

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2709 Disciplinary Docket No. 3
: :
Petitioner : No. 147 DB 2018
: :
v. : Attorney Registration No. 12250
: :
MICHAEL B. FEIN, : (Out of State)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 29th day of June, 2020, upon consideration of the Report and Recommendations of the Disciplinary Board, Michael B. Fein is suspended from the Bar of this Commonwealth for a period of six months, and he shall comply with all the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 06/29/2020


Attest:
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 147 DB 2018
Petitioner	:	
	:	
v.	:	Attorney Registration No. 12250
	:	
MICHAEL B. FEIN	:	
Respondent	:	(Out of State)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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

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

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on August 15, 2018, Petitioner, Office of Disciplinary Counsel, charged Respondent, Michael B. Fein, with violations of the Rules of Professional Conduct in two related matters. Charge I alleged that Respondent altered records received in response to a subpoena in a matter before the Delaware County Orphans’ Court (the “Orphans’ Court”), in violation of RPC 3.3(a)(3), 3.4(a), 3.4(b), 8.4(a), 8.4(c) and 8.4(d). Charge II alleged that over a period of approximately three years, Respondent failed to comply with multiple court orders and decrees issued by the

Orphans' Court, in violation of RPC 8.4(d). On September 18, 2018, Respondent filed an Answer to Petition for Discipline.

Following a prehearing conference on November 7, 2018, a District I Hearing Committee (the "Committee") conducted a disciplinary hearing on December 12, 2018. Petitioner presented its case by moving into evidence Joint Stipulations of Fact, Law and Exhibits, and the exhibits identified in Petitioner's Exhibit List (P-1 through P- 120). Petitioner called four witnesses. Respondent appeared pro se and testified on his own behalf. During the dispositional phase of the hearing, Petitioner relied on the evidence that had been offered to prove the charged rule violations. Respondent testified and introduced exhibits R-1 through R-5.

On February 11, 2019, Petitioner filed a brief to the Committee and recommended that Respondent be suspended from the practice of law for not less than six months. Due to health concerns, Respondent was permitted an extension to file his brief, but did not file a brief.

By Report filed on October 10, 2019, the Committee concluded that Respondent violated the rules charged in the Petition for Discipline and recommended that he be suspended for three months on Charge I and three months on Charge II for a six month period of suspension.

On October 29, 2019, Respondent filed a brief on exceptions to the Committee's Report and recommendation and requested oral argument before the Board. Respondent raised objections to the Committee's conclusions of law and further objected that the Committee failed to consider mitigating facts. Petitioner filed a brief opposing Respondent's exceptions on November 15, 2019 and requested that the Board reject Respondent's exceptions.

Oral argument was held before a three-member panel of the Board on December 18, 2019. The Board adjudicated this matter at the meeting on January 16, 2020.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, Harrisburg, Pennsylvania 17106, is invested, pursuant to Pennsylvania Rule of Disciplinary Enforcement 207 (“Pa.R.D.E.”), with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent is Michael B. Fein, born in 1942 and admitted to practice law in the Commonwealth in 1970. Respondent’s current attorney registration address is 1040 Bobwhite Drive, Cherry Hill, NJ 08003.

3. By Order dated December 20, 2019, the Supreme Court of Pennsylvania placed Respondent on administrative suspension for failure to comply with the Pennsylvania Rules for Continuing Legal Education.

4. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

CHARGE I: REDACTION OF RECORDS FROM LIONS GATE

The parties stipulated to Findings 5 - 52, as set forth below.

5. On March 18, 2009, Leonard J. Moskowitz (“the decedent”) died testate. When decedent died, he was staying at Lions Gate, a facility located in New Jersey that, *inter alia*, provided rehabilitation and nursing services. Joint Stipulation (“JS”) 5.

6. On January 2, 2007, decedent had executed a document titled “Last Will and Testament” (“the will”). JS 6.

7. Sometime after March 18, 2009, Joshua R. Taylor, decedent’s accountant and a named co-executor of the will, attempted to probate the will before the Register of Wills of Delaware County (“the Register of Wills”). JS 7.

8. Bernice Fein, Respondent’s mother and decedent’s long-time companion, challenged the probating of the will in Delaware County, contending that decedent was not domiciled in Pennsylvania at the time of his death. JS 8.

9. By Order dated July 24, 2009, the Register of Wills determined that decedent was a resident of the State of New Jersey at the time of his death (“the July 24, 2009 Order”). JS 9.

10. On September 4, 2009, Gary Auerbach, Esquire, counsel for Mr. Joseph Fine, the residuary beneficiary under the will, challenged the July 24, 2009 Order by filing a Petition for Citation Sur Appeal of the July 24, 2009 Order (“the domicile Petition”) in the Court of Common Pleas of Delaware County, Orphans’ Court Division, naming Joshua Taylor as a petitioner. This matter was captioned ***In the Matter of Estate of Leonard J. Moskowitz, Deceased***, docket number 0546-2009 (“the estate case”). JS 10.

11. The Honorable Joseph P. Cronin, Jr., presided over the estate case. JS 11.

12. Ms. Fein opposed the domicile Petition and was represented by Christopher H. Gadsden, Esquire, in the estate case. JS 12.

13. On June 30, 2010, Mr. Gadsden filed in the estate case “Respondent’s Petition for Issuance of a Letter Rogatory addressed to the Superior Court of New Jersey, Law Division, Camden County, New Jersey, Concerning Lions Gate Continuing Care Retirement Community” (“the Letters Rogatory Petition”). The purpose of the Letters Rogatory Petition was for Ms. Fein to obtain certain records from Lions Gate. JS 13.

14. Judge Cronin granted the Letters Rogatory Petition. JS 14.

15. Sometime in July 2010, Terry M. Henry, Esquire, an attorney at Cozen O’Connor (the law firm at which Respondent was employed at that time), who worked at the Cherry Hill, New Jersey office, filed the necessary paperwork in the Superior Court of New Jersey, Law Division, Camden County (“the Superior Court of NJ”), to obtain the issuance of a Subpoena Duces Tecum (“the Lions Gate subpoena”). This matter was docketed at L-3739-10. JS 15.

16. The Honorable Ronald J. Freeman of the Superior Court of NJ approved the issuance of the Lions Gate subpoena. JS 16.

17. The Lions Gate subpoena required the custodian of records of Lions Gate to produce the following documents:

All records reflecting communication that the Lions Gate Continuing Care Retirement Community marketing department had with Bernice Fein (aka Bernice Fein Moskowitz) and/or Leonard Moskowitz and/or representatives thereof about moving to Lions Gate including, without limitation, records reflecting an appointment which took place on June 4, 2006 at the Lions Gate marketing offices with Stephanie Reese, a residency counselor, and communications and discussions about moving and/or retiring to Lions Gate which continued through March 2009.
JS 17.

18. Respondent received the Lions Gate subpoena. JS 18.

19. On August 10, 2010, Respondent sent an e-mail to counsel for Lions Gate, M. Zev Rose, Esquire, with the law firm of Sherman Silverstein, in which Respondent, *inter alia*:

a. stated that he was “[f]ollowing up on our conversation in June regarding obtaining records from Lions Gate to assist my mother in an estate dispute pending in Pennsylvania”;

b. attached the Lions Gate subpoena;

c. advised that “Bess Soffer in the marketing department is aware of the records which are needed”;

d. requested a “letter from the Custodian of Records on Lions Gate letterhead enclosing the requested documents” be sent “as soon as possible” to Mr. Henry, with the letter scanned and e-mailed to Respondent; and

e. provided Respondent’s e-mail address.

JS 19.

20. On August 18, 2010, Respondent sent an e-mail to Mr. Rose in which Respondent, *inter alia*:

a. stated that he was “following up on the subpoena for Lions Gate”;

b. advised that the return date on the Lions Gate subpoena was August 16th; and

c. asked that he “check with Lions Gate and let [him] know when we can expect the documents....”

JS 20.

21. On August 23, 2010, Respondent received an e-mail from Jeffrey P. Resnick, Esquire, with the law firm of Sherman Silverstein, in which Mr. Resnick attached records from Lions Gate responsive to the Lions Gate subpoena. JS 21.

22. The attachment to Mr. Resnick's e-mail consisted of three pages of notes, containing twenty-nine entries. JS 22.

23. After receiving the records from Lions Gate, Respondent did not:

a. contact Mr. Gadsden to advise him that Respondent had received the records from Lions Gate; and

b. provide Mr. Gadsden with a copy of the records from Lion Gate.

JS 23.

24. By letter dated August 25, 2010, sent to Mr. Gadsden via facsimile transmission by Mr. Auerbach, Mr. Auerbach, *inter alia*:

a. stated that he had spoken with counsel for Lions Gate and was informed that Mr. Gadsden's client had served a subpoena on Lions Gate and received records from Lions Gate in response to the subpoena;

b. advised that he had been unable to obtain from Mr. Henry and Respondent "what had been filed in New Jersey"; and

c. requested that Mr. Gadsden provide copies of "the Petition that has been filed on behalf of Ms. Fein in the New Jersey Superior Court, Law Division, as well as the Subpoena that was served, and copies of whatever documents have been received" from Lions Gate.

JS 24.

