

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 80 DB 2022
	:	
Petitioner	:	
v.	:	Attorney Reg. No. 208824
	:	
JOSEPH D. LENTO,	:	(Philadelphia County)
Respondent	:	

**RESPONDENT JOSEPH D. LENTO’S BRIEF ON EXCEPTIONS TO
REPORT OF SPECIAL MASTER**

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**I hereby certify that I have this day
served the within document by
electronic mail and Federal Express
upon all parties record in this proceeding
in accordance with the requirement of
204 Pa. Code §89.22**

November 7, 2023

/s/ James C. Schwartzman
James C. Schwartzman, Esquire
Counsel for Respondent

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I. STATEMENT OF THE CASE AND SUMMARY OF RESPONDENT'S BASIC POSITION

Office of Disciplinary Counsel (“ODC”) filed a Petition for Discipline against Joseph D. Lento, Esquire (“Respondent”) on or about June 6, 2022. Therein, ODC alleged that Respondent violated various Rules of Professional Conduct in connection with six separate client matters.

Prior to filing the Petition for Discipline, ODC served multiple DB-7 Requests for Statements of Respondent’s Position, as well as multiple follow up requests for additional information. Respondent complied with his obligation to supply the requisite statements and/or information. Therein, Respondent provided ODC with detailed explanations pertaining to the alleged Rule violations and in some instances admitted that he violated certain Rules of Professional Conduct. He also thoroughly explained the nature of his representation relating to each client at issue and moreover, detailed his rationale underlying the steps he took (and/or did not take) in connection with his representation. Each verified Response to each DB-7 (and DB-7A) Request for Statement of Respondent’s Position, along with all supplemental responses, were admitted into evidence.

In addition to explaining the circumstances relating to his representation by way of DB-7 Responses, Respondent testified on his

own behalf during these proceedings. Respondent's testimony directly contradicted the vast majority of the allegations contained within the Petition and the proofs ODC offered in support of its allegations which were largely dependent on the Complainants' testimony. Respondent's DB-7 (and DB-7A) Responses and the attachments thereto, coupled with his testimony, reveals that ODC failed to carry its heavy burden of establishing each and every alleged Rule violation by clear and convincing proofs. Accordingly, the Special Master's recommendation that Respondent be suspended from the practice of law for 4 years is not warranted.

II. GROUNDS UPON WHICH THE EXCEPTIONS REST

Respondent contends that the Special Master's below identified Rule violation findings are not supported by clear and satisfactory proofs and accordingly, Respondent takes exception to the following Rule violation findings:

a. Charge I – the Gardner Matter

Respondent contends that the Special Master erred in finding that Respondent violated RPC 1.3, RPC 1.4(b), RPC 1.5(a), RPC 1.16(d), and RPC 8.4(c).

b. Charge II – the Robreno Matter

Respondent contends that the Special Master erred in finding that Respondent violated RPC 1.1 and RPC 1.3.

c. Charge III – the Watsons Matter

Respondent contends that the Special Master erred in finding that Respondent violated RPC 8.4(d).

d. Charge IV – the American Club of Beijing Matter

Respondent contends that the Special Master erred in finding that Respondent violated RPC 1.3, RPC 8.1(a), and RPC 8.4(c).

e. Charge V – the Douglas Matter

Respondent contends that the Special Master erred in finding that Respondent violated any Rules of Professional Conduct.

f. Charge VI – the Copelin Matter

Respondent contends that the Special Master erred in finding that Respondent violated any rules of Professional Conduct.

III. ARGUMENT

a. Standard of Review

After a Special Master submits his Report and Recommendations, the Disciplinary Board has the opportunity to prepare and forward its own findings and recommendations to the Pennsylvania Supreme Court, along

with the record of the disciplinary proceedings before the Special Master. Pa. R.D.E. 205(c)(6). This *de novo* review allows the reviewing body to give a second look at the record before arriving at its own independent judgment on the matters in dispute. *Office of Disciplinary Counsel v. Diangelus*, 589 Pa. 1, 13, 907 A.2d 452, 459 (2006) (other citations omitted). Although the Disciplinary Board is not bound by the factual findings made by the Special Master, as a general rule, the Special Master is entitled to deference on credibility determinations. *Office of Disciplinary Counsel v. Davis*, 532 Pa. 22, 32, 614 A.2d 1116, 1121-1122 (1992). But even then, findings concerning an individual's credibility serve merely as guidelines for the Court, not as established findings. *Office of Disciplinary Counsel v. Zdrok*, 538 Pa. 41, 645 A.2d 830 (1994); *Office of Disciplinary Counsel v. Lucarini*, 504 Pa. 271, 276, 472 A.2d 186, 188 (1983).

