No.

In the Supreme Court of the United States

RAPHAEL WEITZMAN,

Petitioner,

v.

COMMITTEE ON GRIEVANCES FOR THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

APPENDIX A

23-872 (L)
In re Raphael Weitzman

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 30th day of September, two thousand twenty-four.

Present:
RICHARD C. WESLEY
MICHAEL H. PARK
Circuit Judges.
LEWIS J. LIMAN,
*District Judge.**

SUMMARY ORDER

Docket No: 23-872 (L), 23-7556 (CON)

COMMITTEE ON GRIEVANCES FOR THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK,

Petitioner-Appellee,

v.

RAPHAEL WEITZMAN,

Respondent-Appellant.

FOR PETITIONER-APPELLEE: Evan R. Chesler, Brittany L Sukiennik, Cravath, Swaine & Moore LLP, New York, NY.

FOR RESPONDENT-APPELLANT: Raphael Weitzman, Weitzman Law Offices, L.L.C., New York, NY.

Filed on: **September 30, 2024**

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* Judge Lewis J. Liman, of the United States District Court for the Southern District of New York, sitting by designation.

Appeal from the September 7, 2022, May 8, 2023, and October 16, 2023 orders of the Committee on Grievances of the United States District Court for the Southern District of New York (Failla, J., Chair, Committee on Grievances S.D.N.Y.).

UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the orders of the Committee on Grievances of the United States District Court for the Southern District of New York are AFFIRMED.

Respondent-Appellant Raphael Weitzman, an attorney, appeals from three orders of the Committee on Grievances of the United States District Court for the Southern District of New York ("the Committee") related to his handling of $1.5 million in disputed settlement funds.

In its September 7, 2022 order, the Committee adopted a Magistrate Judge's Report & Recommendation ("R&R") finding that Weitzman violated the New York Rules of Professional Conduct by commingling client funds, failing to maintain settlement funds in a separate account, failing to maintain proper disbursement records, and making false statements to a tribunal. On May 8, 2023, the Committee suspended Weitzman from practicing law in the Southern District of New York for two years. In an October 16, 2023 order, the Committee denied Weitzman's motion to modify or set aside the earlier orders and to disqualify the Committee's counsel. We assume the parties' familiarity with the underlying facts, record of prior proceedings, and issues on appeal.

On appeal, Weitzman argues that the Committee's orders should be vacated because of alleged procedural issues with its investigation, lack of clear and convincing evidence, and excessive sanctions. These arguments are meritless.

This Court reviews the Committee's disciplinary orders for abuse of discretion— that is, "if its imposition of sanctions was based on an erroneous view of the law or on a clearly erroneous assessment of the evidence, or cannot be located within the range of permissible decisions." In re Peters, 642 F.3d 381, 384 (2d Cir. 2011) (per curiam) (quotation marks omitted). Although we have applied a more exacting inquiry when the same judge acts as accuser, fact finder, and sentencer, id., the "ordinary abuse-of-discretion standard" applies here because different judges and outside counsel referred, investigated, and disciplined Weitzman, see In re Demetriades, 58 F.4th 37, 45 n.2 (2d Cir. 2023).

First, we discern no due-process violations in the Committee's investigation. Weitzman argues that the investigation was "flawed" and "denied [him] due process," but the record belies that claim. Weitzman complains that he was "prohibited from presenting evidence" or responding at an evidentiary hearing, Appellant's Br. at 31, but the Magistrate Judge clearly invited him to do so, see App'x

1336-37. Weitzman's other complaints fare no better, and he fails to demonstrate that "the procedure . . . was so lacking . . . in opportunity to be heard as to constitute a deprivation of due process." In re Jacobs, 44 F.3d 84, 89 (2d Cir. 1994). We thus reject Weitzman's challenge to the Committee's September 7, 2022 order adopting the R&R's investigative findings.

Weitzman's evidentiary challenges also fail. He argues that the Committee "failed to substantiate the charges by . . . clear and convincing evidence" in adopting the R&R and imposing discipline. To the contrary, the R&R's findings are supported by ample evidence of misconduct. The record reflects that Weitzman withdrew $1.5 million from his client's escrow account in March and then represented to the court that he disbursed those funds in November. The Committee appropriately relied on this record of misconduct to find by clear and convincing evidence that Weitzman violated the Rules of Professional Conduct in its September 7, 2022 order. Second, the Committee acted well within its discretion in suspending Weitzman from practicing in the district for two years.

Weitzman argues that the Committee erroneously rejected his mitigating factors in its May 8, 2023 sanctions order. But the Committee reasonably found those factors insignificant in light of the aggravating circumstances—including Weitzman's prior disciplinary action, the number of violations, and Weitzman's lack of remorse. See Special App'x at 46-47. Considering these circumstances, the Committee's two-year suspension for Weitzman's misconduct "was well within the range of permissible decisions." Demetriades, 58 F.4th at 55 (quotation marks omitted); see, e.g., In re Friedman, 609 N.Y.S.2d 578, 586 (1st Dep't 1994) (imposing permanent disbarment for acts of dishonesty to the court because a two-year suspension was "far too lenient"); In re Friedman, 51 F.3d 20, 22 (2d Cir. 1995) (per curiam) (indefinite suspension); In re Disbarment of Friedman, 513 U.S. 1037, 1037 (1994) (disbarment).

Third, equitable defenses do not shield Weitzman

from discipline. Weitzman claims that the doctrines of unclean hands, equitable estoppel, and laches bar the Committee from enforcing its orders. But none of those doctrines applies here. Weitzman does not identify any wrongdoing necessary for unclean hands or equitable estoppel, nor does he show that the lengthy investigation prejudiced him, as the laches defense requires. We thus conclude that there is no equitable basis for limiting the Committee's enforcement of its sanctions order.

Weitzman's other challenges to the Committee's decision are similarly frivolous. For example, he argues that his conduct should be excused—including repeated lies to the district court—because his client was "extremely difficult to represent." And Weitzman's ad hominem attacks on the Committee and its counsel are baseless.

Finally, Weitzman's motion to strike the Committee's brief is also frivolous. The Committee has asked this Court to impose sanctions because that motion was "entirely meritless" and "brought for improper purposes." This Court has the inherent power to sanction attorneys for frivolous motions made in bad faith. Ransmeier v. Mariani, 718 F.3d 64, 69 (2d Cir. 2013). We conclude that Weitzman's motion has no legal merit, contains affirmative misrepresentations belied by the record, and worked only to burden and attack the Committee. Weitzman's declaration in opposition to the Committee's cross-motion for sanctions continued these baseless attacks and failed to identify any plausible basis for his motion. In light of Weitzman's meritless appeal and misconduct, we impose sanctions in the form of costs incurred by the Committee in responding to his motion. We also refer Weitzman to this Court's Committee on Admissions and Grievances.

* * *

We have considered Weitzman's remaining arguments and conclude that they are without merit. Accordingly, we AFFIRM the September 7, 2022, May 8, 2023, and October 16, 2023 orders of the Committee. We also DENY Weitzman's motion to strike the Committee's brief and GRANT the Committee's cross-motion for

sanctions with an award of costs incurred in responding to that motion.

FOR THE COURT:
/s/ Catherine O'Hagan Wolfe,
Catherine O' Hagan Wolfe
Clerk of Court

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square New York, NY 10007

DEBRA ANN LIVINGSTON
CHIEF JUDGE
Date: September 30, 2024 Docket #: 23-872cv
Short Title: In Re: Raphael Weitzman

CATHERINE O'HAGAN WOLFE
CLERK OF COURT
DC Docket #: 16-cv-3470
DC Court: SDNY (NEW YORK CITY)
DC Judge: Failla

BILL OF COSTS INSTRUCTIONS

The requirements for filing a bill of costs are set forth in FRAP 39. A form for filing a bill of costs is on the Court's website.

The bill of costs must:

- be filed within 14 days after the entry of judgment;
- be verified;
- be served on all adversaries;
- not include charges for postage, delivery, service, overtime and the filers edits;
- identify the number of copies which comprise the printer's unit;
- include the printer's bills, which must state the minimum charge per printer's unit for a page, a cover, foot lines by the line, and an index and table of cases by the page;
- state only the number of necessary copies inserted in enclosed form;
- state actual costs at rates not higher than those

generally charged for printing services in New York, New York; excessive charges are subject to reduction;

- be filed via CM/ECF or if counsel is exempted with the original and two copies.

United States Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square New York, NY 10007

DEBRA ANN LIVINGSTON
CHIEF JUDGE
Date: September 30, 2024 Docket #: 23-872cv
Short Title: In Re: Raphael Weitzman

CATHERINE O'HAGAN WOLFE
CLERK OF COURT
DC Docket #: 16-cv-3470
DC Court: SDNY (NEW YORK CITY)
DC Judge: Failla

VERIFIED ITEMIZED BILL OF COSTS

Counsel for

_____

respectfully submits, pursuant to FRAP 39 (c) the within bill of costs and requests the Clerk to prepare an itemized statement of costs taxed against the

_____

and in favor of

_____

for insertion in the mandate.
Docketing Fee
Costs of printing appendix (necessary copies_____)
Costs of printing brief (necessary copies_____)
Costs of printing reply brief (necessary copies _____)

(VERIFICATION HERE)

_____
Signature

APPENDIX B

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Docket No: M-2-238

In the matter of

RAPHAEL WEITZMAN,
Respondent.

