed to meet its burden. (Respondent's Brief on Exceptions at 2) Respondent further argues that because the Special Master erred in concluding that Petitioner met its burden on all counts, the Master's recommended four year suspension is too harsh and not warranted. It is Petitioner's burden to prove ethical misconduct by a preponderance of clear and satisfactory evidence. *Office of Disciplinary Counsel v. John Grigsby*, 425 A.2d 730, 732 (Pa. 1981). With this burden in mind, we review the charged rule violations in the context of the evidence of record.

4. In Gardner, 1.3, 1.4(b), 1.5(a), 1.16(d), 8.4(c); in Red Wine Restaurant, 1.1, 1.3; in Watsons, 8.4(d); in American Club, 1.3, 8.1(a), 8.4(c).

Appendix B

RPC 1.1 and 1.3

RPC 1.1 places a duty on an attorney to provide competent representation to a client. The Rule explains that competent representation requires the attorney to have the legal knowledge, skill, and thoroughness reasonably necessary for the representation. In addition, RPC 1.3 places a duty on an attorney to act with reasonable diligence in representing a client. Respondent failed to act with the necessary competence and diligence in handling the Gardner, Robreno (Red Wine Restaurant), American Club, Dougalas, and Copelin matters.

In the Gardner matter, in August 2018, Mr. Gardner spoke with Respondent about expunging Mr. Gardner's entire criminal record. Respondent failed to act with the competence and diligence necessary for the representation when he failed to ascertain that: (1) Mr. Gardner would not be eligible for expungement of his summary conviction until 2022, as 18 Pa.C.S.A. § 9122(b)(3)(i) required Mr. Gardner to be free of arrest for five years following his January 2017 summary conviction; and (2) *Commonwealth v. Lutz*, prohibited the expungement of Mr. Gardner's misdemeanor charges that were withdrawn as part of his guilty plea agreement. (NT III, 284-285, 288, 327, 330)

Furthermore, until the Luzerne County D.A.'s Office objected to Mr. Gardner's Petition for Expungement, Respondent did not even know that Mr. Gardner's misdemeanor charges were withdrawn pursuant to a guilty plea agreement. (NT III, 252) After learning of the D.A.'s objection, Respondent failed to act with competence

and diligence and undertake any research to determine if there was a legal basis for the D.A.'s objection. (NT III, 272, 390-391) Instead, Respondent advised Mr. Gardnerthatthe D.A.'s objection was "disingenuous," prompting Mr. Gardner to retain Respondent for $7,500 for additional representation. (NT I, 140) Respondent collected a $9,000 fee in two installments from his client before ever advising Mr. Gardner that he could not expunge the summary.

In the Red Wine Restaurant cases, Respondent was retained to represent a disabled individual and assigned Mr. Feinstein, his legal associate, to file a complaint under the ADA against Red Wine Restaurant for failing to make the restaurant accessible to a person in a wheelchair. Respondent repeatedly failed to competently and diligently handle the Red Wine Restaurant matters when he: (1) failed to assign substitute counsel to attend the December 20, 2019 prehearing conference after Mr. Feinstein resigned (NT II, 85); (2) failed to confirm there was legal authority under the ADA for bringing a claim based on promoter liability against Alex Torres Production, Inc., and then include the legal authority in the complaint; and (3) failed to supervise and insist that his law firms' attorneys and nonlawyer assistants, complete and file the correct forms and pleadings in the correct jurisdiction. The fact that Respondent was suspended from the Eastern District did not preclude him from reviewing documents and ensuring compliance with court orders and rules.

Appendix B

In the American Club matter, Respondent was retained to represent the plaintiff in a matter that was transferred to Commerce Court in Philadelphia County. Respondent failed to handle the matter with competence and diligence when he: (1) failed to ascertain the legal requirements for filing a *Pro Hae Vice* motion prior to filing three separate deficient motions (NT V, 11); (2) failed to review and correct a *Pro Hae Vice* Motion drafted by his paralegal despite having been provided the opportunity to do so (NT III, 137; NT V, 12-14); (3) signed and filed a Motion for a legal associate's *Pro Hae Vice* admission that misrepresented or omitted Respondent's disciplinary history (Stip 125-128); (4) signed and filed a second Motion for *Pro Hae Vice* admission for a legal associate that intentionally failed to include Respondent's disciplinary history in the Eastern District of Pennsylvania (Stip 139-142); (5) signed two *Pro Hae Vice* motions that failed to comply with Pa.R.Civ.P. 1021.1; and (6) through the acts of his legal associate, filed a third *Pro Hae Vice* motion that failed to comply with Pa.R.Civ.P. 1021.1 (Stip 150). In the Dougalas matter, Respondent was retained to seal or expunge Ms. Dougalas' Pennsylvania and New Jersey criminal convictions. (ODC-80/Bates 709) At the outset of the representation, Ms. Dougalas told Respondent about her convictions for forging prescriptions for controlled substances. Ms. Dougalas sent Respondent copies of the docket entries that showed she was arrested and held for court on thirteen felony charges in Pennsylvania. Respondent failed to act with competence and diligence necessary for the representation when he failed to: (1) properly conduct and take written notes of his intake interview with Ms. Dougalas to determine whether she

had any felony convictions; (2) expeditiously order Ms. Dougalas' State Police Background Check after his legal assistant informed him that the docket entries did not reflect the grading of Ms. Dougalas' criminal convictions; (3) promptly ascertain that the Clean Slate Act would not permit Ms. Dougalas to seal her Pennsylvania felony convictions and continued "operating under the impression that [Ms. Dougalas' convictions] don't involve felonies" (NT IV, 223-224); and (4) keep a file copy of pleadings he purportedly filed on behalf of Ms. Dougalas and a copy of Ms. Dougalas' Background Check. (NT IV, 261)

In the Copelin matter, Ms. Copelin received a letter informing her that she had 10 days to submit an appeal of her pending expulsion from GSU to the college president. (NT I, 185) Ms. Copelin called the school and was "advised" that her appeal "needed to be done by end of business" on February 9, 2021. *(Id.* at 226) Ms. Copelin decided that she wanted an attorney to handle her appeal, discovered Respondent's website, and contacted Respondent's office. From the outset, Ms. Copelin made clear that she wanted an attorney. During Ms. Copelin's initial telephone conversation with Respondent on February 4, 2021, Ms. Copelin informed Respondent that her deadline to file an appeal to the GSU college president was "by the end of business day" on February 9, 2012 *(id.* at 226). In a subsequent telephone consult with Respondent and Mr. Altman on February 6, 2021, Ms. Copelin reiterated that her deadline was close of business day on February 9, 2021, and neither Respondent nor Mr. Altman replied that they could not meet this deadline *(id.* at 193, 244). On the February 9, 2021 call Respondent reassured Ms. Copelin,

"don't worry, he'll get" a letter to the college president by the close of business on February 9, 2021. *(Id.* at 206) Yet Respondent failed to handle Ms. Copelin's matter with the requisite competence and diligence necessary for the representation when he failed to timely send the appeal of Ms. Copelin's expulsion to the college president by close of business on February 9, 2021, and copy Ms. Copelin on the letter written on her behalf to the college president.

RPG 1.4 and RPG 1.2(a)

RPG 1.4(a)(3) requires that an attorney keep a client reasonably informed about the status of a matter; RPG 1.4(a)(4) requires an attorney to promptly comply with a client's reasonable requests for information; and RPG 1.4(b) requires an attorney to explain a matter to a client to the extent reasonably necessary to enable the client to make informed decisions about the representation. In addition, RPG 1.2(a) requires an attorney to abide by a client's decisions concerning the objectives of the representation and to consult with the client as to how the objectives are to be pursued. Respondent violated RPG 1.4 and RPG 1.2(a) in the Gardner, Dougalas, and Copelin matters.

In the Gardner matter, Respondent violated RPG 1.4(b) when he failed to explain Mr. Gardner's legal matter to the extent necessary to enable Mr. Gardner to make an informed decision regarding the representation. Respondent failed to inform Mr. Gardner that: (1) his summary Disorderly Conduct conviction could not be expunged until January 2022 because Pennsylvania law

requires an individual to be free of arrest or prosecution for five years (NT I, 129); and (2) the District Attorney's Office had objected to Mr. Gardner's expungement of his misdemeanor charges because the charges were withdrawn as part of a guilty plea agreement. (NT I, 288) Contrary to Respondent's claim, Respondent's vague and imprecise form fee agreement referencing expungement of the "applicable charges" failed to inform Mr. Gardner of the legal limitations of Mr. Gardner's seeking an expungement at that time. (NT I, 135; NT III, 264, 380-381) Indeed, Mr. Gardner credibly testified that he understood "applicable charges" to include expungement of "everything that happened that day" he was arrested, and believed he had retained Respondent to do that. (NT I, 134; see also NT I, 144-145) Furthermore, Respondent failed to obtain Mr. Gardner's permission to sign his name to a form expungement petition, have Mr. Gardner review the petition before it was filed, or provide Mr. Gardner with a copy of the Petition after it was filed.

Similarly, in the Dougalas matter, at the outset of Respondent's representation of Ms. Dougalas in February 2020, Ms. Dougalas told Respondent about her Pennsylvania convictions and sent Respondent copies of the docket entries that showed she was arrested and held for court on felony charges. (NT I, 36-38, 96, 97, 335) Respondent violated RPG 1.4(b) when he failed to explain to Ms. Dougalas, to the extent necessary to enable her to make an informed decision regarding the representation, that felony convictions would not be eligible for Pennsylvania Clean Slate limited access as felony convictions were listed as specific exceptions under

the Act. (NT I, 41-42) Respondent's failure to explain the limitations of the Clean Slate Act and the necessity of obtaining her State Police records at the outset of the representation also violated RPC 1.2(a), as Respondent could not possibly achieve Ms. Dougalas' objectives to fully seal her criminal record.

Respondent violated RPC 1.4(a)(3) when he failed to keep Ms. Dougalas apprised of the status of his efforts to seal and expunge her criminal record for nearly a year. Respondent failed to advise Ms. Dougalas that his attorney assistant could not complete drafting her petitions because her criminal dockets did not reflect the grading of all her convictions. Despite monthly inquiries from Ms. Dougalas about the status of her legal matter (ODC-84/Bates 719-725), at no time prior to January 28, 2021, did Respondent inform Ms. Dougalas that her Luzerne County felony convictions would not be eligible for sealing under the Clean Slate Act. (Stip 170) Although Respondent received Ms. Dougalas' official criminal history from the Pennsylvania State Police "sometime in December 2020" (**NT** IV, 234), it was not until January 28, 2021 (Stip 173), over one month after Respondent received the State Police records and almost one year after he was retained, that Respondent informed Ms. Dougalas that he could not seal or expunge her Luzerne County felony convictions. (**NT** I, 62) Finally, Respondent failed to advise Ms. Dougalas that he had filed on her behalf a Petition for Expungement with a Background Check attached. (**NT** IV, 250-251)

Respondent also violated RPC 1.4(a)(4) in the Dougalas matter when he failed to: (1) comply with Ms. Dougalas' reasonable requests for information (ODC-91/Bates 736; NT I, 80); (2) promptly provide Ms. Dougalas with copies of the New Jersey pleadings she had requested (NT I, 80, NT IV, 219); and (3) send Ms. Dougalas copies of any correspondence, pleadings, and records from her Luzerne County legal matter. (NT I, 78-79, 81; NT IV, 250-252, 261)

In the Copelin matter, Ms. Copelin contacted Respondent to provide legal representation for her college discipline case and file a timely appeal of her expulsion to the GSU president. (NT I, 185) From the outset, Ms. Copelin made clear that she wanted an attorney. Respondent failed to inform Ms. Copelin that he could not abide by her objective of having legal representation and could allegedly act as an "advisor" and ghostwrite a letter for her. (NT I, 190, 191, 196, 205, 216) Respondent also failed to comply with Ms. Copelin's request to "call so she can remit payment" for the representation. (Stip 196, 197, NT I, 202-203) Respondent failed to send Ms. Copelin a copy of his Letter of Engagement as she had requested and as Respondent had repeatedly promised. (NT I, 200, 203; Stip 200) Respondent's conduct violated RPC 1.2(a) and RPC 1.4(a)(3).

RESPONDENT'S COUNTER POSITION CONCERNING RPCS 1.1 AND 1.3

RPC 1.1 states, "[a] lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness

and preparation *reasonably* necessary for the representation." (emphasis added).

RPC 1.3 states, "A lawyer shall act with *reasonable* diligence and promptness in representing a client." (emphasis added).

1. The Gardner Matter

Mr. Gardner retained Mr. Lento to assist him with an expungement of specific aspects of his criminal record. Importantly, Mr. Gardner's case was not prejudiced in anyway. There was nothing Mr. Lento nor his firm did that precluded Mr. Gardner from obtaining an expungement. Accordingly, there was no harm to the public in this respect. Instead, what happened here was Mr. Gardner dissatisfied with how long the matter was taking. Therefore, he retained new counsel and wanted his money back. As stated above, in Pennsylvania, to demand a refund from an attorney, you must also file an ethics complaint against the attorney, which is what started this matter. Mr. Gardner did not believe that Respondent did anything wrong, but needed to file a complaint to seek a refund of his fee.

Nonetheless, the Board concluded that Mr. Lento violated RPC 1.1 and 1.3 in this matter because it found there were clear and satisfactory proofs to support the following:

a. Mr. Lento failed to ascertain that (1) Mr. Gardner would not be eligible for

expungement of his summary conviction until 2022, as 18 Pa.C.S.A. Section 9122(b)(3)(i) required Mr. Gardner to be free of arrest for five years following his January 2017 summary conviction, citing NT III, 284-285, 288, 327, 330 and (2) *Commonwealth v. Lutz*, prohibited the expungement of Mr. Gardner's misdemeanor charges that were withdrawn as part of his guilty plea agreement, citing NT III, 284-285, 288, 327, 330. As discussed earlier, Lutz is so distinguishable that it had no application to Respondent and cannot form the basis of any discipline.

b. Mr. Lento was aware that Mr. Gardner's misdemeanor charges were withdrawn pursuant to a guilty plea agreement during his initial consultation, but it was not formally confirmed until he received the D.A.'s office objection, citing NT III, 252.

c. He failed to conduct any research to determine if there was a legal basis for the D.A.'s objection, citing NT III, 272, 390-391.

d. Mr. Lento told Mr. Garnder the D.A.'s objection was "disingenuous," prompting Mr. Gardner to retain Respondent for $7,500.00, citing NT I, 140.

e. Mr. Lento collected $9,000 fee in two installments from his client before ever advising Mr. Gardner that he could not expunge the summary.

See **The Board's Report at 103-104.**

Regarding the first issue of fact, (that Mr. Lento failed to ascertain that 18 Pa.C.S.A. Section 9122(b)(3)(i) required Mr. Gardner to be free of arrest for five years prior to seeking expungement) it is respectfully submitted that the Board erred in finding there was clear and satisfactory proofs to support this issue. Mr. Lento's argument is that, per RPC 1.1, he possessed the knowledge, skill, thoroughness and preparation to handle this issue largely based on his prior experience in handling these types of cases. Respondent handled approximately 750-1000 expungements over the course of approximately 15 years (at the time of hearing proceedings in 2023), prior to Mr. Gardner's. Therefore, he did handle the matter with *reasonable* diligence and promptness per RPC 1.3 as well.

Importantly the comments to RPC 1.1, which the Board did not reference in its report, state that relevant factors in determining competence *include the lawyer's experience in the* field in question and that in many instances the required proficiency is that of a general practitioner. See RPC 1.1 comment 1.

Here, the Board cited NT III, 284-285, 288, 327 and 330 in support of this finding, which only includes

testimonial "evidence" of Mr. Lento stating, in sum, that he did not specifically inform Mr. Gardner of an appellate court decision that denied expungement for charges withdrawn as part of a plea agreement in Pennsylvania. As the *Lutz* case was so distinguishable that it had no application in Garder, there was no reason to discuss it. The testimony relied upon by the Board also includes Mr. Lento's statement that he did not conduct legal research during his representation of Mr. Gardner. However, his vast knowledge concerning expungement enabled Respondent to properly represent Mr. Gardner, which he did.

In addition to testifying on his own behalf, Mr. Lento provided *objective* evidence that proves Mr. Lento's position: that the five-year period is not a *per se* bar on expungement. He made that assessment based on his considerable experience in dealing with many of these types of cases, which is exactly what RPC 1.1 permits. *See* RPC 1.1 comment 1. In fact, the D.A. noted exactly why it was objecting to the expungement application, *and that objection intentionally excluded the right to object on the basis of the five-year period. Id.* In other words, not even the D.A. argued that Mr. Gardner was ineligible for expungement because of 18 Pa.C.S.A. Section 9122(b)(3)(i). Thus, there is no clear and satisfactory evidence to support that Mr. Lento was incompetent or lacked diligence by "failing to ascertain" that Mr. Gardner was ineligible for expungement due to 18 Pa.C.S.A. Section 9122(b)(3)(i) because the objective facts of the case prove the contrary.

Moreover, even with the objection the D.A. raised, Mr. Lento testified that he was trying to resolve the matter with the D.A. and the D.A. expressed a willingness to waive the objection. There was absolutely no evidence presented to rebut that fact.

The second issue of fact that the Board found satisfactory evidence to prove RPC 1.1 and 1.3 violations in this matter was based on the argument that *Commonwealth v. Lutz*, 788 A.2d 993 (Pa. Super. 2001) prohibited the expungement of Mr. Gardner's misdemeanor charges that were withdrawn as part of his guilty plea agreement.

The Board cited NT III, 284-285, 288, 327, and 330 in support of this finding, which, as stated above, only includes testimony "evidence" of Mr. Lento stating, in sum, that he did not *specifically* inform Mr. Gardner of the holding in *Lutz*, and that he did not conduct legal research during his representation of Mr. Gardner.

However, the RPCs do not require an attorney to explain specific cases to clients nor conduct additional research on matters they are already familiar with. here, Mr. Lento knew how to handle expungement matters and adequately informed the client on the process. Additionally, Mr. Lento also offered undisputed facts that support his position that, in practice, *Lutz* does not *per se* bar an expungement. Therefore, he did not act incompetently nor without diligence when he did not specifically go over the *Lutz* case with his client. In fact, it was *undisputed* that, after receiving

the D.A.'s objection to the expungement, the D.A. was willing to withdraw its objection entirely if Mr. Gardner could explain how this is negatively affecting him, a point that Mr. Lento diligently pursued prior to being terminated.

Moreover, it cannot be lost upon this Court that these points concern case law based *objections*. Hence, these were not findings by a judge. Mr. Lento may have ultimately prevailed in arguing for the expungement application if given the chance. If it was unethical for an attorney to bring a case simply because one case does not support their position, there would be no cases. Said another way, if the law was so black and white that there were clear answers to every question, there would be no need for our justice system. However, that is not how the law works.

Indeed, subsequent case law supports *Respondent's* position that a guilty plea agreement is not a *per se* bar to expungement in Pennsylvania. *See Commonwealth v. Hanna*, 964 A.2d 923 (Pa. Super. 2009) (In a situation where the petitioner has plead guilty to some charges and the others are dismissed/withdrawn/*nolle prossed*, the Commonwealth bears the heavy burden to show that *Lutz* applies; if it is unable to bear that burden, *Wexler* applies. *The Court further questions whether Lutz should remain good law.* In footnote 5, the Court further articulated the public policy considerations of the value of expungement).

Furthermore, it was *undisputed* that Mr. Gardner's prior counsel filed a petition to expunge the same charges that Mr. Lento petitioned to expunge. Of note, Mr. Gardner confirmed that his prior counsel informed him that "if [he] plead guilty to the disorderly conduct everything else will go away, will make that day go away and then you can get your record expunged, it would only take a couple of months, and that's the quickest way to make this whole thing go away." That undisputed fact further corroborates Mr. Lento's position that Lutz was not a *per se* bar on the expungement.

Thus, at the time he was retained, and throughout the pendency of the representation, Respondent believed, in good faith, that he could assist Mr. Gardner by expunging the misdemeanor offenses. Therefore, there is no clear and satisfactory evidence that Mr. Lento violated RPCs 1.1 and/or 1.3 based on *Lutz*.