On *de novo* review, Respondent is confident that this Disciplinary Board will review the record with a fresh set of eyes and agree that ODC failed to present clear and satisfactory evidence to prove that he engaged in professional misconduct to a degree warranting a 4 year suspension.

b. The Gardner Matter

The Special Master improperly opined that Respondent's conduct amounted to RPC 1.3, RPC 1.4(b), RPC 1.5(a), RPC 1.16(d) and RPC

8.4(c) violations since ODC did not present clear and satisfactory proofs to substantiate the Special Master's findings.

Rule 1.3 places a duty on an attorney to act with reasonable diligence. The record under review established that Mr. Gardner retained Respondent on or about August 14, 2018 for representation in connection with an expungement matter. See Joint Stipulation at ¶ 4. Within approximately two months, Respondent filed a Petition for Expungement. See Joint Stipulation at ¶ 8. In December 2018, the Commonwealth submitted its response to the Petition. See Joint Stipulation at ¶ 9. Respondent timely informed Mr. Gardner about the Commonwealth's position. See Joint Stipulation at ¶ 10. Thereafter, over the course of the next few months, Respondent continued to pursue the expungement on Mr. Gardner's behalf. See *generally* Joint Stipulations at ¶¶ 11, 13, 14, 17 and 20. However, in May 2019 – approximately 9 months after first being retained – Mr. Gardner terminated the representation notwithstanding the fact that Respondent was actively pursuing the matter. See Joint Stipulation at ¶ 19. The record, therefore, does not lend credence to the Special Master finding that Respondent did not act with reasonable diligence. Rather, while retained, Respondent pursued the matter in a diligent and prompt manner.

Rule 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. ODC did not carry its burden as to this alleged Rule violation. Here, Respondent offered, by way of his DB-7A Response and sworn testimony, his understanding of the representation and notably, the information he provided to Mr. Gardner before Mr. Gardner agreed to the representation which included an explanation relating to the five-year waiting period needed to expunge a summary offense. 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. ODC failed to offer clear and satisfactory proofs to rebut Respondent's position. Respondent's fee agreement further substantiates Respondent's position. Here, the fee agreement memorialized the fact of Respondent being engaged to seek an expungement of "applicable charges," i.e., more than one charge. See ODC-4. If Respondent was hired to seek an expungement of the single summary offense, he would not have included the phrase "applicable charges." Moreover, Mr. Gardner testified that his prior attorney counseled him about expungement issues. See 1/23/2023 Tr. at 160:2-161:2. The totality of the evidence, therefore, does not include clear and satisfactory proofs to substantiate a RPC 1.4(b) violation since compelling evidence was put forth that established

Respondent fully informed Mr. Gardner about the expungement process – including that the summary offense could not be expunged until the five-year waiting period expired.

Rule 1.5(a) prohibits an attorney from entering into an agreement for, charging, or collecting a clearly excessive fee. 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. 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. 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 Special Master’s subjective and contrary finding is not supported by clear and satisfactory proofs.¹

Rule 1.16(d) requires an attorney to, *inter alia*, refund any advance payment of fee or expense that has not been earned. Here, Respondent collected \$9,000 in fees during the representation. Importantly,

¹ Office of Disciplinary counsel did not offer any expert testimony in support of the excess fee charge in either the Gardner matter or the Copelin matter. Accordingly, Office of Disciplinary Counsel fell short of establishing any RPC 1.5(a) violation.

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. Accordingly, the records does not support, by clear and satisfactory proofs, any RPC 1.16(d) violation.