OPINION AND ORDER

Filed on: **September 7, 2022**

Raphael Weitzman was referred to the Committee on Grievances for the Southern District of New York (the "Committee") for misconduct in his representation of the plaintiff in *Geralds v. Hawker Financial*, 16-cv-3470 (JGK)(AP). By Order dated May 18, 2017, Evan Chesler, of Cravath, Swaine and Moore LLP, was appointed by the Committee to investigate the matter.
Mr. Chesler conducted a thorough factual investigation, which included taking Weitzman's deposition on September 13, 2018. On June 10, 2019, the Committee issued a Statement of Charges and Order to Show Cause why he should not be disciplined. In response, Weitzman argued that there are various deficiencies with the Committee's Order to Show Cause and therefore it should be denied. He also made myriad arguments as to why the charges against him should be dismissed, many of which have nothing to do with the substance of the violations.

The Committee referred the matter to Judge Sarah Netburn to conduct an evidentiary hearing and issue a

report and recommendation. The hearing on the charges was held on November 16, 2021. On January 27, 2022, Judge Netburn filed the report and recommendation and sent her findings to the Committee. On February 10, 2022, Weitzman submitted objections to the report and recommendation.

The Committee considered Judge Netburn's report and recommendation and Weitzman's objections and unanimously voted to adopt the report and recommendation without modification. Accordingly, the report and recommendation is adopted in its entirety, and the Committee finds by clear and convincing evidence that Weitzman committed four violations of the New York Rules of Professional Conduct by: (1) commingling lawyer and client funds in violation of Rule 1.15(a); (2) failing to maintain settlement funds in a separate account in violation of Rule 1.15(b)(1); (3) failing to maintain proper records in violation of Rule 1.15(d); and (4) making false statements to a tribunal in violation of Rule 3.3(a).

The parties shall have until September 28, 2022, to make submissions on sanctions, which shall set forth any relevant aggravating and mitigating evidence.

Dated: September 7, 2022
New York, New York

SO ORDERED.

/s/ Katherine Polk Failla

Honorable Katherine Polk Failla

Chair, Committee on Grievances of the United States District Court for the Southern District of New York

APPENDIX C

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Docket No: M-2-238

In the matter of

RAPHAEL WEITZMAN,
Respondent.

OPINION AND ORDER

Filed on: **May 8, 2023**

BEFORE THE COMMITTEE ON GRIEVANCES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

This matter comes before the Committee on Grievances for the United States District Court for the Southern District of New York (the "Committee") to consider the imposition of discipline upon Respondent Raphael Weitzman, for misconduct in connection with *Geralds v. Hawker Financial*, 16-cv-3470 (JGK)(AP). Magistrate Judge Sarah Netburn held an evidentiary hearing in this matter and issued a Report and Recommendation, which the Committee adopted in its entirety by order dated September 7, 2022, finding that Respondent violated the New York Rules of Professional Conduct by:
(1) commingling lawyer and client funds in violation of Rule 1.15(a); (2) failing to maintain settlement funds in a separate account, in violation of Rule 1.15(b)(1);

(3) failing to maintain appropriate records in violation of Rule 1.15(d); and (4) making false statements to Judge Koeltl and Judge Peck in violation of Rule 3.3(a). The Committee now turns to the issue of the appropriate sanction for the proven misconduct.

The Committee has reviewed the entirety of the submission of Respondent and concludes that there are no significant mitigating factors. On the other hand, there are numerous aggravating circumstances, as set forth in detail in Evan Chesler's brief in support of sanctions. Among other factors, Respondent recently committed at least one other disciplinary offense. *See* American Bar Association's Standards on Lawyer Sanctions (1992) ("ABA Standards") at § 9.22(a). Specifically, on December 21, 2021, the Supreme Court of the State of New York, Appellate Division, First Judicial Department, publicly censured Respondent in connection with his admitted violations of the New York Rules of Professional Conduct, specifically Rule 1.3(b) (neglect of a legal matter); 1.4(a)(3) (failure to keep clients reasonably informed about status of their matter); 3.1(a) (three counts) (assertion of a frivolous claim) and 8.4(h) (other conduct adversely reflecting on fitness as a lawyer). The motion for discipline was made by consent, whereby Respondent conditionally admitted his misconduct and consented to the public reprimand.

Moreover, Respondent, who is an experienced litigator, has engaged in a pattern of misconduct during which he committed multiple violations of the New York Rules of Professional Conduct. *See id.* at § 9.22(c), (d) & (i). He repeatedly violated Rule 3.3 by making multiple false statements to a tribunal, and he committed

multiple violations of Rule 1.15 by commingling and otherwise mismanaging client funds. Respondent has refused to acknowledge the wrongful nature of

his misconduct and has shown no remorse. *Id.* at 9.22(g).

The Committee concludes that the protection of the public and of the judicial system is best served by suspending Respondent from the practice of law in the Southern District of New York for a period of two years.

CONCLUSION

It is hereby **ORDERED** that Raphael Weitzman is suspended from the practice of law in the Southern District of New York for a period of two years, effective immediately. The Clerk of Court is hereby **ORDERED** to unseal the entire record of this matter. In accordance with Local Civil Rule 1.5(h)(3), Respondent is hereby **ORDERED** to deliver a copy of this Order within fourteen days hereof to the clerk of each federal, state or territorial court, agency and tribunal in which he has been admitted to practice.

DATED: New York, New York
May 8, 2023

SO ORDERED.

/s/ Katherine Polk Failla
Honorable Katherine Polk Failla
Chair, Committee on Grievances of the United States District Court for the Southern District of New York

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Docket No: M-2-238

In the matter of

RAPHAEL WEITZMAN,
Respondent.

ORDER

Filed on: **October 16, 2023**

BEFORE THE COMMITTEE ON GRIEVANCES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

I. BACKGROUND

On September 7, 2022, the Committee on Grievances for this Court adopted the Report and Recommendation of Magistrate Judge Sarah Netburn in its entirety, finding that Respondent committed four violations of the New York Rules of Professional Conduct, specifically Rules 1.15(a), 1.15(b)(1), 1.15(d), and 3.3(a) (the "September 7 Order"). On May 8, 2023, after considering submissions by Respondent and Evan Chesler, who serves as Special Investigator to the Committee on this matter, the Committee issued an order imposing a suspension on Respondent for a period of two years (the "May 8 Order").

On May 23, 2023, Respondent wrote to the Committee and requested "additional time" to file "a motion concerning the [May 8 Order]." The Committee responded that Respondent could have

until June 20, 2023, to file his motion, which the Committee understood would be a motion for a stay of the suspension pending appeal. On June 9, 2023, Respondent filed an appeal of the suspension order. On June 15, 2023, Respondent wrote to the Committee again, stating that he is "continuing to prepare [his] motion relating to the May 8, 2023 Opinion & Order in this matter" and requesting a further extension to July 12, 2023. The Committee granted the extension to July 12, 2023.

In July 12, 2023, Respondent filed a Motion for Stay and Modification/Revocation and for Vacatur and Setting Aside of the Committee's September 7, 2022, and May 8, 2023, Opinions and Orders, and for Disqualification of Committee Counsel, under Federal Rule of Civil Procedure 60(b) (the "Motion"). Mr. Chesler submitted his response on July 26, 2023, and Respondent submitted a reply on August 16, 2023. On October 3, 2023, Respondent requested to amend the Motion to seek relief pursuant to Local Civil Rule 6.3, which governs motions for reconsideration in this District. On October 10, 2023, without permission, he submitted an amended motion and reply.

II. MOTION FOR MODIFICATION/REVOCATION AND FOR VACATUR AND SETTING ASIDE ORDERS

The Motion, insofar as it seeks "modification/revocation, and vacatur and setting aside" of the September 7 Order and May 8 Order predicated on Local Rule 6.3 and Federal Rule 59, is untimely. Local Civil Rule 6.3 requires that such motions be filed within 14 days of issuance of the order. Under Rule 6(b) of the Federal Rules of Civil Procedure, the Court lacks authority to grant an extension of that deadline. *See Lichtenberg* v.

Besicorp Group Inc., 204 F.3d 397 (2d Cir. 2000) (noting that the time limitation for a motion to modify a judgment is "uncompromisable"). Accordingly, the request to amend the Motion for the limited purpose of seeking relief pursuant to Local Civil Rule 6.3 is denied.

Nonetheless, the Committee will proceed to consider the merits of the Motion pursuant to Rule 60(b). *See Farez-Espinoza* v. *Napolitano*, No. 08 Civ. 11060 (HB), 2009 WL 1118098, at *3 (S.D.N.Y. Apr. 27, 2009) ("Motions for reconsideration that are filed outside the ten-day period under Rule 59 and Local Rule 6.3 are treated as motions made pursuant to Rule 60(b) of the Federal Rules of Civil Procedure."). Under Rule 60(b), a court may only vacate or modify an order for reasons enumerated in the rule: mistake, inadvertence, surprise, or excusable neglect; newly discovered evidence; fraud, misrepresentation, or other misconduct; judgment is void; judgment is satisfied, released, or discharged; or any other reason that justifies relief. *See* Fed. R. Civ. P. 60(b). The Rule 60(b) standard "is strict, and reconsideration will generally be denied unless the moving party can point to controlling decisions or data that the court overlooked . . . that might be expected to alter the conclusion reached by the court." *Schrader* v. *CSX Transp.*, 70 F.3d 255, 257 (2d Cir. 1995).