For all of the aforementioned reasons, the Board erred in finding that the following issues supported a finding of violations of RPCs 1.1 and/or 1.3 by clear and satisfactory proofs: (1) Mr. Lento did not know that Mr. Gardner's misdemeanor charges were withdrawn pursuant to a guilty plea agreement until he received the D.A.'s office objection, citing NT III, 252; (2) he failed to conduct any research to determine if there was a legal basis for the D.A.'s objection, citing NT III, 272, 390-391; (3) Mr. Lento told Mr. Garnder the D.A.'s objection was "disingenuous", prompting Mr. Gardner to retain Respondent for $7,500.00, citing NT I, 140.; and (4) Mr. Lento collected $9,000 fee in two installments

from his client before ever advising Mr. Gardner that he could not expunge the summary.

Again, Mr. Lento reasonably believed, based on his vast experience with this area of law, that dismissed charges of any kind would not be a *per se* bar to the expungement application. That fact is supported by case law, Mr. Gardner's prior counsel, and Mr. Lento's own testimony. It is also supported by the *undisputed* fact that the D.A. was willing to withdraw the objection entirely. Thus, additional research was not necessary at that point in the case. Again, in all disputed cases, an adversary will find an argument that supports their position, whether it is weak or strong. Under those circumstances, it simply cannot be unethical for an attorney to continue to zealously advocate for their client rather than just give up. See RPC 1.3 comment 1("A lawyer should pursue a matter on behalf of a client despite opposition, obstruction or personal inconvenience to the lawyer, and take whatever lawful and ethical measures are required to vindicate a client's cause or endeavor. A lawyer must also act with commitment and dedication to the interests of the client and with zeal in advocacy upon the client's behalf.") Mr. Lento believed there was a good faith basis to accomplish Mr. Gardner's goal and by all accounts of the factual record and law, Mr. Lento was correct. All that leads to the ineluctable conclusion that Mr. Lento did not lack diligence nor was he incompetent in pursuing this matter, certainly not by clear and satisfactory proofs.

2. Red Wine Restaurant Matter

In the Red Wine Restaurant matter, Mr. Lento's firm was retained to file a complaint under the ADA against Red Wine Restaurant for failing to make the restaurant accessible to a person in a wheelchair. Ultimately the matter was dismissed without prejudice, meaning the client was not irreparably harmed and could bring his case back. The crux of the dismissal and ethical issues here stem from the departure of Mr. Feinstein—an experienced litigator with *decades* of litigation experience—from the firm and the subsequent failure to include the additional legal authority in the complaint when it was ultimately refiled after Mr. Feinstein left.

Importantly, Mr. Lento was *never* the handling attorney for this matter. Instead, he was sanctioned as the managing attorney for failure to supervise his lawyer and nonlawyer staff. While Mr. Lento took responsibility for violating RPCs 5.1 and 5.3 with regard to his supervision, he disputes that there were clear and satisfactory proofs to find that he violated RPCs 1.1 and 1.3 based on his lawyer and nonlawyer's conduct.

***The law is clear that in order for Mr. Lento to be responsible for another lawyer/nonlawyer's RPC violation, Mr. Lento must have ratified the conduct via order or specific knowledge or that he knew of the conduct at a time when its consequences could have been avoided or mitigated but failed to take remedial action. See* RPC 5.1(c) and 5.3(c).**

Here, the Board found that there were clear and satisfactory proofs in this case to support a finding that RPCs 1.1 and 1.3 were violated by Mr. Lento based on the following: "he (1) failed to assign substitute counsel to attend the December 20, 2019 prehearing conference after Mr. Feinstein resigned (NT II, 85); (2) failed to confirm there was legal authority under the ADA for bringing a claim based on promoter liability against one of the defendants and then include the authority in the complaint; and (3) failed to supervise and insist that his law firm's attorneys and nonlawyer assistants, complete and file the correct forms and pleadings in the correct jurisdiction." *See* the Board's Report at 104.

As to the first issue, there is no question that Mr. Feinstein remained responsible for the substitution of counsel until he was removed as attorney of record. Indeed, Judge Robreno aptly stated, "*you can't just tell somebody else, you know, I'm out of here you take care of it and rely upon that because we rely on the lawyer of record*". That is supported by RPC 5.1(b), which states "An attorney's appearance may not be withdrawn except by leave of court, unless another attorney admitted to practice in this court shall at the same time enter an appearance for the same party, or another attorney admitted to practice in this court had previously entered an appearance for the same party and continues to represent that party in the matter". Thus, RPC 5.1(c) applies.

Simply put, there was no evidence whatsoever that Mr. Lento ratified Mr. Feinstein's failure to attend

the December 20, 2019 hearing. It was undisputed that Mr. Feinstein was aware that he was the *only* attorney licensed to practice in EDPA when he left the firm. Thus, he could have sent Mr. Lento a thousand emails and called him a thousand times telling Mr. Lento to file a substitution before the December 20, 2019 hearing, which he did not do, but that could never change the fact that it was impossible for Mr. Lento to substitute someone else because he had no other attorney. Obviously, you cannot force another attorney to work for you, which is why, as Judge Robreno aptly noted, the appearing attorney cannot simply leave the firm he left high and dry. It was still Mr. Feinstein's responsibility to attend the hearing and it was a matter of impossibility for Mr. Lento to ratify, rectify or avoid the situation until he hired a new attorney all of which Mr. Feinstein knew. Thus, per RPC 5.1(c), there is no clear and satisfactory evidence to support Mr. Lento violated RPCs 1.1 and 1.3 on this basis.

Next, the Board improperly found that there was clear and satisfactory evidence that Mr. Lento "failed to confirm there was legal authority under the ADA for bringing a claim based on promoter liability against one of the defendants and then include the authority in the complaint" thereby constituting violations of RPCs 1.1 and 1.3.

Again, it is undisputed that Mr. Lento never entered his appearance in this case and was never an attorney of record. Therefore, RPC 5.1(c) applies. However, the record is devoid of any evidence whatsoever that Mr.

Lento ratified the conduct or knew of the misconduct at a time that it could have been mitigated. Therefore, there can be no finding that he violated RPCs 1.1 and 1.3 for other attorneys' failure to include the requisite legal authority.

Moreover, what is clear from the record is Mr. Lento hired Dr. Feinstein, an attorney who had been licensed to practice for over ten (10) years, and at the time the firm's only attorney licensed to practice in EDPA, to work on this Eastern District case. It is also clear that Dr. Feinstein was working closely with Mr. Altman, another highly experienced attorney, in filing this matter. It is also objectively true, based on an email to Dr. Feinstein and Mr. Altman, that they were aware that the matter was previously dismissed and needed to be refiled. Moreover, it was undisputed that Dr. Feinstein and Mr. Altman both reviewed the complaint and approved its filing. Based on all those undisputed facts, there was no clear and satisfactory evidence to support that Mr. Lento ratified or knew at an appropriate time, that Dr. Feinstein and Mr. Altman would fail to include requisite legal authority before approving a complaint to be filed. Therefore, he should not be found to have violated RPCs 1.1 and 1.3 based on Dr. Feinstein and Mr. Altman's deficiencies. *See* RPC 5.1(c).

For the same reasons stated in the preceding paragraph, there was certainly no clear and satisfactory evidence that Mr. Lento ratified or knew at a time when he could have remediated Dr. Feinstein's, Mr. Altman's

and his nonlawyer assistant's honest mistake of filing the complaint in the wrong jurisdiction. Quite the contrary, Respondent emailed specific written instructions to Dr. Feinstein and others concerning refiling the lawsuit which were not followed. However, even if Respondent had not provided specific instructions to Dr. Feinstein and others, we respectfully submit that such an honest mistake that caused no harm to the client should ever amount to an RPC violation.

3. The American Club Matter

The issue in the American Club matter involved a motion for *pro hac vice*. Ultimately, the issues in this case did not irreparably harm the client's case. Moreover, Mr. Lento took responsibility for his deficiencies as it relates to this matter by admitting to a RPC 1.1 violation. Accordingly, this section focuses on RPC 1.3, which Mr. Lento submits was not violated.

To that end, the Board found that the following issues were supported by clear and satisfactory evidence to support a RPC 1.3 violation:

a. Mr. Lento failed to ascertain the legal requirements for filing a *Pro Hac Vice* motion prior to filing three separate deficient motions (NT V, 11)

b. Mr. Lento failed to review and correct a *Pro Hac Vice* Motion drafted by his paralegal despite having been provided the opportunity to do so (NT III, 137; NT V, 12-14)

c. Mr. Lento signed and filed a Motion for a legal associate's Pro Vice admission that misrepresented or omitted Respondent's disciplinary history (Joint Stip 125-128) However, and this is significant, the Pennsylvania Rules do not require the sponsoring attorney to disclose their discipline history but only the attorney seeking pro hoc admission.

d. Mr. Lento signed and filed a second Motion for Pro oHae Vice admission for a legal associate that intentionally failed to include Respondent's disciplinary history in the Eastern District of Pennsylvania (Stip 139-142)

e. Mr. Lento signed two *Pro Hac Vice* motions that failed to comply with Pa.R.Civ.P. 1021.1

f. Mr. Lento through the acts of his legal associate, filed a third *Pro Hac Vice* motion that failed to comply with Pa.R.Civ.P. 1021.1 (Stip 150).

***See* the Board's Report at 104—105.**

Again, RPC 1.3 states, "A lawyer shall act with *reasonable* diligence and promptness in representing a client." (emphasis added). The comments to RPC 1.3 make clear that a violation of this rule involves the attorney allowing for an unreasonable passage of time prior to completing a task since such delay could prejudice the client's case. See RPC 1.3 comments generally as well as comment 3 specifically.

Here, while Mr. Lento admitted that the issues the Board raised could satisfy a conclusion that he violated RPC 1.1, none of those issues have anything to do with an unreasonable delay in the matter that adversely prejudiced the client. Instead, the issues concerned an inability to properly fill out the *pro hac vice* form. In fact, the record supports that Mr. Lento was diligent in trying to get the *pro hac* filed and granted since they filed it more than once and he sought advice from three attorneys to ensure he was doing it correctly. That all proves diligence albeit lacking in competence. Thus, there is no evidence to support a finding that Mr. Lento violated RPC 1.3.

4. The Dougalas Matter

In the Dougalas matter, Mr. Lento was retained to seal or expunge Ms. Dougalas' criminal convictions that were eligible for such relief.

To that end, the Board found that the following issues were supported by clear and satisfactory evidence to support RPCs 1.1 and 1.3 violations: "(1) properly conduct and take written notes of his intake interview with Ms. Dougalas to determine whether she had any felony convictions; (2) expeditiously order Ms. Dougalas' State Police Background Check after his legal assistant informed him that the docket entries did not reflect the grading of Ms. Dougalas' criminal convictions; (3) promptly ascertain that the Clean Slate Act would not permit Ms. Dougalas to seal her Pennsylvania felony convictions and continued

"operating under the impression that [Ms. Dougalas' convictions] don't involve felonies" (NT IV, 223-224); and (4) keep a file copy of pleadings he purportedly filed on behalf of Ms. Dougalas and a copy of Ms. Dougalas' Background Check. (NT IV, 261)." *See* the Board's Report at 105.

First, the Board took issue with Mr. Lento not taking notes of his intake interview with the client to determine whether she had any felony convictions. Even if that is true, the RPCs do not require attorneys to take notes during their calls. Moreover, the record is clear that the client was seeking representation for someone to advise whether she would qualify "for anything" to be cleared up on her criminal record. Accordingly, whether there was an inquiry into felonies is of no moment. Nonetheless, Mr. Lento testified and responded in the DB-7 forms that he told the client at the outset that felonies would not qualify but she failed to advise him otherwise. Finally, no attorney is required to know the entire case up front and advise on every issue. Mr. Lento felt comfortable taking the representation based on what the client told him and felt they could assist with the expungement. Of course, as is often the case, Mr. Lento learned new facts as the case developed. That simply is not an ethics violation. Thus, based on this record, there was no clear and satisfactory evidence that Mr. Lento lacked competence or diligence for failing to take notes at the initial meeting.

Second, the Board found Mr. Lento violated RPC 1.1 and 1.3 because he did not "expeditiously" order the client's background check after his assistant stated that the docket entries did not reflect the grading of her convictions. However, RPC does not require attorneys to act "expeditiously"; instead, it requires *reasonable* diligence.

After the initial telephone conference, Respondent reviewed dockets pertaining to Ms. Dougalas' criminal history. *See* 1/25/2023 Tr. at 163:23-164:8. The materials Respondent reviewed did not identify the final disposition regarding the gradation of the charges and therefore, "certain critical information" was "not available per the dockets." *See* 1/25/2023 Tr. at 164:9-165:7, 174:1-10, 174:20-176:17; *see also* D-40 (attorney Capone confirming that information needed to prepare the expungement petitions was missing "since the cases [were] so old. . . ."); *see also* 1/26/2023 Tr. 202:1-205:24. Absent the missing information, Respondent was not able to determine from his review of the dockets whether Ms. Dougalas' criminal history included felony convictions. *See* 1/25/2023 Tr. at 165:8-13.

During the first few weeks of March 2020, Respondent communicated with Luzerne County court personnel *and* District Attorney personnel and the detective associated with Ms. Dougalas' inactive case. *See* 1/25/2023 Tr. at 172:5-173:24. In March 2020, Respondent also emailed Ms. Dougalas about the New Jersey expungement. *See* 1/26/2023 Tr. at 213:15-214:3. Respondent informed Douglas of his conversations and

that the detective said the inactive case is not closed despite Douglas' claim to him otherwise.

During March, April, May June, and July 2020, Ms. Dougalas carried a balance on the fee she agreed to pay Respondent to secure his services. *See* 1/25/2023 Tr. at 178:11-13. Prior to July, Respondent did not request Ms. Dougalas pay the owed balance because, given the ongoing COVID pandemic and since there were no emergent court proceedings scheduled, he did not want to pressure her to make any payment. Instead, he intended to wait for Ms. Dougalas to initiate payment discussions concerning the money owed. *See* 1/25/2023 Tr. at 178:14-182:23. The Fee Agreement clearly informed Douglas that nothing would be filed on her behalf unless the fee was paid in full. Respondent ordered the background check.

There was no harm to the client based on this timeframe, which—as stated above, and as reflected in the comments to the RPC—is what the RPC is designed to protect against. The RPC is not meant to set arbitrary deadlines that are of no substantive moment. Accordingly, the record does not support a finding that Mr. Lento lacked diligence in this regard, nor can it support a finding that he acted incompetently since the background check did in fact provide the information he needed.

Third, the Board found Mr. Lento violated RPCs 1.1 and 1.3 because he failed to "promptly" ascertain that the Clean Slate Act would not permit the client to seal

her Pennsylvania felony convictions and continued to operate under the impression she did not have felonies. Respondent did not have to ascertain this information as he was extremely experienced and knew that felonies are not eligible under the Clean Slate Act. Again, this is a mischaracterization of what the RPCs require. Indeed, neither RPC 1.1 nor 1.3 require "prompt" action. Instead, they both require *reasonable* action. As stated above, the record reflects Mr. Lento pursued this matter in a reasonably timely fashion and, more importantly, any perceived delay did not prejudice the client, which is what the RPC is designed to protect against. Moreover, Mr. Lento was operating under the impression there were no felonies because the client did not tell him there were any even after he told her the felonies could not be expunged unless the person was dead, had turned 70 years of age, and other criteria were met. Nonetheless, Mr. Lento did in fact learn of the felonies through his diligence and knowledge of how to handle these matters. Thereafter, he advised the client accordingly. Thus, there is no clear and satisfactory evidence that proves Mr. Lento acted without diligence and competence when ascertaining the Clean Slate Act would not permit the client to seal the record.

Finally, the Board found that because Mr. Lento did not have a copy of his records meant he was incompetent and lacked diligence. Again, however, that analysis misses the mark. RPC 1.1 states, "[a] lawyer shall provide competent *representation* to a client. Competent *representation* requires the legal knowledge, skill, thoroughness and preparation reasonably

necessary for the *representation*." (emphases added). The missing records only became an issue long *after* Mr. Lento's representation ended.

The Board's finding was factually inaccurate. The original of the documents were saved on Respondent's computer. In January 2021, the documents were printed and mailed. After some procedural exchanges with the Luzerne County Clerk, they were timestamped and served on the District Attorney's Office. Thus, RPC 1.1 simply does not apply here.

Similarly, RPC 1.3 states, "[a] lawyer shall act with reasonable diligence and promptness in *representing* a client." (emphases added). Again, the key words there are "in representing a client". As stated, the record is clear that the lack of copies only became an issue *after* his representation ended. Thus, RPC 1.3 does not apply here either.

5. The Copelin Matter

The Copelin matter involved Mr. Lento's firm writing a letter for the client to send to her school objecting to her expulsion after she was caught cheating. Ultimately, the letter was written and submitted to the school. There is no evidence in the record that suggests the client was prejudiced in anyway due to conduct by Mr. Lento's firm.

Nonetheless, the Board found that the following issues were supported by clear and satisfactory

evidence to support a RPC 1.3 violation: "when he failed to timely send the appeal of Ms. Copelin's expulsion to the college president by close of business on February 9, 2021, and copy Ms. Copelin on the letter written on her behalf to the college president." *See* the Board's Report at 105—106. Here, the Board cited NT I 185, 196, 206, and 244 in support of this finding, which *only includes* self-serving *testimony* "evidence" of Ms. Copelin stating, in sum, that the letter from the school stated she had ten (10) days to submit an appeal of her pending expulsion, that neither Mr. Lento nor Mr. Altman told her they could not submit her appeal by the end of the business day on February 9, 2021, and that Mr. Lento told her on February 9, 2021 not to worry and that the appeal would be submitted by the end of the business day.

Accordingly, all the evidence the Board relies on is Ms. Copelin's self-serving testimony. Mr. Lento rebutted that testimony with his own testimony. That alone shows that there was no clear and satisfactory evidence here.

Moreover, all of these factual issues involved whether or not the firm filed the letter by close of business on the date it was due. Ms. Copelin said she told them about the "end of business" deadline and Mr. Lento testified he was not so informed. Nonetheless, even if she did tell Mr. Lento about the deadline, none of those facts involve competence issues. In fact, there is no reference to the work product at all. Thus, we would submit RPC 1.1 does not apply here.

Even if it did, the undisputed record reflects that the letter was filed by 8:05 pm on the night of the deadline rather than 5:00 pm. There is no evidence whatsoever that the college rejected the letter for being three hours late. Additionally, the letter was ultimately filed by Mr. Altman and there is simply no evidence to prove Mr. Lento ratified any late filing nor knew at a time where he could correct the late filing. Therefore, as detailed above, RPC 5.1(c) states that Mr. Lento cannot be liable for Mr. Altman's alleged deficiencies, although we submit nothing unethical occurred here by clear and satisfactory evidence. Further, the record reflects that Ms. Copelin waited until the eleventh hour to complete payment giving Mr. Lento's firm very little time to file the letter. Thus, even if Mr. Lento was told about the deadline with enough time to file the letter, there was no prejudice to the client for a two hour delay.

Significantly, Ms. Copelin was not prejudiced by any of Respondent's or Altman's conduct as *she had already timely filed her appeal*. Because she did so, their role changed to providing additional support for the timely filed appeal rather than filing the appeal itself.

Therefore, there was no violation of RPC 1.1 and 1.3.

RPC 1.5(a), 1.16(d), 8.4(a)

RPC 1.5(a) prohibits an attorney from entering into an agreement for, charging, or collecting an excessive fee. In determining whether a fee is excessive, the Rule lists, among other factors, the time and labor required, novelty

of question involved, skill required, and results obtained. RPC 1.16(d) requires an attorney to refund any unearned fee upon the termination of the representation. RPC 8.4(a) prohibits a lawyer from violating or attempting to violate the rules.

In the Gardner matter, in August 2018, Respondent received $1,500 to file a petition for the "expungement of the applicable charges," and in January 2019, Respondent received an additional $7,500 to file a formal motion with the Court for a contested hearing on Mr. Gardner's expungement. (Stip 4) Both statutory law and case law prohibited the expungement of Mr. Gardner's January 2017 guilty plea until 2022. (Stip 5) Respondent failed to file the formal motion and Mr. Gardner terminated Respondent's representation four months after paying the $7,500 fee. Respondent failed to promptly refund any of his unearned fee. Given the time and labor Respondent had expended on this routine matter, as well as the unlikelihood of success under statutory law and case law, Respondent's $7,500 fee was clearly excessive. It was not until June 2021, after Respondent received notice that Mr. Gardner filed a Statement of Claim with the Lawyers Fund for Client Security, that Respondent refunded a partial fee of $3,500 to Mr. Gardner. (Stip 23, **24,** 25) Respondent's conduct in collecting a $7,500 fee, failing to refund his unearned fee upon the termination of the representation, attempting to retain an excessive fee, and belatedly refunding only a portion of his fee violated RPC 1.5(a), 1.16(d), and 8.4(a).