Rule 8.4(c) prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit or misrepresentation. In support of this alleged Rule violation, ODC relied heavily on Mr. Gardner's testimony during which he informed the Special Master 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, rebut Mr. Gardner's stance. ODC's "he said" "she said" proofs do not establish a RPC 8.4(c) violation 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. 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.

c. The Robreno Matter

The record now under review falls short of evidencing RPC 1.1 (competence) and RPC 1.3 (diligence) violations. As a preliminary matter,

Respondent's client did not file a disciplinary complaint against Respondent alleging any RPC violations. Both RPC 1.1 and 1.3 pertain to duties a lawyer owes to his/her client. Since no client raised any alleged Rule violations, the Special Master erred in finding Respondent's conduct violated RPC 1.1 and RPC 1.3.

Here, Respondent originally delegated the underlying lawsuit, the *Rosario* matter, to a 30+ year experienced attorney. See 1/25/2023 Tr. at 40:13-41:6, 43:18-44:6. This attorney drafted the original complaint. ODC failed to offer any proofs from which it could be inferred that Respondent was not justified or somehow acted unreasonably by relying on this attorney's knowledge of the law and experience. Indeed, Respondent was not even a member of the United States District Court for the Eastern District of Pennsylvania. Thus, while Judge Robreno determined that the complaint the attorney prepared failed to include sufficient legal citations in support of the asserted claims, Respondent reasonably relied on that attorney's work-product.

Moreover, after the Complaint was dismissed, the record reflects that the *Rosario* case was assigned to another member of the United States District Court for the Eastern District of Pennsylvania for further handling with the understanding that outside counsel would be the lead attorney.

The record reflects that the outside counsel reviewed the underlying complaint and approved its filing. See 1/25/2023 Tr. at 72:17-24; see also ODC-33. Here again, Respondent was not admitted in the United States District Court for the Eastern District of Pennsylvania. Thus, Respondent understandably relied on these individuals to take the steps necessary to ensure that the complaint was filed in conformity with the law.

Finally, the Special Master placed great reliance on testimony from two witnesses – Steven Feinstein and Joan Feinstein – in support of his Rule violation findings. The record under review established that these witnesses lacked credibility notwithstanding the Special Master’s findings. First, Steven Feinstein was Respondent’s former disgruntled employee who arguably attempted to take over Respondent’s practice after Respondent was referred to Office of Disciplinary Counsel’s office. See 1/24/2023 Tr. at 168:2-183:8. As of the date Mr. Feinstein testified, he was in the midst of defending a disciplinary complaint stemming from Judge Robreno’s referral to ODC. See 1/24/2023 Tr. at 123.3-12. Second, Joan Feinstein, who the Special Master found credibly testified as having no knowledge of Judge Robreno’s prior *Rosario* dismissal, lacked credibility given that she too was in the midst of defending a disciplinary complaint that also stemmed from Judge Robreno’s referral. See 1/24/2023 Tr. at 9:-

17. The foregoing reveals that the Special Master's credibility finding relating to Steven Feinstein and Joan Feinstein is not supported by clear and satisfactory proofs given that evidence revealed each witness had a motive to offer biased testimony.

Further, with respect to Joan Feinstein, Respondent testified that he informed Joan that Judge Robreno dismissed the original *Rosario* complaint and further, that it would need to be refiled. See 1/25/2023 Tr. at 85:22-87:16. He further testified that in March, April, May and June he held Zoom meetings to discuss work matters, including the *Rosario* litigation and further, that Joan and the outside counsel participated in these meetings. See 1/25/2023 Tr. at 68:15- 69:9,71:21-72:9. During that timeframe, the COVID pandemic was in its infancy stage. Since offices were, in large part, "shut down," Zoom meetings were held to help keep all office personal up to date with respect to case and/or client matters.

Notably, Joan admitted that Respondent complained to her about multiple problems concerning Steven Feinstein and also, that the complaints probably included Steven Feinstein's failure to appear at a court date. See 1/24/2023 Tr. at 293:1-294:5. Thus, Joan's contention that she was unaware of the *Rosario* complaint having been previously dismissed lacks credibility. The Special Master's finding that Respondent violated

RPC 1.1 and RPC 1.3 in the Robreno matter are not supported by clear and satisfactory proofs. Simply stated, Respondent reasonably relied on members of the United States District Court for the Eastern District of Pennsylvania to prepare and properly file, and later refile, the complaint on behalf of Mr. Rosario.

d. The Watsons Matter

ODC did not present clear and satisfactory proofs to support the Special Master's finding that Respondent violated RPC 8.4(d).