The Committee finds that Respondent has failed to meet the exacting standard for a Rule 60(b) motion. The Motion is largely an attempt at relitigating the disciplinary matter. Respondent raises a host of disagreements with the disciplinary proceedings that he either has already raised, or that he could have raised, with Judge Netburn and the Committee, or that amount to immaterial quibbles. The remainder of his arguments are factual disagreements with Judge Netburn's Report and Recommendation, which is an improper attempt to

relitigate the facts. These are not appropriate matters for a Rule 60(b) motion. *See Bennett* v. *Watson Wyatt*, 156 F. Supp. 2d 270, 273 (S.D.N.Y. 2001) (denying Rule 60(b) motion, noting that "the vast bulk of plaintiff's motion attempts to relitigate arguments already considered and rejected by this Court"); *see also Competex, S.A.* v. *Labow*, 783 F.2d 333, 335 (2d Cir. 1986) ("Rule 60(b) is not a substitute for appeal."). Accordingly, the Motion, having been carefully considered by this Committee, should be denied. *See Toliver* v. *County of Sullivan*, 957 F.2d 47, 49 (2d Cir. 1992) (a district court may entertain and deny a Rule 60(b) motion, even after an appeal is taken).

III. MOTION FOR STAY PENDING APPEAL

In considering whether to stay a judgment pending appeal, "courts in this district have typically considered '(1) whether the petitioner is likely to prevail on the merits of his appeal; (2) whether, without a stay, the petitioner will be irreparably injured; (3) whether issuance of a stay will substantially harm other parties interested in the proceedings; and (4) wherein lies the public interest.'" *Harris* v. *Butler*, 961 F. Supp. 61, 62 (S.D.N.Y. 1997) (quoting *Morgan Guar. Tr. Co.* v. *Republic of Palau*, 702 F. Supp. 60, 65 (S.D.N.Y. 1988)). After carefully considering the matter, the Committee denies Respondent's motion for a stay pending appeal. Respondent has failed to make a strong showing that he is likely to succeed on the merits and has not specified how he would be irreparably injured absent a stay. Moreover, it is in the public's best interest that the stay be denied.

IV. MOTION FOR DISQUALIFICATION

Respondent presents no arguments that would justify disqualification of Mr. Chesler, who was

appointed over six years ago, when the disciplinary proceedings against Respondent commenced. Motions to disqualify are highly disfavored in this Circuit and should only be granted where the attorney's conduct has "'tainted the underlying trial.'" *See Bangkok Crafts* v. *Capitolo Di San Pietro in Vaticano*, 376 F. Supp. 2d 426, 428 (S.D.N.Y. 2005) (denying motion to disqualify because there was no evidence that counsel represented adverse parties) (quoting *Bd. of Educ.* v. *Nyquist*, 590 F.2d 1241, 1246 (2d Cir. 1979)). Respondent has failed to meet his burden of establishing facts that would justify the disqualification of Mr. Chesler.

V. CONCLUSION

For the reasons stated above, Respondent's Motion for Stay and Modification/Revocation and for Vacatur and Setting Aside of the Committee's September 7, 2022, and May 8, 2023, Opinions and Orders, and for Disqualification of Committee Counsel is DENIED.

DATED: New York, New York
October 16, 2023

SO ORDERED.
/s/ Katherine Polk Failla
Honorable Katherine Polk Failla
Chair, Committee on Grievances of the United States District Court for the Southern District of New York

APPENDIX E

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Kendu Geralds
Plaintiff(s),

-against-.

Hawker Financial Company, LLC and
US Claims OPCO, LLC
Defendant(s)

Filed on: **November 22, 2016**

NOTICE OF VOLUNTARY DISMISSAL PURSUANT TO F.R.C.P. 41(a)(1)(A)(i)

Civil Action No: 1:16-cv-03470-JGK

Order dismissing case signed by Hon. Koeltl

Pursuant to F.R.C.P. 41(a)(l)(A)(i) of the Federal Rules of Civil Procedure, the plaintiff(s) and or their counsel(s), hereby give notice that the above captioned action is voluntarily dismissed, without prejudice against the defendant(s) Hawker Financial Company, LLC and US Claims OPCO, LLC.

Dated: New York, New York
November 18, 2016

/s/ Raphael Weitzman
RAPHAEL WEITZMAN
Weitzman Law Offices, L.L.C.
Attorneys for Plaintiffs-Third Party Defendants
30 Wall St., FL 8

New York, NY 10005
(212) 248-5200

To:

Bernfeld, DeMatteo & Bernfeld, LLP
Attorneys for Hawker Financial Company. LLC and US Claims OPCO, LLC
600 Third Avenue, Fl. 15 New York, NY 10016
(212) 661-1661

SO ORDERED
/s/ John Koeltl
Judge John G. Koeltl
U.S.D.J
11/21/16

APPENDIX F

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Kendu Geralds

Plaintiff,

-against-.

Hawker Financial Company, LLC et al

Defendants

Docket No.: **16-cv-3470**; Filed on: **February 21, 2017**

ORDER

John G. Koeltl, District Judge:

The attached affidavits were submitted by third party defendant Raphael Weitzman regarding Mr. Weitzman's distribution of the settlement funds that were at issue in this case. The Court now files the affidavits and attachments under seal because they contain bank account information. The documents, however, shall be made available to judges and other officials and agents of the Court.

SO ORDERED
/s/ John G. Koeltl
Hon. John G. Koeltl
United States District Judge

Dated: New York, New York
February 21, 2017

APPENDIX G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Docket No: M-2-238

In the matter of

RAPHAEL WEITZMAN,
Respondent.

ORDER

Filed on: **May 18, 2017**

BEFORE THE COMMITTEE ON GRIEVANCES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK[1]

Pursuant to Rule 1.5(d)(3) of the Local Civil Rules of the Southern District of New York, Evan Chesler, Esq., a member of the panel of attorneys appointed pursuant to Rule 1.5(a) of said Rules, is hereby appointed and fully empowered to investigate and prepare and support a statement of charges, present evidence at a hearing and take any other necessary and appropriate actions in regard to complaints of professional misconduct against Raphael Weitzman, Esq.

[1] The members of the Committee are District Judge Katherine B. Forrest, Chair; Chief Judge Colleen McMahon; District Judges Katherine Polk Failla; Kenneth M. Karas; Louis L. Stanton, and Richard J. Sullivan; and Magistrate Judges James C. Francis and Judith C. McCarthy

Dated: May 18, 2017
New York, New York

SO ORDERED.

/s/ KATHERINE B. FORREST
Katherine B. Forrest
Chair, Committee on Grievances S.D.N.Y.

APPENDIX H

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Docket No: M-2-238

In the matter of

RAPHAEL WEITZMAN,
Respondent.

ORDER

Filed on: **March 31, 2021**

Honorable Sarah Netburn, United States Magistrate Judge, is designated to conduct a prompt evidentiary hearing on the Statement of Charges against the above respondent in accordance with Local Civil Rule 1.5(d)(4) and make and transmit findings and recommendations on whether any Charges are proven in writing to the Committee, with copies to the Respondent and the designated Attorney Panel member, Evan R. Chesler.

The Committee will reserve to itself the issue of the appropriate sanction in the event it becomes necessary.

Dated: March 31, 2021
New York, New York

SO ORDERED.

/s/Katherine Polk Failla
Honorable Katherine
Polk Failla
Chair, Committee on
Grievances of the
United States District
Court for the
Southern District of
New York

APPENDIX I

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Docket No: M-2-238

In the matter of

RAPHAEL WEITZMAN,
Respondent.

DISCIPLINARY HEARING CASE MANAGEMENT PLAN & SCHEDULING ORDER

Filed on: **June 11, 2021**

SARAH NETBURN, United States Magistrate Judge:

Discovery. All discovery shall be completed by August 13, 2021. By June 18, 2021, Evan Chesler, on behalf of the Committee on Grievances for the United States District Court for the Southern District of New York (the "Committee"), shall provide all discovery material in his possession to Raphael Weitzman. This includes the transcript of Weitzman's deposition taken in investigation leading up to this proceeding.

Pre-hearing Conference. The Court will conduct a pre-hearing conference on Thursday, September 23, 2021, at 10:00 a.m. The purpose of this conference is to discuss witness lists, exhibits, and any other pre-hearing applications. Any pre-hearing applications must be filed by September 10, 2021, with any opposition papers submitted by September 17, 2021. The Court will notify the parties in

advance of this conference if it will be conducted in person or remotely.

Evidentiary Hearing. The evidentiary hearing provided for by Local Civil Rule 1.5(d)(4) is scheduled for October 4, 2021, at 10:00 a.m. in the Thurgood Marshall Courthouse, 40 Foley Square, New York, New York. Unless further ordered, this proceeding will be held in person in a courtroom that complies with all COVID-related precautions.

SO ORDERED.

/s/ SARAH NETBURN
Sarah Netburn

United States
Magistrate Judge

DATED: June 11, 2021
New York, New York

cc: Evan R. Chesler via Chambers email
Raphael Weitzman via Chambers email

APPENDIX J

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Docket No: M-2-238

In the matter of

RAPHAEL WEITZMAN,
Respondent.

ORDER

Filed on: **September 20, 2021**

Before Hon. SARAH NETBURN, United States Magistrate Judge

WEITZMAN LAW OFFICES, L.L.C.
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Telephone (212) 248-5200
Facsimile ,(212) 248-0900
E-mail weitzman@wlollc.com

September 20, 2021

Mag. Sarah Netburn
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: In the Matter of Raphael Weitzman, Docket No.: M-2-238

Hon. Judge Netburn

I am Respondent in the above referenced matter. Thank you for permitting a reply.

I bring to Your Honor's attention as I pair down my initial denied request, I will be observing a religious holiday starting this evening, concluding wednesday evening September 29, 2021, be absolutely prohibited from working September 21 (evening) - 23, 2021 (evening) and September 27 (evening) - 29, 2021 (evening) and mostly prohibited from working the intermediary days.

I further bring to Your Honor's attention September 16, 2021 was another religious holiday which prohibited me from working, my octogenarian mother fell the following day and I spent it in the emergency room and my wife fell 10 days ago and sustained brain injury.

I respectfully request Your Honor in light of at a minimum my personal obligations provide me until Friday October 1, 2021 or such other time as may be deemed appropriate under these circumstances to submit my reply.