25. Respondent received from Mr. Gadsden Mr. Auerbach's August 25, 2010 letter. JS 25.

26. On August 27, 2010, Respondent sent an e-mail to Mr. Auerbach, which was copied to Mr. Gadsden, in which Respondent, *inter alia*:

a. stated that “[i]n response to your attached letter,” Respondent was providing a “copy of the petition as filed in N.J. Superior Court which includes a copy of the subpoena which was later signed by a Superior Court judge and served on the Records Custodian”;

b. advised that “the record we received was not certified by the Records Custodian so it can’t be introduced into evidence; but we intend to go back and request said certification”;

c. said Respondent would send him a “copy well in advance of the September 14 appeal trial date of the certified record we plan to introduce into evidence”; and

d. requested that he not call either Mr. Henry or Mr. Gadsden, and that he e-mail Respondent directly with “any further questions or concerns.”

JS 26.

27. On August 27, 2010, in response to Respondent’s e-mail, Mr. Auerbach sent Respondent an e-mail requesting that Respondent send him “a copy of the records that [Respondent] received that were not certified by the Records Custodian.” JS 27.

28. On August 27, 2010, Respondent responded to Mr. Auerbach’s e-mail with an e-mail stating, *inter alia*, that if Respondent were unable to obtain the certification by September 3, Respondent would provide Mr. Auerbach with “what we intend to introduce on the 14th.” JS 28.

29. On August 27, 2010, Respondent sent an e-mail to Mr. Resnick in which Respondent, *inter alia*:

a. stated that “[f]ollowing up on our phone call this morning, attached is a markup of what [Mr. Resnick] sent [Respondent], with everything irrelevant crossed out, leaving five entries which are helpful to [Respondent’s] mom’s case”;

b. said Respondent would “appreciate” the custodian of records of Lions Gate sending a letter certifying that Respondent’s attached records were “true and correct copies of computer records being produced in response to the subpoena issued by the Superior Court of Camden County”; and

c. requested that a new document be created that consisted only of the five entries Respondent identified and exclude “the irrelevant ones.”

JS 29.

30. Among the five entries were three dated June 4, 15, and 19, 2006, indicating that the decedent and Ms. Fein had visited Lions Gate, that Respondent had requested the mailing of contracts for obtaining a residence at Lions Gate, and that the contracts were mailed. JS 30.

31. The attachment Respondent sent to Mr. Resnick crossed out twenty-four entries from the twenty-nine entries on the three-page document Respondent received from Lions Gate. JS 31.

32. Among the entries that Respondent deemed “irrelevant” was one that was entered on June 21, 2006.

a. That entry indicated that Respondent had stated to an employee of Lions Gate with the initials “SR” that the decedent did not want to move into an apartment at Lions Gate, although Ms. Fein wanted to move, and that Respondent would sign papers as decedent’s power of attorney if decedent refused.

JS 32.

33. Among the entries that Respondent deemed “irrelevant” was one that was entered on July 10, 2006, and two that were entered on July 11, 2006.

a. These three entries, recorded by “SR,” indicated that Respondent conveyed that he needed to cancel, the decedent and Ms. Fein had decided not to move to Lions Gate, Respondent had requested the return of a check, and a refund was issued.

JS 33.

34. Among the entries that Respondent deemed “irrelevant” was one that was entered on May 28, 2008, and two that were entered on May 29, 2008.

a. These three entries, recorded by “BS,” an employee of Lions Gate, indicated that Respondent wanted the decedent and Ms. Fein to think about, and make a visit the following day to, Lions Gate, but that they loved living in Ardmore, that the decedent and Ms. Fein refused to visit Lions Gate and had no interest in residing in that area, and that BS spoke directly with the decedent, who expressed that he and Ms. Fein had absolutely no interest in moving to that area.

JS 34.

35. On August 30, 2010, Mr. Resnick sent Respondent an e-mail, in which he stated that Lions Gate’s computer system could not accommodate Respondent’s request “to redact or reprint individual record entries” and that Respondent would receive a letter from “the Custodian of Records certifying that the records are true and correct and produced in response to the subpoena.” JS 35.

36. On August 30, 2010, Respondent sent an e-mail response to Mr. Resnick, in which Respondent inquired if he could print each of the five entries on a separate page.

JS 36.

37. On August 31, 2010, Mr. Resnick sent Respondent a reply e-mail, in which Mr. Resnick stated that he was told that Lions Gate could not “separately print out its entries.” JS 37.

38. On September 2, 2010, Respondent sent an e-mail to Mr. Resnick in which Respondent, *inter alia*:

a. stated that “[f]ollowing up on conversation on Aug. 31, attached is a PDF file of the records we need and a draft Certification letter set up to be printed on Lions Gate letterhead and signed by David Ross, CEO”; and

b. expressed Respondent’s appreciation if either Mr. Resnick or Lions Gate could “email the letter with the attachments to Mr. Gadsden at the email address in the letter....”

JS 38.

39. The draft Certification letter Respondent prepared, which was addressed to Mr. Gadsden, stated the following:

Attached are five records from Lions Gate Marketing Department, in reverse date order. There are the following abbreviations within these records:

“RENEE” is Renee Davidow of our marketing department.

“SR” is Stefanie Reese, formerly with our marketing department.

“AL” is Assisted Living.

“LG” is Lions Gate.

JS 39.

40. The attachment Respondent sent to Mr. Resnick listed each entry Respondent desired on its own separate page, with no indication that any other entries had been redacted. JS 40.

41. By letter dated September 3, 2010, addressed to Respondent at the Philadelphia office of Cozen O'Connor, Mr. Resnick enclosed an August 3, 2010 letter from Edward M. Toy, the Custodian of Records of Lions Gate. JS 41.

42. Mr. Toy's August 3, 2010 letter was addressed to Respondent and stated the following:

This is to certify that the printed records, as produced by Lions Gate, are a true and accurate history of our dealings with Mr. Leonard Moskowitz.

Please call me if you have any questions.

JS 42.

43. On September 5, 2010, Mr. Resnick sent Respondent an e-mail in which he, *inter alia*:

- a. acknowledged receipt of Respondent's September 2, 2010 e-mail;
- b. advised that he mailed to Respondent a letter dated September 3, 2010, enclosing Mr. Toy's August 3, 2010 letter; and
- c. stated that he would send Lions Gate Respondent's September 2, 2010 e-mail, but he did not think that Lions Gate would be "comfortable" sending the draft Certification letter Respondent had prepared.

JS 43.

44. On September 9, 2010, Respondent received Mr. Resnick's September 3, 2010 letter, with the enclosure, consisting of Mr. Toy's August 3, 2010 letter. JS 44.

45. Thereafter, Respondent forwarded to Mr. Gadsden the following documents:

- a. Mr. Toy's August 3, 2010 letter;
- b. Mr. Resnick's September 3, 2010 letter; and
- c. four entries dated June 4, 2006, June 15, 2006, January 12, 2009, and March 5, 2009, from the records Respondent received from Lions Gate, each entry appearing on its own separate page.

JS 45.

46. On September 27, 2010, Mr. Gadsden sent an e-mail to Mr. Auerbach, in which Mr. Gadsden, *inter alia*, told Mr. Auerbach that attached to the e-mail were "Lions Gate marketing department records, a letter from Lions Gate's custodian of records, and a cover letter from Lions Gate's counsel." JS 46.

47. On November 3, 2010, Mr. Auerbach took the deposition of Ms. Susan Genauer, an employee of Lions Gate. JS 47.

48. During a break in Ms. Genauer's deposition, Mr. Auerbach learned that the documents he received from Mr. Gadsden were not the entirety of the records that were produced to Respondent by Lions Gate pursuant to the Lions Gate subpoena. JS 48.

49. On November 4, 2010, Respondent sent Mr. Gadsden an e-mail in which Respondent attached the entirety of the records that were produced to Respondent by Lions Gate pursuant to the Lions Gate subpoena. JS 49.

50. On November 4, 2010, Mr. Gadsden sent Mr. Auerbach an e-mail in which he forwarded Respondent's November 4, 2010 e-mail and attachments. JS 50.

51. Mr. Auerbach subsequently informed Orphans' Court that Respondent, without the knowledge of Mr. Gadsden, had provided Mr. Gadsden with only a portion of

the records produced by Lions Gate, and that Mr. Gadsden, in turn, had provided Mr. Auerbach with only a portion of the records produced by Lions Gate. JS 51.

52. On April 1, 2011, the Orphans' Court concluded that decedent was domiciled in Pennsylvania on the date of his death and, consequently, reversed and set aside the July 24, 2009 Order. JS 52.

53. Christopher Gadsden, Esquire, and Gary Auerbach, Esquire, credibly testified at the disciplinary hearing.

54. Mr. Gadsden inquired of Respondent about providing information to Mr. Auerbach relating to the records that had been subpoenaed from Lions Gate. N.T. 48-51; P-5.

55. Mr. Gadsden expressed to Respondent his disagreement with Respondent's decision not to make available to Mr. Auerbach the records that were to be obtained from Lions Gate pursuant to a subpoena. N.T. 51-53; P-6, 7.

56. Mr. Auerbach communicated to Mr. Gadsden and Respondent that Mr. Auerbach was seeking the records produced by Lions Gate in response to the subpoena. N.T. 91-92, 94-00; P-9, 14, 17, 29.

57. After Mr. Auerbach sent written and telephonic inquiries to Mr. Gadsden about providing to Mr. Auerbach the records that had been subpoenaed from Lions Gate, Mr. Gadsden informed Respondent about those inquiries. N.T. 53-55, 62-63; P-9, 14-15, 29.