In the Dougalas matter, Respondent received $5,500 from Ms. Dougalas to expunge or seal her criminal record

in Pennsylvania and New Jersey. On March 24, 2021, after Respondent informed Ms. Dougalas that he could not expunge or seal her Pennsylvania felony convictions, Ms. Dougalas requested a refund of Respondent's unearned fee and records from her legal matters. (ODC-90/Bates 734) On May 14, 2021, Ms. Dougalas reiterated her request for a refund and her records. (ODC-91/Bates 735) Respondent failed to provide Ms. Dougalas with any records from her Luzerne County matter. (NT I, 81) In addition, Respondent failed to promptly refund his unearned fee. It was not until July 2021, after Respondent received notice that Ms. Dougalas had filed a Statement of Claim with the Lawyers Fund for Client Security, that Respondent refunded $5,500 to Ms. Dougalas. Respondent's conduct violated 1.16(d).

In the Copelin matter, Respondent requested $7,500 to write a letter on behalf of Ms. Copelin to the GSU college president and explained that there may be an additional fee if her matter proceeded to court. (NT I, 196) Respondent failed to inform Ms. Copelin that he could not act as her attorney in Georgia and Ms. Copelin could only retain Respondent to act as an "advisor." (NT I, 193, 196, 197, 230) On the morning of February 9, 2021, Ms. Copelin paid an initial installment of $2,500 (ODC-102/Bates 762), and later that evening, Respondent's legal associate sent an untimely letter signed by Respondent to the GSU president challenging Ms. Copelin's pending expulsion. (ODC-104, -105/Bates 766, 767) The following day, Ms. Copelin terminated Respondent's representation and instructed Respondent not to charge her credit card. (ODC-107/Bates 770); Respondent subsequently offered to

refund $1,000. (ODC-108/Bates 108) It was not until July 2021, after Respondent received notice that Ms. Copelin filed a Statement of Claim with the Lawyers Fund for Client Security, that Respondent refunded $2,500 to Ms. Copelin. (Stip 213)

At his disciplinary hearing, Respondent justified his $7,500 fee to ghostwrite a letter because "[t]here were approximately 100 pages of documentation as part of the case. . . . and being expelled from school can have a lifetime of consequences." (NT IV, 318) Respondent's justification is unavailing. Given the limitations regarding representation under the GSU student code, time and labor involved, the lack of novelty and difficulty of the question involved, the skill required to ghostwrite the letter, and the unsuccessful results obtained, Respondent attempted to charge an excessive fee to a client. In addition, Respondent failed to promptly refund his unearned fee upon termination of the representation. Respondent's conduct violated RPC 1.5(a), 1.16(d), and 8.4(a).

RESPONDENT'S COUNTER-RESPONSE CONCERNNIG RPCS 1.5(A), 1.16(D) AND 8.4(A)

RPC 1.5(a) states:

> **A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. The factors to be considered in determining the propriety of a fee include the following: (1) whether the fee is fixed or contingent; (2) the time and labor required,**

the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (3) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (4) the fee customarily charged in the locality for similar legal services; (5) the amount involved and the results obtained; (6) the time limitations imposed by the client or by the circumstances; (7) the nature and length of the professional relationship with the client; and (8) the experience, reputation, and ability of the lawyer or lawyers performing the services.

RPC 1.16(d) states:

> **Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding 51 any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.**

RPC 8.4(a) states: "It is professional misconduct for a lawyer to (a) violate or attempt to violate the Rules

of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another"

1. The Gardner Matter

In the Gardner matter, the Board concluded that Mr. Lento violated RPCs 1.5(a), 1.16(d) and 8.4(a) in this matter because it found there were clear and satisfactory proofs to support the following: "August 2018, Respondent received $1,500 to file a petition for the "expungement of the applicable charges," and in January 2019, Respondent received an additional $7,500 to file a formal motion with the Court for a contested hearing on Mr. Gardner's expungement. (Stip 4) Both statutory law and case law prohibited the expungement of Mr. Gardner's January 2017 guilty plea to the summary offense until 2022. (Stip 5) Respondent failed to file the formal motion and Mr. Gardner terminated Respondent's representation four months after paying the $7,500 fee. Respondent failed to promptly refund any of his unearned fee. Given the time and labor Respondent had expended on this routine matter, as well as the unlikelihood of success under statutory law and case law, Respondent's $7,500 fee was clearly excessive. It was not until September 2021, after Respondent received notice that Mr. Gardner filed a Statement of Claim with the Lawyers Fund for Client Security, that Respondent refunded a partial fee of $3,500 to Mr. Gardner. (Stip 23, 24, 25) Respondent's conduct in collecting a $7,500 fee, failing to refund his unearned fee upon the termination of the representation, attempting to retain an excessive

fee, and belatedly refunding only a portion of his fee violated RPC 1.5(a), 1.16(d), and 8.4(a).” *See* The Board’s Report at 109-110.

As to the first issue, once again, the Board’s conclusion is based on the mistaken premise that statutory law and case law prohibited the expungement of Mr. Gardner’s guilty plea pending the expiration of the five-year period. For the reasons detailed in Point I(A)(1) *supra*, the five-year period is not relevant to this matter. Accordingly, since the objective evidence proves the five-year period was a non-issue, it cannot be found by clear and satisfactory evidence that Mr. Lento violated RPCs 1.5(a), 1.16(d) and 8.4(a).

Next, the Board found that Respondent failed to file the formal motion and Mr. Gardner terminated the representation four months after paying the $7,500.00 fee, which Respondent failed to promptly refund. The Board also found that the time and labor Respondent expended on this routine matter, as well as the unlikelihood of success under statutory law and case law, Respondent’s fee was clearly excessive.

Again, the finding of an unlikelihood of success under Pennsylvania statutes and case law is not supported by clear and satisfactory proofs. Further, the record revealed that, in total, Mr. Gardner paid Respondent $9,000.00 to perform expungement-related services. Respondent explained the factors he considered in arriving at his fee, which included travel time, potential briefing and hearings as well as

additional work associated with the preparation for same. *See* 1/25/2023 Tr. at 26:6-18. The record further established that Respondent did, in fact, take steps in conformity with the representation, including further communications with the client, communications with the D.A. and reviewing and drafting documents to advance the expungement. *See* ODC-16; *see also* 1/25/2023 Tr. at 26:22-28:6; *see also* 1/26/2023 Tr. at 12:8-13:3. Ultimately, Respondent tendered Mr. Gardner a $3,500 refund. Even without the refund, Respondent did not collect a "clearly excessive fee" and the Board's subjective and contrary finding is not supported by clear and satisfactory proofs.

Finally, the Board found that Respondent refunded a partial fee of $3,500.00 to Mr. Gardner, only after Mr. Gardner filed a Statement of Claim with the Lawyers Fund for Client Security. As stated above, Respondent collected $9,000.00 in fees during the representation of Mr. Gardner which ended in May 2019. Notably, at no point prior to filing the Statement of Claim in 2021 did Mr. Gardner request a refund from Mr. Lento. Importantly, Respondent's fee agreement memorialized the fee as being "nonrefundable" and "earned upon receipt." *See* ODC-14. Notwithstanding the foregoing, however, Respondent agreed to refund Mr. Gardner $3,500.00. For the reasons stated above, Mr. Lento submits that there are no clear and satisfactory proofs that he violated RPCs 1.5(a), 1.16(d) and 8.4(a).

2. The Dougalas Matter

In the Dougalas matter, the Board concluded that Mr. Lento violated RPC 1.16(d) in this matter because it found there were clear and satisfactory proofs to support the following: "Respondent received $5,500 from Ms. Dougalas to expunge or seal her criminal record in Pennsylvania and New Jersey. Respondent had informed Ms. Dougalas, at the inception of his representation, that he could not expunge or seal her Pennsylvania felony convictions. This was repeated on March 24, 2021. Ms. Dougalas requested a refund of Respondent's alleged unearned fee and records from her legal matters. (ODC-90/Bates 734) On May 14, 2021, Ms. Dougalas reiterated her request for a refund and her records. (ODC-91/Bates 735) Respondent failed to provide Ms. Dougalas with any records from her Luzerne County matter. At the time, the original documents had not returned to the Respondent from transmittals to and from the Luzerne county Clerk and District Attorney. (NT I, 81) In addition, Respondent failed to promptly refund his unearned fee. It was not until July 2021, after Respondent received notice that Ms. Dougalas had filed a Statement of Claim with the Lawyers Fund for Client Security, that Respondent refunded $5,500 to Ms. Dougalas. Respondent's conduct violated 1.16(d)." *See* The Board's Report at 110-111.

Again, RPC 1.16(d) states, in pertinent part:

> **Upon termination of representation, a lawyer shall take steps *to the extent reasonably***

> ***practicable*** **to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.**

(emphasis added).

Here, it is undisputed that Mr. Lento worked on this matter. Accordingly, it is undisputed that Mr. Lento earned, at least, some portion of his fee. It was also undisputed that the fee agreement memorialized the fee as being "nonrefundable" and "earned upon receipt." *See* ODC-80. Thus, the objective evidence supports that no refund was required. Even though Respondent had performed legal services well in excess of the $5,000.00 at issue, Respondent still *fully refunded his fee.*

Accordingly, at the very least, there are no clear and satisfactory proofs that Respindend failed to refund the fee to the extent reasonably practicable as the RPC requires because he did in fact refund the fee. Thus, he did not violate RPC 1.16(d). If the law required immediate and full refund of any fee, regardless of the amount of time spent on a case, then Mr. Lento may have violated RPC 1.16, but that is clearly not what the law requires. Therefore, he should not be held to a standard that the RPCs do not require.

3. The Copelin Matter

In the Copelin matter, the Board concluded that Mr. Lento violated RPC 1.5(a), 1.16(d) and 8.4(a) in this matter because it found there were clear and satisfactory proofs to support the following:

> **Respondent requested $7,500 to write a letter on behalf of Ms. Copelin to the GSU college president and explained that there may be an additional fee if her matter proceeded to court. (NT I, 196) Respondent failed to inform Ms. Copelin that he could not act as her attorney in Georgia and Ms. Copelin could only retain Respondent to act as an "advisor." (NT I, 193, 196, 197, 230) On the morning of February 9, 2021, Ms. Copelin paid an initial installment of $2,500 (ODC-102/Bates 762), and later that evening, Respondent's legal associate sent an untimely letter signed by Respondent to the GSU president challenging Ms. Copelin's pending expulsion. (ODC-104, -105/Bates 766, 767) The following day [in an email the arrived at 11:00 P.M.], Ms. Copelin terminated Respondent's representation and instructed Respondent not to charge her credit card (ODC-107/Bates 770); Respondent subsequently offered to refund $1,000. (ODC-108/Bates 108) It was not until July 2021, after Respondent received notice that Ms. Copelin filed a Statement of Claim with the Lawyers Fund for Client Security, that Respondent**

> **refunded $2,500 to Ms. Copelin. (Stip 213). *See* The Board's Report at 110-111.**
>
> **At his disciplinary hearing, Respondent justified his $7,500 fee to ghostwrite a letter because "[t]here were approximately 100 pages of documentation as part of the case. . . . and being expelled from school can have a lifetime of consequences." (NT IV, 318) Respondent's justification is unavailing. Given the limitations regarding representation under the GSU student code, time and labor involved, the lack of novelty and difficulty of the question involved, the skill required to ghostwrite the letter, and the unsuccessful results obtained, Respondent attempted to charge an excessive fee to a client. In addition, Respondent failed to promptly refund his unearned fee upon termination of the representation. Respondent's conduct violated RPC 1.5(a), 1.16(d), and 8.4(a).**

***See* The Board's Report at 110-112.**

For the reasons stated in Point I(A)(5) *supra*, all objective evidence shows that Ms. Copelin knew she retained Mr. Lento's firm to act as advisors and she was well aware of the plan. On the same day that Respondent was hired by Ms. Copelin, Respondent immediately took steps in accordance with the scope of the engagement. Even though Ms. Copelin waited until

the same day that the letter was due to pay Respondent, Respondent was still able to review and analyze the 100 pages of documents, develop a strategy, and write a letter on Ms. Copelin's behalf.

Finally, the Board found that Respondent refunded his fee of $2,500.00 to Ms. Copelin, only after she filed a Statement of Claim with the Lawyers Fund for Client Security. Respondent initially required a $7,500.00 fee. However, pursuant to an agreement between Respondent and Ms. Copelin, Ms. Copelin only paid $2,500.00. *See* ODC-99. Respondent agreed to fully refund Ms. Copelin $2,500.00. Accordingly, at the very least, there are no clear and satisfactory proofs that Mr. lento failed to refund the fee to the extent reasonably practicable as the RPC requires because he did in fact refund the fee. Thus, he did not violate RPC 1.16(d). If the law required immediate and full refund of any fee, regardless of the amount of time spent on a case, then Mr. Lento may have violated RPC 1.16, but that is clearly not what the law requires. Therefore, he should not be held to a standard that the RPCs do not require.

For the reasons stated above, Mr. Lento submits that there are no clear and satisfactory proofs that he violated RPCs 1.5(a), 1.16(d) and 8.4(a).

4. American Club

In the American Club matter, Mr. Lento admitted to a violation of RPC 8.4(a). As such, we will not spend time assessing whether or not there were adequate proofs to conclude that this rule was violated.

Appendix B

RPC 5.1 and RPC 5.3

Rule 5.1 concerns the responsibilities of managerial and supervisory attorneys. RPC 5.1(a) requires an attorney with managerial authority to make reasonable efforts to ensure that there are measures in effect that give reasonable assurance that the conduct of the firm's attorneys conforms to the RPCs; RPC 5.1(b) requires a supervising attorney to make efforts to ensure that the conduct of other attorneys conforms to the RPCs; and RPC 5.1(c) provides that an attorney shall be responsible for another attorney's conduct if (1) the other attorney either has knowledge of the conduct and ratifies it or (2) knows of the conduct at the time when the conduct could be mitigated/avoided, but fails to take remedial action.

RPC 5.3 concerns the responsibilities of managerial and supervisory lawyers over nonlawyer assistants. RPC 5.3(a) requires an attorney with managerial authority to make reasonable efforts to ensure that there are measures in effect that give reasonable assurance that the conduct of the firm's nonlawyers conforms to the RPCs; RPC 5.3(b) requires an attorney with direct supervisory responsibility over a nonlawyer to make reasonable efforts to ensure that the nonlawyer's conduct is compatible with the professional obligations of the lawyer; and RPC 5.3(c) provides that a lawyer shall be responsible for a nonlawyer's conduct if the lawyer (1) knows about and ratifies the conduct involved or (2) knows of the conduct at the time when the conduct could be mitigated/avoided, but fails to take remedial action.

Appendix B

Respondent was the sole managing partner of Optimum, Lento Law Group, and Lento Law Firm. Respondent had direct supervisory authority over attorneys who worked for the firms. (NT IV, 384; Stip 80) In addition, Respondent had direct supervisory authority over nonlawyer employees at his law firms. (NT V, 64, 66, 67; Stip 80) In managing his law firms and supervising his attorney and nonlawyer employees, Respondent conceded that he repeatedly violated the mandates of both RPC 5.1 and RPC 5.3 in the Red Wine Restaurant, Watsons, and American Club matters. (*See* Red Wine Restaurant matter, NT III, 134; Watsons matter, NT V, 121-122; American Club matter, NT III, 146, NT V, 56) Respondent's failure to manage and supervise his lawyer and nonlawyer assistants resulted in the violation of multiple ethical rules.

In the Red Wine Restaurant matter, Respondent originally assigned Mr. Feinstein to draft the complaint. Judge Robreno dismissed the complaint filed by Mr. Feinstein in *Red Wine Restaurant I* and ordered that "[i]f the complaint is refiled, it shall include legal authority" on promoter liability. (ODC-29/Bates 232). In Respondent's Answer to the Rule to Show Cause, Respondent acknowledged that he "will provide a legal basis" should Respondent refile the complaint. (ODC-31/Bates 258)

Following the departure of Mr. Feinstein, Respondent assigned the Red Wine Restaurant case to Ms. Feinstein, who was not admitted in the Eastern District. Mr. Lento encouraged her to seek admission after repeatedly trying, without success, to associate with an experienced

counsel. Ms. Feinstein was given a document to sign and required to file the complaint, which did not comply with Judge Robreno's order. (NT II, 149; Stip 56) The *Red Wine Restaurant II* complaint was identical to the complaint previously dismissed by Judge Robreno and failed to contain the required legal authority for suing the concert promoter under the ADA. (ODC-34/Bates 273) Respondent violated RPC 5.1(b) when he failed to make reasonable efforts and supervise: (1) Mr. Feinstein's drafting of the original *Red Wine Restaurant* complaint and confirm that Mr. Feinstein had reasonably concluded that there was a legally supportable basis for bringing a claim under the ADA against Alex Torres Production, Inc. (NT III, 43); (2) Ms. Feinstein by failing to advise her of the legal and factual background of the *Red Wine Restaurant I* case prior to Ms. Feinstein's signing a complaint identical to the one had been dismissed; and (3) Ms. Feinstein to ensure that she had reasonably concluded that there was a legally supportable basis for bringing a claim under the ADA against Alex Torres Production, Inc.

Furthermore, Respondent violated RPC 5.1(c)(1) and (2) as he knew about the deficiencies in the *Red Wine Restaurant I* complaint, but failed to ensure that Ms. Feinstein included legal authority on promoter liability in the *Red Wine Restaurant NJ* and *Red Wine Restaurant II* complaints at a time when the consequences of filing the complaints could be avoided or mitigated. Indeed, Respondent failed to review the Red Wine Restaurant complaints or ensure that another attorney reviewed the complaints before they were filed. The totality of Respondent's handling of the Red Wine Restaurant

cases violated RPC 5.1(a), in that Respondent's conduct demonstrated that he failed to have measures in effect to give reasonable assurance that the conduct of attorneys in his law firm would conform to the RPCs.

In the Watsons matter, Respondent also violated RPC 5.1(a). As the managing partner at Optimum with managerial authority over attorney employees, Respondent failed to make reasonable efforts to ensure that attorneys in his law firm: (1) routinely gave him or another attorney at the firm drafts of complaints and pleadings to review before they were filed with the court **(NT** II, 23, 137, **43-44);** (2) supervised the filing of complaints and ensured that a complaint filed in the First Judicial District against residents of Delaware County was properly served by the Delaware County sheriff who had been deputized by the sheriff of the First Judicial District as required by the rules (NT V, 62-63, 81-81; (3) reviewed and proofread documents prior to filing the documents with the court (NT II, 107); (4) maintained an accurate case management system that would provide necessary information, including who filed a complaint, who arranged service of process, and whether Notice of Intent to Take Default Judgment was timely mailed (NT V, 73, 76, 77, 86); and (5) refrained from engaging in conduct that needlessly expended the court system's limited resources.

In the American Club matter, Respondent also violated RPC 5.1(a). After Judge Djerassi dismissed Respondent's two *Pro Hae Vice* motions, for among other issues, failing to comply with Pa.R.Civ.P. 1012.1, Respondent withdrew

from the case and assigned his legal associate to file a *Pro Hae Vice* motion. (NT V, 52) Respondent failed to make reasonable efforts to ensure that the associate's motion-the third *Pro Hae Vice* motion filed in the American Club matter-complied with Pa.R.Civ.P. 1012.1 and Judge Djerassi's orders. (NT V, 54) As a result, Judge Djerassi denied the *Pro Hae Vice* motion.

Moreover, Respondent violated RPC 5.3(a) when he failed to have measures in effect to give reasonable assurance that his nonlawyer assistants would: (1) file the Red Wine Restaurant complaint in the correct federal court, receive approval from the assigned attorney prior to filing a complaint with the federal court, properly complete the forms and cover sheets for filing a complaint in the federal court, and accurately complete and file the request for a refund of Respondent's filing fee; (2) in the Watsons matter, provide Mr. Feinstein with drafts of documents to proofread and review prior to filing the documents (NT II, 107), upload a copy of the 10-day Notice to the CLIO system (NT II, 107; NT V, 92-93); and (3) in the American Club matter, draft and file a Motion for *Pro Hae Vice* Admission that did not falsely state Respondent's disciplinary history.