I thank the Court for its consideration of this matter.

Respectfully yours,
/s Raphael Weitzman
Raphael Weitzman

CC: Evan R. Chesler, Esq.
Brittany Sukiennik, Esq.
Evan Siegel, Esq.
Cravath, Swaine & Moore LLP
825 Eighth A venue
New York, NY 10019-7475

Hon. SARAH NETBURN, United States Magistrate Judge:

Mr. Weitzman's request is GRANTED. The pre-hearing conference scheduled for September 23, 2021, and the evidentiary hearing scheduled for October 4, 2021, are adjourned. Mr. Weitzman shall file any reply by October 1, 2021.

The pre-hearing conference is scheduled for October 6, 2021 at 11 a.m. At that time, the parties should dial into the Court's dedicated teleconferencing line at (877) 402-9757 and enter Access Code 7938632, followed by the pound (#) key.

The evidentiary hearing provided for by Local Civil Rule 1.5(d)(4) is scheduled for October 26, 2021, at 10:00 a.m.

If either of these dates is unavailable for any party, they must contact Courtroom Deputy Rachel Slusher immediately at Netburn_NYSDChambers.nysd.uscourts.gov

SO ORDERED

/s/ SARAH NETBURN
Sarah Netburn
United States
Magistrate Judge

DATED: September 20, 2021
New York, New York

APPENDIX K

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Docket No: M-2-238

In the matter of

RAPHAEL WEITZMAN,
Respondent.

ORDER

Filed on: **December 28, 2021**

Before Hon. SARAH NETBURN, United States Magistrate Judge

WEITZMAN LAW OFFICES, L.L.C.
30 Wall Street, 8th floor
New York, NY 10005-3817
Telephone (212) 248-5200
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December 22, 2021

Mag. Sarah Netburn
Thurgood Marshall
United States Courthouse
40 Foley Square
New York, NY 10007

Re: In the Matter of Raphael Weitzman, Docket No.: M-2-238

Hon. Judge Netburn

I am Respondent in the above referenced matter.

The Committee on Grievances, S.D.N.Y (hereinafter "Committee") directed its counsel on September 9, 2020 attempt to resolve this matter and concluded on March 31, 2021 good cause was shown for Your Honor to conduct an evidentiary hearing whether any charges were proven. Your Honor scheduled the evidentiary hearing November 16, 2021, the Committee's counsel presented his evidence, Your Honor directed my presentation of evidence in written submission by December 7, 2021 and the Committee's counsel to file a written submission by December 21, 2021.

A summary review of the Committee counsel's written submission reveals newly raised substantive matters unaddressed by my written submission. The Committee counsel's written submission also contains out of context partial citations and non-verbatim quotes. I respectfully request Your Honor permit a Reply to the Committee

counsel's written submission to address the foregoing.

I thank the Court for its consideration of this matter.

Respectfully yours,
/s/ Raphael Weitzman
Raphael Weitzman

CC: Evan R. Chesler, Esq.
Brittany Sukiennik, Esq.
Evan Siegel, Esq.
Cravath, Swaine & Moore LLP
825 Eighth A venue
New York, NY 10019-7475

Hon. SARAH NETBURN, United States Magistrate Judge:

Mr. Weitzman's request is GRANTED. He may submit a reply submission of no more than five pages by January 7, 2022.

SO ORDERED

/s/ SARAH NETBURN
Sarah Netburn
United States
Magistrate Judge

DATED: December 28, 2021
New York, New York

APPENDIX L

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

Docket No: M-2-238

In the matter of

RAPHAEL WEITZMAN,
Respondent.

ORDER

Filed on: **January 12, 2022**

SARAH NETBURN, United States Magistrate Judge:

....On December 28, 2021, this Court issued an order granting Raphael Weitzman "a reply submission of no more than five pages " In response, in violation of that Order and without seeking leave, Weitzman filed a 15-page brief, with an additional 359 pages of material in support.

The brief also raises new arguments, see, e.g., Reply Brief at ¶ 26–29 (raising arguments about trust interests for the first time), which is generally improper in a reply. See, e.g., Sacchi v.Verizon Online LLC, No. 14-cv-423 (RA), 2015 WL 1729796, at *1 (S.D.N.Y. Apr. 14, 2015) ("Generally, a court '[does] not consider issues raised in a reply brief for the first time because if a [party] raises a new argument in a reply brief [the opposing party] may not have an adequate opportunity to respond to it.'") (quoting Evergreen Nat. Indem. Co. v. Capstone Bldg. Corp., No.3-07-cv-1189 (JCH), 2008 WL 926520, at *2 (D. Conn. Mar.31, 2008)) (alterations in original).

"A court may enforce its rules and orders by striking noncompliant portions of a party's brief or by ordering a party to remedy its violation." Perez v. U.S. Immigr. &

Customs Enf't, No. 19-cv-3154 (PGG)(JLC), 2020 WL 4557387, at *3 (Aug. 6, 2020), report and recommendation adopted, 2020 WL 5362356 (S.D.N.Y. Sept. 8, 2020). Where a reply raises new issues or violates page-limit requirements, a court is within its discretion to strike those offending elements. See, e.g., Wolters Kluwer Fin. Servs. Inc. v. Scivantage, No. 07-cv-2352 (HB), 2007 WL 1098714, at *1 (S.D.N.Y. Apr. 12, 2007) ("Typically, in such situations, the Court strikes the evidence presented for the first time in reply, and does not consider it for purposes of ruling on the motion."), P&G Auditors & Consultants, LLC v. Mega Int'l Com. Bank Co., No. 18-cv-9232 (JPO), 2019 WL 4805862, at *4 (S.D.N.Y. Sept. 30, 2019) ("It would therefore be within the Court's discretion to . . . to strike the overlength pages of the brief for exceeding the court's length requirements.") Weitzman's clear violation of the Court's order, in a disciplinary proceeding against him no less, counsels against permitting an opportunity to redraft his reply.

The Court therefore strikes the following elements of Weitzman's reply. First, it strikes everything following the fifth page of substantive briefing (paginated as page "7"), meaning paragraphs 16 to 48. Second, it strikes paragraphs 13 and 14, which raise new hearsay objections and paragraph 15, which suggests that 28 U.S.C. § 636(c) has implications for a magistrate judge's ability to order funds escrowed. The Court accepts the remaining material.

SO ORDERED.

s/ SARAH NETBURN
United States
Magistrate Judge

DATED: January 12, 2022
New York, New York

APPENDIX M

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Docket No: M-2-238

In the matter of

RAPHAEL WEITZMAN,
Respondent.

REPORT AND RECOMMENDATION

Filed on: **January 27, 2022**

SARAH NETBURN, United Stated District Magistrate

TO THE COMMITTEE ON GRIEVANCES OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK

This report and recommendation follows from the investigation of the Committee on Grievances for the Southern District of the New York (the "Committee") into misconduct by Raphael Weitzman, an attorney admitted in this District. On November 16, 2021, this Court held a hearing on the four charges of misconduct against Weitzman alleged by the Committee. Based on that hearing and the evidence submitted by the parties, the Court finds that all four charges of misconduct against Weitzman have been proven by clear and convincing evidence.

PROCEDURAL BACKGROUND

This matter began on May 18, 2017, when the

Committee appointed counsel ("Committee Counsel") to investigate complaints of professional misconduct against Weitzman for his conduct in Kendu Geralds v. Hawker Financial Co., et al., No. 16-cv-03470 (JGK)(AJP) ("Hawker"). Order Appointing Counsel, In Re Weitzman, M-2-238 (May 18, 2017).[1] As part of this inquiry, Weitzman was deposed on September 13, 2018. Hearing Tr. at 12:20–22.[2] Based on that investigation, the Grievance Committee issued a statement of charges against Weitzman on June 10, 2019. Statement of Charges at 9, In Re Weitzman, M-2-238 (Jun.10, 2019) (the "Statement of Charges"). The Committee alleged that Weitzman violated the New York Rules of Professional Conduct ("RPC" or "Rule") by: (1) misappropriating or comingling personal and client funds (Rule 1.15(a)); (2) not maintaining settlement funds separate from other funds (Rule 1.15(b)(1)); (3) failing to keep necessary financial records (Rule 1.15(d)(1)); (4) knowingly making false statements to a tribunal or failing to correct previous false statements (Rule 3.3(a)(1)); and (5) disregarding the ruling of a tribunal (RPC 3.3(4)(c)). Statement of Charges at 6–9. The Statement of Charges was accompanied by an order directing Weitzman to show cause why discipline should not be imposed. Order to Show Cause, In Re Weitzman, M-2-238 (Jun. 10, 2019). Weitzman responded on September 16, 2019, arguing that he had acted in good faith and had abided by court orders. Order to Show Cause Reply, In Re Weitzman, M-2-238 (Sept. 16, 2019).

Weitzman requested an evidentiary hearing on these charges and the matter was referred to this Court pursuant to Local Civil Rule 1.5(d) of the Local Rules of the United States District Courts for the Southern and Eastern Districts

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[1] For future tribunals conducting disciplinary proceedings, the Court respectfully recommends the use of an electronic miscellaneous case docket. The administration and transparency of contentious disciplinary proceedings such as this one would be much improved by the ability to readily review filings in an accessible system.

[2] "Hearing Tr." refers to the transcript of the evidentiary hearing held on November 16, 2021.

of New York (the "Local Civil Rules"). Prehearing discovery and motion practice was completed on October 1, 2021, and the Court denied Weitzman's motion for summary judgment on October 6, 2021.