58. Mr. Gadsden specifically advised Respondent in an August 25, 2010 email to provide Mr. Auerbach with the records that had been subpoenaed from Lions Gate. N.T. 55; P-15.

59. Mr. Gadsden first learned that Respondent had received records from Lions Gate in an August 27, 2010 email that Respondent had sent to Mr. Auerbach and had copied to Mr. Gadsden. N.T. 56-57; P-16.

60. Respondent requested in a September 1, 2010 email that Mr. Gadsden not take any telephone calls from Mr. Auerbach. N.T. 61; P-24.

61. Mr. Gadsden provided Respondent with a September 20, 2010 letter that Mr. Auerbach had sent to Mr. Gadsden, in which Mr. Auerbach requested the records that had been received from Lions Gate and advised that he would ask the Honorable Joseph P. Cronin, Jr. to “remedy the situation” if he were not provided with the records. N.T. 62-63; P-29.

62. By email dated September 24, 2010, with a subject heading of Moskowitz– Certification of Lions Gate records,” Respondent forwarded to Mr. Gadsden the following documents:

a. an August 3, 2010 letter from Edward M. Toy, the custodian of Records of Lions Gate, which letter certified that the records produced by Lions Gate in response to the Lions Gate subpoena were a “true and accurate history of our dealings with Mr. Leonard Moskowitz”;

b. a September 3, 2010 letter from Jeffrey P. Resnick, Esquire, which letter transmitted Mr. Toy’s August 3, 2010 letter; and

c. four entries dated June 4, 2006, June 15, 2006, January 12, 2009, and March 5, 2009, from the records Respondent received from Lions Gate, each entry copied so that it appeared on its own separate page and on the same physical position on each page, with no indication that other entries had been redacted.

N.T. 63-65; P-30.

63. Respondent failed to advise Mr. Gadsden in the September 24, 2010 email that:

a. Mr. Toy's August 3, 2010 certification letter related to records that consisted of three pages of documents, with twenty-nine separate entries;

b. Respondent had redacted the records that he had received from Lions Gate; and

c. Respondent was providing him with only four of twenty-nine entries that he had received from Lions Gate.

N.T. 53-67; P-13, 26, 30.

64. Mr. Gadsden believed and expected that when he received Respondent's September 24, 2010 email, with attachments, Respondent had provided Mr. Gadsden with all of the records that Respondent had received from Lions Gate pursuant to the subpoena. N.T. 65-66, 71.

65. Respondent misled Mr. Gadsden into believing that Respondent had provided Mr. Gadsden with all of the records that Respondent had received from Lions Gate. N.T. 73.

66. Mr. Gadsden believed that when he sent to Mr. Auerbach a September 27, 2010 email with attachments consisting of the documents that Mr. Gadsden had received from Respondent on September 24, 2010, Mr. Gadsden was providing to Mr. Auerbach all of the records that Lions Gate had produced in response to the subpoena. N.T. 67-68; P-31.

67. Mr. Auerbach believed that based on Mr. Gadsden's September 27, 2010 email and the attachment thereto, Mr. Auerbach had received all of the records produced by Lions Gate in response to the Lions Gate subpoena. N.T. 100-104; P-31.

68. By misleading Mr. Gadsden, Respondent caused Mr. Gadsden to unwittingly conceal from Mr. Auerbach all of the records produced by Lions Gate in response to the subpoena. N.T. 73-74.

69. After learning at the deposition that he had not been provided with complete records, Mr. Auerbach immediately confronted Mr. Gadsden and Respondent and he recalled Respondent "looking down" and having "almost kind of the look your dog gives when you catch them doing something and they kind of look away." N.T. 104-105.

70. Thereafter, Mr. Gadsden had a private conversation with Respondent, at which time Mr. Gadsden told Respondent that:

- a. he was upset and surprised to learn that Respondent had redacted the records produced by Lions Gate;
- b. he believed that Respondent's actions would be detrimental to Ms. Fein's case; and
- c. "corrective steps" should be taken.

N.T. 69.

71. Mr. Auerbach learned after contacting and receiving documents from Mr. Resnick that Respondent had received the complete set of records from Lions Gate and that Respondent had sought to have Lions Gate only produce those records that were favorable to Ms. Fein's claim that decedent had established a domicile in New Jersey. N.T. 106-107.

72. Mr. Auerbach discovered upon receiving all of the records that several of the records were helpful in establishing that decedent intended to remain domiciled in Pennsylvania; he submitted several of those records to Orphans' Court. N.T. 108-110; P-38, pp. 11-12.

73. Respondent previously solicited advice from Mr. Gadsden on issues related to the estate case and Mr. Gadsden was available to answer any questions Respondent had concerning the estate case. N.T. 59-61; P-24.

74. At no time had Mr. Gadsden conveyed to Respondent that it would have been "proper to provide less than a full set for records" from Lions Gate to Mr. Auerbach. N.T. 72.

75. Mr. Gadsden would have considered using some or all of the redacted records that Respondent had provided to him in litigating the estate case if he had not learned about Respondent's redaction of the records from Lions Gate. N.T. 81-82.

76. Respondent was solely responsible for obtaining the subpoenaed records from Lions Gate. N.T. 58-59.

77. Respondent admitted that he misled Mr. Gadsden because Respondent "wanted to conceal ... those records that were beneficial to the other side's case." N.T. 321.

78. Respondent conceded that his redaction of the records from Lions Gate was "wrong" and "a problem," although he claimed that he did not know that redacting those records "was against a rule." N.T. 322, 324.

79. Respondent testified that he "misled Mr. Gadsden, and ultimately Mr. Auerbach, in not accounting for the redaction." N.T. 248.

80. Respondent defended the redaction of the Lions Gate records on the basis that he was unaware of any rule that required him to provide all of the records he received from Lions Gate in response to the subpoena to Mr. Auerbach and his client, which conduct reflected his “lack of experience in litigation” and his “naivety...” N.T. 247-248.

81. Respondent’s hearing testimony was not credible.

**CHARGE II: FAILURE TO COMPLY WITH DECREES ISSUED
BY ORPHANS’ COURT**

82. On February 4, 2000, Leonard J. Moskowitz executed a New Jersey Power of Attorney (“NJ POA”) naming Respondent as his agent. JS 53.

83. On January 2, 2007, Mr. Moskowitz executed a will. JS 54.

84. The will provided that Ms. Fein would receive all tangible personal property of Mr. Moskowitz so long as she survived him by six months. JS 55.

85. The will further provided that the balance of Mr. Moskowitz’s estate would be held in trust for Ms. Fein, with the net income and principal to be disposed of in the following manner:

a. the designated Trustees were directed to “distribute all of the net income” of the trust to Ms. Fein “during her lifetime, in annual or more frequent periodic installments”; and

b. the Trustees were to distribute the principal of the trust “as the Trustees, in their sole discretion, may deem necessary to provide against any accident, illness or emergency which may affect” Ms. Fein and “to maintain the standard of living to which” Ms. Fein is accustomed to at the time of Mr.

Moskowitz's death, "provided her other assets and income are insufficient to cover the same."

JS 56.

86. The will designated Mr. Fine and Joshua Taylor to serve as Trustees. JS 57.

87. The will stated that upon the death of Ms. Fein, the principal and any undistributed net income of the trust were to be distributed to Mr. Joseph Fine or his "living issue, per stirpes." JS 58.

88. The will designated Ms. Fein and Mr. Taylor to serve as co-Executors. JS 59.

89. On January 16, 2009, Respondent used the NJ POA to transfer securities valued at \$532,493.08 in Mr. Moskowitz's TD Ameritrade Account #xxx-xxx975 ("Moskowitz TD account") to TD Ameritrade Account #xxx-xxx466, which was titled as a joint account of Mr. Moskowitz and Ms. Fein ("the Moskowitz/Fein joint account"). JS 60.

90. On January 29, 2009, Respondent used the NJ POA to transfer securities valued at \$46,922.83 in Mr. Moskowitz's Citibank Smith Barney Account #xxx-xxxxx-xx112 ("Moskowitz Citibank account") to the Moskowitz TD account. JS 61.

91. On February 19, 2009, Respondent used the NJ POA to transfer securities valued at \$42,923.95 in the Moskowitz TD account to the Moskowitz/Fein joint account. JS 62.

92. On March 3, 2009, the value of the securities in the Moskowitz/Fein joint account was \$484,888.91. JS 63.

93. On March 3, 2009, the \$484,888.91 in securities held in the Moskowitz/Fein joint account were transferred to TD Ameritrade Account #xxx-xxx819, which was titled as a joint account of Ms. Fein and Respondent (“the Fein joint account”). JS 64.

94. The value of the securities held in the Fein joint account before the transfer from the Moskowitz/Fein joint account was \$200,006.03.

a. There was a margin loan of \$105,593.24 that was secured against the securities held in the Fein joint account.

b. After deducting the margin loan, the net value of the securities held in the Fein account before the transfer from the Moskowitz/Fein account was \$94,412.78.

JS 65.

95. On March 18, 2009, Mr. Moskowitz died. JS 66.

96. On April 28, 2009, Mr. Taylor filed a petition with the Register of Wills seeking to be named as sole executor of decedent’s estate. JS 67.

97. Through counsel, Ms. Fein filed an answer to the petition and challenged Mr. Taylor’s attempt to probate the will in Delaware County, contending that decedent was not domiciled in Pennsylvania at the time of his death. JS 68.