Respondent also violated RPC 5.3(c)(1) in the American Club matter when he failed to review and correct the *Pro Hae Vice* motion drafted by his paralegal, which falsely stated Respondent declared under penalty of perjury that "I presently am not, and have never been, the subject of any disbarment or suspension proceeding before this or any Court." (NT III, 137; NT V, 12-14) Respondent's

failure to review and correct the motion filed in his name after he received it from Ms. Stone resulted in filing a false pleading with the Court. (Stip 125, 128)

Finally, in the Red Wine Restaurant matter, Respondent violated RPC 5.3(c)(1) in ordering that the identical complaint be refiled in federal court without having reviewed the complaint before it was filed (NT V, 216), and violated RPC 5.3(c)(2) when knowing that the complaint was going to be refiled, Respondent failed to take remedial action to ensure that the lawyers and the staff who prepared the forms and pleadings fully understood the legal basis for Judge Robreno's dismissal of the *Red Wine Restaurant I* complaint so that the consequences of the complaint's prior dismissal could be avoided.

RPC 5.5(a)

PA RPC 5.5(a) and Georgia RPC 5.5(a) employ identical language prohibiting an attorney from practicing law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction or assisting another in doing so.[5] In addition, RPC 8.5(a) provides that an attorney admitted to practice law in this jurisdiction is subject to the disciplinary authority of this jurisdiction regardless of

5. Georgia RPC 5.5(a) provides that a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so. The Georgia Code, § 15-19-51 (a), also prohibits any person other than a duly licensed attorney in Georgia, to furnish advice or legal services of any kind.

where the lawyer's conduct occurs.[6] In the Copelin matter, Respondent violated PA RPC 5.5(a).

Neither Respondent nor Mr. Altman are members of the Georgia Bar. (Stip 202) Respondent received a $2,500 fee from Ms. Copelin, a citizen of Georgia, to provide advice and write a letter on her behalf to a university in Georgia regarding her expulsion, and deposited the fee for furnishing this advice and legal services in his Pennsylvania law firm's operating account. (NT IV, 374) On February 9, 2021, Mr. Altman sent an email to the GSU president stating that the email was from "The Law Office of Keith Altman." (ODC-104/Bates 766, ODC-105/Bates 767) The email attached a letter written on stationery with the letterhead "Lento Law Firm," signed by Respondent with the title "Esq." after his name, included a footnote stating that Respondent is licensed to practice law in New York, New Jersey, and Pennsylvania, and contained substantive legal arguments in support of Ms. Copelin's appeal from her pending expulsion. (Stip. 200, 201, 207)

Respondent's correspondence to the GSU President did not state that he and Mr. Altman were acting as an "advisor" to Ms. Copelin. (NT IV, 369-370) Nor does

6. RPC 8.5(a) provides that a "lawyer admitted to practice in this jurisdiction is subject to the disciplinary authority of this jurisdiction, regardless of where the lawyer's conduct occurs. A lawyer not admitted in this jurisdiction is also subject to the disciplinary authority of this jurisdiction if the lawyer provides or offers to provide any legal services in this jurisdiction. A lawyer may be subject to the disciplinary authority of both this jurisdiction and another jurisdiction for the same conduct."

Respondent's correspondence contain any disclaimer that he was not acting in his legal capacity. In fact, Respondent was providing legal advice and services. Respondent offered no credible evidence that he took this fee or was acting in any capacity other than as an attorney. He engaged in the unauthorized practice of law in Georgia and assisted Mr. Altman in doing so. Respondent's conduct violated RPC 5.5(a)(1) and 8.4(a).

RESPONDENT'S COUNTER-POSITION CONCERNING RPCS 5.1, 5.3, AND 5.5(A)

Mr. Lento admitted to violations of RPCs 5.1 and 5.3 except and to Copelin, Gardner, and Dougalas. As such, we will not spend time assessing whether or not there were adequate proofs to conclude that these rules were violated.

In this instance, Georgia's RPC 5.5 applies since that is what concerns unauthorized practice in Georgia. RPC 5.5(a) states: "A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so."

In the Copelin matter, the Board concluded that Mr. Lento violated RPC 5.5(a) in this matter because it found there were clear and satisfactory proofs to support the following:

> **Neither Respondent nor Mr. Altman are members of the Georgia Bar. (Stip 202)**

Respondent received a $2,500 fee from Ms. Copelin, a citizen of Georgia, to provide advice and write a letter on her behalf to a university in Georgia regarding her expulsion, and deposited the fee for furnishing this advice and legal services in his Pennsylvania law firm's operating account. (NT IV, 374) On February 9, 2021, Mr. Altman sent an email to the GSU president stating that the email was from "The Law Office of Keith Altman." (ODC-104/Bates 766, ODC-105/Bates 767) The email attached a letter written on stationery with the letterhead "Lento Law Firm," signed by Respondent with the title "Esq." after his name, included a footnote stating that Respondent is licensed to practice law in New York, New Jersey, and Pennsylvania, and contained substantive legal arguments [Even though no legal arguments were made] in support of Ms. Copelin's appeal from her pending expulsion. (Stip. 200, 201, 207). Respondent's correspondence to the GSU President did not state that he and Mr. Altman were acting as an "advisor" to Ms. Copelin. (NT IV, 369-370) Nor does Respondent's correspondence contain any disclaimer that he was not acting in his legal capacity. In fact, Respondent was providing legal advice and services. Respondent offered no credible evidence that he took this fee or was acting in any capacity other than as an attorney. He engaged in the unauthorized

> **practice of law in Georgia and assisted Mr. Altman in doing so. Respondent's conduct violated RPC 5.5(a)(1) and 8.4(a).**

***See* The Board's Report at 116-117.**

Regarding these facts, it is respectfully submitted that the Board erred in finding there was clear and satisfactory proofs to support a finding of a violation of RPC 5.5(a). Mr. Lento's argument is that, per RPC 5.5, the scope of his engagement does not amount to the practice of law, irrespective of the letterhead or signature that appears on the letter that was submitted on Ms. Copelin's behalf.

> **The practice of law in Georgia is defined as:**
>
> **(1) Representing litigants in court and preparing pleadings and other papers incident to any action or special proceedings in any court or other judicial body;**
>
> **(2) Conveyancing;**
>
> **(3) The preparation of legal instruments of all kinds whereby a legal right is secured;**
>
> **(4) The rendering of opinions as to the validity or invalidity of titles to real or personal property;**
>
> **(5) The giving of any legal advice; and**

(6) Any action taken for others in any matter connected with the law.

***See* GA Code § 15-19-50 (2023).**

It is undisputed that Respondent was not retained to appear before any court, tribunal, nor administrative agency. Nor did the matter involve conveyancing, preparation of legal instruments whereby a legal right is secured, nor the rendering of opinions as to the validity or invalidity of titles to real or personal property. Respondent was hired to be a representative before the school and the School code does not restrict who may serve in that capacity. Accordingly, the only question is whether Mr. Lento provided legal advice or took legal action connected to *Georgia law*.

We respectfully submit that there are no clear and satisfactory proofs that Mr. Lento provided any services that provided any knowledge or practice of Georgia law. Indeed, there is no evidence, at all, that Mr. Lento ever advised Ms. Copelin on Georgia law. Moreover, the objective evidence (the letter Mr. Lento's firm prepared) does not cite *any* Georgia law. *See* ODC-105. Additionally, Mr. Lento's website and his letterhead all make clear that he is licensed only in New York, New Jersey and Pennsylvania. *See* ODC-93, 96-99, 105. Mr. Altman's email signature and the letter sent to GSU on Ms. Copelin's behalf also make clear that he is only licensed in Michigan and California. ODC-103-105. Notably absent from any evidence is any reference to being admitted in Georgia.

Furthermore, Respondent testified on his own behalf that during his initial telephone call with Ms. Copelin, he explained to her that, if retained, they would serve as her advisor under the university's policy and that his firm "we're not serving as her attorney." NT IV 323. Respondent forwarded Ms. Copelin a consultation agreement confirming that he was being engaged as an "advisor" and not an attorney. *See* ODC-97. As a general rule, student disciplinary matters at the collegiate level are non-adversarial. *See* 3/8/2023 Tr. at 93:13-94:15. Again, the letter prepared by Respondent's firm makes no reference, let alone any analysis, to any Georgia case law, statutes, regulations or laws. *See* ODC-105.

For all of the aforementioned reasons, the Board likewise erred in finding that the following issues supported a finding of violations of RPC 5.5(a) as: (1) Respondent was not retained as an attorney and (2) the services provided did not constitute the practice of law.

RPC 8.1(a)

RPC 8.1(a) prohibits an attorney from knowingly making a false statement of material fact in connection with a bar admission application. In the American Club matter, Respondent signed a May 26, 2020 Verification to a Motion for *Pro Hae Vice* Admission that falsely stated Respondent had "never been" the subject of a suspension proceeding. (ODC-62/Bates 515) After the court dismissed the Motion without prejudice to a refiling that would include disclosure of Respondent's disciplinary history,

on August 14, 2020, Respondent signed and filed a second motion for *Pro Hae Vice* Admission. (Stip 130, 140) In his second *Pro Hae Vice* motion, Respondent knowingly and intentionally failed to disclose his disciplinary history in the Eastern District of Pennsylvania. (Stip 137, 139) Respondent's conduct violated RPC 8.1(a).

RESPONDENT'S COUNTER-RESPONSE TO RPC 8.1(A)

RPC 8.1(a) states: "An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not: (a) knowingly make a false statement of material fact".

In the American Club matter, the Board concluded that Mr. Lento violated RPC 8.1(a) in this matter because it found there were clear and satisfactory proofs to support the following: "signed a May 26, 2020 Verification to a Motion for Pro Hac Vice Admission that falsely stated Respondent had "never been" the subject of a suspension proceeding. (ODC-62/Bates 515) After the court dismissed the Motion without prejudice to a refiling that would include disclosure of Respondent's disciplinary history, on August 14, 2020, Respondent signed and filed a second motion for Pro Hac Vice Admission. (Stip 130, 140) In his second Pro Hac Vice motion, Respondent knowingly and intentionally failed to disclose his disciplinary history in the Eastern District of Pennsylvania. (Stip 137, 139)." *See* The Board's Report at 117-118.

First, RPC 8.1(a) does not apply to this matter. Respondent was not an applicant for admission to the bar, or a lawyer in connection with a bar admission application or involved in connection with a disciplinary matter. He was the sponsor for another lawyer seeking pro hoc admission in a single case. This case is controlled by Pa.R.C.P. 1012.1 which explicitly requires the person seeking pro hoc admission to disclose any disciplinary history, but does not require the same as the sponsoring attorney.

Regarding these facts, it is respectfully submitted that the Board erred in finding there was clear and satisfactory proofs to support a finding of a violation of RPC 8.1(a). The rule prohibits attorneys from *knowingly* making a false statement of material fact. The undisputed evidence proves Mr. Lento's position: that he used his best efforts to determine what specific information he should include within his application in support of Mr. Scordo's *pro hac vice* admission and did not *knowingly* make a false statement of *material fact.* Again, significantly, Pa.R.C.P. 1012.1 identifies what information is required of a sponsoring attorney and the Rule does not require disclosure of any disciplinary history.

Moreover, there is inadequate proofs to show that the omission of the EDPA discipline was material, as the rule requires. Indeed, the EDPA matter involved reciprocal discipline that stemmed from the Pennsylvania matter. Thus, the EDPA case concerned the same exact facts and issues as the Pennsylvania

case. Accordingly, we would submit that, if the Court felt it could grant the *pro hac* admission, even with the Pennsylvania discipline, it would not have changed its analysis due to the EDPA case since it was the same exact discipline. Therefore, it was not a material omission and the RPC was not violated.

Moreover, after learning that the original *pro hac vice* application inadvertently included inaccurate information concerning Respondent's prior disciplinary history and that the *pro hac vice* motion was denied without prejudice, Respondent sought counsel from three attorneys to determine what disciplinary information he needed to include in any subsequent *pro hac vice* submissions. *See* 1/25/2023 Tr. at 142:22-143:15. Based on that advise, Respondent understood that while any subsequent *pro hac vice* submission should include Respondent's Pennsylvania and New Jersey disciplinary history, it need not include any information regarding his standing to practice in the EDPA. *See* 1/25/2023 Tr. at 143:16-144:11; see also 1/27/2023 Tr. at 43:14-44:10. This is, again, because reciprocal discipline was imposed by the EDPA. Accordingly, he did not *knowingly* omit *material* facts. Rather, at the time he submitted the second *pro hac vice* application, he believed and understood that he was providing the Court with the required information.

Thus, there is in adequate proofs to support an RPC 8.1(a) violation.

Appendix B

RPC 8.4(c)

RPC 8.4(c) prohibits an attorney from engaging in conduct involving deceit or misrepresentation. An attorney's conduct need only be reckless to violate RPC 8.4(c). See *Office of Disciplinary Counsel v. Anonymous Attorney A*, 714 A.2d 404 (Pa. 1998) (A violation of RPC 8.4(c) can be established by an attorney's reckless disregard of truth or falsity). Respondent engaged in deceitful conduct in the Gardner, American Club, Dougalas, and Copelin matters.

In the Gardner matter, Respondent provided Mr. Gardner with vague fee agreements that referenced the "expungement of applicable charges" without defining what charges he would seek to expunge. (NT III, 273, 277-281) Mr. Gardner was misled and believed he was retaining Respondent in August 2019, for a fee of $1,500, to expunge Mr. Gardner's entire criminal record, which included Mr. Gardner's January 2017 summary conviction and withdrawn misdemeanor charges. (NT I, 145, 170) Respondent knew or should have known that Pennsylvania law required an individual to be free of arrest or prosecution for five years following a summary conviction and that established Pennsylvania case law prohibited the expungement of Mr. Gardner's misdemeanor charges that were withdrawn as part of a guilty plea agreement. Mr. Gardner credibly explained that had Respondent informed him at the outset that his conviction could not be expunged for five years from the date of his guilty plea, Mr. Gardner would "absolutely not" have retained Respondent (NT

I, 129) and would have waited until 2022 to expunge his entire criminal record as he had "no choice." *(Id.* at 130)

Respondent engaged in similar deceit in December 2018 following his receipt of the D.A. Office's objection to Mr. Gardner's Expungement Petition. Respondent stated that the DA's "argument is disingenuous" and "may/most likely can be defeated." (ODC-9/Bates 000152), Respondent's misleading opinion was offered without the benefit of any legal research or factual support (NT III, 231, 251, 314-315, 328-29, 340), was deceitful, and intended to and did cause Mr. Gardner to pay Respondent an additional $7,500 to file a formal motion with the Court. (NT I, 140, 142-43)[7] This statement was made with reckless disregard for the facts and the law.

In the American Club matter, Respondent misrepresented his record of attorney discipline in two separate motions for another attorney's *Pro Hae Vice* admission. After Respondent filed the first *Pro Hae Vice* motion, he engaged in deceit and misrepresentation when he requested his legal assistant to inform the court and all parties that the false statements about his disciplinary history were a "clerical error" (D-30) and had his assistant file a Certification claiming the false statements were due to her "inadvertence." (ODC-64/Bates 599) In fact, the false statements about Respondent's disciplinary record were a result of Respondent's admitted failure to review the first *Pro Hae Vice* motion before it was filed.

7. Mr. Gardner testified that he "felt used, lied to. I felt like he stole my money." (NT I, 152)

Respondent then engaged in deceit and misrepresentation in his second *Pro Hae Vice* motion when he knowingly and intentionally failed to reveal his discipline in the EDPA (ODC-68/Bates 634), even though the court ordered the "disclosure of movant's disciplinary history" upon any refiling. (Stip 136)

In the Dougalas matter, Respondent deceived Ms. Dougalas to retain him to seal her criminal record for a fee of $5,500, when in fact, Pennsylvania's Clean Slate Act (ODC-81, -82/Bates 711, 713) patently excluded the sealing of her thirteen felony convictions. At the time Ms. Dougalas contacted Respondent in February 2020, Ms. Dougalas knew the difference between a felony and misdemeanor conviction, knew the schedule of the drug for which she had forged prescriptions, and knew that she had been convicted of thirteen felony charges in Luzerne County. (NT I, 34) Ms. Dougalas wanted to seal her criminal record "because" it "follow[ed] [her] around anywhere" and contacted Respondent because she was "confused" as to whether she qualified for sealing under Pennsylvania's Clean Slate Act. *(Id.* at 35-36)

Respondent failed to advise Ms. Dougalas that her criminal dockets did not reflect the grading of her criminal convictions (NT III, 164), inquire whether Ms. Dougalas knew if she had been convicted of any of the felonies for which she was arrested and held for court (ODC-133/Bates 936-37), ask Ms. Dougalas the schedule of drug for which she had forged prescriptions, explain the limitations of the Clean Slate Act, and inform Ms. Dougalas that he needed to obtain official confirmation of the grading of

her convictions. (NT I, 41-42) Instead of obtaining this critical information, Respondent provided Ms. Dougalas with a vague Letter of Engagement promising to seal "3 applicable cases" and expunge "2 applicable cases" for a $5,500 fee. (ODC-80/Bates 709) Ms. Dougalas explained that "[b]ased upon the docket that [Ms. Dougalas] had sent [Respondent]," she assumed that the "three applicable" cases referred to her misdemeanor cases and the "two applicable" cases referred to her felony cases. (NT I, 57) Ms. Dougalas signed the Engagement Letter, paid $2,500, and agreed to pay the balance of the fee upon request. (Stip 164; NT I, 64) Ms. Dougalas testified that had Respondent initially informed her that her felony convictions did not "qualify for anything," it would have been the "end of the conversation right there." (NT I, 113)

One month after being retained, Respondent's assistant notified Respondent of the need to obtain the grading of Ms. Dougalas' convictions in order to complete the petitions to seal and expunge Ms. Dougalas' record. (D-40-42) Rather than contacting Ms. Dougalas, advising her that the dockets were unclear regarding the grading of her offense (NT I, 67, 100), and obtaining information about her convictions (NT IV, 210), Respondent waited until October 2020, after being paid in full, to order the State Police Background Check. (NT III, 183; NT IV, 119, 212-213) Had Respondent advised Ms. Dougalas that her felony convictions could not be sealed, Ms. Dougalas would not have paid $5,500 and "could have put her money somewhere else." (NT I, 63; Stip 174) Ms. Dougalas testified that she felt "lied to and gritted." (NT I, 72)

Appendix B

In the Copelin matter, Respondent engaged in a pattern of conduct involving deceit and misrepresentation regarding his ability to act as Ms. Copelin's attorney and represent her in Georgia, when: (1) Respondent signed his February 4, 2021 text message to Ms. Copelin, "Attorney Joseph D. Lento, Lento Law Firm, Helping Students Nationwide" (ODC-95/Bates 752); (2) during Respondent's February 4, 2021 conversation with Ms. Copelin, in response to Ms. Copelin's statement that she wanted a lawyer, Respondent replied that he "helps students nationwide" and has "helped plenty of students in Georgia" (NT I, 190); (3) Respondent signed his February 4, 2021 email to Ms. Copelin, "Joseph D. Lento, Esquire, Attorney & Counselor at Law, Lento Law Firm, Helping Clients Nationwide" (ODC-96/Bates 755); (4) during Ms. Copelin's February 6,2021 telephone consult with Mr. Altman and Respondent, Mr. Altman identified himself as an attorney who worked for Respondent (NT I, 92, 198), Ms. Copelin explained that she did not want to handle the case herself and wanted an attorney *(id.* at 192-193), Respondent stated his fee could be more if Ms. Copelin needed him to go to court *(id.* at 196), and Respondent and Mr. Altman failed to inform Ms. Copelin that they could not act as an attorney in Georgia and could only act as her advisor *(id.* at 193, 196, 197, 205, 230); and (5) Respondent failed to explain to Ms. Copelin, in any of his oral conversations or written communication, that he could not be her attorney in Georgia and could only act as her advisor. (NT I, 190; FOF 449, 450, 461(b))

Ms. Copelin explained that although she had written a letter to the college president herself, she wanted

Respondent to write a letter on her behalf because "it was a stronger shot if I had representation than just my letter." (NT I, 205) Ms. Copelin was "never looking for anybody other than an attorney" and "wasn't looking for an advisor." (NT I, 205) Ms. Copelin was also not interested in retaining Respondent to be a "ghostwriter." (NT I, 217) Ms. Copelin made clear that she would not have agreed to pay $7,500 to Respondent if she knew that Respondent could not provide her with legal representation in Georgia and had only intended to ghostwrite a letter for her. (NT I, 97, 217-218) The sum of Respondent's omissions and misrepresentations deceived Ms. Copelin to retain Respondent.