The evidentiary hearing was held on November 16, 2021. Weitzman was the only person to testify. The Court also received post-hearing submissions from Weitzman (the "Respondent's Submission") and Committee Counsel (the "Committee Counsel's Submission"), whose papers charge that Weitzman has violated Rules 1.15(a), 1.15(b)(1), 1.15(d)(1)(i), and 3.3.[3] Thereafter, Weitzman requested leave to file a reply brief to respond to purported "newly raised substantive matters" and "out of context partial citation and non-verbatim quotes" in the Committee Counsel's Submission. Reply Request, In Re Weitzman, M-2-238 (May 18, 2017). The Court granted him a five-page reply. Weitzman, however, without first seeking leave, filed a 15-page brief with 359 pages of supporting material. He also raised new arguments, which is generally improper in a reply brief. See, e.g., Sacchi v. Verizon Online LLC, No. 14-cv-423 (RA), 2015 WL 1729796, at *1 (S.D.N.Y. Apr. 14, 2015) ("Generally, a court '[does] not consider issues raised in a reply brief for the first time because if a [party] raises a new argument in a reply brief [the opposing party] may not have an adequate opportunity to respond to it.'") (quoting Evergreen Nat. Indem. Co. v. Capstone Bldg. Corp., No. civ.A. 3–07–cv–1189 (JCH), 2008 WL 926520, at *2 (D. Conn. Mar.31, 2008)) (alterations in original). Given this violation of the Court's order, the Court struck both the excess pages and the new arguments, leaving the five pages permitted by the original order.

FINDINGS OF FACT

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[3] The Committee appears to have decided not to press the fifth charge (disregarding the ruling of a tribunal in violation of RPC 3.3(4)(c)), as it appears neither in the Committee Counsel's post-hearing papers nor in other correspondence between the Committee and Weitzman. See, e.g., Weitzman Reply Submission Ex. B, In Re Weitzman, M-2-238 (Jan. 7, 2020).

The Court renders these findings of fact based on the evidentiary hearing, the parties' post-hearing submissions, and the records of Hawker. In making these findings, the Court notes that throughout the hearing, Weitzman was evasive and obstructive. He gave long-winded or unresponsive replies, forcing the Court to repeatedly instruct him to answer the questions posed. See, e.g., Hearing Tr. at 4:9–23 (directing Weitzman to "please limit [his] responses to the questions that are being asked"), 19:7–14 ("I think I have given this instruction several times, Mr. Weitzman. You need to answer the question that [Committee Counsel] is posing without giving a narrative response. You need to answer the question."), 56:11–13 ("Mr. Weitzman, you are making this more difficult than it needs to be. [Committee Counsel] has asked you a question and you need to answer the question."); see also id. at 13:22–25 (again directing Weitzman to address Committee Counsel's question), 16:7–14 (same), 20:15–16 (same), 48:1–3 (same).

Weitzman also professed an inability to recall basic information, even after being presented with clearly pertinent documents. See, e.g., id. at 37:6–38:3 (professing a lack of memory and need to consult documents despite having just been presented with relevant materials). The Court has factored this into its assessment of his credibility.

Weitzman's misconduct occurred during his representation of Kendu Geralds in Hawker before District Judge John G. Koeltl and Magistrate Judge Andrew J. Peck. Geralds retained Weitzman in November 2011 to pursue a personal injury action after Geralds was injured in a car accident. Id, 6:24–8:20. Geralds received funds from two companies, Hawker Financial Co., LLC, and US Claim OPCO, LLC (the "Finance Companies"), in connection with that litigation.[4] Id. 9:1–12:11. Under the terms of that funding agreement, the Finance Companies may have been entitled to some portion of any settlement Geralds received.

[4] At some point, Geralds also had a funding arrangement with a separate entity called Pegasus Legal Funding. Respondent's Submission at ¶¶ 7, 18, 20. The specifics of this arrangement are not important here.

Id. at 14:20–24.

The personal injury action eventually settled for $1.5 million. Id. at 14:5–6. On March 2, 2016, Weitzman deposited that sum into an escrow account. He then began drawing down those funds. On March 8, he withdrew $1,000, id. at 23:16–22, which he placed onto a debit card. He did not recall the purpose of that withdrawal either at the hearing or during his 2018 deposition. Id. at 24:9–25:11. On March 11, he withdrew $8,000, which he deposited into another account under his control. Id. at 25:12–26:6. He did not recall the purpose of that withdrawal either. Id. At 26:7–27:2. Then, on March 18, he transferred $1,491,018.40 from the escrow account into another account he controlled. Id. at 27:12–24. That transfer left no funds remaining in the escrow account. Id. at 27:25–28:3.

That same day, Weitzman withdrew $999,000 from the account he deposited the $1,491,018.40 into, using a bank check payable to him and deposited that sum into yet another account under his control. Id. at 28:4–29:21. He also used bank checks to make three payments to River Asset Management, LLC, totaling $492,078.40: one for $50,952.87, id. at 30:22–31:21; one for $44,165.53, id. at 31:22–32:3; and one for $396,960.00, id. at 32:4–7. River Asset Management is a company formed by Weitzman under Delaware law on March 11, 2016, and he is its sole member and manager. Id. at 31:10–21., PX 2 at 7, 22–23, 26, 28.

The record reflects that nearly all this money was eventually loaned to a person named William Cannon. In an agreement dated March 18, 2016, Weitzman agreed to loan Cannon $999,000. Id. at 33:24–34:3, PX 3. Almost all the other money withdrawn from the escrow account was loaned to Cannon as well. Id. at 34:4–35:19. This loan agreement appears to have been extended in November 2016. Id. at 35:20–36:16.

Weitzman was evasive about the amount and timing of all his loans to Cannon. At his 2018 deposition, he acknowledged that he made further loans to Cannon of almost $397,000 and about $44,000. PX 31 at 79:16–80:8. At the evidentiary hearing, however, he was unable to recall if

he loaned these sums or a separate $51,000 to Cannon despite being presented with that deposition testimony. He was also unable to remember the timing of these loans. Hearing Tr. at 34:4–36:16. The Court does not find this subsequent memory loss credible and credits Weitzman's prior testimony that, at minimum, additional sums of about $397,000 and $44,000 were loaned to Cannon.

Almost two months after the March 2016 withdrawals, Weitzman sued the Finance Companies in Hawker, seeking a declaratory judgment regarding the settlement funds. Id. At 14:25–16:4. The Finance Companies answered the complaint and made counterclaims on June 20, 2016. Id. at 50:8–11.

In September 2016, Judge Koeltl referred Hawker to Judge Peck for settlement. Id. At 16:23–17:14. Judge Peck, in turn, set a settlement conference for November 16, 2016. Id. At 17:15–22. As part of the order scheduling that conference, Judge Peck directed the parties to submit a letter identifying the client representative who would be present and participating in the conference. Id. at 20:24–21:3, PX 9 at 2 ("[C]ounsel shall advise the Court and opposing counsel, by letter, of who the client representative(s) will be..." The order also directed that "[c]ounsel attending the conference must have full settlement authority and *their client(s) must be present at the conference...*" PX 9 at 1 (emphasis in original). While Hawker was initially captioned as Weitzman's law firm against the Finance Companies, Geralds was subsequently substituted as the plaintiff. Hearing Tr. at 21:21–22:11

Weitzman neither submitted the letter nor brought Geralds to the conference. Id. At 38:21–39:13. Judge Peck found this failure to bring Geralds an "intentional and a clear violation of the court order." PX 19 at 2:21–23. As the conference progressed, Judge Peck also became concerned with Weitzman's representation of Geralds. He noted that Weitzman gave inconsistent explanations for his conduct, first saying that Geralds had ignored his instructions to attend but then saying that he had authority to settle the case. Id. at 5:1–4. Based on this, Judge Peck found that

Weitzman was "not being honest with the Court," id. at 5:24–25, and issued a $5,000 sanction. Id. at 7:6–7.

The conference then turned to the disposition of the settlement funds. Judge Peck asked about the status of the funds and ordered that they be retained in escrow until the case concluded:

> THE COURT:...And when we were off the record, you represented and agreed, Mr. Weitzman, that the proceeds of the auto accident which are in dispute in this case, the million and a half dollars, will be retained in your attorney escrow account until this case is resolved, right?
>
> MR. WEITZMAN: Yes, your honor.
>
> THE COURT: And the Court so orders that, just so that is crystal clear, but I appreciate the fact that you did that willingly...

Id. at 9:3–19.

Though he did not raise this at the conference, Mr. Weitzman later contended that at the time he had severe bronchitis and was taking medication that causes drowsiness and dizziness. Respondent's Submission at ¶23.

Three days later, Weitzman sought to voluntarily dismiss the case under Federal Rule of Civil Procedure 41. Hearing Tr. at 49:6–17. Judge Koeltl initially entered an order granting that dismissal on November 22, 2016. Id. at 52:24–53:4; see also Hawker, ECF No. 34.[5] Weitzman's notice of dismissal did not report that an answer or counterclaims had been filed. Judge Koeltl noted that had he been made aware of this, he would not have granted the dismissal. Hawker, ECF No. 61 at 4:1–5:6. Accordingly, on November 29, 2016, he reopened the case, vacated the

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[5] As Weitzman has made an issue of it, the Court notes for clarity that Judge Koeltl signed the order on November 21, 2016, and it was filed on November 22. The precise date on which the order became operative is immaterial.

dismissal, and directed the parties to continue to abide by any orders previously issued. PX 17; Hawker, ECF No. 40.

Two days later, the parties appeared before Judge Koeltl. Hearing Tr. at 52:8–10. There, Judge Koeltl learned for the first time that the settlement funds had been disbursed.