98. The Register of Wills issued the July 24, 2009 order, which stated that decedent was a resident of the State of New Jersey at the time of his death. JS 69.

99. Mr. Taylor filed the domicile Petition in the Court of Common Pleas of Delaware County, Orphans’ Court Division, thus commencing the estate case. JS 70.

100. On April 1, 2011, the Orphans’ Court concluded that decedent was domiciled in Pennsylvania on the date of his death and, consequently, reversed and set aside the July 24, 2009 Order. JS 71.

101. After Mr. Taylor and Ms. Fein renounced their right to administer the decedent's estate, Stephen Carroll, Esquire, was appointed Administrator DBN-CTA of decedent's estate on November 9, 2011. JS 72.

102. By Decree dated April 4, 2012, the Orphans' Court directed Respondent to "prepare a complete accounting of all of [Respondent's] actions undertaken as Agent under Power of Attorney of Leonard J. Moskowitz, and to file the same with the Clerk of Orphans' Court of Delaware County for audit and to submit a copy thereof to Stephen Carroll, Esquire, Administrator DBN-CTA of the Estate of Leonard J. Moskowitz, Deceased, within thirty (30) days of the date of this Decree." JS 73.

103. On May 4, 2012, Respondent filed a First and Final Account of Michael B. Fein, Agent Under Power of Attorney dated February 4, 2000 for Period Between February 2, 2000 to Decedent's Death on March 18, 2009 ("the May 2012 account"), and a Petition for Adjudication/Statement of Proposed Distribution Pursuant to Pa. O.C. Rule 6.9 ("the May 2012 Adjudication Petition"). JS 74.

104. In the May 2012 Adjudication Petition, Respondent identified the following transactions that he had engaged in using the NJ POA:

- a. transferring the deed for the real property located at 2230 South 5th Street, Philadelphia, Pennsylvania ("the Moskowitz property") from decedent to decedent and Ms. Fein;
- b. transferring the Moskowitz Citibank account to the Moskowitz TD account;
- c. transferring the Moskowitz TD account to the Moskowitz/Fein joint account;

d. requesting that decedent's IRA at Citizens Bank account #xxxxxx-x20-2 ("the Moskowitz IRA"), valued at \$1,850.00, be transferred to the Moskowitz/Fein joint account;

e. requesting that decedent's TD Ameritrade Account #xxx-xxx210 ("the Moskowitz TD account #2") be transferred to the Moskowitz/Fein joint account; and

f. obtaining two Independence Blue Cross refund checks in the amounts of \$133.50 and \$1,068.00 ("the Blue Cross refund checks") for the purpose of having them transferred to the Moskowitz/Fein joint account.

JS 75.

105. After Mr. Carroll filed petitions seeking the return of decedent's assets and preliminary injunctive relief, the Orphans' Court, by Decree dated August 8, 2012, *inter alia*:

a. stated that the "testimony from the respondent, Michael B. Fein, Esquire established that the assets claimed by the administrator to be assets of the Estate of Leonard J. Moskowitz, deceased have been transferred and are subject to being dissipated";

b. concluded that the "imposition of a preliminary injunction in the instant case is necessary to maintain the *status quo* until the underlying issues of this case can be determined";

c. enjoined Ms. Fein and Respondent, individually and as agent for Ms. Fein, from "directly or indirectly transferring, disbursing, or otherwise disposing of or dissipating any of the assets presently or formerly contained" in the Moskowitz TD account, the Moskowitz Citibank account, the portion of the Moskowitz/Fein

joint account which is attributable to assets owned by Mr. Moskowitz and which were transferred by Respondent as his agent, the Moskowitz IRA, the Moskowitz TD account #2, the Blue cross refund checks, and the Moskowitz property; and

d. declared that all of the assets identified in paragraphs 1, 2, and 3 of the August 8, 2012 Decree that were held by Ms. Fein or “by transferees from” Ms. Fein are “held in constructive trust for the benefit of the Estate of Leonard J. Moskowitz, deceased pending their transfer to the Estate of Leonard J. Moskowitz, deceased or further Order” of the court.

JS 76.

106. Respondent received a copy of the August 8, 2012 Decree. JS 77.

107. By Decree dated October 1, 2012, the Orphans’ Court, *inter alia*, directed Respondent and Ms. Fein to “file an accounting with [the] Court of all assets referred to in paragraphs 1, 2 and 3 of the Trial Court’s Decree dated August 8, 2012 and the location of said assets within thirty (30) days from the date of this Decree.” JS 78.

108. On October 31, 2012, Respondent filed an accounting with Orphans’ Court (“the October 2012 account”). JS 79.

109. After Mr. Carroll filed a petition requesting that Respondent and Ms. Fein be held in contempt, the Orphans’ Court issued a Decree dated December 26, 2012, in which the Orphans’ Court found that Respondent and Ms. Fein had failed to comply with the October 1, 2012 Decree and directed that before February 8, 2013, Respondent and Ms. Fein were to, *inter alia*:

a. file an accounting for the Moskowitz TD account, the Moskowitz Citibank account, the portion of the Moskowitz/Fein joint account which is attributable to assets owned by Mr. Moskowitz and which were transferred by

Respondent as his agent, the Moskowitz IRA, the Moskowitz TD account #2, the Blue Cross refund checks, and the Moskowitz property; and

- b. file an accounting that complied with Pa. O.C. Rule 6, et seq. JS 80.

110. Respondent received a copy of the December 26, 2012 Decree. JS 81.

111. On March 27, 2013, Respondent deposited \$20,000.00 into the Fein joint account. JS 82.

112. On April 4, 2013, Respondent offered sworn testimony during a hearing that took place in the estate case. JS 83.

113. During the April 4, 2013 hearing, Respondent testified that he had made an “erroneous withdrawal of \$20,000” from the Fein joint account “but it was replaced.” (N.T. 4/4/13, p. 57) JS 84.

114. After Mr. Carroll filed petitions requesting that Respondent and Ms. Fein be held in contempt, the Orphans’ Court issued a Decree dated April 17, 2013, in which the Orphans’ Court, *inter alia*:

- a. concluded that Respondent and Ms. Fein had willfully disobeyed the August 8, 2012 Decree;

- b. determined that Respondent had willfully disobeyed the Decrees dated October 1, 2012 and December 26, 2012;

- c. stated that the Decrees dated August 8, 2012, October 1, 2012, and December 26, 2012, were “definite and clear and left no doubt or uncertainty” as to the “required conduct that was to be specifically performed”;

- d. held Respondent and Ms. Fein jointly and severally liable for the loss suffered by the decedent’s estate in the amount of \$14,814.00;

e. directed Respondent and Ms. Fein to file an accounting concerning the decedent's assets by May 31, 2013;

f. specified the information that was to be supplied in that accounting regarding the decedent's assets; and

g. stated that Respondent and Ms. Fein were to pay a surcharge of \$100.00 to the decedent's estate for each day after May 31, 2013, that an accounting was not filed that complied with the April 17, 2013 Decree.

JS 85.

115. On May 31, 2013, Respondent filed another accounting with Orphans' Court. JS 86.

116. In September 2013, Respondent sent a \$30,000.00 payment to Mr. Carroll.

a. The \$30,000.00 payment was pursuant to a Decree issued by Orphans' Court that directed Respondent and Ms. Fein to each make a \$15,000.00 payment to Mr. Carroll.

JS 87.

117. On October 1, 2013, Respondent again filed a First and Final Account as agent for the decedent ("the October 2013 account") and a Petition for Adjudication/Statement of Distribution ("the October 2013 Adjudication Petition"). JS 88.

118. After Mr. Carroll filed a Motion for Partial Summary Judgment and Respondent filed a responsive pleading, the Orphans' Court issued a Decree dated October 29, 2013, in which the Orphans' Court granted the motion and decreed that all of the decedent's assets that Respondent had transferred using the NJ POA that was identified by Respondent in the May 2012 account and the May 2012 Adjudication Petition, as well as any other assets transferred by Respondent that were revealed in

subsequent accountings, were to be returned to the decedent's estate within thirty days of the date of the October 29, 2013 Decree.

a. On December 2, 2013, Respondent filed an appeal from the October 29, 2013 Decree with the Superior Court of Pennsylvania; the appeal was docketed at 3302 EDA 2013.

b. On February 4, 2015, the Superior Court issued an Opinion that, *inter alia*, affirmed the October 29, 2013 Decree.

c. On February 18, 2015, Respondent filed a petition for reconsideration.

d. On March 27, 2015, the Superior Court granted Respondent's petition for reconsideration.

e. On May 8, 2015, the Superior Court issued a second Opinion that, *inter alia*, affirmed the October 29, 2013 Decree.

f. On July 28, 2015, Respondent filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania.

g. By Order dated December 11, 2015, the Supreme Court of Pennsylvania denied the Petition for Allowance of Appeal.

h. On December 28, 2015, Respondent filed an Application for Reconsideration; by Order dated January 29, 2016, the Supreme Court of Pennsylvania denied the Application for Reconsideration.

JS 89.