Here, as with the *Rosario* litigation, the record reflects that Respondent delegated the *Watson* litigation to a seasoned attorney, Steven Feinstein, for handling. The underlying matter was an uncomplicated action involving an allegedly unpaid debt of \$10,000.00. See Statement of Facts at ¶ 230. While Respondent did concede that his conduct fell short of what is otherwise required for a supervising attorney, the record does not reveal that his conduct was prejudicial to the administration of justice.

e. The American Club of Beijing Matter

ODC did not present clear and satisfactory proofs to support the Special Master's finding that Respondent violated RPC 1.3, RPC 8.1(a) and RPC 8.4(c).

The undisputed record under review reveals that Respondent acted diligently² and used his best efforts to determine what specific information he should include within his application in support of attorney Anthony Scordo's *pro hac vice* admission into the Philadelphia Court of Common Pleas, Philadelphia County. Thus, the record does not support a finding that: (1) Respondent "knowingly ma[de] a false statement of material fact" under RPC 8.1(a) or (2) Respondent engaged in deceitful conduct under RPC 8.4(c).

Here, after learning that the original application 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 lawyers 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 United States District Court for the Eastern District of Pennsylvania. See

² Respondent notes that his client did not assert a disciplinary complaint against him and accordingly, the Special Master erred in finding that Respondent violated RPC 1.3.

1/25/2023 Tr. at 143:16-144:11; see also 1/27/2023 Tr. at 43:14-44:10.

Respondent acknowledged when questioned that failing to include his federal court disciplinary history was a mistake. *Id.* However, the record does not show that he knowingly made a false statement or that he engaged in any deceitful conduct. Rather, at the time he submitted the second filing, he believed and understood that he was providing the Court with the required information. Unfortunately, Respondent's understanding was simply incorrect.

f. The Douglas Matter

The evidentiary foundation upon which the Special Master premised his Rule violation findings is not supported by clear and satisfactory proofs. The gravamen of ODC's allegations is that the record does not contain clear and satisfactory proofs that otherwise establish Ms. Douglas informed Respondent that her prior criminal history was positive for felony convictions before Respondent agreed to the engagement. It is undisputed that when Ms. Douglas 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. Douglas'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. Respondent testified that during the call, Ms. Douglas 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. Douglas 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.

Ms. Douglas disputes Respondent's recollection of their initial conversation. According to her, she did inform Respondent that her prior criminal history included felony convictions. The point here, however, is not whether she and Respondent agree on the substance of the initial conversation. Rather, for the Special Master to find any Rule violations, it was incumbent on ODC to establish by clear and satisfactory proofs that, *inter alia*,: (1) Ms. Douglas informed Respondent that her prior criminal history included felony convictions and (2) Respondent did not counsel her with respect to how, if at all, felony convictions can be expunged.

Respondent emphatically testified that, while Ms. Douglas did not inform him that her criminal history included felonies, when explaining eligibility requirements he always informs clients about the limitations that apply to felony convictions. See /25/2023 Tr. at 163:11-22. Clear and satisfactory proofs of record do not warrant a contrary finding on this issue. Since ODC did not carry its burden to establish Ms. Douglas's version of the initial conversation, the Special Master erred in finding any Rule violations.

Ms. Douglas's testimony lends credence to Respondent's recollection of what transpired during the initial call. Ms. Douglas confirmed that she contacted Respondent because she wanted to know "[does she] qualify for anything... [Does she] qualify to clean up [her] record 20 years later for anything in Pennsylvania." See 1/23/2023 Tr. at 93:11-15. Respondent testified that he explained how Pennsylvania's expungement process works and therefore, Respondent informed Ms. Douglas about whether she "qualif[ied] for anything."