> THE COURT: You're going to keep the money in escrow until this is all decided, aren't you?
>
> MR. WEITZMAN: No, your Honor. We disbursed the funds when the case was marked closed.
>
> THE COURT: I'm sorry?
>
> MR. WEITZMAN: No, your Honor. We disbursed the funds when the case was marked closed.

PX 23 at 11:18–24; Hawker, ECF No. 61.

In response, Judge Koeltl warned Mr. Weitzman that "you're going to run into an issue as to whether you knowingly violated the magistrate judge's order, whatever the state of the case was." Id. at 12:7-9. Judge Koeltl further cautioned that Judge Peck's order to retain the $1.5 million in escrow "was never vacated." Id. at 12:17. He concluded by affirming that Mr. Weitzman was "still under the obligation to maintain one million five hundred thousand dollars in escrow." Id. at 14:18–19. He further counseled Mr. Weitzman that "[i]f for some reason you mistakenly took that money out of the escrow account, I would strongly advise you to put it back into the escrow account..." Id. at 14:19–22.

Six days after that conference, Judge Koeltl entered an order addressing the disposition of the settlement funds. He began by noting that "[t]he Court has repeatedly informed the parties that the case should not have been closed, and indeed, remains open." PX 21 at 1, Hawker, ECF No. 55. Judge Koeltl then turned to "the $1.5 million that was purportedly being held in Mr. Weitzman's escrow account and was ordered to be kept there until the resolution

of this dispute." Id. at 2. The Order noted that:

> Mr. Weitzman represented to the Magistrate Judge on November 16, 2016, that those funds were being kept in Mr. Weitzman's escrow account and agreed to keep them there. The Magistrate Judge then ordered Mr. Weitzman to keep those funds in his escrow account. That was *a binding order of the Magistrate Judge*... Moreover, this Court independently repeated - both on the record at the conference held December 1, 2016, and in a written order dated December 1, 2016 - that Mr. Weitzman was ordered to maintain the funds in escrow or, in the event that they had been disbursed, that they were to be immediately returned.

Id. (emphasis added).

The Order concluded by directing Weitzman "to return forthwith the contested $1.5 million in his attorney escrow account" and to provide evidence that he had do so by December 12, 2016. Id. at 2–3.

In his December 12 submission, Weitzman reported that "[t]he funds were used to pay enormous costs and expenses generated from the litigation." PX 22 at 3; Hawker, ECF No. 57. He also reported that the funds were not disbursed until after the November dismissal. Id. at 2 ("In the time that Plaintiff filed the voluntary dismissal on November 19, 2016 which your Honor so Ordered on November 21, 2016, litigation was commenced in state court and funds were disbursed.") In a subsequent letter further detailing the distribution of the settlement funds, however, he described the withdrawal of the funds in the various increments throughout early March 2016 and stated that these were loaned to Cannon on November 25, 2016. PX 26 at 1–3.

Hawker settled, and the matter was dismissed on February 6, 2017. Hawker, ECF No. 87. Geralds and Weitzman each received $500,000 and the Finance Companies collectively received about $500,000. Respondent's Submission at ¶ 21.

DISCUSSION

Local Civil Rule 1.5(b)(5) requires that any violation of the Rules in a disciplinary proceeding be found by clear and convincing evidence. Committee Counsel identifies violations involving (1) RPC 1.15, concerning Weitzman's management of Geralds's settlement funds; and (2) RPC 3.3, concerning his candor before Judge Koeltl and Judge Peck during Hawker. Based on the Findings of Fact, the Court finds by clear and convincing evidence that Weitzman committed these violations.

I. Weitzman Mismanaged Client Funds

Three of the Committee's charges against Weitzman concern the management of client funds. "The prohibitions against an attorney's misappropriating or commingling of client escrow funds are notoriously strict and well known to members of the legal profession." In re Fisher, 908 F. Supp. 2d 468, 481–82 (S.D.N.Y. 2012). Despite this, the Statement of Charges alleges that Weitzman violated (1) RPC 1.15(a)'s prohibition on misappropriating funds or comingling lawyer and client funds; (2) RPC 1.15(b)(1)'s requirement to maintain settlement funds in a special separate account; and (3) RPC 1.15(d)(1)'s requirement to keep records of deposits and disbursals from the accounts specified in RPC 1.15(b). Statement of Charges at 6–8.

A. Weitzman Comingled Client Funds

Weitzman comingled client funds with his own in violation of RPC 1.15(a). "A lawyer in possession of any funds or other property belonging to another person...must not misappropriate such funds or property or commingle such funds or property with his or her own." RPC 1.15(a). This rule is violated when a lawyer "[f]ail[s] to maintain intact client and third-party funds held in...[an] escrow account incident to his practice of law, and permit[s] the balances of said funds to fall below the amount required to be

maintained therein for the benefits of clients and third parties..." Matter of Fortuna, 190 A.D.3d 70, 71–72 (1st Dep't 2020).

Weitzman withdrew all of settlement funds for Geralds's case that were deposited on March 2 into his escrow account. Hearing Tr. at 27:25–28:3. He comingled these funds with his own by withdrawing them either in his own name or through transfers to River Asset Management, which he owns. Id. at 28:4–29:21, 30:22–31:21, 31:22–32:3, 32:4–7. Finally, he put most of this money to personal use through investments with Cannon. Id. at 33:24–35:19, PX 3. He also moved $1,000 and then another $8,000 into accounts under his control for purposes he does not recall. Id. at 23:16–22, 24:9–25:11, 25:12–26:6, 26:7–27:2. These acts caused the balance of his escrow account to fall to zero despite potential client and third-party interests in those funds.

Weitzman argues that this rule is inapplicable because the ownership of these funds was never adjudicated. See, e.g., Respondent's Submission at ¶ 45 ("The February 22, 2016 settlement check was deposited into escrow March 2, 2016; Hawker and OPCO never established and the Court never addressed entitlement to the settlement funds[].")

Rule 1.15(b)(4) forecloses this argument. Under this Rule:

> Funds belonging in part to a client or third person and in part currently or potentially to the lawyer or law firm shall be kept in such special account or accounts, but the portion belonging to the lawyer or law firm may be withdrawn when due *unless the right of the lawyer or law firm to receive it is disputed by the client or third person, in which event the disputed portion shall not be withdrawn until the dispute is finally resolved.*

Rule 1.15(b)(4) (emphasis added). Comment 3 to Rule 1.15 notes that "any disputed portion of the funds [held by a lawyer from which they may be paid] must be kept in or transferred into a trust account, and the lawyer should suggest means for prompt resolution of the dispute, such as

arbitration." Thus, both the spirit and letter of the Rules hold that where the lawyer and a client or third party dispute the ownership of settlement funds held by the lawyer, that lawyer must not withdraw or comingle the disputed portion.

Weitzman was unquestionably aware that ownership of at least some of the settlement funds was disputed. After all, he filed lawsuits to determine their disposition.[6] Since ownership was disputed, Weitzman was obligated to maintain in escrow whatever portion was required to satisfy the dispute until it was resolved. Instead, long before Hawker was settled in February 2017, he withdrew the entire settlement in either his name or the name of an entity under his sole control then used it for personal investments with Cannon or other purposes he does not recall.

B. Weitzman Failed to Maintain Settlement Funds in Separate Accounts

The Court further finds that Mr. Weitzman violated RPC 1.15(b)(1). Under this Rule,

> A lawyer who is in possession of funds belonging to another person incident to the lawyer's practice of law shall maintain such funds in a banking institution . . . Such funds shall be maintained, in the lawyer's own name, or in the name of a firm of lawyers of which the lawyer is a member, or in the name of the lawyer or firm of lawyers by whom the lawyer is employed, in a special account or accounts, separate from any business or personal accounts of the lawyer or lawyer's firm, *and separate from any accounts that the lawyer may maintain as executor, guardian, trustee or receiver, or in any other fiduciary capacity...*

RPC 1.15(b)(1) (emphasis added).

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[6] In addition to Hawker, Weitzman reports filing a separate state action in New York state court to resolve disputes concerning the settlement funds. Respondent's Submission at ¶ 10.

Weitzman's transfer of $492,078.40 to River Asset Management violated this rule. Weitzman is both the manager and sole member of River Asset Management. Hearing Tr. at 31:10–21, PX 2 at 7, 22–23, 26, 28. That entity's LLC agreement provides that a manager (*i.e.*, Weitzman) "shall have fiduciary duties limited to good faith and fair dealing." PX 2 at 7. Delaware law permits an LLC agreement to limit fiduciary duties in this manner. See, e.g., Bay Ctr. Apartments Owner, LLC v. Emery Bay PKI, LLC, 2009 WL 1124451, at *8 (Del. Ch. Apr. 20, 2009) ("The Delaware LLC Act gives members of an LLC wide latitude to order their relationships, including the flexibility to limit or eliminate fiduciary duties.") Good faith and fair dealing, however, is still a fiduciary duty. See, e.g., KDW Restructuring & Liquidation Servs. LLC v. Greenfield, 874 F. Supp. 2d 213, 222 (S.D.N.Y. 2012) ("The duty to act in good faith [is] a subsidiary duty of the duty of loyalty...") (citing In re Walt Disney Co. Derivative Litig., 907 A.2d 693, 754 n. 447 (Del. Ch. 2005), aff'd, In re Walt Disney Co. Derivative Litig., 906 A.2d 27 (Del. 2006)). Thus, while the River Asset Management agreement limited Weitzman's fiduciary duties, it did not eliminate them. So, by maintaining settlement funds in the name of River Asset Management, accounts for which he had a separate fiduciary duty, Weitzman violated Rule 1.15(b)(1).