Respondent's conduct in these matters violated RPC 8.4(c).

RESPONDENT'S COUNTER-POSITION CONCERNING RPC 8.4(C)

RPC 8.4(c) states: "it is professional misconduct for a lawyer to (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation, except that a lawyer may advise, direct, or supervise others, including clients, law enforcement officers, and investigators, who participate in lawful investigative activities".

1. The Gardner Matter

The Board concluded that Respondent violated RPC 8.4(c) in this matter because it found there were clear and satisfactory proofs to support the following:

Respondent provided Mr. Gardner with vague fee agreements that referenced the "expungement of applicable charges" without defining what charges he would seek to expunge. (NT III, 273, 277-281) Mr. Gardner was misled and believed he was retaining Respondent in August 2019, for a fee of $1,500, to expunge Mr. Gardner's entire criminal record, which included Mr. Gardner's January 2017 summary conviction and withdrawn misdemeanor charges. (NT I, 145, 170) Respondent knew or should have known that Pennsylvania law required an individual to be free of arrest or prosecution for five years following a summary conviction and that established Pennsylvania case law prohibited the expungement of Mr. Gardner's misdemeanor charges that were withdrawn as part of a guilty plea agreement. Mr. Gardner credibly explained that had Respondent informed him at the outset that his conviction could not be expunged for five years from the date of his guilty plea, Mr. Gardner would "absolutely not" have retained Respondent (NT I, 129) and would have waited until 2022 to expunge his entire criminal record as he had "no choice." *(Id.* at 130)

Respondent engaged in similar deceit in December 2018 following his receipt of the D.A. Office's objection to Mr. Gardner's

> **Expungement Petition. Respondent stated that the DA's "argument is disingenuous" and "may/most likely can be defeated." (ODC-9/Bates 000152), Respondent's misleading opinion was offered without the benefit of any legal research or factual support (NT III, 231, 251, 314-315, 328-29, 340), was deceitful, and intended to and did cause Mr. Gardner to pay Respondent an additional $7,500 to file a formal motion with the Court. (NT I, 140, 142-43)7 This statement was made with reckless disregard for the facts and the law.**

***See* The Board's Report at 118-119.**

Notably, the Board did not conduct *any* analysis of the mental culpability required in order to find a violation of RPC 8.4(c). The case law in Pennsylvania is clear on this point: "the element of scienter required to establish a *prima facie* violation of RPC 8.4(c) is made out upon a showing that a misrepresentation was made *knowingly* or with reckless ignorance of the truth or falsity thereof." *Office of Disciplinary Counsel v. Surrick*, 561 Pa. 167, 749 A.2d 441 (2000) (emphasis added); *see also Office of Disciplinary Counsel v. Anonymous Attorney A*, 552 Pa. 223, 173, 714 A.2d 402, 406 (1998) (Recklessness is shown by "the deliberate closing of one's eyes to facts that one had a duty to see or stating as fact, things of which one was ignorant.").

Regarding these facts, it is respectfully submitted that the Board erred in finding there was clear and

satisfactory proofs to support a finding of a violation of RPC 8.4(c). As previously discussed, neither a guilty plea nor the five-year waiting period constitute *per se* bars on expungement. Specifically, regarding the five-year period, at no point did the D.A. object to Mr. Gardner's expungement petition on the basis of the five-year waiting period. Instead, the Board relied heavily on Mr. Gardner's testimony that Respondent did not advise him about the five-year waiting period associated with a summary offense expungement. However, Respondent's testimony, along with his fee agreement and the D.A. "objection" form forwarded to Mr. Gardner by Respondent, rebut Mr. Gardner's stance. This sort of "he-said, he said" proofs do not establish a violation of RPC 8.4(c) by clear and satisfactory proofs. At no time did Respondent attempt to deceive Mr. Gardner. Rather, the evidence revealed that Respondent fully informed Mr. Gardner about the five-year waiting period even though it was ultimately irrelevant to the case. *See* ODC-117, *see also* 1/25/2023 Tr. at 11:20-13:8, 17:1-15, 18:12-20:4, 34:15-35:11.

Likewise, regarding Mr. Gardner's guilty plea, Respondent offered his own rebuttal testimony and undisputed facts that support his position that, in practice, *Lutz* does not *per se* bar an expungement. Subsequent case law supports Respondent's position that a guilty plea agreement is not a *per se* bar to expungement in Pennsylvania. *See Hanna*, 984 A.2d 923. In fact, as noted, Mr. Gardner's prior counsel filed a petition to expunge the same charges that Mr. Lento petitioned to expunge. That undisputed fact

corroborates Mr. Lento's position that *Lutz* did not impose a *per se* bar on expungement where a defendant pled guilty to same charges and others were dismissed.

Accordingly, at the time he was retained, and throughout the pendency of the representation, Respondent knew that he could assist Mr. Gardner by expunging the misdemeanor offenses. That is further supported by his efforts to have the D.A. withdraw the objection, which the D.A. seemed willing to do. Therefore, there is no clear and satisfactory evidence that Mr. Lento violated RPCs 8.4(c) based on the five-year period or *Lutz*.

2. The American Club Matter

The Board concluded that Mr. Lento violated RPC 8.4(c) in this matter because it found there were clear and satisfactory proofs to support the following: Respondent misrepresented his record of attorney discipline in two separate motions for another attorney's *Pro Hac Vice* admission. After Respondent filed the first *Pro Hac Vice* motion, he allegedly engaged in deceit and misrepresentation when he requested his legal assistant to inform the court and all parties that the false statements about his disciplinary history were a 'clerical error' (D-30) and had his assistant file a Certification claiming the false statements were due to her 'inadvertence.'" (ODC-64/Bates 599) In fact, the false statements about Respondent's disciplinary record were a result of Respondent's admitted failure to review the first *Pro Hae Vice* motion before it

was filed. Respondent then engaged in deceit and misrepresentation in his second *Pro Hac Vice* motion when he knowingly and intentionally failed to reveal his discipline in the EDPA (ODC-68/Bates 634), even though the court ordered the "disclosure of movant's disciplinary history" upon any refiling. (Stip 136). *See* The Board's Report at 119-120.

Regarding the first issue of fact, it is respectfully submitted that the Board erred in finding clear and satisfactory proofs that Mr. Lento engaged in deceit and misrepresentation when he requested his paralegal to inform the court and parties that the false statements about his disciplinary history were a clerical error and had his assistant file a certification claiming the false statements were due to her inadvertence. It is unclear how exactly the Board reached this conclusion. It is undisputed that the first *pro hac vice* motion filed in this matter was made in error. 1/27/2023 Tr. at 16:7-13. Respondent requested that his paralegal prepare a certification as to her first-hand knowledge surrounding the circumstances in which the *pro hac vice* motion was filed in order to explain to the court and the parties what took place. 1/27/2023 Tr. at 23:14-24:1. While Respondent did admit that he did not review the motion before it was filed, he also testified that he did not instruct his paralegal to file the motion, and that, instead, it was filed as a result of an unfortunate miscommunication. 1/27/2023 Tr. at 139:5-18. Thus, there can be no finding that Mr. Lento violated RPC 8.4(c) based on this mistaken filing. Again, RPC 8.4(c) is a high bar to prove a violation that must prove the

mens rea **of the attorney. *Surrick*, 561 Pa. at 173. No such proof exists here.**

Regarding the second issue of fact, it is respectfully submitted that the Board erred in finding clear and satisfactory proofs that Mr. Lento engaged in deceit and misrepresentation in his second *pro hac vice* application when he failed to disclose his discipline in the EDPA. As previously discussed, a violation of RPC 8.4(c) requires that a misrepresentation be made "*knowingly* or with reckless ignorance of the truth or falsity thereof." *Surrick*, 561 Pa. at 173. Respondent sought counsel from three attorneys to determine what disciplinary information he needed to include in any subsequent *pro hac vice* submissions. *See* 1/25/2023 Tr. at 142:22-143:15. Based on that advice, Respondent understood that while any subsequent *pro hac vice* submission should include Respondent's Pennsylvania and New Jersey disciplinary history, it need not include any information regarding his standing to practice in the EDPA. *See* 1/25/2023 Tr. at 143:16-144:11; see also 1/27/2023 Tr. at 43:14-44:10. Clearly, then, the irrefutable record demonstrates that any inaccuracy made by Respondent could not have been made knowingly or recklessly. Thus, there is no evidence, let alone clear and satisfactory evidence, to support a finding that Mr. Lento violated RPC 8.4(c).

3. The Dougalas Matter

The Board concluded that Mr. Lento violated RPC 8.4(c) in this matter because it found there were clear and satisfactory proofs to support the following:

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Respondent deceived Ms. Dougalas to retain him to seal her criminal record for a fee of $5,500, when in fact, Pennsylvania's Clean Slate Act (ODC-81, -82/Bates 711, 713) patently excluded the sealing of her thirteen felony convictions. At the time Ms. Dougalas contacted Respondent in February 2020, Ms. Dougalas knew the difference between a felony and misdemeanor conviction, knew the schedule of the drug for which she had forged prescriptions, and knew that she had been convicted of thirteen felony charges in Luzerne County. (NT I, 34) Ms. Dougalas wanted to seal her criminal record "because" it "follow[ed] [her] around anywhere" and contacted Respondent because she was "confused" as to whether she qualified for sealing under Pennsylvania's Clean Slate Act. (Id. at 35-36)

Respondent failed to advise Ms. Dougalas that her criminal dockets did not reflect the grading of her criminal convictions (NT III, 164), inquire whether Ms. Dougalas knew if she had been convicted of any of the felonies for which she was arrested and held for court (ODC-133/Bates 936-37), ask Ms. Dougalas the schedule of drug for which she had forged prescriptionsa explain the limitations of the Clean Slate Act, and inform Ms. Dougalas that he needed to obtain official confirmation of the grading of her convictions. (NT I, 41-42)

Instead of obtaining this critical information, Respondent provided Ms. Dougalas with a vague Letter of Engagement promising to seal "3 applicable cases" and expunge "2 applicable cases" for a $5,500 fee. (ODC-80/ Bates 709) Ms. Dougalas explained that "[b] ased upon the docket that [Ms. Dougalas] had sent [Respondent]," she assumed that the "three applicable" cases referred to her misdemeanor cases and the "two applicable" cases referred to her felony cases. (NT I, 57) Ms. Dougalas signed the Engagement Letter, paid $2,500, and agreed to pay the balance of the fee upon request. (Stip 164; NT I, 64) Ms. Dougalas testified that had Respondent initially informed her that her felony convictions did not "qualify for anything," it would have been the "end of the conversation right there." (NT I, 113)

One month after being retained, Respondent's assistant notified Respondent of the need to obtain the grading of Ms. Dougalas' convictions in order to complete the petitions to seal and expunge Ms. Dougalas' record. (D-40-42) Rather than contacting Ms. Dougalas, advising her that the dockets were unclear regarding the grading of her offense (NT I, 67, 100), and obtaining information about her convictions (NT IV, 210), Respondent waited until October 2020, after being paid in full, to order the State Police Background

> **Check. (NT III, 183; NT IV, 119, 212-213) Had Respondent advised Ms. Dougalas that her felony convictions could not be sealed, Ms. Dougalas would not have paid $5,500 and "could have put her money somewhere else." (NT I, 63; Stip 174) Ms. Dougalas testified that she felt "lied to and gritted." (NT I, 72)**

***See* The Board's Report at 120-121.**

The record does not contain a single shred of proof, let alone clear and satisfactory proofs, that otherwise establish Ms. Dougalas informed Respondent that her prior criminal history was positive for felony convictions before Respondent agreed to the engagement. It is undisputed that when Ms. Dougalas initially contacted Respondent for potential representation, she did not inform him that she was previously convicted of any felonies. *See* ODC-76. Rather, she merely indicated that "[her] convictions are 20 years old." *Id.*

Following Ms. Dougalas's initial inquiry where she did not identify having any felony convictions, she and Respondent spoke. The evidence pertaining to this conversation's substance differs substantially. According to her, Ms. Dougalas did inform Respondent that her prior criminal history included felony convictions. However, Respondent testified that during the call, Ms. Dougalas did not inform him that she had any prior felony convictions. *See* 1/25/2023 Tr. at 163:11-14; *see also* 1/26/2023 Tr. at 55:13-24, 59:13-17, 61:20-62:4, 65:23-66:6, and 103:18-104:5. Regardless, during the

call, Respondent advised Ms. Dougalas about how the expungement process generally works. In doing so, Respondent informed her that, in Pennsylvania, felony convictions cannot be expunged absent certain criteria being met. *See* 1/25/2023 Tr. at 163:11-22; *see also* 1/26/2023 Tr. at 69:18-70:7.

The point here, however, is not whether she and Respondent agree on the substance of the initial conversation. Rather, in order to establish a violation of RPC 8.4(c), it was incumbent to show by clear and satisfactory proofs that Mr. Lento knowingly or recklessly lied to Ms. Dougalas. The "he-said, she said" proofs on this point cannot establish a violation of RPC 8.4(c) by clear and satisfactory proofs. At no time did Respondent attempt to deceive Ms. Dougalas. In fact, Respondent's engagement letter to Ms. Dougalas, which was very promptly sent to her after their initial conversation, unequivocally supports Respondent's version of events:

> **I am conducting *additional research related to your cases* as record sealing law in Pennsylvania is highly nuanced, but from the information *thus far available,* we will *prospectively* be seeking a record sealing of the 3 applicable Luzerne Count, PA, cases, an expungement of the 2 appliable Luzerne County, PA cases, and an expungement of the Mercer County, NJ case.**

ODC-80 (emphasis added).

This is important because it indisputably demonstrates that Respondent would do further research into Ms. Dougalas' case in order to ascertain *whether* he could assist her with her matter. Moreover, the letter makes objectively clear that he would seek to expunge her records, which he did, not that he guaranteed it, which no lawyer could do.

Accordingly, at the time he was retained, and throughout the pendency of the representation, Respondent believed, in good faith, that he could assist Ms. Dougalas with her request for record relief. In fact, he did assist her. Thus, there is no evidence, let alone clear and satisfactory evidence, to support a finding that Mr. Lento violated RPC 8.4(c).

4. The Copelin Matter

The Board concluded that Mr. Lento violated RPC 8.4(c) in this matter because it found there were clear and satisfactory proofs to support the following:

a. Respondent signed his February 4, 2021 text message to Ms. Copelin, "Attorney Joseph D. Lento, Lento Law Firm, Helping Students Nationwide" (ODC-95/Bates 752);

b. During Respondent's February 4, 2021 conversation with Ms. Copelin, in response to Ms. Copelin's statement that she wanted a lawyer, Respondent replied that he "helps students nationwide" and has "helped plenty of students in Georgia" (NT I, 190);

c. Respondent signed his February 4, 2021 email to Ms. Copelin, "Joseph D. Lento, Esquire, Attorney & Counselor at Law, Lento Law Firm, Helping Clients Nationwide" (ODC-96/Bates 755);

d. During Ms. Copelin's February 6, 2021 telephone consult with Mr. Altman and Mr. Lento, Mr. Altman identified himself as an attorney who worked for Mr. Lento (NT I, 92, 198), Ms. Copelin explained that she did not want to handle the case herself and wanted an attorney *(id.* at 192-193), Mr. Lento stated his fee could be more if Ms. Copelin needed him to go to court*(id.* at 196), and Mr. Lento and Mr. Altman failed to inform Ms. Copelin that they could not act as an attorney in Georgia and could only act as her advisor *(id.* at 193, 196, 197, 205, 230); and

e. Mr. Lento failed to explain to Ms. Copelin, in any of his oral conversations or written communication, that he could not be her attorney in Georgia and could only act as her advisor. (NT I, 190; FOF 449, 450, 461(b)).

***See* The Board's Report at 121-122.**

The record here does not contain a single shred of proof, let alone clear and satisfactory proofs, that Respondent deceived or attempted to deceive Ms. Copelin. First, the Board took issue with Mr. Lento's

slogans: "Helping Students Nationwide" or "Helping Clients Nationwide," and that Mr. Lento told Ms. Copelin that he had helped plenty of students in Georgia. The record does not contain any evidence to dispute these assertions. The undisputed evidence provides that Respondent has "represented thousands of students at over a thousand colleges and universities across the United States." *See* ODC-93. In his rebuttal testimony, Mr. Lento testified that he has been handling student disciplinary matters since 2012; now, for almost 13 years. 1/25/23 Tr. at 194:24-195:3. The record is completely devoid of anything that contradicts these statements. A violation of RPC 8.4(c) requires that there be clear and satisfactory proofs of dishonesty, fraud, deceit or misrepresentation. If the record contains nothing to contradict these statements, by way of testimony, exhibits or otherwise, there can be no clear and satisfactory proofs a violation of RPC 8.4(c). Thus, there is no violation of RPC 8.4(c) here.

Second, the Board fully relied only on Ms. Copelin's self-serving testimony regarding the scope of Mr. Lento's services to otherwise establish a violation of RPC 8.4(c). Mr. Lento offered his own rebuttal testimony. Again, this sort of "he-said, she said" proofs do not establish a violation of RPC 8.4(c) by clear and satisfactory proofs. Moreover, the objective evidence (the consultation agreement) shows Ms. Copelin was informed that Respondent's role would be limited to that of an advisor. The Consultation Engagement Letter clearly represents the three states where Respondent was licensed as an attorney: PA, NJ, and

NY. These facts make clear that: (1) Respondent never held himself out as being licensed to practice law in Georgia, (2) Ms. Copelin knew that he was not licensed in Georgia, and (3) that Respondent would only act as her advisor. From his first contact with Ms. Copelin, Respondent informed her what steps could potentially be taken on her behalf. And, importantly, that the steps taken, if any, would be in terms of Respondent serving as an advisor, not an attorney. Therefore, there was no violation of RPC 8.4(c).

RPC 8.4(d)

RPC 8.4(d) prohibits an attorney from engaging in conduct that is prejudicial to the administration of justice. Conduct is deemed prejudicial when it unnecessarily expends the limited time and resources of the court system. *See Office of DisciplinaryCounsel v. James P. Miller*, No. 52 DB 2022 (D. Bd. Rpt. 9/7/2023, p. 36-37) (S. Ct. Order 11/20/2023) (Miller's conduct prejudiced the administration of justice, as he created additional work for the Erie County court system and forced the court to schedule multiple hearings to address Miller's contemptuous behavior). Respondent's conduct in the Red Wine Restaurant matter, Watsons matter, and American Club matter repeatedly violated RPG 8.4(d).

In the Red Wine Restaurant matter, Respondent's conduct unnecessarily expended the time and resources of the federal court when Respondent: (1) failed to substitute Mr. Feinstein's appearance at the prehearing conference in the Red Wine Restaurant case or request

a continuance to find substitute counsel, resulting in Judge Robreno's holding a prehearing conference, dismissing the complaint (Stip 48), entering a Rule to Show Cause Order and holding a hearing, and referring Respondent to Office of Disciplinary Counsel (Stip 51); (2) Respondent's legal assistant incorrectly filed the Red Wine Restaurant case in New Jersey and filed incorrect forms accompanying the case, resulting in the withdrawal of the complaint and unnecessary correspondence with the court; (3) Respondent failed to review the *Red Wine Restaurant II* complaint before it was filed to ensure that it complied with Judge Robreno's Order to include the law on promoter liability and failed to ensure that the coversheet accompanying the *Red Wine Restaurant II* complaint reflected that the complaint had been previously filed, resulting in Judge Robreno issuing a Rule to Show Cause Order, holding a hearing, and referring the matter to Office of Disciplinary Counsel.

In the Watsons matter, through the conduct of Respondent's lawyer and nonlawyer assistants, Respondent unnecessarily expended the time and resources of the Court of Common Pleas when Respondent's nonlawyer assistants filed a Praecipe to Enter Default Judgment that contained inconsistent dates the Notice of Intent to Take Default was seNed (Stip 109), which resulted in the Watsons filing a Petition Strike, the Court's issuance of a Rule to Show Cause Order, Mr. Feinstein's filing a Response to the Petition, the Court holding a Rule to Show Cause hearing, and the Court dismissing the complaint against the Watsons.