Because the foundation upon which the Special Master's Rule violations are premised is not supported by clear and satisfactory proofs, each Rule violation found was error.

g. The Copelin Matter

The Special Master erred in finding Respondent violated RPC 1.1, RPC 1.2(a), RPC 1.3, RPC 1.4(a)(3), RPC 1.5(a), RPC 1.16(d), RPC 5.5(a), RPC 8.4(a), and RPC 8.4(c).³

As a preliminary matter, the Special Master erred in finding that Respondent violated any Rules of Professional Conduct since the record lacks clear and satisfactory proofs to rebut Respondent's contention that he was retained in a non-lawyer capacity. First, Respondent testified 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 they "would not be serving in an attorney role." Second, Respondent forwarded Ms. Copelin a consultation agreement confirming that he was being engaged as an "advisor" and not an attorney. See ODC-97. Third, as a general rule, student disciplinary matters at the collegiate level are non-adversarial. See 3/8/2023 Tr. at 93:13-94:15. The foregoing establishes that: (1) Respondent was not retained as an attorney and (2) the services provided did not constitute the practice of law. For these

³ It is unclear whether the Special Master lodged a RPC 8.5(a) violation. To the extent the Special Master did find a RPC 8.5(a) violation, such finding was error. Rule 8.5(a) merely pertains to jurisdictional issues and is not, in and of itself, a basis upon which to find a Rule violation.

reasons alone, the Special Master erred in finding that Respondent violated any Rules of Professional Conduct. Even if the Rules do apply to Respondent's situation, as discussed below, clear and satisfactory proofs do not support the Special Master's Rule violation findings.

Rule 1.1 obliges a lawyer to "provide competent representation to a client." Here, the record establishes on or before February 4, 2021, Ms. Copelin, a Georgia State University student, received notice that she would be expelled from GSU stemming from three separate claims of academic dishonesty, including plagiarism and cheating. See Joint Stipulations at ¶ 184; see *also* 1/23/2023 Tr. at 223:20-224:3; see *also* 1/26/2023 Tr. at 307:19-23. Ms. Copelin initially contacted Respondent on February 4, 2021. See ODC-95. Respondent forwarded Ms. Copelin his consultation agreement that day. Ms. Copelin executed the agreement and returned it to Respondent on February 5, 2021. See D-56, D-57.

They conducted the initial consultation call on February 6, 2021. See Joint Stipulations at ¶ 188. During the call, Ms. Copline was advised that Respondent's scope of representation did not include Respondent, or any member of his firm, appearing before any court or tribunal. Nor did it include Respondent, or any member of his firm, filing a legal action in any court or tribunal on her behalf. See 1/25/2023 Tr. 206:18-23. Instead, Ms.

Copelin was informed that, if hired, a letter would be prepared on her behalf for her to directly submit to the school, i.e., they would ghost write a letter on her behalf. See 1/25/2023 Tr. at 202:4-203:7. During the February 6, 2021 call, Ms. Copelin did inform Respondent that, should a response be submitted on her behalf, it needed to be submitted on or before February 9, 2021.⁴

As of February 6, 2021, Respondent was not hired to proceed with the advisory representation. Rather, as of February 7, 2021, Ms. Copelin was attempting to negotiate the fee. See 1/25/2023 Tr. at 200:3-16. On February 8, 2021 Ms. Copelin emailed Respondent and inquired “just so I am clear, please provide realistic odds what can or cannot happen...what I would like is whether I am suspended or not, not to have transcript documented. I will leave voluntarily if it’s not document...call so I can remit payment.” See Joint Stipulations at ¶ 193 and ODC-101. Since Ms. Copelin was inquiring about “realistic odds” of what may happen, Respondent did not call Ms. Copelin that day because he believed that she was still considering whether she wanted to hire Respondent. See

⁴ Ms. Copelin testified that any submission on her behalf needed to be filed by 5:00 p.m. Aside from her testimony there is no evidence to support the 5:00 p.m. deadline. ODC did not introduce the term “business day,” as defined by the Georgia State University Student Code of Conduct, into evidence with respect to pertinent time period.

1/25/2023 Tr. at 201:7-22. Instead, he responded directly to her email inquiry. See ODC-101.

The next day, February 9, 2021 – the date Ms. Copelin’s submission was due – Ms. Copelin called Respondent’s office and remitted payment. See 1/25/2023 Tr. at 201:23-202:3; see *also* ODC-102. On that date, Respondent learned for the first time that Ms. Copelin previously 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. Ms. Copelin’s conduct, preparing and submitting her own response, caused the planned strategy to shift from ghost writing a letter on her behalf to preparing and forwarding a letter to the school under Respondent’s name. See 1/25/2023 Tr. at 204:7-15. This strategy was successfully completed on the date the letter was due, February 9, 2021. See ODC-105. The foregoing demonstrates that Respondent did not violate RPC 1.1.