C. Weitzman Failed to Maintain Appropriate Records

The Committee's third charge relating to Weitzman's management of funds alleges that he violated the record-keeping requirements of RPC 1.15(d)(1). This requires an attorney to keep "records of all deposits in and withdrawals from the accounts specified in Rule 1.15(b) and of any other bank account that concerns or affects the lawyer's practice of law." It further states that "these records shall specifically identify the date, source and description of each item deposited, as well as the date, payee and purpose of each withdrawal or disbursement..." Id. Such records must "be

made at or near the time of the act, condition or event recorded." RPC 1.15(d)(2).

Weitzman violated this Rule. He has failed to put forward any evidence that he kept the required contemporaneous records. The documents he proffers as records are sealed materials he submitted to Judge Koeltl at ECF No. 91 on the Hawker docket. Respondent's Submission at ¶61. These consist of two affidavits sworn on December 19 & 29, 2016, discussing the distribution of the $1.5 million settlement along with a set of bank statements and check images. The bank records and checks do not list the purpose of the transactions they reflect.

A post-hoc accounting of funds supported by bank records cannot satisfy RPC 1.15(d)(1)(i). Bank records are inadequate for the bookkeeping requirements. In In re Emengo, for example, an attorney violated the bookkeeping obligations of the previous version of New York Code of Professional Responsibility where he maintained no ledgers besides bank records and could not recall the purpose of various bank transactions. 902 N.Y.S.2d 579, 582 (2d Dep't 2010). Similarly, in In re Adelsberg, even the combination of bank records and a check register listing the purpose of some but not all the various transactions was found to violate the bookkeeping requirements. 50 N.Y.S.3d 115, 121 (2d Dep't 2017).

A post-hoc explanation like Weitzman's affidavits is similarly inadequate since entries must be made "at or near" the time of the relevant transaction, not in an affidavit months later. See, e.g., In re Steinberg, 143 A.D.3d 138, 140 (2d Dep't 2016) ("[R]espondent failed in his obligations as a fiduciary by his . . . failure to maintain a *contemporaneous* ledger...")(emphasis added).

Weitzman's records are even less adequate than those in Adelsberg. They consist only of bank statements and check images supported by an explanation created months after the relevant transactions. This explanation is also inadequate because it fails to list the purpose of the various transactions individually and fails to state the purpose of the $1,000 or $8,000 withdrawals on March 8 at all. Indeed,

despite having been under investigation for years, Weitzman remained unable to recall the purpose of these two withdrawals even at the 2021 hearing. Hearing Tr. at 24:9–25:11, 26:7–27:2. As with In re Emengo, 902 N.Y.S.2d at 582, the inability to recall these basic transactional details further demonstrates that Weitzman failed to maintain the required records.

II. Weitzman Made False Statements to Judge Koeltl and Judge Peck

Weitzman violated Rule 3.3(a)(1) when he made false statements to Judge Koeltl and Judge Peck during Hawker. This Rule prohibits a lawyer from "knowingly mak[ing] a false statement of fact or law to a tribunal or fail[ing] to correct a false statement of material fact or law previously made to the tribunal by the lawyer..." Id. While this Rule requires that the speaker know the statement was false when made, Weitzman has not disclaimed knowledge of any of the relevant facts demonstrating the false or misleading nature of his statements or suggested he was unaware of their falsity.

A. The November 16 Statement

On November 16, 2016, Judge Peck asked Weitzman whether "the proceeds of the auto accident which are in dispute in this case, the million and a half dollars, will be retained in your attorney escrow account until this case is resolved... ?" Weitzman replied "Yes, your honor." PX 19 at 9:11–19. That was false. By March 18, 2016, all the funds had been withdrawn from Weitzman's escrow account, Hearing Tr. at 27:25¬28:3.

Weitzman seeks to evade this conclusion by arguing that the "will" in "*will* be retained" meant that Judge Peck's query was forward-looking. If so, the funds would not necessarily have to be in escrow when the statement was made but, going forward, would have to be kept in escrow until the conclusion of the case. This cannot be reconciled with Judge Peck's use of the word "retained," which means

"to *keep* in possession or use." Retain, Merriam-Webster (last updated Jan. 3, 2022), available at merriam-webster.com/dictionary/retain. For Weitzman truthfully to say that he will retain the money in escrow, the money must have been in escrow at the time so he could keep it that way. It was not, and Judge Koeltl reached the same conclusion about the interpretation of Judge Peck's order and Weitzman's response. PX 21 at 2 ("Mr. Weitzman represented to the Magistrate Judge on November 16, 2016, that those funds were being kept in Mr. Weitzman's escrow account and agreed to keep them there.")

Alternatively, Weitzman argues that his poor health at this hearing meant that he "lacked capacity at the November 16, 2016 settlement conference to perform duties as an attorney when Magistrate Peck requested my consent on a number of matters including funds escrowing."

Respondent's Submission at ¶ 23.

There are two issues with this argument. First, it makes sense only if Weitzman, under the effects of ill health, *did* make false statements to Judge Peck. He continues to assert that he did not. Hearing Tr. at 4:3–8. This creates a logical contradiction: he was too sick to perform his duties yet also performed those duties. Second, under Rule 3.3(a)(1), a lawyer is prohibited not only from making false statements but from "fail[ing] to correct a false statement of material fact or law previously made to the tribunal by the lawyer..." If Weitzman made a false statement because of his health, he was obliged to correct it, which he has never done since he continues to assert his statements were true.

B. The December 1 Statement

During a December 1, 2016, conference, Judge Koeltl asked Weitzman whether he was "going to keep the money in escrow until this is all decided..." Weitzman replied "No, your Honor. We disbursed the funds when the case was marked closed." PX 23 at 11:18–24. This was false.

Taking the facts in the light most favorable to Weitzman, Judge Koeltl temporarily dismissed the case with an order entered November 22, 2016. Id. at 51:7–10; see also,

Hawker, ECF No. 34. Weitzman transferred $1,000 out on March 8, 2016, id. at 23:16–19, and another $8,000 into another account under his control on March 11. Id. at 25:12–26:6. A final March 18Ntransfer of $1,491,018.40 drained the escrow account entirely. Id. at 27:12–28:3. He then used this money on March 18 to issue bank checks to himself and to River Asset Management and to loan $999,000 to Cannon. Id. at 28:4–29:21; 30:22–32:7; 33:24–34:3. In short, long before Hawker was even temporarily marked closed, all the settlement funds had been removed from escrow. A substantial part of those settlement funds, and possibly all, had then been loaned to Cannon. It was thus false to claim that funds were disbursed only after Hawker was closed.

Weitzman argues that this statement is not false because he was merely stating that the money was "disbursed" generally, but not specifically from escrow. Respondent's submission at ¶55 (citing to ¶9 in the Statement of Charges, which deals with the December 1 statement). There are numerous problems with this argument. First, even accepting this interpretation, his statement would still be a misrepresentation—at least $999,000 was not only "disbursed" from escrow, but "disbursed" again to Cannon about eight months before Hawker was closed.

Second, this interpretation is not credible. Judge Koeltl specifically asked about whether the money would be retained in escrow. Accepting Weitzman's argument would require this Court to accept that Weitzman chose to respond to this query by talking about entirely unrelated payouts, which the Court finds unlikely.

Third, there is no evidence that such post-dismissal payments even exist. Despite being uniquely able to know whom he paid and when, Weitzman has not identified a single payout made in the days or weeks after November 22; the only transaction around this period would be the loan extension, but Weitzman has not identified additional money that might have been "disbursed" during that time. The absence of any evidence of post-November 22 payments further supports the conclusion that Weitzman lied to Judge

Koeltl on December 1 about when the settlement funds were disbursed. Even if Weitzman could identify such payments, his statement would remain misleading. Payouts of $1,000, $8,000, and $999,000 (*i.e.*, about two- thirds of the settlement) were disbursed months before the November dismissal order.

C. The December 12 Statement

On December 12, 2016, Weitzman filed a letter with Judge Koeltl which said that "[t]he funds were never removed from escrow and had not yet been placed into escrow when your Honor ordered the voluntary dismissal filed November 19, 2016 on November 21, 2016..."PX 22 at 2. It went on to say that "[i]n the time that Plaintiff filed the voluntary dismissal on November 19, 2016 which your Honor so Ordered on November 21, 2016, litigation was commenced in state court and funds were disbursed." Id. This, as discussed, was false. The funds had been both placed in escrow and dissipated long before the November dismissal.

Weitzman's response is not entirely clear but appears to reiterate his arguments about the December 1 statement on the meaning of the words "disbursed" and "escrow." See Respondent's Submission at ¶ 58 (citing to ¶ 11 in the Statement of Charges, which deals with this December 12 statement). These arguments about what payments Weitzman made, and from which accounts are unavailing for the reasons already discussed.

D. The December 29 Affidavit

On December 29, 2016, Weitzman submitted an affidavit to Judge Koeltl stating that he "loaned the funds to William Cannon...on November 25, 2016." PX 26 at 3. This is false. While Weitzman has been evasive about the precise timing of his loans to Cannon, at least $999,000 of those loans were made through an agreement on March 18, 2016, more than nine months before he claimed to have loaned the funds to

Cannon. Hearing Tr. at 33:24–34:3.
Weitzman offers no rebuttal save to assert, without supporting evidence, that his December 29 statement was truthful. Respondent's Submission at ¶ 59 (referencing the paragraph in the Statement of Charges dealing with this statement).

E. The November 16 Geralds Statement

At the November 16 conference before Judge Peck, Weitzman said that Geralds told him that he would not appear for the conference. PX 19 at 3:19–20 ("Your Honor, I requested my client to come. My client did not."), 6:18–19 ("He indicated he had no intention of coming.") Even without further investigation, Judge Peck doubted Weitzman's candor on this point at the time. PX 19 at 5:10–25 ("What I'm hearing instead is, 'The dog ate my homework,' or, to be less facetious, 'My client didn't show up,' even though that's not what you told me before we went on the record . . . Frankly, Mr. Weitzman, I do not think you are being honest with the Court.")