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In the American Club matter, the actions of Respondent, Respondent's associate attorney, and Respondent's legal assistant unnecessarily expended the limited time and resources of the Court of Common Pleas when: (1) Respondent's office filed three flawed *Pro Hae Vice* motions; (2) opposing counsel filed responses to Respondent's flawed motions; and (3) the court reviewed the parties' pleadings and entered orders dismissing each of the *Pro Hae Vice* motions.

On this record, we find Respondent's exceptions to be unfounded. Our independent review of the Joint Stipulations of Fact, Petitioner's and Respondent's exhibits, the testimony of Petitioner's witnesses, and Respondent's own testimony, informs our conclusion that the Special Master properly found that the totality of the evidence established Respondent's violations of all rule violations charged in the six matters.

The Special Master found Petitioner's witnesses credible. Ms. Dougalas, Ms. Copelin and Mr. Gardner credibly testified as to how Respondent misled them to pay him legal fees for work that Respondent could not or did not perform. Ms. Feinstein and Mr. Feinstein credibly testified regarding Respondent's failure to supeNise his attorney and non-attorney employees, their efforts to discuss with Respondent the shortcomings in his law office management, Respondent's failure to undertake remedial measures to address these shortcomings, and the negative consequences of Respondent's management of his clients' cases. In contrast, the Special Master found Respondent to be not credible.

The Board gives great deference to the Master's credibility determinations, as he had ample opportunity to assess the witnesses. See *Office of Disciplinary Counsel v. Joseph* Q. *Mirarchi*, No. 56 DB 2016 (D. Bd. Rpt. 5/6/2018, p. 67) (S. Ct. Order 3/18/2019). While there were contradictions between Respondent's version of events and the version of Respondent's former clients and former employees-Respondent described this as "he said" "she said" (Respondent's Brief on Exceptions, p. 8; N.T. oral argument 3/19/2024, p. 12)-upon our independent review, we find no basis to disturb the Master's findings. Moreover, the documentary evidence corroborates the testimony of Petitioner's witnesses. On this record, we conclude that the Master did not err in his conclusions of law.

RESPONDENT'S COUNTER-POSITION CONCERNING RPC 8.4(D)

RPC 8.4(d) states: "it is professional misconduct for a lawyer to (d) engage in conduct that is prejudicial to the administration of justice".

1. Red Wine Restaurant Matter

The Board concluded that Mr. Lento violated RPC 8.4(d) in this matter because it found there were clear and satisfactory proofs to support the following:

a. Mr. Lento failed to substitute Mr. Feinstein's appearance at the prehearing conference in the Red Wine Restaurant case or request a

continuance to find substitute counsel, resulting in Judge Robreno's holding a prehearing conference, dismissing the complaint (Stip 48), entering a Rule to Show Cause Order and holding a hearing, and referring Respondent to Office of Disciplinary Counsel (Stip 51);

b. Mr. Lento's legal assistant incorrectly filed the Red Wine Restaurant case in New Jersey and filed incorrect forms accompanying the case, resulting in the withdrawal of the complaint and unnecessary correspondence with the court; and

c. Mr. Lento failed to review the *Red Wine Restaurant II* complaint before it was filed to ensure that it complied with Judge Robreno's Order to include the law on promoter liability and failed to ensure that the coversheet accompanying the *Red Wine Restaurant II* complaint reflected that the complaint had been previously filed, resulting in Judge Robreno issuing a Rule to Show Cause Order, holding a hearing, and referring the matter to Office of Disciplinary Counsel.

***See* The Board's Report at 123**

Indeed, as previously detailed, it is undisputed Mr. Lento was never the handling attorney for this matter. Accordingly, RPC 5.1(c) and 5.3(c) apply. However, the record is completely devoid of any evidence that Mr.

Lento ratified the conduct or knew of the misconduct at a time that it could have been mitigated. Therefore, there can be no finding that he violated RPCs 8.4(d) for other attorneys'/non-attorneys' incorrect filing of a complaint in the wrong jurisdiction, failure to file a substitution of attorney, and failure to include the requisite legal authority.

2. The Watsons Matter

The Board concluded that Mr. Lento violated RPC 8.4(d) in this matter because it found there were clear and satisfactory proofs to support the following: "through the conduct of Respondent's lawyer and nonlawyer assistants, Respondent unnecessarily expended the time and resources of the Court of Common Pleas when Respondent's nonlawyer assistants filed a Praecipe to Enter Default Judgment that contained inconsistent dates the Notice of Intent to Take Default was served (Stip 109), which resulted in the Watsons filing a Petition Strike, the Court's issuance of a Rule to Show Cause Order, Mr. Feinstein's filing a Response to the Petition, the Court holding a Rule to Show Cause hearing, and the Court dismissing the complaint against the Watsons." *See* The Board's Report at 123-124.

Here, there is no dispute that this matter was delegated to and handled by Mr. Feinstein. In this matter, Mr. Feinstein, drafted and filed the complaint. He then caused the complaint to be filed in a way that did not comport with the Pennsylvania Rules

of Civil Procedure because a process server, rather than a deputized sheriff, served the complaint. After the complaint was filed, the Watsons did not timely serve an answer. Therefore, Mr. Feinstein prepared a Praecipe to Enter Default Judgment. Once prepared, he forwarded it to his legal assistant, Lisa Jones, and informed her to make some edits and once made, the Praecipe could be filed, without any further review or approval by Mr. Feinstein. Ultimately, the Praecipe was filed and the Court entered judgment by default against the Watsons. The Watsons subsequently filed a Petition to Strike Entry of Default Judgment. Mr. Feinstein, as the attorney of record, filed a response to the Petition wherein he essentially argued any deficiency in the Praecipe stemmed from a clerical error. Despite Mr. Feinstein's position, the Court struck the default judgement.

Again, Respondent was never the attorney of record or the attorney with day-to-day responsibility over the file. Accordingly, as previously discussed, RPC 5.1(c) and 5.3(c) apply. However, the record is completely devoid of any evidence that Mr. Lento ratified the conduct or knew of the misconduct at a time that it could have been mitigated. Therefore, there can be no finding that he violated RPCs 8.4(d) for other attorneys'/ non-attorneys' improper filing of the Praecipe.

Appropriate discipline

Having determined that Respondent engaged in serious professional misconduct, we turn next to the

appropriate quantum of discipline to be imposed. In looking at the general considerations governing the imposition of final discipline, it is well established that disciplinary sanctions serve the dual purpose of protecting the public from unfit attorneys and maintaining the integrity of the legal system. *Office of Disciplinary Counsel v. John Keller*, 506 A.2d 872, 875 (Pa. 1986). Another compelling goal of the disciplinary system is deterrence. *In re Dennis Iulo*, 766 A.2d 335, 338, 339 (Pa. 2001). The Board also recognizes that the recommended discipline must be tailored to reflect facts and circumstances unique to the case, including circumstances that are aggravating or mitigating. *Office of Disciplinary Counsel v. Anthony* C. *Cappuccio*, 48 A.3d 1231, 1238 (Pa. 2012). And importantly, while there is no per se discipline in Pennsylvania, the Board is mindful of precedent and the need for consistency in discipline. *Office of Disciplinary Counsel v. Robert Lucarini*, 472 A.2d 186, 189-91 (Pa. 1983).

1. Aggravating factors

This record reveals aggravating factors that weigh in favor of severe discipline.

a. Record of prior discipline

Respondent's prior discipline constitutes a weighty aggravating factor. *See Office of Disciplinary Counsel v. Michael Eric Adler*, No. 88 DB 2022 (D. Bd. Rpt. 11/6/2023, p. 32) (S. Ct. Order 1/23/2024). By Order dated July 17, 2013, the Court suspended Respondent on consent for a period of one year and imposed a consecutive

one year term of probation with a practice monitor. Respondent's misconduct occurred in the latter part of 2011 through early 2012, approximately three years after his admission to the bar in Pennsylvania, and involved his wrongful attempts to solicit client referrals by requesting court employees to enter into a "mutually beneficial business arrangement" and refer potential clients to him. Respondent's prior misconduct and resulting discipline are significant for two reasons: 1) the prior wrongful acts reflect Respondent's attempts to seek professional employment outside the boundaries of the conduct rules, similar to his instant efforts in obtaining employment from clients without regard to ethical rules and with profit his driving motivation; and 2) the disciplinary sanction did not have the intended deterrent effect upon him, as Respondent's probationary period ended in 2015 and his misconduct in the instant matter started in 2018, revealing that the sanction had no appreciable beneficial effect on Respondent's subsequent actions. Considering these concerns, we find it necessary that the sanction imposed for Respondent's instant misconduct be of significant weight, recognizing that the prior suspension and probationary period failed to impress upon him the need to evaluate his actions and change his unethical ways of practicing law.

b. Failure to recognize wrongdoing in certain matters and express remorse

The record demonstrates that Respondent failed to acknowledge and appreciate his wrongdoing in the Gardner, Dougalas, and Copelin matters, and exhibited

an overall lack of sincere remorse for the harm his conduct inflicted on any of his clients. Respondent's lack of genuine remorse compels a heavier disciplinary sanction, as the absence of remorse is an aggravating factor. *See Office of Disciplinary Counsel v. Cynthia Baldwin*, 225 A.3d 817, 858-59 (Pa. 2020). Respondent's failure to express any remorse correlates with his inability to accept that he committed wrongdoing and inflicted harm on his clients. As well, Respondent's failure to acknowledge the harm he inflicted upon the legal profession and the court system is yet more aggravation. *See Office of Disciplinary Counsel v. William H. Lynch*, **No.** 70 DB 2020 (D. Bd. Rpt. 10/21/2021, p. 28) (S. Ct. Order 1/6/2022).

c. Respondent's lack of integrity

The record demonstrates Respondent's lack of integrity in a variety of ways. Respondent placed blame on his clients and employees in an attempt to deflect responsibility, and offered evasive, dubious and incredible testimony on many points regarding his representation of clients and management of his law practice. The impact of Respondent's lack of integrity caused harm to his clients, as shown by the testimony of Mr. Gardner, who felt "lied to and used" (NT I, 152), and Ms. Dougalas, who felt "lied to and gritted." (NT I, 72) Additionally, Respondent submitted false PA Annual Attorney Registration Fee Forms from 2015 to 2022, on which forms he omitted his suspension from the Eastern District of Pennsylvania, providing yet another example of his unwillingness or inability to adhere to rules.

2. Mitigating factors

Upon review of this record, we identity factors of a mitigating nature, as set forth below. We conclude, however, that the weight accorded to these factors does not counter the significant aggravating factors as outlined above.

a. Acceptance of responsibility in certain matters

Respondent recognized his wrongdoing in failing to supervise his employees in the Red Wine Restaurant, Watsons, and American Club matters. Mitigation is appropriate where a respondent demonstrates acceptance of responsibility. *See Office of Disciplinary Counsel v. Robert* G. *Young*, No. 115 DB 2019 (D. Bd. Rpt. 11/30/2020, p. 32) (S. Ct. Order 3/16/2021). However, the weight in mitigation is reduced due to our conclusion that in general, Respondent failed to express credible remorse for the harm he inflicted upon his clients, his colleagues, and the legal profession.

b. Character evidence

Respondent presented the testimony of nine character witnesses. Although these witnesses credibly testified that Respondent was a truthful, honest and law abiding individual, we accord little weight to this testimony, as it revealed that these witnesses had no recent contacts with Respondent professionally or personally, did not know the current disciplinary charges against Respondent,

and did not know that Respondent had a record of attorney discipline. *See Office of Disciplinary Counsel v. Valerie Andrine Hibbert*, No. 215 DB 2019 (D. Bd. Rpt. 2/17/2021, p. 38) (S. Ct. Order4/27/2021) (overall weight and significance of character evidence is undermined where a character witness has little knowledge of the underlying disciplinary charges).

3. Support for a five year term of suspension

Here, the Special Master recommends a suspension for four years, adopting Petitioner's recommendation, while Respondent advocates for a suspension of 18 months or less. Initially, we address the Master's use of a "building block" approach to determine the appropriate sanction, whereby he examined each of the rule violations and decisional law pertinent to the violations and assessed appropriate discipline for the discrete acts of misconduct before reaching the end result of a four year suspension.[8] Respectfully, we disagree with this approach, as in our view it fails to account for the totality of the circumstances and does not capture the essence of Respondent's attitude and approach to his law practice that permeated his actions in each of the six matters.

As amply demonstrated by the evidence presented over seven days of hearing, during a two and a half year period, Respondent, a previously suspended lawyer, repeatedly failed to represent his clients and manage

8. Petitioner employed this approach, as set forth in its Brief to the Special Master.

his law practice in accordance with ethical standards. He engaged in a wide range of misconduct involving: entering into vague fee agreements with clients for legal work that he could not or did not perform through his incompetence, lack of diligence and communication deficiencies; repeatedly filing incorrect or plainly false pleadings in state and federal courts, most egregiously in regard to his motion in support of another attorney's pro hoc vice admission, where Respondent deceitfully concealed his suspension in the Eastern District; and failing to properly manage and supervise his lawyer and nonlawyer employees. Disturbingly, Respondent failed to recognize any wrongdoing for his conduct in the Dougalas, Copelin and Gardner matters and blamed his clients for not understanding the limitations in his representation and his vague fee agreements. Further, Respondent blamed his law associates and nonlawyer employees for not following his instructions or not knowing applicable court rules, which resulted in the law firm's filing multiple incorrect pleadings in the Red Wine Restaurant, American Club and Watsons matters.

The facts of this matter make plain that in the six matters at issue, Respondent placed profit over professionalism. He employed a predatory style of taking on client representation, failing to ascertain whether the client's goals could be accomplished, and nevertheless accepting legal fees.[9] Respondent would either pass off

9. The Gardner and Dougalas matters exemplify this approach. In these matters, Respondent's clients did not become aware that their requested action could not be accomplished until long after Respondent took their money. Mr. Gardner paid

the matter to employees without supervising the work to ensure that it was handled properly, or himself fail to do the work for which he and his firm had been retained. Respondent's explanations of how he practices law and manages his law firms reveal his nonchalance and ineptitude. By his own admission, Respondent did not take written notes of his conversations with clients, failed to keep a copy of documents that he sent to court, had vague and misleading engagement letters, failed to have another attorney review pleadings and motions before they were filed in court, was unfamiliar with procedural rules and established case law, and relied on his office manager to handle the operation of his law firms.

Respondent's theory of practicing law is laid bare by his testimony that he used a "pragmatic" approach to his law practice, explaining that "certain things may not be done as may be required." (NT IV, 145, 158) The record demonstrates that in fact, many "things" were not done as required to comply with the rules of court or ethical rules. Such a confounding statement of his professional approach highlights Respondent's choice to operate a law practice outside the bounds of the rules and underscores his lack of ethical compass, revealing him to be a danger

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Respondent a first installment in August 2018 and a second installment in January 2019 for a total of $9,000 before learning in May 2019 that his expungement request could not be accomplished. Ms. Dougalas retained Respondent in 2020 and paid him $5,500 before he finally advised her in March 2021 that he could not expunge or seal her Pennsylvania felony convictions. In each of these matters, Respondent failed to undertake simple research to ascertain the viability of the requested actions.

to the public and to the integrity of the legal profession. Respondent bore responsibility for the client matters that came to his firm. Here, he wholly abdicated that obligation and in doing so, seemingly forgot that while the practice of law is a business, the fundamental core of that business is the client. Upon this record, we find no evidence that Respondent had genuine concern for his clients.

Having thoroughly reviewed the record, in light of the serious nature of the violations discussed in this Report and the breadth of the misconduct, coupled with the weighty aggravating factors and less significant mitigation, for the following reasons we recommend that the Court suspend Respondent from the practice of law for a period of five years.

The recommended five year period of suspension is supported by the case law. "As is often the case with attorney disciplinary matters, there is no case precedent that is precisely on all fours . . . " *Cappuccio*, 48 A.3d at 1240. While our survey of prior matters did not reveal a case that squares with the instant matter, in reviewing the decisional law, we find cases that provide a benchmark to determine the severity of discipline.

Case precedent suggests that a lengthy suspension is appropriate in matters where the respondent-attorney engages in pervasive misconduct in multiple client matters and there are significant aggravating factors. In the matter of *Office of Disciplinary Counsel v. James P. Miller*, No. 52 DB 2022 (D. Bd. Rpt. 9/7/2023) (S. Ct. Order 11/20/2023), the Court suspended Miller for four years.

The underlying facts demonstrated that Miller, in his capacity as conflicts counsel for Erie County, repeatedly failed to properly represent multiple clients, some of whom were juveniles incarcerated in adult prison, by failing to communicate, failing to act with diligence and promptness to move matters to their conclusion, failing to adhere to deadlines, and failing to follow court orders. Miller also failed to respond to Office of Disciplinary Counsel's requests for information. In aggravation, the Board noted Miller's "grievous" neglect of juvenile defendants as well as his continued procrastination after the court become involved. Miller had no prior history of discipline; however, the Board found that the nature of the repeated neglect and failure to comply with court orders was significantly serious to warrant a lengthy suspension.

In the matter of *Office of Disciplinary Counsel v. Christopher John Basner*, No. 80 DB 2014 (D. Bd. Rpt. 10/16/2015) (S. Ct. Order 12/17/2015), the Court suspended Basner for a period of five years for his misconduct in eleven matters involving neglect, incompetence, failure to communicate with clients, dishonesty, and conduct prejudicial to the administration of justice. Basner displayed a repeated lack of professionalism, which included failing to follow court rules and procedures, filing last minute pre-trial motions, filing meritless briefs, appeals, motions and petitions in various courts, and failing to appear for court, including at jury selection, trial, Megan's Law hearings, sentencing, and contempt proceedings against himself and clients in multiple courts. Basner also failed to refund a fee to one client. Basner had no prior history of discipline.

The Board found that Basner, similar to the instant Respondent, had "little or no understanding of the law, lacks appreciation for the need to comply with court orders, appears unable to understand instructions from judges, and consistently reflects poorly upon the legal profession." D. Bd. Rpt., p. 43. In making its recommendation to the Court, the Board concluded that "[a] suspension of five years is warranted to call appropriate attention to [Basner's] pervasive neglect and incompetence, and his repeated habit of ignoring the rules governing the courts of this Commonwealth and the disciplinary system." Although Basner committed misconduct in more matters than Respondent, the Board's conclusion in *Basner* applies here with equal force, recognizing that Respondent is a repeat offender who has previously been suspended for misconduct that stemmed from his choice to place profit over professionalism.

Upon this record, we conclude that Respondent is not fit to practice law. The serious and troubling misconduct established in this record compels a lengthy suspension in order to protect the public, preserve the integrity of the profession and the courts, and deter other practitioners from engaging in similar misconduct. We recommend that Respondent be suspended for a period of five years.

RESPONDENT'S COUNTER-POSITION ON APPROPRIATE DISCOPLINE

Pursuant to *Local R. Civ. P.* 83.6 II D(3) and/or (4) this Court should find that substantially different action is warranted to avoid a grave injustice in this

matter. To that end, for the reasons stated below, we respectfully submit that this Court should impose a reprimand rather than a five-year suspension.

A. The Law Supports a Finding that Violations of RPCs 1.1, 5.1, 5.3 and 8.4 Warrants a Reprimand Not a Five-Year Suspension.

Pennsylvania case law, which this Court often references in these attorney disciplinary proceedings, provides clear guidance on the imposition of appropriate discipline under these circumstances. Pennsylvania common law clearly holds that a five (5) year suspension is unwarranted, even when accompanied by other, non-serious, infractions and often when a prior ethics history is present.

As noted above, Respondent acknowledges that he violated RPCs 1.1, 5.1, 5.3 and 8.4 in some matters. However, typically, such RPC violations result in a public reprimand being imposed against the attorney, along with the imposition of a probation period. *See Office of Disciplinary Counsel v. Farrell*, No. 80 DB 2023 (public reprimand and probation based upon multiple RPC violations including failure to supervise subordinate lawyer); *Office of Disciplinary Counsel v. Roberts*, No. 132 DB 2022 (public reprimand on consent based upon multiple RPC violations including failure to supervise non-lawyer staff and failure to provide competent representation; no prior discipline); *Office of Disciplinary Counsel v. Ruggiero*, No. 129 DB 2022 (public reprimand on consent based upon multiple

RPC violations including failure to supervise failure to supervise a disbarred attorney; prior discipline); *Office of Disciplinary Counsel v. Weitzman*, No. 140 DB 2018 (public reprimand based upon multiple RPC violations including violation of RPC 8.4(a) and failure to supervise non-lawyer and lawyer staff; prior discipline); and *Office of Disciplinary Counsel v. Michniak*, No. 27 DB 2016 (public reprimand based upon multiple RPC violations including violation of RPC 8.4(c), failure to provide competent representation and failure to supervise non-lawyer; prior discipline).