The foregoing further establishes that Respondent did not violate RPC 1.2(a), RPC 1.3, RPC 1.4, RPC 1.5(a), or RPC 1.16(d). The record shows that Respondent provided Ms. Copelin with sufficient information such that she was reasonably informed about the status of the matter and was able to make informed decisions regarding the representation. Immediate steps were taken and completed in accordance with the scope

of engagement and Respondent's fee for same was commensurate with the services provided, i.e., it was not clearly excessive.⁵

Nor does the record contain clear and satisfactory proofs to establish any RPC 5.5(a) or RPC 8.4 violations. Rule 5.5(a) precludes lawyers from practicing law "in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so." Respondent's scope of engagement, as detailed above, 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. It is undisputed that Respondent was not retained to appear before any court or tribunal. Nor was Respondent retained to file a legal action on Ms. Copelin's behalf. Nor did Respondent ever represent Ms. Copelin in any Georgia court or administrative proceeding.

The Special Master determined that, by advocating on Ms. Copelin's behalf via a letter authored on Respondent's law firm's stationary, Respondent committed the unauthorized practice of law. See Special Master Finding of Fact at ¶ 463. This finding is not supported in the record. A close read of the letter at issue (ODC-105) reveals that its content was not the practice of law. The letter makes no reference, let alone any

⁵ Respondent ultimately tendered Ms. Copelin a full refund.

analysis, to any case law, Georgia laws or statutes. At best, the letter is akin to a reference letter a lawyer may submit on behalf of a college applicant that was written on the lawyer's law firm's stationary. Simply stated, the letter contains no "legal" analysis and therefore, cannot serve as basis to support any unauthorized practice of law violation. The letter merely begs the school not to expel Ms. Copelin – a request that an advisor can properly request.

Moreover, the letter clearly sets forth the jurisdictions in which Respondent is barred. Notably absent is any reference to being admitted in Georgia. See ODC-105. Similarly, the consultation agreement (ODC-97) that Respondent provided Ms. Copelin also identifies his bar admissions (Pennsylvania, New Jersey and New York) as does Respondent's online website. And, as noted above, the consultation agreement informed Ms. Copelin that Respondent's role would be limited to that of an advisor. These facts make clear that: (1) Respondent never held himself out as being licensed to practice law in Georgia and (2) Ms. Copelin knew that he was not licensed in Georgia. Clear and satisfactory proofs do not substantiate different findings.

The Special Master's RPC 8.4 violations are also not supported by clear and satisfactory proofs. The record does not reveal that Respondent

attempted to, nor did he, deceive Ms. Copelin. Nor did Respondent engage in any conduct that was prejudicial to the administration of justice. From his first contact with Ms. Copelin, he 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. When Ms. Copelin formally hired Respondent (February 9, 2021), steps were immediately taken to fulfil the engagement terms.⁶ There was no deception.

h. The Special Master's Recommendation That Respondent Be Suspended for 4 Years Is Not Supported by Clear and Satisfactory Proofs

Respondent takes exception to the Special Master's recommendation that Respondent be suspended for 4 years. As detailed above, many of the Rule violations the Special Master found were not supported by clear and satisfactory proofs. Thus, the harsh recommended sentence is not warranted.

⁶ Respondent acknowledges that a formal fee agreement was not provided to Ms. Copelin on February 9, 2021. Time was of the essence to submit the letter on Ms. Copelin's behalf since it was due the same day she hired Respondent. Moreover, Ms. Copelin terminated the representation after she approved the letter being sent, and after the letter was in fact sent the University. Thus, since the representation was over, she did not receive a fee agreement.