Judge Peck's intuition proved accurate. At his 2018 deposition, Weitzman stated that Geralds did not tell him that he would not come. PX 31 at 49:5–6 ("He [Geralds] did not tell me he wouldn't come."), id. at 10–12 ("I told him he was required to come and assumed he would come as informed.") This statement, made under oath, contradicts his statements to Judge Peck.

Weitzman's attempts to evade this conclusion are without merit. He selectively quotes only the more ambiguous elements of the November 16 hearing and the 2018 deposition without further context. Respondent's Submission at ¶ 50. A review of the relevant material shows that Weitzman was not being truthful when he told Judge Peck that his client had informed him that he was not coming to the settlement conference.

F. Other Misrepresentations

There are five other statements by Weitzman made during the November 16, 2021 evidentiary hearing that Committee Counsel contends are also misrepresentations. Committee Counsel's Submission at 14–15. Committee Counsel argues that the Court should find further violations of Rule 3.3 based on these statements. While these statements do appear to be misrepresentations, it is not proper to find additional violations of Rule 3.3 based on information not contained in the Statement of Charges.

Three of these misrepresentations are reaffirmations by Weitzman that his statements on December 1, 12, and 29 were truthful. Committee Counsel Submission at 15. As discussed, they were not. Two are new. First, Weitzman testified at the evidentiary hearing that he received his deposition transcript "just weeks ago." Hearing Tr. at 27:5–7. Committee Counsel, however, submitted an email indicating that Weitzman was emailed the transcript on June 16, 2021, months before the hearing. Committee Counsel Submission at Ex. 7. Second, he testified that the Finance Companies failed to send a representative to the November 16 conference before Judge Peck. Hearing Tr. at 19:1–3. The transcript of that hearing, however, shows that a representative for these firms did appear. PX 19 at 4:5–12.

In the context of this proceeding, however, it is not appropriate for the Court to find additional violations of the Rules that were not presented in a statement of charges. "An attorney disciplinary proceeding is quasi-criminal in nature..." In re Peters, 642 F.3d 381, 385 (2d Cir. 2011). Accordingly, "the Due Process Clause entitles the charged attorney to, *inter alia*, adequate advance notice of the charges, and the opportunity to effectively respond to the charges and confront and cross-examine witnesses." Id. Such advance notice does not have to be substantial as "[c]onstitutional due process requires only notice 'of such nature as reasonably to convey the required information.'" Matter of Jacobs, 44 F.3d 84, 90 (2d Cir. 1994) (quoting Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950)).

Under this standard, the Statement of Charges is not

sufficient to find additional violations of Rule 3.3. Those charges dealt exclusively with Weitzman's conduct during Hawker and do not cover Weitzman's misstatements during the hearing. They also do not touch on the Finance Companies' representative. Due process thus bars this Court from finding violations based on conduct that was not referenced at all in the Statement of Charges.

This does not leave Court without recourse. It could draw on its inherent sanction authority to investigate and address this further misconduct. As a matter of discretion, however, the Court declines to do so. Further proceedings to adjudicate sanctions would only add delay to a disciplinary investigation that has now gone on for more than four years. The additional misrepresentations Committee Counsel seeks to charge, moreover, do not appear to fundamentally change the nature of Weitzman's misconduct as they are mainly extensions of prior lies or minor misrepresentations of collateral issues. Accordingly, while the Court finds that Weitzman violated Rule 3.3 through the statements he made on November 16, December 1, December 12, and December 29, it declines to find additional violations for his conduct during the hearing.

III. Weitzman's Other Defenses

Weitzman raises several defenses beyond the objections noted above. The Court addresses each of these in turn. First, Weitzman objects that there was no subject matter jurisdiction over the original Hawker matter. See Respondent's Submission at ¶¶ 13–17. This is immaterial. "[A] federal court has the power to control admission to its bar and to discipline attorneys who appear before it." Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991); see also Jacobs, 44 F.3d at 87 ("A district court's authority to discipline attorneys admitted to appear before it is a well-recognized inherent power of the court.") This is sensible. "Otherwise, parties who abuse the judicial procedures could get off scot-free anytime it turned out that the district court lacked subject-matter jurisdiction." Hyde v. Irish, 962 F.3d

1306, 1310 (11th Cir. 2020). Jurisdiction over Hawker is thus not required for disciplinary action against Weitzman.

Second, Weitzman makes several objections to the Committee Counsel's questioning during the evidentiary hearing. He objects to the style and form of the questioning, rather than to any substantive evidentiary issue. See, e.g., Respondent's Submission at ¶¶ 68–72 (describing questioning as "argumentative," "badgering," and "leading") These objections are without basis. Weitzman was evasive and obstructive throughout his examination. The Court was repeatedly forced to direct him to answer the questions put to him. Faced with this obstruction, the Committee Counsel's questions were appropriate.

Third, Weitzman makes various arguments about the validity of Geralds's agreements with the Finance Companies. See Respondent's Submission at ¶¶ 10–12, 18–20, 47. The charges of financial mismanagement against Weitzman, though, stem from his comingling of personal and settlement funds while the ownership of these funds was disputed. His ultimate entitlement (or lack thereof) to these funds, and the agreements' effect on that entitlement, is irrelevant.

Finally, Weitzman makes wide-ranging assertions about factual inaccuracies in the Statement of Charges against him. Where they are relevant to a substantive charge against Weitzman, the Court has addressed them above. Where they represent a free-standing attack on the Statement of Charges, they are meritless. In the attorney discipline context, all a statement of charges needs to do to satisfy due process is "reasonably convey" the information supporting the charges against the attorney. Jacobs, 44 F.3d at 90.

The factual challenges Weitzman makes as part of this attack are irrelevant, meritless, or disingenuous. Some are mere hairsplitting. He dedicates an entire paragraph to contesting whether "finance" is the proper word to describe Geralds's transactions with the Finance Companies, Respondent's Submission at ¶ 47, and challenges the description of Judge Koeltl's initial (and swiftly vacated)

dismissal of Hawker as "purported." Id. at ¶ 42. Paragraph 60 objects to a typo in a reference to the Hawker docket. None of this flyspecking affects the substantive charges against him or the adequacy of the Statement of Charges.

Several of Weitzman's objections rely on misrepresentations of the record. The most concerning of these occurs at ¶ 53 in the Respondent's submission which states:

> The SOC at 7 incorrectly states:
>
> > *"Judge Peck "so ordered" that Respondent retain the money in his escrow account."*
>
> while the record states (Exhibit "6", ECF Dkt. No. 48):
>
> > *"that the proceeds of the auto accident which are in dispute in this case, the million and a half dollars, will be retained in your attorney escrow account until this case is resolved, right?"*
>
> indicating a question.

What makes this distortion remarkable is that it is refuted by Judge Peck's very next statement: "And the Court *so orders that*, just so that is crystal clear..." PX 19 at 9:17-18 (emphasis added). Judge Koeltl stated as much in an order as well. PX 21 at 2 ("The Magistrate Judge then ordered Mr. Weitzman to keep those funds in his escrow account. That was a binding order of the Magistrate Judge.") Given this and other misrepresentations, the Court finds Weitzman's attacks on the adequacy of the Statement of Charges without merit.

CONCLUSION

The Court finds by clear and convincing evidence that Weitzman committed four violations of the New York Rules of Professional Conduct by: (1) comingling lawyer and client funds in violation of Rule 1.15(a); (2) failing to maintain settlement funds in a separate account in violation of Rule 1.15(b)(1); (3) failing to maintain proper records in violation

of Rule 1.15(d); and (4) making false statements to a tribunal in violation of Rule 3.3(a). Parties wishing to respond to this Report shall do so within 14 days of this Report, pursuant to Local Civil Rule 1.5(d) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York. Any such response shall be served upon the Grievance Committee, this Court, and all parties.

/s/ SARAH NETBURN
Sarah Netburn
United States Magistrate Judge

Dated: January 27, 2022
New York, New York

APPENDIX N

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 4th day of April, two thousand twenty-four.

Docket Nos: 23-872(L), 23-7556(Con)

COMMITTEE ON GRIEVANCES FOR THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK,
Petitioner -Appellee,

v.

RAPHAEL WEITZMAN,
Respondent - Appellant.

ORDER

Filed on: **April 4, 2024**

Appellant moves the Court to strike Appellee's brief and requests an extension of time to file his reply brief. Appellee opposes the motion to strike and cross-moves for sanctions on Appellant.

IT IS HEREBY ORDERED that the motion to strike and cross-motion for sanctions are REFERRED to the panel that will determine the merits of this appeal. The motion to extend time to file the reply brief is DENIED as moot in light of the timely filing of Appellant's reply brief.

FOR THE COURT:
/s/ Catherine O'

Hagan

Catherine O'Hagan Wolfe,

Clerk of Court

APPENDIX O

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 14th day of November, two thousand twenty-four.

Docket No: 23-872

COMMITTEE ON GRIEVANCES FOR THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK,
Petitioner -Appellee,

v.

RAPHAEL WEITZMAN,
Respondent - Appellant.

ORDER

Filed on: **November 14, 2024**

Appellant, Raphael Weitzman, filed a petition for panel rehearing, or, in the alternative, for rehearing *en banc*. The panel that determined the appeal has considered the request for panel rehearing, and the active members of the Court have considered the request for rehearing *en banc*.

IT IS HEREBY ORDERED that the petition is denied.

FOR THE COURT:

/s/ Catherine O' Hagan

Catherine O'Hagan Wolfe, Clerk

Additional material from this filing is available in the Clerk's Office.