Accordingly, based on Respondent's admissions, coupled with the insufficient proof of further misconduct, it is clearly apparent that the imposition of a five (5) year suspension is entirely unwarranted in this matter. Based on the legal precedent, the warranted discipline in this matter should not exceed a public reprimand. Therefore, the Court has the authority to reduce the discipline to a reprimand. *Local R. Civ. P.* 83.6 II D(3) and/or (4).

B. Even if this Court Agrees with the State Court in Concluding there was Clear and Satisfactory Evidence to Support a Finding that Mr. Lento Violated all of the Alleged RPCs, the Law Remains Clear that a Five-Year Suspension is Unwarranted.

Even assuming *arguendo* that there was sufficient proof to demonstrate Respondent's violations of *all* of the alleged RPCs, a five-year suspension is still

incredibly unwarranted in this matter in light of the case law. Therefore, the Court still has the authority to reduce the discipline to a reprimand. *Local R. Civ. P.* 83.6 II D(3) and/or (4).

To start, we must note that the Board only cited two (2) cases in its entire report in support its finding of a five-year suspension. We will address why those cases are not persuasive below, but it must first be noted that the Board's Report did not even reference the plethora of other cases that support a drastically different outcome. Therefore, we must conclude that the Board did not consider the cases, which provides this Court with additional authority to conclude that it should impose a substantially different discipline since a five-year suspension is wholly unwarranted and unsupported by the law.

Indeed, cases with similar RPC violations support the fact that a five-year suspension is unwarranted. *See Office of Disciplinary Counsel v. Peter Jude Caroff*, No. 42 DB 2019 (D. Bd. Rpt. 2/25/2020) (S. Ct. Order 6/5/2020) (a combination of Caroff 's neglect, communications failures, trust fund failures, and misrepresentation in one client matter resulted in a one year and one day suspension; prior discipline was an aggravating factor; Caroff admitted his wrongdoing but failed to apologize for how he treated his client); *Office of Disciplinary Counsel v. Bret Keisling*, 65 DB 2017 (D. Bd. Rpt. 6/19/2018) (S. Ct. Order 8/30/2018) (one year and one day suspension based on Keisling's neglect and dishonesty in one client matter; no prior discipline; expressed

remorse); *Office of Disciplinary Counsel v. Richard S. Ross*, No. 189 DB 2020 (D. Bd. Rpt. 1/11/2022) (S. Ct. Order 3/18/2022) (two year suspension based on Ross's misconduct in engaging in a financial transaction with a current client and failing to safeguard the client's interests, thereby taking advantage of that client; prior history of discipline and no remorse served as aggravating factors); *Office of Disciplinary Counsel v. Albert M. Sardella*, No. 132 DB 2019 (D. Bd. Rpt. 9/2/2020) (S. Ct. Order 12/1/2020) (two year suspension based on Sardella's misconduct as executor of an estate, where he charged and collected an excessive fee and engaged in an impermissible conflict of interest in furtherance of his personal interests, and mishandled his IOLTA for an extended period of time; failed to show remorse; no prior discipline).

The disposition of each of the above cases depended on the nature and gravity of the misconduct and the assessment of aggravating and mitigating factors unique to each matter. Nevertheless, regardless of the factual differences, one thing is certain: a five (5) year suspension goes far beyond the pale of warranted discipline in cases with similar misconduct.

Even cases involving multiple client matters have resulted in significantly less discipline than that which was imposed on Respondent by the Commonwealth of Pennsylvania. *See Office of Disciplinary Counsel v. Tangie Marie Boston*, No. 99 DB 2018 (D. Bd. Rpt. 12/10/2019) (S. Ct. Order 2/10/2020) (Supreme Court imposed a suspension of one year and one day on

Boston, who neglected, failed to communicate, and failed to refund unearned fees in four client matters and whose conduct was prejudicial to the administration of justice); *Office of Disciplinary Counsel v. Howard Goldman*, No. 157 DB 2003, (D. Bd. Rpt. 5/20/2005) (S. Ct. Order 8/30/2005) (Supreme Court imposed a one-year-and-one-day suspension on Goldman, who neglected and failed to communicate in four client matters and failed to promptly surrender his unearned fee); and *Office of Disciplinary Counsel v. Susan Bell Bolno*, No. 162 DB 2000, (D.Bd. Rpt. 12/16/2002) (S.Ct. Order 3/7/2003) (Supreme Court imposed a two-year suspension on Bolno, whose mishandling client matters of four client matters involved lack of competence, neglect, failure to communicate, failure to refund her unearned fees to her clients, violations of attorney registration regulations, and failure to answer DB-7 requests).

Here, as stated above, the Board only cited two (2) cases in its entire report to support its conclusion that a five-year suspension was warranted. Those cases were *Office of Disciplinary Counsel v. James P. Miller*, 52 DB 2022 (D. Bd. Rpt. 9/7/2023) (S. Ct. Order 11/20/2023) and *Office of Disciplinary Counsel v. Christopher John Basner*, 80 DB 2014 (D. Bd. Rpt. 10/16/2015) (S. Ct. Order 12/17/2015). Respectfully, those cases could not be more dissimilar to the facts present here as they demonstrate far more egregious conduct.

For instance, in *Miller*, 52 DB 2022, the Board found that:

> **Respondent not only neglected multiple [nine] matters over a period of approximately two years, which egregiously included two cases where juvenile defendants were housed in adult prison without contact from their court-appointed attorney for months, he shirked his responsibility to comply with court orders of the lower court and the Superior Court. This included the Administrative Order that directed him to turn over 50 files to successor counsel appointed to stanch the flow of complaints from defendants arising from Respondent's incompetence, lack of communication, and lack of diligence. Respondent's refusal to comply with the Administrative Order and other orders forced the court at various times to issue rules to show cause and schedule contempt hearings. Even when Respondent was given an opportunity after his removal from the 50 other matters to represent Mr. Evans, he again failed to meet deadlines and fulfill his professional responsibilities, resulting in a finding of contempt. Respondent offered no credible evidence to explain his persistent failure to meet his ethical duties to his clients and to the courts.**

Id. **at 42.**

In this case, Respondent was not a court-appointed attorney to any of his clients, and certainly, not to any

juveniles housed in adult prisons. Respondent did not go months without communicating with his clients. Additionally, while Respondent's firm was barred from representation of a client in a single matter (in which Respondent did not have any direct involvement in the case as he was not admitted in the EDPA, but rather, the case involved two highly experienced attorneys and a third attorney serving as local counsel), Respondent was certainly not removed from or directed to turnover any more of his files. Moreover, Respondent was *never* found to be in contempt of court. Furthermore, Miller involved nine (9) cases whereas this case involves six (6) matters, i.e. 33% less. Even still, despite these very notable differences, which indisputably make the *Miller* matter far more egregious than any allegations levied against Respondent, *Miller was ultimately suspended from practice for four years.*

Likewise, in *Basner*, 80 DB 2014, that respondent, in connection with *eleven (11)* client matters had, among other things: filed last minute pre-trial motions in serious criminal matters as well as meritless briefs, appeals, motions and petitions across various Pennsylvania courts; demonstrably misunderstood the law and provided incorrect facts in motions filed with the court; did not appear for a scheduled trial resulting in an article being written about him entitled, "Lawyer Fails to Show Up at Trial. Judge: Basner earning a reputation in area for 'this sort of behavior," as well as a blog post being published on "Above the Law;" and sent fill-in-the-blank documents to a legally blind client. Ultimately, the Board found that:

> **This case represents an extreme example of client neglect and incompetence by an attorney, as the misconduct started almost as soon as Respondent began his practice in Pennsylvania in 2008, and it never stopped. Respondent developed a reputation in Central Pennsylvania for shoddy work product, lack of preparation and lack of professionalism. President Judge Searer, President Judge Morrow, and Judge Mummah took the unusual step of privately discussing with Respondent their well-founded concerns as to these issues, and held an *en banc* contempt proceeding in October 2010, at which two judges spent a day in court with Respondent addressing these basic practice problems and the misconduct they experienced in Respondent's cases before the 41st Judicial District. These efforts to assist Respondent were for naught. Respondent did not take any immediate corrective actions, displaying a monumental lack of insight into how he is perceived by the court and fellow attorneys. Thereafter, the judges continued to employ sanctions, bench warrants and Rules to Show Cause in an effort to force Respondent to improve his performance and professionalism, yet these efforts were unsuccessful. Judge Mummah noted that he ceased using these tools, as he felt that nothing worked to correct Respondent's behavior.**

***Id.* at 42-43.**

Again, the facts in *Basner* could not be more dissimilar from the facts present in the instant matter. As an initial matter, Respondent does not have a reputation—let alone a published reputation—for shoddy work product, lack of preparation or lack of professionalism. On the contrary, the underlying record demonstrates that nine (9) witnesses testified on Respondent's behalf to attest to his overall good character, his fitness as a good attorney and, generally, as a good person. Respondent, although he has been subject to Rules to Show Cause, has not been subject to any bench warrants or *en banc* contempt proceedings. Additionally, unlike in *Basner*, Respondent has acknowledged that he has committed several RPC violations and immediately took corrective actions to remedy any missteps taken including, but not limited to: implementing a written policy to address proper filing and service of process; increasing training and use of electronic case management software for calendaring and document management; recording all consultation calls and other applicable external telephone communications; and continuing to consult with outside counsel regarding management of the firm.

C. Further Mitigation in Support of a Reprimand.

Additionally, Respondent submitted several mitigating factors to the Pennsylvania Board, some of which were discounted or ignored in the decision to suspend Respondent.

First, Respondent completely cooperated with the Pennsylvanian authorities' excessive investigations, despite the sacrifices to his practice, by timely providing information and documents upon request, stipulating to numerous facts, and admitting to misconduct in several instances.

Second, Respondent presented nine (9) character witnesses, with excellent reputations in the legal community, that testified positively regarding Respondent's reputation for being an honest, truthful, and law-abiding citizen. Additionally, although he was ultimately precluded from providing them, Respondent was prepared to provide the Pennsylvania Board with approximately fifty (50) character witness letters in support of his reputation for being an honest, truthful and law-abiding citizen. It is notable that the Master approved the introduction of Respondent's approximate fifty character letters on January 24, 2023, the second day of hearing proceedings. However, in a fundamentally arbitrary, capricious, and unreasonable act, the Master subsequently disallowed the introduction of the letters after the hearing concluded.

Third, it is not the case, nor was there any finding, that any of Respondent's clients involved were irreparably harmed, financially or otherwise. Indeed, none of Respondent's conduct can be said to have been intentional nor undertaken for the purposes of personal gain. In fact, as stated above, Respondent voluntarily returned fees to the following clients: Mr. Gardner ($3,500.00), Ms. Dougalas ($5,500.00), and Ms. Copelin ($2,500.00).

Fourth, Respondent immediately took a number of steps to ensure that any mistakes that happened in these matters do not happen again. Specifically, Respondent maintained and continues to maintain an electronic case management software, Clio, for calendaring and document management. Respondent increased his understanding of CLIO's features and has expanded his use of the software to more efficiently manage his practice. Respondent ensures that his attorney and non-attorney staff are trained in proper use of the software. Additionally, Respondent and his staff also record all consultations calls and other applicable calls. Accordingly, Mr. Lento is not a threat to the public.

In sum, Respondent is not seeking to avoid discipline; he is asking that it be imposed, but in a manner that does not further suspend him from the practice of law. He is not an attorney who is reckless, malicious, uncooperative, nor shows a disregard for this profession or the ethics system; rather, the record reflects just the opposite; Respondent is contrite and has learned his lesson. While he admits that he made mistakes, he has grown. He poses no threat to this profession nor to his clients. All he asks is the opportunity to demonstrate it.

IV. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Joseph D. Lento, be Suspended for five years from the practice of law in this Commonwealth.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD
OF THE SUPREME COURT OF
PENNSYLVANIA

By: /s/ Joshua M. Bloom
Joshua M. Bloom, Member

Date: ·7-1-::.'.i

APPENDIX C — RESPONSE OF THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA TO MOTION, FILED SEPTEMBER 5, 2024

Thomas J. Farrell
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THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL
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Appendix C

September 5, 2024

VIA PACFile

Prothonotary
Supreme Court of Pennsylvania
Western District Office
801 City-County Building
Pittsburgh, PA 15219
Attention: Betsy Ceraso, Esquire
Deputy Prothonotary

RE: Office of Disciplinary Counsel
v. JOSEPH D. LENTO
No. 80 DB 2022
Attorney Registration No. 208824
(Philadelphia)

Dear Prothonotary:

Attached for filing in the above-referenced matter is Office of Disciplinary Counsel's Answer to Joseph D. Lento's Motion to File a Brief or Supplemental Petition Addressing the Details of the ODC's [sic] Report. A conforming copy of this letter and its attachment is being served on Petitioner's counsel by first-class mail and email.

Respectfully,

/s/ Harriet R. Brumberg
Harriet R. Brumberg
Disciplinary Counsel

Appendix C

IN THE SUPREME COURT OF PENNSYLVANIA

No. 3063 DD 3

No. 80 DB 2022

Atty. Reg. No. 208824

(Philadelphia)

OFFICE OF DISCIPLINARY COUNSEL,

Petitioner,

v.

JOSEPH D. LENTO,

Respondent.

OFFICE OF DISCIPLINARY COUNSEL'S ANSWER TO JOSEPH D. LENTO'S MOTION TO FILE A BRIEF OR SUPPLEMENTAL PETITION ADDRESSING THE DETAILS OF THE ODC'S [SIC] REPORT

Office of Disciplinary Counsel ("ODC"), by Thomas J. Farrell, Chief Disciplinary Counsel, and Harriet R. Brumberg, Disciplinary Counsel, files the within Answer to Joseph D. Lento's Motion to File a Brief or Supplemental Petition Addressing the Details of the ODC's [sic] Report (hereinafter Motion), and respectfully requests this Honorable Court to deny the Motion and suspend Mr. Lento from the practice of law for five years, as recommended in the July 2, 2024 Report and Recommendation of the Disciplinary Board of the Supreme Court of Pennsylvania.

Appendix C

1. DENIED as written. Mr. Lento is the *Respondent* in the July 2, 2024 Report and Recommendation of the Disciplinary Board of the Supreme Court of Pennsylvania and the Disciplinary Board's Request for Supreme Court Action.

2. ADMITTED.

3. ADMITTED.

4. ADMITTED.

5. DENIED. As explained in ODC's Answer to Mr. Lento's Petition for Review, the Disciplinary Board's findings of fact were not erroneous or contrary to the evidence. The Disciplinary Board's findings of fact are consistent with the Hearing Officer's findings of fact and fully supported by the testimony of ODC's five witnesses, the testimony of Mr. Lento himself, ODC's and Mr. Lento's exhibits, and the reasonable inferences therefrom. Moreover, the Hearing Officer and the Disciplinary Board found that ODC's witnesses were credible,[1] while finding Mr. Lento's testimony was not credible.[2] These comprehensive findings should be given substantial deference. ***Office of Disciplinary Counsel v. Altman,*** 228 A.2d 319, 338 (Pa. 2020) ("the findings of the Hearing

1. *See* Hearing Officer Rpt., FOF 17, 23, 33, 329, 344, 431, 453; D.Bd. Rpt. FOF 16, 426, 448, 480, 481, pp. 124-125.

2. *See* Hearing Officer Rpt., FOF 48, 124, 127, 146, 156, 342, 425, 488, pp. 68 n.3, 140; D.Bd. Rpt. FOF 47, 123, 126, 145, 155, 321, 338, 420, 492, pp. 125, 127).

Committee and Disciplinary Board are guidelines for judging the credibility of witness and should be given substantial deference.") (citation omitted)

6., 7., 8. DENIED. There is no factual or legal basis to grant "leave" for additional pleadings in this protracted attorney disciplinary matter so that Mr. Lento "can explain" his objections. The Disciplinary Board's Report and Recommendation sets forth a balanced examination of the facts, conclusions of law, and recommendation for discipline that will enable this Court's review without further explanation.

Prior to the Disciplinary Board writing its Report, the Board reviewed the record before the Hearing Officer, read the Hearing Officer's Report and Recommendation, considered Mr. Lento's Brief on Exceptions and ODC's Brief Opposing Exceptions, heard oral argument, and analyzed relevant attorney discipline cases. Thereafter, the Disciplinary Board wrote a Report explaining its review process, finding that Mr. Lento's misconduct constituted 48 RPC violations, and recommending to this Court that Mr. Lento receive a five-year suspension. (D.Bd. Rpt., 99-102, 131, 133) Given the Disciplinary Board's exhaustive examination of the record resulting in 503 Findings of Fact and 20 conclusions of law, this Honorable Court needs no further briefing to enable it to review the Disciplinary Board's comprehensive Report and Recommendation.

9. DENIED. The Disciplinary Board's Report and Recommendation is not a "one sided version of the record."

In fact, the Board relied heavily on Mr. Lento's testimony:

> By his own admission, Respondent [Mr. Lento] did not take written notes of his conversations with clients, failed to keep a copy of documents that he sent to the court, had vague and misleading engagement letters, failed to have another attorney review pleadings and motions before they were filed in court, was unfamiliar with procedural rules and established case law, and relied on his office manager to handle the operation of his law firm.

D. Bd. Rpt., 130.

Further briefing, particularly by a party who does not comprehend that ODC did not author the Report and Recommendation, will not assist the Court and only serve to further delay adjudication of this serious matter.

10. DENIED. "Fundamental fairness" does not "dictate[] that [Mr. Lento] be able to present to this Honorable Court" a "conflicting version of the record." The record before the Court is closed. Mr. Lento had the opportunity before the Hearing Officer and Disciplinary Board to present his "version" of the record. Indeed, Mr. Lento testified as to his version: he had a "pragmatic" approach to practicing law and that "certain things may not have been done as may be required." (NT IV, 145, 158)

11. DENIED. It would be contrary to the "best interest of this Honorable Court, the parties before this

Court, the legal profession and the people of Pennsylvania" to entertain Mr. Lento's request for "further interpretation and discussion of the record." The record is ripe for this Honorable Court's review. Mr. Lento's attempt to delay this Court's prompt review with additional pleadings would enable Mr. Lento to continue to "place profit over professionalism" and further endanger the public, courts, and profession. *See* D.Bd. Rpt., 130, 133. Mr. Lento's motion should be denied.

WHEREFORE, ODC respectfully requests that your Honorable Court deny Mr. Lento's Motion to File a Brief or Supplemental Petition Addressing the Details of the ODC's [sic] Report, adopt the Disciplinary Board's Report and Recommendations, and enter an Order suspending Mr. Lento from the practice of law for five years.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Thomas J. Farrell
Chief Disciplinary Counsel

By /s/ Harriet R. Brumberg
Harriet R. Brumberg
Disciplinary Counsel
1601 Market Street, Suite 3320
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(215) 560-6296

APPENDIX D — PETITIONER'S MOTION TO FILE A BRIEF OR SUPPLEMENTAL PETITION ADDRESSING THE DETAILS OF THE ODC'S REPORT, IN THE SUPREME COURT OF PENNSYLVANIA, FILED AUGUST 27, 2024

IN THE
SUPREME COURT OF PENNSYLVANIA

Case No. 3063 DD 3

OFFICE OF DISCIPLINARY COUNSEL

v.

JOSEPH D. LENTO

Disciplinary Board No. 80 DB 2022

Attorney Registration No. 208824 (Philadelphia)

Filed August 27, 2024

PETITIONER'S MOTION TO FILE A BRIEF OR SUPPLEMENTAL PETITION ADDRESSING THE DETAILS OF THE ODC'S REPORT

AND NOW comes the Movant, **JOSEPH D. LENTO**, by and through his undersigned counsel, Lawrence A. Katz, Esquire, and moves this Honorable Court to

grant him leave to file a brief or supplemental petition to address the details in the ODC's July 2, 2024 *Report And Recommendations.*

In support of this Motion, Movant represents as follows:

1. Movant is the subject of the ODC's July 2, 2024 *Report And Recommendations Of The Disciplinary Board Of The Supreme Court Of Pennsylvania, And Its Request For Supreme Court Action.*

2. The Report contains 503 Findings of Fact.

3. The Report contains 20 Conclusions.

4. The Report has 134 pages.

5. As discussed in Movant's *Petition for Review*, ¶ 13, "The DB made multiple erroneous findings of fact that were directly contrary to the evidence and/or inconsistent with the evidence."