119. After Mr. Carroll filed a Petition for Exigent Relief, the Orphans' Court issued a Decree dated August 28, 2014, in which the Orphans' Court, *inter alia*:

a. noted that by Decree dated August 8, 2012, Respondent and Ms. Fein were enjoined from directly and indirectly “transferring, disbursing, or otherwise disposing of or dissipating any of the assets and proceeds therefrom; presently or formerly contained in various accounts that held assets” of the decedent and that decedent’s assets were to be held by Respondent and Ms. Fein “in a constructive trust for the benefit of the” decedent’s estate;

b. found that the “total value of assets transferred by the Respondent, Michael B. Fein, Esquire, from accounts formerly owned by [decedent], individually, to a joint account owned by [decedent] and Respondent, Bernice Fein, was \$632,260.01”;

c. determined that the value of the gross assets in the Fein joint account was \$200,006.03 less a margin loan of \$105,593.25, resulting in a net asset value of \$94,412.78;

d. found that on March 3, 2009, assets valued at \$533,164.61 were transferred from the Moskowitz/Fein joint account to the Fein joint account;

e. found that between March 13, 2009 and June 30, 2012, Respondent wrote checks totaling approximately \$707,280.76 on the Fein joint account;

f. found that between March 14, 2013 and March 22, 2013, Respondent wrote checks totaling \$21,052.22 on the Fein joint account;

g. found that on March 27, 2013, Respondent deposited the sum of \$20,000.00 into the Fein joint account;

h. determined that Respondent had not accounted for the sum of \$1,052.22 and that Respondent had not deposited that amount into the Fein joint account;

i. stated that Respondent and Ms. Fein had previously been held in contempt of court and had each been sanctioned in the amount of \$15,000.00;

j. stated that Respondent had testified that he had paid Respondent's \$15,000.00 sanction from the Fein joint account and that he had paid counsel fees from the Fein joint account, which included counsel fees for services that Respondent had received;

k. noted that the Orphans' Court had previously concluded that Respondent did not have the authority under the NJ POA to make transfers of funds from accounts belonging to decedent into accounts jointly owned by decedent and Ms. Fein;

l. concluded that the assets belonging to decedent that Respondent had transferred using the NJ POA, which had a value of \$632,260.01, belonged to decedent's estate;

m. stated that only Mr. Carroll, as Administrator for decedent's estate, could transact any of the assets belonging to decedent's estate;

n. concluded that as of March 3, 2009, the net value of Ms. Fein's assets in the Fein joint account was 13%, whereas the net value of decedent's assets in that same account was approximately 87%;

o. directed Respondent to repay the sum of \$16,052.22 to the decedent's estate within sixty days from the date of the Decree and to be sanctioned \$250.00 per day if he failed to timely pay the amount in full;

p. ordered Respondent not to "transact any activities, including *inter alia*, encumbering funds with margin loans or withdrawal of funds, pending a

hearing on the objections previously filed by [Mr. Carroll] to the Account and Petition for Adjudication filed by” Respondent;

q. directed Respondent to deliver to Mr. Carroll within sixty days a “complete summary of transactions for TD Ameritrade Account #882-441819 [the Fein joint account] from August 8, 2012 until September 30, 2014” and specified the information that was to be included in the summary and to be sanctioned in the amount of \$250.00 per day until compliance if Respondent failed to timely provide the summary; and

r. ordered Respondent to deliver to Mr. Carroll a “copy of the periodic account summary” for the Fein joint account within ten days of Respondent’s receipt of the periodic account.

JS 90.

120. After the Orphans’ Court denied Respondent’s exceptions, Respondent filed an appeal from the August 28, 2014 Decree to the Superior Court of Pennsylvania on January 14, 2015.

a. This appeal was docketed at 292 EDA 2015.

b. On November 16, 2015, the Superior Court, on its own accord, dismissed the appeal.

c. On March 3, 2016, Respondent filed an application to reinstate the appeal, which was denied by Superior Court by Order dated March 29, 2016.

JS 91.

121. After Mr. Carroll filed a Petition to Compel the Delivery of Assets, Posting of Bond, and Finding of Contempt, the Orphans’ Court issued a Decree dated April 29, 2015, in which the Orphans’ Court:

a. stated that to show compliance with the August 8, 2012 Decree, Respondent and Ms. Fein were to produce by June 1, 2015, to the Orphans' Court, with copies to Mr. Carroll, "statements from TD Ameritrade that show that the assets of [decedent], totaling \$632,260.01 and any increase in value thereon from January 16, 2009 to April 1, 2015 are held in TD Ameritrade Account #xxx-xxx819 [the Fein joint account] as of May 1, 2015"; and

b. stated that if Respondent and Ms. Fein failed to produce the financial records as ordered, the parties were to appear for a hearing on the issue of non-compliance to be held on June 10, 2015.

JS 92.

122. Respondent received a copy of the April 29, 2015 Decree. JS 93.

123. On June 1, 2015, Respondent filed a document with Orphans' Court titled "Statement of Compliance with Decree of August 8, 2012" ("the Compliance Statement"). JS 94.

124. The Compliance Statement failed to include the financial records enumerated in the April 29, 2015 Decree. JS 95.

125. Attached to the Compliance Statement was a letter dated May 4, 2015, issued by Valeria Alatore, Senior Relationship Manager with TD Ameritrade, which stated that the Fein joint account had been transferred into a "TD Ameritrade Institutional account," having an account number of xxx-xxx710 ("the Institutional account") and that the balance in the Institutional account as of May 1, 2015, was \$822,928.59. JS 96.

126. By Decree dated June 2, 2015, the Orphans' Court determined that the Compliance Statement failed to comply with the April 29, 2015 Decree and directed all parties to appear for a hearing on June 10, 2015. JS 97.

127. On June 10, 2015, a hearing was held. JS 98.

128. By Decree dated June 10, 2015, the Orphans' Court, *inter alia*:

a. directed Respondent and Ms. Fein to deliver to Judge Cronin's chambers by June 16, 2015, "copies of all account statements showing all transactions occurring from TD Ameritrade Account Number xxx-xxx710 [the Institutional account] and TD Ameritrade Account #xxx-xxx819 [the Fein joint account] from January 1, 2009 until May 1, 2015";

b. ordered Respondent and Ms. Fein to deliver to Judge Cronin's chambers by June 16, 2015, "an explanation of why TD Ameritrade Account #xxx-xxx819 [the Fein joint account] is no longer the account holding the funds of the Estate of [decedent] and copies of any and all documents existing that authorized and/or effectuated the transfer of funds of the Estate of [decedent] from" the Fein joint account to the Institutional account;

c. stated that if Respondent and Ms. Fein failed to comply, Respondent and Ms. Fein were to appear before the Orphans' Court on June 18, 2015, to explain why sanctions should not be imposed for contempt of the Decrees dated April 29, 2015 and June 10, 2015; and

d. directed Respondent and Ms. Fein to deliver to Judge Cronin's chambers by July 15, 2015, and every month thereafter by the 15th, "copies of the complete accounting statement from TD Ameritrade Account Number xxx-xxx710 [the Institutional account] for the previous month," which account statement was to show all transactions affecting the Institutional account.

JS 99.

129. Respondent received a copy of the June 10, 2015 Decree. JS 100.

130. Respondent failed to fully comply with the Decrees dated April 29, 2015 and June 10, 2015 in that he failed to provide copies of monthly statements for the Fein joint account from October 2011 through September 2012, and to provide copies of documents that effectuated the transfer of funds from the Fein joint account to the Institutional account. JS 101.

131. On June 18, 2015, a hearing was held, at which time the Orphans' Court concluded that:

a. Respondent had failed to fully comply with the Decrees dated April 29, 2015 and June 10, 2015; and

b. between 2013 and 2015, there had been disbursements from the Fein joint account that exceeded \$300,000.00.

JS 102.

132. By Decree dated June 18, 2015, the Orphans' Court, *inter alia*:

a. directed Respondent and Ms. Fein to deliver to Orphans' Court by June 30, 2015, "a copy of the check register and copies of checks, front and back, evidencing disbursements from TD Ameritrade Account #xxx-xxx819 [the Fein joint account] and TD Ameritrade Account #xxx-xxx710 [the Institutional account] from January 1, 2009 until June 1, 2015"; and

b. stated that if Respondent and Ms. Fein failed to comply, Respondent and Ms. Fein were to appear before the Orphans' Court on July 2, 2015, to explain why sanctions should not be imposed for contempt of the June 18, 2015 Decree.

JS 103.

133. By Decree dated June 19, 2015, the Orphans' Court, *inter alia*:

a. ordered the custodian of the Institutional account to release to Mr. Carroll the assets contained in the Institutional account;

b. directed Respondent and Ms. Fein to execute whatever documents were necessary to facilitate the transfer of the assets in the Institutional account to Mr. Fein; and

c. ordered Mr. Carroll to determine the amount of assets in the Institutional account that belonged to Ms. Fein.

JS 104.

134. Respondent filed a Motion to Stay the June 19, 2015 Decree; by Decree dated July 10, 2015, the Orphans' Court denied the Motion to Stay. JS 105.

135 By Decree dated July 22, 2015, the Orphans' Court, *inter alia*:

a. directed Mr. Carroll to continue his compliance with the June 19, 2015 Decree, and to also delineate which assets in the Institutional account belonged to decedent before Respondent had made the transfers of decedent's assets into the Fein joint account;

b. ordered Mr. Carroll to deliver his written summary and explanation to the Orphans' Court and Respondent's counsel by August 7, 2015; and

c. directed that at a hearing to be held on August 19, 2015, the Orphans' Court was to determine if Respondent and Ms. Fein had executed whatever documents were necessary to facilitate the transfer of the assets in the Institutional account to Mr. Fein.