Respondent takes exception to the Special Master's reliance on the three cases⁷ that pertain to his recommended sanction with respect to Charge IV (the American Club of Beijing matter). Each of those cases involved an attorney that was seeking *pro hac vice* admission. In none of those cases was the offending attorney the "sponsor" attorney. Thus, the attorneys there were obligated under the pertinent *pro hac vice* admission rules to affirmatively state whether they had any prior discipline and if so, the nature of such discipline. There, each attorney misrepresented their respective disciplinary histories. Since the disposition of each *pro hac vice* admission would call for the reviewing court to consider the applicant's disciplinary history, each applicant had a potential motive to hide their respective histories.

As contrasted here, Respondent owed no duty in the first instance to report whether he had any disciplinary history and, Respondent admitted that the original application was mistakenly filed – a fact for which he accepted responsibility. See 1/27/2023 Tr. at 20:5-21:2. After the trial court denied the application, Respondent sought counsel from three

⁷ The cases are: *ODC v. Tuerk*, No. 51 DB 2014 (D.Bd. Rpt. 7/20/2015) (S.Ct. Order 10/15/2015), *ODC v. Steele*, No. 110 DB 2014 (D.Bd. Rpt. 3/15/2016) (S.Ct. Order 6/6/2016), and *ODC v. Heyburn*, No 58 DB 2020 (D.Bd. Rpt. 4/28/2021) (S.Ct. Order 6/22/2021)

lawyers in an effort to determine what disciplinary history information he needed to submit along with the application. In doing so, Respondent held a good faith believe that he need not include his Federal Court disciplinary history. Indeed, what did Respondent have to gain by omitting this information given that he did disclose his Pennsylvania and New Jersey disciplinary histories? The record does not establish, by clear and satisfactory proofs, any facts that would otherwise support a finding of intentional misconduct, i.e., Respondent did not intentionally attempt to deceive the trial court. Accordingly, while the sanctions in the matters that the Special Master relies upon may have been justified in those cases, such harsh sanction is not warranted here. Accordingly, the recommended sanction should be reduced by at least 18 months.

Further, the Special Master's conclusion that Respondent's failure to act with competence and diligence coupled with his lack of communication and misrepresentations warrants a suspension of at least 18 months is overly harsh. First, as detailed above, the record under review does not contain clear and satisfactory proofs to warrant any intentional "misrepresentation" Rule violations. Moreover, precedent reveals that, violations involving a lawyer's competence, diligence and communication, warrant sanctions ranging from public reprimand to a year and a day may

be justified. See *Office of Disciplinary Counsel v. Evan T. L. Hughes*, No. 40 DB 2018 (D.Bd. Order 3/26/2018); *Office of Disciplinary Counsel v. Matthew Gerald Porsch*, No. 88 DB 2017 (D.Bd. Op. and Order 2/21/2018); *Office of Disciplinary Counsel v. Michael Quinn*, No. 156 DB 2017 (S.Ct. Order 5/30/2018). Accordingly, the Special Master's recommended sanction should be reduced by at least 6 months.

The Special Master's recommended year and a day suspension for Respondent's inadequate supervision of subordinate lawyers and non-lawyer employees is also overly harsh. It must be noted, ODC's alleged failure to supervise charges all relate to matters that were not brought by any of Respondent's former clients.⁸ Thus, while Respondent acknowledged that his conduct did violate RPC 5.1, 5.2 and 5.3, there is no evidence of record to establish that any clients were harmed or otherwise prejudiced. Accordingly, absent a showing of any harm or prejudice to his clients, the Special Master's recommended sanction is too punitive and should therefore be reduced by at least 6 months.

⁸ The failure to supervise charges were levied in Charges II (the Robreno matter), Charges III (the Watsons matter), and Charge IV (the American Club of Beijing matter). Respondent's clients in those matters did not file a complaint with Office of Disciplinary Counsel.

IV. CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Petition be dismissed. If the Petition is not dismissed, based upon the record and precedent⁹, Respondent submits that a 4 year suspension is not warranted. Rather, the Special Master's recommended sanction should be reduced by at least 30 months.

Oral argument before a panel of the Disciplinary Board is requested.

Respectfully submitted,

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Dated: November 7, 2023

⁹ Respondent relies on the precedent cited in his Proposed Findings of Fact, and Conclusions of Law with Supporting Memorandum of Law.

CERTIFICATE OF COMPLIANCE

I certify that this pleading complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

STEVENS & LEE

Date: November 7, 2023

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