6. Movant seeks leave to file a brief or supplemental petition so that specific objections to the challenged findings of fact can be clearly articulated to this Honorable Court, with pinpoint citations to the record to support the objections.

7. Movant further seeks leave to file a brief or supplemental petition so that he can explain to this

Honorable Court why, in light of the specific objections to the challenged findings of fact, the ODC's conclusions were faulty.

8. Finally, Movant seeks leave to file a brief or supplemental petition so that he can explain to this Honorable Court why the ODC's recommendations are not warranted by the evidence when the inaccurate facts in the ODC's Report are viewed in light of the Movant's objections and clarifications based upon the record.

9. In its 135 page document, the ODC has presented this Honorable Court with one version of the record.

10. Fundamental fairness dictates that Movant be able to present this Honorable Court with the conflicting version of the record.

11. It is in the best interest of this Honorable Court, the parties before this Court, the legal profession, and the people of Pennsylvania for this Honorable Court to not view the ODC's Report in a vacuum, but only after *both parties'* interpretation and discussion of the record has been reviewed.

WHEREFORE, **JOSEPH D. LENTO**, moves this Honorable Court to grant him leave to file a brief or

supplemental petition to address the details in the ODC's July 2, 2024 *Report And Recommendations.*

Respectfully submitted,

LENTO LAW GROUP

s/Lawrence A. Katz, Esq.
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APPENDIX E — OFFICE OF DISCIPLINARY COUNSEL'S ANSWER TO JOSEPH D. LENTO'S PETITION FOR REVIEW IN THE SUPREME COURT OF PENNSYLVANIA, FILED AUGUST 26, 2024

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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August 26, 2024

Appendix E

VIA PACFile
Prothonotary
Supreme Court of Pennsylvania
Western District Office
801 City-County Building
Pittsburgh, PA 15219
Attention: Betsy Ceraso, Esquire
Deputy Prothonotary

RE: Office of Disciplinary Counsel
v. JOSEPH D. LENTO
No. 3063 DD 3
No. 80 DB 2022
Attorney Registration No. 208824
(Philadelphia)

Dear Prothonotary:

Attached for filing in the above-referenced matter is Office of Disciplinary Counsel's Answer to Joseph D. Lento's Petition for Review. A conforming copy of this letter and its attachment is being served on Petitioner's counsel by first-class mail and email.

Respectfully,

/s/ Harriet R. Brumberg

Harriet R. Brumberg
Disciplinary Counsel

Appendix E

HRB/red
Attachments
cc: Marcee D. Sloan, Board Prothonotary
Lawrence A. Katz, Esquire, Counsel for Petitioner
Thomas J. Farrell, Chief Disciplinary Counsel

Appendix E

IN THE SUPREME COURT OF PENNSYLVANIA

No. 3063 DD 3

No. 80 DB 2022

Atty. Reg. No. 208824

(Philadelphia)

OFFICE OF DISCIPLINARY COUNSEL,

Petitioner,

v.

JOSEPH D. LENTO,

Respondent.

OFFICE OF DISCIPLINARY COUNSEL'S ANSWER TO JOSEPH D. LENTO'S PETITION FOR REVIEW

Office of Disciplinary Counsel ("ODC"), by Thomas J. Farrell, Chief Disciplinary Counsel, and Harriet R. Brumberg, Disciplinary Counsel, files the within Answer to Joseph D. Lento's Petition for Review ("PFR") and respectfully requests this Honorable Court deny the PFR and suspend Petitioner Lento from the practice of law for five years, as recommended in the July 2, 2024 Report and Recommendation of the Disciplinary Board of the Supreme Court of Pennsylvania.

Appendix E

I, *STATEMENT OF JURISDICTION*

1. ADMITTED in part and denied in part. Admitted that pursuant to 42 Pa.C.S. §§ 700-763, this Honorable Court has jurisdiction to review decisions of the Disciplinary Board of the Supreme Court of Pennsylvania.

DENIED that the Superior Court of Pennsylvania has jurisdiction of Petitioner Lento's Petition for review. Title 42 Pa.C.S. § 725(5) provides that the Supreme Court of Pennsylvania shall have the exclusive jurisdiction of appeals from judicial agencies, including the "agency vested with the power to discipline or recommend the discipline of attorneys at law."[1] On July 16, 2024, Petitioner Lento filed a Petition for Review in the Superior Court of Pennsylvania and captioned his pleading ***"Disciplinary Board of the PA Supreme Court v. Joseph D. Lento."*** The Superior Court assigned Petitioner Lento's pleading docket number 65 EDM 2024. Petitioner Lento failed to serve ODC, a party to all disciplinary proceedings (Pa.R.D.E. 207(c)(1)), with a copy of his PFR as mandated by Pa.R.A.P. 1514(c). By Order dated August 14, 2024, the Superior Court found "it appears there was an active matter [pending] in the Supreme Court of Pennsylvania at Docket No. 3063 DO3" and entered an Order transferring the Petition for Review to this Honorable Court. The Supreme Court docketed the Petition for Review as having been filed on July 16, 2024.

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1. ODC neither admits nor denies that the Prothonotary of the Supreme Court, Superior Court, and Commonwealth Court all had advised (erroneously) counsel for Petitioner Lento to file his PFR of the Disciplinary Board's Report and Recommendation with the Superior Court of Pennsylvania.

2. ADMITTED.

II. *PARTIES*

3. ADMITTED.

4. DENIED that Respondent herein is the Disciplinary Board. The Respondent herein is ODC, which is charged with the duty to "investigate all matters involving alleged misconduct" and to prosecute violations of the Rules of Professional Conduct (RPC). Pa.R.D.E. 207(b)(1), (2).

It is further denied that the Disciplinary Board "investigated certain allegations" of Petitioner Lento's RPC violations. As set forth in D.Bd. Rule § 93.23(1), it is the duty of the Disciplinary Board to "consider the conduct of any person subject to the Enforcement Rules ***after*** investigation by Disciplinary Counsel." (emphasis added) The Note accompanying the Rule states "[i]n order to avoid the commingling of prosecutorial and adjudicative functions, which would be a violation of due process . . . **the Office of Disciplinary Counsel is charged with the duty of investigating and prosecuting all disciplinary matters subject to adjudication by the Board**." (emphasis added)

III. *FACTUAL AND PROCEDURAL BACKGROUND*

5. ADMITTED that ODC filed a Petition for Discipline (PFD) on June 3, 2022. ODC's PFD charged Petitioner Lento with 48 RPC violations in six client matters during the course of two-and-one-half years.

6. ADMITTED that Petitioner Lento filed an Answer to the PFD on July 18, 2022. Petitioner Lento denied all charges.

7. ADMITTED.

8. ADMITTED.

9. ADMITTED. By way of further answer, on the first day of Petitioner Lento's disciplinary hearing, ODC introduced Joint Stipulations and exhibits and called three of Petitioner Lento's former clients as witnesses. The clients testified credibly regarding how Petitioner Lento misled them to pay a substantial legal fee for work that Petitioner Lento could not or did not perform. (D.Bd. Rpt., 7-19, 63-79, 79-94) The next day, ODC presented the credible testimony of two of Petitioner Lento's former employees. Both witnesses testified regarding Petitioner Lento's failure to supervise his attorneys and non-attorney employees, their efforts to discuss with Petitioner Lento the shortcomings in his law office management, Petitioner Lento's failure to undertake remedial measures to address these shortcomings, and the negative consequences of Petitioner Lento's mismanagement on his clients' cases and his law firm's employees. (D.Bd. Rpt., 19-45, 45- 54, 54-63)

During the next three days, Petitioner Lento testified on his own behalf. In sum, Petitioner Lento failed to recognize any wrongdoing for his deceitful conduct and blamed his clients for not understanding the limitations in his representation and his vague fee agreements. (D.Bd.

FOF 490) Furthermore, Petitioner Lento blamed his law associates and non-lawyer assistants for not following his instructions or not knowing applicable court rules, which resulted in his law firms' filing multiple incorrect pleadings. (*Id.*) Petitioner Lento's testimony revealed the dysfunctional nature of his two semi-virtual law firms, Lento Law Group (LLG) and Lento Law Firm (LLF): Petitioner Lento did not take written notes of his conversations with clients; failed to keep a copy of documents that he sent to court; had vague and misleading Letters of Engagement; failed to have another attorney review pleadings and motions before they were filed in court; was unfamiliar with the Rules of Civil Procedure and established case law; and relied heavily on his office manager to handle the operation of his law firms. Although Petitioner Lento ultimately recognized his failure to supervise his employees and have procedures in place to prevent mishandling of client matters, Petitioner Lento failed to express remorse for the harm his misconduct inflicted on his clients, the court system, and the profession as well as his former employees. (D.Bd. FOF 488, 489)

On January 29, 2023, Petitioner Lento rested his case without calling any witnesses on his own behalf. The Hearing Officer found ODC had established at least one RPC violation and continued the proceedings to hear evidence relevant to the quantum of discipline to be imposed.

10. ADMITTED that Petitioner Lento's hearing resumed on March 6 and March 8, 2023. At the outset, ODC introduced aggravating evidence pursuant to D.Bd.

Rule § 89.151(b), including evidence of Petitioner Lento's disciplinary history, his unsuccessful attempt to seek reinstatement to the Eastern District of Pennsylvania (EDPA), and his lack of recognition of prior misconduct. (Hearing Officer Report, FOF 480, 481) Petitioner Lento then introduced the testimony of nine-character witnesses, who had limited, remote, or isolated professional contacts with Petitioner Lento. (D.Bd. Rpt. FOF 495)

On September 18, 2023, the Hearing Officer filed his Report finding that Petitioner Lento violated all charged RPCs and recommending Petitioner Lento receive a four-year suspension. On November 7, 2023, Petitioner Lento filed a Brief on Exceptions; on December 19, 2023, ODC filed its Brief Opposing Exceptions.

11. ADMITTED that on July 2, 2024, the Disciplinary Board submitted its findings of fact and recommendation for discipline to this Court. The Disciplinary Board made 503 findings of fact and concluded ODC met its burden of proof that Petitioner Lento's misconduct in six client matters constituted 48 violations of the RPCs. (*Id.,* 99-102)

In determining the appropriate quantum of discipline for the totality of Petitioner Lento's misconduct, the Disciplinary Board considered 8 aggravating factors, including that Petitioner Lento:

- has a record of public discipline;
- betrayed the trust of his clients;

- failed to recognize his wrongdoing in his handling of his clients' matters;

- failed to express sincere remorse;

- failed to recognize the harm his misconduct inflicted on his clients, former employees, and legal profession;

- failed to accept responsibility and blamed his employees, his clients, and other attorneys for his misconduct;

- gave evasive answers to questions and his testimony was not credible; and

- filed false PA Attorney Annual Fee forms omitting his suspension from the EDPA.

D.Bd. Rpt. FOF 485-492.

After consideration of applicable precedent for Petitioner Lento's vast array of misconduct and serious aggravating facts, the Disciplinary Board recommended that Petitioner Lento receive a five year suspension. (D.Bd. Rpt., 125-133)

IV. ***DETERMINATION SOUGHT TO BE REVIEWED***

12. ADMITTED.

Appendix E

V. *OBJECTIONS TO FINAL ORDER*

13. DENIED the Disciplinary Board made "multiple erroneous findings of fact that were directly contrary to the evidence and/or inconsistent with the evidence."

By way of further answer, the Disciplinary Board made 503 findings of fact and the certified record is 3,157 pages. Petitioner's objection, which lacks either a reference to a specific erroneous finding of fact to be addressed or citation to the certified record, should be rejected outright.

Furthermore, the Disciplinary Board's findings of fact are fully supported by the testimony of ODC's five witnesses, the testimony of Petitioner Lento himself, ODC's and Petitioner Lento's exhibits, and the reasonable inferences therefrom. The Hearing Officer and the Disciplinary Board found that ODC's witnesses were credible,[2] while finding Petitioner Lento's testimony was not credible.[3] These comprehensive findings should be given substantial deference. ***Office of Disciplinary Counsel v. Altman,*** 228 A.2d 319, 338 (Pa. 2020) ("the findings of the Hearing Committee and Disciplinary Board are guidelines for judging the credibility of witness and should be given substantial deference.") (citation omitted) In sum, there is no basis for Petitioner Lento's objection to the Disciplinary Board's findings of fact.

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2. *See* Hearing Officer Rpt., FOF 17, 23, 33, 329, 344, 431, 453; D.Bd. Rpt. FOF 16,426,448,480,481, pp. 124-125.

3. *See* Hearing Officer Rpt., FOF 48, 124, 127, 146, 156,342,425,488, pp. 68 n.3, 140; D.Bd. Rpt. FOF 47, 123, 126, 145,155,321,338,420,492, pp. 125, 127).

14. DENIED that the Disciplinary Board's "decision" recommending Petitioner Lento receive a five-year suspension "should be reversed."

By way of further answer, without providing an explanation or an alternative discipline recommendation, Petitioner Lento makes the blanket assertion that the Disciplinary Board's recommendation was "unreasonable, excessive, and disproportionate." Petitioner Lento also fails to cite a single fact or disciplinary case that would justify imposition of lessor discipline for the plethora of Petitioner Lento's misconduct. The Disciplinary Board's well-supported recommendation should be adopted.

A review of the Disciplinary Board's Report reveals the Disciplinary Board thoroughly examined the extensive record, making 503 Findings of Fact and 20 conclusions of law. (D.Bd. Rpt, 1-102) The Disciplinary Board then considered the aggravating and mitigating factors to tailor the discipline to reflect the facts of this case. (*Id.*,126- 129) Thereafter, the Disciplinary Board focused on relevant attorney discipline cases. (*Id.*, 129-133)

Finally, the Disciplinary Board concluded, "[h] aving thoroughly reviewed the record, in light of the serious nature of the violations . . . and the breadth of the misconduct, coupled with the weighty aggravating factors and less significant mitigation, [it] recommend[ed] that the Court suspend [Petitioner Lento] from the practice of law of a period of five years." (*Id.*, 131) The Board reasoned that Petitioner Lento's "serious and troubling misconduct established in this record compels a lengthy suspension

in order to protect the public, preserve the integrity of the profession and the courts, and deter other practitioners from engaging in similar misconduct." (*Id.*, 133) *See* ***Office of Disciplinary Counsel v. Christie,*** 639 A.2d 782, 785 (Pa. 1994)(the purpose of the attorney discipline system is to protect the public from unfit attorneys and to maintain the integrity of the legal system); ***In re Iulo,*** 766 A.2d 335, 338-339 (Pa. 2001) (deterrence is a goal of the attorney discipline system). The Disciplinary Board's reasoned, measured, and proportionate recommendation that Petitioner Lento receive a five-year suspension should be adopted. *See, e.g.,* ***Office of Disciplinary Counsel v. Christopher John Basner,*** No. 80 DB 2014 (D.Bd. Rpt. 10/16/2015)(8.Ct. Order 12/17/2015)

15. DENIED. For the reasons set forth in paragraph 14, *supra,* this Court should adopt the Disciplinary Board's recommendation that Petitioner Lento receive a five-year suspension.

VI. *RELIEF SOUGHT*

16. DENIED. By way of further answer, ODC recommends that this Honorable Court adopt the Disciplinary Board's Report and Recommendations and enter an Order suspending Respondent from the practice of law for five years.

WHEREFORE, ODC respectfully requests that your Honorable Court deny Petitioner Lento's Petition for Review, adopt the Disciplinary Board's Report and

Appendix E

Recommendations, and enter an Order suspending Respondent from the practice of law for five years.

Respectfully submitted,

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APPENDIX F — PETITION FOR REVIEW IN THE SUPERIOR COURT OF PENNSYLVANIA, FILED JULY 16, 2024

IN THE SUPERIOR COURT OF PENNSYLVANIA

Disciplinary Board No. 80 DB 2022

Attorney Registration No. 208824 (Philadelphia)

OFFICE OF DISCIPLINARY COUNSEL

v.

JOSEPH D. LENTO

Filed July 16, 2024

PETITION FOR REVIEW

AND NOW comes the Petitioner, **JOSEPH D. LENTO**, by and through his undersigned counsel, Lawrence A. Katz, Esquire, and petitions this Honorable Court for review of the July 2, 2024 *Report And Recommendations Of The Disciplinary Board Of The Supreme Court Of Pennsylvania, And Its Request For Supreme Court Action.*

In accordance with Pa.R.A.P. 1513, Petitioner provides the following:

STATEMENT OF JURISDICTION

1. This Honorable Court has jurisdiction under Part 7 of the Judicial Code 42 Pa. Cons. Stat. §§ 700-763

to review decisions of the Disciplinary Board Of The Supreme Court Of Pennsylvania (DB).[1]

2. In reviewing a determination issued by the DB, this Court's standard of review is de novo, and its scope of review is plenary.

PARTIES

3. Petitioner herein, Joseph D. Lento, is an attorney-at-law licensed in the Commonwealth of Pennsylvania. (To avoid confusion, Mr. Lento, who was Respondent before the DB and is Petitioner in this Honorables Court, will simply be referred to as Lento.)

4. Respondent herein, the DB, is the Disciplinary Board of the Pennsylvania Supreme Court, created by the Supreme Court of Pennsylvania, which investigated certain allegations about inappropriate practices and made an adverse ruling against Lento, in its July 2, 2024 Report And Recommendations. (To avoid confusion, the

1. Although the Finding and Report were submitted to the Supreme Court, on July 8, 2024, the Prothonotary of the Supreme Court informed undersigned counsel that the appropriate manner to appeal the Disciplinary Boards' Findings and Recommendation was not through a. Notice of Appeal, but through a Petition for Review, and that it was to be filed in the Superior Court. Because appeals of government agency decisions are usually filed in the Commonwealth Court, undersigned counsel also spoke with the Prothonotary of both the Superior and Commonwealth Courts who verified the information provided by the Prothonotary of the Supreme Court.

DB, who was Petitioner before the DB and Respondent in this Honorables Court, will simply be referred to as DB.)

FACTUAL AND PROCEDURAL BACKGROUND

5. On June 3, 2022, the Office of Disciplinary Counsel filed a Petition for Discipline against Lento and charged him with violations of the Rules of Professional Conduct related to six matters.

6. On July 18, 2022, Lento filed an Answer to the Petition below.

7. Due to the anticipated length of the disciplinary hearing, by Order dated August 25, 2022, the Board Chair appointed former Board Member Stewart L. Cohen, Esquire, as Special Master, pursuant to Pa.R.D.E. 206(d), to conduct the hearing and submit a report to the Board.

8. The Special Master held prehearing conferences on November 1, 2022 and January 13, 2023.

9. The disciplinary hearing was held on January 23-27, 2023.

10. The hearing resumed on March 6, 2023 and March 8, 2023.

11. On July 2, 2024, the DB submitted its findings and recommendations, together with the entire record to the Pennsylvania Supreme Court.

Appendix F

DETERMINATION SOUGHT TO BE REVIEWED

12. Lento seeks review of the July 2, 2024, DB's Findings and Recommendations to the Pennsylvania Supreme Court.

OBJECTIONS TO THE FINAL ORDER

13. The DB made multiple erroneous findings of fact that were directly contrary to the evidence and/or inconsistent with the evidence.

14. The DB decision should be reversed because, even accepting the inaccurate facts contained in the Findings of Fact, the recommended five-year suspension is unreasonable, excessive, and disproportionate to the alleged disciplinary violations.

15. However, when the correct facts are reviewed, and the inaccuracies in the Findings of Facts are eliminated, the recommended five-year suspension is even more unreasonable, excessive, and disproportionate to the alleged disciplinary violations.

RELIEF SOUGHT

16. The Petitioner respectfully requests this Honorable Court to reverse the DB's findings and recommendations and remand the matter to the DB for further action.

Appendix F

ATTACHMENTS

17. Report And Recommendations Of The Disciplinary Board Of The Supreme Court Of Pennsylvania, And Its Request For Supreme Court Action, July 2, 2024.

Respectfully submitted,

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