JS 106.

136. On August 7, 2015, Mr. Carroll filed his Statement of Compliance with the Decrees dated June 19, 2015 and July 22, 2015 (“the Carroll Compliance Statement”). JS 107.

137. On September 28, 2015, the Orphans’ Court issued its Adjudication of the October 2013 account. JS 108.

138. In the Adjudication, the Orphans’ Court, *inter alia*:

a. sustained Mr. Carroll’s objections to the October 2013 account in that Respondent did not have the authority under the NJ POA to make transfers of unlimited gifts of decedent’s assets prior to decedent’s death;

b. determined that Respondent had failed to comply with that portion of the August 28, 2014 Decree that ordered Respondent within sixty days of that Decree to deliver to Mr. Carroll a summary of all transactions for the Fein joint account covering a specified time period;

c. stated that Respondent had complied with the April 29, 2015 and June 18, 2015 Decrees (albeit late); however, Respondent’s method of bookkeeping did not enable the Orphans’ Court to determine the reasons for the disbursements from the Fein joint account and Respondent did not “offer an appropriate explanation at any hearing to explain the nature of the disbursements”;

d. concluded, after considering the Carroll Compliance Statement, that the value of the assets contained in the Institutional account that were the sole property of decedent’s estate was \$1,278,980.00, and that these assets, as well as the Moskowitz property, should be transferred to Mr. Carroll;

e. stated that Respondent and Ms. Fein had been previously directed by the Orphans’ Court to cooperate with TD Ameritrade to transfer the Institutional

account to decedent's estate and that Respondent had informed the Orphans' Court that he would not cooperate;

f. found that Respondent and Ms. Fein were in contempt; and

g. directed Respondent and Ms. Fein to cooperate with transferring the assets in the Institutional account and the Moskowitz property to Mr. Carroll.

JS 109.

139. By Final Decree dated September 29, 2015, the Orphans' Court, *inter alia*:

a. denied Respondent's Petition for Exigent Relief from the Decree dated June 19, 2015;

b. found that Respondent had engaged, and continued to engage, in a pattern of non-compliance;

c. determined that Respondent and Ms. Fein had knowledge of the Decrees dated August 8, 2012 and August 28, 2014, that Respondent and Ms. Fein had willfully and volitionally failed to comply with those Decrees, that Respondent and Ms. Fein had acted with wrongful intent, and that Respondent and Ms. Fein had presented no evidence to show that Respondent and Ms. Fein were unable to comply with those Decrees;

d. stated that Respondent had testified on July 15, 2015, that he had not, and would not, comply with the June 19, 2015 Decree that required Respondent to cooperate with the execution of documents to facilitate the transfer of the assets in the Institutional account to Mr. Carroll; and

e. concluded that financial sanctions would be insufficient to compel compliance with the Orphans' Court Decrees and that an "Attachment" was the only appropriate remedy; however, a Writ of Attachment would not be issued until

there was a final order issued by the Pennsylvania Supreme Court for the appeal Respondent filed from the Decree dated October 29, 2013 (docketed at 3302 EDA 2013 by Superior Court).

JS 110.

140. On October 9, 2015, Respondent filed a Motion for Post-Trial Relief; on October 19, 2015, Respondent filed Exceptions to the Adjudication. JS 111.

141. On October 28, 2015, Mr. Carroll filed Cross-Exceptions to the Adjudication. JS 112.

142. By Final Decree dated December 21, 2015, the Orphans' Court denied Respondent's Exceptions to the September 28, 2015 Adjudication and the September 29, 2015 Decree, as well as Respondent's Motion for Post-trial Relief. JS 113.

143. After considering Mr. Carroll's Cross-Exceptions, the Orphans' Court issued a Final Decree dated December 23, 2015, in which the Orphans' Court, *inter alia*:

a. granted the request for financial sanctions against Respondent in the amount of \$83,750.00 because Respondent failed to comply with that portion of the August 28, 2014 Decree that required him to repay the sum of \$16,052.22 to decedent's estate within sixty days of the date of that Decree;

b. granted the request for financial sanctions against Respondent in the amount of \$64,250.00 because Respondent failed to comply with that portion of the August 28, 2014 Decree that required him to deliver to Mr. Carroll a complete summary of transactions for the Fein joint account, which would include providing Mr. Carroll with copies of cancelled checks and bank statements, within sixty days of the date of that Decree; and

c. granted the request for an award of attorney's fees due to Respondent's failure to comply with the August 28, 2014 decree and directed Respondent to pay the sanctions totaling \$148,000.00 to Mr. Carroll for services Mr. Carroll rendered to decedent's estate.

JS 114.

144. On January 21, 2016, Respondent filed an appeal from the September 29, 2015 Decree to the Superior Court of Pennsylvania.

a. This appeal was docketed at 354 EDA 2016.

b. On June 20, 2017, the Superior Court issued an Opinion that affirmed the September 29, 2015 Decree.

c. On July 5, 2017, Respondent filed a petition for reconsideration.

d. On August 23, 2017, the Superior Court denied Respondent's petition for reconsideration.

e. On September 22, 2017, Respondent filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania.

f. By Order dated February 14, 2018, the Supreme Court of Pennsylvania denied the Petition for Allowance of Appeal.

JS 115.

145. On January 28, 2016, Mr. Carroll filed a Petition for Special and Preliminary Injunction. JS 116.

146. By Decree dated January 28, 2016, the Orphans' Court, *inter alia*, imposed a special injunction that:

a. enjoined Respondent and Ms. Fein from "either directly or indirectly withdrawing, transferring, disbursing or otherwise disposing of any of the assets in

any financial accounts held within TD Ameritrade, registered in the names of Bernice S. Fein and/or Michael B. Fein, Esquire, or either one of them, individually or jointly held with each other or with any other individual, until further order of this Court”; and

b. enjoined Respondent and Ms. Fein from “either directly or indirectly transferring, disbursing or otherwise disposing of or alienating, directly or indirectly, any assets in any financial accounts held within TD Ameritrade, registered in the names of Bernice S. Fein and/or Michael B. Fein, Esquire, or either one of them, individually or jointly held with each other or with any other individual, including the borrowing upon or increasing any margin loan secured by any such assets in any such accounts, until further order of this Court; except to the extent that they may be applied against the margin loan in Account #xxx-xxx-710 [the Institutional account].”

JS 117.

147. On February 2, 2016, a hearing was held concerning the special injunction granted by the January 28, 2016 Decree. JS 118.

148. By Decree dated February 4, 2016, with the concurrence of counsel for the parties, the special injunction was continued in full force until February 16, 2016. JS 119.

149. The February 16, 2016 hearing was rescheduled to March 24, 2016. JS 120.

150. The hearing was held on March 24, 2016. JS 121.

151. By Decree dated March 24, 2016, the Orphans’ Court, *inter alia*, determined that the special injunction would become a preliminary injunction that would remain in effect until all appeals had been resolved. JS 122.

152. At the disciplinary hearing, Petitioner presented the credible testimony of Stephen Carroll, Esquire (Administrator DBN-CTA of decedent's estate), and offered exhibits which establish that:

a. Orphans' Court had issued several Decrees that, *inter alia*, required Respondent to file accountings of assets belonging to decedent that had been held in decedent's TD Ameritrade Account #xxx-xxx975 ("Moskowitz TD account"), Citibank Smith Barney Account #xxx-xxxxx-xx112 ("Moskowitz Citibank account"), Citizens Bank Account #xxxxxx-x20-2 ("Moskowitz IRA"), TD Ameritrade Account #xxx-xxx210 ("Moskowitz TD account #2"), TD Ameritrade Account #xxx-xxx466 ("the Moskowitz/Fein joint account"), and TD Ameritrade Account #xxx-xxx819 ("the Fein joint account"), which assets Mr. Carroll claimed belonged to decedent's estate (N.T. 138-139, 143-145, 153-155; P- 54, 58, 63; JS 78, 80, 85);

b. Mr. Carroll had requested that Orphans' Court require Respondent to file an accounting because Mr. Carroll was seeking to identify the assets that belonged to decedent's estate and to learn what happened to those assets after they were transferred (N.T. 139-140);

c. Orphans' Court had issued an injunction on August 8, 2012, to prevent the dissipation of decedent's assets that had been transferred, which assets Mr. Carroll claimed belonged to decedent's estate (N.T. 137-139; P-53; JS 76);

d. in response to Orphans' Court issuing several Decrees that directed the filing of an accounting, Respondent filed several accountings, but none of those accountings complied with the directives of Orphans' Court (N.T. 141-144, 147-

148, 155-156, 158-161, 165-167, 173; P-56, 58, 61, 63, 64, 65, 66, 68; JS 80, 85, 86);

e. Respondent had failed to file an accounting even though he had been directed to do so by an Orphans' Court Decree dated December 26, 2012 (N.T. 145-147; P-58-59);

f. Mr. Carroll filed several petitions to hold Respondent in contempt for failing to comply with Orphans' Court Decrees (N.T. 142-143, 145-147, 158-161; P-57, 59, 65; JS 80);

g. Orphans' Court sanctioned Respondent on more than one occasion for failing to comply with various Decrees, and directed Respondent to pay sanctions totaling \$148,000.00 in a Decree dated December 23, 2015 (N.T. 152-153, 196-199; P-63, 78, 101, 106; JS 85, 90, 110, 114);

h. Mr. Carroll learned for the first time during Respondent's cross-examination at an April 4, 2013 hearing that there had been a transfer of decedent's assets from the Moskowitz/Fein joint account to the Fein joint account (N.T. 148-152; JS 83);

i. Respondent made three withdrawals totaling \$21,052.22 from the Fein joint account between March 14, 2013 and March 22, 2013, which withdrawals were not in compliance with the Orphans' Court's August 8, 2012 Decree (N.T. 161-164; P-53, P-62, pp. 57-58, P-66, Ex. F, p. 10, P-78, 101, 106; JS 90, 110, 114);

j. Respondent's March 27, 2013 deposit of \$20,000.00 into the Fein joint account did not fully replace the withdrawals from the Fein joint account totaling \$21,052.22 (*Id.*);

k. Respondent's \$30,000.00 payment to Mr. Carroll-pursuant to an Orphans' Court Decree that required Respondent and Ms. Fein to each make a \$15,000.00 payment to Mr. Carroll-was made from funds that were held in the Fein joint account, which payment violated the Orphans' Court's August 8, 2012 Decree (N.T. 165-166; P-53, 67, 78, 106; JS 87, 90, 114);

l. Respondent had acted improperly by not withdrawing several earlier accountings that he had filed prior to filing the First and Final Account as agent for the decedent ("the October 2013 accounting") and the Petition for Adjudication/Statement of Distribution ("the October 2013 Adjudication Petition")(N.T. 167-170; P-70-71; JS 88);

m. Orphans' Court ordered Respondent and Ms. Fein to produce financial records for the Fein joint account so that Mr. Carroll could perform the accounting that would enable Mr. Carroll to complete his duties as Administrator for decedent's estate (N.T. 174-176; P-83, 90, 93);

n. Respondent failed to produce the financial records in full and in a timely manner (N.T. 176; P-83, 86, 87, 90-93; JS 94-96, 99, 101-103);

o. Mr. Carroll filed a report with Orphans' Court which focused on what had happened to decedent's assets after they were transferred, calculated that decedent's assets had a value of \$1,278,980.00 (excluding any income generated by decedent's assets), found that the margin loan on the Fein joint account (which had been transferred into an "Institutional account" with TD Ameritrade and assigned a different account number) had increased to \$1,057,000.00, and concluded that the total value of the assets held in the Fein joint account was

insufficient to satisfy the margin loan and pay decedent's estate the value of decedent's assets (N.T. 178-187; P-99-100; JS 107);

p. Respondent testified at a July 15, 2015 hearing that he would not comply if directed by Orphans' Court to cooperate with effectuating the transfer of the Institutional account to decedent's estate (N.T. 188-189; P-97, pp. 52-54);

q. Respondent only agreed to execute the documents to transfer the assets in the Institutional account to decedent's estate under threat of being imprisoned by Judge Cronin at a December 29, 2015 hearing (N.T. 189-190);

r. in November 2016, the decedent's estate received the value of decedent's assets that were held in the Institutional account after Mr. Carroll sought to execute upon Judge Cronin's Adjudication, Respondent failed to post an appeal bond in the amount of \$1,711,000.00 so he could obtain a supersedeas pending the appeal, and Judge Kenney ordered Respondent either to transfer assets to decedent's estate that were valued at \$1,278,980.00 or to transfer Respondent's IRA account with TD Ameritrade to the Institutional account in order to satisfy the margin loan (N.T. 192-196);

s. Respondent underpaid decedent's estate by approximately \$60,000.00 based on the amounts awarded to decedent's estate by Orphans' Court (N.T. 199-200; P-100, 106); and

t. Orphans' Court issued an Adjudication on December 11, 2018, that brought decedent's estate to a close (N.T. 200-204).

153. Respondent did not offer any testimony or evidence to rebut the evidence that Petitioner presented in support of Charge II.

ADDITIONAL FINDINGS

154. Respondent admitted that he understands what he did with respect to the redacted records was wrong. N.T. 337.

155. Respondent apologized to the lawyers who were involved in the matters. *Id.*

156. Respondent apologized to the Disciplinary Board. N.T. 337-338.

157. Respondent, who was admitted to the Bar of the Supreme Court of New Jersey in 1967 and to the Bar of the Supreme Court of Pennsylvania in 1970, has no record of discipline in either jurisdiction.

158. Respondent provided pro bono legal services for several years as a volunteer with the Philadelphia Volunteers for the Indigent Program, where he served on the board, and the Philadelphia Volunteer Lawyers for the Arts, where he was awarded Volunteer of the Year in 2011. N.T. 332-335; R-1, -2.

159. Respondent and his wife established a fund in memory of their son for the benefit of "One Israel Fund." N.T. 334.

III. CONCLUSIONS OF LAW

By his conduct as set forth above in Charge I, Respondent violated the following Rules of Professional Conduct (RPC):

1. RPC 3.3(a)(3) – A lawyer shall not knowingly offer evidence that the lawyer knows to be false. If a lawyer, the lawyer’s client, or a witness called by the lawyer, has offered material evidence before a tribunal or in an ancillary proceeding conducted pursuant to a tribunal’s adjudicative authority, such as a deposition, and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false;

2. RPC 3.4(a) – A lawyer shall not unlawfully obstruct another party’s access to evidence or unlawfully alter, destroy or conceal a document or other material having potential evidentiary value or assist another person to do any such act;

3. RPC 3.4(b) - A lawyer shall not falsify evidence, counsel or assist a witness to testify falsely, pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness’ testimony or the outcome of the case, but a lawyer may pay, cause to be paid, guarantee or acquiesce in the payment of: (1) expenses reasonably incurred by a witness in attending or testifying, (2) reasonable compensation to a witness for the witness’ loss of time in attending or testifying, and (3) a reasonable fee for the professional services of an expert witness;

4. RPC 8.4(a) – It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

5. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and

6. RPC 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

By his conduct as set forth above in Charge II, Respondent violated the following rule:

1. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice.

IV. DISCUSSION

In this matter, the Board considers the recommendation to suspend Respondent for six months for altering records received in response to a subpoena and for failing to abide by court orders and decrees issued by the Delaware County Orphans' Court in connection with an estate proceeding. Petitioner filed a two-charge Petition for Discipline charging Respondent with violating RPC 3.3(a)(3), 3.4(a), 3.4(b), 8.4(a), 8.4(c), and 8.4(d) (two counts). The Committee concluded that Respondent “engaged in unethical misconduct in his efforts to manipulate evidence” and “intentionally violated multiple decrees in the Estate Case.” Hearing Committee Report 10/10/2019 at 18, 21. The Committee unanimously recommended a three month suspension at Charge I and a three month suspension at Charge II, for a total of six months. Respondent filed

exceptions to the recommendation and takes issue with the Committee's determination that he violated RPC 3.3(a)(3) and RPC 8.4(d). Respondent further contends the Committee failed to properly consider his mitigating factors. Following oral argument, and upon review of the record, we find no merit to Respondent's exceptions. We conclude that Respondent violated the Rules of Professional Conduct as charged in the Petition for Discipline, and for the reasons set forth below, we recommend that Respondent be suspended for a period of six months.

Petitioner must prove ethical misconduct by a preponderance of evidence that is clear and satisfactory. *Office of Disciplinary Counsel v. John Grigsby*, 425 A.2d 730, 732 (Pa. 1981). The evidence, which consists of the Joint Stipulations, Petitioner's exhibits, and the testimony of Petitioner's witnesses, proves that Respondent violated Rules 3.3(a)(3), 3.4(a), 3.4(b), 8.4(a), 8.4(c), and 8.4(d).

The events underlying Respondent's misconduct as to Charge I arose during litigation pursued following the death of Bernice Fein's companion, Leonard Moskowitz, wherein Ms. Fein sought to establish that Mr. Moskowitz was domiciled in New Jersey. Ms. Fein was represented by Mr. Gadsden; however, Respondent was involved in the matter on his mother's behalf. During the proceeding, Respondent received documents from Lions Gate care facility in response to a subpoena. Some of the subpoenaed documents supported Ms. Fein's position; others did not. After receiving these documents, and prior to advising Mr. Gadsden of the receipt and sharing the documents with Mr. Gadsden, Respondent attempted to manipulate the production to include only those documents favorable to Ms. Fein. He asked that Lions Gate reproduce only five entries from the records and also provide a certification that the subset was a true and

correct copy of the records produced. Despite Respondent's persistence, Lions Gate refused to accommodate these requests.

As he was unable to persuade Lions Gate to go along with his plan, Respondent took it upon himself to redact the documents. He provided Mr. Gadsden with the redacted records without informing Mr. Gadsden about the redactions and the concealment of records that were not favorable to Ms. Fein's position. Respondent allowed Mr. Gadsden to forward unknowingly to Mr. Auerbach false evidence in the form of redacted records, using Mr. Gadsden to deceive Mr. Auerbach into believing that Mr. Auerbach had received the universe of records produced by Lions Gate. Respondent's manipulation of the records was discovered by Mr. Auerbach during the deposition of a Lions Gate employee. One day later, at the request of Mr. Gadsden, Respondent produced the entirety of the documents.

Respondent defends his actions on two points. First, he asserts that the redacted documents were never actually submitted to the court or relied on by the court to make a determination in the Moskowitz matter. A review of RPC 3.3(a)(3) demonstrates that a lawyer is required to act with candor toward the tribunal, and is prohibited from offering evidence that the lawyer knows to be false, which includes during ancillary proceedings, such as depositions. The record establishes that Respondent provided false evidence to Mr. Gadsden, who in turn provided the redacted records to Mr. Auerbach in order to depose a witness, which deposition constituted an "ancillary proceeding pursuant to a tribunal's authority."

Second, Respondent attempts to persuade this Board that since he was not a litigator, he was unfamiliar with the rules concerning production of documents in litigation. We give this argument short shrift, as did the Committee. Respondent has fifty years of

experience practicing law. To expect this Board and the Court to believe that he did not understand that an attorney may not alter records produced responsive to a subpoena is extraordinary and completely nonsensical.

Relative to the events underlying Charge II, the record supports the conclusion that Respondent engaged in a pattern of noncompliance with court orders and repeatedly and intentionally violated multiple decrees in the Moskowitz estate case. Between August 2012 and June 2015, Respondent failed to comply with several decrees issued by the court, which decrees required Respondent to account for decedent's assets, to provide certain financial records to the estate administrator, and to pay specific sums of money to decedent's estate. In order to address this noncompliance, the court held numerous hearings and entered orders sanctioning Respondent for his recalcitrance, at one point threatening to imprison Respondent if he did not comply.

Respondent objects to the Committee's conclusion in Charge II that he violated RPC 8.4(d), which prohibits conduct prejudicial to the administration of justice. We conclude that this objection has no substance, as an attorney's failure to comply with court orders constitutes a basis for finding a violation of 8.4(d). See ***Office of Disciplinary Counsel v. Paul J. McArdle***, No. 39 DB 2015 (D. Bd. 921/2016) (S. Ct. Order 11/22/2016). Respondent's non-compliance is amply documented in the record, and he offered no defense or explanation for his contumacious behavior.

Respondent is a 77-year old practitioner with approximately five decades of experience practicing law and no prior professional discipline. During his years of practice, Respondent volunteered with several organizations performing pro bono services and set up a charitable fund in honor of his son. Relative to his misconduct, Respondent apologized on the record to Mr. Auerbach, Mr. Gadsden, and the Board.

Although Respondent claimed in his exceptions that the Committee did not properly consider his mitigating evidence, we find this to be an inaccurate analysis of the Committee's Report. The Committee specifically noted Respondent's years of experience with no discipline and his volunteer activities as a reason why it was not recommending a more severe measure of discipline. Hearing Committee Report 10/10/2019 at 23.

Respondent raises other factors for which he claims he was not given due credit in mitigation. Respondent contends that the Committee erred by not treating as mitigating factors that: no disciplinary action was taken against him on complaints filed in other jurisdictions identical to the instant matter; Respondent eventually provided the unredacted records; Respondent and his mother did not enjoy any financial gain by his redaction of records; and, the Orphans' Court did not refer the issue of the redacted records to Office of Disciplinary Counsel.¹ Respondent provides no explanation or authority for the Board to treat this list of facts as mitigating circumstances.

Upon review, we conclude that Respondent's proposed factors do not constitute mitigation. This matter is properly before the Board, and the fact that another jurisdiction or the Orphans' Court did not take action has no bearing on our review and recommendation in this matter. Furthermore, the fact that Respondent eventually provided the unredacted documents after his misconduct was discovered by opposing counsel as well as the fact that he and his mother did not benefit financially from his misconduct, are certainly not facts of a mitigating nature.

¹ Respondent asserts that his apology to the Orphans' Court is mitigation; we find that Respondent apologized on the record at the disciplinary hearing to the attorneys involved in the redacted records matter and to the Board and we have weighed that finding in our evaluation of discipline.

Following review of the facts and circumstances of this matter, we next consider the appropriate sanction to address Respondent's misconduct.

"The primary purpose of our system of lawyer discipline is to protect the public from unfit attorneys and to maintain the integrity of the legal system." **Office of Disciplinary Counsel v. John Keller**, 506 A.2d 872, 875 (Pa. 1986). In determining the appropriate discipline, the Board examines precedent for the purpose of examining "the respondent's conduct against other similar transgressions." **In re Anonymous No. 56 DB 1994 (Linda Gertrude Roback)**, 29 Pa. D. & C. 4th 398, 406 (1995). The Board considers any aggravating and mitigating circumstances. **In re Anonymous No. 35 DB 1988 (Melvin V. Richardson)**, 8 Pa. D. & C. 4th 344, 355 (1990).

Public discipline is required to address Respondent's redaction of records and pattern of failing to abide by court orders. Prior matters involving the types of misconduct engaged in by Respondent have resulted in discipline ranging from public reprimand to suspension. The respondent in **Office of Disciplinary Counsel v. Francis T. Colleran**, No. 196 DB 2011 (D. Bd. Order 7/24/2012) received a public reprimand administered by the Board for, *inter alia*, forwarding to opposing counsel during representation of a client in a medical malpractice action, a preliminary draft expert report that was incomplete without disclosing to opposing counsel that the expert report was a draft. In determining that a public reprimand was appropriate, the Board considered in mitigation that Colleran had no prior discipline, admitted his misconduct, and cooperated with Office of Disciplinary Counsel.

In the matter of **Office of Disciplinary Counsel v. Blair Harry Hindman**, No. 122 DB 2013 (D. Bd. Rpt. 12/8/2014) (S. Ct. Order 2/10/2015), Hindman redacted information unfavorable to his client in a sentencing memorandum and submitted the altered

document to the court. When questioned by the court, Hindman made statements that were misrepresentations, but ultimately admitted his wrongdoing and apologized to the court. The Board found that Hindman accepted responsibility for his actions, expressed genuine remorse, had no prior discipline, and presented evidence of his good character. The Board recommended a public censure, which the Court imposed.

In the matter of ***Office of Disciplinary Counsel v. John Larason***, No. 1 DB 2002 (D. Bd. Rpt. 5/21/2004) (S. Ct. Order 8/19/2004), the Board recommended and the Court imposed a suspension for three months on Larason, who altered a bankruptcy court schedule and used the altered document to defend his client in a municipal court matter.

Other matters involving more egregious species of false evidence have resulted in long periods of suspension and may be distinguished from the facts of the instant matter. In the matter of ***Office of Disciplinary Counsel v. Allen L. Feingold***, No. 93 DB 2003 (D. Bd. Rpt. 11/18/2005) (S. Ct. Order 3/3/2006), among other acts of misconduct, Feingold assisted his client in offering false testimony during the client's deposition and attempted to conceal the client's false testimony. The Court suspended Feingold for a period of three years. The matter of ***Office of Disciplinary Counsel v. Itzhak Kornfeld***, No. 177 DB 2007 (S. Ct. Order 6/24/2009) involved Kornfeld's altering a document, submitting it to the court, and making false statements to the court regarding the document, for which he consented to a two year period of suspension.

The Court has imposed public discipline on attorneys who fail to comply with court orders. Most often, this type of misconduct is intertwined with other misconduct. The Court suspended an attorney for six months in the matter of ***Office of Disciplinary Counsel v. Gary Scott Silver***, Nos. 56 & 178 DB 2003 (D. Bd. Rpt. 1/7/2005) (S. Ct. Order 4/6/2005). Therein, among acts of misconduct that included commingling entrusted

funds with personal funds, failing to maintain trust account records, failing to deliver funds promptly to a client, and sending ex parte communications to the court, Silver failed to comply with court orders, resulting in a contempt finding.

In two more recent matters, the Court imposed suspension on attorneys, based in part on their failure to abide by court orders. In the matter of ***Office of Disciplinary Counsel v. Hercules Pappas***, No. 190 DB 2018 (D. Bd. Rpt. 11/12/2019) (S. Ct. Order 1/23/2020), the Court suspended Pappas for one year and one day for conduct which included failing to comply with bankruptcy court orders to complete legal education credits. Although Pappas had no prior discipline, the Board found that he showed disregard for the disciplinary system, did not provide credible testimony as to his actions, and was not remorseful. Similarly, an attorney who defied two court orders was suspended for one year and one day. ***Office of Disciplinary Counsel v. Joseph Maher***, 4 DB 2018 (D. Bd. Rpt. 12/14/2018) (S. Ct. Order 2/25/2019) When making its recommendation to suspend Maher, the Board considered that he did not accept responsibility for his actions, displayed no remorse, and had a record of prior discipline.

Based on our review of these cases, we conclude that Respondent's misconduct in redacting subpoenaed records and repeatedly disregarding multiple court orders warrants a six month suspension from the practice of law. While arguably Respondent's actions might justify a longer suspension based on the sanctions imposed in some of the prior cited matters, we find that the totality of the circumstances of the instant matter do not require a longer suspension.

Being mindful of our obligation to view each matter on its own particular facts and circumstances, we consider the mitigating factors, and conclude that lawyers who have practiced for five decades without discipline, and who have contributed their time and

talents to pro bono and volunteer causes, deserve to have those facts weighed in their favor. Based on Respondent's lengthy and blemish-free legal career up to this point in time, we conclude that his regrettable conduct in the instant matter is not indicative of the manner in which he practiced law for nearly the entirety of his career. These compelling factors contribute to our conclusion that Respondent is not a danger to the public such that he must face a reinstatement hearing to determine his fitness. A six month period of suspension is consistent with precedent and is sufficient to address the misconduct.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Respondent, Michael B. Fein, be Suspended for six months from the practice of law in this Commonwealth.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
Dion G. Rassias, Member

Date: 3.5.20